



*the bushland shire*

*creating a living environment*

# **BUSINESS PAPER**

## **PLANNING MEETING**

**Wednesday, 5 August, 2009  
at 6:30pm**

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## **AGENDA AND SUMMARY OF RECOMMENDATIONS**

### **PRESENT**

### **NATIONAL ANTHEM**

### **OPENING PRAYER/S**

Pastor Bob Saunders from the Fox Valley Seventh Day Adventist Church will be opening the Meeting in prayer.

### **ACKNOWLEDGEMENT OF RELIGIOUS DIVERSITY**

Statement by the Chairperson

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

### **ABORIGINAL RECOGNITION**

Statement by the Chairperson:

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

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

Statement by the Chairperson:

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

### **APOLOGIES**

### **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 1 July, 2009 be confirmed; a copy having been distributed to all Councillors, subject to the following amendment to Item2 in the final paragraph on Page 5 of Minutes:

Replace "Amend Condition No. 22 c. as follows:"

with

"Amend Condition No. 21 c. as follows:"

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**PETITIONS****MAYORAL MINUTES****NOTICES OF MOTION****Page Number 1****Item 11 NOM4/09 DELEGATED AUTHORITY TO SENIOR OFFICERS WITHIN THE PLANNING DIVISION****RECOMMENDATION****COUNCILLOR EVANS TO MOVE**

THAT the General Manager be given permission to delegate the authority to senior officers in the Planning Division to determine development applications in circumstances involving a variation of not more than ten percent to a 'development standard' in an environmental planning instrument thus removing the need to refer the application to a Planning Meeting for determination unless a red sticker has been placed against that application.

**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 2****Item 1 PLN54/09 DEVELOPMENT APPLICATION - CHANGE OF USE OF AN EXISTING TOURIST FACILITY TO MULTI-UNIT HOUSING DEVELOPMENT  
55A BROOKLYN ROAD, BROOKLYN****RECOMMENDATION**

THAT Development Application No. 1731/2008 for the change of use of an existing tourist facility to a multi-unit housing development comprising eight units at SP 68618 (No. 55A) Brooklyn Road, Brooklyn be refused subject for the reasons detailed in Schedule 1 of this report.

**Page Number 32**

- Item 2      PLN58/09 DEVELOPMENT APPLICATION - RESIDENTIAL -  
ALTERATIONS AND ADDITIONS  
LOT 13 DP 18039 DUSTHOLE POINT, BEROWRA CREEK**

**RECOMMENDATION**

THAT Council approve Development Application No. 592/2009 for alterations and additions to a dwelling at Lot 13 DP 18039 Dusthole Point, Berowra Creek, subject to the conditions of consent detailed in Schedule 1 of this report.

**Page Number 50**

- Item 3      PLN60/09 DEVELOPMENT APPLICATION - ALTERATIONS  
AND ADDITIONS TO A DWELLING-HOUSE.  
NO. 118 WOONONA AVENUE, WAHROONGA**

**RECOMMENDATION**

THAT Development Application No. 434/2009 for alterations and additions to a dwelling-house and the erection of a carport at Lot 11, DP 13036, No. 118 Woonona Avenue, Wahroonga, be approved subject to the conditions of consent detailed in Schedule 1 of this report.

**B WARD DEFERRED**

**B WARD**

**Page Number 66**

- Item 4      PLN53/09 DEVELOPMENT APPLICATION - SECTION 82A  
REVIEW - ALTERATIONS AND ADDITIONS TO A  
DWELLING-HOUSE  
1 GLENOAK WAY, CHERRYBROOK**

**RECOMMENDATION**

THAT Development Application No. DA/824/2008 for alterations and additions to a dwelling-house at Lot 2, DP 285545, No. 1 Glenoak Way Cherrybrook, be approved subject to the conditions of consent detailed in Schedule 1 of this report.

**C WARD DEFERRED**

**C WARD**

**Page Number 81**

- Item 5      PLN31/09 DEVELOPMENT APPLICATION - ERECTION OF  
A DWELLING-HOUSE  
31 YORK STREET, BEECROFT**

**RECOMMENDATION**

THAT Development Application No. DA/353/2009 for the erection of a three level dwelling-house, double garage, swimming pool, retaining walls and front fence at Lot 945, DP 410085, No. 31 York Street Beecroft be approved subject to the conditions of consent detailed in Schedule 1 of this report.

**Page Number 104**

**Item 6      PLN45/09 DEVELOPMENT APPLICATION - SECTION 96(2) -  
SUBDIVISION OF ONE LOT INTO TWO  
10 REDGUM AVENUE PENNANT HILLS**

**RECOMMENDATION**

THAT Council approve the modification to Development Application No. 1273/2004 for the subdivision of one lot into two and demolition of an existing dwelling at Lot 7 DP 514543 (No. 10) Redgum Avenue, Pennant Hills, as detailed in Schedule 1 of this report.

**GENERAL BUSINESS****Page Number 128**

**Item 7      PLN61/09 STRATEGIC PLANNING PROGRAMME  
PROGRESS REPORT**

**RECOMMENDATION**

THAT:

1. Council note the contents of Executive Manager's Report No. PLN61/09 concerning the status of Strategic Planning Projects currently being undertaken by the Town Planning Services Branch in accordance with the Strategic Planning Programme.
2. Council consider the priority of Strategic Planning Projects in the December review of the Strategic Planning Programme.

**Page Number 134**

**Item 8      PLN62/09 LOCAL HERITAGE ASSISTANCE FUND 2009/2010  
APPLICATIONS**

**RECOMMENDATION**

THAT:

1. Council endorse the expenditure of funds to the value of \$60,000 from the Local Heritage Assistance Fund budget to the following projects (to be completed and reimbursed prior to 30 June 2010).



<b>Project No.</b>	<b>Property Address</b>	<b>Applicant Name</b>	<b>Project Description</b>	<b>Recommended Funding Amount and Comment</b>
1/08	2 Smalls Road Arcadia	Mr Peter John Turvey	Internal & external repairs including replacement of hand rail	<b>\$5,000</b>
2/08	23 Fiona Road, Beecroft	Mrs Pauline Ross	Replace existing tile roof (including replacement of batons as required)	<b>\$8,720</b> (subject to matching colour and terracotta tile)
3/08	50 The Crescent Cheltenham	Mr & Mrs Bryce	Repointing of external walls, reinstating broken footpaths and driveway, reinstating and stabilising sandstone fences	<b>\$20,000</b> (subject to \$3,208 being allocated to repointing and the remainder on sandstone fences)
4/08	208 New Line Road Dural	Baris Akar	Installation of termite barrier	<b>\$1,800</b>
5/08	9 Galston Road, Hornsby	Alison MacDonald	Replacement of two verandah posts, rotted joists and decking on verandah	<b>\$970</b>
6/08	237 Pacific Hwy Hornsby	T.J. and M.P Wyatt	Repair to brickwork, shingles, window sills and gable barge boards on upper level.	<b>\$4,500</b>
7/08	16 Maple Avenue, Pennant Hills	Ms Elva Hoy	Remove paving, reinstate grass, waterproof garage wall and improve drainage	<b>\$660</b>
8/08	333A Pennant Hills Road Pennant Hills	Warren & Hazel Ghisla	Repair/restore lace work and timber of bull nose verandah	<b>\$1,400</b>
9/08	18 Yarrara Road, Pennant Hills	Mr and Mrs Leigh	Remove and replace bull nose sheeting on verandah, remove and replace guttering to the bull nose and main roof	<b>\$6,000</b> (subject to matching profile of roof sheeting)
10/08	24 Dartford Road Thornleigh	Brende de Vere Burke	Remove and replace rotted boards over verandah and restore original slate, repair damaged wood on gable feature, replace water damaged structural posts on verandah	<b>\$2,000</b>
11/08	15-17 Duffy Avenue Thornleigh (Highway House) - Woodlands	Thornleigh Community Baptist Church	Re-mortar brickwork on façade	<b>\$990</b> (subject to confirmation that both pin and tuck pointing being undertaken)
12/08	14 Ingram Road, Wahroonga	Mr Kongmeng Yong	Replace roof	<b>\$7,960</b> (subject to matching colour and terracotta tile)

2. Applicants be advised of Council's resolution.
3. Should any applicant not accept the offer of financial assistance or the works are unable to be completed this financial year, the General Manager be authorised to endorse any additional allocation or redistribution of funds following a recommendation from the Executive Manager, Planning Division.

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**Page Number 140****Item 9 PLN64/09 LOCAL NOMINATIONS FOR THE JOINT REGIONAL PLANNING PANELS****RECOMMENDATION**

## THAT

1. Council advises the Department of Planning that it revokes its nomination of the Executive Manager Planning and the Executive Manger Environment as local members of the Joint Regional Planning Panel.
2. Council advises the Department of Planning that it now nominates the General Manager as a local member of the Joint Regional Planning Panel.
3. Council instigates an expression of interest process to select other suitable local members/alternative members of the Joint Regional Planning Panel.
4. The outcome of the expression of interest process be reported to Council for its endorsement of new local members/alternative members of the Joint Regional Planning Panel.
5. Council receives a report twelve months following the commencement of the Joint Regional Planning Panel outlining the implications of the Panel during this period.

**GENERAL BUSINESS**

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

**CONFIDENTIAL ITEMS****Item 10 PLN59/09 REVIEW OF SECTION 94 DEVELOPMENT CONTRIBUTIONS PLAN 2007**

*This report should be dealt with in confidential session, under s10a (2) (g) of the Local Government Act, 1993. This report contains advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.*

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

**11 DELEGATED AUTHORITY TO SENIOR OFFICERS WITHIN THE  
PLANNING DIVISION**

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COUNCILLOR EVANS TO MOVE

THAT the General Manager be given permission to delegate the authority to senior officers in the Planning Division to determine development applications in circumstances involving a variation of not more than ten percent to a 'development standard' in an environmental planning instrument thus removing the need to refer the application to a Planning Meeting for determination unless a red sticker has been placed against that application.

**Attachments:**

There are no attachments for this report.

File Reference: F2004/07027  
Document Number: D01207755

**1 DEVELOPMENT APPLICATION - CHANGE OF USE OF AN EXISTING TOURIST FACILITY TO MULTI-UNIT HOUSING DEVELOPMENT  
55A BROOKLYN ROAD, BROOKLYN**

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<b>Development Application No:</b>	DA/1731/2008
<b>Description of Proposal:</b>	Change of use of an existing tourist facility to multi-unit housing development comprising eight units
<b>Property Description:</b>	SP 68618 (No. 55A) Brooklyn Road, Brooklyn
<b>Applicant:</b>	Professionals Strata C/- Don Fox Planning Pty Ltd
<b>Owners:</b>	Owners Corporation - SP 68618
<b>Statutory Provisions:</b>	Hornsby Shire Local Environmental Plan 1994 Residential AT (Low Density - Tourist Village)
<b>Estimated Value:</b>	\$25,000
<b>Ward:</b>	A

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**RECOMMENDATION**

THAT Development Application No. 1731/2008 for the change of use of an existing tourist facility to a multi-unit housing development comprising eight units at SP 68618 (No. 55A) Brooklyn Road, Brooklyn be refused subject for the reasons detailed in Schedule 1 of this report.

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**EXECUTIVE SUMMARY**

1. The application proposes the change of use of an existing tourist facility to multi-unit housing development comprising eight units.
2. A red sticker has been placed against the application resulting in it being referred to Council for determination.
3. The proposal does not comply with clauses 14 (Density) and 15 (Floorspace Ratio) of the Hornsby Shire Local Environmental Plan, 1994 (HSLEP). The application is supported by an objection under State Environmental Planning Policy No. 1 – Development Standards (SEPP 1).

4. The proposed development fails to comply with the provisions of State Environmental Planning Policy No. 65, State Environmental Planning Policy (BASIX), Brooklyn Development Control Plan, Access and Mobility Development Control Plan and Car Parking Development Control Plan.
5. Two submissions were received in respect of the application.
6. It is considered that the design of the building does not accommodate its use as multi unit housing. Consequently, it is recommended that the application be refused.

### **HISTORY OF THE SITE**

In the 1950s the existing building was erected and utilised by the '*Sisters of Mercy*' as a convent/orphanage.

On 24 August 2000 Development Application No. 1454/1999 was approved for the change of use of an existing building to a tourist facility comprising eight units and associated car parking. The approved works included:

- Internal modifications to the existing building to create eight self contained units for tourist accommodation, with a maximum letting period of 30 days and one of the units to be used by the site manager.
- No increase in floor space and no modifications to the exterior of the existing building.
- Provision of 11 car parking spaces on-site.
- Retention of the existing swimming pool, tennis court and jetty.

On 24 May 2001, Development Application No. 592/2001 was approved for the strata title subdivision of the tourist facility into eight units.

On 21 January 2002, a Section 96 modification to D/A 592/2001 was approved for the amendment of conditions in relation to permanent occupation of an approved strata unit by a manager or caretaker, and options for leaseback arrangements and deletion of conditions regarding waste management.

On 27 October 2005, Development Application No. 1150/2005 was approved for the alteration of one balcony and addition of three balconies on the northern façade of the existing tourist facility. The approved balconies have not been constructed.

On 27 September 2007, a Section 96(2) modification was approved to increase the size of the balconies approved under Development Application No. 1150/2005.

### **THE SITE**

The site has an area of 2,605m<sup>2</sup> and is located on the northern side of Brooklyn Road, Brooklyn. It has direct frontage to the foreshores of Sandbrook Inlet. The site is irregular in shape and slopes towards the northern site boundary with Sandbrook Inlet.

Existing development on the site comprises a part two and part three storey brick building used as a tourist facility comprising eight units. The existing units are comprised of the following:

#### *Unit 1*

This unit is located on the lower ground level towards the rear of the existing building. It has a floor area of 159m<sup>2</sup>. The unit contains a living room, kitchen, two bedrooms, bathroom, ensuite, laundry and store room. Access to the unit is via an entry located on the northern elevation of the building.

#### *Unit 2*

This unit has a floor area of 96m<sup>2</sup> is located on the upper floor level of the northern portion of the existing building. Access to unit 2 is provided by a stair well located on the south western corner of this portion of the building. It consists of a lounge room, kitchen, sun room, two bedrooms, bathroom and laundry. This unit has an existing 4m<sup>2</sup> balcony located adjacent to the existing sunroom.

#### *Unit 3*

Unit 3 has an area of 209m<sup>2</sup> and is located partially on the ground floor and partially on the upper floor level of the northern portion of the existing building. The main entry into this unit is located on the eastern elevation via the car parking area. Unit 3 contains a lounge room, office, kitchen, three bedrooms, three bathrooms and laundry. This unit has two existing balconies located adjacent to the lounge room and sunroom. There is an existing large balcony which is accessed via the existing kitchen.

#### *Unit 4*

This unit is located on the ground floor and has an area of 120m<sup>2</sup>. It is comprised of a lounge room, kitchen, three bedrooms, two bathrooms and laundry. There is an existing 1m wide balcony sited along the northern elevation of this unit. Access to the unit is gained via the existing balcony.

#### *Unit 5*

Unit 5 is located on upper floor level and is accessed via a staircase located on the southern elevation of the portion of the building closest to the street. This unit has an area of 49m<sup>2</sup>. It contains a lounge room, kitchen, one bedroom, bathroom and laundry. An existing 40m<sup>2</sup> balcony is provided on the northern elevation for this unit.

#### *Unit 6*

Unit 6 is located on the upper floor level and has an area of 139m<sup>2</sup>. This unit has a lounge and dining room, kitchen, three bedrooms, bathroom which includes a laundry. Access to Unit 6 is provided from the staircase located on the southern portion of the building. Unit 6 has a 12m<sup>2</sup> balcony. This balcony is adjoins the balcony of unit 5 and is accessed via the sitting room.

*Unit 7*

Unit 7 is located on the upper floor level and is access via a separate entry located on the southern elevation which fronts Brooklyn Road. This unit is adjacent and at the same level as unit 5. It has an area of 110m<sup>2</sup> and contains a lounge room, three bedrooms, bathroom, kitchen and laundry. An existing balcony is provided on the northern elevation of this unit. The balcony of units 7 and 5 are separated by an existing lattice screen.

*Unit 8*

Unit 8 is located on the ground floor level and on the eastern portion of the building. It was originally utilised as a Church. The unit contains a large living room, one bedroom, kitchen and bathroom. The bedroom is located on a mezzanine level. It has a gross floor area of 399m<sup>2</sup>. Access to unit 8 is via the entry located on the southern elevation this unit.

A swimming pool, tennis court and jetty are sited adjacent to the northern site boundary, which adjoins Sandbrook Inlet. There is a common open space area on the northern boundary of the site, adjacent to the swimming pool. The site contains a communal laundry which is located on the ground floor and a drying area situated adjacent to existing unit 8.

Vehicular access the site is gained via an existing driveway located on the eastern boundary. There is an existing car parking area located towards the rear of the site which accommodates 11 vehicles. There is a sullage tanker parking bay located along the frontage of the site with Brooklyn Road.

The site immediately to the west adjoins part of the same building, however, that part of the building is located on a separate parcel of land. This adjoining building is occupied as a single residence. To the east and south, the site adjoins allotments containing detached dwelling houses.

**THE PROPOSAL**

The application proposes change of use of an existing building from a tourist facility to multi-unit housing development comprising eight units.

The following amendments are proposed to be undertaken to each of the existing units:

*Unit 1*

A 90m<sup>2</sup> private open space area is to be provided in the form of a courtyard on the northern elevation of unit 1. An accessible bathroom and a new laundry is proposed to be provided. To facilitate access to the proposed private open area, two sliding doors would be provided to the living room of unit 1.

*Unit 2*

A balcony with an area of 21m<sup>2</sup> is proposed to be provided on the northern elevation of unit 2. A storage area is proposed to be provided under the staircase leading to unit 2.

*Unit 3*

An entry lobby located on the eastern elevation is proposed to be provided to unit 3. The entry lobby is intended to be used for a private open space area. Two balconies are proposed to be provided on the northern elevation of the unit. Each of the balconies would have an area of 21m<sup>2</sup>. A screen and gate is proposed to be provided to the existing large balcony which is accessed via the kitchen. A large storage area for unit 3 is proposed to be provided on the lower ground floor.

*Unit 4*

A 68m<sup>2</sup> courtyard is proposed to be provided on the northern elevation of unit 4. The courtyard would be located in front of the existing balcony area. The courtyard would be defined by low hedging and screen fencing along the boundary beside the existing pathway. The existing balcony would be provided with planter boxes and screens. Part of the existing foundation area and service bay is to be converted into a storage space for unit 4.

*Unit 5*

No change is proposed to Unit 5 apart from the provision of a storage area under the existing staircase.

*Unit 6*

A 21m<sup>2</sup> balcony is proposed to be provided for this unit on the northern elevation. The existing balcony of unit 6 is to become a non-trafficable area. The internal stair to the balcony is to be removed. The applicant indicated that access to this area would be for maintenance purposes only. Part of the existing laundry is to be used as storage area for unit 6.

*Unit 7*

The existing balcony is proposed to be extended to the west by an additional 2.7 metres providing a total balcony area of 25m<sup>2</sup>. An existing room located on the ground floor is to be converted to a store room for unit 7.

*Unit 8*

A 58m<sup>2</sup> courtyard is proposed to be provided on the southern side of this unit. A new screen and gate would define the proposed courtyard area. A new access point into unit 8 is proposed to be provided in the location adjacent to car parking spaces allocated to this unit.

The development provides eleven car parking spaces at the northern end of the existing accessway. An additional, three car parking spaces are proposed to be provided within the previously utilised tanker bay. Two stacked spaces are proposed to be provided adjacent to unit 8. Two visitor spaces are proposed to be provided, one within the main car parking area and the other within the existing driveway.

The site contains an existing swimming pool and tennis court located on the northern boundary of the site. These facilities are located on common property and are available for the use of all units. There is also an existing jetty and pontoon located below mean high water mark (MHWM).



## 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 not be inconsistent with the draft Strategy.

### 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 AT under the Hornsby Shire Local Environmental Plan 1994 (HSLEP). The proposed development is defined as 'multi-unit housing' and is permissible in the zone with Council's consent.

The objectives of the Residential AT zone are:

- to provide for the housing needs of the population of the Hornsby area and expand the recreational opportunities for the wider community.*
- to promote a variety of housing types, tourist facilities and other land uses compatible with a low density residential environment.*
- to provide for residential and low key tourist development that is within the environmental capacity of a low density residential environment.*

Whilst the proposed development would provide additional housing for the population of the Hornsby area, the proposal does not promote a housing type which is compatible and within the environmental capacity of the low density residential environment. The proposed

development fails to provide functional car parking and amenities for future residents. The proposed development is inconsistent with objectives (b) and (c) of the zone.

*Clause 14 – Density*

Clause 14(3)(b) of the HSLEP states that:

- (3) *Regardless of subclause (2), the Council may consent to the development of land for the purpose of multi-unit housing, but only where the Council is satisfied that the development will result in a density not greater than:*
- (a) *one dwelling per 350m<sup>2</sup> within the Residential A, AA, AM, or AT zone, exclusive of any accessway, rights of carriageway and public or private roads.*

The proposal fails to comply with the development standard. The development would result in a density of 1 dwelling per 325m<sup>2</sup>. The applicant submitted a SEPP 1 objection which is discussed in detail in section 2.2 of this report.

Clause 14(4) of the HSLEP states that:

- (4) *Land within the Residential A, AA, AM, AS or AT zone on which dwellings comprising multi-unit housing are situated may be subdivided for the purpose of creating separate land titles for dwellings only if the subdivision complies with subclause (2). The separate occupation of the proposed lots illustrated by a proposed strata plan relating to multi-unit housing situated on any such land is prohibited.*

On 24 May 2001 Development Application No. 592/2001 was approved for strata title subdivision of an approved tourist facility into eight units. The strata title subdivision of the tourist facility was approved on the proviso that the use of the units would be for temporary basis only, with tenancies being let for a maximum of 30 consecutive days. In accordance with the consent, a restriction as to user has been created on the strata title requiring the Strata units not to be used for permanent occupation.

On this matter, the applicant submitted legal advice (copy attached) which states that:

*“The imposition of a restriction on the title of the land is unnecessary. The use of the premises for any other purpose is unlawful. The Land and Environment Court is “not favourable disposed towards conditions requiring registered restrictions as to user.”*

*The restriction on title is, in my opinion, an irrelevant consideration for the purposes of the assessment of a Development Application to use the premises for the permissible purposes of multi-unit housing. As a consequence, if development consent were granted, the restriction would simply be released by the Council.*

*Even if the Council refused the Development Application and attempted to rely upon the restriction, the Land and Environment Court has power, as consent authority, to release the restriction.*

*As a result, although practically the restriction would need, in due course, to be released it is not a bar to obtaining development consent for the multi-unit housing development.”*

The applicant’s legal advice concludes that:

*“Multi-unit housing is permissible on the land with development consent.*

*The separate occupation of existing Lots within an existing strata plan as multi-unit housing is permissible with consent.*

*If it is necessary to subdivide the land by re-allocation of some common property to existing lots, that subdivision does not offend the restriction in Clause 14(4).*

*The Development Application in its current form is permissible and should not be withdrawn. Even if it is necessary, in order to deal with some of the Council’s concerns, to amend the Strata Plan (by subdivision) the development remains permissible and should not be withdrawn.”*

It is considered that the proposed development seeks to circumvent the provisions of HSLEP insofar as creating a development outcome that would otherwise be prohibited. Clause 14(4) of HSLEP prohibits Council from consenting to the strata subdivision of a multi-unit development in circumstances whereby units have a net density of less than 350 sqm. The approval of the site firstly as a tourist facility, secondly by way of strata subdivision and thirdly by changing its use to multi-unit housing exploits that prohibition.

Despite the opinion of the applicant’s counsel, the imposition of the restriction on the title of the land had the very effect of ensuring that any future land owner was of the unequivocal understanding that the current proposed development would not be considered by Council due to the practical provisions of the HSLEP.

The approval of this development would set an undesirable precedent and would compromise the underlying intent of clause 14(3) and 14(4) of the HSLEP. The intent of clause 14(3) of the HSLEP is to facilitate a variety of housing types within Hornsby Shire that contributes towards the provision of affordable rental accommodation in accordance with objectives the Residential AT zone. Clause 14(4) precludes the subdivision of such of multi-unit housing approved under clause 14(3), as it would contradict the intent of clause 14(3) and its compliance with the zone objectives by creating more costly conventional strata titled allotments.

#### *Clause 15 – Floorspace ratio*

Clause 15 of the HSLEP prescribes that the maximum floorspace ratio (FSR) of development within the Residential AT zone is 0.4:1. The proposal provides an FSR of 0.61:1. The applicant submitted a SEPP 1 submission objecting to the development standard. This matter is discussed in detail in section 2.2 of this report.

#### *Clause 18 – Heritage*

Clause 18 of the HSLEP sets out heritage conservation provisions within the Hornsby area. The objective of the provision is *“to provide for continuity with the past by conserving the heritage of the Hornsby area and to ensure that Aboriginal heritage is preserved and*

*conserved wherever possible*". The site is located in close proximity to Nos. 51, 52 and 53 Brooklyn Road which are listed under Schedule D of the HSLEP as items of heritage significance. The proposed development would not impact on the heritage significance of these items.

#### *Clause 20 – Waterways*

Pursuant to Clause 20 of the Hornsby Shire Local Environmental Plan 1994, the consent of the Council is required for all development below mean high water mark. No works are proposed below mean high water mark.

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

The applicant has submitted an objection to the requirement for compliance with the density standard pursuant to clause 14(3)(b) of the HSLEP, which states that the density of development in the zone must be not greater than one dwelling per 350m<sup>2</sup>. The development provides a density of 1 dwelling per 325m<sup>2</sup>. In addition, the development fails to comply with the maximum floorspace ratio (FSR) of 0.4:1 in the Residential AT zone. The proposed FSR is 0.61:1.

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

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

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

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

The applicant's grounds for the objecting to the density and FSR standards are as follows:

*"State Environmental Planning Policy No. 1 objection in relation to Density*

*The existing building on the subject property comprises 8 apartments approved for use as a tourist facility. It is proposed to simply convert the existing building from a tourist facility to a multi-unit housing development. This change of use would not involve any external or internal alterations to the building and therefore it is not physically possible to comply with the density restrictions.*

*The existing building has been considered by Council to be an appropriate development on this site and in this location, therefore strict adherence to this development standard is considered to be unreasonable and unnecessary.*

*As the property has a site area of 2,605m<sup>2</sup>, the density control of one dwelling per 350m<sup>2</sup> would permit a total of 7.44 dwellings whereas the existing building comprises 8 dwelling apartments in the Council approved tourist facility and the registered strata plan of subdivision for the existing development.*

*The variation of the density control is numerically minor in nature representing a rounding up from 7.44 dwellings to 8 dwellings.*

*The use of the premises as a tourist facility has been adjudged to be consistent with the objectives of the AT zone which require the development to be within the “environmental capacity of a low density residential environment.”*

*Therefore, because the approved tourist facility is consistent with the Residential AT zone objectives and no alteration or intensification of the use of the subject property would occur as a result of the change of use, the use of the building as a multi-unit housing development is also considered to be consistent with the zone objectives and achieves a low density residential development notwithstanding that it does not comply with the numerical standard for density control.*

*In the circumstances, the development standard is considered to be unreasonable and unnecessary and it is requested that Council invoke the provisions of SEPP 1 to vary the development standard in relation to density in these circumstances.*

#### *State Environmental Planning Policy No. 1 Objection in Relation to Floorspace ratio*

*“As this development exists, and no additional building works or new floor space are proposed for the use of the premises for multi-unit housing, the floorspace ratio would remain unchanged. Therefore, the proposed use of the premises for multi-unit housing would not result in an increase in the floorspace ratio.*

*It is considered that the use of the existing building for the purposes of multi-unit housing is consistent with the zone objectives in that it would not result in any alterations to the existing building but only a change in use from a tourist facility to a multi-unit housing development with the same floorspace ratio which is consistent with the zone objectives.*

*As the development is existing and would not increase the floorspace ratio, it is requested that Council invoke the provisions of SEPP 1 to vary the standard in relation to floorspace ratio in these circumstances.”*

The applicant’s objections to the density and FSR controls are discussed below.

