



*the bushland shire*

*creating a living environment*

# **BUSINESS PAPER**

## **PLANNING MEETING**

**Wednesday, 6 May, 2009  
at 6:30pm**

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## **AGENDA AND SUMMARY OF RECOMMENDATIONS**

### **PRESENT**

#### **NATIONAL ANTHEM**

#### **OPENING PRAYER/S**

Reverend Ian Millican of St Mark's Anglican Church Berowra, will be opening the Meeting in prayer.

#### **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**

#### **PRESENTATIONS**

The Mayor to present the 2009 Heritage Awards.

#### **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").*

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*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 less than 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 1 April, 2009 be confirmed; a copy having been distributed to all Councillors.

## **PETITIONS**

## **MAYORAL MINUTES**

## **NOTICES OF MOTION**

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**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****A WARD****Page Number 1**

**Item 1      PLN30/09 DEVELOPMENT APPLICATION - SECTION 96  
(1A) - SUBDIVISION OF ONE LOT INTO TWO  
146 GALSTON ROAD HORNSBY HEIGHTS**

**RECOMMENDATION**

THAT Development Application No. 452/2008/A for the modification of an approved subdivision of one lot into two by adjusting the boundary and amending the conditions of consent at Lot 100 DP 1130236, No. 146 Galston Road, Hornsby Heights be approved subject to conditions listed in Schedule 1 of the independent town planning consultant's report – EDAW.

**B WARD DEFERRED****B WARD****Page Number 3**

**Item 2      PLN21/09 DEVELOPMENT APPLICATION - TWO STOREY  
DWELLING-HOUSE  
16B OSBORN ROAD, NORMANHURST**

**RECOMMENDATION**

THAT Development Application No. DA/1641/2008 for the erection of a split level, one and two storey dwelling-house at Lot 18, DP 1120186, No. 16B Osborn Road, Normanhurst be approved subject to the conditions of consent detailed in Schedule 1 of this report.

**C WARD DEFERRED**

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**C WARD****Page Number 19**

- Item 3      PLN25/09 DEVELOPMENT APPLICATION - TWO STOREY  
              DWELLING-HOUSE  
              47 PRITCHARD STREET, THORNLEIGH**

**RECOMMENDATION**

THAT Development Application No. DA/67/2009 for the erection of a two storey dwelling-house at Lot 2, DP 1133498, No. 47 Pritchard Street, Thornleigh, be approved subject to the conditions of consent detailed in Schedule 1 of this report.

**Page Number 35**

- Item 4      PLN26/09 DEVELOPMENT APPLICATION - SENIORS  
              LIVING DEVELOPMENT  
              14A AND 16 MURRAY ROAD BEECROFT**

**RECOMMENDATION**

THAT Development Application No. 1349/2008 for demolition of the existing rear dwelling and construction of a Seniors Living development comprising 11 self-contained dwellings, including refurbishment of the existing dwelling at the frontage, at lot 115 DP 1136664 and lot 1 DP 509627 (No. 14A & No. 16) Murray Road Beecroft, be approved subject to conditions of consent detailed in Schedule 1 of this report.

**Page Number 65**

- Item 5      PLN29/09 DEVELOPMENT APPLICATION -  
              CONSTRUCTION OF A SWIMMING POOL - 10A  
              SUTHERLAND ROAD, CHELTENHAM**

**RECOMMENDATION**

THAT Development Application No. 196/2009 for the construction of a lap-style swimming pool at Lot 2, DP 1052535, No. 10A Sutherland Road, Cheltenham be approved subject to the conditions of consent 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*

**QUESTIONS OF WHICH NOTICE HAS BEEN GIVEN****SUPPLEMENTARY AGENDA****QUESTIONS WITHOUT NOTICE**

**1 DEVELOPMENT APPLICATION - SECTION 96 (1A) - SUBDIVISION OF ONE LOT INTO TWO  
146 GALSTON ROAD HORNSBY HEIGHTS**

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<b>Development Application No:</b>	DA/452/2008/A
<b>Description of Proposal:</b>	Section 96(1A) - Subdivision of one lot into two
<b>Property Description:</b>	Lot 100 DP 1130236 (No. 146) Galston Road, Hornsby Heights
<b>Applicant:</b>	Jill P Ball
<b>Owner:</b>	Jill P Ball
<b>Statutory Provisions:</b>	Hornsby Shire Local Environmental Plan 1994 Residential A (Low Density) Zone
<b>Estimated Value:</b>	No amendment to original cost of works
<b>Ward:</b>	A

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**RECOMMENDATION**

THAT Development Application No. 452/2008/A for the modification of an approved subdivision of one lot into two by adjusting the boundary and amending the conditions of consent at Lot 100 DP 1130236, No. 146 Galston Road, Hornsby Heights be approved subject to conditions listed in Schedule 1 of the independent town planning consultant's report – EDAW.

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**EXECUTIVE SUMMARY**

1. The application proposes to modify DA/452/2008 by adjusting the boundaries of the allotments and amending the specified conditions of consent.
2. The development involves land owned by the spouse of a 'Designated Person' In accordance with Council's adopted policy '*PSA1 Proposed Council Developments*' and '*Practice Note No. 7 Assessment Practice*', an independent assessment of the development application has been undertaken by EDAW.
3. The proposal complies with the provisions of the Hornsby Shire Local Environmental Plan 1994 and Council's Residential Subdivision, Dwelling House, Sustainable Water, Car Parking and Heritage Development Control Plans.

4. It is recommended that Council consider the attached report prepared by EDAW and determine the application by approval.

### ASSESSMENT

The development involves land owned by the spouse of a 'Designated Person'. In accordance with Council's adopted policy '*PSA1 Proposed Council Developments*' and '*Practice Note No. 7 Assessment Practice*', an independent assessment of the development application has been undertaken by EDAW, which is held at Attachment 3.

### CONCLUSION

The proposal seeks approval to modify DA/452/2008 involving the subdivision of one lot into two. The proposal involves the adjustment of the common boundary of the two lots and amendments to the conditions of the original consent relating to building and engineering works. The proposal was not required to be notified in accordance with the provisions of section 96(1A) of the Act as it has been assessed to have minor environmental impacts.

Council has referred the application to a planning consultancy to undertake an independent assessment of the application. The assessment concludes that the application is worthy of Council's development consent subject to relevant conditions.

It is recommended that Council approve the application in accordance with the recommended conditions of consent prepared by EDAW held at Schedule 1 of that report.

ROD PICKLES  
Manager - Assessment Team 2  
Planning Division

SCOTT PHILLIPS  
Executive Manager  
Planning Division

#### **Attachments:**

1. Locality Plan
2. Site Plan
3. Independent Town Planning Consultant's Report

File Reference: DA/452/2008/A  
Document Number: D01132505



**2 DEVELOPMENT APPLICATION - TWO STOREY DWELLING-HOUSE  
16B OSBORN ROAD, NORMANHURST**

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<b>Development Application No:</b>	DA/1641/2008
<b>Description of Proposal:</b>	Erection of a dwelling-house
<b>Property Description:</b>	Lot 18, DP 1120186, No. 16B Osborn Road, Normanhurst
<b>Applicant:</b>	Mr M N Gyler
<b>Owners:</b>	Mr M N and Mrs M L Gyler
<b>Statutory Provisions:</b>	Hornsby Shire Local Environmental Plan, 1994 Residential A (Low Density) Zone
<b>Estimated Value:</b>	\$320,000
<b>Ward:</b>	B

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**RECOMMENDATION**

THAT Development Application No. DA/1641/2008 for the erection of a split level, one and two storey dwelling-house at Lot 18, DP 1120186, No. 16B Osborn Road, Normanhurst be approved subject to the conditions of consent detailed in Schedule 1 of this report.

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**EXECUTIVE SUMMARY**

1. The application proposes the erection of a split level, one and two storey dwelling-house on a vacant, battle-axe site.
2. The proposal complies with the Hornsby Shire Local Environmental Plan, 1994 and Council's Dwelling House Development Control Plan (DCP).
3. A Red Sticker has been placed against the application resulting in it being referred to Council for determination.
4. Two submissions have been received in respect of the application.
5. It is recommended that the application be approved.

## HISTORY OF THE APPLICATION

On 5 April 2006, Council approved DA/70/2005 to subdivide two allotments, 16 and 16A Osborn Road into four allotments, accessed via a right-of-way off Osborn Road.

## SITE DESCRIPTION

The vacant site is located at the south-western end of the right-of-way on the western side of Osborn Road, Normanhurst. The irregular shaped site has an area of 1044m<sup>2</sup>, with a western boundary of 12.5m, a southern boundary of 42.32m, an eastern boundary of 35.42m and a northern boundary of approximately 25m.

The site has fall towards the rear southern boundary of the property at a grade of 1 in 8 and is subject to easements for access, services and drainage.

The western side of the site forms part of the Blue Gum High Forest Critically Endangered Ecological Community listed under the *Threatened Species Conservation Act, 1995* and the *Environment Protection and Biodiversity Conservation Act, 1999*. A bushland regeneration area occupies the south western part of the site, with tree species that form part of the Blue Gum High Forest Community including Blackbutts (*Eucalyptus pilularis*) and Sydney Blue Gum (*Eucalyptus saligna*).

Adjoining residential development is characterised by an eclectic blend of one and two storey dwelling-houses, ranging from modest, post-war design to houses of a more contemporary appearance.

## THE PROPOSAL

The application proposes the construction of a split level, one and two storey dwelling-house. The ground floor consists of a family room, kitchen, dining room, bedroom/office and laundry. A deck is proposed off the family room. Three bedrooms, a study/rumpus, bathroom and ensuite are located on the first floor. An intermediate level is proposed, containing a lounge room and double garage. The dwelling-house presents as single storey in height when viewed from the front and two storeys in height when viewed from the rear.

## 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 dwelling and would increase the housing stock 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 A (Low Density) under the 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*
- To provide for development that is within the environmental capacity of a low density residential environment.*

The proposed development is defined as a “dwelling-house” under the HSLEP and is permissible in the zone with Council’s consent.

Clause 15 of the HSLEP prescribes that the maximum floor space ratio (FSR) of development within the Residential A zone is 0.4:1. The applicant addresses this requirement by proposing a floor space ratio of 0.25:1.

### 2.3 Dwelling House Development Control Plan

The proposed development has been assessed having regard to the relevant performance criteria and prescriptive measures within Council’s Dwelling House DCP. The following table sets out the proposal’s compliance with the prescriptive measures of the Plan:

<b>Dwelling House Development Control Plan</b>			
<b>Control</b>	<b>Proposal</b>	<b>Requirement</b>	<b>Compliance</b>
<b>Floor Space Ratio</b>	0.25:1	0.4:1	Yes
<b>Site cover</b>	21%	40%	Yes
<b>Dwelling Height</b>	7.5m	9m	Yes
<b>No. of Storeys</b>	1 and 2	1	No

<b>Length of Building</b>	14m	24m	Yes
<b>Unbroken Wall Length</b>	8m	10m	Yes
<b>Private Open Space</b>	600m <sup>2</sup>	120m <sup>2</sup>	Yes
<b>Landscaping</b>	74%	45%	Yes
<b>Car parking</b>	2 spaces	2 spaces	Yes
<b>Cut and Fill</b>	1.4m	1m	No
<b>Solar access to neighbouring properties</b>	4 hrs	4 hrs	Yes
<b>BASIX Certificate</b>	221859S		Yes
<b>Setbacks:</b>			
-Front	8.7m	6m	Yes
-Side	1.16m	1m	Yes
-Side	24m	1m	Yes
-Rear	9m	3m	Yes

As detailed in the above table, the proposed development does not comply with the prescriptive measures of the Height and Design elements of the Dwelling House DCP. These matters of non-compliance are detailed below, together with a discussion on the proposal's compliance with relevant performance standards.

### 2.3.1 Design (Cut and Fill)

To offset any privacy concerns and visual impacts when viewed from adjoining properties, the dwelling-house has been designed with a maximum cut at one point, of 1.4m below natural ground level. In this instance, compliance with the DCP would result in greater privacy impacts. This minor variation from the 1m prescriptive measure is considered acceptable with minimal detrimental environmental impacts and a desirable outcome for adjoining properties in relation to privacy and visual impact.

### 2.3.2 Building Height

The height of the proposal takes advantage of the slope of the site towards the rear boundary by incorporating a split level, one and two storey design. Whilst this proposal departs from the prescriptive measures of the Height element of the Dwelling House DCP which states that "*dwelling-houses on battle axe allotments should not exceed single storey in height*", the variation to the development standard in this instance is considered to be acceptable for the following reasons:

- the dwelling-house has been designed to meet the overarching objective of the Height standard which requires "*Building height consistent with residential*

*development in the local area and that maximizes privacy, solar access and views”;*  
and

- the two storey design allows for a smaller building footprint and the retention of trees on a site that forms part of the Blue Gum High Forest Endangered Ecological Community.

The design principle follows that of a number of contemporary dwellings on battle-axe allotments within B and C Wards.

### **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 south-western corner of the site forms part of the Blue Gum High Forest Critically Endangered Ecological Community listed under the *Threatened Species Conservation Act, 1995* and the *Environment Protection and Biodiversity Conservation Act, 1999*. A bushland regeneration area has been created in this corner to protect and rehabilitate the Blue Gum High Forest remnant found on the site. The dwelling-house has been set back 2.2m from this bushland regeneration area and is consistent with the indicative building footprint identified in the subdivision application.

The proposed development would necessitate the removal of two remnant Blue Gum High Forest trees from the site, marked as T21 and T34 on the site plan. The two trees are Sydney Blue Gums (*Eucalyptus saligna*) and have been assessed as not significant. The proposal has been designed to allow for the retention a Sydney Blue Gum (*Eucalyptus saligna*) and Blackbutt (*Eucalyptus Pilularis*) outside of the bushland regeneration area.

It is recommended that the removal of T21 and T34 be offset by compensatory planting of 4 Blue Gum High Forest canopy species within the Bushland Regeneration Area.

#### **3.2 Built Environment**

The site is within the vicinity of the Loreto Convent group, grounds, gates and cemetery, which are heritage-listed items at 91-93 Pennant Hills Road. The development would not detract from the heritage value of these items, as it is located on a battle-axe lot and would not be visible from the street.

The proposed dwelling-house is in keeping with the established character of residential development in the area and is consistent in terms of design, height and setbacks with the form of development permitted in the locality.

#### **3.3 Social Impacts**

There are no significant social impacts resulting from the proposed development.

#### **3.4 Economic Impacts**

There are no significant economic impacts resulting from the proposed development.

**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 suitable for low density residential development. It is not identified as flood prone or bush fire prone. The proposed dwelling-house is in keeping with the low density residential environment and its low density nature allows for the retention of the Blue Gum High Forest Endangered Ecological Community found on the site.

