



*the bushland shire*

*creating a living environment*

# **BUSINESS PAPER**

## **PLANNING MEETING**

**Wednesday, 2 September, 2009  
at 6:30pm**

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## **AGENDA AND SUMMARY OF RECOMMENDATIONS**

### **PRESENT**

### **NATIONAL ANTHEM**

### **OPENING PRAYER/S**

### **ACKNOWLEDGEMENT OF RELIGIOUS DIVERSITY**

Statement by the Chairperson

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

### **ABORIGINAL RECOGNITION**

Statement by the Chairperson:

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

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

Statement by the Chairperson:

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

### **APOLOGIES**

### **DECLARATIONS OF INTEREST**

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

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

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

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

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

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

*OR*

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

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

## **POLITICAL DONATIONS DISCLOSURE**

Statement by the Chairperson:

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

## **CONFIRMATION OF MINUTES**

THAT the Minutes of the Planning Meeting held on 5 August, 2009 be confirmed; a copy having been distributed to all Councillors.

## **PETITIONS**

## **MAYORAL MINUTES**

## **NOTICES OF MOTION**

## **RESCISSION MOTIONS**

## **MATTERS OF URGENCY**

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

*Note:*

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

**DEVELOPMENT APPLICATIONS****A WARD DEFERRED****A WARD****Page Number 1**

- Item 1      PLN65/09 DEVELOPMENT APPLICATION -  
CONSTRUCTION OF AN ALDI SUPERMARKET AND FIVE  
SPECIALITY RETAIL STORES  
757 PACIFIC HIGHWAY MOUNT KURING-GAI**

**RECOMMENDATION**

THAT Development Application No. 256/2009 for the demolition of the existing buildings and the construction of a new commercial complex comprising an ALDI supermarket, five speciality retail shops, an undercroft car park with eighty one spaces and associated signage at Lot 5 DP 455847 and Lots 18 & 19 DP 6358 (No. 757) Pacific Highway Mount Kuring-Gai be approved subject to the conditions of consent detailed in Schedule 1 of this report.

**Page Number 50**

- Item 2      PLN63/09 DEVELOPMENT APPLICATION - SECTION  
96(AA) - SUBDIVISION OF ONE LOT INTO EIGHT  
15 GARDINER ROAD GALSTON**

**RECOMMENDATION**

THAT pursuant to Section 96(AA) of the Environmental Planning and Assessment Act, 1979, Development Application No. 922/2003 for the subdivision of one lot into eight lots at Lot 3 DP 1108381, No. 15 Gardiner Road Galston be refused for the reasons detailed in Schedule 1 of this report.

**B WARD DEFERRED****B WARD****C WARD DEFERRED****C WARD****Page Number 61**

- Item 3      PLN57/09 DEVELOPMENT APPLICATION - ERECTION OF  
A DWELLING-HOUSE  
4 CHERRYBROOK ROAD, WEST PENNANT HILLS**

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**RECOMMENDATION**

THAT Development Application No. DA/591/2009 for the erection of a one and two storey dwelling-house at Lot 1011, DP1134002, No. 4 Cherrybrook Road, Pennant Hills be approved subject to the conditions of consent detailed in Schedule 1 of this report.

**Page Number 75**

**Item 4     PLN42/09 DEVELOPMENT APPLICATION -  
CONSTRUCTION OF AN ALDI SUPERMARKET  
273 - 291 PENNANT HILLS ROAD AND 2 BELLEVUE  
STREET THORNLEIGH**

**RECOMMENDATION**

THAT Development Application No. 1848/2007 for the construction of an ALDI supermarket with basement level car parking, ancillary warehouse and associated signage at Lot 31 DP 263535, Lot 7 Sec 3 DP 1854, Lot 2 DP 609765, Lot 1 DP 609765, Lot 32 DP 263535, Lot 101 DP 883635 (Nos. 273-277, 279, 281, 281A & 283-291) Pennant Hills Road and 2 Bellevue Street, Thornleigh be approved subject to the conditions of consent detailed in Schedule 1 of this report.

**Page Number 119**

**Item 5     PLN66/09 DEVELOPMENT APPLICATION - ERECTION OF  
A DWELLING-HOUSE  
30 FIONA ROAD, BEECROFT**

**RECOMMENDATION**

THAT Development Application No. 298/2009 for the demolition of a dwelling-house and carport and the erection of a single storey dwelling-house, pool, gazebo, front fence and retaining walls at Lot A, DP 337026, No. 30 Fiona Road, Beecroft be refused for the reasons detailed in Schedule 1 of this report.

**GENERAL BUSINESS****Page Number 131**

**Item 6     PLN71/09 QUESTION WITHOUT NOTICE SOUTH DURAL  
REZONING PROPOSAL**

That Council forward a letter to the Department of Planning confirming Council's support for the progression of investigations by the Department of South Dural for inclusion on the NSW Government's Metropolitan Development Program.

**GENERAL BUSINESS**

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

**QUESTIONS OF WHICH NOTICE HAS BEEN GIVEN**

**SUPPLEMENTARY AGENDA**

**QUESTIONS WITHOUT NOTICE**

**1 DEVELOPMENT APPLICATION - CONSTRUCTION OF AN ALDI SUPERMARKET AND FIVE SPECIALITY RETAIL STORES  
757 PACIFIC HIGHWAY MOUNT KURING-GAI**

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<b>Development Application No:</b>	DA/256/2009
<b>Description of Proposal:</b>	Redevelopment of the Mount Kuring-Gai Village Centre including the construction of an ALDI supermarket and five speciality retail shops.
<b>Property Description:</b>	Lot 5 DP 455847, Lots 18 & 19 DP 6358 (No. 757) Pacific Highway Mount Kuring-Gai
<b>Applicant:</b>	Donaldson Worrad
<b>Owner:</b>	Mr. Bryan T Royce
<b>Statutory Provisions:</b>	Hornsby Shire Local Environmental Plan 1994 – Business C (Neighbourhood) Zone
<b>Estimated Value:</b>	\$ 6,383,850
<b>Ward:</b>	A

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**RECOMMENDATION**

THAT Development Application No. 256/2009 for the demolition of the existing buildings and the construction of a new commercial complex comprising an ALDI supermarket, five speciality retail shops, an undercroft car park with eighty one spaces and associated signage at Lot 5 DP 455847 and Lots 18 & 19 DP 6358 (No. 757) Pacific Highway Mount Kuring-Gai 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 redevelopment of the Mount Kuring-Gai Village Centre including the demolition of the existing buildings, construction of an ALDI supermarket, five speciality retail shops, a public plaza, an undercroft carpark with eighty-one car spaces and associated signage.
  2. The proposal is permissible under the provisions of the Hornsby Shire Local Environmental Plan 1994 and is consistent with the requirements of the Business Lands Development Control Plan.
  3. Six submissions have been received in respect of the application.
  4. It is recommended that the application be approved.
-



## **HISTORY OF THE SITE**

The site was historically zoned Neighbourhood Business 3(b) under the Local Planning Scheme and was used as a caravan park, a residence and a small grocery store with petrol pumps installed on site to service the caravan park.

On 18 December 1980 Council approved the construction of a supermarket and four speciality shops with fifty car parking spaces on the site. The site was zoned Neighbourhood 3 (c) at that time.

On 12 October 1984 Council approved DA/231/84 for the construction of a shopping centre on the site. The approved plans indicate ten shops on the site with fifty car spaces. The shopping centre was subsequently constructed and is known as the Mount Kuring-Gai Village Centre which currently exists on the site.

## **THE SITE**

The subject property is located on the western side of the Pacific Highway at the intersection with Nyara Road adjoining the southern boundary of the site. The site is generally flat with a 3.6 % downward slope towards Nyara road (south-western corner).

The area of the site: 3564 sq metres.

There are ten trees located within the site and eighteen trees located nearby on adjoining properties comprising locally native and introduced species. The current improvements on the site include the Mount Kuring-Gai Shopping Village which comprises a single storey commercial building accommodating ten retail shops and commercial uses including a post office.

The gross floor area of the commercial premise is 863.16 sq metres.

Access to the site is via a single driveway off Nyara Road. At grade car parking is located on the site to cater for the development.

The site adjoins a low density residential area. The allotments immediately adjoining the site to north and the west and those on the opposite side of Nyara road accommodate single dwelling houses. A Telstra exchange building adjoins the site to the north-east.

A pedestrian overpass is located in close proximity to the site over Pacific Highway which provides access to Mount Kuring-Gai Railway Station, situated on the opposite side of the road within 60 to 70 metres of the site.

## **THE PROPOSAL**

The proposal involves the demolition of the existing buildings and the construction of a commercial complex comprising an ALDI supermarket, five speciality retail shops, including a post-office.

Details of the size of the development is provided below:

<b>Component</b>	<b>Gross Floor Area</b>
<b>ALDI supermarket</b>	
ALDI store retail area	846 m <sup>2</sup>
Associated warehouse and storage area	370 m <sup>2</sup>
Staff Amenities	37 m <sup>2</sup>
<b>ALDI Gross Floor area</b>	<b>1253 m<sup>2</sup></b>
<b>Speciality Retail shops</b>	
<b>Retail tenancy 1</b>	100 m <sup>2</sup>
<b>Retail tenancy 2</b>	80 m <sup>2</sup>
<b>Retail tenancy 3</b>	83 m <sup>2</sup>
<b>Retail tenancy 4</b>	82 m <sup>2</sup>
<b>Retail tenancy 5 (Post Office)</b>	46 m <sup>2</sup>
<b>Circulation</b>	94 m <sup>2</sup>
<b>Gross Floor area of the complex</b>	<b>1738 m<sup>2</sup></b>
<b>Total FSR</b>	<b>0.48:1</b>

The undercroft level would comprise eighty one car spaces including two disabled parking spaces. Vehicular access to this level would be provided from Nyara Road via a single driveway for ingress and egress. The basement would be provided with security screens for after hours security. Bicycle parking is provided within the undercroft level. A pedestrian ramp that adjoins the northern boundary and a lift would provide access to the upper floor.

The undercroft level would include a bin collection directly accessible to two loading docks. The loading dock, loading and compactor bays for the ALDI store are to be located adjoining the western boundary of the site in the same location as the existing loading dock. The goods would be delivered to the ALDI store via a scissor lift providing access to the warehouse and freezer area located at the ground level.

The ground level would comprise an ALDI supermarket setback 35 metres from the Pacific Highway (eastern side) and 13 metres from Nyara Road (southern side) frontages. The store would immediately adjoin the northern and the western boundaries of the site. The pedestrian ramp would adjoin the eastern façade of the store. Four speciality retail shops and the post office would be located at the north-eastern corner of the site next to the pedestrian ramp. The shops would be setback 3 metres from the Pacific Highway. Public toilet facilities servicing the development would be located to the rear of these shops. An alternate service entry is proposed for each retail tenancy.

A public plaza is proposed in front of the retail shops to provide an active frontage to the complex. Outdoor seating areas are proposed in this plaza which would cater for future retail use on the site. Pedestrian access to the plaza is provided via a set of stairs and pedestrian ramp from the Pacific Highway. The plaza would provide a semi outdoor space, being covered by an extended awning.

The design of the building would be in contemporary style, being single storey in height to blend with the low density residential environment. The undercroft car park would follow the contours of the land and would be visible from the south-western corner of the property providing a two storey appearance to the development in this section. The applicant has provided details of the proposed schedule of colours and finishes.

Under-awning lighting would be provided for the forecourt area. The undercroft parking area would be lit during business operating hours.

Trolley bays would be located in the undercroft carpark area and also within the pedestrian forecourt adjacent to the ALDI store. The applicant has advised that the standard coin-operated trolley management would be undertaken on the site and managed by ALDI staff.

As part of the proposal, the following signage is proposed:

Signage	Details
Sign type 1	One illuminated flush wall mounted sign measuring 2 x 2.4 metres. The light box would project 0.185 metres from the wall and would display the ALDI logo on the southern elevation of the building fronting Nyara Road
Sign type 2	One double sided and illuminated pole sign to be located at the corner of Pacific Highway and Nyara Road. The pole sign would be 7.8 metres high. The advertising area would incorporate separate panels including the following: <ul style="list-style-type: none"> <li data-bbox="592 2040 1118 2072">• The ALDI store logo: 2 x 2.4 metres;</li> </ul>

	<ul style="list-style-type: none"> <li>• The “Mount Kuring-Gai Village Centre” identification panel : 2 metres x 750 mm; and</li> <li>• Five business identification panels for the retail tenancies: 2 metres x 450 mm.</li> </ul> <p>The total advertising area would be: 10.8 sq metres.</p>
Sign type 3	Five hamper signs for business identification of the four retail shops and the post office. The hamper signs would be located on the underside of the awning and would measure 2.4 x 0.54 metres with a depth of 0.185 metres.
Sign type 4	This sign would be a ‘lifestyle graphic image’ including the photo of a fruit or a vegetable. No logos or business identification sign would be included in this image. It would be similar to a wall mural measuring 6 x 3 metres. The mural would be located at the south-western corner of the site and is primarily designed to create visual interest and eliminate monotonous façade design.

The proposed operating hours of the ALDI supermarket are:

Monday to Wednesday	8:30 am to 7 pm
Thursday	8:30 am to 9 pm
Friday	8:30 am to 7 pm
Saturday	9 am to 7 pm

The details of hours of operation for retail shops have not been provided.

The applicant has advised that all store products for ALDI would be supplied by trucks to the premises. No food preparation would occur at the store. Two to four deliveries would be required for the ALDI supermarket every day. The following delivery times have been proposed:

Monday to Friday	6 am to 12 midnight
Saturday and Sunday	7 am to 10 pm

Deliveries to the speciality shops by standard vehicles and vans would be undertaken in the car parking area. Large delivery vehicles, such as rigid trucks, catering to the speciality retail stores would utilise the additional loading space within the loading dock catering to the ALDI store without conflicting with the supermarket deliveries. The applicant proposes that such deliveries would occur outside the operating hours of the retail premises. However, details of the delivery times of the retail shops have not been provided as the application does not include proposed uses of the speciality retail shops.

The ALDI store would employ a maximum of twenty staff.

## 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 twenty jobs in the locality for the ALDI store and an anticipated additional ten jobs in the retail shops.

#### 1.2 Hornsby Shire Housing Strategy

The Draft Hornsby Shire Housing Strategy provides the community and development industry with a proposed framework of future housing needs of the Shire and how the projected yield would be accommodated in the Local Government Area over the next decade. As a part of this Strategy, Council has placed on public exhibition twenty-five precincts possibly suitable for multi-unit housing development to assist meet Council's housing obligations into the future. The identification, selection and evaluation of precincts have been undertaken in accordance with State Government's Metropolitan Strategy and draft North Subregional Strategy, along with principles and methodology utilised for Council's Housing Strategy in 1998.

The Draft Housing Strategy has identified the site as a potential location of shop-top housing. The Strategy proposes mixed-use development on this site incorporating ground floor shops and multi-unit housing to a height of five storeys. The Strategy has yet to be adopted by Council and any rezoning to progress the Strategy would not be implemented until at least 2011.

The development application for the redevelopment of the Mount Kuring-Gai village centre was lodged with Council prior to the commencement of the public exhibition of the Housing Strategy. The application has been assessed under Council's current statutory development controls applicable to the site.

The approval of the development would be contrary to the Housing Strategy in that it would develop the site for employment generating purposes in lieu of higher density residential

development. Should the site not be developed in accordance with the Strategy, Council would be required to investigate alternative options for housing in the locality in future. This outcome should not in itself lead to the refusal of the current development application.

## 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 regulations*”.

### 2.1 Hornsby Shire Local Environmental Plan 1994

The subject land is zoned Business C (Neighbourhood) zone under Hornsby Shire Local Environmental Plan 1994 (HSLEP). The objectives of the zone are:

- (a) *to encourage economic growth and employment opportunities.*
- (b) *to accommodate the retail, service and social needs of the community within the neighbourhood.*
- (c) *to encourage development that improves the health, vitality, cultural environment and social environment within neighbourhood business centres.*

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

The proposed development would encourage economic growth and employment opportunities, would accommodate the retail, service and social needs and would improve the health and vitality of the neighbourhood. The proposal complies with the zone objectives in this regard.

Clause 15 of the HSLEP prescribes that the maximum floor space ratio (FSR) of development within the Business C zone is 0.5:1. The applicant addresses this requirement by proposing a FSR of 0.48:1 and is acceptable.

Clause 18 of the HSLEP provides heritage conservation measures for the Shire. The proposal would adjoin a house at No. 3 Glenview Road which is listed as a heritage item of Local significance under Schedule D of the HSLEP. The proposed development would adjoin the house in a similar way as the current development and would not result in any greater impact on its heritage significance. No further assessment in this regard is considered necessary.

### 2.2 State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55)

The application has been assessed against the requirements of SEPP 55. This Policy provides State-wide planning controls to promote the remediation of contaminated land to reduce the risk of harm to human health and the environment. Clause 7 of SEPP 55 provides that a consent authority must not consent to the carrying out of any development on land unless it has considered whether the land is contaminated and is suitable for the development.

The applicant has addressed these requirements by providing a preliminary site investigation report to Council. The report concludes that the site has historically been zoned and used for commercial and residential purposes and therefore the site does not constitute potentially

contaminated land. However, the report recommends additional investigations to be undertaken on site after the demolition of the existing buildings to determine any potential contaminants on site and the subsequent remediation, as underground storage tanks related to the historic petrol pumps may still be present on site.

The application is considered satisfactory in this regard subject to implementation of recommended conditions.

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

The application has been assessed against the requirements of State Environmental Planning Policy (Infrastructure) 2007. This Policy contains State-wide planning controls for developments adjoining rail-corridors and busy roads.

#### **2.3.1 Development with frontage to a classified road**

The proposal is assessed against the requirements of Clause 101 of SEPP (Infrastructure) as it fronts the Pacific Highway. In accordance with the requirements of the Policy, the development does not propose any vehicular access from the Pacific Highway and is not sensitive to road noise.

Council's assessment of the proposal considers that the development is satisfactory subject to the implementation of recommended conditions.

#### **2.3.2 Traffic Generating Development**

The development is classified as a Traffic Generating Development in accordance with Clause 104 of the SEPP (Infrastructure) as it is located on a site that has direct vehicular or pedestrian access to a road that connects to a classified road, where the access is located within 90m of the connection and would have an area of more than 500 sq metres.

The proposed development involves access from Nyara Road via a 17 metre wide common driveway for ingress and egress. Two loading docks are situated on the western boundary with direct access to and from the driveway.

The development application includes a traffic assessment report. The report calculates the traffic generation for all components of the development in accordance with the NSW Roads and Traffic Authority (RTA) guidelines and concludes that the development would result in a net traffic generation of 95 – 195 vehicles per hour (two-way) during the Friday afternoon and Saturday peak hours respectively. The RTA guidelines also indicate that 25 per cent of the visits are likely to be passing trade or linked trips.

The traffic intersection analysis in the report has concluded that the intersection of Nyara Road with the site would continue to operate with level of service A/B and that of Pacific Highway with Nyara Road would continue to operate with a B level of service. Therefore it is estimated that the road intersection would be able to accommodate the additional traffic generated by the development.

The application was referred to the RTA for concurrence whereby concerns were initially raised regarding the manoeuvring of the vehicles within the site. The RTA recommended the submission of a Service Vehicle Management Plan (SVMP) to ensure the proper operation of the loading docks and the deliveries of the speciality retail shops and requested that Council

impose conditions to ensure that no queuing of vehicles occur onto the Pacific Highway as a result of the development.

The applicant has addressed the above issues by providing the swept path analysis that demonstrates that all service vehicles including a 19 metre semi-trailer and 12.5 metre long rigid truck can manoeuvre within the site to Council's and RTA's requirements. The submitted plans indicate that a separate specialty shop loading space is provided in front of the compactor to be used by small to heavy rigid vehicles, with smaller delivery vehicles using an area within the car park.

The ALDI store would require two to four deliveries per day. A Service Vehicle Management Plan (SVMP) has been submitted to Council detailing the operations of the loading dock and the truck management on site. The SVMP stipulates the following delivery times for the ALDI store:

Monday to Friday	6am to 12 midnight
Saturday & Sunday	7am to 10pm

Council's assessment of the SVMP concludes that the delivery times are not acceptable due to potential conflict with peak customer arrival and departure times. Therefore, it is recommended that there be no deliveries between 2pm and 6pm Monday to Friday and 10am and 3pm Saturday and Sunday.

With regard to queuing of vehicles, Council's assessment of the intersection analysis concludes that queuing of vehicles would not occur at the intersection. A condition is also recommended requiring no queuing to occur in front of the loading dock at any time, to satisfy the RTA's requirements.

Further, a condition is recommended requiring the monitoring of the site for a period of six months after occupation with regard to traffic impacts of the deliveries on the Nyara Road and Pacific Highway intersection. Should the review indicate that such delivery times would result in queuing at the intersection of Nyara Road and Pacific Highway, the delivery times would be required to be amended at that time.

The SVMP for the specialty shops stipulates that deliveries to the specialty shops would occur outside of operating hours to ensure minimal disturbance to customer vehicles. In any regard, it is not anticipated that the retail shops would generate significant numbers of service vehicles.

Council's assessment of the application concludes that after-hours deliveries may not be practically implemented during operation of the shops. Therefore a condition is recommended requiring time restrictions on delivery hours of the speciality shops similar to that of the ALDI store.

Given the above, it is considered that the application addresses the requirements in relation to a Traffic Generating development and the vehicular access to the site is satisfactorily. The details in relation to parking are discussed in section 2.8 of this report.

#### **2.4 State Environmental Planning Policy No. 64 – Advertisement and Signage**

The application has been assessed against the requirements of State Environmental Planning Policy No. 64 (SEPP 64).



SEPP 64 defines a ‘business identification sign’ as a sign that identifies or names a building or the nature of the business. The proposed signage complies with the definition of business identification signs under the SEPP.

Division 1 Clause 9 of SEPP 64 indicates that the Policy does not apply to ‘business identification signs’. However, the Policy requires that the consent authority must consider the assessment criteria within Schedule 1 of SEPP 64 when assessing any sign.

The assessment of the proposal against Schedule 1 of the SEPP 64 is detailed below:

#### **2.4.1 Character of the Area**

The site is located within the Mount Kuring-Gai commercial precinct. The proposed signs are compatible with existing signage in the locality and would not have a detrimental impact on the desired future character of the area. None of the proposed signs would have an undesirable visual impact on the surrounding residential area.

#### **2.4.2 Special Areas**

The proposed building and associated signage is located in an existing commercial area. The proposal would not detract from the amenity or visual quality of any environmentally sensitive areas.

#### **2.4.3 Views and Vistas**

The proposed signage would not alter any significant views or vistas from the Pacific Highway or from adjoining properties. The signage does not obscure or compromise important views, dominate the skyline or impact on the viewing rights of other advertisers.

#### **2.4.4 Streetscape, Setting or Landscape**

The proposed signs are of a scale, proportion and form that is appropriate for the streetscape and setting and would contribute to the visual interest of the streetscape. The signage does not protrude above buildings.

#### **2.4.5 Site and Building**

The proposed signs are compatible with the site and building on which the signage is to be located.

#### **2.4.6 Associated devices and logos with advertisements and advertising structures**

The proposed signage contains the wording ‘ALDI’ and the ALDI logo, which forms part of the business identification and is considered suitable.

#### **2.4.7 Illumination**

The illumination of the proposed signs is not likely to affect safety for pedestrians, vehicles or aircraft. A condition is recommended requiring that no illumination in signage occurs after operating hours and external lighting is to comply with the relevant Australian standards.

### 2.4.8 Safety

The proposed signs would not reduce the safety of the public road nor would they obscure the sight distances of pedestrians.

On the basis of this assessment, the proposed signs are consistent with the objectives of the Policy and satisfy the assessment criteria specified in Schedule 1.

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

The application has been assessed against the requirements of Sydney Regional Environmental Plan No. 20 (SREP – 20). This Policy provides general planning considerations and strategies requiring Council to consider the impacts of the proposal on water and scenic quality, aquaculture, recreation and tourism.

The proposed development would have minimal potential to impact on the water quality of the catchment, subject to the implementation of management measures for the construction and operational phases of the development. A condition is recommended with respect to the installation of sediment and erosion control measures prior to and during construction.

The proposal also includes details of stormwater management of the site. Council's assessment of the proposal in this regard concludes that the development is satisfactory. The matter has been discussed in detail in section 3.1 of this report.

### 2.6 Business Lands Development Control Plan

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

<b>Business Lands Development Control Plan</b>			
<b>Control</b>	<b>Proposal</b>	<b>Requirement</b>	<b>Compliance</b>
<b>FSR</b>	0.48:1	0.5:1	Yes
<b>Setbacks</b>			
<b>Pacific Highway</b>	3m	3m	Yes
<b>Nyara Road</b>	12.2m	0m to 3m	Yes
<b>Northern side</b>	0m	0m	Yes
<b>Western side</b>	1m	0m	Yes
<b>Height</b>	1 - 2 storeys	2 storeys	Yes
<b>Car parking</b>	81 spaces	93 spaces	No
<b>Signs Total Area:</b>	19.85 m <sup>2</sup>	12.25 m <sup>2</sup>	No

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

### **2.6.1 Density**

The proposed development complies with the required floor space ratio within the site and complies with the density provisions of the BLDCP.

### **2.6.2 Height**

The development proposes a single storey structure to be situated on a raised plaza with undercroft parking area. The height compliments the adjoining low-density residential area and complies with the BLDCP.

### **2.6.3 Car Parking and Vehicle Access**

The proposal does not comply with the BLDCP with regard to number of car spaces provided within the site. The matter has been discussed in detail in section 2.8 of this report.

### **2.6.4 Signs**

The total area of signage proposed on site would have numerical non-compliance with the requirements of the BLDCP. However, the signs are proposed on different facades of the building and under the awning at the corner of Pacific Highway and Nyara Road. Therefore, the numerical non-compliance with the total signage area would not have a detrimental impact on the streetscape. The amount of signage proposed on site is not considered to be excessive compared to the scale of the development and is therefore acceptable.

