



the bushland shire

creating a living environment

BUSINESS PAPER

PLANNING MEETING

**Wednesday, 7 October, 2009
at 6:30pm**

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

- Item 1 PLN75/09 Development Application - Further Report - Section 96(AA) - Subdivision of one lot into eight lots -15 Gardiner Road Galston..... 1

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

- Item 2 PLN70/09 Development Application - Alterations and additions to an existing church 34A Ramsay Road Pennant Hills 13

GENERAL BUSINESS

- Item 3 PLN77/09 Local Nominations for the Joint Regional Planning Panels 34
- Item 4 PLN78/09 Draft Local Environmental Plan To Allow Strata Subdivision - Property No. 218 Brooklyn Road, Brooklyn 40
- Item 5 PLN79/09 Planning Reform Fund - Epping Town Centre 49

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

AGENDA AND SUMMARY OF RECOMMENDATIONS

PRESENT

NATIONAL ANTHEM

OPENING PRAYER

Rev. Ingrid Robertson from Berowra Uniting Church will be opening the Meeting in Prayer.

ACKNOWLEDGEMENT OF RELIGIOUS DIVERSITY

Statement by the Chairperson

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

ABORIGINAL RECOGNITION

Statement by the Chairperson:

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

AUDIO RECORDING OF COUNCIL MEETING

Statement by the Chairperson:

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

APOLOGIES

DECLARATIONS OF INTEREST

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

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

- (a) at any time during which the matter is being considered or discussed by the Council or committee.*

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

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

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

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

OR

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

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

POLITICAL DONATIONS DISCLOSURE

Statement by the Chairperson:

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

CONFIRMATION OF MINUTES

THAT the Minutes of the Planning Meeting held on 2 September, 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****Page Number 1**

**Item 1 PLN75/09 DEVELOPMENT APPLICATION - FURTHER REPORT -
SECTION 96(AA) - SUBDIVISION OF ONE LOT INTO EIGHT LOTS
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.

A WARD**B WARD DEFERRED****B WARD****C WARD DEFERRED****C WARD****Page Number 13**

**Item 2 PLN70/09 DEVELOPMENT APPLICATION - ALTERATIONS AND
ADDITIONS TO AN EXISTING CHURCH - 34A RAMSAY ROAD
PENNANT HILLS**

RECOMMENDATION

THAT Council assume the concurrence of the Director-General of the Department of Planning pursuant to State Environmental Planning Policy No. 1 and approve Development Application No. DA/751/2009 for alterations and additions to existing Church at lot 88 DP 11135 (No. 34A) Ramsay Road Pennant Hills as a deferred commencement consent pursuant to Section 80(3) of the Environmental Planning and Assessment Act, 1979 subject to the conditions detailed in Schedule 1 of this report.

GENERAL BUSINESS**Page Number 34****Item 3 PLN77/09 LOCAL NOMINATIONS FOR THE JOINT REGIONAL
PLANNING PANELS****RECOMMENDATION**

THAT:

1. Council advises the Department of Planning that it nominates Ms Felicity Findlay as Council's second local member and nominates Ms Janelle McIntosh and Mr Peter Fryar as alternative local members of the Joint Regional Planning Panel.
2. Council informs all persons that lodged an expression of interest of Council's decision and thanks them for their interest in the matter.

Page Number 40**Item 4 PLN78/09 DRAFT LOCAL ENVIRONMENTAL PLAN TO ALLOW
STRATA SUBDIVISION - PROPERTY NO. 218 BROOKLYN ROAD,
BROOKLYN****RECOMMENDATION**

THAT:

1. Amendments to the Hornsby Shire Local Environmental Plan 1994 to enable strata subdivision and correct a zoning anomaly at property No. 218 Brooklyn Road, Brooklyn be incorporated in Council's Annual Amending Planning Proposal 2009.
2. Prior to forwarding the Planning Proposal to the Department of Planning for gazettal, Council's Compliance Section ensure that the car parking works approved as part of Development Consent No. 2482/2002 have been undertaken.

Page Number 49**Item 5 PLN79/09 PLANNING REFORM FUND - EPPING TOWN CENTRE****RECOMMENDATION**

THAT:

1. Council continue discussions with the Department of Planning and Parramatta Council concerning options to refine the project brief and funding options for the *Epping Town Centre Study* before determining whether to accept the Minister's offer of funding.

2. A further report be presented to Council at its meeting on 4 November 2009 on the outcomes of the discussions.

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 - FURTHER REPORT - SECTION 96(AA) -
SUBDIVISION OF ONE LOT INTO EIGHT LOTS
15 GARDINER ROAD GALSTON**

Development Application No: DA/922/2003/A

Description of Proposal: Section 96(AA) application 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.

Property Description: Lot 3 DP 1108381, No. 15 Gardiner Road Galston

Applicant: Mr Terence Ian Hannah

Owner: Mr Terence Ian Hannah
Mrs Veronica Ann Hannah

Statutory Provisions: Hornsby Shire Local Environmental Plan 1994 - Residential AR (Low Density - Rural Village)

Estimated Value: Nil

Ward: A

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.

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. On 2 September 2009 Council's Planning Committee first considered the subject application and resolved to defer consideration of the matter to the next Planning Meeting to allow further discussion with the applicant in order to ascertain how the current restriction affects his requirements.

3. The proposal is inconsistent with the element control for '*Flora and Fauna Protection*' of the Rural Lands Development Control Plan.
4. One submission has been received in respect of the application.
5. It is recommended that the application be refused.

HISTORY OF THE APPLICATION

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

"THAT consideration of this matter be deferred to the next Planning Meeting to allow further discussion with the Applicant in order to ascertain how the current restriction affects his requirements."

The applicant was advised of Council's resolution and a meeting was held on 14 September 2009 to discuss how the current restriction affects the proposed development of the site. At the meeting, Council officers recommended that the applicant withdraw the current S96 application and that the request to remove/amend the '*Restriction-As-To-User*' be included in a future development application for a dwelling/swimming pool on the site. This would enable Council to holistically assess how the current restriction affects the proposed development of the site.

The applicant was also advised that, in accordance with Section 5A of the *Environmental Planning and Assessment Act 1979*, an Assessment of Significance ('Seven Part Test') for Sydney Turpentine Ironbark Forest is required to be prepared by a qualified and experienced ecologist for the modification of the existing 10m '*Restriction-As-To-User*'.

At the time of writing this report, the S96 application has not been withdrawn and a 'Seven Part Test' has not been provided. Accordingly, in accordance with Council's resolution, the application has been re-submitted to the October 2009 Planning Meeting for Council's further consideration of the matter.

THE SITE

The subject site of the original consent had an area of 6,937 sqm, 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 572.9m² to 1033.8m².

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 approved development would be consistent with the draft Strategy by providing additional sites for 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:

- (a) *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*
- (b) *it has notified the application in accordance with:*
 - (i) *the regulations, if the regulations so require, and*
 - (ii) *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 Synncarpia 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"> • PROPERTIES NOTIFIED 	<p>X SUBMISSIONS RECEIVED</p>	 <p>PROPERTY SUBJECT OF DEVELOPMENT</p>	
---	-------------------------------	--	---

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.

ROD PICKLES
Manager - Assessment Team 2
Planning Division

SCOTT PHILLIPS
Executive Manager
Planning Division

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.

Attachments:

1. Locality Plan
2. Site Plan

File Reference: DA/922/2003/A
Document Number: D01238275

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 -

**2 DEVELOPMENT APPLICATION - ALTERATIONS AND ADDITIONS TO AN EXISTING CHURCH
34A RAMSAY ROAD PENNANT HILLS**

Development Application No:	DA/751/2009
Description of Proposal:	Alterations and additions to an existing Church.
Property Description:	Lot 88 DP 11135 (No. 34A) Ramsay Road, Pennant Hills
Applicant:	NBRS & Partners
Owner:	Baptist Church Union of NSW
Statutory Provisions:	Hornsby Shire Local Environmental Plan 1994 Residential A (Low Density) Zone
Estimated Value:	\$1,598,480
Ward:	C

RECOMMENDATION

THAT Council assume the concurrence of the Director-General of the Department of Planning pursuant to State Environmental Planning Policy No. 1 and approve Development Application No. DA/751/2009 for alterations and additions to existing Church at lot 88 DP 11135 (No. 34A) Ramsay Road Pennant Hills as a deferred commencement consent pursuant to Section 80(3) of the Environmental Planning and Assessment Act, 1979 subject to the conditions detailed in Schedule 1 of this report.

