

AMENDED STATEMENT OF ENVIRONMENTAL EFFECTS



21 & 22 BURNHAM CLOSE
THORNTON

NEW GENERATION BOARDING HOUSE

PREPARED FOR
ZOE MAY PTY LTD

PREPARED BY



CONTACT INFORMATION
MICHAEL BREWER


PO BOX 258 EAST MAITLAND
NSW 2323
M: 049 049 5656
WWW.415UPS.COM.AU




DECEMBER 2021
© 415 URBAN PLANNING SOLUTIONS 2021
ABN 164 225 481 42

CONTROL PAGE ONLY



DOCUMENT CONTROL

DOCUMENT NAME	STATEMENT OF ENVIRONMENTAL EFFECTS
AUTHOR (INITIAL & SIGN)	MJB 
RELEASE DATE	9 DECEMBER 2021

REVISION NO.	RELEASE DATE	AUTHOR/S SIGNATURE	DESCRIPTION OF AMENDMENT
0	24/12/20		DRAFT FOR CLIENT REVIEW
1	15/1/21		FINAL
2	9/12/21		FINAL POST S34

THIS DOCUMENT HAS BEEN PREPARED WITHOUT PREJUDICE FOR ZOE MAY PTY LTD BY 415 URBAN PLANNING SOLUTIONS PTY LTD IN RESPONSE TO A S34 CONFERENCE HELD 5 NOVEMBER 2021 REGARDING DA 18/1394 WITH MAITLAND CITY COUNCIL. REPRODUCTION OF ALL OR PART OF THIS DOCUMENT IS PROHIBITED WITHOUT THE PRIOR PERMISSION OF 415 URBAN PLANNING SOLUTIONS PTY LTD

TABLE OF CONTENTS

1	INTRODUCTION_____	6
1.1	THE CLIENT _____	6
1.2	THE REGULATIONS _____	6
1.3	THIS REPORT _____	6
1.4	LIST OF DRAWINGS _____	7
1.5	BACKGROUND _____	8
2	THE AMENDED PROPOSAL _____	10
2.1	GENERAL DESCRIPTION _____	10
2.2	BUILDING COMPONENTS _____	10
2.3	LANDSCAPING _____	11
2.4	WASTE MANAGEMENT _____	11
2.5	STORMWATER DRAINAGE _____	11
2.6	BUILDING DESIGN _____	11
3	LOCALITY AND THE SITE _____	12
3.1	THE LOCALITY _____	12
3.2	SITE DESCRIPTION _____	13
3.3	SITE CONSTRAINTS _____	14
3.4	SITE AND LOCALITY PHOTOS – DECEMBER 2019 & AUGUST 2021 _____	17
4	ENVIRONMENTAL ASSESSMENT _____	26
4.1	ENVIRONMENTAL PLANNING & ASSESSMENT REGULATION 2000 _____	26
4.2	ENVIRONMENTAL PLANNING & ASSESSMENT ACT 1979 _____	26
4.3	SEPP PROVISIONS _____	26
4.4	REGIONAL ENVIRONMENTAL PLANS _____	41
4.5	LEP PROVISIONS _____	41
4.6	DRAFT PLANNING INSTRUMENTS _____	43
4.7	PLANNING AGREEMENTS _____	43
4.8	DEVELOPMENT CONTROL PLAN PROVISIONS _____	43
4.9	RESPONSE TO INFORMATION REQUEST AND SECTION 34 PROCESS _____	44
4.10	SUBMISSIONS _____	45
4.11	SOCIAL IMPACT ASSESSMENT _____	45
4.12	THE PUBLIC INTEREST _____	45
4.13	SUITABILITY OF THE SITE _____	45
4.14	OTHER RELEVANT MATTERS _____	46

5	CONCLUSION	47
---	------------	----

APPENDICES

A – REQUEST FOR INFORMATION AND RESPONSE

B – RESPONSE TO CONTENTIONS

C – RESPONSE TO COUNCIL DATED 29 NOVEMBER 2021

1 INTRODUCTION

1.1 THE CLIENT

This Amended Statement of Environmental Effects (SEE) has been prepared without prejudice for Zoe May Pty Ltd to accompany a Development Application (DA 18/1394) to Maitland City Council and updated following a Section 34 Conference held on 5 November 2021. It relates to the operation of a New Generation Boarding House (the boarding house).

1.2 THE REGULATIONS

This report addresses Schedule 1 (2) (4) of the *Environmental Planning & Assessment Regulation 2000* (the Regulations) and therefore includes only what a 'Statement of Environmental Effects' accompanying a DA needs to include (in the case of development other than designated development or State significant development).

Schedule 1 (2) (4) of the Regulations states that:

A statement of environmental effects must indicate the following matters:

- (a) *the environmental impacts of the development,*
- (b) *how the environmental impacts of the development have been identified,*
- (c) *the steps to be taken to protect the environment or to lessen the expected harm to the environment,*
- (d) *any matters required to be indicated by any guidelines issued by the Director-General for the purposes of this clause.*

1.3 THIS REPORT

This SEE is divided into the following sections that address matters (a) to (d) above.

Section 1	This introduction
Section 2	A description of the proposal in detail
Section 3	A description of the site and its surrounds
Section 4	An assessment of the proposal in accordance with the relevant matters for consideration prescribed by Clause 4.15 of the Environmental Planning and Assessment Act, 1979 (as amended)
Section 5	The conclusion to the assessment

1.4 LIST OF DRAWINGS

TABLE 1 below, indicates the Architectural plans that this SEE has relied upon in order to detail as a minimum, any likely environmental and social impacts of the development. The plans have been provided by Sheer Designs Pty Ltd.

TABLE 1 LIST OF DRAWINGS

SHEET NO.	DESCRIPTION	ISSUE	DATE
<u>ARCHITECTURAL</u> DWG SD21 BURN	PREPARED BY SHEER DESIGNS		
01	Title Page	X	7.12.21
02	Perspectives	X	7.12.21
03	Site Analysis	X	7.12.21
04	Site Plan – Car Park Plan	X	7.12.21
05	First Floor Plan	X	7.12.21
06	Second Floor Plan	X	7.12.21
07	Typical Room Plan	X	7.12.21
08	Room Perspectives	X	7.12.21
09	Elevations I	X	7.12.21
10	Elevations II	X	7.12.21
11	Sections	X	7.12.21
12	Earthworks	X	7.12.21
13	Shadow Diagram I	X	7.12.21
14	Shadow Diagram II	X	7.12.21
15	Shadow Diagram III	X	7.12.21
16	Solar Access – Northern Aspect	X	7.12.21
17	Solar Access – Southern Aspect	X	7.12.21
18	Shadow Comparison I	X	7.12.21
19	Shadow Comparison II	X	7.12.21
20	Shadow Comparison III	X	7.12.21
21	Driveway Plan	X	7.12.21
22	Lot Consolidation Plan	X	7.12.21
23	Colours and Finishes	X	7.12.21
24	BASIX	X	7.12.21
<u>STORMWATER</u>	PREPARED BY MARLINE NEWCASTLE PTY LTD		
SW-01	Legend, Notes and Details	2	9.12.21
SW-02	Site Services	2	9.12.21

SHEET NO.	DESCRIPTION	ISSUE	DATE
SW-03	Legend, Notes and Details	2	9.12.21
SW-04	Stormwater Management Layout	2	9.12.21
<u>LANDSCAPE</u>	PREPARED BY JK'S GARDEN CREATIONS		
1/4	Site Analysis Plan		9.12.21
2/4	Landscape Plan/ Ground Floor Plan		9.12.21
3/4	Rooftop Landscape Plan		9.12.21
4/4	Specification Plan		9.12.21

1.5 BACKGROUND

DA 18/1394 was lodged on 08/06/2018 for the demolition of two existing dwellings and construction of four, three storey buildings for use as a New Generation Boarding House. The application was notified to the surrounding area between 25 June 2018 and 9 July 2018, with 56 submissions being received by Council. On-going discussions with Council resulted in a number of modifications to the proposal, with a full set of amended plans and supporting documentation submitted on 9 February 2021.

The application was duly placed on public notification on 12 April 2021 for a period of fourteen (14) days until 26 April 2021. In response to the amended plans, a total of thirty (30) submissions were received with twenty-seven (27) opposed to the DA and three (3) in support.

The DA was reported to Council and was refused on 8 June 2021, with the Applicant initiating proceedings against Council on 9 July 2021. Council filed a Statement of Facts and Contentions with the Land and Environment Court on 6 August 2021. A submission was provided to Council on a without prejudice basis on 22 October 2021, documenting a response to the Contentions. The planning submission is contained at Appendix B of this SEE.

A formal Section 34 Conciliation Conference was held on 5 November 2021 wherein further design amendments were discussed and ultimately incorporated into the current iteration of the development. These changes are documented on the submitted plans and in the Statement of Environmental Effects.

Relevantly, at its meeting on 22 October 2019, Council also considered a Notice of Motion regarding the application of the State Environmental Planning Policy (Affordable Rental Housing) 2009 and multi-dwelling housing. Council resolved as follows:

"THAT

- 1. Council officers investigate and report back on potential planning design and development controls which will support high quality multi-unit housing (including but not limited to residential apartments, serviced apartments and boarding houses) to ensure new development reflects the character of the locality and is consistent with the built form and density identified in Councils Local Environmental Plan and Development Control Plan.*
- 2. Council write to the appropriate government Minister and department seeking changes to the Affordable Housing Rental SEPP being applied to regional and rural areas of NSW."*

Over two years have now passed and it does not appear that this report has been forthcoming during that time. It is noted however, in the Conclusion to Item 10.8 of the Agenda for the Council Meeting of 27 October 2020, that the Group Manager Planning and Environment states:

"The Maitland Local Strategic Planning Statement 2040+ identifies the need to prepare a Local Housing Strategy which will investigate and respond to housing diversity and choice, housing affordability and will include a strategic review of current land use zones and development standards. As part of this strategic review the permissibility of boarding houses and the need for boarding houses within Maitland will be considered to ensure that boarding houses are located in areas which promote good outcomes for all of the community.

It is recommended that Council review boarding houses as part of the preparation of the Local Housing Strategy."

It is noted that subsequently, Council resolved to "review the permissibility of Boarding Houses as part of the Housing Strategy". As part of this process, Council have embarked upon a three-stage process to prepare a Local Housing Strategy involving the following:

- Stage 1: Establish an evidence-base to identify the local housing requirements
- Stage 2: Undertake Land Use Opportunities & Constraints Analysis
- Stage 3: Preparation of Local Housing Strategy

Council's Strategic Planning staff have advised that Stage 1 and Stage 2 works are currently underway with a draft strategy expected to be placed on public exhibition in late 2021, however this has not yet occurred. The consideration and approval of this application will not jeopardise the activities or processes being undertaken at the strategic level towards a robust, evidence-based Local Housing Strategy.

2 THE AMENDED PROPOSAL

2.1 GENERAL DESCRIPTION

The applicant proposes to demolish the existing structures on the Site and construct a New Generation Boarding House containing 31 boarding rooms, with associated communal facilities, parking and landscaped areas, as well as an on-site manager's residence.

In general, the amended development will comprise:

- 31 x double boarding rooms, of which Rooms 11 and 31 are accessible rooms.
- A manager's residence.
- Two (2) communal laundries - one on each level.
- Communal gardens/ outdoor spaces on each level and a communal living room on the upper level.
- Pedestrian access points off both Burnham Close and Taylor Avenue.
- A stair well at the main entrance and a stair well and lift core located centrally and serving both levels plus the basement car park.
- 30 car parking spaces including two disabled spaces, one dedicated electric vehicle space, one car share space, a dedicated Manager's car space and three visitor spaces.
- 7 x motorcycle parking spaces and 8 x bicycle rack spaces.
- External and internal bin storage areas.
- A utility room.
- Landscaped open space areas for use by residents with provision for generous deep soil zones.

2.2 BUILDING COMPONENTS

In accordance with drawings prepared by Sheer Designs, the main components of the development are listed in Table 2 below.

TABLE 2 THE PROPOSED DEVELOPMENT

LEVEL	DETAILS
Ground	Car/ bike/ bicycle parking partly excavated into the Site, external bin store, communal open space, clotheslines and entry foyer with parcel lockers. Pedestrian access to both street

LEVEL	DETAILS
	frontages and letterboxes adjacent to driveway from Burnham Close. Landscaping provided to the communal outdoor areas and along property boundaries.
First Floor	20 x double boarding rooms including 1 x accessible boarding room, manager's room and open space, lift and stair wells, pedestrian entry from Taylor Avenue frontage (adjacent to Manager's Room, 2 x outdoor communal garden/ open space areas, communal laundry.
Second Floor	11 x double boarding rooms including 1 x accessible boarding room, lift and stair wells, an outdoor communal garden/ open space area, indoor common room with attached balcony, communal laundry.

2.3 LANDSCAPING

A detailed Landscape Plan accompanies the DA under separate cover. The Manager's room will have a dedicated private open space area accessible from the room.

Communal open space will be provided in several locations both at ground level and in the form of a roof garden on each level, while the perimeter will be landscaped as demonstrated on the submitted Landscape Plan.

2.4 WASTE MANAGEMENT

The proposal includes the provision of waste storage facilities at the front of the Site in a separate enclosure and in the basement car park. Details of the proposed waste management measures are provided in the Waste Management Plan.

2.5 STORMWATER DRAINAGE

A Stormwater Drainage Plan has been submitted under separate cover, detailing the proposed stormwater management measures proposed.

2.6 BUILDING DESIGN

The submitted photomontages and external schedule of colours, finishes, textures and materials that accompany the subject DA, are indicative of the finished appearance of the proposed development.

3 LOCALITY AND THE SITE

3.1 THE LOCALITY

Thornton is located within the local government area of Maitland City Council. The suburb is split by the New England Highway running north west to south east through the suburb. Thornton is predominantly zoned R1 General Residential however also consists of a range of public recreational areas and local centres within the suburb. Thornton has public transport accessibility including bus stops and a railway station adjacent to Thornton Road catering for passengers travelling to Newcastle, Maitland, Scone and Dungog.

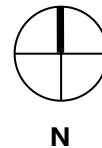
FIGURE 1: LOCALITY AERIAL VIEW



SOURCE SIX MAPS 2020



AERIAL OF SUBJECT SITE & SURROUNDS



3.2 SITE DESCRIPTION

The Site is legally described as Lots 11 and 12 in DP 246016 and known as 21 and 22 Burnham Close, Thornton, respectively. Key details are provided in Table 3 below and the Site is identified in Figure 2 below.

FIGURE 2: SITE AERIAL VIEW



SOURCE SIX MAPS 2020



AERIAL OF SUBJECT SITE

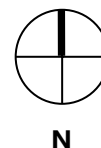


TABLE 3 THE SITE

ADDRESS	LOT/ DP	AREA (M ²)	FRONTAGE
21 Burnham Cl	11/ 246016	835.11	9.8 m (arc)
22 Burnham Cl	12/ 246016	774.5	9.5 m (arc)
	TOTAL	1609.61	19.3 m (arc)

3.3 SITE CONSTRAINTS

The subject site is zoned R1 General Residential according to the Maitland Local Environmental Plan 2011 (MLEP). Although the site is affected by Class 5 acid sulphate soils, no other natural hazards, such as mine subsidence or bushfire affectation, have been identified.

Key features of the Site are identified in Table 4 and Figure 2 below.

TABLE 4: SITE FEATURES

FEATURE	DETAILS
Topography	The Site falls approximately 2.8m from its frontage to Taylor Avenue down to the south western boundary in a relatively consistent fashion.
Site Layout and Built Form	Each property contains a single storey dwelling house with No. 22 also containing a car port and two small sheds.
Landscape	Both allotments contain extensive grassed areas with scattered trees and small landscaped beds in varying condition. The trees identified by the Arborist note a range of native and exotic species.
Vehicle Access	Both allotments have vehicular access via a conventional driveway and gutter crossing off Burnham Close.
Pedestrian Access	Pedestrian access is available directly from both Burnham Close and Taylor Avenue. Access is also available to the pedestrian pathway running along the southeastern boundary of the Site. Immediately adjacent to the Taylor Avenue frontage is a pedestrian crossing, which facilitates access to Thornton Shopping Centre.
Utility Services	The Site is currently serviced by potable Water, electricity, sewage and telecommunications.

In the wider context, the key features of the area are discussed in Table 4 below.

TABLE 4: SURROUNDING CONTEXT

ASPECT	COMMENT
Surrounding Context	<p>Predominantly zoned R1 General Residential with tracts of RE1 Public Recreation to the west and to the east (Thornton Park). Immediately to the north east lies the Thornton Shopping Centre, which is zoned B2 Local Centre. Further to the southwest lies the Hunter Railway Line and a tract of bushland (zoned E3 Environmental Management). The eastern section of the Thornton Industrial Estate, zoned B5 Business Development lies further to the south.</p>
Public Transport	<p>The nearest bus stops are located on both sides of Taylor Avenue approximately 30m to the south east of the pedestrian crossing. Bus services include:</p> <ul style="list-style-type: none"> ▪ 189 – Greenhills Stockland to Thornton <p>Additional bus stops are located approximately 100m to the north near the intersection of Taylor Avenue and Thomas Coke Drive. Bus services at these stops include the following:</p> <ul style="list-style-type: none"> ▪ 182 – Rutherford to Thornton via Maitland ▪ 189 – Greenhills Stockland to Thornton <p>The nearest train services to the Site are provided on the Hunter Line accessed from Thornton Station (approximately 870m southeast). The 189 bus service connects with Thornton Station.</p>
Educational Facilities	<p>Thornton Public School (front gate is approximately 250m to the south-west along Taylor Avenue)</p> <p>Aspect Hunter School is located 700m to the south</p>
Public Recreation Facilities	<p>Unnamed park approximately 300m to the west</p> <p>Thornton Park approximately 300m to the east</p> <p>A & D Lawrence Oval approximately 780m to the north east</p>

ASPECT	COMMENT
Local Centres	<ul style="list-style-type: none"> ▪ Thornton Shopping Centre immediately opposite the Site on Taylor Avenue to the north ▪ Stocklands Greenhills Shopping Centre approximately 6.4km to the northwest ▪ Tenambit Shopping Centre approximately 6.1km to the northeast ▪ Thornton Industrial Estate approximately 1.8km to the south.

