
AGENDA - LPP

Meeting:	Georges River Local Planning Panel (LPP)
Date:	Thursday, 16 February 2023
Time:	4.00pm
Venue:	Blended Meeting Online and Georges River Civic Centre Corner Dora and MacMahon Streets, Hurstville
Participants:	Stephen Alchin (Chairperson) Julie Walsh (Expert Panel Member) Ian Armstrong (Expert Panel Member) Fiona Prodromou (Community Representative)

1. On Site Inspections – Carried out by Panel Members prior to meeting
2. Opening
3. Consideration of Items and Verbal Submissions LPP057-22 50 Lily Street, Hurstville – DA2021/0361 (Report by Principal Planner)
4. Local Planning Panel Deliberations in Closed Session
5. Confirmation of Minutes

**REPORT TO GEORGES RIVER COUNCIL
LPP MEETING OF THURSDAY, 16 FEBRUARY 2023**

LPP001-23

LPP Report No	LPP001-23	Development Application No	DA2021/0361
Site Address & Ward Locality	50 Lily Street, Hurstville Hurstville Ward		
Proposed Development	Alterations and additions to an existing dwelling and a change of use to be used as an eight (8) room boarding house.		
Owners	Mrs. Carmalina Lombardi		
Applicant	Mrs. Carmalina Lombardi		
Planner/Architect	Planner – Rockeman Town Planning; Architect/Designer – Lombardi Designs		
Date Of Lodgement	27/09/2021		
Submissions	4 submissions received		
Cost of Works	\$224,994.00		
Local Planning Panel Criteria	The application is for a boarding house and is required to be determined by the Georges River Local Planning Panel under Georges River Council Delegations.		
List of all relevant s.4.15 matters (formerly s79C(1)(a))	Greater Metropolitan Regional Environmental Plan No.2- Georges River Catchment, State Environmental Planning Policy No.55- Remediation of Land, State Environmental Planning Policy Infrastructure 2007, State Environmental Planning Policy Vegetation in Non-Rural Areas 2017, State Environmental Planning Policy (Biodiversity and Conservation) 2021, State Environmental Planning Policy (Resilience and Hazards) 2021, State Environmental Planning Policy (Transport and Infrastructure) 2021, State Environmental Planning Policy (Industry and Employment) 2021, State Environmental Planning Policy (BASIX) 2004, State Environmental Planning Policy (Affordable Rental Housing) 2009, Hurstville Local Environmental Plan 2012, Hurstville Development Control Plan 2012, Georges River Local Environmental Plan 2021, Georges River Development Control Plan 2021, Housing State Environmental Planning Policy 2021		
List all documents submitted with this report for the Panel's consideration	Statement of Environmental Effects, Architectural Plans and Plan of management		
Report prepared by	Development Assessment Planner		

Recommendation	That the application be refused in accordance with the reasons referenced at the end of this report.
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Summary of matters for consideration under Section 4.15 Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?	Yes
Legislative clauses requiring consent authority satisfaction Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarised, in the Executive Summary of the assessment report?	Yes
Clause 4.6 Exceptions to development standards If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?	Not Applicable
Special Infrastructure Contributions Does the DA require Special Infrastructure Contributions conditions (under s7.24)?	Not Applicable
Conditions Have draft conditions been provided to the applicant for comment?	No, the application is recommended for refusal, the refusal reasons can be viewed when the report is published.

Site Plan



Aerial photo of the site – site outlined in blue

Executive Summary

Proposal

1. Development consent is sought for the alterations and additions to a dwelling house and use of the premises as an eight (8) room boarding house.
2. The proposal as amended involves:
 - A total of eight (8) boarding rooms comprising five (5) single lodger rooms and three (3) double lodger rooms; one of the single lodger rooms is an accessible room. The room type and number of lodgers has been adopted from the revised Plan of Management and revised plans submitted for assessment.
 - A total of four (4) car parking spaces and a shared/turning bay space, two (2) motorcycle spaces and two (2) bicycle parking spaces within the turning bay.
 - A communal laundry is located adjacent to the lift on the lower ground level.
 - Vehicular access to the site is only via Lily Lane and the rear of the subject site. Pedestrian access is via Lily Street and Lily Lane.
 - A communal living room on the ground floor of 22.48sqm (dimensions 5.29m by 4.25m) that contains a fridge, cooktop and sink.
 - External lift access between the ground floor and lower ground floor levels.
 - Bulky waste storage is proposed to be kept within the existing subfloor area accessed under/adjacent to the stairs on the lower ground floor.
 - Communal open space is located rearward of the communal living area on the ground floor level above the garage. Whilst the communal open space is on the ground floor plan it is elevated above the existing ground by 2.75m. The communal open space has a total useable area of 37.8sqm.
 - An on-site detention (OSD) tank under the driveway and bin storage area adjacent to the rear gate to Lily Lane.
 - Green waste storage is located adjacent to the lift on the lower ground level.
 - External ramping within the front setback terrace area to facilitate disabled access to the building from Lily Street.

Site and Locality

3. The site is legally described as Lot 56 in DP 557673 and is known as 50 Lily Street, Hurstville. The site is located on the north-eastern side of Lily Street approximately 50m from Durham Street which connects to Forest Road. The site has two street frontages, one to Lily Street and one to Lily Lane, and currently contains a dwelling house.
4. Development surrounding the site consists of single and two storey dwelling houses. The site is located 300m from Allawah Station.

Zoning and Permissibility

5. The site is zoned R2 - Low Density Residential under the provisions of Hurstville Local Environmental Plan 2012 (HLEP 2012). The proposed development is defined as a 'boarding house', which is permitted with consent in the R2 zone under HLEP 2012 and Clause 28, Division 3 of State Environmental Planning Policy (Affordable Rental Housing) 2009 (SEPP ARH, 2009).
6. The proposal complies with the maximum FSR of 0.6:1 for any permitted residential accommodation, height of building, solar access, parking, and maximum number of rooms in the R2 zone under Division 3 of SEPP ARH, 2009.

7. However, the proposal fails to comply with the landscape area, accommodation size, and private open space of SEPP ARH, 2009. Although Clause 29(4) of the SEPP ARH, 2009 allows consent to be granted even if the development does not comply with these standards, it is considered that the variations are unacceptable due to adverse streetscape, landscaping, and amenity impacts.
8. The overall siting of the building is existing, however the design changes proposed to facilitate the boarding house use of the development is not considered to be compatible with the character of the local area, being contrary to Clause 30A of the SEPP ARH, 2009. This is due to the amenity, streetscape character and landscaping impacts on adjoining properties and the streetscape arising from the proposed development.
9. In this regard, the proposed development fails to adequately satisfy the objectives of the R2 low density residential zone pursuant to Clause 2.3 of HLEP 2012 to “ensure that a high level of residential amenity is achieved and maintained” and “does not compromise the amenity of the surrounding area”.

Submissions

10. The application was notified in accordance with Hurstville Development Control Plan No.1, four (4) individual submission were received objecting to the application. The issues raised are summarised below:
 - Short term rental accommodation.
 - Safety and crime.
 - Overdevelopment.
 - Noise.
 - Streetscape- lift detrimental to design.
 - View loss.
 - Fire safety.
 - Structural stability of existing dwelling to accommodate changes.
 - Traffic.
 - Value of property prices.
 - Permissibility of boarding houses in residential zones.
 - Privacy.
 - Character.
11. The amended plans received by Council did not necessitate re-notification of the application.

Conclusion

12. The proposal has been assessed against the provisions of the State Environmental Planning Policy (Affordable Rental Housing) 2009, Hurstville Local Environmental Plan 2012 and the Hurstville Development Control Plan No.1.
13. The proposal fails to comply with the landscape area and accommodation size ‘standards that cannot be used to refuse consent’ under Clause 29(2) of the SEPP. Although Clause 29(4) of the SEPP allows consent to be granted even if the development does not comply with these standards, it is considered that the variations are unacceptable due to adverse streetscape and amenity impacts.
14. Further, the design of the development is not considered to be compatible with the character of the local area, contrary to Clause 30A of the SEPP. This is due to the physical bulk and scale; visual impact and amenity impacts to adjoining properties.

15. The proposed development design fails to have adequate regard to the R2 zone objectives for the site and is not considered to be suitable for the site given the adverse impacts that arise, as such, approval is not in the public interest.