EXECUTIVE SUMMARY

1. The application proposes alterations and additions to the Pennant Hills Baptist Church.
2. The proposal does not comply with the floor space ratio development standard contained in the Hornsby Shire Local Environmental Plan for the Residential A Zone. The applicant's objection to the standard, submitted pursuant to State Environmental Planning Policy No. 1 – Development Standards, is considered well founded in accordance with established legal principle and is supported.

3. The proposal does not comply with the density and car parking requirements of the Community Uses Development Control Plan. The non-compliance is considered acceptable with regard to the existing non-compliance and the merits of the proposal.
4. One submission was received in support of the application.
5. An appropriate schedule of finishes had not been submitted by the applicant at the time of this report. Accordingly, a deferred commencement consent is recommended subject to the applicant satisfying this requirement.

HISTORY OF THE SITE

The Pennant Hills Baptist Church was built in 1952. A two storey addition to the rear of the church which was added in 1966.

THE SITE

The corner site has an area of 824.9m² with an 18.29m frontage to Ramsay Road, a 45.53m frontage to Rosemount Avenue and a frontage of 18m to an unformed 3.5m wide lane. The site includes an existing church building which is a one and two storey building with an attached two storey building at the rear. No off-street car parking is provided or available on-site. There are no significant trees on the site.

The existing Church is a dominant element in the streetscape. In this regard the dominance is more pronounced by the absence of front fencing, the limited setback to Rosemount Avenue and the extent of footpath paving which is partly over the Church land at the corner frontage.

The Church site adjoins a single storey inter-war dwelling house at No. 36 Ramsay Street and also at No. 32 Rosemount Avenue. There are a number of heritage items in the vicinity of the site including No. 34 Ramsay Street (front fence), No. 35 Ramsay Street (front fence), No. 37 Ramsay Street (house and fence) and No. 22 Rosemount Avenue (house).

The site is located opposite Pennant Hills Public School which is bounded by Ramsay Road, Weemala Road and Greycliffe Avenue. St Marks Anglican Church, on the corner of Rosemount Avenue and Warne Street, is situated diagonally opposite the site. Pennant Hills Railway Station and shops are situated 500m south east of the site. The immediate locality is a low density residential area and includes a mix of non-residential uses including schools, churches and child care centres.

THE PROPOSAL

The proposed alterations and additions include a new ground floor plan which includes an entry and lobby, nave, sanctuary, meeting room and administration, and a new first floor plan for a meeting room and lobby. The alterations and additions combine with the attached two storey building which includes the existing hall on the first floor.

The proposed building additions to the Rosemount Avenue elevation are two storey with a single storey addition to the Ramsay Road elevation. The proposal involves:-

- A new combined entry/lobby at the Rosemount Avenue frontage for the Church and the hall building.

- A one and two storey extension including a lift is proposed at the western side elevation.
- Removal of the existing footpath paving over the church land, a front fence and landscaping.

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 not be inconsistent with the draft Strategy in catering to the Church and community activities.

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

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

The proposed development is defined as a ‘place of worship’ and ‘community facility’ under the HSLEP and is permissible in the zone with Council’s consent.

Clause 15 of the HSLEP prescribes that the maximum floor space ratio (FSR) of development within the Residential A zone is 0.4:1. The existing and proposed development does not comply with the FSR development standard. An objection pursuant to SEPP 1 is submitted by the applicant in this regard.

Clause 18 of the HSLEP sets out heritage conservation provisions within the Hornsby area. The site is not an item of environmental heritage or within a heritage conservation area. The application includes an assessment of the impact of the proposal on the heritage items in the vicinity of the site, in compliance with Clause 18.

2.2 State Environmental Planning Policy No. 1 – Development Standards

The applicant submitted an objection against adherence to the 0.4:1 maximum FSR development standard under Clause 15 of the HSLEP. The existing FSR is 0.92:1. The proposed FSR is 1.10:1.

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

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

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

The applicant’s objection is made with regard to the above 5 points and the objective of the FSR standard under Clause 15 of the HSLEP, being:

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

In summary the applicant submits that:-

- *objective (a) of the zone is not relevant as the proposed use does not relate to housing.*
- *objective (b) is not relevant as the low density development standard (0.4:1) is a constraint when applied to permissible non-residential land uses which involve a built form and bulk greater than that associated with a dwelling house.*
- *The development standard enables the provision of recreation and private open space areas, which are not necessary for the proposed development.*
- *A place of worship traditionally has prominence as a building and as a meeting place.*
- *The existing building exceeds the development standard but fits comfortably within the context of the area.*
- *The FSR is unachievable as the existing building has a FSR of 0.92:1.*
- *In respect to objective (c) the site is not subject to land sensitivity constraints and is capable of the proposed land use and FSR.*
- *The intensity of the proposed development is similar to that existing and is not considered to adversely impact upon the local area.*
- *Any restriction of development to the existing building preserves a form and function now not meeting acceptable standards of the congregation and the community.*
- *The proposed FSR for the place of worship cannot be used as a precedent to obtain a greater FSR for residential development.*

The site has an area of 824.9m². The proposed alterations and additions increase the existing building footprint by 15% to a site coverage of 74%. The proposed 148.5m² increase in floor area results in a floor space ratio increase of 16%. The increase in building footprint is primarily at the two street frontages and does not significantly increase the bulk and scale of the existing building in the streetscape.

The SEPP 1 objection is considered well founded with regard to the existing floor space ratio, the non-residential use of the land and the traditional built form of the church.

The proposed non-compliance with the floor space ratio standard could not be considered as a precedent due to the existing built form and non-residential nature of the development.

The SEPP 1 objection is consistent with the aims of the Policy in being made in accordance with the planning principles established by the Land and Environment Court.

2.3 Community Uses Development Control Plan

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

Community Uses Development Control Plan			
Control	Proposal	Requirement	Compliance
Floor Space Ratio	1.10:1	0.4:1	No
Car parking	0 spaces	60 spaces	No
Setbacks	Primary Front - 4.75m Secondary Front – 0m Side – 0m	Primary Front – 6.0m Secondary Front – 3m Side – 1m	No
Landscaping	20%	45%	No
Site cover	74%	40%	No

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

2.3.1 Density

The existing Church is prominent in the streetscape and has a proposed site coverage of 74%. The hall building attached to the Church is contrary to the built form of the Church. The proposed alterations and additions effectively form a more coherent building.

The existing and proposed development does not comply with the DCP floor space ratio and site coverage requirement. The non-compliance is considered acceptable with regard to the submitted SEPP 1 objection as discussed in Section 2.2 of this report.

The Church as proposed has a seating capacity for 300 people which involves an increase of approximately 100 people to the existing Church. The proposed operating hours and details of Church services and activities are discussed in Section 2.3.5 of this report.

A condition is recommended for the operation of the development to be consistent with the current range of activities.

2.3.2 Design

The proposed alterations and additions include refurbishment and upgrading to meet current access and fire safety requirements. The proposed floor plan provides more functional spaces with flexibility to provide for the range of Church activities and functions.

The proposed external alterations include removal of several windows, infill with matching brick and provision of new windows. A large bay window is proposed along the Rosemount

Avenue frontage. Similar style windows are proposed to enclose the stair well, the ground floor lobby, first floor lobby and the windows of the hall building at the street elevation. The window style and architectural treatment of the additions provide consistency between the two buildings. The schedule of materials and finishes had not been finalised at the time of this report and a condition for a deferred consent commencement is recommended.

The proposed stair at the street elevation is enclosed with clear glass windows. To ensure safety on the stairs, a condition is recommended for the windows to be in translucent glass.

The proposal includes a new sanctuary which forms a single level extension at the front of the church and creates a new element in the presentation of the church in the streetscape. The proposed extension would not detract from the streetscape.

The proposed alterations and additions at the western side elevation include provision for amenities and a lift. There are no windows that would diminish privacy of adjoining residents at the western side boundary.

The proposal meets the DCP design performance criteria for buildings to complement the streetscape.

2.3.3 Setbacks

The existing building occupies a corner site and does not comply with the minimum 3m front setback from the Rosemount Avenue secondary street frontage. The proposed additions involve zero setback to Rosemount Avenue. The additions reinforce the building's interface with the public domain and are considered acceptable with regard the function of the building as a place of worship and community hall building.