**5. PUBLIC PARTICIPATION**

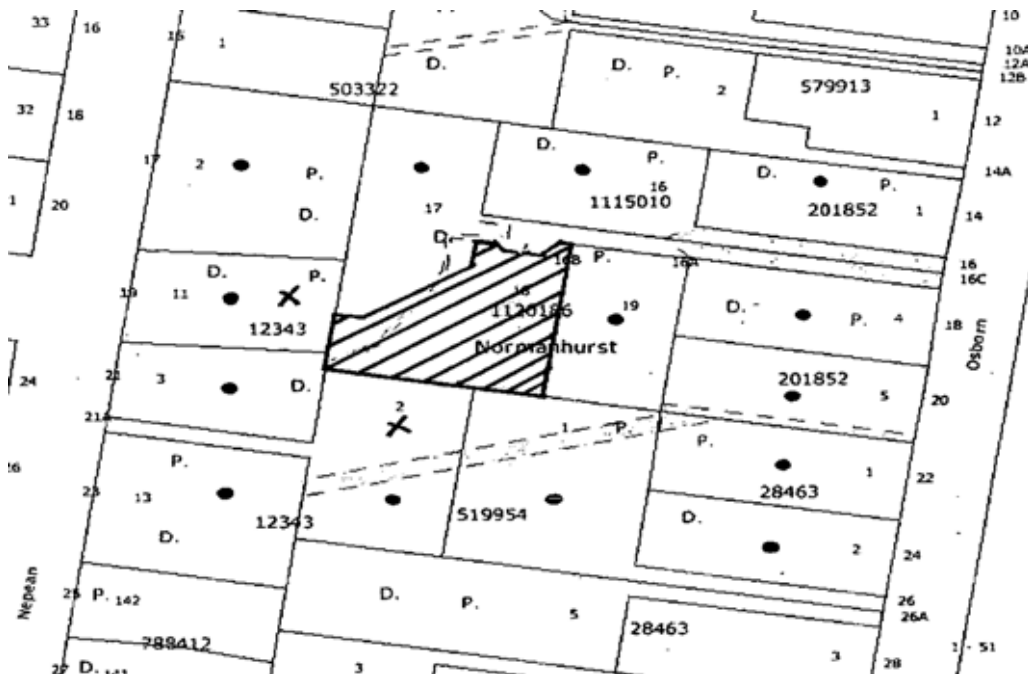
Section 79C(1)(d) of the Act requires Council to consider “any submissions made in accordance with this Act”.

**5.1 Community Consultation**

The proposed development was notified to adjoining and nearby landowners between 3 December and 17 December 2008, in accordance with Council’s Notification and Exhibition DCP. During this period, Council received two submissions raising concerns about loss of solar access and privacy.

In response, the design of the building was amended. The amended plans submitted addressed privacy, solar access and visual impacts and were re-advertised to adjoining land owners between 19 February and 5 March 2009.

The map below illustrates the location of those nearby landowners who made a submission that are in close proximity to the development site.



**NOTIFICATION PLAN**

• PROPERTIES NOTIFIED	X SUBMISSIONS RECEIVED	 PROPERTY SUBJECT OF DEVELOPMENT	
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The two submissions objected to the development, generally on the grounds that the development would result in:

- building height that compromises the privacy of adjoining properties;
- unacceptable overshadowing of adjoining properties;
- development that is excessive in bulk and scale;
- the loss of trees from the development.

The merits of the matters raised in community submissions have been addressed as follows:

### 5.1.1 Privacy

The prescriptive measures of the Privacy element states that “*where the proposed dwelling-house is two storeys, the living and entertaining areas should be located on the ground floor level*”. Given that the rear, southern façade is two storeys in height, the application proposes the fitting of highlight style windows with a 1.5m sill height above finished floor level to the first floor level study/rumpus room. This raised sill height, together with the 9m separation from the rear boundary would effectively address any concerns regarding a loss of privacy in relation to the adjacent premises No. 21A Nepean Avenue.

A deck, up to 1.3m above ground level and 31m<sup>2</sup> in area, is proposed off the family room. To address privacy concerns from this active use area in relation to the adjacent premises No. 21A Nepean Avenue, lattice screening up to 2m in height is proposed along the southern side of the deck and a portion of the western side of the deck.

Whilst an objection was raised with respect to a loss of privacy from this deck in relation to the property to the west known as No. 19 Nepean Avenue, the 24m setback to the common boundary between the properties and the additional screen planting recommended within the bushland regeneration area is considered to be sufficient to provide privacy through separation.

### 5.1.2 Solar Access

A submission has been received from the owners of No. 21A Nepean Avenue raising concerns about the loss of solar access to the principle private open space area located in the rear, north-east corner of their property and to the northern and eastern facing windows of the dwelling-house.

The shadow diagrams submitted with the amended plans (that propose to relocate the house a further 500mm towards the front of the site and a further 100mm lower) indicate that the proposal would cast a shadow over the principle private open space of 21A Nepean Avenue at 9am on 22 June (the winter solstice). However, by 11am, this area, including the clothes line, would be no longer in a shadow cast by the proposal.

The shadow diagrams indicate that the proposed dwelling-house would cast a shadow over northern facing windows of No. 21A Nepean Avenue on the morning of 22 June. However, by 11am, the proposal would no longer cast any shadow over these windows. The extent of this overshadowing complies with the prescriptive measures of the Solar Access element

which seeks development that allows “north facing windows to living areas of adjacent dwellings to receive 3 hours of sunshine between 9am and 3pm on 22 June”.

At Council’s request, further plans were submitted on 22 March and 5 May 2009, showing the extent of the vertical shadows cast on the winter solstice by the proposal on the northern façade of 21A Nepean Avenue, together with the shadows cast by the existing boundary fence along the boundary line in relation to the northern façade and the intervening area of private open space.

These diagrams confirm that the proposal is an acceptable development that meets the objectives of the Solar Access element of the Dwelling House DCP.

As a guide, the newly enacted NSW Housing Code – “Exempt and Complying Development for Detached Dwellings”, deals with overshadowing by way of separation. In this regard the proposed 9m setback from 21A Nepean Avenue would exceed the requirement under the Housing Code.

### **5.1.3 Excessive bulk and scale**

A submission raises concern with the bulk and scale of the proposal.

Clause 15 of the HSLEP prescribes that the maximum floor space ratio (FSR) of development within the zone is 0.4:1. The applicant addresses this requirement by proposing a floor space ratio of 0.25:1. In this regard the proposal would not be excessive in bulk and scale.

### **5.1.4 Loss of trees**

This item has been addressed under the Section 3.1 – “Natural Environment” of this 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 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 two storey dwelling-house would be in the public interest.

## **CONCLUSION**

Consent is sought to construct a two storey dwelling on a battle-axe shaped allotment.

The proposal complies with the Metropolitan Strategy – (Draft) North Subregional Strategy, the Hornsby Shire Local Environmental Plan 1994 and the requirements of the Dwelling House DCP.

The impacts of the development have been assessed in accordance with Section 79C (1) of the *Environmental Planning and Assessment Act, 1997*. The development would have



minimal social, economic and environmental impacts on both the natural and built environments in the locality.

It is recommended that Development Application No. 1641/2008 for the erection of a split level, one and two storey dwelling-house at Lot 18, DP 1120186, No. 16B Osborn Road, Normanhurst be approved, subject to conditions of consent detailed in Schedule 1 of this report.

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.

SIMON EVANS  
Manager - Assessment Team 1  
Planning Division

SCOTT PHILLIPS  
Executive Manager  
Planning Division

**Attachments:**

1. Locality Plan
2. Site Plan
3. Landscape Plan
4. Tree Assessment Plan
5. Floor Plans
6. Elevations
7. Shadow Diagrams
8. Vertical Shadow Diagram

File Reference: DA/1641/2008  
Document Number: D01104998

**SCHEDULE 1****GENERAL CONDITIONS**

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

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

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

**1. Approved Plans and Supporting Documentation**

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

<i>Plan No.</i>	<i>Drawn by</i>	<i>Dated</i>
Ver 1.1/A3	M. Gylar	8/2/2009

**2. Retention of Existing Trees**

This development consent only permits the removal of trees numbered 21 and 34 as identified on Plan No. v1.0 A3 prepared by Michael & Michelle Gylar dated 3/11/08. The removal of any other trees requires separate approval under Council's Tree Preservation Order.

**REQUIREMENTS PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE**

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

**3. Tree protection**

To ensure any work undertaken will not adversely affect the longevity of tree 25, design plans shall be submitted showing the proposed driveway being of pier and beam construction as follows:

- a. Piers are to be located no closer than 3m to the trunk of this tree, and
- b. the driveway edge shall be no closer than 1m to the edge of the trunk.

#### 4. Building Code of Australia

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

#### 5. Contract of Insurance (Residential Building Work)

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

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

#### 6. Notification of Home Building Act, 1989 Requirements

Residential building work within the meaning of the *Home Building Act, 1989* must not be carried out unless the principal certifying authority for the development to which the work relates (not being Council) has given Council written notice of the following information:

- a. In the case of work for which a principal contractor is required to be appointed:
  - i. the name and licence number of the principal contractor, and
  - ii. the name of the insurer by which the work is insured under Part 6 of that Act.
- b. In the case of work to be done by an owner-builder:
  - i. the name of the owner-builder, and
  - ii. if the owner-builder is required to hold an owner-builder's permit under that Act, the number of the owner-builder's permit.

*Note: If arrangements for doing the residential building work are changed while the work is in progress so that the information notified becomes out of date, further work must not be carried out unless the principal certifying authority for the development to which the work relates (not being Council) has given Council written notification of the updated information.*

#### 7. Sydney Water – Quick Check

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

*Note: Refer to [www.sydneywater.com.au](http://www.sydneywater.com.au) or telephone 13 20 92 for assistance.*

**REQUIREMENTS PRIOR TO THE COMMENCEMENT OF ANY WORKS**

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

**8. Erection of Construction Sign**

A sign must be erected in a prominent position on the site showing:

- a. the name, address and telephone number of the principal certifying authority for the work;
- b. the name of the principal contractor (if any) for the building work and a telephone number on which that person may be contacted outside working hours; and
- c. that unauthorised entry to the work site is prohibited.

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

**9. Toilet Facilities**

Toilet facilities must be available or provided at the works site before works begin and must be maintained until the works are completed. Each toilet must:

- a. be a standard flushing toilet connected to a public sewer; or
- b. have an on-site effluent disposal system approved under the *Local Government Act 1993*; or
- c. be a temporary chemical closet approved under the *Local Government Act, 1993*.

**10. Erosion and Sediment Control**

Erosion and sediment control measures must be provided and maintained throughout the construction period in accordance with the manual '*Soils and Construction 2004 (Bluebook)*', the approved plans, Council specifications and to the satisfaction of the principal certifying authority. The erosion and sediment control devices must remain in place until the site has been stabilised and revegetated.

*Note: On the spot penalties up to \$1,500 may be issued for any non-compliance with this requirement without any further notification or warning.*

## REQUIREMENTS DURING CONSTRUCTION

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

### 11. Protection of trees

A 1.8 metre high chain wire fencing (or similar) must be installed 1 metre from significant trees numbered 22 & 25 identified on the approved plans.

All works (including driveways and retaining walls) within 3 metres of any trees required to be retained (whether or not on the land the subject of this consent), must be carried out under the supervision of an 'AQF Level 5 Arborist' or equivalent and a certificate submitted to the principal certifying authority detailing the method(s) used to preserve the tree(s).

*Note: Except as provided above, the applicant is to ensure that no excavation, filling or stockpiling of building materials is to occur within 4 metres of any tree to be retained.*

### 12. Construction Work Hours

All work on site (including demolition and earth works) must only occur between the following hours:

Monday to Saturday	7 am to 5 pm
Sunday & Public Holidays	No work

### 13. Council Property

During construction works, no building materials, waste, machinery or related matter is to be stored on the road or footpath. The public reserve is to be kept in a clean, tidy and safe condition at all times.

### 14. Disturbance of Existing Site

During construction works, the existing ground levels of open space areas and natural landscape features, (including natural rock-outcrops, vegetation, soil and watercourses) must not be altered unless otherwise nominated on the approved plans.

### 15. Survey Report – Finished Floor Level

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

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

**REQUIREMENTS PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE**

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

*Note: For the purpose of this consent, any reference to 'occupation certificate' shall also be taken to mean 'interim occupation certificate' unless otherwise stated.*

**16. Internal Driveway/Vehicular Areas**

The internal driveway and turning areas are to be designed and constructed in accordance with Australian Standard 2890.1, and 3727. Removal and adjustment of the existing turning area right of access slab to allow proper matching of the finished driveway level shall be undertaken, as required.

**17. Fulfilment of BASIX Commitments**

The applicant must demonstrate the fulfilment of BASIX commitments pertaining to the development.

**18. Damage to Council Assets**

Any damage caused to Council's assets as a result of the construction of the development must be rectified in accordance with Council's written requirements and at the sole cost of the applicant.

**19. Retaining Walls**

All required retaining walls must be constructed as part of the development.

**OPERATIONAL CONDITIONS**

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

**20. Ongoing Protection of Bushland**

The bushland regeneration zone No. 1 identified on the approved plans must remain undisturbed and be protected in perpetuity in accordance with the following requirements:

- a. the area is to be fenced off with post and wire (or similar) fencing to prevent vehicular access;
- b. the area is to be kept free of environmental and noxious weeds using recognised bush regeneration methods in accordance with '*Recovering bushland on the Cumberland Plain: Best practice guidelines for the management and restoration of bushland – Department of Conservation 2005*'; and
- c. machinery and fertilizer not to be used in the bushland area for maintenance purposes.

**- END OF CONDITIONS -****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 legislation and Council's policies and specifications. 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**

The Environmental Planning and Assessment Act, 1979 requires you to:

- a. Obtain a construction certificate prior to the commencement of any works. Enquiries regarding the issue of a construction certificate can be made to Council's Customer Services Branch 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 written notice prior to the commencement of any works.
- d. Have mandatory inspections of nominated stages of the construction inspected.
- e. Obtain an occupation certificate before occupying any building or commencing the use of the land.

**Long Service Levy**

In accordance with Section 34 of the *Building and Construction Industry Long Service Payments Act 1986*, a 'Long Service Levy' must be paid to the *Long Service Payments Corporation* or *Hornsby Council*.

*Note: The rate of the Long Service Levy is 0.35% of the total cost of the work.*

*Note: Hornsby Council requires the payment of the Long Service Levy prior to the issue of a construction certificate.*

**Tree Preservation Order**

To ensure the maintenance and protection of the existing natural environment, you are not permitted to ringbark, cut down, top, lop, remove, wilfully injure or destroy a tree outside three metres of the approved building envelope without prior written consent from Council. Fines may be imposed if you choose to contravene Council's *Tree Preservation Order*.

*Note: A tree is defined as a perennial plant with self supporting stems that are more than 3 metres or has a trunk diameter more than 150mm measured 1 metre above ground level, and excludes any tree declared under the Noxious Weeds Act (NSW).*

**Dial Before You Dig**

Prior to commencing any works, the applicant is encouraged to contact *Dial Before You Dig* on 1100 or [www.dialbeforeyoudig.com.au](http://www.dialbeforeyoudig.com.au) for free information on potential underground pipes and cables within the vicinity of the development site.



**3 DEVELOPMENT APPLICATION - TWO STOREY DWELLING-HOUSE  
47 PRITCHARD STREET, THORNLEIGH**

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<b>Development Application No:</b>	DA/67/2009
<b>Description of Proposal:</b>	Erection of a dwelling-house
<b>Property Description:</b>	Lot 2, DP 1133498, No. 47 Pritchard Street, Thornleigh
<b>Applicant:</b>	Lifestyle Designer Homes P/L
<b>Owner:</b>	Mr A B and Mrs S A Garratt
<b>Statutory Provisions:</b>	Hornsby Shire Local Environmental Plan, 1994 Residential A (Low Density) Zone
<b>Estimated Value:</b>	\$288,800
<b>Ward:</b>	C

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**RECOMMENDATION**

THAT Development Application No. DA/67/2009 for the erection of a two storey dwelling-house at Lot 2, DP 1133498, No. 47 Pritchard Street, Thornleigh, be approved subject to the conditions of consent detailed in Schedule 1 of this report.

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**EXECUTIVE SUMMARY**

1. The application proposes the erection of a one and two storey dwelling-house on a vacant site.
2. The proposal generally complies with the Hornsby Shire Local Environmental Plan 1994 and Council's Dwelling House Development Control Plan (DCP).
3. A Red Sticker has been placed against the application resulting in it being referred to Council for determination.
4. One submission has been received in respect of the application.
5. It is recommended that the application be approved.

## HISTORY OF THE SITE

On 10 December 1998, consent was granted to DA/297/1998 for a two lot subdivision which had the effect of creating the subject allotment.