In determining to permit a departure from the standard, the proposed development is assessed against the objectives of the standards.

The objective of Clause 14 is:

*“To provide for the development of land at a density that is in accordance with the land’s environmental capacity and zone objectives.”*

The objective of Clause 15 is:

*‘To control the intensity and scale of development of land so that development would be in accordance with the land’s environmental capacity and zone objectives.’*

The applicant’s objection to both standards is based on the assumption that as the existing tourist facility has been approved by Council, a variation to both development standards should be supported. The existing use of the site was specifically approved for a tourist facility. However, the planning implications for a tourist facility are significantly different when compared to multi-unit housing. A tourist facility involves a short term use of a building with different living and activity patterns, whereas multi-unit requires a degree of permanence in duration of occupation.

The conversion of the existing building to multi-unit housing requires merit based assessment against far more stringent requirements than that applied for the tourist facility. The proposed development fails to provide adequate car parking and amenities for future residents and is therefore, not within the environmental capacity of the low density residential area and in accordance with the zone objectives.

Consequently, despite the building remaining in its current physical configuration, it is considered that the SEPP 1 objection is not well founded as it has not been demonstrated that compliance with the development standards is unreasonable and unnecessary in the circumstances of this case.

### **2.3 State Environmental Planning Policy No. 65 - Design Quality Residential Flat Building**

The application has been assessed against the requirements of the State Environmental Planning Policy No. 65 (SEPP 65). This Policy provides State-wide planning controls for establishing design criteria for the assessment of residential flat developments and for residential components of mixed use developments. The primary aim of SEPP 65 is to *“improve the design quality of residential flat development in New South Wales”*.

Part 2 of SEPP 65 contains 10 Design Quality Principles. Those principles deal with the following issues:

- Context
- Scale
- Built form
- Density
- Resource, energy and water efficiency
- Landscape
- Amenity

- Safety and security
- Social dimensions
- Aesthetics.

The following section of this report includes an assessment of the residential component of the proposed development against the ten principles provided in Part 2 of SEPP 65.

### **2.3.1 Principle 1: Context**

The site is located within the residential precinct of Brooklyn, which is characterised as low scale residential developments. The desired future character of the area is reflected in the requirements of the Brooklyn Development Control Plan which is to preserve the streetscape and the low scale residential character of Brooklyn. The existing building is out of context with the surroundings and it is an intrusive element in a low scale, residential area.

### **2.3.2 Principle 2: Scale**

The existing mainly two to three storey building is out of scale with the immediate surroundings of a low density residential area. The scale of the building is prominent when from Sandbrook Inlet. The existing building is not consistent with the desired future character of the Brooklyn area.

### **2.3.3 Principle 3: Built Form**

The existing build form is not consistent with to the desired future character of Brooklyn and is out of context with the existing low density residential area. The existing built form fails to provide adequate internal amenity to the future residents of the proposed units. The details of the elements of the built form have been further discussed under section 2.4 of this report.

### **2.3.4 Principle 4: Density**

SEPP 65 states:

*"Good design has a density appropriate for a site and its context, in terms of floor space yields (or number of units or residents).*

*Appropriate densities are sustainable and consistent with the existing density in an area or, in precincts undergoing a transition, are consistent with the stated desired future density. Sustainable densities respond to the regional context, availability of infrastructure, public transport, community facilities and environmental quality."*

As discussed previously in this report, the development fails to meet the density requirements of the Council controls for the site and, hence, is inconsistent with this design principle.

### **2.3.5 Principle 5: Resource, Energy and Water Efficiency.**

*"Good design makes efficient use of natural resources, energy and water throughout its full life cycle, including construction.*

*Sustainability is integral to the design process. Aspects include demolition of existing structures, recycling of materials, selection of appropriate and sustainable materials, adaptability and reuse of buildings, layouts and built form, passive solar design*

*principles, efficient appliances and mechanical services, soil zones for vegetation and reuse of water.”*

The applicant failed to provide adequate information with the application such as a BASIX certificate to demonstrate that the proposed development would comply with this principle.

### **2.3.6 Principle 6: Landscape**

*“Good design recognises that together, landscape and buildings operate as an integrated and sustainable system, resulting in greater aesthetic quality and amenity for both occupants and the adjoining public domain. Landscape design builds on the existing site’s natural and cultural features in responsible and creative ways. It enhances the development’s natural environmental performance by co-ordinating water and soil management, solar access, micro-climate, tree canopy and habitat values. It contributes to the positive image and contextual fit of development through respect for streetscape and neighbourhood character, or desired future character. Landscape design should optimise useability, privacy and social opportunity, equitable access and respect for neighbours’ amenity, and provide for practical establishment and long term management.”*

The amended plans show that landscaping is proposed to be provided to the ground floor courtyards in order to screen these areas from the public areas. However, the applicant failed to submit adequate details with respect to the proposed landscaping to demonstrate compliance with this design principle.

### **2.3.7 Principle 7: Amenity**

SEPP 65 states:

*“Good design provides amenity through the physical, spatial and environmental quality of a development.*

*Optimising amenity requires appropriate room dimensions and shapes, access to sunlight, natural ventilation, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas, outlook and ease of access for all age groups and degrees of mobility.”*

The development proposes a poor level of amenity for the proposed units. These include:

- The siting and design of the ground floor courtyards of units 1 and 4 results in privacy conflicts with the communal open space areas.
- There is a privacy conflict between the balcony of units 5 and 7.
- The private open space of unit 4 would be overlooked from the balconies of units 3, 5 and 7.
- The private open space area of unit 1 would be overlooked from the balcony of unit 3.
- The private open space and living area of unit 8 would not receive adequate sunlight.
- The courtyard of unit 8 would not be accessible from the main living area of this unit. It is accessed via the laundry.



- A garbage storage area has not been provided for the multi unit housing development.
- Convenient access is not provided for persons with a disability. In particular barrier free access is not provided to the adaptable unit 1 from the car parking area.

### 2.3.8 Principle 8: Safety and Security

*“Good design optimises safety and security, both internal to the development and for the public domain. This is achieved by maximising overlooking of public and communal spaces while maintaining internal privacy, avoiding dark and non-visible areas, maximising activity on the streets, providing clear, safe access points, providing quality public spaces that cater for desired recreational uses, providing lighting appropriate to the location and desired activities, and clear definition between public and private spaces.”*

A multiple number of access points are provided into the building and the location of each of the units are not clearly identifiable. Whilst the casual surveillance of common open space areas is achieved from the proposed units, the internal privacy of the ground floor courtyards to units 1 and 4 has not been achieved. The provision of low hedge and fencing to the courtyards of units 1 and 4 raises safety and security issues.

The plans show that screens would be provided to the south western balcony of unit 3 and planters and screens would be provided to the balcony of unit 4. However, no details with respect to these screens and planters have been provided. In addition, only a lattice screen has been provided between the balconies of units 5 and 7. Therefore the proposed development fails to minimise the risk of security and to ensure the privacy of future residents.

### 2.3.9 Principle 9: Social dimensions

*“Good design responds to the social context and needs of the local community in terms of lifestyles, affordability, and access to social facilities.*

*New developments should optimise the provision of housing to suit the social mix and needs in the neighbourhood or, in the case of precincts undergoing transition, provide for the desired future community.”*

The applicant failed to adequately address how the proposed conversion to multi-unit housing would meet the needs of the local community. The proposal results in the loss of already limited tourist facility in the Brooklyn area.

### 2.3.10 Principle 10: Aesthetics

*“Quality aesthetics require the appropriate composition of building elements, textures, materials and colours and reflect the use, internal design and structure of the development. Aesthetics should respond to the environment and context, particularly to desirable elements of the existing streetscape or, in precincts undergoing transition, contribute to the desired future character of the area.”*

The proposal is not consistent with the design principles contained within the RFDC. It is considered that the aesthetic quality of the building does not contribute to the desired future character of the Brooklyn area.

## 2.4 The Residential Flat Design Code

Clause 30(2) of SEPP 65 requires consent authorities to consider the design quality of the residential flat development when evaluated in accordance with the design quality principles, and the Department of Planning's Residential Flat Design Code (RFDC). The following is an assessment of the proposal against the requirements of the RFDC:

<b>Residential Flat Design Code</b>			
<b>Site Design</b>			
<b>Issue</b>	<b>Rule of Thumb</b>	<b>Provided</b>	<b>Compliance &amp; Comments</b>
<b>Building Depth</b>	10-18 metres	9.5m to 10m	Yes
<b>Deep Soil Zone</b>	Min 25%	Approx. 11%	No
<b>Communal open space</b>	25-30%	18%	No
<b>Private Open Space (POS) for Ground floor units</b>	Min 25 m <sup>2</sup> for each unit	A POS greater than 25m <sup>2</sup> provided for units 1, 4 and 8	Yes
<b>Min Dimension for POS at Ground Level</b>	4 m minimum in one direction	Primary courtyard area has 4 m minimum dimension for units 1, 4 and 8	Yes
<b>Pedestrian Access</b>	20 % of the dwellings should have barrier free access and comply with the accessibility standard of AS 1428	One adaptable unit (No. 1)	No -Continuous path of travel not provided to at least 2 units
<b>Vehicle Access</b>	Width of driveway maximum of 6m.	6m wide driveway	Yes
<b>Building Design</b>			
<b>Issue</b>	<b>Rule of Thumb</b>	<b>Provided</b>	<b>Compliance</b>
<b><i>Single aspect studio apartments</i></b>			
<b>Allotment layout</b>	Single aspect 8m maximum depth Back of kitchen 8m maximum from window	8 m maximum depth and kitchen distance 8 m from window or door	No However, acceptable

<b>Building Configuration</b>			
<b>Issue</b>	<b>Rules of Thumb</b>	<b>Provided</b>	<b>Compliance</b>
<b>Balconies</b>	Minimum depth 2m for primary balconies	> 2 m for primary balconies	Yes
<b>Storage area -</b>	One bed - 6 m <sup>3</sup> Two Bed - 8 m <sup>3</sup> Three bed - 10 m <sup>3</sup> with 50% accessible from apartments	Sufficient storage areas have been provided for each unit with 50 % space accessible from apartment	Yes
<b>Building Amenity</b>			
<b>Issue</b>	<b>Rule of Thumb</b>	<b>Provided</b>	<b>Compliance</b>
<b>Aspect</b>	Optimise northern aspect	50 % have northern aspect	Yes
<b>Solar access</b>	Living rooms and private open spaces for at least 70 percent of apartments in a development should receive a minimum of three hours direct sunlight between 9 am and 3 pm in mid winter.	70 % would receive 3 hrs direct sunlight between 9 am and 3 pm in mid winter.	Yes
<b>No of single aspect units with SW-SE aspect</b>	10% maximum	10%	Yes
<b>Cross ventilated units</b>	60 %	60 %	Yes
<b>Kitchen with access to natural ventilation</b>	25 %	> 25 %	Yes

As detailed in the above table, the proposed development does not comply with some 'rules of thumb' within the RFDC. The matters of non-compliance have been discussed in the above table and/or below as well as a brief discussion on compliance with relevant performance standards:

### 2.4.1 Deep Soil Zone

The proposal does not provide for sufficient deep soil landscaping area within the site. No additional deep zone landscaping areas have been proposed.

### 2.4.2 Communal Open Space

Due to the provision of ground floor private open space area for unit 1 and 4, the area of the existing communal open space has been reduced. The proposed communal area fails to comply with the rule of thumb of the RFDC.

### 2.4.3 Safety

The RFDC requires developments to be safe and secure for residents and visitors. To address this issue, the applicant provided the following statement with respect to the proposal:

- *A new point of entry is proposed to be provided to Apartment 8 in the location adjacent to the car parking proposed to be allocated to that apartment.*
- *The POS area to Apartment 4 would be provided with a fence and gated entry to that area. Therefore, the entry to that apartment would not be directly accessible from the common areas.*
- *The existing lattice screens to the balconies to Apartments 5 & 7 do not provide sufficient grip spaces.*
- *There are no communal entry points.*
- *Where practical, car parking spaces have been located close to relevant points.*
- *Opportunities for casual surveillance of the common areas, including the swimming pool and tennis court exists.*

The proposed development fails to provide secure access to the car parking area and direct and secure access to the units. There are numerous entry points into the building. The units that have access to a private courtyard would not have adequate height fencing to provide security and privacy to future occupants and the public.

### 2.4.4 Visual Privacy

The objective of 'Visual Privacy' in the RFBC are:

*“provide reasonable levels of visual privacy externally and internally, during the day and at night and to maximise outlook and views from principal rooms and private open space without compromising visual privacy.”*

In terms of internal amenity, the layout of the development gives rise to several privacy problems. There is an overlooking issue from the communal open space and pedestrian accessways into the private courtyards of the units 1 and 4. This is exacerbated due to low level hedges and screens proposed for the courtyards. While planting and/or fencing have been shown on the plans, these would need to be a sufficient height before an adequate privacy screen could be obtained.

The applicant has indicated that low hedging and screen fencing have been provided to allow for unrestricted water views. However, the retention of views compromises the visual privacy of these courtyards.

There is lack of privacy between the balconies of unit 5 and 7 as only a lattice screen is provided. The balconies of units 5 and 7 would overlook the courtyard of unit 4.

The south west balcony of unit 3 would overlook the courtyard of unit 4. There are similar overlooking issues from the ramp located between balcony of unit 3 and the balcony of unit 4. Whilst the plans show screens, no details with respect to these screens have been provided.

In the case of unit 8, the communal clothes drying area is located at an elevated level above the courtyard of this unit. The clothes drying area is approximately 1 to 1.5 metres above the courtyard level of unit 8, meaning that a fence to secure privacy would rise to a height of over 2 metres above that level. No details with respect to the proposed fencing for the courtyard of unit 8 has been provided.

The proposal provides unsatisfactory amenity in terms of visual privacy.

#### **2.4.5 Pedestrian Access**

The RFDC prescribes that a development should follow the accessibility standard set out in Australian Standard AS 1428 (parts 1 and 2), as a minimum and provide barrier free access to at least 20 percent of dwellings in the development.

The amended plans indicate that unit 1 is capable of being modified as an adaptable dwelling and car parking space numbered U1 would be provided as an accessible parking space. Level access from this space has not been provided to unit 1.

In addition, the applicant failed to provide sufficient information to demonstrate that barrier free access would be provided to at least 2 dwellings.

#### **2.4.6 Solar Access**

The applicant submitted a diagram indicating the angle of the sun on June 21 and the following statement with respect to solar access:

*“The existing building enjoys a northerly aspect and each of the apartments in the building has windows which address this aspect. With the exception of Apartment 8, the private open space areas of all apartments also address the northerly aspect.*

*It is apparent that the private open space areas of each unit within the building (except for apartment 8) would receive at least 3 hours of sunlight between 9am and 3pm mid winter.*

*The elevation of the sun in mid winter is such that at least part of the windows to the living rooms of all apartments would receive sunlight between 9am and 3pm in mid winter.”*

A copy of the applicant’s diagram is attached.

As indicated in the table, the proposed development would comply with the solar access requirements and the proposal is acceptable in this regard.

#### **2.4.7 Energy Efficiency and Water Conservation**

The applicant has not provided any details with respect to any energy efficiency and water conservation measures to be implemented. Therefore, Council is unable to assess these matters for compliance.

## 2.5 State Environmental Planning Policy (Building Sustainability Index : BASIX) 2004

In accordance with Clause 3 of Environmental Planning and Assessment Regulation 2000, BASIX applies in relation to any application for a change of building of use by which a building becomes a 'BASIX affected building.' A BASIX affected building and BASIX affected development are defined as follows :

*BASIX affected building means any building that contains one or more dwellings, but does not include a hotel or motel.*

*BASIX affected development means any of the following development that is not BASIX excluded development:*

- (a) *development that involves the erection (but not the relocation) of a BASIX affected building,*
- (b) *development that involves a change of building use by which a building becomes a BASIX affected building,*
- (c) *development that involves the alteration, enlargement or extension of a BASIX affected building, where the estimated construction cost of the development is:*
  - (i) *\$100,000 or more—in the case of development for which a development application or an application for a complying development certificate is made on or after 1 October 2006 and before 1 July 2007, or*
  - (ii) *\$50,000 or more—in the case of development for which a development application or an application for a complying development certificate is made on or after 1 July 2007,*
- (d) *development for the purpose of a swimming pool or spa, or combination of swimming pools and spas, that services or service only one dwelling and that has a capacity, or combined capacity, of 40,000 litres or more.*

A BASIX certificate has not been provided for the proposed development. The applicant claims that as the works are less than \$50,000, a BASIX certificate is not required as the development should be considered as BASIX optional development which is defined as follows:

*"BASIX optional development means any of the following development that is not BASIX excluded development:*

- (a) *development that involves the alteration, enlargement or extension of a BASIX affected building, where the estimate of the construction cost of the development is:*

- (i) *less than \$100,000—in the case of development for which a development application or an application for a complying development certificate is made on or after 1 October 2006 and before 1 July 2007, or*
  - (ii) *less than \$50,000—in the case of development for which a development application or an application for a complying development certificate is made on or after 1 July 2007,*
- (b) *development for the purpose of a swimming pool or spa, or combination of swimming pools and spas, that services or service only one dwelling and that has a capacity, or combined capacity, of less than 40,000 litres.”*

The applicant's submission is considered incorrect as BASIX optional development applies to existing BASIX affected buildings. The existing tourist facility is not classified as a BASIX affected building. The proposed development involves change of use by which a building becomes a BASIX affected building and therefore, a BASIX certificate must be submitted in accordance with the State Policy. This is especially the case given that the proposal provides for eight permanent occupancies.

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

The application has been assessed against the requirements of Sydney Regional Environmental Plan No. 20 – Hawkesbury Nepean River (SREP 20). This Plan requires Council to consider the impacts of a development on water quality, aquaculture, recreation and tourism. The compliance of the proposal with the relevant strategies and policies within SREP 20 is discussed below:

### **2.6.1 Riverine Scenic Quality**

The area is identified under 'Landscape Unit 4.2.6' as an area of Regional Scenic significance under the Hawkesbury Nepean Scenic Quality Study with a high visual sensitivity and high absorption capacity of the landscape. The resultant development would not establish a significant change to the scenic quality of the area.

### **2.6.2 Recreation and Tourism**

The proposal would not have an impact on the recreation and tourism opportunities in the area.

## **2.7 Brooklyn Development Control Plan**

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

Brooklyn Development Control Plan			
Control	Proposal	Requirement	Compliance
<b>Floorspace Ratio:</b>	0.61:1	0.4:1	No
<b>Car parking</b>	16 spaces (not functional)	16 spaces	No
<b>Site cover</b>	32%	40%	Yes

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

### 2.7.1 Floor Space Ratio

This matter is addressed in section 2.1 and 2.2 of this report.

### 2.7.2 Car Parking

As discussed in detail in section 2.9 of this report, the proposal fails to comply with Council's Car Parking Development Control Plan including AS2890.1 and AS2890.5.

### 2.7.3 Waste Minimisation and Management

The prescriptive measure of the element Waste Minimisation and Management requires that applications for multi-unit housing developments comprising more than 6 dwellings should identify a suitable area for waste collection point at the accessway frontage. The proposed development fails to comply with this requirement.

In addition, the site currently has 8 x 140 litre garbage bins, 8 x 240 litre recycling bins and 4 x 240 litre green waste bins. Council does not offer a shared bin service in Brooklyn. Thereby a total of 20 bins would be required to be accommodated on site. However, the applicant failed to provide a plan which identifies where bins are to be housed on site.

### 2.7.4 Crime Prevention

The element objective of Crime Prevention is to *"reduce crime risk and minimise opportunities for crime."* As discussed in sections 2.4 and 2.5 of this report, the proposed development is inconsistent with the crime prevention provisions of the Brooklyn Development Control Plan.

### 2.7.5 Sustainable Building.

The element objective of Sustainable Building requires *"development that reduces potable water and energy consumption and results in an improvement in the thermal performance of a residential building having regard to an average home in NSW"*. The applicant failed to submit a BASIX certificate in order to satisfy the requirements of this element.



### **2.7.6 Density**

The floor space ratio for the development exceeds the 0.4:1 development standard for the Residential AT (tourist) zone. The applicant submitted a State Environmental Planning Policy No. 1 objection to vary the development standard. This matter is addressed in Section 2.2 of this report.

### **2.7.7 Privacy, views, solar access**

The element objectives of the privacy and views contained in the Brooklyn DCP is to:

*“Ensure that residents can enjoy reasonable privacy in their home and private open space without being overlooked by neighbours.*

*Ensure that new development does not unreasonably restrict or reduce views of the waterways.”*

The privacy measures that have been proposed have been designed such that existing water views of the units are maintained. However, as discussed previously in this report, the retention of water views compromises the privacy of the proposed courtyards and fails to comply with the privacy element of the Brooklyn DCP.

### **2.7.8 Foreshore controls**

A 10m foreshore building line applies to the site. The Brooklyn Development Control Plan permits wharves, jetties, pontoons, slipways and single storey boatsheds (not exceeding 30m<sup>2</sup>) within the foreshore building line. No works are proposed within the foreshore building line.

### **2.7.9 Vehicle Access and Parking**

As discussed in sections 2.4 and 2.8 of this report, the proposed development fails to comply with the parking requirements of the Brooklyn DCP and the Car parking DCP.

## **2.8 Car Parking Development Control Plan**

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

<b>Car Parking Development Control Plan</b>			
<b>Control</b>	<b>Proposal</b>	<b>Requirement</b>	<b>Compliance</b>
<b>Unit 1:</b>	2 spaces	2 spaces	Yes
<b>Unit 2:</b>	1 space	1 space	Yes
<b>Unit 3:</b>	2 spaces	2 spaces	Yes
<b>Unit 4:</b>	2 spaces	2 spaces	Yes
<b>Unit 5:</b>	1 space	1 space	No
<b>Unit 6:</b>	2 spaces	2 spaces	Yes
<b>Unit 7:</b>	2 spaces	2 spaces	No
<b>Unit 8:</b>	2 spaces	2 spaces	No
<b>Visitor:</b>	2 spaces	2 spaces	No
<b>Total Car parking</b>	16	16	No

The proposal fails to comply with the requirements of Council's Car Parking DCP based on the following reasons:

1. The proposed car parking spaces have not been dimensioned to demonstrate compliance with AS 2890.1.
2. The proposed car parking spaces Nos. 12, 13, 14, 15 and 16 fail to comply with the provisions of AS2890.1 and AS2890.5.
3. The proposed car parking spaces Nos. 12, 13 and 14 are located within the sullage tanker stopping bay on the Brooklyn Road frontage. This bay was created to enable the sullage tanker to provide safe pump out services to the site. The proposed layout i.e. parallel parking for 3 cars would result in a vehicle needing to reverse park when other spaces are occupied. A reverse parking manoeuvre within this section of Brooklyn Road is considered unacceptable due to the relative high traffic volumes, poor site distances and narrow road carriage widths. Therefore, the proposal fails to satisfy the requirements of AS 2890.5 (On Street Car parking).
4. The proposed car parking spaces Nos. 15 and 16 are located in areas that would hinder pedestrian access and vehicular access and as such, fail to comply with AS 2890.1.

Based on the abovementioned design deficiencies, the proposed development is unsatisfactory with respect to the provision of car parking and would result in a less than safe outcome for residents and motorists/pedestrians on Brooklyn Road.

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

The proposed development has been assessed having regard to the relevant performance and prescriptive design standards within Council's Access and Mobility Development Control Plan (Access and Mobility DCP).

The Access and Mobility DCP requires the provision of one adaptable unit. The amended proposal identifies unit 1 as an accessible unit. However, as discussed previously in this report, a continuous path of travel has not been provided from the accessible car parking space (No. U1) to this unit. Council's assessment of the proposal in this regard is considered unsatisfactory.

### **2.10 Waste Minimisation and Management Development Control Plan**

The applicant has submitted a Waste Management Plan. As discussed previously in this report, the proposed development fails to comply with the provisions of the Waste Minimisation and Management Development Control Plan.

### **2.11 Section 94 Contributions Plan**

Council's Section 94 Plan applies to the development as it would result in the generation of additional dwellings. For the approved tourist facility, a Section 94 contribution was required to be paid. In calculating the required contribution consideration was given to the road/footpath works which have been required to be undertaken by the applicant including the dedication of the road widening.

The demand for public facilities generated by the proposed use would be higher than the demand for public facilities generated by the existing tourist facility. Therefore, should Council resolve to approve the application, an additional monetary contribution would be required for the proposed multi-unit housing development in accordance with Council's Section 94 Plan.

## **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 would be no adverse impact on the natural environment as a result of the development proceeding.

### **3.2 Built Environment**

#### **3.2.1 Traffic and Road Safety**

The proposed development is acceptable with regard to the level of traffic generated. However, Council's engineering assessment of the road safety of the development concludes that the location of the three car parking spaces within the previously utilised sullage tanker bay on the Brooklyn Road frontage, would result in a vehicle having to reverse park when the other car parking spaces are occupied. A reverse parking manoeuvre within this section of Brooklyn Road is considered unacceptable due to the relative high traffic volumes, poor site distances and narrow road carriage widths.

In this regard, the requirements of AS 2890.5 for On-Street Car parking have not been met.

### **3.3 Social Impacts**

The proposed change of use would result in the increase in (less than acceptable) housing stock in the area. However, it would result in the loss of short term tourist accommodation available in the locality.

### **3.4 Economic Impacts**

The proposal would not have an 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**

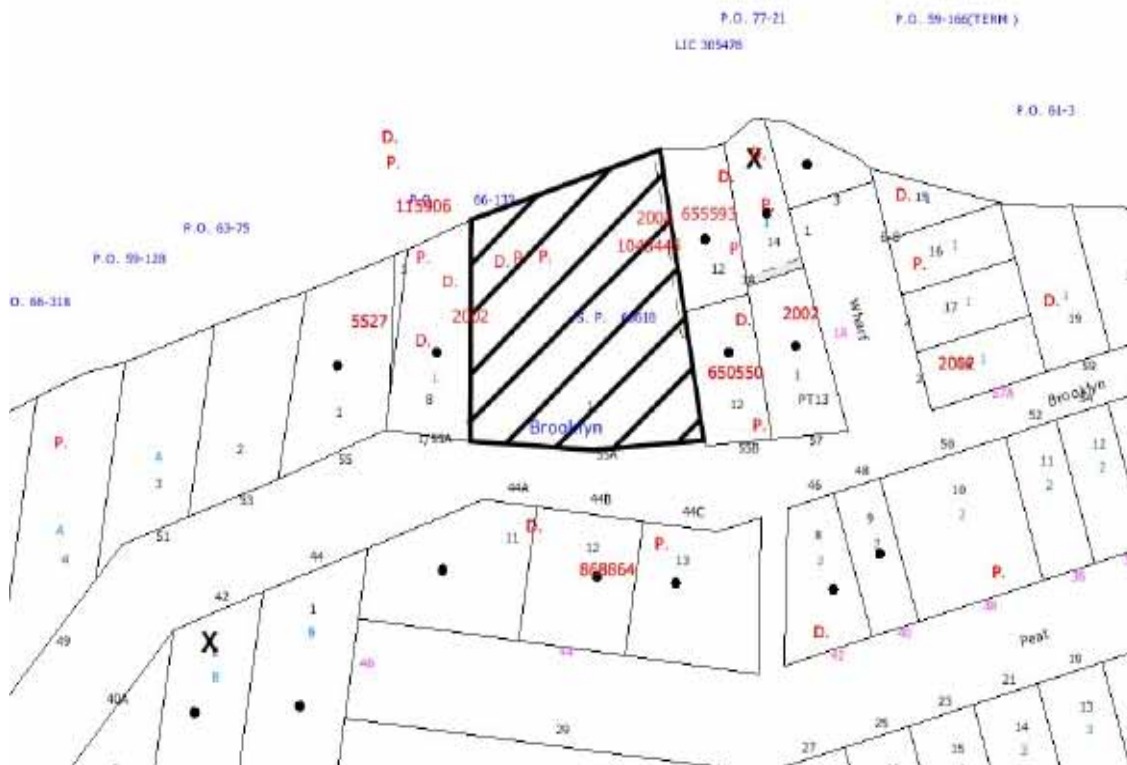
The land is identified as being subject to bushfire risk as it is classified as bushfire prone land. The application was referred to the Rural Fire Service (RFS). The RFS raised no concerns with respect to the proposal.