The proposed sanctuary addition at the front of the church does not comply with DCP requirement for an encroachment on the 6m setback to 4m to be a maximum of 1/3 of the frontage. The 8.8m wide addition exceeds this requirement by 2m. The non-compliance is considered acceptable with regard to the proposed presentation of the church in the streetscape. The non-compliance would not establish a precedent or alter the predominant residential building line in the street.

The proposed additions at the western side elevation increase the existing setback to 1.047m in compliance with the DCP.

It is considered the proposed setback encroachment meets the DCP performance criteria *“where it does not compromise the streetscape or the amenity and enjoyment of adjacent properties.”*

2.3.4 Solar Access

The proposed alterations and additions maintain the existing height of the building. The solar access of the adjoining residential property remains the same as existing, in compliance with the DCP.

The existing and proposed developments overshadow the Rosemount Avenue footpath, in non-compliance with the DCP requirement for sunlight on public footpaths between 12.00 noon and 2.00 pm on June 22. The non-compliance with the DCP is acceptable with regard to the existing situation.

2.3.5 Car Parking

The existing development does not include any on-site car parking and no car parking is provided for the proposed development. A total of 60 car parking spaces would be required in accordance with the DCP requirement for 1 space per 5 seats.

The applicant submitted an events schedule which details the weekly activities conducted by the Church (held at Attachment 9).

The majority of people (230) attend the church on Sunday. During the week Pennant Hills Public School use the hall for school assembly, dance and gymnastic classes. The Church conducts English language classes (ESL), a playgroup, youth group and Church meetings. Other than for Sunday Church services, school activities are predominant but would not result in traffic and car parking issues.

A traffic and road safety investigation concluded that the proposal is acceptable in respect to traffic and car parking impacts having regard to the circumstance of the case. A condition is recommended for the operation of the Church to be consistent with the range of current activities being conducted from the site and for the hall not to be used in isolation from Sunday Church services.

2.3.6 Landscaping

The submitted landscaping plan is satisfactory in the treatment of the public spaces along the street frontage and more formal treatment at the Ramsay Street frontage of the Church. A condition is recommended for the tubular steel front fence to be in flat top profile, to ensure the fence forms a safe element in the public domain.

The proposal involves a minor reduction in the existing landscaping from 21% to 20% and is in non-compliance with the DCP requirement for 45% site landscaping. The non-compliance is considered acceptable in view of the existing landscaping provision.

It is considered the proposal is satisfactory with regard to the DCP performance criteria for landscaping to reflect the scale of the development.

2.4 Heritage Development Control Plan

The site is not identified as a heritage item or within a heritage conservation area. There are, however, a number of heritage items in the vicinity of the site including:

- 22 Rosemount Avenue - house
- 34 Ramsay Street - fence
- 35 Ramsay Street - fence
- 37 Ramsay Street - house and fence
- 49 Ramsay Street - house

The items in the vicinity are of local significance. The proposed alterations and additions to the existing Church maintain the traditional built form and would not detract from the heritage significance of the items.

3. ENVIRONMENTAL IMPACTS

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

3.1 Natural Environment

The proposed development would not adversely impact on existing trees or the natural environment.

3.2 Built Environment

The proposed alterations and additions to the church and hall would modify the appearance of the building in the streetscape to a more contemporary standard but would retain the traditional form of the Church building.

The proposed architectural style provides a cohesive treatment to the church and attached hall building. A condition is recommended for the finishes to complement the development in the streetscape.

The development relies upon on-street car parking. The proposed alterations and additions increase the seating capacity of the Church from 200 to 300 people and would improve the functional layout of the Church and hall. A condition is recommended for the operation of the Church to be consistent with the range of current activities being conducted and for the hall not to be used in isolation from Sunday church services.

Subject to recommended conditions, the reliance of on-street car parking generally maintains the existing situation and is considered acceptable.

A vehicle crossing is at the existing Church entry. A condition is recommended for a new vehicle crossing at the new entry.

The Church is opposite Pennant Hills Public School and school children cross the road at the frontage of the site. Pedestrian crossings are in place at the intersection of Ramsay Road with Rosemount Street and Weemala Road. A traffic management plan is recommended for the proposed development to address pedestrian safety, particularly one hour prior to and after school hours.

3.3 Social Impacts

The existing Church and hall caters to a range of activities including those conducted by Pennant Hills Public School. The proposed alterations and additions refurbish the existing building in meeting access requirements and would provide a more functional and flexible use of space.

The proposal would therefore be of positive social impact.

3.4 Economic Impacts

The proposed alterations and additions would increase the economic life of the building. During construction the proposal would contribute to the local economy in the provision of employment opportunities.

4. SITE SUITABILITY

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

The proposal involves an existing church site and is suitable for the proposed development.

5. PUBLIC PARTICIPATION


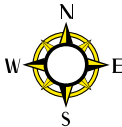
Section 79C(1)(d) of the Act requires Council to consider “*any submissions made in accordance with this Act*”.

5.1 Community Consultation

The proposed development was placed on public exhibition and was notified to adjoining and nearby landowners between 23 July and 13 August 2009, in accordance with Council’s Notification and Exhibition Development Control Plan. During this period, one submission was received by Council. The map below illustrates the location of the properties notified and the property concerning the submission.



NOTIFICATION PLAN

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

The submission was received from Pennant Hills Public School and was in support of the application, subject to pedestrian safety of school children being addressed.

The pedestrian safety concerns are addressed by recommended condition for a Traffic Management Plan to be implemented during construction of the proposed 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 criteria and would provide a development outcome that, on balance, would result in a positive impact for the community. Accordingly, it is considered that the approval of the proposed alterations and additions to the existing Church and hall would be in the public interest.

CONCLUSION

Consent is sought for alterations and additions to the existing Pennant Hills Baptist Church. The proposed alterations and additions provide a more functional floor plan and a more coherent building in the streetscape.

The application is subject to an objection to the floor space ratio development standard under Clause 15 of the HSLEP, pursuant to SEPP 1 – Development Standards. The objection is well founded and is supported with regard to the existing non-compliance and the merit of the proposal in upgrading the church and hall building to a more contemporary standard.

The existing and proposed development does not comply with the Community Uses DCP in respect to density and parking. The proposal, however, is considered satisfactory with regard to the DCP performance criteria in respect to design, setbacks and landscaping subject to recommended conditions. However, evidence of the acceptability of the application is the lack of any community objections during the public exhibition period.

The church and hall building provide for a range of church and community activities including use by Pennant Hills Public School. The proposed alterations and additions increase the seating capacity of the church. A condition is recommended for the use to remain consistent with the current range of activities.

ROD PICKLES
Manager - Assessment Team 2
Planning Division

SCOTT PHILLIPS
Executive Manager
Planning Division

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.

Attachments:

1. Locality Plan
2. Site Plan
3. Existing Floor Plan
4. Roof/Site Plan
5. DA Floor Plan
6. Elevations
7. Sections/Front Elevation
8. Landscape Plan
9. Events Schedule

File Reference: DA/751/2009

Document Number: D01220204

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. Deferred Commencement

Pursuant to Section 80(3) of the Environmental Planning and Assessment Act 1979, this consent does not operate until the following information is submitted to Council:

- a. The submission to Council of a schedule of finishes for the alterations and additions that complement the existing development and maintain the integrity of the existing Church building within the streetscape.

Such information must be submitted within 12 months of the date of this notice, otherwise this consent will lapse.

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

2. Approved Plans and Supporting Documentation

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

<i>Plan No.</i>	<i>Drawn by</i>	<i>Dated</i>
07107-DA01-A Site	NBRS + Partners	7/07/2009
07107-DA02-A Floor	NBRS + Partners	7/07/2009
07107-DA03-A Eleva	NBRS + Partners	7/07/2009
07107-DA04-A Section	NBRS + Partners	7/07/2009
34A/LP/D Landscape	JCA Urban Designers	18/06/2009
SW-04 B Stormwater	Sparks and Partners	May 2009

<i>Document No.</i>	<i>Prepared by</i>	<i>Dated</i>
D01201050 – Statement Environmental Effects	Chris Young Planning Pty Ltd	July 2009
TBA – Materials & Finishes Schedule	NBRS + Partners	

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. Fire Safety Upgrade

To ensure the protection of persons using the building and to facilitate egress from the building in the event of a fire, the application for a construction certificate must demonstrate that it will comply with the following Category 1 fire safety provisions:

- a. To ensure the protection of persons using the existing building and to facilitate egress from this building in the event of a fire, details must be submitted with the application for a construction certificate, detailing what works are necessary (if any) to bring it into full compliance with Parts C, D and E of the Building Code of Australia.

