



the bushland shire

creating a living environment

BUSINESS PAPER

PLANNING MEETING

**Wednesday, 4 November, 2009
at 6:30pm**

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QUESTIONS OF WHICH NOTICE HAS BEEN GIVEN

SUPPLEMENTARY AGENDA

QUESTIONS WITHOUT NOTICE

AGENDA AND SUMMARY OF RECOMMENDATIONS

PRESENT

NATIONAL ANTHEM

OPENING PRAYER/S

ACKNOWLEDGEMENT OF RELIGIOUS DIVERSITY

Statement by the Chairperson

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

ABORIGINAL RECOGNITION

Statement by the Chairperson:

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

AUDIO RECORDING OF COUNCIL MEETING

Statement by the Chairperson:

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

APOLOGIES

DECLARATIONS OF INTEREST

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

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

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

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

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

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

OR

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

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

POLITICAL DONATIONS DISCLOSURE

Statement by the Chairperson:

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

CONFIRMATION OF MINUTES

THAT the Minutes of the Planning Meeting held on 7 October, 2009 be confirmed; a copy having been distributed to all Councillors.

PETITIONS

MAYORAL MINUTES

NOTICES OF MOTION

RESCISSION MOTIONS

MATTERS OF URGENCY

ITEMS PASSED BY EXCEPTION / CALL FOR SPEAKERS ON AGENDA ITEMS

Note:

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

DEVELOPMENT APPLICATIONS

A WARD DEFERRED

A WARD

Page Number 1

- Item 1 PLN76/09 DEVELOPMENT APPLICATION - CONSTRUCTION OF AN
INDOOR SWIMMING POOL
312 GALSTON ROAD, GALSTON.**

RECOMMENDATION

THAT Development Application No. 1114/2009 for the construction of an indoor swimming pool at Lot 3, DP 255997, No. 312 Galston Road, Galston be approved subject to the conditions of consent detailed in Schedule 1 of this report.

Page Number 12

- Item 2 PLN81/09 DEVELOPMENT APPLICATION - RURAL SUBDIVISION -
ONE LOT INTO TWO
30 PEBBLES ROAD, FIDDLETOWN**

RECOMMENDATION

THAT Council seek the concurrence of the Director-General of the Department of Planning for approval of Development Application No. DA/914/2009 for the subdivision of one rural lot into two at lot 3 DP 551290 (No. 30) Pebbles Road, Fiddletown 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.

Page Number 28

- Item 3 PLN82/09 DEVELOPMENT APPLICATION - ERECTION OF A
DWELLING-HOUSE
146 GALSTON ROAD, HORNSBY HEIGHTS**

RECOMMENDATION

THAT Development Application No. 1149/2009 for the erection of a dwelling-house at proposed Lot 102 within Lot 100, DP 1130236, No. 146 Galston Road, Hornsby Heights be approved as a deferred commencement consent subject to conditions of consent detailed in Schedule 1 of this report.

Page Number 36

- Item 4 PLN83/09 DEVELOPMENT APPLICATION - ALTERATIONS AND ADDITIONS
78A SOMERVILLE ROAD, HORNSBY HEIGHTS**

RECOMMENDATION

THAT Development Application No. 1232/2009 for the erection of alterations and additions to a garage at Lot 12, DP 1137290, No. 78A Somerville Road, Hornsby Heights be approved subject to the conditions of consent detailed in Schedule 1 of this report.

Page Number 43

- Item 5 PLN87/09 DEVELOPMENT APPLICATION - DEMOLITION OF A GARAGE AND SUBDIVISION OF ONE LOT INTO TWO
20 WARRUGA CRESCENT BEROWRA HEIGHTS**

RECOMMENDATION

THAT Development Application No. 616/2009 for the demolition of a garage and the subdivision of one allotment into two at Lot 2 DP 553883 (No. 20) Warruga Crescent Berowra Heights be approved subject to the conditions of consent detailed in Schedule 1 of this report.

B WARD DEFERRED**B WARD****Page Number 65**

- Item 6 PLN80/09 DEVELOPMENT APPLICATION - SECTION 82A REVIEW - MIXED USE DEVELOPMENT
42 DENMAN PARADE NORMANHURST**

RECOMMENDATION

THAT Council adheres to its decision to refuse Development Application No. 532/2009 for the demolition of an existing building and construction of a residential unit at Lot 2B DP 365028 (No. 42) Denman Parade Normanhurst, for the reasons of refusal detailed in Schedule 1 of this report.

C WARD DEFERRED**C WARD****Page Number 77**

- Item 7 PLN72/09 DEVELOPMENT APPLICATION - TWO LOT SUBDIVISION - DEMOLITION
77 HANNAH STREET BEECROFT**

RECOMMENDATION

THAT Development Application No. 897/2009 for the demolition of an existing dwelling and garage and the Torrens title subdivision of one lot into two lots at Lot 1 DP 231939, No. 77 Hannah Street Beecroft be approved subject to the conditions of consent detailed in Schedule 1 of this report.

GENERAL BUSINESS**Page Number 98****Item 8 **PLN85/09 REPORTING VARIATIONS TO DEVELOPMENT STANDARDS****

THAT Council note the contents of Executive Manager's Report No. PLN85/09.

Page Number 100**Item 9 **PLN86/09 HERITAGE FESTIVAL 2010****

THAT:

1. Council endorse the program of events and budget for the Heritage Festival 2010 as outlined in Executive Manager's Report No. PLN86/09.
2. Council delegate the judging of the Heritage Awards 2010 to Council's Heritage Advisory Committee to enable the timely exhibition of entries during the Heritage Festival and the presentation of awards at the Planning Meeting on 5 May 2010.
3. Council endorse the photograph of the Hawkesbury River Rail Bridge, Brooklyn attached to Executive Manager's Report No. PLN86/09 to be used on the postcard to advertise the Heritage Festival 2010.

Page Number 106**Item 10 **PLN89/09 ANNUAL AMENDMENTS PLANNING PROPOSAL AND DEVELOPMENT CONTROL PLAN AMENDMENTS****

THAT:

1. Council endorse progression of the Planning Proposal attached to Executive Manager's Report No. PLN89/09 to:
 - 1.1 rezone and permit strata subdivision at property No. 218 Brooklyn Road, Brooklyn;
 - 1.2 update the listing of heritage items in accordance with the recommendations of *Heritage Review State 4* and *East Epping Heritage Review*; and

-
- 1.3 implement the recommendations of the *Hornsby West Side Conservation Area Review*.
 2. Council forward the Planning Proposal to the Minister of Planning seeking “approval” to progress the preparation of the draft LEP in accordance with Section 56(1) of the *Environmental and Planning Assessment Act 1979*.
 3. Should the Minister determine under Section 56(2) of the *Environmental Planning and Assessment Act, 1979*, that the matter may proceed without significant amendment to the Proposal, Council publicly exhibit the Planning Proposal in accordance with the Minister’s determination.
 4. The draft amendments to the *Heritage, Dwelling-House, Residential Subdivision, Low Density Multi-Unit Housing, Medium Density Multi-Unit Housing, Medium/High Density Multi-Unit Housing, Dural Village Centre, River Settlements, Rural Lands and Extractive Industries Development Control Plans* as outlined in Executive Manager’s Report No. PLN89/09, be exhibited for 28 days with the exhibition of the Planning Proposal.
 5. Following the exhibition, a report on submissions be presented to Council.

Page Number 116**Item 11 PLN91/09 WATERWAYS REVIEW PLANNING PROPOSAL**

THAT:

1. Council endorse progression of the Planning Proposal attached to Executive Manager’s Report No. PLN91/09 to:
 - 1.1 zone the waterways of Hornsby Shire to accord with the physical and environmental constraints of the area;
 - 1.2 amend the provisions of clause 11 of the Hornsby Shire Local Environmental Plan 1994 (Development Near Zone Boundaries) to not apply to the proposed W1 Natural Waterways, W2 Recreational Waterways, Environmental Protection A (Wetlands) or National Parks and Nature Reserves zones, where they adjoin land;
 - 1.3 prohibit reclamation in all waterways zones;
 - 1.4 specify that dredging that requires consent is designated development; and
 - 1.5 introduce various definitions within the *Hornsby Shire Local Environmental Plan 1994* to accord with the proposed zonings and other draft LEP provisions.
2. The balance of the recommendations of the *Waterways Reviews* that cannot be implemented as an amending Local Environmental Plan be implemented when Council prepares its new Comprehensive Local Environmental Plan.

3. Pursuant to Section 56(1) of the *Environmental Planning and Assessment Act, 1979*, Council forward the Planning Proposal to the Minister of Planning seeking “gateway” determination to progress the preparation of the draft Local Environmental Plan.
4. Should the Minister determine under Section 56(2) of the *Environmental Planning and Assessment Act, 1979* that the matter may proceed without significant amendment to the Proposal, Council publicly exhibit the Planning Proposal in accordance with the Minister’s determination.
5. Following the exhibition, a report on submissions be presented to Council.

GENERAL BUSINESS

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

QUESTIONS OF WHICH NOTICE HAS BEEN GIVEN

SUPPLEMENTARY AGENDA

QUESTIONS WITHOUT NOTICE

**1 DEVELOPMENT APPLICATION - CONSTRUCTION OF AN INDOOR SWIMMING POOL
312 GALSTON ROAD, GALSTON.**

Development Application No:	DA/1114/2009
Description of Proposal:	Construction of an indoor swimming pool
Property Description:	Lot 3, DP 255997, No. 312 Galston Road, Galston
Applicant:	Mr R J Ball
Owner:	Mr R J Ball and Mrs J P Ball
Statutory Provisions:	Hornsby Shire Local Environmental Plan, 1994 Rural BA (Small Holdings – Agricultural Landscapes)
Estimated Value:	\$98,500
Ward:	A

RECOMMENDATION

THAT Development Application No. 1114/2009 for the construction of an indoor swimming pool at Lot 3, DP 255997, No. 312 Galston Road, Galston be approved subject to the conditions of consent detailed in Schedule 1 of this report.

EXECUTIVE SUMMARY

1. The application proposes the construction of an indoor swimming pool attached to the existing dwelling-house.
2. The proposal generally complies with the Hornsby Shire Local Environmental Plan, 1994 and Council’s Rural Lands Development Control Plan (DCP).
3. The application is a minor development that is being referred to Council for determination as the applicant is a member of Council’s staff, who is a ‘Designated Person’.
4. No submissions have been received in respect of the application.
5. It is recommended that the application be approved.

THE SITE

The irregular shaped site is located on the northern side of Galston Road, near the intersection with Crosslands Road. The site has an area of 2,000m² with a splayed front boundary width of 47.54m and a rear boundary width of 93.10m. The western boundary is 191.60m in length and the eastern boundary is 231.60m in length.

The site has a 5% cross fall from the front, south-west corner to the rear, north eastern corner and is orientated towards the south east.

Existing improvements comprise a single storey, brick and tile dwelling-house with a double garage at sub-floor level. An above-ground swimming pool stands within a fenced enclosure adjacent to the southern side of the dwelling-house. The front and rear yard areas are landscaped lawn, shrubs and tree plantings and a sealed driveway provides vehicle access to the street.

Surrounding development is characterised by similar scale, one and two storey dwelling-houses, surrounded by well established landscaped areas, rural structures, market gardens and orchards typical of the rural parts of Galston. The Rowland Retirement Village is opposite the entrance to the subject site.

The site is not within a bushfire prone zone.

THE PROPOSAL

The application proposes the construction of an indoor swimming pool attached to the southern end of the dwelling-house, finished with materials and in a style that is consistent with the existing exterior. The room would have wall lengths of 16.6m x 7.5m and would be approximately the same height as the existing building. Below ground rainwater storage tanks, totalling 10,000 litres is also proposed.

The room would incorporate a reinforced concrete swimming pool of approximately 60,000 litre capacity. The development would involve the removal of the nearby above-ground swimming pool and five non significant trees and shrubs.

PROBITY APPLICATION

The development involves land owned by a 'Designated Person' and his spouse. Pursuant to '*Planning Division Practice Note No. 7 - Assessment Practice*' the application was assessed by Council Officers as it is a development that involves '*non-controversial small scale development*'.

ASSESSMENT

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

1. STRATEGIC CONTEXT

1.1 Metropolitan Strategy – (Draft) North Subregional Strategy

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

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

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

The proposed development would not be inconsistent with the draft Strategy.

2. STATUTORY CONTROLS

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

2.1 Hornsby Shire Local Environmental Plan, 1994

The subject land is zoned Rural BA (Small Holdings – Agricultural Landscapes) under Hornsby Shire Local Environmental Plan, 1994 (HSLEP). The objectives of the zone are:

- to restrain population growth, maintain the rural character of the area and ensure that existing or potentially productive agricultural land is preserved.*
- to promote agricultural use of land and provide for a range of compatible land uses which maintain the agricultural and rural environment of the area.*
- to ensure development is carried out in a manner that improves the environmental qualities, and is within the servicing capacity, of the area.*

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

2.2 Rural Lands Development Control Plan

The proposed development has been assessed having regard to the relevant element objectives, performance criteria and prescriptive measures within Council's Rural Lands DCP as follows:

2.2.1 Setbacks

The proposed setbacks comply with the 15m prescriptive measure within the DCP and would have minimal visual and environmental impacts.

