

BUSINESS PAPER

PLANNING MEETING

**Wednesday, 5 November, 2008
at 6:30 pm**

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AGENDA AND SUMMARY OF RECOMMENDATIONS

PRESENT

NATIONAL ANTHEM

OPENING PRAYER/S

ACKNOWLEDGEMENT OF RELIGIOUS DIVERSITY

Statement by the Chairperson

"We Recognise our Shire's rich cultural and religious diversity and we acknowledge and pay respect to the beliefs of all members of our community, regardless of creed or faith."

ABORIGINAL RECOGNITION

Statement by the Chairperson:

"We recognise the traditional inhabitants of the land we are meeting on tonight, the Darug and Guringai Aboriginal people, and respect is paid to their elders and their heritage."

AUDIO RECORDING OF COUNCIL MEETING

Statement by the Chairperson:

"I advise all present that tonight's meeting is being audio recorded for the purpose of assisting in the accuracy of the Minutes. The recordings may be accessed by members of the public once the Minutes have been finalised and speakers are requested to ensure their comments are relevant to the issue at hand and refrain from making personal comments or criticisms."

APOLOGIES

DECLARATIONS OF INTEREST

Clause 52 of Council's Code of Meeting Practice (Section 451 of the Local Government Act, 1993) requires that a councillor or a member of Council committee who has a pecuniary interest in a matter which is before the Council or committee and who is present at a meeting of the Council or committee at which the matter is being considered must disclose the nature of the interest to the meeting as soon as practicable. The disclosure is also to be submitted in writing (on the form titled "Declaration of Interest").

The Councillor or member of a Council committee must not be present at, or in sight of, the meeting of the Council or committee:

- (a) at any time during which the matter is being considered or discussed by the Council or committee.*
- (b) at any time during which the Council or committee is voting on any question in relation to the matter.*

Clause 51A of Council's Code of Meeting Practice provides that a Councillor, Council officer, or a member of a Council committee who has a conflict of interest or non pecuniary interest in any matter with which the Council is concerned and who is present at a meeting of the Council or committee at which the matter is being considered must disclose the nature of the interest to the meeting as soon as practicable. The disclosure is also to be submitted in writing (on the form titled "Declaration of Interest").

The Councillor or member of a Council committee who has a conflict of interest may still participate in the discussion and vote on the matter. In this regard particular note should be taken of Section 6.12 of Council's Code of Conduct.

CONFIRMATION OF MINUTES

THAT the Minutes of the Planning Meeting held on 15 October, 2008 be confirmed, a copy having been distributed to all Councillors.

PETITIONS

MAYORAL MINUTES

NOTICES OF MOTION

RESCISSION MOTIONS

Page Number 1

Item 1 RM8/08 RESCISSION MOTION - DEVELOPMENT APPLICATION NO. DA/928/2007 AT LOT 12 DP 1079875 (NO. 2A) MANOR ROAD

COUNCILLOR RUSSELL TO MOVE

THAT the resolution adopted at the Planning Meeting held on 15 October 2008 in respect of Item 3, Report No. PLN204/08 – Development Application – Aged or Differently Abled Persons Housing, 2A Manor Road, Hornsby namely:-

"THAT Development Application No. DA/928/2007 at Lot 12 DP 1079875 (No. 2A) Manor Road, Hornsby be refused as the applicant has failed to demonstrate that it would not have an adverse traffic, parking, bushfire hazard and amenity impact on the neighbouring residents.

FOR: COUNCILLORS BERMAN, CHOPRA, EVANS, MARTIN, MCMURDO,
RUSSELL, AND SMART.

AGAINST: COUNCILLORS HUTCHENCE AND MILLS."

be, and is hereby rescinded.

NOTE: THE ABOVE RESCISSION MOTION IS SUPPORTED BY
COUNCILLORS HUTCHENCE AND MILLS.

NOTE: In the event of the proposed Rescission Motion being adopted, the following motion is proposed.

“THAT Development Application No. DA/928/2007 at Lot 12 DP 1079875 (No. 2A) Manor Road, Hornsby be deferred to allow the applicant opportunity to undertake consultation with neighbouring residents to address the traffic, parking, bushfire hazard and amenity issues of the development.”

MAYORAL MINUTES

NOTICES OF MOTION

MATTERS OF URGENCY

ITEMS PASSED BY EXCEPTION / CALL FOR SPEAKERS ON AGENDA ITEMS

Note:

Persons wishing to address Council on matters which are on the Agenda are permitted to speak, prior to the item being discussed, and their names will be recorded in the Minutes in respect of that particular item.

DEVELOPMENT APPLICATIONS

A WARD DEFERRED

A WARD

B WARD DEFERRED

B WARD

Page Number 2

**Item 2 PLN211/08 ALTERATIONS & ADDITIONS TO A
 DWELLING-HOUSE, DEMOLITION OF A POOL SHED AND
 ERECTION OF A CABANA
 22 WARANDOO STREET, HORNSBY**

THAT Council refuse Development Application No. 167/2007 for alterations and additions to a dwelling house, the demolition of a pool shed and the erection of a cabana at Lot 9, DP 200132, No. 22 Warandoo Street, Hornsby for the recommended reasons detailed in the report from Moody & Doyle P/L and reproduced at Schedule 1.

C WARD DEFERRED

C WARD

Page Number 7

**Item 3 PLN209/08 DEVELOPMENT APPLICATION - ERECTION OF
 A DWELLING-HOUSE ON A BATTLE-AXE ALLOTMENT
 (PROPOSED LOT 11)
 66-68 CASTLE HOWARD ROAD, BEECROFT**

THAT Development Application No. 585/2008 at Lot Z DP 385117, Lot B DP 363878, 66-68 Castle Howard Road, Beecroft be approved, subject to the conditions of consent detailed in Schedules A and B of this report.

Page Number 19**Item 4 PLN210/08 DEVELOPMENT APPLICATION - ERECTION OF
 A DWELLING-HOUSE ON A BATTLE-AXE ALLOTMENT
 (PROPOSED LOT 12)
 66-68 CASTLE HOWARD ROAD, BEECROFT**

THAT Development Application No. 586/2008 at Lot Z DP 385117, Lot B DP 363878, 66-68 Castle Howard Road, Beecroft be approved, subject to the conditions of consent detailed in Schedules A and B of this report.

GENERAL BUSINESS

- *Items for which there is a Public Forum Speaker*
- *Public Forum for non agenda items*
- *Balance of General Business items*

Page Number 30**Item 5 PLN215/08 OUTCOME OF PROCEEDINGS IN THE NSW
 LAND AND ENVIRONMENT COURT - ABORIGINAL LAND
 CLAIMS**

THAT:

1. The contents of Executive Manager's Report No. PLN215/08 advising that Aboriginal Land Claims 6323, 6324, 6326 and 6465 have been granted, be received and noted.
2. When the Metropolitan Local Aboriginal Land Council has received title to the Aboriginal Land Claims, Council:
 - 2.1 Advise the Metropolitan Aboriginal Land Council of its intention to progress the rezoning of lands with no development potential with Aboriginal Land Claims 6326 and 6465 in the preparation of Council's Comprehensive Local Environmental Plan which is due to be completed by March 2011.
 - 2.2 Invite the Metropolitan Aboriginal Land Council to submit a land capability assessment for the lands for Council's consideration as part of the rezoning process.

SUPPLEMENTARY AGENDA**CONFIDENTIAL ITEMS****QUESTIONS OF WHICH NOTICE HAS BEEN GIVE****QUESTION OF WHICH NOTICE HAS BEEN GIVEN****QUESTIONS WITHOUT NOTICE**

**1 RESCISSION MOTION - DEVELOPMENT APPLICATION NO. DA/928/2007
AT LOT 12 DP 1079875 (NO. 2A) MANOR ROAD**

COUNCILLOR RUSSELL TO MOVE

THAT the resolution adopted at the Planning Meeting held on 15 October 2008 in respect of Item 3, Report No. PLN204/08 – Development Application – Aged or Differently Abled Persons Housing, 2A Manor Road, Hornsby namely:-

"THAT Development Application No. DA/928/2007 at Lot 12 DP 1079875 (No. 2A) Manor Road, Hornsby be refused as the applicant has failed to demonstrate that it would not have an adverse traffic, parking, bushfire hazard and amenity impact on the neighbouring residents.

FOR: COUNCILLORS BERMAN, CHOPRA, EVANS, MARTIN, MCMURDO, RUSSELL, AND SMART.

AGAINST: COUNCILLORS HUTCHENCE AND MILLS."

be, and is hereby rescinded.

NOTE: THE ABOVE RESCISSION MOTION IS SUPPORTED BY COUNCILLORS HUTCHENCE AND MILLS.

NOTE: In the event of the proposed Rescission Motion being adopted, the following motion is proposed.

"THAT Development Application No. DA/928/2007 at Lot 12 DP 1079875 (No. 2A) Manor Road, Hornsby be deferred to allow the applicant opportunity to undertake consultation with neighbouring residents to address the traffic, parking, bushfire hazard and amenity issues of the development."