5. Sydney Water – Quick Check

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

Note: Refer to www.sydneywater.com.au or telephone 13 20 92 for assistance.

6. Stair Windows

The windows to the stairway at the east elevation must be in translucent glass to provide for safety of people on the stairs.

7. Front Fence

The tubular steel fence at the frontage must be in flat top profile to form a safe element in the public domain.

REQUIREMENTS PRIOR TO THE COMMENCEMENT OF ANY WORKS

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

8. Erection of Construction Sign

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

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

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

9. Toilet Facilities

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

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

10. Erosion and Sediment Control

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

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

11. 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. Pedestrian safety of school children particularly for 1 hour before 9.15am and 1 hour after 3.15pm Monday to Friday.

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 7am and 5pm Monday to Saturday.

No work is to be undertaken on Sundays or public holidays.

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.
- b. Demolition works, where asbestos material is being removed, must be undertaken by a contractor that holds an appropriate licence issued by *WorkCover NSW* in accordance with Chapter 10 of the *Occupational Health and Safety Regulation 2001* and Clause 29 of the *Protection of the Environment Operations (Waste) Regulation 1996*.

- c. On construction sites where buildings contain asbestos material, a standard commercially manufactured sign containing the words 'DANGER ASBESTOS REMOVAL IN PROGRESS' measuring not less than 400mm x 300mm must be erected in a prominent position visible from the street.

14. 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.

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.

15. Survey Report – Finished Floor Level

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

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

16. Stormwater Drainage

The stormwater drainage system for the development must be designed and constructed for an average recurrence interval of 20 years and be drained to street gutter via the existing outlet point (located about 20m down stream of property boundary). The system is to be constructed generally in accordance with the drawing SW04, job No 0913, prepared by Sparks and Partners.

17. Footpath

- a. Damaged footpath due to stormwater drainage works shall be reinstated.
- b. The land adjoining the footpath to be fully turfed.
- c. Any public utility adjustments to be carried out at the cost of the applicant and to the requirements of the relevant public authority.

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. 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 to be replaced with integral kerb and gutter.
- b. The footway area to be restored by turfing.
- c. The new crossing is to be sited for ease of access to the new entry to the building.

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.

20. 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.

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.

21. 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.

22. Use of Premises

The operation and use of the Church premises must be in accordance with the following:

- a. The development approved under this consent must be used for a '*place of worship*' and '*community facility*' as detailed in the 'Events Schedule' and not for any other purpose without Council's separate written consent.
- b. All activities in the hall on a Sunday must be ancillary to and in conjunction with the primary use as a place of worship.
- c. The hours of operation of the premise are restricted to those times listed below:

Sunday	8.30 am to 9.00 pm
Monday to Saturday	9.00 am to 10.30 pm

23. Landscape establishment

The landscape works must be maintained in perpetuity to ensure the establishment and successful growth of plant material to meet the intent of the landscape design. This shall include but not be limited to watering, weeding, replacement of failed plant material and promoting the growth of plants through standard industry practices.

- 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:
- The issue of 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 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.

Should asbestos or asbestos products be encountered during demolition or construction 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 *WorkCover NSW*) be engaged to manage the proper handling of the material. Further information regarding the safe handling and removal of asbestos can be found at:

www.environment.nsw.gov.au
www.nsw.gov.au/fibro
www.adfa.org.au
www.workcover.nsw.gov.au

Alternatively, telephone the *WorkCover* 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.

Advertising Signage – Separate DA Required

This consent does not permit the erection or display of any advertising signs. Most advertising signs or structures require development consent. Applicants should make separate enquiries with Council prior to erecting or displaying any advertising signage.

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

3 LOCAL NOMINATIONS FOR THE JOINT REGIONAL PLANNING PANELS

EXECUTIVE SUMMARY

The NSW Government's planning reforms include the establishment of Joint Regional Planning Panels (JRPPs) to determine development proposals of regional significance. The Government has announced that the core objective of JRPPs is to provide stronger decision making through greater independence, to supplement councils' expertise and draw on local and regional knowledge.

In response to a request from the Minister for Planning, Council wrote to the Department of Planning on 5 June 2009 advising that it had resolved to nominate the Executive Managers Planning and Environment as local members and the General Manager as an alternative member of the JRPP. On 2 July 2009, the Department released the Code of Conduct and Procedures for the Operation of the JRPPs. As a consequence of those documents, it was identified that the Executive Managers Planning and Environment were not appropriate local members of the JRPP and therefore, it became necessary that Council nominates new local members.

To facilitate that outcome, Council has carried out an Expression of Interest process to identify alternative suitable local members. This report recommends the appointment of a new local member and two alternative members.

PURPOSE/OBJECTIVE

The purpose of this report is to nominate new local members of the JRPP as it affects the Hornsby local government area.

DISCUSSION

Background

The NSW Government's planning reforms, reportedly aimed at delivering a more efficient and transparent planning system, include the establishment of JRPPs. The objective of JRPPs is to create a panel of people with appropriate expertise to determine development proposals of regional significance providing stronger decision-making through greater expertise, independence and regional knowledge.

Six regions have been established covering metropolitan and regional areas of NSW. Hornsby local government area is in the Sydney West Region.

The Panels commenced operation on 1 July 2009.

Functions of JRPPs

The functions of the JRPPs are to:

1. exercise certain consent authority functions for 'regional development'; and

2. where requested, advise the NSW Minister for Planning on planning or development matters or environmental planning instruments in respect to the JRPP's region.

JRPPs determine 'regionally significant' development applications, including:

- Commercial, residential, mixed use, retail and tourism development with a capital investment value more than \$10 million and less than \$100 million.
- Community infrastructure and ecotourism developments more than \$5 million both public and private, such as schools, community halls and child care facilities.
- Designated development.
- Development where the council is the proponent with a capital investment value of more than \$5 million or has a potential conflict of interest.

JRPPs also have such other functions as are conferred on them by the Environmental Planning and Assessment Act 1979 (the Act). For example, JRPPs may have a role in relation to Local Environmental Plans (LEPs). This may include being appointed as the Relevant Planning Authority (RPA) for a LEP or, where requested by the Minister, reviewing or providing advice in respect of a proposed LEP. Where a JRPP is appointed as an RPA for a LEP, the Minister may also delegate plan making powers to the JRPP. JRPPs may also, in limited circumstances, be appointed by the Minister to exercise the functions of the planning assessment panels under s.118 of the Act (such is presently the case in Ku-Ring-Gai Council).

Councils' role in relation to matters under consideration by the JRPP

The adopted 'Procedures for the Operation of the JRPPs' prescribe that the assessment of applications to be determined by the Panels is to be undertaken by the relevant council officers in which the proposed development is located. The council officers are to submit their assessment report and recommendations to the JRPP for determination.

Whilst the council will not be the determining body for JRPP matters, the council will have the opportunity to provide its views about any matters that are to be considered by a JRPP. The council's view may be provided to a JRPP by way of a submission in the same way that any other submissions about the matter are provided to a JRPP for its consideration in determining a matter. The JRPP must consult the council prior to determining a matter which is likely to have significant financial implications for the council.

Membership of JRPPs

JRPPs consist of five members as follows:

State Members: Three State members appointed by the Minister, each having expertise in one or more of the following: planning, architecture, heritage, the environment, urban design, land economics, traffic and transport, law, engineering, tourism or government and public administration. One of the State members will be appointed as the Chairperson of the JRPP.

The Minister for Planning has appointed the following State members for Sydney West; Janet Thompson (Chair), Bruce McDonald and Paul Mitchell, with Stuart McDonald and Lindsay Fletcher as alternates.

Local Members: Two local members appointed by each council that is situated in a part of the state for which a JRPP is appointed. At least one council nominee is required to have

expertise in one or more of the following: planning, architecture, heritage, the environment, urban design, land economics, traffic and transport, law, engineering or tourism. The council nominees will automatically become local members of the JRPP for matters in that council's local government area. However, local members will not sit on a JRPP for matters that are within another local government area.