3.4 SITE AND LOCALITY PHOTOS – DECEMBER 2019 & AUGUST 2021

PHOTO 1: LOOKING SOUTHEAST FROM TAYLOR AVENUE/ THOMAS COKE DRIVE
19 AND 17 BURNHAM CLOSE



PHOTO 2: LOOKING WEST AT NO.21 FROM PEDESTRIAN PATHWAY



PHOTO 3: LOOKING WEST AT NO.22 FROM PEDESTRIAN PATHWAY



PHOTO 4: LOOKING SOUTH AT NO.19 BURNHAM CLOSE FROM TAYLOR AVENUE



PHOTO 5: LOOKING WEST AT THE SITE FROM TAYLOR AVENUE



PHOTO 6: LOOKING SOUTHWEST AT NO.21 FROM TAYLOR AVENUE



PHOTO 7: LOOKING SOUTHWEST AT PEDESTRIAN PATHWAY AND THORNTON PUBLIC SCHOOL GROUNDS



PHOTO 8: STREET PRESENCE - LOOKING NORTH AT 17 BURNHAM CLOSE.



PHOTO 9: LOOKING EAST FROM BURNHAM CLOSE AT NO. 17 AND 19



PHOTO 10: LOOKING EAST FROM BURNHAM CLOSE AT THE SITE.



PHOTO 11: LOOKING SOUTHEAST FROM BURNHAM CLOSE AT NO. 20



PHOTO 12: LOOKING SOUTHEAST FROM BURNHAM CLOSE AT 18 AND 16



PHOTO 13: LOOKING WEST FROM BURNHAM CLOSE AT 16, 14 AND 12



PHOTO 14: STREETScape LOOKING NORTHWEST ALONG BURNHAM CLOSE.



PHOTO 15: LOOKING NORTHEAST AT THORNTON SHOPPING CENTRE.



PHOTO 16: LOOKING NORTHEAST AT THORNTON LIBRARY.



PHOTO 17: LOOKING SOUTHWEST AT 19 AND 17 BURNHAM CLOSE.



PHOTO 18: LOOKING SOUTHWEST AT 17 AND 15 BURNHAM CLOSE.



4 ENVIRONMENTAL ASSESSMENT

4.1 ENVIRONMENTAL PLANNING & ASSESSMENT REGULATION 2000

This report considers the environmental consequences of the development as required under Schedule 1 (2) (4) of the Environmental Planning & Assessment Regulation 2000 (the Regulations).

Any environmental impacts of the development have been identified through a review of applicable planning instruments as outlined below; review of the site and its surrounds and review of other related documents. Our assessment of the proposal, against the planning instruments guiding development, concludes that environmental impacts, as a result of the development, are acceptable. The perceived and actual impacts of the proposal are no different to those that would be anticipated by the largest form of permissible development in the R1 General Residential zone, namely a 3 storey residential flat building.

4.2 ENVIRONMENTAL PLANNING & ASSESSMENT ACT 1979

Section 4.15(1) of the Environmental Planning and Assessment Act 1979 (EP&A Act) provides criteria, which a consent authority is to take into consideration, where relevant, when considering a Development Application (DA). A full assessment of the subject DA, in accordance with the relevant matters for consideration prescribed under Section 4.15(1) of the EP&A Act, is provided in this section.

4.3 SEPP PROVISIONS

STATE ENVIRONMENTAL PLANNING POLICY NO 55 – REMEDIATION OF LAND (SEPP 55)

In relation to development applications, Clause 7(1) of SEPP 55 requires the consent authority to consider whether the land is contaminated, and if so the consent authority must be satisfied the land will be suitable in its contaminated state, or will be suitable after remediation, for the purpose for which development is proposed.

Clause 7(2) of SEPP 55 requires the consent authority before determining a DA that would involve a change of use on certain land (specified in sub clause (4)), to consider a report specifying the findings of a preliminary investigation of the land in accordance with the contaminated land planning guidelines.

The land is unlikely to be contaminated and no preliminary investigation is triggered in this case given:

- The Site is not within an investigation area or identified under the LEP as constituting contaminated land or land that must be subject to a site audit statement.
- The Site and adjoining properties are not subject to a legal notice for a matter listed under Section 59(2) of the Contaminated Land Management Act 1997.
- There are no restrictions on the use of the site for residential use.
- The site and its surrounds have been used for residential purposes for the last four to five decades. Aerial images taken in 1954 indicate the Site was semi-cleared farmland with further aerial photography in 1977 showing the existing dwellings had been established.
- The proposal does not involve a change of use on land specified in sub clause (4), including any use specified in Table 1 of the Managing Land Contamination Planning Guidelines (1998).

Given the above factors, no further investigation of land contamination is warranted in this case. The site is suitable in its present state for the proposed development. Therefore, pursuant to the provisions of SEPP 55, Council can consent to the carrying out of development on the land.

STATE ENVIRONMENTAL PLANNING POLICY (INFRASTRUCTURE) 2007

The Infrastructure SEPP aims to facilitate the efficient delivery of Infrastructure across the State. The proposed development will require existing utility services to be upgraded and/or augmented to enable the future occupants to be accommodated in a planned and rational manner.

Clause 45 requires the consent authority to give written notice to the electricity supply authority in certain circumstances, as well as give consideration to any response received within 21 days. Council may therefore refer this amended application.

Clause 66C requires the consent authority to give consideration to certain matters before determining an application for development in or adjacent to a gas pipeline corridor. Although the survey plan does not indicate any corridors adjacent to the Site, liaison will be undertaken with the relevant service providers prior to the commencement of works as to ascertain any special requirements.

Clause 102 also requires the consent authority consider the impact of road noise and vibration generated by traffic on certain roads. Further, where new residential development is proposed on or adjacent to a road with an annual average daily traffic volume (AADT) exceeding 40,000 vehicles, certain controls apply to ensure an adequate level of internal residential amenity is provided. According to the RMS'

“Traffic Volume Maps For Noise Assessment For Building On Land Adjacent To Busy Roads”, the Site is not on or adjacent to a road that has an AADT exceeding 40,000 vehicles.

Clause 104 requires the consent authority provide written notice of the application to the Roads and Maritime Services (RMS) to development specified in Schedule 3, where the relevant size or capacity is triggered, as shown in Table 5, below:

TABLE 5: TRAFFIC GENERATING TRIGGERS FOR RMS REFERRAL

COLUMN 1 - PURPOSE OF DEVELOPMENT	COLUMN 2 - SIZE OR CAPACITY - SITE WITH ACCESS TO ANY ROAD	COLUMN 3 - SIZE OR CAPACITY - SITE WITH ACCESS TO CLASSIFIED ROAD OR TO ROAD THAT CONNECTS TO CLASSIFIED ROAD
Apartment or RFB	300 or more dwellings	75 or more dwellings
Area used exclusively for parking or any other development having ancillary parking accommodation	200 or more motor vehicles	50 or more motor vehicles

The proposed development is not an apartment or RFB and does not contain any dwellings (as defined). There are no specific requirements for a New Generation Boarding House and the proposal will provide parking for less than 50 motor vehicles. Accordingly, the proposal does not trigger referral to RMS under either Column 2 or Column 3 of Table 2 above.

STATE ENVIRONMENTAL PLANNING POLICY (BUILDING SUSTAINABILITY INDEX: BASIX) 2004

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 – (SEPP BASIX) relates to the BASIX Scheme, which encourages sustainable residential development via the achievement of energy and water saving targets.

The BASIX Scheme aims to:

- Reduce consumption of mains-supplied potable water and reduce emissions of greenhouse gases, in the use of a building or in the use of the land on which the building is situated; and
- Improve the thermal performance of the building.

The proposed development is within the category of dwellings affected by SEPP BASIX, however a Section J assessment will be provided under separate cover, which addresses the relevant requirements.

STATE ENVIRONMENTAL PLANNING POLICY (AFFORDABLE RENTAL HOUSING) 2009 (ARH SEPP)

The ARH SEPP aims to facilitate an increase in the amount and diversity of affordable housing in NSW by encouraging home owners, social housing providers and developers to invest and create new affordable rental housing to meet the needs of the growing population and existing residents. The very existence of a State-wide policy clearly establishes there is a need for affordable forms of housing, such as the proposed New Generation Boarding House. The SEPP includes incentives and criteria to increase the supply of affordable housing, such as FSR bonuses and relaxation of development requirements such as parking, open space, solar access and the like.

Division 3 (Clauses 25-30) of ARH SEPP deals with development involving New Generation Boarding Houses. Specifically, Clause 28 allows for boarding house development on residential-zoned land. The site is zoned R1 General Residential under the Maitland Local Environmental Plan 2011. The proposed New Generation Boarding House is therefore permissible on the Site.

Clause 29 Standards that cannot be used to refuse consent

Clause 29 provides a set of standards that cannot be used to refuse consent for a boarding house development that meets these standards. An assessment of the proposal against these standards is provided below in Table 6 below. The assessment demonstrates the proposal satisfies all of the applicable standards and therefore, Council cannot refuse consent on these grounds.

Clause 30 Standards for Boarding Houses

Clause 30 provides a set of standards that need to be complied with for new boarding house development. An assessment of the proposal against these standards is provided in Table 7 below. The assessment demonstrates the proposal satisfies all of the applicable standards and provides sufficient planning merit and public benefit to warrant an approval.

TABLE 6: CLAUSE 29 - STANDARDS THAT CANNOT BE USED TO REFUSE CONSENT

REQUIREMENT	PROPOSED	COMPLIES
FSR – no control	The site is not affected by any LEP FSR limit	N/A
Building Height – no control	The site is not affected by any LEP height limit	N/A
Landscaped Area – if the landscape treatment of the front setback area is compatible with the streetscape in which the building is located	<p>The Site has two street frontages – Taylor Avenue and Burnham Close. These are illustrated in Photos 5, 6 and 8-14. Burnham Close, forms part of an attempt to apply the failed Radburn housing experiment, exhibits a streetscape dominated by 1.5m – 1.8m high colourbond fences in a variety of colours, concrete strip driveways, cars parked along the grassed verges and a complete lack of street trees or landscaped setbacks. Burnham Close does not exhibit any desirable streetscape qualities. The proposal will encourage activation of the streetscape, being a focal point for the development, providing landscaping to soften the functional aspects of the development.</p> <p>The Taylor Avenue streetscape surrounding the Site is dominated by the sparsely vegetated car park of the Thornton Shopping Centre, the heavily-timbered corner of the Thornton Public School playground, and the inconsistent landscaping provided along Taylor Avenue to the northwest. The landscaping to the Taylor Avenue frontage is compatible with the</p>	YES

REQUIREMENT	PROPOSED	COMPLIES
	existing streetscape without compromising on public safety and permeability of the Site entry point for enhanced passive surveillance opportunities.	
Solar Access – where the development provides for one or more communal living rooms, if at least one of those rooms receives a minimum of 3 hours direct sunlight between 9am and 3pm in mid-winter.	The development provides a communal living room on the north eastern corner of the upper floor with two small communal spaces adjacent to the lift and stairwell on the first floor of the western side of the building and another above in the central module of the building. The main communal room will receive in excess of 3 hours direct solar access during midwinter, as demonstrated in the amended plans.	YES
Private Open Space – if at least the following private open space areas are provided (other than the front setback area):		
(i) one area of at least 20m ² with a minimum dimension of 3m is provided for the use of the lodgers,	A dedicated communal open space area is provided in the northwestern portion of the Site that exceeds the spatial requirements.	YES
(ii) if accommodation is provided on site for a boarding house	An on-site manager will reside on the first floor of the building. The development proposes a courtyard totalling 18.75m ² in area to compensate for a minimum dimension of 2.02m and 2.2m. While	YES

REQUIREMENT	PROPOSED	COMPLIES
manager - one area of at least 8m ² with a minimum dimension of 2.5m is provided adjacent to that accommodation.	compliance with this requirement is not mandatory, it simply means that the proposal is not protected under Clause 29 in relation to the minimum dimension. Notwithstanding this, there are no development standards in Clause 30 (or any other instrument or policy) that requires a minimum dimension of 2.5m.	
Parking Spaces – if: (i) N/A - The applicant is not a social housing provider. (ii) N/A - The applicant is not a social housing provider. (iia) in the case of development not carried out by or on behalf of a social housing provider—at least 0.5 parking spaces are provided for each boarding room, and (iii) in the case of any development—not more than 1 parking space is provided for each person employed in	<p>The development requires a minimum of 15.5 spaces, based at a rate of 0.5 x 31 boarding rooms. A total of 30 car spaces are provided which includes one car share space, one electric car charging space, three visitor spaces and two disabled parking spaces.</p> <p>The proposal provides one dedicated car space for the on-site manager within the quantum of on-site parking.</p>	<p>YES</p> <p>YES</p>

REQUIREMENT	PROPOSED	COMPLIES
connection with the development and who is resident on site		
<p>Accommodation Size – if each boarding room has a gross floor area (excluding any area used for the purposes of private kitchen or bathroom facilities) of at least:</p> <p>(i) 12 m² in the case of a boarding room intended to be used by a single lodger,</p> <p>or</p> <p>(ii) 16 m² in any other case.</p>	Each boarding room has a minimum area (less the kitchen and bathroom areas) that complies with the control for double rooms.	YES
<p>Private Kitchen or Bathroom Facilities – A boarding house may have private kitchen or bathroom facilities in each boarding room but is</p>	Each boarding room is self-contained and there are no shared kitchen or bathroom facilities.	YES

REQUIREMENT	PROPOSED	COMPLIES
not required to have those facilities in any boarding room.		

TABLE 7: CLAUSE 30 - STANDARDS FOR BOARDING HOUSES

REQUIREMENT	PROPOSED	COMPLIES
(a) if a boarding house has 5 or more boarding rooms, at least one communal living room will be provided	One communal living room has been provided with two smaller ancillary spaces	YES
(b) no boarding room will have a gross floor area (excluding any area used for the purposes of private kitchen or bathroom facilities) of more than 25 m ²	All rooms <25m ² excluding kitchen and bathroom areas.	YES
(c) no boarding room will be occupied by more than 2 adult lodgers	Maximum of two adult boarders per room. No children or minors are permitted to reside in the proposal.	YES

REQUIREMENT	PROPOSED	COMPLIES
(d) adequate bathroom and kitchen facilities will be available within the boarding house for the use of each lodger	Each boarding room provides a self-contained kitchen and private toilet/ bathroom facilities consisting of a toilet, shower and hand basin.	YES
(e) if the boarding house has capacity to accommodate 20 or more lodgers, a boarding room or on-site dwelling will be provided for a boarding house manager	An on-site manager will reside in the proposed development.	YES
(g) if the boarding house is on land zoned primarily for commercial purposes, no part of the ground floor of the boarding house that fronts a street will be used for residential purposes unless another environmental planning instrument permits such a use	N/A – the land is zoned R1 General Residential	N/A

REQUIREMENT	PROPOSED	COMPLIES
(h) at least one parking space will be provided for a bicycle, and one will be provided for a motorcycle, for every 5 boarding rooms.	The development requires and provides 7 motorcycle spaces and 8 bicycle spaces.	YES

Clause 30A Character of local area

Clause 30A of the SEPP ARH states:

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 issue of compatibility is one that has formed a well-worn path before the Court with the matter of *Project Venture Developments Pty Ltd v Pittwater Council* [2005] NSWLEC191 providing the long-held standard, at paragraphs 22-31 of the Judgment. Critical to understanding the issue, the Court observed that being compatible is not synonymous with being identical.

In this regard, the Judgment notes the following:

*26 For a new development to be visually compatible with its context, it should contain, or at least respond to, the essential elements that make up the character of the surrounding urban environment. In some areas, planning instruments or urban design studies have already described the urban character. In others (the majority of cases), the character needs to be defined as part of a proposal's assessment. The most important contributor to urban character is the relationship of built form to surrounding space, a relationship that is created by **building height, setbacks and landscaping**. In special areas, such as conservation areas, **architectural style and materials** are also contributors to character.*

*27 Buildings do not have to be the same **height** to be compatible. Where there are significant differences in height, it is easier to achieve compatibility when the change is gradual rather than abrupt. The extent to which height differences are acceptable depends also on the consistency of height in the existing streetscape.*

*28 Front **setbacks** and the way they are treated are an important element of urban character. Where there is a uniform building line, even small differences can destroy the unity. **Setbacks** from side boundaries determine the rhythm of building and void. While it may not be possible to reproduce the rhythm exactly, new development should strive to reflect it in some way.*

*29 **Landscaping** is also an important contributor to urban character. In some areas landscape dominates buildings, in others buildings dominate the landscape. Where canopy trees define the character, new developments must provide opportunities for planting canopy trees.*

From this it can be seen as they key elements of consideration relate to context, building height, setbacks, landscaping and materials. These elements are addressed below. Further discussion on the matter of context is also provided in Appendix B in response to the Contentions.

Context

The context of the surrounding area is not simply one of detached dwelling houses or tied strictly to the zoning pattern. As noted previously, while the area surrounding the Site is dominated by detached dwelling houses of one and two storey construction. Other key contributors to the existing character in the immediate area include the playground and buildings associated with Thornton Primary School to the immediate southeast; the Thornton Shopping Centre and community buildings to the northeast across Taylor Avenue; and the recreation facilities associated with Thornton Park. These land uses and facilities demonstrate that the suburban character of the area is not as homogenous as initially suggested. The visual contribution of these buildings and streetscapes is also demonstrated in the Site Photos in Section 3.3 above.