Report in Full Proposal

16. Council is in receipt of an application seeking consent for alterations and additions to a dwelling house and use of the premises as an eight (8) room boarding house.
17. The proposal, as originally submitted, involved:
- A total of nine (9) boarding rooms comprising six (6) single lodger rooms and three (3) double lodger rooms; one of the single lodger rooms is an accessible room.
 - A total of five (5) car parking spaces and a shared space, two (2) motorcycle spaces and two (2) bicycle parking spaces.
 - A communal laundry is located adjacent to the lift on the lower ground level.
 - Vehicular access to the site is only via Lily Lane and the rear of the subject site. Pedestrian access is via Lily Street and Lily Lane.
 - A communal living room on the ground floor of 17sqm (dimensions 4.6m by 3.7m)
 - External lift access between the ground floor and lower ground floor levels.
 - Communal open space is located rearward of the communal living area on the ground floor level above the garage. Whilst the communal open space is on the ground floor plan it is elevated above the existing ground by 2.75m. The communal open space has a total useable area of 36.7sqm with dimensions of 6.2m by 6.1m.
 - An on-site detention (OSD) tank under the driveway and bin storage area adjacent to the rear gate to Lily Lane.
 - External ramping within the front setback terrace area to facilitate disabled access to the building from Lily Street.
18. Following concerns raised in Council's request for additional information letter, dated 26 July 2022, amended architectural plans were provided by the Applicant on 24 August 2022. The assessment is based on the amended plans submitted to Council.
19. The proposal as amended, and is the basis of this assessment involves:
- A total of eight (8) boarding rooms comprising five (5) single lodger rooms and three (3) double lodger rooms; one of the single lodger rooms is an accessible room. The room type and number of lodgers has been adopted from the revised Plan of Management and revised architectural plans submitted for assessment.
 - A total of four (4) car parking spaces and a shared/turning bay space, two (2) motorcycle spaces and two (2) bicycle parking spaces within the shared turning bay.
 - A communal laundry is located adjacent to the lift on the lower ground level.
 - Vehicular access to the site is only via Lily Lane being the rear of the subject site. Pedestrian access is via Lily Street and Lily Lane.
 - A communal living room on the ground floor of 22.48sqm (dimensions 5.29m by 4.25m) and contains a fridge, cooktop, and sink.
 - External lift access between the ground floor and lower ground floor level.
 - Bulky waste storage is proposed to be kept within the existing subfloor area accessed under/adjacent to the stairs on the lower ground floor.

- Communal open space is located rearward of the communal living area on the ground floor level above the garage. Whilst the communal open space is on the ground floor plan it is elevated above the existing ground by 2.75m. The communal open space has a total useable area of 37.8sqm.
- An on-site detention (OSD) tank under the driveway and bin storage area adjacent to the rear gate to Lily Lane.
- Green waste storage is located adjacent to the lift on the lower ground level.
- External ramping within the front setback terrace area to facilitate access for all/disabled access to the building from Lily Street.

The Site and Locality

20. The site is legally described as Lot 56 in DP 557673 and is known as 50 Lily Street, Hurstville. The site is located on the north-eastern side of Lily Street approximately 50m from Durham Street which connects onto Forest Road. The site is rectangular in shape and has a frontage of 12.19m and a site area of 490.4sqm. The site slopes approximately 3m from the front boundary to the rear boundary. The site is currently occupied by a two-storey brick dwelling house. The site does not contain any significant landscaping on the site. The local area is characterised by single, two and three storey dwelling houses mostly traditional in design with a brick and tiled roof finish.



Figure 1 - Aerial of the site and surrounds – site outlined in blue



Figure 2 – Frontage of 50 Lily Street Hurstville



Figure 3 – Lilly Lane elevation of the development – 50 Lily Street Hurstville

21. Development surrounding the site consists of single and two storey dwelling houses. The site is located 300m from Allawah Station.

Background

22. A history of the development proposal is as follows:
- A pre-application discussion was not held regarding this application.
 - The current application was submitted on 27 September 2021.
 - The application was placed on exhibition, with the last date for public submissions being 28 October 2021. Four (4) submissions were received.
 - Council's Environmental Health Officer provided referral comments and conditions on 18 October 2021 in support of the proposal subject to suitable conditions of consent.
 - Council's Development Engineer provided referral comments and conditions on 21 October 2021 in support of the proposal subject to suitable conditions of consent.
 - Council's Building Surveyor provided referral comments and conditions on 7 December 2021 in support of the proposal subject to suitable conditions of consent.
 - The application was re-allocated to Council's Development Assessment Planner on 7 June 2022.
 - Council's Development Assessment Planner conducted a site inspection on 10 June 2022.
 - Council's Waste Officer provided referral comments on 25 July 2022, requesting additional information.
 - Council's assessing officer requested additional information on 26 July 2022, requesting information regarding accommodation size, standards for boarding houses, private open space, landscape area, waste management, traffic and parking engineering matters, sub-floor area and amenity for future lodgers, safety of future lodgers, and plan of management.
 - Ausgrid provided referral comments and suitable conditions for the application if it were to be supported on 28 July 2022.
 - The Applicant provided additional information and revised plans on 24 August 2022.
 - Council's Traffic Engineer provided referral comments and conditions on 28 October 2022.
 - Council's Waste Officer provided referral comments on 17 November 2022, unsupportive of the proposed development.
 - The Applicant was notified verbally on 24 November 2022 that the application is unsupportable and will be referred to the Georges River Local Planning Panel for determination with a recommendation for refusal. The Applicant was also advised via email on 30 November 2022 of an indicative timeframe of when the application would be before the Panel for determination.

Compliance

23. The development has been assessed having regard to Matters for Consideration under Section 4.15(1) of the Environmental Planning and Assessment Act 1979.

Section 4.15 Evaluation

24. The following is an assessment of the application with regard to Section 4.15(1) Evaluation of the Environmental Planning and Assessment Act 1979.

- (1) **Matters for consideration – general** – *In determining an application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:*

The provision of:

- (i) Any environmental planning instrument,

State Environmental Planning Policies (SEPPS)

25. Compliance with the relevant State Environmental Planning Policies is summarised in the following table and discussed in further detail below.

State Environmental Planning Policy Title	Complies
State Environmental Planning Policy (Biodiversity and Conservation) 2021	Yes
State Environmental Planning Policy (Resilience and Hazards) 2021	Yes
State Environmental Planning Policy (Transport and Infrastructure) 2021	Yes
State Environmental Planning Policy (Industry and Employment) 2021	Yes
State Environmental Planning Policy (BASIX) 2004	Yes
State Environmental Planning Policy (Affordable Rental Housing) 2009	No

26. The following SEPP's have been repealed however have been included in this report as they were relevant at lodgement, their criterion has been transferred holistically to the new SEPP's which have been assessed within this report.
- Greater Metropolitan Regional Environmental Plan No.2- Georges River Catchment.
 - State Environmental Planning Policy No.55- Remediation of Land.
 - State Environmental Planning Policy Infrastructure 2007.
 - State Environmental Planning Policy Vegetation in Non-Rural Areas 2017.

State Environmental Planning Policy (Biodiversity and Conservation) 2021

27. The relevant parts of the above Policy that apply to this application are Chapter 2 – Vegetation in non-rural areas, and Chapter 6 – Water Catchments.

Chapter 2 - Vegetation in Non-Rural Areas

28. Chapter 2 aims to protect the biodiversity values of trees and other vegetation in non-rural areas of the State, and to preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation.
29. This chapter applies to clearing of:
- Native vegetation above the Biodiversity Offset Scheme (BOS) threshold where a proponent will require an approval from the Native Vegetation Panel established under the Local Land Services Amendment Act 2016; and*
 - Vegetation below the BOS threshold where a proponent will require a permit from Council if that vegetation is identified in the council's development control plan (Development Control Plan).*
30. Landscaping at the rear of the site is proposed to be removed to make way for hard stand area for car parking.

Chapter 6 – Water Catchments

31. The primary relevant aims and objectives of this Chapter are:
- *whether the development will have a neutral or beneficial effect on the quality of water entering a waterway,*
 - *whether the development will have an adverse impact on water flow in a natural waterbody,*
 - *whether the development will increase the amount of stormwater run-off from a site,*
 - *whether the development will incorporate on-site stormwater retention, infiltration or reuse,*

- *the impact of the development on the level and quality of the water table,*
- *the cumulative environmental impact of the development on the regulated catchment,*
- *whether the development makes adequate provision to protect the quality and quantity of ground water.*

32. The stormwater design was reviewed by Council's Engineering Section at lodgement. No objection was raised with respect to the management and disposal of stormwater. The proposal is consistent with the objectives and purpose of Chapter 6 of the SEPP.

State Environmental Planning Policy (Resilience and Hazards) 2021

33. Chapter 2 and Chapter 4 of State Environmental Planning Policy (Resilience and Hazards) 2021 are relevant to the proposal.
34. Chapter 2 aims to: *"Promote an integrated and co-ordinated approach to land use planning in the coastal zone in a manner consistent with the objects of the Coastal Management Act 2016 including the management objectives for each coastal management area"*.
35. The subject site is not mapped as a Coastal Environment area and a Coastal Use area.
36. Chapter 4 aims to promote the remediation of contaminated land in order to reduce the risk of harm to human health or any other aspect of the environment.
37. Clause 4.6 requires contamination and remediation to be considered in determining a DA. The consent authority must not consent to the carrying out of development on land unless it has considered whether or not the land is contaminated.
38. A review of historic aerial photography indicates that the site has historically been used for residential purposes. Residential usage is not typically associated with activities that would result in the contamination of land. On this basis, the site is likely to be suitable for residential development in its current state for the development proposed with respect to contamination.

