

BUSINESS PAPER

PLANNING MEETING

**Wednesday, 4 February, 2009
at 6:30pm**

TABLE OF CONTENTS

AGENDA AND SUMMARY OF RECOMMENDATIONS**MAYORAL MINUTES****NOTICES OF MOTION****RESCISSION MOTIONS****MATTERS OF URGENCY****ITEMS PASSED BY EXCEPTION / CALL FOR SPEAKERS ON AGENDA ITEMS****DEVELOPMENT APPLICATIONS****GENERAL BUSINESS****A Ward Deferred**

- Item 1 PLN4/09 Section 82A Review - Demolition of outbuildings, alteration to the existing dwelling and subdivision of one allotment into two allotments
20 Nyara Road Mt Kuring-gai..... 1

A Ward

- Item 2 PLN3/09 Development Application - Boundary adjustment between two allotments
Lots 20 & 21 DP 23821, Coba Point Berowra Creek..... 26

B Ward Deferred**B Ward****C Ward Deferred****C Ward**

- Item 3 PLN2/09 Development Application - modification to Townhouse Development (Building D), Convert attic roof space to bedrooms and modify fencing and strata plan
Lot 2 DP 555678 Nos 23-27 Ray Road, Epping
..... 38
- Item 4 PLN8/09 Section 82A Review - Subdivision of one approved lot into two lots
68 - 86 Hull Road Beecroft 50
- Item 5 PLN9/09 Development Application - Subdivision of one approved lot into two and boundary adjustment
68 - 86 Hull Road, Beecroft 61
- Item 6 PLN1/09 Development Application - Demolition of an existing dwelling and subdivision of one lot into two - 8 Chorley Avenue Cheltenham..... 72

GENERAL BUSINESS

- Item 7 PLN7/09 Inquiry - New South Wales Planning Framework 82
-

SUPPLEMENTARY AGENDA

CONFIDENTIAL ITEMS

Item 8 PLN5/09 Hornsby Shire Housing Strategy

QUESTION OF WHICH NOTICE HAS BEEN GIVEN

QUESTIONS WITHOUT NOTICE

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 a 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 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").

If the non-pecuniary interest is significant, the Councillor must:

- a) remove the source of conflict, by relinquishing or divesting the interest that creates the conflict, or reallocating the conflicting duties to another Council official.*

OR

- b) have no involvement in the matter by absenting themselves from and not taking part in any debate or voting on the issue as if the provisions of Section 451(2) of the Act apply.*

If the non-pecuniary interest is non-significant, the Councillor must provide an explanation of why they consider that the interest does not require further action in the circumstances.

POLITICAL DONATIONS DISCLOSURE

Statement by the Chairperson:

"I advise all present that a Political Donations Disclosure Statement pursuant to Section 147(3) of the Environmental Planning and Assessment Act 1979 must be made in the event that a person has made or a Councillor or political party has received a gift or political donation from any person or organisation, including a person or organisation making a submission to an application or other planning matter, listed on the Planning Meeting agenda."

CONFIRMATION OF MINUTES

THAT the Minutes of the Planning Meeting held on 17 December, 2008 be confirmed; a copy having been distributed to all Councillors.

PETITIONS

MAYORAL MINUTES

NOTICES OF MOTION

RESCISSION MOTIONS

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****Page Number 1**

- Item 1 PLN4/09 SECTION 82A REVIEW - DEMOLITION OF
OUTBUILDINGS, ALTERATION TO THE EXISTING
DWELLING AND SUBDIVISION OF ONE ALLOTMENT
INTO TWO ALLOTMENTS - 20 NYARA ROAD MT KURING-
GAI**

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.

A WARD**Page Number 26**

- Item 2 PLN3/09 DEVELOPMENT APPLICATION - BOUNDARY
ADJUSTMENT BETWEEN TWO ALLOTMENTS
LOTS 20 & 21 DP 23821, COBA POINT BEROWRA CREEK**

THAT, subject to the concurrence of the Director General of the NSW Department of Planning, Development Application No. 1296/2008 for the boundary adjustment between two allotments at Lots 20 & 21 DP 23821 Coba Point, Berowra Creek, be approved subject to conditions of consent detailed in Schedule 1 of this report.

B WARD DEFERRED**B WARD****C WARD DEFERRED****C WARD****Page Number 38**

- Item 3 PLN2/09 DEVELOPMENT APPLICATION - MODIFICATION
TO TOWNHOUSE DEVELOPMENT (BUILDING D),
CONVERT ATTIC ROOF SPACE TO BEDROOMS AND
MODIFY FENCING AND STRATA PLAN
LOT 2 DP 555678 NOS 23-27 RAY ROAD, EPPING**

THAT Development Application No. 1688/2006/C to convert the attic roof space of Building D to additional bedrooms for townhouses D2-D10, change the fencing materials from masonry to timber (western boundary) and modify the proposed strata plan to include basement storage at lot 2 DP 555678 Nos. 23-27 Ray Road Epping be approved subject to Schedule 1 of this report.

Page Number 50

Item 4 PLN8/09 SECTION 82A REVIEW - SUBDIVISION OF ONE APPROVED LOT INTO TWO LOTS - 68 - 86 HULL ROAD BEECROFT

THAT the Section 82A Review of Development Application No. 1882/2007 for the subdivision of one approved lot into two lots at lot 3 DP 1042630, Nos 68-82 Hull Road, Beecroft, be refused for the reasons detailed in Schedule 1 of this report.

Page Number 61

Item 5 PLN9/09 DEVELOPMENT APPLICATION - SUBDIVISION OF ONE APPROVED LOT INTO TWO AND BOUNDARY ADJUSTMENT - 68 - 86 HULL ROAD, BEECROFT

THAT Development Application No. 1013/2008 for the subdivision of approved lot 5 into two lots and boundary adjustment with approved lot 6 and lot 7 at lot 3 DP 1042630, Nos. 68-86 Hull Road Beecroft be refused for the reasons detailed in Schedule 1 of this report.

Page Number 72

Item 6 PLN1/09 DEVELOPMENT APPLICATION - DEMOLITION OF AN EXISTING DWELLING AND SUBDIVISION OF ONE LOT INTO TWO - 8 CHORLEY AVENUE CHELTENHAM

THAT Development Application No. DA/1202/2008 for demolition of an existing dwelling and subdivision of one lot into two at lot 144 DP 12364, No. 8 Chorley Avenue, Cheltenham be refused for the reasons detailed in Schedule 1 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 82

Item 7 PLN7/09 INQUIRY - NEW SOUTH WALES PLANNING FRAMEWORK

THAT Council forward a submission to the NSW Legislative Council's Standing Committee on State Development indicating its general support for the Inquiry into the NSW planning

framework as outlined in the Discussion Paper. The submission also request that the Inquiry address issues concerning:

1. development of cohesive National/State planning objectives and framework;
2. consolidation of legislation to address duplication and inconsistency;
3. targeted public annual reviews of legislation;
4. improvements in the effectiveness of investigative and enforcement powers in relation to principally certified development;
5. closure of gaps between development and building controls; and
6. development of a planning and funding framework to support councils to perform their role.

SUPPLEMENTARY AGENDA

CONFIDENTIAL ITEMS

Item 8 PLN5/09 HORNSBY SHIRE HOUSING STRATEGY

This report should be dealt with in confidential session, under s10A (c) of the Local Government Act, 1993. This report contains information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business. (This report proposes the rezoning of land, where prior knowledge of the proposal could confer an unfair financial advantage to any person)

QUESTION OF WHICH NOTICE HAS BEEN GIVEN

QUESTIONS WITHOUT NOTICE

1 SECTION 82A REVIEW - 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 (Further Report)
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:	\$60,000
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 supplied amended plans and further information in support of the application and requested Council to review its determination pursuant to section 82A of the Act.

The subject development application was again considered by Council at its Planning Meeting on 19 November 2008. At that meeting, Council resolved:

“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.”

Immediately following that Planning Meeting, a Rescission Motion was lodged against Council’s resolution in the following terms:

“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.”

On 3 December 2008, Council’s Planning Committee adopted the Rescission Motion and subsequently resolved the following:

“THAT:

- 1. Council defer the decision on the Section 82 Review to allow the Applicant to work with Council officers to further address the objections raised by concerned residents.*
- 2. An on-site meeting be arranged between the relevant Council officers, the Applicant, residents and Councillors.”*

In accordance with Council’s most recent resolution, an on-site meeting was held on 15 December 2008 involving the applicant, neighbouring property owners, interested Councillors and Council officers. The following design alternatives were discussed at the meeting:

- The applicant provide amended plans to Council relocating the retaining wall within proposed Lot 2, at least 1 metre from the western boundary and setback 4.5m – 7.4m from the rear boundary of the allotment. This would result in no fill in the majority of the section of the site adjoining No. 22 Nyara Road and would also reduce the overall boundary fence height in future.
- A restriction as to user be placed on proposed Lot 2 requiring any future dwelling house to be contained within the proposed building envelope

Discussions also took place regarding recommendation of conditions for screen planting along the western boundary and deletion of any boundary fence in lieu of such screening to maintain the amenity of both the allotments in future.

In response to the discussions held at the meeting on 15 December 2008, the applicant submitted amended plans to Council on 17 December 2008 (held at Attachment 2).

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 a section of the site within proposed Lot 2. The fill would require the construction of a retaining wall set back at a distance of 1 metre from the western boundary and then set at an angle to the northern and western boundary of the site at the rear. The maximum depth of fill proposed is approximately 0.7 metres.
- The retaining wall is setback at a distance of 5 metres from the gum tree located on the adjoining northern property and is outside the critical root zone of the significant tree.
- The north-western section of the site is not proposed to be filled to maintain the amenity of the neighbouring property at No. 22 Nyara Road. The area is proposed to be landscaped in future.
- 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.
- A catch drain and swale are proposed along the eastern boundary to trap all overland flow.

As detailed above, on 2 July 2008, Council refused DA/552/2008 (the original proposal). The following table sets out a comparison of the original proposal and the amended proposal in respect of each application's compliance with the prescriptive measures of Council's Residential Subdivision Development Control Plan:

Control	Requirement	Original proposal	Compliance	Amended proposal	Compliance
Density					
Lot 1	500m ²	548m ²	Yes	548m ²	Yes
Lot 2	500m ²	545m ²	Yes	545m ²	Yes
FSR					
Lot 1	0.4:1	0.3:1	Yes	0.3:1	Yes
Site cover					
Lot 1	40%	45%	No	38%	Yes

Building Envelope					
Lot 2	200m ²	200m ²	Yes	218m ²	Yes
Building Envelope minimum dimension					
Lot 2	10m	12m	Yes	12m	Yes
Car parking					
Lot 1	2 spaces	2 spaces	Yes	2 spaces	Yes
Lot 2	2 spaces	2 spaces	Yes	2 spaces	Yes
Private Open Space					
Lot 1	120 m ²	82 m ²	No	140m ²	Yes
Lot 2	120 m ²	147 m ²	Yes	147m ²	Yes
Landscaping					
Lot 1	45%	48%	Yes	48%	Yes
Lot 2	45%	45%	Yes	45%	Yes
Setbacks					
Lot 1					
Front (Nyara Road)	6m	No change	Yes	No change	Yes
Western side	1m	0m	No	0m	No
Eastern side	1m	No change	Yes	No change	Yes
Rear	5m	5 m	Yes	5 m	Yes
Lot 2					
Front	1m	4m	Yes	4m	Yes
Western side	1m	7.5m	Yes	7.5m	Yes
Eastern side	1m	1m	Yes	1m	Yes
Rear	5m	4.7m	Yes	5m	Yes
Cut and Fill					
Lot 2	1m	1.7 m	Yes	0.8m	Yes
Width of Access Handle					
	4m	3.5m-4m	No	3.5m – 4m	No

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:

- to provide for the housing needs of the population of the Hornsby area.*
- to promote a variety of housing types and other land uses compatible with a low density residential environment.*
- 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 satisfactorily addresses reason No. 1 for refusal of the original application.

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 Lot 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	0.7m	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 onsite 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 700 mm adjacent to 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 reduced the height of the proposed fill from 1.7m. By stepping in the proposed retaining wall 1 metre from the western boundary, the height of the fill has been reduced a further 100mm to 700mm. 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.

2.4 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.

A condition is recommended requiring a restriction as to user to be placed on proposed Lot 2 so that a future dwelling on site is contained within the proposed building envelope.

The other relevant issues are discussed below.

2.4.1 Privacy

The proposal would result in filling a section of the site at the rear from between 0 and 700mm (centre to the western boundary). The maximum height of the retaining wall at the rear would be similar to the existing retaining wall in the front section of the site. The increase in the level of this section of the site complies with Council's development standards.

Currently, a dwelling house and an outbuilding (used as a habitable area) are located on the neighbouring property to the west of the site. The dwelling house is located at an angle to the western boundary of the site with the minimum distance being 700 mm, which does not comply with the prescriptive measures of Council's Dwelling House Development Control Plan (minimum side setback requirement is 1m). A bedroom of this dwelling house is located close to the site and in absence of a fence it overlooks into the rear yard of the subject property and has an impact on the privacy and views of the occupants of 20 Nyara Road. Similarly the windows of the rooms within the outbuilding at the rear also overlook the rear yard of the site. It is further noted that the existing dwelling on the property located to the west is sufficiently raised above the ground level due to a pole construction design which increases the impact on the privacy of the residents of the subject site. The current situation with regard to the impact of the neighbouring property on the privacy of the site is considered unacceptable having regard to contemporary development standards.

Should the subdivision be approved and a future dwelling house be built on the rear allotment, a boundary fence would be required to be constructed along the western side boundary which would improve the current situation for both the properties in relation to privacy and overlooking. Since the retaining wall is setback at a sufficient distance from the western boundary, the fence would not be required to be constructed over the retaining wall. This would mitigate any adverse visual impact resulting from the height of the structure.

Further, any future dwelling would likely be constructed generally within the footprint of the proposed building envelope and would be located at a distance of approximately 9.5m from the outbuilding at the rear. As detailed in this report, landscaping opportunities have been provided along the length of the access handle and on the north-western section of the site (not filled) to reduce the negative impact on the privacy of the adjoining dwelling due to proposed driveway. Therefore it is not considered that the current proposal for subdivision and a future dwelling house on the battleaxe allotment would have unacceptable privacy impacts on the neighbouring property located to the west.

2.4.2 Solar Access

Council's Dwelling House DCP requires that dwellings should be designed to allow at least 4 hours of sunshine to the private open space required for adjacent and proposed dwellings between 9 am and 3 pm on 22nd June.

The allotment is north-south orientated. A future dwelling house on the site would likely be orientated in the north-south direction with a car turning area and the private open space area located adjoining the western boundary. This would provide an adequate distance of separation between a new dwelling house and the existing dwelling to the west and therefore

would reduce the opportunities for overshadowing. Further, the private open space area for the adjoining western dwelling is primarily north facing. Therefore it would be unlikely that the yard would be overshadowed during winter solstice due to a future development on the adjoining property.

It is noted in this regard that Council's Dwelling House DCP indicates that the height of the dwelling house the battleaxe allotment should be single storey. If a future dwelling house on proposed Lot 2 complies with this requirement, it would have a negligible impact on the solar access received by the north-facing rear yard and the east facing windows of the adjoining dwelling.

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.

A gum tree is located on the adjoining northern property, at a distance of 3m from the fence of the site at the rear. Council's additional assessment included a further examination of the tree and concludes that the tree is significant and would require a minimum setback of 5m from any building or fill to prevent damage to the critical root zone. The revised plans submitted after the on-site meeting show the return of the retaining wall on the northern elevation setback 4m - 5.5m from the rear boundary. This would ensure the long term survival of the tree.

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. However, no fill is to be placed on the north-western section of the site as the retaining wall would be setback at a sufficient distance from the 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 western boundary 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 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

<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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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 complies with the requirements of Council's Dwelling House DCP. The proposal would result in an area of the site approximately (70m²) being filled to a maximum depth of 0.7m. There would be no fill placed on the north-western section of the site. 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 an 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. Furthermore, the proposed retaining wall has been set back 1 metre from the western boundary and has a maximum height of 700mm.

- 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 proposed 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.

Council's Engineering assessment concludes that the proposed size of the pipe is in accordance with Council's specifications and is acceptable.

- 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 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.

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.

An assessment of the aerial photographs concludes that Nyara Road and the adjoining streets such as Glenview Road and Alicia Road accommodate several allotments that have been subdivided recently and historically creating battleaxe allotments, similar to the proposed development. Given that a number of nearby allotments function in a similar manner, it is considered the proposal would not create an undesirable precedent for the area.

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. Amended Subdivision Plan

3. Floor Plan and Elevation

File Reference: DA/552/2008
Document Number: D01070324

ITEM 1

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

- 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>Title</i>	<i>Prepared by</i>	<i>Dated</i>
08/38A/1	Plan of Subdivision	McKittrick Fry and O'Hagan	16/12/2008
08/38A/2	Floor Plan	McKittrick Fry and O'Hagan	16/12/2008
08/38A/3	Landscape Concept Plan	McKittrick Fry and O'Hagan	09/09/2008

<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

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

Fencing

- No fencing shall be erected on the front boundary of proposed Lot 1.

