



Issued: 13 January 2022 8:40 AM

JUDGMENT/ORDER

COURT DETAILS

Court	Land and Environment Court of NSW
Division	Class 1
Registry	Land and Environment Court Sydney
Case number	2021/00196949

TITLE OF PROCEEDINGS

First Applicant	Zoe May Pty Ltd
First Respondent	Maitland City Council ABN 11596310805

DATE OF JUDGMENT/ORDER

Date made or given	12 January 2022
Date entered	12 January 2022

TERMS OF JUDGMENT/ORDER

The Court orders that:

- (1) The appeal is upheld.
- (2) Development consent is granted to development application DA18/1394 for the demolition of two existing dwelling houses and the construction of a part three storey, part two storey boarding house comprising of 31 boarding rooms and one managers residence on land legally identified as Lot 11 and Lot 12 in Deposited Plan 246016 and known as 21 and 22 Burnham Close, Thornton subject to the conditions of consent contained at Annexure A to this agreement.
- (3) The Applicant is to pay the Respondent's costs thrown away, pursuant to s 8.15(3) of the Environmental Planning and Assessment Act 1979, agree in the amount of \$12,500 within 28 days.

SEAL AND SIGNATURE



Signature	S. Froh
Capacity	Registrar
Date	13 January 2022

If this document was issued by means of the Electronic Case Management System (ECM), pursuant to Part 3 of the Uniform Civil Procedure Rules (UCPR), this document is taken to have been signed if the person's name is printed where his or her signature would otherwise appear.

FURTHER DETAILS ABOUT Applicant(s)

First Applicant

Name Zoe May Pty Ltd
Address 24 Lawson Avenue
BERESFIELD NSW 2322
Telephone
Fax
E-mail
Client reference

Legal representative

Name Alice Spizzo
Practicing certificate number 28840
Address Post Office Box 640
PADDINGTON NSW 2021
DX address
Telephone 0419260708
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Electronic service address alice@alicespizzoadvisory.com.au

FURTHER DETAILS ABOUT Respondent(s)

First Respondent

Name Maitland City Council
ABN 11596310805
Address 285 - 287 High Street
MAITLAND NSW 2320
Frequent User Identifier MAITCC

ATTACHMENTS TO ORDERS

(196949.21 Dickson C (Annexure A).pdf)

[attach.]

Annexure A

DETERMINATION OF DEVELOPMENT APPLICATION BY GRANT OF CONSENT

Development Application No: DA18/1394

Development: Demolition of two existing dwellings and construction of a part three, part 2 storey boarding house comprising 31 boarding rooms and 1 manager's residence.

Site: 21 and 22 Burnham Close, Thornton

The above development application has been determined by the granting of consent subject to the conditions specified in this consent.

Date of determination: 12 January 2022

Date from which consent takes effect: Date the consent is registered on the NSW Planning Portal.

TERMINOLOGY

In this consent:

- (a) Any reference to a Construction, Compliance, Occupation or Subdivision Certificate is a reference to such a certificate as defined in the *Environmental Planning and Assessment Act 1979*.
- (b) Any reference to the "applicant" means a reference to the applicant for development consent or any person who may be carrying out development from time to time pursuant to this consent.
- (c) Any reference to the "site", means the land known as Lot 11 and Lot 12 in Deposited Plan 246016.

The conditions of consent are as follows:

Reason for Condition(s)

The following condition(s) have been applied to the development, subject of this consent, to ensure that the development meets the requirements of the NSW Environmental Planning and Assessment Act 1979, the NSW Environmental Planning and Assessment Regulation 2000, and the various policies and development controls of Maitland City Council and other government agencies relevant to the development being undertaken.

APPROVED PLANS AND DOCUMENTATION

1. The development shall be carried out in accordance with the approved plans and documentation as detailed in the following schedule and any amendments arising through conditions to this consent or as shown in red colour on the plans:

a) Plans Reference:

Architectural Plans prepared by: Sheer Designs; Project Number: SD21Burn.			
Name of Plan	Drawing Number	Issue	Date
Site plan – carpark plan	4	X	7/12/21
First floor plan	5	X	7/12/21
Second floor plan	6	X	7/12/21
Typical room plan	7	X	7/12/21
Elevations I	9	X	7/12/21
Elevations II	10	X	7/12/21
Sections	11	X	7/12/21
Earthworks	12	X	7/12/21
Driveway plan	21	X	7/12/21
Lot consolidation plan	22	X	7/12/21
Colours and finishes	23	X	7/12/21
BASIX	24	X	7/12/21

Landscape Plans prepared by: JK's Garden Creation

Name of Plan	Drawing Number	Issue	Date
Site analysis plan	1	-	9/12/21
Landscape plan ground floor	2	-	9/12/21
Landscape plan first and second floors	3	-	9/12/21
Specifications	4	-	9/12/21

Engineering Plans prepared by: Marline Newcastle Pty Ltd; Project Number: 10468.			
Name of Plan	Drawing Number	Issue	Date
Legend, notes and details	SW-01	2	9/12/21
Site services	SW-02	2	9/12/21
Legend, notes and details	SW-03	2	9/12/21
Stormwater management layout	SW-04	2	9/12/21

b) Document Reference:

Document	Reference	Author	Date
Amended Statement of Environmental Effects	Revision 2	415 Urban Planning Solutions Pty Ltd	9/12/21
Amended Social Impact Assessment	Revision 2	415 Urban Planning Solutions Pty Ltd	9/12/21
Amended Crime Prevention Through Environmental Design Report	Revision 3	415 Urban Planning Solutions Pty Ltd	9/12/21

Amended Plan of Management	Revision 4	415 Urban Planning Solutions Pty Ltd	9/12/21
Amended Waste Management Plan	Revision 3	415 Urban Planning Solutions Pty Ltd	9/12/21
Arboricultural impact assessment	Revision 3	Footprint Green Pty Ltd	8/12/21
Access Report; as amended by addendum	LP-21056 -	Lindsay Perry Access	22/11/21 9/12/21
Construction Traffic Management Plan	Ref 21532	Varga Traffic Planning Pty Ltd	8/12/21
Biodiversity Assessment Report	21ASAD02	Travers Bushfire and Ecology	22/10/21
Acoustic Report	201965R/29 515	Spectrum Acoustics	20/10/21

CONTRIBUTIONS/FEES

2. Pursuant to Section S7.12 of the Environmental Planning and Assessment Act 1979 and the Maitland S94A Levy Contributions Plan 2006, a contribution of \$35,813 shall be paid to the Council.

