

ATTACHMENTS

PLANNING MEETING

**Wednesday, 3 December, 2008
at 6:30 pm**

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SUPPLEMENTARY REPORTS

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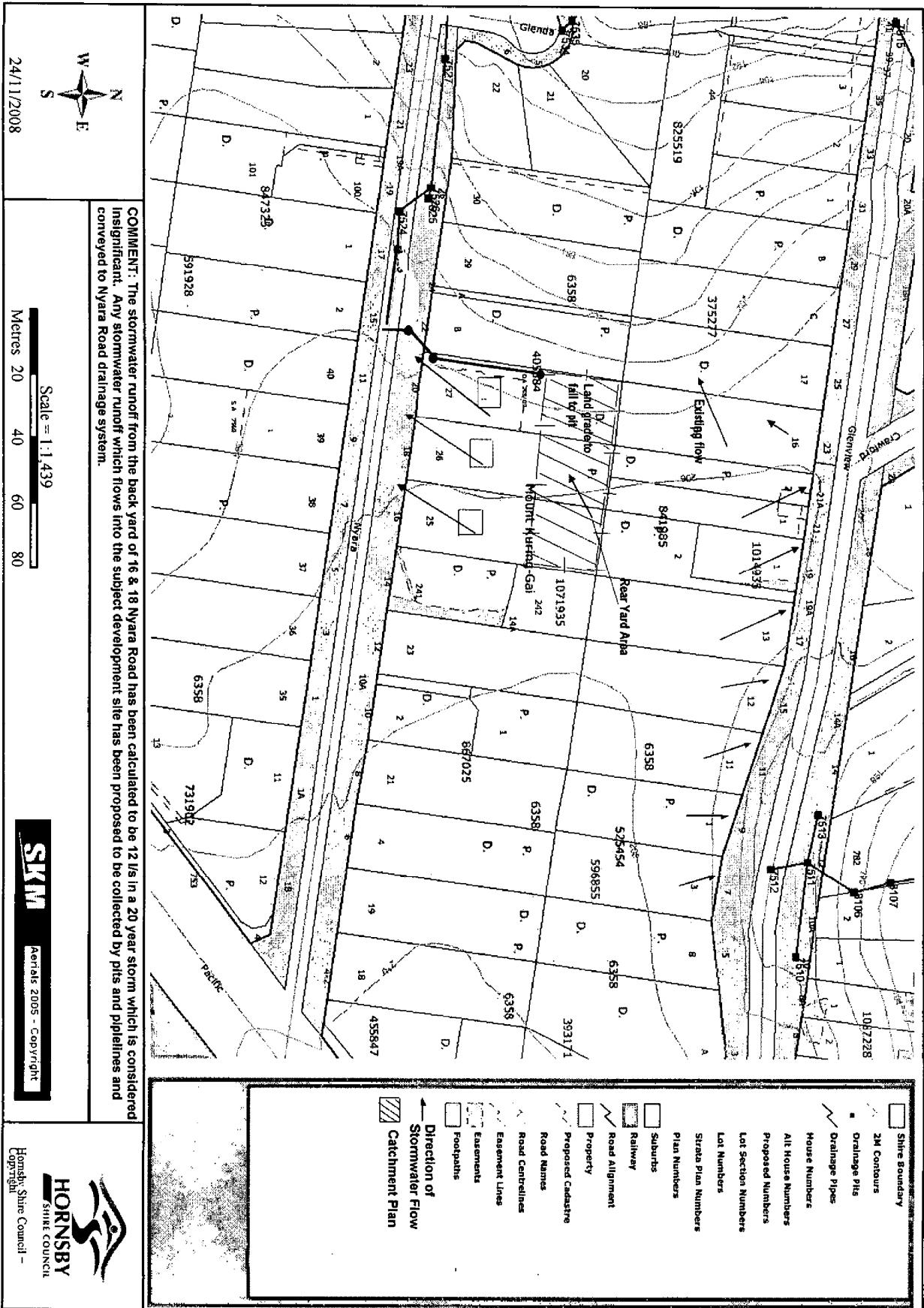
ATTACHMENT/S

REPORT NO. PLN243/08

ITEM 8



- 1. SITE PLAN INDICATING TREE PROTECTION AREA**
- 2. AERIAL PHOTOGRAPH INDICATING THE SITE AND NEARBY ALLOTMENTS WITH SIMILAR SUBDIVISION PATTERN**
- 3. PLAN SHOWING EXISTING DRAINAGE PATTERN AND THE IMPACT OF THE PROPOSED DEVELOPMENT**
- 4. MINUTES TO REPORT NO. PLN216/2008**
- 5. PLANNING REPORT NO. PLN216/2008**