2.2.2 Dwelling Design

The proposed design themes and materials selected for the addition are consistent with the existing dwelling-house. The development is compatible with the built form character of the surrounding rural area and is considered acceptable.

2.2.3 Soil and Water Management

Sediment and erosion control measures would be appropriately positioned on the site and materials and waste would be stockpiled to minimise environmental impacts during the construction phase. With these measures in place, the proposal would not have any detrimental environmental impacts and is considered acceptable.

2.2.4 Effluent Disposal

The septic tanks and effluent treatment trenches that serve the dwelling-house are sited within the north-east corner of the site, no closer than 20m from the proposed development. The contours of the site are such that any stormwater runoff from the development or backwash water from the pool's filtration system would drain well clear of the waste treatment areas.

The proposal would have no detrimental impacts on the environment and public health and would not cause unhealthy or insanitary conditions.

2.2.5 Flora and Fauna Protection

The proposal would require the removal of five trees including a Liquidambar and two palm trees growing in the vicinity of the existing above ground pool. None of these trees are local, indigenous species and their removal would have no detrimental environmental impacts.

2.2.6 Visual Amenity

The design of the proposed development is consistent with the existing dwelling-house and its height and location would have no impacts on the rural views currently enjoyed from adjacent properties.

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 necessitate the removal of five trees from the site. It is considered that the removal of these trees is acceptable in the circumstances of the case, as none of them are significant or local indigenous species.

3.2 Built Environment

Given the 180m front boundary setback and the established trees and landscaping in the front yard area, the proposed development would not be visible from the street.

The design has attempted to minimise any visual impacts when viewed from adjacent premises by proposing materials and architectural details that are in keeping with the existing dwelling-house.

3.3 Social and Economic Impacts

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

4. SITE SUITABILITY

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

The site is not constrained by flooding, bushfire, landslip, threatened species or a natural watercourse and considered suitable for the proposed development.

5. PUBLIC PARTICIPATION



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

5.1 Community Consultation

The proposed development was placed on public exhibition and was notified to adjoining and nearby landowners between 8 September and 22 September 2009, in accordance with Council’s Notification and Exhibition DCP. No submissions were received by Council during this period. The map below illustrates the location of those nearby landowners who were notified of the proposal.



NOTIFICATION PLAN

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

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

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

The application is considered to have satisfactorily addressed Council’s planning criteria and would provide a development outcome that, on balance, would not affect the public interest. Accordingly, it is considered that approval of the proposed swimming pool within an enclosing room attached to the dwelling-house would not be inconsistent with public interest.

CONCLUSION

The application proposes the construction of an indoor swimming pool attached to the existing dwelling-house. The design of the addition would be in keeping with the existing structure and similar development in the area.

The development meets the objectives of Council’s Rural Lands DCP and is in accordance with the objectives of the rural zoning stipulated in the HSLEP. It is considered that the development would have a positive impact upon the rural landscape and would be in keeping with the built form of the area.

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

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

SIMON EVANS
Manager - Assessment Team 1
Planning Division

SCOTT PHILLIPS
Executive Manager
Planning Division

Attachments:

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

File Reference: DA/1114/2009
Document Number: D01241928

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

The conditions of consent within this notice of determination have been applied to ensure that the use of the land and/or building is carried out in such a manner that is consistent with the aims and objectives of the relevant legislation, planning instruments and Council policies affecting the land and does not disrupt the amenity of the neighbourhood or impact upon the environment.

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

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

1. Approved Plans and Supporting Documentation

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

<i>Plan No.</i>	<i>Drawn by</i>	<i>Dated</i>
1 of 3 to 3 of 3	Absolute Architectural	24.08.09

2. Removal of Existing Trees

This consent only permits the removal of the 5 trees in the immediate vicinity of the development. The removal of any other trees requires separate approval under Council's Tree Preservation Order.

REQUIREMENTS PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE**3. Building Code of Australia**

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

4. Contract of Insurance (Residential Building Work)

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

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

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

5. Notification of Home Building Act, 1989 Requirements

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

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

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

REQUIREMENTS PRIOR TO THE COMMENCEMENT OF ANY WORKS

6. Erection of Construction Sign

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

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

7. Erosion and Sediment Control

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

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

REQUIREMENTS DURING CONSTRUCTION

8. 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.

OPERATIONAL CONDITIONS

9. Swimming Pool Requirements

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

- a. As *Sydney Water's* sewer system is not provided to the site, a pool water filtration system that does not require backwashing must be provided. Alternatively, all waste water from the pool's filtration equipment must be piped to discharge to the disposal system that serves the existing above-ground pool.
- b. The filtration motor and pump, or spa heater and blower unit must be housed in a soundproofed structure. Sound from the equipment must not exceed 5(dBA) above ambient noise levels at any property boundary.
- c. The applicant must participate in the 'Static Water Supply Project' initiative of the NSW Fire Brigades and make available the water in the swimming pool for use as a static water supply for fire fighting purposes by the NSW Fire Brigades or the NSW Rural Fire Service.

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

- END OF CONDITIONS -

ADVISORY NOTES

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

Environmental Planning and Assessment Act, 1979 Requirements

- The Environmental Planning and Assessment Act, 1979 requires:
- 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; and
- An occupation certificate to be issued before occupying any building or commencing the use of the land.

Long Service Levy

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

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

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

Tree Preservation Order

To ensure the maintenance and protection of the existing natural environment, it is an offence to ringbark, cut down, top, lop, remove, wilfully injure or destroy a tree outside 3m of the approved building envelope without the prior written consent from Council.

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

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

Dial Before You Dig

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

Asbestos Warning

Should asbestos or asbestos products be encountered during 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.

**2 DEVELOPMENT APPLICATION - RURAL SUBDIVISION - ONE LOT INTO TWO
30 PEBBLES ROAD, FIDDLETOWN**

Development Application No:	DA/914/2009
Description of Proposal:	Subdivision of one lot into two.
Property Description:	Lot 3 DP 551290 (No. 30) Pebbles Road, Fiddletown
Applicant:	Carolyn Stubbs
Owner:	Mrs C L Stubbs
Statutory Provisions:	Hornsby Shire Local Environmental Plan 1994 Rural AA (Large Holdings – Agricultural Landscapes) / Environmental Protection B (River Catchments)
Estimated Value:	Nil
Ward:	A

RECOMMENDATION

THAT Council seek the concurrence of the Director-General of the Department of Planning for approval of Development Application No. DA/914/2009 for the subdivision of one rural lot into two at lot 3 DP 551290 (No. 30) Pebbles Road, Fiddletown 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 the subdivision of one rural lot into two lots.
 2. The proposal does not comply with the minimum rural lot size pursuant to Clause 14 of Hornsby Shire Local Environmental Plan. The submitted objection to the minimum lot size development standard is well founded with regard to State Environmental Planning Policy No. 1 – Development Standards.
 4. A joint submission has been received in support of the application.
 5. It is recommended that the application be referred to the Director-General of the Department of Planning for approval.
-

THE SITE

The site comprises a rural holding of 5.47 hectares and occupies a section of a low ridge (Fagan Ridge) that extends from Arcadia to Marramarra National Park. The site has frontage to both sides of Peebles Road which traverses north south through the site. The site is generally uniform in shape. Peebles Road divides the site into a 1.67 hectare parcel on the western side and a 3.8 hectare parcel on the eastern side of the road. The western side includes an existing dwelling house, metal sheds and a dam. The eastern side includes a metal shed and three dams. The previous use of the site for poultry farming has been discontinued.

The majority of the site is cleared with remnant bushland along the western and eastern side boundaries. The eastern part of the site drains to Fiddletown Creek and the western part drains to Coolah Creek, which flow to Marramura Creek and the Hawkesbury River.

The site is within a bushfire prone area. Approximately 0.46 hectares of the site is within an environment protection zone, the remainder is within a rural zone.

The locality is characterised by similar sized farm holdings along Peebles Road and Fagan Ridge, north of Northholm Grammar School. The farm holdings are generally bordered by large tracts of crown land comprising bushland. However, the subject allotment is the only similarly sized allotment in the locality that is physically divided by a public road.

THE PROPOSAL

The proposal is for the subdivision of one lot into two lots with each lot having frontage to either side of Peebles Road, which forms the boundary frontage of the proposed lots.

Proposed lot 31 has an area of 1.67 hectares, has frontage to the western side of Peebles Road and includes the existing dwelling house.

Proposed lot 32 has an area of 3.8 hectares, has frontage to the eastern side of Peebles Road and is the site of the indicative building envelope for a future dwelling. Approximately 0.46 hectares of the proposed lot is within the Environment Protection B zone. The proposal includes an 840m² area site for a future dwelling house. It is the applicant's intention to establish an animal training establishment for horses on the proposed lot, subject to Council's separate approval.

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 involves the subdivision of rural land and is generally outside the scope of the draft Strategy.

2. STATUTORY CONTROLS

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

2.1 Hornsby Shire Local Environmental Plan 1994

The subject land is partly zoned Rural AA (Large Holdings – Agricultural Landscapes) Zone and partly zoned Environment Protection B (River Catchment) Zone under Hornsby Shire Local Environmental Plan 1994 (HSLEP).

The objectives of the Rural AA zone are:

- to restrain population growth, maintain the rural character of the area and ensure that existing or potentially productive agricultural land is preserved in large land holdings.*
- to promote agricultural use of land and provide for a range of compatible land uses which maintain the agricultural and rural environment of the area.*
- to ensure development is carried out in a manner that improves the environmental qualities, and is within the servicing capacity, of the area.*

The objectives of the Environment Protection B zone are:

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

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

Clause 14 of the HSLEP prescribes that the minimum area per allotment within the Rural AA zone is 10 hectares and within the Environment Protection B zone is 40 hectares. The existing allotment and the proposed subdivision do not comply with the minimum lot area

requirements. In this regard the application is the subject of an objection pursuant to State Environmental Planning Policy No. 1 – Development Standards.

Clause 18 of the HSLEP sets out heritage conservation provisions within the Hornsby area. The subject site is not an item of environmental heritage and the proposal is not subject to a heritage assessment.

2.2 State Environmental Planning Policy No. 1 – Development Standards (SEPP 1)

The applicant submitted an objection against Council's adherence to the minimum 10 hectare lot size development standard under Clause 14 of the HSLEP. The existing lot area is 5.47 hectares including 0.46 hectares within the Environment Protection B zone. The two proposed lots are 1.67 hectares and 3.8 hectares respectively.

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 point test and the objectives of the Rural AA zone and Environment Protection B zone.

In summary the applicant submits that:-

1. *The objectives of the 10 hectare and 40 hectare subdivision development standards have been achieved as outlined in Sections 6, 7 and 8 of this SEPP 1 Objection, i.e.:-*

- *The proposal meets with the objectives of the zoning as the proposed lots are consistent with the existing lot sizes within 1 km of the site, having an average lot size of 3.75 ha.*
 - *The proposed lots are suitable for a range of rural activities including raising horses, animal boarding, bed and breakfast establishments, ecotourism, flower growing and intensive horticulture.*
 - *The proposed subdivision does not fragment the existing bushland and the site's Environment Protection B zoned land.*
2. *The subject subdivision development standards have reduced relevancy because only a small number of existing allotments in the locality have complying lot sizes or have areas proximate to the Rural AA Zone 10 hectare subdivision standard.*

The underlying objective of maintaining low development density should therefore be considered in the context of the prevailing density of approximately 1 dwelling per 4 hectares rather than the much lower density of 1 dwelling per 10 hectares. The proposed subdivision achieves reasonable consistency with the prevailing density and results in a minimal increase in overall development density within the locality and no noticeable change to the small farm character of the locality.

3. *The circumstances of the case are unique in that there are few rural holdings in Hornsby Shire that remain split by a formed public road. As detailed in Section 6, the proposal will not create a precedent to the extent that it would defeat or thwart the object or purpose of the identified subdivision development standards, i.e.:-*
- *The 10 ha minimum lot size is not recognised by the existing subdivision pattern along Peebles Road.*
 - *The proposal maintains the linear small farm rural character of the area.*
 - *The proposal is consistent with circumstances subject of an appeal upheld in the Land and Environment Court, 'Rein Warry and Company v Wollondilly Shire Council (2008) NSWLEC 1176 (12 May 2008)', involving subdivision of a rural parcel bisected by a public road.*
4. *It is our understanding that Council has consistently applied the subdivision development standards since the gazettal of HSLEP and that the approved variations to this standard have been relatively rare. It should be noted that most subdivision approvals to remove splitting of rural properties by formed public roads were approved prior to the 1994 gazettal of HSLEP.*
5. *This test is not applicable as the zoning of the land is not unreasonable or inappropriate. Given that the great majority of land holdings in the Peebles Road locality and in some other rural localities in Hornsby Shire, have areas significantly less than the 10 hectare minimum lot area that applies in the Rural AA zone, there is an argument that an additional rural zone with a minimum lot size more reflective of prevailing lot size is warranted.*

The SEPP 1 objection is considered to be well founded and is supported with regard to;

- (a) the existing land parcel is physically divided by a public road,
- (b) the resulting lot areas are not inconsistent with the size and character of lots in the locality,
- (c) the proposal maintains the linear pattern of rural development along Pebbles Road, and
- (d) the proposal would not result in a precedent given the unique circumstances of the case (refer also to Section 2.6.1).