State Environmental Planning Policy (Transport And Infrastructure) 2021

39. Compliance with SEPP (Transport and Infrastructure) 2021 has been considered during the assessment of this development application. The site is not mapped within a Transport and Infrastructure Area/Corridor thus it is unlikely to be impacted by rail noise or vibration. Ausgrid was consulted as required by Chapter 2, comments, and suitable conditions in regard to overhead powerlines in the vicinity of the development were received.

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

40. The trigger for BASIX Certification is when the estimated cost of works for residential development (new dwelling(s)/alterations and additions) is equal to or above \$50,000. BASIX Certification is also triggered when proposing a swimming pool with a volume of 40,000 litres.
41. A BASIX Certificate prepared by Sustainability-Z Pty Ltd, dated 24 August 2021, certificate number A429074, has been submitted with the Development Application satisfying the minimum requirements of SEPP (Building Sustainability Index: BASIX) 2004.

State Environmental Planning Policy (Affordable Rental Housing) 2009

42. The application is designed having regard to the provisions of State Environmental Planning Policy (Affordable Rental Housing) 2009 (ARH SEPP) and as such the provisions of Division 3 relating to Boarding Houses are applicable to the application.

Division 3 Boarding HousesClause 25 - 28 Development to which this Division applies

43. The subject site is located in the R2 Low Density Residential Zone, boarding houses are permissible with consent under the Hurstville Local Environmental Plan No.1 (HLEP). The site satisfies the provisions of Clause 27 of the ARH SEPP 2009 which states the following:

'27 Development to which Division applies

- (1) *This Division applies to development, on land to which this Division applies, for the purposes of boarding houses.*
- (2) *Despite subclause (1), this Division does not apply to development on land within Zone R2 Low Density Residential or within a land use zone that is equivalent to that zone in the Sydney region unless the land is within an accessible area.*
- (3) *Despite subclause (1), this Division does not apply to development on land within Zone R2 Low Density Residential or within a land use zone that is equivalent to that zone that is not in the Sydney region unless all or part of the development is within 400 metres walking distance of land within Zone B2 Local Centre or Zone B4 Mixed Use or within a land use zone that is equivalent to any of those zones.'*

44. The site is located in the Sydney region and therefore must be located in an accessible area for the division to apply. An accessible area is defined by Clause 4 of State Environmental Planning Policy (Affordable Rental Housing) 2009 as follows:

'Accessible area means land that is within:

- (a) *800m walking distance of a public entrance to a railway station or a wharf from which a Sydney Ferries ferry service operates, or*
- (b) *400m walking distance of a public entrance to a light rail station or, in the case of a light rail station with no entrance, 400 metres walking distance of a platform of the light rail station, or*
- (c) *400m walking distance of a bus stop used by a regular bus service (within the meaning of the [Passenger Transport Act 1990](#)) that has at least one bus per hour servicing the bus stop between 06.00 and 21.00 each day from Monday to Friday (both days inclusive) and between 08.00 and 18.00 on each Saturday and Sunday.'*

45. The subject site satisfies the requirements of an accessible area as defined in (c) above. A map and table outlining bus services within proximity to the site is provided below. The following services were operating at the time of the preparation of this assessment report.

Location of transportation network	Type of transportation	Walking Distance	Mon – Fri Frequency	Saturday Frequency	Sunday Frequency
Allawah Railway Station (on Railway Parade)	Train Service	300m	Complies	Complies	Complies
Durham Street	Bus Service	150m	Complies	Does not operate on Saturdays	Does not operate on Sundays
Lily Street	Bus Service 455 Kingsgrove, St George Hospital via Kogarah 947 Kogarah to Hurstville via Dolls Point	100m	Complies	Does not operate on Saturdays	Does not operate on Sundays

Figure 4 - bus stops within 400m of the subject site

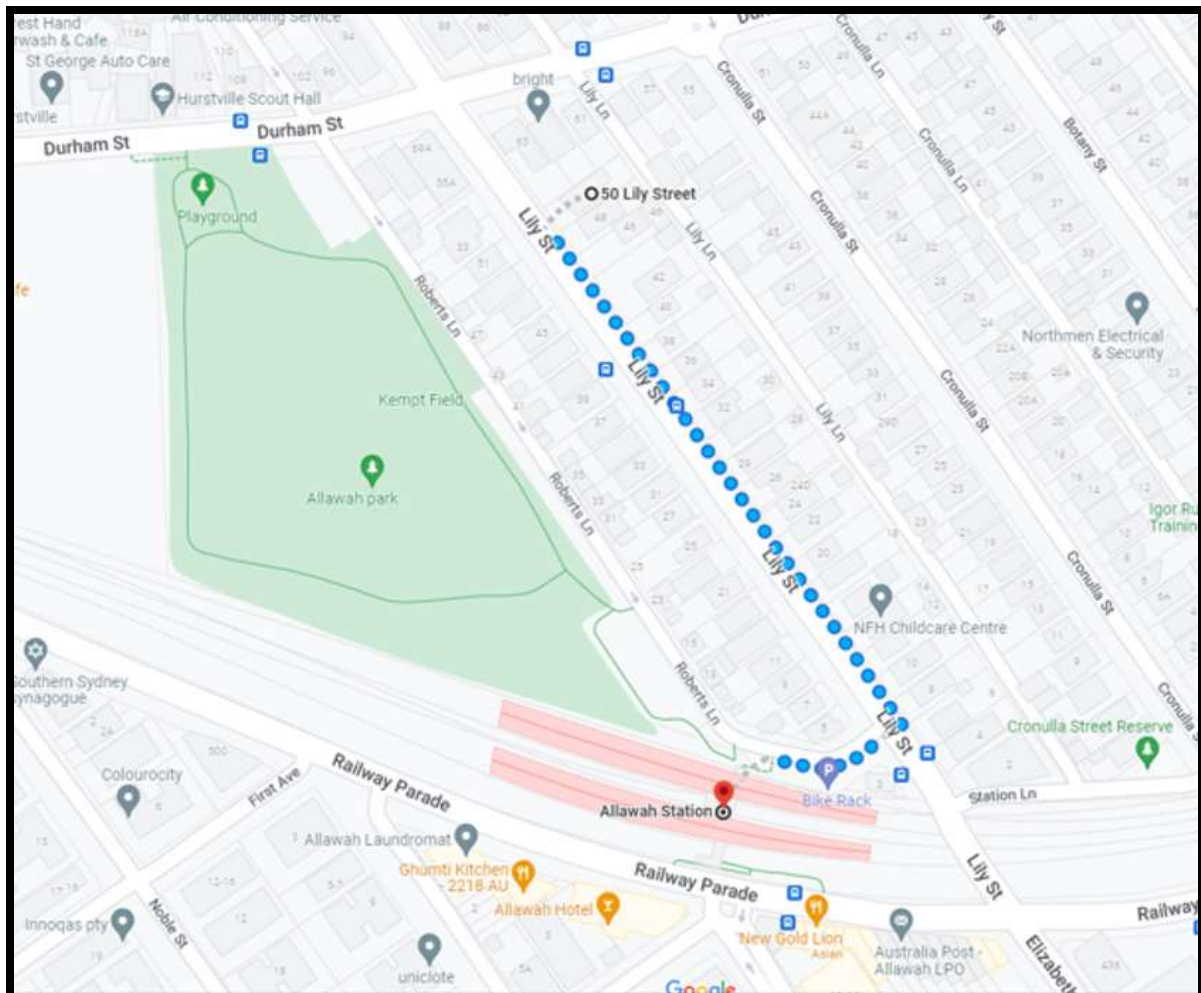


Figure 5 – train station within 400m of the subject site

Clause 29 - Standards that cannot be used to refuse consent

46. Council cannot refuse a development application for a boarding house under the Affordable Rental Housing SEPP 2009 for the following reasons if the proposal meets the criterion.

Clause 29	Standards	Proposal	Complies
29(1)(a) Floor Space Ratio - If residential accommodation is permitted	If the density and scale of the buildings when expressed as a FSR is not more than the existing maximum FSR for any form of residential accommodation permitted (0.6:1 under HLEP 2012). Site area = 490.4m ² Permitted = 294.24m ²	The proposal provides a total gross floor area of 294.13sqm or FSR of 0.6:1 FSR includes the 'existing sub-floor area' and garage car parking beyond 36sqm.	Yes
29(2)(a) Height	If the building height is not more than the maximum height permitted under another EPI for any building on the land: Maximum 9m in R2 under the HLEP.	Maximum height of building 8.3m. Lift considered in height of building.	Yes
29(2)(b) Landscape Area	The landscape treatment of the front setback area is compatible with the streetscape in which the building is located.	The existing front setback is hard stand area in the form of a terrace with pot plants. In order to facilitate accessible access for all future lodgers, a ramp is proposed along the north - western corner of the terrace area. Existing deep soil landscape area within the south-eastern corner of the site is to be retained via the proposed development. There are two existing street trees fronting Lily Street within the frontage of the development site. The introduction of ramped areas along with balustrading and tactile slip resistance within a raised terrace area does not provide a suitable balance between built form and landscaped elements along this frontage. The built form will dominate the front setback and result in	No, see further discussion below

		a bulk and scale issue when viewed from the public domain. There has been little thought into how the proposal is able to provide accessibility to the site whilst adhering to the low-density residential streetscape of the locality. The proposed front setback presents an interface with the public domain that has commercialised aspects rather than a dwelling house appearance.	
29(2)(c) Solar Access	Where the development provides for one or more communal living rooms, if at least one of those rooms receives minimum of 3 hours direct sunlight between 9am and 3pm in midwinter.	The communal living room include doors along the north-eastern façade to maximize solar access. This room will receive sufficient solar access in accordance with '3 hours direct sunlight between 9am and 3pm in midwinter' criterion.	Yes
29(2)(d)(i) Private Open Space (Other than the front setback area)	<p>If a minimum of the following is provided:</p> <p>(i) one area of at least 20sqm 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 8sqm with a minimum dimension of 2.5m is provided adjacent to that accommodation</p>	<p>A 37.8sqm area is provided in the form of an elevated paved communal terrace above the garage and adjacent to the communal living room.</p> <p>No manager is proposed to reside onsite as there are less than 20 boarders accommodated.</p>	<p>Yes</p> <p>N/A</p>
29(2)(e)(iia) Parking	(ii) 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,	In this case: 8 lodger rooms x 0.5 car space = 4 car spaces required; 4 car spaces have been provided (one of which is an accessible space).	Yes