File Reference: DA/928/2007
Document Number: D01031125

**2 ALTERATIONS & ADDITIONS TO A DWELLING-HOUSE, DEMOLITION OF A POOL SHED AND ERECTION OF A CABANA
22 WARANDOO STREET, HORNSBY**

Development Application No:	167/2007
Description of Proposal:	Alterations and additions to a dwelling-house, demolition of a pool shed and erection of a cabana
Property Description:	Lot 9, DP 200132, No. 22 Warandoo Street, Hornsby
Applicant:	Mr A F Just
Owner:	Mr A F Just
Statutory Provisions:	Hornsby Shire Local Environmental Plan 1994 Residential A (Low Density)
Estimated Value:	\$160,000
Ward:	B

RECOMMENDATION

THAT Council refuse Development Application No. 167/2007 for alterations and additions to a dwelling house, the demolition of a pool shed and the erection of a cabana at Lot 9, DP 200132, No. 22 Warandoo Street, Hornsby for the recommended reasons detailed in the report from Moody & Doyle P/L and reproduced at Schedule 1.

EXECUTIVE SUMMARY

1. The application proposes the erection of alterations and additions to a dwelling-house, the demolition of a pool shed and the erection of a cabana.
2. On 15 August 2007, Council's Planning Committee first considered the application and resolved to defer consideration to allow the applicant to address concerns regarding height and associated loss of view, privacy and setbacks.
3. The applicant has lodged an appeal with the Land and Environment Court of NSW against Council's deemed refusal of the application. The matter has been listed for hearing on 12 November, 2008.
4. Given that the matter is the subject of a Court appeal, the application was referred to independent planning consultants, Moody and Doyle P/L for advice on Council's

prospects in the appeal and the preparation of a report that supports Council's deemed refusal of the application. The consultants have concluded that the proposal does not comply with the objectives of the Height, Design and Setbacks elements of the Dwelling House DCP.

5. Four submissions have been received in respect of the application.
6. It is recommended that Council consider the attached report prepared by Moody and Doyle P/L and determine the application by refusal.

HISTORY OF THE APPLICATION

On 16 February 2007, the subject application was lodged, proposing alterations and additions to a dwelling-house, the demolition of a pool shed and the erection of a cabana.

Adopting the recommendations of the Executive Manager, Planning Division at its Meeting on 15 August 2007, Council resolved:

"That Development Application No. 167/2007 for alterations to a dwelling-house demolition of pool shed and erection of a cabana at Lot 9, DP200132 (No. 22) Warandoo Street, Hornsby, be deferred and the applicant be requested to submit amended plans to:-

1. *Lower the additions by approximately one (1) metre to reduce the extent of overshadowing of No. 24 Warandoo Street and to maintain the views currently enjoyed by the owners of No. 20 Warandoo Street.*
2. *Remove the proposed master bedroom deck to minimise the privacy impacts upon the existing deck of No. 20 Warandoo Street.*
3. *Allow the applicant the opportunity to provide justification as to why the cabana in the north eastern corner of the allotment should be approved."*

The resolution was based on concerns that the development would have significant detrimental impacts on the amenity of all surrounding properties which could be satisfactorily resolved with an achievable re-design.

On 2 July 2008, in response to Council's resolution, the applicant lodged an amended plan proposing minor modifications and a detailed submission in support of the development.

On 5 August 2008, the applicant lodged an appeal in the Land and Environment Court against Council's 'deemed refusal' of the application (Proceedings No. 10760 of 2008).

On 14 October 2008, the applicant lodged further amended plans proposing minor modifications.

ASSESSMENT

A detailed assessment of the merits of the application against the matters for consideration pursuant to s79C of the Environmental Planning and Assessment Act 1979 has been undertaken by Moody & Doyle P/L. A copy of that report is held at Attachment 3 to this report.

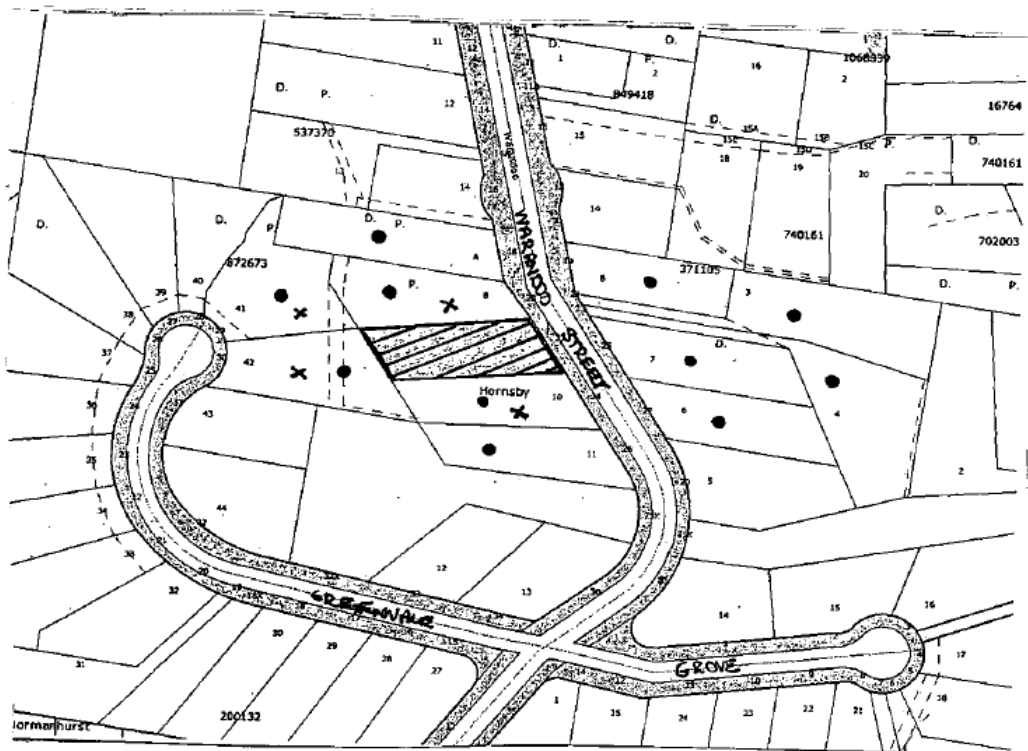
On 14 October 2008, following the completion of the planning consultant’s report, the applicant lodged amended plans in response to Council’s Statement of Issues to the Land and Environment Court. The amended plans were referred to the planning consultant with instructions that those plans form the basis of the consultant’s assessment of the application. The consultant has assessed the amended plans and has concluded that the recommended reasons for refusal of the application remain unaltered. A copy of the consultant’s assessment of the amended plans is held at Attachment 4 to this report.

PUBLIC CONSULTATION



The original proposal was placed on public exhibition and was notified to adjoining and nearby landowners between 20 February 2007 and 6 March 2007 and the amended plans which are the subject of the Land and Environment Court appeal were notified between 15 October 2008 and 29 October 2008 in accordance with Council’s Notification and Exhibition Development Control Plan.

In response to the notification process, submissions were received from the owners of the four adjoining properties objecting to the proposal with respect to setbacks, overshadowing, height, design, dividing fences, privacy, overdevelopment, character, noise, bulk and scale, traffic and pedestrian safety, social impacts, pollution of watercourse, loss of views, visual impact, glare, amenity, swimming pool safety and property values.

The plan below illustrates the location of the subject site in proximity to residents that made a submission to the application.



NOTIFICATION PLAN

<ul style="list-style-type: none"> • PROPERTIES NOTIFIED 	<ul style="list-style-type: none"> X SUBMISSIONS RECEIVED 	 PROPERTY SUBJECT OF DEVELOPMENT	
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CONCLUSION

The consultant's report identifies that the proposed alterations and additions to the dwelling-house in its current form would have a detrimental impact on the amenity of all surrounding properties, is inconsistent with the provisions of the Hornsby Shire Local Environmental Plan, 1994 and fails to meet the objectives of the Dwelling House Development Control Plan in terms of design, height, privacy and solar access.

The applicant has lodged an appeal in the Land and Environment Court against Council's deemed refusal of the application. Having regard to the detailed assessment of the application by Council's consultant town planner, it is recommended that the application be refused for the reasons detailed in Schedule 1 of this report.

SIMON EVANS
Manager - Assessment Team 1
Planning Division

SCOTT PHILLIPS
Executive Manager
Planning Division

Attachments:

1. Locality Plan
2. Amended Plans submitted on 14/10/08
3. Moody & Doyle P/L Consultant's Report
4. Moody & Doyle P/L Supplementary Report

File Reference: DA/167/2007
Document Number: D01022696

SCHEDULE 1**REASONS FOR REFUSAL**

1. Pursuant to the provisions of Section 79C(1)(a) and (b) of the Environmental Planning and Assessment Act 1979, the height of the proposed dwelling-house additions will unreasonably impact on the outlook currently enjoyed from the living rooms within the adjoining dwelling to the north at No. 20 Warandoo Street, Hornsby.
2. Pursuant to the provisions of Section 79C(1)(a) and (b) of the Environmental Planning and Assessment Act 1979, the proposed pool cabana does not comply with the setbacks element of the Dwelling House Development Control Plan and consequently, insufficient area is provided for landscape planting to screen the structure from view from surrounding properties particularly at the rear. As a consequence, the structure will adversely impact on the amenity of the properties adjoining at the rear.
3. Pursuant to the provisions of Section 79C(1)(a) and (b) of the Environmental Planning and Assessment Act 1979, the proposed rear deck and balcony to the dwelling-house additions will adversely impact on the privacy of the adjoining property to the south at No. 24 Warandoo Street, Hornsby.
4. Pursuant to the provisions of Section 79C (1) (e) of the Environmental Planning and Assessment Act 1979, the adverse impacts on the proposed development on the amenity of the adjoining properties is not in the public interest.