### **2.6.5 Acoustics**

The proposal includes retail premises and would adjoin a Residential A (Low) density zone to the north and south-west. The applicant has submitted a Noise Assessment Report to address the impact of the development on the surrounding residences with regard to noise and the attenuation measures.

The noise assessment report has considered the following noise generating criteria:

- i. Operational noise from mechanical plant and equipments, truck deliveries hours as detailed in the proposal section of this report and the undercroft carpark which would be open at the north-western corner.
- ii. Traffic noise from the public roads.
- iii. Construction noise.

The fixed plants and equipments to be used on site would include:

- i. Two carpark exhaust fans, the exact locations of which are to be determined with construction certificate plans. However, the fans would be setback at least 6 metres from the any boundary.

- ii. Two indoor air-conditioning units on the rooftop platform.
- iii. Two refrigeration units on the rooftop platform.
- iv. External air-conditioning units and exhausts for the speciality retail shops would be required. Details of plant and equipment have not been included in the proposal.

The report concluded the following:

- *Noise levels from continuously operating plant would meet the DECC (Department of Environment and Conservation) criteria subject to acoustic screening of the external plant area.*
- *An acoustic fence comprising 2 metres high precast concrete or masonry wall and a 1 metre high clear acrylic screen, located along the western and the northern boundaries would provide appropriate noise attenuation to the adjoining properties. In accordance with the Noise Assessment report, the fence would be 2 metres high, with 3 metres high section adjacent to the façade of No. 6 Nyara Road adjoining the western boundary.*
- *The report predicts that truck deliveries between 10 pm and 12 midnight would result in noise generation exceeding the sleeping arousal criteria by 2 dbA. This would impact the residences at No. 6 and No. 1 Nyara Road. The Environmental Criteria for Road Traffic Noise (ECRTN) provides that such predicted noise levels would be unlikely to result in awakening reactions.*
- *The report also specifies that the total number of expected deliveries per day for the ALDI store would be two to four. Therefore the expected 'night' (10 pm to 12 pm) time delivery would be infrequent and therefore have minimal impacts.*

*The proposed delivery hours are:*

<i>Monday to Friday</i>	<i>6 am to 12 pm</i>
<i>Saturday and Sunday</i>	<i>7 am to 10 pm</i>

- *Currently the site has a 24 hours delivery to the shops and there are no noise barriers in place. The proposed development would improve the current situation.*
- *The traffic generated by the development would comply with all the noise assessment criteria.*
- *The noise levels during construction would exceed the DECC criteria. In order to comply with such criteria, a number of measures are proposed to control the on-going construction works on site.*

Council's assessment included a detailed examination of the Noise Assessment Report. It is concluded that the above delivery hours would result in non-compliance with the noise levels during "night" time (10 am and 12 pm) and would potentially impact on the amenity of the neighbouring properties at No. 6 Nyara Road and No. 1 Nyara Road.

Therefore, the following conditions are recommended to retain the amenity of the neighbouring properties:

- i. The delivery times for the ALDI supermarket and any speciality retail shop be restricted to the following times:

Monday to Friday	6 am to 10 pm
Saturday and Sunday	7 am to 10 pm

- ii. The noise generated by the proposal at any time are not to exceed the background noise levels by more than 5dB(A).

- iii. An acoustic assessment is to be undertaken by a suitably qualified environmental consultant within 60 days of occupying the site in accordance with the Environment NSW Industrial Noise Policy (2000), Council's Guidelines for Noise and Vibration Generating Development (Acoustic Guidelines V.5, 2000) and DECC's Noise Guide for Local Government (2004) to demonstrate that the noise generated from the premise does not exceed the 5dB(A) level.

- iv. Delivery/Waste Collection hours are to be restricted to the following times:

Monday to Friday	7 am to 10 pm
Saturday	7 am to 8 pm
Sundays, Public Holidays	7 am to 6 pm

- v. The applicant is to prepare a Construction Noise Management Plan prior to any works commencing on site and have that plan approved by Council.

- vi. The proposal does not include the hours of operation of the speciality retail shops. However, the shops are approved under this application and the first occupation would be exempt pursuant to council's Exempt and Complying Development Control Plan. Therefore, the hours of operation for the speciality retail shops are restricted to those times below:

Friday to Wednesday	7 am to 7 pm
Thursday	7 am to 9 pm

Given the implementation of the above conditions, it is considered that the proposal would be acceptable with regard to noise impacts on adjoining properties.

### 2.6.6 Solar Access

The applicant has submitted shadow diagrams to demonstrate that shadows cast by the proposed development between 9am and 3pm during winter solstice would not result in the unreasonable loss of solar access to adjoining residential buildings or pedestrian areas.

### **2.6.7 Landscaping**

The proposal includes a landscape plan incorporating suitable planting along the street frontages and reinstatement of the nature strip along the Pacific Highway and Nyara Road in front of the site. Substantial planting would be undertaken along the both frontages of the site to soften the appearance of the building and reduce any adverse visual impact due to the retaining walls.

Council's assessment of the proposal in this regard is satisfactory subject to the implementation of recommended conditions.

### **2.6.8 Commercial Centre Hierarchy**

The site is classified as a 'neighbourhood centre.' The DCP indicates that the neighbourhood centres primarily provide retail and other services to the residential area which immediately surrounds them. The role of a neighbourhood centre is to serve the needs of the local residents and not undermine the strength of the commercial environment of surrounding larger centres.

The proposed development would revitalise and improve the functioning of the neighbourhood centre. It would also attract residents from the nearby catchment area. However, the development would not have a negative impact on the larger commercial centre in Hornsby as it caters for a broader community within the local government area.

### **2.6.9 Crime Prevention**

The proposal includes an undercroft car parking area to be secured by the installation of security screens. Appropriate surveillance measures would be in place once operation of the site commences.

Vehicular access to the site is restricted to the use of the undercroft area. Pedestrians can access the car park and the plaza via a ramp and an open set of stairs. The design of pedestrian and vehicular access would not result in the creation of any blind corners.

The development incorporates territorial reinforcement by creating a public plaza with a sense of community ownership.

The proposal was referred to NSW Police for comments. However, no comments have been received.

### **2.6.10 Waste Management**

A Waste Management Plan for construction and on going waste has been submitted and is assessed as satisfactory.

The ALDI store bin room is proposed to be located adjoining the loading dock to be utilized for servicing the bin. This is considered to be a suitable arrangement. The specialty shops bin rooms are proposed to be located approximately 25 metres from the bin collection point, which is considered to be a long distance and may result in servicing inconvenience with regard to 660 litre bins.

The applicant has addressed this issue by indicating that the grade of the car parking area is designed to facilitate the movement of the laden bins from the bin storage area to the garbage truck. Private waste contractors would be appointed to ensure the proper waste management procedures on site. The vehicle swept path analysis demonstrates that appropriate manoeuvring of 12.5 metre long garbage trucks within the site can be provided.

Given the above, the application is assessed as satisfactory with regard to waste management on site.

## **2.7 Mount Kuring-Gai Commercial Centre Masterplan**

The Commercial Centre Masterplans provide a planning strategy for development within the commercial centres of the Shire and ensure that any future development is consistent with the role and function of that commercial centre.

The Mount Kuring-Gai Commercial Centre Masterplan is incorporated in the Business Lands DCP to provide planning principles, strategies and the specific development controls for the site. Compliance of the proposal with the development controls within the masterplan is discussed below:

### **2.7.1 Masterplan Principles**

The proposal complies with the masterplan principles in the following way:

- The development would encourage a range of retail uses including cafés in addition to the supermarket.
- The design of the development would enhance the amenity provided in the current commercial precinct and allow safe and clear pedestrian movement throughout the site.
- The vehicular access is designed to reduce potential conflict between car and pedestrian movements.
- The residential amenity of the adjoining dwellings would be protected by the acoustic provisions as detailed in section 2.6.5 of this report.
- Residential uses have not been proposed within site as the primary objective of the proposal is to provide a neighbourhood centre with a mix of retail uses that promote an active and viable shopping centre.

### **2.7.2 Design Objectives**

The form and massing of the development is low key to blend with the adjoining low density residential zone and would encourage a range of retail and commercial uses on the site. However, the layout of the proposed development does not comply with the layout delineated in the Masterplan for the site, contained within the BLDCP.

The applicant has indicated that the layout of the proposed development has been amended as it would provide an active street frontage by providing a plaza and retail shops. This would in turn increase the interaction of the community with the neighbourhood centre. The current

design would result in minimising overshadowing and noise generation and would provide adequate parking on the site.

Given that the masterplan is a concept plan for the site and the proposal satisfies the design objectives, the non-compliance with the concept layout is considered acceptable.

### **2.7.3 Desired future character**

The site design, building and parking locations would accommodate a semi outdoor public plaza to create a pleasant environment for the neighbourhood. The plaza would accommodate outdoor seating areas that may cater to future restaurants or food premises. Appropriate landscaping is proposed along the Nyara Road and the Pacific Highway frontage. Re development of the centre would result in speciality retail and a supermarket that would blend with the low-scale suburban neighbourhood and comply with the desired future character of the area.

### **2.7.4 Vehicular Access**

The proposal retains the existing vehicular access from Nyara Road as indicated in section 2.3 of this report. No vehicular exit is provided to the Pacific Highway directly.

There is a clear delineation and separation of the vehicular and pedestrian access within the site. The development also proposes undercroft parking in accordance with the RTA Guidelines.

### **2.7.5 Building Design**

The building mass is low scale and is broken up to minimise its bulk. The building setback complies with the requirements of the masterplan. The design is such that the roof fixtures would not be visible from the road. Active street frontage would allow constant surveillance and community interaction. The building is designed to step up at the corners. The lifestyle graphic on the blank façade at the south-west corner would result in breaking up the monotony and create visual interest for passing vehicular and pedestrian traffic. The development proposes a landmark feature at the corner, splayed treatment addressing both street frontages and a distinctive top-middle and base.

It is considered that the design of the development complies with the masterplan requirements and is assessed as satisfactory.

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

The application has been assessed against the requirements of Council's Car parking Development Control Plan. The DCP requires the provision of 1 car space per 17 sq metres of gross leasable floor area (GLFA) in the Business C Zone.

In accordance with the RTA guidelines, the GLFA would be 90% of the GFA. Being 1565 sq metres, the development would require the provision of 93 spaces on site at the above rate. The proposed development accommodates 81 spaces within the undercroft car parking area and does not comply with the DCP in this regard.

The applicant has addressed this matter by providing a Traffic Impact Statement. The statement has provided details of extensive parking surveys undertaken on similar sites



accommodating ALDI stores and indicates that the RTA's "Guide to Traffic Generating Development" calculates the peak parking demand for such supermarkets to be 4.2 spaces per 100 sq metres and that for the speciality retail stores to be 4.5 spaces per 100 sq metres.

In accordance with the above rates, the parking demand for the site is calculated to be 68 spaces. The proposal complies with this requirement. Further, the development is proposed within a neighbourhood centre and is accessible by train and local bus services. These services would provide alternative travel modes and reduce the traffic generation and parking requirement on the site.

Council's assessment of the proposal in this regard is considered satisfactory and the proposal is acceptable with regard to the non-compliance of the on-site parking spaces with the DCP.

Parking spaces would be 5.4 metres x 2.4 metres in dimension, while the proposed minimum aisle width would be 6.6 metres. Four (2.3 metres wide) small car spaces have also been proposed in accordance with RTA guidelines and are considered acceptable.

Schedule C of the Car Parking DCP requires retail development including supermarkets to provide 1-2 percent accessible spaces. The proposal provides 2 accessible car parking spaces at the basement level. Both of these spaces would be located in a convenient position adjoining the lift and the pedestrian ramp with a grade of 1:14. The proposed development satisfies the requirement of the Car Parking DCP with respect to accessible spaces.

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

The application is assessed against the requirements of Council's Access and Mobility Development Control Plan. The applicant has addressed the requirements of this DCP by providing an Access Report. The proposal satisfies the requirements for provision of accessible parking spaces as indicated in section 2.8 of this report and provides the following design elements:

- A continuous path of travel to all points of the site including access from public footpaths to the pedestrian forecourt via a pedestrian ramp.
- Lift access and 1:14 access ramp to the main store entry and speciality retail shops from the undercroft car park.
- Two accessible parking spaces located adjacent to primary pedestrian access points.
- Disabled toilet facilities on the ground floor.

The Access Report concludes that the proposed development complies with Parts D3.2, D3.3, D3.5, D3.6, D3.8, E3.6 and F2.4 of the Building Code of Australia, relevant Australian Standards AS1428.1, AS1428.4, AS1735.12 and AS2890.1 and Council's Access and Mobility DCP.

The proposal is assessed as satisfactory with regard to access and mobility.

## **2.10 Outdoor Advertising Development Control Plan**

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

<b>Outdoor Advertising Development Control Plan</b>			
<b>Control</b>	<b>Proposal</b>	<b>Requirement</b>	<b>Compliance</b>
<b>Top Hamper Signs</b>			
<b>Area of each sign</b>	1.29 m <sup>2</sup>	5m <sup>2</sup>	Yes
<b>Height</b>	545mm	600mm	Yes
<b>Height above ground</b>	3m	3.7m	Yes
<b>Illuminated Flush Wall sign</b>			
<b>Area</b>	4.4m <sup>2</sup>	4m <sup>2</sup>	No
<b>Height above ground</b>	2.6m	2.6m min	Yes
<b>Pole Sign</b>			
<b>Height above ground</b>	7.8 m	8 m	Yes
<b>Advertising area</b>	10.8 m <sup>2</sup>	4.5 m <sup>2</sup>	No

As detailed in the above table, the proposed development does not comply with some prescriptive measures within Council's Outdoor Advertising DCP. The matters of non-compliance are detailed below:

### **2.10.1 Flush wall signs**

The illuminated flush wall mounted sign advertising ALDI would be erected on the elevation fronting Nyara Road. The area of the sign box does not comply with the prescriptive requirement contained in the Outdoor Advertising DCP. However, given that the numerical non-compliance is minor (0.4 sq metres only), it would not have a detrimental impact on the streetscape given the overall scale of the development on site.

The proposed non-illuminated flush wall image located on the Nyara Road frontage would have an area of 9 sq metres. However, it is not considered to be a business identification sign as it does not advertise a logo. It would consist of a vegetable/fruit image only. The proposed non-illuminated flush wall sign exceeds Council's control by 5.87 sq metres. The design of this signage is well integrated into the design of the development and would create a visually interesting façade. It is considered to be similar to a mural and is acceptable.

### **2.10.2 Pole Sign**

The pole sign would be double sided incorporating separate panels to identify the business within the site. The total signage area exceeds the maximum area requirement prescribed in the Outdoor Advertising DCP by 4.3 sq metres. This non-compliance has occurred in order to

consolidate signage in the form of an appropriately sized ALDI logo, identification sign for “Mount Kuring-Gai Village Centre” and the speciality retail shops. The sign would be similar to the double sided pole sign that exists on site currently and the overall impact of the signage on site would not be detrimental to the streetscape due to its location and design.

The pole sign would improve the identity of the commercial complex and attract more visitors. Therefore, the non-compliance is acceptable.

### **2.11 Sustainable Water Development Control Plan**

The application has been assessed against the requirements of the Sustainable Water Development Control Plan. Subject to implementation of conditions regarding sediment and erosion control measures on site during construction, the proposal would comply with the requirements contained within the Sustainable Water Development Control Plan.

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

The matters regarding compliance of the proposal with the requirements of this DCP have been discussed in section 2.6 of this report.

### **2.13 Section 94 Contributions Plan**

Council’s Section 94 Plan applies to the development as it would result in the generation of additional retail floor space within the site. Council’s Section 94 Plan is calculated on the basis of number of employees on the site at the rate of 1 employee per 30 sq metres of gross floor area.

The development proposes 1738 sq metres of commercial floor space of which 1253 sq metres would be dedicated to the ALDI shop and 485 sq metres to the retail stores. 863 sq metres of commercial space currently exists on the site. Therefore, the proposal would result in the generation of 875 sq metres of additional commercial floor space on site. The applicant has indicated that ALDI would employ a maximum of twenty staff on site. Therefore the total commercial floor space generated on site would be equivalent to the following number of employees:

- ALDI store would employ 20 staff
- The proposed floor area for the retail shops would be equivalent to 16 employees (calculated at the rate of 1 employee per 30 sq metres of gross floor area).
- The existing floor area within the premises would be equivalent to 28 employees (calculated at the rate of 1 employee per 30 sq metres of gross floor area).

Therefore the proposed additional commercial floor space on site would be equivalent to 8 employees (20 + 16 – 28). Accordingly Section 94 contributions have been recommended based on 8 employees as a condition of development consent.

## **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

#### 3.1.1 Trees

There are ten trees on the site and eighteen trees located on adjoining properties that would be affected by this development. The trees comprise of a variety of species including locally native *Angophora sp.*, *Callistemon sp.*, *Leptospermum sp.*, *Melaleuca sp.* and introduced species such as *Lephostemon sp.*, *Cupressus sp.*, *Harpephyllum sp.*, *Corymbia sp.* & *Lagerstroemia sp.*

The site is not categorised as environmentally sensitive. The proposed development would necessitate the removal of all trees on the site and would impact on twelve trees that are located on adjacent properties. The applicant has provided an Arborist's report justifying the removal of all the trees within the site.

Council's assessment of the proposal included a detailed examination of the existing trees on the site. It is noted that a significant tree (*Angophora Costata*) is located on the northern boundary of the site. Retention of this tree would only be achieved if no works are proposed within 8 metres of the tree. In this regard, it is noted that the land is zoned as Business C (neighbourhood) Zone. The objectives of the zone are to promote a healthy community environment and promote economic growth of the locality. The proposal complies with the zone objectives due to reasons discussed in section 2.1 of this report. Further the proposal would also comply with the draft North Subregional Strategy by providing employment opportunities and having a positive social and economic impact on the locality.

The retention of the tree would result in the loss of car parking on the site, reduce the feasibility of the development on site and have no positive impact on the future development of the site that would otherwise be achieved by the redevelopment of the commercial centre. Due to these reasons it is considered that the removal of the *Angophora* tree within the site is appropriate.

The applicant has provided owners consent from the neighbouring properties at No. 759 Pacific Highway and No. 3 Glenview Road with regard to removal of trees within their property. The applicant has also provided an additional report by Redgum Arboriculture and Horticulture Consultants indicating the maintenance mechanism for all other trees within the neighbouring properties to be affected by the development, in order to avoid removal. Such maintenance works would include minor pruning and maintenance of all trees to be impacted upon by the development including a Forest Red Gum tree located within the adjoining property at No. 6 Nyara Road. The report states that the works are to be undertaken within the site and would not impact on the neighbouring properties.

#### 3.1.2 Air

The proposed development is located in the immediate vicinity of residential premises and there is potential for dust to cause an impact on neighbouring premises during construction works.

Schedule 6 of the Protection of Environment Operations (Clean Air) Regulation 2002 (POEO) requires that dust particles (solid particles) during construction are not to exceed 100 mg per cubic metre. Further, the Regulations also require that testing facilities be implemented on site in accordance with Schedule 7 of POEO and the publication: '*Approved*

*Methods for the Sampling and Analysis of Air Pollutants in New South Wales* and Australian Standard 4323.2-1995.

A condition is recommended requiring the applicant to provide an Air Quality Management Plan prior to the issue of the construction certificate. The plan would incorporate the compliance of the proposal with the above guidelines and the air quality control measures proposed on site.

The fumes and dust particles from the car exhaust vent would also have the potential to impact on the adjoining residential properties.

The applicant has not provided the detailed design of the car park exhaust system, however has indicated that the proposed exhaust system for the undercroft parking area is designed to extract car exhaust emissions away from the nearby residential dwellings. The void at the north-western corner of the car park would act as the source of fresh air supply to the system and would be under negative pressure. The exhaust system and the associated negative pressure would minimise any emissions leaving the carpark at this corner.

As noted earlier in this report, the exhaust shaft would be located a minimum 6 metres from any adjoining residential boundary and would ensure that the emissions are extracted away from the residential properties. It would include acoustic lining of the inlet and discharge ducts of car park exhaust fans to maintain compliance with the DECC acoustic requirements.

### **3.1.3 Water**

The RTA requires that the stormwater runoff from the site not impact upon the RTA drainage system within the Pacific Highway.

The applicant proposes an on-site-detention system for stormwater management on the site. Stormwater discharge from the detention system would be directed to the pit in the Pacific Highway.

The above works would require concurrence from the RTA to satisfy its requirements. A condition has been recommended requiring that the applicant submit a detailed stormwater management plan addressing this requirement prior to the issue of the construction certificate.

In the event that the RTA's concurrence is not received by the applicant to drain water to Pacific Highway, approximately 20 % of the stormwater from the detention system would discharge into the stormwater pit within Nyara Road. This requirement has also been incorporated within the development consent and details are to be submitted prior to the release of the construction certificate.

Subject to compliance with the above conditions regarding stormwater management on the site and appropriate sediment-erosion control measures being implemented, the proposal would not have an adverse impact on the water quality of the Hawkesbury-Nepean Catchment.

Given the above, the proposal is considered acceptable with regard to its impact on the natural environment.

## **3.2 Built Environment**

The matters in relation to the impact of the development on the built environment and traffic of the locality have been discussed in sections 2.3 and 2.6 of this report.

### 3.3 Social Impacts

The social impacts of the development on the local and broader community have been considered with specific reference to the potential employment generation within the complex. It is estimated that the development would generate thirty equivalent full time positions post construction. This is consistent with the North Subregion (Draft) Subregional Strategy that provides a target of 9,000 jobs within the Hornsby LGA by 2031.

There would also be a number of multiplier effects that the development would provide throughout the local and regional economies. These multiplier effects would result from the sourcing of goods and services from suppliers to businesses within the complex as well as the increased consumption generated by the increase of employment in the area. The complex is likely to provide employment opportunities to younger age groups, which typically have higher unemployment rates within the region.

### 3.4 Economic Impacts

The proposed development would result in a notable increase in the total retail floor space within the Mount Kuring-Gai village Centre. Accordingly, an assessment of the economic impact of the development upon the centre and other nearby centres has been undertaken.

In support of the development application, the applicant has submitted an Economic Impact Assessment (EIA) undertaken by SGS Economics and Planning Consultancy.

Several key issues have been identified of relevance as follows:

- (a) *The proposal complies with the objectives of all relevant planning controls;*
- (b) *The Hornsby and Kuring-Gai Subregional Employment Lands Study notes that there is around 1114 sq metres of floor space on this including the forecourt area (being greater than the existing GFA) and there is a demand for an additional 109 sq metres on site (given trends);*
- (c) *Given the 'linear' nature of the urban area, a secondary catchment of expenditure is likely to extend north and south of the proposed development site, the primary catchment being Mount Kuring-Gai. While the net increase in the floor space would marginally add to the 'crowding' of the neighbourhood centre, it does not oversupply the catchment for small centre retailing. Since the population is separated from the town and regional shopping centres, a small excess of local shopping would not be inappropriate;*
- (d) *The current development would revitalise the otherwise poorly performing centre at risk of future decline;*
- (e) *The nearby industrial area hosts approximately 1200 workers. It is estimated that about 100 sq metres of supportable floor space demand would be coming from these workers in addition to the household demand within the catchment;*

- (f) *It is estimated that that catchment can support in the order of 5730 sq metres of supermarket floor space which would be achieved after the inclusion of the proposed ALDI development;*
- (g) *The quantitative analysis indicates a demand-supply balance following the ALDI development. However, the shops and centres to the north of Mount-Kuring-Gai whose amenity and attractiveness is less in comparison to this development, would experience a decline in their trading performances;*
- (h) *The reduced trip would one of the benefits achieved from this development; and*
- (i) *The development would provide a modest net community benefit through the increase in effective rents and would not be cancelled out by a commensurate decline in rents elsewhere.*

An assessment of the Economic Impact Statement has been undertaken by Council. Researches show that the grocery prices ALDI supermarket, on average is 25 % to 40 % less than the other supermarkets in Australia due to low overhead costs of the store. Discount supermarket ALDI provides cheapest rates of grocery in all 40 regions where it operates. The most expensive supermarket in each region is on average 41 per cent dearer than ALDI. Therefore, if the redevelopment of this site includes an ALDI store, it would result in affordable shopping for the residents within the primary and secondary catchment as well as improving competition between similar retail stores within the catchment. Council's assessment of the Economic Impact Statement concludes that the proposal would result in net community benefit and a positive economic impact on the locality.

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

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

The site is not subject to bushfire risk.

The development is considered to be suitable for the site due to reasons discussed in Sections 2 and 3 of this report.

#### **5. PUBLIC PARTICIPATION**


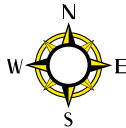
Section 79C(1)(d) of the Act requires Council to consider "*any submissions made in accordance with this Act*".

##### **5.1 Community Consultation**

The proposed development was placed on public exhibition and was notified to adjoining and nearby landowners between 23 March 2009 and 3 April 2009 in accordance with Council's Notification and Exhibition Development Control Plan. The applicant did not provide Council with the evidence of yellow notice being erected on site. Therefore the notification period for extended between 29 May 2009 and 13 June 2009. During this period, Council received six 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>	<ul style="list-style-type: none"> <li>X SUBMISSIONS RECEIVED</li> </ul>	 PROPERTY SUBJECT OF DEVELOPMENT	
<p>The address of one objector was not identified</p>			

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

- Unacceptable traffic on local streets;
- Loading docks being located in close proximity to the bedroom of the adjoining residence at No. 6 Nyara Road;
- Removal of a massive Forest Red Gum Tree (marked as Tree No. 21 in the tree plan) located within No. 6 Nyara Road;
- Removal of the Angophora Costata located on the northern boundary of the site (Tree No. 15 on the tree plan);
- Removal of trees along the boundary of No. 3 Glenview Road;
- Unacceptable impact on the neighbouring properties due to the fumes from the car park exhaust vents;
- Lack of parking on site and no street level parking which would result in on-street car parking within Nyara Road;
- Unacceptable noise from activities at the centre, and mechanical exhausts within the site and the construction works;
- Unacceptable privacy impact on the property at No. 7 Glenview Road due to reduction of the height of the acoustic fence in this area;



- Unacceptable impact on the security of the adjoining premises;
- Unacceptable aesthetic impact on the adjoining properties;
- Development that is excessive in bulk and scale.