Screen planting

- 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.

Building Envelope

- A "Restriction As to User" is to be created over the proposed Lot 2 requiring that any future dwelling house on site is to be contained within the concept building envelope as indicated in the approved plans.

Fill

- 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.
- A compaction certificate is to be obtained from a NAZA Registered geotechnical engineer verifying that the correct compaction requirements have been met in accordance with Hornsby Shire Council's Civil Works specifications.

8. 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

9. 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.

10. The concrete vehicular crossing and Right-of-accessway shall be a minimum of 150mm in depth reinforced with F72 steel reinforcing fabric. The vehicular crossing and Right of access shall have a minimum width of 3.0m.
11. The driveway is to be constructed with a turning area within the proposed Lot 2 to ensure that vehicles can come out in a forward direction using Australian Standard AS 2890.1-2004 85th percentile car turning template.
12. 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

13. Construction of a kerb, gutter and pavement along the full frontage of the development would be 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 subdivision certificate. The footpath is to be graded at 4% from the kerb to the property boundary.

Drainage

14. 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 generally in accordance with Plan No. 08/38A1, dated 16/12/2008, prepared by McKittrick Fry and O'Hagan. 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.
15. 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

16. 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

17. 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

18. 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

19. 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

20. 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

21. 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

22. All demolition work is to be carried out in accordance with the applicable provisions of Australian Standard 2601-2001 'The Demolition of Structures'.

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 \$19,205.85 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 \$19,205.85 per additional allotment and it is to be paid by the end of the 31 March 2009 and prior to the issuing of the construction certificate or the subdivision certificate, whichever occurs first. 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 and Demolition

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 Nyara Road 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 9847 6760.

- 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) 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.
- f) 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

Long Service Levy

3. 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.*)

Tree Preservation order

4. A Tree Preservation Order exists within the Hornsby Shire whereby the cutting down, topping, lopping, removing or wilful destruction of any tree exceeding 3.0 metres in height (except where exempt as defined under Council's Tree Preservation Order) without prior written consent of Council is prohibited.

- END OF CONDITIONS -

ITEM 1

2 DEVELOPMENT APPLICATION - BOUNDARY ADJUSTMENT BETWEEN TWO ALLOTMENTS - LOTS 20 & 21 DP 23821, COBA POINT BEROWRA CREEK

Development Application No:	1296/2008
Description of Proposal:	Boundary adjustment between two allotments
Property Description:	Lots 20 & 21 DP 23821, Coba Point Berowra Creek
Applicant:	Montgomery Planning Solutions
Owner:	Lot 20 DP 23821 - Mr. G Wright Lot 21 DP 23821 - Mr. G Wright and Mr. SG Wright
Statutory Provisions:	Hornsby Shire Local Environmental Plan 1994 (HSLEP 1994) – Environmental Protection E (River Settlement) Zone
Estimated Value:	Nil
Ward:	A

RECOMMENDATION

THAT, subject to the concurrence of the Director General of the NSW Department of Planning, Development Application No. 1296/2008 for the boundary adjustment between two allotments at Lots 20 & 21 DP 23821 Coba Point, Berowra Creek, be approved subject to conditions of consent detailed in Schedule 1 of this report.

EXECUTIVE SUMMARY

1. The application proposes a boundary adjustment between two existing allotments to rectify a building encroachment.
2. The proposal does not comply with Clause 14 of HSLEP 1994 with respect to the minimum allotment size. The application is supported by an objection under State Environmental Planning Policy No. 1 – Development Standards (SEPP 1)
3. No submissions have been received in respect of the application.
4. It is recommended that the application be approved.

HISTORY OF THE SITE

The current allotments and those surrounding have been in existence since 1952 when the land was subdivided. Dwellings were subsequently erected on each of the lots.

The land was zoned 2(a1) Residential under the Hornsby Planning Scheme Ordinance (HPSO) 1977 which required a minimum area of 690m² to erect a dwelling. Upon gazettal of Hornsby Shire Local Environmental Plan (HSLEP) 1994, the land was zoned Residential A with the minimum area per allotment being 500 m².

In 1996 the River Settlements Study recommended that the zoning be changed to Environmental Protection B (River Catchment).

On 7 February 2003, HSLEP (Amendment No. 64) implemented the recommendations of the Berowra Waters Plan of Management and rezoned the River Settlements – Berowra Waters, Dusthole Point, Neverfail Bay, Calabash Point and Coba Point to Environmental Protection E (River Settlement) zone. The minimum area per allotment for the Environmental Protection E (River Settlement) zone is now 40ha.

THE SITE

The site comprises Lot 20 and Lot 21 DP 23821 located on the north-eastern side of Coba Point on Hawkesbury River. Both allotments comprise a relatively flat area adjoining the Berowra Creek (extending up to 15 metres from the riverfront). The flat section of the site terminates in a rock ledge and then slopes steeply up following an average grade of 50 - 60%. A second steep rock ledge exists along the rear boundary of the site.

The front section of the site includes reclaimed land below the Mean High Water Mark. A timber jetty and pontoon provides access to the reclaimed area within existing lot 21. A concrete boat ramp provides access to the reclaimed area fronting lot 20.

- Area of existing lot 20 - 910 sqm
- Area of existing lot 21 - 845 sqm

The current improvements on both the allotments include two single storey dwellings with enclosed verandas fronting the river. The western corner of the veranda in front of the dwelling on lot 20 encroaches approximately 200mm over the boundary separating the two allotments.

- FSR of existing dwelling on lot 20 - 0.14:1
- FSR of existing dwelling on lot 21 - 0.12:1

Two existing trees are located within the front setback of the dwelling houses. The rear sections of both the allotments comprise numerous native trees and remnant bushland.

There is no road network or vehicular access to either lot. Residents access the site via boat on Berowra Creek.

The surrounding developments include modest residential developments screened by existing vegetation.

THE PROPOSAL

The proposal involves the boundary adjustment between two existing allotments to remove the encroachment of dwellings over allotment boundaries.

The site area of proposed lot 200 is 947 sqm (approximately 4% increase of existing site area) The site area of proposed lot 201 is 808 sqm (approximately 4 % decrease of existing site area).

- FSR of dwelling on proposed lot 200 - 0.13:1
- FSR of dwelling on proposed lot 201 - 0.13:1

No alterations are proposed to the existing dwellings on the site.

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 proposal would have no impact on the Draft Strategy targets as it does not result in the net increase of the housing stock in the Hornsby LGA.

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 Shire Local Environmental Plan 1994

The site is zoned Environmental Protection E (River Settlement). The use is defined as 'subdivision' and is permissible with development consent, pursuant to Clause 7

The zone objectives are:-

- (a) *To protect the natural environment of sensitive areas within the catchment of the Hawkesbury River.*
- (b) *To accommodate low density housing that is consistent with the environmental sensitivity, infrastructure limitations and access limitations of the area.*
- (c) *To protect the scenic quality and water quality of the area and promote development that is within the environmental capacity of the area.*

The proposal does not involve any building works that would have adverse impact on the natural environment of the sensitive areas, catchment of the Hawkesbury River or the riverine scenic quality. The proposal would retain low density housing consistent with the environmental sensitivity of the area. Therefore, the proposal complies with the zone objectives.

Clause 14 (2) of the Hornsby Shire LEP 1994 requires that the minimum allotment sizes within the zone to be 40 ha. The proposed lots would be 947 sqm and 808 sqm in area respectively. The applicant seeks to create two undersized allotments and consequently the proposal does not comply with the development standard contained within Clause 14.

The application is supported by an objection pursuant to SEPP 1, to support the proposed variation.

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 dwellings on the allotments are as follows:

- Dwelling on Lot 200 0.13:1
- Dwelling on Lot 201 0.13:1.

As indicated above, the dwellings on both the allotments would comply with the development standard under Clause 15.

2.2 State Environmental Planning Policy No. 1 – Development Standards

The application has been assessed against the requirements of SEPP 1. This Policy provides flexibility in the application of development standards in circumstances where strict compliance with those standards would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objectives of the Act.

The Land and Environment Court has expressed the view that there are five different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the Policy:

1. *The objectives of the standard are achieved notwithstanding non-compliance with the standard;*
2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*
3. *The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*
4. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;*

5. *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

It is considered that the first four of the above points are relevant matters to consider in respect of this application.

The applicant has submitted an objection pursuant to SEPP 1 in support of the proposal. The applicant's submission has been summarised (in italics) below:

The current allotments and the surrounding properties have been in existence since 1952 and do not comply with the minimum allotment size as required under Clause 14(2) of the HSLEP 1994.

Each of the two allotments accommodates a dwelling house. The current boundary adjustment would result in rectifying the encroachment of the existing dwelling on Lot 20 over the boundary separating the two allotments.

The proposed subdivision would not result in any additional development or increase in density. The proposed development is essentially a minor adjustment of the existing boundary which modifies the site areas by 4% only. Therefore the proposal complies with the underlying objective of Clause 14(2) to regulate allotment sizes and prevent increase in density where it is inappropriate to do so.

Due to the above reasons it is considered that the objection is consistent with the aims of the Policy and that compliance with the development standard is unreasonable and unnecessary in the circumstances.

The application involves two existing allotments, both of which have areas less than 40 ha. Therefore, the proposed boundary adjustment cannot result in the creation of new allotments with areas greater than 40 ha. While unable to achieve the minimum allotment area required by Clause 14(2) of the HSLEP, the proposal achieves the objectives of the clause and the Environmental E Zone because it would not increase the density of development on the site, would not create any new allotments, would not alter demands on existing infrastructure, would result in a minimal impact upon the riverscape and is within the environmental capacity of the site. The proposal would rectify the encroachment of the dwelling on proposed Lot 20 over the adjoining allotment boundary and improve the orderly management of the land.

The development is consistent with the objectives of the Environmental Planning & Assessment Act, 1979 and Hornsby Shire Local Environmental Plan 1994 as it would encourage the improved management of land and promote the orderly use of that land.

The SEPP 1 objection prepared by the applicant is well founded and it has been demonstrated that compliance with the development standard is unreasonable and unnecessary in the circumstances of this case.

In accordance with Circular B1 issued 17 March 1989, by the Department of Planning the application requires the concurrence of the Director General. This matter is discussed further in Section 5.2.3 of this report.

2.3 Sydney Regional Environmental Plan No. 20 – Hawkesbury - Nepean River

The proposed development has been assessed having regard to the relevant performance and prescriptive design standards within SREP 20.

The proposal does not include any building works. The development would not have any impact on the water quality or the riverine scenic quality of the Hawkesbury River. No further assessment in this regard is necessary.

2.4 River Settlements Development Control Plan

The proposed development has been assessed having regard to the relevant performance and prescriptive design standards within Council's River Settlements Development Control Plan. The following table sets out the proposal's compliance with the prescriptive standards of the Plan:

River Settlements Development Control Plan			
Control	Proposal	Requirement	Compliance
SITE COVER			
Proposed lot 200	13%	30%	Yes
Proposed lot 201	13%	30%	Yes
HEIGHT	Unchanged		
SETBACKS			
Proposed lot 200			
Front	Unchanged		
Side (west)	1.3m	1m	Yes
Side (east)	Unchanged		
Rear	Unchanged		
Proposed lot 201			
Front	Unchanged		
Side (west)	Unchanged		
Side (east)	0 m	1m	No
Rear	Unchanged		

As detailed in the above table, the proposed development does not comply with the prescriptive standard of the element "setbacks" within Council's River Settlement DCP. The matters of non-compliance are detailed below, as well as a brief discussion on compliance with relevant performance standards.

2.4.1 Setbacks

The proposed boundary adjustment would result in zero setback of the existing dwelling on proposed lot 201 from the eastern boundary.

However, the section of the dwelling house with a zero setback comprises a deck which is a non-habitable structure. The non-compliance with the setback requirement would not result in adverse impact on the neighbouring property as the structure is existing. The proposal would be an improvement to the existing circumstances and is acceptable in this regard.

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 proposal does not involve the removal of any trees or other vegetation that would impact on the natural environment.

3.2 Built Environment

The proposal would result in the removal of the awning that encroached over the boundary separating the two allotments. This would not impact upon the built environment.

4. SITE SUITABILITY

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

4.1 Bushfire Risk

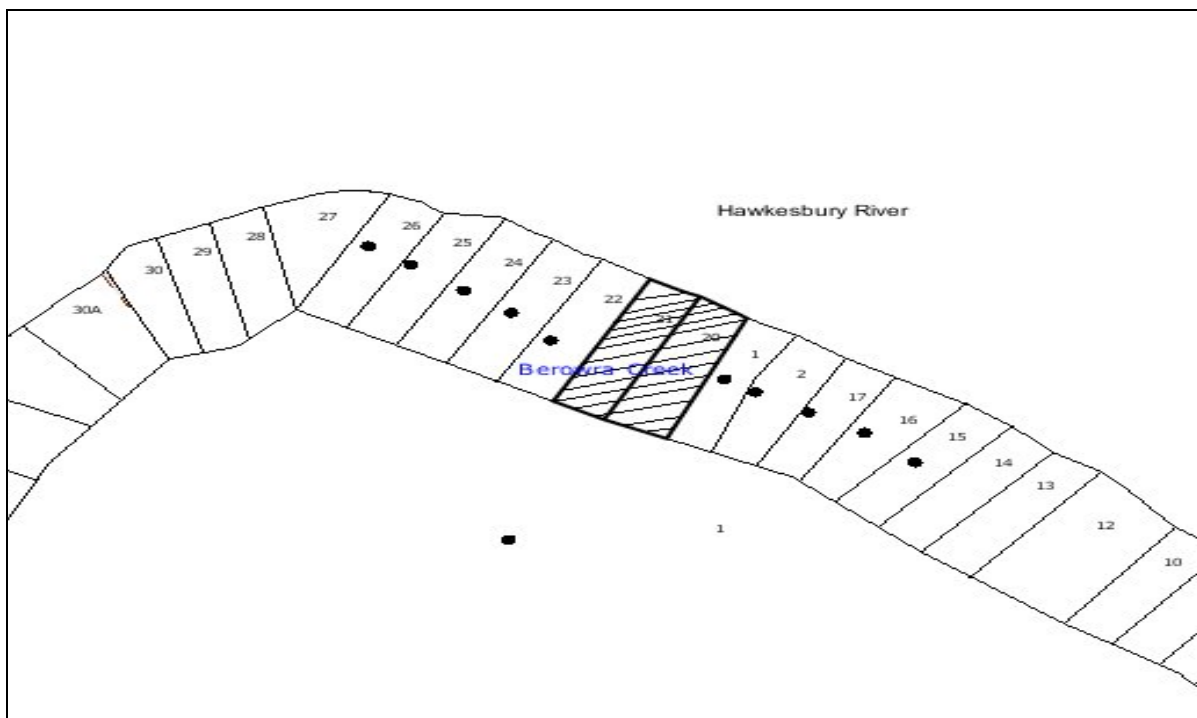
The land is identified as being subject to bushfire risk and constitutes integrated development under Section 100 B of the Rural Fires Act 1997. Accordingly, the proposal was referred to the NSW Rural Fire Service for comments (Refer to discussion in Section 5.2 of this report).

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 2 October 2008 and 30 October 2008 in accordance with Council’s Notification and Exhibition Development Control Plan. During this period, Council received no submissions. The map below illustrates the location of the site and the notified properties.



NOTIFICATION PLAN

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

The development application is Integrated Development under the Act. Accordingly, the application was referred to the following Agencies for comment:

5.2.1 Rural Fire Service

NSW Rural Fire Service reviewed the application and raised no objections subject to the implementation of recommended conditions regarding Asset Protection Zones. Given that each dwelling is separated by a steep rocky escarpment from the rear portion of its allotment the no trees would be required to be removed as part of this application.

5.2.2 Department of Water and Energy

The proposal involves subdivision and demolition of an awning within 40m of the Hawkesbury River. Therefore the application requires Controlled Activity Approval under the Water Management Act 2000 and was referred to the Department of Water and Energy.

The Department has advised that due to the minor nature of the works, a Controlled Activity Approval would not be necessary.

5.2.3 Department of Planning

The proposal requires concurrence from the Director General of the NSW Department of Planning under SEPP 1 in accordance with paragraph 12 of Circular B1, dated 17 March 1989 issued by the Department of Planning which states:

“NOTIFICATION OF ASSUMED CONCURRENCE

12. *In pursuance of section 81(1) of the Act, Council may assume the Director’s concurrence under S.E.P.P. No. 1 in respect of all applications, subject to paragraph 13, except an application:*

- (a) *to erect a dwelling on an allotment of land zoned rural or non-urban or within the zones listed in Schedule A to this circular;*
- (b) *to subdivide land which is zoned rural or non-urban or within the zones listed in Schedule A to this circular:*

when the development the subject of the application does not comply with a development standard specifying a minimum area of land.”