## **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 initially placed on public exhibition and was notified to adjoining and nearby landowners in accordance with Council’s Notification and Exhibition Development Control Plan. Two submissions were received during this period. The proposal was re-notified to adjoining, nearby landowners and objectors between 11 June 2009 and 25 June 2009 due to the lodgement of amended plans. During this period, Council received no further submissions. The map below illustrates the location of those nearby landowners who made a submission that are in close proximity to the development site.



**NOTIFICATION PLAN**

<ul style="list-style-type: none"> <li>• PROPERTIES NOTIFIED</li> </ul>	X SUBMISSIONS RECEIVED	 PROPERTY SUBJECT OF DEVELOPMENT	
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Two submissions objected to the development, generally on the following grounds that the development would result in:

- Development that exceeds the maximum floor space ratio.
- Development contrary to consent conditions of the strata approval which restrict the use to temporary accommodation.
- Unacceptable precedent for inappropriate development in the future in the Brooklyn area.
- Information not provided with respect to intended use of existing jetty and pontoon.

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

**6. THE PUBLIC INTEREST**

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

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

The Land and Environment Court has, in the decision of Senior Commissioner Roseth in the matter of *Michael Hesse v Parramatta City Council [2003] NSWLEC 313 revised - 24/11/2003*, established certain planning principles for determining the merits of adaptive re-use and public interest. Senior Commissioner Roseth stated:-

*“In my opinion, to be in the public interest, an adaptive re-use project must have an element of public benefit apart from resource conservation. One or more of the following circumstances must be present:*

- *the building is of historical or heritage value;*
- *the building is attractive and fits into its urban design context;*
- *the building is much loved by the community;*
- *the new use serves the public interest better than the existing use.”*

With respect to the proposal, none of the above circumstances applies. Accordingly, it is considered that the approval of the proposed multi-unit housing development would not be in the public interest on those grounds.

The development seeks to circumvent the HSLEP in providing for development that is otherwise prohibited. Approval of the development would set an undesirable planning precedent and is therefore not in the public interest.

## CONCLUSION

The application proposes change of use of an existing building from a tourist facility to multi-unit housing development comprising eight units.

The proposed development fails to comply with the provisions of Hornsby Shire Local Environmental Plan 1994, the State Environmental Planning Policy No. 65, State Environmental Planning Policy (BASIX), Brooklyn Development Control Plan, Waste Minimisation and Management Development Control Plan, Access and Mobility Development Control Plan and Car Parking Development Control Plan.

The proposal is unsatisfactory and is recommended for refusal.

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 and Elevations
3. Floor Plans
4. Applicant's Statement and Shadow Diagram
5. Applicant's Legal Advice

File Reference: DA/1731/2008  
Document Number: D01182584

**SCHEDULE 1**

1. Pursuant to the provisions of Section 79C(1)(a)(i) and (c) of the Environmental Planning and Assessment Act, 1979 and Hornsby Shire Local Environmental Plan 1994, the proposal fails to satisfy objectives (b) and (c) of the Residential AT (Low Density- Tourist Village) zone, in that , the development fails to promote a housing type which is compatible with and within the environmental capacity of the low density residential area.
2. Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act, 1979, the proposed development does not comply with Clause 14 'Density' and Clause 15 'Floor Space Ratio' within the Hornsby Shire Local Environmental Plan, 1994 and is an overdevelopment of the site.
3. Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act, 1979, it is considered that the proposal fails to justify that compliance with development standards should be varied under the provisions of SEPP No. 1.
4. Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of State Environmental Planning Policy No. 65 – Design Quality of Residential flat Development, as the applicant fails to demonstrate that design quality of the proposed development satisfies the design quality principles outlined in part 2 of the Policy.
5. Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of State Environmental Planning Policy No. 65 – Design Quality of Residential flat Development, in that the proposal does not comply with the design considerations as contained within the publication *Residential Flat Design Code*
6. Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act, the applicant has not submitted a BASIX certificate to accompany the development application in accordance with Part 6(1)(a) of State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004.
7. Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act, 1979, it is considered that the proposed development seeks to circumvent the prohibition of the strata subdivision of multi-unit dwellings under Clause 14(4) of HSLEP in that it would result in a density of units greater than 1 per 350m<sup>2</sup>.
8. Pursuant to Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act, 1979, the proposal is inconsistent with general provisions of the Brooklyn Development Control Plan with respect to car parking, waste minimisation and management, crime prevention and sustainable building.
9. Pursuant to Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act, 1979, the proposal is inconsistent with residential precincts provision of the Brooklyn Development Control Plan with respect to density, privacy and parking.
10. Pursuant to Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act, 1979, the proposal is inconsistent with the provisions of the Car Parking Development Control Plan, as the proposal fails to satisfy the requirements of AS2890.1 and AS2890.5



11. Pursuant to Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act, 1979, the proposal is inconsistent with the provisions of the Access and Mobility Development Control Plan, in that, a continuous path of travel has not been provided.
12. Pursuant to Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act, 1979, the proposal is inconsistent with the provisions of the Waste Minimisation and Management Development Control Plan, as adequate waste collection point and storage area has not been provided for the development.
13. Pursuant to Section 79C(1)(b) of the Environmental Planning and Assessment Act, it is considered that sufficient information has not been provided on the plans with respect to accurate scale, dimensions, details of screen planting and fencing to allow a proper assessment of the environmental impacts of the proposed development.
14. Pursuant to Section 79C(1)(b) of the Environmental Planning and Assessment Act, 1979, it is considered that the development would result in an unsafe traffic outcome on Brooklyn Road.
15. Pursuant to Section 79C(1)(c) of the Environmental Planning and Assessment Act, 1979, it is considered that the site is not suitable to accommodate the proposed development due to the inability of the development to satisfy a number of design criteria detailed in this notice of determination.
16. Pursuant to Section 79C(1)(e) of the Environmental Planning and Assessment Act, 1979, the proposed development would set an undesirable precedent for similar inappropriate development is therefore not in the public interest.

**- END OF REASONS FOR REFUSAL -**

**2 DEVELOPMENT APPLICATION - RESIDENTIAL - ALTERATIONS AND ADDITIONS  
LOT 13 DP 18039 DUSTHOLE POINT, BEROWRA CREEK**

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**Development Application No:** DA/592/2009

**Description of Proposal:** Alterations and additions to a dwelling house

**Property Description:** Lot 13 DP 18039 Dusthole Point, Berowra Creek

**Applicant:** Mr Michael Yarak

**Owner:** Mr M A Gresham and Mrs A Gresham

**Statutory Provisions:** Hornsby Shire Local Environmental Plan 1994  
Environmental Protection E (River Settlements)

**Estimated Value:** \$50,000.00

**Ward:** A

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**RECOMMENDATION**

THAT Council approve Development Application No. 592/2009 for alterations and additions to a dwelling at Lot 13 DP 18039 Dusthole Point, Berowra Creek, subject to the conditions of consent detailed in Schedule 1 of this report.

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**EXECUTIVE SUMMARY**

1. The application proposes alterations and additions to an existing dwelling house.
2. The proposal does not comply with Clause 15 of the Hornsby Shire Local Environmental Plan 1994 (HSLEP) with respect to the floor space ratio. 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

On 13 June, 2002, Council approved DA/142/2002 for alterations and first floor additions to an existing dwelling house. The approved development resulted in a floor space ratio for the development of 0.35:1 and a site coverage of 41 percent.

## THE SITE

The site has an area of 461.6 sqm, is located on the southern side of the Hawkesbury River at Dusthole Point and slopes steeply towards the foreshore. An unformed road is located along the southern boundary of the site.

The site is comprised of a part one and two storey dwelling house. The deck and a portion of the ground floor at the front elevation are raised on timber posts 3 metres above the natural ground level. The remainder of the land comprising the building envelope has been excavated to create a level building platform. A retaining wall is located in line with the mean high water mark. A pontoon and ramp to the north of the site provide access to the River.

Significant vegetation is located within the front and rear setback, however, the site has been significantly cleared to accommodate previous improvements to the dwelling. No vegetation is required to be removed to accommodate the proposed development.

Adjoining development comprises similar one and two storey dwelling houses and waterway structures.

## THE PROPOSAL

The application proposes the addition of a bedroom, ensuite and balcony to the second storey. The proposed additional floor area is 36.4m<sup>2</sup>. The development would be contained within the existing building footprint and would not require any excavation works or removal of vegetation.

## 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 does not contribute additional housing or to the employment capacity of the area, however the application is not inconsistent with the Strategy.

## 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 Environment Protection E (River Settlements) under the Hornsby Shire Local Environmental Plan 1994 (HSLEP). The objectives of the zone are:

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

The proposed development is defined as a “dwelling house” under the HSLEP and is permissible in the zone with Council’s consent. The proposed additions to the dwelling would not 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. (Refer to further discussion regarding the development’s consistency with the zone objectives in Section 2.2 of this report).

Clause 15 of the HSLEP prescribes that the maximum floor space ratio (FSR) of development within the Environmental Protection E (River Catchment) zone is 0.4:1. The application proposes additions that would result in a FSR of 0.439:1. The application includes an objection pursuant to State Environmental Planning Policy No.1 in support of the proposed variation. The matter of non-compliance is further discussed in sections 2.2 and 2.3.

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

The proposed development would result in a FSR of 0.439:1, exceeding the 0.4:1 standard as prescribed by Clause 15 of the HSLEP.

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

It is considered that point 1 is a relevant matter to consider in respect to this application.

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

*"The proposal would result in a minor variation to the FSR by 3.9 percent which equates to 18.3m<sup>2</sup>. The total floor area of the dwelling would be 202.96m<sup>2</sup> following the additions. The proposal is consistent in bulk and scale with adjoining residences located at Dusthole Point, Berowra Creek. The main reason for non-compliance is due to the small size of the existing allotment, that is, 461.6m<sup>2</sup> in comparison to the minimum 40 hectares for the Environmental Protection E zone.*

*The proposed alterations and additions meet the objectives for the Environmental Protection E zone based on the following assessment:*

- *In accordance with zone objective (a): "the first floor additions are within the footprint of the existing dwelling house and the proposed floor area would not have an impact on the natural environment surrounding the dwelling catchment of the Hawkesbury River,"*
- *In accordance with zone objective (b): "the proposed additional floor area (36.4m<sup>2</sup>) ensures the existing dwelling remains as low density housing that is compatible with the scale and density of the adjoining house, and the additional floor area would not impact on the environmental sensitivity of the locality or existing infrastructures,"*

- In accordance with zone objective (c): *“the additional floor area is within the existing building envelope, designed to present a consistent roof form and building height ensuring the visual and scenic qualities of the area are maintained.”*

In determining to support a departure from the standard, the proposed development is assessed against the objectives of the standard. The objective of Clause 15 is as follows:

*“To control the intensity and scale of development of land so that development will be in accordance with the land’s environmental capacity and zone objectives.”*

The clause provides controls based on the ratio of the floor space of a building to the total site area. The numerical controls prescribed by the clause provide a standardized measure of the environmental capacity of land, in relation to development that is permissible within the zone. The applicant has reasonably submitted that the objectives of the standard are achieved, notwithstanding non-compliance with the numerical standard of 0.4:1.

The proposed development would not result in the removal of any vegetation and would not negatively impact upon the surrounding bushland. As discussed in section 2.4 and 2.5.2, the proposed development is consistent with the themes of the area in design and scale and does not negatively impact upon the visual qualities of the area.

As such, the applicant has demonstrated compliance with the objectives of Clause 15 and the zone, and provided a well-founded argument in exceeding the FSR control.

### **2.3 Draft Hornsby Shire Local Environmental Plan 1994 Amendments 2008**

Section 79C(1)(a)(ii) of the Act requires Council to *“take into consideration relevant draft environmental planning instruments.”*

The assessment of the application has included a review of development standards and controls applicable to the river settlements and foreshores. Relevant to this application, Council resolved at its Planning Meeting on 1 July 2009 that the following amendment of the River Settlements and Foreshores review be implemented in Council’s Annual Amendments LEP:

- (3) *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;*

The site is located within the Berowra Creek river settlements area and is subject to the draft amendment indicated above.

General concerns raised by the public and the Council with the bulk and scale of new development and the potential for impact on the scenic quality of the waterways resulted in a review of the floor space ratio standard within the Environmental Protection E zone. The proposed FSR, being 0.3:1, reflects the dwellings currently being built and the environmental sensitivity of the riverscape, with the aim of reducing the maximum size of dwellings that can be constructed. Subject to compatibility with the Standard Instrument, a sliding scale, providing a maximum dwelling size of up to 180 sqm, is also proposed as part of the review.

The proposed development would result in a floor space ratio of 0.439:1 and a dwelling floor area of 202.96m<sup>2</sup>. As detailed in the SEPP 1 submission above, the proposal would result in a minor variation to the existing 0.4:1 FSR by 3.9 percent which equates to 18.3m<sup>2</sup>. Restricting the FSR of the dwelling to 0.3:1 would result in a maximum dwelling size of 138m<sup>2</sup> and would be overly restrictive.

Notwithstanding the above, the proposal is consistent in bulk and scale with adjoining residences located at Dusthole Point, Berowra Creek. The main reason for non-compliance is due to the small size of the existing allotment being 461.6m<sup>2</sup>.

The additional floor area would be provided on the first floor and would not impact on the environmental capacity of the site and would not have an adverse visual impact in the locality.

Irrespective of the draft Amendments LEP, the current application preserves the existing development standard controls (0.4:1 FSR) as the application has been made prior to the Gazettal of the LEP.

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

The site is located within the catchment of the Hawkesbury-Nepean Rivers. 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 Plan provides specific development controls regarding the environmental impact of development on the River system and riverscape and consideration as to the impact of a development on the water quality of the River. The development would result in a minor addition to an existing dwelling. The existing waste management system is considered sufficient to accommodate the minor intensification of the site and would not negatively impact upon the River.

The Plan sets guidelines for the protection of the scenic quality of the River. The area is described in the Hawkesbury-Nepean Scenic Quality Study as exhibiting scenic qualities of regional significance, being “*an outstanding example of a drowned valley landscape on the urban fringe of Sydney where limited transport access has produced modest maritime settlements surrounded by natural environments.*” The area is identified as being of high visual sensitivity; however, concerns are raised regarding the bulk and scale of redevelopment detracting from the unique natural and cultural elements. The study provides guidance in response to these concerns, suggesting “*designs for new buildings which de-emphasise bulk and are of broken up rather than simple prismatic shapes.*”

The development would maximise the in-fill potential offered by the existing building footprint by extending the first floor. Currently, the saw-tooth roof line provides visual appeal by segmenting the building and avoiding excessive bulk. The proposed development would provide a simplified roof line and visually appealing contrast between the solid second storey façade and open decking fronting the River. As detailed in Section 2.5.2 of this report, the design is consistent with the bushland and river themes of the area in both its design and finishes. The development provides adequate setbacks in relation to the adjoining properties, and the height does not extend beyond the tree canopy.

#### **2.5 River Settlements Development Control Plan**

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

<b>Medium Density Multi-Unit Housing Development Control Plan</b>			
<b>Control</b>	<b>Proposal</b>	<b>Requirement</b>	<b>Compliance</b>
<b>Density</b>	461.6 m <sup>2</sup>	40 ha	No*
<b>Floor Area</b>	202.96m <sup>2</sup>	184.64m <sup>2</sup>	No*
<b>Floorspace Ratio</b>	0.439:1	0.4:1	No*
<b>Site Coverage</b>	41.19%	30%	No*
<b>Height</b>	7.4 m	N/A	Yes
<b>Setbacks:</b>			
Front	2 m	2 m	Yes
East	1.1 m	1 m	Yes
West	2 m	1 m	Yes
Rear	6.15 m	4.5 m	Yes

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

### 2.5.1 Density

The proposal seeks to provide an additional 36.4m<sup>2</sup> to the first floor of the existing dwelling with the addition of a bedroom, ensuite and WIR. The resultant FSR would be 0.439:1. The proposed development is inconsistent with the FSR control of 0.4:1 for sites within the Environmental Protection E zone. The applicant submitted a SEPP 1 submission to request variation of the development standard on the basis that the variation is minor and the development is consistent in bulk and scale with the adjoining developments. A variation to the FSR standard is supported. (Refer to section 2.2 for further discussion regarding a SEPP No. 1 objection to the FSR development standard.)

The existing dwelling is non-compliant with the 30 percent site coverage development standard. The proposed addition is to the first floor. The proposed development would not generate additional site coverage and as such is not inconsistent with the objective of the element in protecting the environmental and scenic qualities of the area from overdevelopment.



### 2.5.2 Design

The proposed development would result in the extension of the first floor over the existing building footprint. As such, the development would not require any excavation works. Landscaping and existing vegetation would not be negatively impacted as a result of the proposed addition.

The ground floor is obscured from the River by an existing deck and pergola, which provides relief to the solid structure and reduces any adverse visual impact on the River. The dwelling is also partially screened by a significant tree located in the front setback.

The DCP requires the external colour of dwellings to complement the riverscape and be sympathetic to the surrounding bushland. In addition, dwellings should be consistent with the dominant design themes of adjoining development. The proposed extension would create a gable-style roof with a pitch at 9°, in line with the fall of the ground floor roof in front of the proposed addition. The applicant stated:

*“materials chosen compliment the existing dwelling fabric and will consist of weather board panelling, hard wood and metal roofing, semi-commercial section aluminium window units...The River facing façade incorporates a multiple stepped appearance in order to create a balanced and unobtrusive presence to the River.”*

The colour of the addition would match that of the existing dwelling, being light blue and yellow/cream, and is consistent with the themes of the river settlements.

### 2.5.3 Height

The proposed addition would be consistent with the existing first floor, and is consistent with the themes of the riverscape. The structure would not protrude above the tree canopy and would not negatively impact upon solar access to adjoining properties.

### 2.5.4 Setbacks

The proposed additions comply with the side, rear and foreshore setbacks contained within the River Settlements DCP.

### 2.5.5 Views, Sunlight, Privacy

The element requires development to take into account the views, solar access and privacy of adjoining dwellings through sympathetic design and orientation. The site is north facing, with the existing dwelling orientated to take advantage of natural light. The applicant provided a shadow diagram in accordance with the prescriptive measures that demonstrates the proposed addition would not negatively impact upon solar access to the adjoining properties. The proposed addition would not generate any privacy implications as there are no windows or active areas proposed adjacent to the adjoining property. Finally, the proposed structure does not interrupt the views of the River enjoyed by the adjoining properties, as it is consistent with the established setback of the area.

### **3. ENVIRONMENTAL IMPACTS**

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

#### **3.1 Natural Environment**

The proposed development is restricted to the existing building footprint and would not result in the removal of any vegetation. Water quality within the River would not be negatively affected during construction subject to compliance with conditions of consent regarding sediment and erosion control, and the removal of excavated soils.

#### **3.2 Built Environment**

The design and built form of the proposed development is discussed in detail in section 2.5 of this report. The development provides for additional floor space that is consistent with the objectives of the zone and is sympathetic to the surrounding built and natural environment.

##### **3.2.1 Building and Sustainability Index**

The applicant has provided a BASIX certificate in accordance with the Act and the Regulations. A condition of consent is recommended in Schedule 1 to ensure that mandatory targets in energy and water efficiency are attained.

##### **3.2.2 Effluent Disposal**

The applicant provided details of an existing wastewater management system approved under application number 10/02/CT. The current system is considered sufficient to provide for the intensified use of the land.

#### **3.3 Social Impacts**

The proposed development would not result in any social impacts for the area.

#### **3.4 Economic Impacts**

The proposed development would not result in any economic impacts for the area.

### **4. SITE SUITABILITY**

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

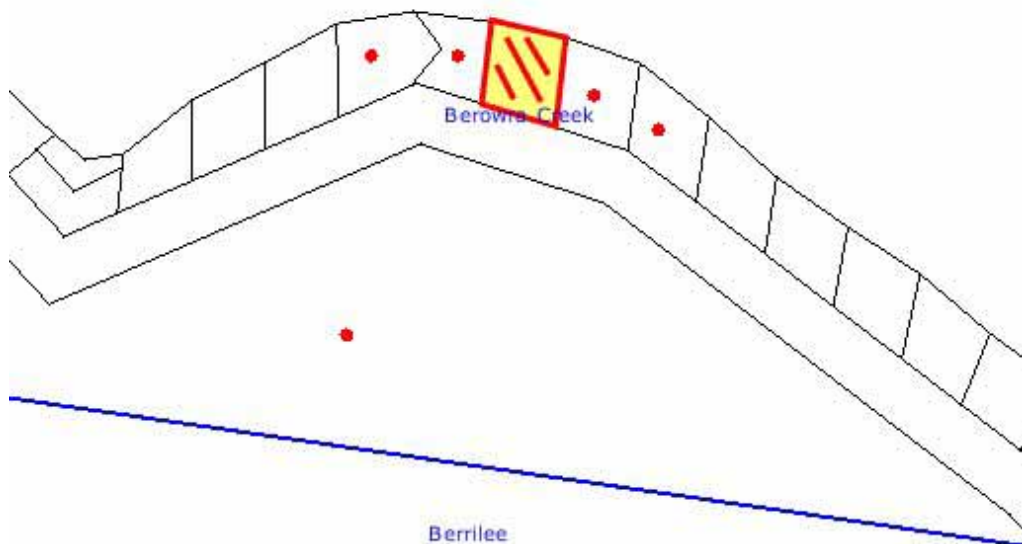
The site is located on the riverbank and exhibits difficult topographical features. The site is steeply sloping, is subject to landslip and is characterised by a rock outcrop underneath the existing foundations. The proposed addition is located within the existing building footprint and is not impacted by the topographical elements. The site is considered suitable for the proposed development and would have minimal impact on the natural and built environment.

**5. PUBLIC PARTICIPATION**


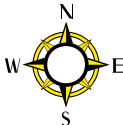
Section 79C(1)(d) of the Act requires Council to consider “any submissions made in accordance with this Act”.

**5.1 Community Consultation**

The proposed development was placed on public exhibition and was notified to adjoining and nearby landowners between 18/06/2009 and 9/07/2009 in accordance with Council’s Notification and Exhibition Development Control Plan. During this period, Council received no submissions. The map below illustrates the location of 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>	X SUBMISSIONS RECEIVED	 PROPERTY SUBJECT OF DEVELOPMENT	
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**5.2 Public Authorities - Rural Fire Service**

The site is located within a bushfire prone area. The application was referred to the local RFS for assessment, however, no return correspondence was received. Recommended conditions of consent in relation to bushfire protection are listed in Schedule 1.

## 6. THE PUBLIC INTEREST

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

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

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

## CONCLUSION

The application proposes alterations and additions to an existing dwelling. The proposed development does not comply with the floorspace ratio development standard outlined in Clause 15 of the Hornsby Shire Local Environmental Plan 1994, and is inconsistent with the River Settlements and Foreshore Review for the draft Annual LEP Amendments. An objection under State Environmental Planning Policy No. 1 - Development Standards has demonstrated compliance with the zone objectives, and is consistent with the established test for assessing SEPP 1 objections.

The application does not meet some numerical development standards under Council’s River Settlements Development Control Plan. Matters of non-compliance are not fatal to the application and the merits of the proposal are addressed within the report.

No submissions were received in respect of the application.

Having regard to the relevant matters for consideration and the circumstances of the case, 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. Architectural Plan
3. Shadow Diagram
4. Sediment and Erosion Control Plan

File Reference: DA/592/2009



**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:

<b><i>Plan No.</i></b>	<b><i>Drawn by</i></b>	<b><i>Dated</i></b>
02122008 - Proposed First Floor Extension	Michael Yarak - ArchWood Design	18/05/2009
Shadow Diagram	Michael Yarak - ArchWood Design	N/A
Sediment and Erosion Control Plan	Michael Yarak - ArchWood Design	N/A

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

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

**2. Building Code of Australia**

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

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

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

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

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

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

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

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

#### 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. Design and Construction - Bushfire Attack Category

The development must be constructed in accordance with *Australian Standard 3959-2009 – 'Construction of buildings in bush fire-prone areas'* sections 5, 6 and 7 and the following conditions based on *Planning for Bush Fire Protection 2006* and the *NSW Rural Fire Service's* publication *Standards for Asset Protection Zones:-*

- a. All materials are to have a Flammability Index no greater than 5.
- b. All guttering and valleys are to be screened with non-corrosive mesh to prevent the build up of flammable material. Any materials used shall have a Flammability index no greater than 5.
- c. All windows directly exposed to the bushfire hazard are to be fitted with toughened or fire rated glass capable of withstanding up to 40 kW square metre radiant heat flux loading and fitted non-combustible shutters.
- d. All glazing must be capable of withstanding up to 29kW/m<sup>2</sup> of radiant heat flux loading.

- e. Proposed bi-fold doors, French door(s) and the like facing the bush fire hazard must be a proprietary type door system incorporating 5mm toughened glass, non combustible seals, and a design that does not permit gaps greater than 1.8mm in diameter to prevent the penetration of embers. Draught excluders, seals and door furniture must be manufactured from materials having a “Flammability Index” no greater than 5. The entire door system (including jamb and seals) must be designed and constructed to withstand 29kW/m<sup>2</sup> of radian heat flux.
- f. All exposed/external timber used in the development must be of a fire resistant timber species as identified in RFS Development Control Note 001. These species include Blackbutt, Kwila (Merbau), Red Iron Bark, Red River Gum, Silver Top Ash, Spotted Gum and Turpentine.

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

## 6. Asset Protection Zones

At the commencement of building works the entire property must be maintained as an inner protection area (IPA) as outlined within the document ‘*Planning for Bush Fire Protection 2006*’ and the NSW Rural Fire Service’s document ‘*Standards for Asset Protection Zones.*’ The Inner Protection Area should comprise the following:

- a. Minimal fine fuel at ground level.
- b. Vegetation that does not provide a continuous path to buildings for transfer of fire.
- c. Shrubs and trees that do not form a continuous canopy and vegetation planted or cleared in clumps rather than continuous rows.
- d. Species that retain dead material or deposit excessive quantities of ground fuel are avoided.
- e. Shrubs and trees pruned or removed in such a way that they do not touch or overhang the buildings.
- f. Vegetation located far enough away from the buildings so that plants do not ignite the buildings by direct flame contact or radiant heat emission.
- g. An unobstructed pedestrian access around the building to allow for residents and service personnel to undertake property protection activities.

## 7. Erection of Construction Sign

A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

- 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.*

### **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.

#### **8. 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

#### **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. 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.

### **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'*

#### **11. Fulfilment of BASIX Commitments**

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

## 12. Smoke Alarms – Dwelling Additions

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

## 13. Wastewater to Existing System

All wastewater generated within the approved development must be directed to the existing onsite sewage management system servicing the site.