On 15 March 2007, consent was granted to DA/297/1998/A under Section 96, by the deletion of condition No. 10 requiring tree planting along the southern boundary.

## THE SITE

The vacant site has an area of 555.6m<sup>2</sup>, a front and rear boundary width of 30.37m and a depth of 18.29m. Access to the site is from Pritchard Street. The land has a 1.5m slope towards the street.

Adjoining residential development is characterised by an eclectic blend of one and two storey dwelling-houses, ranging from modest, post-war design to houses of a more contemporary appearance.

## THE PROPOSAL

The proposal is for the erection of a one and two storey dwelling-house containing a family room, alfresco area, dining room, living room, guest room, kitchen, laundry, powder room, study and a double garage at ground floor level and four bedrooms, a bathroom, ensuite, walk-in-robe, balcony and a sitting room at first floor level.

## 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 dwelling in the Hornsby LGA and would contribute towards 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 Shire Local Environmental Plan, 1994

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

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

The proposed development is defined as a dwelling-house under HSLEP and is permissible in the zone with Council’s consent.

Clause 15 of HSLEP prescribes that the maximum floor space ratio (FSR) of development within the zone zone is 0.4:1. The applicant addresses this requirement by proposing a FSR of 0.4:1.

### 2.3 Dwelling House Development Control Plan

The proposed development has been assessed having regard to the relevant performance and prescriptive design standards within Council’s Dwelling House DCP. The following table sets out the proposal’s compliance with the prescriptive standards of the Plan:

<b>Dwelling House Development Control Plan</b>			
<b>Control</b>	<b>Proposal</b>	<b>Requirement</b>	<b>Compliance</b>
<b>Floor space ratio</b>	0.4:1	0.4:1	Yes
<b>Site cover</b>	32%	40%	Yes
<b>Dwelling Height</b>	7.43m	9m	Yes
<b>No. of Storeys</b>	1 and 2	2	Yes
<b>Length of Building</b>	16m	24m	Yes
<b>Unbroken Wall Length</b>	9.16m	10m	Yes

<b>Private Open Space</b>	170m <sup>2</sup>	120m <sup>2</sup>	Yes
<b>Landscaping</b>	60%	45%	Yes
<b>Car parking</b>	2 spaces	2 spaces	Yes
<b>Cut</b>	0.8m	1m	Yes
<b>Solar access to neighbouring properties</b>	4 hrs	4hrs	Yes
<b>BASIX Certificate</b>	238080S		Yes
<b>Setbacks:</b>			
<b>-Front</b>	4.24m	6m	No
<b>-Side</b>	1.25m	1m	Yes
<b>-Side</b>	9.8m	1m	Yes
<b>-Rear</b>	2.7m	3m	No

As detailed in the above table, the proposed development does not comply with the front and rear setback requirements under the Dwelling House DCP. This matter of non-compliance is detailed below, together with a brief discussion on compliance with the relevant performance standards.

### 2.3.1 Setbacks

The objective of the Setbacks element of the Dwelling House DCP states as follows:

*“Setbacks that complement the streetscape, provides for landscaping and protect the privacy of and sunlight to neighbouring properties”.*

#### **Front setback**

The DCP specifies a minimum setback of 6m from the primary front boundary. The DCP provides a concession permitting a single storey encroachment to 4m where the streetscape would not be adversely affected.

In this instance, the proposed single storey encroachments comprise a front porch having a 4.24m setback and the ground floor level having a 5.04m setback. Both encroachments are consistent with the 4.8m front setback of the neighbouring property to the west (No. 49 Pritchard Street). In addition, the porch and ground floor front building lines occupy no more than one third of the width of the site, in accordance with the variation permitted for single storey encroachments.

It is noted that the subdivided allotment approved under DA/297/1998, has resulted in an allotment with the width greater than the depth. As a consequence, the dwelling-house has been orientated with the long axis facing the street frontage. Further, the length of this axis is constrained by a large Eucalyptus tree located on the eastern side of the site, resulting in the two storey design and the use of the concessions allowable for a single storey encroachment within the front setback area to allow for the erection of a dwelling-house that complies with

the prescriptive measures of the Scale element of the DCP in terms of floor space ratio and site coverage.

### ***Rear Setback***

The proposal complies with the minimum 3m rear setback requirement of the Dwelling House DCP, apart from a minor 360mm indentation in the south-western façade at ground level to provide a physical ‘break’ in accordance with the prescriptive measures of the Design element.

The proposal meets the objectives of the Setbacks element and is considered an appropriate design solution having regard to the constraints of the site.

### **2.3.2 Private Open Space**

The objective of the Private Open Space element of the Dwelling House DCP states as follows:

*“Development that provides adequate useable private open space to support residential outdoor activities and use.”*

A “Positive Covenant” created as part of the development consent for the subdivision requires a dwelling-house to be set back 3m from the southern boundary, (except as otherwise approved by Council), to provide for an adequate area for private open space.

As discussed in Section 2.3.1 of this report under the sub-heading “*Rear Setback*”, it is not possible to provide a private open space area with a minimum dimension of 5m to the rear of the dwelling-house. As a consequence, the required useable area of private open space has been located to the eastern side of the dwelling-house, directly accessible from the family/dining room and the adjacent alfresco area.

The proposal meets the objectives of the Private Open Space element and is considered an appropriate design solution having regard to the constraints of the site.

### **2.3.3 Privacy**

The dwelling-house has been designed to achieve the Privacy objectives of Council’s Dwelling House DCP. The ground floor family room, dining room, kitchen and alfresco area are positioned so that views are orientated to the property’s eastern boundary only.

To address any privacy impacts from the rear, a cut of up to 0.8m is proposed along the rear boundary alignment and the main active ground floor living areas, comprising an open plan family room, dining room and kitchen, are orientated to the property’s private open space to the east of the dwelling-house, away from the rear boundary.

The depth of this excavation, together with the downslope of the site away from the rear neighbouring property (No. 25 Tillock Street) and the 1.8m height of the existing boundary would effectively screen the ground floor rear windows including the 2 living room windows.

The two first floor windows facing the rear boundary would serve a bathroom and a bedroom only. The bathroom window is to be fitted with obscure glazing whilst hours of use and anticipated window screening with blinds or curtains would address any reasonable concerns regarding a loss of privacy in relation to the adjacent premises No. 25 Tillock Street.

The windows to serve the proposed first floor level sitting room would face the street frontage only and as a consequence, would not overlook the private open spaces or active use rooms of adjacent properties.

The proposal meets the objectives of the Privacy element and is considered acceptable.

#### **2.3.4 Solar Access**

The shadow diagrams submitted in support of the application confirm that the dwelling-house has been designed to allow the north facing windows of the dwelling-house to the south (No. 25 Tillock Street) to receive 3 hours of sunshine to its north-facing windows between 9am and 3pm on the 22 June (the winter solstice), in compliance with the prescriptive measures.

The proposal would not have any overshadowing impacts on the private open space at the rear of No. 25 Tillock Street. The proposal meets the objectives of the Solar Access element of the DCP and is considered acceptable.

#### **2.3.5 Vehicle Access and Parking**

The 5.64m internal width of the double lock-up garage comprises a minor variation to the DCP's 5.7m requirement and the car access openings of 2.2m do not comply with the required 2.4m openings. The car access openings could be overcome by way of Council requiring a single panel lift garage door in lieu of two single doors. However, it is considered that such a variation would not improve the appearance of the front of the dwelling and therefore, is not necessary in this instance. The variations in this instance are considered to be minor, providing a designated area for off-street parking and maintaining the amenity of the streetscape and efficiency of the local road network.

The proposal meets the objectives of the Vehicle Access and Parking element and is considered acceptable.

### **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**

There are no trees proposed to be removed as part of the application. The proposed two storey dwelling allows for the retention of the large Eucalyptus tree located on the eastern side of the site.

#### **3.2 Built Environment**

The proposed dwelling-house is in keeping with the established character of residential development in the area and is consistent with the form of development permitted in the locality.

#### **3.3 Social Impacts**

There are no significant anticipated social impacts resulting from the proposed development.

### 3.4 Economic Impacts

The proposal would have a positive impact on the local economy in conjunction with other new low density residential development in the locality generating an increase in demand for local services.

## 4. SITE SUITABILITY

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

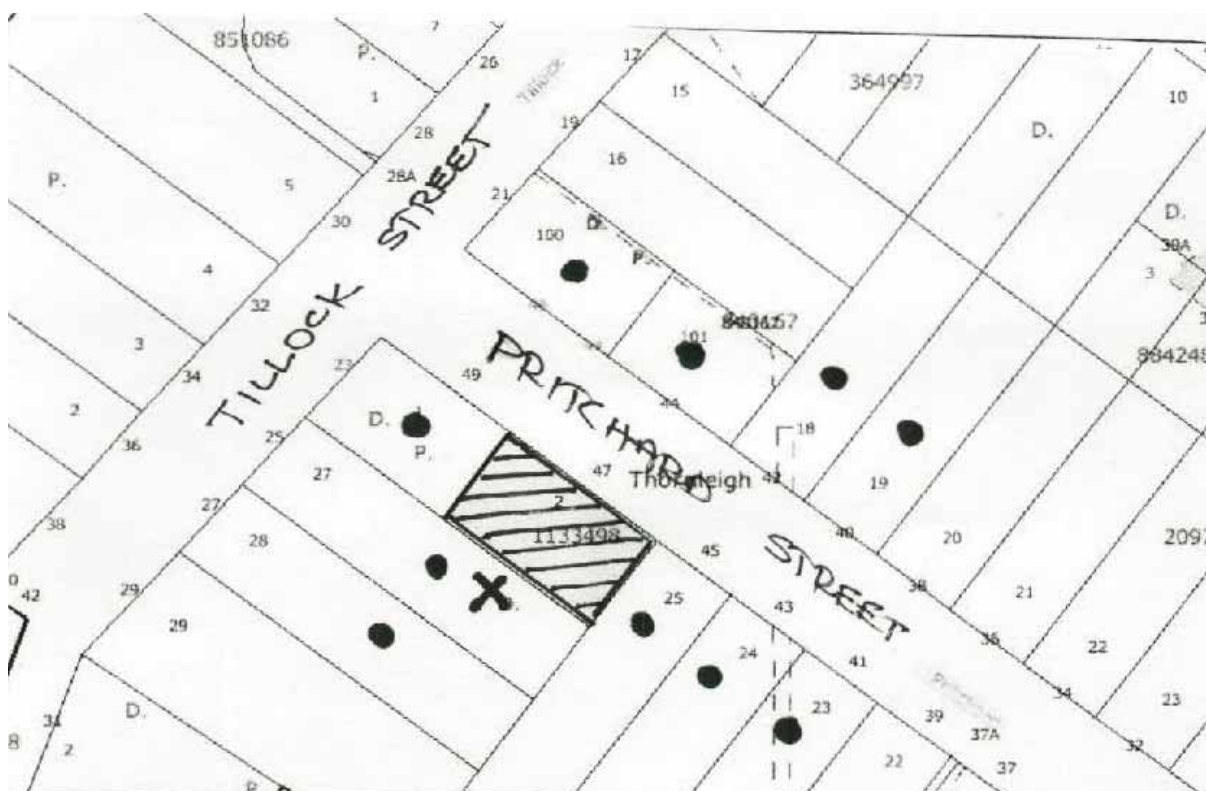
The site is suitable for low density residential development of the type proposed. The site is not subject to flooding and is not identified as being bushfire prone land, thus making it suitable for low density residential development. The site’s close proximity to public transport and local retail and employment centres adds to its aptness for the erection of a dwelling-house.

## 5. PUBLIC PARTICIPATION


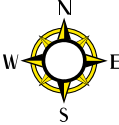
Section 79C (1) (d) of the Act requires Council to consider “*any submissions made in accordance with this Act*”.

### 5.1 Community Consultation

The proposed development was placed on public exhibition and was notified to adjoining and nearby landowners between 28 January and 14 February 2009, in accordance with Council’s Notification and Exhibition Development Control Plan. During this period, Council received one submission from an adjoining landowner. The location of this landowner and the proximity to the development site is illustrated on the map below.



NOTIFICATION PLAN

<ul style="list-style-type: none"> <li>• PROPERTIES NOTIFIED</li> </ul>	X SUBMISSIONS RECEIVED	 PROPERTY SUBJECT OF DEVELOPMENT	
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The submission from the owners of No. 25 Tillock Street objected to the development, generally on the grounds that the scale of the development is not be in keeping with residential development in the immediate locality and that it would have adverse visual, privacy, amenity and overshadowing impact on their property, due to the height and setback in relation to the common boundary line.

The merits of the matters raised in the submissions have been addressed in the body of the report with the exception of the following:

### Height

The proposed 7.43m height of the building complies with the maximum 9m height requirement of the DCP and would have minimal amenity impacts in terms of overlooking and overshadowing.

### Scale

The development complies with the 0.4:1 floor space ratio development standard for the site, which is located within the Residential A (Low Density) zone.

### Noise

The position of the air conditioning unit on the south-west elevation of the dwelling-house achieves the development standards for exempt development under State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 and therefore does not require specific Council consent.

## 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 two storey dwelling house would be in the public interest.

## CONCLUSION

The proposal satisfies the requirements of the Metropolitan Strategy – (Draft) North Subregional Strategy, the Hornsby Shire Local Environmental Plan, 1994 and the Dwelling House DCP.



The impacts of the development have been assessed in accordance with Section 79C (1) of the *Environmental Planning and Assessment Act, 1997*. The development would have minimal social, economic and environmental impacts on both the natural and built environments in the locality. It is considered that the objection to the development would not in itself warrant refusal of the application.

It is recommended that Development Application No. DA/67/2009 for the erection of a one and two storey dwelling-house at Lot 2, DP 1133498, 47 Pritchard Street, Thornleigh be approved, subject to conditions of consent detailed in Schedule 1 of this report.

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.

SIMON EVANS  
Manager - Assessment Team 1  
Planning Division

SCOTT PHILLIPS  
Executive Manager  
Planning Division

**Attachments:**

1. Locality Plan
2. Site Plan
3. Landscape Plan
4. Floor Plans
5. Elevations
6. Shadow Diagrams

File Reference: DA/67/2009  
Document Number: D01114874

**SCHEDULE 1****CONDITIONS OF APPROVAL****GENERAL CONDITIONS**

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

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

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

**1. Approved Plans and Supporting Documentation**

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

<i>Plan No.</i>	<i>Drawn by</i>	<i>Dated</i>
08.91, Issue G, Sheets 1-11	JR, Lifestyle Designer Homes Pty Ltd	16.03.09

**REQUIREMENTS PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE**

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

**2. Building Code of Australia**

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

**3. Contract of Insurance (Residential Building Work)**

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

*Note: This condition does not apply to the extent to which an exemption is in force under Clause 187 or 188 of the Act, subject to the terms of any condition or*

*requirement referred to in Clause 187(6) or 188(4) of the Act, or to the erection of a temporary building.*

#### **4. Notification of Home Building Act 1989 Requirements**

Residential building work within the meaning of the *Home Building Act 1989* must not be carried out unless the principal certifying authority for the development to which the work relates (not being Council) has given Council written notice of the following information:

- a. In the case of work for which a principal contractor is required to be appointed:
  - i. The name and licence number of the principal contractor.
  - ii. The name of the insurer by which the work is insured under Part 6 of that Act.
- b. In the case of work to be done by an owner-builder:
  - i. The name of the owner-builder.
  - ii. If the owner-builder is required to hold an owner-builder's permit under that Act, the number of the owner-builder's permit.