Nominations of Council members to the JRPP

In May 2009, the Government requested that by 5 June 2009, councils nominate two persons to become members and a third person to be an alternate member of the relevant JRPP. Council adhered to the Government's request and wrote to the Department of Planning advising that it had resolved to nominate the Executive Managers Planning and Environment as local members and the General Manager as an alterative member of the JRPP.

On 2 July 2009 (after the date that councils were requested to nominate local members and after the commencement date of the operation of the Panels), the Department released the Code of Conduct and Procedures for the Operation of the JRPPs. As a consequence of those documents, it was identified that two of Council's nominees (Executive Managers Planning and Environment) were not appropriate local members of the JRPP and therefore, was necessary for Council to nominate new members.

On 5 August 2009 Council resolved to nominate Council's General Manager as a local member of the Panel. At that time, Councillors declined to be nominated as members. In doing so, Council resolved to undertake an Expression of Interest (EOI) process to identify suitable additional local members. This report identifies a second nominee and two alternate nominees.

Selection Criteria for Local Members

The selection criteria of local members include:

- *Senior level experience in dealing with multiple stakeholders;*
- *high level communication skills;*
- *capability to drive high profile outcomes in a credible and authoritative manner;*
- *high level analytical skills; and*
- *knowledge of the assessment of complex developments and planning matters.*

In addition, at least one of the two council nominees must have a high level of expertise in one or more of the following fields:

- *Planning*
- *Architecture*
- *Heritage*
- *The environment*
- *Urban design*
- *Land economics*
- *Traffic and transport*
- *Law*
- *Engineering*
- *Tourism*

Outcome of EOI Process

In accordance with Council's resolution, notices were placed in three local newspapers inviting EOIs until 14 September 2009. During the advertising period, Council received twelve EOIs from the following persons:

- Mr Jack Cleaver
- Ms Anne Conway
- Mr Lindsay Dyce
- Mr Glenn Falson
- Ms Felicity Findlay
- Mr Peter Fryar
- Ms Sue Haertsch
- Mr Stephen Ledger
- Ms Janelle McIntosh
- Mr Alan Moore
- Mr Philip Scott
- Mr Rajiv Shankar

Each person that lodged an expression of interest demonstrated that they satisfy the selection criteria and ten of the twelve persons have the necessary qualifications to be an 'expert' local member. Accordingly, further consideration was given to those nominations that best demonstrated their knowledge and understanding of Council and the local area. Nine nominees are either residents of Hornsby or former long-standing employees.

Given that Council has already nominated one 'expert' local member (Mr Ball), emphasis was given to those nominees that best demonstrated their contribution to the local community. It is noted that two nominees were former councillors, who each made a considerable public contribution to the Hornsby community through their councillor duties. Having regard to the above circumstances, and based on each nominee meeting the selection criteria, it is recommended that Council nominates Ms Felicity Findlay as a local member and Ms Janelle McIntosh as an alternate local member.

From time to time, Council's current local member, Mr Ball, may be unable to sit on the Panel due to other commitments or a conflict (as set out in the Code of Conduct). On that basis, and having regard to the fact that Ms Findlay and Ms McIntosh are 'non-expert' members, it is considered appropriate to nominate an alternate 'expert' local member. It is considered that Mr Peter Fryar best demonstrates that he meets the selection criteria and an understanding of the planning framework within Council and the Hornsby Shire. Mr Fryar is a qualified town planner, who was employed by Council between 2000 and 2008 as the Manager Assessments. Mr Fryar has considerable planning experience within Hornsby Shire and more broadly across the State. Mr Fryar is a recognised expert in the Land and Environment Court and would be suitably placed to sit as a local member of the JRPP in the event that Mr Ball is unavailable.

Funding of the JRPP

The NSW Government has made a commitment to fund the employment costs of State Panel members and the general administration of the Panels. A JRPP secretariat has been appointed within the Department of Planning.

The employment costs of local members are the responsibility of each council. The Minister for Planning has written to all Mayors setting out remuneration guidelines for local members

of JRPPs. The Minister states “*while I have decided not to set the fees for Council nominated members, so that councils are free to determine the fees paid to their appointed members, the following should be considered when setting fees:*”

- *Council staff members: No fees should be paid, as participation in the Regional Panel would form part of the employee’s regular duties, consistent with the Department of Premier and Cabinet Guidelines for NSW Board and Committee Members: Appointment and Remuneration on payment to Public Sector Employees.*
- *Elected councillors: As councillors already receive an annual fee set by the Local Government Remuneration Tribunal each year for performing their councillor duties, an additional per meeting fee of no more than \$600 appears reasonable, recognising that membership of the Regional Panel will bring additional responsibilities.*
- *Community members: Each council may determine an appropriate level of remuneration for that person, by arrangement with that member, but that a meeting fee not exceeding \$1400 should be considered as a guide when determining appropriate remuneration rates. This is commensurate with the fee proposed for State appointed members.*
- *Alternates: Alternate members, when serving on the Regional Panel, should receive fees commensurate to those paid to comparable council-appointed members.”*

Having regard to the Minister’s guidelines, it is recommended that ‘non-expert’ local members be paid a fee of \$600 per meeting, consistent with the fee that would be paid to a Councillor and that (non-staff) ‘expert’ local members are paid a fee of \$1,400, consistent with the fee that is being paid to State appointed members.

Council has not allocated funding for the JRPP in its 2009/10 operational budget due to the timing of the Minister’s announcement being after the setting of Council’s budget. For the remainder of the 2009/10 financial year, funding will be allocated from the Planning Division consultancy budget.

BUDGET

The financial implications of the appointments are set out above. It is estimated that the cost to Council for local members for the remainder of 2009/10 will be approximately \$3,000 to \$5,000, which will be allocated from the Planning Division consultancy budget.

POLICY

There are no policy implications.

CONSULTATION

The EOI process was open between 2 and 14 September 2009.

TRIPLE BOTTOM LINE SUMMARY

Triple Bottom Line is a framework for improving Council decisions by ensuring accountability and transparency on social, environmental and economic factors. It does this by reporting on Council’s strategic themes. As this report provides Council with information

and does not propose any actions which require a sustainability assessment, no Triple Bottom Line considerations apply.

RESPONSIBLE OFFICER

The responsible officer for this report is the Executive Manager Planning, Mr Scott Phillips, telephone 9847 6751.

RECOMMENDATION

THAT:

1. Council advises the Department of Planning that it nominates Ms Felicity Findlay as Council's second local member and nominates Ms Janelle McIntosh and Mr Peter Fryar as alternative local members of the Joint Regional Planning Panel.
2. Council informs all persons that lodged an expression of interest of Council's decision and thanks them for their interest in the matter.

SCOTT PHILLIPS
Executive Manager
Planning Division

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.

Attachments:

There are no attachments for this report.

File Reference: F2009/00493
Document Number: D01243644

4 DRAFT LOCAL ENVIRONMENTAL PLAN TO ALLOW STRATA SUBDIVISION - PROPERTY NO. 218 BROOKLYN ROAD, BROOKLYN

EXECUTIVE SUMMARY

Council has received a request to prepare a draft Local Environmental Plan (LEP) to permit the strata subdivision of an existing multi-unit housing development. The proponent has requested that Clause 22 – Exceptions of the *Hornsby Shire Local Environmental Plan (HSLEP) 1994* be amended to permit strata subdivision of the existing building on property No. 218 Brooklyn Road, Brooklyn.

Currently, Clause 14(4) of the *HSLEP* prohibits the separate occupation of proposed strata title lots in the Residential A, AA, AM, AS and AT zones. The underlying objective of Clause 14(4) is to emulate the State Government's prohibition on the subdivision of dual occupancy developments. The site contains a multi-unit housing development comprising six dwellings and has been used for the same since at least 1986. The prohibition of strata subdivision has created a planning anomaly in that the change to the legislation did not envisage such a prohibition on the subject site.

The majority of the site is zoned Residential A (Low Density) with two small areas of Business A (General) zoned land at the western end of the site. A review of the zoning history of the site indicates that the business zoning is also an anomaly. Should an amendment to the *HSLEP* be prepared to facilitate the strata subdivision of the site, it should also seek to rectify the zoning anomaly.

This report recommends that, should Council wish to progress a draft LEP amendment to permit strata subdivision and rectify the zoning anomaly for the site, a planning proposal be prepared and presented to Council in accordance with recent State Government changes to the draft LEP making process. The planning proposal should incorporate other matters set out for inclusion in Council's Annual Amending LEP, including the recommendations of *Heritage Review Stage 4*.