**- END OF CONDITIONS -**

### ADVISORY NOTES

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

### Environmental Planning and Assessment Act 1979 Requirements

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

### Long Service Levy

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

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

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

### **Tree Preservation Order**

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

*Note: A tree is defined as a 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.

**3 DEVELOPMENT APPLICATION - ALTERATIONS AND ADDITIONS TO A DWELLING-HOUSE.  
NO. 118 WOONONA AVENUE, WAHROONGA**

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<b>Development Application No:</b>	DA/434/2009
<b>Description of Proposal:</b>	Alterations and additions to a dwelling-house and the erection of a carport.
<b>Property Description:</b>	Lot 11, DP 13036, No. 118 Woonona Avenue, Wahroonga
<b>Applicant:</b>	Accomplished Construction and Design Pty Ltd
<b>Owner:</b>	Mr Darren Brownlee and Ms Annette Hawkins
<b>Statutory Provisions:</b>	Hornsby Shire Local Environmental Plan, 1994 Residential A (Low Density)
<b>Estimated Value:</b>	\$433,357
<b>Ward:</b>	A

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**RECOMMENDATION**

THAT Development Application No. 434/2009 for alterations and additions to a dwelling-house and the erection of a carport at Lot 11, DP 13036, No. 118 Woonona Avenue, Wahroonga, be approved subject to the conditions of consent detailed in Schedule 1 of this report.

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**EXECUTIVE SUMMARY**

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

## THE SITE

The rectangular shaped site has an area of 695.5m<sup>2</sup> and is located on the high, western side of Woonona Avenue Wahroonga. The front and rear boundaries have a width of 15.24m and the northern and southern side boundaries have a length of 45.72m.

The site contains a two level, timber clad dwelling-house with a tile roof. The upper floor level contains bedrooms, habitable rooms and living areas and a rear-facing deck. The lower level contains a single garage and a laundry.

The site experiences a crossfall of 15% with a steep grade rising approximately 4 metres from street level to the front of the existing dwelling-house. A timber staircase provides pedestrian access from street level.

There are four trees affected by the proposal, a Frangipani and a Palm located at the rear of the existing dwelling-house, a Jacaranda located adjacent to the existing driveway and a Japanese Maple located at the front of the adjoining property, No. 120 Woonona Avenue.

The adjacent property to the north (No. 120 Woonona Avenue) contains a split level, fibro and timber clad dwelling-house. The dwelling-house includes a large unroofed first floor level deck located on the northern side. The adjacent property to the south (No. 116 Woonona Avenue) contains a single storey, timber clad residence with a subfloor level garage.

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

## THE PROPOSAL

The application proposes alterations and additions to a dwelling-house and the erection of a double carport. The lower level alterations and additions include the extension of the existing garage and laundry and its conversion to a bedroom, ensuite, rumpus room and foyer.

On the upper level, the alteration and additions include an extension to the rear of the dwelling-house, increasing the size of the existing living rooms and bedrooms. The proposed external cladding of the building would be weatherboard. A timber deck is also proposed at the rear of the dwelling-house.

A double carport is proposed at the front of the property.

## 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 contributing to the housing choice in the locality.

## 2. STATUTORY CONTROLS

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

### 2.1 Hornsby Shire Local Environmental Plan, 1994

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

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

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

Clause 15 of the HSLEP prescribes that the maximum floor space ratio (FSR) of development within the zone is 0.4:1. The applicant addresses this requirement by proposing an FSR of 0.34:1.

### 2.2 Dwelling House Development Control Plan

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

<b>Dwelling House Development Control Plan</b>			
<b>Control</b>	<b>Proposal</b>	<b>Requirement</b>	<b>Compliance</b>
<b>Floor Space Ratio</b>	0.34:1	0.4:1	Yes
<b>Site Cover</b>	37%	40%	Yes
<b>Dwelling Height</b>	7.2m	9m	Yes
<b>Storeys</b>	1 and 2	2	Yes
<b>Building Length</b>	17.1m	24m	Yes
<b>Wall Length</b>	15.1m	10m	No
<b>Private Open Space</b>	258m <sup>2</sup>	120m <sup>2</sup>	Yes
<b>Landscaping</b>	58%	45%	Yes
<b>Car parking</b>	2 spaces	2 spaces	Yes
<b>Setbacks:</b>			
<b>Dwelling</b>			
- Front	9.5m	6m	Yes
- Side	1.59m	1m	Yes
- Side	0.92m	1m	No
- Rear	15.6m	5m	Yes
<b>Carport</b>			
- Front	4m	6m	No
- Side	0m	1m	No

As detailed in the above table, the proposed development does not comply with the unbroken wall length and front and side setback requirements under the Dwelling House DCP. These matters of non-compliance are detailed below, together with a brief discussion on compliance with relevant performance standards.

### 2.2.1 Design

The proposed 15.1m unbroken length of the southern wall and the 12.1m unbroken length of the northern wall do not comply with the prescriptive measures of the Design element, which states that “*walls should not exceed 10m in length without a physical ‘break’ such as an indentation, bay window or change in level*”. The purpose of this control is to prevent large blank walls facing neighbouring properties.

The northern elevation is two-storey in height and contains an acceptable design balance between solid walls and the three windows on each of the levels. The roof design also includes two gables facing the side boundary which also provides articulation effectively addressing any perceived detrimental visual impacts resulting from this wall length. The elevation of the building would not be viewed as a whole element from the neighbouring

property due to the location of the dwelling on that property. Accordingly, the impact of the wall length would be significantly reduced.

The southern façade is single storey in height with windows within the wall and a glazed skylight within the roof plane. The roof design also includes the gable end facing the side boundary. The size and location of these windows and the articulation in the roof effectively address any perceived detrimental visual impacts resulting from this wall length.

It is considered that a departure from the development standard is acceptable in the circumstances of the case.

### **2.2.2 Setbacks**

The additions would result in a side boundary setback of 0.92m on the northern side of the allotment. The carport has a front boundary setback of 4m and a zero side boundary setback also on the northern side of the allotment. These setbacks do not comply with the prescriptive measures of the Setbacks element which requires that structures be set back 6m from the front and 1m from side boundaries.

The proposed reduction in the northern side setback is considered acceptable as the additions to the upper and lower levels follow the same plane as the walls of the existing dwelling-house and the 80mm variation to the 1m setback control would be indistinguishable. Further, the dwelling at No. 120 Woonona Avenue backs onto the subject property and does not enjoy amenity along that elevation.

Whilst the proposed siting of the carport on the common boundary with No. 120 Woonona Avenue does not comply with the Dwelling House DCP prescriptive 1m setback requirement, the subject carport would replace the existing carparking area which exists in the same location. As a consequence, the new carport would have similar impacts to the current situation.

To address the owners concerns regarding light spill and noise a 1.5m high screen that has openings no greater than 30mm erected along the northern side of the carport is recommended.

Having regard to the steep topography of Woonona Avenue and the numerous carports and garages in the immediate area with reduced front boundary setbacks similar to the proposed carport, including carports at No. 49 and No. 122 Woonona Avenue and garages at No. 102, 104 and 122 Woonona Avenue, the proposed 4m setback is considered acceptable. In summary, it is considered that in the circumstances of the case, the proposed carport setbacks would not detract from the character of the locality and would have no greater impact on the neighbour's property than the existing carparking area and therefore, a variation to the setback control is acceptable.

### **2.2.3 Privacy**

There are currently two large windows located in the upper level of the northern wall of the existing dwelling-house both of which currently overlook onto the blank wall and roof of the dwelling at No. 120 Woonona Avenue. One of these windows would be replaced with two smaller windows. The new windows would reduce existing privacy impacts and consequently, the proposed design and window placement is acceptable.



The new windows located in the lower level are highlight in design, with sill heights 1.5m above the floor level. As a consequence, no overlooking would occur.

The northern side of the new first floor level deck has been designed with a 1.8 solid privacy screen, which would prevent the direct overlooking of premises No. 120 Woonona Avenue.

The proposed carport at the front of the property would replace the existing carparking spaces in the same location and would have no greater privacy impacts as a consequence. As stated above, a 1.5m high screen is recommended along the northern side of the carport. The provision of this screen would also serve to minimise any perceived privacy impacts.

The proposal meets the objectives of the Privacy element of the Dwelling House DCP and is considered to be acceptable.

#### **2.2.4 Vehicle Access and Parking**

The proposed carport would provide parking for two vehicles. To establish acceptable driveway gradients and manoeuvrability it is proposed that the existing front deck be reduced in size and the existing carparking area removed and lowered by approximately 0.6m. This would have the outcome of negating the need for a retaining wall between the subject property and No. 120 Woonona Avenue, which was of concern to that owner.

The proposal meets the objectives of the vehicle access and parking element of the Dwelling House DCP and is considered to be acceptable.

### **3. ENVIRONMENTAL IMPACTS**

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

#### **3.1 Natural Environment**

There are four trees affected by the proposal, a Frangipani and a Palm tree located at the rear of the existing dwelling-house, a Jacaranda located adjacent to the existing driveway and a Japanese Maple located at the front of the adjoining property, No. 120 Woonona Avenue. It is Council’s assessment that these trees are not considered to be significant.

The Japanese Maple would be affected by the proposed carport to the extent that some branches that have grown over the common boundary line would have to be removed. The removal of these branches would not have any significant planning implications nor would it affect the life expectancy of the tree. The main tree branches would remain unaffected.

Further, the proposed carport would not affect the root system of the Japanese Maple as the proposed carport would be located in the same position and on the sandstone rock shelf as the existing concrete carparking area.

#### **3.2 Built Environment**

The proposed alterations and additions and carport would be consistent with the character of the established built form of the residential development in the locality.

### 3.3 Social Impacts

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

### 3.4 Economic Impacts

The proposal would not result in any economic impacts.

## 4. SITE SUITABILITY

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

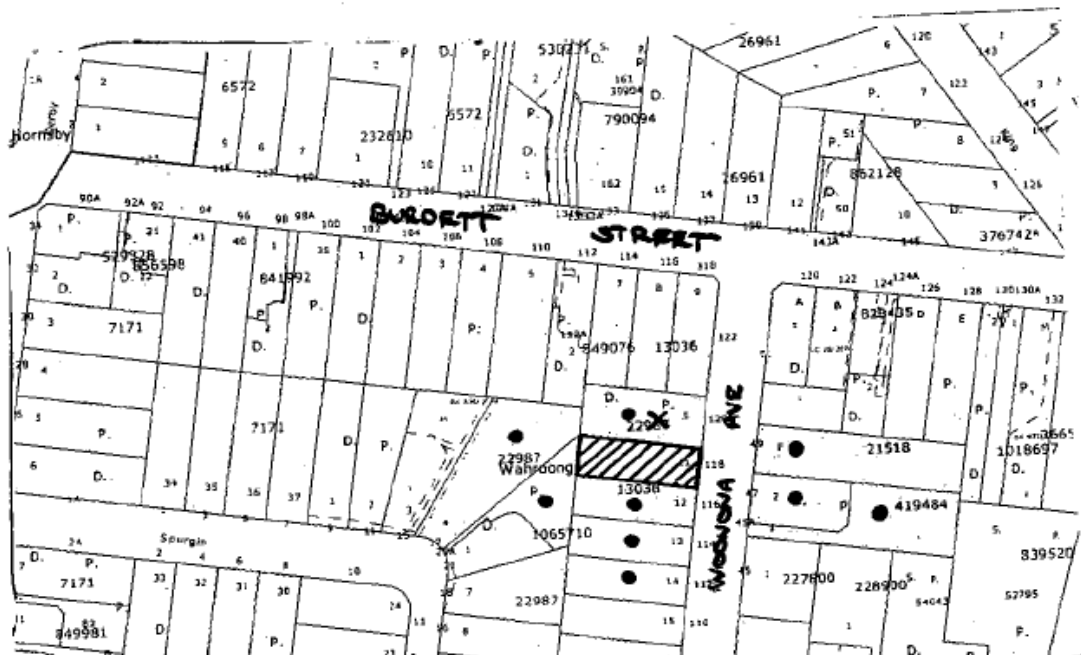
The site is not constrained by flooding, landslip, bushfire or threatened flora or fauna and is suitable for low density residential development of the type proposed.

## 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 and 5 May 2009, in accordance with Council’s Notification and Exhibition Development Control Plan. During this period, Council received one submission. The map below illustrates the location of the nearby landowner who made a submission that is in close proximity to the development site.



NOTIFICATION PLAN

<ul style="list-style-type: none"> <li>• PROPERTIES NOTIFIED</li> </ul>	<ul style="list-style-type: none"> <li>X SUBMISSIONS RECEIVED</li> </ul>	 PROPERTY SUBJECT OF DEVELOPMENT	
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Two submissions have been received, one from the owner of No. 120 Woonona Avenue and the other from a planning consultant acting on behalf of the owner of No. 120 Woonona Avenue. Both submissions raise concerns regarding privacy, setbacks, design, height, carparking, fencing and retaining walls, noise, impacts on trees, sediment controls, external finishes and the inaccurate and insufficient details on the plans.

Those matters not addressed in the body of the report are addressed as follows:

#### **5.1.1 Inaccurate and insufficient details on the plans**

- Floor levels and excavation: The submitted plans include a survey plan, showing contours that identify the existing ground level and the proposed levels of the development. The plans also show that the existing garage slab would be removed and the lower level excavated by 0.2m - 0.4m to achieve the required room heights. A 1m excavation would take place on the southern side of the rumpus room resulting from the expansion of the lower level. Excavations would also occur to establish a level platform for the carport and the new driveway.
- Location of stormwater and sewerage pipes: All wastewater and stormwater drainage pipes would be connected to the existing drainage system that serves the existing dwelling-house.
- Landscape concept plan, clothesline and trampoline: Whilst a specific concept landscape plan has not been submitted with the application, there is sufficient detail on the plans to determine that at least 45% of the site is available for landscaping purposes and the provision of a clothesline. The location and use of the trampoline is not a land use planning matter and Council cannot control the use or placement of this device on private property.

The plans and specifications submitted with the application contain sufficient detail to enable a full and proper assessment to be made.

#### **5.1.2 Sediment and Erosion Controls**

All sedimentation controls would be located wholly within the boundaries of the subject premises. Where sediment barriers are to be installed along the northern property boundary, the barrier would be constructed using straw bales. The installation of these straw bails would prevent damage to premises No. 120 Woonona Avenue.

The proposal meets the objectives of the Soil and Water Management element of the Dwelling House DCP and is considered to be acceptable.

#### **5.1.3 On-site storage of materials and garbage bins**

There is sufficient space on the site to accommodate domestic storage and the off-street parking of vehicles.

#### **5.1.4 Noise impacts**

The alteration and additions would have minimal noise impacts on the amenity of the adjacent property at No. 120 Woonona Avenue.

The proposal meets the objectives of the Acoustics element of the Dwelling House DCP and is considered to be acceptable.

#### **5.1.5 Boundary Fence and Retaining Wall**

The application does not propose the erection of boundary fencing. The erection of boundary fencing is subject to negotiation and agreement between the respective property owners in accordance with the requirements of the *Dividing Fences Act, 1991*.

The required pier and beam construction for the footings supporting the concrete floor of the rumpus room and guest bedroom would ensure that the existing retaining wall located between the subject premises and No. 120 Woonona Avenue is not impacted upon.

To establish a level platform for the proposed garage and to establish an acceptable driveway grade the carport would be excavated 0.6m lower than the existing ground level therefore negating the need for retaining walls.

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

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

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

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

### **CONCLUSION**

The application proposes the alterations and additions to an existing dwelling house and the erection of a carport.

The proposal is consistent with the objectives of the Hornsby Shire Local Environmental Plan, 1994 and the Dwelling House DCP. The development would have minimal social, economic and environmental impacts on both the natural and built environments in the locality. It is considered that the objections to the development would not in themselves, warrant refusal of the application.

Council received submissions from one adjoining property owner concerning the development. Matters raised in the submissions can be adequately overcome subject to compliance with relevant conditions.

Having regard to the assessment of the proposed development and the circumstances of the case, it is recommended that Council approves the application.

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

SIMON EVANS  
Manager - Assessment Team 1  
Planning Division

SCOTT PHILLIPS  
Executive Manager  
Planning Division

**Attachments:**

1. Locality Plan
2. Site Plan
3. Floor Plans
4. Elevations
5. Section
6. Sediment Control Plan

File Reference: DA/434/2009  
Document Number: D01193596

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

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

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

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

**1. Approved Plans and Supporting Documentation**

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

<i>Plan</i>	<i>Drawn by</i>	<i>Dated</i>
Architecturals and Floor Plans	KK	26 March 2009
Site Plan - Job No. 86842	John Lowe and Associates P/L	11 March 2009
Sediment Plan - Job No. 86842	John Lowe and Associates P/L	11 March 2009

**2. Amendment of Plans**

The approved plans are to be amended as follows:

- a. The privacy screen along the northern side of the proposed rear deck must be of solid construction to 1.8m in height.
- b. A 1.5m high screen with no openings more than 30mm wide must be erected along the northern side of the carport.

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

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

**3. Building Code of Australia**

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

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

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

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

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

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

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

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

#### 6. 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.

**7. Erection of Construction Sign**

A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

- 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.*

**8. Erosion and Sediment Control**

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

Any sediment and erosion controls erected along the northern boundary must be constructed of straw bales.

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

**REQUIREMENTS DURING CONSTRUCTION**

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

**9. Construction Work Hours**

All work on site (including demolition and earth works) must only occur between the following hours 7 am and 5 pm Monday to Saturday. No work is permitted on Sundays or Public Holidays.



## 10. Demolition

All demolition work must be carried out in accordance with *Australian Standard 2601-2001 – The Demolition of Structures*.

## 11. Council Property

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

## 12. Disturbance of Existing Site

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

### **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.*

## 13. Fulfilment of BASIX Commitments

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

## 14. Stormwater Drainage

The stormwater drainage system for the development must be designed and constructed for an average recurrence interval of 20 years and be gravity drained directly to Council's street drainage system.

## 15. 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.

## 16. Smoke Alarms

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

## 17. Retaining Walls

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

**- END OF CONDITIONS -****ADVISORY NOTES**

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

**Environmental Planning and Assessment Act 1979 Requirements**

The Environmental Planning and Assessment Act 1979 requires:

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

**Long Service Levy**

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

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

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

**Tree Preservation Order**

To ensure the maintenance and protection of the existing natural environment, it is an offence to ringbark, cut down, top, lop, remove, wilfully injure or destroy a tree outside 3 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 3 metres, and which develops many branches, usually from a distance of not less than 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 advice and information should be obtained prior to disturbing the material. It is recommended that a contractor holding an asbestos-handling permit (issued by *WorkCover 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 *WorkCover* Asbestos and Demolition Team on 8260 5885.

**4 DEVELOPMENT APPLICATION - SECTION 82A REVIEW - ALTERATIONS AND ADDITIONS TO A DWELLING-HOUSE  
1 GLENOAK WAY, CHERRYBROOK**

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<b>Development Application No:</b>	DA/824/2008
<b>Description of Proposal:</b>	Alterations and additions to a dwelling-house (Section 82A Review)
<b>Property Description:</b>	Lot 2, DP 285545, No. 1 Glenoak Way, Cherrybrook
<b>Applicant:</b>	Mr Laksha Siriwardena
<b>Owners:</b>	Mr Nambukara Tantri Mahinda Senadeera and Mrs Widanalage Shanti Hycinth Senadeera
<b>Statutory Provisions:</b>	Hornsby Shire Local Environmental Plan 1994 Residential A (Low Density)
<b>Estimated Value:</b>	\$20,000
<b>Ward:</b>	B

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**RECOMMENDATION**

THAT Development Application No. DA/824/2008 for alterations and additions to a dwelling-house at Lot 2, DP 285545, No. 1 Glenoak Way Cherrybrook, be approved subject to the conditions of consent detailed in Schedule 1 of this report.

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**EXECUTIVE SUMMARY**

1. On 2 October 2008, Council refused under delegated authority, Development Application No. 824/2008 for alterations and additions to the subject dwelling-house.
2. Pursuant to Section 82A of the Environmental Planning and Assessment Act, 1979 (the Act), a request has been made of Council to review its determination.
3. The proposal does not comply with the 0.4:1 floor space ratio development standard under the Hornsby Shire Local Environmental Plan, 1994 (HSLEP). Consequently, the application has been supported by an objection under State Environmental Planning Policy No. 1 – Development Standards (SEPP 1) seeking approval of a variation to this standard.
4. No submissions have been received in respect of the application.

5. It is recommended that Council changes the determination and approves the application, subject to conditions.

## HISTORY OF THE APPLICATION

On 25 August 2008, Council refused DA/824/2008 on the following grounds:

1. *The proposal does not comply with the prescriptive measures, performance criteria and objectives of the Scale element of the Dwelling House DCP. The proposed 0.41:1 floor space ratio does not comply with the 0.4:1 floor space ratio pursuant to Clause 15 of the Hornsby Shire Local Environmental Plan 1994, resulting in an overdevelopment of the site which is inconsistent with the intensity and scale of the development within the locality.*
2. *The proposal does not comply with the prescriptive measures, performance criteria and objectives of the Private Open Space element of the Dwelling House DCP which requires a minimum area of 120m<sup>2</sup> to be available for private open space at the rear of the dwelling-house with a minimum dimension of 5m, exclusive of driveways. With the proposed alterations to the rear of the existing dwelling-house, the private open space would be reduced to approximately 52m<sup>2</sup> and does not provide adequate, useable private open space to support outdoor activities and use.*

On 15 June 2009, a request for Council to review its determination of the application was lodged pursuant to Section 82A of the Act. In support of the request, a submission under SEPP 1 has been lodged by the applicant seeking to vary the floor space ratio development standard.

## THE SITE

The rectangular shaped allotment has an area of 500m<sup>2</sup> and faces the cul-de-sac at the north-west end of Glenoak Way, Cherrybrook. The topography of the land experiences an average fall of 10% to the rear, north-west boundary of the allotment. The rear of the site adjoins an Open Space A (Public recreation – Local) Zone.

The site accommodates a contemporary designed, one and two storey dwelling-house of brick construction with a tiled roof.

No trees would be removed as part of this development.

The immediate area is characterised by a predominance of two storey dwelling-houses of similar age and design, surrounded by extensive landscaped garden areas.

## THE PROPOSAL

The application proposes alterations and additions to the existing single storey bedroom and family room located at the rear of the dwelling-house. An internal wall in the dining room is proposed to be demolished and the roof above the entire single storey section of the dwelling-house would be tiled to match the remainder of the roof.

The total area of the proposed extension would be 14m<sup>2</sup>.

## ASSESSMENT

The development application has been assessed having regard to the matters for consideration prescribed under Section 79C of the *Environmental Planning and Assessment Act, 1979* (the Act). Subsequently, the following issues have been identified for further consideration:

### 1. STRATEGIC CONTEXT

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

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

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

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

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

### 2. STATUTORY CONTROLS

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

#### 2.1 Hornsby Shire Local Environmental Plan, 1994

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

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

The proposed development is defined as a “dwelling-house” and is permissible within the zone pursuant to Clause 7 of the HSLEP.

Clause 15 of HSLEP prescribes that the maximum floor space ratio (FSR) of development within the low density zone is 0.4:1. The applicant seeks to erect alterations and additions to a dwelling-house which would result in the dwelling having an FSR of 0.41:1. Consequently, the proposal does not comply with the development standard contained within Clause 15.

In this regard, a detailed assessment has occurred to determine whether the proposal satisfies the zone objectives and the objectives of the development standard. To address this matter, the applicant has submitted an objection to the FSR development standard under SEPP 1.

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

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

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

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

It is considered that point 1 listed above is a relevant matter to consider in respect of this application.

The applicant has lodged a SEPP 1 objection to the development standard in the following terms:

*“I wish to lodge an objection under SEPP 1 and request that Council approves the proposed alterations and additions to the rear of my house.*

*The proposal meets the scale of development and is compatible with housing characteristics of the surrounding area. The additions to the rear of the dwelling house will "fit in" with the bulk and scale of other dwelling-houses in the locality.*

*The minor scale of the proposal will not create negative impacts on adjoining properties and occupants due to the orientation of the block, the topography and proximity to the bushland reserve at the rear. Privacy in relation to adjoining properties will be preserved and neighbours will not be overshadowed.”*

Whilst not applying directly to the site due to it being identified as bushfire prone, Council's assessment has had regard to the provisions of the NSW Housing Code, which provides that the maximum gross floor area for complying development as being:

- 330m<sup>2</sup>, if the lot has an area of at least 450m<sup>2</sup> but less than 600m<sup>2</sup>
- 380m<sup>2</sup>, if the lot has an area of at least 600m<sup>2</sup> but less than 900m<sup>2</sup>
- 430m<sup>2</sup>, if the lot has an area of at least 900m<sup>2</sup>

Accordingly, if applicable, the development would satisfy the FSR development standard under the Code.

Given that the NSW Housing Code is now enacted in many parts of the Shire including adjoining allotments, it is anticipated that more developments will be approved under this Code, which will change the characteristics of dwelling-houses. Consequently, whilst Council has previously applied a maximum FSR of 0.4:1 for dwelling-houses in the low density residential zones within the Shire under the HSLEP, the introduction of the new NSW Housing Code will change the effect of this standard.

Notwithstanding that the site is subject to a bushfire risk, (as detailed in subsequent sections of this report), it is considered that the proposed FSR of the building would not impede the orderly development of the site and that the additional floor space would not impinge on the environmental and amenity aspects of the site and the underlying objectives of the zoning.

The dwelling-house would also provide accommodation that would not detract from the scale and variety of dwelling-houses in the low density areas of the Shire.

As the proposal is considered to meet the zone objectives outlined in the HSLEP, the "object of purpose" would be undermined if strict compliance of the prescriptive measure was required.

### **2.3 State Environmental Planning Policy (Exempt and Complying Development)**

On 27 February 2009, SEPP (Exempt and Complying Development) commenced operation. Under the SEPP, the Housing Code outlines how residential developments including:

- detached one and two storey dwellings,
- home extensions and
- other ancillary development, such as swimming pools,

can proceed on lots of greater than 450m<sup>2</sup> in size as complying development with council or accredited certifier approval. The subject allotment is excluded from the SEPP on the basis that the land is identified as being bushfire prone.

### **2.4 Dwelling House Development Control Plan**

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



<b>Dwelling House Development Control Plan</b>			
<b>Control</b>	<b>Proposal</b>	<b>Requirement</b>	<b>Compliance</b>
<b>Gross Floor Area</b>	206m <sup>2</sup>	200m <sup>2</sup>	No
<b>FSR</b>	0.41:1	0.4:1	No
<b>Site coverage</b>	31%	40%	Yes
<b>Height</b>	4.9m	<9m	Yes
<b>Storeys</b>	1 and 2 storeys	2 storeys	Yes
<b>Car parking</b>	2 spaces	2 spaces	Yes
<b>Length of Building</b>	14.76 m	24 m	Yes
<b>Unbroken Wall length</b>	17.8m	10m	No
<b>Private Open Space</b>	130m <sup>2</sup>	120 m <sup>2</sup>	Yes
<b>Landscaping</b>	48%	45%	Yes
<b>Setbacks</b>			
- <b>Front</b>	9 m	9 m	Yes
- <b>Side (north)</b>	1.3 m	1 m	Yes
- <b>Side (south)</b>	3.1 m	1 m	Yes
- <b>Rear</b>	4.7 m	3 m	Yes

As detailed in the above table, the proposed development does not comply with a number of prescriptive measures within Council's Dwelling House DCP. The matters of non-compliance are detailed below, as well as a brief discussion on compliance with the relevant performance criteria.

