



*the bushland shire*

*creating a living environment*

# **BUSINESS PAPER**

## **PLANNING MEETING**

**Wednesday, 1 July, 2009  
at 6:30pm**

---

## **TABLE OF CONTENTS**

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

- Item 1    PLN48/09 Development Application - Boundary Adjustment  
          1070 and 1098 Singleton Road Laughtondale..... 1

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

- Item 2    PLN50/09 Development Application - Registered Club - Alterations &  
          Additions  
          103-109 New Line Road, Cherrybrook..... 14

**C Ward**

- Item 3    PLN32/09 Development Application - Subdivision of one lot into three  
          36 Chapman Avenue, Beecroft..... 32

**GENERAL BUSINESS**

- Item 4    PLN51/09 Draft Amendments Local Environmental Plan 2008 - Report on  
          Submissions..... 61
- Item 5    PLN52/09 Heritage Review Stage 4 - Property No. 5 Chilcott Road, Berrilee  
          ..... 85

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

---

## **AGENDA AND SUMMARY OF RECOMMENDATIONS**

### **PRESENT**

### **NATIONAL ANTHEM**

### **OPENING PRAYER/S**

### **ACKNOWLEDGEMENT OF RELIGIOUS DIVERSITY**

Statement by the Chairperson

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

### **ABORIGINAL RECOGNITION**

Statement by the Chairperson:

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

### **AUDIO RECORDING OF COUNCIL MEETING**

Statement by the Chairperson:

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

### **APOLOGIES**

### **DECLARATIONS OF INTEREST**

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

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

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

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

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

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

*OR*

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

*If the non-pecuniary interest is 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 3 June, 2009 be confirmed; a copy having been distributed to all Councillors.

## **PETITIONS**

## **MAYORAL MINUTES**

## **NOTICES OF MOTION**

## **RESCISSION MOTIONS**

## **MATTERS OF URGENCY**

## **ITEMS PASSED BY EXCEPTION / CALL FOR SPEAKERS ON AGENDA ITEMS**

---

Note:

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

## **DEVELOPMENT APPLICATIONS**

### **A WARD DEFERRED**

#### **A WARD**

##### **Page Number 1**

**Item 1      PLN48/09 DEVELOPMENT APPLICATION - BOUNDARY  
ADJUSTMENT  
1070 AND 1098 SINGLETON ROAD LAUGHTONDALE**

### **RECOMMENDATION**

THAT Council seeks the concurrence of the Director-General of the NSW Department of Planning for the approval of Development Application No. 370/2009 for a boundary adjustment between two lots, Nos. 1070 and 1098 Singleton Road, Laughtondale, subject to the conditions of consent detailed in Schedule 1 of this report.

### **B WARD DEFERRED**

#### **B WARD**

### **C WARD DEFERRED**

##### **Page Number 14**

**Item 2      PLN50/09 DEVELOPMENT APPLICATION - REGISTERED  
CLUB - ALTERATIONS & ADDITIONS  
103-109 NEW LINE ROAD, CHERRYBROOK**

### **RECOMMENDATION**

THAT Development Application No. 144/2009 for alterations and additions to an existing registered club at Lot 2 DP 367373, Nos. 103-109 New Line Road Dural be approved subject to conditions of consent detailed in Schedule 1 of this report.

### **C WARD**

##### **Page Number 32**

**Item 3      PLN32/09 DEVELOPMENT APPLICATION - SUBDIVISION  
OF ONE LOT INTO THREE  
36 CHAPMAN AVENUE, BEECROFT**

**RECOMMENDATION**

THAT Development Application No. DA/1432/2008 for demolition of existing dwelling and subdivision of one lot into three at lot 6 DP 206721 (No. 36) Chapman Avenue, Beecroft be granted a deferred commencement consent subject to the conditions detailed in Schedule 1 of this report.

**GENERAL BUSINESS****Page Number 61****Item 4      PLN51/09 DRAFT AMENDMENTS LOCAL  
ENVIRONMENTAL PLAN 2008 - REPORT ON  
SUBMISSIONS**

THAT:-

1. Council adopt the Local Environmental Plan attached to Executive Manager's Report No. PLN51/09 to:
  - 1.1 rezone property No. 5 Thornleigh Street, Thornleigh;
  - 1.2 implement the recommendations of the Open Space Land Acquisition Review;
  - 1.3 rezone property No. 122X Berowra Waters Road, Berowra Heights;
  - 1.4 rezone Lot 100 DP 1053594 Pennant Hills Road, Normanhurst;
  - 1.5 rezone properties Nos. 180-190 Pennant Hills Road, Thornleigh; and
  - 1.6 permit, with consent, bed and breakfast accommodation across all river settlements and low density residential zoned lands;
  - 1.7 rezone properties currently zoned Environmental Protection B (River Catchments) on Dangar Island to Environmental Protection E (River Settlements);
  - 1.8 amend Clause 15(1) to reduce the maximum floor space ratio for the Environmental Protection E zone from 0.4:1 to 0.3:1; and
  - 1.9 amend the *Hornsby Shire Local Environmental Plan 1994 (HSLEP)* Map to include a Foreshore Building Line for Dangar Island.
2. Council defer consideration of the inclusion of short-term accommodation as a permissible land use in certain zones under the *HSLEP* until a review being undertaken by the Department of Planning has been completed.
3. The Local Environmental Plan be forwarded to the Department of Planning for gazettal.
4. Council endorse the Development Control Plan Amendments attached to Executive Manager's Report No. PLN51/09 that:
  - 4.1 insert a bed and breakfast element into the Brooklyn, Dangar Island, River Settlements and Dwelling House DCPs;
  - 4.2 amend the setbacks diagram for Thornleigh in the Business Lands DCP as it relates to property No. 5 Thornleigh Street and properties Nos. 180-190 Pennant Hills Road, Thornleigh.
5. Council defer consideration of insertion of the short-term accommodation element attached to Executive Manager's Report No. PLN51/09 into the Brooklyn, Dangar

Island and Dwelling House Development Control Plan until the short-term accommodation review being undertaken by the Department of Planning has been completed.

6. A further report be presented to Council containing an amendment to the Setbacks element of the Industrial Lands Development Control Plan to protect the amenity of residential allotments adjoining industrial properties in Asquith.
7. Council forward a submission to the Department of Planning containing a copy of submissions commenting on the issues of short-term accommodation for consideration by the Department in undertaking its review.
8. Submitters be advised of Council's resolution.

### **Page Number 85**

#### **Item 5      PLN52/09 HERITAGE REVIEW STAGE 4 - PROPERTY NO. 5                   CHILCOTT ROAD, BERRILEE**

THAT Council endorse the recommendation of *Heritage Review Stage 4* that the former school building at property No. 5 Chilcott Road, Berrilee be listed as an item of local heritage significance and that the listing be progress as part of an Annual Amending Local Environmental Plan.

### **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 - BOUNDARY ADJUSTMENT  
1070 AND 1098 SINGLETON ROAD LAUGHTONDALE**

---

<b>Development Application No:</b>	DA/370/2009
<b>Description of Proposal:</b>	Boundary Adjustment – Two Lots
<b>Property Description:</b>	Lots 6 and 7 DP 771588 (Nos. 1070 and 1098) Singleton Road, Laughtondale
<b>Applicant:</b>	Daniel McNamara Planning Solutions
<b>Owner:</b>	Mr T B Watkins and Mrs J E Watkins
<b>Statutory Provisions:</b>	Hornsby Shire Local Environmental Plan 1994 Environmental B (River Catchment) Zone
<b>Estimated Value:</b>	Nil
<b>Ward:</b>	A

---

**RECOMMENDATION**

THAT Council seeks the concurrence of the Director-General of the NSW Department of Planning for the approval of Development Application No. 370/2009 for a boundary adjustment between two lots, Nos. 1070 and 1098 Singleton Road, Laughtondale, subject to the conditions of consent detailed in Schedule 1 of this report.

---

**EXECUTIVE SUMMARY**

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



## HISTORY OF THE SITE

The site was previously zoned 7(d) Environmental Protection – Scenic under the Hornsby Planning Scheme Ordinance, which required a minimum allotment size of 40 hectares.

On 20 May 1987, Council approved Development Application No. 66/1987 for the subdivision (boundary adjustment) of four lots into four at Lot 1, DP 706162, Lots A and B, Folio Plan 386335 and Portion 18, Singleton Road. The proposal involved the re-configuration of four existing undersized allotments into four new undersized allotments.

The approved development resulted in the re-configuration of the lots, to locate Lot 4 and Lot 5 on the northern side of Singleton Road (adjoining the Hawkesbury River) and Lot 6 and Lot 7 on the southern side of Singleton Road.

## THE SITE

The site comprises Lots 6 and 7 DP 771588, Singleton Road, Laughtondale. Both allotments are irregular in shape, are located on the southern side of Singleton Road and approximately 60 metres south of the Hawkesbury River. The allotments are bordered by Marramarra National Park to the south. The site comprises of number of exotic trees, native trees and locally indigenous specimens. The site slopes north to Singleton Road with an average fall of 20 – 30%.

- Area of existing lot 6: 4,961m<sup>2</sup>
- Area of existing lot 7: 20,135m<sup>2</sup>

Lot 7 has a frontage of 360 metres to Singleton Road and a depth of 75 metres. A creek is located along the western boundary of the lot. A single fibro dwelling occupies the allotment.

Lot 6 has a frontage of 275 metres to Singleton Road. A single brick dwelling occupies Lot 6 which is located within 1 metre of the western boundary that divides both allotments. Ancillary structures located on the site include a shed and pool, which encroach over the existing common boundary.

Both allotments are undersized.

## THE PROPOSAL

The application proposes a boundary adjustment between two existing allotments. The proposed boundary adjustment would correct an existing encroachment of structures over the allotment boundaries.

- Area of proposed lot 26: 10,672m<sup>2</sup> (approximately 54% increase of the existing site area).
- Area of proposed lot 27: 14,424m<sup>2</sup> (approximately 29% decrease of the existing site area).

Both proposed allotments would remain undersized.

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

The application does not propose the removal of vegetation from the site, however the NSW Rural Fire Service (RFS) require that area around the dwellings be maintained as in Inner Protection Area which is addressed in Section 3.1 of this report.

## ASSESSMENT

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

### 1. STRATEGIC CONTEXT

#### 1.1 Metropolitan Strategy – (Draft) North Subregional Strategy

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

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

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

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

### 2. STATUTORY CONTROLS

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

#### 2.1 Hornsby Shire Local Environmental Plan 1994

The subject land is zoned Environmental B (River Catchment) under Hornsby Shire Local Environmental Plan 1994 (HSLEP). The objectives of the zone are:

- to protect the natural environment of sensitive areas within the catchment of the Hawkesbury River.*
- to protect the valleys and escarpments within the catchment of the Hawkesbury River and accommodate land uses, including housing, that recognise environmental sensitivity of the area.*
- to protect the scenic quality of visually prominent areas and water quality within the catchment of the Hawkesbury River.*

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

There are no building works proposed as part of this application and there would be no adverse impact on the natural environment of sensitive areas, catchments of the Hawkesbury River or riverine scenic quality. The proposal complies with the objectives of the zone.

Clause 14 of the HSLEP prescribes that the minimum area per allotment created in the Environmental B (River Settlements) zone is to be 40 hectares. The proposal does not comply with the development standard contained within Clause 14 as the proposed lots are 1.446 hectares and 1.066 hectares in area respectively. The application includes an objection pursuant to State Environmental Planning Policy No. 1 in support of the proposed variation.

Clause 15 of the HSLEP does not prescribe a maximum floor space ratio (FSR) of development within the Environmental Protection B (River Catchments) zone. The boundary adjustment would result in a FSR of 0.02:1 for proposed Lot 26 and FSR of 0.007:1 for proposed Lot 27, which is considered acceptable in the locality.

## 2.2 State Environmental Planning Policy No. 1 – Development Standards

The application has been assessed against the requirements of State Environmental Planning Policy No. 1 – Development Standards (SEPP 1). This Policy provides flexibility in the application of development standards in circumstances where strict compliance with those standards would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objectives of the Act.

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

1. *The objectives of the standard are achieved notwithstanding non-compliance with the standard;*
2. *The underlying objective or the purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*
3. *The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*
4. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard would be unnecessary and unreasonable.*
5. *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, a particular parcel of land should not have been included in the particular zone.*

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

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

*Compliance with the development standard (minimum 40 hectares) is not possible as the combined area of the existing allotments is only 2.52 hectares. It would therefore be unreasonable and unnecessary to apply the development standard strictly.*

*Owing to the minor nature of the works to accommodate the boundary adjustment, the proposed development would not be inconsistent with the zone's objectives.*

*The proposed boundary adjustment would not lead to the fragmentation of rural holdings or the loss of agricultural land; would not impact on threatened flora and fauna; protects the scenic quality of visually prominent areas and water quality within the catchment of the Hawkesbury River, maintains appropriate access to each property and would not generate any additional traffic; and would not, for the reasons illustrated above, create an undesirable precedent for development within the locality.*

*It is considered the objection is consistent with the aims and objectives of SEPP 1 and that compliance with the development standard is unreasonable and unnecessary in the circumstances.*

The application involves two existing allotments, both of which have areas less than 40 hectares. Therefore, the proposed boundary adjustment cannot result in the creation of new allotments with areas greater than 40 hectares. While unable to achieve the minimum allotment area required by Clause 14(2) of the HSLEP, the proposal achieves the objectives of the clause and the Environment B (River Catchment) zone because it would not create any additional allotments, would not alter demands on existing infrastructure, would not impact on the natural environment and would protect the scenic quality of the site. The boundary adjustment would not create any new dwelling entitlements. Further, the boundary adjustment would rectify the encroachment of structures ancillary to the dwelling-house on proposed Lot 26 that are located over the allotment boundary and would improve the orderly development of the land.

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

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

In accordance with Circular B1 issued 17 March 1989 by the Department of Planning the application requires the concurrence of the Director-General where more than one allotment does not comply with the minimum area. That matter is discussed further in Section 5.2.3 of this report.

### **2.3 State Environmental Planning Policy No. 55 – Remediation of Land**

Clause 7 of the State Environmental Planning Policy No. 55 – Remediation of Land requires Council to consider whether land is contaminated prior to granting consent to the carrying out of development on that land. The proposal does not involve any building works and therefore no further assessment in this regard is necessary.

### **2.4 Sydney Regional Environmental Plan No. 20 – Hawkesbury – Nepean River**

The proposed development has been assessed having regard to the relevant performance and prescriptive standards within Sydney Regional Environmental Plan No. 20 – Hawkesbury – Nepean River.

No building works are proposed as part of this development and there would be no impact on the water quality or riverine scenic quality of the Hawkesbury River. No further assessment under this Plan is required.

## 2.5 Rural Lands Development Control Plan

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

Rural Lands Development Control Plan			
Control	Proposal	Requirement	Compliance
<b>Setbacks</b>			
Proposed Lot 26			
Front	Unchanged		
Side (east)	Unchanged		
Side (west)	52m	15m	Yes
Rear	Unchanged		
Proposed Lot 27			
Front	Unchanged		
Side (east)	50m	15m	Yes
Side (west)	Unchanged		
Rear	Unchanged		

The proposal's compliance with the relevant prescriptive measures within the Plan are discussed below.

### 2.5.1 Setbacks

The proposed boundary adjustment would rectify the encroachment of structures ancillary to the dwelling-house (shed and pool) on proposed Lot 26, which currently encroach into adjoining Lot 7. The proposal would be an improvement to the existing circumstances on the site and would provide for setbacks in accordance with the prescriptive requirements of the 'setbacks' element of the Rural Lands DCP.

## 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 application does not propose the removal of any trees on the site.

The site is subject to bushfire risk and was referred to the Rural Fire Service (RFS) for comment. The RFS requires that a condition be applied requiring an Asset Protection Zone resulting in land surrounding the existing dwellings on both allotments, to a distance of 10 metres or to the property boundary, to be maintained as an Inner Protection Area. The Inner Protection Area, as outlined in the RFS document 'Standards for asset protection zones', requires maintenance of the site to remove flammable material including removal of fine fuels (leaves, twigs, bark) and pruning or removal of trees and shrubs to avoid a continuous canopy to the building asset.

The bushfire assessment report submitted with this application assessed the existing Asset Protection Zones on the site. The report states that the dwellings on both proposed lots maintain an existing Asset Protection Zone of 10 metres surrounding the dwellings or to the property boundary. Therefore, apart from maintenance of this Asset Protection Zone, clearance of vegetation would not be necessary on the site to satisfy this requirement.

### **3.2 Built Environment**

The proposed development does not involve any alterations to the existing dwelling on the allotments and therefore, the proposal would not have a detrimental impact on the built environment surrounding the site.

### **3.3 Social Impacts**

The proposal would not have any social impact on the locality.

### **3.4 Economic Impacts**

The proposal would not have any economic impact on the locality.

## **4. SITE SUITABILITY**

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

### **4.1 Bushfire Risk**

The land is identified as being subject to bushfire risk. The proposal was referred to the RFS for comment. The RFS raised no objection to the proposal subject to conditions requiring an Asset Protection Zone and fire upgrading to the existing dwellings located on the proposed lots 26 and 27.

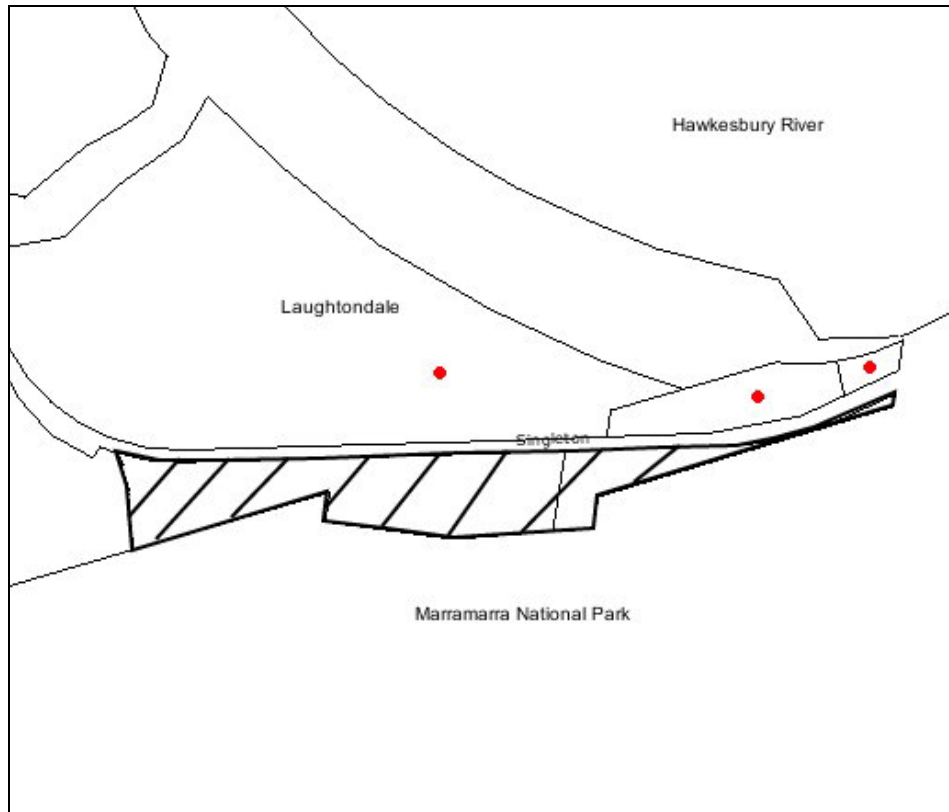
The requirement for the Asset Protection Zone is addressed in Section 3.1 of this report.

## **5. PUBLIC PARTICIPATION**


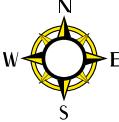
Section 79C (1)(d) of the Act requires Council to consider "*any submissions made in accordance with this Act*".

