

REVISED COUNCIL ASSESSMENT BRIEFING REPORT TO PANEL

SYDNEY NORTH PLANNING PANEL

PANEL REFERENCE & DA NUMBER	PPSSNH-739 - DA/1086/2025 Land and Environment Court of New South Wales 2026/00019133
PROPOSAL	Demolition of existing structures and construction of a 7 storey low and mid-rise (LMR) affordable housing residential flat building comprising 69 units
ADDRESS	Lots 40 and 41 DP 4910 and Lot 1 DP 16108 Nos. 19-23 Forbes Street, Hornsby
APPLICANT	Turn Oze Pty Ltd
OWNER	WM Turner, MC Turner and EM Turner
DA LODGEMENT DATE	3 October 2025
APPLICATION TYPE	DA, Integrated
REGIONALLY SIGNIFICANT CRITERIA	Clause 2, Schedule 6 of <i>State Environmental Planning Policy (Planning Systems) 2021</i> : General Development Cost value > \$30M
CIV	\$35,904,810.00 (excluding GST)
CLAUSE 4.6 REQUESTS	Floor Space Ratio, Building Height, Building Height (Storeys).
LIST OF ALL RELEVANT PLANNING CONTROLS (S4.15(1)(A) OF EP&A ACT)	- State Environmental Planning Policy (Biodiversity and Conservation) 2021 - State Environmental Planning Policy (Housing) 2021 - State Environmental Planning Policy (Planning Systems) 2021 - State Environmental Planning Policy (Resilience and Hazards) 2021 - State Environmental Planning Policy (Transport and Infrastructure) 2021 - Hornsby Local Environmental Plan 2013 - Hornsby Development Control Plan 2013
AGENCY REFERRALS	- Dept of Planning, Environment and Water - Transport for NSW (Sydney Train) - Ausgrid - NSW Police

TOTAL & UNIQUE SUBMISSIONS	• 74 received during the public submission period • 8 received during the Court Process
KEY ISSUES	LEC Court Proceeding - Contentions relating to height, bulk and scale, floor space ratio and heritage.
DOCUMENTS SUBMITTED FOR CONSIDERATION	• Architectural Plans • Landscape Plans • Landscape Maintenance Plans • Design Report • Statement of Environmental Effects • Aboricultural Impact Assessment • Acoustic and Vibration Assessment • Traffic and Parking Assessment Report • Civil Engineering Plans • Public Domain Engineering Plans • Geotechnical Investigation Report • Survey Plan • Management Plan • Flood Study and Review • Construction Management Plan • Building Code of Australia Report • Access Report • BASIX Certificate • Clause 4.6 Variation (building height) • Clause 4.6 Variation (building height - stories) • Clause 4.6 Variation (Floor Space Ratio)
PREVIOUS BRIEFINGS	N/A
PLAN VERSION	N/A
ASSESSMENT STATUS	Under Appeal in the NSW Land and Environment Court (Deemed Refusal)
PREPARED BY	Katrina Maxwell, Senior Town Planner
DATE OF REPORT	3 August 2026

1 THE SITE AND LOCALITY

1.1 The Site

Street Address: 19-23 Forbes Street, Hornsby

Property Description: Lot 40 and 41 in DP 4910 and Lot 1 DP 16108



Figure 1: Aerial photograph (Nearmap, 5 December 2025).

The site comprises of 3 separate allotments and once consolidated would have a combined primary street frontage of 54.15 metres to Forbes Street, with an allotment depth of approximately 60.76 metres and a site area of approximately 3,097m².

The site is a slightly irregular shaped land parcel that is located adjacent to The Great Northern Railway along the rear boundary. The site has a fall of approximately 11m from the rear of the site towards the front (from east to west).

The site is presently occupied by three detached dwelling houses with associated structures as well as trees and shrubs, some of which are sought to be removed under the development application.

The site is zoned R3 (Medium Density Residential) pursuant to Hornsby Local Environmental Plan 2013.

1.2 The Locality

The site is 190m south of the Hornsby RSL Club and the western side of the Hornsby Town Centre.

The site is adjacent to the Northern Rail Corridor to the east.

The eastern side of Forbes Street and the northern side of Nursery Street is zoned R3 Medium Density Residential under HELP 2013 and presently comprises of a mixture of townhouse developments and standalone dwelling houses.

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The southern side of Nursery Street is zoned R2 Low Density Residential under HELP 2013 and contains a combination of single and two storey dwelling houses. This side of Nursery Street is situated within the Pretoria Parade Precinct, Hornsby West Side Heritage Conservation Area as shown in Figure 3 above.

2 THE PROPOSAL AND BACKGROUND

2.1 The Proposal

The appeal is against the deemed against the refusal of Development Application No. DA/1086/2025 ("the development application"), which seeks consent for

- Demolition of existing structures
- Construction of a part 7, part 8 storey residential flat building comprising 69 units (comprising 3 x studio, 25 x 1-bedroom, 35 x 2 bedroom, 6 x 3 bedroom) over 2 levels of basement parking on the land at 19-23 Forbes Street, Hornsby ("the proposal").
- Site amalgamation.
- Demolition of existing structures and removal of 19 trees.
- All 12 units on Level 2 are proposed to be used for the purpose of affordable housing.
- Public domain improvements which incorporate construction of a 1.2m wide footpath across the site frontage.