The approval of the Director-General of the Department of Planning is required for the proposed subdivision in accordance with *Planning Circular PS 08-003* concerning variation to development standards.

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

The Policy provides for the remediation of contaminated land to reduce risks to human health and the environment and includes provision for identifying potentially contaminated land and standards for remediation.

The applicant submitted a Preliminary Contamination Assessment prepared by Geotechnique Pty Ltd in accordance with the Policy. The assessment involved the proposed indicative area for a future dwelling comprising an area of approximately 840m² within proposed lot 32. The assessment determined the area suitable for future residential use. The area included a higher concentration of zinc, due to corrosion of galvanised iron sheds and tanks on the site, which may impact on plant growth but would not present a risk to human health. Accordingly, it is considered prudent that further testing of this area be undertaken for possible remediation.

A condition is recommended for the implementation of the report recommendation to remediate the zinc concentration prior to Council issuing a subdivision certificate.

2.4 Rural Fires Act 1997

The site is within a bushfire prone area. The development application for subdivision forms 'integrated development' and was referred to the NSW Rural Fire Service (RFS) for assessment in accordance with *Planning For Bushfire Protection NSW 2006* guidelines.

The RFS raised no objection to the proposal subject to recommended conditions.

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

The Plan regulates impacts of future land uses on the River through implementation of planning policies and strategies for total catchment management, environmentally sensitive areas, water quality, water quantity, cultural heritage, flora and fauna, riverine scenic quality, agriculture/aquaculture and fishing, rural residential development, urban development, recreation and tourism.

Clause 11 of the Plan includes development controls for intensive horticultural establishments and intensive animal industries including horse training and boarding

establishments. The proposed future use of lot 32 for an animal training establishment for horses would be the subject of a separate development application, irrespective of whether this application is approved.

The proposed subdivision would not adversely impact on the river or the catchment.

2.6 Rural Lands Development Control Plan

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

Rural Lands Development Control Plan			
Control	Proposal	Requirement	Compliance
Lot size	Lot 31 – 1.67 ha Lot 32 – 3.8 ha	10 ha	No
Setbacks	Lot 32 – Front 15m Side 20m	15m Front & all boundaries	Yes

The proposed development does not comply with the minimum lot area prescriptive standard within Council's DCP. The matters of non-compliance, as well as a brief discussion on compliance with relevant performance standards are discussed as follows.

2.6.1 Subdivision

The existing land parcel and a majority of the surrounding properties with the Rural AA zone do not comply with the prescribed minimum 10 hectare lot size. The proposed subdivision would not detract from the pattern of rural development along Pebbles Road and meets the DCP subdivision performance criteria, i.e.:

- *The density of allotments should retain the rural character of the area and avoid elements of an urban nature.*
- *Lots sizes should be compatible with the character of the surrounding area.*

The proposed subdivision is consistent with the rural holdings in the locality and maintains the pattern of rural development along Pebbles Road. The rural land uses in the locality include horse keeping, orchards, poultry farming including ducks, small scale livestock and flower growing. The proposed subdivision would provide for similar rural activities.

As noted in Section 2.2 of this report, the proposed subdivision is unique to the existing parcel being split by a public road. In this regard an existing parcel north of the site (lot 1 DP 406980) is similarly split, however subdivision would result in a relatively small area (approx 6,000m²) and would on merit be inconsistent with the subject proposal.

2.6.2 Agriculture

The existing land parcel is effectively divided by Peebles Road which compromises safety for movement of stock and operation for rural enterprises. The proposed subdivision would assist in promoting a more viable use of the respective lots and is consistent with the DCP agriculture performance criteria, i.e.:

- *The use of land should conserve the potential for the agricultural use of the land.*

2.6.3 Setbacks

The indicative site area for a future dwelling on proposed lot 32 is setback 15m from Peebles Road and 20m from the northern side boundary. The proposed setbacks comply with the DCP setback prescriptive measures and performance criteria.

2.6.4 Drainage Control

The site occupies a ridge and drains to on-site dams, minimising runoff impacts on the two neighbouring creeks. The applicant submitted an on-site waste management report concerning site capability for effluent disposal. Subject to the report recommendations a future dwelling on lot 32 would not adversely impact on downstream water quality.

The proposed subdivision meets the drainage control performance criteria, i.e.:

- *Drainage from development sites should be consistent with the pre-development stormwater patterns.*

2.6.5 Fences and Gates

The proposed subdivision does not alter the existing boundary fencing and would not warrant the requirement for new fencing.

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 subdivision does not involve the removal of any existing trees or native vegetation and maintains the existing lot boundaries and the physical characteristics of the site. The bushland areas of the site are within the Environment Protection B (River Catchment) Zone.

The existing dams on the site provide a buffer between the agricultural areas and the bushland areas of the proposed lots.

It is considered the proposed subdivision would not adversely impact on the bushland areas of the site.

3.2 Built Environment

The existing dwelling house on proposed lot 31 and the existing shed building on proposed lot 32 are retained by the proposal.

The indicative site for a future dwelling on proposed lot 32 would maintain an appropriate separation with the neighbouring dwelling and the rural character of the locality. The planning merits of any dwelling on that allotment would be assessed under a separate development application.

3.3 Social Impacts

The proposal would involve minimal population increase and maintain the rural character of the locality.

3.4 Economic Impacts

The proposed lots would remain viable for a range of agricultural pursuits given the close proximity to the Sydney market.

4. SITE SUITABILITY

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

4.1 Bushfire Risk

The land is identified as being subject to bushfire risk. The NSW Rural Fire Service considered the proposed subdivision and raised no objection to the proposal subject to recommended conditions.

4.2 Land Contamination

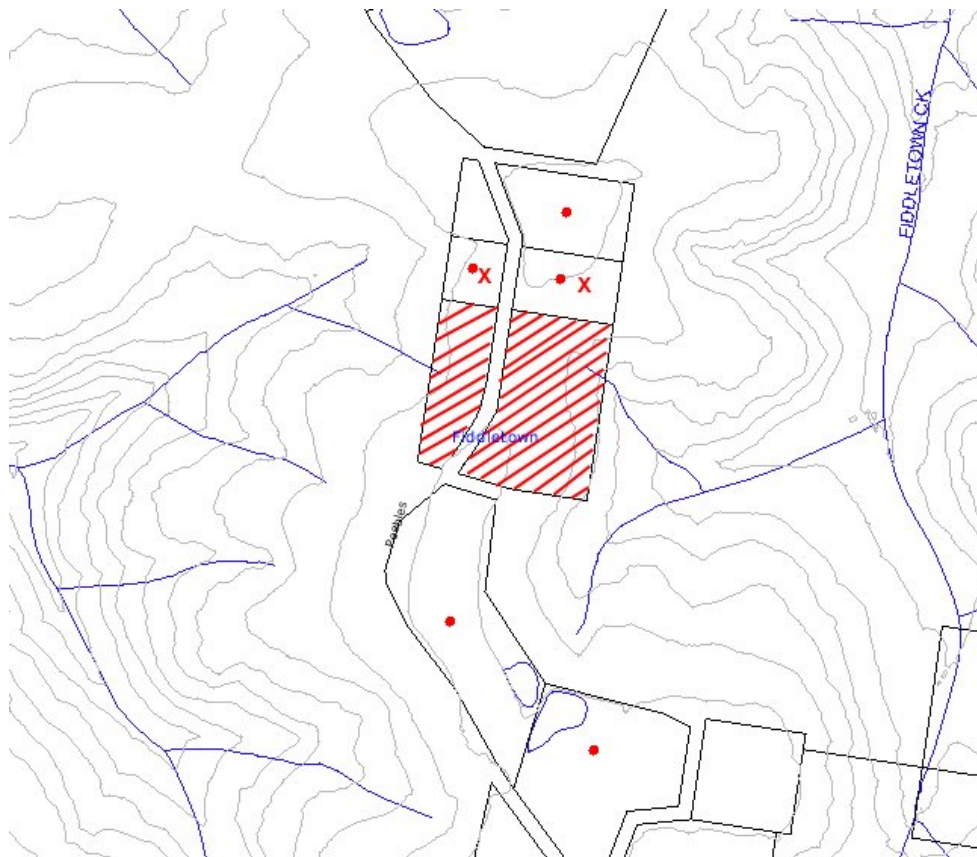
The site’s land use history includes poultry farming and market gardening. A preliminary contamination assessment prepared in accordance with the requirements of SEPP 55, determined the proposed site of a future dwelling is suitable for residential use.

5. PUBLIC PARTICIPATION



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

5.1 Community Consultation

The proposed development was placed on public exhibition and was notified to adjoining and nearby landowners between 18 August and 8 September 2009 in accordance with Council’s Notification and Exhibition Development Control Plan. During this period, Council received one submission on behalf of two neighbours. The map below illustrates the location of those nearby landowners who made a submission that are in close proximity to the development site.



NOTIFICATION PLAN

<ul style="list-style-type: none"> • PROPERTIES NOTIFIED 	X SUBMISSIONS RECEIVED	 PROPERTY SUBJECT OF DEVELOPMENT	
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A submission on behalf of two adjoining residents supported the application with regard to a similar earlier subdivision resulting in the creation of their own properties in 1974.

5.2 Public Agencies

The development application is Integrated Development under the Act in requiring the approval of the NSW Rural Fire Service. The RFS raised no objection to the proposal subject to recommended conditions.

6. THE PUBLIC INTEREST

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

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

The application is considered to have satisfactorily addressed Council’s and relevant agencies’ criteria and would provide a development outcome that, on balance, would result in

a positive impact for the community. Accordingly, it is considered that the approval of the proposed rural subdivision would be in the public interest.

CONCLUSION

Consent is sought to subdivide an existing rural allotment which is physically divided by a public road.

The proposed subdivision is considered satisfactory in maintaining the rural character of the locality, notwithstanding the minimum lot size applicable for the subject Rural AA zone. The majority of allotments in the Pebbles Road locality are less than the minimum 10 hectare development standard.

The submitted SEPP 1 objection to the standard is considered well founded in accordance with the planning principles established by the Land and Environment Court. The circumstances of the application are considered to be unique with the existing parcel being split by Pebbles Road and would not establish an undesirable precedent for smaller rural lot subdivision.

The proposed subdivision is considered acceptable with regard the provisions of the relevant environmental planning instruments applicable to the rural site, the Rural Lands DCP and the requirements of the NSW Rural Fire Service.

The application is supported in the public submissions and is recommended for approval.

ROD PICKLES
Manager - Assessment Team 2
Planning Division

PAUL DAVID
Manager - Subdivision & Development
Engineering Services
Planning Division

SCOTT PHILLIPS
Executive Manager
Planning Division

Attachments:

1. Locality Plan
2. Site Plan
3. Subdivision Plan
4. Cadastral Plan - Pebbles Road

File Reference: DA/914/2009
Document Number: D01253070

SCHEDULE 1

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. A further Preliminary Contamination Assessment (to report dated 19 February 2009) must be submitted for the remaining cleared area of proposed lot 32, in accordance with requirements of the NSW Environment Protection Authority *Contaminated Sites – Guidelines for Reporting on Contaminated Sites* and *Contaminated Sites Sampling Design Guidelines*.

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:

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 relevant legislation, planning instruments and Council policies affecting the land and does not disrupt the amenity of the neighbourhood or impact upon the environment.

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

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

2. Approved Plans and Supporting Documentation

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

<i>Plan No.</i>	<i>Drawn by</i>	<i>Dated</i>
Ref: 0604-2	G. J. Atkins & Associates	4 February 2009
Ref: 0604-3-REV B	G. J. Atkins & Associates	23 February 2009

<i>Document No.</i>	<i>Prepared by</i>	<i>Dated</i>
D01217899	Geotechnique Pty Ltd	19 February 2009

REQUIREMENTS PRIOR TO THE ISSUE OF A SUBDIVISION 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.

3. Water/Electricity Utility Services

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

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

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

4. Sydney Water – s73 Certificate

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

5. Site Remediation

- a. The site contamination identified in the Preliminary Contamination Assessment must be remediated in accordance with the recommendation of Geotechnique Pty Ltd report dated 19 February 2009 and certification of the remediation submitted to Council.
- b. The recommendations of the further Preliminary Contamination Assessment required under condition No. 1 of this consent must be implemented and certification of remediation as required submitted to Council.