#### 2.4.1 Scale

The Scale element of the DCP requires that:

*“The maximum floor space ratio for dwelling-houses is 0.4:1. The floor space includes the sum of the areas of each floor of a building where the area of each floor is taken to be the area within the outer face of the external enclosing walls, including voids, but does not include carports, decks, terraces and the like.*

*The floor space also includes the area of any garage in excess of the car parking requirements (refer to car parking element).”*

The applicant's FSR calculation indicates that the gross floor area would increase from 192m<sup>2</sup> to 206m<sup>2</sup> which equates to an FSR of 0.41:1. It is considered that the proposed minor increase in floor area would not adversely affect the scale of the building in the streetscape as the extension would be at the rear of the allotment and would front a public reserve. In summary, it is considered that in the circumstances of the case, the proposed scale of the

development would not detract from the character of the locality and therefore, a variation to the development standards is acceptable.

### **2.4.2 Private Open Space**

The proposal does not comply with the prescriptive Private Open Space element of the DCP in that the minimum dimension that should be considered as open space would be slightly reduced below the 5m requirement. The dwelling extension would result in the width of the private open space being 4.7m. Notwithstanding the variation, the development still provides 130m<sup>2</sup> of useable private open space directly accessible from the ground floor living areas, which is in excess of the minimum open space area. It is considered that reasonable amenity would be maintained despite the departure from the development standard.

### **2.4.3 Design**

The 17.8m northern side wall of the dwelling-house does not comply with the prescriptive measures of the Design element, which requires walls to be a maximum of 10m without providing a physical break. The existing approved structure has an unbroken wall length of 16.1m. The proposed extension increases the length by 1.7m.

The variation in the roof design and the openings in the façade effectively address any monotonous or symmetrical appearance when viewed from the adjoining premises. It is considered that a departure from the development standard is acceptable in the circumstances of the case and would not have an adverse visual impact when the building is viewed from an adjoining property.

## **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**

#### **Bushland and Biodiversity**

The development would not have an impact on any trees on the site or on any trees within the bushland reserve to the rear of the site.

### **3.2 Built Environment**

The proposed extension to the rear of the dwelling-house is not out of character with the existing structure and is consistent with the form of development permitted in the locality.

### **3.3 Social Impacts**

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

## **4. SITE SUITABILITY**

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

## **Bushfire Risk**

The site is identified as being subject to bushfire risk. The application demonstrates that the proposed extension to the dwelling-house can be constructed in a manner that would withstand that risk.

The application was referred to the NSW Rural Fire Service (RFS) for comment. The RFS has advised that it raises no objection to the development proceeding subject to relevant bushfire mitigation conditions being imposed on any consent.

## **5. PUBLIC PARTICIPATION**

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

The original proposal was placed on public exhibition and was notified to adjoining and nearby landowners between 24 June, 2008 and 8 July, 2008 in accordance with Council’s Notification and Exhibition Development Control Plan. During this period, no submissions were received. The Section 82A application lodged on 15 June 2009 was not placed on public exhibition as the plans are unaltered from those originally submitted.

## **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 minor increase in the FSR for this development would not set an undesirable precedent for other developments in the street and the locality and approval of this variation to the development standard would accord with the aim of SEPP 1 to “*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 application satisfactorily meets Council’s development standards and therefore provides a development outcome that, on balance, would result in a positive impact for the community. Accordingly, it is considered that approval of the proposal would be in the public interest.

## **CONCLUSION**

The application proposes a 14m<sup>2</sup>, single storey extension to the rear of the existing dwelling-house.

The extension would result in the dwelling-house having a gross floor area of 206m<sup>2</sup>, which exceeds the maximum 0.4:1 FSR development standard for the site by 6m<sup>2</sup>. The applicant has made a submission under the provisions of SEPP 1 to vary this development standard. It is considered that the approval of the development is warranted in the circumstances of this case. The application justifies the non-compliance with the relevant provisions within Clause

15 of the HSLEP and approval of the application would not set an undesirable precedent for the area. Other minor non-compliances with prescriptive measures contained within the dwelling House DCP are considered to be acceptable.

No submissions have been received concerning the development.

Having regard to the assessment of the proposed development and the circumstances of the case, it is recommended that Council approves the application.

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

SIMON EVANS  
Manager - Assessment Team 1  
Planning Division

SCOTT PHILLIPS  
Executive Manager  
Planning Division

**Attachments:**

1. Locality Plan
2. Site Plan
3. Floor Plans
4. Elevation Plan

File Reference: DA/824/2008  
Document Number: D01181678

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

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

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

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

**1. Approved Plans and Supporting Documentation**

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

<i>Plan No.</i>	<i>Drawn by</i>	<i>Dated</i>
Unnumbered floor plans and elevations	Cyrilak	14.06.08
Site plan No. 8943	Surveyor	12.11.98

<i>Document No.</i>	<i>Prepared by</i>	<i>Dated</i>
SEPP 1 objection	Laksha Sisriwardena	June 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. Contract of Insurance (Residential Building Work)**

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

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

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

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

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

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

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

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

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

#### **6. Design and Construction - Bushfire Attack Category**

New construction must comply with Australian Standard AS3959-2009 'Construction of buildings in bush fire-prone areas' Level 3 and the following conditions based on *Planning for Bush Fire Protection, 2006* and the *NSW Rural Fire Service's* publication *Standards for Asset Protection Zones*:

- a. All guttering and valleys are to be screened with non-corrosive mesh to prevent the build up of flammable material. Any materials used shall have a flammability index no greater than 5.
- b. All exposed/external timber used in the development should be of a fire resistant timber species as identified in RFS Development Control Note 001. These species include Blackbutt, Kwila (Merbau), Red Iron Bark, Red River Gum, Silver Top Ash, Spotted Gum and Turpentine.

- c. Any proposed new external doors shall comply with RFS Development Control Note 3/06 “External Doors” – Revised November 2007 (Release 2).

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

*The use of fire retardant treated timber in accordance with Level 3 construction under Australian Standard 3959 – “Building in Bushfire Prone Areas” is acceptable if a swimming pool is located not more than 20 metres from the exposed hardwood timber on the building and a minimum 3kW (5hp) petrol or diesel powered pump and a 38mm suction hose nozzle and fittings are provided to enable water to be pumped from the pool.*

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

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

#### **7. Erection of Construction Sign**

A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

- 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.*

#### **8. Erosion and Sediment Control**

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

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

**REQUIREMENTS DURING CONSTRUCTION**

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

**9. Construction Work Hours**

All work on site (including demolition and earth works) must only occur between the hours of 7 am and 5 pm, Monday to Friday. No work is permitted on Sundays or Public Holidays.

**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. 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.

**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 for an average recurrence interval of 20 years and be gravity drained to the existing internal drainage system.

**13. 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.

**- END OF CONDITIONS -**



**ADVISORY NOTES**

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

**Environmental Planning and Assessment Act, 1979 Requirements**

The Environmental Planning and Assessment Act, 1979 requires:

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

**Long Service Levy**

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

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

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

**Tree Preservation Order**

To ensure the maintenance and protection of the existing natural environment, it is an offence to ringbark, cut down, top, lop, remove, wilfully injure or destroy a tree outside 3 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 advice and information should be obtained prior to disturbing the material. It is recommended that a contractor holding an asbestos-handling permit (issued by *WorkCover 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 *WorkCover* Asbestos and Demolition Team on 8260 5885.

**5 DEVELOPMENT APPLICATION - ERECTION OF A DWELLING-HOUSE  
31 YORK STREET, BEECROFT**

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<b>Development Application No:</b>	DA/353/2009
<b>Description of Proposal:</b>	Erection of a three level dwelling-house, double garage, swimming pool, retaining walls and front fence.
<b>Property Description:</b>	Lot 945, DP 410085, No. 31 York Street, Beecroft
<b>Applicant:</b>	Ms Penny Rosier
<b>Owner:</b>	Mrs Janet Wotton
<b>Statutory Provisions:</b>	Hornsby Shire Local Environmental Plan 1994 Residential AS (Low Density-Sensitive Lands)
<b>Estimated Value:</b>	\$484,750
<b>Ward:</b>	C

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**RECOMMENDATION**

THAT Development Application No. DA/353/2009 for the erection of a three level dwelling-house, double garage, swimming pool, retaining walls and front fence at Lot 945, DP 410085, No. 31 York Street Beecroft be approved subject to the conditions of consent detailed in Schedule 1 of this report.

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**EXECUTIVE SUMMARY**

1. The application proposes the erection of a dwelling-house, swimming pool, detached garage, retaining walls and a front fence on a vacant site.
  2. The proposal generally complies with the Hornsby Shire Local Environmental Plan 1994 and Council's Dwelling House Development Control Plan (DCP).
  3. The proposal does not comply with the 0.4:1 floor space ratio of the Hornsby Shire Local Environmental Plan (HSLEP). Consequently, the application has been supported by a submission under State Environmental Planning Policy No. 1 (SEPP 1) seeking approval of a variation to the development standard.
  4. A Red Sticker has been placed against the application resulting in it being referred to Council for determination.
  5. One submission has been received in respect of the application.
-

6. It is recommended that the application be approved.

### **HISTORY OF THE SITE**

On 11 December 2007, consent was granted to DA/843/2007 for the demolition of a Scout hall on the subject allotment.

### **THE SITE**

The vacant site has an area of 693.5m<sup>2</sup> with a front boundary width of 16.74m and a rear boundary of 17.81m. The northern boundary is 46m and the southern boundary is 38.48m in length.

The front half of the allotment has a negligible slope. The rear half of the allotment has a fall of approximately 40% towards the rear, south-east corner. The site is well vegetated, including native and exotic trees.

Adjoining the southern boundary is the Chilworth Recreation Reserve, which is zoned Open Space A. A 2.44m wide “watermain” easement runs parallel to the southern boundary within this reserve.

Consent was granted to DA/1478/2008 on 16 December 2008, for the erection of a two-storey dwelling-house on the northern adjoining allotment (No. 29 York Street, Beecroft).

The surrounding residential development is characterised by an eclectic blend of one and two storey dwelling-houses, ranging from modest, post-war design to houses of a more contemporary appearance, each surrounded by well established trees and landscaped areas.

The site is located within the Beecroft/Cheltenham heritage conservation area and is identified as bushfire prone.

### **THE PROPOSAL**

The application proposes the erection of a three level, brick dwelling-house with a tiled mansard style roof. The lower ground floor incorporates two bedrooms, a walk-in-robe and a bathroom. The ground floor comprises an entry, sitting room, dining room, family room, kitchen, pantry, laundry, study with ensuite, rear sitting room and a terrace. The upper floor includes one bedroom, a bathroom, a walk-in-robe and a sun room.

A detached double garage, also with a mansard roof, is to be erected forward of the dwelling, with a masonry and decorative metal fence along the front boundary up to 1.6m in height. An in-ground swimming pool is to be constructed in the rear yard.

The proposal would require the removal of thirteen trees.

### **ASSESSMENT**

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

## 1. STRATEGIC CONTEXT

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

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

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

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

The proposed development would be consistent with the draft Strategy by providing an additional dwelling in the Hornsby LGA and would contribute to housing choice in the locality.

## 2. STATUTORY CONTROLS

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

### 2.1 Hornsby Shire Local Environmental Plan, 1994

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

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

The use is defined as a “dwelling-house” and is permissible within the zone pursuant to Clause 7 of the HSLEP.

Clause 15 of HSLEP prescribes that the maximum floor space ratio (FSR) of development within the low density zone is 0.4:1. The applicant seeks to erect a dwelling-house with an FSR of 0.54:1 and consequently, the proposal does not comply with the development standard contained within Clause 15.

In this regard, a detailed assessment has occurred to determine whether the proposal satisfies the zone objectives and the objectives of the development standard. To address this matter, the applicant has submitted an objection to the FSR development standard under State Environmental Planning Policy No. 1 (SEPP 1).

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

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

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

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

The points 1 to 3 listed above are relevant matters to consider in respect of this application.

The applicant's SEPP 1 submission in support of the proposal is summarised (in italics) below:

*"The proposal meets the scale of development and is compatible with housing characteristics of the locality particularly the older houses in the Heritage Precinct which tend to be large with gracious setbacks.*

*The proposal provides for a dwelling house which fits in with the bulk and scale of other dwelling-houses in the locality, and this is particularly true due to the topography of the area and the relationship of ground floors to the natural ground levels.*

*The effects of the scale of the proposal do not create negative impacts on adjoining properties and occupants due to the orientation of the block, the topography and proximity to Chilworth Reserve. Privacy is preserved and neighbours are not overshadowed".*

The submission addresses the objective of the floor space ratio provision in Council's LEP through the design of a dwelling-house that would not over intensify the scale of the development of the land in regard to the land's environmental capacity and the zone objectives.

Whilst not applying directly to the site (refer to Section 2.3 of this report), Council's assessment has had regard to the provisions of the NSW Housing Code, which provides that the maximum gross floor area for complying development within the Beecroft/Cheltenham precinct (outside the heritage conservation area) as being:

- 330m<sup>2</sup>, if the lot has an area of at least 450m<sup>2</sup> but less than 600m<sup>2</sup>
- 380m<sup>2</sup>, if the lot has an area of at least 600m<sup>2</sup> but less than 900m<sup>2</sup>
- 430m<sup>2</sup>, if the lot has an area of at least 900m<sup>2</sup>

Accordingly, if applicable, the development would satisfy the FSR development standard under the Code.

Given that the NSW Housing Code is now enacted in many parts of the Shire, it is anticipated that more developments will be approved under this Code, which will change the characteristics of dwelling-houses. Consequently, whilst Council has previously applied a maximum FSR of 0.4:1 for dwelling-houses in the low density residential zones within the Shire under the HSLEP, the introduction of the new NSW Housing Code will change the effect of this standard.

Having regard to the above, Council's assessment partly focussed on those aspects of the site that rendered the development as not being complying development, namely heritage and the bushfire risk. As concluded in subsequent sections of this report, it is considered that the proposed FSR of the building would not impede the orderly development of the site having regard to heritage requirements or bushfire risk.

In regard to whether the objection may be well founded, the applicant contends that:

*“ Due to the topography and the proposed building, that strict compliance with the development standards would undermine the aim of the policy to allow flexibility of the application of the floor space ratio development standard contained in the Hornsby LEP and is unreasonable and unnecessary in this particular case.”*

The Council officer's assessment is satisfied that the proposal takes into consideration the environmental and topographical constraints of the site. The additional floor space would not impinge on the environmental and amenity aspects of the site and the underlying objectives of the zoning. The proposed mansard roof design takes advantage of what would otherwise be a ceiling void, by creating additional floor space to the dwelling-house without increasing the scale of the development or the size of the building platform.

The dwelling-house would provide accommodation that would not detract from the scale and variety of dwelling-houses in the low density areas of the Shire. As the proposal is considered to meet the zone objectives outlined in the HSLEP, the “object of purpose” would be undermined if strict compliance of the prescriptive measure was required.

### **2.3 State Environmental Planning Policy (Exempt and Complying Development)**

On 27 February 2009, SEPP (Exempt and Complying Development) commenced operation. Under the SEPP, the Housing Code outlines how residential developments including:

- detached one and two storey dwellings,
- home extensions and
- other ancillary development, such as swimming pools,

can proceed on lots of greater than 450m<sup>2</sup> in size as complying development with council or accredited certifier approval. The subject allotment is excluded from the SEPP on the basis that the land is within a heritage conservation area and is identified as being bushfire prone.

## 2.4 Dwelling House Development Control Plan

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

<b>Dwelling House Development Control Plan</b>			
<b>Control</b>	<b>Proposal</b>	<b>Requirement</b>	<b>Compliance</b>
<b>Gross Floor Area</b>	376m <sup>2</sup>	277.4m <sup>2</sup>	No
<b>FSR</b>	0.54:1	0.4:1	No
<b>Site coverage</b>	36%	40%	Yes
<b>Height</b>	7.65m	<9m	Yes
<b>Storeys</b>	3 storeys	3 storeys	Yes
<b>Car parking</b>	2 spaces	2 spaces	Yes
<b>Length of Building</b>	19 m	24 m	Yes
<b>Unbroken Wall length</b>	13m	10m	No
<b>Private Open Space</b>	130m <sup>2</sup>	120 m <sup>2</sup>	Yes
<b>Landscaping</b>	46%	45%	Yes
<b>Setbacks</b>			
- <b>Front (garage)</b>	7.1m	6 m	Yes
- <b>Side (north)</b>	1.5m	1 m	Yes
- <b>Side (south-garage)</b>	0.57m	1 m	No
- <b>Rear</b>	5m	3 m	Yes

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

### 2.4.1 Scale

The Scale element of the DCP requires that:

*"The maximum floor space ratio for dwelling-houses is 0.4:1. The floor space includes the sum of the areas of each floor of a building where the area of each floor is taken to be*



*the area within the outer face of the external enclosing walls, including voids, but does not include carports, decks, terraces and the like.*

*The floor space also includes the area of any garage in excess of the car parking requirements (refer to car parking element)."*

The applicant's FSR calculation indicates that the gross floor area is 376m<sup>2</sup> which equates to an FSR of 0.54:1.

An assessment of the suitability of the scale of the proposed development is held under section 2.2 of this report. In summary, it is considered that in the circumstances of the case, the proposed scale of the development would not detract from the character of the locality and therefore, a variation to the development standards is acceptable.

#### **2.4.2 Setbacks**

The 18.16m front boundary setback of the dwelling-house is well in excess of the 6m prescriptive measure of the Setbacks element. The siting of the dwelling-house at this setback would reduce its visual impact when viewed from the street.

Whilst the 0.575m setback of the garage to the southern boundary does not comply with the 1m prescriptive measure of the Setbacks element, this variation would not be detrimental to the character of the streetscape and the adjoining Chilworth Reserve as it adjoins a reserve and would not directly impact upon other residences. Accordingly, a variation to the development standard is considered acceptable.

#### **2.4.3 Design**

The proposed unbroken wall length of 13.2m for the northern facing wall does not comply with the prescriptive measure of the Design element which requires walls that exceed 10m in length to have an indentation or a physical break. The purpose of this control is to prevent large blank walls facing neighbouring properties.

This façade would incorporate sufficient openings and supports a pergola to effectively address any monotonous or symmetrical appearance when viewed from the adjoining premises No. 29 York Street, Beecroft and is therefore considered acceptable. It is considered that compliance with the development standard would not necessarily improve the architectural merit of the development.

#### **2.4.4 Cut**

The dwelling-house includes a lower ground floor that requires a cut of up to 2.9m in depth to establish the level. As the slope of the allotment falls at approximately 40% to the south-east, the amount of cut is reduced to zero towards the rear of the allotment.

The extent of excavation is considered to be acceptable in this instance, as it has the effect of lowering the overall height of the structure and reducing its visual impact on the area with minimal environmental or amenity impacts.

The excavated spoil for the dwelling-house is to be used as fill under the concrete slabs with all top soil to be stockpiled for re-use on site.

## 2.5 Heritage Development Control Plan

As the allotment is located within the Beecroft/Cheltenham heritage conservation area, the application was referred to the Heritage Advisory Committee for comment.

Following the submission of amended plans to address concerns regarding the roof style, setbacks, the visual impact from the street and the impact on trees, the Heritage Advisory Committee raised no objections to the proposal on heritage grounds.

The Committee noted that the proposal was generally in keeping with the existing development within the heritage conservation area and that it would not have an adverse impact upon the significance of the heritage items within the vicinity or the character of the surrounding conservation area.

## 3. ENVIRONMENTAL IMPACTS

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

### 3.1 Natural Environment

#### Bushland and Biodiversity

Council’s assessment of the application noted that there are numerous trees on and in the vicinity of the site, including locally native *Eucalyptus pilularis*, *Angophora costata* and *Syncarpia glomulifera* and introduced species such as *Citharexylum spinosum*.

The development would necessitate the removal of 13 trees from the site. The application has been supported by a flora and fauna report which found 64 plant species, with 41 native, 20 weeds and 3 identified as either weedy or native. The report also noted:

*“that the native plant diversity is higher adjoining Chilworth Reserve as it is larger and less disturbed. Although clearing for the development will cause the loss of many individual native plants, these species also exist outside the development footprint and commonly in the nearby reserve.”*

The removal of the trees is considered acceptable, due to the limitations within the site for the construction of a building.

The application has been supported by a flora and fauna assessment prepared by Clive Barker (dated February 2009) and an Assessment of Significance (‘Seven Part Test’). This assessment concluded that there is unlikely to be a significant impact upon the local population of threatened species, populations and communities listed under the *Threatened Species Conservation Act, 1995*. Council officer’s assessment concurs with the findings of those studies and appropriate ecological conditions have been recommended to ensure that the development is constructed in an environmentally sensitive manner.

### **3.2 Built Environment**

The proposed dwelling-house is not out of character with the established built form of residential development in the Beecroft/Cheltenham heritage conservation area and is consistent with the form of development permitted in the locality.

### **3.3 Social Impacts**

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

### **3.4 Economic Impacts**

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

## **4. SITE SUITABILITY**

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

### **4.1 Bushfire Risk**

The site is identified as being subject to bushfire risk. The application demonstrates that the proposed dwelling can be constructed in a manner that would withstand that risk.

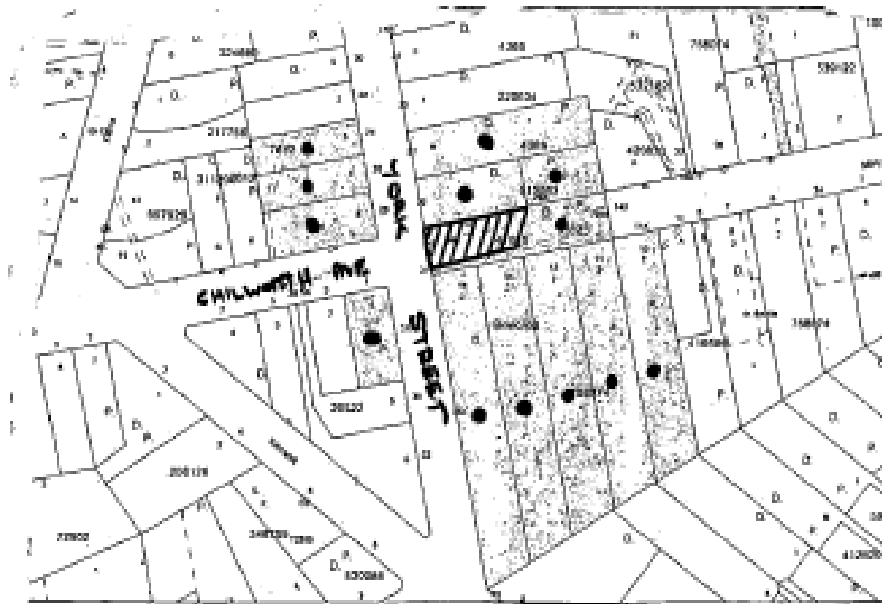
The application was referred to the NSW Rural Fire Service (RFS) for comment. The RFS has advised that it raises no objection to the development proceeding subject to relevant bushfire mitigation conditions being imposed on any consent.

## **5 PUBLIC PARTICIPATION**


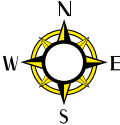
Section 79C (1) (d) of the Act requires Council to consider “*any submissions made in accordance with this Act*”.

### **5.1 Community Consultation**

The proposed development was placed on public exhibition and was notified to adjoining and nearby landowners between 1 April and 14 April 2009, in accordance with Council’s Notification and Exhibition DCP. During this period, Council received no submissions from property owners and one submission from the Beecroft Cheltenham Civic Trust.



**NOTIFICATION PLAN**

<ul style="list-style-type: none"> <li>• PROPERTIES NOTIFIED</li> </ul>	X SUBMISSIONS RECEIVED	 PROPERTY SUBJECT OF DEVELOPMENT	
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The Trust raised concerns about the development, generally on the following grounds:

- The disposal of stormwater to Chilworth Reserve;
- Referral to the NSW Rural Fire Service;
- The potential habitable room above the garage;
- The flora and fauna report makes no reference to the Powerful Owl;
- The proposed swimming pool is close to two trees;
- The impact of the retaining wall adjacent to the Chilworth Reserve; and
- All works carried out is to be certified by Council to protect Chilworth Reserve.

These issues are addressed as follows:

**5.1.1 Drainage**

Due to the fall of the land, stormwater from the dwelling-house would discharge to Chilworth Reserve. Council’s engineering assessment concludes that the proposed stormwater solution is acceptable, subject to the imposition of conditions that would ensure that the discharge from a dispersal trench would be evenly spread over the Reserve.

This method of stormwater dispersal is consistent with the recommendation contained within the Stormwater Management Assessment report prepared in support of this application. The proposal meets the objectives of Council’s Drainage Control element of the Dwelling House DCP and is considered acceptable.

### **5.1.2 Rural Fire Service Referral**

The application was referred to the NSW Rural Fire Service for comment. The RFS raised no objection to the proposal, subject to the imposition of appropriate conditions. The proposal meets the objectives of the Fire Hazard element of the Dwelling House DCP and is considered acceptable.

### **5.1.3 Potential Habitable Room above the Garage**

The room above the garage has been described in the application as a “storage room”. However, the room could be used as a “habitable room” without impinging on the environmental aspects of the allotment and the amenity and privacy of the adjoining allotments. The floor area of this storage room has been included in the calculation of the floor space ratio on the assumption that the future occupant will use the room for habitable purposes.

### **5.1.4 Powerful Owl not included in the Flora and Fauna Report**

The impact of the proposal on the powerful Owl is addressed in Page 10 of the flora and fauna report and is referred to in Appendix 1: “*Assessment of Significance – Potential Endangered Populations and Threatened Fauna*”.

Council’s environmental assessment of the application concluded that the applicant’s report was sufficient and that the impact of the development would not be significant.

### **5.1.5 The proposed swimming pool is close to two trees**

It is Council’s assessment that the two trees numbered T13 and T14 on Drawing No. 1/15 Site Plan, located in close proximity to the proposed swimming pool, are not significant and would be removed.

A recommended condition of consent prescribes that all works, including the erection of retaining walls adjoining the reserve, are carried out to minimise environmental and amenity impacts.

### **5.1.6 Works carried out is to be certified by Council**

Section 81A of the Act allows the applicant with the choice of appointing either Council or a private accredited certifier to act as the Principal Certifying Authority (PCA). The nominated certifier is responsible for ensuring that all the works are carried out in accordance with the approved plans and specifications.

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The applicant is yet to appoint a PCA for this development. If a private certifier is nominated to carry out the designated inspections, Council would not be the statutory authority to certify the works as they progress.

## **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's departure from numerical development standards would not set an undesirable precedent for other developments in the street and the locality and approval of a variation to the development standards would accord with the aim of SEPP 1 to "*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 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 dwelling-house, detached garage, swimming pool, retaining walls and front fence would be in the public interest.

## CONCLUSION

The application proposes the erection of a dwelling-house, swimming pool, detached garage, retaining walls and a front fence.

The dwelling-house would have a gross floor area of 376m<sup>2</sup>, which exceeds the 0.4:1 FSR requirement for the site. The applicant has made a submission under the provisions of SEPP 1 to vary this development standard. It is considered that the approval of the development is warranted in the circumstances of this case. The application justifies the non-compliance with the relevant provisions within Clause 15 of the HSLEP and approval of the application would not set an undesirable precedent for the area.

Council received one submission concerning the development. Matters raised in the submission can be adequately overcome subject to compliance with relevant conditions. The application was referred to Council's Heritage Committee and to the Rural Fire Service to comment on the heritage and bushfire impacts of the proposal respectively. The Committee and the RFS each advised that the development would be acceptable subject to the imposition of relevant conditions.

Having regard to the assessment of the proposed development and the circumstances of the case, it is recommended that Council approves the application.