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

#### **5.1.1 Privacy impact**

Council's records indicate that the property at No. 7 Glenview Road does not directly adjoin the site. The proposal includes a 3 metre high acoustic fence along the entire length of the western boundary. The height of the fence is considered suitable to maintain privacy of the adjoining properties.

#### **5.1.2 Tree removal**

One submission has requested the removal of a Kaffir Palm tree located at the boundary of the site and the adjoining property at No. 6 Nyara Road.

This is considered to be a reasonable request and a condition is recommended for the removal of this tree.

#### **5.1.3 Fencing details**

One submission noted that the details of fencing are not provided in the proposal.

The proposal includes details of the proposed acoustic fence. No other fencing is proposed along the Pacific Highway and Nyara Road. Any proposed fencing along the northern boundary would be subject to negotiation between the owners of the neighbouring properties.

#### **5.1.4 On-going operation during construction**

One submission considered that the post office and the pharmacy should continue to operate on site during construction without any interruption.

The proposal seeks approval for the redevelopment of the shopping centre and the construction of five retail tenancies in addition to the ALDI store. One of the tenancies is likely to be a post-office in the future. However, the proposal does not seek consent for fitout of any retail tenancies and the post office is not approved as a part of this development. It is not known whether a pharmacy would operate on the site in future and would depend on the operator. In any case the ceasing of the operation of the pharmacy or the post office within the site would not result in non-compliance of the proposal with the relevant development controls and statutory instruments. Therefore the request within the submission cannot be adhered to.

Notwithstanding the above, the applicant has proposed the following staging of construction within the site:

- (a) Construction of the five retail tenancies on the site enabling the continued operation of the retail premises at the rear.

- (b) Following completion of the retail shops, the future occupiers would occupy the speciality retail stores.
- (c) The construction of the ALDI store would commence in the next phase.

This staging would involve restricted and controlled deliveries on site and would also significantly reduce the number of available customer parking spaces within the site. Conditions have been recommended regarding construction management on site to ensure maintenance of appropriate levels of amenity during construction. However, the staging of the construction is concept only and is not approved under this application.

### 5.1.5 Moving footway

One submission suggested that a moving footway should be provided for access to the shopping level from the undercroft level.

The proposal includes a ramp and a lift for access and complies with the relevant development controls in this regard.

### 5.1.6 Construction Noise Management

One submission suggested that:

- Noise barriers should be provided during the demolition and construction phase.
- A Construction Management Plan should be provided indicating that safe access within Nyara Road and the intersection would always be maintained during construction.
- Demolition and construction hours should be maintained.

A condition has been recommended regarding submission of a Construction Noise Management Plan prior to the issue of the construction certificate for approval by Council. The Management plan would include the following information:

- (a) Identification of all nearby residences and other sensitive land use.
- (b) An assessment of potential noise impacts from the proposed construction methods.
- (c) A detailed examination of feasible and reasonable noise mitigation measures to minimise or avoid noise impacts.
- (d) Development of reactive and pro-active strategies for dealing promptly with any noise complaints, including documentation and feedback mechanisms.
- (e) Identification of a site contact person to follow up complaints.
- (f) The establishment of monitoring systems at affected residences and other sensitive land uses for noise levels.

- (g) Regular internal checks of plant and equipment to confirm there has been no degradation in noise levels.
- (h) Regular independent auditing of procedures and noise levels by an environmental consultant.
- (i) A register to be placed and maintained on site indicating the time, date and person responsible for carrying out noise readings at the required times specified in the management plan (at a minimum, readings should be conducted fortnightly during the construction phase).

Subject to the approval of the above management plan, the implementation of the techniques on site during construction, recommended conditions regarding construction work hours and traffic control plan, the amenity of the neighbouring properties would be maintained reasonably during construction works.

### 5.1.7 Traffic related requirements

Several submissions made the following observations:

- Traffic Lights at the intersection of Nyara Road and Pacific Highway should be reconfigured to cater to the additional traffic and avoid accidents.
- “No stopping” restrictions should be installed on Nyara Road.
- ‘Left turn’ slip lane right lane arrows should be installed on Nyara Road to cater for the additional traffic.
- Pedestrian ramps at the intersection of Nyara Road and Pacific Highway should be upgraded.
- Pedestrian refuge island should be provided on the driveway of the site.

The RTA reviewed the proposal in this regard and raised no concerns regarding the existing traffic lights. A condition has been recommended requiring installation of “No stopping” signs on Nyara Road and the Pacific Highway. However, no recommendations have been provided regarding the left turn lane, right turn arrows or pedestrian ramp upgrade. The proposal demonstrates that the road network can accommodate that additional traffic and is assessed as satisfactory in this regard. The driveway is not to be used by pedestrians for access to the site therefore such a refuge island would not be required. A refuge island would restrict manoeuvring of trucks within the site and is not acceptable.

### 5.1.8 Design requirements

Submissions were received concerning the design of the development as follows:

- Adequate sediment and erosion control measures should be in place.
- Adequate disabled access be provided.
- The illumination within the site after business hours should be minimised.

- All mechanical plants and equipments should be acoustically and aesthetically treated.
- No music or sound from the commercial premises should be audible to residential properties after 9:30 pm.
- Waste and loading/unloading facilities should be fully screened from public views.
- Stormwater management plan should ensure retention of canopy trees.
- A new 1.2 metres wide footpath should be constructed along the full width of the site.
- Graffiti management plan should be adopted on site.
- Shopping trolley management plan should include regular ‘collection patrol’ around the site.
- Collection and delivery services should not occur within the site between 8:00 pm and 8:00 am.
- The undercroft area visible from Nyara Road should be screened and landscaping incorporated.
- Landscape treatment should be provided to the disabled access ramp to the forecourt of the site.
- Business identification signage should be minimised.
- The signage should not dominate the design of the building.

The above matters raised in community submissions have been addressed in the body of the report. Conditions are recommended regarding the erosion and sediment control measures, disabled access, footpath construction, noise, landscaping and treatment of mechanical plants.

## **5.2 Public Agencies**

The development application was referred to the following Agencies for comment:

### **5.2.1 Roads and Traffic Authority**

The proposal was referred to Roads and Traffic Authority of New South Wales. The matter has been discussed in detail in section 2.3 of this report.

### **5.2.2 NSW Police Force**

The development was referred to the NSW Police Force for comment with regard to Crime Prevention. However, no comments have been received within the specified time period. Notwithstanding, Council’s assessment under CPTED principles concludes that the development addresses crime and safety requirements.

### 5.2.3 State Rail

The proposal is located in close proximity to the rail corridor and Rail Corp was notified of the development. No comments have been received. It is not anticipated that the development would have any impact upon rail operations.

## 6. THE PUBLIC INTEREST

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

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

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

## CONCLUSION

The proposed development involves the demolition of an existing commercial complex and the redevelopment of the Mount Kuring-Gai Village Centre including an ALDI supermarket, four retail shops, a post office, public forecourt and associated landscaping works. The proposal would involve a gross floor area of 1738 sq metres and accommodate eighty-one car spaces within the site.

The proposed development would promote employment opportunities in a location that is well positioned to take advantage of nearby public transport nodes.

The proposed development would be single storey, being built over a raised plaza. It would present a visually interesting façade and presentation to Nyara Road and the Pacific Highway. The development complies with Section 79(c) of the Environmental Planning and Assessment Act 1979, the standards within SEPP (Infrastructure) 2007, the Hornsby Shire Local Environmental Plan 1994 and the objectives of the development controls within Business Lands Development Control Plan – Mount Kuring-Gai Shopping Centre Masterplan.

Approval of the proposal is recommended.

ROD PICKLES  
Manager - Assessment Team 2  
Planning Division

SCOTT PHILLIPS  
Executive Manager  
Planning Division

**Attachments:**

1. Locality Plan
2. Survey Plan
3. Site Plan
4. Floor Plans
5. Elevations and Sections
6. Demolition Plan
7. Signage details
8. Waste Management Plan
9. Shadow Plans
10. Landscape Plans
11. Tree Plan

File Reference: DA/256/2009

Document Number: D01204024

**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>
Detail and Level Survey	Stutchbury Jaques Pty Ltd	28/07/2008
DA-01/E Site Plan	Donaldson Worrad	17/07/2009
DA-02/D Basement Carpark Plan	Donaldson Worrad	17/07/2009
DA-03/E Ground Floor Plan	Donaldson Worrad	17/07/2009
DA-04/D Roof Plan	Donaldson Worrad	05/03/2009
DA-05/D Elevations and Sections	Donaldson Worrad	17/07/2009
DA-06/D Elevations and Sections	Donaldson Worrad	17/07/2009
DA-07/C Demolition Plan	Donaldson Worrad	12/02/2009
DA-09/D Signage Detail	Donaldson Worrad	17/07/2009
DA-10/E Waste Management Plan	Donaldson Worrad	17/07/2009
LDA-001 B – Landscape Planting Plan	Scott Carver Pty Ltd	January 2009
LDA-002 B – Landscape Details	Scott Carver Pty Ltd	January 2009
L113-C0104 Rev D Erosion and Sedimentation Control Plan	GW Engineers	19/05/2009
L113-C L113 - C0100 Rev F Stormwater Concept Plan	GW Engineers	19/05/2009
Plan showing the location of loading docks.	Donaldson Worrad	Received By Council on 23/06/2009

<i>Document No.</i>	<i>Prepared by</i>	<i>Dated</i>
Schedule of Finishes	Donaldson Worrad	March 2009
Building Code of Australia Compliance Report	Steve Watson and Partners	February 2009
BCA Energy Efficiency – Section J	Erbas and Associates Pty Ltd	-
Geotechnical Investigations	Jeffery & Kataukas Pty Ltd Consulting Geotechnical and Environmental Engineers	4 November 2008
Traffic Report	Colston Budd Hunt & Kafes Pty Ltd	February 2009
Accessibility Report	Accessibility Solutions (NSW) Pty Ltd	16 February 2009
Arboricultural Assessment	Regum Arboriculture and Horticulture Consultants	9 October 2008
Noise Assessment Report Version C	Wilkinson Murray Pty Ltd	February 2009
Infrastructure Services Assessment	George Floth Pty Ltd Consulting Engineers	12 August 2008
Stage 1 – Environmental Site Assessment	Environmental Investigation Services	November 2008
Economic Impact Assessment	SGS Economics and Planning	December 2008
Waste Management Plan	Donaldson Worrad	26/05/2009
Service Vehicle Management Plan	Donaldson Worrad	19/06/2009
Tree Management Agreements	Regum Arboriculture and Horticulture Consultants	27/05/2009

## 2. Removal of Existing Trees

This development consent permits the removal of trees numbered T1, T4, T5, T6, T7, T9, T10, T11, T12, T13, T14 and T15 as identified on the Detail and Level Survey prepared by Stutchbury Jaques Pty Ltd date 28/07/2008. 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. 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.*

#### 5. Dilapidation Report

A ‘Dilapidation Report’ is to be prepared by a ‘chartered structural engineer’ detailing the structural condition of all adjoining properties.

#### 6. Traffic Control Plan

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

- a. Arrangements for public notification of the works.
- b. Temporary construction signage.
- c. Permanent post-construction signage.
- d. Vehicle movement plans.
- e. Traffic management plans.
- f. Pedestrian and cyclist access/safety.

#### 7. Air Quality Management Plan

An Air Quality Management Plan must be prepared by a suitably qualified consultant and a copy submitted to Council. The report must be prepared in accordance with the requirements of Schedule 6 and Schedule 7 of the Protection of Environmental Operations (Clean Air) Regulation 2002, the publication: *Approved Methods for the Sampling and Analysis of Air Pollutants in New South Wales* (Available from the Department of Environment and Climate Change) and *Australian Standard 4323.2-1995*.

#### 8. Construction Noise Management Plan

A construction noise management plan must be prepared by an appropriately qualified acoustic engineer and a copy submitted to Council. The plan must be prepared in accordance with the Draft NSW construction noise guidelines include the following information:

- a. Identification of all nearby residences and other sensitive land uses.

- b. An assessment of potential noise impacts from the proposed construction methods.
- c. A detailed examination of feasible and reasonable noise mitigation measures to minimize noise impacts.
- d. Development of strategies for dealing with any noise complaints.
- e. Identification of a site contact person to follow up complaints.
- f. The establishment of monitoring systems at affected residences and other sensitive land uses for noise levels.
- g. Regular checks of plant and equipment with regard to noise levels.
- h. Regular independent auditing of procedures and noise levels by an environmental consultant.

#### **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.

#### **9. 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.*

#### **10. Protection of Adjoining Areas**

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

- a. Could cause a danger, obstruction or inconvenience to pedestrian or vehicular traffic.

- b. Could cause damage to adjoining lands by falling objects.
- c. Involve the enclosure of a public place or part of a public place.

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

## 11. 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*.

## 12. 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.

## 13. 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

## 14. Demolition

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

- a. Demolition material is to be disposed of to an authorised recycling and/or waste disposal site and/or in accordance with an approved waste management plan.

## 15. 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.

## 16. Street Sweeping

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

## 17. Works near Trees

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

All works (including driveways and retaining walls) within five metres of any trees required to be retained (whether or not on the subject property, and pursuant to this consent or the *Tree Preservation Order*) must be carried out under the supervision of an *'AQF Level 5 Arborist'* and in accordance with the "Tree Maintenance Agreements" prepared by Redgum Arboriculture and Horticulture Consultants dated 27/05/2009 and a certificate submitted to the principal certifying authority detailing the methods used to preserve the trees.

*Note: Except as provided above, the applicant is to ensure that no excavation, filling or stockpiling of building materials, parking of vehicles or plant, disposal of cement slurry, waste water or other contaminants is to occur within 4 metres of any tree to be retained.*

## 18. 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.

## 19. Landfill

Landfill must be constructed in accordance with Council's *'Construction Specification, 2005'*. All fill material imported to the site is to wholly consist of Virgin Excavated Natural Material (VENM) as defined in Schedule 1 of the *Protection of the Environment Operations Act 1997* or a material approved under the *Department of Environment and Climate Change's* general resource recovery exemption.

## 20. Excavated Material

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

## 21. Underground storage tanks

In the event underground storage tank/s are encountered during construction or demolition works, all tanks must be removed and disposed of in accordance with *Australian Standard 4976 – 2008: The removal and disposal of underground petroleum storage tanks – Standards Australia*.

## 22. Implementation of Noise Management Plan

The recommendations and attenuation measures within the Construction Noise Management Plan must be implemented on site at all times during construction and demolition works in addition to the following requirements:

- a. A copy of the recorded noise readings be provided to Council and the Principal Certifying Authority on a fortnightly basis (minimum).
- b. A register be maintained on site indicating the time, date and person responsible for carrying out noise readings at the required times specified in the management plan.

### 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.*

## 23. Maintain Canopy Cover

To maintain canopy cover the following requirements must be incorporated into the development:

- a. Tree No. 15 removed as a result of this Development Application must be replaced with a tree, selected from Council's booklet '*Indigenous Plants for the Bushland Shire*', such as *Syncarpia glomulifera* (Turpentine) are to be planted on the subject site. The planting location shall not be within 4 metres of the foundation walls of a building. The pot size is to be a minimum 25 litres and the tree must be maintained until they reach the height of 3 metres. Trees must be native to Hornsby Shire and reach a mature height greater than 8 metres.

- b. Street tree planting along the Nyara Road verge must consist of three *Tristaniopsus laurina* (Water Gums) planted at a minimum pot size of 100 litres, in mulch planters (500 mm x 500 mm). Tree must be located to ensure appropriate sight lines for pedestrians and vehicles is maintained.
- c. All planter box areas must include automatic irrigation, subsoil drainage (proprietary drainage cell, 50 mm sand and filter fabric), and waterproofing. Soil depths additional to the requirement of subsoil drainage would be 500 mm for shrubs.

#### **24. Sydney Water – s73 Certificate**

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

#### **25. Stormwater Drainage**

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

- a. Connected directly to Public drainage system subject to the conditions and comments in the concurrence issued by Roads and Traffic Authority (Ref: DR412).

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

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

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

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

#### **27. On Site Stormwater Detention**

An on-site stormwater detention system must be designed by a Chartered Civil Engineer and constructed in accordance with the following requirements:

- a. The drainage system to control all collected roof and surface stormwater must be designed with an on-site-detention system. Stormwater discharge from the development site must be limited to 55 litres per second and on site detention storage provided for up to 50 year ARI storm events.
- b. Discharge from the on-site detention system must be directed to the pit within

- Pacific Highway subject to consent of the Roads and Traffic Authority.
- c. Detail calculations are to be submitted with the construction certificate application.
  - d. Have a surcharge/inspection grate located directly above the outlet.
  - e. Where above ground and the average depth is greater than 0.3 metres, a 'pool type' safety fence and warning signs to be installed.
  - f. Not be constructed in a location that would impact upon the visual or recreational amenity.
  - g. The creation of an appropriate "*Positive Covenant*" and "*Restriction as to User*" over the constructed on-site detention/retention systems and outlet works, within the lots in favour of Council in accordance with Council's prescribed wording. The position of the on-site detention system is to be clearly indicated on the title.
  - h. To register the OSD easement, the restriction on the use of land "*works-as-executed*" details of the on-site-detention system must be submitted verifying that the required storage and discharge rates have been constructed in accordance with the design requirements. The details must show the invert levels of the on site system together with pipe sizes and grades. Any variations to the approved plans must be shown in red on the "*works-as-executed*" plan and supported by calculations.

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

## 28. Vehicular Crossing

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

- a. Approval obtained from all relevant utility providers that all necessary conduits be provided and protected under the crossing ( if any).

*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. No application is necessary if no changes are proposed to the existing vehicular footway crossing.*

## 29. Road Works

All road works approved under this consent must be constructed in accordance with Council's *Civil Works Design and Construction Specification, 2005* and the following requirements:

- a. Existing kerb and gutter along Nyara Road be replaced and new kerb and gutter constructed to full frontage of Pacific Highway, together with footpath formation, necessary drainage to convey the runoff and sealing of road pavement between the existing pavement and lip of the gutter.
- b. The existing road pavement to be saw cut a minimum of 300 mm from the existing edge of the bitumen and reconstructed.
- c. Nyara Road pavement fronting the development be upgraded to industrial /commercial standard.
- d. The submission of a compaction certificate from a geotechnical engineer for any fill within road reserves, and all road sub-grade and road pavement materials.
- e. The existing footpath along Nyara Road and Pacific highway be removed and reconstructed.
- f. The existing pram ramp crossing at the corner of Pacific Highway and Nyara Road be replaced by a concrete ramp in accordance with Council's Civil Works Specifications 2005.
- g. All works affecting Pacific Highway be approved by the Roads Traffic Authority of New South Wales for Council's endorsement.
- h. A construction certificate be obtained from Council for works within the public road reserve.

### **30. Traffic Control Plan**

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

- g. Arrangements for public notification of the works.
- h. Temporary construction signage.
- i. Permanent post-construction signage.
- j. Vehicle movement plans.
- k. Traffic management plans.
- l. Pedestrian and cyclist access/safety.

### **31. Damage to Council Assets**

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



### 32. Completion of Landscaping

A certificate must be provided by a practicing landscape architect, horticulturalist or person with similar qualifications and experience certifying that all required landscaping works have been satisfactorily completed in accordance with the approved landscape plans.

*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).*

### 33. Car Park exhaust

To protect the amenity of the adjoining properties, the car park exhaust system and all mechanical plants and equipment including the condenser unit for the air-conditioner on site must be located a minimum 6 metres from any property boundary adjoining a residential development.

### 34. External Lighting

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

The approved signage must not be illuminated after the operating hours of the retail premises.

### 35. Waste Management

The applicant must submit documentary evidence (i.e. tipping dockets/receipts from recycling depots, transfer stations and landfills) and a summary report of actual destinations and quantities of waste generated by the works carried out under this development consent. This summary report is to be based on and be in the format of the Waste Management Plan Section One – Demolition Stage and/or Section Three – Construction Stage. If less than 60% waste was reused or recycled, the summary report must include the reasons why the 60% target was not achieved.

### 36. Bin Storage

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

### 37. Food Premises

The fit out and operation of that part of the building to be used for the manufacture, preparation or storage of food for sale, must be in accordance with *Australian Standard 4674-2004 – Design and fit out of food premises*, the *Food Act 2003*, and the *Food Regulation 2004*.

*Note: Reference should also be made to the Food Safety Standards and the 'Safe Food Australia - A guide to the Food Safety Standards 2nd Edition January 2001'.*

### 38. Creation of Easements

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

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

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

### 39. Works as Executed Plan

A works-as-executed plan must be prepared by a registered surveyor and submitted to Council for completed road pavement, kerb & gutter, public drainage systems, and on-site detention system.

### 40. Site Remediation Verification

The applicant must provide documentation from a suitably qualified environmental consultant verifying that the site has been remediated in accordance with the NSW Environment Protection Authority's Contaminated Sites – Guidelines for Consultants Reporting on Contaminated Sites, the Contaminated Sites- Sampling Design Guidelines Contaminated Sites – Guidelines for the NSW Site Auditor Scheme and the recommendations of the Stage 1 Environmental Site Assessment prepared by Environmental Investigation Services dated November 2008.

### 41. s94 Infrastructure Contributions

The payment to Council of a contribution of \$ 18148.4\* for 8 employees towards the cost of infrastructure identified in Councils *Development Contributions Plan 2007-2011*.

*Note: \* The value of contribution is based on a rate of \$2268.55 per employee, derived from a rate of one employee per 30sqm of commercial floor area for the speciality retail shops and 20 employees for ALDI shop and is current as at 18 August 2009. The contribution will be adjusted from this date in accordance with the underlying consumer price index for subsequent financial quarters.*

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

## OPERATIONAL CONDITIONS

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

### 42. Hours of Operation

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

Monday to Wednesday	8:30 am to 7 pm
Thursday	8:30 am to 9 pm
Friday	8:30 am to 7 pm
Saturday	8:30 am to 7 pm
Sunday	9 am to 7 pm

- b. The hours of operation of the speciality retail shops be restricted to those times below:

Friday to Wednesday	7 am to 7 pm
Thursday	7 am to 9 pm

- c. The delivery hours for the ALDI store and the retail shops are restricted to those times listed below:

Monday to Friday	6 am to 10 pm
Saturday and Sunday	7 am to 10 pm

- d. No deliveries are permitted within the premises for the ALDI store during the following hours to avoid conflict with peak customer traffic:

Monday to Friday	2 pm to 6 pm
Saturday and Sunday	10 am to 3 pm

- e. The waste collection times within the premises are restricted to those times listed below:

Monday to Friday	7 am to 10 pm
Saturday and Sunday	7 am to 8 pm
Public Holidays	7 am to 6 pm

### 43. Traffic Monitoring

An assessment of the impact of the approved delivery times on the queuing of vehicles on Nyara Road and its nearby intersection with Pacific Highway must be undertaken by a suitably qualified traffic consultant over a period of 6 months after occupying the site in accordance with *RTA guidelines for Traffic Generating*

*Developments* and the relevant Australian Standards. Should the assessment find that queuing is occurring at the above locations, mitigation measures must be provided to Council including further amendments to delivery times.

#### **44. Car Parking and Deliveries**

All car parking must be constructed and operated in accordance with *Australian Standard AS 2890.1 – 2004 – Off Street Car Parking* and *Australian Standard 2890.2 - 2002 – Off Street Commercial* and the following requirement:

- a. All parking areas and driveways must be sealed to an all weather standard, line marked and signposted.
- b. Car parking, loading and manoeuvring areas must be used solely for nominated purposes.
- c. Vehicles awaiting loading, unloading or servicing must be parked on site and not on adjacent or nearby public roads;
- d. All vehicular entry on to the site and egress from the site must be made in a forward direction.

#### **45. Noise – Plant and Machinery**

The level of total continuous noise emanating from operation of all the plant, including air conditioning units and processes in all buildings (LA10) (measured for at least 15 minutes) in or on the above premises, must not exceed the background level by more than 5dB(A) when measured at all property boundaries.

An acoustic assessment is to be undertaken by a suitably qualified environmental consultant within 60 days of occupying the site in accordance with the *Environment NSW Industrial Noise Policy (2000)*, *Council's Policy and Guidelines for Noise and Vibration Generating Development (Acoustic Guidelines V.5, 2000)* and the *DECC's Noise Guide for Local Government (2004)*. The assessment must be submitted to Council for review. Should the assessment find that noise from the premise exceeds 5dB(A) appropriate measures must be employed to rectify excessive noise.

#### **46. Fire Safety Statement - Annual**

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

#### **47. Maintenance of Wastewater Device**

All wastewater and stormwater treatment devices (including drainage systems, sumps and traps) must be regularly maintained in order to remain effective. All solid and liquid wastes collected from the device must be disposed of in accordance with the *Protection of the Environment Operations Act 1997*.

**48. Lifestyle Sign**

The illuminated flush wall sign referred to as the 'lifestyle graphic' must not display any words, letters, symbols or images that identify a product or corporate body or display an image that reduces the safety of road users.

**49. Trolleys**

The supermarket operators must carry out regular patrols of the local streets to ensure all trolleys are returned.

**CONDITIONS OF CONCURRENCE – ROADS AND TRAFFIC AUTHORITY**

The following conditions of consent are from the nominated State Agency pursuant to Section 79B of the *Environmental Planning and Assessment Act 1979* and must be complied with to the satisfaction of that Agency.