PURPOSE

The purpose of this report is to inform Council of a request to prepare a draft LEP to permit the strata subdivision of an existing multi-unit housing development at property No. 218 Brooklyn Road, Brooklyn.

BACKGROUND

Council records indicate that the existing building at property No. 218 Brooklyn Road has been used for the purpose of multi-unit housing since at least 1986. Council records also indicate that on 16 April 2003, a development application was approved for alterations and additions to the existing multi-unit housing development, including car parking. The approved alterations and additions have been completed. However, the approved car parking has not been provided. The proponent advises that this is due to site constraints making construction of the approved parking difficult, unsightly and costly.

The proponent first approached Council in December 2008 concerning a proposal for a combined development application and LEP amendment to strata subdivide the existing units on the site. The proponent also requested advice from Council concerning the potential purchase of Council land in the vicinity of the site for provision of car parking. Council advised that the matters involving purchase of Council land are subject to separate negotiation with Council's Property Development Branch. The proponent was advised that a site specific exception to permit strata subdivision may be considered by Council as part of Council's next Annual Amending LEP. However in order for Council to formally consider the matter, a comprehensive draft LEP submission would be required, including an evaluation of the proposal, the likely strategic planning and land use implications and demonstrating the community benefits arising from the proposal.

A draft LEP submission was submitted by the proponent on 27 March 2009, requesting that Clause 22 – Exceptions of the *HSLEP* be amended to permit strata subdivision of the existing development on property No. 218 Brooklyn Road, Brooklyn. This report discusses the proposal and the implications of preparing an amendment to the *HSLEP*.

EVALUATION

In evaluating the proposal it is appropriate to consider the site, the proposal, the surrounding environment and amenity and the community benefit of the proposal.

The Site and Context

The site consists of Lot 1 DP 901075, Lot 6 DP 664306 and Lots 8-10, Section B DP 2746. The combined area of the site is 799m². The site is located at the eastern end of Brooklyn Road, Brooklyn.

The site is developed with an existing two-storey sandstone and brick building on stone foundations with a galvanised iron roof. A detached studio is erected to the east of the two-storey building. A number of small sheds and outbuildings are also located on the site. The building comprises six residential flats, with four smaller units on the ground floor and two larger units on the first floor. There is no car parking available on the site.

The site is bounded by Brooklyn Commercial Centre to the west and low density residential properties to the south and east. The buildings within the commercial centre are typically two storeys in height. The site is located on the corner of Brooklyn Road and William Street. However, there is a significant change in level directly adjacent the property to the east, where the property meets an unformed section of William Street. This difference in level means that Brooklyn Road and William Street are not connected, and Brooklyn Road effectively ends in front of the site.

Zoning History

Prior to 1951 - The proponent's submission states that the main building on the site was built in the early 1900s. There is photographic evidence to suggest the building was used for commercial purposes in the early 1900s.

1951 onwards (County of Cumberland Planning Scheme Ordinance) - The property was zoned 'living area' under the *County of Cumberland Planning Scheme Ordinance*. The 'living area' zone was a residential zone that permitted single dwelling-houses without

consent from Council, and other residential flat buildings with consent. There is anecdotal evidence to suggest the building has been used as multi-unit housing since at least the 1960s.

1977 onwards (Hornsby Shire Planning Scheme Ordinance) - The property was zoned 'Residential a2' under the *Hornsby Shire Planning Scheme Ordinance*. The 'Residential a2' zone was a low density zone that permitted single dwelling-houses without consent from Council, and residential flat buildings up to two-storeys with consent.

Current zoning (Hornsby Shire Local Environmental Plan) - The majority of the site is zoned Residential A (Low Density) with two small areas of Business A zoned land at the western end of the site. A review of the zoning history of the site as set out above indicates that the Business zoning is an anomaly. Should an amendment to the *HSLEP* be prepared to facilitate the strata subdivision of the site, it should also seek to rectify the zoning anomaly.

Development Approvals

In April 2003, Council approved Development Application No. 2482/02 for alterations and additions to an existing multi-unit housing development and the provision of on-site car parking. The approved works included the reconstruction of two heritage style balconies to the front of the building, the erection of a new external timber staircase to the western side of the building and the construction of a six vehicle car park in the south eastern corner of the site (adjacent to William Street). The approved vehicle parking area is to be accessed via William Street and would be constructed as an elevated concrete slab with retaining wall. To date, the works concerning the balconies and external staircase have been carried out. The approved car park has not been constructed.

The Proposal

The proponent has requested an amendment to Clause 22 of the *HSLEP* to permit the strata subdivision of the existing multi-unit housing development. The purpose of Clause 22 is to provide exceptions that allow or prohibit development in accordance with the overall objectives of the *HSLEP*. The granting of an exception would retain the current zoning of the land. However, strata subdivision would be permissible with the consent of Council.

Currently, Clause 14(4) of the *HSLEP* prohibits the separate occupation of proposed strata title lots in the Residential A, AA, AM, AS and AT zones. The Clause was introduced in 1995 (*HSLEP Amendment No. 8*) to avoid development pressure in Hornsby Shire after similar changes to State legislation resulted in Hornsby Shire being one of the few local government areas in which separately titled dual occupancy developments were still permitted. The underlying objective of Clause 14(4) is to emulate the State Government's prohibition on the subdivision of dual occupancy developments. The existing multi-unit housing development on the site has been used for the same since at least 1986. The prohibition of strata subdivision has created a planning anomaly in that the change to the legislation did not envisage such a prohibition on the subject site, where there was otherwise a reasonable expectation that strata subdivision could occur.

HSLEP (Amendment No. 8) contains savings and transitional provisions that allow subdivision of multi-unit housing developments approved between specific dates in accordance with certain planning instruments. However, the existing development does not benefit from the savings provisions.

Council has previously supported amendments to the *HSLEP* to permit strata subdivision of existing multi-unit housing developments (other than dual occupancy developments) which predate the prohibition of strata subdivision and do not benefit from the savings provisions. Should Council seek to permit strata subdivision on this site, there are a number of options available to Council to facilitate this. The options include an amendment to Clause 22 - Exceptions as requested by the proponent, or rezoning the site to a Residential B (Medium/Density), Residential C (Medium/High Density) or Business A (General) zone, all of which permit strata subdivision.

The Residential B zone promotes townhouse type development with attached dwellings configured over two levels, and the Residential C zone promotes three storey walk up unit development. Both zonings would permit a higher floor space ratio on the site. These built forms do not accord with the existing building, and the site does not adjoin existing Residential B or Residential C zoned land. The Business A zone would permit additional commercial uses on the site which would potentially generate additional traffic and car parking demands. A Business zoning would also potentially cause land use conflict, as some units would be used for residential and others for commercial with associated amenity impacts. Further, the recently exhibited *Ku-ring-gai and Hornsby Subregional Employment Study* does not identify the Brooklyn Commercial Centre as requiring expansion to service the local catchment or to meet the employment targets set for the Shire in the draft *North Subregional Strategy*.

Accordingly, should Council support the submission to permit strata subdivision of the site, an amendment to Clause 22 of the *HSLEP* (and retention of the existing Residential A zoning) is the most appropriate method to facilitate the same. Should a draft LEP to amend Clause 22 of the *HSLEP* be gazetted, the proponent would be required to submit a development application for the strata title subdivision of the building.

Amenity

Should Council resolve to prepare a draft LEP to permit strata subdivision, it should be satisfied that the proposal would not impact on the amenity of surrounding uses. Strata subdivision would not result in any material change to the existing site or the existing building. Amending Clause 22 of the *HSLEP* to allow strata subdivision on the site does not alter building density, landscaping, or car parking requirements. The proponent states that under separate strata title and ownership the building is less likely to be demolished or undergo significant alterations and therefore, no additional impacts to neighbours or the locality would arise.

Car Parking

As discussed above, Development Application No. 2482/2002 included an approved car park to the south eastern corner of the site. Although the majority of the works associated with the development application have been carried out, the car park has not been constructed. The draft LEP submission identifies a parcel of Council land in the adjoining road reserve as an alternate location suitable for car parking. The submission indicates that should the land be purchased from Council, a proposal to provide parking at this location would be included in any development application for strata subdivision.