- END OF REASONS FOR REFUSAL -

3 DEVELOPMENT APPLICATION - ERECTION OF A DWELLING-HOUSE ON A BATTLE-AXE ALLOTMENT (PROPOSED LOT 11) 66-68 CASTLE HOWARD ROAD, BEECROFT

Development Application No:	585/2008
Description of Proposal:	Erection of a dwelling-house on a battle-axe allotment
Property Description:	Lot Z DP 385117, Lot B DP 363878, 66-68 Castle Howard Road, Beecroft
Applicant:	Mr A Morison
Owner:	Mr A and Mrs J Morison
Statutory Provisions:	Hornsby Shire Local Environmental Plan 1994 Residential AS (Low Density-Sensitive Lands)
Estimated Value:	\$398,800
Ward:	C

RECOMMENDATION

THAT Development Application No. 585/2008 at Lot Z DP 385117, Lot B DP 363878, 66-68 Castle Howard Road, Beecroft be approved, subject to the conditions of consent detailed in Schedules A and B of this report.

EXECUTIVE SUMMARY

1. The application proposes the erection of a part one and two storey dwelling-house on a battle-axe allotment yet to be registered with the NSW Department of Lands.
2. Council considered this application on 2 July and 3 September 2008 and resolved at both meetings to defer consideration to enable the applicant to submit amended plans that address concerns regarding scale, orientation, privacy, the loss of trees and bushland impacts.
3. The applicant has commenced Class 1 proceedings in the Land and Environment Court against Council's deemed refusal the application. The matter has been set down for callover on 24 October 2008.
4. The application generally complies with the requirements of the Council's Dwelling House DCP and meets the objectives of the zone.

5. Seven submissions have been received in respect of the application.
6. It is recommended that the application be approved.

HISTORY OF THE APPLICATION

On 2 July 2008, Council first considered the subject application and resolved:

“THAT Development Application No. 585/2008 for the erection of a one and two storey dwelling-house be deferred to allow the Applicant to:

- 1. Ensure the development complies with the prescriptive measures set out in the DCP by considering a reduction in the dwelling scale.*
- 2. Attempt to reorient Lot 11 to face Castle Howard Road.*
- 3. Provide a statement exploring the loss of significant trees and impact of the development on existing trees.*
- 4. Introduce further measures to protect the privacy of the neighbours.”*

In response, the applicant submitted amended plans for further assessment to address council’s concerns.

On 3 September 2008, Council again considered the proposal and resolved:

“THAT:

- A. Consideration of this matter be deferred to allow the Applicant to comply with the following Council resolution from the Planning Meeting held on 2 July, 2008:*
 - 1. Ensure the development complies with the prescriptive measures set out in the DCP by considering a reduction in the dwelling scale.*
 - 2. Attempt to reorient Lot 11 to face Castle Howard Road.*
 - 3. Provide a statement exploring the loss of significant trees and impact of the development on existing trees.*
 - 4. Introduce further measures to protect the privacy of the neighbours.*
- B. An assessment be made regarding the removal of critically endangered threatened species and the report be referred to the Bushland and Biodiversity Team.”*

In response, the applicant submitted a plan showing the relationship in elevation and set backs between the subject development and the neighbouring properties at 20b and 22 Boronia Avenue and 28 Murray Road.

On 26 September 2008, the applicant lodged an appeal in the Land & Environment Court against Council’s deemed refusal of the application. The matter has been set down for callover on 24 October 2008.

A detailed assessment of the merits of the application against the matters for consideration pursuant to S79C of the Environmental Planning and Assessment Act 1979 has been undertaken in the Executive Manager's previous reports to Council. A copy of those reports together with supporting information are held at Attachments 2 and 3 to this report.

SUPPLEMENTARY ASSESSMENT

Natural Environment

In accordance with Council's 'Resolution B' at its 3 September 2008 meeting, the proposal was further assessed in respect of the proposed removal of critically endangered threatened species on site.

The assessment reveals that the site occurs near remnant bushland mapped as Blackbutt Gully Forest (Smith and Smith 2007) within Castle Howard Reserve. The subject site for the proposed dwelling contains a significant invasion of introduced environmental weeds including Trad (Tradescantia flumiensis) and Panic Veld Grass (Ehrharta erecta) as well introduced horticultural species within the understorey strata.

Remnant indigenous canopy trees species include Smooth-barked Apple (*Angophora costata*), Blackbutt (*Eucalyptus pilularis*) and Sydney Turpentine (*Syncarpia glomulifera*). The four trees proposed for removal do not contain hollows that are likely to form significant habitat for native fauna including threatened species. The native vegetation is consistent with a highly degraded form of Blackbutt Gully Forest and is considered to contain poor resilience of native seed bank.

Four Smooth-barked Apple (*Angophora costata*) trees are proposed to be retained as part of the development. In accordance with permissible planning requirements, the site does not accommodate an alternative building envelope or design that would practically retain additional native trees for the longer term.

It is noted that a Flora and Fauna Report has not been provided with the application. However, given the poor native resilience of the site and the lack of threatened species or their habitats the provision of a Flora and Fauna Report is not considered necessary.

The assessment concludes that it is unlikely that the proposal would have a significant impact upon species, populations and endangered ecological communities listed under the Threatened Species Conservation Act, 1995.

CONCLUSION

As detailed in the previous officer's report, the proposed dwelling-house is permissible within the zone under the Hornsby Local Environmental Plan, 1994.

It is considered that the most recent concerns regarding the impact of the development on nearby bushland have been satisfactorily addressed. The proposal is in keeping with the established area with regard to its design and building setbacks, and is not inconsistent with the height of the existing dwelling-houses on the adjoining properties. The proposal would have minimal impacts on the amenity of the surrounding residential area and satisfies the relevant objectives and requirements of the Dwelling House DCP.

Having regard to the circumstances of the case, it is recommended that Council approve the application subject to the conditions of consent held at Schedule A and B.

SIMON EVANS
Manager - Assessment Team 1
Planning Division

SCOTT PHILLIPS
Executive Manager
Planning Division

Attachments:

1. Locality Plan
2. Plans
3. Executive Manager's Report No. PLN188/08 & Minutes (including plans)
4. Executive Manager's Report No. PLN138/08 & Minutes (including plans)

File Reference: DA/585/2008
Document Number: D01019292

SCHEDULE A**DEFERRED COMMENCEMENT**

- i. This consent does not operate until the following information is submitted to Council:
- a) Evidence that the plan of subdivision has been lodged with the *NSW Department of Lands* creating the proposed lot, is submitted to Hornsby Shire Council.

Upon Council's written satisfaction of the above information, the Conditions listed in Schedule B of development consent will apply:

SCHEDULE B**GENERAL CONDITIONS**

The conditions of consent within this notice of determination have been applied to ensure that the use of the land and/or building is carried out in such a manner that is consistent with the aims and objectives of the planning instrument affecting the land.

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

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

Approved Plans and Supporting Documentation

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

<i>Plan No.s</i>	<i>Drawn by</i>	<i>Dated</i>
A-01/B to A-05/B, A-06/A (Lot 11)	Stephen Wu Architects P/L	28/07/08
S.14382 -Trees on plan of subdivision (Lot 11)	P. S Graham	12/09/06

Important Note: *This development consent only permits the removal of tree(s) 17, 30, 33 and 35 as identified on Plan No. S14382 prepared by P.S. Graham and Associates dated 12/9/2006. The removal of any other trees requires separate approval under Council's Tree Preservation Order.*

REQUIREMENTS PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

The following conditions of consent must be complied with prior to the issue of a 'Construction Certificate' by either Hornsby Shire Council or an accredited certifier. All necessary information to demonstrate compliance with the following conditions of consent must be submitted with the application for a construction certificate.

Bush Fire Protection

2. The development must be designed and constructed in accordance with *Australian Standard 3959 – Building in Bushfire Prone Areas*, ‘Level 1 Construction’.

Note: Timbers treated with an applied intumescent paint are no longer recognised by the Rural Fire Service as a fire retardant treated timber or a performance option to increase fire resistance.

3. Roofing must have leafless guttering and valleys must be screened with non corrosive mesh to prevent the build up of flammable material. Any material used should have a Flammability Index no greater than 5.

Building Code of Australia

4. All building work must be carried out in accordance with the requirements of the Building Code of Australia.

Contract of Insurance (Residential Building Work)

5. In the case of residential building work for which the *Home Building Act 1989* requires there to be a contract of insurance in force in accordance with Part 6 of that Act, that such a contract of insurance is in force before any building work authorised to be carried out by the consent commences.

Note: This condition does not apply to the extent to which an exemption is in force under Clause 187 or 188 of the Act, subject to the terms of any condition or requirement referred to in Clause 187(6) or 188(4) of the Act, or to the erection of a temporary building.

Notification of Home Building Act 1989 Requirements

6. Residential building work within the meaning of the *Home Building Act 1989* must not be carried out unless the principal certifying authority for the development to which the work relates (not being Council) has given Council written notice of the following information:
 - a) In the case of work for which a principal contractor is required to be appointed:
 - i) The name and licence number of the principal contractor, and
 - ii) The name of the insurer by which the work is insured under Part 6 of that Act.
 - b) In the case of work to be done by an owner-builder:
 - i) The name of the owner-builder, and
 - ii) If the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit

Note: If arrangements for doing the residential building work are changed while the work is in progress so that the information notified becomes out of date, further work must not be carried out unless the principal certifying authority for the development

to which the work relates (not being Council) has given Council written notification of the updated information.

Sydney Water – Quick Check

7. The application must be submitted to a *Sydney Water* ‘Quick Check Agent’ or ‘Customer Centre’ for approval to determine whether the development will affect any *Sydney Water* infrastructure, and whether further requirements are required to be met.

Note: Refer to www.sydneywater.com.au or telephone 13 20 92 for assistance.