Schedule A of the circular lists the following land which, under an environmental planning instrument, is within one of the following zones:

- (a) *Environment protection*
- (b) *Environmental protection*
- (c) *Rural environment protection*
- (d) *Rural environmental protection*
- (e) *Coastal lands protection*
- (f) *Coastal lands acquisition*
- (g) *Special Uses (water catchment)*

13. *Council may assume the Director’s concurrence in respect of a development application referred to in paragraph 12(a) or 12(b) but only if:*

- (a) *only one allotment does not comply with the minimum area; and*
- (b) *that allotment has an area equal to or greater than 90 percent of the minimum area specified in the development standard.*

As the proposal is for subdivision and the land is zoned Environment Protection E, in accordance with paragraph 12 of Circular B1, Council is unable to assume the concurrence of the Department of Planning under SEPP 1. Accordingly, the application is recommended for approval subject to the concurrence of the Director General of the Department of Planning.

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 and relevant agencies’ 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 proposed development would be in the public interest.

CONCLUSION

The proposal involves a minor boundary realignment of two existing allotments which would not result in any additional allotments.

The application does not comply with the Hornsby Shire Local Environmental Plan, 1994 in respect to clause 14 'Density'. The applicant has submitted an objection pursuant to State Environmental Planning Policy No. 1 to support the variation to the development standard. The SEPP 1 objection is well founded and the proposal is acceptable in this regard.

The proposal is also consistent with the objectives of Council's River Settlements Development Control Plan and Sustainable Water Development Control Plan.

Approval of the application is recommended subject to the concurrence of the Director General of the Department of Planning as the proposal is located within an Environmental Protection area.

ROD PICKLES
Manager - Assessment Team 2
Planning Division

SCOTT PHILLIPS
Executive Manager
Planning Division

Attachments:

1. Locality Plan
2. DA Plan

File Reference: DA/1296/2008
Document Number: D01069455

SCHEDULE 1**Approved Plans and Supporting Documentation**

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>Prepared by</i>	<i>Dated</i>
07051-DA1 Plan of proposed boundary adjustment	Monaghan Surveyors Pty Ltd	29/04/2008

Sydney Water

2. 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.

Subdivision Certificate

3. The following documentary evidence is to be obtained and forwarded to the Principal Certifying Authority prior to the release of the subdivision certificate:-
- Submission of a surveyor's certificate stating that all structures within the subject land comply with the development consent in regard to clearance from proposed new boundaries.
 - The submission of 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.

Asset Protection Zones

4. The area around each existing dwelling for a distance of 10 metres or to the property boundary shall be managed as an Inner Protection Area (IPA) as outlined within Section 4.1.3 or Appendix 5 of Planning for Bushfire Protection 2006 and the NSW Rural Fire Service's Document '*Standards for Asset Protection Zones*'.

Water and Utilities

5. A minimum on-site water supply of 5000 litres with a 3KW 5 hp petrol or diesel powered pump shall be made available for fire fighting purposes of each dwelling. A metal 65 mm Stortz outlet with Gate or Ball valve and hose shall be provided.

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:
 - b) Lodge and obtain approval of a subdivision certificate to authorise the Plan of Subdivision. Enquiries regarding the issue of a construction certificate can be made to Council's Customer Service Centre on 9847 6760.
 - 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.

Tree Preservation order

2. A Tree Preservation Order exists within the Hornsby Shire whereby the cutting down, topping, lopping, removing or wilful destruction of any tree exceeding 3.0 metres in height (except where exempt as defined under Council's Tree Preservation Order) without prior written consent of Council is prohibited.

**3 DEVELOPMENT APPLICATION - MODIFICATION TO TOWNHOUSE DEVELOPMENT (BUILDING D), CONVERT ATTIC ROOF SPACE TO BEDROOMS AND MODIFY FENCING AND STRATA PLAN
LOT 2 DP 555678 NOS 23-27 RAY ROAD, EPPING**

Development Application No:	DA/1688/2006/C (Section 96(2))
Description of Proposal:	Section 96(2) application to convert the attic roof space of Building D to additional bedrooms for townhouses D2-D10, change the fencing materials from masonry to timber (western boundary) and modify the proposed strata plan to include basement storage.
Property Description:	Lot 2 DP 555678 (Nos 23-27) Ray Road, Epping
Applicant:	Citiscapc Developments (No. 2) Pty Ltd
Owner:	Citiscapc Developments (No. 2) Pty Ltd
Statutory Provisions:	Hornsby Shire Local Environmental Plan 1994 Residential A (Low Density) Zone, Residential C (Medium/High Density) Zone and Special Uses A (Community Purposes) Zone
Estimated Value:	\$80,000 (additional to the \$10,000,000 original proposal).
Ward:	C

RECOMMENDATION

THAT Development Application No. 1688/2006/C to convert the attic roof space of Building D to additional bedrooms for townhouses D2-D10, change the fencing materials from masonry to timber (western boundary) and modify the proposed strata plan to include basement storage at lot 2 DP 555678 Nos. 23-27 Ray Road Epping be approved subject to Schedule 1 of this report.

EXECUTIVE SUMMARY

1. The application proposes to convert the attic roof space to additional bedrooms for townhouses D2-D10, change the fencing materials from masonry to timber (western boundary) and modify the proposed strata plan to include basement storage.

2. The proposal does not comply with the Medium Density Multi-Unit Housing DCP in respect to height and floor space ratio. The non-compliances are considered acceptable.
3. Eight submissions including a petition with 87 signatories have been received in respect of the application.
4. It is recommended that the application be approved.

HISTORY OF THE SITE

On 1 August, 2007, Council approved DA/1688/2006 for the demolition of existing buildings, the retention and restoration of 'Woodlands House' for a medical centre, the erection of two, 4 storey residential flat buildings containing 40 dwellings, the erection of two, 2 storey buildings containing 15 townhouses and the erection of a 2 storey dwelling house, Torrens title subdivision into 3 lots and strata subdivision.

The approved development is currently under construction.

THE SITE

The site has an area of 8,160sqm, is located on the western side of Ray Road and experiences an average fall of 8% to the watercourse which flows west to east along the southern boundary of the site.

The site formally comprised the Emmaus Bible College which included nine low scale buildings and a two storey building with lower ground floor car parking. These buildings have been demolished in the construction of the approved development.

The site includes "Woodlands House" an item of environmental heritage.

Three storey walk-up residential flat buildings front Ray Road south of the site and opposite the site on Edensor Street. To the north and west of the site are detached dwelling houses.

The site adjoins an item of environmental heritage (dwelling house) at No. 10 Rosebank Avenue, west of the site.

THE PROPOSAL

The proposed modifications include the following:

- The addition of a third bedroom located within the attic space of townhouses D2-D10 (Building D). An increase in floor area of units D2–D5 (32m²) and units D7–D10 (28m²), resulting in a total 240m² additional floor area.
- The addition of windows and 'Juliet' balconies to the east facing townhouses (units D2–D5).
- The addition of skylight windows to the west facing townhouses (units D7–D10).
- Western boundary fence changed from masonry to timber.

- Strata subdivision of the residential storage facility within the basement carpark.

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 for a greater mix of dwelling type within the development and increases 3 bedroom 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 Environmental Planning & Assessment Act, 1979 - Section 96

The application is lodged pursuant to Section 96(2) of the Act which allows the modification of a consent, where the proposal has been notified in accordance with regulatory requirements, is substantially the same development as approved and Council considers the application with regard to Section 79C of the Act and any submissions.

The application was notified pursuant to Council's Notification & Exhibition DCP. There were eight submissions including a petition with 87 signatories received in response to the public exhibition of the proposal.

The proposed modification is substantially the same development as approved.

2.2 Hornsby Local Environmental Plan 1994

The subject land is zoned Residential A (Low Density), Residential C (Medium/High Density) and Special Uses A (Community Purposes) under Hornsby Local Environmental Plan 1994 (HSLEP). The objectives of the respective zones are:

Residential A (Low Density) Zone

- (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.*

Residential C (Medium/High Density) Zone

- (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 medium to high density residential environment.*
- (c) to provide for development that is within the environmental capacity of a medium to high density residential environment.*

Special Uses A (Community Purposes) Zone

- (a) to provide for the cultural needs of the community.*
- (b) to identify land for the provision of community services and facilities.*
- (c) to ensure that community uses are compatible with the amenity of the area in which they are located.*

The proposed development is defined as ‘multi-unit housing’ under HSLEP and is permissible in the zones with Council’s consent. The area of the site subject to the proposed increase in floor space is within the Special Uses A (Community Purposes) Zone.

Clause 15 of HSLEP does not prescribe a maximum floor space ratio (FSR) of development within the Special Uses A (Community Purposes) zone. A floor space ratio of 0.6:1 is a density prescriptive measure of the Medium Density Multi-Unit Housing DCP which applies to the proposal.

Clause 18 of HSLEP sets out heritage conservation provisions within the Hornsby LGA. The site includes an item of environmental heritage ‘Woodlands House’. The heritage significance of the item has been considered in the assessment of the application.

2.3 Medium Density Multi-Unit Housing Development Control Plan

The proposed modification has been assessed having regard to the relevant performance and prescriptive design standards within Council’s Medium Density Multi-Unit Housing Development Control Plan (Housing DCP). The DCP applies to medium density housing development in Hornsby Shire. The following table sets out the proposal’s compliance with the prescriptive standards of the Plan:

Medium Density Multi-Unit Housing Development Control Plan			
Control	Proposal	Requirement	Compliance
Site Area - Special Uses A zoned area of approved Lot 3	2,631m ²	N/A	N/A
Approved floor space ratio	0.56:1	0.6:1	Yes
Proposed Floor Space Ratio	0.66:1	0.6:1	No
Site Coverage	31%	40%	Yes
Height	3 storey	2 storey	No
Ceiling Height	7.2 – 8.4m	7m	No
Carparking Townhouses	30 spaces	29 spaces	Yes
Open Space	94.3-124.1m ²	60-80m ²	Yes

As detailed in the above table, the proposed development does not comply with the density and height prescriptive standards within Council's Housing DCP. The matters of non-compliance are detailed below, as well as a brief discussion on compliance with relevant performance standards.

2.3.1 Floor Space Ratio

The addition of bedrooms within the eight townhouses (Building D), results in an addition of 240m² of floor area. The proposal increases the approved floor space ratio of the Special Uses A (Community Purposes) Zone within Lot A from 0.56:1 to 0.66:1. A maximum floor space of 0.6:1 is the DCP prescriptive measure for medium density development. The proposed 0.66:1 floor space ratio exceeds the DCP requirement by 154.9m².

The proposed strata subdivision of the basement storage areas involves approved space for residential storage and does not contribute to floor space.

The proposed additional floor area increases the size of dwellings D2, D3, D4 & D5 from 94.3m² to 126.3m² and dwellings D7, D8, D9 & D10 from 94.3m² to 122.3m². The approved dwellings and proposed dwellings are considered 'large dwellings' generally within the range of 85-125m² as described in the DCP and satisfy the site density prescriptive measure for minimum site area per dwelling.

The proposed non-compliance with the 0.6:1 floor space ratio is considered acceptable as the proposal does not increase the number of approved dwellings on the site or the required car parking provision, pursuant to the DCP criteria. The proposed additional floor area is within the existing building envelope and does not alter the landscaping or private open space provision. The proposal provides for a better mix of dwelling type within the development and increases 3 bedroom housing choice in the locality.

The non-compliance should also be considered in context with the overall development of the Special Uses A zoned land area of the redevelopment site. Approved lot 2 has an area of 1,527m² and includes 'Woodlands House' approved for restoration for a medical centre. The lot forms an integral part of the design of the approved development and has a floor space ratio of 0.17:1.

2.3.2 Height

The approved development comprises a mixture of 4 storey residential flat buildings and 2 storey townhouses. The proposed use of the attics within the 8 townhouses of Building D for habitable space effectively creates a third level and 3 storey development.

The DCP includes the following height prescriptive measure:

The maximum height of any building should not exceed 7m to the ceiling of the topmost storey

The creation of habitable space within the attic of the approved building effectively creates a third storey and results in an increase in the height of the topmost ceiling from 6.0m to 7.2m-8.4m which is in non-compliance with the 7m height limit. The ridge height of the townhouses remains unchanged as approved.

The non-compliance with the height prescriptive measure is considered acceptable as the ridge height of the building remains unchanged and the building would still be compatible with surrounding approved and constructed development. The western elevation of Building D remains the same as approved, other than the addition of skylights. It is considered the amenity of adjoining properties in Rosebank Avenue would not be altered in relation to the approved development. Further, the DCP performance criteria are maintained in respect to a medium density environment and solar access.

2.3.3 Privacy

The proposed conversion of the attic space includes the addition of Juliet balconies with full length windows on the eastern elevation and reconfiguration of sky lights on the western elevation. The proposed openings for the additional bedroom accommodation are considered satisfactory in respect to privacy for existing and future residents.

The Juliet balconies within the roof would not directly overlook the townhouse's private open space areas. The outlook would include the 'Woodlands House' medical centre, the approved dwelling house at No. 27 Ray Road and the northern elevation of the approved 4 storey residential flat buildings A & B. The impact on privacy of the approved dwelling is considered acceptable with regard to the separation between the nearest proposed balcony and the dwelling (21.5m), the approved landscape plan and the limited use of the balconies involving bedroom accommodation. In respect to Building A and B the proposal is consistent with the approved plans and the privacy impacts from unit balconies at the northern elevation overlooking the open space areas of dwellings D2-D5.

The proposed skylights at the western elevation are 2.4m above floor level and would not overlook residents of existing dwellings fronting Rosebank Avenue Epping.

The applicant seeks to increase the height of the western boundary fence to be not less than 1.8m in height above natural ground level. The approved fencing condition No. 5 requires that:

5. *The height of the masonry fence along the western boundary of the site shall be not less than 1.3m above the ground floor level of the townhouses at the western elevation.*

To ensure an appropriate level of privacy between the adjoining residences in Rosebank Avenue, a revised condition is recommended to ensure the fence is not less than 1.8m in height.

2.4 Heritage Development Control Plan

The site includes 'Woodlands House' an item of heritage of local significance and adjoins an item at No. 10 Rosebank Avenue Epping. The streetscape of Rosebank Avenue is identified as representing the inter war housing period and has heritage significance.

The proposed modifications, including the change in the material of the boundary fence from masonry to timber, would not adversely impact on the heritage significance of the streetscape. To complement the housing development and to improve the appearance of the fence, a condition is recommended for the fence to include masonry piers at each change in level.

2.5 Section 94 Development Contributions Plan 2007-2011

The proposal increases the size of units D2-D10 within Building D from 2 bedroom to 3 bedroom units. A contribution is applicable for the increase in the size of the units in accordance with the Contributions Plan.

A condition is recommended for the payment of the applicable rate of contribution for each additional bedroom.

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 modification is within the approved building envelope and would not impact on trees or landscaping.

3.2 Built Environment

The proposed modification includes Juliet balconies within the roof of Building D at the eastern elevation. The balconies would not detract from the design of the approved development.

The proposed modifications include changes to the material of the western boundary fence from masonry to timber. The applicant submits the change in material from masonry to timber is more in keeping with the aesthetic nature of existing adjoining properties, complements the landscape plan and minimises foundation work. The proposed change is considered appropriate in this regard subject to condition for brick piers to provide contrast and improve aesthetics.

The proposed attic conversion for bedroom accommodation at the western elevation of Building D involves the use of skylights for light and ventilation. In this regard the necessary compliance with the Building Code of Australia is considered satisfactory in respect to amenity.

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 approved for medium/high density multi-unit housing.

5. PUBLIC PARTICIPATION


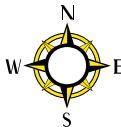
Section 79C(1)(d) of the Act requires Council to consider “*any submissions made in accordance with this Act*”.

5.1 Community Consultation

The proposed development was placed on public exhibition and was notified to adjoining and nearby landowners between 12 November, 2008 and 26 November, 2008 in accordance with Council’s Notification and Exhibition Development Control Plan. During this period, Council received eight submissions including a petition with 87 signatories. 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

<ul style="list-style-type: none"> • PROPERTIES NOTIFIED 	X SUBMISSIONS RECEIVED	 PROPERTY SUBJECT OF DEVELOPMENT	
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The submitted petition included signatories from residents of the mapped area and neighbouring streets including Cliff Road, Hazlewood Place, Kent Street and Patya Close.

The eight submissions including the petition objected to the development, generally on the following grounds that the development would result in:

- Low standard of accommodation;
- Increased density;
- Non-compliance with Medium Density DCP density, height limit and floor space ratio;
- A third storey and loss of privacy;
- Heritage impact;
- Timber fence instead of masonry;
- Adverse traffic & parking impacts.

The merits of the matters raised in community submissions have been addressed in the body of the report. It is noted the submissions reflect the objectors' previous level of concern raised in response to the original development application.

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 proposed modification would be in the public interest.

7. CONCLUSION

The application proposes to convert the attic roof space to additional bedrooms for townhouses D2-D10, change the fencing materials from masonry to timber (western boundary) and modify the proposed strata plan to include basement storage.