Council's Property Development Branch has indicated that the subject Council land is not suitable to be sold to the applicant. Accordingly, the proponent will need to provide car parking for the existing multi-unit housing development in accordance with Development

Consent No. 2482/2002. Should Council resolve to prepare an amendment to the *HSLEP* to permit strata subdivision, this would not negate the non-compliance with Development Consent No. 2482/2002.

Community Benefit

In deciding whether to support the submission for an exception under Clause 22 of the *HSLEP*, Council should be satisfied that the proposal demonstrates a community benefit either socially, economically and/or environmentally.

The proponent claims that the draft LEP to permit strata subdivision would benefit the community through the likely long term retention of the existing building with its historical value as a building from the early 1900s. The draft LEP would permit the separate strata titling of the existing multi-unit housing development, bringing six residential units onto the market which are well serviced by the adjacent Brooklyn Commercial Centre and train station. The strata title subdivision would provide a form of housing that may be more affordable than the detached single dwellings common in the local area. The use and appearance of the development would remain the same and the character of the area would be retained.

Notwithstanding the above, the community benefit would be enhanced if the proponent completed the car park in accordance with Development Consent No. 24821/2002. Accordingly, should Council resolve to support the submission to permit strata subdivision of the site, Council should ensure that the car parking works have been undertaken prior to forwarding a draft LEP to the DOP for gazettal.

CONSULTATION

Following receipt of the draft LEP submission, the proposal was informally exhibited to seek public comment to assist in the assessment of the proposal. Property owners adjoining the site were notified of the proposal and invited to make submissions. No submissions were received.

Council's Assessment Teams and Property Development Branch were consulted in the preparation of this report. No objections were raised in principle to a future development application being considered to allow for the strata subdivision of the existing building. However, Council's Team Leader, Building Certifications advises that the non-compliance with Development Consent No. 2482/2002 concerning the provision of car parking should be addressed.

PLANNING REFORMS

In July 2009, the State Government announced changes to the way that LEPs are progressed. A new system, known as the "gateway plan-making process", has been established. The gateway process has been introduced to assist meet the Government's target of a 50% overall reduction in the time taken to produce LEPs and to allow the steps in the system to be tailored to the complexity of individual LEPs. The new gateway process involves the following steps:

Planning Proposal — Council is responsible for the preparation of a planning proposal for submission to the DOP, which explains the effect of, and justification for, the proposal.

Gateway — The Minister (or delegate) determines whether the planning proposal is to proceed. This gateway acts as a checkpoint to ensure that the proposal is justified before

further studies are done and resources allocated to the preparation of a plan. If necessary, the proposal is amended. A community consultation process is also determined, including consultation with relevant public authorities.

Community consultation — The proposal is publicly exhibited (generally low impact proposals for 14 days, others for 28 days).

Assessment – Council considers public submissions and the proposal is amended as necessary. Parliamentary Counsel then prepares a draft LEP.

Decision – With the Minister’s (or delegate’s) approval the plan becomes law and is published on the NSW legislation website.

Should Council wish to progress a draft LEP to permit strata subdivision of the site, a planning proposal would be required to be prepared. The planning proposal must set out the objectives or intended outcomes of the proposed draft LEP, an explanation of the provisions that are to be included in the proposed draft LEP, justification for the proposal, and the intended community consultation to be carried out.

Council’s current practice is to progress minor amendments to the *HSLEP* as one Annual Amending LEP rather than as separate amendments, consistent with previous advice from the DOP. At its meeting on 3 June 2009, Council resolved (in part) to implement the recommendations of *Heritage Review Stage 4* as part of an Annual Amending LEP. Any planning proposal prepared to permit strata subdivision at property No. 218 Brooklyn Road, Brooklyn should form part of Council’s Annual Amending Planning Proposal in 2009.

STATUTORY CONSIDERATIONS

As part of Council’s consideration of amendments to LEPs, Council is required to consider the relevance of any State Environmental Planning Policy (SEPP) or Ministerial Direction under Section 117 of the *Environmental Planning and Assessment Act, 1979*. The proposal is not contrary to any SEPP or relevant Section 117 Directions.

OPTIONS

Council has before it the following options:

Option 1 – Resolve not to prepare a planning proposal

An appropriate resolution for this option would be:

1. *Council not progress the preparation of a planning proposal for property No. 218 Brooklyn Road, Brooklyn as the proposal is not the result of any strategic study or report and represents a minor amendment with minimal broader economic or community benefit.*
1. *The advertising fee of \$1,200 be refunded to the proponent.*
2. *Council’s Compliance Section follow up the non-compliance with Development Consent No. 2482/2002 in relation to car parking.*

Option 2 – Incorporate amendments relevant to property No. 218 Brooklyn Road, Brooklyn in Council’s Annual Amending Planning Proposal 2009

This option would allow the amendments relating to the site to be incorporated as part of an Annual Amending LEP. The Planning Proposal would include the amendment to permit strata subdivision and correct the zoning anomaly at property No. 218 Brooklyn Road, Brooklyn, along with the recommendations from *Heritage Review Stage 4*.

Option 2 is recommended. The prohibition of strata subdivision was not intended to apply to this type of development which predates current planning controls. The strata subdivision of the existing building on the site would bring six residential units onto the market which are well serviced by the adjacent Brooklyn Commercial Centre and train station. The use and appearance of the development would remain the same and the character of the area would be retained. The site’s zoning anomaly can be rectified as part of the proposal. Progression of the amendments as an Annual Amending Planning Proposal incorporating other anomalies or minor amendments to the *HSLEP* is consistent with previous advice from the DOP.

FINANCIAL

In accordance with Council’s Schedule of Fees and Charges, a fee of \$16,200 has been paid to cover the administration, advertising and assessment costs associated with the submission. Should Council resolve not to support the preparation of a planning proposal, it would be appropriate to refund the advertising fee associated with the submission.

TRIPLE BOTTOM LINE SUMMARY

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

- *Working with our community:* Should Council resolve to progress the planning proposal, a consultation strategy relevant to the amendment would be prepared as part of the consultation strategy for the Annual Planning Proposal 2009 addressing anomalies or minor amendments. Public exhibition material would be readily accessible and understandable to all members of the community by providing it in a number of locations and means of communication. The community would be able to obtain hard copy information from Council or download information from Council’s website.
- *Conserving our natural environment:* The proposal seeks strata subdivision of an existing multi-unit housing building. The facilitation of the proposal would not impact negatively upon the natural environment.
- *Contributing to community development through sustainable facilities and services:* The request to permit the strata subdivision of the existing multi-unit housing building is not applicable to the provision of sustainable facilities and services for the community.
- *Fulfilling our community’s vision in planning for the future of the Shire:* The progression of a Clause 22 Exception provision would permit the strata subdivision of the existing building. There is no expansion proposed. The existing

built form of the multi-unit housing development is consistent with Development Consent No. 2482/2002 issued by Council. The facility is not incompatible with the established residential and business character of the area and the proposal to permit strata subdivision would not alter the visual appearance of the property.

- *Supporting our diverse economy:* The proposal to permit the strata subdivision of the existing building within the residentially zoned land would not adversely affect the adjacent commercial centre.
- *Other sustainability considerations:* The building has been operating as multi-unit housing since at least 1986. A development application was approved on the site in 2003. Strata subdivision of the existing building would not result in any material change to the existing site or the existing building. Accordingly, there are no likely potential negative impacts.

CONCLUSION

The proponent has requested that Clause 22 – Exceptions of the *Hornsby Shire Local Environmental Plan (HSLEP) 1994* be amended to permit strata subdivision of the existing building on property No. 218 Brooklyn Road, Brooklyn.

Currently, Clause 14(4) of the *HSLEP* prohibits the separate occupation of proposed strata title lots on the site. The prohibition of strata subdivision has created a planning anomaly in that the change to the legislation did not envisage such a prohibition on the subject site. Progression of an amendment to the *HSLEP* to permit the separate strata titling of the existing multi-unit housing development would bring six residential units onto the market which are well serviced by the adjacent Brooklyn Commercial Centre and train station. The use and appearance of the development would remain the same and the character of the area would be retained.

A review of the zoning history of the site indicates that a small portion of the site is zoned Business A (General), an anomaly which could be rectified as part of an amendment to the *HSLEP*.

This report recommends that, should Council wish to progress a draft LEP amendment to permit strata subdivision and rectify the zoning anomaly for the site, it should be incorporated in Council's Annual Amending Planning Proposal 2009 (along with the recommendations of *Heritage Review Stage 4*) in accordance with recent State Government changes to the draft LEP making process.