**50. Anchoring**

Detailed design drawings and associated geotechnical reports must be submitted to the RTA prior to the issue of a Construction Certificate. The geotechnical report must include the following requirements:

- a. The impact of excavation/rock anchors on the stability of Pacific Highway and detailing the methods of monitoring the carriageway with regard to settlement.
- b. The impact of the excavation on the structural stability of Pacific Highway.

*Note: The applicant is to contact RTA's Geotechnical Engineer at 8837 0246 or 8837 0245 for further information in this matter. The assessment cost shall be paid by the applicant.*

**51. Stormwater discharge**

The post development stormwater discharge from the subject site into the RTA drainage system must not exceed the pre-development discharge. Details of design plans and hydraulic calculations relating to any changes proposed to the drainage system within Pacific Highway must be submitted to RTA for approval prior to commencement of works on site.

*Note: Details should be forwarded to:  
The Sydney Asset Management  
PO BOX 973 Parramatta CBD NSW 2124*

*A plan checking fee would be payable and performance bond required prior to the issue of the approval. The applicant is to contact RTA's Project Engineer at 8849 2114 regarding any Civil Work requirements.*

**52. Sight Lines**

Any proposed landscaping or fencing must not impede upon the desired site lines of vehicle drivers, pedestrians and cyclists.

**53. Construction vehicles**

All construction vehicles must be accommodated within 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".*

### **Disability Discrimination Act**

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

### **Use of Building**

This consent permits the use of the premises for the purpose of "shops" only. Separate development consent is required for the use of the premises for any other purpose in the future.

This consent does not permit the fit-out of individual tenancies except ALDI.

### **Dial Before You Dig**

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

### **Asbestos Warning**

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

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

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

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

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

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

**Food Authority Notification**

The *NSW Food Authority* requires businesses to electronically notify the Authority prior to the commencement of its operation.

*Note:* *NSW Food Authority* can be contacted at [www.foodnotify.nsw.gov.au](http://www.foodnotify.nsw.gov.au).

**Roads and Traffic Authority**

All proposed works are to at no cost to the Roads and Traffic Authority.



**2 DEVELOPMENT APPLICATION - SECTION 96(AA) - SUBDIVISION OF ONE LOT INTO EIGHT 15 GARDINER ROAD GALSTON**

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<b>Development Application No:</b>	DA/922/2003/A
<b>Description of Proposal:</b>	Section 96(AA) application to modify Development Consent No. 922/2003 for the Torrens title subdivision of 1 lot into 8 to amend the Restriction-As-To-User relating to the 'Restricted Development Area' on the newly created lot 3.
<b>Property Description:</b>	Lot 3 DP 1108381, No. 15 Gardiner Road Galston
<b>Applicant:</b>	Mr T Hannah
<b>Owner:</b>	Mr PP Mustaca
<b>Statutory Provisions:</b>	Hornsby Shire Local Environmental Plan 1994 - Residential AR (Low Density - Rural Village)
<b>Estimated Value:</b>	Nil
<b>Ward:</b>	A

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**RECOMMENDATION**

THAT pursuant to Section 96(AA) of the Environmental Planning and Assessment Act, 1979, Development Application No. 922/2003 for the subdivision of one lot into eight lots at Lot 3 DP 1108381, No. 15 Gardiner Road Galston be refused for the reasons detailed in Schedule 1 of this report.

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**EXECUTIVE SUMMARY**

1. The application proposes to modify Development Consent No. 922/2003 for the Torrens title subdivision of one lot into eight to amend the 'Restriction-As-To-User' relating to the 'Restricted Development Area' on the newly created Lot 3.
  2. The proposal is inconsistent with the element control for 'Flora and Fauna Protection' of the Rural Lands Development Control Plan.
  3. One submission has been received in respect of the application.
  4. It is recommended that the application be refused.
-

## HISTORY OF THE APPLICATION

On 21 July 2004 Council's Planning Meeting first considered the subject application and resolved that it be refused principally on grounds that the proposal was an overdevelopment of the site and would have an adverse environmental impact.

On 25 August 2004 the applicant lodged an appeal in the Land and Environment Court against Council's refusal of the application. The Court subsequently upheld the appeal.

## THE SITE

The subject site of the original consent had an area of 6,937 sqm, and an access handle to the western side of Arcadia Road and frontage to the northern end of Gardiner Road. A watercourse runs northeast to southwest and is situated towards the eastern portion of the site and the site contains remnant Sydney Turpentine Ironbark Forest (STIF).

The Section 96(AA) application relates to the newly created Lot 3 which has an area of 764.2 sqm and is accessed from Gardiner Road via a Right-of-Access. There is a '*Restriction-As-To-User*' located within the northern rear setback, 10 metres from the rear boundary that prohibits development including building structures or clearing of native vegetation.

## THE APPROVED DEVELOPMENT

The approved development is for the Torrens title subdivision of one allotment into eight and the creation of a right of carriageway to service the proposed lots. The lots range in area (exclusive of the access handle) from 572.9m<sup>2</sup> to 1033.8m<sup>2</sup>.

The carriageway commences at the termination of the cul-de-sac (Gardiner Road) and continues along the southern boundary of the site, providing access to proposed lots 1 to 5. Access to proposed lots 7 and 8, (east of the watercourse) will be provided by piping a portion of the creek to allow access over the creek. Access to lot 6 will be provided via an existing access handle off Arcadia Road.

## THE MODIFICATION

The proposed modification to the approved development is for the amendment of condition No. 60 relating to the '*Restriction-As-To-User*', which states:

60. *In order to conserve native flora and fauna habitat a 'Restriction-As-To-User' shall be placed on Lots 3, 4, and 5 such that no development, including building structures and no clearing of native vegetation is to occur within the "Restricted Development Area", located 10 metres from the lots northern boundary, as marked in red diagonal lines on the approved plans.*

The applicant provided the following information in support of the proposed modification:

*"As per the letter from Hornsby Shire Council's Bushland and Biodiversity Team dated 18 March 2009, native vegetation no longer occurs in the area referred to in the general conditions (paragraph 60) of the Development Consent in LEC 11016 of 2004. As such the application is for the removal of this condition."*

## 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 additional dwellings and would improve housing choice in the locality.

### 2. STATUTORY CONTROLS

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

#### 2.1 Environmental Planning and Assessment Act 1979 - Section 96(AA)

The proposal constitutes an amendment under Section 96(AA) of the Act. Pursuant to Section 96(AA), Council may consider an application to amend development consent granted by the Court provided that, inter alia:

- it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*
- it has notified the application in accordance with:*
  - the regulations, if the regulations so require, and*
  - a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*

- (c) *it has notified, or made reasonable attempts to notify, each person who made a submission in respect of the relevant development application of the proposed modification by sending written notice to the last address known to the consent authority of the objector or other person, and*
- (d) *it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.*

With respect to (a), it is considered that the proposal as amended is substantially the same as the development originally approved.

With respect to (b), (c) and (d), the amended application was advertised and the one submission received was considered in the assessment of the modification.

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

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

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

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

The proposed development fails to comply with objective (c) of the HSLEP in that removal of the Restriction-As-To-User on the lot would not adequately protect environmentally sensitive areas of the site and adversely impact upon the remnant Sydney Turpentine Ironbark Forest.

Clause 14 of HSLEP prescribes that the minimum area per allotment (density) of development within the Residential AR (Low Density - Rural Village) zone is 500 sqm. The proposed modification would not alter the existing density of the site which complies with the controls.

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

The site is located within the catchment of the Hawkesbury-Nepean River. As such the land is subject to the SREP No. 20. The aim of the Plan is to protect the environment of the Hawkesbury-Nepean River system by ensuring that the impacts of development are considered in the regional context. The Plan addresses matters related to water quality, significant vegetation habitats, extraction, environmental heritage and scenic quality, recreation and tourism, and agriculture.

The proposed modification is inconsistent with the specific planning policies and recommended strategies for flora and fauna pursuant to Clause 6 of SREP No. 20, which requires that flora and fauna communities are managed so that the diversity of species and genetics within the catchment is conserved and enhanced.

The proposed modification to remove the ‘*Restriction-As-To-User*’ is contrary to the intent of Condition No. 60 which was imposed to minimise adverse environmental impacts and protect the existing STIF on and adjoining the site; and the Shale/Sandstone Transition Forest (Smith & Smith 2008), which is an Endangered Ecological Community (EEC), listed under the Threatened Species Conservation.

## 2.4 Rural Lands Development Control Plan

The objectives of the Rural Lands Development Control Plan are:-

- *to provide land use direction for the rural area;*
- *to provide measures to protect the natural and built environment;*
- *to enhance the established character of rural areas; and*
- *to ensure development relates to site conditions.”*

The key controls within the DCP that relate to the modification are the ‘*Environmental Strategy*’ and the element control for ‘*Flora and Fauna*’. Council’s assessment of the modification considers that the proposal is inconsistent with the performance criteria of both the ‘*Environmental Strategy*’ and the element control for ‘*Flora and Fauna*’. This matter is discussed further in Section 3.1 of this report.

## 3. ENVIRONMENTAL IMPACTS

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

### 3.1 Natural Environment

On and adjacent to the subject site are remnant trees that form part of a mapped Shale/Sandstone Transition Forest (Smith & Smith 2008), which is an Endangered Ecological Community (EEC), listed under the Threatened Species Conservation Act 1995.

There are four trees on or adjacent to this property comprising a range of species, including locally native species such as *Angophora costata* (Smooth-bark Apple) and *Synncarpia glomulifera* (Turpentine).

There are three trees on the subject site and one tree on an adjoining property that are considered significant according to Council’s standard assessment procedures for trees on development sites. These are trees numbered T2, T3 & T4.

The removal of these trees or the excavation or filling of soil or the placing of any building or associated works within a minimum of 4 metres of the trunks of these trees would unlikely be permitted during any future development application for a dwelling on the site.

The proposed modification seeks to remove the ‘*Restriction-As-To-User*’ on Lot 3 to permit future building works and structures within the rear 10 metres of the site. Council’s

assessment of the proposal concludes that the major item of conservation significance onsite that has the potential to be retained in perpetuity post development is the Sydney Turpentine Ironbark tree located along the rear of the property boundary.

Council's assessment also concludes that should the '*Restriction-As-To-User*' be removed from Lot 3, it may lead to detrimental impacts to the critical root zones of trees on the neighbouring property at No. 33 Arcadia Road, Galston which form part of the local STIF population and would be contrary to the Court order granting consent to the original subdivision.

The *Angophora costata* with native understorey species located in the middle of the site does not form part of the '*Restriction-As-To-User*' and due to its poor health, would potentially be approved for removal as part of a future development application as indicated in pre-DA advice provided to the applicant.

The applicant bases the justification of the application on advice received by Council's Bushland and Biodiversity Team dated 18 March 2009. That advice states as follows:

- *The subject site is mapped as containing Shale Sandstone Transition Forest Endangered Ecological Community listed under the Threatened Species Conservation Act 1995 (Smith and Smith 2008).*
- *The subject site is highly degraded containing one remnant Angophora costata (Smooth-barked Apple) tree in the middle of the property and a Syncarpia glomulifera (Sydney Turpentine) tree at the rear of the property.*
- *The Angophora costata tree has been approved for removal by the Parks and Landscapes Team due to the poor condition of this tree.*
- *The understorey vegetation of this site is highly degraded and dominated by weeds however it does include some native species including Lomandra longifolia and Acacia parramatensis through the centre of the site.*
- *The 'Restricted Development Area' occurs 10m from the rear boundary as a result of vegetation mapping that indicates that Shale Sandstone Transition Forest Endangered Ecological Community occurs at this location.*
- *Native vegetation no longer occurs in this area as a result of either unauthorised clearing or the buffer created from Council's vegetation mapping system (Smith and Smith 2008).*
- *The Bushland and Biodiversity Team consider that the Syncarpia glomulifera tree occurring at the rear of the property is worthy of retention as it continues to provide inter-canopy connectivity to adjacent trees.*
- *The applicant's request for extending the building envelope of the dwelling further northwards is not considered to have a significant impact on native vegetation, however, consultation about the planning requirements of the request should be put forth to Council planners.*

The purpose for creating the *'Restriction-As-To-User'* was to protect the STIF. The removal and degradation of the zone as noted in the advice above should not form the basis for the removal of the restriction. Instead, the zone should be re-established in accordance with the original intent of the approved subdivision.

It is considered that the removal of the *'Restriction-As-To-User'* is unacceptable in the circumstances of the case due to the need to protect the existing and necessary re-establishment of STIF located on the site and adjoining property.

### **3.2 Built Environment**

The proposed modification would not alter the approved subdivision layout.

### **3.3 Social Impacts**

The proposed modification would not have a detrimental social impact upon the locality.

### **3.4 Economic Impacts**

The proposed modification would not have a detrimental economic impact upon the locality.

## **4. SITE SUITABILITY**

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

The suitability of the site has been assessed under DA/922/2003. The proposed modification would impact on the intended environmental outcome of the original proposal as detailed above.

## **5. PUBLIC PARTICIPATION**


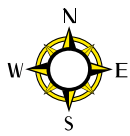
Section 79C(1)(d) of the Act requires Council to consider *"any submissions made in accordance with this Act"*.

### **5.1 Community Consultation**

The proposed development was placed on public exhibition and was notified to adjoining and nearby landowners between 16 June 2009 and 30 June 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 that made a submission who is 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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One submission objected to the development, generally on the grounds that the removal of the ‘*Restriction-As-To-User*’ would result in:

- Detrimental impacts to the existing flora and fauna that occurs on the site and the adjoining property to the north.
- The Section 96(AA) application has not indicated what effect the modification will have.
- The notification plan is not the same as the plan approved by the Court.
- Use of the subject site for stockpiling of excavated soil and rock from adjoining property development.



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

### **5.1.1 Effect of Proposed Modification**

The applicant has indicated in the submitted Statement of Environmental Effects (SEE), that the modification is intended to have the effect of removing the current 10m restriction. However, the SEE does not address the environmental impact of the modification. Instead, the applicant relies upon advice provided by Council prior to the lodgement of the DA. This is not considered appropriate in the circumstances of the case.

### **5.1.2 Notification Plan**

Whilst it is acknowledged that the submitted notification plan is not the plan that was approved by the Court, the purpose of the plan is to indicate the allotment boundaries and the existing trees on the site and the submitted plan addresses this requirement.

### **5.1.3 Compliance Matters**

The submission raised concern with regard to the stockpiling of excavated soil and rock on Lot 3 whilst works were being undertaken on Lots 1 and 2, which resulted in degradation of the existing restricted development area with Lot 3. This matter is currently being investigated by Council's officers.

## **5.2 Public Agencies**

The original development application is Integrated Development under the Act as it requires approval under the Rural Fires Act, 1997 and the Rivers and Foreshores Improvement Act, 1948. Accordingly, the original application was referred to the NSW Rural Fire Service and the Department of Water and Energy for comment. The proposed modification is minor in nature and was not required to be referred to the public agencies as detailed below.

The proposed modification would not alter the layout of the approved subdivision or the original recommendations of the NSW Rural Fire Service. Accordingly, the application was not referred to the NSW Rural Fire Service for further comment.

During the assessment of the original application, the Department of Water and Energy (DWE) determined that a Part 3A Permit is required under the provisions of the Rivers and Foreshores Improvement Act (1948) and issued General Terms of Approval (GTA's).

The proposed modification does not require any works within 40 metres of the watercourse. Accordingly, the application was not referred to the DWE for further comment.

## **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 not considered to have satisfactorily addressed Council's environmental objectives for the land and would provide a development outcome that, on balance, would not result in a positive impact for the community. Accordingly, it is considered that the approval of the proposed modification would not be in the public interest.

## CONCLUSION

Consent is sought to remove a '*Restriction-As-To-User*' on an approved subdivision that has the effect of protecting a 10-metre wide STIF community. Council's assessment concludes that the proposed modification would have a detrimental impact upon the protection of existing flora and fauna on the site and is inconsistent with the requirements of the Rural Lands DCP and SREP 20.

Having regard to the circumstances of the case, it is recommended that Council refuses 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.

ROD PICKLES  
Manager - Assessment Team 2  
Planning Division

PAUL DAVID  
Manager - Subdivision & Development  
Engineering Services  
Planning Division

SCOTT PHILLIPS  
Executive Manager  
Planning Division

### Attachments:

1. Locality Plan
2. Site Plan

File Reference: DA/922/2003/A  
Document Number: D01200046

**SCHEDULE 1**

1. Pursuant to the provisions of Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979, it is considered that the proposed development is unsatisfactory with respect to the aims, objectives and policies of Sydney Regional Environmental Plan No. 20, in particular, the policies and strategies for the protection of flora and fauna.
2. Pursuant to the provisions of Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979, it is considered that the proposal is unsatisfactory with respect to the aims and objectives of the Hornsby Shire Local Environmental Plan to protect and enhance the environmental qualities of the area and to protect environmentally sensitive areas.
3. Pursuant to the provisions of Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, it is considered that the proposal is unsatisfactory in that it does not comply with the requirements of the Rural Lands Development Control Plan, in particular, the '*Environmental Strategy*' and the element control for '*Flora and Fauna Protection*'.
4. Pursuant to the provisions of Section 79C(1)(b) of the Environmental Planning and Assessment Act 1979, it is considered that the development would have an adverse impact upon the remnant Sydney Turpentine Ironbark Forest.
5. Pursuant to the provisions of Section 79C(1)(e) of the Environmental Planning and Assessment Act, 1979, it is considered that approval of the application would set an undesirable precedent for similar inappropriate development and is therefore not in the public interest.

**- END OF REASONS FOR REFUSAL -**

**3 DEVELOPMENT APPLICATION - ERECTION OF A DWELLING-HOUSE  
4 CHERRYBROOK ROAD, WEST PENNANT HILLS**

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<b>Development Application No:</b>	DA/591/2009
<b>Description of Proposal:</b>	Erection of a dwelling-house
<b>Property Description:</b>	Lot 1011, DP1134002, No. 4 Cherrybrook Road, Pennant Hills
<b>Applicant:</b>	Eden Brae Homes
<b>Owners:</b>	Mr Ben Murray and Mrs Claudia Antunez
<b>Statutory Provisions:</b>	Hornsby Shire Local Environmental Plan, 1994 Residential A (Low Density Zone)
<b>Estimated Value:</b>	\$291,906
<b>Ward:</b>	C

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**RECOMMENDATION**

THAT Development Application No. DA/591/2009 for the erection of a one and two storey dwelling-house at Lot 1011, DP1134002, No. 4 Cherrybrook Road, Pennant Hills be approved subject to the conditions of consent detailed in Schedule 1 of this report.

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**EXECUTIVE SUMMARY**

1. The application proposes the erection of a one and two storey dwelling-house on a vacant site.
2. The proposal complies with the Hornsby Shire Local Environmental Plan, 1994 (HSLEP) and generally complies with Council's Dwelling House Development Control Plan (DCP).
3. The application has been referred to Council for determination in accordance with Council's resolution that required all future development applications be determined by Council, which was adopted when the subdivision DA was approved.
4. Council did not receive any submissions objecting to the development.
5. It is recommended that the application be approved.

## HISTORY OF THE APPLICATION

The development application was lodged on 2 June, 2009. Amended plans were submitted to Council on 30 July, 2009 to address Council's officers' initial concerns regarding the extent of fill proposed and the impact that the development would have on two Grey Gum trees in the rear yard of the adjacent premises, No. 6 Cherrybrook Road.

## HISTORY OF THE SITE

The subject allotment was created as part of a two lot subdivision approved by Council under DA/716/2005 on 21 December, 2005.

## THE SITE

The vacant, sector shaped site has an area of 844.1m<sup>2</sup> with a front boundary arc of 35.07m, a north-eastern boundary length of 50.06m and a southern boundary length of 46.13m.

The front of the allotment is oriented towards the north-west with the land falling from north to south at an approximate gradient of 16%.

Stormwater from the development would be drained via an interallotment drainage system located in the rear, north-east corner of the site.

There are three trees on the site comprising two Camellia and a Liquidambar and two trees, *Eucalyptus punctata* (Grey Gum), which are located on the neighbouring property, No. 6 Cherrybrook Road. There is no significant vegetation or trees located on the subject and neighbouring properties that would be impacted upon by the development.

A new two storey dwelling-house, erected in accordance with DA/1474/2008, stands on the northern adjoining allotment, No. 6 Cherrybrook Road.

Adjoining the southern boundary is the second subdivided allotment approved under DA/716/2005 (Lot 1012 Cherrybrook Road), which is currently vacant.

The surrounding residential development is characterised by an eclectic blend of one and two storey dwelling-houses of a predominantly contemporary appearance, surrounded by well established trees and landscaped gardens.

## THE PROPOSAL

The application proposes the erection of a one and two-storey, brick and tile dwelling-house comprising a double garage, entry, living room, dining room, kitchen/meals room, bathroom, laundry, media room, rumpus room and outdoor alfresco area located at the ground floor level. Four bedrooms, an ensuite, a walk-in-robe, bathroom, "upper lounge room" and a balcony are located at the first floor level.

The dwelling-house would be set back 7.6m from the front boundary, 2.4m from the north-eastern side boundary, 1m from the southern side boundary and 18m from the rear corner of the allotment.

## 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 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 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 Residential A zone is 0.4:1. The proposal achieves an FSR of 0.37:1 which complies with the development standard contained within Clause 15.

## 2.2 State Environmental Planning Policy (Exempt and Complying Development)

The NSW Government, as part of its ongoing planning reforms, has released the first stage of the NSW Housing Code.

This 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 development is excluded by the guidelines of the SEPP in this instance, as the application proposes a cut and fill of up to 1.6m, which is contrary to the maximum allowable depth of 1m.

## 2.3 Dwelling House Development Control Plan

Pursuant to Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act, 1979 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>	317.3m <sup>2</sup>	337.6m <sup>2</sup>	Yes
<b>FSR</b>	0.37:1	0.4:1	Yes
<b>Site coverage</b>	25%	40%	Yes
<b>Height</b>	7.8m	<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>	21.6 m	24 m	Yes
<b>Unbroken Wall length</b>	<10m	10m	Yes
<b>Private Open Space</b>	150m <sup>2</sup>	120m <sup>2</sup>	Yes
<b>Landscaping</b>	60%	45%	Yes
<b>Setbacks</b>			
- <b>Front</b>	7.6 m	6 m	Yes
- <b>Side (north-east)</b>	2.4m	1 m	Yes
- <b>Side (south)</b>	1 m	1 m	Yes
- <b>Rear</b>	9 m	3 m	Yes

Whilst the proposed development complies with the prescriptive measures of the Dwelling House DCP as detailed in the above table, the proposal raises design and privacy issues in terms of the extent of excavation and the first floor level balcony. These issues of non-compliance are detailed below, as well as a brief discussion on compliance with the relevant performance criteria.

### 2.3.1 Landform Modification

The dwelling-house includes a ground floor that requires a cut of up to 1.6m in depth to establish the building platform. This excavation does not meet the prescriptive measures of the Design element which states that “*Dwelling-houses should be designed with a maximum cut or fill of 1m from natural ground level*”. The purpose of this control is to minimise amenity impacts as a consequence of excavating or filling of the land. As the slope of the allotment has a cross fall of approximately 16% towards the southern side, the amount of cut is reduced to zero towards the middle of the site.

The extent of excavation has the effect of lowering the overall height of the structure and reducing its visual impact on the area. The excavated spoil for the dwelling-house would be used as fill under the concrete slab.

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

### 2.3.2 Privacy

The first floor level balcony off ‘Bedroom1’ does not comply with the prescriptive measures of the Privacy element which seeks to have living areas on the ground level to minimise overlooking of the recreational and living areas of neighbouring properties. In this instance, the proposed first floor level balcony is orientated towards the street frontage only and would not impinge upon the privacy of the adjoining allotments.

The proposal meets the objectives of the Privacy 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

The assessment of the application noted that there are three trees on the site comprising two Camellias and a Liquidambar. The site does not include any indigenous trees or native vegetation.

It is considered that the removal of these trees is acceptable as they have not been identified as significant. Their removal would not have a deleterious impact on the character of the area.

The assessment also noted that two trees, *Eucalyptus punctata* (Grey Gum) are located in the rear yard of the neighbouring property, No. 6 Cherrybrook Road. As the amended plans



submitted to Council on 30 July, 2009 have deleted any development within 4m of these trees, the proposal would not have any impact on these trees.

The submitted landscape concept plan includes plant species appropriate to the development and the locality.

### **3.2 Built Environment**

The proposed dwelling-house would be consistent with the character of the established built form of the residential development in the locality in terms of design, setbacks and height.

### **3.3 Social Impacts**

There are no anticipated 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 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*”.

The site is identified as having development constraints in accordance with Council’s Land Sensitivity Study, which records ratings of Level 3 for Soil Dispersibility and Level 2 for Soil Landscapes. The proposal involves an excavation up to a depth of up to 1.6m. Subject to the implementation of soil and water management measures during the construction phase, the development constraints would be satisfactorily addressed.

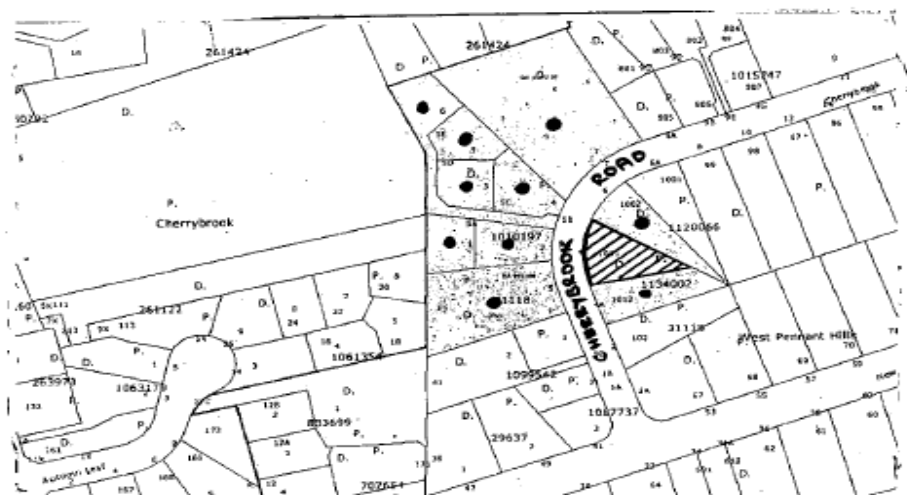
The site is otherwise considered suitable for the proposed development.