### **5.1 Community Consultation**

The proposed development was placed on public exhibition and was notified to adjoining and nearby landowners between 21 April 2009 and 12 May 2009, in accordance with Council’s Notification and Exhibition Development Control Plan. During this period, Council received no submissions.



**NOTIFICATION PLAN**

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

**5.2 Public Agencies**

The development application is Integrated Development under the Act, in that it requires approval under Section 100B of the Rural Fires Act, 1997. Accordingly, the application was referred to the following Agencies for comment:

**5.2.1 Rural Fire Service**

The RFS’s requirements are addressed in Section 4.1 of this report.

**5.2.2 Department of Planning**

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

*“NOTIFICATION OF ASSUMED CONCURRENCE*

12. *In pursuance of Section 81(1) of the Act, Council may assume the Director's concurrence under S.E.P.P. No. 1 in accordance with paragraph 13, except an application:*

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

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

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

- (a) *Environment protection*
  - (b) *Environmental protection*
  - (c) *Rural environment protection*
  - (d) *Rural environmental protection*
  - (e) *Coastal lands protection*
  - (f) *Coastal lands acquisition*
  - (g) *Special Uses (water catchment)*
13. *Council may assume the Director's concurrence in respect of a development application referred to in paragraph 12(a) or 12(b) but only if:*
- (a) *only one allotment does not comply with the minimum area; and*
  - (b) *that allotment has an area equal to or greater than 90 percent of the minimum area specified in the development standard.*

The proposal is for subdivision and the land is zoned Environmental Protection B, (i.e. non urban). In accordance with paragraph 12 of Circular B1, Council is unable to assume the concurrence of the Director-General pursuant to SEPP 1. Accordingly, the application is recommended for approval subject to the concurrence of the Director-General of the DOP.

### **5.2.3 Department of Water and Energy**

The site is located within 40 metres of a watercourse. Subdivision proposals involving building works require Controlled Activity Approval by the Department of Water and Energy in accordance with the Water Management Act 2000. However, there are no building works proposed as part of this development and therefore no further assessment in this regard is necessary.

## **5. THE PUBLIC INTEREST**



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

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

The application is considered to have satisfactorily addressed Council’s and relevant agencies’ criteria (subject to consideration by the Director-General of the DOP), 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 boundary adjustment would be in the public interest.

## **CONCLUSION**

The proposal involves a boundary adjustment between two existing allotments which would not create any additional allotments, but would remove the encroachment of structures on over the existing allotment boundary.

The proposal is integrated development and requires the concurrence of the Director-General of the DOP.

The proposal does not comply with the HSLEP, 1994 in respect to minimum lot size. The applicant has submitted an objection pursuant to SEPP 1 to support the variation to the development standard. The SEPP 1 objection is well founded and the proposal is acceptable in this regard.

The proposal is also consistent with the objectives of Council’s Rural Lands Development Control Plan.

Approval of the application is recommended subject to concurrence of the Director-General of the DOP.

ROD PICKLES  
Manager - Assessment Team 2  
Planning Division

SCOTT PHILLIPS  
Executive Manager  
Planning Division

### **Attachments:**

1. Locality Plan
2. Subdivision Plan

File Reference: DA/370/2009  
Document Number: D01169315

**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.*

**2. 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>
28147/D	Chadwick Cheng Consulting Surveyors	26/02/2009

**GENERAL TERMS OF APPROVAL – NSW RURAL FIRE SERVICE**

The following conditions of consent are General Terms of Approval from the nominated State Agency pursuant to Section 91A of the *Environmental Planning and Assessment Act 1979* and must be complied with to the satisfaction of that Agency.

**3. Asset Protection Zone**

At the issue of a subdivision certificate and in perpetuity, the land surrounding the existing dwellings on proposed lots 26 and 27, to a distance of 10 metres or to the property boundary, shall be maintained as an Inner Protection Area as outlined within Section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones'.

**4. Design and Construction**

Prior to the issue of a subdivision certificate, the existing dwellings on proposed lots 26 and 27 are required to be upgraded to improve ember protection. This is to be achieved by enclosing all openings (excluding roof tile spaces) or covering openings with a non-corrosive metal screen. Where applicable, this includes any sub floor areas, openable windows, doors, vents, weepholes and eaves.

**- 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.

**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 single or multi-trunked wood perennial plant having a height of not less than three (3) metres, and which develops many branches, usually from a distance of not less than one (1) metre from the ground, but excluding any plant which, in its particular location, is a noxious plant declared as such pursuant to the Noxious Weeds Act 1993. This definition of 'tree' includes any and all types of Palm trees.*

*All distances are determined British Standard BS 5837: 2005, "Trees in Relation to Construction – Recommendations".*

**Subdivision Certificate Requirements**

A subdivision certificate application is required to be lodged with Council containing the following information:

- a. A surveyor's certificate certifying that all structures within the subject land comply with the development consent in regard to the setbacks from the new boundaries.
- b. A surveyor's certificate certifying that all services, drainage lines or access are located wholly within the property boundaries. Where services encroach over the new boundaries, easements are to be created.
- c. Certification that the requirements of relevant utility authorities have been met; and

*Note: Council will not issue a subdivision certificate until all conditions of the development consent have been completed.*

**Fees and Charges – Subdivision**

All fees payable to Council as part of any construction, compliance or subdivision certificate or inspection associated with the development (including the registration of privately issued certificates) are required to be paid in full prior to the issue of the subdivision certificate. Any additional Council inspections beyond the scope of any compliance certificate required to verify compliance with the terms of this consent will be charged at the individual inspection rate nominated in Council's Fees and Charges Schedule.

**Allotment Numbering**

The allocation of allotment numbering must be authorised by Council prior to the numbering of each allotment in the development.

**2 DEVELOPMENT APPLICATION - REGISTERED CLUB - ALTERATIONS & ADDITIONS  
103-109 NEW LINE ROAD, CHERRYBROOK**

---

<b>Development Application No:</b>	DA/144/2009
<b>Description of Proposal:</b>	Alterations and additions to an existing registered club comprising the removal of existing walls, construction of a new outdoor gaming area and extension of an approved smoker's deck
<b>Property Description:</b>	Lot 2 DP 367373, Nos. 103 – 109 New Line Road Dural
<b>Applicant:</b>	West Pennant Hills Sports Club Limited
<b>Owner:</b>	West Pennant Hills Sports Club Limited
<b>Statutory Provisions:</b>	Hornsby Shire Local Environmental Plan 1994 Open Space C (Private Recreation)
<b>Estimated Value:</b>	\$78,000
<b>Ward:</b>	C

---

**RECOMMENDATION**

THAT Development Application No. 144/2009 for alterations and additions to an existing registered club at Lot 2 DP 367373, Nos. 103-109 New Line Road Dural be approved subject to conditions of consent detailed in Schedule 1 of this report.

---

**EXECUTIVE SUMMARY**

1. The application proposes alterations and additions to an existing registered club comprising the removal of existing walls, construction of a new outdoor gaming area and extension of an approved smoker's deck.
2. On 3 June 2009 Council's Planning Committee first considered the subject application and resolved to defer consideration of the matter for a period of one month to allow for Councillors to conduct an on-site meeting and, if considered necessary, follow up with a workshop before this matter returns to Council.
3. The proposal complies with the provisions of the Hornsby Shire Local Environmental Plan 1994 and the relevant Development Control Plans.

4. Forty-eight submissions from twenty-five residences have been received in respect of the application.
5. It is recommended that the application be approved.

### **HISTORY OF THE APPLICATION**

On 3 June 2009 Council's Planning Committee first considered the subject application and resolved:

*“THAT consideration of this matter be deferred for a period of one month to allow for appropriate senior staff to conduct an on-site meeting with Councillors and, if considered necessary, follow up at a workshop before this matter returns to Council.”*

Available Councillors attended the site inspection on 11 June 2009. At the conclusion of the inspection, it was agreed by attending Councillors that it was not necessary for the proposed follow-up workshop to take place.

The Councillors also suggested that Council produce information for the distribution to adjoining and nearby residents outlining relevant contact details if they feel that noise disturbance at the Club is unreasonable. A draft Community Flyer is attached to this report (held at Attachment 6).

### **HISTORY OF THE SITE**

On 29 April 1968, Certificate of Consent No. 68/63 for the construction of bowling greens, licensed clubhouse, courts and pool was granted. Since that time numerous applications have been granted for extensions to the Club.

Most recently, on 3 September 2008, Council approved Development Application No. 1046/2007 for major alterations and additions to the West Pennant Hills Sports Club including a new car park, relocation of bowling greens, tennis courts, cricket nets and the erection of one sign. Works have not commenced under this application.

On 26 November 2008, Council issued a Notice of Intention to serve an Order in response to unauthorised works relating to internal alterations to the existing Club layout and alterations to the existing smoker's deck.

The subject application was submitted to address the issues relating to the unauthorised works.

### **THE SITE**

The site is rectangular in shape with an area of 2.177 hectares, is located on the western side of New Line Road, 100m south of Cedarwood Drive and 150m north of Edward Bennett Drive, Cherrybrook and experiences an average fall of 3% to the front of the site. A tributary of Berowra Creek traverses the eastern and southern portions of the site, with a bridge connecting the front landscaped area of the site to the Sports Club and its facilities. Facilities on the site include two bowling greens, three (3) all-weather tennis courts, ancillary outbuildings, and cricket nets.

The existing building (1754.42 sqm) includes a main entry, gaming room, reception and administration areas, auditorium, TAB and facilities such as toilets, bowls room, cool room,

kitchen, servery, coffee shop and bar. One hundred and fifty-four (154) line marked car spaces are located around the building to the east, south and west. Vehicular access to the site is available from New Line Road, via separate entry and exit driveways.

Land to the north and south is zoned Residential A (Low Density) and supports detached dwellings (along Bowerman Place) and two-storey townhouses, respectively. Edward Bennett Oval abuts the western boundary of the site with pedestrian access available via a gate. Across New Line Road to the east the land is zoned Residential A and incorporates detached dwellings.

The alignment of New Line Road adjacent to the vehicular entry to the site narrows from two lanes in each direction to two lanes northbound and one lane southbound.

## THE PROPOSAL

The applicant has provided the following information with respect to the proposed works:

*Development approval is sought for the following works:*

- *Demolition of the existing verandah store room located on the northern elevation of the building adjoining the existing bowling green;*
- *Conversion of part of the existing outdoor covered verandah (adjacent to the bowling green) to outdoor gaming area comprising 55m<sup>2</sup> of floor area with floor to ceiling aluminium louvres. The verandah is an existing outdoor seating area for patrons and therefore the conversion to an outdoor gaming area constitutes only a change of activity. The proposal provides for a new solid roof and a ventilated louvre enclosure to this area which would significantly reduce potential noise and light spillage from this currently open area towards the Club's northern boundary;*
- *Conversion of the existing indoor gaming floor area into two separate outdoor gaming areas (42m<sup>2</sup> and 24m<sup>2</sup>) by relocating of the external walls and replacement with floor to ceiling aluminium louvres;*
- *Extend the existing approved outdoor smoking deck by 21.64m<sup>2</sup> with new floor to ceiling solid aluminium louvres and access provided from the outdoor gaming area;*
- *Realign the existing metal roof over the approved smoker's deck to match the new roof over deck extension;*
- *Install airlock doors to separate the smoking zones from the internal gaming areas; and*
- *Provided suitable acoustic insulation and absorption measures as outlined in the Noise Impact Statement prepared by The Acoustic Group.*

All areas created will be nominated smoking zones and as such are required to satisfy the guidelines of the *Smoke-free Environment Act 2000*.

The new outdoor deck and gaming areas will stand a minimum 48m from the northern boundary beyond which adjoining homes are set back a further distance of at least 11m.

The only additional outdoor floor area created by the modifications is the outdoor smoking deck extension in the north-west corner of the Club. All other areas involve conversion of existing internal space to outdoor area, or in the case of the verandah, conversion from open air seating to a partially enclosed outdoor gaming area.

## 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 jobs 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 Open Space C (Private Recreation) under the Hornsby Shire Local Environmental Plan 1994 (HSLEP). The objectives of the zone are:

- to ensure there is provision of adequate open space to meet the needs of the community and to enhance the environmental quality of the Hornsby area.*
- to encourage a diversity of recreational settings and facilities.*
- to sustain the use of privately owned land for sporting activities.*

The proposed development is defined as 'registered club' under the HSLEP and is permissible in the zone with Council's consent.



The HSLEP contains no development standards applicable to the Open Space C (Private Recreation) zone.

## **2.2 Sydney Regional Environmental Plan No. 20 - Hawkesbury-Nepean River**

The aim of the REP is for consent authorities to protect the environment of the river system by addressing the impacts of future land uses. The site is located within the catchment of the Hawkesbury Nepean River. Part 2 of this Plan contains general planning considerations and strategies requiring Council to consider the impacts of the proposal on water quality, scenic quality, aquaculture, recreation and tourism.

The proposed modification does not involve any increase in floor space or major works that would require any additional assessment under SREP 20.

## **2.3 State Environmental Planning Policy (Infrastructure) 2007**

The proposed development whilst resulting in a minor increase to the total floor area would not alter the approved patron numbers and would not require additional parking. Therefore referral to the RTA under Schedule 3 of SEPP (Infrastructure) 2007 is not required.

## **2.4 Cherrybrook Precinct Development Control Plan**

The primary purpose of this DCP is to provide controls for the Cherrybrook Precinct. The Plan has no prescriptive development standards applicable to this site, or this form of development. However, the objectives of the Cherrybrook Precinct Masterplan include provisions requiring development to be designed to minimise noise to the occupants of neighbouring dwellings, as discussed below:

### **2.4.1 Acoustics**

The ‘acoustic’ element of the Cherrybrook Precinct DCP requires development to provide a reasonable acoustic environment for residents. Development should be designed to minimise noise and vibration impacts on the occupants of surrounding dwellings or buildings by complying with Council’s *“Policy and Guidelines for Noise and Vibration Generating Development (2000).”*

The site is located in the vicinity of low density residential development and a number of submissions received raised concerns with regard to unacceptable noise from activities at the Club.

The applicant submitted an ‘Acoustic Report’ prepared by *The Acoustic Group*. The report recommends installation of acoustic absorption material on the underside of the roof for the deck and acoustic ceilings for the gaming areas to maintain compliance with the Office of Liquor, Gaming and Racing (OLGR) before midnight residential boundary criterion.

Council’s environmental assessment of the application has concluded that the acoustic impact of the proposal is acceptable subject to the implementation of appropriate consent conditions.

## **2.5 Car Parking Development Control Plan**

The primary purpose of this DCP is to provide parking controls for the development. Whilst the proposed partially enclosed deck would result in a minor increase to the gross floor area

of the existing Club, there would not be an increase in the patronage of the Club and the proposal would not alter traffic generation, vehicle access or parking on the site.

### **2.6 Access and Mobility Development Control Plan**

The primary purpose of this DCP is to assist proponents and Council in ensuring the requirements for equitable access are satisfied when building work is proposed.

The proposed internal modifications do not raise any concerns regarding access for people with disabilities. Consent conditions require compliance with the Building Code of Australia and Australian Standard 1428.

## **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**

No significant impact arises from the modification to the existing building.

### **3.2 Built Environment**

There is no significant impact on the built environment and acoustic matters are discussed under the Cherrybrook Precinct DCP.

Submissions received raised concerns regarding the bulk and scale of the proposed works and that no airlock has been provided on the verandah gaming room.

The proposed works are single storey with a maximum height 4.5m. The smoker’s deck extension is set back 46m from the northern boundary and the verandah enclosure is setback 48m from the northern boundary. Given the large setbacks and the low height of the development, the bulk and scale of the proposal is in keeping with the surrounding residential development in the locality.

An airlock has been provided from the existing Club to the verandah outdoor gaming room as detailed in Drawing No. ar-1201, Rev A01, dated 16/02/2009.

### **3.3 Social Impacts**

The *Smoke-free Environment Act 2000* banned indoor smoking from July 2007. The associated *Smoke-free Environment Regulation 2007* defines an enclosed public place as:

*“A public place is considered to be substantially enclosed if the total area of the ceiling and wall surfaces (the **total actual enclosed area**) of the public place is more than 75 per cent of its total notional ceiling and wall area.”*

Submissions received raise concerns that the proposal would be defined as an ‘enclosed public place’ and therefore smoking would not be permitted in these areas. The applicant has advised that the design of the development as submitted to Council satisfies the criteria so as not to fall under the definition of an ‘enclosed public place’, therefore permitting smoking in these areas. This is a matter for the NSW Department of Health to inspect and regulate.

Submissions received raise concerns regarding an expansion in the number of poker machines provided in the Club. The application does not propose to expand the number of gaming machines on the premises. Should the Club seek to increase the number of gaming machines at its premises it will need to prepare a Social Impact Assessment and lodge an application to the Office of Liquor Gaming and Racing. The statement of environmental effects addresses the social impact of the proposal and concludes that there are no adverse impacts envisaged.

### **3.4 Economic Impacts**

The proposal would not have a detrimental economic impact on the locality.

## **4. SITE SUITABILITY**

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

The site is not known to be subject to subsidence, landslip or fire risk and the site has the capacity to support the proposed alterations and additions.

## **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 5 March 2009 and 26 March 2009 in accordance with Council’s Notification and Exhibition Development Control Plan. During this period, Council received forty-eight submissions from twenty-five residences. 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><b>TWO SUBMISSIONS RECEIVED OUT OF MAP RANGE</b></p>			

Forty-eight submissions objected to the development, on the grounds that the development would result in:

- Unacceptable traffic on local streets;
- Unacceptable noise from activities at the Club;
- Inadequate parking;
- Development that is excessive in bulk and scale;
- Use of the existing awning area at night should cease;
- Privacy impacts;
- Works undertaken without development consent;
- No airlock has been provided on the verandah games room;
- Louvres permit visibility of gaming to the public/ tennis courts/ bowling greens, which is contrary to the OLGR requirements.

The submissions also raised the following concerns that are not directly related to the current application:

- The application is contrary to the Masterplan approved in DA/1046/2007;

- Noise measures and additional parking have not been provided in accordance with DA/1046/2007;
- When will works commence for DA/1046/2007;
- Security Management Plan approved in DA/1046/2007 has not been implemented;
- Unauthorised sign on cricket nets;
- Expansion of gaming should provide more parking;
- OLGR have increased gaming machines which is detrimental to the community;
- Fix the existing light nuisance;
- Close the back gate after 9pm

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

### **5.1.1 Traffic and Parking**

A number of submissions raised concerns with regard to unacceptable traffic on local streets, inadequate parking and people parking in adjoining residential streets.

The proposal would result in a minor increase to the gross floor area of the existing Club, however, there would not be an increase in the patronage of the Club and the proposal would not alter traffic generation, vehicle access or parking on the site.

The Club has been requested to ask its members to refrain from parking in the adjoining streets and to utilise the car park on-site.

### **5.1.2 Privacy Impacts**

Concerns have been raised with regard to privacy impacts and that the proposed louvres permit visibility of gaming to the public/ tennis courts/ bowling greens, which is contrary to the Office of Liquor Gaming and Racing (OLGR) requirements.

The proposed works are single storey and are set back a minimum of 46m from the northern boundary which would minimise any overlooking concerns of adjoining neighbours. With regard to the privacy impacts on the bowling green, the existing verandah is open and allows for clear sightlines, whereas the proposed louvres would improve privacy to users of the bowling greens. With regards to the smoker's deck overlooking the tennis courts, the existing deck and the deck extension would have a solid 1.8 metre high wall which would maintain privacy to the tennis court users.

Furthermore concerns have been raised with regard to the noise and privacy impacts of the use of the existing verandah area at night that is accessed from the existing lounge and is adjacent to the proposed new outdoor gaming area and the bowling greens. To address the concerns of adjoining residents, a condition is recommended that no patrons are permitted to utilise the covered verandah area adjacent the bowling greens after 9pm at night.