	(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	No manager is proposed or required to reside onsite.	N/A
29(2)(f) Accommodation size	<p>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) 12sqm in the case of a boarding room intended to be used by a single lodger, or</p> <p>(ii) 16sqm in any other case</p>	<p>8 boarding rooms are proposed.</p> <p><u>Room 1 (adaptable):</u> single, 11.5sqm excluding bathroom, and private kitchen plus an area of 0.6m deep for the length of the kitchen bench (accessible).</p> <p><u>Room 2:</u> single, 14.4sqm excluding bathroom and private kitchen plus an area of 0.6m deep for the length of the kitchen bench.</p> <p><u>Room 3:</u> single, 11.7sqm excluding bathroom and private kitchen plus an area of 0.6m deep for the length of the kitchen bench</p> <p><u>Room 4:</u> single, 10.9sqm excluding bathroom and private kitchen plus an area of 0.6m deep for the length of the kitchen bench.</p> <p><u>Room 5:</u> single, 12.1sqm excluding bathroom and private kitchen plus an area of 0.6m deep for the length of the kitchen bench.</p>	No, see further discussion below

		<p><u>Room 6</u>: double, 16.7sqm excluding bathroom and private kitchen plus an area of 0.6m deep for the length of the kitchen bench.</p> <p><u>Room 7</u>: double, 16.2sqm excluding bathroom and private kitchen plus an area of 0.6m deep for the length of the kitchen bench.</p> <p><u>Room 8</u>: double (as per the revised Plan of Management and architectural plans), 15.9sqm excluding bathroom and private kitchen plus an area of 0.6m deep for the length of the kitchen bench.</p>	
29(3) Accommodation	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.	Noted. Each room is provided with private kitchen and bathroom facilities.	Yes
29(4)	A consent authority may consent to development to which this Division applies whether or not the development complies with the standards set out in sub-clause (1) or (2)	Noted.	No, see discussion below.

29(2)(b) Landscape Area

47. The proposal in its current form is considered to result in a built form that is inconsistent with the surrounding development. The front setback is dominated by hard surfaces including a paved terrace, ramps, landings, balustrading, tactile slip resistance and fencing. In order to facilitate accessible access for all future lodgers, a ramp is proposed along the north-western corner of the terrace area. The introduction of ramped areas along with balustrading and tactile slip resistance within a raised terrace area does not provide a suitable balance between built form and landscaped elements along this frontage.
48. It is acknowledged that the existing deep soil landscape area within the south-eastern corner of the site is to be retained via the proposed development and there are two existing street trees fronting Lily Street within the Council's Road reserve of the development site.

49. Nevertheless, the existing and additional built form will dominate the front setback and result in a bulk and scale issues when viewed from the public domain. There has been little thought into how the proposal is able to provide accessibility to the site whilst adhering to the low-density residential streetscape of the locality. The proposed front setback presents an interface with the public domain that has commercialised aspects rather than a dwelling house appearance. No effort has been made to soften the frontage of the site to be more consistent with a residential streetscape interface.
50. The front setback is inconsistent with the existing and desired development in the locality. In this regard, the proposal will adversely disrupt the built form rhythm within the streetscape and fails to be compatible with the surrounding local character.

29(2)(f) Accommodation size

51. The proposed development does not achieve the minimum accommodation size for three of the eight lodger rooms being rooms 1, 3 and 4. The undersize accommodation is due to the space forward of the kitchen bench facilities being included towards the total room space (sqm). Within the Court judgement *Salem v Georges River Council* [2022] NSWLEC 1408 it was concluded that 0.6m forward of the kitchen bench facilities are not included towards the overall room size given that this space is for manoeuvring and the functionality whilst utilising the facilities within the room. There is no site-specific reason why the minimum room sizes being 12sqm for a single room lodger and 16sqm for a double room lodger cannot be achieved.

29(4) Standards that cannot be used to refuse consent

52. The proposal fails to comply with the landscape area and accommodation size, '*standards that cannot be used to refuse consent*' under Clause 29(2) of the SEPP. Although Clause 29(4) of the SEPP allows consent to be granted even if the development does not comply with these standards. It is considered that the variations are unacceptable due to adverse streetscape, landscaping and amenity impacts resulting from the non-compliances.

Clause 30 - Standards for Boarding Houses

53. A consent authority must not consent to development for boarding houses unless it is satisfied of each of the following.

Clause 30	Standards	Proposal	Complies
Communal living	(a) if a boarding house has 5 or more boarding rooms, at least one communal living room will be provided	8 rooms proposed - one communal living room is provided.	Yes
Size of boarding rooms	(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 25sqm	No boarding room has an area exceeding 25sqm in area (excluding any area used for the purposes of private kitchen or bathroom facilities)	Yes

Maximum occupancy	(c) no boarding room will be occupied by more than 2 adult lodgers	Maximum 2 adult lodgers per room proposed for double lodger rooms being rooms 6, 7 and 8.	Yes
Kitchen and bathroom facilities	(d) adequate bathroom and kitchen facilities will be available within the boarding house for the use of each lodger	Each room has its own private kitchen facilities, and the communal room has also been designed to accommodate kitchen facilities. Each room has bathroom facilities.	Yes
Boarding house manager	(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	The boarding house has a total occupant capacity of 11, thus a boarding house manager is not required. As per the plan of management, a caretaker will be appointed to manage the day-to-day operations of the boarding house. The caretaker will be contactable between the hours of 6am – 10pm Monday- Sunday inclusive.	Yes
Bicycle and motor cycle space	(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.	In this case 8 boarding rooms provided: 2 motorcycle and 2 bicycle spaces required. 2 of each have been provided.	Yes

30AA Boarding houses in Zone R2 Low Density Residential

54. Clause 30AA states that:

Clause 30AA	Standards	Proposal	Complies
30AA	A consent authority must not grant development consent to a boarding house on land within Zone R2 Low Density Residential or within a land use zone that is equivalent to that zone unless it is satisfied that the boarding house has no more than 12 boarding rooms.	A total of eight (8) rooms are proposed.	Yes

55. Clause 30A – Character of local area

Clause 30A	Standards	Proposal	Complies
30A	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.	Whilst the overall siting of the building is existing apart from a lift extension to the rear façade and a ramp access within the front terrace area. The application is for the adaptive reuse of a dwelling as a boarding house. The design of the development is not considered to be compatible with the character of the local area, contrary to Clause 30A of the SEPP. This is due to the unsatisfactory streetscape appearance via the commercialisation of the front setback, lack of landscape area and amenity for the future lodgers.	No, see discussion below

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56. Case law has held that the test in Clause 30A is “one of compatibility not sameness” (Gow v Warringah Council [2013] NSWLEC 1093 (15 March 2013)). Compatibility is widely accepted to mean “capable of existing together in harmony” (Project Venture Developments Pty Ltd v Pittwater Council [2005] NSWLEC 191).
57. It has also been held that in assessing ‘compatibility’ both the existing and future character of the local area needs to be taken into account (Sales Search Pty Ltd v The Hills Shire Council [2013] NSWLEC 1052 (2 April 2013) and Revelop Projects Pty Ltd v Parramatta City Council [2013] NSWLEC 1029).

Relationship to the Existing and Future Character of the Local Area

58. In Revelop Projects Pty Ltd v Parramatta City Council [2013] NSW LEC 1029, Commissioner Morris concluded that the ‘local area’ includes both sides of the street and the ‘visual catchment’ as the minimum area to be considered in determining compatibility.
59. The ‘local area’ in this case is taken to include both sides of Lily Street, Lily Lane (given the site’s rear boundary and vehicular access is off the Lane) and the immediate surrounding streets. Within this local area, development is primarily characterised by single and double storey dwelling houses being brick and tiled in finish. Most dwellings along Lily Street do not have their vehicular access from this street and are accessed via the rear Lily Lane.
60. In Project Venture Developments v Pittwater Council [2005] NSWLEC 191 the Land and Environment Court specifically set out a relevant planning principle. Consideration has therefore been given to the two key questions identified in the Land and Environment Court Planning Principles:

(a) Are the proposal's physical impacts on surrounding development acceptable? The physical impacts include constraints on the development potential of surrounding sites.