The above amount is to be adjusted at the time of payment in accordance with the provisions of the Maitland S94A Levy Contributions Plan 2006.

Payment of the above amount is required prior to issue of the Construction Certificate for the development.

This condition has been applied to ensure that where the proposed development results in an increased demand for public amenities and services, payment towards the cost of providing these facilities/services is made in accordance with Council's adopted contributions plan and the provisions of section 7.12 of the Environmental Planning and Assessment Act, 1979.

CERTIFICATES

3. **Prior to the commencement of works** an application for a Construction Certificate shall be submitted to, and be approved by, the Accredited Certifier.

4. **Prior to issue of the Construction Certificate** a Compliance Certificate under Section 50 of the Hunter Water Act 1991, for this development, shall be submitted to the Accredited Certifier.
 5. **Prior to the issue of an Occupation Certificate** all conditions of development consent shall be complied with.
 6. **Prior to occupation of the building** an Occupation Certificate shall be issued by the Principal Certifying Authority.
 7. The applicant shall submit to Council, *"Notice of Appointment of the Principal Certifying Authority"* at least two (2) days **Prior to the commencement of construction works**.
 8. The applicant shall submit to Council a "Notice of Commencement" form at least two (2) days **prior to the commencement of construction works**.
 9. Building work that involves residential building works (within the meaning of the Home Building Act, 1989) must not be carried out unless the principal certifying authority for the development to which the work relates:
 - (a) in the case of work to be done by a licensee under that Act:
 - (i) has been informed in writing of the licensee's name and contractor licence number, and
 - (ii) is satisfied that the licence has complied with the requirements of Part 6 of that Act, or
 - (b) in the case of work to be done by any other person:
 - (i) has been informed in writing of the person's name and owner-builder permit, or
 - (ii) has been given a declaration, signed by the owner of the land, that states that the reasonable market cost of the labour and materials involved in the work is less than the amount prescribed for the purposes of the definition of owner-builder work in Section 29 of that Act, and is given appropriate information and declarations under paragraphs (a) and (b) whenever arrangements for the doing of the work are changed in such a manner as to render out of date any information or declaration previously given under either of those paragraphs.
- (2) A certificate purporting to be issued by an approved insurer under Part 6 of the Home Building Act, 1989, that states that a person is the holder of an

insurance policy issued for the purposes of this clause, is sufficient evidence that the person has complied with the requirements of that part.

LAND TITLE

10. Prior to the issue of any Occupation Certificate Lots 11 and 12 in DP 246016 shall be consolidated and registered at the NSW Land Registry Services and a copy of the registered plan shall be provided to Council.

DEMOLITION

11. All demolition works are to be carried out in accordance with Australian Standard AS 2601-2001. Demolition materials shall be recycled as far as practicable and any demolition waste disposed of only a licensed Landfill Authority.

HEALTH AND AMENITY

12. In the event of any undisclosed or unidentified contamination being found on-site (not previously identified) or any potentially contaminating infrastructure or soils (eg., staining, odours, asbestos) being identified during works, a qualified and experienced environmental scientist must inspect, review and advise on remediation or mitigation prior to further works commencing. Council must be notified if this occurs and must be provided with any resulting reports and recommendations.
13. Targeted removal of any building materials suspected to contain asbestos or other contaminants (eg lead paint etc., as part of demolition works) must ensure the necessary removal, storage and disposal is undertaken to a licensed landfill authority. Any remediation undertaken on the land must meet the standard required under State Environmental Planning Policy No 55 – Remediation of Land.

Asbestos removal and disposal shall be in accordance with the requirements of WorkSafe NSW and Maitland City Council.

Note: All waste material that arises as a result of the works shall be classified according to the NSW EPA Guidelines prior to removal from the site. All waste material must be disposed of at a facility approved for that purpose. Note: *if contaminated soil or other waste is transported to a site unlawfully, the owner of the waste, the transporter and the owner of the land receiving the waste are guilty of an offence.*

BOARDING HOUSE

14. Development consent is granted for the construction and use of the building as a boarding house under the provisions contained within Division 3 (Boarding Houses) of *State Environmental Planning Policy (Affordable Rental Housing) 2009*.

This consent is limited to the construction and operation of a boarding house with 31 boarding rooms and one (1) manager's residence as defined by the Maitland Local Environmental Plan 2011.

The boarding house shall comply with the following provisions:

- (a) A maximum of 31 x double rooms shall be provided on site with one common room and one manager's residence.
- (b) Each boarding room must have a minimum gross floor area (excluding an area used for the purposes of private kitchen or bathroom facilities) of 16m².
- (c) 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 25m².
- (d) No boarding room will be occupied by more than two lodgers at any one time.
- (e) The boarding house must be provided with a boarding house manager.
- (f) The manager's room shall not be used as a boarding room at any time. This does not preclude rent being paid by the Manager.