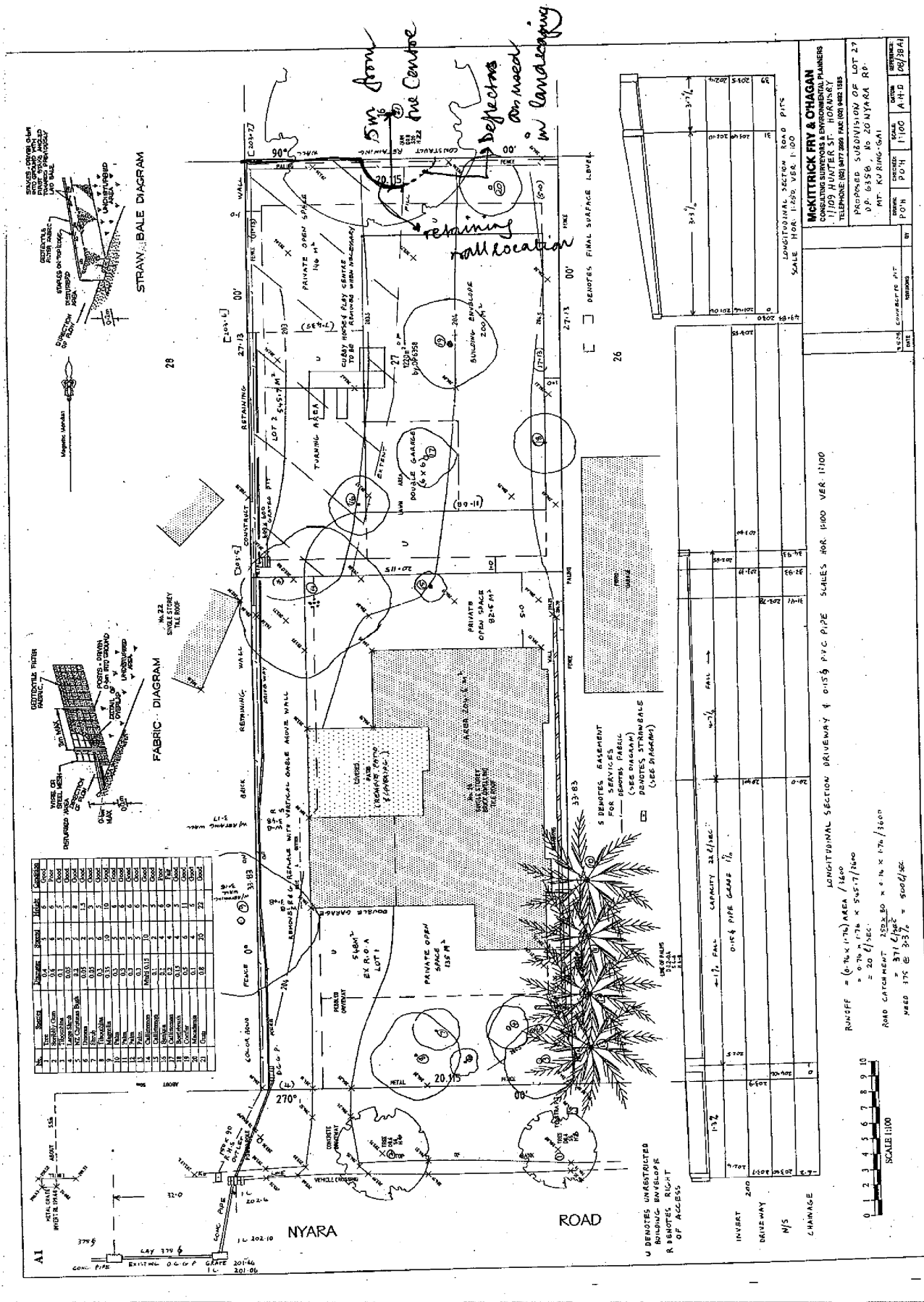
ATTACHMENT 1 - ITEM 8





AERIAL PHOTOGRAPH INDICATING THE LOCATION OF THE SITE AND PROPERTIES WITH A SIMILAR SUBDIVISION PATTERN

⊙ EXISTING PROPERTIES WITH SIMILAR SUBDIVISION PATTERN	 PROPERTY SUBJECT OF DEVELOPMENT	
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ATTACHMENT 3 - ITEM 8



FOR ACTION

Meeting: PLANNING

19/11/2008

TO: Town Planner - Northern Assessment Team, Team 2 (Aditi Coomar)

Subject: Development Application - Demolition of outbuildings, alteration to the existing dwelling and subdivision of one allotment into two allotments 20 Nyara Road Mt Kuring-gai

Target Date: 3/12/2008

Notes:

Mr Jeff Spencer, of Mt Kuring-gai, addressed Council regarding this item.
Ms Sandra Jones, of Mt Kuring-gai, addressed Council regarding this item.
Ms Melanie Angstromann, of Mt Kuring-gai, addressed Council regarding this item.
Mr Roland Briefrel, of Mt Kuring-gai, addressed Council regarding this item.
Ms Lintia Agosti, of Mt Kuring-gai, addressed Council regarding this item.

MOVED ON THE MOTION OF COUNCILLOR SMART, seconded by COUNCILLOR BROWNE,

THAT Council adhere to its previous decision to refuse Development Application No. 552/08 for the demolition of outbuildings, alteration to the existing dwelling and subdivision of one allotment into two allotments at Lot 27 DP 6358, No. 20 Nyara Road, Mt Kuring-gai due to concerns regarding the non-compliance of the driveway access, the gum tree on the neighbouring property, solar access to the neighbouring property at the rear of the block and drainage issues.

AN AMENDMENT WAS MOVED BY COUNCILLOR EVANS, seconded by COUNCILLOR RUSSELL,

THAT consideration of Development Application No. 552/08 for the demolition of outbuildings, alteration to the existing dwelling and subdivision of one allotment into two allotments at Lot 27 DP 6358, No. 20 Nyara Road, Mt Kuring-gai be deferred to enable the information provided by the applicant to be reviewed and its accuracy verified.

THE AMENDMENT MOVED BY COUNCILLOR EVANS, seconded by COUNCILLOR RUSSELL, WAS PUT AND LOST.

THE MOTION MOVED BY COUNCILLOR SMART, seconded by COUNCILLOR BROWNE, WAS PUT AND CARRIED.

FOR: COUNCILLORS BROWNE, HUTCHENCE, MARTIN, MCMURDO, MILLS AND SMART.

AGAINST: COUNCILLORS BERMAN, EVANS AND RUSSELL.

NOTE: A Rescission Motion in respect of this Item was lodged prior to finalisation of these Minutes. The Rescission Motion will be considered by Council at the 3 December 2008 Planning Meeting.