6. s94 Infrastructure Contributions

The payment to Council of a contribution of \$19,263.30* for one additional lot towards the cost of infrastructure identified in Council's Development Contributions Plan 2007-2011.

*Note: * The value of contribution is based on a rate of \$19,263.30 per additional lot and is current as at 14 October 2009. The contribution will be adjusted from this date in accordance with the underlying consumer price index for subsequent financial quarters.*

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

OPERATIONAL CONDITIONS**7. Presence of Soil Contamination**

Council and the PCA must be notified immediately should the presence of asbestos or soil contamination, not recognised during the original assessment process be identified during demolition or construction works.

8. Future Dwelling Site

Any future dwelling on proposed lot 32 must be situated within the area identified on plan Ref: 0604-3-REV B prepared by G. J. Atkins & Associates.

GENERAL TERMS OF APPROVAL – NSW RURAL FIRE SERVICE

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

9. General Condition

The development proposal is to comply with the subdivision layout identified on the drawing prepared by G. J. Atkins & Associates Pty Ltd numbered 0604-2, dated 4 February 2009.

10. Asset Protection Zones

The intent of measures is to provide sufficient space and maintain reduced fuel loads so as to ensure radiant heat levels of buildings are below critical limits and to prevent direct flame contact with a building.

At the issue of subdivision certificate and in perpetuity, the land surrounding the existing dwelling on proposed lot 31, to a distance of 20 metres, or to the property boundary, shall be maintained as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones'.

11. Access

The intent of measures for property access is to provide safe access to/from the public road system for fire fighters providing property protection during a bush fire and for occupants faced with evacuation.

Property access roads shall comply with section 4.1.3 (2) of 'Planning for Bush Fire Protection 2006'.

12. Design and Construction

The intent of measures is that buildings are designed and constructed to withstand the potential impacts of bush fire attack.

The existing dwelling on proposed Lot 31 is required to be upgraded to improve ember protection. This is to be achieved by enclosing all openings (excluding roof tile

spaces) or covering openings with a non-corrosive metal screen. Where applicable, this includes any sub floor areas, openable windows, doors, vents, weepholes and eaves.

- END OF CONDITIONS -

ADVISORY NOTES

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

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.

Subdivision Certificate Requirements

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

- a. Certification that the requirements of relevant utility authorities have been met; and
- b. Certification that the requirements of the NSW Rural Fire Service have been met.

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

Fees and Charges – Subdivision

All fees payable to Council as part of any construction, compliance or subdivision certificate or inspection associated with the development (including the registration of privately issued certificates) are required to be paid in full prior to the issue of the subdivision certificate.

Any additional Council inspections beyond the scope of any compliance certificate required to verify compliance with the terms of this consent will be charged at the individual inspection rate nominated in Council's Fees and Charges Schedule.

Tree Preservation Order

To ensure the maintenance and protection of the existing natural environment, it is an offence to ringbark, cut down, top, lop, remove, wilfully injure or destroy a tree outside 3 metres of the approved building envelope without the prior written consent from Council.

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

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

Fines may be imposed for non-compliance with Council's *Tree Preservation Order*.

NSW Rural Fire Service

This approval is for the subdivision of the land only. Any further development application for class 1, 2 & 3 buildings as identified by the 'Building Code of Australia' must be subject to separate application under section 79BA of the EP & A Act and address the requirements of 'Planning for Bush Fire Protection 2006'.

**3 DEVELOPMENT APPLICATION - ERECTION OF A DWELLING-HOUSE
146 GALSTON ROAD, HORNSBY HEIGHTS**

Development Application No:	DA/1149/2009
Description of Proposal:	Erection of a dwelling-house
Property Description:	Proposed Lot 102 within Lot 100, DP 1130236, No. 146 Galston Road, Hornsby Heights
Applicant:	Mrs J P Ball
Owner:	Mrs J P Ball
Statutory Provisions:	Hornsby Shire Local Environmental Plan, 1994 Residential A (Low Density)
Estimated Value:	\$220,000
Ward:	A

RECOMMENDATION

THAT Development Application No. 1149/2009 for the erection of a dwelling-house at proposed Lot 102 within Lot 100, DP 1130236, No. 146 Galston Road, Hornsby Heights be approved as a deferred commencement consent subject to conditions of consent detailed in Schedule 1 of this report.

EXECUTIVE SUMMARY

1. The application proposes the erection of a single storey dwelling-house on an approved allotment that is yet to be registered.
 2. The development involves land owned by the spouse of a 'Designated Person'. As the proposal is not minor development, in accordance with Council's adopted Policy '*PSA1 Proposed Council Developments*' and '*Practice Note No. 7 Assessment Practice*', an independent assessment of the development application has been undertaken by Andrews Neil Urban Design Group.
 3. The proposal generally complies with the Hornsby Shire Local Environmental Plan, 1994 and Council's Dwelling House Development Control Plan (DCP).
 4. No submissions have been received in respect of the application.
-

5. It is recommended that Council consider the attached report prepared by Andrews Neil Urban Design Group and determine the application by approval.

ASSESSMENT

The development involves land owned by the spouse of a 'Designated Person'. As the proposal is not minor development, in accordance with Council's adopted policy '*PSAI Proposed Council Developments*' and '*Practice Note No. 7 Assessment Practice*', an independent assessment of the development application has been undertaken by Andrews Neil Urban Design Group, which is held at Attachment 6.

CONCLUSION

The application proposes the erection of a single storey dwelling-house in a contemporary style design.

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

It is recommended that Council approve the application in accordance with the recommended conditions of consent prepared by Andrews Neil Urban Design Group held at Schedule 1 of that report.

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

SIMON EVANS
Manager - Assessment Team 1
Planning Division

SCOTT PHILLIPS
Executive Manager
Planning Division

Attachments:

1. Locality Plan
2. Site Plan
3. Floor Plan
4. Elevations
5. Landscape Plan
6. Independent Development Assessment Report

File Reference: DA/1149/2009
Document Number: D01254960

SCHEDULE 1**CONDITIONS OF APPROVAL****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. A registered plan of subdivision from the *NSW Department of Lands* creating the proposed lot must be submitted to Council.”

Such information shall 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:

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 relevant legislation, planning instruments and Council policies affecting the land and does not disrupt the amenity of the neighbourhood or impact upon the environment.

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

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

2. Approved Plans and Supporting Documentation

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

<i>Plan No.</i>	<i>Drawn by</i>	<i>Dated</i>
Ball 1 of 3 to Ball 3 of 3	BB of Absolute Architectural P/L	07.09.09

<i>Document No.</i>	<i>Prepared by</i>	<i>Dated</i>
Landscape Plan - Ball 1 of 1	Absolute Architectural P/L	12.08.09

3. Removal of Existing Trees

This development consent only permits the removal of the 2 trees (Acacia and Magnolia) as identified on the Landscape Plan No. “Ball 1 of 1”, prepared by

Absolute Architectural and dated 12.08.09. The removal of any other trees requires separate approval under Council's Tree Preservation Order.

REQUIREMENTS PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

4. Building Code of Australia

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

5. Contract of Insurance (Residential Building Work)

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

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

6. Notification of Home Building Act, 1989 Requirements

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

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

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

7. Sydney Water – Quick Check

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

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

REQUIREMENTS PRIOR TO THE COMMENCEMENT OF ANY WORKS

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.

REQUIREMENTS DURING CONSTRUCTION**11. Construction Work Hours**

All work on site, including earth works, must only occur between 7am and 5pm Monday to Saturday. No work is to be undertaken on Sundays or public holidays.

12. 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.

13. Survey Report – Finished Floor Level

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

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

REQUIREMENTS PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE

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

14. Fulfilment of BASIX Commitments

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

15. Stormwater Drainage

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

16. Internal Driveway/Vehicular Areas

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

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

17. Vehicular Crossing

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

- a. Any redundant crossings to be replaced with integral kerb and gutter.
- b. The footway area to be restored by turfing.
- c. Approval obtained from all relevant utility providers that all necessary conduits be provided and protected under the crossing.

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

18. Damage to Council Assets

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

19. Retaining Walls

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

- END OF CONDITIONS -

ADVISORY NOTES

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

Environmental Planning and Assessment Act, 1979 Requirements

- The Environmental Planning and Assessment Act, 1979 requires:
- 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.

Tree Preservation Order

To ensure the maintenance and protection of the existing natural environment, it is an offence to ringbark, cut down, top, lop, remove, wilfully injure or destroy a tree outside 3 metres of the approved building envelope without the prior written consent from Council.

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

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

Fines may be imposed for non-compliance with Council's *Tree Preservation Order*.

Dial Before You Dig

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

**4 DEVELOPMENT APPLICATION - ALTERATIONS AND ADDITIONS
78A SOMERVILLE ROAD, HORNSBY HEIGHTS**

Development Application No:	DA/1232/2009
Description of Proposal:	Enclosure of an existing storeroom
Property Description:	Lot 12, DP 1137290, No. 78A Somerville Road, Hornsby Heights
Applicant:	Mr N M Berman
Owner:	Mr N M Berman
Statutory Provisions:	Hornsby Shire Local Environmental Plan, 1994 Residential A (Low Density)
Estimated Value:	\$2,500
Ward:	A

RECOMMENDATION

THAT Development Application No. 1232/2009 for the erection of alterations and additions to a garage at Lot 12, DP 1137290, No. 78A Somerville Road, Hornsby Heights be approved subject to the conditions of consent detailed in Schedule 1 of this report.

EXECUTIVE SUMMARY

1. The application proposes the enclosure of an existing storeroom located at the rear of a free-standing garage.
2. The report has been prepared for Council determination as the development involves land owned by a 'designated person' namely Council's Mayor.
3. The proposal complies with the Hornsby Shire Local Environmental Plan, 1994 and Council's Dwelling House Development Control Plan (DCP).
4. Due to the minor nature of the work, the application was not required to be notified pursuant to Council's Notification and Exhibition Development Control Plan.
5. It is recommended that the application be approved.

THE SITE

The irregular shaped battle-axe allotment is oriented towards the north-east, overlooking the Berowra Bushland reserve and is accessed via a right-of-way from the eastern side of Somerville Road. The site has an area of 836m² with a 9% fall from the street to the rear, south-west corner and is located within a bushfire prone zone.

Existing improvements comprise a dwelling-house adjacent to the rear, north-eastern boundary and a free-standing garage including a partially enclosed storeroom adjacent to the southern side boundary.

Surrounding development is characterised by a predominance of modest, post-war, single storey dwelling-houses interspaced by two storey dwelling-houses of more contemporary design, all surrounded by well established landscaped areas and gardens.

THE PROPOSAL

The application proposes fully enclosing a partly enclosed storeroom at the rear of the exiting garage by incorporating a double sliding door within the northern façade and the installation of cladding to the eastern façade.

PROBITY APPLICATION

The development involves land owned by the spouse of a ‘Designated Person’. Pursuant to ‘*Planning Division Practice Note No. 7 - Assessment Practice*’ the application was assessed by Council Officers as it is a development that involves ‘*non-controversial small scale development*’.

ASSESSMENT

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

1. STRATEGIC CONTEXT

1.1 Metropolitan Strategy – (Draft) North Subregional Strategy

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

The proposed development would not be inconsistent with the draft Strategy.

2. STATUTORY CONTROLS

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

2.1 Hornsby Shire Local Environmental Plan, 1994

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

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

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

2.2 Dwelling House Development Control Plan

The proposed design and materials selected for the addition are consistent with the existing garage and would be in keeping with compatible with the built form character of the surrounding area.

The proposal would not be inconsistent with the planning controls contained within Council’s Dwelling House Development Control Plan (DCP).

3. ENVIRONMENTAL IMPACTS

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

Due to the minor nature of the development it would have no impacts on the natural and built environment or have any negative social or economic impacts.

4. SITE SUITABILITY

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

The site is not constrained by flooding, landslip, significant flora & fauna, a natural watercourse or acid sulphate soils.

Whilst the development is located on a site identified as bushfire prone, enclosing the existing storeroom would not be inconsistent with the requirements of *Australian Standard 3959 - Building in Bushfire Prone Areas*. The development would not increase the risk of bushfire on the site or on adjoining sites.

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

Given the minor scale of the development, the application was not subject to the notification requirements of Council's Notification and Exhibition Development Control Plan.

6. THE PUBLIC INTEREST

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

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

The minor scale of the proposal raises no issues with respect to its social, economic or environmental impact on the community. Accordingly, it is considered that the approval of the development would not be inconsistent with the public interest.

CONCLUSION

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

SIMON EVANS
Manager - Assessment Team 1
Planning Division

SCOTT PHILLIPS
Executive Manager
Planning Division

Attachments:

1. Locality Plan
2. Site/Floor/Elevation Plan

File Reference: DA/1232/2009
Document Number: D01256536

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

The conditions of consent within this notice of determination have been applied to ensure that the use of the land and/or building is carried out in such a manner that is consistent with the aims and objectives of the relevant legislation, planning instruments and Council policies affecting the land and does not disrupt the amenity of the neighbourhood or impact upon the environment.