Plan of Management

15. The boarding house shall be operated in accordance with the approved Plan of Management.

Prior to the issue of any Occupation Certificate the Plan of Management shall be amended as follows:

- (a) The outdoor communal areas and balconies shall not be used between the hours of 10pm at night and 7am in the morning.
- (b) Within 7 days of the issue of any Occupation Certificate, a copy of the final Plan of Management shall be submitted to Council.
- (c) A copy of the Plan of Management shall be made freely available to family and visitors who frequent the boarding house, as well as to neighbouring property owners and local residents, if requested.
- (d) The Plan of Management shall be dated from the date of initial operation and shall be reviewed annually (on the anniversary of the initial date) and a copy provided to Council and all relevant parties within fourteen (14) days of completion.

Crime Prevention Through Environmental Design

16. The development shall be constructed and maintained in accordance with the recommendations of the approved Crime Prevention Through Environmental Design Report.

Technical Surveillance shall be applied across publicly accessible areas of the development. This may include mechanisms such as a security surveillance system that

is of a quality to enable facial recognition, application of motion activated lighting in public areas, clear signage, establishment of clear line of sight for capable guardianship within design of structure.

Details demonstrating compliance with this condition shall be submitted to the satisfaction of the Certifying Authority prior to issue of any Occupation Certificate.

Managing Complaints

- 17.** The boarding house operator shall keep a legible record of all complaints made to the boarding house manager arising from the use of the boarding house.

The record shall include details of the following:

- (a)** The name and address of the complainant (if provided).
- (b)** The time and date the complaint was received.
- (c)** The nature of the complaint.
- (d)** The name of the employee who received the complaint.
- (e)** Action taken to investigate the complaint, and summary of the results of the investigation.
- (f)** Indicate what was occurring at the time the noise was heard if possible.
- (g)** Remedial action, if required.
- (h)** Validation of the remedial action.
- (i)** Summary of feedback to the complainant.
- (j)** A permanent register of complaints should be held on the premises, which shall be reviewed monthly by staff to ensure all complaints are being responded to. All complaints received shall be reported to the boarding house operator with initial action/investigation commencing within 7 days. The complainant must be notified of the results and actions arising from the investigation.
- (k)** A copy of the complaint must be forwarded to Council by the boarding house operator addressing (a) to (j) above. This record of complaints must be produced to any authorised officer of Council who requests to see it.

Fire safety

- 18.** The boarding house must comply with the fire safety provisions of the Building Code of Australia as they apply to Boarding Houses (Class 3).

Disability Access Requirements

- 19.** Access for people with disabilities shall be provided from the building to kerb ramps and footpaths along the Taylor Avenue street frontage, by means of a continuous path of travel in accordance with *Australian Standard AS 1428.1*.

The recommendations contained within the approved Access Report shall be incorporated into the design and construction of the development including:

- (a) The provision of two accessible boarding rooms that must comply with the essential features of Class C AS 4299;
- (b) Two designated accessible parking bays must comply with AS 2890.6;
- (c) Signage shall be installed identifying two accessible parking bays.

Upon completion of the works and prior to the issue of an Interim or Final Occupation Certificate, whichever occurs first, documentation shall be provided to the Principal Certifying Authority from a suitably qualified consultant certifying that the works have been completed in accordance with the recommendations of the report.

Note: Additional legislation exists to promote the provision of services, which enable people with a disability to maximise their potential, further their integration in the community and achieve positive outcomes.

ABORIGINAL RELICS AND ARTEFACTS

- 20. Should any Aboriginal 'objects' be uncovered by the work, excavation or disturbance of the area is to stop immediately and the Office of Environment and Heritage must be informed in accordance with Section 89A of the National Parks and Wildlife Act, 1974 (as amended). Works affecting Aboriginal 'objects' on the site must not continue until the Office of Environment and Heritage has been informed. Aboriginal 'objects' must be managed in accordance with the *National Parks and Wildlife Act, 1974*.

BUILDING SUSTAINABILITY INDEX (BASIX) CERTIFICATE

- 21. The development shall be constructed in accordance with a current Building Sustainability Index (BASIX) certificate.

SIGNAGE

- 22. Separate development consent shall be obtained from Council prior to the erection of any advertising structures or signs on the site. This does not apply to any exempt, complying or previously approved signage.

LIGHTING

- 23. Low intensity security and sensor lighting shall be provided to all shared pedestrian paths, parking areas and/or entries. All lighting must meet the minimum Australian and New Zealand standards, including the Australian Standard for Public Lighting of streets, car parks and pedestrian areas.

The lighting should be designed, positioned and installed, to include appropriate shielding and orientation of the light fixture, so as not to give rise to obtrusive light,

interfere with traffic safety or detract from the amenity of the surrounding area in accordance with Australian Standard 4282:1997 – *Control of the Obtrusive effects of Outdoor Lighting*. The lights should be low glare, vandal resistant and free from obstructions and should ensure that there is no light spill or glare beyond the property boundary.

PRIVACY SCREENS

24. The fixed louvred privacy screens on the balcony of bedroom 5 and 25 shall be increased in height to 1.6 metres measured above the balcony floor level. Details demonstrating compliance with this condition shall be provided to the Certifying Authority for approval with the Construction Certificate.

UTILITY SERVICES

25. Prior to issue of the Construction Certificate, documentary evidence from the suppliers of electrical power and communications (including gas, if applicable) confirming that satisfactory arrangements have been made regarding the provision of their respective infrastructure, shall be submitted to the Certifying Authority.

ANCILLARY PROVISIONS

26. External clothes hoists/clothes lines shall be located and screened from public and/or communal areas.

REFLECTIVITY

27. External cladding materials such as roofs, walls and windows shall have low-reflective properties.

LANDSCAPING

28. All landscaped areas of the development shall be maintained in accordance with the approved landscape plan. The landscaped areas shall be kept free of parked vehicles, stored goods, waste material, and the like.