Internal Driveways/Accessway

8. The internal driveway and parking areas must be designed in accordance with *Australian Standards 2890.1, 2890.2 and 3727* and the following requirements:-
 - a) The driveway must be a rigid pavement.
 - b) Grades in excess of 25% are not permitted and changes in grades must not exceed 8%.

Stormwater Drainage

9. The stormwater drainage system must be designed and constructed to the following requirements:
 - a) Satisfactorily drain rainfall intensities for an average recurrence interval of 20 years.
 - b) Be gravity drained into Council's street drainage system, piped drainage system or existing interallotment drainage system.

Drainage - On Site Detention

10. An on-site-detention system must be designed and constructed with a capacity of not less than 5 cubic metres and a maximum discharge, when full, of 8 litres/second. The system must be designed by a chartered civil engineer to the following requirements:
 - a) A surcharge/inspection grate is to be located directly above the outlet;
 - b) Stormwater discharge from the detention system is to be controlled via a 1 metre length of pipe not less than 50mm in diameter alternatively a stainless plate with sharply drilled orifice to correct diameter bolted securely over the face of the outlet discharging into a larger diameter pipe capable of carrying the design flow to Council's gutter/stormwater pit;
 - c) Where the on-site detention system is proposed under the vehicular driveway, the engineer is to certify that the detention tank is structurally capable of withstanding the maximum anticipated traffic loads;
 - d) An on-site detention system located within private or common courtyard areas must be designed so that it does not impact on the amenity of the development or the use of such areas.

REQUIREMENTS PRIOR TO THE COMMENCEMENT OF ANY WORKS

The following conditions of consent must be complied with prior to the commencement of any works on the site. The conditions have been imposed to ensure that the works are carried

out in such a manner that complies with relevant legislation and Council's policies and does not disrupt the amenity of the neighbourhood or impact upon the environment.

Sediment and Erosion Control

11. Sedimentation and erosion barriers are to be constructed to control the discharge of sediment from the site. The barriers are to be designed and installed in accordance with the requirements of Landcom's "Managing Urban Stormwater: Soils and Construction", Volume 1, 4th Edition, March 2004, (the Blue Book), and Hornsby Shire Council's "Sustainable Water Best Practices" manual and must be effectively maintained at all times during the course of construction and must not be removed until the site has been stabilised or landscaped to the Principal Certifying Authority's satisfaction.

Erection of Construction Sign

12. A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - a) showing the name, address and telephone number of the principal certifying authority for the work;
 - b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours; and
 - c) stating that unauthorised entry to the work site is prohibited.

Note: Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

Trees Protection Barriers

13. Trees numbered 11 and 12 must be protected by the construction of 1.8m cyclone chainmesh fencing erected around the trees at a distance of 3m from the trunk of the tree.
14. Trees numbered 19 and 20 must have their trunks protected by 2 metre lengths of 75 millimetres x 25 millimetres hardwood timbers spaced at 80 millimetres secured with galvanised wire (not fixed or nailed to the tree in any way).

DEVELOPMENT REQUIREMENTS DURING CONSTRUCTION

The following conditions of consent have been imposed to ensure that the administration and amenities relating to the proposed development comply with all relevant requirements. These conditions are to be complied with during the construction of the development on site.

Survey Reports

15. To ensure that the building is being erected in accordance with the approval, a registered surveyors report must to be submitted to the principal certifying authority at each level of the building (prior to the pouring of concrete) certifying that:

- a) the building, retaining walls and the like have been correctly positioned on the site;
- b) the finished floor level(s) are in accordance with the approved plans;

Tree Protection

16. Trees protection barriers, installed around trees numbered 11, 12 19 and 20 must be maintained throughout the course of construction.
17. Works within 3 metres from any trees required to be retained must be carried out under the supervision of qualified level 5 arborist and a certificate submitted to the Principal Certifying Authority certifying that the works would not impact on the health of the tree(s).

Hours of Construction

18. In order to maintain the amenity of adjoining properties, site works must be restricted to between 7.00 am and 6.00 pm, Monday to Friday and 8.00 am to 1.00 pm Saturday. Site works may extend to 4.00 pm on Saturdays if inaudible on residential properties. No work must be undertaken on Sundays or public holidays. Plant, goods or materials must not be delivered to the site outside the approved hours of site works unless otherwise approved by Council.

REQUIREMENTS PRIOR TO THE ISSUE OF AN OCCUPATION

The following conditions of consent must be complied with prior to the 'Principal Certifying Authority' issuing an 'Occupation Certificate'.

Note: For the purpose of this consent, any reference to 'occupation certificate' must also be taken to mean 'interim occupation certificate'.

Fulfilment of BASIX Commitments

19. The applicant must demonstrate the fulfilment of BASIX commitments pertaining to the development. (*Clause 97A(3) of the Environmental Planning and Assessment Regulation 2000.*)

Creation of Easements, Restrictions or Covenants

20. A "Positive Covenant" and "Restriction as to User" must be created in favour of Council over the completed on-site detention system(s) in accordance with Council's standard wording to ensure the continued maintenance and performance of the stormwater management system. The lodgement of the "Positive Covenant" and "Restriction as to User" to Council must be accompanied by a "Works-as-executed Plan" prepared by a registered surveyor and certified by a design engineer.

Damage to Council Assets

21. Prior an Interim/Final Occupation Certificate being issued, a letter from Hornsby Shire Council must be obtained confirming that no damage has been caused to Council's assets.

22. The cost of repairing any damage caused to Council's assets in the vicinity of the subject site as a result of construction works associated with the approved development is to be repaired to Hornsby Shire Council requirements at no cost to Council.

Landscaping

23. To maintain local tree canopy cover, three medium to large locally native trees are to be planted on the subject site. The planting location must not be within 3 metres of the foundation walls of the dwelling-house. The pot size is to be a minimum 25 litres and the trees must be maintained and protected until they reach the height of 3 metres. Trees must be locally indigenous, from local plant stock (preferably), reach a mature height greater than 12 metres and have a life span greater than 20 years.
24. To ensure that species indigenous to the Hornsby Shire are planted to reflect the bushland character of the area and enhance the local biodiversity, landscaping is to be primarily composed of locally occurring native species, as listed in the Hornsby Council planting guide, "Indigenous Plants for the Bushland Shire", available at Council or on Council's web site: www.hornsby.nsw.gov.au. Landscape plants must be non-invasive and not have the potential to spread into the surrounding bushland. Indigenous native trees proposed for replanting must be located more than 4 metres from any building structure.

OPERATIONAL CONDITIONS

The following conditions have been applied to ensure that the ongoing use of the land is carried out in such a manner that complies with relevant legislation and Council's policies and does not disrupt the amenity of the neighbourhood or impact upon the environment.

Bushfire Management

The following conditions have been applied to ensure that the building(s) is constructed and the land is managed in such a manner that is consistent with the aim and objectives of the *NSW Rural Fire Service* publication 'Planning For Bush Fire Protection 2006'.

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

Inner Asset Protection Zone

25. The entire property must be maintained as an 'Inner Protection Area' in accordance with the following:
- a) minimise fine fuel at ground level;
 - b) only retain vegetation that does not provide a continuous path to building(s) for the transfer of fire;
 - c) only retain shrubs and trees that do not form a continuous canopy and vegetation planted/cleared into clumps rather than continuous rows;

- d) do not plant vegetation that retains dead material or deposits excessive quantities of ground fuel;
- e) shrubs and trees are pruned or removed so they do not touch or overhang the building/s; and
- f) vegetation be maintained at a sufficient setback from the building/s so plants will not ignite the building/s by direct flame contact or radiant heat emission.

Bush Fire Access

26. Unrestricted access must be available around the property for fire fighting personnel at all times.

Bush Fire Landscaping Requirements

- 27 Landscaping must comply with the principles within Appendix 5 of *Planning for Bush Fire Protection 2006* and the following requirements:
- a) use of low flammability vegetation species comprising maximum tree cover of less than 30%, and maximum shrub cover less than 20%;
 - b) courtyards/pathways/lawns/ and/or ground cover plantings without flammable woodchips/mulch only to be provided in close proximity to the building;
 - c) restrict planting in the immediate vicinity of the building which may, over time, and if not properly maintained, come in contact with the building;
 - d) planting not to provide a continuous canopy to the building (i.e. trees or shrubs be isolated or located in small clusters);
 - e) use smooth bark species of trees species which generally do not carry a fire up the bark into the crown and avoid deciduous species, climbing species or species with rough fibrous bark, or which retain/shed bark in long strips or retain dead material in their canopies;
 - f) locate combustible materials such as woodchips/mulch, flammable fuel stores away from the building.

ADVISORY NOTES

The following information is provided for your assistance to ensure compliance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, other relevant Council Policy/s and other relevant requirements. This information does not form part of the conditions of development consent pursuant to Section 80A of the Act.

Environmental Planning and Assessment Act 1979 Requirements

- 1 The Environmental Planning and Assessment Act 1979 requires you to:

- a) Obtain a construction certificate prior to the commencement of any works. Enquiries regarding the issue of a construction certificate can be made to Council's Customer Service Centre on 4645 4608.
- b) Nominate a principal certifying authority and notify Council of that appointment prior to the commencement of any works.
- c) Give Council at least two days notice prior to the commencement of any works.
- d) Have mandatory inspections of nominated stages of the construction inspected.
- e) Obtain an occupation certificate before occupying any building or commencing the use of the land.