### **5.1.3 Development Consent No. 1046/2007**

On 3 September 2008, Council approved a major redevelopment of the Club's premises (DA/1046/2007) which included a masterplan and staging of the proposed works. The consent is valid for 5 years and works have not yet commenced. Council is unable to impose

a timeframe for works to start, and until such time as the consent becomes operative, the implementation of the Security Management Plan and the acoustic measures and upgrading of the car parking on the site are not required to be commenced.

#### **5.1.4 Compliance Matters**

A number of submissions raised concerns with regard to the works being undertaken without development consent, existing lights on the premises causing glare and reflection and that unauthorised signs had been erected on the cricket nets.

These matters were investigated by Council's Compliance officers. With regard to the unauthorised signage on the cricket nets and the glare from the tennis court lights, the Club has removed the signage and the tennis court lights have been upgraded to comply with the requirements of Development Consent No. 156/1982. The matter of the unauthorised works has been resolved by the submission of this application.

#### **5.2 Public Agencies**

The application was referred to the following agency for comment:

##### **5.2.1 NSW Police**

The NSW Police Force raised no objections to the proposed development, subject to the recommendations of the acoustic report being implemented to alleviate any concerns in relation to what impact the noise from the outdoor gaming terrace and smoking area might have on the residential area adjacent to the complex.

### **6. THE PUBLIC INTEREST**

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

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

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

### **CONCLUSION**

The application proposes alterations to West Pennant Hills Sports Club involving internal modifications and the enclosure of part of the existing verandah to create an outdoor gaming room and the extension of the existing smoker's deck.

The proposal is consistent with the objectives of the Hornsby Shire Local Environmental Plan 1994 and Council's relevant Development Control Plans.

Matters raised in community submissions can be addressed via appropriate conditions. The proposal satisfies the requirements of the NSW Police Force.

Accordingly, the application 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 Plan
3. Floor Plans
4. Sections
5. Elevations
6. Community Flyer

File Reference: DA/144/2009  
Document Number: D01177357

**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:

*Architectural Plans prepared by DEM Pty Ltd*

<b><i>Plan No.</i></b>	<b><i>Plan Title</i></b>	<b><i>Rev</i></b>	<b><i>Dated</i></b>
ar-0101	Site Plan	A01	16 February 2009
ar-1201	Ground Floor Plan	A01	16 February 2009
ar-1202	Roof Plan	A01	16 February 2009
ar-2101	Sections	A01	16 February 2009
ar-2601	East & West Elevation	A01	16 February 2009
ar-2602	North Elevation	A01	16 February 2009

*Supporting Documentation*

<b><i>Document Title</i></b>	<b><i>Prepared by</i></b>	<b><i>Dated</i></b>
Statement of Environmental Effects Project No. 4056-00	DEM	16 February 2009
Construction Waste Management Plan	DEM	16 February 2009
BCA Compliance Report Project No. 90004, Rev 2	Blackett Maguire & Goldsmith Pty Ltd	9 February 2009
Noise Impact Statement Report No. 39.3170.R12:ZSC	The Acoustic Group	6 February 2009
Noise Impact Statement Report No. 39.3170.R13:ZSC	The Acoustic Group	28 March 2009



**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. Fire Safety Upgrade**

To ensure the protection of persons using the existing building and to facilitate egress from this building in the event of a fire, details must be submitted for the works necessary to bring the area indicated as "existing outdoor gaming area – not approved" into full compliance with Parts C, D and E of the Building Code of Australia.

**4. 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.

**5. 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.*

## 6. 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.

## 7. 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

## 8. 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.

## 9. 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.

## 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.*

## 11. 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.

### 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.*

## 12. 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 connected to the existing drainage system.

## 13. Cigarette Butt Receptacle

Cigarette butt receptacles must be provided on the smoker's deck to minimise littering.

## 14. External Lighting

All external lighting must be designed and installed in accordance with *Australian Standard AS 4282 – Control of the Obtrusive Effects of Outdoor Lighting*. Certification of compliance with the Standard must be obtained from a suitably qualified person.

## 15. Acoustic absorption material

Acoustic absorption material must be applied to the underside of the roof (of the deck) and acoustic ceilings applied for all gaming areas in accordance with the recommendations of the *Noise Impact Statement Report No. 39.3170.R12:ZSC* prepared by *The Acoustic Group*, dated 6 February 2009. Certification of compliance with the recommendations of *Noise Impact Statement Report No. 39.3170.R12:ZSC* must be obtained from a suitably qualified person.

**16. Air Locks**

Air locks must be provided to doorways that lead to the outdoor smoking area to prevent the entry of cigarette smoke into the Club.

**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.

**17. Patron Numbers**

This consent does not authorise or approve an increase in patron numbers.

**18. Fire Safety Statement - Annual**

On at least one occasion in every 12 month period following the date of the first 'Fire Safety Certificate' issued for the property, the owner must provide Council with an annual 'Fire Safety Certificate' to each essential service installed in the building.

**19. Noise – Plant and Machinery**

- a. Existing plant on the subject site must operate at levels less than 40 dB(A) at the northern boundary.
- b. Additional plant associated with the proposal must not to exceed 37 dB(A) at the northern boundary.

**20. Noise – Acoustic Assessment**

An acoustic assessment is to be undertaken by a suitably qualified environmental consultant, selected by Council and at the sole cost of the applicant, within 60 days of the date of this consent in accordance with the *Environment NSW Industrial Noise Policy (2000)*, *Council's Policy and Guidelines for Noise and Vibration Generating Development (Acoustic Guidelines V.5, 2000)* and the *DECC's Noise Guide for Local Government (2004)*. Measurements must be taken from the common property boundary with Lot 2 DP 262492, Lot 4 DP 262492, Lot 7 DP 262492 and Lot 713 DP 260293, (Nos. 4, 8, 14 and 19) Bowerman Place Cherrybrook. Should the assessment find that noise from the premise exceeds 5dB(A) appropriate measures must be employed to rectify excessive noise.

**21. Use of Smoker's Deck**

The use of the deck is subject to the following conditions to protect the acoustic amenity of neighbouring residences:

- a. The hours of operation of the smoking deck are restricted to those times listed below:

Sunday - Wednesday	10am - 11pm
Thursday - Saturday	10am - Midnight

*Please note: This includes Public Holidays and Special Events.*

- b. Alcohol must not to be consumed on the deck between the hours of 10pm and Midnight.
- c. Signs must be posted both at the exit to the deck and on the deck stating: "CONSIDER OUR NEIGHBOURS. PLEASE KEEP NOISE TO A MINIMUM."
- d. No music, entertainment, television monitors or amplified music/announcements is permitted on the smoking deck area.
- e. All noise complaints must be recorded by the Duty Manager and must be dealt with immediately.

## **22. Management**

The Club Manager must take all steps necessary to ensure the orderly behaviour of patrons and to ensure that no noise nuisance occurs from patrons entering, using and leaving the outdoor gaming area, the verandah and/or smoking deck. All resident complaints are to be recorded and if possible, responded to in writing.

## **23. Use of Verandah**

No patrons are to utilise the outdoor covered verandah accessed from the lounge area and adjacent to the bowling green after 9pm.

**- 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.*

### **Disability Discrimination Act**

The applicant's attention is drawn to the existence of the *Disability Discrimination Act*. A construction certificate is required to be obtained for the proposed building/s, which will provide consideration under the *Building Code of Australia*, however, the development may not comply with the requirements of the *Disability Discrimination Act*. This is the sole responsibility of the applicant.

### **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.

### **The Smoke-free Environment Act 2000**

This assessment does not confirm that the outdoor gaming area and smoking deck is an unenclosed public place for the purposes of *The Smoke-free Environment Act 2000*. This is a matter for the *NSW Department of Health*.

**3 DEVELOPMENT APPLICATION - SUBDIVISION OF ONE LOT INTO THREE  
36 CHAPMAN AVENUE, BEECROFT**

---

<b>Development Application No:</b>	DA/1432/2008
<b>Description of Proposal:</b>	Demolition of existing dwelling and subdivision of one lot into three
<b>Property Description:</b>	Lot 6 DP 206721 (No. 36) Chapman Avenue, Beecroft
<b>Applicant:</b>	Peter Anderson
<b>Owner:</b>	Schofields Garden & Floral Centre Pty Ltd
<b>Statutory Provisions:</b>	Hornsby Shire Local Environmental Plan 1994 Residential AS (Low Density – Sensitive Lands)
<b>Estimated Value:</b>	\$18,000
<b>Ward:</b>	C

---

**RECOMMENDATION**

THAT Development Application No. DA/1432/2008 for demolition of existing dwelling and subdivision of one lot into three at lot 6 DP 206721 (No. 36) Chapman Avenue, Beecroft be granted a deferred commencement consent subject to the conditions detailed in Schedule 1 of this report.

---

**EXECUTIVE SUMMARY**

1. The application proposes the demolition of the existing dwelling and subdivision of one lot into three.
2. The proposal complies with the Hornsby Shire Local Environmental Plan 1994, the Residential Subdivision Development Control Plan and the Heritage Development Control Plan.
3. The proposal is integrated development and the general terms of approval have been received from the Department of Water and Energy.
4. Five submissions have been received in respect of the application.
5. It is recommended that the application be granted deferred commencement consent.

## HISTORY OF THE SITE

The site was previously the subject of DA/1122/2007 for the subdivision of one lot into four. That application was to be considered by Council at its meeting on 21 November 2007, however the application was withdrawn prior to the meeting.

On 26 May 2008 Council approved tree assessment application No. TA/554/2008 for the removal of 12 trees from the site. The subsequent removal of the trees was raised as a concern by adjoining property owners and the NSW Department of Environment and Climate Change. The concerns were in respect to an assessment of significance being undertaken pursuant to Section 5A of the Environmental Planning and Assessment Act, 1979. These concerns were addressed to the Department's satisfaction by Council's response concerning the condition of the trees removed and the applicant's agreement to replacement tree planting.

## THE SITE

The site comprises an existing battleaxe lot, has an area of 3,205m<sup>2</sup> (2,968m<sup>2</sup> excluding the access handle) and has an average fall of 10% to the western boundary. The lot is one of three existing battleaxe lots with shared access (reciprocal rights of carriageway) over their respective handles. The shared driveway is over the handle of the subject site and the handle of the adjoining rear property at No. 36A Chapman Avenue.

The subject site includes an existing single storey rendered brick dwelling with tiled roof, a swimming pool and several large remnant trees. A small watercourse, piped under the existing driveway, flows east-west through a number of adjacent properties to Bangalow Avenue. The existing driveway consists of concrete strips. The handle of No. 36B Chapman Avenue is thickly vegetated with trees and shrubs and is not used for access.

The site is approximately 550m north west of Beecroft Railway Station and shops.

The site is located within a low density residential area generally characterised by substantial dwellings on large lots with formal gardens and large remnant trees. The site is in the vicinity of recent subdivisions approved by Council:

- Lloyd Wright Way – Site area 10,964m<sup>2</sup> (11-11A Albert Road), DA/2781/2001 approved for 15 community title lots, average lot size 606m<sup>2</sup>.
- Lloyd Wright Way - Site area 4,376m<sup>2</sup> (38A Beecroft Road), DA/1321/2003 approved for four lots, existing dwelling retained on 2,113m<sup>2</sup> with Beecroft Road access, 3 lots of 756m<sup>2</sup> with access off Lloyd Wright Way.
- Lloyd Wright Way - Site area 2,428m<sup>2</sup> (34A Beecroft Road), DA/104/2006 approved for 3 lots, existing dwelling retained on 1,300m<sup>2</sup> with Beecroft Road access, 2 lots of 640.4m<sup>2</sup> and 642.3m<sup>2</sup> with access off Lloyd Wright Way.
- Lloyd Wright Way - Site area 4,338m<sup>2</sup> (40A Beecroft Road), DA/516/2007 approved for subdivision into 4 lots. Lot 1 of area 1,636.2m<sup>2</sup> with Beecroft Road access. Lot 2 - 763.6m<sup>2</sup>, lot 3 - 709.2m<sup>2</sup> and lot 4 area 822.9m<sup>2</sup> with access off Lloyd Wright Way. The site includes trees identified as an endangered ecological community.



The remnant trees on the subject site are identified as an endangered ecological community. The site, together with the adjoining properties (36A & 36B), is one of the last remaining substantial holdings in the locality to be subject to redevelopment.

## THE PROPOSAL

The proposal involves the demolition of the existing dwelling house and subdivision of one lot into three. The existing swimming pool is proposed to be retained. A central accessway and turning area is proposed for vehicular access to the three lots which would have the benefit of the existing right of carriageway.

The proposed stormwater drainage system involves connection to the existing watercourse, where it crosses the access handles. The site falls to the western boundary and the area below the 138m contour line cannot drain into the proposed stormwater drainage system. A building line limit is proposed to restrict development to the area above this line. The submitted landscape plan includes the revegetation of Blue Gum High Forest for part of the area below the building line.

Proposed lot 1 has an area of 1,245m<sup>2</sup> (763.2m<sup>2</sup> excluding ROC). The lot is irregular in shape of dimensions; northern boundary 30.87m, western boundary 26.365m, southern boundary 47.72m and eastern boundary with access handle 27.0m/68.88m. The access handle has an area of approximately 230.7m<sup>2</sup>. The central right of carriageway over the lot and benefiting proposed lots 2 and 3, has an area of approximately 251.1m<sup>2</sup>. The lot has an average fall of 9.5%. The lot includes trees Nos. 110, 111, 185 and 180, identified as good and worthy of preservation.

Proposed lot 2 is irregular in shape and has an area of 1,009m<sup>2</sup>. The lot dimensions are; northern boundary 26.09m, western boundary 39.62m, southern boundary 5.12m/5.02m and eastern boundary 26.365/27.42m. The lot has an average fall of 8.4%. The lot includes trees Nos. 170, 175, 203, 242 and 253, identified as good and worthy of preservation.

Proposed lot 3 is regular in shape and has an area of 950.3m<sup>2</sup> (914.7m<sup>2</sup> excluding ROC). The lot dimensions are; northern boundary 28.165m, western boundary 27.42m, southern boundary 30.87m and eastern boundary 40.06m. The lot includes the existing swimming pool to be retained. The lot has an average fall of 10% to the south western corner. The lot includes tree No. 236, identified as good and worthy of preservation.

The existing access handle of the subject site and the adjoining access handle for lot 7 DP 206721 (No. 36A) Chapman Avenue, have a combined width of 6.7m and accommodate the proposed right-of-accessway. The accessway over the two handles includes a 3m wide driveway extending to 5m width for passing bays at the frontage and two passing bays at 30m intervals along the driveway. The right of carriageway is existing and includes access for lot 5 DP 206721 (No. 36B) Chapman Avenue. The proposed development, however, does not involve works within the handle of lot 5 DP 206721.

The proposed accessway and the adjoining handle of lot 5 DP 206721 include good and worthy trees Nos. 73, 433, 435, 437, 438, 440, 441, 442, 444, 445, 446, 448, 449, 450, 451, 453, 454, 455, 456, 457, 462, 463, 465, 466, 467, 477 and 478.

The proposed accessway involves the removal of trees Nos. 434, 443, 447, 460, 461, 464, 468, 469 and 480.

## 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 two residential lots and housing opportunities in the locality.

### 2. STATUTORY CONTROLS

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

#### 2.1 Hornsby Shire Local Environmental Plan 1994

The subject land is zoned Residential AS (Low Density – Sensitive Lands) under 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 'demolition' and 'subdivision' under the HSLEP and is permissible in the zone with Council's consent.

Clause 14 of the HSLEP prescribes that the minimum area of an allotment within the Residential AS zone is 600m<sup>2</sup>, excluding the area of any accessway. The proposed lots comply with this requirement.

Clause 18 of the HSLEP sets out heritage conservation provisions within the Hornsby area. The subject site is located within the Beecroft/Cheltenham Heritage Conservation Area. The applicant submitted a Statement of Heritage Impact in compliance with the Clause, which is addressed in a later section of this report.

## 2.2 Water Management Act 2000

The site includes a minor watercourse which flows to Devlins Creek.

The Water Management Act 2000 includes provision for prescribed activities within 40 metres of a watercourse. Subdivision is a controlled activity under the Act and requires the approval of the Department of Water and Energy. In this regard the application is 'integrated development' and was referred to the Department for assessment.

The Department of Water and Energy has granted 'General Terms of Approval' for the proposed development.

## 2.4 Residential Subdivision Development Control Plan

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

Residential Subdivision Development Control Plan			
Control	Proposal	Requirement	Compliance
Lot Size (excl access)	Lot 1 – 763m <sup>2</sup> Lot 2 – 995.8m <sup>2</sup> Lot 3 – 926.6m <sup>2</sup>	600m <sup>2</sup>	Yes
Accessway Width	6.7m	4m	Yes

The proposed subdivision complies with the prescriptive standards contained within Council's DCP in respect to density, setbacks, private open space and solar access. The merits of the proposal with regard to the DCP's other relevant performance standards, are discussed as follows:

### 2.4.1 Allotment Layout and Design

Proposed lot 1 can accommodate a 200m<sup>2</sup> indicative building envelope with a minimum dimension of 10m clear of the drainage limit building line and trees to be retained, in compliance with the DCP criteria. A condition is recommended for a 'Restricted Development Area' to be created on the title of the lot, over that area that cannot be drained to the stormwater drainage system.

The area recommended for restriction for building on proposed lot 1, involves an area of 220m<sup>2</sup>, thus reducing the useable residential area to 543.2m<sup>2</sup>. The resulting area is considered acceptable in respect to the available area for siting a dwelling with regard to setbacks, trees to be retained and the residential character of the area.

The applicant's proposed indicative 200m<sup>2</sup> building envelope on lot 2 is shaped to retain tree No. 164. The building envelope does not comply with the DCP criteria for a minimum dimension of 10m. The tree however is not identified as significant and the lot could accommodate a 200sqm building envelope in compliance with the DCP if tree No. 164 was removed.

As with lot 1, it is recommended that a 'Restrictive Development Area' be created on the title of lot 2 over that area that can not be drained to the stormwater drainage system. The recommended restricted area for lot 2 reduces the residential useable area to 518.8 m<sup>2</sup>. The resulting area is considered acceptable in respect to the available area for siting a dwelling with regard to setbacks, trees to be retained and the residential character of the area (subject to the removal of tree No. 164).

The area subject to the 'Restricted Development Area' on lots 1 and 2 is also the area recommended for the restoration of the remnant bushland on the site. (Refer to discussion in Section 3.1.)

Proposed lot 3 is relatively large and accommodates a 200m<sup>2</sup> building envelope in compliance with the DCP allotment layout and design performance criteria. It is noted that lot 3 has been designed to retain the existing pool on site within that lot. It is further noted that the pool is old and that if demolished, may make way for an alternative allotment configuration that would increase the size of lot 2 and possibly retain tree No. 164.

#### **2.4.2 Landscaping**

The proposed subdivision includes adequate areas for landscaping to ensure privacy of future and existing residents. The submitted landscape plan includes revegetation of Blue Gum High Forest along the western boundary of the site, providing screening to the adjoining property at 36B Chapman Avenue and the rear of adjacent properties fronting Bangalow Avenue.

The proposed subdivision involves the removal of 9 trees of which none are significant or good and worthy of preservation. To accommodate a useable building envelope on lot 2, it is recommended that a 10<sup>th</sup> tree (tree No. 164) also be removed. Appropriate conditions are recommended to protect the trees to be retained within the vicinity of the proposed accessway and stormwater drainage works.

The proposal complies with the DCP landscaping performance criteria. (Refer also to discussion in Section 3.1.)

#### **2.4.3 Drainage Control**

The applicant has been unable to secure easements over downstream properties for effective stormwater drainage of all the development site. Consequently, the proposed stormwater drainage system is to be piped to the existing watercourse where it crosses the accessway. The proposed system involves excavation to achieve the necessary fall and would drain 78% of lot 1, 53% of lot 2 and all of lot 3. The proposed drainage system is satisfactory subject to a condition requiring the proposed building restriction to be implemented on title to ensure all non-permeable surface areas of lot 1 and lot 2 are able to be connected to the stormwater drainage system.