Landscape Works

29. Landscape works shall be constructed in accordance with the approved landscape plans and specification.

A minimum of three x *Eucalyptus crebra* trees shall be planted at a minimum pot size of 100L and maintained until maturity

Landscape works shall conform to planting densities as scheduled with all plants at nominated pot sizes and spacing's and be maintained until maturity to achieve continuous healthy growth. All planted areas shall be covered with minimum 100mm mulch to aid plant establishment.

Landscape Works

- 30.** At the completion of landscape works, the consulting landscape architect who prepared the documentation shall submit to the Certifying Authority a Landscape Compliance Report. This report shall certify shrub and tree species, pot size, and planting densities and landscape area setout comply with approved documentation and practical completion of the landscaping works has occurred. The Certifying Authority shall not issue the Occupation Certificate without receipt of the Landscape Compliance Report.

Landscape Works

- 31.** All landscape works required under this consent are required to be maintained until maturity to achieve continuous healthy growth, improving amenity and aesthetics over the site and meeting the aims for development in the zone. Any landscaping that does not survive until maturity must be replaced with the same species.

All landscaping works required under this consent shall be permanently maintained in good condition in accordance with the approved landscape plan. Replacement landscaping is to be carried out in the event that any shrub, bush or tree dies with a like species.

TREE REMOVAL

- 32.** Tree removal shall be carried out by an arborist, or a person suitably qualified in that field.

A copy of this consent must be held on site while the work is being carried out and made available for inspection, upon request, by Council officers.

Where the trees subject to removal have been identified as 'habitat trees' or alternatively may be reasonably expected to provide habitat to native fauna, an ecologist shall be engaged to undertake clearance of any fauna within the subject tree(s) immediately prior to tree removal. Any fauna species discovered in the tree(s) shall be relocated to an appropriate habitat tree within the locality. Any undetected fauna injured as a result of the felling shall be collected by the ecologist and forwarded to WIRES (or the like).

Note: The National Parks and Wildlife Service may provide advice as to a suitably qualified ecologist.

- 33.** Open burning is prohibited in the Maitland Local Government Area except where permitted under the provisions of Council's Control of Burning Policy.

TREE PRESERVATION

Retention of Trees and Native Vegetation

34. All native trees and vegetation on the site shall be retained and protected in accordance with the *Australian Standard AS4970-2009 – Protection of Trees on Development Sites* unless it has been identified for removal on the approved plans or documentation.

All reasonable measures shall be undertaken to protect native vegetation on, and adjoining the site, that shall be retained from damage during construction. Such measures shall include, but not be limited to:

- a) maintaining exclusion fencing around vegetation that adjoins the construction area to minimise damage to vegetation that shall be retained;
- b) prohibiting compaction and the placement of fill within five metres of trees and native vegetation that shall be retained;
- c) keeping all vehicles, construction materials and refuse within areas approved for buildings, structures, access ways and car parks;
- d) limiting the number of access points;
- e) salvaging useable trees and shrubs which are felled for re-use, either in log form, or as woodchip mulch for erosion control and/or site rehabilitation. Non-salvageable material such as roots and stumps shall only be disposed of at an approved site;
- f) notifying all contractors, sub-contractors, and personnel of vegetation protection requirements of this condition.

A separate application shall be made to Council for the removal of any other trees or native vegetation. This includes application for the removal of any understorey vegetation or the stripping of ground cover vegetation that is outside those areas approved for construction.

Tree Protection Measures

35. Tree protection measures shall be implemented for the development to protect trees 2 and 3, trees located on the public reserve and trees located on adjoining properties. Trees and native vegetation shall be retained and protected in accordance with *Australian Standard AS4970-2009 – Protection of Trees on Development Sites*, unless they have been specifically identified for removal on the approved plans or documentation.

Tree protection measures shall include the following:

- a) Tree Protection Zones (TPZ) of a minimum of three metres shall be established around all trees identified to be retained.
- b) A 1.8 metre high chain mesh fence shall be erected along the perimeter of each TPZ, on the development site, prior to works commencing and shall remain intact until construction is completed.
- c) Any excavation within the vicinity of an identified TPZ shall be carried out by hand, with all care taken not to damage tree roots. If tree roots greater than 30mm are found during works that need to be severed, they shall be cut with a saw (not ripped) under the supervision of a suitably qualified AQF5 arborist or horticulturalist.
- d) TPZs shall be mulched to a depth of 100mm using organic mulch.
- e) Fences around TPZs shall be sign posted to warn of its purpose (sign example under AS4970).
- f) Storage of materials, building waste, excavated spoil, cement or any other harmful materials is not permitted within TPZs.
- g) Any minor hand pruning of trees shall be carried out in accordance with *Australian Standard AS4373-2007 – Pruning of Amenity Trees*, by a suitably qualified AQF3 arborist or horticulturalist.

Note: A separate application shall be made to Council in accordance with *State Environmental Planning Policy – SEPP (Vegetation in Non-Rural Areas) 2017*, for the removal of any other trees or native vegetation. This includes application for the removal of any understory vegetation or the stripping of ground cover vegetation that is outside those areas approved for construction.

FENCING

36. Taylor Avenue boundary: The existing fence on the Taylor Avenue boundary of the site shall be replaced with a 1.5 metre high slatted boundary fence as per the approved colours and finishes plan.

Burnham Close boundary: The existing fence on the Burnham Close boundary of the site shall be replaced with a 1.5 metre high slatted boundary fence as per the approved colours and finishes plan.

Public Reserve boundary: The existing fence adjacent to the public reserve on the south east boundary of the site shall be replaced with a 1.8 metre high slatted boundary fence as per the approved colours and finishes plan.

North east boundary: The existing fence on the northeast boundary of the site, adjacent to No.19 Burnham Close, shall be replaced with a 1.8 metre high Colorbond boundary fence tapering down to 1.5 metres in height at the Taylor Avenue and Burnham Close frontage.