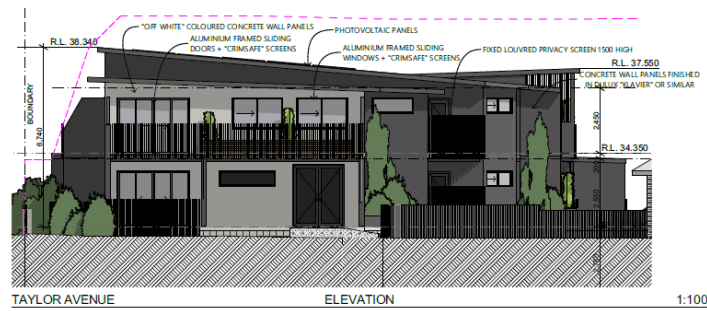
Building Height

The proposal presents as a two storey structure from the Taylor Avenue frontage with the structure viewed from Burnham Close at an oblique angle and well set back from the street. While existing structures surrounding the Site vary from single storey detached dwellings to the more substantial rectilinear commercial structure of the shopping centre, the desired future character of the area supports large, 3 storey residential flat buildings. The desired future character is clearly expressed in the relevant land use and built form controls contained in the MLEP and MDCP.

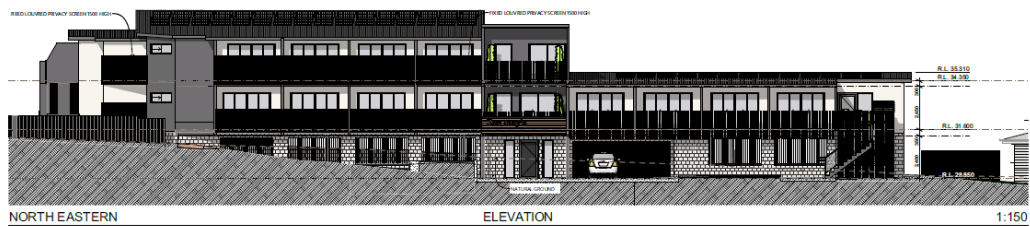
Setbacks

Although not relevant to a boarding house, the amended plans demonstrate an indicative building envelope that would be applied for a residential flat building, which is permissible in the zone. This demonstrates that the proposal is of a lesser bulk, scale and massing than what could be reasonably expected for a 3-storey residential flat building and is shown in the sketches below:

BASIX
REFER TO PAGE 24



SUBJECT TO
SECTION J REPORT
AT CC STAGE



BASIX
REFER TO PAGE 24



SUBJECT TO
SECTION J REPORT
AT CC STAGE



The proposal provides a setback to both street frontages that is greater than the buildings immediately adjoining it in order to minimise overshadowing to adjoining dwellings, the perceived appearance of the structure, allow adequate outlook and passive surveillance opportunities and maintain visual and acoustic privacy. Both setbacks are adequately landscaped to ensure the proposal is sympathetic to and improves the existing streetscape.

The setback to the pedestrian pathway along the southeastern boundary is appropriate given the non-residential use of the laneway and adjoining school. The orientation of boarding rooms towards this feature provides good levels of internal amenity as well as a significantly heightened level of public safety through casual surveillance.

Landscaping

As noted above, the Site has two street frontages – Taylor Avenue and Burnham Close. These are illustrated in Photos 5, 6 and 8-14. Burnham Close, being typical of the failed Radburn-style housing experiment, exhibits a streetscape dominated by 1.5m – 1.8m high colourbond fences in a variety of colours, concrete strip driveways, cars parked along the grassed verges and a complete lack of street trees or landscaped setbacks. Burnham Close does not exhibit any desirable streetscape qualities. The proposal will encourage activation of the streetscape, being a focal point for the development, providing landscaping to soften the functional aspects of the development.

The Taylor Avenue streetscape surrounding the Site is dominated by the sparsely vegetated car park of the Thornton Shopping Centre, the heavily-timbered corner of the Thornton Public School playground, and the inconsistent landscaping provided along Taylor Avenue to the northwest. The landscaping to the Taylor Avenue frontage is compatible with the existing streetscape without compromising on public safety and permeability of the Site entry point for enhanced passive surveillance opportunities.

Materials

The amended proposal will be constructed of materials that are common in the locality. The building itself will utilise painted and rendered brickwork and cement panels for the facades, aluminium framed doors and windows and have a flat metal deck roof. It was observed that these materials are typical of the area and will be consistent with the established character.

Based on this assessment, the proposal represents a built form that is not incompatible with the existing or desired future character of the area and therefore complies with Clause 30A of the SRH SEPP.

Outlook and Access

Appendix B demonstrates that the surrounding “Radburn Estate” is not a true Radburn scheme. Notwithstanding this, the proposal maintains two of the primary functional aspects of the Radburn scheme layout, that being access and outlook. The Radburn layout was based on the premise of segregating cars and pedestrians to facilitate access to local schools, shops and recreation spaces on foot and engender a sense of community supervision. In doing so, it resulted in the living rooms of houses having an outlook over the “rear yards” and shared pedestrian networks, while vehicles and service functions were performed via a network of cul-

de-sacs. Such designs do not however relate to topography, solar access or contemporary living.

The proposal retains the intended service function from Burnham Close with this frontage providing the only vehicular access point. The orientation of the building enables a significant number of the boarding rooms to have an outlook the communal landscaped areas on the northern side of the building or the pedestrian pathway along the eastern Site boundary and the school playground. Combined with open-style fencing (rather than colorbond), this pleasant outlook provides a high degree of passive surveillance for pedestrians using this section of the footpath network.

4.4 REGIONAL ENVIRONMENTAL PLANS

The proposal is in line with the regional priorities under both the Hunter Regional Plan 2036 and the Greater Newcastle Metropolitan Plan 2036 which seek to increase infill housing opportunities and provide for housing diversity and choice within walkable locations.

4.5 LEP PROVISIONS

MAITLAND LOCAL ENVIRONMENTAL PLAN 2011 (MLEP 2011)

Clause 1.4 – Definitions

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.*

The proposal is consistent.....

Clause 2.1 – Land use zone

The subject site is within zone R1 General Residential according to the MLEP 2011 and its relevant zoning maps.

Clause 2.3 – Zone objectives and land use table

The relevant objective of the zone is:

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

The need for the proposal is demonstrated by virtue of there being a State-level policy designed specifically to facilitate this form of housing. The proposal provides an alternative form of low-cost rental housing in a density and format not otherwise provided in locality and is therefore consistent with these objectives.

Clause 4.3 – Height of Building

The maps to the MLEP do not identify any height of building control applying to the Site.

Clause 4.4 – Floor Space Ratio

The maps to the MLEP do not identify any floor space ratio control applying to the Site.

Clause 5.10 – Heritage Conservation

The Site does not contain a Heritage Item nor is it near any listed Items. Likewise, the Site is not within a Conservation Area.

Clause 7.1 – Acid sulphate soils

The site is zoned class 5 – Acid Sulfate Soils however it is not within 500m of another class of soils.

Clause 7.2 – Earthworks

Development Consent is Required and sought in this application. The provisions of this Clause require Council consider the development in the context of a number of key matters, including:

- a) drainage patterns and soil stability
- b) the likely future use of the land
- c) the quality and source of any imported fill or exported soil and it's off-site disposal
- d) the existing and likely amenity of adjoining properties
- e) the source and destination of any fill imported onto and off the Site

- f) the likelihood of disturbing relics
- g) potential adverse impacts on any waterway, drinking water catchment or environmentally sensitive area.

The proposes a maximum depth of cut of approximately 2.7m with minimal fill proposed. Standard conditions can be imposed to address erosion and sediment control during construction.

4.6 DRAFT PLANNING INSTRUMENTS

There are no applicable draft planning instruments currently under preparation that are relevant to the Site or the proposal.

4.7 PLANNING AGREEMENTS

There are no voluntary planning agreements that apply to the proposal.

4.8 DEVELOPMENT CONTROL PLAN PROVISIONS

MAITLAND DEVELOPMENT CONTROL PLAN 2011

The Maitland Development Control Plan 2011 (MDCP) does not provide any specific controls for boarding houses, nor does it apply according to Section 1.2 of Part C of the MDCP. Section 1.2 of Part C of the MDCP is quite specific as to what forms of development it applies to, as follows:

"1.2 Application

This chapter applies to the whole of the Maitland Local Government Area where residential development is permitted. The chapter provides guidelines for the development of the following forms of housing:

- *Single detached dwelling house*
- *Dual occupancy housing (attached or detached)*
- *Multi dwelling housing (attached or detached)*
- *Residential Flat Building (other than buildings to which State Environmental Planning Policy No.65 – Design Quality of Residential Flat Development applies)*
- *Senior Living Accommodation (to the extent of providing guidelines which supplement the standards prescribed under State Environmental Planning Policy 2004 – Housing for Seniors or People with a Disability)"*

This exhaustive list specifically does not include boarding houses or several other types of residential accommodation (as defined in the Dictionary to the MLEP), such

as *attached dwellings, group homes, hostels or semi-detached dwellings*, all of which are defined separately to the list above in the MDCP.

This is explored further in Appendix B. The following Sections in Table 7 are however relevant to all development:

TABLE 7: MDCP COMPLIANCE

REQUIREMENT	PROPOSED	COMPLIES
B2 – Domestic Stormwater	Refer to the submitted stormwater concept plans.	YES
B5 – Tree Management	Refer to the submitted arborists report and landscape plans.	YES
B6 – Waste Not – Site Waste Minimisation & Management	Refer to the submitted Site Waste Minimisation and Management Plan	YES
C1 – Accessible Living	The development includes two accessible rooms (BR 11 on the ground floor and BR 31 on the upper level) meeting BCA requirements for this Class 3 building. A lift provides access to all levels and access is easily available to the street, car parking area, communal rooms/spaces, open space areas and bin storage areas.	YES
C.12 – Safer by Design	The principles of Crime Prevention through Environmental Design (CPTED) have been incorporated into the design of the proposal. Refer to the CPTED report provided under separate cover.	YES

4.9 RESPONSE TO INFORMATION REQUEST AND SECTION 34 PROCESS

Council issued an Information Request on 14 August 2018, outlining a number of concerns with the original proposal (Refer to Appendix A). Through an extensive

design evaluation, the proposal was amended in response. Council deemed the amendments were not acceptable and subsequently refused Consent.

As noted above, the matter was filed in the NSW Land and Environment Court and a Section 34 Conciliation Conference was held on 5 November 2021. Further amended plans were submitted to Council on 29 November 2021 with a summary assessment provided in our response of the same date in Appendix C.

The current suite of plans were prepared following further without prejudice discussions with Council on 7 December 2021. The assessment provided in this report is based on the Revision X drawings.

4.10 SUBMISSIONS

We note that the application has previously been subject twice to public notification. We further note that renotification of the amended development will not require renotification.

4.11 SOCIAL IMPACT ASSESSMENT

Council's information Request letter dated 14 August 2018 The MDCP does not have any specific provisions regarding social impact assessment and Council has no adopted Social Impact Assessment Policy to provide a framework for rational decision-making.

Notwithstanding this, the submitted Social Impact Assessment has been amended accordingly and is provided under separate cover.

4.12 THE PUBLIC INTEREST

The proposed development will provide a diverse mix of quality, low density, housing stock to the locality and will have positive social, environmental and economic impacts which are considered to be in the public interest.

4.13 SUITABILITY OF THE SITE

The SEE has demonstrated in detail that the Site is suitable for the proposed development, as amended. In summary, suitability is achieved given:

- The proposed development is permissible and will be consistent with the relevant R1 zone objectives.
- The development will respect the existing and desired future character of the immediate locality.
- Considerable compliance is achieved with the relevant non-statutory controls. In those minor instances where strict compliance with the numerical controls

may not be achieved, it is considered that the relevant objectives have been satisfied.

- Likely impacts from the proposal are reasonable.
- The Site is ideally located adjacent to a range of public and private services, including public bus and train services.

4.14 OTHER RELEVANT MATTERS

Impacts to the built environment and social environments will be positive in light of the DA's subsequent conservation of an established and dominant built form element. The social benefits associated with the proposal's permanent increase in the local population are substantial. The development, particularly its internal configuration, is designed to avoid unreasonable amenity impacts to adjoining properties.

Natural environmental impacts will be within normal community expectations. That is, the proposal will rely on typical construction techniques, while the sustainability measures have been incorporated into the overall design of the development.

The permanent population associated with the proposal is likely to result in positive impacts to the local economy. It will allow people to access a form of accommodation that is significantly lacking within the suburb and LGA. At a broader scale, the construction activity associated with the proposal maintains employment.

5 CONCLUSION

The proposed development, as amended, is permissible within the R1 General Residential Zone, subject to consent under the provisions of the ARHSEPP. The Site is capable of accommodating the proposed boarding house. As demonstrated, the amended development is generally consistent with the provisions of the relevant State Environmental Planning Policies and Council's Development Control Plans. It is not expected to have any significant detrimental impacts on the amenity of the locality and is consistent with Council's envisaged future development of the precinct, notwithstanding the inherent and unavoidable conflict for the first development in the area.

The built form of the proposal is considered to respond appropriately to the desired future character and generally comply with the relevant built form controls. The proposed development achieves considerable compliance with the relevant controls. Accordingly, the proposed development will be satisfactory from an environmental planning perspective and warrants approval.

APPENDIX A – REQUEST FOR INFORMATION AND RESPONSE



Our Ref: (DA18/1394)

Phone Enquiries: 4934 9700
Amanda Wells

12/04/2021

Zoe May Pty Ltd
22 Mumford Avenue
THORNTON NSW 2322

Dear Michael/Nigel

Re: DA18/1394 - Demolition of Two (2) Existing Dwellings and Construction of a Three Storey Boarding Houses (42 Boarding Rooms)
11/246016, 12/246016 - 21 Burnham Close THORNTON NSW 2322, 22 Burnham Close THORNTON NSW 2322

Reference is made to Development Application DA18/1394 in relation to the above proposal. Pursuant to clause 54 of the *Environmental Planning and Assessment Regulation 2000*, a further assessment of the application has identified that the application is not satisfactory. Given the extensive list of outstanding issues and number of requests that have already been made to seek information, Council officers intend to report the proposal to Council based on the information on hand. The recommendation for the development application based on this information will be for refusal. The key issues outstanding are as follows:

Planning

Character of the Area

Council has previously stated that the development's appearance is not in harmony with the existing development and pattern of built form within the locality. It was requested that the development be reduced in size and scale to fit with the character of the area. It is noted that the amended plans have changed the 4 x 3 storey buildings into 1 large 3 storey building, in essence increasing the bulk of the development. The proposed building height and bulk is out of character for the area. The proposal shows a large building with side walls that are 42 metres long and feature minimal articulation, and a large flat roof.

In contrast the area is comprised predominately of small-scale single dwellings that are well articulated and contribute positively to the street character. The dominant building material and colour is red face brick for surrounding developments. A minor portion of dwellings are constructed of weatherboard, painted in light colours. The locality is dominated by dwellings which have hipped or gable roofs, most of which are tiled. The proposed development is considered to be inconsistent with the existing character of the area, and the amended documentation and plans do not appropriately address this.

The Statement of Environmental Effects (SoEE) claims on page 40 that the proposed materials, including rendered brick and a flat metal roof, are typical of the area. However, as per the above character statement, a majority of the

buildings in the area are of face brick construction and have tiled hipped roofs. The proposed rendered brickwork, concrete panel, exposed concrete block walls and the flat, metal roof are not in keeping with the character of the area.

The SoEE repeatedly claims that the proposal fits within its context because it resembles a residential flat building, which is a permissible form of development in an R1 zone. However, during the assessment of any residential flat building, Council works with applicants to ensure that proposed development is appropriate for the context. Any proposal seeking development approval for a residential flat building must demonstrate that it is of appropriate scale, size and bulk, fits within the character of its context and does not create amenity issues for its residents, visitors or neighbours. The proposed building shows a repetitive 46m long façade with minimal articulation which would also not be considered a good outcome for a residential flat building.

Building Design/Setbacks

Council previously requested that the development include more articulation to break up the mass. The amended development presents with a larger unbroken mass due to in the proposal consolidated into a single structure. The SoEE claims on page 49 that the building footprint has been reduced, however the footprint seems to have increased as stated above with the original proposed 4 buildings amalgamating into 1 large form.

The 1m setback to the side boundary is not adequate, particularly when considering that the adjacent land use is a public walkway and that northern units are close to ground level.

Shadow Diagrams/Solar Access

Council previously requested shadow diagrams which would demonstrate any external impacts to neighbouring properties as well as internal impacts and be inclusive of a compliance table demonstrated the percentage performance of each individual room and communal space. It is noted that the only solar access diagrams submitted for the internal areas were for the second-floor common room. Further, it was raised that the open space communal area at ground level was impacted by overshadowing from 9am until 3pm and this is not an acceptable outcome. The proposed new plans show that the ground level communal open space is again impacted by overshadowing between 9am and 3pm which remains unacceptable.

Retaining Walls

Details of proposed retaining walls including longitudinal sections were requested. These have not been submitted. It was requested that any retaining walls in cut be located away from adjoining boundaries. The submitted plan shows cut exceeding 2 metres closer to the boundary than previously shown.

Privacy Impacts

Council previously requested that the development must be designed so that privacy is protected, particularly in regard to the open spaces and windows of habitable rooms and to existing dwellings. The amended plans show that the communal garden on the Second Floor is overlooking the neighbour's residence and private open space, creating privacy issues. The manager's residence also suffers from privacy issues. The bathroom windows look directly onto the main entrance of the development and the drone delivery landing zone. The manager's courtyard

also overlooks the walkway up to the main entrance. It is not considered that the amended plans have adequately addressed the issue of privacy.

Statement of Environmental Effects

Council previously requested that the *Maitland Development Control Plan 2011* be addressed, specifically the following chapters:

- *B.6 Waste Not – Site Waste Minimisation and Management;*
- *C.1 Accessibly Living;*
- *C.8 Residential Design (noting that whilst the chapter is not relevant to the consideration of the full design proposal as the SEPP standards prevail, a number of design elements for consideration in relation to amenity impacts associated with the development should be addressed);*
- *C.11 Vehicular Access and Traffic; and*
- *C.12 Crime Prevention .*

It is noted that in the amended SoEE you declined to address any of the chapters.

Safety

The ground floor plan shows blade walls perpendicular to the car park wall, in the communal open space area. These blade walls raise CPTED concerns as they can provide shelter for people to hide behind. The communal open space shown on the ground floor is not visible from the street or from communal areas creating further safety issues.