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

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

1. Approved Plans and Supporting Documentation

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

<i>Plan No.</i>	<i>Drawn by</i>	<i>Dated</i>
WD1 Revision A	Russell Byrne and Associates	24.5.96

REQUIREMENTS PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE**2. Building Code of Australia**

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

3. Notification of Home Building Act, 1989 Requirements

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

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

- ii. If the owner-builder is required to hold an owner-builder's permit under that Act, the number of the owner-builder's permit.

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

4. Design and Construction - Bushfire Attack Category

The development must be constructed in accordance with the current *Australian Standard AS3959 'Construction of buildings in bush fire-prone areas' Level 3.*

REQUIREMENTS PRIOR TO THE COMMENCEMENT OF ANY WORKS

5. Erection of Construction Sign

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

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

REQUIREMENTS DURING CONSTRUCTION

6. 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.

- 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.

**5 DEVELOPMENT APPLICATION - DEMOLITION OF A GARAGE AND
SUBDIVISION OF ONE LOT INTO TWO
20 WARRUGA CRESCENT BEROWRA HEIGHTS**

Development Application No:	DA/616/2009
Description of Proposal:	Demolition of a garage and subdivision of one lot into two.
Property Description:	Lot 2 DP 553883 (No. 20) Warruga Crescent, Berowra Heights
Applicant:	PS Graham and Associates
Owner:	Mr Patrick Moran and Mrs Clare Moran
Statutory Provisions:	Residential A (Low Density) Zone
Estimated Value:	\$35,000
Ward:	A

RECOMMENDATION

THAT Development Application No. 616/2009 for the demolition of a garage and the subdivision of one allotment into two at Lot 2 DP 553883 (No. 20) Warruga Crescent Berowra Heights be approved subject to the conditions of consent detailed in Schedule 1 of this report.

EXECUTIVE SUMMARY

1. The application proposes the retention of an existing dwelling, the demolition of a garage and the subdivision of one allotment into two.
2. The proposal complies with the provisions of the Hornsby Shire Local Environmental Plan 1994 and is generally consistent with the requirements of Council's Residential Subdivision Development Control Plan.
3. Six submissions have been received in respect of the application.
4. It is recommended that the application be approved.

HISTORY OF THE SITE

On 8 September 2004 Council refused a development application for subdivision of one allotment into two on the subject property on the following grounds:

- 1. Pursuant to the provisions of Section 79C(1)(a)(i) and (c) of the Environmental Planning and Assessment Act, 1979 the proposed subdivision is considered an overdevelopment of the site.*
- 2. The proposal does not comply with the objective of Clause 14 of Hornsby Shire Local Environmental Plan 1994, namely, to provide for development that is within the environmental capacity of the land.*
- 3. Pursuant to the provisions of Section 79C(1)(a)(iii) and (c) of the Environmental Planning and Assessment Act, 1979 and Council's Residential Subdivision Control Plan, proposed Lot 21 is considered deficient in regard to the provision of minimum lot size as a result of existing site gradients.*
- 4. Pursuant to the provisions of Section 79C(1)(a)(iii) and (c) of the Environmental Planning and Assessment Act, 1979 and Council's Residential Subdivision and Dwelling House Development Control Plans, the proposed subdivision is considered deficient in regard to the provision of off-street parking and vehicle turning paths.*
- 5. Pursuant to the provisions of Section 79C(1)(a)(iii) and (c) of the Environmental Planning and Assessment Act, 1979 and Council's Residential Subdivision and Dwelling House Development Control Plans, the proposed subdivision is considered deficient in regard to the provision of minimum access handle width.*
- 6. Pursuant to the provisions of Section 79C(1)(e) of the Environmental Planning and Assessment Act, 1979 the proposed subdivision is not considered to be in the public interest.*

The current application, whilst similar in configuration, provides further information that seeks to address Council's previous reasons for refusal.

THE SITE

The subject property is an irregular shaped battleaxe allotment located on the southern side of Warruga Crescent. The allotment slopes towards the rear with an average grade of 11.3 % from the north-western corner to the south-eastern corner.

The site has an area of 1151 m² (1037 m² excluding access handle)

Access to the property is via a 3.8 metre wide driveway. The current improvement on the site is a single storey clad dwelling and a detached garage. The gross floor area of the existing dwelling is 100 m².

The front section of the site accommodates a fibro garage which is utilised for storage purposes. Two retaining walls are located along the width of the property at two levels to support the land. A number of trees are located in and around the site including native planted trees and locally indigenous specimens such as *Eucalyptus spp.*, *Callistemon spp.*, *Cupressus spp.*, *Liquidamber spp.*, *Camellia spp.*, *Macadamia spp.*, *Syagrus spp.* & *Baobab spp.*

The surrounding land uses comprise single and two storey residential dwellings. A power pole is located on the street in close proximity to the driveway entrance. A two-storey dwelling house is located on the property immediately fronting the site. This dwelling house overlooks the front yard of the site.

THE PROPOSAL

The proposal involves the demolition of the garage, retention of the existing dwelling and the subdivision of one allotment into two in the following configuration:

- Site area for lot 1: 500 m² (excluding turning area and access handle); and
- Site area for lot 2: 500.3 m² (excluding turning area and access handle).

The Floor Space Ratio of the existing dwelling on lot 2 would be 0.2:1.

The existing 3.8 metre wide driveway would provide access to the lots with both allotments having a reciprocal right-of way (R.O.W). A common turning area is to be provided that would enable vehicles to enter and exit the site in a forward direction.

Proposed lot 1 would comprise an irregular shaped battleaxe allotment to be accessed by a shared R.O.W. A building envelope with a total area of 200 m² is proposed within this allotment including provision for two car spaces.

Proposed lot 2 would comprise an irregular shaped allotment to be accessed by the same R.O.W and would accommodate the existing dwelling. Two car spaces are proposed to be located on the south-western side of the dwelling house in a stacked arrangement and a driveway proposed for access to the car spaces from the common turning area. The construction the vehicular turning area and driveway would require the demolition of the existing steps and construction of a retaining wall in front of the dwelling house. Pedestrian access to the dwelling house from this turning area would be provided via a set of stairs.

Stormwater drainage from both allotments would be connected to Council's drainage system within Woodcourt Road via a 1 metre wide drainage easement within the adjoining allotment (Lot 12 DP 816320). Documentary evidence of the drainage easement has been submitted to Council.

ASSESSMENT

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

1. STRATEGIC CONTEXT

1.1 Metropolitan Strategy – (Draft) North Subregional Strategy

The Metropolitan Strategy is a broad framework to secure Sydney's place in the global economy by promoting and managing growth. It outlines a vision for Sydney to 2031; the challenges faced, and the directions to follow to address these challenges and achieve the

vision. The draft North Subregional Strategy acts as a framework for Council in the preparation of a new Principal LEP by 2011.

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

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

The proposed development would be consistent with the draft Strategy by providing an additional allotment and would contribute towards housing choice in the locality.

2. STATUTORY CONTROLS

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

2.1 Hornsby Local Environmental Plan 1994

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

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

The use is defined as ‘*demolition*’ and ‘*subdivision*’ and is permissible within the zone pursuant to Clause 7 of the HSLEP.

The development would facilitate the provision of housing for the population of the area and would be compatible with the low density residential environment. In this regard, the proposal complies with objectives (a) and (b) of the zone. Though the proposed allotments are irregular in shape, the application demonstrates that the allotment sizes and shapes are suitable to accommodate building envelopes, private open space areas, car spaces and driveways complying with Council’s Residential Subdivision Development Control Plan. The development is within the environmental capacity of the site and complies with objective (c) in this regard.

Clause 14 of the HSLEP prescribes that the minimum size of allotments within the zone is 500 m². The proposal complies with Clause 14 in this regard.

Clause 15 of the HSLEP prescribes that the maximum floor space ratio (FSR) of development within the zone is 0.4:1. The proposed FSR for the existing dwelling on proposed allotment 2 is 0.2:1. Therefore, the proposal complies with Clause 15 with regard to the proposed FSR.

2.2 State Regional Environmental Plan No. 20 – Hawkesbury Nepean River

The application has been assessed against the requirements of Sydney Regional Environmental Plan No. 20. This Policy provides controls to protect the environment of the

Hawkesbury-Nepean system, including its water quality. The plan addresses matters related to water quality, significant vegetation habitats, extraction, environmental heritage and scenic quality, recreation and tourism, and agriculture.

The proposed development includes a satisfactory stormwater management plan and is consistent with the objectives of the SREP 20 subject to implementation of consent conditions regarding erosion and sediment control measures during construction.

2.3 Residential Subdivision Development Control Plan

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

Residential Subdivision Development Control Plan			
Control	Proposal	Requirement	Compliance
Density			
Lot 1	500 m ²	510 m ²	No
Lot 2	500.3 m ²	510 m ²	No
FSR			
Lot 2	0.2:1	0.4:1	Yes
Site cover			
Lot 2	23%	40%	Yes
Building Envelope			
Lot 1	200 m ²	200 m ²	Yes
Minimum Dimension			
Lot 1	7 m	10 m	No
Car parking			
Lot 1	2 spaces	2 spaces	Yes
Lot 2	2 spaces	2 spaces	Yes
Private Open Space			
Lot 1	120 m ²	120 m ²	Yes
Lot 2	100 m ²	80 m ²	Yes
Landscaping			

Lot 1	45%	45%	Yes
Lot 2	50%	45%	Yes
Width of Access handle	3.8 m	4 m	No
Setbacks			
Lot 1			
Front	1m	1m	Yes
Eastern side	6 m	1m	Yes
Western side	7 m	1 m	Yes
Rear	1m	3 m	No
Lot 2			
Front	7m	1m	Yes
Eastern side	Existing retained		
Western side	Existing retained		
Rear	Existing retained		

The compliance of the proposal with the objectives, performance criteria and prescriptive measures of the various elements within Council's RSDCP are discussed below:

2.3.1 Density

The proposed allotments comply with the minimum allotment sizes as prescribed in the HSLEP. The RSDCP requires allotment sizes to be increased with the slope of the land. Given that the slope of the land is 11.3 %, the proposed allotment sizes should be a minimum of 510 – 520 sq metres to comply with the prescriptive measures within the RSDCP. However, given that the proposed allotments can accommodate a reasonably sized dwelling house, a building envelope and private open space areas in addition to driveways, the minor non-compliance with regard to allotment sizes within the RSDCP is considered acceptable.

2.3.2 Design

The proposed shapes of the allotments are a product of the existing dwelling on the site, which is proposed to be retained. The existing dwelling is old and is modest in design having a limited life-span. It is anticipated that the dwelling would be replaced with a more modern dwelling in the short term.

The proposal to retain the existing dwelling is problematic in that it creates irregular shaped allotments that do not strictly comply with the design standards under the RSDCP. A superior outcome for the site would be to demolish the dwelling and create more regular shaped allotments. That outcome would make the future design of dwellings on the land more straight forward.

Notwithstanding the above, it would still be possible to design two satisfactory dwellings on the lots as currently proposed. It is on this basis that approval of the application is recommended. However, should Council consent to the subdivision application, the land owner is encouraged to give close consideration to amending the development to achieve a superior subdivision pattern as described above.

The proposal is considered acceptable, but not ideal with regard to the objectives of the “Allotment Design” element of the RSDCP.

2.3.3 Setbacks

The proposed allotments satisfy the DCP standards with regard to building setbacks except for the non-compliance with the rear setback dimension for proposed lot 1. The current application is for subdivision and the proposed location of the building envelope is indicative only. Further, the rear setback area would not be utilised for private open space purposes. Therefore non-compliance with regard to the rear setback is acceptable in this instance. The location of any future dwelling house on the land and the associated setbacks would be assessed under a separate application.

2.3.4 Solar access

The allotments are north-south orientated. The private open space areas are proposed to be orientated in a north-south direction to receive sufficient solar access. The existing dwelling house is single storey and would not have adverse impact on the adjoining development with regard to overshadowing.

Any impact of overshadowing due to a future dwelling on proposed lot 1 would be assessed under a separate application.

2.3.5 Private Open Space & Landscaping

Both allotments would have sufficient area suitable for use as private open space. The existing dwelling would have its private open space located at the rear and to the west. The location of its private open space would not be impacted upon by overlooking from adjoining properties.

The applicant has demonstrated that a suitable private open space area could be provided for proposed Lot 1. The private open space area would not be level and would be partly separated by two retaining walls. However, the location of the building envelope indicates that direct access to the outdoor space could be provided in future from the primary living areas. The details of the useability of the private open area would be assessed under a separate application for dwelling house on this allotment.

The proposed location and suitability of the private open spaces and the landscaped areas are considered satisfactory.