South west boundary: The existing fence on the south west boundary of the site, adjacent to No.20 Burnham Close, shall be replaced with a 1.8 metre high Colorbond boundary fence tapering down to 1.5 metres in height at the Burnham Close frontage and public reserve frontage.

All costs associated with the removal and replacement of any fence shall be borne by the person with the benefit of the consent and not the relevant neighbouring property owners.

14 days written notice shall be given to the relevant neighbouring property owner of the intention to erect the boundary fencing.

All new or replacement boundary fencing shall be completed prior to the issue of any Occupation Certificate.

ENVIRONMENTAL CONTROLS

- 37.** The use and occupation of the premises, including all plant and equipment installed, is not to give rise to any offensive noise, as defined under the *Protection of the Environment Operations Act 1997 (NSW)*. In this regard:
- Mechanical plant and equipment (eg., air conditioning etc) shall be designed and located to minimise noise and nuisance; and
 - The owner of the site in conjunction with the operator of the site shall take all necessary steps to ensure the operation of the communal areas does not create an environmental nuisance.
- 38.** The development shall be undertaken in accordance with the requirements of the approved Acoustic Report, except as modified by these conditions of consent. Demonstrated compliance with Acoustic measures is to be certified by an Accredited Acoustic Consultant and provided to the Principal Certifying Authority prior to the issue of an Occupation Certificate.
- 39.** There shall be no interference with the amenity of the neighbourhood by reason of the emission of any 'offensive noise' as defined in the *Protection of the Environment Operations Act 1997*. In this regard:
- The owner of the site in conjunction with the operator of the site shall take all necessary steps to ensure the operation of both the communal and private balconies do not create an environmental nuisance.
 - The communal outdoor areas are not to be used between the hours of 10pm at night and 7am in the morning and this requirement is to be incorporated into the revised Plan of Management and tenancy agreements.
 - The private balconies are not to be used in a manner which would create noise disturbance to surrounding properties after 10pm at night and before 7am in the morning and this requirement is to be incorporated into the revised Plan of Management and tenancy agreements.

Acoustic Certification

40. Any construction certificate plans shall be certified as being designed in accordance with the approved Acoustic Report and AS2107.2000 Acoustics.

Screening of plant and equipment

41. All plant and equipment (including but not limited to air conditioning equipment) shall not be located on the roof.

Screening shall be provided to any services (such as air conditioning, hot water system, etc) required to be installed on balconies. Screening shall be provided to ensure the services are not visible from the street.

Details demonstrating compliance with this condition shall be submitted to the satisfaction of the Certifying Authority prior to issue of the first Construction Certificate.

WASTE MANAGEMENT

Waste Management Plan

42. All requirements of the approved Waste Management Plan shall be implemented during the demolition, excavation and construction of the development.

Garbage Storage Area

43. The garbage storage area shall be constructed of, or lined with materials that are durable, impervious to moisture, and capable of being easily cleaned with a high pressure cleaner with hose attached to tap connected to water.

The area shall be roofed, the floor bunded, graded and drained to a sump connected to the sewer in accordance with the requirements of the Hunter Water Corporation.

Waste Collection

44. Documentation confirming arrangements/agreements have been made with a private contractor for the collection of general waste, green waste and recycling materials shall be submitted to the Certifying Authority prior to the issue of the Occupation Certificate.

This documentation shall demonstrate the waste contractor can service the development for all waste streams, and within designated waste storage areas.

Maitland City Council or a private contractor shall not collect waste between the hours of 8pm and 6am on any day.

CAR PARKING

45. Prior to the issue of a construction certificate plans demonstrating a total of 30 car parking spaces in accordance with *Australian Standard AS/NZS 2890* shall be submitted to the certifying authority.

The spaces shall be allocated in the following proportions:

Boarding house	24 spaces
Residential – Visitors	3 spaces
Disabled car spaces	2 spaces
Manager’s space	1 space
Total	30

In addition, 7 motorbike spaces and 8 bicycle spaces shall be provided.

All car parking spaces, line marking and signage shall be completed prior to the issue of any Occupation Certificate.

All driveways, parking areas and vehicles turning areas shall be constructed with a segmental paver surface (on a concrete sub-base), or as reinforced concrete.

All parking bays shall be delineated. “Visitor parking” spaces shall be signposted.

Bicycle Parking

- 46.** Secure bicycle parking/storage shall be provided to accommodate 8 bicycles on the site in accordance with the approved plans. The installation and dimensions of the bicycle parking/storage shall be in accordance with the Austroads *Cycling Aspects of Austroads Guides* and *Australian Standard AS2890.3:1993*. These works shall be completed prior to the issue of the Occupation Certificate.

VEHICLE ACCESS

- 47. Prior to commencement of construction** of the driveway crossing on the public footway verge, the works shall have been approved by Council. An application form, “*Application To Construct Private Works On Footway*” shall be submitted to Council, together with the appropriate fee (for each driveway).
- 48. Prior to issue of an Occupation Certificate** the driveway layout and profile shall be constructed, in accordance with Council’s Manual of Engineering Standards, which includes the retention of (or if damaged reconstruction as plain concrete of) any existing footpath, and with reference to Council’s information document “*Footway Crossings (Driveways)*”.

CONSTRUCTION (TRAFFIC) MANAGEMENT

- 49. Prior to commencement of works on the site**, a Construction (Traffic) Management Plan shall be submitted to the satisfaction of Council’s Manager of Engineering and Design. The Construction (Traffic) Management Plan must be generally in accordance with the draft plan prepared by Varga Traffic Planning dated 8 December 2021.

During construction the applicant shall undertake construction works strictly in accordance with the approved Construction (Traffic) Management Plan and the following:

- All demolition, construction, delivery, tradesman and contractor vehicles shall enter and exit Burnham Close and the development site in a forward direction.
- All demolition, construction, delivery, tradesman and contractor vehicles shall not park on, deliver from or hoist from Taylor Avenue, Burnham Close or adjacent footways. All activities shall be undertaken onsite.
- All storage of materials shall not be stored on Taylor Avenue, Burnham Close or adjacent footways. All storage of material shall be undertaken on site.
- Burnham Close shall be kept clear at all times to allow for manoeuvring of emergency vehicles and regular garbage services.