61. The proposal results in alterations and additions to an existing dwelling and a change of use to form a boarding house consisting of eight (8) lodger rooms to house 11 lodgers. The existing dwelling house is being modified via the proposal to allow for individual rooms, communal living areas, vehicular parking, and disabled access into the building via ramping and a lift being externally attached to the built form in the rear.
62. Despite, the building remaining compliant with the floor space ratio and height of building the proposal seeks to remove landscaped area within the rear yard to make way for vehicular parking to meet the requirements of the number of lodgers and rooms and the provisions of onsite car parking.
63. The proposal will have an adverse visual impact on neighbouring properties with respect to the bulk and scale of the building within the front setback given the addition of ramping, balustrades and tactile slip resistance. The depletion of landscaping on site will also increase the visual density appearance of the site as there is limited opportunity to soften the built form with deep soil landscape area.

(c) Is the proposal's appearance in harmony with the buildings around it and the character of the street?

64. The existing streetscape is characterised by single, and two (2) storey detached dwellings. Dwellings have access from both Lily Street and Lily Lane with vehicular access only from the rear (off Lily Lane).
65. The proposed boarding house retained the existing dwelling's structural elements to enable alterations and additions both internally and externally. The proposal in its current form is considered to result in a built form that is inconsistent with the surrounding development. The front setback is dominated by hard, pathways, ramps landing and fencing within the front setback to facilitate access to the building. In this regard, the proposal will adversely disrupt the built form rhythm in the streetscape.
75. The location of the car park in the rear setback will also adversely impact neighbours with respect to acoustic amenity, light spill from headlights, and also results in a lack of deep soil area able to accommodate open spaces and substantial landscaping. In the rear of the site is also a speed hump that will need to be navigated when accessing the site given Lily Lane is a two-way narrow laneway.
76. Assessing 'compatibility' requires both the existing and future character of the local area to be taken into account (*Sales Search Pty Ltd v The Hills Shire Council* [2013] NSWLEC 1052 and *Revelop Projects Pty Ltd v Parramatta City Council* [2013] NSWLEC 1029). It is acknowledged that there are sites within the immediate development catchment that are yet to reach their development potential. However, given the required access to the building, design of the building and car parking requirements, the design and streetscape presentation of future development on adjoining sites is unlikely to resemble that of the proposed development. Resulting in the development being out of character now and inconsistent with the perceived future character as established by the current planning controls.

77. For these reasons the proposal is not in harmony with the buildings around it or the street.

52 Boarding houses

78. Clause 52 states that:

Clause 52	Standards	Proposal	Complies
52	A consent authority must not grant consent to the strata subdivision or community title subdivision of a boarding house.	Noted. Subdivision is not proposed.	Yes

State Environmental Planning Policy Housing 2021

79. The Housing SEPP was gazetted on 26 November 2021. The Housing SEPP requires that boarding houses are for the purpose of affordable rental housing and managed by a registered community housing provider and introduce a definition for 'co-living housing', which may be carried out by private developers, but would only be permitted where residential flat buildings or shop top housing are permitted. Therefore, whilst it is considered that little to no determinative weight would apply due to this development application being lodged prior to the gazettal of the Housing SEPP 2021; the current proposal is inconsistent with the provisions of the Housing SEPP 2021 Instrument.

Georges River Local Environmental Plan 2021

80. Consideration is given to the provisions of Georges River Local Environmental Plan 2021 in the assessment of this application. In this regard, the provisions have no determining weight as a result of proposed operation of Clause "1.8A Savings provisions relating to development applications" of the Draft Plan which provides *"If a development application has been made before the commencement of this Plan in relation to land to which this Plan applies and the application has not been finally determined before that commencement, the application must be determined as if this Plan had not commenced."*

Environmental Planning Instruments

Local Environmental Plan

81. The subject site is subject to the Hurstville Local Environmental Plan 2012.

Part 2 – Permitted or Prohibited Development

Clause 2.1 – Land Use Zones

82. The subject site is zoned R2 Low Density Residential, and the proposal is a permissible form of development with Council's consent.



Figure 6 – zoning of the site and surrounding area – site outlined in blue

83. The extent to which the proposal complies with the relevant standards of Hurstville Local Environmental Plan No.1 (HLEP2012) is outlined in the table below.

Hurstville Local Environmental Plan 2012 (HLEP2012)

Clause	Standard	Proposed	Complies
Part 1 Preliminary			
1.2 – Aims of the Plan	In accordance with Clause 1.2 (2)	The development is inconsistent with the aims of the plan.	No
1.4 - Definitions	Boarding House: <i>means a building that:</i> <i>(a) is wholly or partly let in lodgings, and</i> <i>(b) provides lodgers with a principal place of residence for 3 months or more, and</i> <i>(c) may have shared facilities, such as a communal living room, bathroom, kitchen or laundry, and</i> <i>(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.</i>	The proposed development is consistent with the boarding house definition.	Yes
Part 2 Permitted or prohibited development			

2.3 - Zone objectives and Land Use Table	<p>Meets objectives of R2-Low Density Residential Zone:</p> <p>Development must be permissible with consent and satisfy the below objectives:</p> <p>To provide for the housing needs of the community within a low-density residential environment.</p> <p>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</p> <p>To encourage development of sites for a range of housing types, where such development does not compromise the amenity of the surrounding area, or the natural or cultural heritage of the area.</p> <p>To ensure that a high level of residential amenity is achieved and maintained.</p> <p>To encourage greater visual amenity through maintaining and enhancing landscaping as a major element in the residential environment.</p> <p>To provide for a range of home business activities where such activities are not likely to adversely affect the surrounding residential amenity.</p>	Despite, the proposed development being a permissible use within the R2 Low Density Residential Zone, the proposal fails to satisfy the objectives of the R2 Zone.	No, see discussion below
Part 4 Principal development standards			
4.3 – Height of Buildings	9m as identified on Height of Buildings Map	Maximum height of building 8.3m – including lift height.	Yes
4.4 – Floor Space Ratio	0.6:1 as identified on Floor Space Ratio Map	<p>Site Area = 490.4sqm</p> <p>Permitted gross floor area- 294.24sqm</p> <p>Proposed gross floor area-</p>	Yes

		294.13sqm FSR proposed 0.6:1	
Part 5 Miscellaneous provisions			
5.6- Architectural roof features	In accordance with Clause 5.6 (1)	There are not architectural roof features on this building.	N/A
5.7- Development below mean high water mark	(1) The objective of this clause is to ensure appropriate environmental assessment for development carried out on land covered by tidal waters.	The site is not subject to the mean high water mark given it is not a foreshore site.	N/A
5.10 – Heritage conservation	In accordance with Clause 5.10 (1)	The site is not a heritage item however it is within close proximity to heritage listed items. The proposed development is not anticipated to impact the heritage listed items. The site is not in a heritage conservation area.	Yes
5.21- Flood Planning	In accordance with Clause 5.21 (1)	The site is not flood prone land as per Council's flood prone land mapping layer.	N/A
Part 6 Additional local provisions			
6.1 – Acid sulfate soils	(1) The objective of this clause is to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage.	The site is not located in an area containing Acid Sulfate Soils as per the LEP maps.	N/A
6.2- Earthworks	(1) The objective of this clause is to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.	The proposed development comprises of minor earthworks to facilitate the proposed works.	Yes
6.7 –	Development consent	Essential services are	Yes

Essential Services	must not be granted to development unless services that are essential for the development are available	currently available to the site and can be extended to service the new use.	
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R2 Low Density Residential Zone Objectives

84. The proposal is inconsistent with the objectives of the R2 low density residential zone pursuant to Clause 2.3 of HLEP 2012 to “ensure that a high level of residential amenity is achieved and maintained” and “does not compromise the amenity of the surrounding area”.

Georges River Local Environmental Plan 2021

85. Consideration is given to the provisions of Georges River Local Environmental Plan 2021 in the assessment this application given the Environmental Planning Instrument was gazette on 8 October 2021. In relation to this development site the zoning, height and floor space ratio are not proposed to change. Boarding houses are a permissible use in the zone.
86. In this regard, the provisions have no determining weight as a result of proposed operation of Clause “1.8A Savings provisions relating to development applications” of the Draft Plan which provides “If a development application has been made before the commencement of this Plan in relation to land to which this Plan applies and the application has not been finally determined before that commencement, the application must be determined as if this Plan had not commenced.”

Hurstville Development Control Plan No. 1 (HDCP)

87. The proposed development is subject to the provisions of the Hurstville Development Control Plan No.1 (HDCP). The following comments are made with respect to the proposal satisfying the objectives and controls contained within the DCP.
88. Boarding houses do not have any DCP specific controls for assessment, as a result the assessment criterion in Chapter 4.4 of HDCP for low density residential for areas of assessment not covered by the SEPP have been used as a guide for assessment given the predominance of the surrounding development is single dwelling houses and streetscape consistency is of relevance.