2.3.6 Drainage Control

The application includes a stormwater management plan, details of a proposed on-site detention system and calculations demonstrating that the allotments could be connected to the Council controlled drainage system within Woodcourt Road via a drainage easement within the adjoining western allotment (No. 16 Woodcourt Road) without adversely impacting on the adjoining properties.

Council’s engineering assessment of the application concludes that drainage control on site is satisfactory.

2.3.7 Privacy

The allotment slopes towards the rear. The existing dwelling house on Lot 2 is single storey and is sufficiently separated from the dwelling house to the south. No major alterations are proposed to this dwelling house apart from removal of the existing steps due to the location of the proposed car turning area. This would not alter the location of the dwelling house or impact on the privacy of the neighbouring dwelling houses.

The building envelope on Lot 1 is proposed within the front yard of the site replacing an existing garage. The adjoining dwelling to the north currently overlooks this section of the site. It is considered that any proposed dwelling house on this allotment would be adequately separated from the adjoining developments. The boundary fence would also restrict any adverse privacy impact on the private open space area.

The proposal is acceptable in its current form with regard to privacy. However, details of the impact of any future dwelling house on the privacy of neighbouring properties would be assessed under a separate application for dwelling house on proposed lot 1.

2.3.8 Access Handle

The existing access to the site is via a 3.8 metres wide driveway off Warruga Crescent. The proposal would retain the use of the access handle to provide access to lots 1 and 2. The access handle would not comply with the prescriptive measure within RSDCP which requires a 4 metres wide access to battleaxe allotments including a 3 metre wide pavement and 0.5 metre landscaped area on either side. However, the RSDCP provides that the 4 metre width of driveway primarily applies to new access handles and can be varied for existing battleaxe allotments subject to landscaping being provided on both sides.

The driveway width can accommodate a 3 metre wide pavement to facilitate vehicle access and would include 0.4 metre wide landscaped strips on either side of the pavement. Given that the non-compliance relates to the landscaping strip only and that the driveway includes existing fences on both sides, this is considered acceptable and would not result in adverse impact on the neighbouring properties.

2.4 Berowra Cowan Development Control Plan

The proposed development has been assessed having regard to the relevant performance and prescriptive design standards within Council's Berowra Cowan Development Control Plan. The plan provides recommendations and guidelines for development within the unique low density areas of Berowra, Berowra Heights and Cowan and embodies the findings and recommendations of the Berowra/Cowan Planning Study, conducted in 1994. The compliance of the proposal with the strategies of this DCP is discussed below:

The '*Residential Strategy*' of the plan aims to provide a wide range of housing types which are efficient and sustainable in relation to natural, built and social environments. The proposal provides opportunities for varying dwelling sizes and is considered to be sustainable in relation to the natural and built environment.

The '*Traffic Services Strategy*' specifies that safe, convenient and efficient movement of people should be promoted. The proposal complies with this requirement.

2.5 Dwelling House Development Control Plan

The existing dwelling house on proposed lot 2 has been assessed having regard to the relevant performance and prescriptive design requirements of Council's Dwelling House Development Control Plan. The proposal does not alter the height or design of the existing dwelling. The compliance of the dwelling houses with the relevant performance criteria such as FSR, site cover, privacy, setbacks, private open space, and landscaping are discussed in Section 2.3 of this report.

2.5.1 Car Parking

Council's Dwelling House DCP requires that car parking be provided behind the building line. Proposed lot 2 includes two hard stand car spaces in a stacked arrangement within the front and side setback and complies with the DCP development standard.

2.6 Car Parking Development Control Plan

The development's compliance with the relevant requirements of the Car Parking DCP has been discussed under sections 2.3 and 2.5 of this report.

2.7 Sustainable Water Development Control Plan

Subject to a recommended condition requiring erosion and sediment control measures to be implemented on site during construction works, the proposal would comply with the Sustainable Water DCP.

2.8 Section 94 Contributions Plan

Council's Section 94 Contributions Plan applies to the development as one additional allotment is proposed. This requirement is addressed as a condition of consent.

3. ENVIRONMENTAL IMPACTS

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

3.1 Natural Environment

3.1.1 Trees

The site comprises a number of exotic and native planted trees and locally indigenous specimens including *Eucalyptus spp.*, *Callistemon spp.*, *Cupressus spp.*, *Liquidamber spp.*, *Camellia spp.*, *Macadamia spp.*, *Syagrus spp.* & *Baobab spp.* The proposal would require the removal of one tree to facilitate the construction of the car spaces within lot 2.

Council's assessment of the proposal included a detailed examination of the existing trees on site and concluded that none of the trees located within the site are significant and may be removed for future developments on the proposed allotments. However, the subdivision application would require the removal of only one tree for driveway construction within proposed lot 2. Therefore a condition of consent is recommended requiring the retention of all other trees on site including those on the neighbouring properties at the subdivision stage.

3.1.2 Water Quality

Subject to conditions requiring implementation of erosion and sediment control measures on site during construction works, the proposal would not have an adverse impact on the water quality of the catchment.

3.2 Built Environment

The impact of the proposed allotment on the built environment has been discussed in detail within Section 2.3 of this report.

Council's engineering assessment of the traffic impacts of the development is considered satisfactory.

3.3 Social Impacts

The proposal would result in a positive social impact by improving the housing choice in the locality.

3.4 Economic Impacts

The proposal would result in a positive economic impact by contributing towards an additional allotment and dwelling house in the locality.

4. SITE SUITABILITY

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

The site does not constitute bushfire prone land. The site is suitable for the development.

5. PUBLIC PARTICIPATION


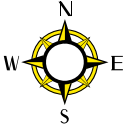
Section 79C(1)(d) of the Act requires Council to consider "*any submissions made in accordance with this Act*".

5.1 Community Consultation

The proposed development was placed on public exhibition and was notified to adjoining and nearby landowners between 18 June 2009 and 9 July 2009 in accordance with Council's Notification and Exhibition Development Control Plan. During this period, Council received six submissions. The map below illustrates the location of those nearby landowners who made a submission that are in close proximity to the development site.



NOTIFICATION PLAN

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

- Unacceptable impact on the stormwater runoff to No. 12 Woodcourt Road
- Non-compliance with allotment sizes as the site has a gradient exceeding 15 %
- Unsatisfactory turning area within the allotments
- Unacceptable impact of stormwater runoff with regard to the retaining wall within No. 16 Warruga Crescent
- Unacceptable increase in noise and density
- Unacceptable impact on the privacy of neighbouring properties
- Unacceptable width of driveway being 2.7 metres
- Restriction of views for the residence within 18 Warruga Crescent
- Irregular allotment shapes not complying with the subdivision pattern of the locality
- Irregular shaped building envelope
- Removal of trees within the site
- Insufficient parking within the site resulting in on-street parking for visitors to the site
- Insufficient space for garbage bins

The objectors also raised the following issues:

- Reversing of vehicles onto Warruga Crescent should not be permitted

- Currently a number of vehicles obstruct the driveway of No. 15 Warruga Crescent and result in damage to the property. Further subdivision would aggravate this problem.
- The proposed dwelling house within the site should be single storey
- The proposed stormwater drainage via No. 16 Woodcourt Road is not possible as it is higher up than the subject property.
- The proposal would require relocation of the telegraph pole located at the entrance.
- The proposal does not include details of the stormwater easement.
- The proposal should manage the stormwater flows from No. 18 Warruga Crescent.

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 Restriction of views

The residence located within No. 18 Warruga Crescent currently overlooks the front yard of the site. Any dwelling house located within the front allotment in future would be at a lower level than the adjoining dwelling house and is unlikely to impact upon the views of the occupants. Details of this matter would be assessed under a separate application for construction of a dwelling house on this allotment.

5.1.2 Noise

The proposal would result in one additional allotment and the increase in the noise would not be significant.

5.1.3 Garbage bins

The proposed allotments have sufficient space for storage of garbage bins. The details of location of garbage bins would be assessed under a separate development application for the construction of a dwelling.

5.1.4 Damage to assets due to car parking

This matter relates to the public road and is not considered to be relevant to the proposed subdivision application.

5.1.5 Telegraph pole

An engineering assessment of the application considers that the telegraph pole would not require relocation as no alterations are proposed to the existing vehicular crossing.

5.1.6 Stormwater from 18 Warruga Crescent

The proposal does not include No. 18 Warruga Crescent. Stormwater management of this property is not included in the development application.

5.2 Public Agencies

The development application is not Integrated Development under the Act. Accordingly, the application was not referred to any Public Agency.

6. THE PUBLIC INTEREST

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

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

The application is considered to have satisfactorily addressed Council’s and relevant agencies’ criteria and would provide a development outcome that, on balance, would result in an acceptable impact. Accordingly, it is considered that the approval of the proposed development would not be inconsistent with the public interest.

7. CONCLUSION

The application proposes the demolition of the existing garage, subdivision of one allotment into two and the retention of the existing dwelling.

The proposal complies with Section 79C of the Environmental Planning and Assessment Act, 1979, the Hornsby Shire Local Environmental Plan, 1994 and Council’s Berowra-Cowan, Car Parking and Sustainable Water DCP.

The proposed development is generally consistent with the requirements of Council’s Residential Subdivision Development Control Plan. The subdivision would result in irregular shaped allotments. However, the proposal demonstrates that the allotments can accommodate suitable building envelopes, private open space areas and car spaces. The minor non-compliance with regards to the dimensions of the building envelope, setback of the building envelope from the rear boundary and the provision of a 0.5m landscape strip along the proposed accessway do not warrant refusal of the application as the development is considered to be acceptable in relation to environmental impacts.

Approval of the application is recommended.

ROD PICKLES
Manager - Assessment Team 2
Planning Division

PAUL DAVID
Manager - Subdivision & Development
Engineering Services
Planning Division

SCOTT PHILLIPS
Executive Manager
Planning Division

Attachments:

1. Locality Plan
2. Survey Plan
3. Subdivision Plan
4. Subdivision Plan with Building Envelopes

File Reference: DA/616/2009

Document Number: D01259268

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 relevant legislation, planning instruments and Council policies affecting the land and does not disrupt the amenity of the neighbourhood or impact upon the environment.

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

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

1. Approved Plans and Supporting Documentation

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

<i>Plan No.</i>	<i>Drawn by</i>	<i>Dated</i>
Detail Survey –S.14700	PS Graham and Associates	14/05/2009
Stormwater Concept Plan	PS Graham and Associates	Received by Council on 21/09/2009
Proposed Plan of Subdivision	PS Graham and Associates	14/05/2009

2. Removal of existing Trees

This development consent only permits the removal of tree numbered T3 as identified on Plan No. S.14700 prepared by PS Graham and Associates dated 14/05/2009. The removal of any other trees requires separate approval under Council's Tree Preservation Order.

REQUIREMENTS PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE**3. Easement Over Downstream Land**

The proposed drainage easement over Lot 12 DP 816320 must be registered with the *NSW Department of Lands*.

4. Building Code of Australia

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

5. Water/Electricity Utility Services

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

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

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

REQUIREMENTS PRIOR TO THE COMMENCEMENT OF ANY WORKS

6. Erection of Construction Sign

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

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

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

7. Erosion and Sediment Control

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

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

REQUIREMENTS DURING CONSTRUCTION

8. Construction Work Hours

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

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

9. Demolition

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

- 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.
- 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*.
- 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.

10. Environmental Management

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

11. Works near Trees

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

All works (including driveways and retaining walls) within four metres of trees numbered T26, T27A, T27B, T27C, T27D (as marked on the approved plans) required to be retained (whether or not on the subject property, and pursuant to this consent or the *Tree Preservation Order*), must be carried out under the supervision of an '*AQF Level 5 Arborist*' and a certificate submitted to the principal certifying authority detailing the methods used to preserve the trees.

Note: Except as provided above, the applicant is to ensure that no excavation, filling or stockpiling of building materials, parking of vehicles or plant, disposal of cement

slurry, waste water or other contaminants is to occur within 4 metres of any tree to be retained.

REQUIREMENTS PRIOR TO THE ISSUE OF A SUBDIVISION CERTIFICATE

12. Sydney Water – s73 Certificate

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

13. Stormwater Drainage

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

- a. Connected directly to Council's street drainage system.
- b. An inter-allotment stormwater drainage system to service the proposed lot with pits being constructed in situ.
- c. The roof and stormwater drainage system from the existing dwelling to be connected to the proposed inter-allotment drainage system.

14. Internal Driveway/Vehicular Areas

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

- a. The driveway be a rigid pavement.
- b. The driveway grade must not exceed 25 percent and changes in grade must not exceed 8 percent. Parking and turning areas are not to exceed 5 percent grade.
- c. The driveway pavement be a minimum 3 metres wide, 0.15 metres thick reinforced concrete with F72 steel reinforcing fabric and a 0.15 metre sub-base.
- d. The existing driveway be removed unless a chartered structural engineer certifies that it is capable of remaining stable under an 8 tonne traffic loading.
- e. The pavement have a kerb to one side and a one-way cross fall with a minimum gradient of 2 percent and a lintel and pit provided at the low point.
- f. Retaining walls required to support the carriageway and the compaction of all fill batters to be in accordance with the requirements of a chartered structural engineer.
- g. The provision of safety rails where there is a level difference more than 0.3 metres and a 1:4 batter can not be achieved.
- h. Planting of landscaping strips 0.5 metres wide along both sides of the length of the driveway.