Long Service Levy

- 2 Under Section 34 of the Building and Construction Industry Long Service Payments Act 1986, any work costing \$25,000 or more is subject to a Long Service Levy. The levy rate is 0.35% of the total cost of the work and must be paid to either the Long Service Payments Corporation or Hornsby Shire Council. Under Section 109F (1) of the Environmental Planning & Assessment Act, 1979 this payment must be made prior to a construction certificate being issued. (*clause 98(1)(b) of the Environmental Planning and Assessment Regulation 2000.*)

- END OF CONDITIONS -

4 DEVELOPMENT APPLICATION - ERECTION OF A DWELLING-HOUSE ON A BATTLE-AXE ALLOTMENT (PROPOSED LOT 12) 66-68 CASTLE HOWARD ROAD, BEECROFT

Development Application No:	586/2008
Description of Proposal:	Erection of a dwelling-house on a battle-axe allotment
Property Description:	Lot Z DP 385117, Lot B DP 363878, 66-68 Castle Howard Road, Beecroft
Applicant:	Mr A Morison
Owner:	Mr A and Mrs J Morison
Statutory Provisions:	Hornsby Shire Local Environmental Plan 1994 Residential AS (Low Density-Sensitive Lands)
Estimated Value:	\$394,680
Ward:	C

RECOMMENDATION

THAT Development Application No. 586/2008 at Lot Z DP 385117, Lot B DP 363878, 66-68 Castle Howard Road, Beecroft be approved, subject to the conditions of consent detailed in Schedules A and B of this report.

EXECUTIVE SUMMARY

1. The application proposes the erection of a part one and two storey dwelling-house on a battle-axe allotment yet to be registered with the NSW Department of Lands.
2. Council considered this application on 2 July 2008 and resolved to defer consideration to enable the applicant to submit amended plans that address concerns regarding scale, privacy and the loss of trees.
3. The applicant has commenced Class 1 proceedings in the Land and Environment Court against Council's deemed refusal the application. The matter has been set down for callover on 24 October 2008.
4. The application generally complies with the requirements of Council's Dwelling House DCP and meet the objectives of the zone.
5. Six submissions have been received in respect of the amended application.

6. It is recommended that the application be approved.

HISTORY OF THE APPLICATION

On 2 July 2008, Council considered the subject application and resolved:

“THAT Development Application No. 586/2008 for the erection of a one and two storey dwelling-house be deferred to allow the applicant to:

- 1. Ensure the development complies with the prescriptive measures set out in the DCP by considering reduction in the dwelling scale.*
- 2. Provide a statement exploring the loss of significant trees and impact of the development on existing trees.*
- 3. Introduce further measures to protect the privacy of the neighbours.”*

In response, the applicant has submitted an amended Statement of Environmental Effects and plans showing the relationship in elevation and set backs between the subject development and the neighbouring properties at 20b and 22 Boronia Avenue and 28 Murray Road.

On 26 September 2008, the applicant lodged an appeal in the Land & Environment Court against Council’s deemed refusal of the application. The matter has been set down for callover on 24 October 2008.

A detailed assessment of the merits of the application against the matters for consideration pursuant to S79C of the Environmental Planning and Assessment Act 1979 has been undertaken in the Executive Manager’s previous report to Council. A copy of that report together with supporting information is held at Attachment 2 to this report.

SUPPLEMENTARY ASSESSMENT

Natural Environment

In accordance with Council’s ‘Resolution 2’ at its 2 July, 2008 meeting, the proposal was further assessed in respect of the proposed removal of critically endangered threatened species on site.

The assessment reveals that the site occurs near remnant bushland mapped as Blackbutt Gully Forest (Smith and Smith 2007) within Castle Howard Reserve. The subject site for the proposed dwelling is highly modified and contains a significant invasion of introduced environmental weeds including Trad (Tradescantia flumiensis) and Panic Veld Grass (Ehrharta erecta).

A group of remnant indigenous canopy trees species include Smooth-barked Apple (Angophora costata), Red Stringybark (Eucalyptus resinifera) and Sydney Turpentine (Syncarpia glomulifera) occurring in the middle of the proposed building envelope. The native vegetation is consistent with a highly degraded form of Blackbutt Gully Forest (Smith and Smith 2008) and is considered to contain poor resilience of native seed bank.

In accordance with permissible planning requirements, the site does not accommodate an alternative building envelope or design that would practically retain additional native trees for the longer term.

It is noted that a Flora and Fauna Report has not been provided with the application. However, given the poor native resilience of the site and the lack of threatened species or their habitats, the provision of a Flora and Fauna Report is not considered necessary.

The assessment concludes that it is unlikely that the proposal would have a significant impact upon species, populations and endangered ecological communities listed under the Threatened Species Conservation Act, 1995.

CONCLUSION

As detailed in the previous officer's report, the proposed dwelling-house is permissible within the zone under the Hornsby Local Environmental Plan, 1994.

It is considered that the most recent concerns regarding the impact of the development on nearby bushland have been satisfactorily addressed. The proposal is in keeping with the established area with regard to its design and building setbacks and is not inconsistent with the height of the existing dwelling-houses on the adjoining properties. The proposal would have minimal impacts on the amenity of the surrounding residential area and satisfies the relevant objectives and requirements of the Dwelling House DCP.

Having regard to the circumstances of the case, it is recommended that Council approve the application subject to the conditions of consent held at Schedule A and B

SIMON EVANS
Manager - Assessment Team 1
Planning Division

SCOTT PHILLIPS
Executive Manager
Planning Division

Attachments:

1. Locality Plan
2. Plans
3. Executive Manager's Report & Minutes PLN139/08 (including plans)

File Reference: DA/586/2008
Document Number: D01020565

SCHEDULE A**DEFERRED COMMENCEMENT**

- i. This consent does not operate until the following information is submitted to Council:
- a) Evidence that the plan of subdivision has been lodged with the *NSW Department of Lands* creating the proposed lot is submitted to Hornsby Shire Council.

Upon Council's written acceptance of the above information, the Conditions listed in Schedule B of development consent will apply:

SCHEDULE B**GENERAL CONDITIONS**

The conditions of consent within this notice of determination have been applied to ensure that the use of the land and/or building is carried out in such a manner that is consistent with the aims and objectives of the planning instrument affecting the land.

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

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

Approved Plans and Supporting Documentation

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

<i>Plan No.s</i>	<i>Drawn by</i>	<i>Dated</i>
A-01/B to A-04/B, A-05/A and A-06/A (lot 12)	Stephen Wu Architects P/L	05/08/08
S.14382 -Trees on plan of subdivision (lot 12)	P. S Graham	12/09/06

Important Note: *This development consent only permits the removal of tree(s) 47, 48, 49, 50 and 51 as identified on Plan No. S.14382 prepared by P.S. Graham and Associates dated 12/9/06. The removal of any other trees requires separate approval under Council's Tree Preservation Order.*

REQUIREMENTS PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

The following conditions of consent must be complied with prior to the issue of a 'Construction Certificate' by either Hornsby Shire Council or an accredited certifier. All necessary information to demonstrate compliance with the following conditions of consent must be submitted with the application for a construction certificate.

Bush Fire Protection

2. The development must be designed and constructed in accordance with *Australian Standard 3959 – Building in Bushfire Prone Areas*, ‘Level 1 Construction’.

Note: Timbers treated with an applied intumescent paint are no longer recognised by the Rural Fire Service as a fire retardant treated timber or a performance option to increase fire resistance.

3. Roofing must have leafless guttering and valleys must be screened with non corrosive mesh to prevent the build up of flammable material. Any material used should have a Flammability Index no greater than 5.

Building Code of Australia

4. All building work must be carried out in accordance with the requirements of the Building Code of Australia.

Contract of Insurance (Residential Building Work)

5. In the case of residential building work for which the *Home Building Act 1989* requires there to be a contract of insurance in force in accordance with Part 6 of that Act, that such a contract of insurance is in force before any building work authorised to be carried out by the consent commences.

Note: This condition does not apply to the extent to which an exemption is in force under Clause 187 or 188 of the Act, subject to the terms of any condition or requirement referred to in Clause 187(6) or 188(4) of the Act, or to the erection of a temporary building.

Notification of Home Building Act, 1989 Requirements

6. Residential building work within the meaning of the *Home Building Act, 1989* must not be carried out unless the principal certifying authority for the development to which the work relates (not being Council) has given Council written notice of the following information:
 - a) In the case of work for which a principal contractor is required to be appointed:
 - i) The name and licence number of the principal contractor; and
 - ii) The name of the insurer by which the work is insured under Part 6 of that Act.
 - b) In the case of work to be done by an owner-builder:
 - i) The name of the owner-builder, and
 - ii) If the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

Note: If arrangements for doing the residential building work are changed while the work is in progress so that the information notified becomes out of date, further work must not be carried out unless the principal certifying authority for the development

to which the work relates (not being Council) has given Council written notification of the updated information.

Sydney Water – Quick Check

7. The application must be submitted to a *Sydney Water* ‘Quick Check Agent’ or ‘Customer Centre’ for approval to determine whether the development will affect any *Sydney Water* infrastructure and whether further requirements are required to be met.

Note: Refer to www.sydneywater.com.au or telephone 13 20 92 for assistance.

Internal Driveways/Accessway

8. The internal driveway and parking areas must be designed in accordance with *Australian Standards 2890.1, 2890.2 and 3727* and the following requirements:-
 - (i) The driveway must be a rigid pavement; and
 - (ii) Grades in excess of 25% are not permitted and changes in grades must not exceed 8%.