*Note: If arrangements for doing the residential building work are changed while the work is in progress so that the information notified becomes out of date, further work must not be carried out unless the principal certifying authority for the development to which the work relates (not being Council) has given Council written notification of the updated information.*

#### **5. Sydney Water – Quick Check**

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

*Note: Refer to [www.sydneywater.com.au](http://www.sydneywater.com.au) or telephone 13 20 92 for assistance.*

#### **REQUIREMENTS PRIOR TO THE COMMENCEMENT OF ANY WORKS**

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

#### **6. Erection of Construction Sign**

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 demolition or building work and a telephone number on which that person may be contacted outside working hours.
- c. Stating that unauthorised entry to the work site is prohibited.

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

## 7. Toilet Facilities

Toilet facilities must be available or provided at the works site before works begin and must be maintained until the works are completed at a ratio of one toilet for every 20 persons employed at the site. Each toilet must:

- a. be a standard flushing toilet connected to a public sewer; or
- b. be a temporary chemical closet approved under the *Local Government Act 1993*.

## 8. Erosion and Sediment Control

Erosion and sediment control measures must be provided and maintained throughout the construction period in accordance with the manual '*Soils and Construction 2004 (Bluebook)*', the approved plans, Council specifications and to the satisfaction of the principal certifying authority. The erosion and sediment control devices must remain in place until the site has been stabilised and revegetated.

*Note: On the spot penalties up to \$1,500 may be issued for any on-compliance with this requirement without any further notification or warning.*

### REQUIREMENTS DURING CONSTRUCTION

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

## 9. Construction Work Hours

All work on site (including demolition and earth works) must only occur between the following hours:

Monday to Saturday	7 am to 5 pm
Sunday & Public Holidays	No work

## 10. Works near Trees

A 1.8 metre high chain wire fencing (or similar) must be installed 2m from trees numbered 1 and 2 identified on the approved plans.

All works (including driveways and retaining walls) within 3m of any trees required to be retained (whether or not on the land the subject of this consent), must be carried out under the supervision of an 'AQF Level 5 Arborist' or equivalent and a certificate submitted to the principal certifying authority detailing the method(s) used to preserve the tree(s).

*Note: Except as provided above, the applicant is to ensure that no excavation, filling or stockpiling of building materials is to occur within 4m of any tree to be retained.*

### **11. Council Property**

During construction works, no building materials, waste, machinery or related matter is to be stored on the road or footpath. The public reserve is to be kept in a clean, tidy and safe condition at all times.

### **12. Disturbance of Existing Site**

During construction works, the existing ground levels of open space areas and natural landscape features, (including natural rock-outcrops, vegetation, soil and watercourses) must not be altered unless otherwise nominated on the approved plans.

### **13. Survey Report – Finished Floor Level**

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

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

### **REQUIREMENTS PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE**

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

*Note: For the purpose of this consent, any reference to 'occupation certificate' shall also be taken to mean 'interim occupation certificate' unless otherwise stated.*

### **14. Fulfilment of BASIX Commitments**

The applicant must demonstrate the fulfilment of BASIX commitments pertaining to the development.

### **15. On Site Stormwater Detention**

An on-site stormwater detention system must be designed by a chartered civil engineer and constructed in accordance with the following requirements:

- a. Have a capacity of not less than 5m<sup>3</sup> cubic metres, and a maximum discharge (when full) of 8 litres per second (the 5m<sup>3</sup> of storage is additional to BASIX's requirement and is to be clearly indicated in the design plan if combined with a rainwater tank).
- b. Have a surcharge/inspection grate located directly above the outlet.
- c. Discharge from the detention system to be controlled via 1 metre length of pipe, not less than 50 millimetres diameter or via a stainless plate with sharply drilled orifice bolted over the face of the outlet discharging into a larger diameter pipe capable of carrying the design flow to an approved Council system.
- d. Where above ground and the average depth is greater than 0.3 metres, a 'pool type' safety fence and warning signs to be installed.
- e. Not be constructed in a location that would impact upon the visual or recreational amenity of residents.

#### **16. Internal Driveway/Vehicular Areas**

The driveway and parking areas on site must be designed in accordance with *Australian Standards 2890.1, 2890.2, 3727* and the following requirements:

- a. Design levels at the front boundary be obtained from Council.
- b. The driveway be a rigid pavement.
- c. The driveway grade not exceed 25 percent and changes in grade not exceed 8 percent.

#### **17. Damage to Council Assets**

Any damage caused to Council's assets as a result of the construction of the development must be rectified in accordance with Council's written requirements and at the sole cost of the applicant.

#### **18. Creation of Easements**

- a. The creation of an appropriate "*Positive Covenant*" and "*Restriction as to User*" over the constructed on-site detention/retention systems and outlet works, within the lots in favour of Council in accordance with Council's prescribed wording. The position of the on-site detention system is to be clearly indicated on the title.
- b. To register the OSD easement, the restriction on the use of land "*works-as-executed*" details of the on-site-detention system must be submitted verifying that the required storage and discharge rates have been constructed in accordance with the design requirements. The details must show the invert levels of the on site system together with pipe sizes and grades. Any variations to the approved plans must be shown in red on the "*works-as-executed*" plan and supported by calculations.

*Note: Council must be nominated as the authority to release, vary or modify any easement, restriction or covenant.*

### **19. Retaining Walls**

All required retaining walls must be constructed as part of the development.

### **20. Installation of Air Conditioner**

To protect the amenity of adjacent properties, the condenser unit for the air conditioner must be sited a minimum of 3m from the property boundary of any adjoining residential premises unless a certificate has been prepared by a suitably qualified person confirming that the unit has been tested for heating and cooling on the highest settings and that the noise levels generated do not exceed 5 dB (A) above background noise levels when tested at the property boundary between 8 pm and 10 pm.

**- END OF CONDITIONS -**

#### **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 legislation and Council's policies and specifications. 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**

The Environmental Planning and Assessment Act 1979 requires:

- a. A construction certificate prior to the commencement of any works. Enquiries regarding the issue of a construction certificate can be made to Council's Customer Services Branch on 9847 6760.
- b. A principal certifying authority to be nominated and Council notified of that appointment prior to the commencement of any works.
- c. Council to be given at least two days written notice prior to the commencement of any works.
- d. Mandatory inspections of nominated stages of the construction inspected.
- e. An occupation certificate issued before occupying any building or commencing the use of the land.

#### **Long Service Levy**

In accordance with Section 34 of the *Building and Construction Industry Long Service Payments Act 1986*, a 'Long Service Levy' must be paid to the *Long Service Payments Corporation* or *Hornsby Council*.

*Note: The rate of the Long Service Levy is 0.35% of the total cost of the work.*

*Note: Hornsby Council requires the payment of the Long Service Levy prior to the issue of a construction certificate.*

### **Tree Preservation Order**

To ensure the maintenance and protection of the existing natural environment, it is an offence to ringbark, cut down, top, lop, remove, wilfully injure or destroy a tree outside 3m of the approved building envelope without prior written consent from Council. Fines may be imposed if you choose to contravene Council's *Tree Preservation Order*.

*Note: A tree is defined as a perennial plant with self supporting stems that are more than 3 metres or has a trunk diameter more than 150mm measured 1 metre above ground level, and excludes any tree declared under the Noxious Weeds Act (NSW).*

### **Dial Before You Dig**

Prior to commencing any works, the applicant is encouraged to contact *Dial Before You Dig* on 1100 or [www.dialbeforeyoudig.com.au](http://www.dialbeforeyoudig.com.au) for free information on potential underground pipes and cables within the vicinity of the development site.

### **Asbestos Warning**

Should asbestos or asbestos products be encountered during construction or demolition works advice and information should be obtained prior to disturbing the material. It is recommended that a contractor holding an asbestos-handling permit (issued by *Work Cover NSW*), be engaged to manage the proper disposal and handling of the material. Further information regarding the safe handling and removal of asbestos can be found at:

[www.environment.nsw.gov.au](http://www.environment.nsw.gov.au)

[www.nsw.gov.au/fibro](http://www.nsw.gov.au/fibro)

[www.adfa.org.au](http://www.adfa.org.au)

[www.workcover.nsw.gov.au](http://www.workcover.nsw.gov.au)

Alternatively, telephone the *Work Cover* Asbestos and Demolition Team on 8260 5885.



**4 DEVELOPMENT APPLICATION - SENIORS LIVING DEVELOPMENT  
14A AND 16 MURRAY ROAD BEECROFT**

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<b>Development Application No:</b>	DA/1349/2008
<b>Description of Proposal:</b>	Construction of a Seniors Living development comprising 11 self-contained dwellings and strata title subdivision.
<b>Property Description:</b>	Lot 115 DP 1136664 & Lot 1 DP 509627 (No. 14A & No. 16) Murray Road, Beecroft
<b>Applicant:</b>	Caxton Property (Chester) Pty Ltd C/- Glendinning Minto & Associates Pty Ltd
<b>Owner:</b>	Ms F J Berger & Mrs B J Berger and Caxton Property (Chester) P/L
<b>Statutory Provisions:</b>	State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 Residential AS (Low Density – Sensitive Lands)
<b>Estimated Value:</b>	\$3,800,000
<b>Ward:</b>	C

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**RECOMMENDATION**

THAT Development Application No. 1349/2008 for demolition of the existing rear dwelling and construction of a Seniors Living development comprising 11 self-contained dwellings, including refurbishment of the existing dwelling at the frontage, at lot 115 DP 1136664 and lot 1 DP 509627 (No. 14A & No. 16) Murray Road Beecroft, be approved subject to conditions of consent detailed in Schedule 1 of this report.

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**EXECUTIVE SUMMARY**

1. The application proposes demolition of an existing rear dwelling and construction of a Seniors Living development comprising 11 self-contained dwellings, including refurbishment of the existing dwelling at the frontage, and strata title subdivision.
  2. The proposed development complies with the design principles and development standards contained within State Environmental Planning Policy (Housing for Seniors or People With a Disability) 2004.
  3. Fifty five submissions have been received in respect of the application.
  4. It is recommended that the application be approved.
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## HISTORY OF THE APPLICATION

The development application was lodged on 30 September 2008. The application was amended on 22 January 2009 to address concerns raised by Council. The amendments included a reduction in the number of proposed dwellings from 12 to 11 dwellings, revised alterations and additions to the existing dwelling, revised letter box and bin storage area at the frontage, increased separation between the proposed detached dwellings, relocation of private open space areas away from the western boundary and an increased setback from the western boundary.

## HISTORY OF THE SITE

On 23 July 2008 Council approved Development Application DA/694/2008 for a boundary adjustment between Nos. 142-142A Beecroft Road and 14A Murray Road to form a large parcel of land which together with No. 16 Murray Road, form the site of the proposed Seniors Living development.

## THE SITE

The site has an area of 4,566m<sup>2</sup> and forms a large L-shaped parcel comprised of two existing lots. The site contains two existing dwelling houses, one at the Murray Road frontage (No. 16) and one towards the rear of the site (No. 14A) and a cleared area that was formerly an overgrown garden and disused tennis court at the rear of Nos 142 – 142A Beecroft Road. The site has a frontage of 22.8m to Murray Road and a width of 45.7m across the rear part of the site.

The site contains 62 trees including adjoining trees, trees within the road reserve and the proposed stormwater drainage easement over No. 33 Boronia Avenue. The remnant indigenous trees on the site would have once comprised Sydney Turpentine Ironbark Forest.

The site has an average fall of 8% to the western boundary and is generally of even topography with mainly shale derived soils.

The 'Chesalon Nursing Home' adjoins the eastern and rear part of the site and has a dominant visual impact. The nursing home occupies a large area (approx. 6,126m<sup>2</sup>) on the north-west corner of Beecroft Road and Murray Road and includes the original building 'Brunoy' which is an item of local environmental heritage and has been integrated with more recent two and three storey development on the nursing home site. A 3 storey dwelling house on a battle-axe lot (No. 138A Beecroft Road) adjoins the rear northern part of the site and is visually dominant over much of the site. Other properties surrounding the subject site include large single and 2 storey dwelling houses with frontages to Murray Road, Boronia Avenue and Beecroft Road. A tennis court at the rear of No. 31 Boronia Avenue adjoins the rear of the site. Beecroft Nursing Home, at No. 134 Beecroft Road, is located 300m north of the subject site.

The Beecroft Village centre and railway station are located 1.2km north of the site. The site is in the vicinity of Cheltenham Girls High School on Beecroft Road, 150m east of the site. Murray Road and Boronia Avenue are main thoroughfares for access to Cheltenham Oval and sports ground 300m south of the site.

## THE PROPOSAL

The proposed Seniors Living development includes the following:

- Alterations and additions to the existing dwelling house at No. 16 Murray Road, to include a first floor area within the roof space, a rear terrace and double carport and to form a 3 bedroom dwelling (Unit 1).
- Demolition of the existing dwelling house at No. 14A Murray Road.
- Erection of 4 x 3br detached dwellings each with double garages (Units 2, 3, 4 and 5). Three of the dwellings include a first floor within the roof space (Units 2, 3 and 4).
- Erection of a building with a basement level carparking and 4 x 3br detached dwellings (Units 6, 7, 8 and 9) and 2 x 3br semi-detached dwellings (Units 10 and 11), above. Units 9 and 10 include two storey built form. The dwellings are designed around a central courtyard with raised garden beds.

The lower ground floor basement level includes double garaging and a separate dwelling entrance including lift access for each of the 6 dwellings and 4 visitor parking spaces. Unit 11 is a maisonette style dwelling with frontage to the proposed accessway and includes bedroom accommodation at the lower ground floor level.

The proposal includes substantial excavation works to a maximum depth of 4.5m and the removal of approximately 5,000m<sup>3</sup> of soil from the site.

The proposal involves the removal of 39 trees. The landscape plan submitted for the proposal includes replacement of indigenous trees.

## 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 11 self-contained dwellings for Seniors Living and would improve 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 Shire Local Environmental Plan 1994

The subject land is zoned Residential AS (Low Density – Sensitive Lands) under the 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 ‘housing for aged or differently abled persons’ under the HSLEP and is permissible in the zone with Council’s consent.

Certain provisions under the HSLEP are not applicable to the proposal as State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004, prevails to the extent of any inconsistency with the Policy.

### 2.2 State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004

The SEPP is the overriding planning instrument for the development of housing for aged and disabled people in NSW and provides for hostels, residential care facilities (nursing homes) self contained dwellings and multi-storey buildings. The SEPP is comprehensive in scope including land use planning provisions, design principles, development standards and standards specifically to meet the housing needs of aged and disabled people. The SEPP also includes design guidelines for infill development such as the proposed development.

The proposed development has been assessed having regard to the relevant standards within the SEPP. The following table sets out the proposal’s compliance with the SEPP:

<b>SEPP (Housing for Seniors or People with a Disability)</b>			
<b>Control</b>	<b>Proposal</b>	<b>Requirement</b>	<b>Compliance</b>
<b>Site Area</b>	4,566m <sup>2</sup>	1,000m <sup>2</sup>	Yes
<b>Site Frontage</b>	22.8m	20m	Yes
<b>Gross Floor Area</b>	Unit 1 – 217.1m <sup>2</sup> Unit 2 – 201.3m <sup>2</sup> Unit 3 – 199.8m <sup>2</sup> Unit 4 – 194.6m <sup>2</sup> Unit 5 – 195.9m <sup>2</sup> Unit 6 – 185.7m <sup>2</sup> Unit 7 – 199.6m <sup>2</sup> Unit 8 – 176.3m <sup>2</sup> Unit 9 – 205.0m <sup>2</sup> Unit 10 – 212.8m <sup>2</sup> Unit 11 – 196.3m <sup>2</sup>	N/A	N/A
<b>Floor Space Ratio</b>	0.478:1	0.5:1	Yes
<b>Height</b>	7.225m	8m	Yes
<b>Private Open Space</b>	Unit 1 – 75m <sup>2</sup> Unit 2 – 37m <sup>2</sup> Unit 3 – 39m <sup>2</sup> Unit 4 – 34m <sup>2</sup> Unit 5 – 93m <sup>2</sup> Unit 6 – 60m <sup>2</sup> Unit 7 – 63m <sup>2</sup> Unit 8 – 36m <sup>2</sup> Unit 9 – 36m <sup>2</sup> Unit 10 – 15m <sup>2</sup> Unit 11 – 24m <sup>2</sup>	15m <sup>2</sup> per unit	Yes
<b>Deep Soil Landscaping</b>	16%	15%	Yes
<b>Solar Access</b>	90% of dwellings	70% of dwellings	Yes
<b>Car parking</b>	17 spaces	12 spaces	Yes

As noted in the above table, the proposed development complies with the development standards pursuant to Clause 40 and Clause 50 of the SEPP.