A stormwater detention system is recommended for the proposed subdivision. The detention system, together with recommended conditions of the Department of Water and Energy,

would ensure no adverse impact on the watercourse and downstream properties as a result of the proposed development.

#### **2.4.4 Accessway Design**

The proposed accessway has a length of 70m, a driveway width of 3m extending to 5m for the proposed passing bays and includes a common turning area, in compliance with the DCP design criteria. The accessway provides for the three proposed lots and the two existing adjoining lots. The proposed accessway would have capacity for a total of six dwellings. Access for a waste collection vehicle is not required for the proposal, in accordance with the Residential Subdivision DCP.

To minimise the impact of bin storage on the streetscape and to cater for waste collection for the proposed lots and the existing properties, a condition is recommended for the accessway to include a waste bin storage facility at the Chapman Avenue frontage.

The accessway has a length of 70m and connects with the access for No. 36A Chapman Avenue (which has a further length of 104m). The applicant, in liaison with the adjoining owners, submitted a Works Management Plan for construction of the accessway, to ensure that access is able to be maintained to the existing adjoining properties during the construction of the development. A condition is recommended for the implementation of the Works Management Plan.

A condition is recommended for the accessway to be designed and constructed in a manner that minimises impact on trees to be retained. This would be achieved via pier and beam construction in those locations where root damage could occur as a result of excavation. The existing trees and vegetation provide an effective screen for the operation of the proposed accessway, in respect to adjacent dwellings at No. 38 Chapman Avenue and No. 36B Chapman Avenue.

Without appropriate conditions, the proposed accessway and recommended bin storage area could detract from the amenity of the adjoining dwelling at No. 34 Chapman Avenue, given that the common boundary is unfenced. Accordingly, a condition is recommended requiring the construction of a solid lapped and capped timber fence along the eastern common boundary with No. 34 Chapman Avenue.

The proposed development would generate an additional 18 daily traffic movements in accordance with the RTA's *Guide To Traffic Generating Developments*. Subject to adherence with recommended conditions, it is considered the proposed accessway would not adversely impact on the existing acoustic environment.

A condition is recommended for the accessway to be finished in coloured concrete, bitumen or stencilled to minimise its visual impact.

#### **2.4.5 Utility Services**

The existing utilities are provided by way of separate and shared service lines for the three existing battleaxe lots. The proposed development involves joint trenching to combine existing and proposed services including water, electricity and telecommunications. An appropriate easement is recommended to facilitate joint trenching for utility services.

### **2.5 Heritage Development Control Plan**

The site is located within the Beecroft-Cheltenham Heritage Conservation Area. The proposed subdivision is consistent with recent infill subdivision and would not adversely impact on the streetscape or the significance of the heritage conservation area.

The proposal includes demolition of the existing dwelling. The dwelling does not have heritage significance, is not visible in the streetscape and its demolition would not affect the conservation area. (Refer to discussion under Section 3.2 of this report.)

## 2.6 Waste Minimisation and Management Development Control Plan

In support of the application the applicant submitted a Waste Management Plan for the demolition of the existing dwelling house, in compliance with the DCP.

## 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 99 trees located on the site, including trees in close proximity to adjoining properties. Of these trees 46% are exotic species. The proposed subdivision involves the removal of 9 trees, being trees Nos. 434, 443, 447, 460, 461, 464, 468, 469 and 480, of which 7 are exotic species. None of these trees are identified as significant or good and worthy of preservation.

Council has identified that none of the trees on site are individually significant, however, thirty-seven trees are identified as good and worthy of preservation. These trees are numbered 73, 110, 111, 170, 175, 180, 185, 203, 236, 242, 253, 433, 435, 437, 438, 440, 441, 442, 444, 445, 446, 448, 449, 450, 451, 453, 454, 455, 456, 457, 462, 463, 465, 466, 467, 477 and 478. Appropriate conditions are recommended to protect existing trees to be retained which are located within 4m of the driveway construction, service pits and drainage works.

In support of the application, the applicant has provided a ‘Revegetation Plan’ (prepared by Phil Packham Horticulture dated 4/5/2009) and a ‘Landscaping and Revegetation Proposal’ (prepared by Phil Packham Horticulture dated 30/4/2009) that includes the planting of twelve Blue Gum High Forest canopy species within the proposed ‘Restricted Development Area’ being:

- *Eucalyptus pilularis* (Blackbutt)
- *Eucalyptus saligna* (Blue Gum)
- *Eucalyptus resinifera*
- *Elaeocarpus reticulatus*
- *Allocasuarina torulosa*

An additional 300 local provenance Blue Gum High Forest tube stock including tall shrubs (25% density), medium shrubs (25% density) and groundcover (50% density) for a diversity of 17 species has also been proposed in the understorey of *Zone 3* as indicated in the Plan. The density and diversity of planting with Blue Gum High Forest is also intended to be a compensatory measure for the removal of twelve trees previously approved by Council

(TA/554/2008). A minimum of seven Blue Gum High Forest canopy species would be retained and incorporated into *Zone 3*.

*Zone 1 and 2* of the proposed *Revegetation Plan* includes screen plantings between each of the three proposed allotments comprising of some Blue Gum High Forest species (*Breynia obolgifolia* and *Rapanea variabilis*) with the exception of *Syzygium luehmanii* and *Acmena smithii* var. *minor* which are not considered to be an invasive species.

It is considered that active restoration efforts and the cessation of mowing would encourage natural regeneration as there is likely to be a viable seedbank below the existing tree canopy within *Zone 3*. However, it is recommended that supplementary planting of native tubestock be undertaken to further provide suitable microclimate for regeneration and help establish habitat structure. The planting of BGHF species in a clump at *Zone 3* of the 'Restricted Development Area' is considered a realistically achievable arrangement for managing endangered native vegetation whilst allowing turf for active use as part of the private open space requirements for proposed residential lots 1 and 2. A condition is recommended for the 'Revegetation Pan' to be amended for planting of an additional six Blue Gum High Forest canopy trees within the grassed component area of the 'Restricted Development Area' of lots 1 and 2.

It is considered the Seven Part Test Assessment of Significance (prepared by Trevor Hawkeswood dated 22<sup>nd</sup> June 2008) in support of the application is acceptable. Given the recent proposition of compensatory plantings of Blue Gum High Forest species within a 'Restricted Development Area' which is specifically dedicated to the perpetual protection and active maintenance of Blue Gum High Forest on the subject site, the proposal is considered appropriate in respect to offsetting the loss of trees previously removed on site and the trees to be removed by the current proposal.

In summary, the proposed development is considered acceptable in respect to impact on existing trees and the revegetation of Blue Gum High Forest on the site.

### **3.2 Built Environment**

#### **3.2.1 Residential Character**

The proposed subdivision retains large remnant trees on the site which contribute to the visual quality of the locality. The proposed lots are relatively large and would provide opportunity for dwelling houses consistent with the character of the area.

The proposed indicative building envelopes on lots 1 & 3 are of a sufficient size so as to provide some flexibility in dwelling design at the time that development applications are lodged for individual dwellings on those lots, without potentially impacting on trees worthy of preservation. However, the proposed indicative building envelope on lot 2 is irregular in shape and has been designed to retain tree No. 164. Whilst tree No. 164 has not been identified as being worthy of protection by Council officers, it is understood that the applicant proposes to retain the tree following consultation with the neighbouring property owner at 36A Chapman Avenue.

It is Council's experience that it is not always possible for applicants to achieve compliance with smaller building envelopes created at subdivision stage and it is envisaged that this outcome might not be realised in respect of lot 2 based on the proposed envelope. Accordingly, Council's assessment of the likelihood that a future dwelling could be accommodated on proposed lot 2 is based on tree No. 164 being removed at a future date. An

indicative building envelope with tree No. 164 removed is held at Attachment 5. It is considered that on this basis the development satisfies the requirements of Council's Subdivision DCP. Alternatively, if the existing swimming pool is demolished, proposed lot 2 could be enlarged, which may create a complying building envelope that results in the retention of tree No. 164.

### 3.2.2 Heritage

Council's Heritage Committee reviewed the submitted Heritage Impact Statement prepared by Rod Howard & Associates, and made the following comments:

*The proposal is for demolition of the existing dwelling-house and subdivision of one allotment into three allotments. The property is located within the Beecroft/Cheltenham Heritage Conservation Area listed under the provisions of Schedule E (Heritage Conservation Areas) of the HSLEP 1994.*

*At its meeting on 1 December 2008, the Heritage Advisory Committee commented that the existing Federation period dwelling-house has been substantially altered over time and does not warrant retention as a contributory element of the Heritage Conservation Area. Furthermore, the property does not contribute to the streetscape presentation in view of its location on a battle-axe allotment.*

*The Committee noted that the subject property has been cleared of the natural understorey vegetation, but retains a number of established remnant forest trees, particularly around the periphery of the property. The Statement of Significance for the Beecroft/Cheltenham Heritage Conservation Area identifies remnant forest trees as a characteristic element of the precinct.*

*The Committee noted that the indicative building envelopes show that the majority of established trees can be retained and provided with sufficient setbacks from the future buildings to ensure ongoing viability. As such, the Committee raised no objection to the proposed subdivision subject to appropriate conditions of consent which require the protection of existing trees during the demolition and subdivision stages.*

*The Committee recommended that attention be given to the design of any subsequent developments upon the subdivided allotments to ensure established trees are retained as these contribute to the heritage significance of the Conservation Area. Accordingly, the Committee resolved that no objections be raised to the proposal on heritage grounds subject to an appropriate condition requiring the protection of established trees during the demolition and subdivision stages.*

Conditions are recommended for the protection of existing trees to be retained and for the revegetation of Blue Gum High Forest. The trees would be subject to further assessment in future development applications for dwelling houses.

### 3.3 Social Impacts

The proposed subdivision provides additional housing opportunities in the locality and would be of positive social impact.

### 3.4 Economic Impacts



The proposed subdivision utilises existing urban infrastructure and would be of positive economic benefit in rationalising available land resources.

#### **4. SITE SUITABILITY**

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

The site includes large remnant trees identified as part of a critically endangered ecological community. The proposed subdivision layout results in the retention of the majority of trees on the site and includes revegetation work to restore the Blue Gum High Forest.

The site includes a watercourse. The proposed works including stormwater drainage and accessway construction are subject to a Soil and Water Management Plan, to minimise impacts on the watercourse and protect downstream water quality.

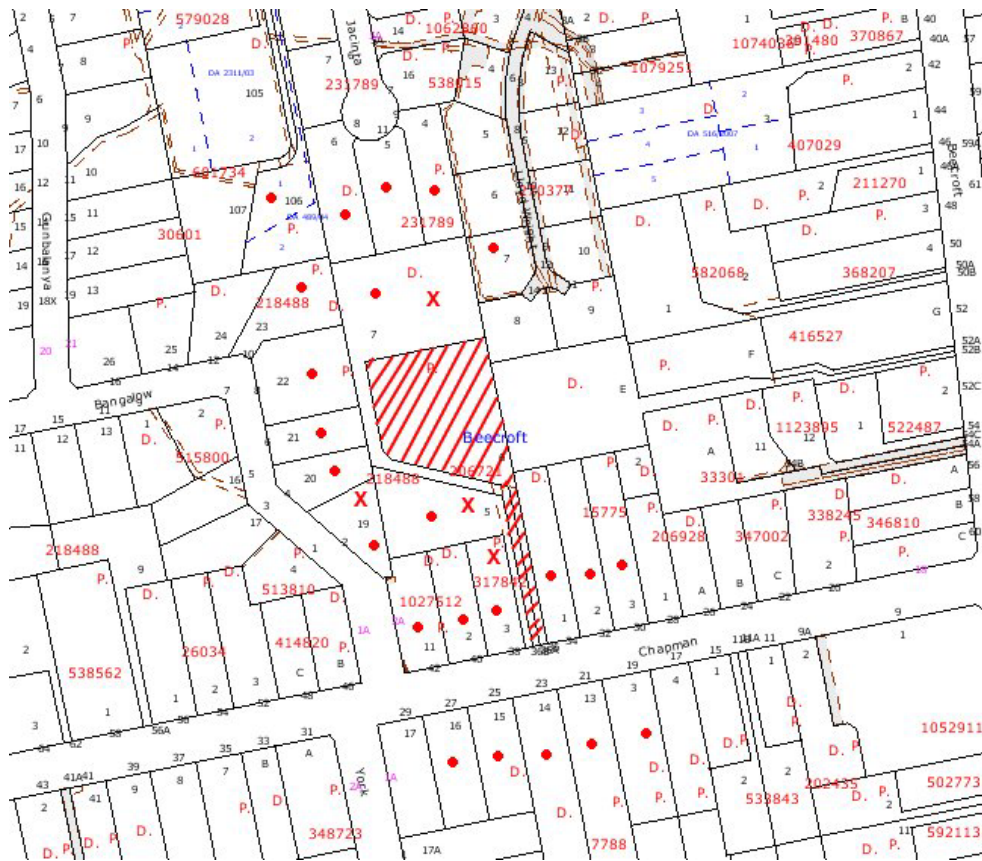
The site is located in close proximity to public transport, shops, schools, sporting and community facilities and is well located for residential development.

#### **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 5 November and 26 November 2008 in accordance with Council’s Notification and Exhibition Development Control Plan. During this period, Council received five submissions. Amended plans concerning stormwater drainage and a construction management plan for the accessway were notified between 9 January and 23 January 2009. No submissions were received in response to the amended plans. 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>	<p>X SUBMISSIONS RECEIVED</p>	<p>PROPERTY SUBJECT OF DEVELOPMENT</p>	
<p>ONE SUBMISSION RECEIVED OUT OF MAP RANGE</p>			

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

- Disruption of access and services;
- Loss of natural habitat;
- Loss of privacy;
- Drainage problems and flooding;
- Traffic and on-street car parking;
- Accessway noise;
- Excessive bins at the frontage;
- Loss of trees comprising endangered vegetation community;
- Issue with owners consent for driveway work; and
- Issue with covenant for rail fencing.

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

### 5.1.1 Owners Consent

The consent of the owner of the adjoining handle (No. 36A Chapman Avenue) is required for works within the right of carriageway. At the time of writing this report consent had not been obtained for the proposal.

The issue of adjoining owners consent for associated works was the subject of consideration in the Land and Environment Court in the appeal *P S Graham & Associates v Hornsby Shire Council 2005 NSWLEC 545*. The case involved widening of a driveway over an existing right of carriageway. Commissioner Bly granted deferred commencement consent effectively for works associated with the development application.

A letter from the adjoining owner's legal representative, stating preparedness to give consent in principle subject to conditions, has been submitted. The conditions are generally met by the amended plans and construction management plan, other than in respect of the neighbouring resident wishing to ensure that tree No. 164 is retained. A deferred consent commencement condition is recommended in respect to owners consent. Should the consent of the owner of the handle of No. 36A Chapman Avenue decline to grant owners consent based on doubts regarding the long term survival of tree No. 164, the consent would lapse.

The consent of the owner of the handle of No. 36B Chapman Avenue is not required for the proposed development as the proposal does not require works to be constructed within that part of the handle. The proposal would not adversely impact on existing trees within the handle, subject to recommended conditions for tree protection.

### 5.1.2 Fencing

The existing site is mainly fenced in timber rail fencing and wire mesh approximately 1m high. A 1.8m high wire mesh fence with concrete posts has been constructed along the eastern boundary of the site.

It is considered the requirement for the majority of fencing would be addressed in development applications for future dwellings on the site. A condition is recommended for the provision of a solid timber fence along the eastern boundary with No. 34 Chapman Avenue, to address privacy and amenity in respect to the operation of the driveway and the recommended bin storage area.

In the submissions, concern was raised regarding a covenant for rail fencing. In this regard, Clause 13 of Hornsby Shire Local Environmental Plan enables Council to suspend the covenant for the purpose of regulating development in accordance with the Plan. Notwithstanding, replacement of the existing rail fencing is not required for the subject proposal.

## 5.2 Public Agencies - Department of Water and Energy

The development application is Integrated Development and requires the approval of the Department of Water and Energy for works located within 40m of the watercourse, pursuant to the *controlled activities* provision within the *Water Management Act 2000*.

The Department advised it's General Terms of Approval for works requiring 'Controlled Activity Approval'. The general terms of approval form recommended conditions of consent, subject to Council's approval of the application.

## 6. THE PUBLIC INTEREST

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

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

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

## CONCLUSION

Consent is sought to subdivide 36 Chapman Avenue, Beecroft into three residential allotments. The site was the subject of a previous application for four lots which was not supported by Council due to the impact on existing trees.

The proposed subdivision into three lots generally complies with the requirements of the Residential Subdivision DCP in respect to density, lot layout, design, landscaping and accessway design, and enables the revegetation of Blue Gum High Forest on the site. The area to be revegetated mainly involves the area of the site unable to be connected to the proposed stormwater drainage system. This area is subject to a recommended ‘Restricted Development Area’ to prevent any future building or paved areas. The restriction is considered acceptable with regard to the available area for residential development on the relatively large lots.

The proposal retains the majority of trees on the site which enhances the visual quality of the locality and contributes to the heritage significance of the Beecroft Cheltenham Heritage Conservation Area. Appropriate conditions are recommended to protect the trees to be retained.

The application is subject to the consent of the adjoining property owner for works involving the proposed accessway. The owner has advised preparedness to give consent ‘in principle’. A deferred consent commencement condition is recommended in this regard.

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

ROD PICKLES  
Manager - Assessment Team 2  
Planning Division

SCOTT PHILLIPS  
Executive Manager  
Planning Division

**Attachments:**

1. Locality Plan
2. Site Plan
3. Subdivision/Landscape Plan
4. Stormwater Management Plan
5. Subdivision Plan illustrating alternative building envelope at proposed Lot 2 and buildable area for each lot

File Reference: DA/1432/2008

Document Number: D01139989

## SCHEDULE 1

### 1. Deferred Commencement – Owners Consent

**Pursuant to Section 95(6) of the Environmental Planning and Assessment Act 1979, this consent does not operate until the following information is submitted to Council:**

- a. The written owner's consent has been obtained to enable the construction of driveway works within the existing Right of Carriageway as shown on the approved plans which is not part of the site owned by the applicant.

**Upon Council's written satisfaction of the above information, the following conditions of development consent will apply:**

#### 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.*

### 2. 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>
Ref 2486	Mepstead & Associates / Phil Packham Horticulture	4-5-2009

<i>Document No.</i>	<i>Prepared by</i>	<i>Dated</i>
D01156299	Phil Packham Horticulture (Landscaping & Revegetation Proposal)	30-4-09
D01077468	Mepstead & Associates (Works Management Plan)	Undated

### 3. Removal of Existing Trees

This development consent only permits the removal of tree(s) numbered 164, 434, 443, 447, 460, 461, 464, 468, 469 and 480 as identified on Plan No. Ref 2486 prepared by Mepstead & Associates / Phil Packham Horticulture dated 4-5-2009. 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.

### 4. Amendment of Plans

The approved plans are to be amended as follows:

- a. The accessway is to include a bin storage area to cater for the approved lots and existing properties serviced by the accessway.

### 5. 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.

### 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. 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.*

## **8. 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. The existing crossings shall be removed and reconstructed.
- b. The footway area to be restored by turfing.
- c. Approval obtained from all relevant utility providers that all necessary conduits be provided and protected under the 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.*

## **9. 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. Traffic management plans.
- f. Pedestrian and cyclist access/safety.

#### 10. Protection of trees

- a. To avoid mechanical injury or damage, trees numbered 73, 110, 433, 435, 450, 455 and 470 must have their trunks protected by 2m lengths of 75mm x 25mm hardwood timbers spaced at 80mm secured with galvanised wire (not fixed or nailed to the tree in any way). Trunk protection must be maintained in good condition for the duration of the construction period.
- b. A 1.8 metre high chain wire fencing (or similar) must be installed 4 metres from significant trees number 170 and around the group of trees numbered 174, 175, 176, 179, 180, 181, 185, 203, 253.
- c. 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 methods used to preserve the trees.