[Open Item in Minutes](#)



This action sheet has been automatically been produced by the Administration Branch using **InfoCouncil**, the agenda and minutes system.
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Officer's Notes

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ATTACHMENT 4 - ITEM 8

Planning Report No. PLN216/08

Date of Meeting: 19/11/2008

**1 DEVELOPMENT APPLICATION - DEMOLITION OF OUTBUILDINGS,
ALTERATION TO THE EXISTING DWELLING AND SUBDIVISION OF ONE
ALLOTMENT INTO TWO ALLOTMENTS
20 NYARA ROAD MT KURING-GAI**

Development Application No:	552/2008 – Section 82A Review
Description of Proposal:	Demolition of outbuildings, alteration to the existing dwelling and subdivision of one allotment into two allotments.
Property Description:	Lot 27 DP 6358, No. 20 Nyara Road, Mt Kuring-gai
Applicant:	McKittrick Fry And O’Hagan
Owner:	Quantum Extracts Pty Ltd
Statutory Provisions:	Hornsby LEP 1994 Residential A (Low Density) SREP 20 – Hawkesbury Nepean River
Estimated Value:	\$4000
Ward:	A

RECOMMENDATION

THAT Development Application No. 552/2008 for the demolition of outbuildings, alteration to the existing dwelling and subdivision of one allotment into two allotments at Lot 27 DP 6358, No. 20 Nyara Road, Mt Kuring-gai be approved subject to conditions of consent as detailed in Schedule 1 of this report.

EXECUTIVE SUMMARY

1. On 2 July 2008 Council refused DA/552/2008 for the demolition of outbuildings, alteration to the existing dwelling and the subdivision of one allotment into two allotments with the retention of the existing dwelling on proposed lot 1.
2. Pursuant to Section 82A of the Environmental Planning and Assessment Act, 1979 (the Act), a request has been made of the Council to review its determination.
3. The amended proposal complies with Hornsby Shire Local Environmental Plan 1994 (HSLEP) and Council’s Residential Subdivision Development Control Plan (RSDCP).
4. Sixteen submissions have been received in respect of the application.

5. It is recommended that the application be approved.

HISTORY OF THE APPLICATION

On 2 July 2008 Council's Planning Committee first considered the subject application and resolved:

“THAT Development Application No. 552/2008 for demolition of outbuildings, alteration to the existing dwelling, subdivision of one lot into two and to retain the existing dwelling on proposed lot 1 be refused on the following grounds:

- 1. The development does not comply with objective (c) of the Hornsby Shire Local Environmental Plan 1994 as the development is not within the environmental capacity of the site.*
- 2. The proposal does not comply with the “Drainage Control” element of the Residential Subdivision Development Control Plan as it proposes to fill a portion of the proposed rear allotment by 1.7m. This will result in landform modification and any future dwelling house on the allotment will have adverse impact on the privacy, views and solar access of the neighbouring properties.*
- 3. The proposed development fails to comply with the ‘Accessway Design’ element of the Residential Subdivision Development Control Plan with the regard to the effective width of the access handle.*
- 4. The proposal does not comply with the ‘Private Open Space’ element of the Dwelling House Development Control Plan, as it fails to demonstrate that appropriate private open space can be provided for the existing dwelling on lot 1.*
- 5. The proposed development does not comply with the “Site Coverage” element of the Dwelling House Development Control Plan.*
- 6. The proposed lot 2 does not comply with the prescriptive measure of the Residential Subdivision DCP in relation to the rear setback.*
- 7. The proposal is unsatisfactory as a landscape plan is not included for the accessway design and the proposed private open space area in the front setback of lot 1.*
- 8. Insufficient information has been provided regarding the details of the covered patio and any possible obstruction to the driveway due to the location of a post/column supporting the roof of the patio.”*

In response, the applicant has supplied amended plans and further information in support of the application. This report details the assessment of an application for Council to review its determination pursuant to s.82A of the Act.

HISTORY OF THE SITE

On 15 August 2007 Council refused Development Application No. 245/07 for subdivision of one allotment into two allotments and the retention of the existing dwelling on proposed lot 1.

THE SITE

The site is rectangular in shape and has an area of 1,226 sqm. The property is located on the northern side of Nyara Road with an average slope of 10% from east to west (across the property).

A single storey brick veneer dwelling exists in the front portion of the site. The dwelling accommodates a double garage which is accessed via a driveway off Nyara Road. The front setback is landscaped and partly screened from the road due to the planting. There is an existing solid fencing along part of the western boundary. A retaining wall is constructed along this boundary behind the front building line with a wire mesh fence above it.

The site accommodates 21 trees including locally native Scribbly Gum and introduces Callistemon species.

The surrounding area is characterised by low density single and two storey dwellings. A few of the surrounding properties on Nyara Road and Alicia Road include battleaxe allotments with access via a 4 m wide driveway from the street.

THE PROPOSAL

The development application, as originally submitted to Council, involved the demolition of the outbuildings at the rear, alterations to the existing dwelling by removing a section of the eave and gutter and replacement with a gable roof, and the Torrens title subdivision of one allotment into two allotments, with an existing dwelling to be located on proposed lot 1. Lot 2 would be a battleaxe allotment, access being provided by an access handle off Nyara Road.

- Site area for lot 1: 548 sqm
(564 m² including right of way)
- Site area for lot 2: 545 sqm
(662 m² including access handle)
- FSR of existing dwelling on lot 1: 0.3:1

Proposed Lot 1 would be a rectangular allotment with a frontage to Nyara Road and would accommodate the existing single storey brick dwelling retaining the access to the double garage. The allotment would have a right of way over to accommodate an access handle servicing Lot 2.