DCP Provisions	Development Provisions	Complies
3.1 Vehicle Access, Parking and Manoeuvring		
DS1.3 Provide onsite parking based on 1 space per 3 beds plus 1 space per 2 employees	4 spaces are required, and 4 spaces are provided.	Yes
3.4 Crime Prevention Through Environmental Design		
Site and Building Layout DS1.4 Entrances should be located in prominent positions, be easily recognisable through design features and directional signage and should allow	The proposal maintains an entry facing the street and allows users to see into both the terrace area adjoining the entry and into the building before entering.	Yes

<p>users to see into the building before entering.</p> <p>DS1.5 Pathways within and to the development should be direct and all barriers along the pathways should be permeable including landscaping and fencing.</p> <p>DS1.14 Garages and carports should not dominate the front façade of the building.</p> <p>Lighting DS2.1 Dwelling and commercial unit main entries should be well lit at night. DS2.3 All lighting must be vandal resistant and easy to maintain.</p> <p>DS2.4 Direct lights towards access/egress routes and possible hiding places to illuminate potential offenders, rather than towards buildings or resident observation points.</p> <p>Landscaping DS2.19 Avoid medium height vegetation with concentrated top to bottom foliage. Plants such as low hedges and shrubs, creepers, ground covers and high canopied vegetation are good for natural surveillance. Refer Figure 1 – Vegetation placement for passive surveillance.</p> <p>Fencing DS4.1 Front fences are to be predominantly open in design to allow sight through the fences eg picket fences, wrought iron.</p>	<p>The design incorporates solid barriers and impervious terrace within the front setback.</p> <p>The garage is located in the rear of the site.</p> <p>Can be conditioned if the application was to be supported.</p> <p>Can be conditioned if the application was to be supported.</p> <p>Despite the quantity of landscaping on site not being compliant the quality of the retained landscaping on site is suitable landscaping.</p> <p>Existing fencing to be retained, with the exception of the fencing where the new access for all/persons with a disability is to be installed.</p>	<p>No</p> <p>Yes</p> <p>Yes- subject to condition if the application was supportable.</p> <p>Yes- subject to condition if the application was supportable.</p> <p>Yes</p> <p>Yes</p>
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<p>Security and Operational Management</p> <p>DS5.1 Locks are to be fitted on all doors and windows to the Australian Standard.</p> <p>DS5.5 Entry doors are to be self-closing and signs displayed requesting building occupants not to leave doors wedged open.</p> <p>DS5.6 Consider installing user/sensor electronic security gates at car park entrances, garbage areas and laundry areas etc., or provide alternative access controls.</p> <p>Building Identification</p> <p>DS6.2 Each building entry must clearly state the dwelling or unit numbers accessed from that entry.</p>	<p>Can be conditioned if the application was to be supported.</p> <p>Can be conditioned if the application was to be supported.</p>	<p>Yes- subject to condition if supportable</p> <p>Yes- subject to condition if supportable</p>
<p>3.5 Landscaping and 3.6 Public Domain</p>		
<p>DS8.1 Development that involves landscaping is to be supported by a:</p> <p>a. a survey plan showing the location of existing trees, their type and condition and what are being proposed to be removed</p> <p>b. concept level landscape plan showing the extent, function and character of landscaped area</p> <p>c. detailed landscape plan showing excavation, location of site services, proposed levels, drainage, construction detail; and a detailed planting schedule</p> <p>DS1.8 Street trees are to be provided on all streets to achieve the following outcomes:</p> <p>a. coordinated palette of climatically responsive</p>	<p>Survey plan provided.</p> <p>A Landscape plan was submitted with the application noting the removal of the existing landscape area in the rear yard to make way for vehicular parking.</p> <p>There are two existing street trees along Lily Street that are to be retained via the proposed development.</p>	<p>No</p> <p>Yes</p>

<p>species</p> <p>b. reinforce the street hierarchy and create distinct places</p> <p>c. be robust and low-maintenance</p> <p>d. be planted in a coordinated, regularly spaced and formalised manner</p> <p>e. increase the comfort of the public domain for pedestrians</p> <p>f. enhance the environmental performance of the precinct by increasing opportunities for energy efficiency, reducing the heat island effect and providing habitat for wildlife</p>		
3.7 Stormwater Management		
<p>DS1.5 A development application is supported by a concept stormwater management plan showing how surface and roof waters are to be discharged by gravity to the street or easement and the size of all pipes.</p> <p>DS1.15 Developer required creating an easement over the adjoining downstream property/s to drain stormwater by gravity across the downstream properties to the road kerb or Council's drainage system. Note: A drainage application under Section 68 of the Local Government Act 1993 and Section 138 of the Roads Act 1993 is required to get approval to connect to Council's drainage system.</p> <p>DS1.16 Where an easement is required over downstream properties for drainage purposes:</p> <p>a. it is to have a minimum width of 1m and a separate Development Application is</p>	<p>A stormwater drainage plan was submitted as a part of the application. Council's engineers reviewed the proposal and raised no objections subject to conditions if the application was to be supported.</p>	<p>Yes</p>

<p>required for the installation of the pipeline within easement.</p> <p>b. a letter of consent from the owner(s) of the downstream properties is to be submitted with the Development Application for installation of the pipeline within easement.</p> <p>The applicant is to provide Council with evidence that the easement has been registered with the Registrar General.</p> <p>DS1.19 The rate of discharge of roof and pavement runoff from the site is to be controlled by the provision of an onsite detention system.</p> <p>DS1.20 On site detention facility shall be designed in accordance with Hurstville City Council's 'Drainage and On-Site Detention Policy'.</p>		
<p>Section 4.4 Dwelling Houses on Standard Lots (Note: a merit assessment has been undertaken under Section 4.4 in the absence of any controls applicable to boarding houses given the R2 zoning, lot size and the character of the streetscape.)</p>		
<p>Building Height</p> <p>DS2.1. Maximum building height is in accordance with the LEP</p> <p>DS2.3. For flat roofed dwellings, maximum height to the top of the parapet of the building is: a. 7.8m above the existing ground level vertically below that point (Refer Figure 1)</p> <p>Setbacks</p> <p>DS3.1. Minimum setback from the primary street boundary is:</p> <p>a. 4.5m to the main building face</p> <p>b. 5.5m to the front wall of</p>	<p>The building has an existing height of 8.23m, the lift attached to the dwelling has a lower RL than the ridge of the dwelling. The proposal complies with the 9m maximum height of building limit under HLEP 2012.</p> <p>The existing dwelling has a pitched roof that is to be retained via this proposal.</p> <p>The new building work being the addition of a lift complies with the setback requirements.</p> <p>Street Setback</p> <p>6.9m to the main building face</p> <p>Nil setback to front terrace area</p>	<p>Yes</p> <p>Yes</p> <p>N/A- existing setbacks unchanged via proposed development</p>

garage, carport roof or onsite parking space (Refer Figure 2) or
c. within 20% of the average setback of dwellings on adjoining lots.

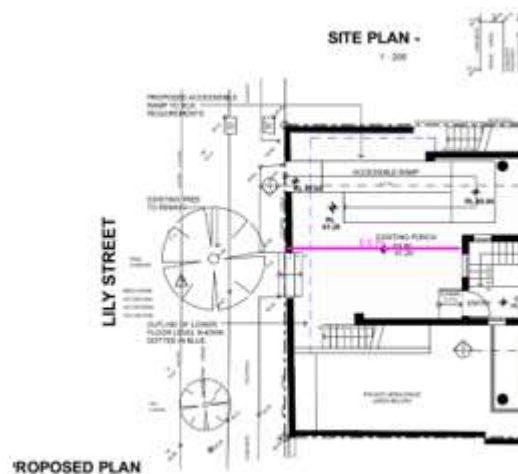
DS3.4. The minimum side setback outside the FSPA is 900mm (ground floor) and 1.2m (first floor). Note: Council may permit a variation to the minimum side setbacks for irregular shaped lots if it can be demonstrated that this will result in the retention of principal private open space or significant trees and the achievement of the performance criteria.
DS3.6. Minimum rear boundary setbacks are:
a. 3m for any basement and ground floor level solid wall
b. 6m for first floor level solid walls
c. where a first floor balcony is proposed at the rear, 6m from the balustrade

Facades

DS4.3. Garage doors are not wider than 6m

Solar access

DS6.1. Development allows for at least 3 hours of sunlight on the windows of main living areas and adjoining principal private open space of adjacent dwellings between 9.00 am and 3.00 pm on 22 June.
Note 1: Development applications for development two storeys



Side Setback- ground and first floor.
Northern- 1m.
Southern- 0.9m to building façade/2.6m to lift/4.6m to garage/private open space.

Rear Setback
10.5m to garage/private open space.

The garage door is 4.9m wide.

The development maintains at least 3 hours sunlight to living area windows and private open space of the adjoining properties.