Stormwater Drainage

9. The stormwater drainage system must be designed and constructed to the following requirements:
 - a) Satisfactorily drain rainfall intensities for an average recurrence interval of 20 years; and
 - b) Be gravity drained into Council's street drainage system, piped drainage system or existing interallotment drainage system.

Drainage - On Site Detention

10. An on-site-detention system must be designed and constructed with a capacity of not less than 5 cubic metres and a maximum discharge, when full, of 8 litres/second. The system must be designed by a chartered professional civil engineer to the following requirements:
 - a) A surcharge/inspection grate is to be located directly above the outlet;
 - b) Stormwater discharge from the detention system is to be controlled via a 1 metre length of pipe not less than 50 millimetres in diameter alternatively a stainless plate with sharply drilled orifice to correct diameter bolted securely over the face of the outlet discharging into a larger diameter pipe capable of carrying the design flow to Council's gutter/stormwater pit;
 - c) Where the on-site detention system is proposed under the vehicular driveway, the engineer is to certify that the detention tank is structurally capable of withstanding the maximum anticipated traffic loads; and
 - d) An on-site detention system located within private or common courtyard areas must be designed so that it does not impact on the amenity of the development or the use of such areas.

REQUIREMENTS PRIOR TO THE COMMENCEMENT OF ANY WORKS

The following conditions of consent must be complied with prior to the commencement of any works on the site. The conditions have been imposed to ensure that the works are carried out in such a manner that complies with relevant legislation and Council's policies and does not disrupt the amenity of the neighbourhood or impact upon the environment.

Sediment and Erosion Control

11. Sedimentation and erosion barriers are to be constructed to control the discharge of sediment from the site. The barriers are to be designed and installed in accordance with the requirements of Landcom's "Managing Urban Stormwater: Soils and Construction", Volume 1, 4th Edition, March 2004, (the Blue Book), and Hornsby Shire Council's "Sustainable Water Best Practices" manual and must be effectively maintained at all times during the course of construction and must not be removed until the site has been stabilised or landscaped to the Principal Certifying Authority's satisfaction.

Erection of Construction Sign

12. A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - a) showing the name, address and telephone number of the principal certifying authority for the work;
 - b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours; and
 - c) stating that unauthorised entry to the work site is prohibited.

Note: Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

Trees Protection Barriers

13. Trees numbered 40 must be protected by the construction of 1.8m cyclone chainmesh fencing erected around the tree at a distance of 4 metres from the trunk of the tree.
14. Trees numbered 8, 10, 19, 20, 38 and 39 must have their trunks protected by 2m lengths of 75 millimetres x 25 millimetres hardwood timbers spaced at 80 millimetres secured with galvanised wire (not fixed or nailed to the tree in any way).

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The following conditions of consent have been imposed to ensure that the administration and amenities relating to the proposed development comply with all relevant requirements. These conditions are to be complied with during the construction of the development on site.

Survey Reports

15. To ensure that the building is being erected in accordance with the approval, a

registered surveyor's report must to be submitted to the principal certifying authority at each level of the building (prior to the pouring of concrete) certifying that:

- a) the building, retaining walls and the like, have been correctly positioned on the site; and
- b) the finished floor level(s) are in accordance with the approved plans.

Tree Protection

16. Trees protection barriers installed around trees numbered 8, 10, 19, 20, 38, 39 and 40 must be maintained throughout the course of construction.
17. Works within 3 metres from any trees required to be retained must be carried out under the supervision of qualified level 5 arborist and a certificate submitted to the Principal Certifying Authority certifying that the works would not impact on the health of the tree(s).

Hours of Construction

18. In order to maintain the amenity of adjoining properties, site works must be restricted to between 7.00 am and 6.00 pm, Monday to Friday and 8.00 am to 1.00 pm Saturday. Site works may extend to 4.00 pm on Saturdays if inaudible on residential properties. No work must be undertaken on Sundays or public holidays. Plant, goods or materials must not be delivered to the site outside the approved hours of site works unless otherwise approved by Council.

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19. The applicant must demonstrate the fulfilment of BASIX commitments pertaining to the development. (*Clause 97A(3) of the Environmental Planning and Assessment Regulation, 2000.*)

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20. A "Positive Covenant" and "Restriction as to User" must be created in favour of Council over the completed on-site detention system(s) in accordance with Council's standard wording to ensure the continued maintenance and performance of the stormwater management system. The lodgement of the "Positive Covenant" and "Restriction as to User" to Council must be accompanied by a "Works-as-executed Plan" prepared by a registered surveyor and certified by a design engineer.

Damage to Council Assets

21. Prior to an Interim/Final Occupation Certificate being issued, a letter from Council must be obtained confirming that no damage has been caused to Council's assets.

22. The repair of any damage caused to Council's assets in the vicinity of the subject site as a result of construction works associated with the approved development is to be completed to Council's requirements at no cost to Council.

Landscaping

23. To maintain local tree canopy cover, 3 medium to large locally native trees are to be planted on the subject site. The planting location must not be within 3 metres of the foundation walls of the dwelling-house. The pot size is to be a minimum 25 litres and the trees must be maintained and protected until they reach the height of 3 metres. Trees must be locally indigenous, from local plant stock (preferably), reach a mature height greater than 12 metres and have a life span greater than 20 years.
24. To ensure that species indigenous to the Hornsby Shire are planted to reflect the bushland character of the area and enhance the local biodiversity, landscaping is to be primarily composed of locally occurring native species, as listed in the Hornsby Council planting guide, "Indigenous Plants for the Bushland Shire", available at Council or on Council's web site: www.hornsby.nsw.gov.au. Landscape plants must be non-invasive and not have the potential to spread into the surrounding bushland. Indigenous native trees proposed for replanting must be located more than 4 metres from any building structure.

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25. The entire property must be maintained as an 'Inner Protection Area' in accordance with the following:
- a) minimise fine fuel at ground level;
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 - c) only retain shrubs and trees that do not form a continuous canopy and vegetation planted/cleared into clumps rather than continuous rows;
 - d) do not plant vegetation that retains dead material or deposits excessive quantities of ground fuel;

- e) shrubs and trees are pruned or removed so they do not touch or overhang the building/s; and
- f) vegetation be maintained at a sufficient setback from the building/s so plants will not ignite the building/s by direct flame contact or radiant heat emission.

Bush Fire - Access

26. Unrestricted access must be available around the property for fire fighting personnel at all times.

Bush Fire - Landscaping Requirements

27. Landscaping must comply with the principles within Appendix 5 of *Planning for Bush Fire Protection, 2006* and the following requirements:
- a) use of low flammability vegetation species comprising maximum tree cover of less than 30%, and maximum shrub cover less than 20%;
 - b) courtyards/pathways/lawns/ and/or ground cover plantings without flammable woodchips/mulch only to be provided in close proximity to the building;
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 - d) planting not to provide a continuous canopy to the building (i.e. trees or shrubs be isolated or located in small clusters);
 - e) use smooth bark species of trees species which generally do not carry a fire up the bark into the crown and avoid deciduous species, climbing species or species with rough fibrous bark, or which retain/shed bark in long strips or retain dead material in their canopies;
 - f) locate combustible materials such as woodchips/mulch, flammable fuel stores away from the building.

ADVISORY NOTES

The following information is provided for your assistance to ensure compliance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, other relevant Council Policy/s and other relevant requirements. This information does not form part of the conditions of development consent pursuant to Section 80A of the Act.

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- b) Nominate a principal certifying authority and notify Council of that appointment prior to the commencement of any works;
- c) Give Council at least two days notice prior to the commencement of any works;
- d) Have mandatory inspections of nominated stages of the construction inspected;
- e) Obtain an occupation certificate before occupying any building or commencing the use of the land.

Long Service Levy

2. Under Section 34 of the Building and Construction Industry Long Service Payments Act 1986, any work costing \$25,000 or more is subject to a Long Service Levy. The levy rate is 0.35% of the total cost of the work and must be paid to either the Long Service Payments Corporation or Hornsby Shire Council. Under Section 109F (1) of the Environmental Planning & Assessment Act, 1979 this payment must be made prior to a construction certificate being issued. (*clause 98(1) (b) of the Environmental Planning and Assessment Regulation. 2000.*)

- END OF CONDITIONS -

5 OUTCOME OF PROCEEDINGS IN THE NSW LAND AND ENVIRONMENT COURT - ABORIGINAL LAND CLAIMS

EXECUTIVE SUMMARY

The NSW Aboriginal Land Council and the Metropolitan Local Aboriginal Land Council filed appeals in the NSW Land and Environment Council against the Crown Lands Minister's refusal of Aboriginal land claims in the Berowra and Berowra Heights areas (ALCs 6323, 6324 and 6326). On 29 August 2008, the Court upheld the appeals granting the land claims.

The lands, and other residential Landcom Crown land sites in Hornsby Shire, were the subject of an Ecologically Sustainable Development Study in the late 1990's commissioned by Landcom. The Study found that much of the lands are constrained by the presence of significant vegetation, threatened species and ecological communities, potential impacts on adjoining bushland, impacts on water and visual quality.

In 2003, Council resolved to progress a draft LEP to rezone Landcom sites with environmental constraints to reflect their development potential. However, the DOP advised that it is Departmental policy not to permit draft Plans to proceed where land is subject to undetermined land claims. Accordingly, Council withdrew the draft LEP and advised the Department of its intention to prepare separate draft LEPs to rezone sites that are, and those that are not, subject to land claims.

When the Land Council has received title to the subject land claims, Council would be appropriately placed to progress the rezoning of the lands. It would be appropriate to invite the Metropolitan Aboriginal Land Council to submit a land capability assessment for the lands for Council's consideration as part of the rezoning process.