The main entry to the lobby on the Ground Floor is difficult for visitors and delivery personnel to find. It also presents as part of the private carpark, which changes the external parking to an ambiguous semi-private, semi-public state, which is a security issue for residents, residents' property, delivery personnel and for visitors.

Social and Economic Impacts

The SoEE claims on page 61 that it provides 'a diverse mix of quality, low density housing stock to the locality'. This proposal provides 43 boarding rooms (4 single rooms and 39 double rooms) with an occupancy rate of 43-82 people on a site that is 1,600m². This does not constitute a diverse mix of units, nor is it a low density development. The submitted Social Impact Assessment has been reviewed by Council officers and a number of issues have been raised. Concern is raised as to the validity of some of the data used and the conclusions made as some of the data is unreferenced.

Section 7.11 Cost Report

The submitted cost report does not show any cost details regarding demolition and site preparation.

Engineering

Stormwater Management

It is proposed to provide onsite stormwater disposal trenches in addition to the detention volume in the rainwater tanks. However, providing stormwater disposal trenches in the proposed site are not supported as infiltration from trenches would be difficult due to clay condition of the area. Therefore, it is suggested to include minimum of 2.5m³ of detention capacity in the rainwater tank. Overflow from tanks can be conveyed to the street gutter.

Bin Collection

The SoEE notes that garbage collection will be by Council collection. Concern is raised that the development only provides eight (8) red bins to service 42 rooms, 38 of which are double rooms. Further information was requested, including an assessment against Part B.6 – Waste Not – Site Waste Minimisation & Management, however no such assessment was provided, nor was an amended Site Waste Minimisation & Management Plan (SWMMP) plan. The original submitted SWMMP did not complete the Construction Phase section instead leaving it blank. No information was provided as to the demolition waste from the existing buildings and structures on site, nor any information as to the construction waste from the build of a 3 storey building.

Additional information was requested requiring an assessment that the site can be suitably serviced for waste collection including storage area, adequate room for bins to be placed for collection, and how the waste will be collected by garbage vehicles given the site is located at the end of a busy cul-de-sac. This information was not submitted.

Conclusion

The proposed development does not address the concerns initially raised by Council on 14 August 2018. The development in its revised form is still considered to be in conflict with the surrounds and of a scale that is not appropriate for the location.

It is strongly recommended that you withdraw the application. Should you prepare a new application for lodgement, Council strongly encourages you to book a pre-lodgement meeting so that we can provide you with feedback and assistance.

Yours sincerely,



Amanda Wells
Senior Development Planner

TABLE 8: RESPONSE TO INFORMATION REQUEST

ISSUE	RESPONSE
Council believes the development as proposed is an overdevelopment of the site and not suitable in regard to the existing residential development in the area and character of the area.	Refer to the “character test” provided in Section 4.3 above. Given there are no density, height, FSR, setback, site cover controls or the like, the statement that the proposal is an overdevelopment of the Site cannot be substantiated. The proposal represents a built form that is not dissimilar to a residential flat building – a form of development that is both permissible and regulated in the R1 zone.
More specifically, the proposed physical impacts of the development on the surrounding area are not acceptable and the development is not compatible with the character of the local area.	Council’s Information Request did not elaborate on what the physical impacts of the proposal were. The assessment of the revised concept has demonstrated that physical impacts are limited, and that the proposal provides an appropriate level of internal amenity without compromising that enjoyed by the adjoining dwellings. Refer to the “character test” provided in Section 4.3 above.
In this regard, the location of the development and its relationship to the cul de sac head is not considered appropriate, given existing car parking problems in this narrow cul de sac and present concerns with bin collection along Burnham Close.	This issue has not been substantiated by Council, however traffic and parking issues are addressed in the study prepared by Seca Solution. The proposal satisfies the requirements of the ARH SEPP in terms of car parking provision and does not rely on on-street car parking.

ISSUE	RESPONSE
The traffic generation to the site as a result of this development will exacerbate the existing car parking and bin collection issues in this street.	This matter is addressed in the Traffic and Parking Assessment. It also appears from anecdotal evidence that issues with the collection of waste bins within the street stem from the dysfunctional Radburn subdivision pattern and residents parking their cars or storing vehicles under repair within the road reserve, instead of housing them within their allotments.
The development as proposed is also considered to be out of character with the existing development in this locality which comprises mainly single storey development in the immediate vicinity.	Refer to the "character test" provided in Section 4.3 above. Given that the Site also adjoins a school, community facilities and a shopping centre, these structures also contribute to the existing and desired future character.
The development is also deficient in regard to car parking (Note: the SEPP has been amended to require 0.5 car parking spaces per boarding house room in all locations, except where provided by a Social Housing Provider).	The proposal now provides more than the required quantum of car parking spaces. The proposal goes beyond the minimum requirement to accommodate both car share programs and electric vehicles.
This development requires significant reduction in the bulk and scale of the	The proposal has been amended accordingly to satisfy the applicable requirements of the relevant environmental planning instruments.

ISSUE	RESPONSE
development in order to meet the necessary requirements of the SEPP and Council requirements	
In addition, you are required to review context and neighbourhood character, meet building setbacks, address built form, (in particular , bulk and scale) and should include a revised architectural design which addresses not only bulk and scale but building alignments, proportions, articulation, shape and functionality)	These matters have been taken into account in the revised design concept.
The development should also further address density, overlooking of neighbours properties, privacy issues, solar access, streetscape amenity, parking and traffic impacts, safety, housing diversity and social interactions, aesthetics, active frontages and impacts on lifestyle of existing and future residents in the area.	These matters have been taken into account in the revised design concept, where relevant and articulated in the applicable statutory planning instruments.

ISSUE	RESPONSE
<p>The Statement of Environmental Effects supplied includes very generic responses and does not adequately address these requirements nor the legislation requirements.</p>	<p>This SEE addresses the applicable statutory provisions.</p>
<p><u>Character of the Area</u></p> <p>Council advises that the development's appearance is not in harmony with the existing development and pattern of built form.</p> <p>The development should be reduced in size and scale to fit with the character of the area. Council believes the development as proposed is not only an overdevelopment of the site but that the development does not respond to the site constraints and existing development in the area.</p>	<p>Refer to the "character test" provided in Section 4.3 above. Given there are no density, height, FSR, setback, site cover controls or the like, the statement that the proposal is an overdevelopment of the Site cannot be substantiated. The proposal represents a built form that is not dissimilar to a residential flat building – a form of development that is both permissible and regulated in the R1 zone.</p>

ISSUE	RESPONSE
A visual assessment of street character will indicate that vertically dominant buildings are inconsistent with the traditional context of single storey dwellings and some two storey development in the immediate vicinity. In this regard a reduction in the overall massing and scale of buildings is required and a reduction in building footprints on the site	Council's observations have been taken into account in the redesign of the proposal.
The character of the area must be maintained and the existing development in the area taken into account to ensure that the proposed physical impacts on the surrounding existing residential development is acceptable.	There is no mandatory or statutory requirement to "maintain" the existing character and Council's attention is directed to the Character Test that was developed by Smithson C in the matter of <i>Project Venture Developments Pty Ltd v Pittwater Council</i> [2005] NSWLEC191.
The number of buildings on the site is considered to be an overdevelopment of the land and should be reduced.	The proposal has been amended to include only one building.

ISSUE	RESPONSE
<p><u>Building Design/Setbacks</u></p> <p>The development should also include more articulation of the roof profile to break up the mass using proportions that provide for more visual interest. The design is currently of a scale that is not considered to be modest or acceptable within this existing residential area and contains no modulation or articulation of the buildings. A redesign should give particular focus to building alignments, proportions, articulation (including shape and functionality of the buildings).</p>	<p>These matters have been taken into account in the revised design concept, where relevant and articulated in the applicable statutory planning instruments. The reference to the terms “modest or acceptable” is subjective given there are no density, height, FSR, wall length/ wall height, setback, site cover controls or the like.</p>
<p>The development does not respond to the site constraints and should show more creative architectural merit. The use of carefully chosen materials and finishes should be revised to provide for a more</p>	<p>The amended proposal has been developed as a consequence to Council’s comments and a close analysis of the surrounding area and site features.</p> <p>A schedule of finishes and materials is provided under separate cover.</p>

ISSUE	RESPONSE
appropriate design that provides for visual interest.	
Development should also meet the required setbacks and height requirements of the zone.	<p>The MLEP does not prescribe any specific setback or building height development standards.</p> <p>The MDCP permits a maximum building height of 14m for all land within the R1 General Residential Zone. There are no specific setback requirements for boarding houses in the MDCP, however generic setback provisions have been adopted.</p>
<p><u>Shadow Diagrams/Solar access</u></p> <p>Shadow diagrams are to provide concise information in relation to solar access, clearly demonstrating any external shadow impacts to neighbouring properties and also <u>internal</u> shadow impacts. This should include a compliance table demonstrating the % performance of each individual boarding room and communal space area.</p>	Amended shadow diagrams have been provided however there are no statutory requirements relating to the percentage performance of individual boarding rooms or communal open space aside from those detailed in Clause 29(2)(c) of the ARH SEPP.
In addition, the shadow diagrams submitted presently indicate	As above. The MDCP does not contain any standards for boarding houses. The ARH SEPP does not impose any controls or identify the outcomes being sought in this

ISSUE	RESPONSE
overshadowing impacts to the proposed open space areas of the development at all times between 9am and 3pm. This is not an acceptable outcome and in this regard the development does not propose useable open space areas. The development needs to be re-designed to ensure appropriate solar access is achieved on the site and that open space areas are usable.	comment from Council. The proposal satisfies the relevant statutory provisions relating to solar access and communal areas.
Communal open space areas and the Managers residence should be clearly depicted on the floor plans.	Refer to the amended plans.
Communal living spaces are to be provided on the ground and other floors.	<p>This is not a statutory requirement of the ARH SEPP. The ARH SEPP requirements are identified in Clauses 29 and 30.</p> <p>As noted, the MDCP does not have any specific provisions regarding Boarding Houses and as such, this request is arbitrary.</p>

ISSUE	RESPONSE
Bin storage areas should be provided on site and screened from view and details provided on the plans.	Refer to amended plans. A dedicated screened enclosure is provided.
In addition, any cut retaining walls should be placed away from the boundary to ensure provision for sub soil drainage and fencing.	Retaining walls are detailed on the amended plans.
Details of fencing heights should also be indicated on the plans together with a longitudinal section relating to proposed retaining.	Refer to the amended plans.
<p><u>Privacy Impacts -</u></p> <p>The development should be designed so that privacy of individual rooms within the building and adjacent existing dwellings is protected. This is particularly relevant to the development open spaces and windows of habitable rooms.</p>	Refer to the amended plans.

ISSUE	RESPONSE
<p><u>Acoustic Impacts</u> -</p> <p>No consideration of acoustic impacts has been undertaken. A report is required to be provided by an Accredited Acoustic Consultant and should take into account the NSW Road Noise Policy and the Department of Planning Guideline - <i>Development Near Rail Corridors and Busy Roads</i>.</p>	<p>There are no statutory requirements for undertaking an acoustic assessment in this scenario. Further, the volume of traffic along surrounding roads and distance from the nearest railway line do not trigger the application of the Policy or Guideline.</p> <p>Notwithstanding, an acoustic assessment, prepared by Spectrum Acoustics is provided under separate cover. This assessment demonstrates that, subject to certain construction methods to satisfy the National Construction Code, the proposal will not create undue noise or have any adverse impacts on adjoining properties.</p>
<p><u>Tree Removal:</u></p> <p>The development does not provide an assessment in regard to removal of native vegetation on the site. In this regard, Council requests that an Arborist report be provided and that section B5 of Council 's DCP be fully addressed as part of the proposed development.</p>	<p>Refer to the arborists report provided under separate cover.</p>
<p>The development must also address the removal of any potentially vulnerable or</p>	<p>The Site does not contain Lower Hunter Spotted Gym Ironbark Forest as defined by the Final Determination of the NSW Threatened Species Scientific Committee dated</p>

ISSUE	RESPONSE
endangered vegetation on the site. In this regard the site potentially contains Lower Hunter Spotted Gym Ironbark Forest and its removal should be fully addressed by you to enable assessment by Council.	31/5/2019 and the vegetation is not identified on the Biodiversity Values Map and Threshold Tool. While four of the trees to be removed are from two of the species identified in the Final Determination, these alone do not meet the assemblage or structural criteria necessary to classify the vegetation as being from the EEC.
<p><u>Statement of Environmental Effects</u></p> <p>The Statement of Environmental Effects should complete a full and detailed assessment against not only the SEPP but the applicable Boarding House legislation, Council's LEP and DCP requirements including, but not limited to:</p> <p>B6 - Waste Not - Site Waste Minimisation & Management;</p> <p>C1 - Accessible Living;</p> <p>C8 - Residential design - (whilst this chapter is not relevant to the consideration of the full design proposal as the SEPP standards prevail, a number of design elements remain</p>	<p>The amended Statement of Environmental Effects (SEE) addresses Schedule 1 (2) (4) of the <i>Environmental Planning & Assessment Regulation 2000</i> (the Regulations) and therefore includes only what a '<i>Statement of Environmental Effects</i>' accompanying a DA needs to include (in the case of development other than designated development or State significant development).</p> <p>Schedule 1 (2) (4) of the Regulations states that:</p> <p><i>A statement of environmental effects must indicate the following matters:</i></p> <ul style="list-style-type: none"> (a) <i>the environmental impacts of the development,</i> (b) <i>how the environmental impacts of the development have been identified,</i> (c) <i>the steps to be taken to protect the environment or to lessen the expected harm to the environment,</i> (d) <i>any matters required to be indicated by any guidelines issued by the Director-General for the purposes of this clause.</i>

ISSUE	RESPONSE
<p>for consideration in relation to amenity impacts associated with the development on adjoining properties;</p> <p>C11 - Vehicular Access & Traffic;</p> <p>C12 - Crime Prevention.</p>	<p>This amended SEE also addresses the relevant general provisions of the MDCP, noting that there are no specific provisions that relate to boarding house development.</p>
<p>Social & Economic Impact Statement</p> <p>A Social and Economic Impact Statement is required to be provided.</p>	<p>Usually, where there is a demonstrated need, separate social and economic impact assessments can be prepared. In this instance, there is no statutory requirement for the provision of such assessment(s). Further, Council does not have any policy basis to make such a request. Council has not established the basis for making such a request or even identified what issues such reports would hope to address.</p> <p>It should also be identified that in terms of justifying the need for the proposal in economic or social grounds, the mere existence of a State Policy specifically aimed at facilitating this very form of housing provides sufficient justification. This justification has been upheld by the Court on previous occasions. Given that the LGA has only 2 existing Registered Boarding Houses (and a further approved but not yet built boarding house), and Thornton has no accommodation of this form, there is no risk of any adverse economic impacts on either the LGA or the surrounding area.</p> <p>A detailed Social Impact has been prepared and is provided under separate cover, demonstrating that the proposal will not have significant adverse social impacts.</p>

ISSUE	RESPONSE
<p><u>Subdivision</u></p> <p>Whilst a boundary re-alignment is proposed to occur on the land Council advises that no further subdivision of the land by way of Strata or Community Title Subdivision is available under the SEPP.</p>	<p>The application does not propose a Strata or Community title subdivision. Such subdivision is prevented by Clause 52 of the ARHSEPP. The consolidation of the existing two allotments is a separate process and does not require Council's consent to occur.</p>
<p>The Boarding Houses Act 2012 regulates the operation and management of boarding houses in NSW. The proposed boarding house is required to be registered as a <i>general boarding house</i> with NSW Fair Trading on the public register.</p>	<p>Consideration of or compliance with the Boarding Houses Act 2012 (the BH Act) is not a relevant statutory matter for a Development Application under the Environmental Planning and Assessment Act 1979. The BH Act has a separate approval and registration process that a DA is not reliant upon. The relevant approval agency under the BH Act is Fair Trading NSW.</p>
<p>An operator of a boarding house is required to enter into an Occupancy Agreement with each boarding house resident that outlines the terms and conditions of the occupancy. An Occupancy Agreement must include the <i>Occupancy Principles</i> established under the Boarding</p>	<p>As above. Matters pertaining to Occupancy Agreements are irrelevant for the purposes of the assessment of the DA against the EPA Act. Notwithstanding this, House Rules and Occupancy Agreement can be developed as a condition of consent and approval is not determinative of these operational documents.</p>

ISSUE	RESPONSE
House Act, which are a set of basic rights and responsibilities for residents of boarding houses.	
The Plan of Management should also outline the responsibilities of the Operator of the Boarding House and tenants. The Plan provided is a generic cut and paste and refers to Newcastle Council.	An amended Plan of Management is provided under separate cover.
The Plan should be completed in a more professional manner and meet the requirements of the legislation for NSW Boarding House Occupancy Principles and elaborates on how the Management of the site will occur and how the car parking will work in terms of staffing and management of the site and management of the garbage storage areas and for bin collection. An amended plan is required in this regard.	There are no statutory provisions that outline NSW Boarding House Occupancy Principles or that relate to Plans of Management for Boarding Houses. Notwithstanding this, an amended Plan of Management is provided under separate cover.

ISSUE	RESPONSE
<p><u>Public Submissions</u></p> <p>Council has received 57 submissions objecting to this development and copies of those submissions and a summary of submissions has been provided to you. Council staff will be required to report the DA to Council as a result.</p>	<p>Noted. The issues raised in the submissions have been addressed where relevant to the proposal. It is expected that Council will renotify the amended proposal in due course.</p> <p>Given the resolution of Council at it's meeting in October 2019, it is anticipated that the matter would be reported to Council for determination.</p>
<p><u>Section 7.11 Cost report</u></p> <p>The application will be levied a development contribution and Council requires a detailed Cost report to be signed off by a registered Quantity Surveyor to enable accurate calculation of the levy.</p>	<p>A detailed cost report is provided under separate cover.</p>
<p><u>Engineering</u></p> <p>Stormwater detention is to be provided for the parking area in accordance with Council standards. Detention volume for the parking area is 1.8m³/100m² and a</p>	<p>Refer to the amended stormwater drainage details provided under separate cover.</p>

ISSUE	RESPONSE
permissible discharge of 1.5L/s/100m ² . However, given that parking is required to be revised this may require further assessment	
Provision of details of stormwater connection from low point of Lot 12 to the existing Council stormwater system	Refer to the amended stormwater drainage details provided under separate cover.
Inter-allotment drainage covered by a 1.5m wide easement for drainage to be included within Lot 12 where stormwater from Lot 11 passes through it	Refer to the amended stormwater drainage details provided under separate cover. With consolidation of the two allotments, an interallotment drainage system is a moot point.
A right of access is to be provided on both Lots 11 and 12 within the parking area benefitting each lot	As above. Consolidation of the two allotments eliminates this issue.