No

Yes

Yes

Yes

<p>and over are to be supported by shadow diagrams demonstrating compliance with this design solution. Note 2: Exemptions will be considered for developments that comply with all other requirements but are located on sites with an east-west orientation.</p>	<p>Garage is located at the rear of the site and behind the building line.</p>	<p>Yes</p>
<p>Vehicular access and parking DS9.3. Enclosed or roofed car accommodation, including garages and carports, are located at least 1m behind the main setback. Note: Carports forward of the front setback may be considered where no vehicular access behind the front building alignment is available. DS9.4. The maximum width of a garage opening is 6m.</p>	<p>The garage door is 4.9m wide.</p>	<p>Yes</p>
<p>Landscaped areas DS10.3. The minimum dimension of landscaped open space is 2m in any direction. DS10.4. A minimum of 15m² of the landscaped open space is provided between the front setback and the street boundary in the form of a front yard.</p>	<p>Refer to assessment under SEPPARH. As noted previously, the proposed landscape treatment of the front setback area is minimal given the extensive terrace area, paving, ramps and balustrading.</p>	<p>No</p>

Georges River Development Control Plan (Interim Policy)

89. The Interim Policy is a supplementary document, meaning that the Hurstville Development Control Plan No. 1 controls continue to apply if a particular control is not specified in the Interim Policy, or if it is still considered best practice. All operative Development Control Plans still legally apply. Whilst the Interim Policy has no statutory recognition in the assessment of a Development Applications pursuant to the Environmental Planning and Assessment Act 1979, the policy was used as a guide as it is an endorsed position of the Council.
90. In relation to the proposed boarding house, the proposal does not conflict with the controls of the Interim Policy Development Control Plan as outlined below.

Control	Proposed	Complies
<p><i>Building Setbacks (Front)</i></p> <p>Minimum setback from the primary street boundary is:</p> <p>a) 4.5m to the main building face</p> <p>b) 5.5m to the front wall of garage, carport roof or onsite parking space</p> <p>Or</p> <p>a) Within 20% of the average setback of dwellings on adjoining lots</p>	<p>The front setback to the façade of the dwelling is existing and does not seek to be altered via this proposed development. It should be noted that additional built elements in the form of balustrading and ramping are being added within the front setback to enable accessible access into the dwelling from Lily Street.</p> <p>Street Setback</p> <p>6.9m to the main building face</p> <p>Nil setback to front terrace area</p>	<p>Yes-existing</p>
<p><i>Building Setback (Rear)</i></p> <p>Buildings are to have a minimum rear setback of 15% of the average site length, or 6m, whichever is greater</p> <p>Where the existing pattern of development displays an established rear setback, development should recognise and respond to site features and cross views of neighbouring properties</p>	<p>Rear setback remains unchanged via the proposed development being 10.5m.</p>	<p>Yes-existing</p>
<p><i>Building Setback (Side)</i></p> <p>The minimum side setback outside the FSPA is 900mm (ground floor) and 1.2m (first floor)</p> <p>The minimum side setback inside the FSPA is 900mm (ground floor) and 1.5m (first floor) with a minimum of 5.5m in front of any proposed new garage.</p>	<p>The side setbacks are existing and remain unchanged via the proposed development.</p> <p>A lift is being added along the southern elevation adjacent to the garage. The side setback remains compliant for the added lift.</p> <p>Side Setback- ground and first floor</p> <p>Northern- 1m</p> <p>Southern- 0.9m to building façade/2.6m to lift/4.6m to garage/private open space.</p> <p>N/A</p>	<p>Yes-existing</p>

<p><i>Landscaped Area</i></p> <p>Where located outside the FSPA, a minimum of 20% of site area is landscaped open space</p> <p>Where located inside the FSPA, a minimum of 25% of the site area is landscaped open space</p> <p>The minimum dimension of landscaped open space is 2m, designed in a useable configuration</p> <p>A minimum of 15m² of the landscaped open space is provided between the front setback and the street boundary in the form of a front yard</p>	<p>The subject site is outside the FSPA- 20% LSA required.</p> <p>20% or 98.08m² LSA required</p> <p>4.22% or 20.7m² LSA proposed</p> <p>N/A</p> <p>The proposal achieves the minimum dimension of 2m.</p> <p>The landscape area is located within the front south-western corner of the site. The landscape area slopes towards the side boundary as the land falls away from the terraces area that is elevated from the street.</p>	<p>No</p> <p>Yes</p> <p>No</p>
<p><i>Private Open Space</i></p> <p>An area of Principal Private Open Space is to be provided which:</p> <p>a) has a minimum area of 30m²</p> <p>b) has a minimum dimension of 5m, designed in a useable configuration</p> <p>c) is located at ground level and behind the front wall of the dwelling</p> <p>d) is directly accessible from a main living area</p>	<p>Achieved – Private open space of 37.8sqm with dimensions of 6.2m by 6.1m</p>	<p>Yes</p>
<p><i>Basement/Land Modification</i></p> <p>Basements are permitted where Council's height controls are not exceeded, and it is demonstrated that there will be no adverse environmental impacts (e.g. affectation of watercourses and geological structure).</p>	<p>No basement proposed</p>	<p>N/A</p>

<p>Basements for low grade sites (ie < 12.5% Grade front to rear):</p> <p>a) Basements on land where the average grade is less than 12.5% are permitted only where they are not considered a storey (see definition below) and the overall development presents as 2 storeys to the street.</p> <p>b) A basement is not considered a storey if it is: situated partly below the finished ground and the underside of the ceiling is not more than 1m above the natural ground at the external wall for a maximum of 12m in length, with the exception of the façade in which the garage door is located.</p>		
<p>Solar Access Where the neighbouring properties are affected by overshadowing, at least 50% of the neighbouring existing primary private open space or windows to main living areas must receive a minimum of 3 hours sunlight between 9am–3pm on the winter solstice (21 June).</p> <p>Note 1: development applications for development two storeys and over are to be supported by shadow diagrams demonstrating compliance with this design Interim Policy – Georges River Development Control Plan 2020 July 2019 Page 6 of 8 solution.</p>	<p>Complies – greater than 3hrs of sunlight to a minimum of 50% of the adjoining lots provided.</p>	<p>Yes</p>

Note 2: Exemptions will be considered for developments that comply with all other requirements but are located on sites with an east-west orientation.		
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Impacts

Natural Environment

91. The provision of deep soil landscape area on site will be reduced to allow for vehicular parking. Deep soil landscape area within the south-eastern corner of the site is to be retained via the proposal. Nevertheless, the failure to provide adequate quantity of landscaping on site is unacceptable and is considered to contribute to the overdevelopment of the site.

Built Environment

92. The proposal in its current form is considered to result in a built form that is inconsistent with the character of the surrounding development currently and in the future based on the current planning controls. The front setback is dominated by hard surfaces, pathways, ramps, landings and fences. This setback is inconsistent with existing and desired development in the locality will result in an undesirable precedent within the locality.
93. The primary lodger access into the building provides access for persons with a disability however from the accessible room there is no access to the communal living areas as the hallway width is inadequate in accordance with the Building Code of Australia (BCA). The inability to provide access for all, to the communal areas within the building forms of the reasons for refusal.
94. The resident entrance will need to be well lit at night which will have adverse impacts on the neighbouring properties. In addition, it will be an area with high levels of pedestrian traffic which will adversely impact the amenity of the neighbour.
95. The initial proposal was accompanied with an Acoustic Report and Plan of Management. The Plan of Management does not reflect the noise management recommendations under Section 5.4 of the Acoustic Report given it is unclear how the doors to the indoor communal area are kept shut during the night-time being between 10pm and 7am, and how noise rules are implemented, in the absence of an onsite manager and the manager only contactable between 6am and 10pm Monday to Sunday. This part of the application remains unresolved.

Social Impact

96. The proposed development is of a scale and form that is inconsistent with the existing context, which will result in a negative social impact.

Economic Impact

97. There is no apparent adverse economic impact that is likely to result within the locality due to the provision of additional housing. It is likely there will be a small positive economic impact as a result of the construction of the development.

Suitability of the Site

98. The site is zoned R2 – Low Density Residential. The proposal is a permissible form of development in this zone however the proposal fails to meet a number of standards of the State Environmental Planning Policy (Affordable Rental Housing) 2009 which affects the amenity of the future lodger's and the surrounding properties.

Submissions, Referrals and the Public Interest

99. The application was advertised, and adjoining residents were notified by letter and given fourteen (14) days in which to view the plans and submit any comments on the proposal. Four (4) submissions were received during the neighbour notification period. The issues raised are summarised below.