PURPOSE/OBJECTIVE

The purpose of this report is to advise Council of the outcome of proceedings in the NSW Land and Environment Court concerning Aboriginal land claims within Hornsby Shire.

BACKGROUND

The *Aboriginal Land Rights Act (ALRA) 1983*, enables Aboriginal Land Councils to lodge claims for the ownership of Crown land. Applications for land claims are determined by the Crown Lands Minister. If a claim is granted, the ownership of the land is transferred from the Crown to the Aboriginal Land Council.

Since 1986, the Department of Lands has advised Council of 43 Aboriginal land claims (ALCs) within Hornsby Shire and has sought comments on the claims, including whether Council has an interest in the lands based on a lawful use or occupation. Specifically, on 22 February 2000, the NSW Aboriginal Land Council claimed land in the Berowra area (ALCs 6323, 6324 and 6326). On 19 May 2000, the Metropolitan Local Aboriginal Land Council also made a claim for land at Berowra Heights (ALC 6465). These 4 land claims are the subject of this report.

The Crown Lands Minister refused each of the 4 subject land claims on 25 October 2005. In summary, the grounds for refusing the claims were that the land was needed, likely to be needed, used, or occupied for an essential public purpose (ie. as residential lands or for natural conservation).

On 16 December 2005, the Land Councils filed appeals in the NSW Land and Environment Council against the Minister's refusal of the ALCs. The appeals were heard by Justice Sheahan from 25 to 28 March 2008. On 29 August 2008, his Honour handed down his judgment (copy attached) that the appeals be upheld and the land claims be granted.

DISCUSSION

This report outlines the major findings of the judgment concerning the ALCs and the implications of the decision for Hornsby Shire.

Aboriginal Land Rights Act 1983 (ALRA)

The ALRA enables Aboriginal Land Councils to lodge claims for the ownership of Crown land. Under the Act, claimable Crown land includes lands that:

- a) *are able to be lawfully sold or leased, or are reserved or dedicated for any purpose, under the Crown Lands Consolidation Act 1913 or the Western Lands Act 1901;*
- b) *are not lawfully used or occupied;*
- b1) *do not comprise lands which, in the opinion of a Crown Lands Minister, are needed or are likely to be needed as residential lands;*
- c) *are not needed, nor likely to be needed, for an essential public purpose; and*
- d) *do not comprise lands that are the subject of an application for a determination of native title (other than a non-claimant application that is an unopposed application) that has been registered in accordance with the Commonwealth Native Title Act; and*
- e) *do not comprise lands that are the subject of an approved determination of native title (within the meaning of the Commonwealth Native Title Act) (other than an approved determination that no native title exists in the lands).*

Applications for land claims are determined by the Crown Lands Minister. If a claim is granted, the ownership of the land is transferred from the Crown to the Aboriginal Land Council.

The Claimed Lands

Council has been advised that of the 43 ALCs within Hornsby Shire, 12 have been granted (either in part or in their entirety), 11 have been refused and 20 remain undetermined. This report discusses 4 of the land claims refused by the Crown Lands Minister that were the subject of the recent decision in the NSW Land and Environment Court. The lands, the subject of the claims, are identified below.

Aboriginal Land Claim 6323

The land comprises property No. 6X The Gully Road, Berowra. The land is irregular in shape and is bounded to the west by The Gully Road, the south and east by Berowra shops and the north by an unmade Crown Road.

The northern part of the land is zoned Residential A (Low Density) and the southern part is zoned Open Space A (Public Recreation – Local) under the Hornsby Shire Local Environmental Plan (HSLEP) 1994. The northern part of the land is undeveloped and is covered with high quality sandstone bushland. The southern part of the land includes the parking area to the north and west of the Berowra RSL Club, Sean’s Corner Park and two access tracks between The Gully Road and the shops. As part of the appeal, the claim was amended to exclude the parking area, the two access tracks and the area known as Sean’s Corner Park.

Aboriginal Land Claim 6324

The land comprises properties Nos. 1033 – 1035 and Nos. 1037 – 1039 Pacific Highway, Berowra located north of the Berowra commercial centre. The properties are zoned Residential A under the HSLEP. The land is undeveloped and is covered with high quality sandstone bushland.

Aboriginal Land Claim 6326

The land is located at the end of Greenview Parade, Berowra. The land is bounded by the former La Mancha Caravan Park site, Berowra Valley Regional Park (BVRP) and residential properties along Greenview Parade and Bambil Road.

The land is zoned part Residential A, part Residential AS (Low Density – Sensitive Lands), part Open Space A and part Open Space B (Public Recreation – District) under the HSLEP. The land contains bushland which is contiguous with the BVRP and a high voltage electricity easement and associated access trail.

Aboriginal Land Claim 6465

The land comprises part of Berowra Reserve, known as Berowra Park, is irregular in shape and adjoins the northern boundaries of Berowra Heights. The land is located north of Cliff View Road between Turner Road to the west and residential properties to the south.

On 3 September 1954, Reserve 77011 was created for public recreation purposes. It covers the northern part of ALC 6465. On 20 October 1954, Council was appointed trustee of the reserve. The reserve was renamed on 22 August 1997 and a private trust appointed.

The land is zoned part Residential A, part Residential AS, part Environmental Protection A (Wetlands), part Environmental Protection B (River Catchment) and part Open Space A. The Muogamarra Nature Reserve is located approximately 430 metres north of the land. The land is covered with diverse bushland containing regionally significant vegetation. The land also contains a number of fire trails and walking trails.

Maps indicating the location of the ALCs are attached to this report.

Council Submissions

Council made submissions to the Minister for Lands on each of the ALCs. Council noted that the land claims relate to Landcom sites which, at the time of lodgement, were identified by the Berowra Cowan Planning Study (1994) and the HSLEP as being required for residential purposes. The need of the land for residential purposes was acknowledged by Landcom as it was originally identified that all of the Landcom sites had a potential production of 554 lots. A number of development applications proposing the subdivision of Crown land were lodged with Council between 1991 and 1996. Accordingly, Council resolved that the Mayor should write to the then Department of Land and Water Conservation objecting to the granting of all the undetermined land claims as there was an identified need for part of the claimed lands for residential purposes.

The northern portion of ALC 6465 comprises Reserve 77011. The land has been reserved for bushland conservation and Council is responsible for the care, control and management of the land and had been actively managing the land for the purposes of flora and fauna conservation. Accordingly, Council objected to the ALC over that portion of the land. Council also objected to the inclusion of Sean's Corner Park in ALC 6323 as the land is being used for an essential public purpose, namely recreation.

Land and Environment Court Judgment

In the conduct of the appeals, the onus was on the Crown Lands Minister to demonstrate that the land was not claimable under the *ALRA* at the date the claims were lodged. If the Minister failed to discharge that onus, the Court was bound to order that the land be transferred to the Aboriginal Land Council.

The judgement addresses the applicability of the Landcom Ecologically Sustainable Development Study and the reasons for refusal of the land claims. The major findings of the judgement are summarised below.

Landcom Ecologically Sustainable Development Study

His Honour notes that in the late 1990's, Landcom identified the possibility of some 500 sites to be developed in the Berowra area. The Council and a local resident group, the United Residents Action Group (URAG), expressed concern about over-development of land in the area by Landcom and potential loss of sensitive bushland. A mediation meeting was held on 14 May 1997 between representatives from Landcom, Council and the community. At the meeting, the parties agreed to appoint a consultant to undertake an ecologically sustainable development (ESD) study of all vacant, residential Landcom Crown land sites in Hornsby Shire, with the exception of Bambil and Balaclava Roads, Berowra (which had existing approvals).

His Honour notes that the Total Environment Centre (TEC) was engaged to prepare the ESD Study which took 2 years to complete. On 29 June 2000, the Deputy Premier and then Minister for Urban Affairs and Planning issued a media release concerning Landcom sites within Hornsby Shire. In the release, the then Minister, Dr Refshauge, indicated that the Government would adopt the recommendations of the ESD Study and dedicate sixty (60) hectares of land in Hornsby Shire as open space. However, his Honour notes that on 12 December 2002, Dr Refshauge advised the Crown Lands Minister that, at the time he made the public statements, he had not been advised of the existence of the ALCs. Accordingly, Dr Refshauge advised that the public statements do not have any bearing on the capacity of the Crown Lands Minister to determine the land claims and confirmed there was no decision by the Executive Government that the lands claimed were needed for nature conservation.

Need or likely need of the land for residential purposes

His Honour notes that the ESD Study indicates the “*capability and suitability*” of the lands for residential purposes. However, acceptance of the Study recommendations indicates a desire to use the lands for that particular purpose not a need. His Honour notes observations by Lloyd J in *Wanaruah* that:

“The fact that the land is zoned for residential purposes is not, however, conclusive of the questions of whether it is needed or likely to be needed as residential lands. The zoning of the land is merely evidence in favour of the respondent [Minister] that there was at the relevant date an acknowledgement in public documents of the capacity or suitability of the land for the future residential use: it does not of itself establish that the claimed land was relevantly likely to be needed as residential.”

His Honour concludes that in considering the residential use of the land, the Minister incorrectly considered “*use*” rather than “*need*” or “*likely need*”. The question of whether the claimed land was needed or likely to be needed for residential purposes is not the same issue as whether there is a decision by the Government that the land “*be used*” for such purpose. His Honour also notes that Landcom had no relevant authority to make a decision for, or on behalf of, the Government that the claimed land, or any Crown land, was needed or likely to be needed as residential lands.