Proposed Lot 2 would comprise a battleaxe allotment with access from Nyara Road via a 4m wide access handle which reduces to 3.5m within the portion of the site adjoining the existing dwelling. The allotment is capable of accommodating a building envelope with an area of 200 m². The proposed allotment would have a right of way over a section of lot 1 (16 sqm) along the eastern boundary of the access handle to increase the width of the handle to 4m and provide landscaping.

The applicant has submitted additional information in support of the Section 82A application to address Council's previous reasons for refusal. In summary, the applicant submits that the amended plans address the reasons of refusal as follows:

- The patio attached to the existing dwelling on proposed lot 1 is proposed to be demolished. The removal of the patio would result in the reduction of the site coverage of the dwelling house and would increase the amount of useable private open space area at the rear and the side of the dwelling.

- The details of landscaping along both sides of the access handle are provided in the submitted plan.
- The proposal involves filling the north-western section of the site at the rear to a maximum height of 800 mm and construction of a retaining wall. The filled section would reduce in height and gradually be levelled at a distance of 10m from the western boundary.
- The proposed method of stormwater disposal has been amended. The proposed wall along the western boundary would intercept and direct overland flows (from rainfall) through a pit (to be constructed with the interallotment drainage system) to Council's drainage system within Nyara Road.

ASSESSMENT

The development application has been assessed having regard to the '2005 City of Cities Metropolitan Strategy', the 'North Subregion (Draft) Subregional Strategy' and the matters for consideration prescribed under Section 79C of the *Environmental Planning and Assessment Act 1979* (the Act). Subsequently, the following issues have been identified for further consideration.

1. STRATEGIC CONTEXT

1.1 Metropolitan Strategy – (Draft) North Subregional Strategy

The Metropolitan Strategy is a broad framework to secure Sydney's place in the global economy by promoting and managing growth. It outlines a vision for Sydney to 2031; the challenges faced, and the directions to follow to address these challenges and achieve the vision. The draft North Subregional Strategy acts as a framework for Council in the preparation of a new Principal LEP by 2011.

The draft Subregional Strategy sets the following targets for the Hornsby LGA by 2031:

- Employment capacity to increase by 9,000 jobs; and
- Housing stock to increase by 11,000 dwellings.

The proposed development would be consistent with the draft Strategy by providing an additional allotment and would facilitate greater housing choice in the locality.

2. STATUTORY CONTROLS

Section 79C(1)(a) requires Council to consider any relevant environmental planning instruments, draft environmental planning instruments, development control plans, planning agreements and other prescribed matters.

2.1 Hornsby Local Environmental Plan 1994

The subject land is zoned Residential A (Low Density) under the Hornsby Local Environmental Plan 1994 (HSLEP). The objectives of the zone are:

- a) to provide for the housing needs of the population of the Hornsby area.

- b) *to promote a variety of housing types and other land uses compatible with a low density residential environment.*
- c) *to provide for development that is within the environmental capacity of a low density residential environment.*

The uses are defined as ‘demolition’ and ‘subdivision’ and are permissible within the zone pursuant to Clause 7 of the HSLEP.

The development would facilitate the provision of housing for the population of the area and would be compatible with the low density residential environment. The proposal complies with objectives (a) and (b) of the zone in this regard.

The proposal, as amended, would provide a method of stormwater drainage that is considered suitable and would improve the current drainage situation in the street. The proposed width of the new access handle servicing the rear allotment is considered adequate, given the landscaping opportunities. The proposed land fill is within the prescribed measures of the RSDCP. The proposal therefore would result in a development within the environmental capacity of the site and complies with objective (c) of the zone. The amended proposal addresses reason no. 1 for refusal of the original application satisfactorily.

Clause 14 of HSLEP prescribes that the minimum size of allotments within the zone is 500 sqm. The proposal complies with Clause 14 in this regard.

Clause 15 of HSLEP prescribes that the maximum floor space ratio (FSR) of development within the zone is 0.4:1. The proposed FSR for the existing dwelling on proposed allotment 1 is 0.3:1. Therefore, the proposal complies with Clause 15 with regard to proposed FSR. Having regard to the proposed size of lot 2, a dwelling of 218 sqm could be constructed within the FSR requirement.

2.2 State Regional Environmental Plan No. 20 – Hawkesbury Nepean River

The application has been assessed against the requirements of Sydney Regional Environmental Plan No. 20. This Policy provides controls to protect the environment of the Hawkesbury-Nepean system, including its water quality. The plan addresses matters related to water quality, significant vegetation habitats, extraction, environmental heritage and scenic quality, recreation and tourism, and agriculture.

It is considered that the proposed development is not inconsistent with the objectives of the Plan. The matters in relation to “water quantity” are discussed in Section 2.3.7 of this report.

2.3 Residential Subdivision Development Control Plan

The proposed development has been assessed having regard to the relevant performance and prescriptive design standards within Council’s Residential Subdivision Development Control Plan (RSDCP). The following table sets out the proposal’s compliance with the prescriptive measures of the Plan:

Residential Subdivision Development Control Plan			
Control	Proposal	Requirement	Compliance

Density			
Lot 1	548 m ²	500 m ²	Yes
Lot 2	545 m ²	500 m ²	Yes
FSR			
Lot 1	0.3:1	0.4:1	Yes
Site cover			
Lot 1	38%	40%	Yes
Building Envelope			
Lot 2	218 m ²	200 m ²	Yes
Building Envelope minimum dimension			
Lot 2	12m	10m	Yes
Car parking			
Lot 1	2 spaces	2 spaces	Yes
Lot 2	2 spaces	2 spaces	Yes
Private Open Space			
Lot 1	140m ²	120 m ²	Yes
Lot 2	147m ²	120 m ²	Yes
Landscaping			
Lot 1	48%	45%	Yes
Lot 2	45%	45%	Yes
Setbacks			
Lot 1			
Front (Nyara Road)	No change		
Western side	0m	1m	No
Eastern side	No change		
Rear	5 m	5m	Yes
Lot 2			
Front	4m	1m	Yes
Western side	7.5m	1m	Yes
Eastern side	1m	1m	Yes
Rear	5m	5m	Yes

Cut and Fill			
Lot 2	0.8m	1m	Yes
Width of Access Handle	3.5m – 4m	4m	No

As detailed in the above table, the proposed development does not comply with one prescriptive measure within Council's RSDCP. The matter of non-compliance is detailed below, as well as a brief discussion on compliance with relevant performance criteria.