## **5. PUBLIC PARTICIPATION**

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

### **5.1 Community Consultation**

The proposed development was placed on public exhibition and was notified to adjoining and nearby landowners between 2 June and 16 June 2009, in accordance with Council’s Notification and Exhibition DCP. The map below illustrates the location of those nearby landowners notified who are in close proximity to the development site.



NOTIFICATION PLAN

<ul style="list-style-type: none"> <li>• PROPERTIES NOTIFIED</li> </ul>	<ul style="list-style-type: none"> <li>X SUBMISSIONS RECEIVED</li> </ul>	PROPERTY SUBJECT OF DEVELOPMENT	
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Council did not receive any submissions objecting to the development.

### 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 planning 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 one and two storey dwelling-house would be in the public interest.

### 7. CONCLUSION

The application proposes the erection of a one and two-storey dwelling-house in a contemporary style design that would be in keeping with the existing and recently erected dwelling-houses in the street.

The scale of the development meets the prescriptive measures of Council’s Dwelling House DCP and is in accordance with the objectives of the low density zoning stipulated in the HSLEP. It is considered that the development would have a positive impact upon the streetscape and would be in keeping with the built form of the area.

Having regard to the assessment of the proposed development, 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. Shadow Diagram

File Reference: DA/591/2009  
Document Number: D01188462

**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>
A13007 (Sheets 1-9)	A&N Design	29/07/2009

**2. Removal of Existing Trees**

This development consent only permits the removal of trees numbered T1, T2 and T3 as identified on the Site Plan, No. A13007 prepared by A&N Design dated 29/07/2009. 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.*

### **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. 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*.

### **9. 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.

### **10. 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.

### 11. Council Property

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

### 12. Disturbance of Existing Site

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

### 13. Survey Report – Finished Floor Level

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

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

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

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

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

### 14. Fulfilment of BASIX Commitments

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

### 15. 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 and connected to the existing inter allotment drainage system.

### 16. Internal Driveway/Vehicular Areas

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

- a. Design levels at the front boundary 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.

### 17. 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.*

### 18. Damage to Council Assets

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

### 19. Retaining Walls

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

**- 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.

**4 DEVELOPMENT APPLICATION - CONSTRUCTION OF AN ALDI SUPERMARKET  
273 - 291 PENNANT HILLS ROAD AND 2 BELLEVUE STREET  
THORNLEIGH**

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<b>Development Application No:</b>	DA/1848/2007
<b>Description of Proposal:</b>	Construction of an ALDI supermarket with basement level car parking, ancillary warehouse and associated signage.
<b>Property Description:</b>	Lot 31 DP 263535, Lot 7 Sec 3 DP 1854, Lot 2 DP 609765, Lot 1 DP 609765, Lot 32 DP 263535, Lot 101 DP 883635 (Nos. 273-277, 279, 281, 281A & 283-291) Pennant Hills Road and (No. 2) Bellevue Street, Thornleigh
<b>Applicant:</b>	Willana Associates
<b>Owner:</b>	Aldi Foods Pty Ltd
<b>Statutory Provisions:</b>	Hornsby Shire Local Environmental Plan 1994: Business A (General) Residential A (Low Density)
<b>Estimated Value:</b>	\$5,880,000
<b>Ward:</b>	C

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**RECOMMENDATION**

THAT Development Application No. 1848/2007 for the construction of an ALDI supermarket with basement level car parking, ancillary warehouse and associated signage at Lot 31 DP 263535, Lot 7 Sec 3 DP 1854, Lot 2 DP 609765, Lot 1 DP 609765, Lot 32 DP 263535, Lot 101 DP 883635 (Nos. 273-277, 279, 281, 281A & 283-291) Pennant Hills Road and 2 Bellevue Street, Thornleigh be approved subject to the conditions of consent detailed in Schedule 1 of this report.

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**EXECUTIVE SUMMARY**

1. The application proposes the construction of an ALDI supermarket with basement level car parking, ancillary warehouse and associated signage.
2. The proposal is permissible under the provisions of the Hornsby Shire Local Environmental Plan 1994 and is consistent with the requirements of the Business Lands Development Control Plan, Car Parking Development Control Plan, Access

and Mobility Development Control Plan and Sydney Regional Environmental Plan - Sydney Harbour Catchment.

3. Nine submissions have been received in respect of the application. This includes two letters in support and seven objections to the proposed development.
4. It is recommended that the application be approved.

### **HISTORY OF THE APPLICATION**

On 4 December 2007 Development Application No. 1848/2007 was lodged for the construction of a commercial and retail building containing an ALDI supermarket, two commercial tenancies and associated basement level car parking and signage. Subsequent to the submission of the application, Council made several requests for additional information and raised a number of issues with respect to the proposal.

Following a series of detailed negotiations between Council and the applicant, the applicant submitted amended plans and additional information on 7 May 2009. The amended proposal, involves the deletion of the first floor level at the northern corner of the building which included two commercial tenancies. The amended proposal required the re-exhibition of the application and referral to the relevant agencies. The outcome of that process is set out in this report.

### **THE SITE**

The site is comprised of six allotments known as Lots 31 and 32 DP 263535, Lot 7 SEC 3 DP 1854, Lots 1 and 2 DP 609765 and Lot 101 DP 883635 (Nos. 273-277, 281, 281A, 283-291) Pennant Hills Road and (No. 2) Bellevue Street. The site has an area of 2700m<sup>2</sup> and is irregular in shape. It has a 73.26m frontage to Pennant Hills Road, a 28.53m frontage to Bellevue Street and a 37.09m frontage to Station Street. Apart from 2 Bellevue Street, the site is located within the Thornleigh commercial precinct.

There are five allotments which front Pennant Hills Road. All of these allotments are located within the Business A (General) zone and contain existing commercial buildings. There are no trees located on the site. The existing commercial buildings accommodate an architectural practice, medical centre, swimming pool retailer, Subway shop, pizza restaurant, post office, and children's party rooms.

The allotment (No. 2 Bellevue Street) is located on the north eastern corner of the site and contains a hardstand area and a fenced swimming pool used as part of the existing swimming pool retailer. This allotment is zoned Residential A and is within the proposed Thornleigh Draft Housing Strategy precinct.

To the east, the site adjoins single storey residential developments. To the south and on the opposite side of Station Street, the site adjoins a commercial and retail development. To the north, the site fronts Thornleigh Marketplace shopping centre. There are a number of commercial uses to the west and on the opposite side of Pennant Hills Road.

The site is located in close proximity to Thornleigh Train Station and bus interchange. There is an existing foot bridge adjacent to the site which provides pedestrian access to Thornleigh Station.

## THE PROPOSAL

The current application proposes the construction of an ALDI supermarket with basement level car parking, ancillary warehouse and associated signage. The applicant provided the following statement with respect to the proposal:

*“The amended development is similar to the original development but does not include the two commercial tenancies. As part of the amended proposal, the first floor level at the northern corner of the building has been deleted.*

*It generally involves the following:*

- *Excavation and infrastructure works.*
- *Erection of an ALDI store with a basement parking level and ancillary warehouse, cool rooms, loading dock (with vehicle turntable) and staff facilities.*
- *Changes to existing services including the erection of an electrical substation.*
- *Fit out and use of an ALDI store.*
- *Erection of associated signage.*
- *Provision of new on-site landscaping, including site fencing.*
- *Removal of existing vehicular crossings and provision of two new crossings.*

*The demolition of the existing buildings on the site will be subject to a separate application.”*

The details of the proposed floor areas are described below:

Site area:	2700m <sup>2</sup>
Basement car park:	2226m <sup>2</sup>
ALDI store:	1088m <sup>2</sup>
Staff Amenities:	66m <sup>2</sup>

The proposed building is comprised of the following:

### *Basement level*

The basement contains car parking for 66 vehicles. This includes 2 disabled parking spaces and a turning bay. There is a vehicle access ramp providing ingress and egress from Station Street. There is a 1:14 pedestrian access ramp on the north western side of the basement level. The ramp provides access to the main entry to the store. On the south eastern side of the basement level, there is a sprinkler pump room, fire egress stairs and lift access.

### *Ground floor level*

The proposed supermarket is located along the entire Pennant Hills Road frontage. It is sited behind the pedestrian access ramp which provides access to the basement level. The main entry to the ALDI store would be located on the corner of Pennant Hills Road and Station Street. Adjacent to the main entry, there is lift access, trolleys bays and an ancillary office.

The portion of the proposed building located on the corner of Pennant Hills Road and Bellevue Street, would be comprised of ancillary facilities including a warehouse, staff rooms, amenities, freezer and cool room.

There is a loading dock, 7 staff parking spaces and a turntable located on the eastern boundary of the site. The loading dock and staff car parking spaces are accessed via a new driveway fronting Bellevue Street. The waste bin enclosure which includes a garbage bin and waste compactor would be located adjacent to the loading dock.

In addition, the following signage is proposed:

*Four illuminated flush mounted business identification wall signs*

Two of the proposed wall signs would be located on the parapet entry, above the awning, at the corner of Station Street and Pennant Hills Road. One of the signs would face Pennant Hills Road and the other sign would face Station Street.

The other two signs would be located on the Bellevue Street and Pennant Hills Road frontage. One of the wall signs would face Bellevue Street and the other would face Pennant Hills Road.

The dimensions of these signs would be 2m in width and 2.4m in height. The colours of the signage would be dark blue for the background, red and orange for the frame, light blue for the ALDI corporate logo with white wording.

*One illuminated flush wall sign*

The applicant advised that this sign would be a 'lifestyle image' which would consist of a vegetable image and would not advertise a product or business. It would have the dimensions of 4.2m in width and 2.35m in height. The proposed sign would be located on the Pennant Hills Road elevation, near the intersection with Bellevue Street, just above the footpath level.

*One illuminated top hamper sign*

An illuminated top hamper sign is proposed to be erected above the main store entrance. It would have a width of 450mm and a length of 4.5m. It would consist of a light box with internal fluorescent tubing and would display the ALDI corporate logo with the wording of 'ALDI Store.'

*Two illuminated under awning signs*

Two illuminated under awning signs are proposed to be erected. One of the signs would be located on the Pennant Hills Road elevation and the other on the Station Street elevation. They would each be located 10m from the main entrance and have a length of 1.8m and 450mm in height.

The applicant provided the following statement with respect to the nature of the operation:

*"The hours of operation are proposed to be 7.00am to 10.00pm, seven days a week. There will be approximately 10-15 staff members in the store at any one time. Employees shall be both full time, part time and managerial staff."*

*Deliveries will occur on a daily basis. For a typical busy day two to four deliveries would be undertaken. The hours of delivery will be between 7.00am to 10.00pm Mondays to Sundays. The duration of each delivery is expected to be about 1 hour.*

*The majority of ALDI products will be transported directly from a distribution centre in Western Sydney, in ALDI managed and operated trucks. Trucks will be a maximum of 12.5m in length with compartments that allow the concurrent transportation of frozen, dry and chilled goods.*

*ALDI stores, unlike other stores sell a limited range of 600 to 800 basic items and most needed grocery lines and some household goods. This differs from traditional supermarkets such as Coles and Woolworth's, which sell in excess of 25,000 product lines.*

*The store will comply with the requirements of the Food Act 2003. All goods will arrive at the store pre-packaged. The store will not include kitchens, delicatessens, bakeries or the like, where fresh food is handled or prepared."*

## **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 20-30 jobs in the locality.

#### **1.2 Ku-Ring-Gai and Hornsby Subregional Employment Study**

As part of the preparation of the Comprehensive Local Environmental Plan, Council (together with Ku-Ring-Gai Council) prepared the Ku-Ring-Gai and Hornsby Subregional Employment Study.

The main aim of the Study is to ensure local employment lands strategies facilitate opportunities for the provision of an additional 13,500 jobs within the North Subregion by the

year 2031, as required by the draft North Subregional Strategy. The objective of the Study is to develop a strategy for zoning, land uses and controls for employment lands that is consistent with the hierarchy of commercial centres under the Metropolitan Strategy and the State Government's Standard Instrument.

The Study has been exhibited and a report on submissions will be prepared in late 2009. At that time, Council will be requested to determine whether to endorse the recommendations of the Study to be progressed as part of Council's Principal LEP.

The Study divides employment land within Thornleigh into two employment functions:

- (a) Village centre activity located within the vicinity of the railway station; and
- (b) Edge of centre activity located on the periphery of the village, generally north east of the centre.

Property Nos. 273 – 291 Pennant Hills Road, Thornleigh are employment lands located within that area identified as comprising a village centre function.

The Study assesses both employment and floor space forecasts for Thornleigh to 2031. With respect to the village centre, the Study estimates that the potential demand for floor space is much higher than the potential supply of available floor space. The Study recommends that employment floor space capacity be increased within Thornleigh village to meet the forecast shortfall of approximately 5,361sqm of floor space. The Study indicates that increasing floor space ratio controls is one method to address this shortfall.

The proposal, which seeks to develop 442sqm of residential land for the purpose of a supermarket, would contribute to the employment floor space short fall identified in the Study, with respect to Thornleigh village.

### **1.3 Hornsby Shire Housing Strategy**

The Hornsby Shire Housing Strategy identifies opportunities for additional housing to be provided in planned precincts throughout urban areas to assist meet Council's housing obligations into the future. The Strategy has been prepared in response to the draft North Subregional Strategy. Property No. 2 Bellevue Street is located on the north western edge of the proposed Station Street Precinct. The use of No. 2 Bellevue Street for commercial purposes would reduce the yield within the precinct by approximately four dwellings. The use of the site for employment generating uses instead of high density residential would not have a significant impact on the Housing Strategy.

Following the exhibition, submissions will be considered and reported to Council, detailing any recommended changes to the Strategy. Council will then make a decision on whether to proceed with the Strategy.

The Employment Study and the Housing Strategy have been exhibited and therefore, do not currently form an adopted policy position of the Council. The development proposal would provide additional employment generating floor space, to address the projected floor space shortfall identified in the Subregional Employment Study, with respect to Thornleigh. As a consequence, the development proposal would assist facilitate opportunities for the provision of an additional 13,500 jobs within the North Subregion, as required by the draft North Subregional Strategy. However, the benefit of providing additional employment should be

balanced against the need to provide additional housing to assist meet Council's housing obligations of an additional 2,600 dwellings by 2010.

## 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 Business A (General) and Residential A (Low Density) under the Hornsby Shire Local Environmental Plan 1994 (HSLEP).

The proposed development is defined as a ‘shop’ under the HSLEP and is permissible in the Business A (General) zone with Council's consent. However, a portion of the site, located at the north east corner of the site, is zoned Residential A (Low Density) and shops are prohibited in the zone.

Clause 11 of the HSLEP 1994 makes specific provision for development near zone boundaries and provides an opportunity for Council to allow for development of transitional land where the development is prohibited by the zoning, however is permissible in the adjoining zone.

Clause 11 (1) applies to “transitional land”, which is defined in the HSLEP as follows:

*‘Transitional land means that land which is within 20 metres of a boundary between any two zones.’*

Clause 11 (2) states that:

*Regardless of any other provision of this plan, development may, with the consent of the Council, be carried out on land to which this clause applies within a zone, for any purpose for which development may be carried out in the adjoining zone, where the Council is satisfied that:*

- (a) the development is not inconsistent with the aims and objectives of this plan and the objectives of both zones, and*
- (b) in the case of business or industrial development, suitable land or premises are not available for the development in any business or industrial zone in the locality.*

The proposed staff carparking area and truck turntable is located within the area defined as transitional land as it extends within 12 metres of the land zoned Residential A (Low Density) and therefore, the proposal is consistent with clause 11(1).

In regard to subclause 11(2)(a), the development is considered to be not inconsistent with the aims and objectives of the HSLEP. Moreover the proposal must not be inconsistent with the objectives of both zones. In this regard the zone objectives are as follows:

The objectives of the Business A (General) zone are:



- (a) *to encourage economic growth and employment opportunities.*
- (b) *to accommodate the retail, service and social needs of the community within the neighbourhood.*
- (c) *to encourage development that improves the health, vitality, cultural environment and social environment within neighbourhood business centres.*

The objectives of the Residential A (Low Density) zone are:

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

With regard to clause 11(2)(a) of the HSLEP, the proposal would not be inconsistent with the objectives of the Residential A (Low density) zone, in that, the staff parking and truck manoeuvring area are within the environmental capacity of the low density residential environment subject to the provision of the proposed masonry acoustic wall and landscaping which would screen from view this portion of the site when viewed from adjoining residential area. The absence of built form on the transitional land provides adequate visual separation between the proposed retail development and the existing residential properties to the east.

The transitional land would only be utilised for staff parking and truck manoeuvring. These uses are comparable to developments which are permitted in the Residential A zone, including educational establishments, child care centre, community facilities and veterinary clinics and the like.

In respect to clause 11(2)(b) the applicant provided the following statement:

*“The securing of a site for the ALDI store was a lengthy process that required the amalgamation of a number of parcels in order to form a development site capable of providing the ALDI store. The absence of larger sites makes this task difficult, along with the nature of tenancies in existing buildings in the locality. The result is that suitable sites within the Business Zone, that can accommodate the ALDI store, are not ‘available.’*

*Notwithstanding the size and location of the subject site, the resultant parcel still provide a number of challenges in order to accommodate an orderly and functioning development. The provision of separate entrance for some parking and the “turntable” to accommodate loading and unloading of trucks is an example of the design flexibility required to accommodate ALDI. It is also indicative as to the effort that is required to find suitable locations for this form of development as it is the absence of more suitable sites that has resulted in the need for some design alternatives.*

*The additional residential allotment is required to help facilitate an appropriate level of on-site amenity and therefore allow for the provision of a loading facility (including manoeuvring area), employee parking and on-site landscaping. The ability*

*to utilise the additional residential property allows for greater visual separation between the proposed building and the existing dwelling on the adjoining site.”*

Clause 11(2)(b) HSLEP requires that Council be satisfied that, in the case of business development, suitable land or premises are not available for development in any business zone in the locality. Sections 1.2 and 1.3 of this report details the strategic planning implications of the proposal in terms of both the *Ku-ring-gai and Hornsby Subregional Employment Study* and the *Hornsby Shire Housing Strategy*.

Clause 15 of the HSLEP prescribes that the maximum floor space ratio (FSR) of development within the Business A (General) zone is 1:1. Schedule B of HSLEP allows a floor space bonus within the Business A (General) zone, of up to half of the site area, above that allowed by the maximum FSR. The maximum FSR within the Residential A (Low Density) is 0.4:1. No floor space is proposed within the Residential A zone.

The proposed building would have a total floor area of 1,435m<sup>2</sup>. This equates to a FSR of 0.64:1 over that portion of the site zoned Business A. Therefore, the proposed development complies with the FSR provisions of the HSLEP.

## **2.2 Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005**

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

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

## **2.3 Sydney Regional Environmental Plan 55 – Remediation of Land**

The application has been assessed against the requirements of *State Environmental Planning Policy No. 55* (SEPP 55). This Policy provides State-wide planning controls to promote the remediation of contaminated land to reduce the risk of harm to human health and the environment.

Pursuant to Clause 7 of SEPP 55, a consent authority must not consent to the carrying out of any development on land unless it has considered whether the land is contaminated, and if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out.

The site has historically been zoned and used for commercial and residential purposes. It is unlikely that the site is affected by land contamination. Notwithstanding, additional investigations would be required to be undertaken after the demolition of the existing buildings to determine any potential contaminants on site and the subsequent remediation.

The proposal is satisfactory subject to the implementation of the recommended conditions in this regard.

## 2.4 State Environmental Planning Policy No. 11 – Traffic Generating Development

State Environmental Planning Policy No. 11 (SEPP 11) has been repealed, however at the time the application was lodged SEPP 11 applied. Accordingly, the provisions of SEPP 11 apply to the application pursuant to the savings provisions of the SEPP (infrastructure 2007).

The proposed development constitutes development prescribed under Schedule 2 of SEPP 11 as the development is located on land with direct vehicular or pedestrian access to an arterial road, or land that has direct vehicular or pedestrian access within 90m of an arterial road.

The site has direct vehicular access to the Pennant Hills Road, which is an arterial road, via Bellevue Street and Station Street. The development application includes a Traffic Assessment Report. The application was referred to the NSW Roads and Traffic Authority. The RTA recommended conditions with respect to the proposal. This matter is discussed in detail in section 3.2.1 of this report.

## 2.5 State Environmental Planning Policy (Infrastructure) 2007

Clause 11 (savings provisions) of SEPP infrastructure states that this Policy does not apply to or in respect of “*the determination of a development application made under Part 4 of the Act, but not finally determined before the commencement of this Policy.*” The Policy commenced on January 2008 and the development application was lodged on 4 December 2007. Therefore, this Policy does not apply.

## 2.6 Sydney Regional Environmental Plan 64 – Advertising and Signage

The Policy aims to:

- (a) *ensure that signage (including advertising) is compatible with the desired amenity and visual character of the area, provides effective communication in suitable locations and is of a high quality and finish;*
- (b) *regulate signage (but not content) under Part 4 of the Act; and*
- (c) *provide time-limited consents for the display of certain advertisements.*

The Policy defines a ‘business identification sign’ as a sign that “*identifies or names a building, and that may include the name of a business or building, the street number of a building, the nature of the business and a logo or other symbol that identifies the business, but that does not include general advertising of products, goods or services.*”

Division 1 Clause 9 of the Policy states that ‘business identification signs’ are not applicable to the Policy. All the proposed signs are considered to be consistent with the definition of ‘business identification’ sign as outlined in the Policy.

Clause 13 Matters for Consideration states that:-

*A consent authority must not grant consent to an application to display an advertisement to which this Policy applies unless the advertisement:*

- (a) *is consistent with the objectives of this Policy as set out in clause 3 (1) (a), and*

- (b) *has been assessed by the consent authority in accordance with the assessment criteria in Schedule 1 and the consent authority is satisfied that the proposal is acceptable in terms of its impacts, and*
- (c) *satisfies any other relevant requirements of this Policy.*

An assessment of the criteria listed in Schedule 1 and any other relevant requirements is listed below.

1. *Character of the Area*

- *Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located?*
- *Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?*

The site is located within the Thornleigh commercial precinct. The proposed signage is compatible with existing signage in the locality and would not have a detrimental impact on the desired future character of the area. None of the proposed signs would have an undesirable visual impact on the surrounding residential area.

2. *Special Areas*

- *Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas?*

The proposed building and associated signage is located in an existing commercial area. The proposal would not detract from the amenity or visual quality of any environmentally sensitive areas.

3. *Views and Vistas*

- *Does the proposal dominate the skyline and reduce the quality of vistas?*
- *Does the proposal obscure or compromise important views?*
- *Does the proposal respect the viewing rights of other advertisers?*

The proposed signage would not alter any significant views or vistas from Pennant Hills Road or from adjoining properties. The proposed signs do not obscure or compromise important views, dominate the skyline nor impact on the viewing rights of other advertisers.

4. *Streetscape, Setting or Landscape*

- *Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape?*
- *Does the proposal contribute to the visual interest of the streetscape, setting or landscape?*

- *Does the proposal reduce clutter by rationalising and simplifying existing advertising?*
- *Does the proposal screen unsightliness?*
- *Does the proposal protrude above buildings, structures or tree canopies in the area or locality?*

The proposed signs are of a scale, proportion and form that are appropriate for the streetscape and setting and would contribute to the visual interest of the streetscape. The signs would not protrude above buildings.

#### 5. *Site and Building*

- *Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located?*
- *Does the proposal respect important features of the site or building, or both?*
- *Does the proposal show innovation and imagination in its relationship to the site or building, or both?*

The proposed signs are compatible with the development and site on which the signage is to be located.

#### 6. *Associated devices and logos with advertisements and advertising structures*

- *Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed?*

The proposed signage contains the wording 'ALDI' and the ALDI logo, which forms part of the business identification and is considered suitable.

#### 7. *Illumination*

- *Would illumination result in unacceptable glare?*
- *Would illumination affect safety for pedestrians, vehicles or aircraft?*
- *Would illumination detract from the amenity of any residence or other form of accommodation?*
- *Can the intensity of the illumination be adjusted, if necessary?*
- *Is the illumination subject to a curfew?*

The illumination of the proposed signs are not likely to affect safety for pedestrians, vehicles or aircraft.

#### 8. *Safety*

- *Would the proposal reduce the safety for any public road?*
- *Would the proposal reduce the safety for pedestrians or bicyclists?*
- *Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas?*

The proposed signs would not reduce the safety of the public road nor would they obscure the sight distances of pedestrians.

On the basis of this assessment, the proposed signs are consistent with the objectives of the Policy and satisfy the assessment criteria specified in Schedule 1.

## 2.7 Business Lands Development Control Plan

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

<b>Business Lands Development Control Plan</b>			
<b>Control</b>	<b>Proposal</b>	<b>Requirement</b>	<b>Compliance</b>
<b>FSR</b>	0.64:1	1:1	Yes
<b>Setbacks</b>			
<b>Pennant Hills Road</b>	0m	0m	Yes
<b>Station Street</b>	0m	0m to 3m	Yes
<b>Bellevue Street</b>	0m	0m	Yes
<b>Height</b>	1 storey	3 storeys	Yes
<b>Car parking</b>	73 spaces	72 spaces (1 space per 20m <sup>2</sup> GLFA)	Yes
<b>Signs</b>			
<b>Total Area:</b>	32.7m <sup>2</sup>	34.7m <sup>2</sup>	Yes

As detailed in the above table, the proposed development complies with the prescriptive standard within Council's Business Lands DCP. A brief discussion on compliance with relevant performance standards are detailed below:

### 2.7.1 Density

The objective of the density element of the Business Lands DCP states that:

*"To reinforce the role and function of Business Centres and to ensure development is compatible with the surrounding built form."*

The maximum floor space ratio in the Business A (General) zone is 1:1. The gross floor area of the proposed development is 1,435m<sup>2</sup>. Accordingly, the floorspace ratio of the proposed supermarket is 0.64:1, which complies with the maximum floorspace ratio control. The bulk and scale of the proposed building is consistent with the existing built form on adjoining sites.