The site incorporates three zonings and the approved development is designed to conform to the requirements for the respective zone. The Medium Density Multi-Unit Housing DCP applied to the Special Uses A (Community Purposes) zoned area of the site. The proposed attic conversion for bedrooms results in non-compliance with the DCP density and ceiling height requirements. The non-compliance is considered acceptable as the proposed modification involves the use of existing approved space.

The proposed modification is therefore substantially the same development as approved and can be considered pursuant to S96(2) of the Act.

The concerns raised by objectors in response to the proposed modification reflect the previous level of concern in response to the original development application. The concerns are adequately addressed by the proposal subject to conditions. Accordingly, it is recommended that the application be approved subject to the conditions held at Schedule 1.

ROD PICKLES
Manager - Assessment Team 2
Planning Division

SCOTT PHILLIPS
Executive Manager
Planning Division

Attachments:

1. Locality Plan
2. Modification Plans
3. Approved Plans
4. DA 1688/2006 Consent

File Reference: DA/1688/2006/C
Document Number: D01069374

SCHEDULE 1

THAT pursuant to Section 96(2) of the Environmental Planning and Assessment Act, 1979, Development Consent No. 1688/2006 for demolition of existing buildings, retention and restoration of 'Woodlands House' for a medical centre, erection of 2 x 4 storey residential flat buildings containing 40 dwellings, erection of 2 x 2 storey buildings containing 15 townhouses and erection of a 2 storey dwelling house, Torrens title subdivision into 3 lots and strata subdivision, be amended as follows:

1. Deletion of condition No. 1A and replacement with a new condition 1A as follows:

1A. 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>
DA03 Basement Plan	Cracknell & Lonergan	30.05.2008
DA04 Ground Plan	Cracknell & Lonergan	30.05.2008
DA05 First Floor Plan	Cracknell & Lonergan	30.05.2008
DA06 Second Floor Plan	Cracknell & Lonergan	30.05.2008
DA07 Third Floor Plan	Cracknell & Lonergan	30.05.2008
DA08 Roof Plan	Cracknell & Lonergan	30.05.2008
DA09 Sections / Elevations	Cracknell & Lonergan	30.05.2008
DA10 Sections / Elevations	Cracknell & Lonergan	30.05.2008
DA11 Sections / Elevations	Cracknell & Lonergan	30.05.2008
DA12 Sections / Elevations	Cracknell & Lonergan	30.05.2008
32902L2 Subdivision Plan	Craig & Rhodes	30/05/08
S962 A05 Bldg D 2 nd Flr	Cracknell & Lonergan	August 2008
S962 A07 Bldg D Roof	Cracknell & Lonergan	August 2008
S962 A11 Bldg D East Elvn	Cracknell & Lonergan	August 2008

2. Addition of a new condition No. 3A as follows:

3A. The basement carpark shall include a residential storage facility which forms part of the strata plan entitlement to nominated units within the development.

3. Deletion of condition No. 5 and replacement with a new conditions Nos. 5A & 5B as follows:

5A. The height of the timber fence along the western boundary of the site shall be not less than 1.3m above the ground floor level of the townhouses at the western elevation and not less than 1.8m above finished ground level.

5B. The western boundary fence shall include brick piers in face brick matching the development, at each change in level.

4. Addition of a new condition No. 116A as follows:

116A. The payment of a contribution of \$24,781.60, for a third bedroom for 8 dwellings, 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 \$3,097.70 per third bedroom and it is to be paid by the end of the financial quarter in which the development application was determined and prior to the issuing of a construction 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.

Note 2: Council's Contribution Plan can be viewed at [www.hornsby.nsw.gov.au/Building & Development](http://www.hornsby.nsw.gov.au/Building%20&%20Development), or a copy may be inspected during business hours at the first floor of Hornsby Shire Council's Administration Building located at No. 296 Pacific Highway, Hornsby.

- END OF CONDITIONS -

4 SECTION 82A REVIEW - SUBDIVISION OF ONE APPROVED LOT INTO TWO LOTS - 68 - 86 HULL ROAD BEECROFT

Development Application No:	1882/2007 – Section 82A Review
Description of Proposal:	Subdivision of one approved lot into two lots
Property Description:	Lot 3 DP 1042630 (Nos. 68-86) Hull Road, Beecroft
Applicant:	Vigor Master Pty Ltd
Owner:	Hopeway Development Pty Ltd
Statutory Provisions:	Hornsby Shire Local Environmental Plan 1994 Special Uses A (Community Purposes) Zone
Estimated Value:	\$3,000
Ward:	C

RECOMMENDATION

THAT the Section 82A Review of Development Application No. 1882/2007 for the subdivision of one approved lot into two lots at lot 3 DP 1042630, Nos 68-82 Hull Road, Beecroft, be refused for the reasons detailed in Schedule 1 of this report.

EXECUTIVE SUMMARY

1. The Section 82A Review application is in respect to the proposed subdivision of one approved lot into two lots within an approved community title subdivision.
2. The proposal does not comply with the Residential Subdivision Development Control Plan and is in conflict with the development consent conditions applicable to the approved lot pursuant to DA/2457/2002.
3. Three submissions have been received in respect of the application.
4. It is recommended that the application be refused.

HISTORY OF THE APPLICATION

On 21 May 2008 Council's Planning Committee considered Executive Manager's Report PLN97/08 concerning the subject development application and resolved:

THAT Development Application No. 1882/2007 for subdivision of one lot (approved lot 8) into two lots (increasing the total number of lots to nine) be refused on the grounds Nos. 1 to 5 in Executive Manager's Report No. PLN97/08.

- 1. The proposed subdivision is unsatisfactory in respect to Section 79C(c) of the Environmental Planning and Assessment Act, 1979, as proposed lot 8B includes uncompacted fill and is unsuitable for residential development.*
- 2. The proposed subdivision is unsatisfactory in respect to Section 79C(a)(iii) of the Environmental Planning and Assessment Act, 1979, as the proposal does not comply with the Residential Subdivision Development Control Plan.*
- 3. Proposed lot 8B cannot accommodate a 200sqm building envelope clear of the area of uncompacted fill and does not comply with the allotment design prescriptive measures of the Residential Subdivision Development Control Plan.*
- 4. The proposal is in non-compliance with condition No. 11E of Development Consent No. 2457/2002.*
- 5. The proposal is not in the public interest.*

On 18 July 2008, the applicant submitted a request for Council to review its decision to refuse the application (Section 82A review).

On 6 November 2008 the applicant submitted development applications for proposed lot 8A and lot 8B, for a dwelling house on each lot (DA/1526/2008 and DA/1527/2008). These applications cannot be considered by Council unless the proposed lots are approved under the subject application.

HISTORY OF THE SITE

The site previously formed part of the grounds of the Mount Saint Benedict Convent School, and was surplus to the requirements of the school.

The site is the subject of Development Application No. 2457/2002 approved by Council on 17 December 2003 for the subdivision of the site into 8 lots together with a boundary adjustment with adjoining residential properties Nos. 26, 28, 30 & 32 Spring Street Beecroft. The development consent was subsequently modified to allow an amended lot layout, to allow the use of fill on the site, the relocation of a watercourse and a boundary adjustment between lot 7 and lot 8. The approved subdivision is now nearing completion.

On 16 May 2007 Council refused Development Application No. DA/1686/2005 for subdivision of two approved lots (one of which included the subject lot 8) into four, on the following grounds:

- 1. The proposal is unsatisfactory in respect to Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, as the proposed Torrens title*

subdivision does not comply with the Residential Subdivision Development Control Plan.

2. *The proposal does not comply with the element of 'Density' contained within the Residential Subdivision Development Control Plan, in regard to the requirement for a larger lot size on steep sites.*
3. *The proposed subdivision does not comply with the Residential Subdivision DCP 'Allotment Layout' criteria to minimise disturbance to existing natural vegetation.*
4. *The proposed subdivision does not comply with the Residential Subdivision DCP 'Allotment Design' requirement to accommodate a 200sqm building envelope of minimum dimension of 10m set back 4m from significant trees.*
5. *The proposal does not comply with the Residential Subdivision DCP 'Landscaping' criteria to retain significant trees.*
6. *The proposed subdivision results in the loss of Sydney Blue Gums which are identified as an endangered ecological community.*
7. *The proposal does not comply with consent conditions Nos. 63 and 64 of DA/2457/2002.*

On 28 July 2008 the applicant submitted Development Application No. DA/1013/2008 for the subdivision of one allotment (lot 5) into two and a boundary adjustment between approved lots 6 and 7. This application is concurrently being reported to Council (Refer PLN9/08).

THE SITE

The site (lot 8) forms part of an approved community title residential subdivision situated on a steeply sloping site with a southerly aspect. The site has frontage to the western side of Hull Road and is located south of the Mount St Benedict Convent and Girls High School on Pennant Hills Road. The overall site includes an area of remnant bushland identified as Blue Gum High Forest and is traversed by an intermittent watercourse. The site forms the top part of the catchment of Devlins Creek.

The site, subject of the application, comprises approved lot 8 which has an area of 1,393.5sqm of general dimensions 35m width x 39m depth. The lot is located on the southern side of the newly completed accessway and experiences an average fall of 20% to the rear southern boundary.

The lot includes an area of uncompacted fill used to fill and relocate the intermittent watercourse mainly within lot 7 which adjoins the eastern boundary. Lot 8 and lot 7 are currently subject to a Vegetation Management Plan for the restoration of Blue Gum High Forest and the riparian zone. Part of the watercourse is across the lower southern part of the lot. The watercourse is subject to an easement and a riparian zone, pursuant to consent conditions for DA/2457/2002. The riparian zone includes the south eastern part of the site (lot 8).

The rear of the site adjoins residential property comprising a two storey dwelling house with frontage to Spring Street Beecroft.

THE PROPOSAL

The proposal is for the subdivision of approved lot 8 into two lots.

Proposed lot 8A is an irregular shaped lot with an area of 698.12m² and is of dimensions, 17.1m frontage, 45.239m western side boundary, 38.943m eastern side boundary and rear boundary 19.52m. The lot has an average fall of 20% to the rear boundary. The lot includes Tree No. 110 identified as a Sydney Blue Gum.

Proposed lot 8B is rectangular in shape with an area of 699.27m² and is of dimensions, 17.9m frontage, 38.943m western side boundary, 39.101m eastern side boundary and rear boundary 17.9m. The lot has an average fall of 20% to the rear boundary. The lot includes Tree No. 75 identified as a Sydney Blue Gum.

ASSESSMENT

Prior to Council's determination, the development application was 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).

1. STATUTORY CONTROLS

1.1 Section 82A - Environmental Planning and Assessment Act, 1979

The application for review of Council's refusal of DA/1882/2007 is made pursuant to Section 82A of the Act. In accordance with the provisions under Section 82A, the applicant may make amendments to the development. Council is to notify the application and to take into consideration any submissions in carrying out the review.

The notification and assessment of the application are in accordance with Section 82A.

2. APPLICATION FOR REVIEW

The submitted plan for the proposed subdivision of approved lot 8 into two lots is the same plan as previously considered by Council. The application includes additional geotechnical information detailing the depth of fill on the site in relation to the indicative building envelope on proposed lot 8B.

2.1 Reasons for Refusal

Development Application No. 1882/2007 was refused by Council on the following grounds:

1. *The proposed subdivision is unsatisfactory in respect to Section 79C(c) of the Environmental Planning and Assessment Act, 1979, as proposed lot 8B includes uncompacted fill and is unsuitable for residential development.*
2. *The proposed subdivision is unsatisfactory in respect to Section 79C(a)(iii) of the Environmental Planning and Assessment Act, 1979, as the proposal does not comply with the Residential Subdivision Development Control Plan.*

3. *Proposed lot 8B cannot accommodate a 200sqm building envelope clear of the area of uncompacted fill and does not comply with the allotment design prescriptive measures of the Residential Subdivision Development Control Plan.*
4. *The proposal is in non-compliance with condition No. 11E of Development Consent No. 2457/2002.*
5. *The proposal is not in the public interest.*

The grounds for refusal of the application are considered with regard to the additional information submitted by the applicant under relevant headings as follows:

2.2 Uncompacted Fill

The eastern section of proposed lot 8B includes uncompacted fill to a depth ranging from 0.3m to 1.5m and >1.5m in the north eastern corner of the site. The filled area affects approximately 280m² of the proposed lot. The indicative building envelope is proposed to be located on land filled to a depth of 0.5m.

The filled area is subject to condition No. 11E (DA/2457/2002) which seeks to exclude that part of the site from future development.

The area of uncompacted fill poses a constraint to residential development and was allowed to remain in place subject to the construction of sub-soil drainage approved by Council (DA/2457/2002/C). It is considered that the area should remain restricted from development to allow the establishment of trees and vegetation to stabilise the filled area in accordance with the Vegetation Management Plan and consent conditions of DA/2457/2002.

The applicant submitted geotechnical advice in respect to proposed lot 8B which indicates a depth of fill up to a maximum of 0.5m within the 200m² indicative building envelope. The 0.5m depth of fill is considered not to be prohibitive for the construction of a dwelling house on proposed lot 8B subject to a geotechnical engineering design. The advice is acknowledged in respect to Item 3 of the grounds of refusal.

2.3 Residential Subdivision DCP

Proposed lot 8A complies with the allotment design prescriptive measures for accommodating a 200m² indicative building envelope clear of setbacks to boundaries and trees to be retained.

Proposed lot 8B includes an area of uncompacted fill amounting to approximately 280m² which is subject to a 'restriction as to user' to prevent the erection of any building or work within the filled area (Condition No. 11E of DA/2457/2002). The restriction effectively reduces the useable area of the lot for residential use to 419.27m².

The proposed subdivision raises a number of issues in respect to compliance with the requirements of the DCP as follows:

2.3.1 Density

The restriction under Condition 11E of DA/2457/2002 effectively reduces the useable area of proposed lot 8B to 419.27m². The useable area is insufficient to provide for development in accordance with density performance criteria of the Residential Subdivision DCP, i.e.;

Lot sizes are required to enable dwellings and driveways to be sited to protect natural or cultural features, and respond to site constraints including topography, bushland, soil erosion, drainage, and bushfire risk.

Solar Access

The site occupies a south facing slope and the proposed subdivision involves a north – south division of the approved lot. The slope and orientation of the proposed lots would result in relatively long narrow building with overshadowing of the private open space areas at the rear southern elevation.

The proposed lots do not meet the DCP performance criteria for solar access, that is;

Lots should be orientated so that the long axis or length of the lot faces to the north to maximise solar access to future private open space areas and promote the development of energy efficient housing.

2.3.2 Private Open Space

The private open space area of proposed lot 8B is affected by the riparian zone and watercourse easement which reduces the useable area for active recreational use, clothes drying etc to 84m² in non-compliance with the DCP requirement for a minimum private open space area of 120sqm.

The proposed lot layout and orientation would result in substantial overshadowing of the open space areas from a future dwelling.

The proposed private open space areas do not meet the DCP performance criteria, that is;

Private open space areas should be located in areas which receive sunlight all year round.

2.4 Development Consent DA/2457/2002

The site is subject to conditions of development consent for DA/2457/2002 that apply to the site as follows:

11E. A Restriction using terms available from Council shall be created on the proposed community title to restrict building and development of the Lots and areas affected by uncontrolled fill. The Restriction shall be created on the final plan of subdivision and submitted to Council for consideration.

55A. The relocation and restoration of the watercourse on the site shall be undertaken generally in accordance with plans ref: Job No: 05-21 (06-11) prepared by Landscape Architects International Pty Ltd.

55B. The Vegetation Management and Landscape Plan – Amendment B dated 12/5/06 prepared by Landscape Architects International Pty Ltd shall be amended prior to the issue of the Construction Certificate to include the following:

- (a) *The riparian zone is to be shown as 10 metres either side of the top of the watercourse bank.*
- (b) *The Watercourse Restoration Section AA shall indicate that this is a non-scale diagrammatic cross section or similar wording.*
- (c) *In the Vegetation Management Plan Summary of Council Conditions shall include any conditions and plans relating to the section 96(2) DA/2457/2002/C application.*

Copies of the final amended Vegetation Management and Landscape Plan shall be submitted to Council prior to the issue of the Construction Certificate.

55C. *Prior to issue of Construction Certificate a qualified and experienced bush regeneration company shall prepare and implement a plan for creek restoration and revegetation works following disturbance of the fill area and riparian zone due to the installation of subsurface drainage. All disturbances shall be fully rehabilitated in accordance to the approved plan. The plan is to provide details on revegetation of the area disturbed for the sub-surface drainage works, using Blue Gum High Forest species, considering there will be an area excavated for the installation of the sub surface drainage. The plan is to specify that all works are to be implemented and co-ordinated by a qualified bush regeneration company. The Plan shall include the following details:*

- (a) *Describe planting densities of at least 4 plants per square metre.*
- (b) *Details of how plants will be sourced for revegetation works including from translocation from site within the allotments approved for residential development. Plants not sourced from site must be Blue Gum High Forest species and obtained from a nursery which has local provenance stock of Blue Gum High Forest species.*
- (c) *Details on soil stabilisation, use of mulch, stockpiling of soil and plants, and protection measures for adjoining areas containing remnant Blue Gum High Forest.*
- (d) *Details of follow-up maintenance including on-going weeding and plant watering.*
- (e) *A schedule of works which includes at a minimum:*
 - (i) *Following planting, six-weekly maintenance visits must be undertaken for the first year to ensure watering, weed control and plant establishment.*
 - (ii) *In year 2, maintenance shall occur at least every 3 months. Monitoring and reporting within the maintenance period.*

55D. *All plants that are planted in the revegetation area must be suitably maintained by a qualified and experienced bush regeneration company and any plants that die within the 2 years maintenance period as outlined in the approved plan shall be replaced by a similar indigenous Blue Gum High Forest species.*

- 55E. *The applicant shall submit to Council confirmation that a qualified and experienced bush regeneration company has been engaged to carry out restoration works in accordance with the approved plans.*

The conditions do not limit Council in determining the subject application on merit, however, the intent of the conditions to address the environmental impacts of the approved subdivision, in relocating the watercourse and the filling of the land, remain current in respect to lot 8.