2.3.1 Design

The allotments are designed to have a north-south orientation. The proposed allotment at the rear would be capable of accommodating a building envelope exceeding the required 200 sqm including adequate car parking and turning areas. The existing dwelling within proposed lot 1 would maintain an adequate setback from the rear boundary to retain the privacy of any future dwelling house on proposed lot 2. The design of the allotments is considered appropriate.

2.3.2 Density

The amended plans include the demolition of the covered patio. Therefore, proposed lot 1 now complies with the 'Site Coverage' control of Council's Residential Subdivision DCP. The Section 82A review application addresses reason No. 5, of refusal of the original application and is considered satisfactory.

2.3.3 Setbacks

The dwelling on proposed lot 1 currently exists on the site. The provision of the access handle along the western boundary would result in a nil setback of a section of the dwelling house from the boundary. This section of the dwelling house includes the western wall of the garage with a window opening.

The effect of the nil setback of the window from the boundary can be mitigated via a condition to protect the opening in accordance with the fire separation requirements of the Building Code of Australia. Given the above, the non-compliance with the prescriptive measure regarding the setbacks is acceptable.

The building envelope on proposed lot 2 is setback at a distance of 3m from the rear boundary and complies with Council's RSDCP. The amended application therefore addresses reason No. 6 of refusal of the original application.

2.3.4 Private Open Space

The amended proposal involves the demolition of the patio attached to the existing dwelling. The private open space area for proposed lot 1 would be wholly contained behind the front building line and is considered suitable. A condition is recommended for screen planting along the eastern boundary of the access handle to retain the privacy of the open space. A condition is also recommended that no fence be erected on the front boundary of the allotment to avoid any detrimental impact on the streetscape.

The amended application addresses reason No. 4 for refusal of the original application with regard to private open space areas and is considered satisfactory.

2.3.5 Access Handle

The RSDCP requires the minimum width of access handles to be 4m. The proposed access handle maintains an effective width of 4m for the majority of its length. However, the width would reduce to 3.5 m in the section of the site accommodating the existing dwelling. Given that the dwelling house is existing and that 0.3m -0.5m of landscaping can be provided between the driveway and the dwelling in addition to the 3m wide driveway, the non-compliance is considered acceptable. The amended application involves the removal of the post located within the driveway to comply with the driveway width and addresses reason No. 8 for refusal of the original application.

The application also provides details of the landscaping along the eastern and western boundaries to ensure that the privacy of the dwelling house at 22 Nyara Road, is retained. The application therefore adequately addresses reasons Nos. 3 and 7 of the original application by providing details of landscaping opportunities on either side of the driveway.

2.3.6 Car Parking

The proposal would not have any adverse impact on transport, traffic, access and parking within the site. The existing dwelling accommodates two car spaces and is acceptable. The proposed allotment at the rear is capable of accommodating two car spaces and a turning area.

2.3.7 Drainage Control

The proposal would result in the increase of the hard surface areas by creating an additional allotment and therefore increasing the quantity of water runoff from the site. The original application was refused due to non-compliance with the 'drainage control' element of the RSDCP.

The engineering assessment of the proposal concludes that the amended proposal is acceptable as the amount of stormwater generated currently due to rainfall, to downstream properties, would be reduced by the proposed retaining wall at the rear. In absence of this wall, the overland flows would normally enter the downstream properties. A positive covenant would be created for provision of an on -site detention system with any future dwelling within proposed lot 2 in addition to an interallotment drainage easement.

Stormwater is proposed to be drained to Council's drainage system within Nyara Road, which has adequate capacity to accommodate the flow from any on-site detention system to be built with any future dwelling house within proposed lot 2. A section of the site at the rear would be filled to achieve the stormwater drainage. The fill would attain a maximum height of 800 mm along the western boundary and is acceptable.

The applicant addresses reason No. 2 for refusal by proposing a suitable method of stormwater disposal and reducing the height of the proposed fill in the amended plans.

2.3.8 Soil and Water Management

The amended proposal reduces the height of the proposed fill from 1.7m to 0.8m. Further, the proposed fill on site would effectively improve the stormwater management of the land and Nyara Road and is considered suitable. The amended proposal addresses the matters of non-

compliance in relation to the proposed fill, raised in the original application and is assessed as satisfactory.

2.3.9 Dwelling House Development Control Plan

The existing dwelling house on proposed lot 1 has been assessed having regard to the relevant performance and prescriptive design requirements of Council's Dwelling House Development Control Plan. The proposal does not alter the height or design of the existing dwelling. The compliance of the dwelling house with the relevant performance criteria such as FSR, site cover, setbacks, private open space, car parking and landscaping are discussed in Section 2.3 of this report.

3. ENVIRONMENTAL IMPACTS

Section 79C(1)(b) of the Act requires Council to consider "*the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality*".

3.1 Natural Environment

The proposed development would necessitate the removal of two trees on proposed lot 2.

Council's assessment of the proposal included a detailed examination of the existing trees on site. No trees within the site are identified as 'significant trees' apart from a street tree within the frontage of the property. The proposal would not have an adverse impact on the tree subject to compliance with relevant conditions.