### 2.7.2 Setback

The Business Lands DCP incorporates setback diagrams to which buildings are required to conform. The setback diagram recommends a 0m setback to the Pennant Hills Road, Bellevue Street and Station Street frontage. However, the Business Lands DCP requires a 3m setback for a small portion, adjacent to the residential development at No. 3 Station Street.

The proposed building has a nil setback to Pennant Hills Road and Bellevue Street. The proposed development provides a nil setback to Station Street frontage and the driveway to the basement level is provided within the 3m setback area. Therefore, the proposed development complies with the prescriptive setback provisions contained in the Business Lands DCP.

### 2.7.3 Building Design

The objectives of the control element Building Design contained in the Business Lands DCP are:

*“To provide for the integration of individual developments into business precincts.*

*To ensure the design of buildings complements and enhances existing business precincts.”*

The building has a flat roof and incorporates a parapet to provide a visual appearance of a two storey building to match the height of the adjoining office building. The built form provides interest through the use of contrasting materials comprising rendered and painted masonry with feature wall cladding.

Shopfront glazing is proposed to be provided along the Pennant Hills Road frontage of the development. An awning which steps down towards Bellevue Street is proposed to be provided over the footpath fronting Pennant Hills Road. This awning wraps around the main entry located on the Station Street. A smaller awning would be provided on the corner of Pennant Hills Road and Bellevue Street.

The proposed building and has been designed to complement and enhance the existing business precinct whilst the scale of the supermarket would be compatible with adjoining residential developments located in Station and Bellevue Streets.

The proposed development is consistent with the design criteria of Council’s Business Lands DCP and the proposed design is acceptable in terms of bulk and scale.

### 2.7.4 Height

The objective of the control element for Height in the Business Lands DCP is:

*“To promote development that integrates with the built form of business precincts.”*

The element prescribes that the height of buildings in the Business A (General) zone should be consistent with the height of adjacent developments and should not exceed three (3) storeys. The proposed development is single storey with a height of 7.9 metres, which complies with the prescriptive height provisions contained in the Business Lands DCP. Adjoining developments comprise two and three storey office and retail developments. The height of the building is compatible with the surrounding buildings.

### **2.7.5 Solar Access**

The applicant submitted shadow diagrams demonstrating shadows cast by the proposed development between 9am and 3pm during Winter Solstice. The shadow diagrams indicate that the proposed development would not result in the unreasonable loss of solar access of adjoining residential buildings or pedestrian areas.

### **2.7.6 Landscaping**

The prescriptive measure of the Landscaping element of the Business Lands DCP requires landscaping to be provided to the rear of buildings where the site abuts access streets, service roads or residential developments. The site adjoins existing residential developments along its rear boundary. The applicant submitted a landscape concept plan showing landscaping to be provided on site along the boundary with No. 4 Bellevue Street and No. 3 Station Street.

Council's assessment of the proposal in this regard is satisfactory subject to the implementation of recommended conditions.

### **2.7.7 Vehicle Access and Parking**

Vehicular access is to be provided via both Bellevue Street and Station Street. The Station Street driveway provides access for customers to the basement car park level. Service vehicle access would be provided from Bellevue Street. The Traffic Report submitted indicates that ALDI stores typically have two to four deliveries per day. This includes one to three semi trailers. The store would be serviced by vehicles ranging in size up to 12.5m. On-site manoeuvring is proposed to be provided for services vehicles to enter and exit the site in a forward direction. This includes the provision of a turntable to facilitate ingress and egress from the loading dock.

A total of 73 car parking spaces are proposed to be provided in the basement level. The Business Lands DCP requires provision of 72 car parking spaces. Seven at grade employee parking spaces are proposed to be provided. The staff parking spaces are accessed via Bellevue Street.

The proposed development meets Council's parking and access requirements.

### **2.7.8 Signs**

The site has a 73.26m frontage to Pennant Hills Road, a 28.53m frontage to Bellevue Street and 37.09m frontage to Station Street. The site has a total road frontage of 138.9m. In accordance with prescriptive measure of signs, the total advertising on a site should not exceed 0.25m<sup>2</sup> per linear metre for premises with two frontages. The total advertising permitted on this site is 34.72m<sup>2</sup>. The proposed development has a total area of 32.7m<sup>2</sup> and therefore complies with the Business Lands DCP.



### 2.7.9 Waste Management and Minimisation

A Waste Management Plan for construction and on going waste has been submitted. The application submits that construction waste would be recycled off site at Kimbriki; hence at least 60% waste would be reused or recycled as required by the *Waste Minimisation and Management Development Control Plan*. Given that plastic wrap and pallets are returned to the distribution centre for recycling/reuse, and all items are pre-packaged (no food preparation in store), waste generation is expected to be considerably lower than other supermarkets in general.

Council's *Waste Minimisation and Management Guide* provides an estimated waste generation rate for supermarkets at 240 litres/100m<sup>2</sup> floor space/day. The Australian Capital Territory *Development Control Code for Best Practice Waste Management* estimates waste generation for supermarkets at 100 – 300 litres/100m<sup>2</sup>/day. Waste generation for Retail shops (non-food shops) in both these publications is estimated at 50 litres/100m<sup>2</sup>/day. Based on these estimates and a floor space of 1062m<sup>2</sup>, the proposed supermarket needs to be able to accommodate 0.5 to 1m<sup>3</sup>/day waste. Given that commercial properties can arrange daily waste collection services if required, a 1.5m<sup>3</sup> bin as proposed would be adequate.

Council's *Waste Minimisation and Management Guide* provides an estimated recycling generation rate for a supermarket at 240 Litres/100 m<sup>2</sup> floor area/day suggesting that the recycling generation rate should be around 17.5 m<sup>3</sup>/week. The proposed 30 m<sup>3</sup> cardboard/paper compactor would be adequate. Only the side of the loading dock area is roofed at 4750mm height, the remainder being open air, hence bins would be able to be serviced by either rear loader (operating height 4.3m) or front loader (operating height 6.1m) waste collection vehicles.

Turning templates have been provided with 12.5m vehicles turning left into the property and right out of the property onto Bellevue Street. It is proposed that all heavy vehicles including waste and recycling collection vehicles approach the site from Pennant Hills Road via The Commenara Parkway and Wood Street to Bellevue Street rather than directly to Bellevue Street from Pennant Hills Road, and depart the site via the same route.

The proposed coin operated trolley systems are generally successful in preventing shopping trolleys being abandoned in local streets as people are more likely to return the trolley in order to retrieve their coin. However, the supermarket operators would still need to carry out regular patrols of the local streets to ensure all trolleys are returned.

The proposed development is acceptable with respect to Waste Minimisation and Management.

### 2.7.10 Soil and Water Management Plan

The submitted Erosion and Sediment Control Plan satisfies the requirements of the Soil and Water Management Plan element of the Business Lands DCP.

### 2.7.11 Commercial Centres Hierarchy

The element objective of the Commercial Centres Hierarchy in the Business Lands DCP states that:

*“To promote development that is consistent with and reinforces the identified role of the centres within the commercial centres hierarchy.”*

The site which is located on Pennant Hills Road in Thornleigh is classified as a ‘neighbourhood centre.’ The prescriptive measure for neighbourhood centre states that:

*“Primarily neighbourhood centres provide retail and other services to the residential area which immediately surrounds them.*

*In some instances, to improve the function of neighbourhood centres, better integration of the centre should be provided to improve vitality and urban renewal. Where appropriate, alternative uses for under-utilised sites should be investigated.*

*The role of neighbourhood centres to serve the needs of local residents should be reinforced. To ensure that neighbourhood centres do not undermine the strength of the commercial environment of surrounding larger centres, commercial/ retail uses that serve the wider community should not be located within neighbourhood centres.”*

The proposed development is consistent with the Commercial Centres Hierarchy element of the Business Lands DCP.

#### **2.7.12 Acoustics**

The acoustic impact of the proposed development has been carefully assessed having regard to the proximity of the site to residential dwellings.

The objective of the control element of Acoustics contained in the Business Lands DCP is:

*“To provide a reasonable acoustic environment for residents.”*

A number of submissions in response to the public exhibition of the application raised concern about the noise impacts of the development. The applicant submitted an acoustic report with the original application. The acoustic report identified the following noise impacts:

- *Operational noise from fixed plant and equipment, truck deliveries/waste collection and the car park.*
- *Additional traffic on public roads.*
- *Construction of the store.*

In addition, the acoustic report identified that the following acoustic measures would be necessary:

- *Air-conditioning and refrigeration equipment would be located on the rooftop, near the corner of Pennant Hills Road and Bellevue Street, and would be shielded on the sides exposed to residences in Bellevue and Station Streets by acoustic barriers.*

- *Car park exhaust and supply ducts would be fitted with 1D silencer and directed up.*
- *Deliveries and waste removal would be restricted to occur between 7.00am and 10.00pm 7 days a week.*

The original application proposed the erection of a 1.8m fence along the eastern boundary of the site. Council raised concern regarding the noise generated by the truck turntable and the potential need for a higher acoustic barrier along the eastern boundary.

The applicant submitted an additional acoustic report which detailed the measurements of the noise levels and rotational speed of a similar turntable at another ALDI store and provided revised prediction of receiver noise levels from deliveries to the proposed store. The acoustic report identified that a 3.5m high acoustic fence is predicted to result in both the daytime and evening noise level criteria being satisfied for all delivery periods. The proposed barrier consists of a 2.5m high masonry wall with an additional 1m high perspex screen on top.

The plans show a 3.5m high acoustic barrier being located along the boundary adjacent to No. 4 Bellevue Street and for the remainder of the eastern boundary a 3m high wall is proposed. Council's acoustic assessment of the proposal has concluded that to satisfy the noise criteria, a condition is recommended requiring the provision of 3.5m high acoustic wall along the entire length of the eastern boundary with No. 3 Station Street and No. 4 Bellevue Street.

### **2.7.13 Crime Prevention**

The objective of the control element of Crime Prevention in the Business Lands DCP is:

*“To reduce crime risk and minimise opportunities for crime.”*

The basement car parking has the potential to become an area used for the congregation of people during non operating hours of the supermarket. A security fence is proposed to be provided to enclose the basement carparking outside of operating hours. The proposed development satisfies the Crime Prevention element of the Business Lands DCP.

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

Council's Car Parking DCP requires the provision of 1 space per 20m<sup>2</sup> GLFA in Business A Zone. The proposed store has a total floor area of 1,435m<sup>2</sup> and requires the provision of 72 car parking spaces. A total of 73 car parking spaces are proposed to be provided on site. This includes the following:

- 66 car parking spaces in the basement level, which includes 2 accessible parking spaces.
- 7 staff car parking spaces on ground level.

The proposed development meets Council's off-street car parking requirements.

Schedule C of the Car Parking DCP requires retail development which includes supermarkets to provide 1-2 percent accessible spaces. The proposal provides 2 accessible car parking

spaces in the basement level. Both of these spaces are located in a convenient position within the basement level car park. One of the spaces is located adjacent to the lift and the other is located next to the lobby which would be accessed via a 1:14 grade ramp. The proposed development satisfies the requirement of the Car Parking DCP with respect to accessible spaces.

The surrounding land uses comprise a mix of commercial retail developments predominantly along Pennant Hills Road. Some of these commercial and retail have on-site parking. The Thornleigh Marketplace shopping centre is located to the north of the site, it has frontage to Bellevue Street and has on-site car parking.

The site is accessible by train and local bus services. These services would provide alternative travel modes and reduce the traffic generation and parking requirement on the site. In addition, the expanded hours of operation would spread the parking demands. Accordingly, it is considered that the proposal provides sufficient off-street car parking spaces and the development would not adversely impact upon the amenity of the neighbourhood.

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

The proposal satisfies the requirements for provision of accessible parking spaces, as well as the following access requirements:

- On grade access from public footpath into the entry to the store.
- Lift access and a 1:14 grade access ramp to the main store entry from the basement car park level.
- Two accessible parking spaces located adjacent to primary pedestrian access points.

The proposal includes an Access Report which provides details of compliance with the access requirements. The report concludes that the proposed development complies with relevant parts of the Building Code of Australia, Australian Standards and Council's Access and Mobility DCP.

The proposal is assessed as being satisfactory with regard to access and mobility.

## **2.10 Outdoor Advertising Development Control Plan**

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

Outdoor Advertising Development Control Plan			
Control	Proposal	Requirement	Compliance
<b>Top Hamper Sign</b> <b>Area:</b> <b>Height:</b>	2.025m <sup>2</sup> 450mm	5m <sup>2</sup> 600mm	Yes Yes
<b>2 x Under Awning Signs</b> <b>Length:</b> <b>Width:</b> <b>Depth:</b> <b>Area:</b>	1.8m 0.45m 0.15m 0.81m <sup>2</sup>	2.5m 0.4m 0.5m 1.25m <sup>2</sup>	Yes No Yes Yes
<b>4 x Illuminated Flush Wall signs</b> <b>Area:</b>	4.8m <sup>2</sup>	4m <sup>2</sup>	No
<b>1 x Unilluminated Flush Wall sign</b>	9.87m <sup>2</sup>	4m <sup>2</sup>	No

As detailed in the above table, the proposed development does not comply with the maximum area and prescriptive standard for width of under awning signs and flush wall signs within Council's Outdoor Advertising DCP. The matters of non-compliance are detailed below:

### 2.10.1 Under awning signs

The proposed under awning signs do not comply with Council's standard regarding a maximum width of 0.4m. The intent of the standard is to prevent conflict between pedestrians and signage. This non-compliance is considered acceptable on the basis that it is a minor departure from the control, with the proposed sign maintaining sufficient distance above the ground to allow safe pedestrian access beneath.

### 2.10.2 Four illuminated and one unilluminated flush wall signs

Four illuminated flush mounted wall signs are proposed to be erected on the building. Two of these signs would be erected on the entry parapet, on Station Street and Pennant Hills Road elevation. These signs fail to comply with the prescriptive requirement of 4m<sup>2</sup> contained in the Outdoor Advertising DCP. The proposal provides 4.8m<sup>2</sup> signs. The proposal varies Council's control by 0.8m<sup>2</sup>.

The proposed unilluminated flush wall sign is located on the Pennant Hills Road elevation near the intersection with Bellevue Street. It would consist of a vegetable image only and have dimensions of 4.2m in width and 2.35m in height. The maximum allowable area for flush wall signs is 4m<sup>2</sup>. The proposal would provide a 9.87m<sup>2</sup> sign. The proposed unilluminated flush wall sign exceeds Council's control by 5.87m<sup>2</sup>. A variation to this standard is sought by the applicant based on the following justification:

*"Proposed signs fulfil the objectives of the DCP, despite the variance to the maximum area requirement of 4m<sup>2</sup>. The number of and size of the signs will appropriately relate to the length and area of the building elevations. They will be appropriately integrated into the building design and provide a uniform and orderly visual impact, as well provide visual interest to the building elevation."*

The proposed variation to the signage requirement is considered satisfactory on the basis that the overall signage proposed on the site is below the total signage area permitted on a site with three street frontages. The proposed signs are consistent with existing signs in the vicinity of the site, such as approved signs at Thornleigh Market Place, Bunnings, McDonalds, nearby service stations, motor showrooms and the advertisements located on the adjoining pedestrian overhead bridge. The design of the signage is integrated into the design of the development and is not visually obtrusive.

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

The proposal includes a Waste Management Plan and details of on-going waste management on site. The design of the development incorporates a common waste disposal area at the ground level in addition to temporary waste cupboards being provided for each unit.

The application complies with the requirements of Council's Waste Management and Minimisation Development Control Plan. A detailed discussion on this matter is provided in Section 2.7.9 of this report.

### **2.12 Sustainable Water Development Control Plan**

Subject to sediment and erosion control measures being implemented on site during construction, the proposal would comply with the requirements contained within the Sustainable Water Development Control Plan.

### **2.13 Section 94 Contributions Plan**

Council's Section 94 Plan applies to the development if it results in the generation of additional retail floor space within a site.

The gross floor area of the existing buildings on the site is 1,438m<sup>2</sup>. The proposed gross floor area is 1,435m<sup>2</sup>. There is no additional contribution payment required for the proposed development.

## **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**

#### **3.1.1 Air Quality**

As the proposed development is located in the immediate vicinity of residential properties and there is potential for dust to cause an impact on neighbouring premises during construction works. The Protection of Environment Operations (Clean Air) Regulation 2002 (POEO) requires that dust particles (solid particles) during construction are not to exceed 100 mg per cubic metre. Further, the Regulations also require that testing facilities be implemented on site in accordance with Schedule 7 of POEO and the publication: '*Approved Methods for the Sampling and Analysis of Air Pollutants in New South Wales*' and Australian Standard 4323.2-1995. Therefore, a condition has been recommended requiring the applicant to provide an Air Quality Management Plan prior to the issue of the construction certificate.

The plan would incorporate the compliance of the proposal with the above guidelines and the air quality control measures proposed on site.

The fumes and dust particles from the car exhaust vent would also have the potential to impact on the adjoining residential properties. The car park exhaust is located a distance of 13.5m from the nearest residential boundary. In accordance with the AS 1668.2 – 1991 (*The use of mechanical ventilation and air conditioning in buildings*) a minimum distance of 6m is required to be provided. A condition is recommended requiring compliance with AS 1668.2 – 1991. In addition, a condition is recommended requiring the carpark exhaust and supply ducts to be fitted with 1D silencers and be directed upwards.

It is considered that subject to adopting the above measures, the development would not adversely impact upon residential properties.

### **3.2 Built Environment**

#### **3.2.1 Traffic**

The application has been assessed having regard to the potential volumes of traffic generated by the proposed development and the impacts of additional traffic on the local road network, particularly Bellevue and Station Streets. Other impacts associated with increased traffic flow including pedestrian safety and noise have also been identified as potential issues.

A traffic report was submitted with the original application and an additional report was submitted with the amended proposal. The traffic report indicates that traffic generated by the proposed development in Station Street is expected to be between 160 to 240 vehicles per hour. However, the report concludes that the existing road network is able to accommodate the proposed increase in traffic from the proposed development.

Council's engineering assessment indicated that traffic mitigation effects at the intersection of Station and Wood Streets would encourage departing traffic in Station Street to turn left onto Wood Street. The applicant has advised that "*ALDI Stores is agreeable to providing some works to assist with the management of the intersection of Station Street and Wood Street. The works are in the form of 'kerb blisters'.*" Therefore, a condition is recommended requiring the applicant to submit to Council detailed designs for the entry treatment at the intersection of Station and Wood Streets. The entry treatment would be subject to approval by the Local Traffic Committee.

The site has direct vehicular access to the Pennant Hills Road, which is an arterial road, via Bellevue Street and Station Street. The application was referred to the Roads and Traffic Authority (RTA). The RTA initially raised concern with respect to design of the service area turntable, safe movement of staff within the on-site car park, provision of a service vehicle management plan and potential queuing of vehicles on Station Street/Pennant Hills Road.

In response to the RTA's initial concerns, the additional information submitted by the applicant demonstrates that the proposed turntable is capable of accommodating the longest truck proposed which is 12.5m. There is room for one additional 12.5m truck to queue on-site if the turntable is in use. Therefore, the design of the service area turntable is acceptable. Furthermore, Council's engineering assessment has concluded that there is no indication that the safety of pedestrians or staff would be compromised as a result of the proposed development. The RTA has advised Council that it is satisfied with the outcome.

Council's engineering assessment concluded that a service management plan would not be required given that the service access is separate from the car park access and there is some queuing space within the property. A recommended condition of consent requires that the service vehicles are not to queue on the street. The applicant has advised that it is able to manage that outcome given that all deliveries are by ADLI employees and can be scheduled as necessary.

The deliveries to the site are likely to occur via Commenara Parkway, Wood Street and Bellevue Street. This is the current arrangement in place for deliveries to the Woolworths development at Thornleigh Marketplace shopping Centre.

### **3.2.2 Streetscape and Visual Impact**

The development would result in some visual impact on adjoining properties at No. 3 Station Street and 4 Bellevue Street. It is considered that all reasonable measures have been proposed to minimise the visual impact of the development on adjoining properties. These measures include the provision of an acoustic wall, landscaping and a suitable building setback from the eastern boundary.

### **3.3 Social Impacts**

The social impacts of the development on the local and broader community have been considered with specific reference to the potential employment generation within the complex. It is estimated that the development would generate 20 to 30 equivalent full time positions post construction. This is consistent with the North Subregion (Draft) Subregional Strategy that provides a target of 9,000 jobs within the Hornsby LGA by 2031.

The proposed supermarket would make a positive social contribution to the local community by providing additional competitive shopping facilities to service the needs of the local community.

### **3.4 Economic Impacts**

Council received a number of submissions to the development regarding the impact the development would have on local businesses noting that ALDI provides a duplication of goods at nearby supermarkets. In addition, a submission raises concern that the applicant failed to submit an economic impact assessment.

In support of the development application, the applicant provided the following economic impact statement:

*"The question of economic impact focuses on whether the consequence of the ALDI store would be that the economic viability of other businesses is compromised to the extent of no longer becoming viable. In contrast, economic competition can be in the interest of the wider community resulting in greater levels of affordability and access to products within different price brackets.*

*The proposed ALDI store is consistent with important retail principles relating to competition, support for existing facilities, shopper convenience, maximisation of investment, employment opportunities and population support. The ALDI product range is limited to a single choice for each product line in return for a reduced cost*



*per item. In contrast, other supermarket operators stock a range of products with varying prices, hence catering to a different consumer and to a different price range.*

*There is the potential for an ALDI store to create flow-on effects for other surrounding businesses and lead to an increased expenditure in other retail outlets, as well as stimulate other development to strengthen the viability of the centre.*

*The store is unlikely to pose a threat to undermine the economic viability of existing supermarkets and food stores. It will provide a reasonable level of competition by offering a different service. Whilst, there are supermarket outlets within the locality, an ALDI store will offer an alternative to these by providing a different choice of products.*

*The store will be capable of achieving an economic output that will ensure its own well being. It will offer lower priced products commensurate with the financial capability of a low-income population, thereby focusing on providing affordable products to a particular group in the community. It will provide convenient access to everyday goods and services to support the needs of the local residential community.*

*The store will provide various job opportunities within the local government area and especially opportunities for local residents. It is anticipated that there will be 10 to 15 persons employed in connection with the onsite operation of the store. This will include full-time, part time, casual, managerial, junior and senior employees.*

*The employment opportunities will not be limited to the operation state, but extend to the construction stage. At the construction stage, there will be employment opportunities generated by on-site construction works, as well as industrial support employment opportunities (i.e. employment required by other industries to produce the inputs for the construction industry) and consumption multiplier benefits (i.e. demand for additional goods and services due to increased spending by wage and salary earners across all industries arising from employment.)”*

In accordance with *Fabcot Pty Ltd –v- Hawkesbury City Council No. 10592 of 1996 [1997] NSWLEC (27 March 1997)* the economic impact of a proposed development upon individual traders is not itself a planning consideration and what is instead required is a more general consideration of the impact in the locality. In terms of direct competition between trade competitors the above judgement advised the following:

*“Economic competition between individual trade competitors is not an environmental or planning consideration to which the economic effect described in s 90(1)(d) is directed. The Trade Practices Act 1974 (Cth) and the Fair Trading Act 1987 are the appropriate vehicles for regulating economic competition. Neither the Council nor this Court is concerned with the mere threat of economic competition between competing businesses. In an economy such as ours that is a matter to be resolved by market forces, subject to the Trade Practices Act and the Fair Trading Act. It is not part of the assessment of a proposal under the Environmental Planning and Assessment Act for a consent authority to examine and determine the economic viability of a particular proposal or the effect of any such proposal on the economic viability of a trade competitor. Moreover, it is at least arguable from the fact that the Trade Practices Act now applies to local government councils, that if a local council were to refuse or to limit a proposal for development on the ground of competition*

*with a trade competitor, it could be guilty of anti-competitive conduct contrary to Pt 4 of that Act.”*

Whilst the economic impact of a proposed development upon private individual traders is not per se a proper environmental or planning consideration, the overall economic impact of a development on the wider locality is a valid planning consideration. The provision of an ALDI supermarket at Thornleigh would compliment the area and provide greater choice for local residents. The proposed development would not result in the reduction in the level of service and facilities presently enjoyed by the locality and would not undermine the viability of any retail centre in the locality.

In addition, the proposed development would generate employment during the construction stage and post construction. The applicant estimates that in most situations, between 3 to 5 staff members would be employed in the store at any one time. This includes full time, part time and casual positions.

It is considered that the proposal would not result in an adverse 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*”.