APPENDIX B – RESPONSE TO CONTENTIONS





22 October 2021

The General Manager
Maitland City Council
PO Box 220
MAITLAND NSW 2320

Dear Sir/ Madam

WITHOUT PREJUDICE – RESPONSE TO CONTENTIONS – ZOE MAY PTY LTD VS
MAITLAND CITY COUNCIL – 2021/196949

We refer to the above matter and the Statement of Facts and Contentions (SOFACS) dated 6 August 2021 in relation to Development Application DA18/1394. This DA sought consent for a boarding house on the subject property and was refused on 8 June 2021.

Accordingly, we write without prejudice to provide a response to Parts B and C of the SOFAC to address the Contentions and outline the information provided to support the amended development concept. These comments have been prepared in reference to the suite of drawings prepared by Sheer Designs SD21 BURN, Sheets 01-20, Issue Q dated 21 October 2021.

CONTENTIONS

1. Existing Character

1.1 *The proposed development is incompatible with the existing character of the Radburn Estate.*

Email: admin@415ups.com.au
PO Box 258 East Maitland NSW 2323
Phone: 049 049 5656
www.415.ups.com.au

RESPONSE

We disagree that the proposal is incompatible. We also disagree as to the extent of the local area and that the area Council refer to the "Radburn Estate" is in fact a true Radburn Scheme.

The proposal is consistent with the character of the local area, having regards to Clause 30A of the ARH SEPP and the Planning principle developed by the NSW Land and Environment Court in *Project Venture Developments Pty Ltd v Pittwater Council* [2005] NSWLEC 191 at paragraphs 22-31. Further, the applicable test under Clause 30A of the ARH SEPP is whether the proposal is compatible with the character of the local area, not a particular estate that does necessarily represent the local area.

Clause 30A of the ARH SEPP states:

"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 key element here is to ask what is the "local area"? Council has restricted itself in the Contention solely to the area referred to as "the Radburn Estate". This approach is not appropriate given that the focus of Clause 30A is not solely on residential areas, but all surrounding areas. Further, the spatial extent of the Radburn Estate must also be taken into account when examining Council's "local area". The Radburn Estate is neither a Heritage Conservation Area, a suburb or even widely known by that name. It is also noted that Council has not clearly defined the extent or boundaries of the Radburn Estate, relying instead on inference to a policy statement, titled *"Building Line and Fencing – Radburn Estate, Thornton"*. As noted above, we disagree with the notion that the estate is in fact a true Radburn Scheme and has merely copied certain elements, to the detriment of its performance against the Scheme's underpinning ideals.

Section 1(a) of the policy statement states that it applies as follows:

"1. Application of Policy

- a. *This Policy applies to those lots located within the Radburn Estate at Thornton as shown on the map (refer Attachment 1) which have a principal frontage to a public reserve."*

The map is provided in Figure 1 below.

FIGURE 1: THE RADBURN ESTATE



Section 2(a) defines the "principal frontage" as follows:

- a. *The principal frontage of an allotment within the context of this policy means the frontage of an allotment towards which the main pedestrian address of the dwelling is orientated. In the Radburn subdivision, the frontage of individual dwellings are predominantly oriented towards the pedestrian reserves.*

Therefore, the policy statement only applies to those allotments where the main

pedestrian access to the dwelling is orientated towards a public reserve. Only No. 22 has the main pedestrian access to the dwelling from a reserve, while No. 21 fronts Taylor Avenue. Based on Site photos, it is clear that the pedestrian entrance to the dwelling at No. 21 is rarely used. The Site will be consolidated into one property with the proposed development having the main pedestrian address to both Burnham Close and Taylor Avenue. This then means that there will not be a principal frontage of the Site facing a reserve.

Further, Section 2(c) states that the nearest part of a "dwelling" shall be no closer than 6m to the boundary adjoining the reserve. The proposal is neither a dwelling nor does it contain dwellings and given the Site will be consolidated and therefore will not have a principal frontage to a public reserve, the provisions of Section 2(c) are not applicable. Additionally, the term "principal street frontage" is defined in Section 5 of Part C of the MDCP as *"that elevation of a building which contains the main pedestrian access point to the dwelling."* In the case of the proposal, the main pedestrian access is to both Burnham Close and Taylor Avenue.

Last but not least is the hierarchy of planning controls. The policy statement has no statutory weight and causes a conflict with the MDCP with regards to side and rear setbacks, requiring a more onerous 6m setback than would normally apply to allotments. Where conflicts of such nature occur, the higher-order document should prevail.

Notwithstanding this, is the context of the local area. A map showing the Site in the context the Radburn Estate is shown in Figure 2, while a map showing the extent of the local area as defined by the author is shown in Figure 3.

The character of the local area surrounding the Site as shown in Figure 3 below includes built elements that are immediately more visibly connected to and therefore more relatable to the Site and are more closely aligned with the blocks surrounding the existing activity node consisting of the shopping centre/ library and community facilities/ Thornton Public School/ Thornton Park. It is this activity node that provides a central focus for Thornton, with the surrounding residential areas providing the backdrop.

Within the surrounding residential areas exist a range of dwellings of varying sizes, ages, materials and stories - it is not just brick and weatherboard single storey cottages built in the 70's.

FIGURE 2: THE SITE AND THE RADBURN ESTATE



The proposal will naturally have greater levels of activity and human movement than surrounding detached houses and therefore is more relatable to the activity node. In the

context of the surrounding residential development there are numerous examples that depart from the vernacular painted by Council. Additionally, Council's assessment does not recognise those areas where newer development has occurred which were a different format to those dwellings in the Estate that were constructed in what appears to have been three separate stages. These include the Garratt Circuit/ Beyer Road development and the townhouses at 20-22 Government Road.

FIGURE 3: THE SITE AND THE LOCAL AREA



Having said that, Council's presumption that the local area can only be connected to the Radburn Estate, despite the physical proximity to other residential areas and the naturally disconnected nature of the Radburn Estate's street layout, is flawed and fails to take into account how the local area is viewed by the Court in other cases, such as *Epping Property*

Developments Pty Ltd v Parramatta City Council [2017] NSWLEC 1095 and of course, *Project Venture Developments v Pittwater Council* [2005] NSWLEC 191 with respect to what the local area is.

In *Project Venture*, the Court held that compatibility is not synonymous with being the same as. The Court accepted that buildings can exist together in harmony without having the same density, scale or appearance. The proposal does not alter the street layout, nor does it depart from having service areas focusing on and vehicular access from the cul-de-sac or orientation of living areas (in this case boarding rooms) towards the open space network.

Particulars

- (a) The existing character of Redburn Estate is a low density residential built form comprised generally of single dwelling houses with either brick or weatherboard facades with hipped or gabled roofs, modest site coverage and large front and rear setbacks. Dwellings are orientated inwards to the large vegetated public reserves where the front setbacks act as an extension of the public reserve.***

RESPONSE

This Particular is nothing more than a statement that also incorrectly adopts certain descriptors as Radburn “standards”. The underlying principles of the Radburn Scheme were the separation of people and cars to improve walkability and the value of social life and cohesion. The Radburn Scheme was characterised by the following key physical elements:

- The concept of a 16ha “Superblock” –a neighbourhood unit of sufficient size (between 7,500 and 10,000 people) structured into neighbourhoods with an 800m (1/2 mile) radius, centred around a primary school.
- A specialised road hierarchy of which cul-de-sacs formed lower order service access to each neighbourhood block, consisting of 20 dwellings in low density configurations up to 50 dwellings in higher densities.

- Complete segregation of pedestrians and cars with over and underpasses for pedestrians at road junctions.
- Houses turned around to face the gardens and pedestrian pathways.
- The park and a primary school being the core of the Super block with two to three superblocks sharing primary and secondary schools, community facilities and community shops as opposed to the traditional urban core or train station.

Having regard to this, the Thornton "Radburn Estate" adopts only two of the Scheme's fundamental principles – the pedestrian network and the majority of houses facing the open space network. The failure to adopt these principles weakens the integrity of the Estate and therefore its value as a distinct character unit, as follows:

- The 16ha "Superblock" – the Estate occupies almost twice the spatial area, yet a fraction of the density. It has an area of 31.97 Ha and contains 333 dwellings, providing a population (based on the 2016 Census) of 862 people.
- Specialised road hierarchy - The Thornton Radburn Estate does not display such a road hierarchy, consisting entirely of cul-de-sacs from either Haussman Drive or Taylor Avenue. Each of the cul-de-sacs service between 9 and 27 dwellings.
- Segregation of pedestrians and cars - this has only been achieved in the northern part of the Estate. The southern portion between Haussman Drive and the power line easement is merely a conventional series of short cul-de-sacs where the dwellings face the street. What segregation that exists between the pedestrian network and surrounding road network also terminates at its intersections with Haussman Drive and Taylor Avenue and therefore any benefits are restricted to a small area.
- Houses in Saarinen, Garnier, Hulot, Meehan, Bauer, Tripp, Deschamps, and Foreshaw Close generally only face the street and almost all houses have tall colourbond or timber fences adjoining their boundaries with the reserve. Dwellings in these streets are of a conventional format, have no connectivity with the open space network save for a pedestrian pathway at the turning head of each

street and is completely separated from the open space network by conventional 1.8m high fencing.

- The Estate is not focussed on either a park, school, community facilities or community shops. The only large tract of land (in this case undeveloped bushland) that serves as open space is located at the periphery of the Estate's network of pathways and linear reserves. Key recreational areas are located to the north of the Site within Thornton Park. The Estate also relies wholly on commercial and retail services and community facilities outside the Estate.

Additionally, neither the Site nor the Estate are within a Heritage Conservation Area or recognised by any statutory instrument or DCP as having particular characteristics or aesthetic/ historic/ social value. Another noted feature is that site coverage across the Estate varies (despite there being no such criteria), with a number of properties having multiple outbuildings such as sheds, swimming pools, dwelling additions and awnings.

Given the above, it is disputed that the Estate is in fact a true Radburn Scheme. The incomplete adoption of the particular Radburn character elements and inclusion of conventional allotments in the southern portion compromise the overall integrity and therefore significance of Council's concept of the local area.

(b) The proposed development is incompatible with the existing character for the following reasons:

- (i) it does not maintain the visual pattern and predominant scale of existing detached single storey style housing in Radburn Estate as the proposed boarding house is an unbroken, unarticulated and flat bulk three storey, 8.7m tall building with a long and vertical built form extending across the full width of the Site;***

RESPONSE

We disagree with this Particular and note the different opinions as to what constitutes the local area for the purposes of Clause 30A of the ARH SEPP. We also reiterate the Planning Principle developed by the Court in *Project Venture*, namely that:

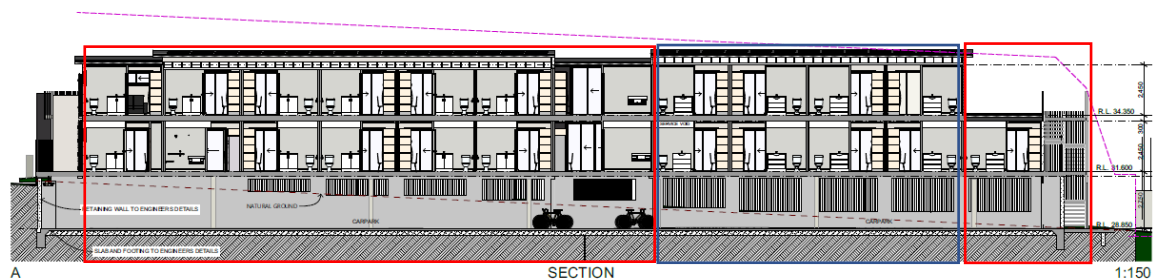
- Compatibility is not synonymous with being the same as. It is generally accepted that buildings can exist together in harmony without having the same density, scale or appearance.
- There are situations where the planning controls envisage a change of character, in which case compatibility with the future character is more appropriate than with the existing.

Having regard therefore to the context of the Site and the surrounding local area and to demonstrate the proposal is compatible with the local area, the following observations are made:

HEIGHT:

The proposal is defined as being part 2 and part 3 storeys in height, based on the adopted definition of *height* and a *storey*. This is also demonstrated below in Figure 4.

FIGURE 4: NUMBER OF STOREYS



2 Storey 3 Storey

When viewed from Taylor Avenue, the proposal will have the appearance of a 2 storey building, set against the backdrop of the significantly taller trees on the northwestern end of Thornton Public School. This view will be similar when approaching the Site from Thomas Coke Drive or in the car park of the adjacent shopping centre. Views of the Site when approaching from the southeast along Taylor Avenue will be significantly obscured

by the aforementioned trees within the school grounds. When viewed whilst walking south west from the footpath reserve, the building will be perceived as a predominantly two storey building, projecting out to three storeys and then down to two again at the rear. The opposite view would be perceived heading northeast along the pedestrian pathway. Likewise when viewed from the public domain in Burnham Close, the building would be perceived as a part 2 and part 3 storey structure with a semi-excavated basement.

There are other examples of buildings within the local area that are greater in height than the immediately adjoining single storey dwellings, most notably the shopping centre and the library and community services buildings. These all contribute to the context of the local area. Other examples of buildings that are either wholly or partly two storey are also plotted on a map in Appendix 1, that takes into account both contested definitions of the local area.

SETBACKS:

Although the MDCP does not apply to the proposal, a comparison against the setback criteria is provided in Table 1 below for comparative purposes.

TABLE 1: SETBACKS

	MDCP	PROPOSED	COMPLIES
PRINCIPAL STREET FRONTAGE - MINIMUM	5m	5m to Taylor Avenue 14.695m to Burnham Place	YES
IRREGULAR ALLOTMENT SHAPE	4m, average of 5m	5m to Taylor Avenue 14.695m to Burnham Place	YES

	MDCP	PROPOSED	COMPLIES
SIDE BOUNDARY – WALLS UP TO 3M	1m	Northern – 1.264m SE (pedestrian reserve) – 1m / 2.2m	YES
SIDE BOUNDARY – WALLS >3M 1m + 0.3m wall height for each metre between 3m & 7.2m	N – 1.78m SE – 1.61m SW – 1.81m	Northern (stairwell) – 2m Northern (BR5) – 1m / 3.3m SE (reserve) – 3.02m – 4m SW (adjoins #20) – 2.05m	YES YES YES YES
SIDE BOUNDARY – WALLS >7.2M As above +1m/ 1m above 7.2m	N – 1.78m SE – 3.26m SW – 3.62m	Northern (stairwell) – 2m Northern (BR5) – 1m / 3.3m SE (reserve) – 3.02m – 4m SW (adjoins #20) – 5.49m	YES YES NO – only outside BR 35/36 YES for remainder YES
REAR BOUNDARY	N/A		

The proposal not only complies with the minimum setback criteria for the nominated residential development, it exceeds them, albeit with one minor exception. Given that the exception is for a small portion of the building adjacent to a public reserve, and a greater offset is provided, the proposal is considered acceptable. Council is also

reminded of the provisions of Section 4.15 (3A) (a) and (b) regarding compliance with DCP standards and the flexible application in terms of non-compliances.

In terms of the setbacks to Taylor Avenue, it is noted that properties along the northern side of Burnham Close display an irregular setback, with no distinct alignment. This is repeated internally along both sides of Burnham Close. Setbacks of the houses to the pedestrian pathway separating the Burnham Close cluster and the Lorraine Close cluster are more closely aligned, although slight variations are evident. These patterns are repeated throughout the northern section of the Estate, whereas the southern section is significantly more uniform with front and rear setbacks.

In terms of side setbacks, these too vary considerably, depending on both the shape of the allotments and subsequent placement of each dwelling and associated outbuildings. There is a predominance of garages, car ports and awnings that have zero side and rear lot lines within the estate, whereas those areas on the northern side of Taylor Avenue tend to be well setback from the single (street) frontage.

LANDSCAPING:

Generally, the setbacks to the street frontages within the Radburn Estate are occupied by garages, carports, awnings, swimming pools and a variety of other outbuildings, with small, unadorned grassed yard areas competing for the remaining space. Landscaping is generally dominated by the ubiquitous 1.5-1.8m high colourbond fencing that lines the street frontages. Landscaping along the frontages to the pedestrian pathway network is generally comprised of unadorned lawns with small, scattered shrubs, although this is often supplemented by the numerous large trees and shrubbery throughout the network. In some instances, the vegetation narrows down the view corridors along these pathways, provides hiding places or even obscures passive surveillance from within the dwellings.

In terms of the setback to Taylor Avenue, those dwellings within the Estate between the Site and Abercrombie Close contained varied landscaping and plantings. Landscaping varies between the densely planted-out mix of native and exotic trees and shrubs of No.

19 Burnham Close to the white picket fence and semi-formal plantings of No. 17, to the simple turfed yard of No. 9 to the unkempt and slightly overgrown yard of No. 3. On the opposite side of Taylor Avenue landscaping patterns are similar however, the front setbacks are smaller and large canopy trees are less frequently observed.

The concept landscape plan provides a densely landscaped setback to both street frontages with a mix of ground covers, low and tall shrubs and trees. The streetscape at both frontages will be a significant improvement on the current landscaping and make an overwhelmingly positive impact on the amenity of each frontage.

OTHER ELEMENTS:

Roof Form

Another element alluded to by Council is the proposed low-pitched skillion roof form. Not surprisingly, given that most of the housing stock in the local area was constructed in the 1970s and 1980s when “kit homes’ were starting to proliferate, roof are typically a combination of hipped and gable forms. Outbuildings, awnings and the like tended to be of metal construction and display flat or skillion roof forms. The Diagram in Appendix 1 also demonstrates that flat and skillion roof forms are also scattered around the local area with the Thornton Shopping Centre, built in the early to mid-1980’s has adopted a Mansard Roof form. This contrasts with the steeply-pitched forms of the library and community facility. Given the diversity shown around the local area, the roof form is considered acceptable.