The development is considered acceptable with regard to its impact on the natural environment.

3.2 Built Environment

The proposal involves alterations to the existing dwelling by removing a section of the eave and gutter and replacement with a gable roof and the removal of a patio attached to the dwelling. The proposed alterations would have negligible impact on the streetscape. The proposed allotments comply with the minimum allotment size requirement.

The proposal, as amended includes the demolition of a patio to reduce the overall building footprint of the existing dwelling house.

The current proposal involves the filling of a section of the site and increasing the level by 800 mm along the western boundary. This is considered acceptable as it complies with the prescriptive measures of Council's RSDCP and would improve the overall drainage pattern on site. The provision of 1.8 m high boundary fence on the retaining wall would assist to retain the privacy of the adjoining property at 22 Nyara Road. However, the impact of any future dwelling house on the surrounding built environment would be assessed under a separate development application.

Council's engineering assessment of the traffic impacts of the development concludes that the proposal is acceptable with regard to the driveway widths, accessway provisions and car spaces on site. The proposal would not result in a detrimental impact on the built environment of the area.

4. SITE SUITABILITY

Section 79C(1)(c) of the Act requires Council to consider “the suitability of the site for the development”.

The site is considered suitable for the development as it would generate two allotments exceeding 500 sqm and capable of accommodating two dwelling houses with minimal impact on the natural and built environment.

5. PUBLIC PARTICIPATION



Section 79C(1)(d) of the Act requires Council to consider “any submissions made in accordance with this Act”.

5.1 Community Consultation

The proposed development was placed on public exhibition and was notified to adjoining and nearby landowners between 25 September 2008 and 9 October 2008 in accordance with Council’s Notification and Exhibition Development Control Plan. During this period, Council received sixteen submissions. The map below illustrates the location of those nearby landowners who made a submission that are in close proximity to the development site.



NOTIFICATION PLAN

• PROPERTIES NOTIFIED	X SUBMISSIONS RECEIVED	 PROPERTY SUBJECT OF DEVELOPMENT	
2 SUBMISSIONS RECEIVED OUT OF MAP RANGE			

Sixteen submissions objected to the development. The concerns raised by the objectors and the merits of the matters raised in community submissions have been addressed below:

- Any proposed dwelling will have potential overlooking opportunities.
- The private open space area for lot 2 will not receive sufficient solar access due to the north-west orientation.
- Any future dwelling house on Lot 2 would intercept the existing overland flow from properties further up the street. This would result in inconvenience to the downstream properties.
- The level of the rear allotment will be increased unacceptably due to the proposed fill. Any future dwelling house on the proposed allotment will have adverse impact on the surrounding properties with regard to privacy and views.

The proposed fill on site is 0.8m and complies with the requirements of Council's Dwelling House DCP. As discussed in this report, the proposed fill and the retaining wall would improve stormwater management on site. The proposed fill is within the required 1m, thus minimizing the impact on privacy and solar access to the adjoining dwelling houses. Any impacts on privacy can be mitigated by the construction of a boundary fence. However, the matters in relation to potential overlooking opportunities, solar access and overland flows would be assessed in detail under a separate development application for a dwelling house on proposed lot 2.

- The materials proposed for land fill and methods of preventing future erosion are not specified.

A condition is recommended requiring that all imported fill material be clean, that is, non-contaminated excavated material (i.e. soil, rock or similar material) and not putrescible and non-putrescible solid waste (including demolition material). All fill, including existing fill, would be compacted in accordance with Council's Civil Works - Construction Specification 2005.

- The proposal is only for the profit of the developer.

The proposal would result in the creation of one additional allotment and therefore increase the housing choice within the LGA.

- Construction of a 800mm high retaining wall, 1800mm high solid boundary fence and any future development, being setback 1m from the boundary, would adversely impact on the solar access to the existing dwelling at No. 22 Nyara Road.

The current proposal does not include the construction of a dwelling house. In accordance with the Dwelling house DCP, any future dwelling house on site should be limited to single storey to have limited overshadowing impact on the adjoining western property. However, this matter would be assessed in detail under a separate development application.

- The application does not include a landscape plan for viewing by the neighbours.

The proposed subdivision plan includes details of landscaping and is considered satisfactory.

- The proposed demolition of the patio is not credible as the patio can be constructed after the approval of the application.

The proposal includes the demolition of the patio and the subdivision certificate would not be released without the demolition of the patio and construction of the driveway providing access to the battleaxe allotment.

- The development would result in the destruction of trees.
- The drainage on the street is inadequate. The proposal would aggravate this problem.
- The proposal will result in reduced amenity for the neighbouring properties due to lack of privacy.
- Privacy of the open space area for lot 1 will be hampered due to the location of the access handle. Location of the private open space area within the front setback is not acceptable.
- The width of the access handle is deficient due to the location of the retaining wall.
- The proposal does not include details of the right-of-way.
- No satisfactory overland flow path is available for the proposed on-site-detention system. If the detention tank overflows due to a major storm event or a blockage due to low maintenance, then the adjoining property at No. 22 Nyara Road would be flooded.
- The propose 375mm diameter pipeline across Nyara Road is considered inadequate. The connection of the pipeline to a pit on the northern side of the roadway and replacement of the deep table drain by a kerb and gutter is preferred to the current system.
- The development is not within the environmental capacity of the land.
- The proposed development does not comply with the site coverage element of the RSDCP.
- The building envelope on proposed lot 2 does not comply with RSDCP with regard to rear setback.

The above matters have been discussed in the body of this report under the relevant headings.

6. THE PUBLIC INTEREST

Section 79C(1)(e) of the Act requires Council to consider “*the public interest*”.