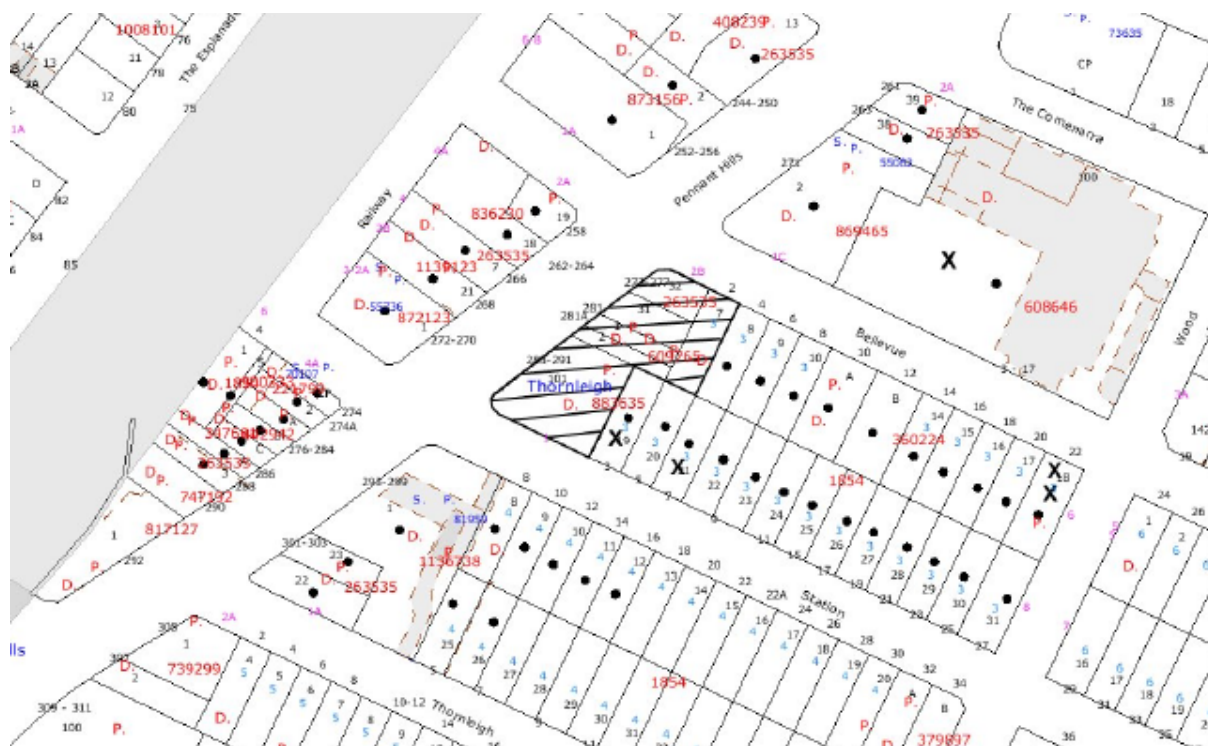
There is no known hazard/risk associated with the site with respect to bushfire, landslip, subsidence and flooding that would preclude approval of the proposed development. For the reasons detailed in this report, it is considered that the site is suitable for the development.

#### **5. PUBLIC PARTICIPATION**


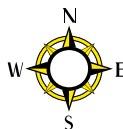
Section 79C(1)(d) of the Act requires Council to consider “*any submissions made in accordance with this Act*”.

##### **5.1 Community Consultation**

The application was originally placed on public exhibition between 21 January 2008 and 11 February 2008. As a consequence of the submission of amended plans, the application was again placed on public exhibition and was notified to adjoining and nearby landowners between 7 May 2009 to 21 May 2009 in accordance with Council’s Notification and Exhibition Development Control Plan. During this period, Council received nine submissions, including two letters in support, a submission from the Thornleigh Resident Action Group and Mr Greg Smith SC Member for Epping. 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	
4 SUBMISSIONS RECEIVED OUT OF MAP RANGE			

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

- Increase in traffic.
- Insufficient on-site parking.
- Inadequate buffer between commercial and adjoining residential buildings.
- Excessive movement of trucks and number of deliveries.
- Unacceptable noise impact and operating hours.
- Pedestrian safety.
- Lack of disabled parking.
- Duplication of supermarkets in Thornleigh.
- Impact on the character of the area.
- Inadequate ingress and egress points.

- Air pollution.
- Devalues homes.
- Lack of any retail or economic impact assessment.
- Inconsistent with zone objectives for land zoned residential.
- Impact of the loading dock on nearby properties and existing approved retail development at Thornleigh Market Place.
- Destabilisation of the existing development at No. 3 Station Street due to excavation works.
- Loss of parking spaces in Station Street during construction works.
- Height of fence adjacent to No. 3 Station Street.
- Impact on existing traffic on congestion Pennant Hills Road

Two submissions supported the development and made the following observations:

- The development would provide an increase in much needed services in the locality.
- Request that Council impose a condition of consent requiring that the applicant pay for a new boundary fence at the applicant's cost.

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

#### **5.1.1 Destabilisation of adjoining development**

A condition of consent is recommended requiring a 'dilapidation report' to be prepared by a 'Chartered Structural Engineer' detailing the structural condition of all adjoining properties. The 'dilapidation report' is to be submitted to the Principal Certifying Authority prior to the release of the construction certificate.

#### **5.1.2 Loss of parking in Station Street during construction**

To minimise amenity impacts on the adjoining residential properties during construction, a condition has been recommended requiring all site works to be undertaken between Monday to Friday from 7 am to 5 pm with no work being carried out on Sunday or public holidays.

#### **5.1.3 Height of fence adjacent to 3 Station Street**

Concern has been raised by the adjoining property owner that the acoustic fence would be reduced to a height of 1m above the ramp wall. The height of the acoustic fence needs to be reduced at the front of the site to allow adequate sight distance for vehicles exiting and entering the basement level car park. This is considered acceptable and would not adversely impact upon the neighbouring residence.

### 5.1.4 Existing traffic congestion on Pennant Hills Road

Mr Greg Smith SC Member for Epping has raised concern about the congestion presently experienced on Pennant Hills Road and that the development would exacerbate this existing problem.

The Traffic Report submitted by the applicant identifies that the peak hour generation would be 160 and 240 vehicles per hour two-way during weekday afternoon and Saturday peak periods respectively. The RTA guidelines suggest that 25 per cent of visits are likely to be passing trade, that is, customer who would have driven past the store regardless of their visit to the store. The Traffic Report takes into account the 25 per cent passing trade.

Having regard to the analysis of the existing two-way peak hour traffic flows plus the additional traffic generated by the proposed development, the Traffic Report concludes that the road network would be able to accommodate the additional traffic generated from the proposed development.

Notwithstanding the above, the officer's assessment does not dismiss the regional issues that arise from the lack of a F3–M2 link. That matter is beyond the parameters of the assessment of this application.

## 6. THE PUBLIC INTEREST

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

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

The application is considered to have satisfactorily addressed Council's and relevant agencies criteria and would provide a development outcome that, on balance, would result in a positive impact for the community. The proposed development would generate employment during the construction stage and post construction. The applicant estimates that between 20-30 staff members would be employed at the store. This includes full time, part time and casual positions.

Accordingly, it is considered that the approval of the proposed retail development would be in the public interest.

## CONCLUSION

The amended application proposes construction of an ALDI supermarket with basement level car parking, ancillary warehouse and associated signage. The proposal complies with Hornsby Shire Local Environmental Plan 1994, Business Lands Development Control Plan, Car Parking Development Control Plan, Access and Mobility Development Control Plan and Sydney Regional Environmental Plan - Sydney Harbour Catchment

Approval of the proposed development is recommended.

Note: At the time of the completion of this planning report, Mr Greg Smith SC Member for Epping made a *Political Donations Disclosure Statement* pursuant to Section 147(5) 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. Survey Plan
3. Site Plan
4. Landscape Plan
5. Floor Plans
6. Elevations
7. Sections
8. Photomontages

File Reference: DA/1848/2007  
Document Number: D01156000

**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>
DA-001 Revision C – Site Plan	Donaldson Worrad	09.06.09
DA-002 Revision D – Basement Floor Plan	Donaldson Worrad	05.05.09
DA-003 Revision E – Ground Floor Plan	Donaldson Worrad	09.06.09
DA-008 Revision D – Roof Plan	Donaldson Worrad	05.05.09
DA-010 Revision D – Elevations	Donaldson Worrad	05.05.09
DA-015 Revision B – Sections	Donaldson Worrad	05.05.09
DA-002 Revision D – Site Plan	Donaldson Worrad	05.05.09
Proposed Landscape Plan - Revision C	Daniel, Dagger Design Consultants	22-04-2009
Erosion and Sediment Control Plan – 06S017TLDA C 03	Hughes Trueman	21 November 2007

<b><i>Document No.</i></b>	<b><i>Prepared by</i></b>	<b><i>Dated</i></b>
D00892763 - Contingency Management Plan for Asbestos Containing Materials in Fill, Petroleum Infrastructure or Hydrocarbon	Coffey Environments Pty Ltd	27 March 2008

Impacted Soils if Encountered During Site Redevelopment Works, 273-291 Pennant Hills Road, Thornleigh.		
Acoustic Report -	Wilkinson Murray	30 September 2008
Traffic and Parking Report	Colston Budd Hunt & Kafes Pty Ltd	28 April 2009
Building Code of Australia Statement	Steve Watson and Partners	23 April 2009
D00755739 - Geotechnical Assessment	Coffey Geotechnics Pty Ltd	27 August 2007
D01156271 – Schedule of Colours and Finishes – Photomontage		7 May 2009
D00887232 – Construction Waste Management Plan	Donaldson Worrad	17 March 2008
D00887688 – Access Report	Accessibility Solutions Pty Ltd	4 April 2008

#### 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. 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.*

#### 4. Dilapidation Report

A 'Dilapidation Report' is to be prepared by a 'chartered structural engineer' detailing the structural condition of all adjoining properties.

#### 5. Air Quality Management Plan

An Air Quality Management Plan must be prepared by a suitably qualified consultant and a copy submitted to Council. The report must be prepared in accordance with the requirements of Schedule 6 and Schedule 7 of the Protection of Environmental



Operations (Clean Air) Regulation 2002, the publication: *Approved Methods for the Sampling and Analysis of Air Pollutants in New South Wales* (Available from the Department of Environment and Climate Change) and Australian Standard 4323.2-1995.

## 6. Traffic Control Plan

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

- a. Arrangements for public notification of the works.
- b. Temporary construction signage.
- c. Permanent post-construction signage.
- d. Vehicle movement plans.
- e. Traffic management plans.
- f. Pedestrian and cyclist access/safety.
- g. No work zone permitted on Pennant Hills Road.

### **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. Protection of Adjoining Areas

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

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

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

## 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.*

## 11. Entry Treatment

A detailed design for the kerb blister vehicular entry treatment at the intersection of Station and Wood Streets must be submitted to Council for approval under the *Local Government Act 1993*.

## 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.

### 12. Construction Work Hours

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

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

### 13. Demolition

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

- a. Demolition material is to be disposed of to an authorised recycling and/or waste disposal site and/or in accordance with an approved waste management plan.

### 14. 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.

### 15. Street Sweeping

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

### 16. Council Property

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

### 17. Landfill

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

- a. All fill material imported to the site is to wholly consist of Virgin Excavated Natural Material (VENM) as defined in Schedule 1 of the *Protection of the Environment Operations Act 1997* or a material approved under the *Department of Environment and Climate Change's* general resource recovery exemption.

## 18. Excavated Material

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

## 19. Noise Management

During the period of construction the quietest available plant should be used, regularly maintained and fitted with appropriate mufflers. The use of hydraulic hammers should be minimised during demolition and affected residents must be consulted during the construction process and advised of progress.

### 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.*

## 20. Sydney Water – s73 Certificate

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

## 21. Mechanical Ventilation

The mechanical ventilation system must comply with Australian Standard AS 1668.2-1991 - *The use of mechanical ventilation and air conditioning in buildings*.

## 22. Stormwater Drainage

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

- a. Connected directly to Council's street drainage system.
- b. The basement pump-out drainage system must be constructed in accordance with the requirements of Australian Standards AS 3500 – Plumbing and Drainage.

## 23. Internal Driveway/Vehicular Areas

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

- a. Design levels at the front boundary be obtained from Council.

- b. The driveway be a rigid pavement.
- c. The driveway grade not exceed 25 percent and changes in grade not exceed 8 percent.

#### 24. On Site Stormwater Detention

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

- a. Have a capacity of not less than 45 cubic metres, and a maximum discharge (when full) of 20 litres per second generally in accordance with Drawing No 06S017TLDAC01 Revision B dated 21-11-07 and Drawing No 06S017TLDAC02 Revision B dated 21-11-07 by Hughes Trueman Consulting Engineers Pty Ltd and Hornsby Shire Council Civil Works – Design Specification 2005.
- b. Have a surcharge/inspection grate located directly above the outlet.
- c. The discharge control device must be constructed within the above ground detention tank.
- d. Discharge from the detention system must be controlled via 1 metre length of pipe, not less than 50 millimetres diameter or via a stainless plate with sharply drilled orifice bolted over the face of the outlet discharging into a larger diameter pipe capable of carrying the design flow to an approved Council system.
- e. Not be constructed in a location that would impact upon the visual or recreational amenity of residents.

#### 25. Vehicular Crossing

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

- a. The vehicular crossing in Bellevue Street shall be splayed in accordance with the approved plans to enable a 12.5m heavy rigid vehicle and 12.1m articulated vehicle to enter and leave the site without encroaching over the centreline in Bellevue Street.
- b. A longitudinal section of the vehicular crossing in Station Street designed in accordance with Australian Standards AS 2890.1 – 85<sup>th</sup> Percentile Vehicle Ground Clearance Requirements shall be submitted with the application for approval. Transitions to match existing levels in the road reserve may require reconstruction of kerb and gutter, vehicular crossing and footpath adjoining the development site.
- c. Any redundant crossings to be replaced with integral kerb and gutter.

- d. The footway area to be restored by turfing.
- e. Approval obtained from all relevant utility providers that all necessary conduits be provided and protected under the crossing.

## 26. Road Works

All road works approved under this consent must be constructed in accordance with Council's *Civil Works Design and Construction Specification, 2005* and the following requirements:

- a. A kerb and gutter and pavement along the full frontage of the proposed development in Station Street and Bellevue Street together with necessary drainage and sealing of road pavement between the existing pavement and lip of the gutter.
- b. The existing road pavement to be saw cut a minimum of 300 mm from the existing edge of the bitumen and reconstructed.
- c. The concrete footpath must be removed and reconstructed for the full width along the full frontage of the development in Pennant Hills Road and a 1.2 metre wide concrete footpath constructed along the full frontage of the development in Bellevue Street and Station Street with the remaining area turfed.
- d. The existing pram ramps fronting the development in Pennant Hills Road, Bellevue Street and Station Street shall be removed and reconstructed.
- e. Council's piped drainage system in Station Street must be extended and a grated gully pit with a 1.8 metre kerb inlet constructed to provide a direct connection for the stormwater discharge from the development.
- f. The lintel of the existing grated gully pit in Bellevue Street must be removed and replaced with a cast iron grate. A grated gully pit with 1.8 metre extended kerb inlet shall be constructed upstream of the vehicular crossing and Council's piped drainage system extended to the pit.
- g. All damaged sections of the bitumen road pavement fronting the development in Station Street must be removed and reconstructed.
- h. The construction of an entry treatment at the intersection of Station Street and Wood Street required by condition No. 11.
- i. The relocation of street signs and power poles at no cost to Council.

## 27. Damage to Council Assets

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

## 28. External Lighting

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

## 29. Waste Management Plan

To confirm compliance with the Waste Management Plan lodged with this Development Application, prior to issue of the occupation certificate, submit to Council documentary evidence (i.e. tipping dockets/receipts from recycling depots, transfer stations and landfills) and a summary report of actual destinations and quantities of waste generated by the works carried out under this development consent. This summary report is to be based on and be in the format of the Waste Management Plan Section One – Demolition Stage and/or Section Three – Construction Stage. If less than 60% waste was reused or recycled, then the summary report must include the reasons why the 60% target was not achieved.

## 30. Bin Storage

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

## 31. Food Premises

- The fit out and operation of that part of the building to be used for the manufacture, preparation or storage of food for sale, must be in accordance with *Australian Standard 4674-2004 – Design and fit out of food premises*, the *Food Act 2003*, and the *Food Regulation 2004*.

*Note: Reference should also be made to the Food Safety Standards and the 'Safe Food Australia - A guide to the Food Safety Standards 2nd Edition January 2001'.*

## 32. Creation of Easements

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

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

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

### **33. Works as Executed Plan**

- A works-as-executed plan(s) must be prepared by a registered surveyor and submitted to Council for completed road pavement, kerb & gutter, public drainage systems, and on-site detention system.

### **34. Planter Boxes/On Slab Planting**

To ensure a sustainable landscape is achieved to any on slab planter box areas, such as where deep soil is to be provided over concrete pavements, they must include automatic irrigation, subsoil drainage (proprietary drainage cell, 50mm sand and filter fabric), and waterproofing. Soil depths additional to the requirement of subsoil drainage must be a minimum of 1000mm with a soil volume of 35 cubic metres for trees and a minimum of 500mm for shrubs.

The planter box walls located along the eastern boundary of the site, adjacent to No. 4 Bellevue Street, shall have a maximum height of 600mm above the surface level of the service entry driveway. The planter box design, materials and heights to Bellevue Street must be in keeping with the residential appearance of existing front boundary fences and allow for driver site lines for vehicles entering and leaving the service entry driveway.

### **35. Additional Screen Planting**

Additional planting must be provided to the proposed landscape area along eastern boundary adjacent to No. 3 Station Street. The screen planting to the on-grade landscape area must include:

- a. 7 *Elaeocarpus reticulatus* (Blueberry Ash) capable of reaching a mature height of 5 metres and planted at 2 metre centres in planter bed area. Trees to be installed at minimum pot size of 5 litres.
- b. 7 *Cyathea australis* (Rough Tree Fern) capable of reaching a mature height of 4 metres planted at 3 metre centres in planter bed area. Tree ferns must be installed at a minimum height of 1.5 metre.

### **36. Landscape Works To All Areas – Plant sizes and densities**

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

### **37. Completion of Landscaping**

A certificate must be provided by a practicing landscape architect, horticulturalist or person with similar qualifications and experience certifying that all required



landscaping works have been satisfactorily completed in accordance with the approved landscape plans.

### 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.

#### 38. Hours of Operation

- The hours of operation of the premises are restricted to those times listed below:

Monday – Sunday 7.00am to 10.00pm

#### 39. Hours of Deliveries and Waste Removal

The hours of deliveries and waste removal shall be restricted to approved opening hours of the store.

#### 40. Car Parking and Deliveries

- All car parking must be constructed and operated in accordance with *Australian Standard AS 2890.1 – 2004 – Off Street Car Parking* and *Australian Standard 2890.2 - 2002 – Off Street Commercial* and the following requirements:
  - a. All parking areas and driveways are to be sealed to an all weather standard, line marked and signposted.
  - b. Car parking, loading and manoeuvring areas to be used solely for nominated purposes.
  - c. Vehicles awaiting loading, unloading or servicing must be parked on site and not on adjacent or nearby public roads;
  - d. All vehicular entry on to the site and egress from the site must be made in a forward direction.

#### 41. Noise

- a. All noise generated by the proposed development must be attenuated to prevent levels of noise being emitted to adjacent premises which possess tonal, beating and similar characteristics or which exceeds background noise levels by more than 5dB(A).
- b. An Acoustic fence with a height of 3.5 metres must be installed along the entire eastern boundary between the supermarket and No. 4 Bellevue Street and 3 Station Street, Thornleigh.

- c. Air-conditioning and refrigeration equipment must be located on the rooftop, near the corner of Pennant Hills Road and Bellevue Street. Acoustic barriers must be installed on the northern, eastern and southern sides of the equipment so as residences are not exposed to noise from the equipment
- d. Carpark exhaust and supply ducts must be fitted with 1D silencers and directed upwards.

#### **42. Fire Safety Statement - Annual**

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

#### **43. Maintenance of Wastewater Device**

- All wastewater and stormwater treatment devices (including drainage systems, sumps and traps) must be regularly maintained in order to remain effective. All solid and liquid wastes collected from the device must be disposed of in accordance with the *Protection of the Environment Operations Act 1997*.

#### **44. Waste Collection**

The Management must keep written evidence on site of a valid contract with a licensed waste contractor(s) for the regular collection and disposal of the waste and recyclables that are generated on site.

#### **45. Operation of Turntable**

In the event that the turntable is not operational, deliveries must not occur unless there are accredited traffic controllers present to supervise the reverse movement of vehicles from Bellevue Street to the loading dock.

#### **46. Lifestyle Sign**

The illuminated flush wall sign referred to as the 'lifestyle graphic' must not display any words, letters, symbols or images that identify a product or corporate body or display an image that reduces the safety of road users.

#### **47. Trolleys**

The supermarket operators must carry out regular patrols of the local streets to ensure all trolleys are returned.

### **CONDITIONS OF CONCURRENCE - ROADS AND TRAFFIC AUTHORITY**

The following conditions of consent are from the nominated State Agency pursuant to Section 79B of the *Environmental Planning and Assessment Act 1979* and must be complied with to the satisfaction of that Agency.

**48. Anchoring**

The developer must submit detailed design drawings and geotechnical reports relating to the excavation of the site and support structures to the Roads and Traffic Authority for assessment (prior to the issue of any Construction Certificate). The developer must meet full cost of the assessment by the Roads and Traffic Authority. This report must address the following key issues:

- a. The impact of excavation/rock anchors on the stability of the Pennant Hills Road and detailing how the carriageway would be monitored for settlement.
- b. The impact of the excavation on the structural stability of the Pennant Hills Road.
- c. Any other issues that may need to be addressed to the satisfaction of the Roads and Traffic Authority. (Contact Geotechnical Engineer Stanley Yuen on 8837 0246 or Graham Yip 8837 0245 for details).

**49. Stormwater Discharge**

The post development stormwater discharge from the site into the Roads and Traffic Authority drainage system must not exceed the pre development discharge. Detailed design plans and hydraulic calculations of any changes to the stormwater drainage system must be submitted to the Roads and Traffic Authority for approval, prior to the commencement of any works.

Details shall be forwarded to:  
The Sydney Asset Management  
PO Box 973  
Parramatta CBD NSW 2124

A plan checking fee may be payable and a performance bond may be required before the Roads and Traffic Authority's approval is issued. With regard to the civil works requirements, please contact the Roads and Traffic Authority's Project External Works on ph: 8849 2114 or fax: 8849 2766.

**50. Sight Lines**

Any proposed landscaping, fencing or signage must not impede the desired sight lines of all road users including pedestrians and cyclists.

**51. Vehicles**

All vehicles must be able to enter and exit the site in a forward direction.

**52. Construction Vehicles**

All construction vehicles must be accommodated on site.

**53. Cost of Works**

All works must be at no cost to the Roads and Traffic Authority.

**- 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.*

**Asbestos Warning**

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

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

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

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

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

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

### **Disability Discrimination Act**

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

### **Food Authority Notification**

The *NSW Food Authority* requires businesses to electronically notify the Authority prior to the commencement of its operation.

*Note:* *NSW Food Authority* can be contacted at [www.foodnotify.nsw.gov.au](http://www.foodnotify.nsw.gov.au).

**5 DEVELOPMENT APPLICATION - ERECTION OF A DWELLING-HOUSE  
30 FIONA ROAD, BEECROFT**

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<b>Development Application No:</b>	DA/298/2009
<b>Description of Proposal:</b>	Demolition of a dwelling-house and carport. Erection of a dwelling-house, pool, gazebo, front fence and retaining walls.
<b>Property Description:</b>	Lot A, DP 337026, No. 30 Fiona Road Beecroft
<b>Applicant:</b>	Mr P W Watkins
<b>Owner:</b>	Mr P W Watkins
<b>Statutory Provisions:</b>	Hornsby Shire Local Environmental Plan, 1994
<b>Estimated Value:</b>	\$559,000
<b>Ward:</b>	C

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**RECOMMENDATION**

THAT Development Application No. 298/2009 for the demolition of a dwelling-house and carport and the erection of a single storey dwelling-house, pool, gazebo, front fence and retaining walls at Lot A, DP 337026, No. 30 Fiona Road, Beecroft be refused for the reasons detailed in Schedule 1 of this report.

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**EXECUTIVE SUMMARY**

1. The application proposes the demolition of a dwelling-house and carport and the erection of a single storey dwelling-house, pool, front fence, gazebo and retaining walls.
2. The proposal does not comply with the objectives of the Landscaping, Environment Protection and Flora and Fauna Protection elements of the Dwelling House Development Control Plan (DCP) and fails to meet the objectives of the Residential AS (Low Density – Sensitive Lands) zone.
3. An Assessment of Significance (Seven Part Test) conducted by Wildsearch Consultants on behalf of the applicant under Section 5A of the Environmental Planning and Assessment Act, 1979 found that the proposed development is likely to cause a significant impact upon the long-term viability of the local occurrence of Sydney Turpentine Ironbark Forest (STIF) which is an endangered ecological community (EEC) growing on the site.

4. A Red Sticker has been placed against the application requiring it to be referred to Council for determination.
5. One objection to the proposal and one submission of support have been received in respect of the application.
6. It is recommended that the application be refused.

### **HISTORY OF THE APPLICATION**

The application was lodged on 23 March, 2009. Council's preliminary assessment of the proposal identified that remnant Sydney Turpentine Ironbark Forest (STIF), being an endangered ecological community, is growing on the site. Consequently, the applicant was requested to submit amended plans "*that reduce the building footprint of the dwelling-house to minimise the impact of the development on these threatened trees.*" In addition, Council requested that the applicant submit amended plans and details to address concerns with respect to setbacks, vehicle access and parking, finished floor levels, fencing and a schedule of finishes.

In response to Council's request, a meeting was held between the applicant and Council officers, which resolved that Council would review the application and offer recommendations as to a possible mutually agreeable outcome. Following Council officers' review, the applicant was advised that a front setback to the development of 12.5m from the Fiona Road boundary would allow for the retention of a greater proportion of the STIF ecological community located on the site, while still accommodating the proposed single storey dwelling-house.

Notwithstanding this suggestion, amended plans were submitted by the applicant proposing the retention of the 5.7m front boundary setback as originally submitted with minor modifications and additional information in support of the application.

The applicant has requested that the proposal be assessed in its current form.

### **THE SITE**

The rectangular shaped site is located on the northern side of Fiona Road with a total area of 1,839m<sup>2</sup>, a width of 22.86m and length of 80.46m. The site has a 5% fall from the rear, north-west to the front, south-east corner.