- i. Conduit for utility services including electricity, water, gas and telephone be provided.

15. Damage to Council Assets

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

16. Creation of Easements

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

- a. A right of access and easement for services over the access corridor.
- b. An inter-allotment drainage easement over each of the burdened lots.
- c. The creation of a "*Positive Covenant*" over the proposed Lot 1 requiring that any future development is to provide an on-site detention system. The on-site detention system is to have a storage capacity of 5 cubic metres and a maximum discharge of 8 litres per second into Council's drainage system in accordance with Council's prescribed wording.

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

17. Works as Executed Plan

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

18. Boundary Fencing

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

Note: Alternative fencing may be erected subject to the written consent of the adjoining property owners.

19. s94 Infrastructure Contributions

The payment to Council of a contribution of \$ 19263.30* for one additional lot towards the cost of infrastructure identified in Council's Development Contributions Plan 2007-2011

*Note: * The value of contribution is based on a rate of \$ 19263.30 per additional lot and is current as at 6 October 2009. The contribution will be adjusted from this date in accordance with the underlying consumer price index for subsequent financial quarters.*

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

- END OF CONDITIONS -

ADVISORY NOTES

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

Environmental Planning and Assessment Act 1979 Requirements

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

Long Service Levy

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

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

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

Tree Preservation Order

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

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

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

Subdivision Certificate Requirements

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

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

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

Fees and Charges – Subdivision

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

Dial Before You Dig

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

Asbestos Warning

Should asbestos or asbestos products be encountered during 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.

House Numbering

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

**6 DEVELOPMENT APPLICATION - SECTION 82A REVIEW - MIXED USE
DEVELOPMENT
42 DENMAN PARADE NORMANHURST**

Development Application No:	DA/532/2009
Description of Proposal:	Demolition of an existing building and construction of a residential unit and carport within a mixed use development (Section 82A Review)
Property Description:	Lot 2B DP 365028 (No. 42) Denman Parade, Normanhurst
Applicant:	Mr Shehade Hajje and Mrs Dawn Hajje
Owner:	Mr Shehade Hajje and Mrs Dawn Hajje
Statutory Provisions:	Hornsby Shire Local Environmental Plan 1994 Business C (Neighbourhood) zone
Estimated Value:	\$43,000
Ward:	B

RECOMMENDATION

THAT Council adheres to its decision to refuse Development Application No. 532/2009 for the demolition of an existing building and construction of a residential unit at Lot 2B DP 365028 (No. 42) Denman Parade Normanhurst, for the reasons of refusal detailed in Schedule 1 of this report.

EXECUTIVE SUMMARY

1. On 28 July 2009, Council refused under delegated authority, Development Application No. 532/2009 for the demolition of an existing building and the construction of a residential unit and carport.
 2. Pursuant to Section 82A of the Environmental Planning and Assessment Act, 1979 (the Act), a request has been made for Council to review its determination.
 3. The proposal does not comply with the Hornsby Shire Local Environmental Plan 1994 (HSLEP), the Business Lands Development Control Plan and the Car Parking Development Control Plan. The application does not comply with the 0.5:1 floor space ratio development standard under the HSLEP and the application has been supported by an objection under State Environmental Planning Policy No. 1 - Development Standards (SEPP 1) seeking a variation to this standard.
-

4. No submissions have been received in respect of the application.
5. It is recommended that Council adhere to its previous decision to refuse the application.

HISTORY OF THE APPLICATION

On 28 July 2009, Development Application No. 532/2009 was refused under delegated authority on the following grounds:

1. *Pursuant to the provisions of Section 79C(1)(a)(i) and (c) of the Environmental Planning and Assessment Act, 1979, the proposal does not comply with the aims and objectives of State Environmental Planning Policy No. 1 – Development Standards.*
2. *Pursuant to the provisions of Section 79C(1)(a)(i) and (c) of the Environmental Planning and Assessment Act, 1979 and Hornsby Shire Local Environmental Plan 1994, the proposal does not comply with the objectives of Clause 15 Floor Space Ratio.*
3. *Pursuant to the provisions of Section 79C(1)(a)(i) and (c) of the Environmental Planning and Assessment Act, 1979 and Hornsby Shire Local Environmental Plan 1994, the proposal does not comply with the objectives of the Business C (Neighbourhood) zone.*
4. *The proposal is unsatisfactory in respect to the provisions of Section 79C(1)(a) of the Environmental Planning and Assessment Act, 1979, as the proposal does not comply with the requirements of the Business Lands Development Control Plan, in particular, the element controls for ‘Density’, ‘Building Design’, ‘Vehicle Access and Parking’, ‘Drainage Control’, ‘Acoustic’ and ‘Crime Prevention’.*
5. *Pursuant to the provisions of Section 79C(1)(a)(i) and (c) of the Environmental Planning and Assessment Act, 1979, the proposal fails to address the requirements of Clause 87 of State Environmental Planning Policy (Infrastructure) 2007.*
6. *Pursuant to the provisions of Section 79C(1)(e) of the Environmental Planning and Assessment Act, 1979, the proposal is not considered to be in the public interest.*

On 8 September 2009, a request for Council to review its determination was lodged pursuant to Section 82A of the Act.

THE SITE

The site has an area of 366 square metres and is located on the southern side of Denman Parade, opposite the railway line. The site is essentially flat, with a frontage of 8.8 metres to Denman Parade and a depth of 48 metres.

The site contains a two storey building, comprising a shop on the ground floor and a residential unit on the first floor. This arrangement is consistent with adjoining development fronting Denman Parade.

The rear portion of the site contains a free standing building containing a garage door with an attached carport. Other ancillary structures in the rear yard include a free standing laundry / bathroom and two sheds. The existing development on the site results in a floor space ratio (FSR) of 0.67:1

Vehicular access to the site is via an existing Right of Way from Normanhurst Road which serves several other properties to the east of the site. Parking is provided informally on the site for two vehicles.

A landscaped area containing shrubs and lawn is located adjacent to the rear boundary and is 50 square metres in area.

THE PROPOSAL

The proposal involves the demolition of an existing building and the construction of a two storey structure, containing a residential unit on the first floor and a carport below. The existing building proposed to be demolished is located in the rear portion of the site, is 49.6 square metres in floor area and contains a garage door and attached carport.

The proposed first floor unit contains one bedroom and has a total area of 80 square metres. The proposed carport located below would contain three car spaces and an additional two open car spaces are proposed to be provided on site. Access to the site is proposed to be maintained via the existing Right of Way from Normanhurst Road.

There is no proposed change to the existing shop and first level unit fronting Denman Parade. The proposed development would result in a FSR of 0.76:1.

The request for Council to review its determination pursuant to Section 82A of the Act, included an amended car parking plan showing vehicular movements for access and egress from the site.

The Section 82A review application requested that the original SEPP 1 objection be reconsidered and determined at a Council meeting.

ASSESSMENT

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

1. STRATEGIC CONTEXT

1.1 Metropolitan Strategy – (Draft) North Subregional Strategy

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

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

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

The proposed development would be consistent with the Draft Strategy in so far as providing an additional single dwelling.

Council has prepared a draft Housing Strategy to facilitate the construction of some of the 11,000 dwellings required under the Subregional Strategy. The Housing Strategy, as exhibited, identifies the subject allotment as well as surrounding properties as possibly accommodating higher density housing. The subject application is not consistent with the Strategy in that it would further fragment land and make opportunities for redevelopment more difficult. Consequently, it is considered that the development would not be in the strategic planning interests of the Shire.

2. STATUTORY CONTROLS

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

2.1 Hornsby Shire Local Environmental Plan 1994

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

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

The proposed development is defined as ‘multi-unit housing’ under the HSLEP and is permissible in the zone with Council’s consent.

Clause 15 of the HSLEP prescribes that the maximum FSR of development within the Business C (Neighbourhood) zone is 0.5:1. The proposed development results in a FSR of 0.76:1 which is inconsistent with this requirement. The application includes an objection pursuant to SEPP 1 in support of the proposed variation to the development standard.

It is considered that the proposal would not result in any improvement to the health, vitality and cultural and social environment within the zone. The proposal would result in an over-development of the site and would not provide parking arrangements in accordance with Council’s requirements. Furthermore, the proposed development would set an undesirable precedent for future development which would not improve the social and cultural environment of the zone. Accordingly, the proposal does not comply with the objectives of the Business C (Neighbourhood) zone.

2.2 State Environmental Planning Policy No. 1 – Development Standards

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

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

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

The objective of the FSR standard as stated in the HSLEP is:

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

The SEPP 1 objection cannot be considered well founded as it does not comply with the above listed objective of the FSR standard.

The intensity and scale of the development is not in accordance with the lands environmental capacity. The proposal would result in an over development of the site and a shortfall in parking.

The development requires six car spaces to be provided in order to satisfy the requirements of the 'Vehicle Access and Parking' element of the Business Lands Development Control Plan. Five car spaces are proposed as part of this application. The application has not demonstrated that safe and efficient access to the site can be provided or that vehicles are able to turn on site and egress in a forward direction.

The Section 82A review application included an amended car parking plan showing vehicular movements for access and egress from the site. An engineering assessment of the revised parking layout concluded that the proposal does not sufficiently demonstrate the ability for vehicles to enter and leave the subject site in forward direction. In consideration the current access arrangement and the proposed car parking design it is determined that the proposal

does not provide for safe ingress/egress to the site and is unsatisfactory. It is not within the capacity of the site to provide the parking required in accordance with Council's requirements and Council therefore cannot support the departure from the FSR standard when sufficient parking has not been demonstrated.

The proposal does not demonstrate a design which complies with AS2890.1-2004 or the 'Vehicle Access and Parking' element of the Business Lands Development Control Plan and is the proposed development is therefore not considered within the environmental capacity of the site.

The proposal is inconsistent with the objectives of the FSR standard as the proposal is not consistent with the objectives of the Business C (Neighbourhood) zone as addressed in Section 2.1 of this report.

The SEPP 1 objection was submitted in support of the proposal and is summarised as follows:

'The extent of non compliance is numerically minor being limited to 73 square metres or within 20% of the policy compliance.

The non-compliance results from additional floor area not contributing in any significant way to the perceived bulk of the building.

The sites environmental attribute and capacity area not altered or compromised as a consequence of the additional gross floor area.

The proposal does not compromise the attainment of zone objectives by the existing building in a streetscape context nor lead to a built form outcome which would be perceived as being generally within the sites visual catchment.

The objection is well founded on the basis that strict compliance would serve no proper planning purpose having regard to the minor nature of the variation proposed, the impact of the proposals ability to satisfy the underlying objective and purpose of the floor space ratio development standard.

The Draft Housing Strategy for the site allows a FSR of 0.8:1 far in excess of what is proposed. The proposal does not alter the size, scale, bulk and height of the existing shop and dwelling and is within the environmental capacity of the site.'

With respect to the above comments contained within the SEPP 1 objection, Council's planning assessment has determined the following:

Whilst the SEPP 1 objection states non-compliance is numerically minor, it is considered that the departure of the standard is significant and the proposal would result in an over development of the site having regard to the inability of the site to accommodate the required number of car parking spaces.

Whilst the SEPP 1 objection states that the additional floor area would not contribute to the perceived bulk of the building, it is considered that the demolition of a single storey building and construction of a two storey structure would have an impact on the scale and perceived bulk of the building when viewed from adjoining properties. It is considered the proposed development would result in an over development of the site and would not compliment and the existing built environment.

The SEPP 1 submission is not supported on the basis of the draft Housing Strategy as the development is inconsistent with the Strategy. Specific planning controls for the precincts adopted under the Strategy would not be released until precincts are adopted, which would contain relevant planning controls in terms of setbacks, building envelope, parking arrangements and the like for zones accommodating higher density development.

The application states the existing building to be demolished is a residence, which is to be replaced with a new first floor residence and ground level carport. The existing building on the site is a brick building 49.6m² in area with a garage roller door and attached carport. There are no Council records which indicate that consent has been granted to use the building as a residence and no evidence was provided to demonstrate this within the application.

The SEPP 1 is not well founded as it would result in a development which would set an undesirable precedent for future applications in the zone. The SEPP 1 objection does not comply with the objectives of the FSR standard and the proposed development is not considered suitable and appropriate for the site.

2.3 State Environmental Planning Policy No. 20 – Hawkesbury Nepean River

The application has been assessed against the requirements of State Environmental Planning Policy No. 20. Hawkesbury-Nepean River. This Policy provides State-wide planning controls for the protection of the Hawkesbury – Nepean River system including its water quality.

Council's engineering assessment of the drainage requirements of the development concludes an on-site detention system (OSD) would be required to prevent nuisance of stormwater run off to adjoining properties. The application did not include any details of the required OSD.