The conditions include a restrictive covenant over the filled area of the site and the inclusion of part of the site in a Vegetation Management Plan for restoration of the riparian zone and Blue Gum High Forest.

The Vegetation Management Plan referred to in condition No. 55B above, includes the eastern section of the site for bushland restoration and restoration of the riparian zone. The indicative building envelope for proposed lot 8B encroaches within the restoration area. Indigenous vegetation has re-established on the site following the relocation of the watercourse.

The eastern section of the site (Lot 7 & Lot 8) is identified as supporting Blue Gum High Forest, which is listed as a critically endangered ecological community pursuant to the Threatened Species Conservation Act, 1995. The approved Vegetation Management Plan seeks to restore the ecological community on the site. The indicative building envelope on proposed lot 8B encroaches on Council's mapped area of Blue Gum High Forest and the area subject to the Vegetation Management Plan. Proposed lot 8B would result in the loss of the bushland restoration area on approved lot 8.

2.5 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.

In the preparation of plans for the approved subdivision the adjoining owners in Spring Street were party to the subdivision in respect to the design involving relatively large lots, the retention of significant trees, Blue Gum High Forest and the watercourse. In being party to the subdivision design, the adjoining owners were included in the development by way of the boundary adjustment which increased the size of their adjoining land holdings.

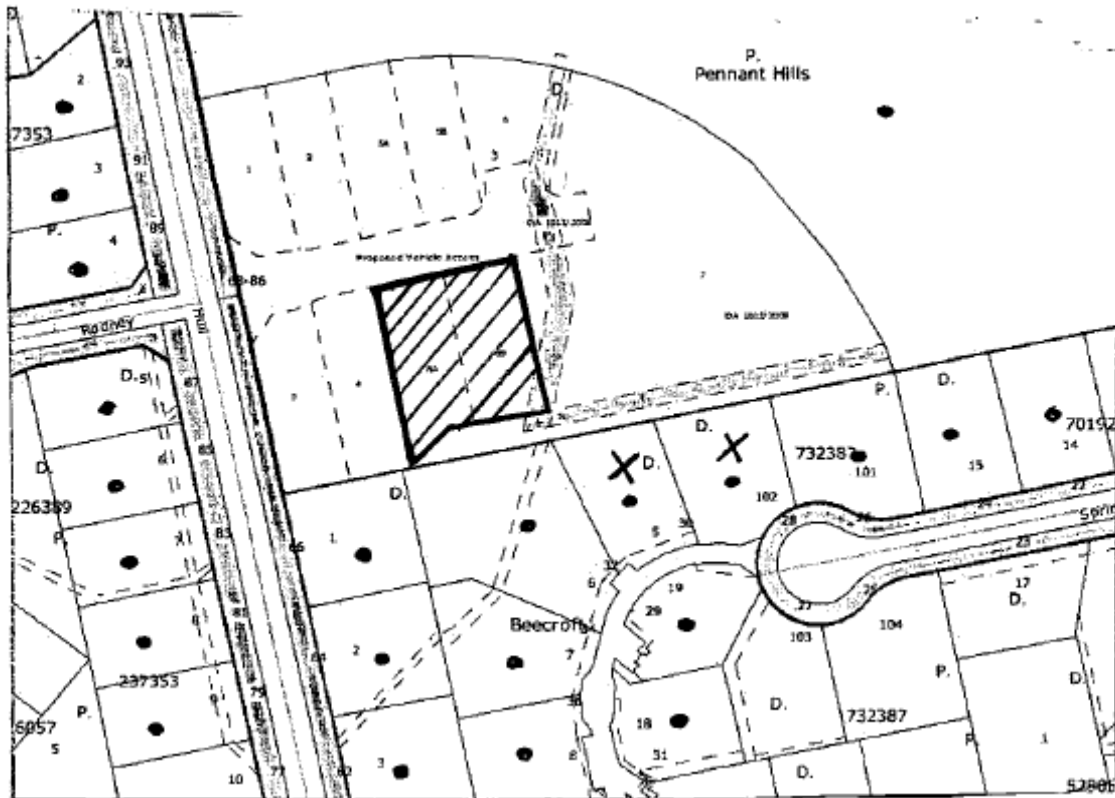
The proposed subdivision of lot 8 would result in substantially smaller lots than originally approved, result in further loss of Blue Gum High Forest habit and is contrary to the original design involving the boundary adjustment with the adjoining owners.

The proposal is contrary to the original subdivision design which included the adjoining owners and considered not in the public interest.



3. PUBLIC SUBMISSIONS

The Section 82A Review Application was placed on public exhibition and was notified to adjoining and nearby landowners between 30 July 2008 and 13 August 2008 in accordance with Council's Notification and Exhibition Development Control Plan. During this period,

Council received three 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

<ul style="list-style-type: none"> • PROPERTIES NOTIFIED 	<ul style="list-style-type: none"> X SUBMISSIONS RECEIVED 	 PROPERTY SUBJECT OF DEVELOPMENT	
<p>1 SUBMISSION RECEIVED OUT OF MAP RANGE</p>			

The submissions objected to the development, generally on the following grounds that the development would result in:

- Development of land involving uncompacted fill;
- Proximity of a future dwelling to a watercourse;
- Approved lot 8 has regard to the slope and the watercourse;
- Proposal is not ecologically sustainable;
- Approved lot 8 designed in consultation with adjoining property owners that are party to the approved boundary adjustment with properties in Spring Street.

The above matters raised in community submissions are generally reiterated in the body of the report.

CONCLUSION

The applicant has requested that Council review its decision to refuse DA/1882/2007 for the subdivision of one lot (approved lot 8) into two lots.

The proposed subdivision of approved lot 8 is inconsistent with the current development as approved by Council. The approved lot is subject to consent conditions for the restoration of the Blue Gum High Forest and for restriction of development within the area of uncompacted fill. Proposed lot 8 is significantly constrained by the consent conditions which limit the available area for residential development.

The proposed subdivision is unsatisfactory in respect to the density, solar access and private open space requirements of the Residential Subdivision DCP. The proposed subdivision is contrary to the original subdivision design involving adjoining owners in a boundary adjustment and is not in the public interest.

It is recommended that Council confirms its previous decision to refuse the development application.

Note: At the time of the completion of this planning report, no persons have made a *Political Donations Disclosure Statement* pursuant to Section 147(3) of the Environmental Planning and Assessment Act 1979 in respect of the subject planning application.

ROD PICKLES
Manager - Assessment Team 2
Planning Division

SCOTT PHILLIPS
Executive Manager
Planning Division

Attachments:

1. Locality Plan
2. Site Plan
3. Subdivision Plan

File Reference: DA/1882/2007
Document Number: D01044046

SCHEDULE 1

1. The proposed subdivision is unsatisfactory in respect to Section 79C(c) of the Environmental Planning and Assessment Act, 1979, as proposed lot 8B includes uncompacted fill and is unsuitable for residential development.
2. The proposed subdivision is unsatisfactory in respect to Section 79C(a)(iii) of the Environmental Planning and Assessment Act, 1979, as the proposal does not comply with the Residential Subdivision Development Control Plan.
 - 2.1 The proposal does not meet the density performance criteria.
 - 2.2 The proposal does not meet the solar access performance criteria.
 - 2.3 The proposal does not meet the private open space performance criteria.
3. Proposed lot 8B cannot accommodate a 200sqm building envelope clear of the area of uncompacted fill and does not comply with the allotment design prescriptive measures of the Residential Subdivision Development Control Plan.
4. The proposal is in non-compliance with condition No. 11E of Development Consent No. 2457/2002.
5. The proposal is in non-compliance with condition Nos. 55A, 55B, 55C and 55D of Development Consent No. 2457/2002 requiring the implementation of a Vegetation Management Plan for the restoration of Blue Gum High Forest.
6. The proposed subdivision is inconsistent with the original subdivision design for a larger lot size with regard to topography, privacy impacts and retention of Blue Gum High Forest and is not in the public interest.

- END OF REASONS FOR REFUSAL -

5 DEVELOPMENT APPLICATION - SUBDIVISION OF ONE APPROVED LOT INTO TWO AND BOUNDARY ADJUSTMENT - 68 - 86 HULL ROAD, BEECROFT

Development Application No:	DA/1013/2008
Description of Proposal:	Subdivision of approved lot 5 into two lots and a boundary adjustment with approved lots 6 and 7
Property Description:	Lot 3 DP 1042630 (Nos. 68-86) Hull Road Beecroft
Applicant:	Vigor Master Pty Ltd
Owner:	Hopeway Development Pty Ltd
Statutory Provisions:	Hornsby Shire Local Environmental Plan 1994 Special Uses A (Community Purposes) Zone
Estimated Value:	\$3,000
Ward:	C

RECOMMENDATION

THAT Development Application No. 1013/2008 for the subdivision of approved lot 5 into two lots and boundary adjustment with approved lot 6 and lot 7 at lot 3 DP 1042630, Nos. 68-86 Hull Road Beecroft be refused for the reasons detailed in Schedule 1 of this report.

EXECUTIVE SUMMARY

1. The application proposes the subdivision of approved lot 5 into two lots and a boundary adjustment with approved lots 6 and 7.
 2. The site was subject to a previous application (DA/1686/2005) for subdivision of two lots into four lots which was refused by Council at its Planning Meeting on 16 May 2007.
 3. The proposal does not comply with the landscaping and allotment design element objectives of Council's Residential Subdivision Development Control Plan and results in the loss of Blue Gum High Forest.
 4. The application is the subject of an appeal to the Land and Environment Court against Council's deemed refusal of the application (Proceedings No. 11156 of 2008)
 5. Five submissions have been received in respect of the application.
-

6. It is recommended that the application be refused.

HISTORY OF THE SITE

The site previously formed part of the grounds of the Mount Saint Benedict Convent School and was surplus to the requirements of the school.

The site is the subject of Development Application No. 2457/2002 approved by Council on 17 December 2003 for the subdivision of the site into 8 lots together with a boundary adjustment with adjoining residential properties Nos. 26, 28, 30 & 32 Spring Street Beecroft. The development consent was subsequently modified to allow an amended lot layout, to allow the use of fill on the site, the relocation of a watercourse and a boundary adjustment between lot 7 and lot 8. The approved subdivision is now nearing completion.

On 16 May 2007 Council refused Development Application No. DA/1686/2005 for the subdivision of two approved lots (approved lot 5 & approved lot 8) into four lots on the following grounds:

1. *The proposal is unsatisfactory in respect to Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, as the proposed Torrens title subdivision does not comply with the Residential Subdivision Development Control Plan.*
2. *The proposal does not comply with the element of 'Density' contained within the Residential Subdivision Development Control Plan, in regard to the requirement for a larger lot size on steep sites.*
3. *The proposed subdivision does not comply with the Residential Subdivision DCP 'Allotment Layout' criteria to minimise disturbance to existing natural vegetation.*
4. *The proposed subdivision does not comply with the Residential Subdivision DCP 'Allotment Design' requirement to accommodate a 200sqm building envelope of minimum dimension of 10m set back 4m from significant trees.*
5. *The proposal does not comply with the Residential Subdivision DCP 'Landscaping' criteria to retain significant trees.*
6. *The proposed subdivision results in the loss of Sydney Blue Gums which are identified as an endangered ecological community.*
7. *The proposal does not comply with consent conditions Nos. 63 and 64 of DA/2457/2002.*

Approved lot 8 was subject to a further development application DA/1882/2007 for subdivision into two lots. That application was refused by Council on 21 May 2008 on the following grounds:

1. *The proposed subdivision is unsatisfactory in respect to Section 79C(c) of the Environmental Planning and Assessment Act, 1979, as proposed lot 8B includes uncompacted fill and is unsuitable for residential development.*

2. *The proposed subdivision is unsatisfactory in respect to Section 79C(a)(iii) of the Environmental Planning and Assessment Act, 1979, as the proposal does not comply with the Residential Subdivision Development Control Plan.*
3. *Proposed lot 8B cannot accommodate a 200sqm building envelope clear of the area of uncompacted fill and does not comply with the allotment design prescriptive measures of the Residential Subdivision Development Control Plan.*
4. *The proposal is in non-compliance with condition No. 11E of Development Consent No. 2457/2002.*
5. *The proposal is not in the public interest.*

On 18 July 2008 the applicant submitted a request for Council to review its decision to refuse DA/1882/2007 for the subdivision of one lot (approved lot 8) into two lots (Section 82A review). The review of that application is concurrently being reported to Council (Refer PLN8/09).

In Council's previous assessment of the subject application, compensatory planting of Sydney Blue Gums was recommended within a restricted development area on lot 7, to replace the removal of trees on proposed lots 5A & 5B. The applicant objected to the proposed restricted development area, appealed to the Land and Environment Court and submitted a schematic proposal for a future subdivision of lot 7.

On 8 December 2008 Council issued a Notice of Intention To Issue an Order to the applicant in respect to non-compliance with DA/2457/2002 consent conditions for restoration of Blue Gum High Forest on lot 7.

On 17 December 2008 the Land and Environment Court issued Orders for the proceedings to be listed for a Section 34 Conference on 9 February 2009.

THE SITE

The site forms part of an approved community title residential subdivision situated on a steeply sloping site with a southerly aspect. The site has frontage to the eastern side of Hull Road and is located south of the Mount St. Benedict Convent & Girls High School on Pennant Hills Road. The site forms the top part of the catchment of Devlins Creek.

The site, subject of the application, comprises approved lots 5, 6 & 7 with a total area of 6,242.4sqm. The site of the two proposed lots 5A and 5B is located on the northern side of the accessway and experiences an average fall of 20% to the frontage.

The site of the two proposed lots includes a group of existing trees identified as remnant Blue Gum High Forest (Refer Attachment 4 - Blue Gum High Forest Area).

The northern boundary of the site adjoins the lower southern perimeter of the Mount St Benedict School grounds which is not a school activity area and forms part of the landscaped area for the school. The Mount St. Benedict Convent is located approximately 50m north of the site.

THE PROPOSAL

The proposal involves a boundary adjustment between approved lots 5, 6 and 7 and the subdivision of approved lot 5 into two lots.

Proposed lot 5A has an area of 656.09m² and is of dimensions, 15.7m frontage and 42.09m depth. The lot has an average fall of 19% to the frontage. The lot includes Tree Nos. 78 and 89 identified as Sydney Blue Gums.

Proposed lot 5B is an irregular shaped lot with an area of 679.88m² and is of dimensions, 17.3m frontage, 41.249m western side boundary, 28.816m eastern side boundary and rear boundary 17.5m. The lot has an average fall of 21% to the frontage. The lot includes Trees Nos. 70 and 80 identified as Sydney Blue Gums.

Proposed lot 6 is an irregular shaped lot with an area of 663.58m² and is of dimensions 16m frontage, 28.816m western side boundary, 31m eastern side boundary and 32.5m rear boundary. The lot has an average fall of 23% to the frontage.

Proposed lot 7 is the residue lot which includes remnant Blue Gum High Forest and has an area of 4,075.95m².

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 lot which, when developed would increase housing supply 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 Shire Local Environmental Plan 1994

The subject land is zoned Special Uses A (Community Purposes) under Hornsby Shire Local Environmental Plan 1994 (HSLEP). The objectives of the zone are:

- (a) *to provide for the cultural needs of the community.*
- (b) *to identify land for the provision of community services and facilities.*
- (c) *to ensure that community uses are compatible with the amenity of the area in which they are located.*

The proposed development is defined as ‘subdivision’ under HSLEP and is permissible in the zone with Council’s consent. A minimum lot area development standard is not applicable to the Special Uses A (Community Purposes) zone under HSLEP. In this regard the Residential Subdivision Development Control Plan applies to the Special Use zones (refer to discussion in Section 2.3).

Clause 18 of HSLEP sets out heritage conservation provisions within the Hornsby Shire local government area. The site is in the vicinity of ‘Mount St. Benedict’s Convent and grounds’ identified in Schedule D as an item of environmental heritage. The site is within the Beecroft-Cheltenham Heritage Conservation Area identified in Schedule E of HSLEP (refer to discussion in Section 2.3.4).