A single storey dwelling-house, carport and shed are currently located on the site.

The site supports the growth of 156 trees comprising 72 different plant species, both exotic and native and containing remnant Sydney Turpentine Ironbark Forest Endangered Ecological Community which is listed under the *Threatened Species Conservation Act, 1995*.

The site is primarily surrounded by post-war style, weatherboard and brick, one and two storey dwelling-houses, surrounded by well established trees and landscaped areas and is located outside the Beecroft-Cheltenham Heritage Conservation Area.

A small section of the site in the front, south-west corner is mapped as being bushfire prone.

## THE PROPOSAL

The proposal is for the demolition of the existing dwelling-house, carport and shed and the erection of a single storey dwelling-house consisting of a study, four bedrooms with ensuites, a family room, kitchen, lounge room with a gas fire place, dining room, workshop and garage, laundry, external dining area, drying court, internal courtyard, pond and a lap pool.

A basement area is also proposed containing a storeroom and a “services room” for air-conditioning equipment and four 10,000 litre rain and surface water tanks.

An extensive turfed area, gazebo and block retaining wall are proposed in the rear yard. A pergola is proposed along the eastern side of the property. A 1.8m high masonry fence is proposed along a section of the eastern boundary and a 1.5m high chain wire fence is proposed along the western side of the site.

A fence consisting of perforated metal panels fixed to masonry supports up to 2.7m in height, is proposed along the Fiona Road boundary. The existing driveway and crossover which access the middle of the site would be removed and replaced by similar structures adjacent to the western side of the site.

The application proposes the removal of 110 trees and the transplanting of 6 trees to accommodate the development.

## 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 AS (Low Density – Sensitive Lands) under 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 and sensitive to the land capability and established character of this environment.*
- (c) *to provide for development that is within the environmental capacity of a sensitive low density residential environment.*

The proposed development does not achieve the objectives of this zone in that it is not sensitive to the land capability and established character of the environment and is not within the environmental capacity of the site.

The Flora and Fauna Survey prepared by Wildsearch Consultants (March 2008) on behalf of the applicant found that:

- *“The vegetation that occurs on the subject site is an example of Sydney Turpentine Ironbark Forest (STIF) which is an endangered ecological community.*
- *Of the 1671m<sup>2</sup> of STIF that occurs on the site outside of existing structures, 264m<sup>2</sup> (16%) will be retained and managed and 1407m<sup>2</sup> (84%) will be removed.*
- *According to the Seven Part Test, the proposed development is likely to cause a significant impact upon the long-term viability of the local occurrence of STIF.”*

The results of the fauna and flora survey indicate that the proposed development does not achieve the objectives of the Residential AS (Low Density – Sensitive Lands) zone.

Clause 15 of HSLEP prescribes that the maximum floor space ratio (FSR) of development within the Residential AS zone is 0.4:1. The applicant has addressed this requirement by proposing a floor space ratio of 0.19:1 which complies with Clause 15.

## 2.2 State Environmental Planning Policy No. 19 - Bushland in Urban Areas

The application has been assessed against the requirements of State Environmental Planning Policy 19 – Bushland in Urban Areas. This Policy provides State-wide planning controls for protecting urban bushland.

The Flora and Fauna Survey prepared by Wildsearch Consultants concluded “*that there is sufficient native species in the tree, shrub and groundcover layers for the vegetation to be considered bushland, according to the SEPP 19 definition.*”

The applicant has not addressed this site constraint, as the development proposes the clearing of 84% of the STIF present on the site, resulting in a significant detrimental effect on the endangered ecological community.

### 2.3 Dwelling House Development Control Plan

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

<b>Dwelling House Development Control Plan</b>			
<b>Control</b>	<b>Proposal</b>	<b>Requirement</b>	<b>Compliance</b>
<b>Floor Space Ratio</b>	0.19:1	0.4:1	Yes
<b>Site Cover</b>	29%	40%	Yes
<b>Dwelling Height</b>	6.2m	9m	Yes
<b>Storeys</b>	1	2	Yes
<b>Building Length</b>	34.7m	24m	No
<b>Wall Length</b>	27.4m	10m	No
<b>Private Open Space</b>	850m <sup>2</sup>	120m <sup>2</sup>	Yes
<b>Landscaping</b>	66%	45%	Yes
<b>Car parking</b>	2 spaces	2 spaces	Yes
<b>Setbacks - Dwelling</b>			
Front	5.7m	6m	No
Side (east)	1m	1m	
Side (west)	4.4m	1m	Yes
Rear	31m	3m	Yes
<b>Gazebo</b>			
Side (west)	4.5m	1m	Yes
Rear	4.5 m	3m	Yes

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

### 2.3.1 Setbacks

The proposed front boundary setback of 5.7m to the dwelling-house does not comply with the 6m prescriptive measure. The 300mm encroachment by the garage is acceptable in this instance, given that it is a minor variation and noting that the articulation within the front façade has been designed to complement the streetscape.

However, as determined by the flora and fauna survey, this 5.7m setback would require the removal of a significant proportion of the higher quality STIF present in the front yard. In this regard, a front setback of at least 12m (in line with the existing dwelling-house) is recommended to ensure that a greater proportion of the remnant STIF would remain.

This issue is further discussed in Section 3.1 of this report.

### 2.3.2 Design

Whilst the 34.7m total building length exceeds the 24m prescriptive measure by 10.7m, this length is in proportion with the 80m length of the site and includes, with the design, an open, internal courtyard and a pond. This space forms part of the private open space for the development, exploits solar access in relation to active living rooms and is considered acceptable.

The unbroken eastern wall length of 27.4m is a significant increase in excess of the 10m maximum length development standard without a 'physical break'. In this instance, the wall is single storey in height and the solid wall sections are broken up by asymmetrical glazing. This wall is also screened from the adjoining property by the proposed 1.8m masonry fence and is considered acceptable.

The proposal, however, fails to meet the performance criteria of the Design element in that it is not sympathetic to the natural features of the land, including trees and bushland. These issues are further discussed in Section 3.1 of this report.

### 2.3.3 Privacy

Although the proposal is single storey in height, the finished floor level potentially allows for the overlooking of the adjoining western property, No. 34 Fiona Road. The applicant has addressed this issue by proposing the screening of windows within the western façade and the internal courtyard.

With these screens, the proposal meets the objectives of the Privacy element and is considered acceptable.

## 3. ENVIRONMENTAL IMPACTS

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

### 3.1 Flora and Fauna Protection

The application includes an assessment by consulting arborist Stuart Pittendrigh of the trees on the site. This assessment lists 156 trees, including 7 Sydney Turpentine trees numbered

13, 22, 31, 33, 34, 43 and 84. Five of these trees (22, 31, 33, 34 and 43) are in the front portion of the site and would be impacted by the development in its current form. The arborist's report also noted that no trees are rated as either rare or endangered. There is no specific reference to any dangerous trees on the site, though 13 were considered to be in poor or very poor condition and one is dead.

A Flora and Fauna Survey undertaken by Wildsearch Consultants (March 2008) on behalf of the applicant was also submitted, which determined from the Assessment of Significance (Seven Part Test) under Section 5A of the Act, that "*the proposed development is likely to cause a significant impact upon the long-term viability of the local occurrence of STIF.*" The Ameliorate Strategies of the report also identified the need to minimize the area of STIF to be cleared.

The Survey considered the threat of the development to fauna and determined that the proposed development is unlikely to cause a significant impact on any fauna species.

The nature strip in front of the site also contains a corridor of STIF trees and understorey, providing a vegetative link between the property and the road.

The assessment of the proposal by Council's officers concurs with the findings of the Survey, which concludes that the proposed siting of the dwelling-house and garage and the landscaping of the front yard does not allow for the retention of the vegetative link between the property and the road. Repositioning the dwelling-house further back on the site would allow for the retention of this link.

Although this repositioning may still require the removal of numerous trees, it is considered to be a more suitable outcome that responds to the site's environmental constraints, while still meeting the reasonable housing needs of the property owner. The removal of trees from the site could also be offset by compensatory planting of similar species. However, the applicant declined Council's officers' suggestions that the application be amended to address this site constraint and instead, requested that Council determine the application based on the information before it.

The proposal would have a significant effect on the remnant STIF, which is listed as an endangered ecological community under the *Threatened Species Conservation Act, 1995* and is considered unacceptable.

### **3.2 Built Environment**

The design of the dwelling-house has attempted to minimise its visual impact by proposing a low roofed, single storey structure. The proposal is not out of character with the established built form of residential development in the area and is consistent with the form of development permitted in the locality.

The design of the proposed front fence up to 2.7m in height is inconsistent with the character of the surrounding streetscape, which is typified by low, if any fencing. A condition would be included in the consent, limiting the height of the front fence to a maximum of 1.5m, should Council resolve to approve the application.

### **3.3 Social Impacts**

There are no anticipated 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*”.

The site is not subject to flooding or landslip, is not in a heritage conservation area or in the vicinity of a heritage listed item. The site contains remnant STIF, an endangered ecological community and a small section of the site in the front, south-west corner is bushfire prone. Following a review of the plans and documents submitted, the Rural Fire Service has advised that it raises no concerns or issues in relation to bushfire risk.

The proposed development is not suitable for the site in its proposed form as the extensive single storey layout comprising two pavilions surrounding an internal courtyard would involve the clearing of most of the remnant STIF community on the site resulting in a significant effect on the long-term viability of the local occurrence of STIF.

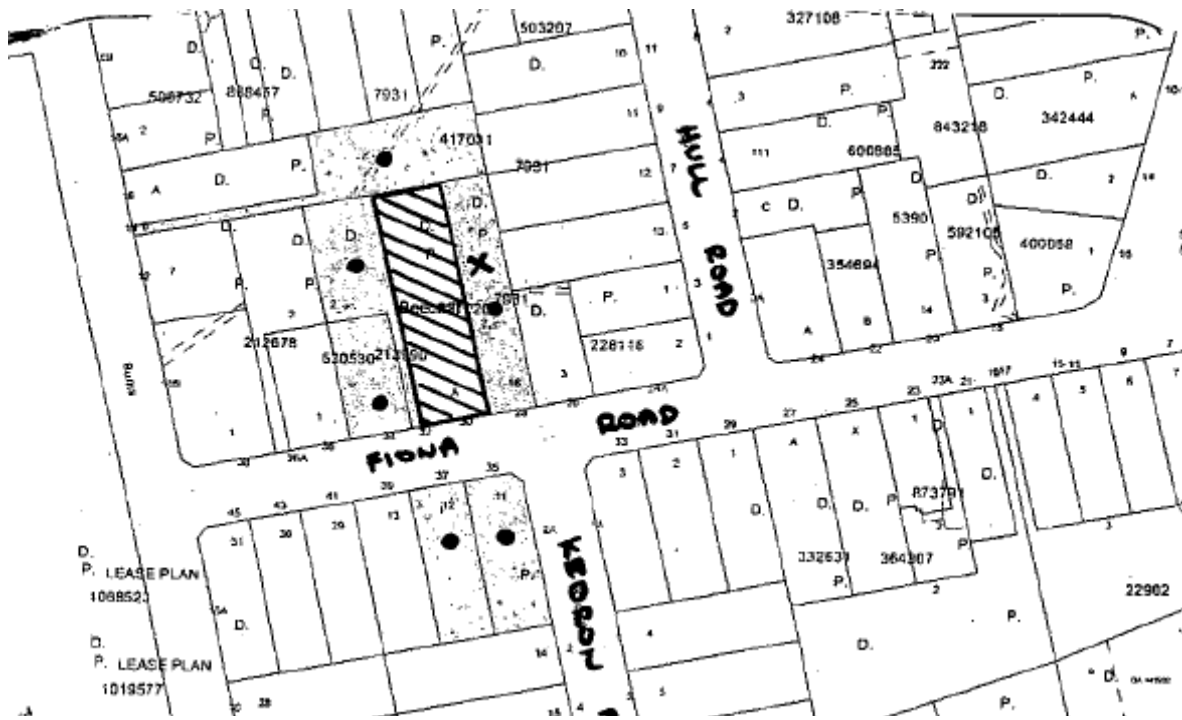
## 5. PUBLIC PARTICIPATION

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


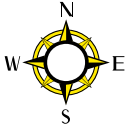
### 5.1 Community Consultation

The proposed development was placed on public exhibition and was notified to adjoining and nearby landowners between 24 March and 6 April 2009 in accordance with Council’s Notification and Exhibition Development Control Plan. During this period, Council received one submission objecting to the proposal. A submission was also received after the notification period in support of the development.

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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One submission from the Beecroft-Cheltenham Civic Trust objected to the development on the grounds that the building footprint would result in an unacceptable loss of remnant bushland. The Trust also requested that Council seek a photographic recording of the property prior to its demolition, as a condition of consent.

A submission was received from an adjoining property owner after the notification period, which supported the development on the grounds that it proposed the removal of several trees considered to be unsafe, at the same time reducing the costs involved with the maintenance of such trees and lowering the bushfire risk whilst still maintaining a group of trees at the front of the property.

The merits of the matters raised in these submissions have been addressed in the body of the report under the headings “Setbacks”, Design, “Heritage” and “Flora and Protection”.

The request for a photographic record of the existing site, based on heritage protocols, is addressed as follows:

**5.1.1 Heritage**

The property is not listed as a heritage item, nor is it located within a heritage conservation area.

Generally, Council requires the submission of a photographic recording in the case of the demolition of an identified heritage item. The purpose of a photographic record is to provide detailed documentation of a building, or to a lesser extent, landscape, to assist in likely future research and/or education.

The existing dwelling-house at No. 30 Fiona Road represents a circa 1943-55 brick and tile structure. It is understood that the property was the former residence of local nature conservationist, John Noble and his legacy of a heavily vegetated site is clearly discernable.

A photographic recording of the dwelling-house is considered unreasonable in this instance, given its limited architectural merit. Moreover, a photographic recording of the vegetated grounds is unlikely to provide any greater research and/or educational benefit than publically-available aerial photography and the tree survey submitted as part of the development application.

Accordingly, a photographic recording would not be required as a condition of consent should Council resolve to approve the application.

## 6. THE PUBLIC INTEREST

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

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

The application has failed to satisfactorily address Council’s criteria in relation to this environmentally sensitive site. The development as submitted would result in a negative impact for the community. Accordingly, it is considered that the refusal of the proposed development would be in the public interest.

## CONCLUSION

Consent is sought to demolish a dwelling-house and carport and erect a dwelling-house, pool, gazebo, front fence and retaining walls on an environmentally sensitive site.

Following the submission of the application, Council officers have sought to negotiate with the applicant to have the proposal modified to address this environmental sensitivity, by increasing the front boundary setback of the dwelling from 5.7m to 12.5m. This increased setback (in line with the existing dwelling-house on the site) would allow for the retention of a greater proportion of the environmentally sensitive STIF ecological community located in the front yard. The 12.5m setback would also be in accordance with one of the conclusions from the Flora and Fauna Survey prepared on behalf of the applicant, which concluded that “*according to the Seven Part Test, the proposed development is likely to cause a significant impact upon the long-term viability of the local occurrence of STIF.*”

There is adequate space and scope to design and position a dwelling-house that recognises the environmental qualities of this ecological community identified by Council officers and the consultant acting on behalf of the applicant, at the same time providing a home which meets the reasonable aspirations of its occupants and more reasonably satisfies Council’s planning guidelines.

However, the applicant has requested that the application be assessed on its merits based on the current design, noting that the siting of the development is consistent with other dwelling-houses in the street and that its relocation would have implications in relation to the sewer main that traverses the middle of the site.

The impacts of the development have been assessed in accordance with Section 79C (1) of the *Environmental Planning and Assessment Act, 1997*. It is considered that approval of the proposal in its current configuration would significantly compromise the environmental qualities of the site and would set an undesirable precedent for further environmentally insensitive development.

Having regard to the assessment of the proposed development, it is recommended that Development Application No. 298/2009 for the demolition of a dwelling-house and carport and the erection of a dwelling-house, pool gazebo, front fence and retaining walls at Lot A, DP 337026, No. 30 Fiona Road Becroft be refused for the reasons detailed in Schedule 1 of this report.

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

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SCOTT PHILLIPS  
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**Attachments:**

1. Locality Plan
2. Existing Site Plan
3. Floor Plan
4. Basement Floor Plan
5. Elevation Plan
6. Gazebo Elevation
7. Fence Plan

File Reference: DA/298/2009  
Document Number: D01205784



**SCHEDULE 1**

1. Pursuant to the provisions of Section 79C (1)(a)(i) of the Environmental Planning and Assessment Act, 1979, it is considered that the proposed development fails to satisfy the objectives of the Residential AS Zone under the Hornsby Shire Local Environmental Plan, 1994 as it would not provide for development that is within the environmental capacity of the site.
2. Pursuant to the provisions of Section 79C (1)(b) and (c) of the Environmental Planning and Assessment Act, 1979, it is considered that the development is not suitable for the site as the extensive single storey layout comprising two pavilions surrounding an internal courtyard would involve the clearing of most of the remnant local occurrence of Sydney Turpentine Ironbark Forest (STIF) which is an endangered ecological community (EEC) growing on the site resulting in a significant effect on the long-term viability of the local occurrence of STIF.
3. Pursuant to the provisions of Section 79C(1)(e) of the Environmental Planning and Assessment Act, 1979, it is considered that the approval of the development would set an undesirable precedent for similar inappropriate development and is therefore not in the public interest.

## 6 QUESTION WITHOUT NOTICE SOUTH DURAL REZONING PROPOSAL

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### EXECUTIVE SUMMARY

In August 2009, Council resolved that a report be prepared concerning the status of the investigations into the rezoning of land at South Dural. The Department of Planning (DOP) is directly responsible for determining whether to include an area on the *Metropolitan Development Program (MDP)*. Inclusion of land on the *MDP* is required before land can be rezoned for urban purposes.

The DOP has confirmed that prior to the proposal being considered by the Land Supply CEOs Group for inclusion on the *MDP*, formal comments will be sought from Council to determine its position. Formal comments have not yet been sought from Council in respect of the rezoning proposal and as such, Council has not undertaken an evaluation of the proposal at this stage. However, Council may consider that it may assist the Department to progress its consideration of the proposal if Council indicates its support for the investigation process. Accordingly, Council may consider it appropriate to forward a letter to the Department confirming Council's support to progress the investigation of the area known as South Dural.

### PURPOSE

The purpose of this report is to provide a response to a Question Without Notice, concerning the report submitted to the DOP in February 2009, titled *South Dural - Land Release Justification Submission*, on behalf of the South Dural Residents and Ratepayers Group.

### BACKGROUND

Council, at its meeting on 5 August 2009, considered a Question Without Notice by Councillor Berman and resolved:

*That the Executive Manager Planning provide a report to the September 2009 Planning Meeting outlining the status of South Dural in light of a report submitted to the Department of Planning in February 2009 titled South Dural - Land Release Justification Submission on behalf of the South Dural Residents and Ratepayers Group with a view to Council sending the Department of Planning a letter of Council's support for the NSW Government to progress the investigation of the inclusion of the land on the Metropolitan Development Program?*

This report has been prepared in response to the Question Without Notice.

### DISCUSSION

This report outlines the *MDP* process and the role of Council in the process. This report also outlines the status of the South Dural rezoning submission.

This report does not include an evaluation of the rezoning submission. An evaluation of the submission would be undertaken following receipt of a request from the DOP for Council's comments as part of the process of considering the inclusion of South Dural on the *MDP*.

### **Metropolitan Development Program (MDP)**

The NSW Government has, since the early 1970s, maintained the supply of new home sites to accommodate Sydney's growing population through its urban development program. Since 2001, this has been known as the *Metropolitan Development Program* or *MDP*. The *MDP* is the Government's key program for tracking and managing housing supply and covers major infill sites in existing urban areas as well as the release of land not previously urbanised, known as greenfield release areas, typically on the metropolitan fringe.

The *MDP* develops an indicative ten-year dwelling supply forecast, which is used to track the likely future availability of land for housing purposes to ensure the demand of the housing market can be adequately met. The Program is also used by NSW Government agencies responsible for the provision of infrastructure, by keeping them informed of likely future land release areas that will require infrastructure services. To assist with these functions, it is a requirement that proposed land releases in the metropolitan region are included on the *MDP* before they can proceed to formal rezoning.

The process for new release land to be placed on the *MDP* includes five key steps as outlined in the following table:

<b>Step</b>	<b>Description</b>	<b>Lead Responsibility</b>
Step 1: Release	Cabinet decides to urbanise the land and include it on <i>MDP</i> .	Cabinet (Land Supply CEOs Group, DOP)
Step 2: Rezoning	Detailed local planning is undertaken leading to rezoning of area and development of an infrastructure contributions plan.	DOP, local council
Step 3: Servicing	Key infrastructure is upgraded to accommodate new dwellings i.e. extension of trunk network of water and sewer to new area.	Infrastructure agencies, developers
Step 4: Subdivision	Approval of development application, construction of works, and title registration.	Local council
STEP 5: Sale	Marketing of land to builders and home purchasers.	Land owner/developers

As indicated in the table, the State Government has the major involvement in the early stages of the process including release of land onto the *MDP*, preparation of sector structure and infrastructure plans, the rezoning of land for residential purposes and the servicing of the

land. Council's formal role commences in the rezoning process if Cabinet decides to include the land on the *MDP*.

The council and developers have the lead responsibility for the remaining steps in the process, including development application activity/construction and land/housing sale. The State Government has set benchmarks under the *MDP* for the first three steps for which it has most control. A flow chart of the *MDP* process is attached.

The DOP has indicated that investigations are currently underway to facilitate the Land Supply CEOs Group to consider whether to recommend to Cabinet whether South Dural is suitable for placement on the *MDP* at Step 1. However, as the Land Supply CEOs Group process is "Cabinet in Confidence", neither Council or the land owners will be in a position to be advised of the decision until or unless Cabinet publicly releases its decision. The status of the investigations are outlined below.

### **South Dural - Land Release Justification Submission**

In 2007, representatives from the South Dural Residents and Ratepayers Group met with the Minister for Planning to present their proposal to include South Dural on the *MDP*. The meeting was conducted independent of representations made to Council and was in response to concerns by the Group about Council's delay in resolving to commence investigations into the release of the area for urban purposes.

As discussed previously, the DOP is directly responsible for determining whether to recommend an area be included on the *MDP* and therefore, all representations for the inclusion of an area on the Program must be made through the Department. As a result of the representations made by the Group, the Department is now undertaking its own investigations into South Dural independent of Council resolutions. However, Council is being consulted as part of the process.

In October 2007, the DOP conducted a workshop with key government agencies to determine infrastructure requirements for the potential release of the land. At the conclusion of the workshop, the proponent was requested to undertake investigation work where it was identified that additional study is required. The investigation work was requested to be submitted to the Department by February 2008.

In December 2007 and April 2008, letters were received by Council from the South Dural and Ratepayers Group advising that members had met with Sydney Water representatives to discuss the servicing of South Dural. The Group commented that Sydney Water had confirmed that servicing of both water and sewage was available to cater for residential development of the area and that the Group had engaged a consultant to update its reports accordingly. However, no supporting documentation was provided to Council.

In February 2009, the *South Dural - Land Release Justification Submission* was submitted to the DOP on behalf of the South Dural Residents and Ratepayers Group. A copy of the submission was also forwarded to Council for its information at that time.

On 25 March 2009, the report was considered by the Land Supply Senior Officers Group (which comprises representatives from the Department and key Government agencies), to determine whether the submitted report provided adequate investigation work to enable progression of an evaluation of the proposal. It is understood that the Group commented that further clarification from the proponent was required concerning aspects of the proposal,

including the scope and funding of infrastructure works to be undertaken by the proponent in conjunction with the release of the land for urban purposes.

A further meeting was convened by the DOP in April 2009, to enable the South Dural Residents and Ratepayers Group to clarify the scope of works associated with the proposed rezoning. The purpose of the meeting was also to enable Department representatives to outline the next steps in the Department's investigation process.

At the meeting, DOP representatives confirmed that issues in relation to servicing and infrastructure needed to be addressed prior to the proposal being considered by the Land Supply CEOs Group for inclusion on the *MPD*. Specifically, issues in relation to road capacity, water provision, electricity supply and educational facilities were highlighted. The DOP advised that before consideration of the proposal was progressed, the DOP would seek formal comments from key Government agencies concerning issues associated with the scope and funding of infrastructure works to be undertaken by the proponent. The proponent would then be requested by the DOP to address any issues identified by the Government agencies.

The DOP representatives also advised that prior to the proposal being considered by the Land Supply CEOs Group, formal comments would be sought from Council to determine its position. At this time, Council would undertake an evaluation of the proposal, including public exhibition of the proposal to ensure the views of the community are included in any submission by Council.

To date, formal comments have not been sought from Council in respect of the rezoning proposal. However, it may assist the Department to progress its consideration of the proposal if Council indicated its support for the process of investigation. Accordingly, Council may consider it appropriate to forward a letter to the Department confirming Council's support to progress the investigation of the area known as South Dural.

## **CONCLUSION**

In February 2009, the *South Dural - Land Release Justification Submission* was submitted to the DOP on behalf of the South Dural Residents and Ratepayers Group. The DOP is currently considering whether to progress evaluation of the proposal for inclusion of the land on *MDP*.

The Department has advised that formal comments would be sought from Council to determine its position on the proposal prior to the proposal being considered by the Land Supply CEOs Group. To date, formal comments have not been sought from Council. However, it may assist the Department to progress its consideration of the proposal if Council indicates its support for the process of investigation.

## **RECOMMENDATION**

That Council forward a letter to the Department of Planning confirming Council's support for the progression of investigations by the Department of South Dural for inclusion on the NSW Government's Metropolitan Development Program.

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Manager - Town Planning Services  
Planning Division

SCOTT PHILLIPS  
Executive Manager  
Planning Division

**Attachments:**

1. Greenfield Land Supply Process – Extract MPD Report - DOP.

File Reference: F2004/07492  
Document Number: D01220848