No works on adjoining Public Reserve

- 50.** The public reserve adjoining the site shall not be affected by site works, construction materials stockpiles, waste, building products and debris, site sheds, spoil placement or the like. No access for vehicles, machinery or goods to the site shall be gained across the public reserve without written approval from Council. All costs associated shall be payable by the person having the benefit of the consent.

DILAPIDATION REPORT

- 51. Prior to the issue of a Construction Certificate,** the applicant shall submit to Council a comprehensive Dilapidation Report assessing the condition of adjacent road pavements, footpaths and other Council infrastructure that could potentially be damaged by the works. If Council considers the road pavement and wearing course have been subject to accelerated wearing and/or failure, such damage shall be repaired to the satisfaction of Council.

The report shall be prepared by an engineer or other suitably qualified person.

The report shall also cover the adjoining properties at No.19 and No.20 Burnham Close.

The report shall include a description of the location and nature of any existing observable defects to the properties and existing public infrastructure, including a photographic record.

For continuous assets such as footpaths or kerb and channel, records shall be taken at least every five metres.

Dilapidation Survey Report

- 52.** A final Dilapidation Report shall be prepared by an engineer or suitably qualified person at the completion of the works. The report shall identify if any structural or cosmetic damage has occurred to the properties specified in the earlier report. A copy of the report shall be submitted to the satisfaction of Council's Manager Engineering

and Design, the Certifying Authority and owners of potentially affected properties and public infrastructure. Any identified damage shall be repaired prior to the issue of any Occupation Certificate.

- 53. Prior to issue of any occupation certificate**, any items identified by Council in relation to the Dilapidation Report findings shall be repaired to the satisfaction of Council (confirmation of which is to be provided in writing). An approval process for any repair works shall be determined by Council.

STORMWATER DRAINAGE

- 54. Prior to issue of a Construction Certificate**, the construction details in accordance with Council's Manual of Engineering Standards shall be provided for the following stormwater requirements:

- a) On-site Detention (OSD) of stormwater that reduces post-developed discharges to pre-developed discharges for the 1, 10 and 100yr ARI critical storm events with the maximum permissible site discharge limited to **24.1** litres per second for the 1% event, and generally in accordance with **drainage plan number 10468 SW-01, SW-02 revision 2 dated 09/12/2021 by Marline Building and Engineering Services**, and
- b) Stormwater pipes and pits shall be piped under the front disabled carparking and driveway to avoid the rootzones of the trees to be retained
- c) Catchments of roof, and surfaces shall be shown and calculations demonstrate that the accumulative flows within pipes and surface flows are limited to the design storms and discharge rates as listed above, prior to discharge at the boundary line.
- d) The stormwater plan shall not be issued (construction Certificate) until the Section 68 Stormwater approval has been issued by Maitland City Council (as landowner of the Public Reserve discharge site) so that discharge depths and locations are confirmed.
- e) Detailed pavement finished surface levels demonstrating 1% conveyance paths to, and 1% inlet capacity into the OSD tank/structure, and
- f) Structural certification is required for underground detention systems where expected traffic loads are likely, and,
- g) an emergency overland flow path for major storm events, that is directed to the public drainage system, and
- h) entrapment of gross pollutants, nutrients and hydrocarbons generated from the contributing ground-surface catchment areas, and
- i) conveyance where necessary, of stormwater through the site from upstream catchments, (including roads and adjoining properties).

- 55. Prior to issue of an Occupation Certificate or Operation of the development,** a *Stormwater System Maintenance Procedure Plan* shall be prepared by an engineer, detailing a regular maintenance programme for pollution control devices, covering inspection, cleaning and waste disposal, a copy of which shall be supplied to the owner/operator and to Maitland City Council for supply to future owners as needed.
- 56. Prior to issue of an Occupation Certificate,** the stormwater-control system shall be constructed in accordance with the approved stormwater drainage plan. A qualified engineer shall supply written certification to the PCA and Council that the constructed system including detention volume and discharge rates achieve the consent requirements for detention.

PUBLIC RESERVE WORKS - CERTIFICATION

- 57. Prior to the issue of the Construction Certificate** for the internal site works, a Section 68 Stormwater Approval shall be approved within the existing public reserve(s) for the following works:
- (a) Connection of stormwater discharge from the site through to the council stormwater system
 - (b) Confirmation of the pipe size, depth, and location.
 - (c) Defined route to navigate between trees and route zones, OR locations of hand digging to avoid root damage
 - (d) Confirmation of pipe depths so that internal drainage can be designed to adequately connect and gravity drain
 - (e) Ancillary drainage and pavement rectification works including adjustment of utility services.

Prior to commencement of works within an existing public reserve:

- (a) an engineering design, in accordance with Council's Manual of Engineering Standards, shall be submitted to Council for approval
 - (b) **consent under the Local Government Act** for the approved works, shall be issued by Council
 - (c) all relevant Council fees shall be paid
 - (d) a traffic control plan in accordance with the RMS publication "Traffic control at Worksite" shall be submitted to Council, where council deems necessary.
- 58. Prior to the issue of an Occupation Certificate, written** evidence from Council's Subdivision and Development Engineering Section, confirming that satisfactory completion of works have been achieved in accordance with the S68 Local Government Act Approval associated with this consent, shall be received by the relevant certifier.

EROSION CONTROLS

- 59.** The property shall be protected against soil erosion, such that sediment is not carried from the construction site by the action of stormwater, wind or "vehicle tracking".