The proposal is satisfactory in respect to compliance with the mandatory access requirements of the SEPP pursuant to Clause 26, whereby pathway gradients are suitable for residents to access public transport within 400m of the site. Bus Route 635 on Beecroft Road would enable residents to access shops, bank services, retail, commercial services, recreation and medical facilities located at Beecroft, Epping and Macquarie Commercial Centres.

In accordance with the recommendation of the applicant's Access Consultant, a condition is recommended for the reconstruction of a kerb ramp on the north-west corner of Murray Road and Beecroft Road to comply with Clause 26.

### **2.2.1 Minimum site area and building height**

The proposal complies with the minimum site area and frontage requirement of the Seniors Living SEPP, Clause 40. The clause also includes height restrictions for Seniors Living developments on sites where residential flat buildings are not permitted.

The proposed development is designed in compliance with the two storey height development standard and the single storey height standard for buildings within the rear 25% of the site.

The merits of the proposal in respect to the SEPP design principles and design guidelines are discussed below.

### **2.2.2 Neighbourhood amenity and streetscape**

The proposed development retains the existing dwelling house at the Murray Road frontage and includes alterations and additions to the existing dwelling (Unit 1), construction of an accessway along the eastern side of the dwelling together with a pedestrian pathway and provision of a covered letterbox/bin storage facility at the frontage designed to complement the dwelling in the streetscape.

The proposed works to the front facade of Unit 1 are sympathetic to the federation style of the existing dwelling and would not detract from the Murray Road streetscape. Refer also to comments in Section 3.2.

The four proposed detached dwellings located behind the existing dwelling at the Murray Road frontage are single storey and would not impact on the streetscape (Units 2, 3, 4 & 5). The proposed detached dwellings are setback 2.5m – 3.0m from the western boundary, are well articulated and include a first floor area within the roof space (Units 2, 3 & 4). The western boundary adjoins the side elevation of two adjoining dwellings, No. 18 and No. 18A Murray Road and the rear yard of two adjoining dwellings, No. 33 and No. 35 Boronia Avenue Beecroft.

Units 2, 3 and 5 have laundry doors and windows opening onto the western setback. There are no first floor openings at the western elevation. The setback area mainly provides for clothes drying and landscaping. The proposed setback is considered adequate, in respect to the amenity of adjoining property, subject to the provision of boundary fencing and landscaping. The submitted landscape plan is acceptable in this regard.

At the northern boundary, the proposed development adjoins the tennis court at the rear of a dwelling house at No. 31 Boronia Avenue and a 3 storey dwelling house on a battleaxe lot at No. 138A Beecroft Road. The tennis court has a chainmesh fence located along the boundary which includes an access gate. Proposed Unit 5 is a single storey detached dwelling setback 3.5m – 7.0m from the northern boundary adjoining the tennis court. Subject to the provision of appropriate landscape screening, the tennis court would not adversely impact on the amenity of Unit 5. The submitted landscape plan includes hedge planting along the boundary with the tennis court.

Proposed Units 6 & 7 both comprise single storey detached dwellings. At the northern elevation the dwellings are setback 3m from the boundary. Proposed Unit 6 does not include any openings that would face the northern boundary and would not significantly detract from amenity of the adjoining property at No. 138A Beecroft Road.

Proposed Unit 7 has two narrow dining room windows and a patio opening onto the 3m setback. The finished floor level of Unit 7 is 1.0m – 0.6m below natural ground level. The site of the adjoining 3 storey dwelling house at 138A Beecroft Road is elevated relative to the subject site. The proposed patio and windows of Unit 7 would not be readily visible from the adjoining dwelling house. The proposed landscape screening and the existing brick lattice fence on the northern boundary is adequate to maintain privacy.

Proposed Unit 8 has a minimum setback of 2.0m from the eastern boundary with Nos. 142-142A Beecroft Road. The unit includes a patio at the eastern elevation within 6m of the side boundary. The proposed floor level is 1m below the existing ground level of the adjoining property. The proposed unit and patio is considered acceptable in respect to the amenity of the adjoining property.

Proposed Unit 9 has a minimum setback of 2.2m from the eastern boundary and includes a patio similar to Unit 8 in respect to the amenity of the adjoining property. The unit adjoins the southern boundary with the Chesalon Nursing Home and has a 1.5m – 2.8m setback from the boundary. A laundry door and bedroom doors open onto the setback area and a small patio. The proposed unit would not adversely impact on the amenity of the nursing home. The nursing home includes two small upper windows at this elevation and would not significantly detract from the privacy of proposed Unit 9.

Proposed Unit 10 is setback 1.5m – 6.3m from the southern boundary with the Chesalon Nursing Home. No active area is proposed within the setback area. The nursing home is setback 17m at this location and includes 1<sup>st</sup> and 2<sup>nd</sup> floor windows. The proposed unit would not detract from neighbourhood amenity and would enjoy reasonable privacy subject to the proposed landscape screening along the southern boundary.

Proposed Unit 11 adjoins Unit 10 and is setback 5.8m – 6.3m from the southern boundary. The unit includes two small narrow windows at this elevation. The proposed unit is satisfactory in respect to neighbourhood amenity and privacy at this elevation.

Overall the proposed Seniors Living development is considered an appropriate design response to the site with regard to the adjoining 3 storey and single storey developments and the aspects of the site. The proposed built form involving detached dwellings is in keeping with the residential character of the area. The interface with neighbouring properties is satisfactory in maintaining amenity and privacy.

### **2.2.3 Visual and acoustic privacy**

The rear area of the site adjoins the 3 storey Chesalon Nursing Home at the southern boundary and a 3 storey dwelling house at the northern boundary. The adjoining 3 storey developments overlook the site to a significant extent and proposed Units 6, 7, 8, 9, 10 & 11. The proposed units have been configured to provide for visual privacy with the roof ridges effectively screening the adjoining developments from the living areas. The northern patios of Units 10 & 11 remain within a view corridor of some of the upper windows of the adjoining 3 storey dwelling, however, the proposed raised gardens and brush screens would provide adequate privacy.

The driveway and service area of the Chesalon Nursing Home would result in some noise impacts but this would generally be mitigated by fencing and the lower ground floor level of the adjoining service area.

The proposed units 1, 2, 3, 4 and 5 have limited activity areas within the setback area adjoining neighbouring properties and the first floor roof space would not directly overlook the neighbouring properties. These units are considered acceptable with regard to visual and acoustic privacy, subject to a condition for internal pathways of Units 1 – 5 to be brick or stone pavers not gravel or mulch.

The proposed patios at the northern elevation of Units 7, 8 and 9 are situated at a lower level relative to the adjoining property, are screened by fencing and are acceptable in respect to visual and acoustic privacy. The first floor roof space would not directly overlook neighbouring properties.

The proposed raised gardens and brush screening within the forecourt of Units 6, 7, 8, 9, 10 and 11 would provide an acceptable level of privacy between the proposed dwellings.

The roof areas of the development would be overlooked by adjoining 3 storey development. The proposed buildings include dark coloured roof tiles and variation in the roof form which would minimise the visual impact.

#### **2.2.4 Solar Access and design for climate**

The proposed dwellings are single storey in relation to neighbouring Murray Road properties and would not reduce the amount of sunlight currently received by adjoining properties during Winter.

The proposed living areas and outdoor living areas are located on the north side of the units and comply with the SEPP solar access design principles. The existing 3 storey dwelling adjoining the northern boundary would overshadow proposed Unit 6 during mid-winter. Notwithstanding, the proposed development complies with the SEPP Clause 50 standard for a minimum of 70% of dwellings to receive 3 hours of direct sunlight between 9am and 3pm in mid-winter.

The proposed dwellings comply with BASIX criteria for sustainable design and energy efficiency.

#### **2.2.5 Stormwater**

The proposed development includes a proposed easement for stormwater drainage over a downstream property to Boronia Avenue and to Council's system, which involves a watercourse tributary of Devlins Creek. The proposed development would increase the existing stormwater runoff. A stormwater detention system is recommended as a condition of consent to minimise impact on downstream water quality.

#### **2.2.6 Crime prevention**

The proposed dwellings comply with the security and crime prevention design requirements of the Seniors Living SEPP.



### 2.2.7 Waste management

The proposed waste storage room and bin storage area at the frontage is adequate for the waste generated by the proposed dwellings subject to recommended conditions.

The proposed development involves the demolition of one of the existing dwellings and a condition is recommended for compliance with the Waste Management Plan submitted with the application.

### 2.2.8 Internal Site Amenity

The proposed dwellings front either a central driveway or a central courtyard area. The building articulation and landscaping ensure individual identity for each of the dwellings with sufficient separation from common areas to provide clear distinction between private and public spaces.

The proposed development includes two common open space areas. At the rear of the site open space areas would be landscaped including lawn areas, seating and paving. At the frontage the proposed covered seating/letterbox structure is integrated with landscaping and pathways. The proposed common open space areas provide functional outdoor spaces for the future residents.

The proposed detached dwellings have been designed with regard to the operation of the central driveway and pedestrian pathway. Habitable rooms are mainly located away from the driveway and landscaping provides separation between the dwellings and the driveway/pathway.

The outlook of the proposed dwellings is primarily internalised with limited orientation to neighbouring properties. The submitted landscape plan is appropriate in creating vistas, garden features and outdoor spaces for dwellings within the development.

The proposed dwellings are relatively large with open plan lounge/dining/kitchen areas oriented north, creating functional living spaces for seniors. The accommodation enables multi-purpose use of space and caters for family and guests. Units 6 to 11 include individual lifts and additional storage areas. Stair access is proposed to first floor accommodation of Units 1, 2, 3 and 4. The units comply with the SEPP requirement for the main bedroom to be at the same level as the entry.

### 2.2.9 Standards that cannot be used to refuse development consent for self-contained dwellings

The proposed development complies with the SEPP Clause 50 development standards in respect to building height, density and scale, landscaped area, solar access, private open space and car parking provisions.

The submitted plan *Deep Soil Planting Area* Drawing No. DA30-A details a total area of 886m<sup>2</sup> for deep soil planting. However, a number of the proposed areas are within 3m setback areas for clothes drying and utility areas or would not contribute to canopy trees planting. Deletion of these areas adjacent to Units 1, 4, 6 and 7, provides a total deep soil landscaping area of 733m<sup>2</sup>, which is in compliance with the Seniors Living SEPP development standard for a minimum 15% of the site area (684m<sup>2</sup>).

### 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 site includes an area identified by Council’s vegetation mapping as Sydney Turpentine Ironbark Forest which is an endangered ecological community under the *Threatened Species Conservation Act 1995*. The site is also identified as being within the area of a locally endangered Gang Gang Cockatoo population.

The applicant submitted a Flora and Fauna Assessment prepared by Footprint Green Pty Ltd which included a 7 part test pursuant to Section 5A of the Environmental Planning and Assessment Act, 1979. The report includes the following summary in conclusion:

*“Whilst much of the vegetation on the site consists of exotic species and the habitats have been disturbed, several indigenous canopy trees remain that are considered to be components of what was once the endangered Sydney Turpentine Forest ecological community.*

*It is recognised that these indigenous canopy trees do provide an ecological contribution and assist with the conservation of the Sydney Turpentine Forest within core habitat area. To ensure that there is no net loss to the ecological contribution provided by these trees compensatory replanting using species consistent with those found in the Sydney Turpentine Ironbark Forest will need to be carried out. To compensate for the removal of the 9 indigenous canopy trees the proposed development should include on the landscape plan a minimum of 18 indigenous canopy trees.*

*Based upon the nature and scope of the development it is considered that the proposed development would have minimal impact on common native fauna currently using the site and provided that the recommended measures to minimise impacts on the ecology are implemented. The proposed development would not have a significant impact on threatened species, populations or the Sydney Turpentine Ironbark Forest community.”*

Specifically, the Flora and Fauna Assessment prepared by Footprint Green Pty Ltd recommends a total of 18 indigenous canopy trees for compensatory planting including 8 *Eucalyptus paniculata*, 2 *Eucalyptus resinifera*, 1 *Angophora costata* and 7 *Syncarpia glomulifera*.

The submitted landscape plan includes a total of 23 indigenous canopy trees. Conditions are recommended to ensure the long term survival of the replacement trees.

The site includes 62 existing trees the majority of which are exotic species (60%). The proposal involves the removal of 54 trees (within 3m of proposed works) including 9 indigenous trees. Of the trees to be removed trees Nos. 35 and 36 are significant trees under Council’s *Tree Management Plan* and trees Nos. 14, 15, 20, 30, 33, 34, 38, 41, 55, 56, 60, 61, 62 and 66 are trees good and worthy of preservation.

The applicant seeks to remove 39 trees and to retain 23 trees through protection measures, including good and worthy trees Nos. 14, 15, 30, 34, 55, 60, 61, 62 and 66. The tree protection measures include specific design requirements for works within 3m of trees to be retained as detailed in the 'Impact of Proposed Development on Trees' report prepared by Footprint Green Pty Ltd. A condition is recommended for the trees to be retained in accordance with the report's tree retention requirements.

The submitted landscape plan prepared by G. R. & M. A. Sykes includes a mix of indigenous and exotic plant species appropriate to the proposed planting situations and in providing screening for privacy in relation to boundaries and the adjoining tennis court. The submitted plan includes 23 indigenous canopy trees. Correction of the Plant Index for the Landscape Plan is required. A condition is recommended to amend Plant No. 70 from *Eucalyptus sideroxylon* (Mugga Ironbark) to *Eucalyptus paniculata* (Grey Ironbark), in accordance with the submitted Flora and Fauna Assessment.

Subject to recommended conditions and implementation of the landscape plan, the proposed removal of the nominated existing trees is considered acceptable.

### **3.2 Built Environment**

The site is within a low density residential area characterised by substantial dwellings on large lots with formal gardens and large remnant trees.

#### **3.2.1 Residential character**

The proposed new dwellings are largely at the rear of existing buildings and would have minimal visual impact on the streetscape. The proposal is in keeping with the adjoining two to three storey 'Chesalon Nursing Home' and surrounding dwelling houses and includes an appropriate transition in scale between the adjoining three and single storey developments. Whilst the proposed development exceeds the residential density applicable for the area under the HSLEP, the proposal does not change the pattern of development in the streetscape and would not adversely impact on the residential character of the area. Refer also to comments in Section 3.2.2.

While the locality includes many sites that may meet the SEPP's site selection criteria, the provision of housing in accordance with SEPP is generally at random and would be unlikely to substantially alter the character of the locality or result in an accumulation of similar developments.