Figure 2: Extract of Applicant's photomontage

The key development data is provided in Table 1.

Table 1: Key Development Data

Control	Proposal
Site area	3,097m ²
FSR residential)	Complies
Clause 4.6 Requests	Building height, building height (stories), floor space ratio
No of apartments	69
Max Height	Max 22.75m (including affordable housing bonus) - 23.48m proposed (3.2% variation)
Car Parking spaces	45 Residential, 13 visitor Spaces provided

2.2 Background

The development application was lodged on 29 September 2025. A chronology of the development application since lodgement is outlined in Table 2.

Table 2: Chronology of the DA

Date	Event
29 September 2025	The development application was lodged
16 October 2025	The development application was placed on public notification until 18 November 2025
On 28 October 2025,	The Respondent issued correspondence to the Applicant
On 10 November 2025	TfNSW correspondence to the Respondent requesting the submission of additional information and requesting that the assessment period be subject to a “stop-the-clock” pending receipt of the information.
On 18 November 2025	The Applicant advised the Respondent that it would not withdraw the development application nor commissioning a flood study until such time Council's flood study (Cardino 23 February 2022) is fully assessed and specific flood mapping is completed. The Applicant advised that the Respondent should continue to assess the development application in its current form.
15 December 2025	On, the Applicant submitted further documents in response to the letter from TfNSW dated 10 November 2025
On 15 January 2026	The Applicant commenced proceedings in Class 1 of the Land and Environment Court's jurisdiction appealing against the Respondent's deemed refusal of the development application.
30 April 2026	Without Prejudice Meeting held at Council
25 May 2026	Without Prejudice Materials were submitted

5 June 2026	Section 34 Conciliation Conference before Commissioner Gray. The conciliation conference commenced at the site, where six objectors made oral submissions. Following the objectors' submissions, the Commissioner and the parties undertook an inspection of the nearby locality before reconvening the conciliation conference at the Council office in Hornsby. During the conciliation conference, the Applicant's "without prejudice" material was discussed. On behalf of Council, it was confirmed that this material did not resolve the fundamental contentions raised by Council.
12 June 2026	Directions Hearing was held with the parties' legal representatives
15 July 2026	The Applicant was granted leave to amend the development application and to rely upon amended plans and documents in the proceedings.

3 CONTENTIONS

A summary of the contentions is outlined in Table 3.

Table 3: Summary of Key Contentions

Contentions	Resolved (Y/N)
1. Building Height The development application must be refused as the proposal exceeds the maximum height of building permitted under section 16(3) SEPP Housing and the Applicant has not satisfactorily demonstrated the matters required to be demonstrated under clause 4.6(3) of HLEP 2013.	No - The Applicant submitted amended plans however they did not adequately address Council's concerns.
2. Floor Space Ratio The development application must be refused as the proposal exceeds the maximum floor space ratio permitted under section 16(1) SEPP Housing and the Applicant has not satisfactorily demonstrated the matters required to be demonstrated under clause 4.6(3) of HLEP 2013.	Yes - The exceedance (if any) only arises from the surplus of visitor carparking spaces which would not be discernible from the street or other properties.
3. Character The development application should be refused because the proposal is incompatible with the existing or desired future character of the area.	No
4. Amenity Impacts The development application should be refused because it has not demonstrated that the proposal will provide adequate amenity for future residents, and the proposal also results in unacceptable amenity impacts to adjoining development in terms of overshadowing, bulk and scale.	No

5. Design Principles for Residential Apartment Development The development application should be refused because the proposal is unsatisfactory when assessed against the design principles in Schedule 9 to SEPP Housing.	No
6. Design Excellence The development application must be refused because the consent authority could not be satisfied that the proposal exhibits design excellence as required by Clause 6.8 of HLEP 2013.	No
7. Heritage The development application should be refused because the proposal will result in adverse impacts on the significance of the Pretoria Parade Precinct of the Hornsby West Side Heritage Conservation Area, including setting and views, due to its form and scale.	No
8. Waste Management The development application should be refused because the proposal does not provide satisfactory arrangements for the management of domestic waste likely to be generated by residents of the development.	No
9. Rail Concurrence The development application should be refused because approval of the proposal would be premature and inappropriate in circumstances where TfNSW's concurrence under section 2.99 of SEPP T&I has not been received and it is unknown whether the proposal will adversely impact rail infrastructure.	Yes - TfNSW's concurrence has now been received however TfNSW will need to give concurrence to the amended plans
10. Suitability of the Site for Development The development application should be refused because the site is not suitable for intensity and scale of the proposal having regard to the contentions raised above.	No
11. Public Interest The development application should be refused because the proposal would not be in the public interest having regard to the contentions raised above and would result in undesirable environmental impacts.	No
12. Insufficient Information The development application should be refused because insufficient information has been provided to enable a proper assessment of the proposal.	No

4 REFERRALS AND SUBMISSIONS

4.1 Agency Referrals and Concurrence

The development application has been referred to various agencies for comment/concurrence/referral as required by the EP&A Act and outlined below in Table 4.