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

SIMON EVANS  
Manager - Assessment Team 1  
Planning Division

SCOTT PHILLIPS  
Executive Manager  
Planning Division

**Attachments:**

1. Locality Plan
2. Site Plan
3. Floor Plans
4. Section
5. Elevations
6. Landscape Plan
7. Shadow Diagram
8. Perspective

File Reference: DA/353/2009

Document Number: D01138569

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

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

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

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

**1. Approved Plans and Supporting Documentation**

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

<i>Plan No.</i>	<i>Drawn by</i>	<i>Dated</i>
1-15 (Amended D.A. Issue B)	Penny Rosier (Architect)	19/06/2009

**2. Removal of Existing Trees**

This development consent only permits the removal of 13 trees numbered T2, T3, T4, T5, T6, T7, T8, T9, T13, T14, T16, T17 and T22 as identified on Drawing No.1/15 (Site Plan), prepared by Penny Rosier (Architect) dated 19/06/2009. 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.

**3. Building Code of Australia**

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

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

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



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

## **5. Notification of Home Building Act, 1989 Requirements**

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

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

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

## **6. 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.*

## **7. Design and Construction - Bushfire Attack Category**

The development must be constructed in accordance with *Australian Standard 3959-2009 – 'Construction of buildings in bush fire-prone areas' Level 3* and the following conditions based on *Planning for Bush Fire Protection 2006* and the *NSW Rural Fire Service's* publication *Standards for Asset Protection Zones*:-

- a. No timber on the building is to be exposed on the southern and eastern elevations.
- b. All guttering and valleys are to be screened with non-corrosive mesh to prevent the build up of flammable material. Any materials used shall have a Flammability index no greater than 5.

- c. External doors are to be sealed with draft excluders or weather strips to prevent the entry of embers.
- d. In accordance of the Development Control Services 'Fast Facts' 4/08 – 'Glazing in the Flame Zone' all windows/door glazing facing the hazard (eastern and southern elevations) shall have:
  - i. The openable portions screened using a mesh with a maximum aperture of 2mm made of corrosion resistant steel or bronze, and
  - ii. the window/door assemblies are protected by a complying bushfire shutter or;
  - iii. where window/door systems are not protected by complying bushfire shutter-
    - 1. the window system shall have an FRL of at least -/30/- or
    - 2. the window system shall comply with AS 1530.8.2 when tested from the outside.

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

*The use of fire retardant treated timber in accordance with Level 3 construction under Australian Standard 3959 – Building in Bushfire Prone Areas is acceptable if a swimming pool is located not more than 20m from the exposed hardwood timber on the building and a minimum 3kW (5hp) petrol or diesel powered pump and a 38mm suction hose nozzle and fittings are provided to enable water to be pumped from the pool.*

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

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

#### **8. Erection of Construction Sign**

A sign must be erected in a prominent position on 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.*

## 9. Toilet Facilities

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

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

## 10. Erosion and Sediment Control

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

*Note: On the spot penalties up to \$1,500 may be issued for any 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.

## 11. Construction Work Hours

All work on site must only occur between the hours of 7 am to 5 pm, Monday to Saturday. No work is permitted on Sundays or Public Holidays.

## 12. Works near Trees

To ensure any work undertaken will not adversely affect the longevity of the tree numbered T1, (Site Plan), prepared by Penny Rosier (Architect) dated 16/06/2009, the driveway must be laid on existing grade with no excavation or fill within the nominated restriction zone, or

Pier and beam construction of the driveway or road within the nominated restriction zone must be used with piers being located no closer than 3m to the trunks of the trees. The driveway edge must be no closer than 1m to the edge of the trunk. The excavation for the piers within the nominated restriction zone must be hand dug to reveal the presence of any roots. A qualified and experienced arborist must be on site

overseeing the work to ensure no roots greater than 50mm in diameter are severed, and root damage is minimised.

### 13. Tree Protection Barriers

To avoid injury or damage, tree numbered T1 must have the trunk protected by 2m lengths of 75mm x 25mm hardwood timbers spaced at 80mm secured with galvanised wire (not fixed or nailed to the tree in any way).

### 14. Impacts on Bushland

All required tree protection measures must be maintained in good condition for the duration of the construction period.

### 15. Bushland Protection during Construction

To ensure the protection of bushland during construction, all works, including the erection of retaining walls adjoining the reserve, are to be carried out to minimise environmental and amenity impacts in accordance with the following requirements:

- a. The installation of a 1.8 metre high chain wire fencing (or similar) along the southern and eastern property boundaries delineating the site from the adjacent bushland of Chilworth Recreation Reserve identified on the approved plan *Landscape Concept Plan – DWG No. 12/15 Issue A prepared by Penny Rosier Architect (dated March 2009)*.
- b. All machinery to be cleaned of soil and debris before entering the site to prevent the spread of weeds and fungal pathogens.

*Note: 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.*

### 16. Council Property

During construction works, no building materials, waste, machinery or related matter is to be stored on within the adjacent easement, Chilworth Recreation Reserve, the road or the 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.*

### 17. 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.

## 18. Survey Report – Finished Floor Level

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

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

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

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

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

## 19. Fulfilment of BASIX Commitments

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

## 20. Stormwater Drainage – Dwellings

The stormwater drainage system for the development must be designed and constructed for an average recurrence interval of 20 years and be gravity drained in accordance with the following requirements:

- a. Roof water connected to a rainwater tank having a minimum capacity of 3,500 litres (in addition to any BASIX requirements). Overflow and collected surface water in accordance with Council's design specification; "On Site Absorption System", and the following requirements:
  - i. The trench located a minimum of 5m from any down stream properties and 1m from the side boundaries.
  - ii. The trench laid on contour.
  - iii. The trench is to be a minimum of 0.5 metres wide, 0.5 metres deep and 2 metres long for every 50m<sup>2</sup> of impervious area.
  - iv. Overland flow from the trench is to be spread evenly over the site so as not to discharge water in a concentrated manner onto adjoining land.

## 21. Internal Driveway/Vehicular Areas

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

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

## 22. 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. Any redundant crossings are to be replaced with integral kerb and gutter; and
- b. The footway area is to be restored by turfing.

*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.*

## 23. 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.

## 24. Landscaping of Site

In accordance with the Landscape Concept Plan – DWG No. 12/15 Issue B prepared by Penny Rosier Architect (dated 19/06/2009) the areas generally zoned "Indigenous Species" the planting schedule must be locally indigenous to Blackbutt Gully Forest located within the site and adjoining Chilworth Recreation Reserve. Screen planting along the north western boundary of the site must comprise of *Allocasuarina torulosa* of local provenance obtained from a recognised native nursery.

*Note: Advice on suitable species for landscaping can be obtained from Council's planting guide 'Indigenous Plants for the Bushland Shire', available at [www.hornsby.nsw.gov.au](http://www.hornsby.nsw.gov.au).*

## 25. Weed Removal

To prevent the further spread of weeds, the applicant must ensure that all environmental and noxious weeds Moth Vine (*Araujia sericifera*), Small-leaved Privet (*Ligustrum sinense*), Large-leaved Privet (*Ligustrum lucidum*), Trad (*Tradescantia flumiensis*), English Ivy (*Hedera helix*) and Madeira Vine (*Anredera cordifolia*) on site are to 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*

## 26. Retaining Walls

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

### OPERATIONAL CONDITIONS

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

## 27. Bushfire Management - Landscaping

The building must be constructed and the land managed in a manner that is consistent with the aims and objectives of the *NSW Rural Fire Service* publication '*Planning For Bush Fire Protection, 2006*' and in accordance with the following requirements:

- a. Suitable impervious areas being provided immediately surrounding the building such as courtyards, paths and driveways;
- b. Grassed areas/mowed lawns/ or ground cover plantings being provided in close proximity to the building;
- c. Restrict planting in the immediate vicinity of the building which may over time and if not properly maintained come in contact with the building;
- d. New plantings should not provide a continuous canopy to the building (i.e. shrubs should be isolated or located in small clusters);
- e. When considering landscape species consideration needs to be given to estimated size of the plant at maturity;
- f. Avoid species with rough fibrous bark, or which retain/shed bark in long strips or retain dead material in their canopies;
- g. Use smooth bark species that may increase fuel at surface / ground level (i.e. leaf litter);
- h. Avoid climbing species to walls and pergolas;
- i. Locate combustible materials such as woodchips/mulch, flammable fuel stores away from the building;
- j. Locate combustible structures such as garden sheds, pergolas and materials such timber garden furniture away from the building and
- k. Use flammability vegetation species.

*Note: Further information concerning planning for bush fire protection can be found at: [www.rfs.nsw.gov.au](http://www.rfs.nsw.gov.au).*

## 28. Swimming Pool Requirements

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

- a. All waste water from the pool's filtration system must be piped to *Sydney Water's* sewer system;
- b. The filtration motor and pump must be housed in a soundproofed structure. Sound from the equipment must not exceed 5(dBA) above ambient noise levels at any residential property boundary; and
- c. The applicant must participate in the 'Static Water Supply Project' initiative of the *NSW Fire Brigade* and make available the water in the swimming pool for use as a static water supply for fire fighting purposes by the *NSW Fire Brigade* or the *NSW Rural Fire Service*.

*Note: On completion of the swimming pool, the applicant is to contact the local NSW Fire Brigade Station or NSW Rural Fire Service Station to arrange the installation of a static water supply identification plate.*

**- 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 to be issued 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 is to be nominated and Council notified of that appointment prior to the commencement of any works.
- Council is to be given at least two days written notice prior to the commencement of any works.
- Mandatory inspections of nominated stages of the construction.



- An occupation certificate to be issued before occupying any building or commencing the use of the land.

### **Long Service Levy**

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

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

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

### **Tree Preservation Order**

To ensure the maintenance and protection of the existing natural environment, it is an offence to ringbark, cut down, top, lop, remove, wilfully injure or destroy a tree outside 3m of the approved building envelope without prior written consent from Council. Fines may be imposed 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 3m and which develops many branches, usually from a distance of not less than 1m 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.

**6 DEVELOPMENT APPLICATION - SECTION 96(2) - SUBDIVISION OF ONE LOT INTO TWO  
10 REDGUM AVENUE PENNANT HILLS**

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<b>Development Application No:</b>	DA/1273/2004/A
<b>Description of Proposal:</b>	Section 96(2) – Modification to the proposed subdivision boundary, retain the existing dwelling on the site and complete minor alterations to the dwelling.
<b>Property Description:</b>	Lot 7 DP 514543, (No. 10) Redgum Avenue, Pennant Hills
<b>Applicant:</b>	Mr B Challita
<b>Owner:</b>	Mr J L Habkoug, Miss K J Habkoug and Mr B Challita
<b>Statutory Provisions:</b>	Hornsby Shire Local Environmental Plan 1994 Residential A (Low Density) Zone
<b>Estimated Value:</b>	\$50,000
<b>Ward:</b>	C

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**RECOMMENDATION**

THAT Council approve the modification to Development Application No. 1273/2004 for the subdivision of one lot into two and demolition of an existing dwelling at Lot 7 DP 514543 (No. 10) Redgum Avenue, Pennant Hills, as detailed in Schedule 1 of this report.

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**EXECUTIVE SUMMARY**

1. The application proposes to modify Development Consent No. 1273/2004, by adjusting the proposed subdivision boundary, retaining the existing dwelling on the site (previously approved for demolition) and completing minor alterations to the existing dwelling.
2. On 20 July 2005, Development Application No. 1273/2004 for the subdivision of one lot into two and demolition of the existing dwelling on the site was approved by Council at its Planning Meeting.
3. The proposal complies with the provisions of the Hornsby Shire Local Environmental Plan 1994 and is consistent with the Residential Subdivision Development Control Plan.
4. No submissions have been received in respect of the application.

5. It is recommended that the application be approved.

### **HISTORY OF THE APPLICATION**

On 20 July 2005, Development Application No. 1273/2004 for the subdivision of one lot into two and demolition of the existing dwelling on the site was approved by Council at its Planning Meeting. Part B of Council's resolution stated:

*'Any future applications for this site be brought before Council for determination'.*

Accordingly, the proposed modifications to the development consent is referred to a Planning Meeting for Council's consideration.

### **THE SITE**

The site comprises an existing battleaxe lot, has an area of 1410m<sup>2</sup> and is located on the southern side of Redgum Avenue. The site experiences a slight fall of 5% to the north of the property and is accessed via an existing carriageway that services Nos. 8 and 10 Redgum Avenue. A single storey brick dwelling and a double carport occupies the site. The site contains several locally native and introduced tree species.

The site is within a low density residential area and a Council reserve adjoins the eastern and southern boundaries of the site. The site is identified as bush fire prone land and a water course is located within 40 metres of the site.

### **APPROVED DEVELOPMENT**

The approved development comprises the subdivision of one lot into two and demolition of the existing dwelling on the site. The approved lot sizes are:

- Lot 71 - 507m<sup>2</sup> (excluding access handle)
- Lot 72 - 528m<sup>2</sup> (excluding access handle)

Access to the site is via a shared access handle that services Nos. 8 and 10 Redgum Avenue. The approved carriageway on the site is located along the western boundary, is 3 metres wide with space for a 0.5 metre wide landscaping verge on each side of the carriageway. The right of carriageway includes a vehicular turning area which is shared by both approved allotments and is located within the rear section of Lot 71.

### **PROPOSED MODIFICATION OF DEVELOPMENT CONSENT**

The proposal seeks to modify the development consent to adjust the boundary line to the approved subdivision, retain the existing dwelling on the site and complete minor alterations to the dwelling.

The application proposes a minor relocation of the boundary line, 2.4 metres towards the south. The modifications would result in the following allotments:

- Proposed Lot 71 - 606m<sup>2</sup> (excluding access handle)
- Proposed Lot 72 - 501m<sup>2</sup> (excluding access handle)

The boundary adjustment would result in the existing dwelling on the site being wholly located within proposed Lot 71. The proposal involves the retention of the existing dwelling and a re-design of the approved accessway and turning areas for the proposed allotments.

The proposal includes the following alterations to the existing dwelling:

- Demolition of a small rear portion of the dwelling to maintain a 3 metre rear boundary setback. This includes demolition of a bathroom and part of the laundry.
- Demolition of a concrete access ramp attached to the dwelling on the western elevation. This removal is necessary in order to accommodate the driveway access to the rear allotment. The existing access door on the western elevation is proposed to be replaced with wall cladding and a window. Access to the building is maintained through the front door located on the northern elevation.

No trees are proposed to be removed as part of this modification.

## 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 modification would not result in any inconsistency with the draft Strategy.

### 2. STATUTORY CONTROLS

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

#### 2.1 Environmental Planning and Assessment Act, 1979 – Section 96

The application is lodged pursuant to Section 96(2) of the Act which allows the modification of a consent, where the proposal has been modified in accordance with regulatory

requirements, is substantially the same development as approved and Council considers the application with regard to Section 79C of the Act and any submissions.

The proposed development is substantially the same development as approved.

The application was notified pursuant to Council's Notification and Exhibition DCP. There were no submissions in response to the public exhibition of the proposal.

## **2.2 Hornsby Shire Local Environmental Plan 1994**

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

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

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

Clause 14 of the HSLEP prescribes that the minimum allotment size for subdivision within the zone is 500m<sup>2</sup>, excluding the area of any accessway. The proposed modification seeks to alter the approved lot areas, to result in a lot size of 606m<sup>2</sup> for proposed Lot 71 and 501m<sup>2</sup> for proposed lot 72. The proposed allotment sizes comply with the above control.

Clause 15 of the HSLEP prescribes that the maximum floor space ratio (FSR) of development within the Residential A (Low Density) zone is 0.4:1. The FSR of proposed Lot 71 is 0.18:1, whilst the indicative building envelope on proposed Lot 72 results in a FSR of 0.39:1, which complies with the above control.

## **2.3 State Environmental Planning Policy No. 19 – Bushland in Urban Areas**

The application has been assessed against the requirements of State Environmental Planning Policy No. 19- Bushland in Urban Areas. This Policy provides State-wide planning controls for the protection of bushland within urban areas.

The development requires consideration against Clause 9 of the Policy as the site adjoins land zoned for public space. The proposed subdivision and retention of the dwelling on the site would not have any detrimental impact on bushland on the adjoining public reserve. The proposal complies with the provisions of Clause 9 and the objectives of the Policy.

## **2.4 State Environmental Planning Policy No. 20 – Hawkesbury Nepean River**

The application has been assessed against the requirements of State Environmental Planning Policy No. 20 – Hawkesbury Nepean River. This Policy provides State-wide planning controls for the protection of the Hawkesbury-Nepean River system including its water quality. Subject to the fulfilment of conditions for sediment and erosion controls being implemented, the proposal complies with the objectives of the Policy.

## 2.5 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 (Residential Subdivision DCP). The following table sets out the proposal's compliance with the prescriptive standards of the Plan:

<b>Residential Subdivision Development Control Plan</b>			
<b>Control</b>	<b>Proposal</b>	<b>Requirement</b>	<b>Compliance</b>
<b>Density</b> Proposed Lot 71 Proposed Lot 72	606m <sup>2</sup> 501m <sup>2</sup>	500m <sup>2</sup> 500m <sup>2</sup>	Yes Yes
<b>Building Envelope</b>	198.5m <sup>2</sup>	200m <sup>2</sup>	No
<b>Width of Access Handle</b>	3.15m	4m	No

As detailed in the above table, the proposed development does not comply with two of the prescriptive standards within the Residential Subdivision DCP with respect to accessway width and the building envelope. The matters of non-compliance with the Residential Subdivision DCP are addressed as follows:

### 2.5.1 Allotment Design

The indicative building envelope on proposed Lot 72 does not comply with the prescriptive measures of the 'Allotment Design' element of the Residential Subdivision DCP which requires a building envelope of 200m<sup>2</sup> with a minimum dimension of 10 metres to be shown on the subdivision plan. The indicative building envelope on proposed Lot 72 is 198.5m<sup>2</sup> and has a minimum dimension of 6 metres, which is inconsistent with the above control.

Proposed Lot 72 is an irregular shaped allotment as a result of the configuration of the rear boundary line. A 200m<sup>2</sup> building envelope can be adequately sited on the allotment whilst still complying with provisions for FSR, site coverage, landscaping and private open space. Whilst the building envelope shows a minimum dimension of 6 metres, this dimension occurs at the rear of the site where the rear boundary line is irregular. The majority of the dwelling has a minimum dimension of 10 metres in accordance with the prescriptive standard. Proposed Lot 72 complies with the minimum lot size requirements, is of sufficient dimensions and appropriate shape to accommodate a future dwelling.

Notwithstanding the above, the original subdivision layout illustrated a 200m<sup>2</sup> building envelope. Nothing in the proposed modification to the consent prevents the construction of a dwelling within the approved envelope.

### 2.5.2 Accessway Design

The proposed development is inconsistent with the prescriptive measures of the 'Accessway Design' element of the Residential Subdivision DCP which requires a minimum carriageway width of 3 metres and a landscape verge of 0.5 metres on each side of the carriageway.

The proposal seeks to utilise the existing driveway to access proposed lot 72. The current occupants use this driveway to access the double carport located at the rear of the site. The existing driveway is located along the western boundary and the driveway pavement meets the western boundary where no landscaping verge exists.

The proposal involves the demolition of an existing concrete ramp on the western elevation of the dwelling in order to increase the width of the driveway. The wall of the existing dwelling is setback 3.6 metres from the western boundary, whilst the eaves of the dwelling are setback 3.15 metres from the western boundary. Sufficient setback is available to provide the required 3 metre wide carriageway, however retention of the dwelling means that no landscaping verge along the western boundary can be provided. The absence of the landscaping verge is considered acceptable as there would be no further impacts to the amenity of the western adjoining property. The driveway is already in use by the current occupants of 10 Redgum Avenue, who access the carport on the rear section of the site where no screening is provided. The eaves are 2.6 metres above the ground at the south western corner of the dwelling. The eave does not overhang the driveway and would not hinder vehicular access.

The proposed modification would not increase the number of allotments utilising the driveway and does not require amendment of any conditions applied relating to the driveway and access. Accordingly, it is considered that a departure from the numerical development standard is acceptable in the circumstances of the case.

## 2.6 Dwelling House Development Control Plan

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

<b>Residential Subdivision Development Control Plan</b>			
<b>Control</b>	<b>Proposal</b>	<b>Requirement</b>	<b>Compliance</b>
<b>Site Cover</b> Proposed Lot 71 Proposed Lot 72	20% 39%	40% 40%	Yes Yes
<b>Car parking</b> Proposed Lot 71 Proposed Lot 72	2 2	2 2	Yes Yes
<b>Private Open Space</b> Proposed Lot 71 Proposed Lot 72	300m <sup>2</sup> 150m <sup>2</sup>	120m <sup>2</sup> 120m <sup>2</sup>	Yes Yes
<b>Landscaping</b> Proposed Lot 71 Proposed Lot 72	68% 45%	45% 45%	Yes Yes
<b>Setbacks</b> Proposed Lot 71			

Side (north)	18m	1m	Yes
Side (east)	6.2m	1m	Yes
Side(west)	3.6m	1m	Yes
Rear (South)	3m	3m	Yes
Proposed Lot 72			
Side (north)	4.8m	1m	Yes
Side (east)	4.5m	1m	Yes
Side (west)	1.2m	1m	Yes
Rear (south)	3m	3m	Yes

The proposal complies with the prescriptive standards of the Dwelling House Development Control Plan and the proposed retention and alterations to the dwelling are considered suitable for the site.

### 2.7 Waste Minimisation and Management Development Control Plan

The primary purpose of this Development Control Plan is to provide planning strategies and controls to promote waste minimisation and management. The original application did not include a waste management plan and a condition has been applied to the consent requiring this to be submitted at the issue of a construction certificate.

### 2.8 Sustainable Water Development Control Plan

The proposed development has been assessed having regard to the relevant performance and prescriptive design standards within Council's Sustainable Water Development Control Plan. Subject to conditions requiring that stormwater management and sediment and erosion controls be implemented, the proposal is consistent with the objectives of the Plan.

## 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

In its assessment of the original development application, Council identified 22 trees on this site comprising of a variety of species including locally native *Syncarpia Glomulifera* (Turpentine) and *Eucalyptus Resinifera*, as well as introduced species such as Liquid Amber and Jacaranda. No trees were permitted for removal as part of the consent for the subdivision and demolition. Conditions were applied for tree fencing to be erected during demolition works. The proposed modification would not necessitate the removal of any trees on the site.

The proposed development would not have a negative impact on the water quality of the creek subject to fulfilment of the General Terms of Approval applied by the Department of Water and Energy.

### 3.2 Built Environment

The retention of the existing dwelling and subdivision boundary adjustment would not result in any detrimental impacts on the built environment. The existing single storey brick dwelling



is consistent with the style of dwellings on adjacent properties and its retention would have no adverse impacts in terms of privacy and overshadowing.

The proposed boundary adjustment maintains acceptable allotment sizes and adequate separation between the existing dwelling on proposed Lot 71 and the indicative building envelope on proposed Lot 72.

### **3.3 Social Impacts**

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

### **3.4 Economic Impacts**

The proposal would not have any economic impacts 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 application was referred to the NSW Rural Fire Service for comment. The RFS has advised that it raises no objection to the proposed modification subject to implementation of an Asset Protection Zone (as currently conditioned).

## **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 7 April 2009 and 23 April 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	
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**5.2 Public Agencies**

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

**5.2.1 Rural Fire Service**

This matter has been addressed in Section 4.1 of this report.

**5.2.2 Department of Water and Energy**

The application was referred to the Department of Water and Energy as the site is within 40 metres of a watercourse. The Department raised no objections to the modification subject to the General Terms of Approval applied to the original consent for the subdivision being applied to the consent.

**6. THE PUBLIC INTEREST**

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

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

The proposed modification 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 boundary adjustment and retention of the existing dwelling would be in the public interest.

## CONCLUSION

The Section 96(2) application proposes to modify the development consent for the subdivision of one lot into two and demolition of an existing dwelling on the site. The proposed modification involves a boundary adjustment to the approved subdivision, retention of the existing dwelling and minor alterations to the dwelling.

The proposed modification does not comply with the 'Accessway Design' element of the Residential Subdivision Development Control Plan. The proposed retention of the dwelling does not enable the provision of the 0.5 metre landscaping verge on the western boundary. The forfeit of the landscaping verge is considered acceptable as there would be no further significant impacts on the amenity of adjoining properties.

The application was publicly exhibited and Council received no submissions. The application was referred to the RFS and Department of Water and Energy for comment. Both Agencies advised Council that no objection was raised to the development subject to the imposition of appropriate conditions/general terms of approval.

The application is assessed as satisfactory against the provisions of Section 79C of the Environmental Planning and Assessment Act, the Hornsby Shire Local Environmental Plan and the Residential Subdivision Development Control Plan.

The application is considered to be acceptable in relation to environmental impacts and is considered to be in the public interest. The application is consequently recommended for approval subject to conditions in Schedule 1 of this report.

PAUL DAVID  
Manager - Subdivision & Development  
Engineering Services, Planning Division

ROD PICKLES  
Manager - Assessment Team 2  
Planning Division

SCOTT PHILLIPS  
Executive Manager  
Planning Division

**Attachments:**

1. Locality Plan
2. Subdivision Plan
3. Floor Plan
4. Subdivision Layout Plan

File Reference: DA/1273/2004/A  
Document Number: D01162490

**SCHEDULE 1****PART A****SECTION 96**

<b>Date of this modification:</b>	5 August 2009
<b>Details of this modification:</b>	Conditions amended for the retention of the existing dwelling on the site and boundary adjustment.
<b>Conditions Added:</b>	<b>60, 61, 62, 63</b>
<b>Conditions Deleted:</b>	<b>8, 38</b>

**GENERAL CONDITIONS**

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

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

*Note: For the purpose of this consent, any reference to an Act, Regulation, Australian Standard or publication by a public authority 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.*

**DEVELOPMENT ENGINEER****Construction Certificate – Subdivision/Engineering Works**

1. A construction certificate must be obtained from either Council or an Accredited Certifier. Engineering design plans and specifications are to be prepared by a chartered professional engineer for any proposed works. The plans and specifications are to be in accordance with development consent conditions, appropriate Australian standards, and applicable Council standards, in particular "Hornsby Shire Council Civil Works - Design and Construction Specification". Information required to be submitted with a construction certificate is as follows:-
  - (a) copies of compliance certificates relied upon;
  - (b) Four (4) copies of the detailed engineering plans in accordance Hornsby Shire Council's Civil Works - Design Specification 1999. The detailed plans may include but are not limited to the earthworks, roadworks, road pavements, road furnishings, stormwater drainage, landscaping and erosion control works;
  - (c) Hornsby Shire Council's approval for works in the existing public road and works involving Council-controlled drainage systems is required prior to the issuing of a construction certificate for these works.

**Principal Certifying Authority**

2. Before any construction works commence, you are required to appoint a Principal Certifying Authority as required by section 81A of the Environmental Planning & Assessment Act, 1979. The Principal Certifying Authority is responsible for ensuring that all the works are carried out in accordance with the approved plans and specifications. On the date of this consent, Council is the only principal certifying authority for subdivision work. Council requires that the applicant enter into a deed of agreement identifying each party's responsibilities prior to the commencement of subdivision work.

**Notifying Council of Commencement of Works**

3. It is a requirement of the Environmental Planning and Assessment Act (Section 81A(2)) that you notify Hornsby Council at least two (2) days prior to the intention to commence works. Where works are to be undertaken in a public place, such notice must be accompanied by evidence of the contractor's Public Liability and Workers' Compensation Insurances. The public risk policy shall be such an amount as determined by Council (not being less than \$10,000,000.00) and shall cover the owner and the Council against any injury, loss or damage sustained by any person, firm or company.