Building Width Over the Site

The Particular makes reference to the “*vertical built form extending across the full width of the Site*” being inconsistent with the Radburn Estate. As demonstrated above, the development steps through the linear length and roof line and easily exceeds the required setbacks. The proposed setbacks provide a greater separation of the building to the adjoining properties and the public domain, allowing for sight lines between the subject development and adjoining dwellings or the pedestrian pathway. A review of available aerial mapping also demonstrates that the building envelopes of many of the

dwellings within the Estate are quite wide, with the house not having to compete for the space normally occupied by garaging. Given the above, the proposal is acceptable and maintains an appropriate level of amenity.

As identified previously, the scale of the built environment varies considerably with the character not just being constrained to dwellings within the Estate – some of which are approximately 800m away, as opposed to the dwellings on the corner of Taylor Avenue and Thomas Coke Drive or the shopping centre, which are less than 100m away. We also note that the southern portion of the Estate does not possess any of the Radburn features of those streets to the north of the power line easement.

We do not agree that the proposal is an unbroken, unarticulated and flat bulk building with a long and vertical built form that extends across the full width of the Site.

The proposal provides a significant break mid-way along the building's main axis and balconies have slightly different depth on the NW side of the building. The southern end of the upper level has also been stepped in by deleting two boarding rooms. to lessen the perceived impact, noting that the lower car parking level is partly excavated into the Site to a maximum depth of 2.3m. The overall height of the building has been kept within that which could reasonably be expected for a residential flat building, which is also permitted within the R1 General Residential Zone, despite there being no height limit imposed by the MLEP.

- (i) ***with a 1m front setback to the public reserve, the building will present as an intrusive hard vertical built form and will overwhelm the public reserve. The 1m front setback is also inconsistent with the character of the Radburn subdivision pattern which utilises large front setbacks as an extension of the public reserves;***

RESPONSE

We disagree with this Particular.

The boundary to the public reserve and pathway is deemed a side boundary and not a front setback, as identified above. Table 1 above also demonstrates that the side boundary setbacks are achieved and generally exceeded, with only a minor departure of 0.24m outside boarding rooms 35 and 36. Only the basement and balconies have a 1m setback, which increases to 4m to the walls of the two boarding room levels above.

The reserve is generally 8m in width with a narrow concrete pedestrian path whereas the subject building generally exceeds the required side setbacks.

- (ii) ***the site coverage of the proposed building at 65% is inconsistent with existing modest site coverage of the dwellings in the Radburn Estate;***

RESPONSE

We disagree with this Particular.

The Table to the Design Requirements of Section 7 of the MDCP states as follows:

Housing Type	Maximum Site Coverage Ground Floor (%) (See Note 1)	Minimum Unbuilt Area (%) (See Note 2)
Dwelling House	60	40
Small Lot Housing	60	40
Dual Occupancy (2 units)	60	40
Multi Dwelling Housing (3 or more dwellings)	70	30
Residential Flat Buildings	70	30

Based on this Table, there is no stipulated maximum Site Cover. However, if a comparable and permissible built form such as a Residential Flat Building were considered (which is not subject to the Character Test), then a 70% maximum Site cover is permitted.

Council's statement is also without any evidence to support the claim. Examination of the Estate using Mecone Mosaic found the following selected properties where the Site cover was similar to or ever greater than the proposal:

ADDRESS	SITE AREA (M ²)	SITE COVER (M ²) (APPROX)	% SITE COVER (APPROX)
11 Burnham Close	598	399	66.7
17 Burnham Close	450	393	87.3
18 Burnham Close	500	307	61.4
7 Lorraine Close	614	371	60.4
14 Purdom Close	568	371	65.3
12 Griffin Close	542	381	70.3
12 Gibbon Close	538	404	75.1
4 Osbourne Close	545	418	76.7
8 Osbourne Close	545	397	72.8
13 Osbourne Close	590	421	71.4
9 Saarinen Close	580	390	67.2
2 Hulot Close	560	337	60.2
2 Tripp Close	564	402	71.3
12 Tripp Close	586	355	60.6
3 Forshaw Close	764	471	61.5

ADDRESS	SITE AREA (M ²)	SITE COVER (M ²) (APPROX)	% SITE COVER (APPROX)
15 Forshaw Close	626	379	60.5
19 Forshaw Close	571	427	74.8
10 Wren Close	578	415	71.8
14 Wren Close	528	357	67.6
3 Sulman Close	584	367	62.8
6 Deschamps Close	741	467	63.0
17 Woolley Close	564	342	60.6

Note is also made at the significant level of non-compliance in several properties within the Estate, including 17 Burnham Close, which has a site cover of 87.3%.

(iii) at least 50% of the boarding rooms are orientated towards Burnham Close rather than towards the public reserves with balconies and privacy screens dominating the front and rear setbacks being uncharacteristic elements in the Redburn Estate;

RESPONSE

The proposal is not for a new dwelling and there is no mandatory requirement that boarding rooms are to be orientated to a particular direction. The layout of the dwellings within the Estate and hence the subdivision pattern took no account of environmental factors such as the slope and aspect of the land, orientation for solar optimisation, privacy or even protection of openings from the heat during summer afternoons.

Council is again directed to the Planning Principle developed in Project Venture, specifically to paragraph [22] where new development need not be the same as existing development. The balconies and their associated balustrades and blade privacy screens do not dominate the “front and rear” setbacks. They are but one element of the side elevations of the building and assist in providing depth and modulation to the façade, as well as greater levels of internal amenity. Additionally, orientating the boarding rooms towards the public reserves (i.e., the public domain) is a far better planning outcome in terms of privacy, outlook and passive surveillance, providing a better level of overall amenity.

- (iv) ***the proposed roof form is flat with minimal pitch and comprised of corrugated iron with no elements or articulation and does not reflect the roof form in the Radburn Estate; and***

RESPONSE

Refer to the attached Map which shows a variety of roof forms within the local area. The boarding house will have a roof constructed of Bondor insulated metal sheets at 2 degrees, which is not corrugated iron, nor is it flat as described elsewhere in the Particulars. A number of dwellings in the local area, as well as the school buildings, library and community centre and shopping centre, as well as buildings associated with the sports facilities have metal roofs. Outbuildings, awnings and the like tended to be of metal construction and display flat or skillion roof forms. The Diagram in Appendix 1 also demonstrates that flat and skillion roof forms are also scattered around the local area with the Thornton Shopping Centre, built in the early to mid-1980's has adopted a Mansard Roof form. This contrasts with the steeply-pitched forms of the library and community facility. Given the diversity shown around the local area, the roof form is considered acceptable.

- (v) ***the finished façade of the proposed building is out of character with the traditional low-density residential setting style in the Radburn Estate.***

RESPONSE

The buildings throughout the local area exhibit a range of materials, colours and finishes, as stated in paragraph 3.1 of the SOFAC, which states:

"The dominant building character in the Radburn Estate is single storey red brick dwelling houses with tiled hipped or gable roofs. A minor portion of dwellings have weatherboard facades and/or corrugated iron hipped or gable roofs."

Notwithstanding this, in the local area defined in Figure 4 above, displays a number of façade finishes and materials. The Radburn Estate is not within a Heritage Conservation Area and there are no special colour schemes identified in any statutory or policy document.

2. Desired Future Character

2.1 *The proposed built form is inconsistent with the desired future character of the Radburn Estate and the R1 zone as envisaged in the suite of controls which seek to preserve and enhance the existing character and built form, including the MDCP.*

RESPONSE

We disagree with this Contention. First and foremost, there is no character statement to define the existing character of the Radburn Estate, of which, we have already defined is only one of the elements that contribute to the character of the local area around the Site. Likewise, there is no statement of what the desired future character of the Estate might entail.

However, as Council have observed, there are a suite of controls that do provide a statutory basis for the desired future character of the local area within the ARHSEPP and the MLEP. These are discussed below.

R1 ZONE OBJECTIVES:

The objectives of the R1 General Residential zone are, relevantly:

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*

The proposal is consistent with these objectives, providing a different type of housing to the vernacular and at a different level of density to that which is evident. The Social Impact Assessment (SIA) has demonstrated that both Thornton and the local area suffer from a lack of variety in the type and size of residential accommodation available. The fact also stands that there is a critical need for this particular type of residential accommodation. This is supported not only by the statistics provided in the SIA from the ABS, but by the very existence of a State Policy that specifically aims to "... facilitate the effective delivery of new affordable rental housing ...".

PERMISSIBLE DEVELOPMENT IN THE R1 ZONE

The MLEP expressly permits a range of residential development forms other than detached dwelling houses within the R1 zone with consent. These include attached dwellings, boarding houses, group homes, home-based child care, hostels, hotel or motel accommodation, multi dwelling housing, residential flat buildings, seniors housing, serviced apartments and shop top housing. The lack of FSR and Maximum Building Height controls over the R1 zone in Thornton as well as the express nature of the permissibility of the proposal leads one to conclude that there was an active consideration of what the future character of an R1 zone might look like, as opposed to the R2 Low Density Zone.

LEP OBJECTIVES

Clause 1.2(2) of the MLEP does not contain any objectives that "...seek to preserve and enhance the existing character and built form...", but does have following objectives that are relevant to the proposal and we say the proposal is consistent with:

- (c) *to properly plan and protect human-made resources of Maitland including buildings, structures and sites of recognised significance which are part of the heritage of Maitland,*

- (e) *to create liveable communities which are well connected, accessible and sustainable,*
- (f) *to provide a diversity of affordable housing with a range of housing choices throughout Maitland,*
- (h) *to concentrate intensive urban land uses and trip-generating activities in locations most accessible to transport and centres, strengthening activity centre and precinct hierarchies and employment opportunities,*
- (j) *to encourage orderly, feasible and equitable development whilst safeguarding the community's interests, environmentally sensitive areas and residential amenity.*

ARH SEPP

The ARH SEPP provides the key statutory provisions relevant to boarding houses, but aside from the Character Test in Clause 30A, there is no specific requirement to “*preserve and enhance the existing character and built form*”.

THE MDCP

The MDCP does not contain any relevant criteria for boarding houses, nor does it apply according to Section 1.2 of Part C of the MDCP. Section 1.2 of Part C of the MDCP is quite specific as to what forms of development it applies to, as follows:

“1.2 Application

This chapter applies to the whole of the Maitland Local Government Area where residential development is permitted. The chapter provides guidelines for the development of the following forms of housing:

- *Single detached dwelling house*
- *Dual occupancy housing (attached or detached)*
- *Multi dwelling housing (attached or detached)*
- *Residential Flat Building (other than buildings to which State Environmental*

Planning Policy No.65 – Design Quality of Residential Flat Development applies)

- *Senior Living Accommodation (to the extent of providing guidelines which supplement the standards prescribed under State Environmental Planning Policy 2004 – Housing for Seniors or People with a Disability)”*

This exhaustive list specifically does not include boarding houses or several other types of residential accommodation (as defined in the Dictionary to the MLEP), such as *attached dwellings, group homes, hostels or semi-detached dwellings*, all of which are defined separately to the list above in the MDCP.

Particulars

- (a) ***The Design Guidelines in Part C.8 of the MDCP seek to encourage development that is of a scale and pattern that is consistent with the existing development and of a design which integrates into the streetscape (Section C-8, Objective 1.4(b)-(c); Control 2.1 of the MDCP).***

RESPONSE

As stated above, Section 1.2 of Part C of the MDCP states the types of residential development to which the DCP applies. This exhaustive list specifically does not include boarding houses or several other types of residential accommodation (as defined in the Dictionary to the MLEP), such as *attached dwellings, group homes, hostels or semi-detached dwellings*, all of which are defined separately to the list above in the MDCP. It is our view that Council cannot therefore seek to apply or rely of the MDCP in the context of either the Contention or Particular. This is also supported by Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 (the Act), given that Council’s DCP does not provide provisions that relate to the development that is the subject of a development application and is therefore not applicable.

If, however, Council persists with the Particular, then the following is noted. Section 1.3 notes that the purpose of Section C-8 of the MDCP is to *"To encourage high quality urban design and improved amenity across all forms of residential development within the City of Maitland."* Particular (a) however states something different to this Purpose, stating instead that *"Part C.8 of the MDCP seek to encourage development that is of a scale and pattern that is consistent with the existing development and of a design which integrates into the streetscape."* Accordingly, the statement made in the Particular is factually incorrect.

Likewise, Objectives (b) and (c) state as follows:

- "(b) To provide measures to protect the natural and built environment and minimise conflicts which often arise through development.*
- (c) To ensure that development relates to site conditions and that the amenity of adjacent residential development is appropriately considered."*

Again, the Particular is factually incorrect and should be disregarded.

The Particular also refers to Control 2.1 of the MDCP without demonstrating how the proposal fails to achieve any specific provisions, noting that Control 2.1 relates to Site Analysis and Site Context. On this basis, the Particular should be disregarded.

- (b) Design is to reflect the contextual streetscape in terms of height, size, bulk and scale of development, the architectural treatment and style of buildings, predominant building materials, colours and street setbacks (Control 2.1(d) of the MDCP).***

RESPONSE

This Particular is merely a statement and does not describe any specific noncompliance. Control 2.1(d) of the MDCP relates to the provision of a Context Analysis. It does not contain any standards or guidelines, other than what should be documented. There is no

requirement for a development to “reflect the contextural streetscape” as particularized. Accordingly, the Particular should be disregarded.

- (c) ***Massing and bulk and scale of built form is required to be minimised through progressive side and rear setbacks (Section C-6, control 6(h) of the MDCP). In addition, a minimum 6.0m building line front setback is required for all development with a principal street frontage in the Radburn Estate (Line and Fencing – Radburn Estate, Thorton).***

RESPONSE

Firstly, there is no correlation between the Contention (which relates to the desired future character) and the content of this Particular. Further, Section C-6 of the MDCP relates to Outdoor Advertising. Assuming however that Council actually refers to Section C-8 Residential Design – Subsection 6 – Side and Rear Setbacks, Design Requirement h), we again reiterate that the MDCP specifically excludes application to boarding houses by virtue of C-8, Section 1.2.

Notwithstanding this, we note that bulk and scale controls are contained in Subsection 8- *Building Height, Bulk and Scale*. The objectives for the side and rear setback controls contained in Subsection 6 however are:

- a) *To allow flexibility in the siting of buildings and the provision of side and rear setbacks.*
- b) *To allow adequate building setbacks for landscaping, privacy, natural light and ventilation between buildings.*

As noted in Table 1 above, the proposal generally achieves the minimum setbacks in the event that the MDCP did apply and in most cases, provides a greater setback than specified. There is one small exception outside BR 35/ 36 where it adjoins the public reserve by 0.22m, however this is offset elsewhere along the particular elevation by a

setback up to 4m. The proposal therefore satisfies the numerical and objective criteria for the side and rear setbacks.

With respect to the further particular stating *"a minimum 6.0m building line front setback is required for all development with a principal street frontage in the Radburn Estate"*, we again reiterate the following:

- The policy clearly states in Clause 1 a) that it applies *"to those lots located within the Radburn Estate at Thornton as shown on the map (refer Attachment 1) which have a principal frontage to a public reserve."* (emphasis added). Clause 2 b) of the Policy reiterates that it only applies to lots with a principal frontage to a public reserve. For the reasons outlined previously, we assert the Site does not meet this pre-condition.
- The Policy does not use the term "principal street frontage", instead it refers to lots having a principal frontage to a public reserve. The term "principal street frontage" is defined on p166 of Part C Design Guidelines, Subsection 5 – Street Building Setbacks as *"that elevation of a building which contains the main pedestrian access point to the dwelling."* This has been previously addressed however Council have again failed to outline the nexus between the Policy and the desired future character that is the subject of the Contention.

(d) *Building height and bulk and scale controls in Section C-8 seeks to ensure that buildings are of a height, scale and length that is not excessive and relates well to the local context and overall site constraints through design principles.*

RESPONSE

This Particular is simply a Statement. It has already been established that the MDCP specifically excludes its application to boarding houses. Further, the MLEP does not impose any maximum building height controls over the Site. It is also noted by virtue of Design Control e) and Table 4, that there is a very clear expectation by Council that Multi Dwelling Housing and Residential Flat Buildings within the R1 zone can have a maximum

height of 8m and 11m respectively. The proposal at its maximum height (as defined) is only 8.4m.

- (e) ***The external appearance design principles seek to ensure designs that consider the existing character, scale and massing of development in the immediate area (Section C-9 of the MDCP).***

RESPONSE

Although this Particular is simply a Statement, it does not accurately reflect Objective c), which states:

- c) *To ensure good design which provides continuity of character between existing building forms, new development and surrounding landscape by using a selection and/or combination of characteristic elements and mass.*

It has already been established that the MDCP specifically excludes its application to boarding houses. Further, it fails to recognise that Objective b) also seeks to "... allow flexibility in design and use of materials while encouraging high architectural standards". Notwithstanding this, the proposal seeks to integrate a distinctly new type of residential accommodation adjacent to the activity hub of the Thornton Town Centre.

Having regard to the Design Principles, the following is noted:

- The proposal is set against the backdrop of the substantially taller vegetation on the western end of Thornton Public School, which provides a context for the surrounding landscape.
- Architectural interest has been created by:
 - i. the use of a range of colours and finishes that include textured surfaces.
 - ii. walls and roof forms are vertically and horizontally off-set with the mid-section indented and vertical blade walls and balustrades used to relieve the long horizontal lines of the main building walls and provide articulation as well as allowing the interplay of light and shadows to promote the depth of

the balconies.