*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.*

#### 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. 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

#### 12. 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 the existing natural watercourse generally in accordance with Drawing No 2486-SUBD-E-21 Sheet 1 of 3 Revision B Dated 29.07.08 by Mepstead & Associates.

- b. An inter-allotment stormwater drainage system to service the proposed lots with pits being constructed in situ.
- c. A piped culvert under the proposed access driveway together with headwall construction on both sides.

### 13. 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 25 cubic metres, and a maximum discharge (when full) of 55 litres per second to service all lots in the subdivision.
- 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.

### 14. 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. The driveway must be a rigid pavement.
- b. The driveway grade must not exceed 25 percent and changes in grade not exceed 8 percent.
- c. Pedestrian access to help prevent slip and fall must be designed and constructed with the future access driveway. Pedestrian grades steeper than 12.5% must be provided with surface texturing, brushing or cleats to satisfy Class V: R11 ramps according to Australian Standards AS 4586-2004 Clause 5.2.
- d. The driveway pavement must be a minimum 3 metres wide, 0.15 metres thick reinforced concrete with F72 steel reinforcing fabric and a 0.15 metre sub-base.
- e. The pavement must have a kerb to one side and a one-way cross fall with a minimum gradient of 2 percent and a lintel and pit provided at the low point.
- f. The driveway width must be a minimum 5 metres at passing bays every 40 metres and for 6 metres from the street boundary.

- g. A turning area at the end of the access driveway must be constructed in accordance with Australian Standards AS 2890.1 – 85<sup>th</sup> percentile turning templates to enable vehicles to enter and leave the site in a forward direction.
- h. Retaining walls required to support the carriageway and the compaction of all fill batters must be in accordance with the requirements of a chartered structural engineer.
- i. Planting of landscaping strips 0.5 metres wide must be provided along both sides of the length of the driveway.
- j. Conduit for utility services including electricity, water, gas and telephone must be provided.
- k. The driveway must be finished in coloured concrete, bitumen or stencilled.

### 15. Excavation In Vicinity of Trees

Excavation for the installation of a stormwater drainage line within 3m of trees numbered 463, 465, 466, 467 and 477 must be carried out using the thrust boring method or by hand excavation.

*Note: Nothing in this condition infers that the requirements of condition No. 10 should not be complied with during construction works.*

### 16. Driveway Construction

To protect existing trees to be retained, the driveway must be laid on or above the existing grade with no excavation or fill. Where construction on existing grade cannot be achieved, pier and beam construction of the driveway must be used with piers being no closer than 3m to the trunks of the trees and the driveway edge being no closer than 1m.

### 17. Bushland Protection

To ensure the protection of bushland during construction, the applicant must ensure the following:

- a. All machinery to be cleaned of soil and debris before entering the site to prevent the spread of weeds and fungal pathogens.

*Note: The site contains Sydney Blue Gum High Forest which is listed as a 'Critically Endangered Ecological Community' under the 'Threatened Species Conservation Act 1995'. The Act prohibits the disturbance to threatened species, endangered populations and endangered ecological communities, or their habitat, without the approval of the 'Department of Environment and Climate Change' where such activities are not authorised by a development consent under the 'Environmental Planning and Assessment Act 1979'.*

*Actions such as tree removal, understorey slashing or mowing, removal of dead trees within this vegetation would likely impact upon this endangered ecological community. Such action would qualify as illegally picking or*

*disturbing the habitat and could render any person who carried out such action as LIABLE FOR PROSECUTION.*

## 18. 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.

## 19. 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.

## 20. Landfill

Landfill must be constructed in accordance with Council's *Construction Specification, 2005* and the following requirements:

- a. All fill material imported to the site is to wholly consist of Virgin Excavated Natural Material (VENM) as defined in Schedule 1 of the *Protection of the Environment Operations Act 1997* or a material approved under the *Department of Environment and Climate Change's* general resource recovery exemption.
- b. A compaction certificate must be obtained from a geotechnical engineer verifying that the specified compaction requirements have been met.

## 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.

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

The following conditions of consent must be complied with prior to the *Principal Certifying Authority* issuing a *Subdivision Certificate*

## 22. Regeneration and Revegetation of Blue Gum High Forest

All landscaping, revegetation and regeneration of Blue Gum High Forest on the site must be undertaken in accordance with the approved *Revegetation Plan (prepared by Phil Packham Horticulture dated 4/5/2009)* and *Landscaping and Revegetation Proposal (prepared by Phil Packham Horticulture dated 30/4/2009)* and the following requirements:

- a) The proposed canopy plantings of 2 *Allocasuarina torulosa* (Forest Oak) within Zone 3 must be replaced with 2 Sydney Turpentine (*Syncarpia glomulifera*).
- b) Continue the planting of Zone 3 within the 'Restricted Development Area' to extend along the entire western boundary by including the planting of six additional Blue Gum High Forest canopy species at 4 metre centres within the grassed area component of, the 'Restricted Development Area' located 4 metres from the building line limit.
- c) All environmental and noxious weeds must be removed and suppressed 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*';  
  
*Note: The Guideline is available at: [www.environment.nsw.gov.au](http://www.environment.nsw.gov.au), publications.*
- d) All planted indigenous native tubestock including trees, shrubs and groundcovers must be sourced from a recognised native nursery that stock local provenance species from the locality. Receipts confirming the source of the planted tubestock must be retained to confirm the sources of planted stock.
- e) All planting and weeding must be undertaken by a qualified and experienced bush regeneration company with appropriate licenses and experience within Blue Gum High Forest.
- f) All planted stock must be established for a minimum period of 30 days.
- g) All failed planted stock must be replaced by similar Blue Gum High Forest species within a minimum period of 30 days to the planting density specified in the approved plans.
- h) The erection of a physical barrier (that extends a minimum 20mm below ground surface and 80mm above ground surface) along the edge of all turf areas to prevent the spread of exotic grasses or weeds into the native revegetation area.

### **23. Restriction as to User – Protection of Land from Future Development**

To inform current and future owners that the areas of Blue Gum High Forest on Lots 1 and 2 of the site are to be protected from future development, a Restriction as to User must be created under Section 88B of the *Conveyancing Act 1919* identifying that the area of the site identified on the approved plans is restricted from future development or disturbance of any kind.

*Note: The wording of the Restriction as to User must be to Council's satisfaction and Council must be nominated as the authority to release, vary or modify the Restriction.*

**24. Placement of a Positive Covenant – Maintenance of Blue Gum High Forest**

A positive covenant must be created under Section 88E of *The Conveyancing Act 1919* for Lots 1 and 2 as marked in red diagonal lines on the approved plans. This area is deemed to be the 'Restricted Development Area'. The covenant must specify:

- a. All landscaping/vegetation management must be in accordance with the approved *Revegetation Plan (prepared by Phil Packham Horticulture dated 4/5/2009)* and *Landscaping and Revegetation Proposal (prepared by Phil Packham Horticulture dated 30/4/2009)* except as modified by conditions of this consent.
- b. Any approved tree removal within the 'Restricted Development Area' must be replaced within this defined area with local provenance advanced stock of the same species, so a continual stand of Blue Gum High Forest trees will be preserved.
- c. No development shall encroach within the 'Restricted Development Area', nor any removal of sandstone outcrops, nor any clearing of indigenous vegetation or horticultural activities or keeping of poultry or livestock.
- d. High use open space areas must be limited to land outside the 'Restricted Development Area'.

**25. Boundary Fencing**

Lapped and capped timber fencing must be erected along the eastern boundary with No. 34 Chapman Avenue behind the front building alignment to a height of 1.8 metres.

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

**26. Sydney Water – s73 Certificate**

A s73 Certificate must be obtained from *Sydney Water*.

**27. 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.

**28. Creation of Easements**

The following matters must be nominated on the plan of subdivision under s88B of the *Conveyancing Act 1919*:

- a. A right of access and easement for services over the access corridor.
- b. An inter-allotment drainage easement(s) over each of the burdened lots.
- c. 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.

- d. 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.
- e. The creation of a restriction on the use of land over proposed lots 1 and 2 that no structures or any paved areas shall be built on that part of the lot that cannot be drained to the interallotment drainage system as shown on Drawing No. 2486-TREE Sheet 1 of 1 Revision A dated 18/2/2009 by Mepstead & Associates.

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

### **29. Works as Executed Plan**

A works-as-executed plan(s) must be prepared by a registered surveyor and submitted to Council for completed drainage systems, service conduits, 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.

### **30. s94 Infrastructure Contributions**

The payment to Council of a contribution of \$38,373.05\* for two additional lots towards the cost of infrastructure identified in Council's Development Contributions Plan 2007-2011.

*Note: \* The value of contribution is based on a rate of \$19,186.65 per additional lot and is current as at 5 June 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.

**32. Revegetation Monitoring Report**

A brief maintenance and monitoring report, prepared by a qualified and suitably experienced horticulturalist, must be provided to Council's Bushland and Biodiversity Team every six months for a period of two years after the release of the subdivision certificate to ensure the ecological objectives of the 'Restricted Development Area' and maintenance of all planted stock are ensured in accordance with the approved plans.

**33. Trees to be Inspected**

Trees within the 'Restricted Development Area' must be inspected annually by a qualified Arborist for a period of two years, and treated to maintain tree health to ensure the stand of Blue Gum High Forest canopy trees on proposed Lots 1 and 2 will be preserved during the establishment period of the zone and future development works. Arborist inspections and recommendations shall be included in the maintenance and monitoring report referred to in condition No. 32.

**GENERAL TERMS OF APPROVAL – Department of Water & Energy**

The following conditions of consent are General Terms of Approval from the nominated State Agency pursuant to Section 91A of the *Environmental Planning and Assessment Act 1979* and must be complied with to the satisfaction of that Agency.

**General Terms of Approval** – for works requiring a Controlled Activity Approval under the Water Management Act 2000. Reference No. 10 ERM2008/1474. File No. 9050530

These General Terms of Approval (GTA) only apply to the controlled activities described in the plans and associated documentation relating to DA/1432/2008 and provided by Council

- (i) Site plan, map and/or surveys

Any amendments or modifications to the proposed controlled activities may render these GTA invalid. If the proposed controlled activities are amended or modified the Department of Water & Energy must be notified to determine if any variations to these GTA will be required.

- 34.** Prior to the commencement of any controlled activity (works) on waterfront land, the consent holder must obtain a Controlled Activity Approval (CAA) under the Water Management Act from the Department of Water & Energy. Waterfront land for the purposes of this DA is land and material in or within 40 metres of the top of the bank or shore of the river identified.

- 35.** The consent holder must prepare or commission the preparation of:

- (i) Rehabilitation Plan  
(ii) Works Schedule  
(iii) Erosion and Sediment Control Plan



36. All plans must be prepared by a suitably qualified person and submitted to the Department of water & Energy for approval prior to any controlled activity commencing. The following plans must be prepared in accordance with Department of Water & Energy guidelines located at [www.naturalresources.nsw.gov.au/water/controlled\\_activity.shtml](http://www.naturalresources.nsw.gov.au/water/controlled_activity.shtml).
- (i) Outlet structures
37. The consent holder must (i) carry out any controlled activity in accordance with approved plans and (ii) construct and/or implement any controlled activity by or under the direct supervision of a suitably qualified professional and (ii) when required, provide a certificate of completion to the Department of water & Energy.
38. The consent holder must reinstate waterfront land affected by the carrying out of any controlled activity in accordance with a plan or design approved by the Department of Water & Energy.
39. The consent holder must not locate ramps, stairs, access ways, cycle paths, pedestrian paths or any other non-vehicular form of access way in a riparian corridor other than in accordance with a plan approved by the Department of Water & Energy.
40. The consent holder is to ensure that all drainage works (i) capture and convey runoffs, discharges and flood flows to low flow water level in accordance with a plan approved by the Department of Water & Energy; and (ii) do not obstruct the flow of water other than in accordance with a plan approved by the Department of Water & Energy.
41. The consent holder must establish all erosion and sediment control works and water diversion structures in accordance with a plan approved by the Department of water & Energy. These works and structures must be inspected and maintained throughout the working period and must not be removed until the site has been fully stabilised.
42. The consent holder must ensure that no excavation is undertaken on waterfront land other than in accordance with a plan approved by the Department of water & Energy.

**- 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.

### **Subdivision Certificate Requirements**

A subdivision certificate application is required to be lodged with Council containing the following information:

- A surveyor's certificate certifying that all structures within the subject land comply with the development consent in regard to the setbacks from the new boundaries.
- A surveyor's certificate certifying that all services, drainage lines or access are located wholly within the property boundaries. Where services encroach over the new boundaries, easements are to be created.
- Certification that the requirements of relevant utility authorities have been met; and

*Note: Council will not issue a subdivision certificate until all conditions of the development consent have been completed.*

### **Fees and Charges – Subdivision**

All fees payable to Council as part of any construction, compliance or subdivision certificate or inspection associated with the development (including the registration of privately issued certificates) are required to be paid in full prior to the issue of the subdivision certificate. Any additional Council inspections beyond the scope of any compliance certificate required to verify compliance with the terms of this consent will be charged at the individual inspection rate nominated in Council's Fees and Charges Schedule.

### **Dwelling Numbering**

The allocation of dwelling numbering must be authorised by Council prior to the numbering of each dwelling in the development.

### **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 single or multi-trunked wood perennial plant having a height of not less than three (3) metres, and which develops many branches, usually from a distance of not less than one (1) metre from the ground, but excluding any plant which, in its particular location, is a noxious plant declared as such pursuant to the Noxious Weeds Act 1993. This definition of 'tree' includes any and all types of Palm trees.*

*All distances are determined British Standard BS 5837: 2005, "Trees in Relation to Construction – Recommendations".*

### **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.

#### 4 DRAFT AMENDMENTS LOCAL ENVIRONMENTAL PLAN 2008 - REPORT ON SUBMISSIONS

---

##### EXECUTIVE SUMMARY

In June 2008, Council considered a report identifying a number of planning anomalies to be rectified and amendments to be made to the *Hornsby Shire Local Environmental Plan 1994 (HSLEP)* as part of its annual Amendments Local Environmental Plan (LEP) for 2008. Council endorsed a draft LEP for consultation and public exhibition proposing to rezone lands, address planning anomalies and make minor amendments to the *HSLEP*.

The draft LEP has been prepared in consultation with relevant Government agencies, adjoining councils and the community. No unresolved objections were received from Government agencies and adjoining councils.

The draft Plan was exhibited for community comment in February and March 2009 along with supporting Development Control Plan (DCP) amendments. Seventy-six submissions were received in response to the exhibition of the draft LEP and DCP amendments. The key issues raised in submissions are addressed in this report. The following amendments to the draft LEP and DCP amendments are recommended:

- update property details for properties Nos. 180-190 Pennant Hills Road Thornleigh;
- defer consideration of the inclusion of short-term accommodation as a permissible land use in certain zones under the *HSLEP* until a review being undertaken by the Department of Planning (DOP) has been completed;
- defer consideration of insertion of the short-term accommodation element into the *Brooklyn, Dangar Island* and *Dwelling House DCPs* until a review being undertaken by the DOP has been completed; and
- insert a prescriptive measure in the setbacks element of the *Industrial Lands DCP* to protect the amenity of residential allotments adjoining industrial properties in Asquith.

It is recommended that Council adopt the amended draft Amendments LEP attached to this report and forward it to the DOP for gazettal.

##### PURPOSE

The purpose of this report is to review submissions received in response to the exhibition of the draft 2008 Annual Amendments LEP and associated draft DCP amendments.

##### BACKGROUND

At its meeting on 4 June 2008, Council considered Executive Manager's Report No. PLN115/08 concerning Council's annual amendments review. The report presented a draft

LEP to rezone lands, address planning anomalies and make minor amendments to the HSLEP. Council resolved (in part) that:

1. *The draft Amendments Local Environmental Plan attached to Executive Manager's Report No. PLN115/08 to:*

  - 1.1 *rezone property No. 5 Thornleigh Street, Thornleigh;*
  - 1.2 *implement the recommendations of the Open Space Lands Acquisitions Review;*
  - 1.3 *rezone property No. 122X Berowra Waters Road, Berowra Heights; and*
  - 1.4 *rezone Lot 100 DP1053594 Pennant Hills Road, Normanhurst*

*be prepared pursuant to Section 54(1) of the Environmental Planning and Assessment Act, 1979 and be forwarded to the Department of Planning by Friday 13 June 2008.*

2. *Council notify the Director General of the Department of Planning of Council's resolution to prepare a draft Amendments LEP in accordance with Section 54(4) of the Environmental Planning and Assessment Act, 1979.*
3. *Council make a submission to the Local Environmental Plan Review Panel in the form and manner set out in the Department of Planning Circular PS 06-005 titled Local Environmental Plan Review Panel.*
4. *The Director General be requested to provide written advice in relation to issuing "Written Authorisation to Exercise Delegation", to allow Council to exercise delegation under Sections 65 and 69 of the Environmental Planning and Assessment Act, 1979 in progressing the draft LEP.*
5. *The Roads and Traffic Authority, the Commissioner of the NSW Rural Fire Service, the Department of Environment and Climate Change, Sydney Water and the Department of Lands be consulted pursuant to Section 62 of the Environmental Planning and Assessment Act, 1979 in the preparation of the draft Amendments LEP.*
6. *Should the Director General of the Department of Planning allow Council to exercise delegation under Section 65 of the Environmental Planning and Assessment Act, 1979 and where no objections or comments warranting significant amendment to the draft LEP, Council publicly exhibit the draft LEP for a minimum period of 28 days in accordance with the consultation strategy outlined in Executive Manager's Report No. PLN115/08.*
7. *Following exhibition, a report on submissions be reported to Council for its consideration.*
8. *Should any substantive amendments be proposed during the public exhibition period that, that matter be dealt with in isolation allowing all other matters to progress unimpeded.*
9. *Council invite the Metropolitan Local Aboriginal Land Council to submit a land capability assessment for property No. 2C Chelmsford Road, Asquith and Lot 478 DP 48659 Pacific Highway, Berowra for consideration in progressing a rezoning*

*of the land from open space A as part of Council's Comprehensive Local Environmental Plan.*

10. *Council advise the Metropolitan Local Aboriginal Land Council of the timeframe for the preparation of Council's Comprehensive Local Environmental Plan and invite the submission of any land capability assessment.*

In accordance with parts 9 and 10 of Council's resolution, a letter has been forwarded to the Metropolitan Local Aboriginal Land Council inviting submission of a land capability assessment for property No. 2C Chelmsford Road, Asquith and Lot 478 DP 48659 Pacific Highway, Berowra. The letter also indicated the timeframe for the preparation of Council's Comprehensive LEP.