RECOMMENDATION

THAT:

1. Amendments to the Hornsby Shire Local Environmental Plan 1994 to enable strata subdivision and correct a zoning anomaly at property No. 218 Brooklyn Road, Brooklyn be incorporated in Council's Annual Amending Planning Proposal 2009.
2. Prior to forwarding the Planning Proposal to the Department of Planning for gazettal, Council's Compliance Section ensure that the car parking works approved as part of Development Consent No. 2482/2002 have been undertaken.

JAMES FARRINGTON
Manager - Town Planning Services
Planning Division

SCOTT PHILLIPS
Executive Manager
Planning Division

Note: *Statement pursuant to Section 147(3) of the Environmental Planning and Assessment Act 1979 must be made in the event that a Councillor has received a gift or political donation from any person/organisation (including a person/organisation making a submission to an application) in the prescribed manner.*

Attachments:

1. Draft LEP Submission

File Reference: F2009/00263
Document Number: D01246151

5 PLANNING REFORM FUND - EPPING TOWN CENTRE

EXECUTIVE SUMMARY

The funding allocation by the Minister for Planning towards progression of the *Epping Town Centre Study* represents a significant shortfall in the total costs of the Study. In September 2009, representatives of the Department of Planning, Parramatta and Hornsby Councils met to discuss options to progress the Study.

Department representatives advised that the offer of funding is based on the delivery of the completed study including revised planning controls for the Centre. Therefore, a proposal to stage the Study, with the balance of the Study to be progressed when funds are allocated in the future, would unlikely be supported. However, there may be opportunity to revise the scope of works in light of previous studies undertaken by the Councils, provided the Study outputs are achieved. With a revised scope of works, a financial contribution by Council is still likely to be required to progress the Study.

It is recommended that Council continue discussions with the DOP and Parramatta Council concerning options to refine the study brief and funding options before determining whether to accept the Minister's offer.

PURPOSE

The purpose of this report is to advise Council of the outcomes of a meeting with representatives from the DOP and Parramatta Council concerning funding under the State Government's Planning Reform Fund to progress the *Epping Town Centre Study* and options to progress the Study.

BACKGROUND

At its meeting on 2 September 2009, Council considered a Mayoral Minute advising of the outcome of a joint application with Parramatta Council for funding under the State Government's Planning Reform Fund to progress the *Epping Town Centre Study*. The Minute noted that the Minister for Planning announced the allocation of \$125,000 towards the Study which represents a significant shortfall in the total costs of the Study.

Council resolved to defer consideration of the funding offer pending discussions with the DOP and Parramatta Council concerning options for funding the Study and/or amendment to the study brief. Council also resolved that the Mayor, Councillors Browne, Hutchence and Martin be invited to participate in the discussions.

In accordance with Council's resolution, a meeting between representatives of the Department, Parramatta and Hornsby Councils was scheduled to be held on 11 September 2009. However, Department representatives withdrew from the meeting due to other commitments. Representatives from the Councils met to discuss options for a way forward. At the conclusion of the meeting, it was agreed that to progress the Study it is essential that direction be provided by the Department concerning the opportunity to amend the timing of the Study or stage the Study to reflect the funding offer.

The meeting with Department representatives was rescheduled and was held on 17 September 2009. Councillors Browne and Hutchence, Executive Manager, Planning Division and Manager, Town Planning Services represented Council at the meeting. This report addresses the outcomes of the meeting and options to progress the Study.

DISCUSSION

At the meeting, Department representatives reaffirmed that the *draft North Subregional Strategy* identifies that the DOP is to work with both Hornsby and Parramatta Councils to prepare a town centre study to provide the strategic context required to deliver revised planning controls for Epping.

Council representatives acknowledged that the *draft Strategy* identifies the Study as a State government initiative to maximise opportunities arising from investment in rail infrastructure. Council has previously indicated its willingness to provide staff resources to assist in the progression of the Study through participation on working parties. However, at the suggestion of the DOP, a joint application with Parramatta Council was made for Planning Reform Funds to progress the Study.

Funding totalling \$300,000 was sought from the DOP including \$250,000 for consultant input. A further \$50,000 was sought to fund a part-time project officer to administer the Study. The funding offer of \$125,000 by the Minister for Planning is not adequate to cover the costs of delivering the study brief. It was noted that neither Hornsby nor Parramatta Councils have made a budget allocation towards the Study. Accordingly, advice was sought from the Department concerning whether there is opportunity to refine the study brief or undertake the Study in stages to reflect the funding offer.

The following key directions from the meeting were noted:

- The offer of funding is based on the delivery of the completed study including revised planning controls for the Centre. Therefore, a proposal to stage the Study (eg. undertake the traffic study as the first stage) utilising the funding offered, with the balance of the Study to be progressed when funds are allocated in the future, would unlikely be supported.
- The offer of funding is based on a joint review of controls within both the Hornsby and Parramatta local government areas. Therefore, acceptance of the funds by one Council to progress the Study for a component of the Centre would unlikely be supported.
- The application for Planning Reform Funds includes \$250,000 to undertake traffic and transport modelling, opportunities and constraints analysis, scoping of development options, and economic modelling. There may be opportunity to revise the scope of works in light of the funding offer and previous studies undertaken by the Councils, provided the Study outputs are achieved.
- The Study should be completed within 12 months from the signing of any Memorandum of Understanding (MOU). This would include the exhibition and adoption by the Councils of any draft Local Environmental Plan to amend existing planning controls for the Centre. The 12 month timeframe would enable any financial contribution by the Councils to be allocated over two financial years.

- Should the offer of funding be rejected by the Council(s), a report would be prepared by the Department's Regional Team to the Minister for Planning outlining options for consideration by the Minister to achieve the objective of preparing revised planning controls for Epping.

At the conclusion of the meeting, it was agreed that representatives from the Councils should review the scope of works for the Study in light of previous studies undertaken by the Councils that may assist in achieving the Study outputs. A revised scope of works should then be presented to the Department for confirmation that the revised brief would meet the terms of the funding offer. The timeframe for signing the MOU has been extended to enable a report to be presented to the Council meeting on 4 November 2009 concerning any revised scope of works.

It would be appropriate for Council to continue discussions with the DOP and Parramatta Council concerning options to refine the study brief and funding options before determining whether to accept the Minister's offer.

FINANCIAL

The funding of \$125,000 by the Minister for Planning towards the progression of the Study represents a significant shortfall in the total costs of the Study. It should be noted that, even with a revised scope of works, a financial contribution by Council is likely to be required to progress the Study.

The Annual Operating Budget for the Town Planning Services Branch has been allocated towards the progression of Council's Comprehensive LEP and DCP and the Hornsby Shire Housing Strategy. Accordingly, funding and staff resources have not been allocated to contribute to undertake the Study. The report on a revised brief for the Study would also address options to reallocate funds and resources to progress the Study.

TRIPLE BOTTOM LINE SUMMARY

Triple Bottom Line is a framework for improving Council decisions by ensuring accountability and transparency on social, environmental and economic factors. It does this by reporting upon Council's strategic themes. As this report provides Council with information and does not propose any actions which require a sustainability assessment, no Triple Bottom Line considerations apply.

CONCLUSION

In September 2009, representatives of the Department of Planning, Parramatta and Hornsby Councils met to discuss options to progress the *Epping Town Centre Study*. Department representatives advised that there may be opportunity to revise the scope of works in light of previous studies undertaken by the Councils, provided the Study output of revised planning controls for the Centre is achieved. With a revised scope of works, a financial contribution by Council is still likely to be required to progress the Study.

It is recommended that Council continue discussions with the Department and Parramatta Council concerning options to refine the project brief and funding options before determining whether to accept the Minister's offer.

RECOMMENDATION

THAT:

1. Council continue discussions with the Department of Planning and Parramatta Council concerning options to refine the project brief and funding options for the *Epping Town Centre Study* before determining whether to accept the Minister's offer of funding.
2. A further report be presented to Council at its meeting on 4 November 2009 on the outcomes of the discussions.

JAMES FARRINGTON
Manager - Town Planning Services
Planning Division

SCOTT PHILLIPS
Executive Manager
Planning Division

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.

Attachments:

There are no attachments for this report.

File Reference: F2004/07521
Document Number: D01247050