Need or likely need of the land for the purposes of nature conservation

His Honour notes that the ESD Study identified various lands which should not be developed and considered various conservation options. The options included either addition to existing reserves or dedication. However, neither the Department of Lands (the department responsible for Crown land) or the National Parks and Wildlife Service (the agency responsible for much of the Government’s activity in relation to nature conservation) was involved in the Study.

His Honour comments that the Study was reported to Landcom which had no powers to deal with lands under the regimes prescribed in the *Crown Lands Act* or the *National Parks and Wildlife Act*. Furthermore, Landcom did not have any specific nature conservation functions, except concerning matters incidental to carrying out its land development work. His Honour concludes that Landcom did not have the authority to determine whether the land was needed, or likely to be needed, for nature conservation.

Lawful use or occupation of the land

Council’s Biodiversity Planning Coordinator provided evidence that the claimed lands were included in Council Plans of Management, that upgrade works on fire trails and road surfaces had been undertaken, and that parts of the lands were being restored by a local bush care group that was actively supported by Council. The work by the bush care group had been undertaken over the last 11 years. However, his Honour states that occasional entry on to, and/or the existence and maintenance of fire trails, and/or the existence of Council or community sponsored generic “plans of management” dealing with “bush care” and the like are insufficient to establish lawful use and occupation or control by Council.

In relation to R77011 within ALC 6465, his Honour notes that although Council supplied the Gooraway Place Bushcare Group with equipment, it would appear that most of the Group’s work was done outside the Reserve. The evidence relating to the public use of R77011

amounts to no more than “limited, casual, and sporadic” activity by the public, insufficient to engage the “lawful use or occupation” exception to claimability.

In summary, his Honour concludes that the relevant lands having either conservation or residential potential is not sufficient to refuse the land claims. His Honour comments that the Crown Lands Minister has not demonstrated that the lands *are needed* for an essential public purpose and therefore, the land claims should be granted.

Implications for Hornsby Shire

In considering the implications of the granting of the land claims for Hornsby Shire, it is appropriate to consider a draft LEP prepared to rezone Landcom sites and the outcomes of a complaint lodged by the MLALC about Council under the *Human Rights and Equal Opportunity Commission Act 1986*.

Landcom Sites LEP

At its meeting on 17 September 2003, Council considered Executive Manager’s Report No. PLN302/03 presenting legal advice concerning undetermined ALCs in Hornsby Shire. The advice addressed whether Council’s objections to land claims were likely to be successful. The advice stated that it would be difficult to establish that the undetermined ALCs are not “claimable Crown land” on the basis that they are required for residential purposes or are likely needed for an essential public purpose of nature conservation. In the advent of the ESD Study and recommendations of the legal advice, Council engaged a consultant to undertake a review of the zoning of the Landcom sites within the Shire.

The consultant’s report recommended that 13 of 19 Landcom sites should be rezoned. The sites are those which the ESD Study recommended “no development” or “limited development” and in the case of the latter where development consent has also been granted and acted on. The ESD Study identified development opportunities for the remainder of the sites albeit that economic considerations have meant that development of the sites is not currently being pursued. On 6 October 2004, Council resolved to progress the preparation of a draft LEP to implement the ESD Study recommendations and consult with the Metropolitan Local Aboriginal Land Council (MLALC) in the process.

Specifically, in relation to the four ALCs that are the subject of this report, the draft LEP proposed to rezone the residential zoned lands within ALCs 6326 and 6465 to Environmental Protection B under the HSLEP. The draft LEP did not apply to ALCs 6323 and 6324 as the lands were recommended for limited development by the ESD Study.

The MLALC objected to the draft LEP and its referral to the DOP for certification for public exhibition prior to further consultation on the draft Plan. Council noted that the draft LEP proposed to rezone land to reflect its current development potential as identified in the ESD Study. Furthermore, the planning merits of downzoning the land to reflect its limited development potential should be applied irrespective of the future ownership of the land. Council also noted that the preparation of the draft LEP was procedural in nature given that it aimed to implement the recommendations of the ESD Study which had been endorsed by the Minister. Accordingly, Council resolved to progress the preparation of the draft Plan and refer it to the DOP for certification for public exhibition.

On 25 February 2005, a letter was received from the DOP stating that it is Departmental policy not to permit draft Plans to proceed where land is subject to undetermined land claims. Representatives from the Planning Division met with officers from the DOP to discuss the

Department's position. The representatives from the DOP confirmed that, although no written policy exists, it is unlikely the Minister would support the progression of a draft Plan where it applies to land that is subject to undetermined ALCs. The Department representatives advised that a draft LEP could be progressed for sites that are not subject to undetermined land claims or current Land and Environment Court cases. Accordingly, it was suggested that Council withdraw the draft LEP and prepare a new draft LEP to rezone those sites that are not subject to undetermined land claims. It was also suggested that Council could then resolve whether to proceed with the rezoning of the other sites, once the relevant land claims and Court cases have been determined and when further consultation with the MLALC had been undertaken.

At its meeting on 7 September 2005, Council considered Executive Manager's Report No. PLN252/05 advising Council of the outcome of discussions with representatives from the DOP. Council resolved to withdraw the draft LEP for Landcom sites and advise the Department of its intention to prepare separate draft LEPs to rezone sites that are, and those that are not, subject to ALCs. In accordance with Council's resolution, 2 sites (Arcadia Crescent, Berowra and Cootamundra, Road, Hornsby Height) that are not subject to undetermined land claims, are proposed to be rezoned Open Space B as part of the Amendments LEP 2007 which is currently awaiting gazettal by the DOP.

When the Land Council has received title to the land claims that are the subject of this report, Council would be appropriately placed to progress the rezoning of the lands within ALCs 6326 and 6465. Should Council support the progression of the rezoning of the lands, it would be appropriate the rezonings be incorporated into Council's Comprehensive LEP. The draft Comprehensive LEP is anticipated to be presented to Council in the second half of 2009 seeking endorsement for public exhibition. The LEP is due to be completed by March 2011.

Complaint against Council under the Human Rights and Equal Opportunity Commission Act 1986

On 20 May 2005, Council received a letter from the Human Rights and Equal Opportunity Commission (HREOC) advising of a complaint lodged against Council under the *Human Rights and Equal Opportunity Commission Act 1986*. The complaint was lodged by the chairman and members of the MLALC concerning Council's conduct in dealing with the ALCs over Landcom sites and resolving to prepare a draft LEP to rezone the sites.

Council submitted to the HREOC that Council's objection to the land claims was based on advice from the Department of Lands concerning the criteria for assessing claims under Section 36(1) of the *Aboriginal Land Rights Act 1983*. Council's objection was consistent with the criteria relating to the need for the claimed land for residential purposes on the date the claims were made.

The preparation of the draft LEP for Landcom sites was the final step in a process to implement the findings and recommendations of an ESD Study which commenced prior to the lodgement of any of the land claims over Landcom sites in Hornsby Shire. The subject lands are constrained by the presence of significant vegetation, threatened species and ecological communities, potential impacts on adjoining bushland, impacts on water and visual quality. The draft LEP proposed to rezone land to reflect its current development potential. The planning merits of downzoning the land to reflect its limited development potential should be applied irrespective of the future ownership of the land.

Council and the MLALC conciliated the matter. At its meeting on 4 April 2007, Council considered a confidential report (Executive Manager's Report No. PLN81/07) concerning the

terms of the conciliation. Should Council support the progression of a draft LEP to rezone the lands within ALCs 6226 and 6465, the process should be in accordance with the terms of the conciliation.

FINANCIAL

There are no direct financial implications.

POLICY

There are no direct policy implications.

CONSULTATION

The Acting Manager, Bushland and Biodiversity and Council's Solicitor were consulted in the preparation of this report.

TRIPLE BOTTOM LINE SUMMARY

Triple Bottom Line is a framework for improving Council decisions by ensuring accountability and transparency on social, environmental and economic factors. It does this by reporting upon Council's strategic themes. As this report provides Council with information and does not propose any actions which require a sustainability assessment, no Triple Bottom Line considerations apply.

CONCLUSION

On 29 August 2008, the NSW Land and Environment upheld appeals by the Aboriginal Land Council and the Metropolitan Local Aboriginal Land Council and granted Aboriginal land claims in the Berowra and Berowra Heights areas (ALCs 6323, 6324 and 6326). The lands are zoned (in part) for residential purposes. However, part of the lands are environmentally constrained.

The Department of Planning has previously advised that it is Departmental policy not to permit draft Plans to proceed where land is subject to undetermined land claims. Accordingly, when the Land Council has received title to the subject land claims, Council would be appropriately placed to progress the rezoning of the lands identified as having no development potential by the Landcom ESD Study. It would be appropriate to invite the Metropolitan Aboriginal Land Council to submit a land capability assessment for the lands for Council's consideration as part of the rezoning process.

RECOMMENDATION

THAT:

1. The contents of Executive Manager's Report No. PLN215/08 advising that Aboriginal Land Claims 6323, 6324, 6326 and 6465 have been granted, be received and noted.
2. When the Metropolitan Local Aboriginal Land Council has received title to the Aboriginal Land Claims, Council:

- 2.1 Advise the Metropolitan Aboriginal Land Council of its intention to progress the rezoning of lands with no development potential with Aboriginal Land Claims 6326 and 6465 in the preparation of Council's Comprehensive Local Environmental Plan which is due to be completed by March 2011.
- 2.2 Invite the Metropolitan Aboriginal Land Council to submit a land capability assessment for the lands for Council's consideration as part of the rezoning process.

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Attachments:

1. Land & Environment Court Judgment
2. Aboriginal Land Claim Maps

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