The public interest is an overarching requirement, which includes the consideration of the matters discussed in this report. Implicit to the public interest is the achievement of future built outcomes adequately responding to, and respecting, the future desired outcomes expressed in environmental planning instruments and development control plans.

The application is considered to have satisfactorily addressed Council’s criteria and would provide a development outcome that, on balance, would result in a positive impact for the community. Accordingly, it is considered that the approval of the application, would be in the public interest.

7. CONCLUSION

The application proposes the demolition of outbuildings and patio, alterations to existing dwelling and subdivision of one allotment into two allotments with the retention of the existing dwelling on proposed lot 1.

The original application did not comply with the ‘site cover’, ‘private open space’ and ‘access handle’ elements within the RSDCP. Further, the application proposed to fill a

section of the site at the rear, to a height of 1.7m and did not comply with the 'soil and water management' element and the 'drainage control' element of the DCP.

The Section 82A review application for DA/552/2008 has addressed the reasons for refusal of the original application by addressing the issues of non-compliance with the above provisions. The submitted additional information involves the demolition of the patio and demonstrates compliance of proposed lot 1 with the elements 'site cover' and 'private open space'. Landscaping opportunities are provided along the majority of the access handle and the non-compliance with regard to the width for a section of the site is considered acceptable. The amended application reduces the fill on site and proposes appropriate drainage of the site to Nyara Road. Therefore, the amended proposal has addressed the reason for refusal of the original application in relation to the above matters.

Having regard to the assessment of the proposed development, it is recommended that Council approve the application subject to the recommended conditions in Schedule 1 of this report.

ROD PICKLES
Manager - Assessment Team 2
Planning Division

SCOTT PHILLIPS
Executive Manager
Planning Division

Attachments:

1. Locality Plan
2. Landscape Plan
3. Floor Plan and Elevation
4. Subdivision Plan

File Reference: DA/552/2008
Document Number: D01029165

ATTACHMENT 5 - ITEM 8

SCHEDULE 1**Approved Plans and Supporting Documentation (applicable to all stages)**

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

<i>Plan No.</i>	<i>Drawn by</i>	<i>Dated</i>
Plan of Subdivision	McKittrick Fry and O'Hagan	9/09/2008
Erosion and Sediment Control Plan	McKittrick Fry and O'Hagan	9/09/2008
Landscape Concept Plan	McKittrick Fry and O'Hagan	9/09/2008
Floor Plan	McKittrick Fry and O'Hagan	9/09/2008

<i>Plan No.</i>	<i>Drawn by</i>	<i>Dated</i>
Waste Management plan	McKittrick Fry and O'Hagan	9/09/2008

Building Code of Australia

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

Fencing

3. No fencing shall be erected on the front boundary of proposed lot 1.

Screen planting

4. The area adjoining the access handle, as indicated in the approved plan, shall be provided with screen planting to retain the privacy of the open space area of proposed lot 1. The landscaping works shall be undertaken prior to the release of the subdivision certificate.

Fill

5. All fill, including existing fill, must be compacted in accordance with the Hornsby Shire Council Civil Works - Construction Specification 2005. The fill material imported to the site is to consist of clean fill material only, that is, non-contaminated excavated material (i.e. soil, rock or similar material). Putrescible and non-putrescible solid waste (including demolition material) is not permitted.
6. A compaction certificate is to be obtained from a chartered civil engineer / geotechnical engineer verifying that the correct compaction requirements have been met.
7. At the completion of filling works, a certificate prepared by a registered surveyor shall be submitted to Council certifying finished ground levels are in accordance with the approved plans.

Sydney Water

8. A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation.

Please refer to the Building Developing and Plumbing section of the web site www.sydneywater.com.au or telephone 13 20 92 for assistance.

9. The concrete vehicular crossing shall be a minimum of 150mm in depth reinforced with F72 steel reinforcing fabric. The vehicular crossing shall have a minimum width of 3.0m at the property boundary alignment.
10. The driveway is to be constructed with a turning area within the proposed lot 2 to ensure that vehicles can come out to the premises using Australian Standard AS 2890.1-2004 85th percentile car turning template.
11. The vehicular crossing and the internal driveways are to be designed and constructed in accordance with Hornsby Shire Council Civil Works Specifications and AS 3727 and shall comply with the following requirements:
 - a) Longitudinal sections through the centrelines of the driveways from the street /road to the proposed garages, showing proposed driveway grades and allowing or suitable transition at changes of grades, are to be submitted for consideration with a construction certificate application.
 - b) The maximum grade is to be 25% with maximum transition for changes of grade to be 8% per plan meter.

Kerb and gutter

12. The kerb, gutter and pavement would be constructed in line with the adjoining property laybacks and gutters with footpath formation, necessary drainage and sealing of road pavement between the existing pavement and lip of the gutter. The existing road pavement is to be saw-cut, a minimum of 300mm from the existing edge of bitumen and reconstructed. The work is to be completed prior to the issue of the occupancy or subdivision certificate, whichever is first. The footpath is to be graded at 4% from the kerb to the property boundary.

Drainage

13. An interallotment drainage system is to be constructed for drainage of any future dwelling on the proposed lot 2 and stormwater discharged to Council drainage system in accordance with the plan, prepared by Mckittrick Fry and O'Hagan, Reference No 08/38A1. The system is to be designed with a provision for connection of a discharge pipe from a future on-site detention facility. The drainage lines shall be designed to satisfactorily drain rainfall intensities for an average recurrence interval of 20 years. The design shall be:
 - a) be in accordance with Hornsby Shire Council Civil Works – Design Specification 1999;
 - b) be in accordance with Australian/New Zealand Standard 3500.3; and
 - c) ensure that the development, either during construction or upon completion, does not impede or divert natural surface water runoff so as to cause a nuisance to adjoining properties.