Also at its meeting on 4 June 2008, Council considered Executive Manager's Report No. PLN114/08 concerning the *River Settlements and Foreshores Review*. The report presented a draft LEP to implement the recommendations of the *River Settlements and Foreshores Review*. Council resolved that:

1. *The draft Local Environmental Plan to implement the recommendations of the River Settlements and Foreshores Review attached to Executive Manager's Report No. PLN 114/08 be progressed as part of the Annual Amendments LEP 2008 and include:*
  - *permitting, with development consent, short-term accommodation and bed and breakfast accommodation across all river settlements;*
  - *rezoning properties currently zoned Environmental Protection B (River Catchments) on Dangar Island to Environmental Protection E (River Settlements);*
  - *amending Clause 15(1) to reduce the maximum floor space ratio for the Environmental Protection E zone from 0.4:1 to 0.3:1; and*
  - *amending the Hornsby Shire Local Environmental Plan 1994 Map to include a Foreshore Building Line for Dangar Island.*
2. *A further report be presented to Council containing associated draft Development Control Plan amendments including controls for short-term accommodation and bed and breakfast accommodation across the river settlements.*
3. *A new River Settlements DCP be prepared, consolidating the existing DCPs applying to the river settlements and incorporating the recommendations of the Review, subject to amendments as a result of submissions as detailed in Executive Manager's Report No. PLN70/08.*
4. *The remaining recommendations of the River Settlements and Foreshores Review, including a sliding scale floor space ratio and amendments to the Foreshore Building Line Map, be considered as part of Council's Comprehensive LEP.*
5. *Council note that parking is an issue of high priority to river residents, despite being outside the scope of the River Settlements and Foreshores Review.*
6. *Submitters be advised of Council's decision.*

Also at its meeting on 4 June 2008, Council considered Executive Manager's Report No. PLN116/08 concerning a rezoning proposal for properties Nos. 180 – 190 Pennant Hills Road, Thornleigh. The report presented a draft LEP to rezone the properties. Council resolved that:

1. *The draft Local Environmental Plan attached to Executive Manager's Report No. PLN116/08 be progressed as part of the Annual Amendments LEP 2008 to rezone Nos. 180 – 190 Pennant Hills Road, Thornleigh from Residential A (Low Density) to Business B (Special).*
2. *The draft amendments to the Business Lands Development Control Plan, attached to Executive Manager's Report No PLN116/08, be progressed concurrently with the Annual Amendments LEP.*
3. *Submitters be advised of Council's resolution.*

In accordance with Council's resolutions, a consolidated draft Amendments LEP was prepared. The draft Amendments LEP aims to:

- rezone property No. 5 Thornleigh Street, Thornleigh;
- implement the recommendations of the *Open Space Land Acquisition Review*;
- rezone property No. 122X Berowra Waters Road, Berowra Heights;
- rezone Lot 100 DP 1053594 Pennant Hills Road, Normanhurst;
- rezone properties Nos. 180-190 Pennant Hills Road, Thornleigh; and
- implementing the recommendations of the *River Settlements and Foreshores Review*.

Draft DCP Amendments were prepared to be exhibited concurrently with the draft LEP including:

- a short-term accommodation element and a bed and breakfast accommodation element for insertion into the *Brooklyn, Dangar Island, River Settlements, Rural Lands* and *Dwelling House DCPs* to support the proposal to permit short-term accommodation and bed and breakfast accommodation across all river settlements with development consent in accordance with Executive Manager's Report No. PLN155/08;
- an amended setbacks diagram for Thornleigh in the *Business Lands DCP* as it relates to the rezoning of property No. 5 Thornleigh Street, Thornleigh in accordance with Executive Manager's Report No PLN23/08; and
- an amended setback diagram for Thornleigh in the *Business Lands DCP* as it relates to the rezoning of properties Nos. 180-190 Pennant Hills Road, Thornleigh in accordance with Executive Manager's Report No. PLN116/08.

On 13 June 2008, the DOP was advised of Council's intention to prepare a draft Amendments LEP pursuant to Section 54 of the *Environmental Planning and Assessment (EP&A) Act*. A

submission was made to the LEP Review Panel requesting authorisation to exhibit the Plan and prepare the final report to the Minister of Planning requesting the making of the Plan.

In August 2008, consultation was undertaken with relevant public authorities and adjoining councils in accordance with Section 62 of the *EP&A Act*. No unresolved objections were received.

In October 2008, Council forwarded a letter to the DOP advising that consultation with relevant Government agencies and adjoining councils had been undertaken. The letter noted that no unresolved objection was received and further requested the issuing of a Section 65 certificate.

In December 2008, Council received “Written Authorisation to Exercise Delegation” from the DOP to exhibit the Plan and prepare the report to the Minister pursuant to Sections 65 and 69 of the *EP&A Act*.

The draft Amendments LEP and associated draft DCP amendments were exhibited for community comment between 10 February and 20 March 2009 at Council’s Administration Centre, Council’s libraries and on the Council website. Letters were sent to five community groups, relevant State Government agencies and adjoining Councils. An advertisement was placed in the paper on two occasions. Relevant Council branches were also invited to comment on the draft LEP and DCP amendments.

## **DISCUSSION**

This report outlines the draft Amendments LEP and associated DCP amendments and reviews submissions received in response to the exhibition of the Plans.

Seventy-six submissions were received in response to the exhibition, twenty of which are form letters. Eighteen submissions are generally supportive or raise no objection to the draft LEP and DCP amendments. A summary of submissions is attached. The key issues raised in submissions are outlined below as they relate to each component of the draft LEP and associated DCP amendments.

### **Property No. 5 Thornleigh Street, Thornleigh**

The draft LEP seeks to rezone property No. 5 Thornleigh Street, Thornleigh from Residential A (Low Density) to Business A (General) and includes an amendment to Schedule B of the *HSLEP* to allow a site specific floor space ratio (FSR) maximum of 1.5:1. The associated draft DCP amendment proposes to amend the setback element within the *Business Lands DCP* to introduce a 6m setback from the front property boundary and a one metre setback from the boundary with No. 7 Thornleigh Street to the east.

**Submissions:** Five submissions comment on the rezoning of property No. 5 Thornleigh Street, Thornleigh. Two submissions support the rezoning, with one requesting an indication from Council that no further residential land is to be rezoned in Thornleigh Street for business purposes. Two submissions object to the rezoning of the site. The issues raised in the submissions are addressed below.



***Bulk and Scale***

One submission raises concern about the bulk and scale impacts likely as a result of a 1.5:1 FSR maximum for the site. The submission states that there is no justification for such a FSR and that to achieve it, development on the site would exceed two-storeys.

**Comment:** The *HSLEP* specifies a FSR for the Business A (General) zone of 1:1. However, Council resolved that the draft LEP for property No. 5 Thornleigh Street should permit a FSR of 1.5:1. It is understood that the additional FSR was nominated to provide a control consistent with the maximum FSR of 1.5:1 achievable (subject to bonus provisions) under the *HSLEP* for the adjacent Thornleigh Commercial Centre. Accordingly, the draft LEP proposes to amend Schedule B of the *HSLEP* to allow a FSR of 1.5:1 for property No. 5 Thornleigh Street.

It is acknowledged that a FSR of 1.5:1 would likely result in a development of greater than two storeys. A two storey height limit would impede the achievement of the maximum FSR. An FSR of 1.5:1 would permit development of a scale consistent with the adjacent development at property Nos. 293–299 Pennant Hills Road, Thornleigh which was approved with an FSR of 1.4:1. The *Business Lands DCP* specifies that the height of buildings in the Business A zone should be consistent with the height of adjacent development and should not exceed three storeys. Any development proposal for the site would be assessed against this criteria within the *Business Lands DCP*.

***Residential Amenity***

Two submissions object to the rezoning of property No. 5 Thornleigh Street siting negative transition issues to the adjoining residential property at No. 7 Thornleigh Street, Thornleigh. Transition issues raised in the submissions include overshadowing, lack of width to provide adequate landscaping and traffic. One submission rejects that the amenity of the surrounding residential area would be maintained by the setback controls outlined in the draft DCP amendment.

The Roads and Traffic Authority comment that vehicular access should be provided to the property via Thornleigh Street.

**Comment:** The draft amendments to the *Business Lands DCP* are aimed at minimising the likely impacts of future commercial development on the adjoining residential property. The DCP amendments propose a 6m setback from the front property boundary and a 1m setback from the boundary of No. 7 Thornleigh Street. The draft LEP does not identify any proposed future use of the site and accordingly, does not address issues of overshadowing, landscaping and traffic in detail. These issues would be addressed at development application stage.

***Employment Lands Review and Sub-Regional Employment Study***

One submission comments that the rezoning of property No. 5 Thornleigh Street, Thornleigh is contrary to the recommendations of the *Employment Lands Review (ELR)*. The submission also states and that the rezoning would not significantly increase the provision of additional business land to satisfy shortfalls identified in the *Ku-ring-gai and Hornsby Sub-Regional Employment Study*.

**Comment:** The *ELR (1999)* provides a comprehensive strategic plan and direction for employment lands throughout Hornsby Shire. The ELR identifies that the Thornleigh Commercial Centre should be consolidated and future expansion of the Centre discouraged.

However, in resolving to rezone property No. 5 Thornleigh Street, it is understood that Council was of the view that the rezoning would align the boundary of the Commercial Centre with the property at the rear of No. 8 Station Street, providing a logical boundary to the Centre.

The *Ku-ring-gai and Hornsby Subregional Employment Study* includes key observations and recommendations concerning employment lands within the North Subregion (Ku-ring-gai and Hornsby Local Government areas) and provides strategic direction for the future role and function of employment lands. The Study was exhibited from November 2008 to February 2009. A report to Council on submissions received during the exhibition period is expected at a later date in 2009.

The *Subregional Employment Study* identifies the Thornleigh Commercial Centre as having a significant shortfall of employment floorspace. The Study identifies that the demand supply gap within the Centre may be met by increasing floor space ratios within the Centre. The Study does not identify the expansion of the Centre as inappropriate as a means to address the shortfall. Accordingly, the proposed rezoning of property No. 5 Thornleigh Street for business purposes is not inconsistent with the *Subregional Employment Study*.

It is also noted that the land directly adjacent to property No. 5 Thornleigh Street, Thornleigh, being Property No. 7 Thornleigh Street is identified for inclusion in a precinct as part of Council's Housing Strategy. The precinct is identified as potentially suitable for the development of five storey multi-unit housing. The Strategy is currently on exhibition until 17 July 2009.

**Resolve:** It is recommended that no amendment be made to the draft LEP and DCP amendments as a result of submissions commenting on property No. 5 Thornleigh Street, Thornleigh.

### **Open Space Land Acquisition Review Rezoning**

The draft LEP seeks to rezone twenty-seven parcels of privately owned land in the suburbs of Asquith, Berowra, Cowan, Carlingford, Castle Hill, Cherrybrook, Hornsby and North Epping zoned Open Space A (Public Recreation - Local). The twenty-seven sites were identified for rezoning as part of the *Open Space Land Acquisition Review* which evaluated all land in private ownership zoned Open Space A to ensure that only land that will meet community needs for open space, or that preserves the environmental quality of the Hornsby area is zoned Open Space A. Council is responsible for the acquisition of these lands in accordance with Clause 17 – Land Acquisition of the *HSLEP*. The location and proposed zonings for the twenty-seven parcels are summarised as follows:

<b>Street Address</b>	<b>Proposed Zone</b>
3 Kelray Pl, Asquith	Industrial B (Light)
9 Kelray Pl, Asquith	Industrial B
11 Kelray Pl, Asquith	Industrial B
12 Kelray Pl, Asquith	Industrial B
48 Michigan Ave, Asquith	Industrial A
45-47a Salisbury Rd, Asquith	Industrial B
49-51 Salisbury Rd, Asquith	Industrial B
53 Salisbury Rd, Asquith	Industrial B
55 Salisbury Rd, Asquith	Industrial B
57 Salisbury Rd, Asquith	Industrial B

32 Koloona St, Berowra	Residential A
34 Koloona St, Berowra	Residential A
36 Koloona St, Berowra	Residential A
38 Koloona St, Berowra	Residential A
40 Koloona St, Berowra	Residential A
42 Koloona St, Berowra	Residential A
20 Kona Cl, Berowra	Residential A
22 Kona Cl, Berowra	Residential A
13 McCready Pl, Berowra	Residential A
14 McCready Pl, Berowra	Residential A
15 McCready Pl, Berowra	Residential A
1325 Pacific Highway, Brooklyn	Environmental Protection B (River Catchment)
19 Lyndelle Pl, Carlingford	Residential A
3 Elbana Cr, Castle Hill	Residential A
44 Parkhill Cr, Cherrybrook	Residential A
33 Clovelly Rd, Hornsby	Residential A
20 Downes St, North Epping	Residential A

The lands are proposed to be rezoned in accordance with the zoning of the balance of each parcel of land and/or to provide a consistent zoning with adjacent land.

**Submissions:** Four submissions object to the rezoning of Open Space A parcels in Salisbury Road, Asquith to Industrial B (Light).

**Comment:** The submissions relate to the proposed rezoning of the strip of Open Space A zoned land between the Asquith industrial area and adjoining residential properties. The findings of the *Open Space Land Acquisition Review* conclude that the buffer strip should not be acquired for open space purposes as its size and location would not facilitate the provision of open space to meet recreational needs.

The submissions raise concern that the removal of the buffer strip may allow the adjoining industrial property owners opportunity to develop over the buffer strip area, impacting on the residential amenity of the adjoining residential properties. The *Industrial Lands DCP* states that generally buildings may be built to the side or rear boundary on a zero building line except where a setback is required to screen buildings from sensitive areas. Sensitive areas include adjoining residential land uses. However, to provide greater certainty concerning Council's expectations for an appropriate setback to maintain residential amenity, it would be appropriate that the Setback Element in the *Industrial Lands DCP* be amended to include a setback requirement for properties in Salisbury Road. A setback of 15m would reflect the average width of the existing Open Space A buffer strip.

**Resolve:** It is recommended that the setback element within the *Industrial Lands DCP* be amended to include a 15m rear setback requirement for industrial properties fronting Salisbury Road that directly adjoin residential properties to the rear.

#### **Property No. 122X Berowra Waters Road, Berowra Heights**

The draft LEP seeks to rezone property No. 122X Berowra Waters Road, Berowra Heights from Special Uses B (Transport Corridor) to Residential A (Low Density). Property No. 122X Berowra Waters Road is owned by Council and is the only lot from an original road

widening proposal remaining in existence. The rezoning of the property would regularise the zoning boundary and reflect the current use of the land as part of a baby health care centre.

**Submissions:** No submissions comment on this component of the draft LEP.

#### **Lot 100 DP 1053594 Pennant Hills Road, Normanhurst**

The draft LEP seeks to rezone Lot 100 DP 1053594 Pennant Hills Road, Normanhurst from Special Uses B (Transport Corridor) to Residential A (Low Density). The land is Council owned and currently used as a point of ingress and egress by the public to the adjoining service station located on property No. 155 Pennant Hills Road, Normanhurst. Council is currently negotiating with the owners of property No. 155 Pennant Hills Road for the sale and purchase of the land.

**Submissions:** No submissions comment on this component of the draft LEP.

#### **Properties Nos. 180 – 190 Pennant Hills Road, Thornleigh**

The draft LEP seeks to rezone properties Nos. 180-190 Pennant Hills Road, Thornleigh and road reservation (Terra Street) from Residential A (Low Density) to Business B (Special), to facilitate the establishment of bulky goods retailing. A range of non-residential uses are permitted on properties Nos. 180-190, namely a service station and convenience store, veterinary hospital, restaurant and boarding kennel pursuant to Clause 22 Exceptions of the *HSLEP*. Rezoning the properties to Business B (Special) would remove the requirement for the Clause 22 exceptions with the exception of boarding kennels, while facilitating the establishment of bulky good retailing on the northern part of the site, being Nos. 180-184 Pennant Hills Road. Draft DCP amendments to the setback elements of the *Business Lands DCP* as it concerns properties Nos 180-190 Pennant Hills Road, were also exhibited. The amendments include a 6m setback control along Pennant Hills Road and a zero setback to Terra Street.

**Submissions:** No submissions comment on this component of the draft LEP. However, a minor amendment is required to update the property details for the land.

**Resolve:** It is recommended that the draft Amendments LEP be amended by updating property details for properties Nos. 180-190 Pennant Hills Road, Thornleigh.

#### **River Settlements and Foreshores Review**

The draft LEP seeks to implement recommendations from the *River Settlements and Foreshores Review*. The *Review* considered the suitability of current planning controls for maintaining the qualities of the river settlements and foreshores of Hornsby Shire, having regard to emerging issues and current best practice. Council resolved to include certain recommendations from the *Review* into the draft Amendments LEP as follows:

- permit, with development consent, short-term accommodation and bed and breakfast accommodation across all river settlements;
- rezone properties currently zoned Environmental Protection B (River Catchments) on Dangar Island to Environmental Protection E (River Settlements);
- amend Clause 15(1) to reduce the maximum floor space ratio for the Environmental Protection E zone from 0.4:1 to 0.3:1; and

- amend the *HSLEP* Map to include a Foreshore Building Line for Dangar Island.

Short-term accommodation and bed and breakfast accommodation DCP Elements were exhibited concurrently with the draft LEP.

Sixty-eight submissions comment on aspects of the draft LEP and DCP amendments as they relate to the recommendations of the *River Settlements and Foreshores Review*. The submissions are addressed under headings below.

### **Short-term accommodation**

Issues relating to short-term accommodation are discussed below firstly in relation to the draft LEP and secondly in relation to the draft DCP amendments.

#### **1. Draft LEP**

There is currently no definition of short-term accommodation within the *HSLEP* or the State Government's Standard Instrument. The DOP has advised that it is unlikely to support the inclusion of additional definitions in existing planning instruments. Therefore, Council is restricted to using existing definitions in the *HSLEP* or the Standard Instrument. The definition most closely aligned with short-term accommodation is "*tourist and visitor accommodation*" under the Standard Instrument which is defined as follows:

*Tourist and visitor accommodation means a building or place that provides temporary or short-term accommodation on a commercial basis, and includes hotel or motel accommodation, serviced apartments, bed and breakfast accommodation and backpackers' accommodation.*

The draft LEP seeks to introduce "*tourist and visitor accommodation (other than hotels, motels, serviced apartments and backpackers' accommodation)*" as a definition into the *HSLEP* as it includes short-term and bed and breakfast accommodation. "*Tourist and visitor accommodation*" is proposed to be permitted with consent across all river settlement areas and low density residential lands. A draft short-term accommodation DCP element was exhibited concurrently with the draft LEP.

The *Codes SEPP* took effect in February 2009. The *Codes SEPP* includes bed and breakfast accommodation as an exempt development activity. However, the *SEPP* does not address short-term accommodation. Accordingly, a letter was forwarded to the Department in March 2008 seeking a position from the Department concerning the assessment process for short-term accommodation.

A response (copy attached) was received in June 2009 stating that the DOP is currently reviewing the issue of short-term accommodation and identifies that the outcome of the review is likely to impact on the provisions contained within the draft Amending LEP. The letter requests that Council defer the issue of short-term accommodation until the review has been finalised.

**Submissions:** Fifty-four submissions comment on draft LEP issues concerning short-term accommodation as outlined below.

### ***Short-term accommodation as a permitted land use***

***Submissions:*** Fifty-one submissions comment on short-term accommodation as a permitted land use. Four submissions support the land use, while one submission objects to short-term accommodation as a permitted land use. Twelve submissions support the land use with the requirement for development consent, while thirty-four submissions (twenty of which are form letters) object to the requirement for development consent.

### ***Enforcement of short-term accommodation regulations***

***Submissions:*** Six submissions comment on the enforcement of proposed short-term accommodation regulations. Five submissions state that there is a lack of certainty regarding the procedure for maintaining short-term accommodation properties and the penalties that would be imposed for breaches of Council controls. Two submissions note that the river settlement areas are isolated and therefore difficult to police.

### ***Differentiating Short-term accommodation from permanent rentals***

***Submissions:*** Three submissions raise objection to the proposed short-term accommodation regulations as they differentiate short-term accommodation as something different from longer-term rental or permanent occupation of a dwelling when the residential usage of these may be the same. Three submissions comment that permanent residents in the river settlement areas cause greater amenity impacts than the renters of short-term accommodation properties.

### ***Economic impact on the local community***

***Submissions:*** Thirty submissions (seventeen of which are form letters) identify that the requirement for development consent for short-term accommodation would impact negatively on local communities where a number of short-term rentals already exist. The submissions comment that the requirement for development consent would reduce the number of available short-term rentals and ultimately tourists and as such, would affect the livelihood of different businesses and individuals that are dependent upon the patronage of short-term accommodation. The submissions also comment that the reduction in tourists may lead to a decline in services available to permanent residents. Four submissions comment that in the current economic climate, tourist accommodation should be encouraged.