#### **3.2.2 Heritage**

The Heritage Committee commented on the amended proposal as follows:

*"The proposal is for consolidation of allotments, demolition of an existing dwelling-house (No. 14A Murray Road), and construction of a Seniors Living development comprising eleven (formerly twelve) dwellings.*

*Property Nos. 142-142A Beecroft Road is listed as a heritage item (garden, fence and gate posts) of local significance under the provisions of Schedule D (Heritage Items) of the HSLEP 1994. The property is located within the Beecroft/Cheltenham Heritage Conservation Area listed under the provisions of Schedule E (Heritage Conservation Areas). The property is also within the vicinity of No. 140 Beecroft Road, Beecroft ("Coombanning") and Nos. 144-146 Beecroft Road, Beecroft*

*(Chesalon Nursing Home) which are listed as heritage items of local significance under the provisions of Schedule D.*

*The proposal was previously considered by the Heritage Advisory Committee at its meeting on 3 November 2008.*

*At its meeting on 2 March 2009, the Heritage Advisory Committee generally agreed that the amended plans address the Committee's earlier concerns in relation to the treatment of the existing Federation dwelling-house at No. 16 Murray Road and its setting. The amended plans provide for an improved streetscape presentation by retaining much of the front yard space and establishing a separate entrance for residents (of the dwellings beyond) in the form of a matching lynch gate. The bin storage area has been moved to be alongside the driveway, thereby reducing built structures within the front yard space.*

*The Committee also noted that the Pettit and Sevitt house at No. 14A Murray Road has been subject to substantial changes over time, and moreover, is not a contributory element of the streetscape by virtue of its location on a battle-axe allotment. As such, no objection is raised to its demolition on heritage grounds. The amended proposal also provides for the relocation of deep soil planting, which would enhance views along the vehicle accessway. The scale and bulk of the proposed dwellings are predominately single storey in appearance as each is designed to utilise rooms in the roof space. The Committee generally agreed that the proposed development would not have an adverse impact upon the character of the surrounding Conservation Area or the heritage items in the vicinity. Accordingly, the Committee resolved that no objection be raised to the proposal on heritage grounds."*

### **3.2.3 Traffic and parking**

The proposed development requires 12 car parking spaces in accordance with the Seniors Living SEPP criteria. A total of 17 car parking spaces are proposed including 4 visitor spaces. The 4 visitor spaces are located within the basement area of Units 6 to 11 and a condition is recommended for access to the spaces to be made available to Units 1 to 5.

Traffic lights control the intersection of Murray Road and Beecroft Road. The traffic generated by the proposed development is relatively low and would not adversely impact on the local road network.

Council's Traffic and Road Safety assessment concluded that the proposal would be satisfactory in respect to Cheltenham Girls High School parents set down/pick up on Murray Road and on-street visitor parking associated with the adjoining 'Chesalon Nursing Home'.

Should the application be approved, construction vehicle access to the site via Boronia Avenue should be avoided due to the narrow width of the roadway. A condition is recommended for the traffic management plan to include site access only from Murray Road and Beecroft Road.

### 3.2.4 Stormwater Drainage

The proposed drainage of the development involves an easement to Boronia Avenue and Council's drainage system which connects to Devlins Creek. The drainage system on the lower side of Boronia Avenue involves an open channel through residential property.

The proposed development increases the site coverage from 20% to 80%. A condition is recommended for the stormwater drainage system to be of design not to exceed pre-development flows and include sufficient detention to cater for a 1 in 50 year storm event.

Subject to the recommended condition, stormwater drainage impact on downstream properties and Devlins Creek would be minimal.

### 3.3 Social Impacts

The proposed self-contained dwellings provide opportunity for eligible households to downsize to well located accommodation with good access to a wide range of services and recreation facilities.

The proposal increases the housing stock for older people or people with a disability and would have a positive social impact.

### 3.4 Economic Impacts

The proposed development would result in an increase in employment opportunities, in the construction of the development and in the demand for goods and services in the occupation of the development.

## 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 relatively level and is suitable for development subject to replacement planting of indigenous trees remnant of Sydney Turpentine Ironbark Forest (refer to comments in Section 3.1).

The proposal involves substantial excavation works to a depth of 4.5m. Council's *Land Sensitivity Study* identifies development constraints of Soil Dispersibility Level 3 and Soil Landscapes Level 2, for the site. The applicant submitted a geotechnical report prepared by Jeffery and Katauskas Pty Ltd which includes recommendations for the proposed demolition and excavation works, including prescribed use of heavy machinery, vibration limits and retaining wall design. The report also includes recommendations for footings and slab construction for the proposed development. A condition is recommended for implementation of the report recommendations to minimise construction impacts on neighbouring properties and to ensure site stability.

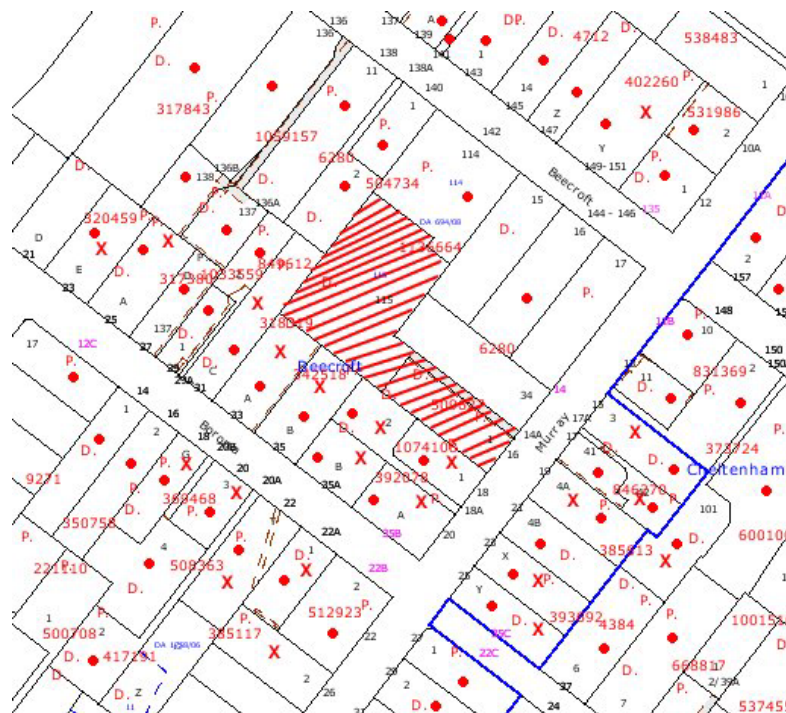
A condition is recommended for the implementation of erosion and sediment control measures in addition to the submitted Soil and Water Management Plan prepared by Craig & Rhodes Pty Ltd, to protect downstream water quality.

## 5. PUBLIC PARTICIPATION


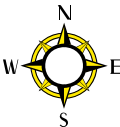
Section 79C(1)(d) of the Act requires Council to consider “any submissions made in accordance with this Act”.

**5.1 Community Consultation**

The proposed development was placed on public exhibition and was notified to adjoining and nearby landowners between 15 October and 5 November 2008 in accordance with Council’s Notification and Exhibition Development Control Plan. During this period, Council received 38 submissions. The plans for the amended proposal were notified from 28 January to 11 February 2009 and 19 submissions were received in response. 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"> <li>• PROPERTIES NOTIFIED</li> </ul>	<ul style="list-style-type: none"> <li>X SUBMISSIONS RECEIVED</li> </ul>	 PROPERTY SUBJECT OF DEVELOPMENT	
<p>26 SUBMISSIONS RECEIVED OUT OF MAP RANGE</p>			

A total of 55 submissions objected to the development, including submissions from 17 objectors who reiterated previous concerns, generally on the grounds that the development would result in:

- Unacceptable traffic congestion on local streets.
- Unacceptable heritage streetscape impact.
- Unacceptable impact on residential character.
- Unacceptable impacts during construction.

- The removal of the majority of indigenous trees.
- Development that is excessive in density, bulk and scale.
- Precedent for high density development.
- Poor amenity for adjoining properties.
- Lack of communal open space for senior residents.
- Restricted deep soil zones unsuitable for replacement trees.
- Poor outlook for residents of the proposed dwellings.
- Loss of privacy.
- Loss of solar access.
- Internal stairs unsuitable for seniors.
- Extensive excavation.
- Inadequate public transport.
- Accumulation of developments for seniors.
- Exploitation of the Seniors Living Policy.

In response to the original and the amended proposal, 2 submissions were received from the same respondent in support and made the following observations:

- The development would provide additional housing for senior residents.
- The development would result in the removal of dangerous trees.
- The development would provide landscape screening of the existing tennis court.

The merits of the matters raised in community submissions have been addressed in the body of this 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 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 Seniors Living development would be in the public interest.

## CONCLUSION

Consent is sought for the construction of a Seniors Living development comprising 11 self-contained dwellings and strata title subdivision. The proposed development has been amended to address concerns previously raised by Council and is of design compatible with surrounding properties. The proposal complies with the design principles and development standards pursuant to the Seniors Living SEPP.

The proposed development involves a large building footprint, however, complies with the SEPP standard for deep soil landscaping requiring a minimum 15% of the site area. The proposed landscaping is designed to provide a quality living environment for residents and to provide privacy screening. The proposed landscaping includes replacement planting for the

indigenous canopy trees to be removed. The site is considered not to support Sydney Turpentine Ironbark Forest, notwithstanding Council's mapping of the site in this regard. The replacement trees and existing trees to be retained would maintain the visual quality of the area.

The proposed dwellings are relatively large for Seniors Living SEPP developments and are generally of a high standard in terms of amenity. The proposal would provide housing choice in meeting the needs of older people or people with a disability and is well located being in close proximity to a wide range of services and facilities.

The proposal received a total of 55 submissions including two submissions in support. The objections primarily were concerned with the loss of trees, parking congestion on Murray Road, impacts on residential amenity and the heritage character of the area. The majority of the concerns were addressed by the amended plans which reduced the number of dwellings, increased the setbacks to adjoining properties and increased the available area for landscaping and included design elements to complement the heritage streetscape.

The proposed development increases the existing stormwater runoff from the site. Conditions are recommended for the stormwater drainage detention system to be of design capacity for the proposed development, to minimise impact on downstream properties and water quality.

The proposed development involves a battle-axe site and retains the existing dwelling in the streetscape. The development would have minimal impact on the existing heritage streetscape and the residential character of the area. The proposed dwellings are designed with regard to the amenity of the adjoining properties and future residents. The submitted landscape plan includes replacement planting for indigenous canopy trees proposed for removal and would maintain the visual quality of the locality.

The proposed development complies with the Seniors Living SEPP and is recommended for approval.

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 Survey Plan
3. Tree Locations
4. Site Analysis Plan
5. Landscape Plans
6. Deep Soil Planting Areas



7. Floor Plans
8. Elevations
9. Shadow Diagrams
10. Stormwater Drainage Plan

File Reference: DA/1349/2008

Document Number: D01115387

**SCHEDULE 1****CONDITIONS OF CONSENT****GENERAL CONDITIONS**

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

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

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

**1. Approved Plans and Supporting Documentation**

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

<i>Plan No.</i>	<i>Drawn by</i>	<i>Dated</i>
DA00-A Site Plan	NBRS + Partners	27/03/2009
DA01-A Gnd Flr Plan	NBRS + Partners	8/04/2009
DA02-A 1 <sup>st</sup> Flr Plan	NBRS + Partners	27/03/2009
DA03-A 2nd Flr Plan	NBRS + Partners	27/03/2009
DA10-A Elevations	NBRS + Partners	8/04/2009
DA11-A Elevations	NBRS + Partners	27/03/2009
Landscape Plan 1-2	G R & M A Sykes	Undated
Soil & Water Mgmt Plan	Craig & Rhodes	8.9.08

<i>Document No.</i>	<i>Prepared by</i>	<i>Dated</i>
D01130921 Waste Management Plan	Craig & Rhodes	5 Nov 2008
D01020412 Impact of proposed development on trees	Footprint Green Pty Ltd	26 September 2008

**2. Retention of Existing Trees**

This development consent only permits the removal of trees numbered 3, 4, 6, 7, 9, 10, 11, 12, 13, 16, 17, 18, 19, 20, 21, 22, 27, 31, 32, 33, 34, 35, 36, 37, 39, 41, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 56 and 57 as identified on Plan No. tidmrbtn14.01 0.2 prepared by Footprint Green Pty Ltd dated 26/09/08. The removal of any other trees requires separate approval under Council's Tree Preservation Order.

### 3. Amendment of Plans

The approved plans are to be amended as follows:

- a. The mulch pathways detailed on the floor plans and landscape plans are to be deleted and replaced with pathways comprising concrete, stone or brick pavers, to provide an uninterrupted surface of travel, other than around Tree No. 38.
- b. The landscape plan Plant Index listing for Plant No. 70 is to be amended by the replacement of *Eucalyptus sideroxylon* with *Eucalyptus paniculata*.
- c. The landscape plan is to be amended by relocation of Plants Nos. 70 from the western side of Unit 2 and Unit 3 to the deep soil area on the eastern side of the accessway. Plant No. 7 is to be relocated from the south eastern side of Unit 9 to the deep soil area south west side of Unit 1.
- d. All indigenous canopy trees – *Eucalyptus paniculata* Grey Ironbark, *Eucalyptus resinifera* Red Mahogany, *Angophora costata* Sydney Red Gum, and *Syncarpia glomulifera* Turpentine, numbered 70, 85, 2 and 7 on the landscape plan, are to be a minimum pot size of 25 litres.

#### REQUIREMENTS PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

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

#### 4. Building Code of Australia

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

#### 5. Access Plan

The construction certificate drawings must be certified by an access consultant, as compliant with the accessibility and useability standards of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004.

#### 6. Geotechnical Plan

The construction certificate drawings must be prepared in accordance with the recommendations of the geotechnical engineer, Jeffery and Katauskas Pty Ltd, report dated 1 July 2008 Ref: 22202ZRrpt.

#### 7. Waste Management Plan

The bin storage areas must be designed and constructed in accordance with Hornsby Shire Council's *Waste Minimisation and Management Development Control Plan*.

**8. Contract of Insurance (Residential Building Work)**

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

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

**9. Dilapidation Report**

A 'Dilapidation Report' must be prepared by a 'chartered structural engineer' detailing the structural condition of the following adjoining properties:

- a. No. 138A Beecroft Road, Beecroft; and
- b. Nos. 144-146 Beecroft Road (Chesalon Nursing Home) Beecroft.

**10. Water/Electricity Utility Services**

The applicant must submit written evidence of the following service provider requirements:

- a. *Energy Australia* – a letter of consent demonstrating that satisfactory arrangements have been made to service the proposed development.
- b. *Sydney Water* – the submission of a 'Notice of Requirements' under s73 of the *Sydney Water Act 1994*.

*Note: Sydney Water requires that s73 applications are to be made through an authorised Sydney Water Servicing Coordinator. Refer to [www.sydneywater.com.au](http://www.sydneywater.com.au) or telephone 13 20 92 for assistance.*

**REQUIREMENTS PRIOR TO THE COMMENCEMENT OF ANY WORKS**

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

**11. Erection of Construction Sign**

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 demolition or building work and a telephone number on which that person may be contacted outside working hours.
- c. Stating that unauthorised entry to the work site is prohibited.

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

## **12. Protection of Adjoining Areas**

A temporary hoarding, fence or awning must be erected between the work site and adjoining lands before the works begin and must be kept in place until after the completion of the works if the works:

- a. Could cause a danger, obstruction or inconvenience to pedestrian or vehicular traffic.
- b. Could cause damage to adjoining lands by falling objects.
- c. Involve the enclosure of a public place or part of a public place.

*Note: Notwithstanding the above, Council's separate written approval is required prior to the erection of any structure or other obstruction on public land.*

## **13. Toilet Facilities**

Toilet facilities must be available or provided at the works site before works begin and must be maintained until the works are completed at a ratio of one toilet for every 20 persons employed at the site. Each toilet must:

- a. be a standard flushing toilet connected to a public sewer; or
- b. have an on-site effluent disposal system approved under the *Local Government Act 1993*; or
- c. be a temporary chemical closet approved under the *Local Government Act 1993*.

## **14. Erosion and Sediment Control**

Erosion and sediment control measures must be provided and maintained throughout the construction period in accordance with the manual '*Soils and Construction 2004 (Bluebook)*', the approved plans, Council specifications and to the satisfaction of the principal certifying authority. The erosion and sediment control devices must remain in place until the site has been stabilised and revegetated.