2.2 Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

The application has been assessed against the requirements of the Sydney REP which includes planning principles applicable to the site within the upper part of the catchment. The principles incorporate measures to protect water quality, minimise urban runoff, conserve water and to ensure the catchment watercourses, wetlands, riparian lands and remnant vegetation are protected.

The site works for the approved lot have been largely completed in accordance with consent conditions of DA/2457/2002 for erosion and sediment control measures. The proposed subdivision of the approved lot involves only minor service connection work and would not adversely impact on the catchment or water quality subject to appropriate controls being implemented at construction phase.

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 (DCP). The following table sets out the proposal’s compliance with the prescriptive standards of the Plan:

Residential Subdivision Development Control Plan			
Control	Proposal	Requirement	Compliance
Density	Lot 5A – 659.09m ² Lot 5B – 679.88m ² Lot 6 – 663.58m ² Lot 7 – 4,239.85m ²	600m ²	Yes

The proposed development complies with the minimum lot area requirement and meets the prescriptive standard for the preferred lot size on steeper sites, to minimise overshadowing and overlooking of future dwellings.

The proposed indicative building envelopes on proposed lots 5A & 5B involve the removal of trees Nos. 70, 79, 80 & 89 which are Sydney Blue Gums and identified as significant trees. The proposed lots cannot accommodate a 200m² indicative building envelope clear of setbacks to boundaries and significant trees. The proposed lots are in non-compliance with the DCP allotment design and landscaping element objectives.

The resulting loss of trees from residential development of proposed lot 5A and lot 5B has been considered with regard to compensatory planting on approved lot 7 which forms part of the site subject to the application. Approved lot 7 is the subject of a Vegetation Management Plan for the restoration of Blue Gum High Forest. The lot includes sufficient suitable area for compensatory planting in association with the restoration of Blue Gum High Forest on the community title subdivision site.

The restoration of Blue Gum High Forest on the site is currently provided for by the large lot areas and consent conditions under DA/2457/2002. Notwithstanding, the proposed and any future subdivision should only be considered by Council with regard to the protection and restoration of Blue Gum High Forest within a community title lot (lot 7), to ensure future management is the responsibility of all owners within the community title scheme, in accordance with a Vegetation Management Plan.

To date, the applicant has declined to enter into such negotiations with Council's officers.

2.3.1 Heritage Development Control Plan

Council's Heritage Committee considered the proposal and advised that the proposed subdivision would not detract from the significance of the Beecroft Heritage Conservation Area or the significance of the heritage item in the vicinity of the site, namely, 'Mount St. Benedict's Convent and grounds'.

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 trees located on approved lot 5 comprising trees Nos. 70, 78, 80 and 89 are identified as Sydney Blue Gums which are located in the central part of the lot. Any future development of lot 5 would need to be of design to minimise impact on the trees.

The indicative building envelopes for proposed lot 5A and lot 5B, would involve removal or adversely impact on all of the trees.

Blue Gum High Forest is identified as a critically endangered ecological community under the Threatened Species Conservation Act 1995. The approved subdivision is subject to a Vegetation Management Plan for the restoration of Blue Gum High Forest primarily on lot 7. The NSW Rural Fire Service has advised of approval for the granting of a Bush Fire Safety Authority for the proposed development subject to the following condition:

1. *The entire property of the proposed lots shall continue to be managed to inner protection area (IPA) requirements as outlined within section 4.1.3 and appendix 5 of Planning For Bush Fire Protection 2006 and the NSW Rural Fire Service's document 'Standards for asset protection zones'.*

The condition is in conflict with the current DA/2457/2002 consent conditions for the implementation of a Vegetation Management Plan, as the density of plantings required under the plan could not be achieved for an inner protection area.

The area of Blue Gum High Forest subject to the Vegetation Management Plan has been recently been mowed. Council has issued a Notice of Intention to Issue an Order was issued to the applicant to fence and restore the Blue Gum High Forest area on the site, in accordance with consent conditions for DA/2457/2002 (refer also to discussion in Section 5.2).

The application does not demonstrate how the conflict between bushfire and environmental management can be reconciled.

3.2 Built Environment

The proposed lots are elevated to the accessway and provide opportunity for dwelling design for lower floor garaging, reducing a building footprint. The position of the lots provides opportunity for dwellings with north facing living areas and access to private open space with minimal impacts on privacy and overshadowing of adjoining residential property.

Other than for the site constraint involving the existing trees, the proposed lots would provide opportunity for sustainable housing design.

4. SITE SUITABILITY

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

Approved lot 5 includes a stand of Sydney Blue Gums, a critically endangered ecological community, which would be removed or adversely affected by the proposed subdivision into two lots.

The eastern part of the site is within a bush fire prone area.

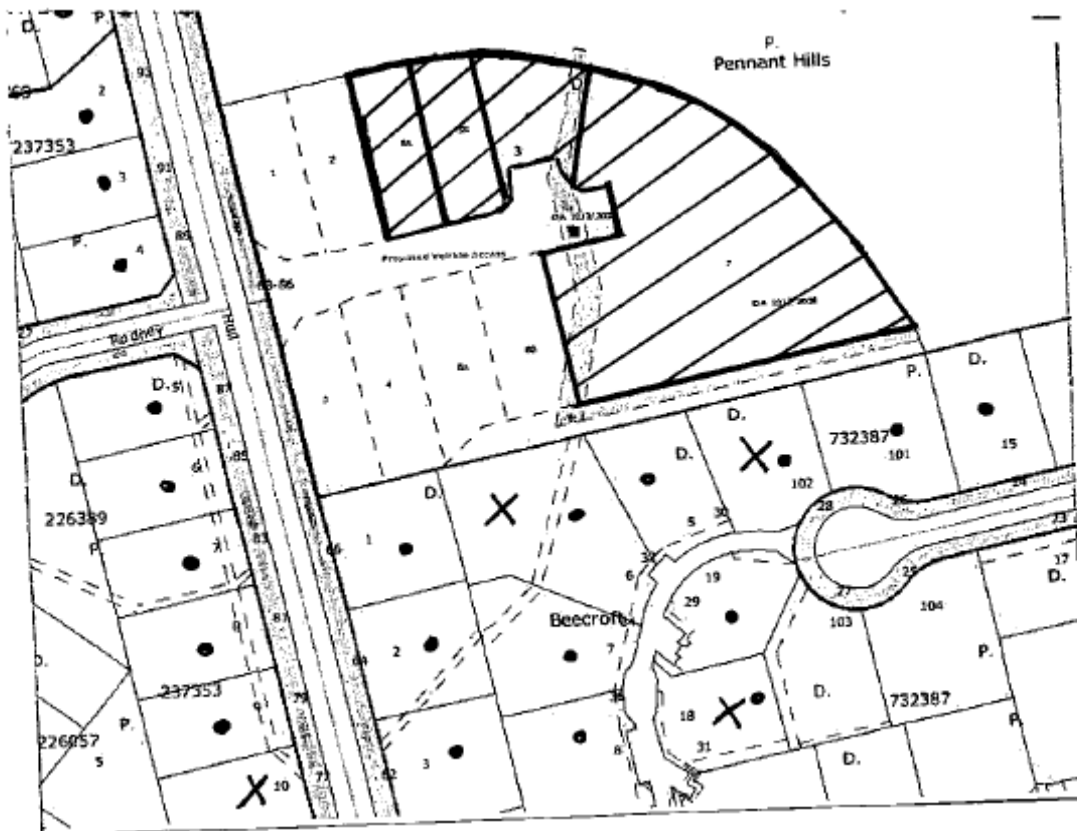
The site, including approved lots 5, 6 & 7 is suitable for residential development, subject to subdivision design to enable the restoration of Blue Gum High Forest and to provide for bush fire safety. Without appropriate offsets in place, namely community title management of a portion of approved lot 7, it is considered that the site is not suitable to accommodate two dwellings on the land. Consequently, the subdivision of the land is not recommended.

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 13 August 2008 and 3 September 2008 in accordance with Council’s Notification and Exhibition Development Control Plan. During this period, Council received five 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

<ul style="list-style-type: none"> • PROPERTIES NOTIFIED 	<ul style="list-style-type: none"> X SUBMISSIONS RECEIVED 	 PROPERTY SUBJECT OF DEVELOPMENT	
<p>1 SUBMISSION RECEIVED OUT OF MAP RANGE</p>			

1 SUBMISSION REPRESENTING THE SPRING ST CROFT HOME OWNERS ASSOC.
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Five submissions objected to the development, generally on the following grounds that the development would result in:

- Loss of Sydney Blue Gums on lot 5;
- Diminish the available area of lot 7 for Sydney Blue Gums;
- Detract from the character of the area;
- Lots subject to environmental constraints.

The merits of the matters raised in community submissions have been addressed in the body of the report.

5.2 Public Agencies

The development application is Integrated Development under the Act and requires the approval of the NSW Rural Fire Service for the issue of a Bush Fire Safety Authority.

The Rural Fire Service advised of its concurrence to the application subject to conditions. The conditions include the implementation of an inner protection zone, which is not a requirement under the current DA/2457/2002 consent conditions and recognises the proposed increase in residential density. The current bush fire safety measures for the approved lots are provided for by the accessway design and access to hydrants.

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.

Of note in this regard is the approved subdivision plan, which included the involvement of the adjoining owners in Spring Street who were party to the application and the approved boundary adjustment for addition to their lands. The approved plan provides for large residential lots to enable significant trees to be retained and to restore Blue Gum High Forest on the site. However, the proposed subdivision is contrary to the intent of the approved subdivision plan and in this regard is considered to be not in the public interest.

CONCLUSION

The application proposes subdivision of one lot into two lots and a boundary adjustment. The proposed subdivision follows on a previous proposal involving the subdivision of lot 5 which was refused by Council particularly with regard to the loss of significant trees on lot 5. The proposed lots cannot accommodate a 200m² building envelope and retain the significant trees. The proposal does not comply with the Residential Subdivision DCP landscaping and allotment design element objectives.

The requirements of the NSW Rural Fire Service for the proposed lots conflict with the current consent conditions for restoration of Blue Gum High Forest.

It is recommended that the development application be refused.

Note: At the time of the completion of this planning report, no persons have made a *Political Donations Disclosure Statement* pursuant to Section 147(3) of the Environmental Planning and Assessment Act 1979 in respect of the subject planning application.

SCOTT PHILLIPS
Executive Manager
Planning Division

Attachments:

1. Locality Plan
2. Subdivision Plans
3. Bushfire Prone Area Plan
4. Blue Gum High Forest Area Plan
5. Approved Subdivision Plan

File Reference: DA/1013/2008
Document Number: D01044968

SCHEDULE 1

1. The proposal is unsatisfactory in respect to Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act, 1979, as the proposal does not comply with the Residential Subdivision Development Control Plan.
 - 1.1 The proposal does not comply with the allotment design prescriptive measure to accommodate a 200m² indicative building envelope clear of setbacks to boundaries and significant trees.
 - 1.2 The proposal does not comply with the landscaping performance criteria to retain significant vegetation.
2. The proposal is unsatisfactory in respect to Section 79(1)(b) of the Environmental Planning and Assessment Act, 1979, as the proposal adversely impacts on Sydney Blue Gum High Forest.
 - 2.1 The proposal results in the loss of Sydney Blue Gums which are identified as a critically endangered ecological community under the Threatened Species Conservation Act 1995.
 - 2.2 The requirements of the NSW Rural Fire Service for the implementation of an inner protection zone for the proposed lots is in conflict with consent conditions under DA/2457/2002 which require the implementation of a Vegetation Management Plan for restoration of Blue Gum High Forest.
3. The proposal is unsatisfactory in respect to Section 79(1)(e) of the Environmental Planning and Assessment Act, 1979, as the proposal is not in the public interest.
 - 3.1 The proposal is contrary to the approved subdivision plan for large residential lots to retain and restore Blue Gum High Forest on the site.

- END OF REASONS FOR REFUSAL -

6 DEVELOPMENT APPLICATION - DEMOLITION OF AN EXISTING DWELLING AND SUBDIVISION OF ONE LOT INTO TWO - 8 CHORLEY AVENUE CHELTENHAM

Development Application No:	DA/1202/2008
Description of Proposal:	Demolition of an existing dwelling and subdivision of one lot into two.
Property Description:	Lot 144 DP 12364, No. 8 Chorley Avenue, Cheltenham
Applicant:	P S Graham & Associates
Owner:	Mrs B L McDonald and Mr R G Rose
Statutory Provisions:	Hornsby Shire Local Environmental Plan 1994 Residential AS (Low Density – Sensitive Lands)
Estimated Value:	\$25,000
Ward:	C

RECOMMENDATION

THAT Development Application No. DA/1202/2008 for demolition of an existing dwelling and subdivision of one lot into two at lot 144 DP 12364, No. 8 Chorley Avenue, Cheltenham be refused for the reasons detailed in Schedule 1 of this report.

EXECUTIVE SUMMARY

1. The application proposes the demolition of an existing dwelling and subdivision of one lot into two.
2. The proposal does not comply with the objectives of Council's Heritage Development Control Plan.
3. Eight submissions have been received in respect of the application.
4. It is recommended that the application be refused.

THE SITE

The site has frontage to the northern side of Chorley Avenue and an area of 1,407m². The site is irregular in shape and is of dimensions; frontage 20.115m, western side boundary 60.96m, eastern side boundary 81.08m and rear boundary 30.81m. The site has a fall of 10% to the western side boundary.

The site includes an existing single storey brick dwelling house with tiled roof which was constructed in 1937. The house has a lower floor single garage at the western side of the house. The adjoining properties include dwelling houses of similar age and construction.

The site includes several trees including two large trees located on each side boundary.

The site is located 350m north east of Cheltenham Railway Station.

THE PROPOSAL

The proposal is for the demolition of the existing dwelling house and subdivision of one allotment into two lots. The original proposal for the alteration of the existing dwelling and the construction of an accessway along the western side boundary was amended following concerns raised by Council regarding inadequate accessway width and adverse impacts on existing trees.

Proposed lot 1 has an area of 622.9m² and is of dimensions; frontage 16.055m, western side boundary 4.905m, eastern side boundary 36.15m and rear boundary 13.81m. Proposed lot 1 has direct road frontage along its entire front boundary.

Proposed lot 2 is a battleaxe lot with an area of 784.1m² (641m² excluding handle). The handle (4.06m x 36.1m) is along the eastern boundary of the site. The lot dimensions are; common boundary 13.81m, western side boundary 20.055m, eastern side boundary 81.08m and rear boundary 30.81m.

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 residential lot and would improve housing opportunities 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 Shire Local Environmental Plan 1994

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

- to provide for the housing needs of the population of the Hornsby area.*
- to promote a variety of housing types and other land uses compatible with a low density residential environment and sensitive to the land capability and established character of this environment.*
- to provide for development that is within the environmental capacity of a sensitive low density residential environment.*

The proposed development is defined as ‘demolition’ and ‘subdivision’ under HSLEP and is permissible in the zone with Council’s consent.

Clause 14 of HSLEP prescribes that the minimum lot area for subdivision within the zone is 600m². The applicant addresses this requirement by the proposed lots areas of 622.9m² and 641m².

Clause 18 of HSLEP sets out heritage conservation provisions within the Hornsby LGA. The proposal involves the demolition of an existing dwelling house within the Beecroft-Cheltenham Heritage Conservation Area. The applicant submitted a Heritage Impact Assessment for Council’s assessment pursuant to Clause 18(6).

2.2 Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

The application has been assessed against the requirements of the Sydney REP which includes planning principles applicable to the site within the upper part of the catchment. The principles incorporate measures to protect water quality, minimise urban runoff, conserve water and to ensure the catchment watercourses, wetlands, riparian lands and remnant vegetation are protected.

Subject to the implementation of erosion and sediment control measures and stormwater detention measure, the proposed subdivision would not adversely impact on the catchment or water quality.

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 standards of the Plan:

Residential Subdivision Development Control Plan			
Control	Proposal	Requirement	Compliance
Lot Area	Lot 1 – 622.9m ² Lot 2 – 641m ²	600m ²	Yes
Width of Access Handle	4m	4m	Yes

The proposed subdivision complies with the density standards within Council's RSDCP. The site includes two large trees, Tree No. 30 and Tree No. 24 which are significant trees and limit the available area for future residential development. The constraints to residential development are detailed below, as well as a brief discussion on compliance with relevant performance standards of the DCP.

2.3.1 Allotment Design

Proposed lot 1 is the site of the existing dwelling to be demolished. The proposed lot can accommodate a 200m² indicative building envelope clear of setbacks to boundaries and trees to be retained. The proposed lot and indicative building envelope provide sufficient area for private open space.

Proposed lot 2 can provide for a 200m² indicative building envelope clear of setbacks to boundaries. Council's assessment recommends a setback of 6m from Tree No. 30 and a setback of 4m from Tree No. 24. The proposed lot can accommodate a 200m² indicative building envelope, in accordance with the prescriptive measure for a minimum dimension of 10m and comply with the required setbacks from significant trees. The proposed lot and indicative building envelope provide sufficient area for private open space. Based on a 200m² building envelope, it is likely that at least a portion of any future dwelling on the site would be two storeys in height.