- iii. A range of building materials and appropriate decorative such as vertical landscaping elements are used on the external facades.
 - iv. Consideration of both typical and rare fenestration (door and window patterns) and the relationship between glazed and solid wall areas.
 - v. The proposed roof form has been chosen to minimise the perceived bulk of the building, yet be relevant to buildings within the area shown in sketch in Appendix 1 that do not have a hip or gabled roof.
- The design provides different visual experiences for the residents and passers-by thorough given the siting of the building, the roof form, balconies and blade walls and balustrades.
 - The proposal promotes design diversity by orientating the building in such a manner that minimises adverse amenity impacts on adjoining properties, takes account of the slope to provide a basement level that is partly excavated into the Site to minimise the perceived bulk and retains vegetation where possible.
 - The proposal retains the pedestrian access points to both street frontages, which is reinforced by appropriate landscaping, fencing and entry treatments to define the boundary between the private and public domains.

3. Planning

3.1 *The proposed building has an excessive bulk and scale and is an overdevelopment of the Site.*

Particulars

- (a) *The excessive vertical and unbroken three storey-built form results in a long and unarticulated rectangle building resulting in a poor design and an inappropriate built form in a low-density residential neighbourhood.***

RESPONSE

As detailed previously, there are no statutory controls limiting FSR, building height or the number of storeys that apply to the Site that are usually used as a guide to determining the apparent bulk and scale of a development. The proposal is comparable with the limits for site coverage, setbacks and height (in metres) to both Multi Dwelling Housing and Residential Flat Buildings within the R1 zone. It should also be noted that the surrounding residential area is not zoned as R2 Low Density Residential, but is instead zoned R1 General Residential which aims to achieve a variety of housing types and densities.

In terms of the statement that the development contains *"excessive vertical and unbroken three storey-built form results in a long and unarticulated rectangle building resulting in a poor design"* overlooks the articulation, deep physical step in the centre of the building and off-set of each portion of the building, as well as the fenestration provided by the blade walls between the boarding rooms. The building clearly reads as a two storey structure from Taylor Avenue and a part two part three storey building when viewed from the public reserve and Burnham Close where the upper level has been stepped in.

(b) The built form and mass of the building extends 90% of the full width of the Site with no articulation, upper storey setbacks or modulation of the built form which exacerbates the excessive bulk and scale of the building.

RESPONSE

This Particular is simply a repeat of Contention 1, Particular (b). There are no applicable statutory controls that dictate upper levels must be setback from the storey below or limit the width of a building and given there are no FSR, building envelope or height controls.

(c) Insufficient side setbacks have been provided for a three-storey built form in a

low- density residential neighbourhood resulting in vertical unarticulated walls adjoining single storey dwelling houses which is an undesirable planning and urban design outcome.

RESPONSE

The R1 General Residential zone is not necessarily a low density zone, expressly providing for 3 storey residential flat buildings with no height or FSR controls. Further, the proposal satisfies all setback controls where the building adjoins another residential property. The building will be setback some 14.695m from Burnham Close and separated some 5m from the residence at No. 19 and approximately 6.5m to the dwelling at No. 20 Burnham Close. Neither portion of the subject building will appear as a 3 storey structure from these adjoining properties, with adequate articulation, modulation and setbacks provided.

(d) An insufficient front setback has been provided to the public reserve which is inconsistent with the 6m building line standard and will dominate the street frontage with long and vertical hard built form elements within 1m from the public reserve.

RESPONSE

By definition, the front setback is to Taylor Avenue, not the public reserve along the southeastern property boundary. The setback to this boundary will not dominate either street frontage and it is hard to see how it would be evident from either Burnham Close or Taylor Avenue, given the existing natural features and existing and proposed built forms. In addition, it is only the partly excavated basement level and balconies to the First Floor that have a 1m setback, with the walls of the building being setback a minimum of 2.56m from the boundary. Further, the "6m building line standard" is not a development standard and holds no statutory weight. The setbacks are an appropriate response to the context of the Site.

- (e) The three storey-built form will dominate the streetscape in Burnham Close and from the adjacent public walkway, and will be visually dominant from Taylor Avenue, which will exacerbate the bulk and scale of the building. The building presents as a 46m long 2.5-3 storey development with minimal articulation.***

RESPONSE

This Particular overlaps others and a response is provided above.

- (f) The built form will not sit in harmony with the streetscape or the existing buildings in the Radburn Estate which have a uniform single storey style and will result in a visually intrusive built form into a low-density residential setting.***

RESPONSE

This Particular overlaps others and a response is provided above.

4. Undesirable Precedent

- 4.1 If approved the DA would result in an undesirable precedent for future boarding houses within the Radburn Estate and the R1 zone in Thornton.***

Particulars

- (a) The undesirable visual impact and built form of the proposed development would be an unjustifiable departure from the existing low-density residential character of the Radburn Estate and wider R1 zone in Thornton which the suite of controls in Part C.8 of the MDCP seek to protect.***

RESPONSE

The proposal does not depart from the relevant statutory planning controls provided by the ARH SEPP or the MLEP. The proposal in particular satisfies the standards contained

in Clauses 29 (Standards that cannot be used for refusal) and 30 (Standards for boarding houses). It also satisfies the Planning Principle developed by the Court in *Project Venture* and therefore satisfies the 'Character Test' provided by Clause 30A of the ARH SEPP. The provision of boarding house accommodation in both a locality and LGA that has scant forms of alternative accommodation types that satisfies the statutory requirements is a good planning outcome and approval of the development will not set an undesirable precedent. The continued application however of controls in a DCP that clearly do not apply to the type of development proposed does however set an undesirable precedent and is in direct conflict with the established planning system in NSW.

5. Visual Privacy and Amenity

5.1 The proposed development will have unacceptable impact on the visual privacy and amenity of the surrounding properties in Burnham Close.

Particulars

- (a) ***The bulk and scale and orientation of a three storey boarding house to Burnham Close will create overlooking opportunities into the private open space of 16, 17, 18, 19 and 20 Burnham Close and impact on the visual privacy and existing amenity of those properties.***

RESPONSE

The proximity of the private open space areas of 16-20 Burnham Close is demonstrated in Figure 5 below.

The private open space areas within the Burnham Close setback of Nos. 16 and 17 is located approximately 32m from the nearest balcony on the development. This is deemed adequate distance separation, taking into account the privacy separation controls applied to residential flat buildings in the Apartment Design Guide. The private open space of No. 18 is filled with portable structures, car bodies and parts and therefore there is no loss of privacy. Likewise, the yard of

No. 17 contains numerous outbuildings, awnings and shade structures so overlooking and therefore amenity impacts, already mitigated by distance would be minimal. The private open space area of No. 20 is out of the direct line of view from the proposal and the private open space area of No. 19 is located on the northern side of the dwelling and associated outbuildings, which provide some shielding. Accordingly, adverse visual privacy impacts would be minimal.

FIGURE 5: ADJACENT PRIVATE OPEN SPACE AREAS



It is noted that Design Requirement h) under subsection 16 – Views and Visual and Acoustic Privacy specifically identifies distance separation, landscaping and the use of fin walls are all acceptable measures (used in this proposal) that are acceptable means of mitigating any potential privacy impacts.

6. Waste

6.1 *Insufficient waste storage and collection has been provided for the proposed boarding house.*

Particulars

- (a) ***Only eight (8) red, four (4) yellow and 2 green waste collection bins have been provided for the boarding house which proposes to house a maximum of eighty (80) residents. The Environment Protection Authority's (EPA) policy 'Better practice guide for resource recovery in residential developments' suggests that a boarding house of this scale would require at least 14 red bins, 14 yellow bins and 5 green bins to adequately service waste generated by boarders.***

RESPONSE

Council does not have any specific controls contained in the MDCP regarding waste storage requirements for residential development or boarding houses. Accordingly, it draws upon a guideline that has no statutory basis and does not address the waste management needs of boarding houses. A more appropriate guideline therefore would be to look at what adjoining councils such as Cessnock City Council (with whom Maitland share waste contractors) and the City of Newcastle Council.

Both Councils work on the basis of a waste generation rate of 60 ltr per occupant per week for general rubbish and 20 ltr per occupant per week for recycling. Based on 78 occupants, this would result in 4680 ltrs per week for general rubbish and 1560 ltrs per week for recycling. Assuming 240 ltr bins would be used, a total of 20 general waste and 7 recycling bins would be required. Cessnock Council also allow bulk waste bin collections

- (b) ***The waste collection storage area is insufficient to service the waste generated by boarders.***

RESPONSE

This Particular is merely a repeat of the previous one.

- (c) ***There is insufficient space to place all required bins for collection at the rear of the property on Burnham Close, which is a cu-de-sac and consequently, the site is not suitable for development of the size proposed.***

RESPONSE

Adequate arrangements can be entered into with a private contractor to facilitate twice weekly collection or collection of bulk waste receptables.

7. Road type and amenity

- 7.1 *The road type and amenity of Burnham Close is not satisfactory to service the proposed development.***

Particulars

- (a) ***Burnham Close is a local access road which is 163m long with a pavement width of 6.0m and is currently servicing 23 lots. The proposed development has not demonstrated through any industry standards that the existing amenity of the street is acceptable for the intensity of the proposed use and the increased vehicle movements.***

RESPONSE

We disagree with this Contention and Particular.

Council have referred to the amenity of the road, claiming that 23 allotments are serviced by Burnham Close. Arguably, as demonstrated above, the cul-de-sacs of the typical Radburn Scheme serve up to 50 dwellings. There are no standards within any statutory document or policy control that address the concept of "road amenity".

This Particular is also dealt with in the submission by Varga Traffic.

- (b) ***The Traffic Impact Statement, dated 19 November 2020, prepared by Seca solution, does not adequately assess how two-way traffic along Burnham Close can be achieved due to its narrow width and existing amenity. Parking restrictions will be required to properly manage the increased traffic in Burnham Close.***

RESPONSE

This Particular is dealt with by Varga Traffic.

8. Public Interest

8.1 *The development is not in the public interest.*

Particulars

- (a) ***The DA should be refused for the reasons raised in the eighty-seven (87) objections against the DA where not otherwise inconsistent with the contentions raised by Council.***

RESPONSE

We disagree with this Contention.

The public interest is not defined by how much interest is displayed by the public. It is noted that a number of the submissions raise false allegations, are based on false and misleading information and debate undertaken on social media or are from people who do not live in the local area. The provision of an alternative form of housing in close proximity to shops, services, public transport, health care and social, recreational and spiritual facilities is considered to be a good planning outcome.

Thornton's housing diversity is almost non-existent. Section 5.9 of the Social Impact Assessment has identified that between the 2011 and 2016 Census periods, diversity of

dwelling types actually decreased. Thornton has no boarding house accommodation whatsoever and the entire LGA only has two registered boarding houses.

Approval of the amended application is therefore not contrary to the public interest given:

- The amended proposed development will provide affordable housing within an accessible location, in accordance with the applicable planning controls in a manner that is compatible with the existing and desired future character of the area.
- The locality's supply of housing in general and affordable rental accommodation in particular will be increased.
- The environmental impacts of the proposal are reasonable and within anticipated limits.
- The provision of affordable housing in a manner that is consistent with the established planning regime to deliver a vital form of housing to support vulnerable and disadvantaged people is of far more importance to the public interest and the wellbeing of society.

PART C – INSUFFICIENT INFORMATION

1. **Ecology** – by others.
2. **Arboriculture** – by others.
3. **Solar Access**

3.1 *The shadow diagrams submitted with the DA are insufficient to demonstrate that the communal living rooms on the second and third floor receive three hours of direct sunlight between 9am-3pm in mid-winter.*

RESPONSE

Clause 29(2) of the ARH SEPP states that a Consent Authority must not refuse consent on the following basis in terms of solar access:

“(c) solar access

where the development provides for one or more communal living rooms, if at least one of those rooms receives a minimum of 3 hours direct sunlight between 9am and 3pm in mid-winter,...”

Given that the ARH SEPP does not define what “direct sunlight” is, the Practice Note from the NSW DPIE titled *Solar Access Requirements in SEPP 65* provides appropriate guidance. It defines the following terms:

- *Solar access is the ability of a building to receive direct sunlight without obstruction from other buildings or impediments, not including trees.”*
- *Sunlight is direct beam radiation from the sun.*

Neither Clause 29 nor any other applicable planning control places a minimum floor area that is exposed to direct sunlight, only that at least one of the communal rooms receives direct sunlight for a minimum of 3 hours between 9am and 3pm in midwinter.

As demonstrated in the amended shadow diagrams, the proposal achieves direct sunlight in both communal rooms for at least 3 hours. Sunlight is evident on the Common Room floor from 11am, reaching its peak at 3pm. Accordingly, the proposal satisfies Clause 29(2)(c) of the ARH SEPP.

3.2 No information has been provided to demonstrate that each boarding room will receive reasonable solar access. Detailed solar access plans are required in order to properly assess the adequacy of the boarding rooms.

RESPONSE

Neither the ARH SEPP nor the MLEP require any such standards to be met. Likewise, the MDCP has no development criteria relating to New Generation Boarding Houses. Further, the only standards to determine whether boarding rooms are “adequate” are contained within Clause 30(1) of the ARH SEPP, which make to requirements for solar access into the boarding rooms.

Notwithstanding this, internal shadow diagrams have been prepared demonstrating what a typical room on each side of the building might experience in terms of direct sunlight. Those rooms with a northerly aspect would have direct sunlight entering the boarding room from 12 noon, increasing to the 3pm cutoff so that these rooms would achieve 3 hours of direct sunlight. Rooms with a southerly aspect however would not receive any direct sunlight, however, as already pointed out, there is no statutory or policy requirement for boarding rooms to achieve any direct solar access.

3.3 Inadequate information has been provided to demonstrate that the proposed development will not have an unacceptable impact on the southern adjoining allotment (20 Burnham Close) as a result of the bulk and scale of the building, the vertical walls, no setbacks at the upper two stories and the 2.05m south-western side boundary setback. Detailed shadow diagrams in plan view and elevation are required to show 1-hour intervals between 9-12pm mid winter to assess the extent of the proposed development's impact on the solar access and amenity of 20 Burnham Close.

RESPONSE

Assuming the requirement for shadow diagrams are from 9am to 12 midday and not 9pm to midnight as indicated), amended shadow diagrams have been provided. These demonstrate that the adjoining dwelling and at least 50% of the private open space areas receive in excess of 3 hours of direct solar access, as follows:

4. Stormwater Management – dealt with by others.

5. Acoustic impacts – dealt with by others.

5.1 *The submitted acoustic report relies on the Plan of Management and management of noise by an on-site manager and restrictions on numbers of people allowed on site. Further information about the likely noise to be generated by the development, including from air conditioning and traffic, as well as mitigation measures that are proposed such as insulation and glazing, is required to properly assess potential impacts on adjoining properties.*

RESPONSE

It should be noted that there are no statutory provisions within any environmental planning instruments or the guidelines contained in the MDCP that apply to the proposed boarding house with respect to acoustic impacts. Further comment has been provided in response to this matter by Spectrum Acoustics.

6. Site Waste Minimisation & Management

6.1 *The submitted Site Waste Minimisation and Management Plan has not adequately addressed the removal and/or recycling of building material. This is required due the extent of the demolition proposed and the scale of the proposed development.*

RESPONSE

A Waste Management Plan addressing the demolition and construction phases of the proposal is provided under separate cover.

6.2 *The proposed development has not adequately demonstrated that waste collection can occur at the Site due to the existing constraints in Burnham Close.*

Particulars

- (a) ***Having regard to the characteristics of Burnham Close and the extent of the waste proposed to be generated by the proposed use details are required to be submitted which confirms that waste collection can occur and how it is to be properly managed. These matters should be addressed in a detailed Waste Management Plan.***

RESPONSE

Details on how waste collection will occur are provided in both the Waste Management Plan and the Plan of Management under separate cover,

- (b) ***Turning templates demonstrating that waste collection trucks can adequately manoeuvre are required to be submitted.***

RESPONSE

Dealt with in the response prepared by Varga Traffic. Video of a garbage truck collection has also taken by the applicant.

- 6.3 A Waste Management Plan is required to be submitted with the DA which adequately addresses the policies and practices to be implemented for waste collection to ensure that waste collection can occur in an orderly manner and that impacts to the amenity of the residents in Burnham Close are minimised.**

RESPONSE

A Waste Management Plan addressing the operation of the proposal will be provided under separate cover. This will demonstrate that waste collection can occur in a safe and orderly manner so that the potential impacts on adjoining properties are minimised.

7. **BASIX Certificate** – dealt with by others.
8. **Parking & Vehicle Access** – dealt with by others.
9. **Engineering** – dealt with by others.
10. **Security**

10.1 An assessment against Part C.12 of MDCP Crime Prevention Through Environmental Design has not been provided.

RESPONSE

A CPTED report will be provided under separate cover, notwithstanding that Council have failed to articulate how the proposal represents a risk to public and resident safety.

11. ***Development contributions*** – dealt with by others.

Please do not hesitate to contact the author on 049 049 5656 or by email at michael@415ups.com.au should you wish to discuss anything further.