Table 4: Concurrence and Referrals to agencies

Agency	Concurrent/ referral trigger	Comments (issue, resolution, conditions)	Resolved
Concurrence Requirements (s4.13 of EP&A Act)			
Sydney Trains	SEPP (Transport and Infrastructure) 2021, s2.99 Excavation in, above, or adjacent to railway corridor	Approved (with conditions)	Yes (amended plans require concurrence)
Referral/Consultation Agencies			
Ausgrid	Clause S2.48 of SEPP (Transport and Infrastructure 2021) (RFB/Townhouses dev) works within 5m of infrastructure	Approved (with conditions)	Yes
Integrated Development (S 4.46 of the EP&A Act)			
Department of Climate Change, Energy, the Environment and Water-Water Group	Water Management Act 2000, s90(2) water management work approval Water Management Act 2000, s91 controlled activity approval	Department of Climate Change, Energy, the Environment and Water-Water Group advised a decision was not required	N/A

4.2 Community Consultation

The proposal was notified in accordance with the Council's Community Engagement Plan from 16 October 2025 and 18 November 2025. A total of 74 public submissions were received. As part of the Court process, 8 additional public submissions were received. Issues raised in these submissions are detailed below:

- (a) The proposal is inconsistent with current streetscape and character.
- (b) The scale of development is inconsistent with objectives of the R3 Medium Density Residential zone and is more consistent with the R4 High Density Residential Zone.
- (c) The development is inappropriate having regard to its bulk and scale, the building height, and the visual impact and dominance, and is not within keeping with neighbouring properties.
- (d) The development would set a precedent of high-density development in the area.
- (e) The site and its surrounds sit within a locality containing established heritage values. A building of this scale and modern presentation is incompatible with the prevailing heritage character and would erode the visual integrity of the area.

- (f) The development would result in amenity impacts to adjoining properties including visual and acoustic privacy loss, loss of natural light, overshadowing of properties to the west, potential light spill, over-looking and view loss.
- (g) Upper-level balconies and elevated communal open space would increase amenity impacts to adjoining properties.
- (h) Noise from the basement roller door, air conditioners and other plant and machinery would adversely impact adjoining properties.
- (i) There is insufficient infrastructure capacity to accommodate the additional population density
- (j) The proposal is in contravention of the current planning controls for the site including the four-storey height limit, building height, floor space ratio, housing choice and non-compliant setbacks and resultant amenity impacts to adjoining property owners.
- (k) The development would undermine the enforceability of zoning across Hornsby and NSW.
- (l) Concerns regarding the validity of the submitted clause 4.6 variations.
- (m) Non-compliance with SEPP Housing and the Apartment Design Guide.
- (n) The multi dwelling housing development DA/214/2022 previously approved for this site is a more appropriate development for the site than the current proposal.
- (o) Construction management and impacts including on-street car parking of workers' vehicles, anticipated truck movements, and traffic control requirements for a minimum of 107 weeks.
- (p) Traffic and parking implications including density will lead to greater traffic, parking congestion, noise and lack of on-street car parking.
- (q) Issues with the traffic report including missing swept path turning diagrams.
- (r) Pedestrian/vehicle conflict using when pedestrians are exiting the pedestrian laneway from Pretoria Parade to Forbes Street.
- (s) The development is more suited to other areas in Hornsby LGA and reliance should not be given to proximity to transport oriented development (TOD) area as the development is outside of this area.
- (t) The development should not be approved as its located outside of the Hornsby Master Plan mapped area.
- (u) While the development would provide affordable housing the impact of development negate the public interest of the development. The proposal contains an inappropriate housing mix, would have negative impacts on property value and would have no public benefit.
- (v) Train noise reflection could cause significant train noise.
- (w) This area of Forbes Street is low-lying and sloping flood-risk zone, recently identified under Hornsby flood management mapping.
- (x) The development could cause potential soil and foundation instability resulting from the 13m deep excavation which may alter stormwater flow patterns, potentially affecting nearby homes and public drainage assets.
- (y) Many existing mature trees, including those providing shade and privacy screening to neighbours, would be removed and cannot be replaced in the short to medium term.
- (z) The development would impact the environment due to its proximity to the source of the canalised creek that flows into a reserve further west.

- (aa) Inconsistent details in supporting documents and missing a flood study and an asbestos survey.
- (bb) A report should be submitted indicating high quality design facades and materials.
- (cc) Concerns as to whether all matters of probity have been complied with.

5 NEXT STEPS

- The amended Statement of Facts and Contentions is currently being reviewed by SNPP before being submitted to the Court.
- Transport for NSW concurrence is required for the amended plans.
- The joint expert reports are to be filed and served by 12 August 2026.
- The proceedings are fixed for hearing on 9-10 September 2026. The hearing is to be held on site and is to commence on site at 9.00am.

6 ATTACHMENTS

Nil