2.3.2 Solar Access

The proposed lots are generally advantaged in respect to solar access and comply with the DCP requirement for open space areas to receive a minimum of 4 hours of sunlight on June 22nd.

2.3.3 Landscaping

The significant trees on the site can be retained and protected for the proposed subdivision. The proposal would result in the loss of six other trees, none of which are considered worthy of retention.

Subject to appropriate measures to protect the trees to be retained, the proposal is considered acceptable in respect to the DCP landscaping element objective.

2.3.4 Drainage Control

The proposed stormwater drainage system complies with the DCP requirements. The written consent of the downstream property owner has been submitted for the granting of a stormwater drainage easement.

2.3.5 Accessway Design

The proposed accessway for lot 2 along the eastern boundary of the site has a minimum width of 4m and complies with the DCP accessway design criteria. The shared use of the accessway with lot 1 would be recommended to minimise the number of driveways in the streetscape and should Council be minded to approve the application, an appropriate condition facilitating that outcome could be drafted.

2.3.6 Privacy

The site has a gradual slope to the western side boundary and toward the rear boundary. It is considered a future dwelling on proposed lot 2 could be designed to address privacy of neighbouring residents.

2.4 Heritage Development Control Plan

The demolition or partial demolition of the existing dwelling house is required in order to achieve the required access for the proposed battleaxe lot.

The applicant submitted a Heritage Impact Assessment prepared by Andrew Starr and Associates, which identified the existing dwelling house as '*an interwar house with elements of Georgian Revival style built in 1937*'. Council's Heritage Committee considered the heritage impact assessment and raised objection to the proposed demolition of the existing dwelling house.

The Heritage DCP includes a Statement of Significance for the Beecroft Cheltenham Heritage Conservation Area which includes the following statement:

The area contains a fine collection of houses from the Victorian, Federation, Arts and Crafts, Inter-War and Post-War eras. Some of which have been designed by acknowledged Sydney Architects such as Charles Slayter, Nicholas Shells and George Sydney Jones.

The intactness of the early residential fabric and streetscapes within the area is significant. There have been comparatively few demolitions within the area. The resubdivision of rear land has permitted increased residential development to occur with only moderate loss of the original built fabric along the major street frontages.

The site is included in the Heritage DCP - Beecroft Cheltenham Heritage Conservation Area - Precinct Area C1, which is described as follows:

The Precinct demonstrates a regular grid based subdivision with Inter-War residential development, juxtaposed with a Post-War 'contour related' road and subdivision pattern

The existing dwelling-house is part of an intact collection of Inter-War houses within Chorley Avenue. The property contributes to the Conservation Area in its scale, architectural character and landscaping, including its stone paths, retaining walls and street kerb.

The pattern of development within this portion of the Conservation Area is significantly intact. The subdivision would represent the first recent subdivision of allotments within this part of Chorley Avenue. The demolition of the dwelling-house and subsequent redevelopment as two allotments would have an adverse impact upon the streetscape and integrity of the historical subdivision pattern.

The applicant has investigated the possibility of partial demolition of the dwelling to provide an accessway, however that the cost of the proposed demolition and reconstruction works would not be economically viable. Therefore the applicant requests that the entire dwelling be demolished.

The existing dwelling-house is a contributory element within the Conservation Area and the proposal is contrary to the objectives of the Heritage DCP. Subdivision of the land is not supported on heritage grounds.

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 rear area of the site including proposed lot 2 is identified by Council’s vegetation 2008 mapping as containing Blue Gum High Forest, which is listed as a critically endangered ecological community under Schedule 1A of the Threatened Species Conservation Act 1995.

The proposal would not adversely impact on Blue Gum High Forest subject to the significant trees being retained and protected and the implementation of sediment and erosion control measures.

3.2 Built Environment

The existing dwelling house contributes to the streetscape which features housing from the Inter-War Period.

The proposed demolition of the dwelling house would detract from the streetscape and the residential character of the locality.

4. SITE SUITABILITY

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

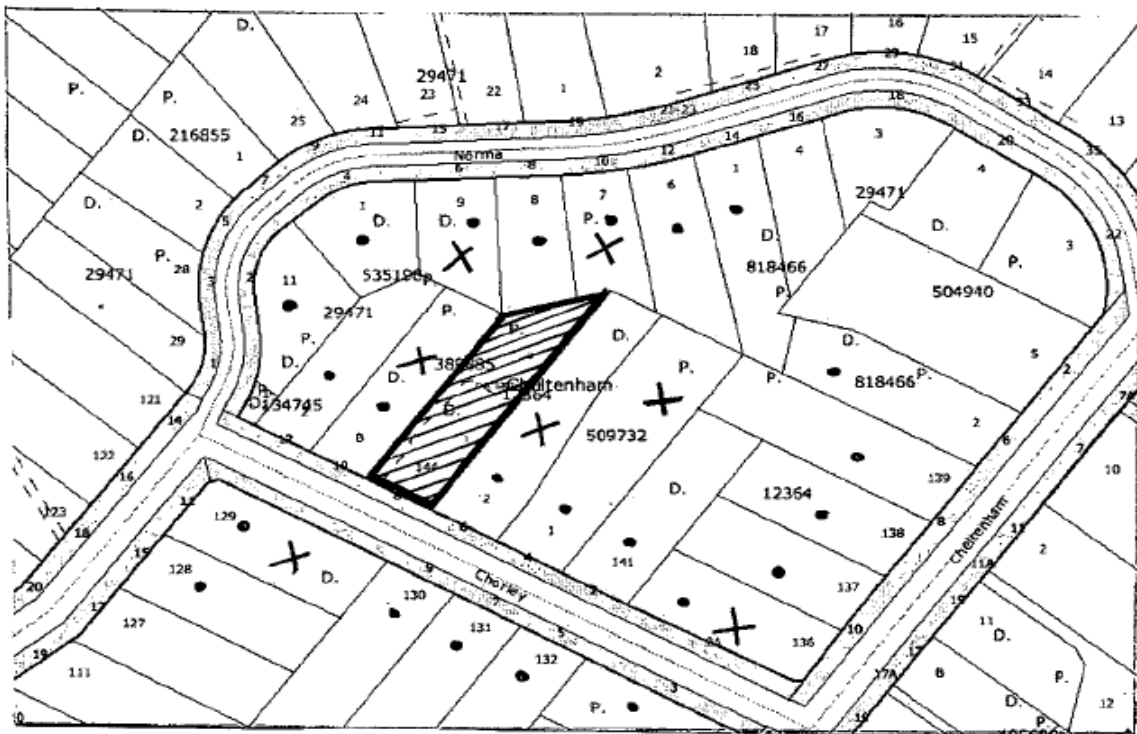
The site is sufficiently large to accommodate low density residential development with regard to the constraints of the site and retain significant trees identified as an endangered ecological community.

5. PUBLIC PARTICIPATION


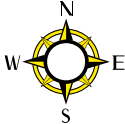
Section 79C(1)(d) of the Act requires Council to consider “any submissions made in accordance with this Act”.

5.1 Community Consultation

The proposed development was placed on public exhibition and was notified to adjoining and nearby landowners between 17 September 2008 and 8 October 2008, in accordance with Council’s Notification and Exhibition Development Control Plan. The amended plans were notified between 6 November 2008 and 20 November 2008. Council received eight submissions in response to the notification. 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

<ul style="list-style-type: none"> • PROPERTIES NOTIFIED 	<ul style="list-style-type: none"> X SUBMISSIONS RECEIVED 	 PROPERTY SUBJECT OF DEVELOPMENT	
<p>1 SUBMISSION RECEIVED OUT OF MAP RANGE</p>			

Eight submissions objected to the development, generally on the following grounds that the development would result in:

- Loss of trees;
- Adverse heritage impact;
- Detract from the streetscape;
- Adverse impacts on Tree 24 and Tree 30;
- Adverse visual impact with loss of trees;

- Loss of privacy;
- Impact on endangered flora and fauna;
- Stormwater drainage impacts.

The merits of the matters raised in community submissions have been addressed in the body of the report.

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 proposed subdivision would require demolition of the existing dwelling house which contributes to the Beecroft Cheltenham Heritage Conservation Area.

The proposal is therefore not in the public interest.

CONCLUSION

Consent is sought for demolition of an existing dwelling and subdivision of one lot into two.

The site is sufficiently large to accommodate low density residential development with regard to the constraints of the site and retain significant trees. However, the existing dwelling house would be required to be demolished to enable the provision of an access handle for the proposed battleaxe lot. The existing dwelling house contributes to the Beecroft Cheltenham Heritage Conservation Area and its demolition for the proposed subdivision would detract from the heritage significance of the area.

The proposed development does not comply with the Heritage DCP.

Having regard to the matters for consideration under Section 79(c) of the Environmental Planning and Assessment Act, it is recommended that the application be refused.

Note: At the time of the completion of this planning report, no persons have made a *Political Donations Disclosure Statement* pursuant to Section 147(3) of the Environmental Planning and Assessment Act 1979 in respect of the subject planning application.

ROD PICKLES
Manager - Assessment Team 2
Planning Division

SCOTT PHILLIPS
Executive Manager
Planning Division

Attachments:

1. Locality Plan
2. Subdivision Plan

File Reference: DA/1202/2008
Document Number: D01067886

SCHEDULE 1**Reasons for Refusal**

1. The proposal is unsatisfactory in respect to Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act, 1979, as the demolition of the existing dwelling house is contrary to the objectives of the Heritage DCP to ensure development is consistent with the heritage character of the Beecroft/Cheltenham Heritage Conservation Area.
2. The proposal is unsatisfactory in respect to Section 79C(1)(e) of the Environmental Planning and Assessment Act, 1979, as the demolition of the existing dwelling house is not in the public interest.

- END OF REASONS FOR REFUSAL -

7 INQUIRY - NEW SOUTH WALES PLANNING FRAMEWORK

EXECUTIVE SUMMARY

The New South Wales (NSW) Parliament is currently conducting a Legislative Council Inquiry into the NSW planning framework. The Inquiry was established in June 2008, to report on the planning framework in the context of national and international planning trends. The Inquiry will consider the issue of whether there is a need for a systematic review of the planning system having regard to the implications of the Council of Australian Governments (COAG) reform agenda for planning in NSW, climate change and natural resource issues in planning and development controls, and the duplication of processes under relevant Commonwealth and NSW legislation.

It is recommended that Council forward a submission to the Legislative Council indicating its general support for the Inquiry into the NSW planning framework as outlined in the Discussion Paper. The submission should also request that the Inquiry address issues outlined in this report including the need for systematic reform of the planning framework to address incohesive planning objectives and framework, legislative duplication and inconsistency, improved investigative and enforcement power, gaps between development and building controls and inappropriate planning and funding frameworks to support councils to perform their role.

PURPOSE

The purpose of this report is to advise Council of the State Government's Inquiry into the NSW planning framework and seek endorsement of a submission to the Legislative Council.

BACKGROUND

In November 2007, the State Government released a Discussion Paper titled "*Improving the NSW Planning System*". The Discussion Paper investigates the causes of problems in the planning system and identifies options for making the system more efficient and accountable, and easier for families and small business to navigate.

In February 2008, Council considered a report outlining the contents of the Discussion Paper and resolved to forward a submission to the DOP. In March 2008, the DOP released a report by a consultant engaged to review submissions in response to the exhibition of the Discussion Paper.

In June 2008, the NSW Parliament passed the *Environmental Planning and Assessment Amendment Bill, 2008* in an attempt to "cut red tape and streamline the planning process". There was considerable debate in Parliament on the proposed reforms and whether there was merit in making further amendments to the *Environmental Planning and Assessment Act, 1979*. As a result, the former Minister for Planning requested a formal Inquiry into whether there was a need for a systematic review of the NSW planning system.

In August 2008, the State Government wrote to Council advising that the NSW Legislative Council's Standing Committee on State Development was conducting an Inquiry into the

NSW planning framework. In November 2008, the State Government released a Discussion Paper (copy attached) outlining the context for the Inquiry and providing background information on each of the terms of reference. The State Government is inviting submissions in relation to the Inquiry until 13 February 2009.

Following receipt of submissions, the Standing Committee intends holding public hearings in early 2009. After consideration of the submissions, evidence and its own research, the Committee will prepare and table a report to the Legislative Council.

DISCUSSION

This report outlines the terms of the Inquiry, the contents of the Discussion Paper and responds to issues relevant to Hornsby Shire.

Planning Framework Inquiry - Terms of Reference

The terms of reference for the Inquiry include:

- The need for further development of the NSW planning legislation;
- The implications of the Council of Australian Governments (COAG) reform agenda for planning in NSW;
- Duplication between Federal and State planning, environmental and heritage legislation;
- Climate change and natural resource issues in planning and development control;
- Appropriateness of considering competition policy issues in land use planning;
- Regulation of land use on, or adjacent to, airports;
- Inter-relationship of planning and building controls; and
- Implications of the planning system on housing affordability.

The terms of reference are further detailed in the Discussion Paper.

Discussion Paper

The Discussion Paper outlines the background and membership of the Legislative Council's Standing Committee. The Discussion Paper notes that the Committee is to inquire into, and report on, matters concerned with policy directions to ensure that opportunities for sound growth and wise development are pursued for the benefit of all people in NSW.

The Discussion Paper is structured to outline some of the issues covered by the eight (8) terms of reference. The Paper notes that it is not intended to be an exhaustive list of all issues. A number of questions are contained in the Discussion Paper to stimulate consideration of the issues and to assist councils respond to the Inquiry.

Comments on the eight (8) terms of reference in the Discussion Paper and their relevance to Hornsby Shire are addressed below.

Implications for Hornsby Shire

The State Government identifies that there is a need for a systematic review of the NSW planning system, to reduce its complexity and make it more responsive and efficient. In particular, there is a need to make changes that free planning professionals from unnecessary development assessment processes and allow them to focus on strategic planning and

significant development affecting a local community. However, a number of issues should be addressed in progressing a review of planning policy reform that will assist in ensuring that the aim of streamlining the planning system is appropriately balanced with the need to ensure development outcomes and processes are consistent with local community expectations.

Term of reference 1(a): The need, if any, for further development of the NSW planning legislation over the next five years, and the principles that should guide such development

Is there a need for further development of planning legislation in NSW?

What further changes to the NSW Planning System is needed and supported?

What principles should guide any further development of planning legislation in NSW?

The *Environmental Planning and Assessment Act 1979 (EPA Act)*, commenced as NSW's first comprehensive legislation "to encourage the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment." Over the last fifteen years there have been numerous alterations to the *EPA Act*, all aimed at improving and making the planning system more efficient. The reforms introduced over the past fifteen years to simplify the system and reduce costs, have in many cases progressively led to increased confusion, complexity and delay. Additional procedures and processes introduced at both local and federal levels have added layers of complexity for the judiciary, practitioners and members of the public.

In broad terms, major reform of the NSW planning framework should be supported to adjust to current issues, be responsive to changing issues in the future and improve overall outcomes. However, the planning system does not need more complex layers to respond to the shortcomings of the current system.

Any further development of planning legislation within NSW should be done as part of a cohesive national framework, with commonality in aims and objectives. Looking ahead to the challenges that face our community, State and Local government will be less effective if they are not coordinated in the urban and regional policy arena. Key national objectives relating to population management, the setting of greenhouse emission targets, sound economic management and affordable housing cannot be delivered fully or efficiently without strong resource and policy partnerships between Federal, State and Local government in urban and regional policy. However, it also remains important that the future planning system for NSW be responsive to the system of governance in NSW.

Any reform of the planning system should recognise the competency of councils to effectively manage planning in their local government area. Reforms in the planning system should ensure that improved support is provided to councils to perform their roles by:

- Ensuring a sustainable funding mechanism to allow councils to appropriately resource planning;
- Providing councils with appropriate levels of autonomy in developing strategic policy and assessing development applications; and
- Consolidating into one Act, competing biodiversity, environmental, conservation, bushfire and like provisions.

It is also important that any reform to the planning framework embody a long term infrastructure framework, with enforceable outcomes and guaranteed income streams. There

should also be improved opportunities for providers to seek complimentary funding for infrastructure.

It is appropriate that any reform embrace a system of targeted annual review of legislation. Priority areas for further reform should be identified rather than reactionary legislative review which results in a series of cursory amendments, catch-up in nature with little forward thinking. Review of the legislation should be periodic and mandated, rather than single issue review driven by interest groups.

Term of reference 1(b): The implications of the COAG reform agenda for planning in NSW

Are the reforms and discussions at the COAG of level important for future development of the NSW planning framework?

What are the specific implications of the work of the COAG on planning in NSW?

COAG is the peak intergovernmental forum in Australia, comprising the Prime Minister, State Premiers, Territory Chief Ministers and the President of the Australian Local Government Association. COAG has recently committed to implement a new model of cooperation between all levels of government. In March 2008, COAG committed to a comprehensive new economic reform agenda for Australia, with a particular focus on health care, water resources, regulatory and competition reform and the broader productivity agenda.