*Note: On the spot penalties up to \$1,500 may be issued for any on-compliance with this requirement without any further notification or warning.*

**REQUIREMENTS DURING CONSTRUCTION**

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

**15. Construction Work Hours**

All work on site (including demolition and earth works) must only occur between the following hours:

Monday to Saturday	7 am to 5 pm
Sunday & Public Holidays	No work

**16. Demolition**

All demolition work must be carried out in accordance with *Australian Standard 2601-2001 – The Demolition of Structures* and the following requirements:

- a. Demolition material is to be disposed of to an authorised recycling and/or waste disposal site and/or in accordance with an approved waste management plan.
- b. Demolition works, where asbestos material is being removed, must be undertaken by a contractor that holds an appropriate licence issued by *WorkCover NSW* in accordance with Chapter 10 of the *Occupational Health and Safety Regulation 2001* and Clause 29 of the *Protection of the Environment Operations (Waste) Regulation 1996*.
- c. On construction sites where buildings contain asbestos material, a standard commercially manufactured sign containing the words 'DANGER ASBESTOS REMOVAL IN PROGRESS' measuring not less than 400mm x 300mm must be erected in a prominent position visible from the street.

**17. Environmental Management**

The site must be managed in accordance with the publication *'Managing Urban Stormwater – Landcom (March 2004)* and the *Protection of the Environment Operations Act 1997* by way of implementing appropriate measures to prevent sediment run-off, excessive dust, noise or odour emanating from the site during the construction of the development.

**18. Street Sweeping**

Street sweeping must be undertaken following sediment tracking from the site along Murray Road during works and until the site is established.

**19. Works near Trees**

All works (including driveways and retaining walls) within 3 metres of any trees required to be retained (whether or not on the land the subject of this consent), must be carried out under the supervision of an 'AQF Level 5 Arborist' or equivalent and a

certificate submitted to the principal certifying authority detailing the method(s) used to preserve the tree(s).

*Note: Except as provided above, the applicant is to ensure that no excavation, filling or stockpiling of building materials is to occur within 4 metres of any tree to be retained.*

## **20. Council Property**

During construction works, no building materials, waste, machinery or related matter is to be stored on the road or footpath. The public reserve is to be kept in a clean, tidy and safe condition at all times.

## **21. Excavated Material**

All excavated material removed from the site must be classified in accordance with the *NSW Environment Protection Authority's Environmental Guidelines – Assessment, Classification and Management of Liquid and Non-Liquid Wastes* prior to disposal to an approved waste management facility and reported to the principal certifying authority.

## **22. Survey Report – Finished Floor Level**

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

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

## **23. Landscape Works To All Areas**

All landscape works must meet the minimum construction standards identified in the Hornsby Shire Council Landscape Code for Development Applications including the construction of mulched planter beds, planting of trees in minimum 25 litre pot sizes, shrubs in minimum 5 litre pot sizes and groundcovers in minimum 150mm pot sizes in the densities identified in the submitted planting specification.

### **REQUIREMENTS PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE**

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

*Note: For the purpose of this consent, any reference to 'occupation certificate' shall also be taken to mean 'interim occupation certificate' unless otherwise stated.*

## **24. Fulfilment of BASIX Commitments**

The applicant must demonstrate the fulfilment of BASIX commitments pertaining to the development.

**25. Smoke Alarms – Dwelling Additions**

Smoke alarms must be installed in the existing building and the proposed additions in accordance with the requirements of the Building Code of Australia.

**26. Stormwater Drainage**

The stormwater drainage system for the development must be designed and constructed in accordance with Council's *Civil Works – Design and Construction Specification 2005* and the following requirements:

- a. Connected to an existing Council piped drainage system.
- b. Hornsby Shire Council's approval for the proposed drainage works within Public Road is required (a construction certificate is to be submitted to Council).

*Note: A certificate from a chartered civil engineer together with a works as executed design plan must be submitted to the principal certifying authority to demonstrate the satisfaction of this condition.*

**27. On Site Stormwater Detention**

An on-site stormwater detention system must be designed by a chartered civil engineer and constructed in accordance with the following requirements:

- a. The drainage system to control all collected roof and surface stormwater shall be designed with an on-site-detention system. Stormwater discharge from the development site shall be limited to 5 year pre development ARI (average recurrence interval) discharge level. On site detention storage shall be provided for up to 50 year ARI storm events. Detail calculations are to be submitted with a construction certificate application.
- b. Have a surcharge/inspection grate located directly above the outlet.
- c. Discharge from the detention system to be controlled via 1 metre length of pipe, not less than 50 millimetres diameter or via a stainless plate with sharply drilled orifice bolted over the face of the outlet discharging into a larger diameter pipe capable of carrying the design flow to an approved Council system.
- d. Where above ground and the average depth is greater than 0.3 metres, a 'pool type' safety fence and warning signs to be installed.
- e. Not be constructed in a location that would impact upon the visual or recreational amenity of residents.
- f. The creation of an appropriate "*Positive Covenant*" and "*Restriction as to User*" over the constructed on-site detention/retention systems and outlet works, within the lots in favour of Council in accordance with Council's prescribed wording. The position of the on-site detention system is to be clearly indicated on the title.



- g. To register the OSD easement, the restriction on the use of land “*works-as-executed*” details of the on-site-detention system must be submitted verifying that the required storage and discharge rates have been constructed in accordance with the design requirements. The details must show the invert levels of the on site system together with pipe sizes and grades. Any variations to the approved plans must be shown in red on the “*works-as-executed*” plan and supported by calculations.

## 28. Vehicular Crossing

A separate application under the *Local Government Act 1993* and the *Roads Act 1993* must be submitted to Council for the installation of a new vehicular crossing and the removal of the redundant crossing. The vehicular crossing must be constructed in accordance with Council’s *Civil Works Design 2005* and the following requirements:

- a. Approval obtained from all relevant utility providers that all necessary conduits be provided and protected under the crossing.
- b. The grated gully pit must be relocated outside the vehicular footway crossing.

*Note: An application for a vehicular crossing can only be made to one of Council’s Authorised Vehicular Crossing Contractors. You are advised to contact Council on 02 9847 6940 to obtain a list of contractors.*

## 29. Internal Driveway/Vehicular Areas

The driveway and parking areas on site must be designed in accordance with *Australian Standards 2890.1, 3727* and the following requirements:

- a. Design levels at the front boundary be obtained from Council.
- b. The driveway grade not exceed 25 percent and changes in grade not exceed 8 percent.
- c. Planting of landscaping strips 0.5 metres wide along both sides of the length of the driveway.
- d. Passing bays are to be constructed at the intersection of the driveway and Murray Road and at 50m intervals. Entry and exit signs area to be erected for the proposed separation of vehicular entry and exit movements by an island (at the intersection of the driveway and Murray Road).

## 30. Works as Executed Plan

A works-as-executed plan(s) must be prepared by a registered surveyor and submitted to Council for completed road pavement, public drainage systems, driveways and on-site detention system. The plan(s) must be accompanied by a certificate from a registered surveyor certifying that all pipelines and associated structures lie wholly within any relevant easements.

**31. Damage to Council Assets**

Any damage caused to Council's assets as a result of the construction of the development must be rectified in accordance with Council's written requirements and at the sole cost of the applicant.

**32. Traffic Control Plan**

A Traffic Control Plan (TCP) must be prepared by a qualified traffic controller in accordance with the *Roads & Traffic Authority's Traffic Control at Worksites Manual 1998* and *Australian Standard 1742.3* for all work on a public road and be submitted to Council. The TCP must detail the following:

- a. Arrangements for public notification of the works.
- b. Temporary construction signage.
- c. Permanent post-construction signage.
- d. Vehicle movement plans.
- e. Construction vehicle access only via Beecroft Road and Murray Road, access via Boronia Avenue is not permitted.
- f. Traffic management plans.
- g. Pedestrian and cyclist access/safety.

**33. Retaining Walls**

All required retaining walls must be constructed as part of the development.

**34. Boundary Fencing**

Fencing must be erected along all property boundaries behind the front building alignment to a height of 1.8 metres at full cost to the developer.

*Note: Alternative fencing may be erected subject to the written consent of the adjoining property owner(s).*

**35. Restriction on Occupation – Housing for Seniors or People with a Disability**

A restriction as to user must be created under s88B of the *Conveyancing Act 1919* and registered, requiring the dwellings approved under this consent to be solely used for the accommodation of:

- a. Seniors (55+ age) or people with a disability.
- b. People who live within the same household as seniors or people with a disability.

- c. Staff employed to assist the administration and provision of services to housing provided under *SEPP (Housing for Seniors or People with a Disability) 2004*.

*Note: The restriction must nominate Council as the authority to release, vary or modify the restriction.*

### **36. External Lighting**

All external lighting must be designed, installed and certified in accordance with *Australian Standard AS 4282 – Control of the Obtrusive Effects of Outdoor Lighting*.

### **37. Certification of Landscape Works**

The completed landscaping works must be inspected and certified by a registered landscape architect or experienced landscape architect/designer as being in accordance with the requirements of the development consent.

### **38. s94 Infrastructure Contributions**

The payment of a contribution of \$63,685.30 for 11 Seniors Living 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 \$9,274.65 per Seniors Living dwelling 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. The levied contribution includes a credit of 9,274.65 for each of the two existing detached dwellings.

*Note: \* The value of contribution is current as at 31 March 2009. The contribution will be adjusted from this date in accordance with the underlying consumer price index for subsequent financial quarters.*

*It is recommended that you contact Council to ascertain the indexed value of the contribution prior to payment.*

### **OPERATIONAL CONDITIONS**

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

### **39. Visitors Car Parking**

All units approved under this development consent must have access to the visitor car parking spaces.

**40. Waste Management**

A site caretaker must be engaged to move bins to and from the bin storage area/bin collection point and to maintain bin storage areas and waste management.

**41. Maintenance of Landscaping**

The landscape works must be maintained in perpetuity to ensure the establishment and successful growth of plant material to meet the intent of the landscape design.

**- END OF CONDITIONS -**

**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 legislation and Council's policies and specifications. 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**

- The Environmental Planning and Assessment Act 1979 requires:
- A construction certificate prior to the commencement of any works. Enquiries regarding the issue of a construction certificate can be made to Council's Customer Services Branch on 9847 6760.
- A principal certifying authority to be nominated and Council notified of that appointment prior to the commencement of any works.
- Council to be given at least two days written notice prior to the commencement of any works.
- Mandatory inspections of nominated stages of the construction inspected.
- An occupation certificate issued before occupying any building or commencing the use of the land.

**Long Service Levy**

In accordance with Section 34 of the *Building and Construction Industry Long Service Payments Act 1986*, a 'Long Service Levy' must be paid to the *Long Service Payments Corporation* or *Hornsby Council*.

*Note: The rate of the Long Service Levy is 0.35% of the total cost of the work.*

*Note: Hornsby Council requires the payment of the Long Service Levy prior to the issue of a construction certificate.*

**Tree Preservation Order**

To ensure the maintenance and protection of the existing natural environment, it is an offence to ringbark, cut down, top, lop, remove, wilfully injure or destroy a tree outside three metres of the approved building envelope without prior written consent from Council. Fines may be imposed for non-compliance with Council's *Tree Preservation Order*.

*Note: A tree is defined as a perennial plant with self supporting stems that are more than 3 metres or has a trunk diameter more than 150mm measured 1 metre above ground level, and excludes any tree declared under the Noxious Weeds Act (NSW).*

### **Dial Before You Dig**

Prior to commencing any works, the applicant is encouraged to contact *Dial Before You Dig* on 1100 or [www.dialbeforeyoudig.com.au](http://www.dialbeforeyoudig.com.au) for free information on potential underground pipes and cables within the vicinity of the development site.

### **Asbestos Warning**

Should asbestos or asbestos products be encountered during construction or demolition works you are advised to seek advice and information should be prior to disturbing the material. It is recommended that a contractor holding an asbestos-handling permit (issued by *Work Cover NSW*), be engaged to manage the proper disposal and handling of the material. Further information regarding the safe handling and removal of asbestos can be found at:

[www.environment.nsw.gov.au](http://www.environment.nsw.gov.au)

[www.nsw.gov.au/fibro](http://www.nsw.gov.au/fibro)

[www.adfa.org.au](http://www.adfa.org.au)

[www.workcover.nsw.gov.au](http://www.workcover.nsw.gov.au)

Alternatively, telephone the *Work Cover* Asbestos and Demolition Team on 8260 5885.

### **House Numbering**

House numbering can only be authorised by Council. Before proceeding to number each premise in the development, the allocation of numbers is required to be obtained from Council's Planning Division. The authorised numbers are required to be displayed in a clear manner at or near the main entrance to each premise.

**5 DEVELOPMENT APPLICATION - CONSTRUCTION OF A SWIMMING POOL - 10A SUTHERLAND ROAD, CHELTENHAM**

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<b>Development Application No:</b>	DA/196/2009
<b>Description of Proposal:</b>	Construction of a swimming pool
<b>Property Description:</b>	Lot 2, DP 1052535, No. 10A Sutherland Road, Cheltenham
<b>Applicant:</b>	Mrs A S Pike
<b>Owners:</b>	Mr A and Mrs AS Pike
<b>Statutory Provisions:</b>	Hornsby Shire Local Environmental Plan, 1994 Residential AS (Low Density-Sensitive Lands) Zone
<b>Estimated Value:</b>	\$19,000
<b>Ward:</b>	C

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**RECOMMENDATION**

THAT Development Application No. 196/2009 for the construction of a lap-style swimming pool at Lot 2, DP 1052535, No. 10A Sutherland Road, Cheltenham be approved subject to the conditions of consent detailed in Schedule 1 of this report.

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**EXECUTIVE SUMMARY**

1. The application proposes the construction of a lap-style, in-ground concrete swimming pool.
2. The proposal complies with the Hornsby Shire Local Environmental Plan, 1994 and is consistent with Council's Dwelling House Development Control Plan (DCP).
3. A Red Sticker has been placed against the application resulting in it being referred to Council for determination.
4. Four submissions have been received in respect of the application.
5. It is recommended that the application be approved.

## HISTORY OF THE SITE

On 23 August 2002, Council approved DA/1705/2002 for a two lot subdivision which had the effect of creating the subject allotment.

On 4 July 2007, Council approved DA/2514/2002 for the construction of a dwelling-house on the newly created allotment.

## THE SITE

The battle-axe shaped allotment is located at the end of an access handle off the north-eastern side of Sutherland Road, opposite Cheltenham Railway Station. The site has an area of 816m<sup>2</sup>, (600m<sup>2</sup> excluding the area of the access handle), with fall towards the south-eastern corner of the property at a grade of 1 in 9. A concrete slab stands on the site, erected in accordance with the dwelling-house approved under DA/2514/2002.

The rear, northern corner of the site has been excavated into bedrock to a depth of up to 2m to establish a level area around the dwelling-house.

Adjoining residential development is characterised by an eclectic blend of one and two storey dwelling-houses, ranging from modest, post-war design to houses of a more contemporary appearance, all surrounded by well established landscaping.

The site is located within the Beecroft/Cheltenham Heritage Conservation Area.

## THE PROPOSAL

The application proposes the construction of a lap-style reinforced concrete in-ground swimming pool located in the setback between the dwelling-house and the rear, north-eastern boundary. The pool would measure 2.7m wide, 15m long and 1.35m deep, with a capacity of 54,600 litres. The north-eastern end of the pool would be excavated to a depth of up to 1.450m to establish the required depth whilst the coping level at the south-eastern end would rise up to 1.4m above ground level.

## 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 up to 6 additional jobs in the locality during the construction phase.