BUILDING CONSTRUCTION

60. All building work shall be carried out in accordance with the provisions of the Building Code of Australia.
61. All excavations and backfilling shall be executed safely, in accordance with appropriate professional standards and shall be properly guarded and protected to prevent the works from being dangerous to life or property.
62. Unless otherwise approved by Council in writing, all general building work shall be carried out between the hours of:
 - a. 7.00am to 6.00pm Monday to Friday
 - b. 7.00am to 5.00pm Saturday

Any work performed on Sunday's or Public Holidays that may cause offensive noise, as defined under the Protection of the Environment Operations Act, is prohibited. Minor works (such as hand sanding, painting, digging and the like) is permitted between the hours of 9.00am to 5.00pm. Power operated tools are not permitted to be used.

SERVICES & EQUIPMENT

63. Upon completion of the building BUT prior to its occupation, a Final Fire Safety Certificate with respect to each critical and essential fire safety measure installed in the building shall be submitted to Council. Such certificates shall be prepared in accordance with Division 4 of Part 9 of the Environmental Planning and Assessment Regulation, 2000.
64. A copy of the Fire Safety Schedule and Fire Safety Certificate shall be prominently displayed in the building in accordance with Division 4 of Part 9 of the Environmental Planning and Assessment Regulation 2000.
65. A Fire Safety Statement in respect of each required essential and/or critical fire safety measure installed within the building shall be submitted to Council and the NSW Fire Commissioner annually (or at a more frequent interval for supplementary statements).

Statements shall be prepared and issued in accordance with Division 5 of Part 9 of the Environmental Planning and Assessment Regulation, 2000. Note that monetary penalties may apply for failure to lodge a fire safety statement within the prescribed timeframe.

Statements to the NSW Fire Commissioner are to be submitted electronically to afss@fire.nsw.gov.au.

Standard forms and further information for lodging Fire Safety Statements may be downloaded from Councils website.

SITE CONSIDERATIONS

66. All excavated and/or filled areas are to be retained or battered and suitably drained so as to prevent any subsidence of the area and constructed so as to deny any flow of water into the building.

Where a retaining wall is planned for this purpose and such wall requires consent (refer to State Environmental Planning Policy -Exempt and Complying Development Codes,

2008) plans and specifications of the wall shall be approved by Council and/or an accredited certifier.

Note: The submission of a separate Development Application is not required for a retaining wall associated with this approval and indicated on the approved plans.

All proposed retaining walls, including any excavation, footings, drainage and backfill shall be contained within the property boundaries. Retaining walls and associated earthworks shall not impede or redirect the natural flow of surface water from adjoining properties in a manner that creates nuisance.

- 67.** If an excavation extends below the level of the base of the footings of a building/structure on an adjoining allotment of land, the person causing the excavation to be made.
- i)** Must preserve and protect the building/structure from damage, and
 - ii)** If necessary, must underpin and support the building/structure in an approved manner, and
 - iii)** Must, at least 7 days before excavating below the level of the base of the footings of a building/structure on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building/structure being erected or demolished.

The owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this condition, whether carried out on the allotment of land being excavated or on the adjoining allotment of land. (Includes a public road and any other public place).

- 68.** Rubbish generated from the development is to be suitably contained on site at all times. No rubbish shall be stockpiled in a manner which facilitates the rubbish to be blown off site.
- 69.** If the work:
- i)** is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient, or
 - ii)** involves the enclosure of a public place
- a hoarding or fence must be erected between the work site and the public place.
- If necessary, an awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling into the public place.
- The work site must be kept lit between sunset and sunrise if it is likely to be hazardous to persons in the public place. Any such hoarding, fence or awning is to be removed when the work has been completed.
- 70.** A sign must be erected in a prominent position on the work:
- i)** stating that unauthorised entry to work site is prohibited, and

- ii) showing the name of the person in charge of the work site and a telephone number at which that person may be contacted during work hours.

Any such sign is to be removed when the work has been completed.

Note: This condition does not apply to:

- i) *building work carried out inside an existing building, or*
- ii) *building work carried out on premises that are to be occupied continuously (both during and outside working hours) while the work is being carried out.*

- 71. Approved toilet facilities are to be provided, at or in the vicinity of the work site at the rate of one toilet for every 20 persons or part of 20 persons employed at the site. The provision of toilet facilities in accordance with this Clause must be completed before any other work is commenced.
- 72. The site is to be cleared of all building refuse and spoil immediately after completion of the building/structure.
- 73. No building materials, refuse or spoil is to be deposited on or be allowed to remain on Council's footpath.
- 74. Suitable and adequate measures are to be applied to restrict public access to the site and building works, materials and equipment.

CONSTRUCTION DUST MANAGEMENT

- 75. The applicant must implement best practice measures to minimise dust emissions from the site during construction. The site shall be managed to prevent the generation of dust, the measures to be employed include:
 - The use of a water cart from the public road access point; and
 - Ceasing construction activities (i.e. no vehicles or equipment use) during adverse meteorological conditions (i.e. on windy days).

CONSTRUCTION HOURS

- 76. Unless otherwise approved by Council in writing, all construction activities including earthworks, truck arrivals and the unloading of fill from trucks shall be carried out between the hours of:
 - a) 7.00am to 6.00pm Monday to Friday
 - b) 7.00am to 5.00pm Saturday

Any work performed on Sunday's or Public Holidays that may cause offensive noise, as defined under the Protection of the Environment Operations Act, is prohibited.

ROAD ACT APPROVAL (MINOR)

ROAD RESERVE WORKS - CERTIFICATION

Prior to the issue of the Construction Certificate for the internal site works, a Roads Act Approval shall be approved within the existing road reserve(s) for the following works:

- (a) All redundant driveway crossings, driveways and/or damaged kerb and gutter are to be removed and reinstated.
- (e) Ancillary drainage and pavement rectification works including adjustment of utility services.