**Sediment & Erosion Control**

4. Temporary sedimentation and erosion controls are to be constructed prior to commencement of any work to eliminate the discharge of sediment from the site. The controls are to be designed and installed in accordance with the requirements of the NSW Department of Conservation and Land Management's "Urban Erosion and Sediment Control" manual, Hornsby Shire Council's "Sustainable Water Best Practices" manual and shall:-
  - (a) be effectively maintained at all times during the course of construction and shall not be removed until the site has been stabilised or landscaped to the Principal Certifying Authority's satisfaction;
  - (b) include a single all weather access way at the front of the property consisting of 50-75mm aggregate or similar material at a minimum thickness of 150mm and 7 metres long, laid over geotechnical fabric and constructed prior to commencement of works;
  - (c) include adequate measures to remove clay from vehicles leaving the site so as to maintain public roads in a clean condition;
  - (d) ensure that no spoil or fill encroaches upon adjacent bushland for the duration of the works;
  - (e) ensure disturbed areas are rehabilitated with indigenous plant species, landscaped and treated by approved methods of erosion mitigation such as, mulching, and revegetation with native grasses or other suitable stabilising processes within fifteen days of the completion of works;

- (f) No site works are to commence until the sediment control installation has been inspected and approved by the Principal Certifying Authority. At least 48 hours notice is to be given for the inspection of such works. A compliance certificate to be submitted to Hornsby Shire Council with the notification for commencement of works.

### **Dust Control**

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

### **Demolition**

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

*Note:* Applicants are reminded that WorkCover NSW requires all plant and equipment used in demolition work must comply with the relevant Australian Standards and manufacturer specifications.

7. Carrying out of demolition works are restricted to Monday to Friday between the hours of 7.00am and 6.00pm. No demolition works are to be undertaken on Saturdays, Sundays or Public Holidays.

8. **Deleted**

9. A waste management plan is to be submitted with the construction certificate application. The plan is to detail the type and volume of demolished building materials, waste building materials and excavated soil wastes/fill materials and the means of their disposal, including recycling options and the location of approved waste disposal depots or approved landfill sites which will be utilised for disposal.

*Note:* The attention of the applicant is directed to the requirements of the WorkCover Authority of NSW regarding the removal and disposal of asbestos and materials containing asbestos and the use of mechanical appliances on this site.

### **Hours of Construction**

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

### **Inspections – Engineering**

11. All engineering work required by this consent must be inspected and compliance certificates shall be issued prior to occupancy or issue of the subdivision certificate, whichever occurs first, certifying that the works comply with development consent, construction certificate and Hornsby Shire Council Civil Works - Design and Construction Specification for the following nominated stages:

- Implementation of erosion control
- Implementation of traffic control
- Boxing out
- Excavated trench and before backfilling
- Pipes before backfilling
- Sand backfilling
- Final pipe inspection
- Pits base
- Pit walls
- Concrete pit tops
- Subgrade
- Subsoil laying
- Sub base
- Kerb pre-laying
- Kerb during laying
- Pavement Depths (Survey certificate)
- Base Course
- Concrete tests
- Street furniture
- Footpath turfing
- Lot regrading and trimming
- Re-vegetation
- Interallotment drainage pipes
- Interallotment pit construction
- Final erosion control inspection
- Replacement of light duty gutter crossing
- Conduits laid within access way corridor prior to backfilling
- Driveways and accessways
- Final inspection

### **Sydney Water**

12. A Section 73 compliance certificate under the Sydney Water Act 1994 must be obtained. Application must be made through an authorised Water Servicing Coordinator. Please refer to “Your Business” section of Sydney Water’s web site at [www.sydneywater.com.au](http://www.sydneywater.com.au) then the “e-developer” icon or telephone 13 20 92.

Following application, a “Notice of Requirements” will detail water and sewer extensions to be built and charges to be paid. Please make early contact with the Coordinator, since building of water/sewer extensions can be time consuming and may impact on other services and building, driveway or landscape design.

**The Notice must be submitted to the Principal Certifying Authority prior to the Construction Certificate being issued.**

The Section 73 Certificate must be submitted to the Principal Certifying Authority prior to occupation of the development/release of the plan of subdivision.



**Driveways and Access**

13. A Traffic Control Plan (TCP), prepared by a suitably qualified work site traffic controller, is to be submitted with any Construction Certificate, demonstrating compliance with the Road & Traffic Authority's Traffic Control at Worksites manual, 1998, and detailing:-
- (a) Public Notification of proposed works;
  - (b) Short term, (during actual works) signage;
  - (c) Long term signage arrangement;
  - (d) Vehicle movement plans, where applicable;
  - (e) Traffic Management Plans;
  - (f) Pedestrian and cyclist access/safety;

Four copies of the TCP is required to be submitted for consideration and approval prior to the release of the Construction Certificate.

14. Construction of the proposed right of carriageway in accordance with the following requirements:-
- (a) Construction of 150mm thick reinforced concrete pavement;
  - (b) The pavement width shall be a minimum width of 3.0 metres;
  - (c) The pavement shall have a kerb to one side and a one-way crossfall with a minimum gradient of 2%;
  - (d) The provision of a safety rail – if required - at appropriate locations along the carriageway.
15. A concrete footpath and gutter crossing is to be constructed. The crossing shall be designed and constructed in accordance with the following provisions:-
- (a) Under the provisions of the *Local Government Act 1993* and *Roads Act 1993* approval for the construction of the proposed concrete footpath and gutter crossing to be sought and the appropriate fees paid prior to the commencement of work;
  - (b) The crossings are to be designed and constructed in accordance with Hornsby Shire Council's standard. The crossing is to have adequate width at the layback as appropriate for the adjacent driveway or car park. A plan of the standard is available on request;
  - (c) Location of the crossings shall not conflict with street trees, kerb inlet pits poles or other street furniture, unless permission to relocate a service or remove a street tree is given by the relevant Authority;
  - (d) Existing crossings shall be removed and reinstated to Hornsby Shire Council's standard kerb and gutter;

- (e) The vehicular crossing design and construction must be certified by Hornsby Shire Council's Works Division as being constructed in accordance with Council's standard, prior to release of any Subdivision Certificate.
16. The internal driveways and car standing areas are to be designed according to the requirements of Australian Standard AS2890.1 –2004 and the following requirements;
- (a) The internal driveway and manoeuvring areas shall be designed and constructed to permit turning and manoeuvring for ingress and egress in a forward direction for both Lots. Turning head design shall be extended as amended in red on approved Subdivision Plan by B & G Surveying;
  - (b) Parking areas and driveways are to be paved and drained. Details of pavement and drainage design are to be submitted in the form of calculations and specifications or details. Spot levels, cross sections and/or design contours must be shown on the plans;
  - (c) Details of car park and turning areas to be prepared by a suitably qualified professional and shown on the Construction plans for examination and approval with the Construction Certificate.
17. Reciprocal rights of carriageway and easement for services are to be created over the access corridor under Section 88B of the Conveyancing Act 1919.

### **Drainage**

18. Stormwater drainage from the site shall be designed to satisfactorily drain rainfall intensities for an average recurrence interval of 20 years. The design shall:-
- (a) Be in accordance with Hornsby Shire Council Civil Works – Design Specification 1999;
  - (b) Provide for drainage discharge to the existing drainage system;
  - (c) Ensure that the development, either during construction or upon completion, does not impede or divert natural surface water runoff so as to cause a nuisance to adjoining properties.
19. The creation of a "Positive Covenant" over the proposed front Lot requiring that any future development is to provide an on-site detention system. The on-site detention system is to have a storage capacity of 5 cubic metres and a maximum discharge of 8 litres per second into Council's drainage system in accordance with Council's standard wording.

### **Easements & Restrictions on Title**

20. All Section 88B restrictions and covenants created as part of this consent are to contain a provision that they cannot be extinguished or altered except with the consent of Hornsby Shire Council.

**Subdivision/Strata Plan**

21. House numbering can only be authorised by Hornsby Shire Council. Before proceeding to number each lot/occupancy in the development, the allocation of numbers must be obtained from Council's Planning Division.

**Subdivision Certificate**

22. Lodgement and approval of a subdivision certificate is required to authorise the Plan of Subdivision.
23. All conditions of the development consent are to be completed prior to the issue of the subdivision certificate.
24. The following documentary evidence is to be obtained and forwarded to the Principal Certifying Authority prior to the release of the subdivision certificate:-
  - (a) Submission of a surveyor's certificate stating that all structures within the subject land comply with the development consent in regard to clearance from proposed new boundaries;
  - (b) The submission of a surveyor's certificate stating that no services, drainage lines or access way encroach over the proposed boundary other than as provided for by easements created by the final plan of subdivision;
  - (c) Submission of certification from an appropriately qualified Worksite Traffic Controller that the documentation requirements of Section 6 of the Traffic Control at Work Sites Manual 1998 (RTA) have been complied with. Where necessary, Council may require a copy of all documentation to be submitted to Council for audit purposes prior to the issue of a subdivision certificate. Council may also audit this documentation at any time during the development works.

**Utility Services**

25. Council requires the underground reticulation of low voltage electricity and telecommunications services for the approved development.
26. The applicant shall ensure that all public utility service pipes, mains and conduits are laid and/or installed in all new roads and existing roads, as part of the construction and drainage works associated with the subdivision.
27. Certification that the requirements of the relevant utility authorities /company such as Energy Australia and Telstra have been met shall be submitted prior to the issue of the subdivision certificate.

**Council Property**

28. The cost of repairing any damage caused to Council's assets as a result of construction works associated with the approved development is to be met in full by the applicant/developer prior to the issue of a subdivision certificate.

## ENVIRONMENTAL HEALTH AND BUILDING SURVEYOR

### Site Works

29. No site works, including the removal of vegetation or any demolition works, shall be commenced prior to:
  - 29.1 A construction certificate being issued.
  - 29.2 Tree/bushland protection measures have been implemented;
  - 29.3 Sediment and erosion control measures have been implemented;

### Asbestos Removal

30. Prior to commencement of any work involving the demolition, alteration or addition to any building on the development site, a survey is to be conducted by a competent person to ascertain whether any asbestos materials exist thereon. Asbestos material means any material that contains asbestos.
31. Where asbestos material is found to exist on the development site and that asbestos material is to be removed or disturbed as a result of any proposed demolition, alteration or addition, then all work involving removal and disposal of asbestos material must be undertaken by persons who hold the appropriate licence issued by WorkCover NSW under Chapter 10 of the Occupational Health and Safety Regulation 2001.
32. The collection, storage, transportation or disposal of any type of asbestos waste is to comply with the requirements of clause 29 of the Protection of the Environment Operations (Waste) Regulation 1996.
33. Upon completion of disposal operations, the applicant must lodge with the principal certifying authority, within seven (7) days, all receipts (or certified photocopies) issued by the receiving landfill site as evidence of proper disposal.

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

### Signs for Demolition Sites

34. 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 is to be erected on the site in a prominent position visible from the street. The sign is to be erected prior to any work commencing and is to remain in place until such time as all asbestos material has been removed from the site to an approved waste facility. This condition is imposed for the purpose of worker and public safety and to ensure compliance with Clause 259(2)(c) of the Occupational Health and Safety Regulation 2001.

35. A sign must be erected in a prominent position on the premises, on which the demolition of a building is being carried out, stating that unauthorised entry to the premises is prohibited and showing the name of the builder or other person in control of the premises and a telephone number at which the builder or other person may be contacted during and outside work hours.

### **Inspections**

36. The demolition works must be inspected by the Principal Certifying Authority to certify that the works comply with the development consent and the approved plans and specifications.

### **Noise**

37. The use of amplified equipment, such as radios and the like during construction stage shall not be used where the noise is audible on any neighbouring property.

### **Disconnection of Utilities**

38. **Deleted**

### **Landscaping**

39. All natural landscape features, including natural rock outcrops, natural vegetation, soil and watercourses, are to remain undisturbed except where affected by necessary works detailed on approved plans.
40. The area surrounding the building shall be reinstated to good order as soon as practical after the completion of site works including, where necessary, the establishment of new landscaping.
41. The natural ground levels of private open space areas are not to be altered unless otherwise indicated on the approved plans.

### **Council Property**

42. The land and adjoining areas are to be kept in a clean and tidy condition at all times. Litter and rubbish shall be placed in containers and removed from the site. A waste storage container is to be provided at the commencement of the building work.
43. The cost of repairing any damage caused to Council's assets as a result of construction works associated with the approved development is to be met in full by the applicant/developer prior to the issue of a subdivision certificate.

### **PARKS AND LANDSCAPE TEAM**

44. No excavation or grade changes are to be carried out within four metres of trees numbered 1, 3, 4, 7, 7a, 8, 9, 9a, 10, 11, 12, 13.
45. Trees marked on plan as 10, 11, 12 and 13 are to be suitably protected from mechanical damage to trunks from construction machinery. Timber hoarding or planking should be wired around tree to provide a measure of protection from

accidental damage. This should be strictly adhered to as trees are shared in a common driveway and provide amenity value to a number of residents.

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

Release of the Construction Certificate gives automatic approval to the removal only of those trees located on the subject property within 3 metres of the foundation footprint of an approved residential, commercial or community building, garage or inground swimming pool. Other trees shall not be removed or damaged without an application being made under Council's Tree Preservation Order. Penalties apply for non-compliance.

## GENERAL

### Fences

47. All boundaries behind the building line and courtyard areas shall be enclosed with 1.8m fences/screens/walls to protect the privacy of future occupants as well as adjoining owners. Provided that where an adjoining owner agrees to the provision of an alternate fence/screen/wall that fence/screen/wall shall be erected in lieu of the fence required by this condition. The fence/screen/wall is to be erected prior to the occupation of the dwellings.

### Contributions

48. The payment of a contribution towards the cost of transport and traffic management, open space and recreation facilities, library and community facilities, bushland and environmental works, stormwater drainage, bushfire protection and Section 94 administration in accordance with Sections 94, 94B and 94C of the Environmental Planning and Assessment Act, 1979, and Hornsby Shire Council's Development Contributions Plan 2004-2010. The total contribution shall be \$12,858.80 if paid prior to 30 June 2005. Following this date, contributions will be adjusted in accordance with the underlying consumer price index for the subsequent financial years, it being noted that there are:-

- One (1) additional allotments @ \$12,858.80 per dwelling/allotment

This amount is to be paid to Council prior to issue of the construction certificate or the subdivision certificate, whichever occurs first. The contribution rate will be adjusted on an annual basis in accordance with the underlying consumer price index movements if not paid prior to 30 June 2005.

**Note:** A copy of Council's Contributions Plan may be inspected during business hours at the first floor of Hornsby Shire Council's Administration Building located at No. 296 Pacific Highway, Hornsby.

**DEPARTMENT INFRASTRUCTURE, PLANNING AND NATURAL RESOURCES**

49. All works proposed must be designed, constructed and operated to minimise sedimentation, erosion and scour of the banks or bed of the watercourse/foreshore and to minimise adverse impacts on aquatic and riparian environments.
50. Erosion and sediment control measures are to be implemented prior to any works commencing at the site and must be maintained, for as long as necessary after the completion of works, to prevent sediment and dirty water entering the watercourse/foreshore environment. These control measures are to be in accordance with the requirements of Council or the consent authority and best management practices as outlined in the NSW Department of Housing's "Managing Urban Stormwater: Soils and Construction" Manual (1998) - the 'Blue Book'.
51. The Part 3A Permit from DIPNR is issued for works on FREEHOLD land only. This Permit is null and void for any works on Crown Land.
52. Rehabilitation of the area in accordance with the Part 3A Permit Conditions or any direction from DIPNR is the responsibility of the Permit holder and owner or occupier of the land.
53. Work as executed survey plans of a professional standard and including information required by DIPNR shall be provided to DIPNR on request.
54. If, in the opinion of a DIPNR officer, works are carried out in such a manner that they may damage or adversely affect the watercourse or foreshore environment, the DIPNR officer may issue an oral or written direction to immediately stop all work/s.
55. If any DIPNR Part 3A Permit Conditions are breached, the Permit holder shall restore the site in accordance with these Conditions and any other necessary remedial actions as directed by DIPNR. If any breach of the Part 3A Permit Conditions requires a site inspection by DIPNR, then the permit holder shall pay a fee prescribed by DIPNR for this inspection and all subsequent breach inspections.
56. Details of any stormwater outlet to the creek (which must be constructed to prevent erosion or scour of the bank) are to be submitted to DIPNR for approval prior to the issue of permit. The stormwater outlet to the watercourse should be designed, located and constructed to minimise any erosion or scour of the banks or bed of the watercourse and the construction technique adopted is to ensure that disturbance to the banks soil and vegetation is kept to an absolute minimum. The stormwater outlet is to be of a soft engineering design and should address the requirements of the guideline '*Stormwater Outlet Structures to Streams (Attachment A)*'.
57. Any disturbed areas adjacent to the watercourse are to be revegetated using a diverse range of native plant species propagated from local genetic stock. A rehabilitation plan covering any disturbed areas in the riparian zone, addressing the requirements of the DIPNR guideline on '*Watercourse and Riparian Zone Rehabilitation Requirements (Attachment B)*', is to be submitted to DIPNR for approval prior to the issue of permit. The disturbed areas must be revegetated for a minimum distance of 10 metres measured from the edge of the disturbance.
58. A Soil and Water Management Plan (S&WMP) for all site works is to be prepared by a suitably qualified person to the satisfaction of Council and DIPNR and approved by

DIPNR prior to the issue of the 3A permit. The S&WMP is to meet the requirements outlined in Chapter 3 of the NSW Department of Housing's 'Managing Urban Stormwater: Soils and Construction' (2004) manual (the 'BlueBook').

59. Evidence of Owner's Consent for any proposed easement to drain water over any neighbouring property is required prior to the issue of the permit.

#### ADDITIONAL CONDITIONS

##### 60. 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>
2977 – D1 A	Plan Concepts Pty Ltd	April 2009
2977 - ED 1	Plan Concepts Pty Ltd	June 2009

<i>Document No / Title</i>	<i>Prepared by</i>	<i>Dated</i>
Tree Location Plan	Hornsby Shire Council	15 September 2009

##### 61. Allotment Size

The allotment size for each of the approved lots (Lot 71 and Lot 72) must have a minimum area of 500m<sup>2</sup>, not including any access handle or right of carriageway.

##### 62. Fire Safety Upgrade

To ensure the protection of persons using the building and to facilitate egress from the building in the event of a fire, the application for a construction certificate must demonstrate that it will comply with the following Category 1 fire safety provisions:

- a. Part 3.7 of the Building Code of Australia Volume 2

##### 63. Bushfire Management – Protection Zones

At the issue of a subdivision certificate and in perpetuity, the entire property shall be maintained as an Inner Protection Area (IPA) as outlined in section 4.1.3 and Appendix 5 of the NSW Rural Fire Service publication 'Planning For Bush Fire Protection 2006' and 'Standards for Asset Protection Zones'.

*Note: Further information concerning planning for bush fire protection can be found at: [www.rfs.nsw.gov.au](http://www.rfs.nsw.gov.au).*

- END OF CONDITIONS -

#### ADVISORY NOTES

1. The applicant's attention is directed to the obligations and responsibilities under the Dividing Fences Act concerning the rights of adjoining property owner/s which may arise from this application. Further enquiries in this regard should be directed to a Solicitor or the Local Land Board, telephone No 9228 6726.



2. A changed determination issued under Section 82A of the Environmental Planning & Assessment Act, 1979 replaces the earlier determination as from the date of the review.

**PART B:**

Where delegated authority is in place, any future applications for this site be so determined.

## 7 STRATEGIC PLANNING PROGRAMME PROGRESS REPORT

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### EXECUTIVE SUMMARY

Council adopted the current Strategic Planning Programme at its meeting in December 2008. Council also resolved that a six monthly report be prepared for Councillors providing an update on the Programme.

The Town Planning Services Branch is currently progressing a number of projects in accordance with the Strategic Planning Programme. Other projects have also been identified by Council and will be the subject of discussion in the report to Council on the December review of the Programme. This review will provide Council with the opportunity to alter the priority of strategic planning projects and introduce new projects where appropriate.

This report provides an interim status report to advise Council of the current projects being undertaken by the Town Planning Services Branch. It is recommended that Council note the contents of the report and consider the priority of major projects in the December review of the Strategic Planning Programme.

### PURPOSE

The purpose of this report is to advise Council of the status of strategic planning projects currently being undertaken by the Town Planning Services Branch in accordance with the Strategic Planning Programme.

### BACKGROUND

The Town Planning Services Branch within the Planning Division of Council is responsible for town planning initiatives in accordance with the Strategic Planning Programme. This Programme is adopted by Council and sets out the major projects of the Branch.

At its meeting on 17 December 2008, Council considered Executive Manager's Report No. PLN246/08 on the Strategic Planning Programme and resolved that:

1. *The 2009/2010 Strategic Planning Programme attached to Executive Manager's Report No. PLN246/08 be adopted.*
2. *A six monthly report be prepared for Councillors providing an update on the Strategic Planning Programme.*
3. *A Workshop with Councillors be conducted to discuss the 2009/2010 Strategic Planning Programme and Council priorities for strategic planning over the current Council term.*

A copy of the adopted Programme is attached. In accordance with Council's resolution, on 10 March 2009 a workshop with Councillors was conducted to discuss the Strategic Planning Programme. Councillors noted the projects currently being progressed in accordance with the Programme and the process to incorporate new projects on the Programme. It was also

noted that in accordance with actions arising from the Councillors' Strategic Weekend in February/March 2009, reports will be presented to Council on options to progress a review of planning controls for the Hornsby Town Centre Westside, Pennant Hills Masterplan review and rural planning provisions review.

The Programme will be referred to Council in December 2009 to determine the priority of strategic planning over the current Council term. The Programme is reviewed annually to enable Council to reconsider priorities as issues evolve and to provide Council with an update on the achievements over the preceding year. This report provides Council with a status report on projects currently being undertaken in accordance with the Programme.

## DISCUSSION

This report provides the status of current projects under the 2009/2010 Strategic Planning Programme. A more comprehensive explanation of the projects and their status will be provided with the review of the Programme to be presented to Council in December 2009.

### Current Projects - Local Environmental Plans (LEPs)

**Amendments LEP (2007):** Council resolved to progress an Amendments LEP to permit specific uses, rezone various lands and update references to property addresses and descriptions in the *HSLEP* as follows:

- rezone St Judes carpark at Dural;
- rezone Landcom sites;
- permit a pharmaceutical facility at Moores Road, Glenorie; and
- rezone a Department of Health site at Pennant Hills.

The LEP has been gazetted.

**Amendments LEP (2008):** Council resolved to progress a LEP to amend the *HSLEP* as follows:

- 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
- implement the recommendations of the *Foreshores Planning Provisions Review*.

The LEP has been forwarded to the DOP for gazettal.

**Hornsby Quarry and Environs LEP:** The *Hornsby Quarry and Environs Land Capability Study* recommends the preparation of a draft LEP to rezone portions of the study area to permit concentrated residential development and reclassify parts of the site to operational land. Council has deferred progression of the draft LEP to consider options for the site, including land filling.

**Galston Village LEP:** A draft LEP has been prepared to implement the findings of the *Galston Village Masterplan Review*. Council deferred the draft LEP until determination of the development application for property No. 346 Galston Road. The DA has been approved. Council has resolved that the Galston Village Working Party consider the recommendations

of the *Review* in light of the approval of the supermarket. A workshop with Councillors concerning the project is currently being arranged.

***Comprehensive LEP:*** Council has resolved to prepare a new Comprehensive LEP for Hornsby Shire by March 2011 in accordance with the State Government's *Standard Instrument*.

Significant progress has been made on the preparation of Council's new LEP. The *Waterways Review* has resulted in a draft LEP to inform the zoning of the waterways. The *Open Space Land Acquisition Review* has been finalised and will inform the preparation of the Land Acquisition Maps and zoning of open space lands. A consultant has undertaken a translation of the rural zones into the *Standard Instrument* format. *Heritage Review Stage 4* has been adopted and will update Council's schedule of Heritage Items.

The *Hornsby and Ku-ring-gai Subregional Employment Study* has been exhibited and will inform the zoning and permitted land uses for commercial and industrial lands within the Shire. The *Housing Strategy* has been exhibited and will inform rezonings to facilitate additional housing opportunities to meet Council's obligations under the *Metropolitan Strategy* and *draft North Subregional Strategy*.

A draft translation of zones, land use tables and zoning maps have been discussed with the DOP's Regional Office. Accordingly, Council is well placed to prepare a draft Comprehensive LEP in the *Standard Instrument* format and incorporating planning controls to meet the dwelling and employment targets under the *Metropolitan Strategy*, by the target date of March 2011.

### **Current Projects - Development Control Plans**

***Heritage DCP Review:*** The *Heritage DCP* was prepared in 1995. The Heritage Advisory Committee has identified a number of matters that should be reviewed. The review will require a formal process of preparation, exhibition and adoption. A consultant has been engaged to provide input to assist progression of the draft DCP and a draft Plan has been prepared and submitted. It is anticipated that the draft DCP will be presented to Council in late 2009.

***Business Lands DCP Amendments:*** Council resolved to prepare an amendment to the *Business Lands DCP* to implement changes to setback requirements for specific properties within Thornleigh to supplement zoning changes recommended under the *Amendments LEP 2008*. At its meeting on 1 July 2009, Council adopted the DCP amendments. The amendments will come into force following gazettal of the associated amending LEP.

***River Settlements DCP Amendments:*** Council resolved to endorse the exhibition of draft DCP amendments for bed and breakfast and short term accommodation to implement recommendations arising from the *River Settlements and Foreshores Review*. The amendments include controls for guest numbers, effluent disposal, signage, car parking (where applicable), fire safety and guest responsibilities. At its meeting on 1 July 2009, Council adopted the DCP amendments for bed and breakfast accommodation. The amendments will come into force following gazettal of the associated amending LEP. Council deferred the amendments relating to short term accommodation pending the outcomes of a review being undertaken by the DOP.

***Hornsby Quarry and Environs DCP:*** The *Hornsby Quarry and Environs Land Capability Study* recommended the preparation of a draft DCP to provide a planning strategy and

guidelines for development within the study area. Council has deferred progression of the draft DCP to consider options for the site, including land filling.

**Galston Village Masterplan DCP Amendments:** Draft DCP amendments have been prepared to implement the findings of the *Galston Village Masterplan Review*. Council deferred the draft amendments until determination of the development application for property No. 346 Galston Road. The DA has been approved. Council has resolved that the Galston Village Working Party consider the recommendations of the *Review* in light of the approval of the supermarket.

**Comprehensive DCP:** Changes to Part 3 of the *Environmental Planning and Assessment Act, 1979* require that only one DCP apply to a parcel. Accordingly, all Council DCPs are required to be amalgamated into one comprehensive DCP within the same timeframe for the preparation of Council's new Comprehensive LEP. The preparation of the DCP has commenced.

### Current Projects - Studies

**Heritage Review Stage 4:** As part of Council's ongoing Heritage Review, Stage 4 involves a review of requests for inclusion or removal of items from Schedule D of the *HSLEP* and a review of heritage listed trees. At its meeting on 3 June 2009, Council resolved to progress the recommendations of the *Review* as part of the next Annual Amendments LEP.

**Ku-ring-gai and Hornsby Subregional Employment Study:** Council resolved to participate with the DOP and Ku-ring-gai Council in the preparation of a *Subregional Employment Study*. The objective of the *Study* is to ensure local employment strategies facilitate opportunities to meet the employment targets under the State Government's *Metropolitan Strategy*. The *Study* has been exhibited and a consultant engaged to undertake further analysis of the Dural Service Centre. A draft report has been submitted by the consultant. A report on submissions is currently being prepared for consideration by the Employment Study Working Party.