Concern	Council Response
Short term rental accommodation and no boarding house manager present on site	Concern was raised with regards to the operation of the boarding house due to a boarding house manager not being available. With reference to the State Environmental Planning Policy Affordable Rental Housing 2009 (ARH SEPP), a boarding house manager is required for any boarding house with 20 or more lodgers. As the proposed boarding house will have a maximum capacity of 11 lodgers over 8 rooms, a boarding house manager is not required in this case.
Traffic	The proposed boarding house provides the required car parking ratios as per clause 29 (2)(e) of the State Environmental Planning Policy (Affordable Rental Housing) 2009. Four (4) car spaces are required and four (4) have been provided. A shared/turning bay is also proposed. Two (2) motorcycle and two (2) bicycle spaces are required and have also been provided. It is noted that originally the application proposed 9 rooms and therefore 4.5 spaces were required and only 4 provided. However with the reduction in rooms by 1 the carparking is now compliant.
View Impact	In a submission received the view impact that the proposed lift would make on the district outlook was raised. It should be noted that the lift is attached externally to the building along the southern elevation and is below the maximum height of building limit and also the ridge of the dwelling. The view impact from the lift is considered to be acceptable.
Fire safety	Council's Building Surveyors have reviewed the proposed development and have provided suitable conditions of consent that would ensure that the proposed development is built to achieve fire safety standard if the application was to be supported.
Structural stability of existing dwelling to accommodate changes	Concern was raised in regard to whether the existing dwelling would be structural stable to undergo the proposed alterations and additions. If the application were to be supported a suitable condition of consent would be applied to the application to ensure that the existing built form is structurally adequate to undergo the proposed works prior to the issue of a Construction Certificate.

Privacy	Loss of privacy was raised in a submission received due to the increase in persons occupying the dwelling and the frequency of people entering and exiting the dwelling. Concern was also raised that the increase in occupants would have the potential for overlooking from side facing windows and the common living areas and private open space. Boarding houses are a permissible form of development within the R2 Low Density Residential zone. The SEPP (ARH) 2009 details the requirements for Boarding Houses within the R2 Low Density Zone and a full assessment are outlined in this assessment report for the subject development. The architectural plans illustrate that privacy screening is to be erected along the side elevations to mitigate privacy concerns. It is noted that amenity (noise) concerns have not been adequately address as the application fails to demonstrate how the development will be managed to reduce acoustic impacts for neighbours and lodgers from the boarding house.
Value of property prices	Property valuations are not a matter for consideration under the provisions of the Environmental Planning and Assessment Act 1979.
Permissibility of boarding houses in residential zones	The site is zoned R2 – Low Density Residential, a boarding house not exceeding 12 rooms is a permissible form of development in this zone.
Character of the area	Submissions received highlighted that the proposed development is inconsistent with the character of the area and that the proposed development will impact upon the amenity of the neighbourhood. An assessment of the proposals compatibility in with the existing and desired future character is outlined in this assessment report as being unsatisfactory.
Noise	Any noise related issues of the property or any criminal related issues will be subject to the same legal enforcement as that of a dwelling house. All lodgers will be subject to a lease arrangement, which can be terminated at any time if the residents do not conduct themselves in accordance with the leasing criterion.
Safety and Crime	The proposal has been assessed in accordance with the relevant provisions. The proposal allows opportunities for passive and casual surveillance to and from the street. The Plan of Management provided will form part of the development consent conditions and covers acceptable behaviour protocols of boarders and visitors.
Overdevelopment	A submission received considers the development to be an overdevelopment of the site in terms of bulk and scale. Concern is raised in relation to the number of lodger rooms proposed on the site and the functionality of the proposal. The proposal does not exceed the maximum floor area or FSR permitted in this zone. In terms of 'density', the proposal is compliant.

Revised Plans

100. The applicant lodged revised plans on 24 August 2022. In accordance with the requirements of GRDCP 2021 these plans were not publicly exhibited as, in the opinion of Council, the changes being sought did not intensify or change the external impact of the development to the extent that neighbours ought to be given the opportunity to comment.

Council Referrals

Development Engineer

101. Council's Development Engineer has raised no objection subject to conditions of consent being imposed if approval is granted.

Traffic Engineer

102. Council's Traffic Engineer reviewed the proposed development and raised concerns with the proposed development:
103. The proposed car parking area materials of construction and finished levels.
104. The levels proposed for the mobility car parking space and if they comply with the gradient requirements of s2.3 "Pavement Slope and Surface" of AS/NZS 2890.6:2009 *Parking Facilities Part 6 – off street, car parking for people with disabilities*. S2.3 requires the gradient/slope of mobility parking spaces not exceed 1:33 (3%) in any direction. The gradient of the mobility space parallel to the angle of parking to be approximately 6% which is an unacceptable gradient. In this regard, detailed designs for the carpark will need to be approved prior to the issue of the Construction Certificate to confirm compliance with the Standard
105. Vehicles parked in car spaces 3 and 4 as far as can be assessed will be partly visible from the backyard of property No.48 Lily Street due to the ground level inside No.50 being higher and there being a low height wall along the common, eastern boundary. It is considered some form of screening should be installed on the common boundary adjacent to the car park area to prevent vehicle exhaust fumes and headlight spill being directed onto No.48 and possibly other properties further to the east.
106. Nevertheless, the above matters can be clarified/conditioned if the application were supported.

Building Surveyor

107. Council's Building Surveyor has noted that the classification of the building has changed. Building classification: Class 1b (boarding house - less than 300m² and accommodate not more than 12 people with a rise in storeys of 2. No objections were raised subject to conditions of consent being imposed if approval is granted.

Health Officer

108. Council's Health Officer has raised no objection to the acoustic report submitted subject to conditions of consent being imposed if approval is granted.

External Referrals

Ausgrid

109. The application was referred to Ausgrid as per Clause 45(2) of the State Environmental Planning Policy (Infrastructure) 2007. No communication was received at the time this report was prepared.

Developer Contributions

110. The development is subject to Section 7.11 Contributions. In accordance with the Georges River Local Development Contributions Plan 2021, a condition of consent requiring payment of the contribution has been imposed.

Conclusion

111. The proposal has been assessed against the provisions of the State Environmental Planning Policy (Affordable Rental Housing) 2009, Hurstville Local Environmental Plan 2012 and the Hurstville Development Control Plan No.1.
112. The proposal fails to comply with the landscaped area and accommodation size 'standards that cannot be used to refuse consent' under Clause 29(2) of the SEPP. Although Clause 29(4) of the SEPP allows consent to be granted even if the development does not comply with these standards, it is considered that the variations are unacceptable due to adverse streetscape and amenity impacts to residents and future occupants.
113. Further, the design of the development is not considered to be compatible with the character of the local area, contrary to Clause 30A of the SEPP. This is due to the physical bulk and scale, visual impact, and amenity impacts to adjoining properties.
114. The proposed development design fails to have adequate regard to the R2 zone objectives for the site and is not considered to be suitable for the site given adverse impacts arises and, as such, approval is not in the public interest.

Determination and Statement of Reasons**115. Statement of Reasons**

- The proposal fails to comply with the landscaped area and accommodation size, 'standards that cannot be used to refuse consent' under Clause 29(2) of the SEPP. Although Clause 29(4) of the SEPP allows consent to be granted even if the development does not comply with these standards, it is considered that the variations are unacceptable due to adverse streetscape, and amenity impacts to residents and future occupants.
- Further, the design of the development is not considered to be compatible with the character of the local area, contrary to Clause 30A of the SEPP. This is due to the commercialisation of the front setback; insufficient landscape area and amenity impacts for the future lodgers.
- The proposal fails to have adequate regard to the objectives of the R2 low density residential zone pursuant to Clause 2.3 of Hurstville Local Environmental Plan 2012 to "ensure that a high level of residential amenity is achieved and maintained" and "does not compromise the amenity of the surrounding area".
- The proposal is not considered to be suitable for the site given adverse impacts arising.

Determination

116. THAT pursuant to Section 4.16(1)(a) of the Environmental Planning and Assessment Act 1979 (as amended) the Georges River Local Environmental Planning Panel refuses DA2021/0361 for alterations and additions and use of premises as a boarding house on Lot 56 DP 557673 on land known as 50 Lily Street, Hurstville, subject to the reasons for refusal below:

1. **Environmental Planning Instrument** - The proposed development is inconsistent and has not demonstrated compliance with the State Environmental Planning Policy (Affordable Rental Housing) 2009, pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979:
 - a) Clause 29 – Standards that cannot be used to refuse as the minimum standards have not been achieved.
 - b) Clause 30A – Character of Local Area
2. **Environmental Planning Instrument** - The proposed development is inconsistent and has not demonstrated compliance with the Hurstville Local Environmental Plan 2012, pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979:
 - a) Clause 1.2 – Aims of the Plan.
 - b) Clause 2.3 – Zone objectives.
3. **Development Control Plan** - The proposed development is inconsistent and has not demonstrated compliance with the following provisions of Hurstville Development Control Plan No. 1, pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979:
 - a) Part 3.1 – Vehicular Access and Parking
 - b) Part 3.4 – Crime Prevention Through Environmental Design
 - c) Part 4.4 – Dwelling Houses on Standard Lots
4. **Impacts on the Environment** - The proposal will result in adverse environmental impacts in the locality, pursuant to Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979. The adverse environmental impacts of the proposal mean that the site is not considered to be suitable for the development as proposed, pursuant to Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979.
5. **Suitability of Site** - Pursuant to Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979, the site is not considered suitable for the proposed development as:
 - a) The development fails to achieve suitable levels of amenity for future residents as a result of inadequate accommodation sizes and the poor outdoor landscaped areas.

ATTACHMENTS

Attachment [1](#)  Site Plan and Elevational Plan- 50 Lily St Hurstville