Prior to commencement of works within an existing public road reserve:

- (a) an engineering design, in accordance with Council's Manual of Engineering Standards, shall be submitted to Council for approval
- (b) **consent under the Roads Act** for the approved works, shall be issued by Council
- (c) all relevant Council fees shall be paid
- (d) a traffic control plan in accordance with the RMS publication "Traffic control at Worksite" shall be submitted to Council.

ADVICES

The following advice is limited in scope and should not be understood to encompass all areas of responsibility of the consent holder, relating to the development.

- A.** You are advised that Strata subdivision or Community Title subdivision of a boarding house is prohibited under clause 52 of *State Environmental Planning Policy (Affordable Rental Housing) 2009*.
- B.** The boarding house must be operated in accordance with the *Boarding Houses Act 2012*. In particular, all boarders must enter into a written occupancy agreement before boarding a room.
- C.** The boarding house is required to be registered as a 'general boarding house' with NSW Fair Trading within 28 days of commencing operation under the provisions of the *Boarding Houses Act 2012*.
- D.** Council officers will undertake an 'initial compliance investigation' within 12 months from the date of registration in accordance with Part 2, Division 4, Clause 16 in the *Boarding Houses Act 2012*. A fee will be charged for this inspection.
- E.** You are advised that the development is subject to requirements from Hunter Water and consultation with Hunter Water in relation to hydraulic design for upgraded facilities and any additional applications required by the Authority.

- F.** You are advised that where underground works within the road reserve are required or necessary for supply of services (such as water, sewer, electricity, gas) further consent for a "Road Opening" must be obtained from Council.

Refer to Council's form "*Application for Registration to Open Roads/Footpaths*".

- G.** You (or the owner) are advised to notify Council in writing, of any existing damage to the street infrastructure (including landscaping) along the frontage of the property, prior to commencement of construction. The absence of such notification signifies that no damage exists. Where necessary repairs are carried out by Council, the owner of the property shall be held liable for the cost of those repairs.
- H.** You are advised that there may be design matters in relation to the drainage *concept* plan that warrant further attention prior to the issue of the Construction Certificate.
- I.** You are advised that, prior to pouring of internal concrete driveways and kerbs which act as surface depression storage for the stormwater detention (and/or surfaces which divert runoff to those storage areas), formwork set-out and levels should be confirmed by the Certifying Authority.
- J.** You are advised that further consent for a driveway across the footway verge must be obtained. *Inspections* of works (eg formwork & reinforcement **MUST** be carried out by Council. (See Council's "*Application To Construct Private Works On Footway*"). You should contact Council (ph. 49 34 9700), giving at least 24 hours notice for inspections.
- K.** You are advised that the issue of this development consent does not amount to a release, variation or modification by Council of any covenant or easement applicable to this property and that Council will not be held responsible when action on this consent results in any loss or damage by way of breach of matters relating to title of the property.
- L.** You are advised that compliance with the requirements of the Disability Discrimination Act, (DDA) applies to works on this site. It should be noted that compliance with the Building Code of Australia does not necessarily meet the requirements of the DDA.
- M.** You are advised that any proposed advertising signs are subject to a separate Development Application to Council.
- N.** The developer is responsible for the full costs associated with any alteration, relocation or enlargement to public utilities as a result of the development. Such utilities include water, sewerage, drainage, power, communication, footways, kerb and gutter and other associated infrastructure.
- O.** The person having the benefit of this consent shall ensure that critical stage inspections are carried out and notify the Principal Certifying Authority giving adequate notice of the time that each stage of the building/development is ready for

inspection. Note: *failure to have a critical stage inspection conducted will constitute a breach of the Environmental Planning & Assessment Act 1979.*

- P.** You are advised that in regard to potential soil erosion from the construction site, such pollution of the environment is an offence under the Protection of the Environment Operations (POEO) Act 1997 and may incur infringement fines.

Q. EARTHWORKS

If earthworks are required owner/occupier shall ensure that access to the landfill site is restricted and monitored to prevent the unauthorised deposition of material.

Only natural earth material, free of contamination shall be deposited on the land. Under no circumstances shall contaminated fill material including fines, putrescible wastes, (including timber, paper, green waste, food etc), oil products (including petrol, bitumen, asphaltic concrete etc), plastic, and the like, be deposited on the land unless expressly authorised by this development consent.

Where ENM, is used, the applicant shall ensure that detailed records are kept identifying the source of the material and its composition and chain of custody documentation. Such records are to be provided to the Council within 30 days of the completion of the filling.

Within 30 days of the completion of filling the applicant shall submit to the Council a validation report prepared in accordance with EPA requirements by a qualified geotechnical consultant confirming that the completed filling works (addressing both material type, compaction and stabilisation) has been undertaken in accordance with the approved development application documentation and associated consent conditions.

The exposed earthworks shall be immediately top dressed and seeded with grasses upon its completion.

Filling material shall be:

- contained within the property with a minimum clearance of #m from adjoining property boundaries
- stabilised against erosion upon final placement with topsoil and grass (seed or turf), or by similar means
- graded evenly to shed stormwater runoff to an existing overland flow path
- provided with stable, maintainable batter slopes not steeper than 1 (vertical) in 4 (horizontal)

- R.** WorkCover recommends that those persons undertaking the work have the following qualifications:

- (i) Work carried out on the ground – a minimum of one person holds the qualification of Certificate II in Horticulture (Arboriculture);

- (ii) All tree climbing works should be carried out by a person who holds a minimum Certificate II in Horticulture (Arboriculture) or be undertaking a course to obtain this qualification. All tree climbing work should be directly supervised by a person with a minimum qualification of Certificate III in Horticulture (arboriculture).

Additional information in respect to WorkCover requirements/procedures (eg. the Amenity Tree Industry Code of Practice) can be obtained from their website: www.workcover.nsw.gov.au.