**Housing Strategy:** The *Hornsby Shire Housing Strategy* identifies areas suitable for the provision of additional housing to meet Council's dwelling targets under the *Metropolitan Strategy*. The *Strategy* was exhibited for public comment until 17 July 2009. A report on submissions is currently being prepared for consideration by the Housing Strategy Steering Committee in August 2009.

**Outdoor Advertising Review:** The purpose of the *Review* is to provide an overview of the outdoor advertising controls relevant to Hornsby Shire. The *Review* is currently being revised in accordance with the definitions under the *Standard Instrument* and is anticipated to result in a revised *Outdoor Advertising DCP*.

### Current Projects - Other projects

**Heritage Week:** Each year Council endorses events to coincide with National Trust's Heritage Week to assist in the promotion of heritage conservation in the Shire. This year's events have been conducted and included an Aboriginal heritage walk, former Red Hill Observatory Heritage Walk, Hawkesbury river boat trip, open day at Fagan Park, astronomical pursuits exhibition and Heritage Awards.

**Local Heritage Assistance Fund:** Each year the Heritage Advisory Committee and Council endorse funding for a number of heritage conservation projects. The projects for the

2008/2009 financial year have been completed and a report on the allocation of monies for projects for the current financial year will be considered by Council at its meeting on 5 August 2009.

***Heritage Inventories:*** The Information Systems Branch is providing assistance to the Town Planning Services Branch to digitize Council's Heritage Study Inventory Sheets to ensure they are more readily accessible to Council's customers. The Sheets have been digitized and are currently being quality assured prior to being made available to the public on Council's website.

***Metropolitan Development Program:*** Each year the DOP requires information on dwelling and subdivision production in the Shire. The Town Planning Services Branch is currently compiling the information for 2008/2009.

### **Management Plan Projects**

***Equitable access to transport nodes:*** Following completion of the *Integrated Landuse and Transport Study*, Council resolved to review the *Access and Mobility DCP* to facilitate equitable access to major transport nodes. As the *ILUTS* has now been completed, this project is scheduled to commence.

***DCP recreation controls:*** As part of the *Strategic Intent Action Plan*, Council resolved to review the recreation controls in Council's DCPs. This project is scheduled to commence.

### **New Projects**

***Amendments LEP (2009):*** At its meeting on 3 June 2009, Council resolved to progress the recommendations of *Heritage Review Stage 4* as part of the next Amendments LEP. At its meeting on 2 September 2009, Council will also considered a planning proposal to permit the strata title subdivision of property No. 218 Brooklyn Road, Brooklyn. Should Council support the proposal, it would be progressed as part of the Amendments LEP.

A number of other projects have arisen as a result of Council resolutions, consideration of development applications, requests from other Divisions or State Government initiatives and rezoning submissions. New projects were also identified at the Councillors' Strategic Weekend in February/March 2009. The projects include the Hornsby Town Centre West precinct and Pennant Hills Masterplan. A workshop with Councillors is currently being arranged to discuss the scope and timing of these projects. A summary of the projects will be provided in the December review for incorporation into the Strategic Planning Programme. The timing of these projects will be required to be determined having regard to the priority of other projects.

### **FINANCIAL**

The Strategic Planning Programme has been designed in accordance with the Council approved Town Planning Services Branch budget allocation, including salaries and consultant expenditure. The Programme is considered in the preparation of Annual Operating Plans. The Programme does not commit to expenditure over that typically provided in the budget. The financial implications of the individual projects are also reviewed and reported to Council as a component of the project.

## TRIPLE BOTTOM LINE SUMMARY

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

## CONCLUSION

The Town Planning Services Branch is currently progressing a number of projects in accordance with the Strategic Planning Programme adopted by Council in December 2008. Other projects have also been identified by Council and will be the subject of discussion in the report to Council on the December review of the Programme. This review will provide Council with the opportunity to alter the priority of strategic planning projects and introduce new projects where appropriate.

This report provides an interim status report to advise Council of the current projects being undertaken by the Town Planning Services Branch. It is recommended that Council note the contents of the report and consider the priority of major projects in the December review of the Strategic Planning Programme.

## RECOMMENDATION

THAT:

1. Council note the contents of Executive Manager's Report No. PLN61/09 concerning the status of Strategic Planning Projects currently being undertaken by the Town Planning Services Branch in accordance with the Strategic Planning Programme.
2. Council consider the priority of Strategic Planning Projects in the December review of the Strategic Planning Programme.

JAMES FARRINGTON  
Manager - Town Planning Services  
Planning Division

SCOTT PHILLIPS  
Executive Manager  
Planning Division

### Attachments:

1. Strategic Planning Programme

File Reference: F2004/10086  
Document Number: D01199855

## **8 LOCAL HERITAGE ASSISTANCE FUND 2009/2010 APPLICATIONS**

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### **EXECUTIVE SUMMARY**

This report presents the recommendations of the Heritage Advisory Committee concerning the allocation of funds under the Local Heritage Assistance Fund 2009/2010. The Committee recommends the allocation of \$60,000 to assist twelve projects relating to the conservation of heritage items within the Shire.

It is recommended that Council endorse the expenditure of funds in accordance with the recommendations of the Committee.

### **PURPOSE**

The purpose of this report is to seek Council's endorsement to allocate \$60,000 under the Local Heritage Assistance Fund.

### **BACKGROUND**

As part of Council's commitment to promoting the conservation of the Shire's heritage resources, Council has offered an annual Local Heritage Assistance Fund since 1995. Through the Fund, Council encourages the conservation of heritage items by contributing financially to their maintenance. The Fund is allocated on a dollar for dollar basis between the owner and Council.

The types of work that are eligible for assistance under the Fund are as follows:

- repair, maintenance or reinstatement of original or missing items on heritage buildings or structures (e.g. Windows, verandahs, roofs, decorative details, traditional fences);
- reinstatement of traditional colour schemes on houses or commercial buildings;
- structural stabilisation of buildings, ruins or slab barns; and
- historic garden conservation.

The following works however, are not eligible:

- additions and alterations;
- routine maintenance (including painting);
- work that has already been completed;
- the purchase or relocation of a building;
- internal decoration; and
- the construction of new outbuildings

Applicants are requested to provide the following information with their application:

- historical background information on the property;
- a plan/sketch of the proposed works (if applicable);
- photographs of the existing structure;



- a minimum of two quotes for the proposed work; and
- a schedule of materials and colours (if applicable)

Over the past fifteen years, Council has provided assistance to 160 projects valued at a total of approximately \$1,900,556. During April and May 2009, applications were invited from all owners of heritage items within the Shire for financial assistance to undertake conservation works. A total of twenty-one applications were received. The proposed conservation works totalled \$557,798 of which \$230,841 was sought from Council. The applications were considered by the Heritage Advisory Committee at its meeting on 6 July 2008, where a number of projects were supported.

## DISCUSSION

The attached table provides a summary of the applications received, value of works, the recommendations of the Heritage Advisory Committee and the proposed funding offers.

The Heritage Committee has recommended that the funds be allocated to twelve projects which are to be completed over the following twelve month period. The successful projects will be offered funding generally on a dollar for dollar basis, although some projects will be offered less than the amount sought due to the limited amount of funding available.

The successful projects recommended by the Committee are as follows:

Project No.	Property Address	Applicant Name	Project Description	Recommended Funding Amount and Comment
1/08	2 Smalls Road Arcadia	Mr Peter John Turvey	Internal & external repairs including replacement of hand rail	<b>\$5,000</b>
2/08	23 Fiona Road, Beecroft	Mrs Pauline Ross	Replace existing tile roof (including replacement of batons as required)	<b>\$8,720</b> (subject to matching colour and terracotta tile)
3/08	50 The Crescent Cheltenham	Mr & Mrs Bryce	Repointing of external walls, reinstating broken footpaths and driveway, reinstating and stabilising sandstone fences	<b>\$20,000</b> (subject to \$3,208 being allocated to repointing and the remainder on sandstone fences)
4/08	208 New Line Road Dural	Baris Akar	Installation of termite barrier	<b>\$1,800</b>
5/08	9 Galston Road, Hornsby	Alison MacDonald	Replacement of two verandah posts, rotted joists and decking on verandah	<b>\$970</b>
6/08	237 Pacific Hwy Hornsby	T.J. and M.P Wyatt	Repair to brickwork, shingles, window sills and gable barge boards on upper level.	<b>\$4,500</b>
7/08	16 Maple Avenue, Pennant Hills	Ms Elva Hoy	Remove paving, reinstating grass, waterproof garage wall and improve drainage	<b>\$660</b>
8/08	333A Pennant Hills Road Pennant Hills	Warren & Hazel Ghisla	Repair/restore lace work and timber of bull nose verandah	<b>\$1,400</b>

9/08	18 Yarrara Road, Pennant Hills	Mr and Mrs Leigh	Remove and replace bull nose sheeting on verandah, remove and replace guttering to the bull nose and main roof	<b>\$6,000</b> (subject to matching profile of roof sheeting)
10/08	24 Dartford Road Thornleigh	Brende de Vere Burke	Remove and replace rotted boards over verandah and restore original slate, repair damaged wood on gable feature, replace water damaged structural posts on verandah	<b>\$2,000</b>
11/08	15-17 Duffy Avenue Thornleigh (Highway House) - Woodlands	Thornleigh Community Baptist Church	Re-mortar brickwork on façade	<b>\$990</b> (subject to confirmation that both tuck and repointing are being undertaken)
12/08	14 Ingram Road, Wahroonga	Mr Kongmeng Yong	Replace roof	<b>\$7,960</b> (subject to matching colour and terracotta tile)

Clause 18(2) of the *Hornsby Local Environmental Plan* (HSLEP) provides that development consent is not required where Council is of the opinion that development would not adversely affect the heritage significance of the heritage item. In supporting the applications, the Committee was of the opinion that the proposed works would either satisfy Clause 18(2) of the *HSLEP*, in that they would not adversely affect the heritage significance of the item or that development consent has been granted for the works. In offering applicants funds for works where no development consent has been granted, Council would be endorsing the works to be undertaken without development consent.

The successful applications would be subject to the conditions of the Local Heritage Assistance Fund to ensure the projects are carried out to a high standard and in an appropriate manner. Council's Town Planning Services Branch will be responsible for ensuring the projects are carried out in accordance with the application and special conditions set by the Heritage Committee.

In the unlikely event that an applicant does not accept the offer of financial assistance or the works are unable to be completed this financial year, it is recommended that the General Manager be authorised to endorse any additional allocation or redistribution of funds following a recommendation from the Executive Manager, Planning Division. Any allocation or redistribution would be limited by the criteria and conditions of the Local Heritage Assistance Fund.

## CONSULTATION

During April and May 2009, applications were invited from all owners of heritage items within the Shire for financial assistance to undertake conservation works. Information regarding the Local Heritage Assistance Fund 2009/2010 was also placed on Council's website.

## FINANCIAL

As part of the 2009/2010 Management Plan, Council has allocated \$60,000 towards the Local Heritage Assistance Fund.

## 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 Local Heritage Assistance Fund is open to owners of heritage items within the Shire and an application form was sent to all owners of heritage listed properties. The Fund provides for collaboration and financial assistance concerning the conservation of heritage items.
- *Conserving our natural environment:* The Local Heritage Assistance Fund has been established by Council to assist property owners to conserve identified heritage items within the Shire. The aim of the fund is to encourage conservation works on heritage items in the Shire. The program is intended to provide kick-start funding to encourage the joint funding of projects between Council and local residents. The Fund encourages interest and concern for the conservation of other heritage items within the Shire of Hornsby.
- *Contributing to community development through sustainable facilities and services:* The Fund does not relate directly to the provision of services and facilities. Accordingly, no adverse impact on opportunities for community development would be expected.
- *Fulfilling our community's vision in planning for the future of the Shire:* The Assistance Fund assists in promoting the conservation of the important heritage values within the Shire.
- *Supporting our diverse economy:* The Local Heritage Assistance Fund aims to assist in the conservation of important character elements and heritage values which enhance the attractiveness of the Shire as a place to live and work.
- *Maintaining sound corporate and financial management:* Council has allocated \$60,000 towards the Local Heritage Assistance Fund. Applicants will be required to provide at least matching finance for the project. In some instances, applicants will need to contribute more to the project.
- *Other Sustainability Considerations:* The Allocation of the Fund would not have an adverse impact on the environment of the Shire.

## CONCLUSION

The Local Heritage Assistance Fund 2009/2010 will provide for the ongoing conservation of twelve heritage items in the Shire. In addition, the provision of financial assistance towards privately owned heritage items will encourage heritage conservation in the Shire and promote Council's commitment to heritage conservation.

**RECOMMENDATION**

THAT:

1. Council endorse the expenditure of funds to the value of \$60,000 from the Local Heritage Assistance Fund budget to the following projects (to be completed and reimbursed prior to 30 June 2010).

<b>Project No.</b>	<b>Property Address</b>	<b>Applicant Name</b>	<b>Project Description</b>	<b>Recommended Funding Amount and Comment</b>
1/08	2 Smalls Road Arcadia	Mr Peter John Turvey	Internal & external repairs including replacement of hand rail	<b>\$5,000</b>
2/08	23 Fiona Road, Beecroft	Mrs Pauline Ross	Replace existing tile roof (including replacement of batons as required)	<b>\$8,720</b> (subject to matching colour and terracotta tile)
3/08	50 The Crescent Cheltenham	Mr & Mrs Bryce	Repointing of external walls, reinstating broken footpaths and driveway, reinstating and stabilising sandstone fences	<b>\$20,000</b> (subject to \$3,208 being allocated to repointing and the remainder on sandstone fences)
4/08	208 New Line Road Dural	Baris Akar	Installation of termite barrier	<b>\$1,800</b>
5/08	9 Galston Road, Hornsby	Alison MacDonald	Replacement of two verandah posts, rotted joists and decking on verandah	<b>\$970</b>
6/08	237 Pacific Hwy Hornsby	T.J. and M.P Wyatt	Repair to brickwork, shingles, window sills and gable barge boards on upper level.	<b>\$4,500</b>
7/08	16 Maple Avenue, Pennant Hills	Ms Elva Hoy	Remove paving, reinstate grass, waterproof garage wall and improve drainage	<b>\$660</b>
8/08	333A Pennant Hills Road Pennant Hills	Warren & Hazel Ghisla	Repair/restore lace work and timber of bull nose verandah	<b>\$1,400</b>
9/08	18 Yarrara Road, Pennant Hills	Mr and Mrs Leigh	Remove and replace bull nose sheeting on verandah, remove and replace guttering to the bull nose and main roof	<b>\$6,000</b> (subject to matching profile of roof sheeting)
10/08	24 Dartford Road Thornleigh	Brende de Vere Burke	Remove and replace rotted boards over verandah and restore original slate, repair damaged wood on gable feature, replace water damaged structural posts on verandah	<b>\$2,000</b>
11/08	15-17 Duffy Avenue Thornleigh (Highway House) - Woodlands	Thornleigh Community Baptist Church	Re-mortar brickwork on façade	<b>\$990</b> (subject to confirmation that both pin and tuck pointing being undertaken)
12/08	14 Ingram Road, Wahroonga	Mr Kongmeng Yong	Replace roof	<b>\$7,960</b> (subject to matching colour and terracotta tile)

2. Applicants be advised of Council's resolution.
3. Should any applicant not accept the offer of financial assistance or the works are unable to be completed this financial year, the General Manager be authorised to endorse any additional allocation or redistribution of funds following a recommendation from the Executive Manager, Planning Division.

JAMES FARRINGTON  
Manager - Town Planning Services  
Planning Division

SCOTT PHILLIPS  
Executive Manager  
Planning Division

**Attachments:**

1. Summary of Applications

File Reference: F2009/00143  
Document Number: D01199921

## **9 LOCAL NOMINATIONS FOR THE JOINT REGIONAL PLANNING PANELS**

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### **EXECUTIVE SUMMARY**

The NSW Government's planning reforms include the establishment of Joint Regional Planning Panels (JRPPs) to determine development proposals of regional significance. The Government has announced that the core objective of JRPPs is to provide stronger decision-making through greater independence, to supplement councils' expertise and draw on local and regional knowledge.

In response to a request from the Minister for Planning, Council wrote to the Department of Planning on 5 June 2009 advising that it had resolved to nominate the Executive Managers Planning and Environment as local members and the General Manager as an alternative member of the JRPP.

On 2 July 2009, the Department released the Code of Conduct and Procedures for the Operation of the JRPPs. As a consequence of those documents, it is identified that two of Council's nominees (Executive Managers Planning and Environment) are not appropriate local members of the JRPP and therefore, it is necessary that Council nominates new members.

### **PURPOSE**

The purpose of this report is to nominate new local members of the JRPP as it affects the Hornsby local government area.

### **DISCUSSION**

#### **Background**

The NSW Government's planning reforms, reportedly aimed at delivering a more efficient and transparent planning system, include the establishment of JRPPs. The objective of JRPPs is to create a panel of people with appropriate expertise to determine development proposals of regional significance providing stronger decision-making through greater expertise, independence and regional knowledge.

Six regions have been established covering metropolitan and regional areas of NSW. Hornsby local government area is in the Sydney West Region.

The Panels commenced operation on 1 July 2009.

#### **Functions of JRPPs**

The functions of the JRPPs are to:

1. exercise certain consent authority functions for 'regional development'; and

2. where requested, advise the NSW Minister for Planning on planning or development matters or environmental planning instruments in respect to the JRPP's region.

It is intended that JRPPs will determine 'regionally significant' development applications, including:

- Commercial, residential, mixed use, retail and tourism development with a capital investment value more than \$10 million and less than \$100 million.
- Community infrastructure and ecotourism developments more than \$5 million both public and private, such as schools, community halls and child care facilities.
- Designated development.
- Development where the council is the proponent with a capital investment value of more than \$5 million or has a potential conflict of interest.

JRPPs will also have such other functions as are conferred on them by the Environmental Planning and Assessment Act 1979 (the Act). For example, JRPPs may have a role in relation to Local Environmental Plans (LEPs). This may include being appointed as the Relevant Planning Authority (RPA) for a LEP or, where requested by the Minister, reviewing or providing advice in respect of a proposed LEP. Where a JRPP is appointed as an RPA for a LEP, the Minister may also delegate plan making powers to the JRPP. JRPPs may also, in limited circumstances, be appointed by the Minister to exercise the functions of the planning assessment panels under s.118 of the Act (such is presently the case in Ku-Ring-Gai Council).

The Department of Planning has advised that it intends to conduct information sessions throughout the State for council staff, stakeholders and the community in August 2009.

### **Councils' role in relation to matters under consideration by the JRPP**

The adopted 'Procedures for the Operation of the JRPPs' prescribe that the assessment of applications to be determined by the Panels is to be undertaken by the relevant council officers in which the proposed development is located. The council officers are to submit their assessment report and recommendations to the JRPP for determination.

Whilst the council will not be the determining body for JRPP matters, the council will have the opportunity to provide its views about any matters that are to be considered by a JRPP. The council's view may be provided to a JRPP by way of a submission in the same way that any other submissions about the matter are provided to a JRPP for its consideration in determining a matter. The JRPP must consult the council prior to determining a matter which is likely to have significant financial implications for the council.

It is currently proposed that the deemed refusal period in which an applicant could commence Class 1 action in the NSW Land and Environment Court against the deemed refusal (non-determination) of a development application in which a JRPP is the consent authority is 70 days. However, it is foreseen that Council will not be able to receive, publicly exhibit, assess, refer the application to a Planning Meeting and make a recommendation to the JRPP in this time period on any occasion. Council has previously expressed this concern to the Department of Planning at a workshop on the proposed amendments to Part 4 of the Act.

### **Membership of JRPPs**

JRPPs are to consist of five members as follows:

**State Members:** Three State members appointed by the Minister, each having expertise in one or more of the following: planning, architecture, heritage, the environment, urban design, land economics, traffic and transport, law, engineering, tourism or government and public administration. One of the State members will be appointed as the Chairperson of the JRPP.

**Council Members:** Two council members appointed by each council that is situated in a part of the state for which a JRPP is appointed. At least one council nominee is required to have expertise in one or more of the following: planning, architecture, heritage, the environment, urban design, land economics, traffic and transport, law, engineering or tourism.

The council nominees will automatically become members of the JRPP for matters in that council's local government area. However, council members will not sit on a JRPP for matters that are within another local government area.

### **Nominations of Council members to the JRPP**

In May 2009, the Government requested that by 5 June 2009, councils nominate two persons to become members and a third person to be an alternate member of the relevant JRPP. Council adhered to the Government's request and wrote to the Department of Planning advising that it had resolved to nominate the Executive Managers Planning and Environment as local members and the General Manager as an alterative member of the JRPP.

On 2 July 2009 (after the date that councils were requested to nominate local members and after the commencement date of the operation of the Panels), the Department released the Code of Conduct and Procedures for the Operation of the JRPPs. As a consequence of those documents, it is identified that two of Council's nominees (Executive Managers Planning and Environment) are not appropriate local members of the JRPP and therefore, it is necessary for Council to nominate new members.

- **Code of Conduct**

The Code outlines the standard of conduct expected of JRPP members (held at Attachment 1 to this report). The Code outlines general conduct obligations, conflicts of interest, personal benefits and relationship between JRPP members, council, council staff and the community.

Relevantly, the Code prescribes in Clause 5.5 that "(members) *must not hold private meetings, briefings or discussions (with applicants, residents etc.) in respect of the matter in the absence of other JRPP members without council staff being in attendance, and must not attend site visits unless they have been formally arranged by council staff and you are accompanied by other JRPP members and/or council staff*". These requirements on JRPP members may be more restrictive than the Local Government 'Model Code', which recognises that appropriate lobbying of councillors is a normal and legitimate part of the democratic system and that councillors have a representative role in considering the views of their constituents and communicating with them.

Councillors wishing to nominate as a local member of the JRPP are encouraged to consider this and other provisions of the Code in making such a decision.

Also of relevance is Clause 5.6 of the Code, which prescribes that "*As a general rule, it is not appropriate for council staff to be members of a JRPP, as it would be difficult for them to appropriately manage the conflicts of duties between being a council staff member and fulfilling the obligations of a JRPP member.*" As it would ordinarily be expected that the



Executive Managers Planning and Environment would have (at a minimum) an indirect role in the assessment of significant development applications, it would not be possible for these officers to be local Panel members. Consequently, this report recommends that Council advises the Department of Planning that it nominates new local Panel members.

The General Manager however, does not have any direct or indirect function in the assessment of development applications or other planning decisions and therefore could remain a local member or alternate member of the Panel without being in conflict with the Code.

### **Selection Criteria for Local Members**

The selection criteria of local members include:

- *Senior level experience in dealing with multiple stakeholders;*
- *high level communication skills;*
- *capability to drive high profile outcomes in a credible and authoritative manner;*
- *high level analytical skills; and*
- *knowledge of the assessment of complex developments and planning matters.*

In addition, at least one of the two council nominees must have a high level of expertise in one or more of the following fields:

- *Planning*
- *Architecture*
- *Heritage*
- *The environment*
- *Urban design*
- *Land economics*
- *Traffic and transport*
- *Law*
- *Engineering*
- *Tourism*

### **Funding of the JRPP**

The NSW Government has made a commitment to fund the employment costs of State Panel members and the general administration of the Panels. A JRPP secretariat will be appointed within the Department of Planning.

The employment cost of local members will be the responsibility of each council. In addition, councils are required to provide, free of charge, appropriate rooms and facilities to allow the respective Panel to meet and determine relevant planning applications.

Council has not allocated funding for the JRPP in its 2009/10 operational budget.

### **Options for Local Members**

Having regard to the Code of Conduct and the selection criteria, Council has a number of options for the nomination of local members.

### **1. Senior Council officers**

Council could nominate senior staff, whom it can be demonstrated would not have any direct or indirect role in the negotiation or assessment of planning matters. Advantages of nominating a senior Council officer include; members who understand the culture of Council, have a good understanding of a broad spectrum of local issues and would perform the role at no additional cost to Council.

It is considered that the General Manager fulfils the relevant criteria and would be a suitable local member/alternate member.

### **2. Councillors**

Council could nominate a Councillor or Councillors, subject to at least one nominated local member having demonstrated expertise as listed above. Should a Councillor or Councillors express an interest to be a local member of the Panel, they would need to be mindful of their role having regard to the JRPP Code of Conduct. In that regard, that Councillor/s may have less opportunity to liaise with interested persons concerning relevant planning applications than they would otherwise have in their role as a councillor as defined by the Local Government 'Model Code' issued by the Department of Local Government.

Advantages of nominating a Councillor/s are similar to that of nominating senior Council staff. That is, members who understand the culture of Council, have a good understanding of a broad spectrum of local issues and would perform the role at no additional cost to Council.

### **3. Technical experts**

Council could nominate technical experts from its current list of approved consultants to serve as local members of the Panel. Advantages of technical experts include; members who have the relevant expertise and who would not have any conflict of interest in respect of the planning applications being considered by the Panel. Disadvantages of technical experts would be an additional cost to Council that is currently not funded.

### **4. Community representatives**

Council could instigate an 'expression of interest' process inviting interested community members to serve as local members of the Panel. Suitable community representatives might include; retired councillors, retired senior staff, members of specific community interest groups and/or general members of the community. Criteria for the selection of community representatives would need to be established, however, it is envisaged that criteria would include; demonstrated expertise, understanding of local issues and service to the Hornsby community. As is the case for community representatives on existing Council committees, it is envisaged that Council would cover community members' personal expenses, travel and hospitality.

## **CONCLUSION**

On 1 July 2009, JRPPs commenced operation in NSW. As a consequence of the late release of the Code of Conduct and Operational Procedures, Council is required to nominate two new local members to the JRPP.

Subject to meeting selection criteria, Council's options for local members are; senior staff, Councillors, technical experts and interested community representatives. Having regard to the selection criteria and the Code of Conduct, it is recommended that Council advises the Department of Planning that it now nominates the General Manager as one of Council's new local member of the JRPP. It is considered that the General Manager satisfies the selection criteria and would provide an appropriate balance between political and technical expertise. In addition, it is recommended that Council instigates an expression of interest process to select other suitable local members/alternative members for period of three years.

## **BUDGET**

The cost of providing rooms and facilities for the JRPP would be minimal and will be absorbed into existing Divisional budgets.

Depending on Council's resolution, Council may need to allocate funds for the payment of expenses to technical experts and/or community representatives to serve as local members of the JRPP. In any regard, it is anticipated that those costs would not exceed \$5,000 per annum, which would be allocated from existing Divisional budgets by way of re-prioritising other projects.

## **POLICY**

There are no policy implications.

## **CONSULTATION**

The Executive Management Team was consulted in the preparation of this report.

## **TRIPLE BOTTOM LINE SUMMARY**

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

## **RESPONSIBLE OFFICER**

The responsible officer for this report is the Executive Manager Planning, Mr Scott Phillips, telephone 9847 6751.

## **RECOMMENDATION**

THAT

1. Council advises the Department of Planning that it revokes its nomination of the Executive Manager Planning and the Executive Manger Environment as local members of the Joint Regional Planning Panel.
2. Council advises the Department of Planning that it now nominates the General Manager as a local member of the Joint Regional Planning Panel.

3. Council instigates an expression of interest process to select other suitable local members/alternative members of the Joint Regional Planning Panel.
4. The outcome of the expression of interest process be reported to Council for its endorsement of new local members/alternative members of the Joint Regional Planning Panel.
5. Council receives a report twelve months following the commencement of the Joint Regional Planning Panel outlining the implications of the Panel during this period.

SCOTT PHILLIPS  
Executive Manager  
Planning Division

**Attachments:**

1. Joint Regional Planning Panels Code of Conduct

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