Yours sincerely

415 URBAN PLANNING SOLUTIONS PTY LTD



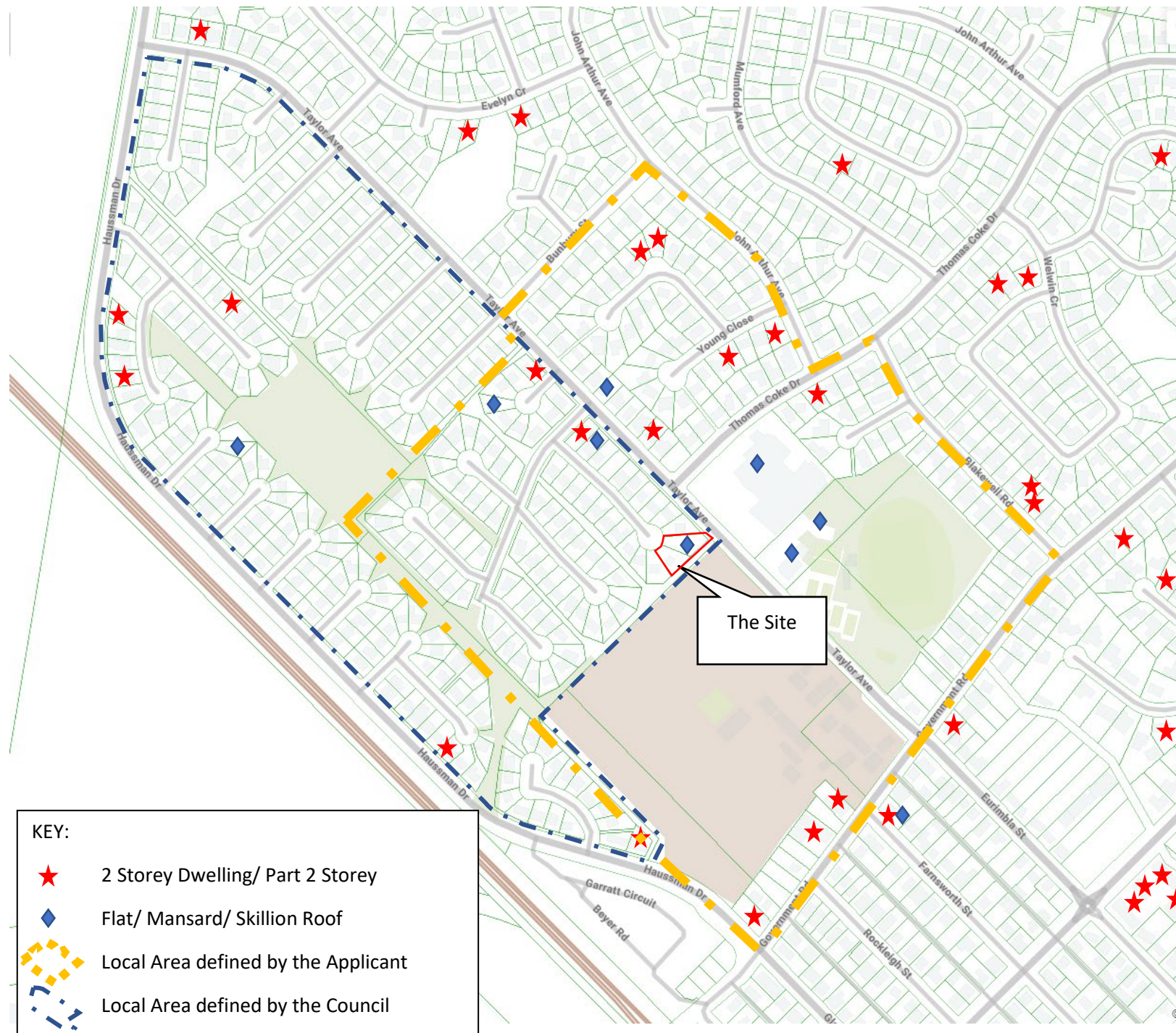
MICHAEL BREWER

DIRECTOR

ATTACHMENTS

- Appendix 1 – Dwelling Diversity and Local Areas

APPENDIX 1 – DWELLING DIVERSITY AND LOCAL AREAS



APPENDIX C – RESPONSE TO COUNCIL DATED 29 NOVEMBER 2021





29 November 2021

THE GENERAL MANAGER
MAITLAND CITY COUNCIL
30 FRANCES STREET
RANDWICK NSW 2031

Dear Mr Evans,

WITHOUT PREJUDICE – ZOE MAY PTY LTD VS MAITLAND CITY COUNCIL –
DA18/1394 – 21-22 BURNHAM CLOSE, THORNTON

We refer to the above matter and the Section 34 Conciliation Conference that was held on the 5 November 2021 between the parties. At the Conciliation Conference, a number of matters generally as outlined in the Statement of Facts and Contentions were discussed. As a result of those discussions, commitments were made by the Applicant to undertake significant amendments to the proposed New Generation Boarding House development.

These amendments generally included the following:

- Deletion of the boarding rooms to the south of the central lift well/ stair core.
- Increased side setbacks to the northern and southeastern side boundaries.
- Relocation of the Communal living room.
- Retention of vegetation within the Burnham Close frontage.
- Relocation and provision of a roof to the bin enclosure.
- Provision of improved privacy and amenity outcomes for the neighbouring properties.
- Addition of bin pads adjacent to the driveway.
- Revisions to the Waste Management Plan to clarify waste collection and storage measures.
- Revisions to the Plan of Management to clarify complaint handling and waste collection protocols.
- Provision of revised plans and supporting documentation as relevant.

In terms of outlining the amended development's compliance with the applicable provisions of State Environmental Planning Policy (Affordable Rental Housing) (ARH

Email: admin@415ups.com.au
PO Box 258 East Maitland NSW 2323
Phone: 049 049 5656
www.415.ups.com.au



SEPP) and the Maitland Development Control Plan 2011, a summary is provided in the following section.

STATE ENVIRONMENTAL PLANNING POLICY (AFFORDABLE RENTAL HOUSING) 2009 (ARH SEPP)

Clause 29 - Standards that cannot be used to refuse consent

Clause 29 provides a set of standards that cannot be used to refuse consent for a boarding house development that meets these standards. An assessment of the amended proposal against these standards is provided below in Table 6 below. The assessment demonstrates the proposal satisfies all of the applicable standards and therefore, Council cannot refuse consent on these grounds.

Clause 30 Standards for Boarding Houses

Clause 30 provides a set of standards that need to be complied with for new boarding house development. An assessment of the proposal against these standards is provided in Table 7 below. The assessment demonstrates the amended proposal satisfies all of the applicable standards and provides sufficient planning merit and public benefit to warrant an approval.

TABLE 1: CLAUSE 29 - STANDARDS THAT CANNOT BE USED TO REFUSE CONSENT

REQUIREMENT	PROPOSED	COMPLIES
FSR – no control	The site is not affected by any LEP FSR limit	N/A
Building Height – no control	The site is not affected by any LEP height limit	N/A
Landscaped Area – if the landscape treatment of the front setback area is compatible with the streetscape in which the building is located	<p>Each street frontage will be provided with extensive landscaping incorporating existing trees where denoted on the Landscape Plan.</p> <p>The landscaping to the Taylor Avenue frontage is compatible with the existing streetscape without compromising on public safety and permeability of the Site entry point for enhanced passive surveillance opportunities. The landscaping to Burnham Close will be a substantial improvement over the colourbond fence vernacular.</p>	YES
Solar Access – where the development provides for one or more communal living rooms, if at least one of those rooms receives a minimum of 3 hours direct sunlight between 9am and 3pm in mid-winter.	The development provides a communal living room on the north-east corner of the upper level with direct sunlight which will receive in excess of 3 hours direct solar access during midwinter. Refer to the amended solar access plans (sheet 14).	YES
Private Open Space – if at least the following private open space areas are provided (other than the front setback area):		

REQUIREMENT	PROPOSED	COMPLIES
<p>(i) one area of at least 20m² with a minimum dimension of 3m is provided for the use of the lodgers,</p> <p>(ii) if accommodation is provided on site for a boarding house manager - one area of at least 8m² with a minimum dimension of 2.5m is provided adjacent to that accommodation.</p>	<p>A dedicated communal open space area is provided in the northwestern portion of the Site that exceeds the spatial requirements. Secondary spaces are located adjacent to boarding room 18, between rooms 1 and 21 and adjacent to room 22 and off the communal living room on the upper level.</p> <p>An on-site manager will reside on the first floor of the building and will be provided with a private Courtyard of 7.66m and a minimum dimension of 2.3m, directly accessible from the accommodation. While compliance with this requirement is not mandatory, it simply means that the proposal is not protected under Clause 29 in relation to the minimum dimension. Notwithstanding this, there are no development standards in Clause 30 (or any other instrument or policy) that requires a minimum dimension of 2.5m.</p>	<p>YES</p> <p>YES</p>
<p>Parking Spaces – if:</p> <p>(i) N/A - The applicant is not a social housing provider.</p> <p>(ii) N/A - The applicant is not a social housing provider.</p> <p>(iia) in the case of development not carried out by or on behalf of a social housing provider—at least 0.5 parking spaces</p>	<p>The development requires a minimum of 16 spaces for borders, based at a rate of 0.5 x 32 boarding rooms, plus one space for the Manager. A total of 31 car spaces</p>	<p>YES</p>

REQUIREMENT	PROPOSED	COMPLIES
<p>are provided for each boarding room, and</p> <p>(iii) in the case of any development—not more than 1 parking space is provided for each person employed in connection with the development and who is resident on site</p>	<p>are provided which includes one car share space, one electric car charging space, one space for the Manager and two disabled parking spaces.</p> <p>The proposal provides one dedicated car space for the on-site manager.</p>	YES
<p>Accommodation Size – if each boarding room has a gross floor area (excluding any area used for the purposes of private kitchen or bathroom facilities) of at least:</p> <p>(i) 12 m² in the case of a boarding room intended to be used by a single lodger, or</p> <p>(ii) 16 m² in any other case.</p>	<p>Each boarding has a minimum area (less the kitchen and bathroom areas) that complies with the respective control.</p>	YES
<p>Private Kitchen or 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.</p>	<p>Each boarding room is self-contained and there are no shared kitchen or bathroom facilities.</p>	YES

TABLE 2: CLAUSE 30 - STANDARDS FOR

BOARDING HOUSES

REQUIREMENT	PROPOSED	COMPLIES
(a) if a boarding house has 5 or more boarding rooms, at least one communal living room will be provided	One communal living room has been provided with two smaller ancillary spaces	YES
(b) no boarding room will have a gross floor area (excluding any area used for the purposes of private kitchen or bathroom facilities) of more than 25 m ²	All rooms <25m ² excluding kitchen and bathroom areas.	YES
(c) no boarding room will be occupied by more than 2 adult lodgers	Maximum of two adult boarders per room. No children or minors are permitted to reside in the proposal.	YES
(d) adequate bathroom and kitchen facilities will be available within the boarding house for the use of each lodger	Each boarding room provides a self-contained kitchen and private toilet/ bathroom facilities consisting of a toilet, shower and hand basin.	YES
(e) if the boarding house has capacity to accommodate 20 or more lodgers, a	An on-site manager will reside in the proposed development.	YES



REQUIREMENT	PROPOSED	COMPLIES
boarding room or on-site dwelling will be provided for a boarding house manager		
(g) if the boarding house is on land zoned primarily for commercial purposes, no part of the ground floor of the boarding house that fronts a street will be used for residential purposes unless another environmental planning instrument permits such a use	N/A – the land is zoned R1 General Residential	N/A
(h) at least one parking space will be provided for a bicycle, and one will be provided for a motorcycle, for every 5 boarding rooms.	The development requires and provides 7 motorcycle and 8 spaces bicycle spaces.	YES

MAITLAND DEVELOPMENT CONTROL PLAN 2011

The Maitland Development Control Plan 2011 (MDCP) does not provide any specific controls for boarding houses. The following Sections in Table 7 are however relevant to all development:

TABLE 7: MDCP COMPLIANCE

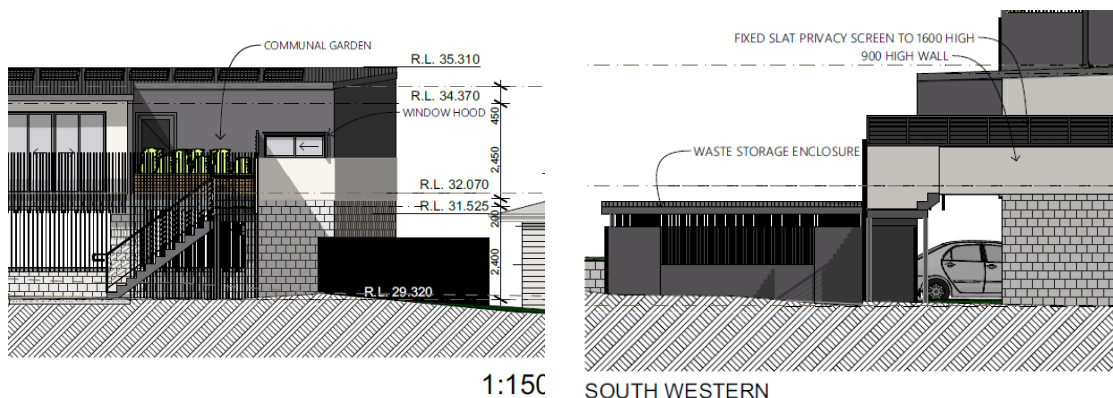
REQUIREMENT	PROPOSED	COMPLIES
B2 – Domestic Stormwater	Refer to the submitted stormwater concept plans.	YES
B5 – Tree Management	Refer to the submitted arborists report and landscape plans.	YES
B6 – Waste Not – Site Waste Minimisation & Management	Refer to the submitted Amended Waste Management Plan	YES
C1 – Accessible Living	The development includes two accessible rooms, one on each floor (BR 11 and 32) meeting BCA requirements for this Class 3 building. A lift provides access to all levels and access is easily available to the street, car parking area, communal rooms/ spaces, open space areas and bin storage areas.	YES
C.12 – Safer by Design	The principles of Crime Prevention Through Environmental Design (CPTED) have been incorporated into the design of the proposal.	YES

OTHER KEY ISSUES

Given the nature of the discussions during the Section 34 process and the changes undertaken, the following outlines how the proposal has responded to several other key issues.

BULK AND SCALE

As discussed at the Conciliation Conference, all boarding rooms south of the central stairwell have been deleted. The southern module has been further offset to produce a greater setback to the southeastern boundary adjoining the pedestrian pathway and linear reserve. Additionally, the external stairwell on the southern end of the building has been deleted to the upper level, however retained for the lower level to satisfy BCA requirements and redesigned so that it and the communal rooftop vegetable garden are screened for privacy, as shown in the drawing excerpts below:



The roof line of the building has also been redesigned with the reduction in the size of the upper level to allow the different roof planes to be clearly interpreted from the public domain and reflect the different building modules.

SETBACKS/ PUBLIC INTERFACE

The southern module has been clearly offset against the central and northern modules so that the main external wall achieves a setback of 5.032m and the balconies achieve a corresponding setback of 3.002m. The increased setback to the southeastern boundary will be densely landscaped with the colourbond fencing replaced with 1.5m high open boundary fencing. Corresponding to the increased setback to the southeastern boundary, the setback of the southern building module has been reduced slightly to 12.995m. This remains consistent with the Burnham Close streetscape and allows sufficient space for the relocated waste storage facility (to allow for the retention of Trees 2 and 3 at Council's request) within a landscaped setting.

The northern corner of the building has also been redesigned to improve separation distances and privacy to the adjoining property as follows:

- Increased the building setback from 1.264m to 2m.
- Provision of landscaping and a new 1.8m high boundary fence at ground level, tapering as required in the front setback.
- Deletion of the communal roof garden.
- Redesigning Boarding Rooms 5 and 26 and provision of a smaller balcony with an angled louvre privacy screen and new landscaped planter boxes.
- Provision of a highlight window above the bed in Boarding Rooms 5 and 26 to prevent overlooking.
- Addition of 1.5m high angled louvre privacy screens to all balconies on both levels (including the communal balconies) on both levels along the northwestern elevation of the building.

PRIVACY

Privacy to adjoining properties has been maintained, as discussed above through the use of fixed angle metal privacy louvres along balconies, redesigning Boarding Rooms 5 and 26, deletion of the external staircase on the southern side of the building, and provision of screening to the communal rooftop garden and external stairs. The setbacks now exceed the applicable statutory requirements.

WASTE STORAGE

The ground floor bin enclosure has been relocated to assist retain existing trees on the Site and a roof added. The enclosure has been sized appropriately and the number of bins provided follows the formula adopted by Council and scaled to reflect the reduced number of boarding rooms. A secondary bin store is also provided within the basement car park with bulky items able to be stored temporarily until collected by a waste contractor, within the Utility Area and Utility Room. Temporary bin collection pads have also been provided adjacent to the driveway as requested by Council and the Waste Management Plan has been updated to reflect the operational requirements in terms of collection and retrieval of the bins within 2 hours by the Manager.

COMMUNAL ROOM

The Communal Living Room has been relocated to the northern elevation of the building to capture greater solar access, provide a more efficient internal layout,

unencumbered by internal travel paths and provide greater opportunities for passive surveillance of the street. Internal solar access to the Communal Living Room easily achieves 3 hours of direct sunlight between 9am and 12 noon, as shown in the excerpt of the submitted shadow diagrams below.



The location of the Communal Living Room also allows its use without impacting on the amenity of other boarders in the development and being located above the Manager, its use can be regulated more closely.

SOLAR ACCESS TO ADJOINING PROPERTY

With respect to solar access to the kitchen window of 21 Burnham Close, the existing and proposed situation has been modelled, as shown on sheets 13, 18, 19 and 20 of the submitted plans. These drawings demonstrate that this window will not be affected between the hours of 9am and 3pm in midwinter as a result of the proposed development.

TREE RETENTION

Initially, the application proposed to remove all trees within the setback to Burnham Close. Through further analysis and redesign of the development, Trees 2 (*E. tereticornus*) and 3 (*G. robusta*) are to be retained. Specific tree protection measures are included in the Arboricultural Impact Assessment prepared by Footprint Green and provided under separate cover.

With respect to Tree 1 (*C. maculata*), further consideration was given by the Project Ecologist and Arborist in terms of relocating the driveway (even after relocating the Waste Enclosure) and examining the extent of excavation required to obtain an adequate entry to the car park level. Despite these investigations, it was agreed that removal of Tree 1 was the only feasible and practical solution. The Project Ecologist has advised that from a biodiversity perspective, the removal of Tree 1 will not have a significant impact.

We also note that despite the loss of Tree 1 (and others on the Site), the Landscape Plan has been amended to incorporate a selection of species that provide canopy trees, mid story plantings and grasses/groundcover specimens from the Lower Hunter Spotted Gum Ironbark Forest (LHSGIF) community. This will result overall, in a positive impact through improved species diversity than the existing site landscaping, which consists of exotic turf grasses and the canopy trees.

Accordingly, we submit that the amendments undertaken to the design of the development and supporting information, demonstrates a proposal that both minimises amenity impacts on adjoining properties and achieves the outcomes discussed and sought in the Section 34 Conciliation Conferences.

Please do not hesitate to contact the author on 049 049 5656 or by email at michael@415ups.com.au or the Applicant's legal representative should you wish to discuss anything further.

Yours sincerely

415 URBAN PLANNING SOLUTIONS PTY LTD



MICHAEL BREWER
DIRECTOR