14. Each of the proposed lots serviced by the proposed interallotment drainage easement shall have burden and benefit created pursuant to Section 88B of the Conveyancing Act 1919.

Subdivision Certificate

15. A surveyor's certificate stating that no services, drainage lines or access way encroach over the proposed boundary other than as provided for by easements created by the final plan of subdivision shall be submitted to Council at the completion of works.

Rights of Access and Easement for Services

16. Reciprocal rights of access and easement for services are to be created over the common driveway (access corridor) under Section 88B of the Conveyancing Act 1919.

Positive Covenant

17. A "Positive Covenant" is to be created over the proposed lot 2 requiring that any future development is to provide an on-site detention system. The on site detention system is to have a storage capacity of 5 cubic meters and a maximum discharge of 8 litres per second into Council's drainage system in accordance with Council's standard wording.

Works as Executed Plan

18. A works-as-executed plan prepared by a chartered engineer or a registered surveyor must be lodged with Council when the engineering works are complete with the Subdivision Certificate application. The works-as executed plan shall clearly show the location of all public utility service pipes, mains and conduits (provision of services).

Council Property

19. 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 paid for by the applicant/developer prior to release of the linen plan.

Fire Upgrading

20. The window opening located in the western wall of the garage is to be protected in accordance with the fire separation requirements of Part 3.7.1.5 of the Building Code of Australia.

Demolition Works

21. All demolition work is to be carried out in accordance with the applicable provisions of Australian Standard 2601-2001 'The Demolition of Structures'.
22. In order to maintain the amenity of adjoining properties, demolition works shall be restricted to between 7.00 am and 6.00 pm. No demolition works are to be undertaken on Saturdays, Sundays or Public Holidays. Plant, goods or materials shall not be delivered to the site outside the approved hours of site works unless written Council gives consent.

Dust Control

23. Measures to prevent the emission of dust or other impurities into the surrounding environment are to be implemented during demolition works.

Asbestos Removal

24. The collection, storage, transportation or disposal of any type of asbestos waste is to comply with the requirements of clause 29 of the Protection of the Environment Operations (Waste) Regulation 1996. Upon completion of disposal operations, the applicant must lodge with the principal certifying authority, within seven (7) days, all receipts (or certified photocopies) issued by the receiving landfill site as evidence of proper disposal.

Note: The person responsible for disposing of the asbestos material shall consult with the Environment Protection Authority to determine the location of an approved landfill site to receive asbestos material.

Tree Trunk Protection

25. To avoid mechanical injury or damage, tree numbered 1 is to have its trunk protected by 2m lengths of 75mm x 25mm hardwood timbers spaced at 80mm secured with galvanised wire (not fixed or nailed to the tree in any way). Trunk protection is to be installed prior to the issue of a construction certificate and maintained in good condition for the duration of the construction period. Affixing signage to trees located on site or located on the nature strip is not permitted.

Materials

26. The applicant is to ensure that no building materials, stockpiles or fill encroaches upon retained trees for the duration of the works. No underground services (i.e. water, drainage, gas, and sewer) should be laid within 3m of any tree located on the property protected under Council's Tree Preservation Order.

Contribution

27. The payment of a contribution of \$ 18,996.80 for *one (1)* additional allotment, towards the cost of transport and traffic management, open space and recreation facilities, library and community facilities, bushland regeneration, stormwater drainage, civic improvements and section 94 plan administration in accordance with sections 94, 94A and 94C of the Environmental Planning and Assessment Act, 1979 and the Hornsby Shire Council's Development Contributions Plan 2007-2011. The contribution is based on a rate of \$ 18,996.80 per additional allotment and it is to be paid by the end of the 30 December 2008 and prior to the issuing of the subdivision certificate. The contribution will be adjusted in accordance with the underlying consumer price index for the subsequent financial quarters.

Note 1: It is recommended that you contact Council on 9847 6030 to ascertain the indexed value of contributions prior to payment.

Erection of Construction Sign

28. 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.

Hours of Construction

29. 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.

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. Engineering design plans and specifications are to be prepared by a chartered professional engineer for any proposed works. The plans and specifications are to be in accordance with development consent conditions, appropriate Australian standards, and applicable Council standards, in particular "Hornsby Shire Council Civil Works - Design and Construction Specification". The information that is required to be submitted with a construction certificate is as follows:
 - Copies of any compliance certificates that are to be relied upon
 - Four (4) copies of the detailed engineering plans in accordance Hornsby Shire Council's Civil Works - Design Specification 1999. The detailed plans may include but are not limited to the earthworks, roadworks, road pavements, road furnishings, stormwater drainage, landscaping and erosion control works.
 - Hornsby Shire Council's approval is required for any works within the public road reserve of Oleander Road or Highlands Avenue prior to the issuing of a construction certificate for these 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;
- f) Lodge separate applications under the Local Government Act 1993 and Roads Act 1993 to Council for approval for:-
 - The installation of vehicular footway crossings servicing the proposed lot 2 and the removal of any redundant crossings.
Note: You are advised to contact Council's Works Division on (02) 9847 6940 to obtain a list of Council's Authorised Vehicular Crossing contractors.
 - The undertaking of work within a public road (this includes laneways, public pathways, footways).
- g) Obtain a construction certificate from Council for approval of the kerb and gutter works (Council is the only authority that can issue such a certificate for its assets). Details are to be submitted by Chartered Professional Civil Engineer of the Institution of Engineers, Australia.

Fire Upgrading

2. Smoke alarms are required in the existing dwelling building in accordance with the Building Code of Australia. A certificate from a licensed electrician certifying that the smoke alarms have been connected to the consumer mains power is to be submitted to Hornsby Council

- END OF CONDITIONS -