### ***Requirement for development consent***

***Submissions:*** Twenty-five submissions (seventeen of which are form letters) comment that the proposed amendments regarding short-term accommodation are discriminatory, unlawful and amount to overregulation. Five submissions support the proposed amendments regarding short-term accommodation.

Twenty-seven submissions (seventeen of which are form letters) comment that existing means of regulating short-term accommodation, through an existing code of conduct, full-time caretakers and other measures are currently working to maintain the amenity of the river settlements. One submission comments that the existing means of self-regulation are not adequate and accordingly, the requirement for development consent is appropriate.

Four submissions note that short-term accommodation rentals have been located in the river settlement areas, particularly Dangar Island for a number of decades without the need for development consent.

Three submissions note that if development consent is required by Council, other adjoining local government areas may become more attractive to purchase properties with the intention of operating a short-term accommodation rental.

#### ***Cost of a Development Application***

***Submissions:*** Four submissions comment that the cost of a development application is expensive and request confirmation that Section 94 contributions would not be applicable.

#### ***Public consultation during exhibition of a Development Application***

***Submissions:*** Twenty-two submissions comment on public consultation during the exhibition of a development application for short-term accommodation. Twenty-one submissions (twenty of which are form letters) raise concern that should a submission be received during the exhibition of a development application, it may unreasonably be used as grounds to restrict the use of the property for short-term accommodation. One submission identifies that consultation through the development application process is appropriate to ensure adjoining property owners are able to voice their opinion concerning a short-term accommodation proposal.

#### ***Time limited consents***

***Submissions:*** One submission suggests that a time-limited consent may be appropriate for an approved development application for short-term accommodation. One submission identifies that a limit could be placed on overall short-term accommodation numbers in some river settlement areas while another submission raises objection to this suggestion.

## **2. DCP Amendments**

The draft DCP amendments aim to encourage small scale tourist accommodation and maintain the amenity of surrounding properties. The draft short-term accommodation element addresses concerns raised through public consultation on the *River Settlements and Foreshores Review*, including noise, number of guests and lack of regard for environmental constraints.

The draft element limits guest numbers to a maximum of six and requires the preparation of a code of conduct (to be signed and adhered to by guests) to be submitted with any development application. The code of conduct is to address the responsibilities of guests, including, at a minimum, guest numbers, details concerning recycling, garbage services, and special requirements relating to the disposal of garbage, details of the fire evacuation plan and fire fighting equipment, and minimisation of noise, nuisance or disturbance to neighbouring properties.

The draft element also addresses signage, car parking (where applicable), fire safety and effluent disposal, to ensure that any potential for increased pressures on constrained sewage systems is addressed. A control is included identifying that a parking availability survey is required where on-site parking is not available. Issues that relate specifically to the draft DCP amendments are addressed below.

#### ***Wording of amendment***

***Submissions:*** Two submissions comment on the wording of the draft DCP elements. One submission comments that more contextual information is required to understand the

performance criteria and prescriptive measures and that more evidence based criteria should be utilised. One submission identifies that the draft DCP amendment should be more positively worded to encourage short-term accommodation rentals.

### ***Parking Provision***

The draft DCP amendment outlines a requirement that where properties are accessible by vehicles, car parking should be provided at a rate of 1 space per guest bedroom behind the building line.

***Submissions:*** Twenty-five submissions comment on parking provision. Nineteen submissions (seventeen of which are form letters) comment that the parking requirements are inappropriate in Brooklyn, considering the steep nature of many sites and the existing traffic congestion issues that are experienced there. Twenty-three submissions (seventeen of which are form letters) identify that part of the issue associated with congestion in Brooklyn car parks is caused by the inappropriate use of the areas by permanent residents. One submission suggests a fee could be applied where parking is unable to be provided. One submission comments that existing areas of Crown land could be utilised for parking. Twenty-five submissions (twenty of which are form letters) note that short-term accommodation renters usually arrive in one car and on weekends, and as such this requirement is onerous.

Twenty-nine submissions (twenty of which are form letters) comment that the preparation of a parking study is an onerous and expensive requirement. Four of these submissions state that a parking study would serve little purpose in the Brooklyn area where parking shortages are well documented.

### ***Fire safety requirements***

The draft DCP amendment specifies that short-term accommodation properties should be provided with appropriate fire-fighting equipment in accordance with Australian Standards and that a fire evacuation plan should be submitted with the development application.

***Submissions:*** Nine submissions comment on the fire safety requirements. Five submissions objected to the requirements. One of these submissions comments that all dwellings on Dangar Island already contain a bush fire evacuation plan. One submission identifies that an existing code of conduct utilised for short-term accommodation in some river settlement areas already requires appropriate fire safety requirements. Two submissions comment that the proposed fire safety requirements are appropriate.

The NSW Rural Fire Service (RFS) indicates that where tourist accommodation is proposed on bush fire prone land, the proposal is considered a Special Fire Protection Purpose (SFPP) and is required to obtain a Bush Fire Safety Authority from the RFS under section 100B of the *Rural Fires Act*. The proposal would also be integrated development under Section 91 of the *EP&A Act*.

### ***Signage***

The draft DCP amendment specifies that signage should be non-illuminated and restricted to a size which would fit within a rectangular figure of 0.5m<sup>2</sup>.

***Submissions:*** Four submissions comment on signage. Three submissions identify that signage should be in keeping with the surrounding environment, with one submission stating that signage is not supported by the local community. One submission notes that signage on



a short-term accommodation property identifies the property as potentially vacant and as such, more susceptible to crime. One submission suggests that signage should be larger than proposed to be visible to passing boats.

### ***Maximum guest numbers***

The draft DCP amendment includes a prescriptive measure restricting short-term accommodation to a maximum of six guests.

***Submissions:*** Twenty-seven submissions (twenty of which are form letters) comment that the maximum number of guests should be more than six. Two submissions recommend that maximum guest numbers should be flexible depending upon the dwelling size. One submission states that a maximum of six guests is appropriate. One submission suggests that a maximum of four guests would be more appropriate.

### ***Code of Conduct***

The draft DCP amendment requires a code of conduct to be prepared and submitted with a development application. The code is to outline responsibilities of guests concerning guest numbers, waste disposal, fire evacuation and noise impacts.

***Submissions:*** Two submissions comment on the DCP requirement for a code of conduct. One submission comments that the proposed code of conduct is insufficient to address issues of noise, nuisance and waste disposal. One submission states that a code of conduct is onerous and an inappropriate means to regulate the use.

***Comment:*** Council undertook the *River Settlements and Foreshores Review* to review the suitability of current planning controls for maintaining the qualities of the river settlements and foreshores of Hornsby Shire, having regard to emerging issues and current best practice. The *Review* includes an analysis of the permissibility of short-term and bed and breakfast accommodation in river settlement areas and recommends permitting the land use with consent across all river settlements. Council sought advice from the DOP as part of the process in October 2006. A response was received in November 2006 stating that short-term accommodation is a local issue for Councils to determine. Council considered submissions received during the public exhibition of the *River Settlements and Foreshores Review* and at its meeting on 4 June 2008, resolved to include a provision to permit, with development consent, short-term accommodation across all river settlements in the Annual Amendments draft LEP. The draft LEP was forwarded to the Department for certification on 24 September 2008. A written authorisation to exercise delegation was received on 16 December 2008 for functions pursuant to Section 65(1) and Section 69(1) of the *Environmental Planning and Assessment Act 1979*. Once again, in providing the written authorisation, the DOP acknowledged that the issue of short-term accommodation is appropriate to be addressed by Council.

The *Codes SEPP* took effect in February 2009. The *Codes SEPP* includes bed and breakfast accommodation as an exempt development activity. However, the SEPP does not address short-term accommodation. Short-term and bed and breakfast accommodation are land uses that fall under the group term 'tourist and visitor accommodation' in the Standard Instrument. Accordingly, a letter was forwarded to the Department in March 2008 seeking further confirmation of the Department's position concerning the assessment process for short-term accommodation.

A response (copy attached) was received in June 2009 stating that the DOP is currently reviewing the issue of short term accommodation and identifies that the outcome of the review is likely to impact on the provisions contained within the draft Amending LEP. The letter suggests that Council defer the provisions relating to short-term accommodation pending the outcome of the review undertaken by the DOP. As it is unlikely the DOP would support the draft LEP provisions that relate to short-term accommodation, it is recommended that Council defer the issue of short-term accommodation until the review undertaken by the DOP has been finalised.

**Resolve:** It is recommended that reference to short-term accommodation in the draft LEP be removed and the draft short-term accommodation DCP element be deferred pending the outcome of the review by the DOP. It is also recommended that Council forward a submission to the DOP containing a copy of submissions commenting on the issues of short-term accommodation for consideration by the Department in undertaking its review.

### ***Bed and Breakfast accommodation***

As indicated above, the draft LEP seeks to introduce a definition into the *HSLEP* for “*Tourist and visitor accommodation*” which includes bed and breakfast accommodation, as permitted with consent across all river settlement areas and low density residential lands. Draft DCP amendments concerning bed and breakfast accommodation were exhibited concurrently with the draft LEP.

Bed and breakfast accommodation is separately defined in the *HSLEP* and currently permitted in parts of the rural areas of the Shire, with development controls contained within the *Rural Lands DCP*. The draft LEP aims to permit bed and breakfast accommodation in all river settlement areas and low density residential lands. Accordingly, should the draft LEP be endorsed by Council and gazetted by the Minister for Planning, bed and breakfast accommodation as a land use may be referred to in one of two ways being, the existing definition contained within the *HSLEP*, or under the “*Tourist and visitor accommodation*” definition.

The *Codes SEPP* includes bed and breakfast accommodation as exempt development in a land use zone where bed and breakfast accommodation is a permissible use. Accordingly, the introduction of bed and breakfast accommodation as a permissible use in the river settlement areas and low density residential lands through the draft LEP would make bed and breakfast accommodation exempt development under the *Codes SEPP* in the same areas. The *Codes SEPP* outlines 2 exempt development criteria for bed and breakfast accommodation, namely that a development for bed and breakfast accommodation must:

- “(a) be in an existing dwelling house that has a floor area not more than 300m<sup>2</sup>, and
- (b) consist of not more than 3 guest bedrooms.”

The draft bed and breakfast accommodation element reflects the existing controls for bed and breakfast accommodation contained within the Tourism element of the *Rural Lands DCP*, including criteria that bed and breakfast accommodation should not impact on the amenity of adjacent properties or adversely impact on the environmental qualities that attract visitors to the Shire. The draft element outlines that bed and breakfast accommodation should be undertaken by the permanent residents of the dwelling house, be on a short-term basis for a maximum of six travellers, and not involve the exhibition of any sign (other than a non-illuminated notice or sign which would fit within a rectangular figure of 0.5sqm). In addition, controls concerning rates of car parking provision (where applicable) for bed and breakfast accommodation under the *Exempt and Complying Development DCP* have been

applied. A control is included identifying that a parking availability survey is required where on site parking is not available. The draft element also contains controls concerning effluent disposal to ensure that any potential for increased pressure on constrained sewage systems is addressed.

Accordingly, the draft DCP element pertaining to bed and breakfast accommodation is more onerous on land owners wishing to use their dwelling for the purposes of bed and breakfast accommodation than the criteria in the *Codes SEPP*. Should the land use become permissible with consent in the river settlement areas and low density residential lands, the draft DCP element would only apply to proposals that do not satisfy the criteria of the *Codes SEPP*, being a proposal for a bed and breakfast accommodation development within a dwelling with a floor area of over 300m<sup>2</sup>. It is noted that the existing definition of bed and breakfast accommodation within the *HSLEP* identifies a maximum of six travellers for such a development, which is consistent with the criteria within the *Codes SEPP* stating that a development must not consist of more than three guest bedrooms (assuming an occupancy of two guests per bedroom).

**Submissions:** Twelve submissions comment on bed and breakfast accommodation. Seven submissions support bed and breakfast accommodation generally as a permitted land use in the river settlement areas. Three submissions support bed and breakfast accommodation as a permitted land use in the river settlement areas with the requirement for development consent. Two submissions support bed and breakfast accommodation but object to the requirement for development consent.

Seven of the twelve submissions address the DCP amendments and their suitability. The following issues are raised and are addressed below:

- parking;
- maximum number of guests;
- signage;
- code of conduct; and
- fire safety provision.

### ***Parking***

The draft DCP amendment outlines a requirement that where areas are accessible by vehicles, car parking should be provided at a rate of one space per guest bedroom behind the building line. The draft DCP amendment requires that where on site parking is not available, the applicant should conduct a parking survey at the departure point.

**Submissions:** Three submissions comment that the requirement for a parking availability study where on site parking is not available is onerous.

### ***Maximum guest numbers***

The draft DCP amendment states that a proposal for bed and breakfast accommodation should cater for a maximum of six guests.

**Submissions:** Two submissions comment that a maximum number of six guests is appropriate. Three submissions suggest that a greater number than six guests should be allowed. One submission states that the maximum number of guests should be reduced to four. One submission comments that the Fretus Hotel site in Berowra Creek should be able to cater for more than six guests.

### **Signage**

The draft DCP amendment specifies that signage should be non-illuminated and restricted to a size which would fit within a rectangular figure of 0.5m<sup>2</sup>.

**Submissions:** One submission states that the display of signage on bed and breakfast accommodation properties is potentially indicative of their vacancy and not in keeping with the natural environment of river settlement areas. One submission comments that signage should be visually compatible with the surrounding area.

### **Wording of DCP amendment**

**Submissions:** Two submissions comment on the wording of the draft DCP element concerning bed and breakfast accommodation. One submission suggests that more contextual information is required to understand the performance criteria and prescriptive measures, and that more evidence based criteria should be utilised. One submission identifies that the draft DCP amendment should be more positively worded to encourage bed and breakfast accommodation.

### **Fire safety requirements**

**Submissions:** A submission from the NSW RFS notes that where tourist accommodation is proposed on bush fire prone land, the proposal is considered a Special Fire Protection Purpose and is required to obtain a Bush Fire Safety Authority from the RFS under section 100B of the Rural Fires Act as well as being integrated development pursuant to under Section 91 of the EP&A Act.

**Comment:** The draft bed and breakfast accommodation element reflects the existing controls for bed and breakfast accommodation contained within the Tourist element of the *Rural Lands DCP*. The *Codes SEPP* includes bed and breakfast accommodation as an exempt development activity in a land use zone where bed and breakfast accommodation is a permissible use. Accordingly, by including bed and breakfast accommodation as a permissible use in the river settlement and low density residential land areas by way of the draft LEP, the land use would become an exempt development activity in these areas under the *Codes SEPP*. Council would have no ability to regulate parking issues surrounding the use of bed and breakfast accommodation in the river settlement areas should the exempt development criteria be met.

In summary, the inclusion of bed and breakfast accommodation within the river settlement areas would promote these areas as tourist destinations, in accordance with the findings of the *Tourism Review*. However, there would be no ability for Council to control parking issues surrounding bed and breakfast accommodation developments should a proposal meet the exempt development criteria in the *Codes SEPP*. However, on balance, the economic and social benefits of introducing bed and breakfast accommodation outweigh the issues of parking regulation. Therefore, it would be appropriate to progress bed and breakfast accommodation as a permissible use.

The draft LEP recommends inserting “*tourist and visitor accommodation*” into the *HSLEP* which includes bed and breakfast accommodation and short-term accommodation. The issue of short-term accommodation is recommended for deferral in the draft LEP. Accordingly, where the insertion of “*tourist and visitor accommodation*” is recommended, it should be replaced with the existing definition of bed and breakfast accommodation as contained in the *HSLEP*.

**Resolve:** It is recommended that the draft LEP be amended by replacing reference to “*tourist and visitor accommodation*” with “*bed and breakfast accommodation*”.

It is also recommended that the draft DCP element concerning bed and breakfast accommodation be progressed to allow the appropriate environmental assessment of bed and breakfast proposals that do not satisfy the exempt development criteria contained within the *Codes SEPP*.

### **Foreshore Building Line on Dangar Island**

The draft LEP seeks to include a Foreshore Building Line for Dangar Island. A Foreshore Building Line is identified in the *HSLEP* for parts of Brooklyn and Wisemans Ferry. However, Dangar Island is subject to a 6m Foreshore Building Line identified in the *Dangar Island DCP*.

**Submissions:** Four submissions refer to the proposed Foreshore Building Line on Dangar Island. Two submissions support the foreshore building line. One submission supports the foreshore building line but suggests that it should be increased to 10m as per the original intent of the *Dangar Island DCP*. One submission questions whether the effects of climate change have been taken into effect in the recommendation of the foreshore building line.

**Comment:** The *River Settlements and Foreshores Review* found that the current 6m foreshore setback for Dangar Island is adequate to achieve a uniform character and maintain the foreshore landscape with minimal visual impact. However, the *Review* recommends that the control be given more weight in the assessment process by being reinforced in the *HSLEP* as a Foreshore Building Line.

In regards to Climate Change, Council has engaged a suitably qualified and experienced consultant team to assist in the preparation of a *Climate Change Adaptation Strategic Plan*. The purpose of the *Plan* is to identify and quantify potential climate change impacts on the natural and built environments of the Shire. The *Plan* will allow Council to optimise the allocation of resources to implement adaptation actions.

Sea level rise is one of the well-known impacts of climate change and the impacts will be felt through changes in mean sea level and perhaps more importantly, through changes in the frequency or intensity of extreme sea level events. The *Climate Change Adaptation Strategic Plan* will identify where Council’s planning instruments should be reviewed, with a particular focus on planning instruments that cover the river settlement regions which are vulnerable to sea level rise.

**Resolve:** It is recommended that no amendment to the draft DCP control be made as a result of the submissions concerning the foreshore building line for Dangar Island.

### **Rezoning Dangar Island to Environmental Protection E**

The draft LEP includes a provision to rezone Dangar Island (in part) from Environmental Protection B (River Catchment) to Environmental Protection E (River Settlement).

**Submissions:** Two submissions express support for the part rezoning of Dangar Island to Environmental Protection E.

**Comment:** It is recommended that Council note the support for the rezoning of land on Dangar Island. The rezoning of properties on Dangar Island from Environmental Protection B to Environmental Protection E would prohibit a range of uses considered inappropriate and inconsistent with the character and environmental qualities of lands within the river settlements. The rezoning of the properties on Dangar Island would also result in greater consistency in zoning of the river settlements areas.

**Resolve:** It is recommended that no amendment be made to the draft LEP as a result of the submissions concerning the rezoning of Dangar Island (in part) to Environmental Protection E.

### **Reduction in FSR for the Environmental Protection E zone**

The draft LEP seeks to reduce the permissible FSR for the Environmental Protection E zone from 0.4:1 to 0.3:1, which is the floor space ratio currently applicable to Dangar Island.

**Submissions:** Six submissions comment on the reduction in floor space ratio for the Environmental Protection E zone. One submission from the Department of the Environment and Climate Change expresses support for the reduction in FSR. Five submissions object to the reduction in FSR. The submissions raise concern that the reduction in FSR would remove the flexibility required to achieve positive development outcomes in the river settlement areas, and to provide for larger dwellings suitable for families. Another identifies that the FSR control is no longer an appropriate tool to control density.

**Comment:** The *River Settlements and Foreshores Review* examined (in part) the scale of development within the Environmental Protection zones. The *Review* recommends a reduction in floor space ratio for the Environmental Protection E zone from 0.4:1 to 0.3:1, which is the floor space ratio currently applicable to Dangar Island under the *Dangar Island DCP*.

The *Review* included an analysis of twenty-one development applications in the river settlements. The analysis found that the applications resulted in dwellings with a floor space ratio of between 0.13:1 and 0.3:1, and an average of 0.17:1 to 0.18:1. Accordingly, the floor space ratio controls for the Environmental Protection E zone and the *Dangar Island DCP* of 0.4:1 and 0.3:1 respectively, are not being achieved.

A reduction in the maximum floor space ratio for the Environmental Protection E zone would result in a reduction in the maximum permissible size of dwellings in some cases. However, it was noted that the analysis undertaken by the consultant identified that 95% of dwellings had a floor space ratio of less than 0.3:1.