## 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) Zone under Hornsby Shire Local Environmental Plan, 1994 (HSLEP). The objectives of the Residential AS (Low Density-Sensitive Lands) 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 permissible in the zone with Council’s consent.

Clause 18 of HSLEP sets out heritage conservation provisions within the Hornsby area. The objective of the provision is “*To provide for continuity with the past by conserving the heritage of the Hornsby area and to ensure that Aboriginal heritage is preserved and conserved wherever possible*”. The proposal is in keeping with this clause.

### 2.2 Dwelling House Development Control Plan

The proposed development has been assessed having regard to the relevant performance criteria and prescriptive measures within Council’s Dwelling House DCP. The following table sets out the proposal’s compliance with the prescriptive measures of the Plan:

<b>Dwelling House Development Control Plan</b>			
<b>Control</b>	<b>Proposal</b>	<b>Requirement</b>	<b>Compliance</b>
<b>Private Open Space</b>	127	120	Yes
<b>Landscaping</b>	20%	45%	No
<b>Setbacks:</b>			
<b>-Side (north-east)</b>	0.2m	1m	No
<b>-Side (south-west)</b>	1m	1m	Yes

-Side (north-west)	3.7m	1m	Yes
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As detailed in the above table, the proposed development does not comply with the prescriptive measures of the Landscaping and Setbacks elements of the Dwelling House DCP. These matters of non-compliance are detailed below, together with discussion on compliance with the relevant performance standards.

### 2.2.1 Setbacks and Landscaping

The objective of the Setbacks element of the Dwelling House DCP states as follows:

*“Setbacks that complement the streetscape, provides for landscaping and protect the privacy of and sunlight to neighbouring properties”.*

The objectives of the Landscaping element of the Dwelling House DCP require:

*“Landscaping that reinforces the function of a street and enhances the amenity of dwelling-houses;*

The proposed lap pool is to be located with a zero setback to the side boundaries. Whilst this setback does not accord with the Dwelling House DCP’s 1m prescriptive element, it does satisfy the Setback element objective. In this instance, the swimming pool would take advantage of what would otherwise be a little-used part of the site. Notwithstanding that the pool would occupy an area that could be used for landscaping, having regard to the sites exposed bedrock foundation, it is considered unreasonable to expect that this part of the site will accommodate any substantial deep root landscaping.

### 2.2.2 Private Open Space

The objective of the Private Open Space element of the Dwelling House DCP requires:

*“Development that provides adequate useable private open space to support residential outdoor activities and use.”*

Under the Dwelling House Development Control Plan a swimming pool is included as part of the private open space requirement for a dwelling house. In this regard the proposal would not diminish the existing area set aside for recreational use.

### 2.2.3 Privacy

#### *Private Open Space*

The objective of the Private Open Space element of the Dwelling House DCP requires:

*“Development that provides adequate useable private open space to support residential outdoor activities and use.”*

In terms of privacy, the south-eastern end of the lap pool would stand up to 1.4m above ground level and without controls in place may result in overlooking of the private open spaces at the rear of the adjacent properties No. 21 Cheltenham Road and Nos. 3 and 5 Day Road. To overcome this, a condition is recommended requiring the erection of suitable

privacy screening to maintain an overall fence height of 1.5m where the raised section of the pool adjoins the boundaries of the above premises.

#### **2.2.4 Heritage Development Control Plan**

As the proposed swimming pool is to be sited at the rear of a dwelling-house on a battle-axe allotment, there would not be any impacts on the established character of the surrounding heritage conservation area.

### **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**

There are no trees in the vicinity of the proposal and the excavation to establish the finished level of the pool would have a negligible impact on the surrounding natural environment.

#### **3.2 Built Environment**

A recommended condition of consent requires a structural engineer to supervise construction at the time of the excavation of the pool and monitor any impacts on the adjacent dwelling-house and the boundary fence along the adjacent rear boundary to ensure that the proposal does not have any impacts on the surrounding built environment.

#### **3.3 Social Impacts**

There are no significant social impacts resulting from the proposed development.

#### **3.4 Economic Impacts**

There are no significant economic impacts resulting from the proposed development.

### **4. SITE SUITABILITY**

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

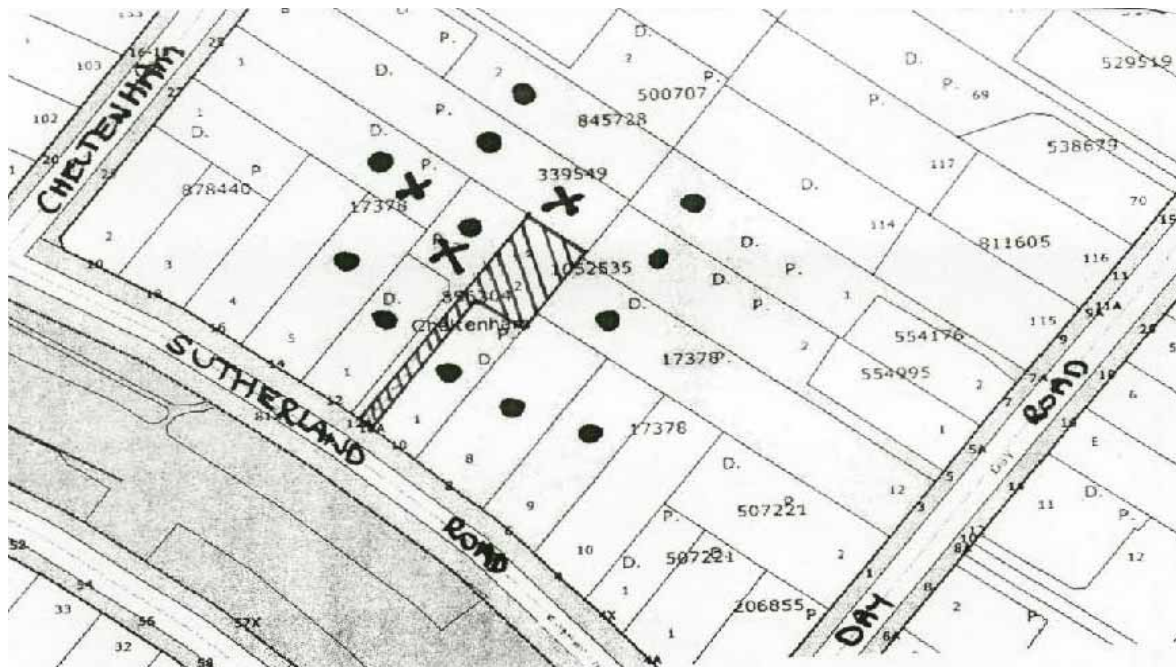
The site is suitable for low density residential development. It is not identified as flood prone or bush fire prone. The proposed swimming pool is in keeping with the low density residential environment and its scale and design would have minimal impacts on the surrounding zone.

### **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 4 March and 18 March, 2009 in accordance with Council’s Notification and Exhibition DCP. During this period, Council received 3 submissions from adjoining property owners and an objection from the Beecroft-Cheltenham Civic Trust. 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"> <li>• PROPERTIES NOTIFIED</li> </ul>	<ul style="list-style-type: none"> <li>X SUBMISSIONS RECEIVED</li> </ul>	 PROPERTY SUBJECT OF DEVELOPMENT	
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Four submissions, including one from the Beecroft Civic Trust objected to the development, generally on the grounds that the setback of, and excavation for, the development would result in unacceptable structural problems in relation to the existing side boundary fence and that the proposal would encroach on the prescribed area for landscaping of the subject site. These issues have been addressed in Section 2.2 of this report and as follows:

**5.1.1 Retaining walls**

Concerns have been raised that support for the neighbouring land may require retaining walls to be erected from the base of the existing excavation to the top of the adjoining land. As a consequence, the swimming pool may need to set back 1m from the boundary to facilitate the construction of future retaining walls.

To address this concern, a condition is recommended requiring the submission of structural engineer’s details showing how the retaining walls would be constructed without interfering or trespassing upon adjoining land. These details are to be submitted to the accredited certifier prior to the issue of a construction certificate. In the event that the retaining walls require additional foundation space, the applicant could modify the swimming pool accordingly.

**5.1.2 Boundary Fencing**

Concerns have been raised about the stability of the boundary fencing. This issue stems from the excavation for the erection of the dwelling-house, approved under DA/2514/2002, and not the swimming pool proposal. Notwithstanding, any impact on the boundary fence from the swimming pool can be addressed by a condition of consent. In this regard, a condition is recommended which requires the boundary fence to be secured to withstand a force of 330N in accordance with Appendix A, B & C of Australian Standard 1926.1 – 2007 ‘Swimming pool safety Part 1: Safety barriers for Swimming Pools’.

## 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 swimming pool would be in the public interest.

## CONCLUSION

Consent is sought to construct an inground swimming pool at the rear of the subject allotment.

The proposal is considered to be an appropriate development on a physically constrained battle-axe allotment, taking advantage of a space that is unlikely to accommodate any deep rooted landscaping because of the bedrock foundation material uncovered as part of the siting of the dwelling-house.

Submissions to the application dealing with structural issues with respect to the nearby boundary fence can be addressed by conditions of consent.

The proposal is consistent with Council’s planning instruments. It is recommended that the application be approved.

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.

SIMON EVANS  
Manager - Assessment Team 1  
Planning Division

SCOTT PHILLIPS  
Executive Manager  
Planning Division

**Attachments:**

1. Locality Plan
2. Site Plan

File Reference: DA/196/2009

Document Number: D01121478

**SCHEDULE 1  
CONDITIONS OF APPROVAL**

**GENERAL CONDITIONS**

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

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

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

**1. Approved Plans and Supporting Documentation**

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

<i>Plan No.</i>	<i>Drawn by</i>	<i>Dated</i>
876A.1/1	ram	30.7.2007

**REQUIREMENTS PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE**

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

**2. Building Code of Australia**

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

**3. Contract of Insurance (Residential Building Work)**

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

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

#### 4. Notification of Home Building Act, 1989 Requirements

Residential building work within the meaning of the *Home Building Act, 1989* must not be carried out unless the principal certifying authority for the development to which the work relates (not being Council) has given Council written notice of the following information:

- a. In the case of work for which a principal contractor is required to be appointed:
  - i. The name and licence number of the principal contractor.
  - ii. The name of the insurer by which the work is insured under Part 6 of that Act.
- b. In the case of work to be done by an owner-builder:
  - i. The name of the owner-builder.
  - ii. If the owner-builder is required to hold an owner-builder's permit under that Act, the number of the owner-builder's permit.

*Note: If arrangements for doing the residential building work are changed while the work is in progress so that the information notified becomes out of date, further work must not be carried out unless the principal certifying authority for the development to which the work relates (not being Council) has given Council written notification of the updated information.*

#### 5. Sydney Water – Quick Check

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

*Note: Refer to [www.sydneywater.com.au](http://www.sydneywater.com.au) or telephone 13 20 92 for assistance.*

#### 6. Structural Certification

Structural engineer's details must be submitted to the accredited certifier demonstrating how the excavation for the swimming pool along the property boundaries approved under DA/2514/2002, will be adequately retained to support the adjoining land. The accredited certifier must be satisfied that the retaining walls recommended by the engineer can be constructed without impacting on the swimming pool or trespassing on the neighbouring properties.



**REQUIREMENTS PRIOR TO THE COMMENCEMENT OF ANY WORKS**

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

**7. Erection of Construction Sign**

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:

- i. Showing the name, address and telephone number of the principal certifying authority for the work.
- ii. Showing the name of the principal contractor (if any) for any demolition or building work and a telephone number on which that person may be contacted outside working hours.
- iii. Stating that unauthorised entry to the work site is prohibited.

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

**8. Erosion and Sediment Control**

Erosion and sediment control measures must be provided and maintained throughout the construction period in accordance with the manual 'Soils and Construction 2004 (Bluebook)', the approved plans, Council specifications and to the satisfaction of the principal certifying authority. The erosion and sediment control devices must remain in place until the site has been stabilised and revegetated.

*Note: On the spot penalties up to \$1,500 may be issued for any on-compliance with this requirement without any further notification or warning.*

**REQUIREMENTS DURING CONSTRUCTION**

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

**9. Construction Work Hours**

All work on site (including demolition and earth works) must only occur between the following hours:

Monday to Saturday	7 am to 5 pm
Sunday & Public Holidays	No work

## 10. Council Property

During construction works, no building materials, waste, machinery or related matter is to be stored on the road or footpath. The public reserve is to be kept in a clean, tidy and safe condition at all times.

*Note: This consent does not give right of access to the site via Council's park or reserve. Should such access be required, separate written approval is to be obtained from Council.*

### REQUIREMENTS PRIOR TO THE ISSUE OF AN OCCUPATION

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

*Note: For the purpose of this consent, any reference to 'occupation certificate' shall also be taken to mean 'interim occupation certificate' unless otherwise stated.*

## 11. Damage to Council Assets

Any damage caused to Council's assets as a result of the construction of the development must be rectified in accordance with Council's written requirements and at the sole cost of the applicant.

## 12. Privacy

A 1.5m high solid/opaque privacy screen is to be constructed, or the existing boundary fence is to be modified such that it has an effective height of 1.5m above the pool coping to preserve the privacy of 21 Cheltenham Road and No.s 3 and 5 Day Road.

## 13. Boundary Fencing

All boundary fencing forming part of the swimming pool fence must be braced so as to satisfy Appendix A, B & C of Australian Standard 1926.1 – 2007 'Swimming pool safety Part 1: Safety barriers for swimming pools'

### OPERATIONAL CONDITIONS

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

## 14. Swimming Pool Requirements

The construction and operation of the swimming pool must comply with the provisions of the *Swimming Pool Act 1992*, the *Swimming Pool Regulation, 1998*, *Australian Standards 1926.1-3 – Swimming Pool Safety* and the following requirements:

- a. All waste water from the pool's filtration system must be piped to *Sydney Water's* sewer system.
- b. The filtration motor and pump, or spa heater and blower unit must be housed in a soundproofed structure. Sound from the equipment must not exceed 5(dBA) above ambient noise levels at any residential property boundary.

- END OF CONDITIONS -

#### 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 legislation and Council's policies and specifications. 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

The Environmental Planning and Assessment Act, 1979 requires:

- a. A construction certificate prior to the commencement of any works. Enquiries regarding the issue of a construction certificate can be made to Council's Customer Services Branch on 9847 6760.
- b. A principal certifying authority to be nominated and Council notified of that appointment prior to the commencement of any works.
- c. Council to be given at least two days written notice prior to the commencement of any works.
- d. Mandatory inspections of nominated stages of the construction inspected.
- e. An occupation certificate issued before occupying any building or commencing the use of the land.

#### Long Service Levy

In accordance with Section 34 of the *Building and Construction Industry Long Service Payments Act 1986*, a 'Long Service Levy' must be paid to the *Long Service Payments Corporation* or *Hornsby Council*.

*Note: The rate of the Long Service Levy is 0.35% of the total cost of the work.*

*Note: Hornsby Council requires the payment of the Long Service Levy prior to the issue of a construction certificate.*

#### Tree Preservation Order

To ensure the maintenance and protection of the existing natural environment, it is an offence to ringbark, cut down, top, lop, remove, wilfully injure or destroy a tree outside 3m of the approved building envelope without prior written consent from Council. Fines may be imposed if you choose to contravene Council's *Tree Preservation Order*.

*Note: A tree is defined as a perennial plant with self supporting stems that are more than 3 metres or has a trunk diameter more than 150mm measured 1 metre above ground level, and excludes any tree declared under the Noxious Weeds Act (NSW).*

### **Dial Before You Dig**

Prior to commencing any works, the applicant is encouraged to contact *Dial before You Dig* on 1100 or [www.dialbeforeyoudig.com.au](http://www.dialbeforeyoudig.com.au) for free information on potential underground pipes and cables within the vicinity of the development site.