A number of areas of focus will have implications for the NSW planning framework including:

- An accelerated business regulation reform agenda to enhance productivity, innovation and workforce mobility, by cutting the costs of regulation including accelerating the timetable for the reform of environmental assessment and approvals;
- Development of five key housing initiatives to facilitate improved housing supply, provide incentives to construct affordable rental housing and lower the burden of infrastructure and regulatory costs of a new home;
- Creation of the National Rental Affordability Scheme and the Housing Affordability Fund to encourage the construction of affordable rental housing for households of limited means, including the development of partnerships between councils and developers;
- Establishment of a National Housing Supply Council to improve the evidence base for housing policy and program development and to coordinate research at local, state and national level;
- Adoption of a new national Climate Change Plan of Action responding to the challenges of reducing greenhouse emissions and responding to the environmental, social and economic impacts that may result from climate change; and
- The establishment of a fund committed to rolling out electronic development assessments to help speed up planning approval processes.

Reform of environmental assessment and development approval

As discussed previously under Terms of Reference 1(a), any further reform of planning legislation within NSW should be done as part of a cohesive national framework, with commonality in aims and objectives. Any future framework should also be responsive to the system of governance in NSW.

Housing Supply and Affordability Initiatives

Although there is general support for endeavours to reduce the affordability of housing, any scheme which seeks to achieve savings in the delivery of a dwelling by reducing costs through a reduction in the provision of facilities and services is not supported. Ultimately the costs of such savings are borne by the new resident, through reduced amenity and reduced access to appropriate services and facilities.

It is also appropriate that robust mechanisms be implemented as part of any affordable housing initiative, to ensure that any cost savings facilitated by the planning system are ultimately passed onto the purchaser of a home rather than into the pocket of the developer.

Coordinated Housing Research

The development of an Affordable Housing Framework should be developed at a National level with consultation with State and Local levels of government.

Climate Change Action Planning

A unified approach to the development of a responsive *climate change action planning* framework at a national level should be supported. Overarching principles for sustainable urban and regional development and setting out measurable national targets should also be supported and should include:

- energy consumption per capita;
- water consumption per capita;
- water quality standards;
- air quality standards; and
- biodiversity retention and protection.

The required response of the planning system to climate change is discussed in detail in respect of Term of Reference 1(d).

ePlanning

Council already supports ePlanning as a tool through tracking of development applications, electronic S149 applications and masterview applications. The NSW and Federal Government should be mindful of resource streams available to councils, councils' investment to date and the ongoing costs of maintaining electronic data sources and systems over time. Any further initiatives should be carried out in consultation with councils.

Term of reference 1(c): Duplication of processes under the Commonwealth Environment Protection and Biodiversity Act 1999 and NSW planning, environmental and heritage legislation

What are your experiences involving assessment processes under the NSW and Commonwealth environment legislation for controlled actions?

Did the bilateral agreements reduce duplication of approval procedures for controlled action?

Are there areas of duplication that need to be addressed?

The ability to manage the environment is hampered by structural problems between different areas and levels of government. The Australian Federal system of government has resulted in two distinct sources of environmental legislation, those from the Commonwealth and the State Parliaments.

The New South Wales and Commonwealth Governments both have laws to protect flora and fauna. Key laws for the protection of species and ecological communities in New South Wales include the *Threatened Species Conservation Act 1995 (TSC ACT)*, the *National Parks and Wildlife Act 1974* and the *Fisheries Management Act 1994*. Federal protected species law operates in parallel to State protected species law. A development or activity may require assessment or approval under State and Federal protected species law. The *Native Vegetation Act 2003*, through its focus on habitat protection, also has a key role in species protection. It should be noted however that Hornsby Council is exempt from this Act.

The key Federal legislation in relation to protected species is the *Environment Protection and Biodiversity Conservation Act*, which protects species and ecological communities by:

- creating a process for the listing of protected species and ecological communities;
- requiring the assessment and approval of proposals that are likely to have a significant impact upon a threatened species, an ecological community or a migratory species; and
- requiring permits for actions in a Commonwealth area that involve the killing, injuring or taking of a listed threatened species, or ecological community.

New South Wales laws do not protect threatened species as of right. Rather, the laws generally set up principles and administrative procedures to assist decision-making in relation to threatened species. Frequently, the State and Commonwealth governments' debate environmental issues and local government is given limited jurisdiction to participate in strategic environmental policy development. Although the National Environment Protection Council was set up (in part) to address some of these problems, little advancement has been made in this area since its inception.

For example, the *TSC Act* enables the Minister for Environment and Climate Change to certify Environmental Planning Instruments (EPIs), if the Minister is satisfied they will bring an overall improvement to, or maintain, biodiversity values. Biodiversity certification enables local government, in areas with high development pressure, to provide for the protection of biodiversity, including threatened species at the strategic planning stage. Certification can switch off the need for threatened species assessment under the *EPA Act*, providing more certainty for local government, applicants and other stakeholders. Overall, biodiversity must be maintained or improved by the EPI for certification to be endorsed. Certification may be granted for part of a Local Environmental Plan (LEP) or individual species within an LEP, depending on the quality of the available data.

Notwithstanding biodiversity certification, the *EPBC Act* continues to apply in areas which are subject to an EPI which has been certified by the State. This negates the intent of biodiversity certification under the *TSC Act*. The *EPBC Act* requires a similar level of investigation, survey and assessment as that which is required to be undertaken under the *TSC Act*. Any reform should address this inconsistency to ensure a consistent approach for the environmental assessment of applications.

As there is no role for assessment by Council under the *EPBC Act*, Council is generally unaware of there being any parallel processes in place. Although there are advantages to having parallel processes in place to ensure both Federal and State conservation objectives

are being considered, it is appropriate that there be only one concurrence for these two actions and this concurrence be coordinated by the State.

There is also duplication of processes and areas of conflict between the *EPA Act* and numerous other NSW and Commonwealth Acts which require additionally streamlining. This is not limited to conflict between the *EPA Act* and the *EPBC Act* but includes conflict within the Act itself, as well as various practises established by NSW legislation. For example, Schedule 4 of the *Environmental Planning and Assessment Regulations* requires councils, in respect of 149 certificates, to include advice in respect of whether an order has been made under the *Trees (Disputes Between Neighbours) Act 2006* to carry out work in relation to a tree on the land. No procedure is in place for these notations to be removed when the Order is satisfied. As such, reference to particular orders issued under the *Trees (Disputes Between Neighbours) Act 2006*, will continue to appear on S149 certificates long after the terms of the order have been completed.

Although there is unnecessary duplication under the *EPBC Act* and NSW legislation, the two levels of legislation have a different strategic focus and this provides benefit in respect of endeavours to protect flora and fauna at both the local and regional levels. As such, the value in maintaining threatened entity protection systems at both State and Federal level should be recognised.

The absence of a role for local government in either the *EPBC Act* or the *TSC Act* should be regarded with concern, particularly in respect of the consideration of offset agreements at National and State level. Biodiversity offsets are increasingly being considered by all levels of government as appropriate actions for long-term management to improve biodiversity conservation to counterbalance specific impacts on biodiversity. Unfortunately, Council has no role in the certification of such agreements and evidence to date has shown that certified agreements at the State level have often had no regard for local conservation objectives. Councils should have a role in the consideration of any biodiversity offset proposal, particularly councils seeking to develop their own conservation/biobanking schemes such as Hornsby Shire.

Biobanking is a market-based scheme that provides a streamlined biodiversity assessment process for development, a rigorous and credible offsetting scheme as well as an opportunity for rural landowners to generate income by managing land for conservation. Biobanking enables 'biodiversity credits' to be generated by landowners who commit to enhance and protect biodiversity values on their land through a biobanking agreement.

Term of reference 1(d): Climate change and natural resources issues in planning and development controls

How should climate change be addressed in the planning framework?

Is the current framework adequate to consider the potential effects of climate change?

How should natural resource issues be taken into account in the planning and development approval framework?

Climate change represents some of the community's greatest economic and environmental challenges. The planning system is in a unique position to assist the community in understanding and adapting to the expected consequences of climate change. Adaption measures assist to reduce the implications of the most serious consequence of climate change. These changes include greater flood risk, more extreme weather conditions, water shortages, and changes to ecosystems and micro-climates. Councils are in a position to actively develop responses to mitigate impacts and guide changes to environmental behaviour such as

promoting energy and water efficiency, sustainable land management practices, incorporating efficient energy use in buildings, and including climate change information in environmental assessments.

The following actions to ensure planning can continue to implement adaptation and greenhouse abatement strategies should be supported:

- Inclusion of climate change in long term strategic planning to enable communities to better adapt to future climate variability;
- Consolidation of relevant, reliable and consistent information. Commonwealth and State Agencies can assist with dissemination and compilation of climate change information to planners and decision makers;
- Adoption of consistent timeframes to provide planners with meaningful targets;
- Development of national targets for governments, through policy and adaptation at all levels, including the local/household level;
- Adoption of a national framework for adaptation with scope for local adaptation strategies; and
- Preparation of regional and local assessments of climate change trends, vulnerabilities and adaptation options. These findings should be readily accessible and relevant to affected stakeholders.

Council in August 2007, considered Executive Manager Environment's Report No. EN 33/07 regarding the setting of a carbon neutral goal as an extension to Council's current greenhouse gas reduction goals. In endorsing the recommendations of the report, Council concluded that to ensure that a holistic approach to climate change was being undertaken, it should consider adaptation as well as mitigation. To progress Council's adaptation activities, it joined ICLEI's pilot Cities for Climate Protection Adaptation Initiative. The initiative seeks to identify the projected risks of climate change to the local area and develop an Action Plan to address those risks. To aid in the identification of the risks of climate change, Council is working collaboratively with the Sydney Coastal Council's Group (SCCG) and CSIRO who have undertaken research on a regional systems approach to managing climate vulnerability in the Hornsby region.

This research will identify risks for Council to consider within an Adaptation Action Plan. A number of the actions anticipated to be generated through this process will relate to development of appropriate development controls responsive to climate change scenarios. Accordingly, this will rely upon the ability of the planning system to support these endeavours.

A National/State framework is required to ensure that there is a unified approach to climate change adaption initiatives and the development of appropriate standards. This is particularly important to pre-empt anomalies which are likely to occur across boundaries, on opposing sides of streets, within opposing sides of catchments and within shared waterways. An authority may progress a climate change adaption scenario and another authority may pursue an alternate scenario, possibly with different aims and objectives.

Should a National or State initiative not be progressed, it will be necessary for local provisions to be investigated by each Council. The appropriate mechanism for implementing many of these actions is through the planning process. There is currently no opportunity within the planning framework to accommodate climate change adaption initiatives at the local level. The Standard LEP template, prepared to provide consistency in the application of development standards within the State, does not accommodate opportunities for the

development of standards directed at climate change adaptation. The inclusion of such initiatives should be addressed in the next issue of the Standard Instrument.

Term of reference 1(e): Appropriateness of considering competition policy issues in land use planning and development approval processes in NSW

Should competition analysis be a part of local planning decisions?

How competition should be factored into the planning system, if at all?

As part of their commitments under National Competition Policy, all Commonwealth, State and Territory governments undertook to review and change legislation that restricts competition, unless they were seen to be in the public interest. The objective of the legislation review program is to remove restrictions on competition that are found not to be in the interests of the community. Legislation that restricts entry into markets or constrains competitive behaviour with markets is an example of one such restriction.

Any requirement that seeks to ensure that new regulations are subject to rigorous assessment, including an analysis of alternatives should be supported. Support should also be given to targeted public annual reviews of significant legislation by the State to identify priority areas where reform would provide significant net benefits to the community.

The stated objective of the National Competition Policy, as it applies to the public sector, is to achieve the most efficient provision of publicly provided goods and services through reforms designed to minimise restrictions on competition. Although this objective should be supported in general terms, the strategic development of any policies targeting competition should be pursued at regional or state level, within an appropriate national framework.

There has been considerable debate in NSW in respect of competition versus Centres Policy. Increasing competition is seen to be ultimately in the interest of the public. However, care should be given in the development of any land use policy directed at increasing competition, to ensure that ultimately the community does not pay for the “*public benefit*” through loss of amenity, privacy, road efficiency and safety etc. There is a need to create competitive retail environments. However, at the same time there is a need to protect existing centres to ensure they remain vibrant and active spaces that are integrated with public transport systems.

If centres do not have the space to accommodate retail demand, planning should be undertaken within a State Policy context. A regional approach to retail planning policy should be undertaken and councils provided with resources to fund local retail studies within the State Policy context.

Term of reference 1(f): Regulation of land use on or adjacent to airports

Is the current arrangement for regulating use on or near airports appropriate?

Is there sufficient involvement of the community within which the airport is located under the current system?

Hornsby Shire is impacted upon by the flight path of aeroplanes. However, the local government area does not contain land set aside for airport development.

Term of reference 1(g): Inter-relationship of planning and building controls

Is the current inter-relationship between the planning system and the regulation of building work appropriate?

The 1997 changes to the development assessment system brought development, building and land subdivision into one process under the *EPA Act*. These amendments also introduced the role of private certifiers into the system. Subsequent amendments to legislation have been designed to simplify and improve the efficiency of the relationship between planning and building controls.

Any further reforms in the planning system should ensure that there is continued security provided to the community in respect of the role of certification by:

- Increasing accountability of private certifiers;
- Increasing accountability of development which is certified privately; and
- Increasing the effectiveness of investigative and enforcement powers available to councils to manage private certification in their area.

In particular, gaps in the legislation between development and building controls should be closed. Specifically, changes to the planning system should require that a Final Occupation Certificate be obtained within 12 months of the issue of an Interim Occupation Certificate. The reason for this request is that once an Interim Occupation Certificate has been issued there is no obligation on either the Principal Certifying Authority or the property owner to complete the works. This has ongoing problems for the community and frequently negates measures put in place through the development assessment process to mitigate a range of potential impacts. It is appropriate that legislation impose a penalty on any property owner that fails to obtain a Final Occupation Certificate within 12 months of occupation.

Council should also support a revision of current energy efficiency requirements under the *EPA Act*. Legislation should require design certification of compliance with Part J of the *Building Code of Australia* at development assessment. It would then be appropriate that prior to the issue of an Occupation Certificate, an Energy Validation Certificate be obtained from the accredited consultant. A certificate would also be required to be submitted to Council in the same way as the *Act* requires an annual fire safety certificate be submitted.

Term of reference 1(h): Implications of the planning system on housing affordability?

What is the impact of the planning system on housing affordability?

What changes, if any, need to be made to the planning system to improve housing affordability?

The decline in housing is a pressing issue for Australians and improving affordability is critical to addressing financial stress and disadvantage within communities. Although local government is in the business of creating liveable and sustainable communities, it does not provide housing. Local government does however have access to a number of indirect levers that enable it to have a role in facilitating and encouraging the provision of housing by others. These indirect levers include housing research and policy development, strategic and land use planning, including identifying land for housing development, building regulations and the application of planning and development controls. Although local government may have a role in implementing affordable housing initiatives, it is appropriate that the development of any initiatives be within a national framework, with clearly articulated objectives and targets.

The draft Subregional Strategies identify that the State Government will develop initiatives to provide for a unified approach to affordable housing through the Affordable Housing Framework. To date the State Government has been unable to provide Council with a timetable for the delivery of this document. Although a number of Comprehensive LEPs

have been endorsed by the State Government, none have included either broad reference to, or specific provisions in respect of affordable housing. Indeed the Standard LEP continues to contain no reference to affordable housing provisions, ensuring an absence of unified response to the delivery of affordable housing provision.

In summary, the Discussion paper outlines a number of issues and poses a number of questions to stimulate discussion on the need for a systematic review of the planning system having regard to the implications of the (COAG) reform agenda for planning in NSW, climate change and natural resource issues in planning and development controls, and the duplication of processes under relevant Commonwealth and NSW legislation. It would be appropriate that Council forward a submission to the Legislative Council indicating its support for the Inquiry and requesting that issues outlined above be addressed by the Inquiry.

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.

CONSULTATION

The Discussion Paper was released by Standing Committee in November 2008 and is on exhibition until 13 February 2009. The Paper is available for inspection on the NSW Parliament website.

The Manager of Assessment Team 1 and the Strategy and Environment Divisions have been consulted in the preparation of this report.

CONCLUSION

It is recommended that Council forward a submission to the Legislative Council indicating its general support for the Inquiry into the NSW planning framework as outlined in the Discussion Paper. The submission should also request that the Inquiry address issues concerning the development of a cohesive planning objectives and framework; reducing legislative duplication and inconsistency; improved investigative and enforcement powers; removing gaps between development and building controls; and the need for a planning and funding framework to support councils perform their role.

RECOMMENDATION

THAT Council forward a submission to the NSW Legislative Council's Standing Committee on State Development indicating its general support for the Inquiry into the NSW planning framework as outlined in the Discussion Paper. The submission also request that the Inquiry address issues concerning:

1. development of cohesive National/State planning objectives and framework;
2. consolidation of legislation to address duplication and inconsistency;
3. targeted public annual reviews of legislation;
4. improvements in the effectiveness of investigative and enforcement

- powers in relation to principally certified development;
- 5. closure of gaps between development and building controls; and
- 6. development of a planning and funding framework to support councils to perform their role.

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Attachments:

1. Discussion Paper

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