Accordingly, a reduction in the maximum floor space ratio for the Environmental Protection E zone to 0.3:1 would reflect the existing floor space ratio for Dangar Island and would provide a consistent control across all the river settlements.

Additionally, should a property owner wish to develop a parcel of land to a density greater than 0.3:1, an objection pursuant to *State Environmental Planning Policy No. 1 – Development Standards*, could be considered with the development application.

**Resolve:** It is recommended that no amendment be made to the draft LEP as a result of submissions commenting on the permissible FSR in the Environmental Protection E zone.

### **Property No. 2-9/55A Brooklyn Road, Brooklyn**

Two submissions were received concerning property No. 2-9/55A Brooklyn Road, Brooklyn. The submissions request that the property be included with as an exception within Clause 22 of the *HSLEP* to allow the strata subdivision of a multi-unit housing proposal.

**Comment:** A response was provided to the submitters indicating that the issues raised in the submissions are outside the scope of the Amendments LEP 2008, as a detailed evaluation would be required to be undertaken to determine the merit and implications of the proposal. The response indicated that should the owners of the property wish to pursue a site specific exception under Clause 22 of the *HSLEP*, a comprehensive rezoning submission would be required.

**Resolve:** It is recommended that no amendment be made to the draft LEP as a result of the submissions concerning property No. 2-9/55A Brooklyn Road, Brooklyn.

## **STATUTORY CONSIDERATIONS**

Statutory considerations are discussed below in terms of both the draft LEP and DCP amendments.

### **Draft Local Environmental Plan**

As part of Council's consideration of a draft LEP, Council is required to consider the relevance of any SEPP, REP or Ministerial Direction under Section 117 of the *EP&A Act 1979*. Executive Manager's Report Nos. PLN115/08, PLN 114/08 and PLN116/08 presented to Council at its meeting on 4 June 2008, addressed the relevant SEPPs, REPs and Section 117 Directions. Council's submissions to DOP pursuant to Section 54 of the *EP&A Act* also addressed the consistency of the draft LEP with relevant SEPPs, REPs and Section 117 Directions.

The DOP indicated with the "*Written Authorisation to Exercise Delegation*" that any inconsistency with section 117 direction 6.2 Reserving Land for Public Purposes, is justifiable as the draft Plan and its provisions are of minor significance.

In December 2008, the DOP advised that Council could exercise its delegations pursuant to Section 65 and 69 of the *EP&A Act* by placing the Plan on public exhibition and preparing the final report to the Minister requesting the making of the Plan.

The draft LEP was exhibited in accordance with Section 66 of the *EP&A Act*. The issues identified in the submissions that concern the draft LEP have been addressed in this report. Minor amendments are recommended to be made to the draft Plan which are inconsequential and do not warrant the re-exhibition of the Plan.

## Draft Development Control Plan Amendments

The draft DCP amendments were exhibited in accordance with Clause 18 of the *Environmental Planning and Assessment Regulations*. The issues identified in the submissions that concern the draft DCP amendments have been addressed in this report. Minor amendments are recommended to be made to the draft DCP amendments which are inconsequential and do not warrant the re-exhibition of the Plan. The amendments would come into effect following gazettal of the LEP.

## CONSULTATION

Council advised the DOP of its decision to prepare a draft LEP pursuant to Section 54 of the *EP&A Act*. The DOP issued Council with “*Written Authorisation to Exercise Delegation*” to exhibit the Plan and prepare final reports to the Minister. Council consulted with relevant Government agencies and adjoining Council’s concerning the preparation of the Plan.

The draft Amendments LEP was exhibited for community comment in February and March 2009. Seventy-six submissions have been received and are addressed in this report.

## FINANCIAL

Council is responsible for the acquisition of land zoned Open Space A (Public Recreation – Local) in accordance with Clause 17 – Land Acquisition of the *HSLEP* 1994. Should the rezoning of twenty-seven parcels in accordance with the *Open Space Land Acquisition Review* occur, Council would no longer be responsible for their acquisition.

## POLICY

There are no policy implications.

## TRIPLE BOTTOM LINE SUMMARY

This Triple Bottom Line (TBL) Statement forms part of Council’s efforts towards “creating a living environment”. The Statement addresses the strategic themes within Council’s Management Plan that cover social, environmental and economic factors and the corresponding sustainability questions contained in the TBL checklist.

- **Working with our community:** The draft LEP has been prepared in consultation with relevant State Government agencies, adjoining councils and the local community. The public exhibition material was readily accessible and understandable to all sectors of the community by providing a number of locations and means of communication. When gazetted, the draft LEP will be incorporated into the HSLEP and be readily available to the community. The community will be able to obtain hard copy information from Council or download information from Council’s website.
- **Conserving our natural environment:** The draft LEP proposes to rezone 27 parcels of Open Space A zoned land. Property No. 1325 Pacific Highway, Brooklyn is considered environmentally sensitive due to topographical constraints, and as such is recommended to be rezoned to the Environmental Protection B (River Catchment) Zone. The draft LEP proposes to implement recommendations from the River Settlements and Foreshores Review. The



purpose of the Review was to examine Council's planning controls and their effectiveness in conserving the natural and built environment.

- **Contributing to community development through sustainable facilities and services:** The rezoning of parcels as part of the Open Space Land Acquisition Review would not impact on the provision of facilities and services.
- **Fulfilling our community's vision in planning for the future of the Shire:** The draft LEP seeks to rezone open space land identified as no longer required for public purposes. This represents a more appropriate utilisation of the land in accordance with the new zonings. The proposal to rezone property No. 122X Berowra Waters Road, Berowra Heights and Lot 100 of DP 1053594 Pennant Hills Road, Normanhurst would regularise planning anomalies and enable consolidation of the lands with adjacent properties. The implementation of the recommendations of the River Settlements and Foreshores Review will assist in maintaining the qualities of the river settlements and foreshores of Hornsby Shire, having regards to emerging issues and current best practice.
- **Supporting our diverse economy:** The rezoning of property No. 5 Thornleigh Street, Thornleigh would provide more employment opportunities in the Thornleigh Commercial Centre. The rezoning of properties Nos. 180-190 would facilitate a bulky goods retailing proposal along Pennant Hills Road.
- **Maintaining sound corporate and financial management:** Council is responsible for the acquisition of land zoned Open Space A in accordance with Clause 17 – Land Acquisition of the HSLEP 1994. Should the rezoning of 27 parcels in accordance with the Open Space Land Acquisition Review occur, Council would no longer be responsible for their acquisition.
- **Other sustainability considerations:** The draft LEP includes amendments for the rezoning of various lands. Further sustainability considerations will be assessed at the application stage for the proposed use of the newly zoned areas.

## CONCLUSION

Council has identified a number of planning anomalies to be rectified, and minor amendments to be made, to the *HSLEP 1994* as part of its 2008 annual Amendments Review. A draft LEP and associated DCP amendments to rectify planning anomalies and make amendments to the *HSLEP* has been prepared in consultation with relevant Government agencies and the community.

No unresolved objections were received from Government agencies and adjoining councils. Seventy-six submissions were received in response to the exhibition of the draft LEP and DCP amendments. The issues identified in the submissions have been addressed in this report.

It is recommended that Council adopt the draft Amendments LEP and DCP amendments subject to minor amendments identified in this report and forward the draft LEP to the DOP for gazettal.

**RECOMMENDATION**

THAT:-

1. Council adopt the Local Environmental Plan attached to Executive Manager's Report No. PLN51/09 to:
  - 1.1 rezone property No. 5 Thornleigh Street, Thornleigh;
  - 1.2 implement the recommendations of the Open Space Land Acquisition Review;
  - 1.3 rezone property No. 122X Berowra Waters Road, Berowra Heights;
  - 1.4 rezone Lot 100 DP 1053594 Pennant Hills Road, Normanhurst;
  - 1.5 rezone properties Nos. 180-190 Pennant Hills Road, Thornleigh; and
  - 1.6 permit, with consent, bed and breakfast accommodation across all river settlements and low density residential zoned lands;
  - 1.7 rezone properties currently zoned Environmental Protection B (River Catchments) on Dangar Island to Environmental Protection E (River Settlements);
  - 1.8 amend Clause 15(1) to reduce the maximum floor space ratio for the Environmental Protection E zone from 0.4:1 to 0.3:1; and
  - 1.9 amend the *Hornsby Shire Local Environmental Plan 1994 (HSLEP)* Map to include a Foreshore Building Line for Dangar Island.
2. Council defer consideration of the inclusion of short-term accommodation as a permissible land use in certain zones under the *HSLEP* until a review being undertaken by the Department of Planning has been completed.
3. The Local Environmental Plan be forwarded to the Department of Planning for gazettal.
4. Council endorse the Development Control Plan Amendments attached to Executive Manager's Report No. PLN51/09 that:
  - 4.1 insert a bed and breakfast element into the Brooklyn, Dangar Island, River Settlements and Dwelling House DCPs;
  - 4.2 amend the setbacks diagram for Thornleigh in the Business Lands DCP as it relates to property No. 5 Thornleigh Street and properties Nos. 180-190 Pennant Hills Road, Thornleigh.
5. Council defer consideration of insertion of the short-term accommodation element attached to Executive Manager's Report No. PLN51/09 into the Brooklyn, Dangar Island and Dwelling House Development Control Plan until the short-term accommodation review being undertaken by the Department of Planning has been completed.
6. A further report be presented to Council containing an amendment to the Setbacks element of the Industrial Lands Development Control Plan to protect the amenity of residential allotments adjoining industrial properties in Asquith.
7. Council forward a submission to the Department of Planning containing a copy of submissions commenting on the issues of short-term accommodation for consideration by the Department in undertaking its review.
8. Submitters be advised of Council's resolution.

JAMES FARRINGTON  
Manager - Town Planning Services  
Planning Division

SCOTT PHILLIPS  
Executive Manager  
Planning Division

**Attachments:**

1. Draft Amendments Local Environmental Plan
2. Draft bed and breakfast Development Control Plan element
3. Draft Setbacks Development Control Plan diagram for Thornleigh
4. Department of Planning letter concerning short-term accommodation - November 2006
5. Department of Planning letter concerning short-term accommodation - June 2009
6. Summary of submissions

File Reference: F2008/00281  
Document Number: D01180033

**5 HERITAGE REVIEW STAGE 4 - PROPERTY NO. 5 CHILCOTT ROAD,  
BERRILEE**

---

**EXECUTIVE SUMMARY**

This report provides further information concerning the proposed listing of the former school building at property No. 5 Chilcott Road, Berrilee as an item of local heritage significance.

*Heritage Review Stage 4* identifies that the school has social significance, being representative of small, one teacher schools. It is acknowledged that the building is in poor physical condition due to lack of maintenance following closure of the school in 2006. However, the property is subject to development consents which demonstrate that the heritage qualities of the site can be maintained by enabling construction of a dwelling-house while retaining and restoring the school on site.

It is recommended that Council progress the heritage listing of the school as part of an Annual Amendments Local Environmental Plan.

**PURPOSE**

The purpose of this report is to provide further information concerning the proposed listing of the former school building at property No. 5 Chilcott Road, Berrilee as an item of local heritage significance.

**BACKGROUND**

At its meeting on 3 June 2009, Council considered Executive Manager's Report No. PLN22/09 reviewing submissions received in response to the exhibition of *Heritage Review Stage 4* and seeking Council's endorsement for progression of the recommendations. Council resolved that:

*Part A*

1. *Council endorse the recommendations of Executive Manager's Report No. PLN22/09 to include, remove and amend items on the heritage list and progress as part of an Annual Amending LEP, with the exception of Property No. 5 Chilcott Road, Berrilee – former Berrilee Public School (Identification No. B9).*
2. *Council investigate inclusion of the following items for heritage listing as part of the next Heritage Review:*
  - 2.1 *Two (2) Eucalypt trees within Hillcrest Road, Pennant Hills; and*
  - 2.2 *Bottle Tree at No. 164 Ray Road, Epping.*
3. *All persons who made submissions and affected property owners be advised of Council's resolution.*

*Part B*

*Council officers undertake further considerations regarding the recommendation in respect of property No. 5 Chilcott Road, Berrilee – former Berrilee Public School (Identification No. B9) and prepare a report for Council’s consideration at the 1 July 2009 Planning Meeting.*

In accordance with Council’s resolution, this report provides further information concerning property No. 5 Chilcott Road, Berrilee.

**DISCUSSION**

This report discusses property No. 5 Chilcott Road, Berrilee in relation to the recommendations of *Heritage Review Stage 4* and submissions received concerning the recommended heritage listing of the property. The report also provided further information concern the historical significance of the property.

**Heritage Review Stage 4**

*Heritage Review Stage 4* includes a review of heritage listed trees and an evaluation of 48 items nominated for addition to, or deletion from, Council’s heritage list. The Berrilee Public School was nominated for heritage listing by the Berrilee Parents and Citizen Association (letter attached).

LandArc Pty Ltd (with assistance from Patrick O’Carrigan and Partners Pty Ltd concerning built items) was appointed as the consultant to undertake the *Review*. The draft Heritage Inventory Sheet (copy attached) for the property notes that in 1897, Mr Lionel Clarke, Secretary of the Berrilee Progress Association, wrote to the Department of Education asking for the school to be established. The School was subsequently built in January 1939 and operated as a provisional school. It became a public school in 1957.

The Statement of Significance for the property states the former school building is:

*Representative of small, one teacher schools in remote locates close to Sydney prior to busing to regional schools as student numbers fell. Located on a hill with a fine westward looking outlook and stands of trees and dense shrubs. Later structures not of equivalent architectural merit to the original schoolhouse.*

The draft Inventory Sheet notes that the building is in poor structural conditional due to the close of the school in 2006 and associated lack of maintenance. Subsequent to the preparation of the *Heritage Review*, the property was sold by the Department of Education to a private land owner.

The *Heritage Review* recommends the school building be listed as a local heritage item.

**Submission Concerning Proposed Heritage Listing**

Executive Manager’s Report No. PLN22/09 notes that five submissions have been received concerning the former Berrilee Public School. A copy of submissions is attached.

The property owner objects to the proposed listing of the school on the basis of the limited developable area within the site. The school building occupies the centre of the available space, thereby constraining future development. The submission also claims that the single

room school building provides limited opportunities for re-use. It is noted that the building is in poor structural condition and replacement of material is required. The submission states that the building was relocated to the school site and the owner would support its relocation off-site. The submission comments that the heritage listing would be a financial burden upon the owner and as the building is no longer in public ownership, it is not publically accessible.

One submission is from the Department of Education as owner of the site during the preparation of the Study. The Department reserves comment as the property was sold by the Department of Education in June 2008. A further three submissions are from community members who support the relocation of the school building to Fagan Park and conversion to a museum.

### **Evaluation of Submissions**

Property No. 5 Chilcott Road, Berrilee is the subject of two recently approved Development Applications submitted by the current owner. DA/1086/2008 was submitted for the demolition of the former school buildings and associated structures. However, as part of the assessment of the application, the Heritage Advisory Committee raised objection to the proposed demolition of the school building in view of the identified heritage value of the site under *Heritage Review Stage 4*.

The applicant subsequently requested that demolition of the school building be excluded from the demolition application. As such, the proposal was amended to provide for the retention of the original school building and demolition of two later teaching buildings and an amenities block.

In the assessment of the amended proposal, it was noted that the three buildings proposed for demolition have less significance than the weatherboard school building. However, the associated school buildings provide a context for the original school building. The application was approved subject to a condition requiring a photographic recording of the site prior to demolition to identify how the school existed at the conclusion of its operations.

DA/1094/2008 is for relocation of the former school building, demolition of associated structures and construction of a dwelling-house. As part of the assessment of the application, the Heritage Advisory Committee supported the retention and adaptive re-use of the school building. The Committee noted that heritage buildings are important in their context, and their location and siting enable significant buildings to be interpreted more readily. While the relocation of buildings is not generally supported on heritage grounds, the Committee acknowledged that the school building occupies the approximate centre of the property and most obvious location for residential development. As such, the Committee considered the relocation of the building within the site represents a reasonable solution and encourages the on-going maintenance of the school building.

The Committee encouraged the investigation of active uses for the school building as part of the proposed redevelopment. The Committee also supported the continued maintenance of the school building in accordance with heritage principles. The application was approved subject to conditions requiring that the building, once relocated, be restored in anticipation of its active reuse. The restoration is required to include (but not limited to) the placement of the structure on brick pier footings, connection of drainage, replacement of window glass and removal of the boarding over windows. A copy of the approved plans is attached.

The above development approvals demonstrate that the school building can be retained in its context and at the same time permit the construction of a dwelling-house on the property.

The approvals also address the owner's objection with respect to the development potential of the property and feasibility for relocation. It is envisaged that the building could be used as a studio or workshop ancillary to the residential use of the property.

The Heritage Advisory Committee considered the community support for conservation of the school building. The Committee acknowledged that this level of public interest is further evidence of the social significance of the school building. However, the Committee does not support the proposal to relocate the building to Fagan Park and its presentation as a museum. Such a proposal would impact on the context of the building and have significant resource and policy implications for Council. The Committee also cited examples where museums of this type experience poor patronage and are unsustainable in the long-term.

In summary, *Heritage Review Stage 4* identifies that the school has social significance, being representative of small, one teacher schools. It is acknowledged that the building is poor physical condition due to lack of maintenance following closure of the school in 2006. However, the property is subject to development consents which demonstrate that the heritage qualities of the site can be maintained by enabling construction of a dwelling-house while retaining and restoring the school on site.

## CONSULTATION

Council's Local Studies Coordinator was consulted in the preparation of this report. The Coordinator has advised that a search of Council's library resources has not identified any further historical information of relevance to the consideration of the heritage listing of the former school.

## OPTIONS

Council has the following options concerning the heritage listing of property No. 5 Chilcott Road, Berrilee:

### **Option 1: Progress the listing of the school as a heritage item of local significance**

This option would involve the progression of the listing of the former school as part of an Annual Amendments LEP.

### **Option 2: Not progress the heritage listing of the school**

As indicated in the discussion above, the draft Inventory Sheet for the property acknowledges that the property is in poor physical condition. Furthermore, development applications have been approved that permit the relocation of the school on site, demolition of associated structures and construction of a dwelling-house on the property. However, conditions have been placed on the approvals to minimise impacts on the school building. An appropriate resolution for this option would be:

*Council not progress the heritage listing of the former school building at property No. 5 Chilcott Road, Berrilee due to the poor physical condition of the building.*

*Heritage Review Stage 4* identifies that the school has social significance, being representative of small, one teacher schools. Accordingly, option 1 is recommended.

## CONCLUSION

At its meeting on 3 June 2009, Council resolved to endorse the recommendations of the report on submissions concerning *Heritage Review Stage 4* with the exception of the proposed listing of the former school building at property No. 5 Chilcott Road, Berrilee. Council resolved to request further information concerning this matter.

The school is representative of small, one teacher schools with social significance. The building is poor physical condition. However, the property is subject to development consents which demonstrate that the heritage qualities of the site can be maintained by enabling construction of a dwelling-house while retaining and restoring the school on site.

It is recommended that Council progress the heritage listing of the school as part of an Annual Amendments Local Environmental Plan.

## RECOMMENDATION

THAT Council endorse the recommendation of *Heritage Review Stage 4* that the former school building at property No. 5 Chilcott Road, Berrilee be listed as an item of local heritage significance and that the listing be progress as part of an Annual Amending Local Environmental Plan.

JAMES FARRINGTON  
Manager - Town Planning Services  
Planning Division

SCOTT PHILLIPS  
Executive Manager  
Planning Division

### Attachments:

1. Letter of nomination from the Berrilee Parents and Citizen Association
2. Draft Inventory Sheets
3. Submissions on proposed heritage listing
4. DA/1094/2008 - Approved Plans

File Reference: F2007/00068  
Document Number: D01180917