It is unlikely the construction process of the proposed development would have any significant impact on the catchment of the Hawkesbury Nepean River system subject to the implementation of sediment and erosion control measures.

2.4 State Environmental Planning Policy (Infrastructure) 2007

The application has been assessed against the requirements of State Environmental Planning Policy (Infrastructure) 2007. Clause 87 of the Policy applies to development on land in or adjacent to a rail corridor that is likely to be adversely affected by rail noise or vibration. The proposed development is for residential use therefore it is required that the application demonstrate that appropriate measures will be taken to ensure that LAeq levels are not exceeded. The application did not include any details of measures to abide by this Policy.

2.5 Business Lands Development Control Plan

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

Business Lands Development Control Plan			
Control	Proposal	Requirement	Compliance
Floor Space Ratio	0.76:1	0.5:1	No
Car parking	5 Spaces	6 Spaces	No

As detailed in the above table, the proposed development does not comply with the prescriptive standards within the Business Lands Development Control Plan. The matters of non-compliance are addressed as follows:

2.5.1 Density

The proposal does not comply with the 0.5:1 FSR prescriptive measure of the Business Lands Development Control Plan. This matter has been addressed in Section 2.2 of this report.

The proposal does not comply with the objectives of the 'Density' element as the bulk, scale and intensity of the development is not compatible with the surrounding built form and results in an over development of the site.

2.5.2 Vehicle Access and Parking

The proposed car parking layout is not satisfactory as addressed in Section 2.2 of this report.

2.5.3 Drainage Control

The application states the proposal would connect to the existing Council drainage system to drain to Denman Parade. Council's engineering assessment of the drainage requirements of the development concludes an on-site detention system (OSD) would be required. The Section 82A review application did not include any details with respect to required OSD.

2.5.4 Building Design

The proposed development is inconsistent with the objectives of the 'Building Design' element which requires buildings to compliment and enhance the existing business precinct.

The proposed two storey free standing development is setback 8 metres from the existing two storey building at the front of the site. The proposed development is significantly larger in bulk and scale than the existing single storey building on the site proposed to be demolished. The two storey free standing development has a zero metre setback from the northern adjoining property and a 1.5 metre setback from the southern boundary. It is considered that the new development would result in an over development of the site, would not compliment and enhance the existing business precinct and would not result in a positive impact on the built environment.

2.6 Car Parking Development Control Plan

The proposal results in a shortfall in the number of car spaces required for the development and the proposed car parking layout is not satisfactory as addressed in Section 2.2 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

The proposed development would not have a detrimental impact on the natural environment.

3.2 Built Environment

The proposal is considered an over development of the site and would be detrimental to the existing built environment.

The proposed development would result in a development excessive in bulk and scale having regard to setbacks. The development proposes a zero metre setback from the northern boundary and a 1.5 metre setback from the southern boundary. Privacy impacts would result from the windows serving the proposed first floor unit which would overlook the private open space of the southern and western adjoining properties. The proposal gives little regard to the provision of landscaping and open space and is not considered an improvement to the existing development on the site.

The proposed development would not complement and enhance the existing business precinct and is considered unacceptable in terms of its impact on the built environment.

3.3 Social Impacts

The original proposal does not demonstrate any crime prevention measures (e.g. clear entry, lighting, casual surveillance). The statement accompanying the Section 82A review application stated that surveillance measures would be implemented, however no specific details were provided.

The proposed development would not provide for safe and efficient vehicular access and would result in an over development of the site, therefore Council cannot be satisfied that the proposal would result in a positive social impact.

3.4 Economic Impacts

The proposed development 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 site is not flood prone land and the site is not affected by bushfire risk.

5. PUBLIC PARTICIPATION

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

5.1 Community Consultation

The proposed development was placed on public exhibition and was notified to adjoining and nearby landowners between 28 May, 2009 and 18 June, 2009 in accordance with Council’s Notification and Exhibition Development Control Plan. During this period, Council received no submissions. The Section 82A application was placed on exhibition from 24 September, 2009 and 8 October 2009, during which time Council received no submissions.

6. THE PUBLIC INTEREST

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

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

The application has not satisfactorily addressed Council’s criteria 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 development would not be in the public interest.

CONCLUSION

The proposal is for the demolition of an existing building and construction of a residential unit and new carport.

The application does not comply with the 0.5:1 floor space ratio development standard under the Hornsby Local Environmental Plan 1994. The application included an objection pursuant to State Environmental Planning Policy No. 1 to support the variation to the development standard. It is determined that the objection is not well founded and therefore the proposed variation cannot be supported.

The Section 82A review application included an amended car parking plan demonstrating vehicular access to the site. This amended plan does not demonstrate compliance with Council’s Car Parking Development Control Plan and the ‘Vehicular Access and Parking’ element of the Business Lands Development Control Plan and is unsatisfactory.

It is recommended that Council adheres to its original decision and that the application be refused for the reasons for refusal detailed in Schedule 1 of this report.

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

ROD PICKLES
Manager - Assessment Team 2
Planning Division

SCOTT PHILLIPS
Executive Manager
Planning Division

Attachments:

1. Locality Plan
2. Site Plan
3. Elevation Plan
4. Floor Plan
5. Car Parking Plan

File Reference: DA/532/2009
Document Number: D01247787

SCHEDULE 1

1. Pursuant to the provisions of Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act, 1979, the proposal does not demonstrate that compliance with the development standard under Clause 15 of the Hornsby Shire Local Environmental Plan 1994 is unnecessary or unreasonable in the circumstances of the case, pursuant to State Environmental Planning Policy No. 1 – Development Standards.
2. Pursuant to the provisions of Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act, 1979 and Hornsby Shire Local Environmental Plan 1994, the proposal does not comply with the prescriptive standard or objectives of Clause 15 Floor Space Ratio.
3. Pursuant to the provisions of Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act, 1979 and Hornsby Shire Local Environmental Plan 1994, the proposal does not comply with the objectives of the Business C (Neighbourhood) zone.
4. Pursuant to the provisions of Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act, 1979, the proposal fails to address the requirements of Clause 87 of State Environmental Planning Policy (Infrastructure) 2007.
5. Pursuant to the provisions of Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act, 1979, as the proposal does not comply with the requirements of the Business Lands Development Control Plan, in particular, the element controls for ‘Density’, ‘Building Design’, ‘Vehicle Access and Parking’, ‘Drainage Control’, ‘Acoustic’ and ‘Crime Prevention’.
6. Pursuant to the provisions of Section 79C(1)(b) of the Environmental Planning and Assessment Act, 1979, the proposal would result in insufficient parking arrangement and would have a detrimental impact on the built environment.
7. Pursuant to the provisions of Section 79C(1)(b) of the Environmental Planning and Assessment Act, 1979, the proposal would detrimentally impact upon the privacy and amenity of adjoining properties.
8. Pursuant to the provisions of Section 79C(1)(b) of the Environmental Planning and Assessment Act, 1979, the proposal would not be suitable for the site given the size of the proposed development and the existing improvements on the site.
9. Pursuant to the provisions of Section 79C(1)(e) of the Environmental Planning and Assessment Act, 1979, the proposal would be inconsistent with the draft Subregional Strategy and the draft Housing Strategy and would not be in the public interest.
10. Pursuant to the provisions of Section 79C(1)(e) of the Environmental Planning and Assessment Act, 1979, the proposal would set an undesirable precedent for similar inappropriate development and is not considered to be in the public interest.

- END OF REASONS FOR REFUSAL -

**7 DEVELOPMENT APPLICATION - TWO LOT SUBDIVISION - DEMOLITION
77 HANNAH STREET BEECROFT**

Development Application No:	DA/897/2009
Description of Proposal:	Demolition of an existing dwelling and garage and Torrens title subdivision of one lot into two lots
Property Description:	Lot 1 DP 231939, No. 77 Hannah Street, Beecroft
Applicant:	PS Graham and Associates
Owner:	Mr S K C Wong and Mrs C L Wong
Statutory Provisions:	Hornsby Shire Local Environmental Plan 1994 Residential AS (Low Density - Sensitive Lands)
Estimated Value:	\$15,000
Ward:	C

RECOMMENDATION

THAT Development Application No. 897/2009 for the demolition of an existing dwelling and garage and the Torrens title subdivision of one lot into two lots at Lot 1 DP 231939, No. 77 Hannah Street Beecroft be approved subject to the conditions of consent detailed in Schedule 1 of this report.

EXECUTIVE SUMMARY

1. The application proposes the demolition of the existing dwelling and the Torrens title subdivision of one lot into two lots.
2. The proposal complies with the Hornsby Shire Local Environmental Plan 1994 and the Residential Subdivision Development Control Plan.
3. The proposal is integrated development and the General Terms of Approval have been received from the Department of Water and Energy.
4. Two submissions have been received in respect of the application.
5. It is recommended that the application be approved.

THE SITE

The site has an area of 1534.7 sqm and is located on the southern side of Hannah Street, 120 metres east of Hull Road. The site is an irregular lot with frontage to Hannah Street of 49.38 metres, a rear boundary length of 31.19 metres and depths of 38.1 metres and 42.21 metres.

A single dwelling-house and detached double garage is constructed on the site.

The bulk of the site has a crossfall from west to east of approximately 10-13%. Devlins Creek is located adjacent to the eastern boundary with a lower and higher bank with a grade of approximately 40% and a height of 4-5 metres.

The site comprises a number of exotic, native planted trees and locally indigenous specimens.

Significant trees are located adjacent to the creek and the Hannah Street road frontage.

THE PROPOSAL

It is proposed to demolish the existing dwelling and garage on the site and subdivide one allotment into two allotments as follows:

- Lot 1: has an area of 600 sqm
- Lot 2: has an area of 934.7 sqm and includes a 10 metre wide riparian buffer zone along the eastern boundary.

Each lot would have separate access to Hannah Street and would drain to Devlins Creek.

The proposal does not involve the removal of any vegetation. However, approval of the development would result in the future removal of vegetation under separate development consents.

ASSESSMENT

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

1. STRATEGIC CONTEXT

1.1 Metropolitan Strategy – (Draft) North Subregional Strategy

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

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

- Employment capacity to increase by 9,000 jobs; and

- Housing stock to increase by 11,000 dwellings.

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

2. STATUTORY CONTROLS

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

2.1 Hornsby Shire Local Environmental Plan 1994

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

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

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

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

Clause 18 of the HSLEP sets out heritage conservation provisions within the Hornsby area. The property is located within the vicinity of property No. 86X Hannah Street, Beecroft which is listed as a heritage item (park) of Local significance under the provisions of Schedule D (Heritage Items) of the Hornsby Shire Local Environmental Plan (HSLEP) 1994.

Council’s heritage assessment noted that the heritage listed park at property No. 86X Hannah Street, Beecroft is located on the opposite side of the road and would not be adversely affected by the development proposal.

2.2 State Environmental Planning Policy No. 19 - Bushland in Urban Areas

The general aim of this Policy is to protect and preserve bushland within the urban areas because of its value to the community as part of the natural heritage, its aesthetic value, and its value as a recreational, educational and scientific resource.

One of the submissions raises concern that development within or adjacent to a bushland protection area should be accompanied by a comprehensive assessment of trees likely to be affected, in accordance with the provisions of SEPP 19.

Clause 9 of SEPP 19 relates to land adjoining land zoned or reserved for public open space. Fearnley Park (No. 86X Hannah Street) is located on the opposite side of the road and is zoned Open Space A (Public Recreation - Local) under HSLEP.

The proposed development would not impact upon bushland on the adjoining open space land on the opposite side of the road and the development includes a 10 metre riparian buffer zone to protect the creek that is located on the land immediately adjacent to the site to the east, which is privately owned land and zoned Residential AS (Low Density - Sensitive Lands).

The proposal also includes the retention of a majority of remnant canopy trees onsite, which would continue to function as a wildlife corridor and vegetation link with Fearnley Park, which is on the opposite side of Hannah Street.

Accordingly, no further assessment under SEPP 19 is required.

2.3 State Environmental Planning Policy No. 55 - Contaminated Lands

Clause 7 of *State Environmental Planning Policy No. 55 - Remediation of Land* (SEPP 55) requires Council to consider whether land is contaminated prior to granting consent to the carrying out of any development on that land.

Should the land be contaminated Council must be satisfied that the land is suitable in a contaminated state for the proposed use. If the land requires remediation to be undertaken to make the land suitable for the proposed use, Council must be satisfied that the land will be remediated before the land is used for that purpose.

The site history indicates a history of residential development, it is not likely that the site has experienced any significant contamination, and further assessment under SEPP 55 is not required.

2.4 State Environmental Planning Policy (Sydney Harbour Catchment) 2005

The site is located within the catchment of Sydney Harbour. As such the land is subject to the *SREP (Sydney Harbour Catchment) 2005*. The aim of the Plan is to ensure that the catchment, foreshores, waterways and islands of Sydney Harbour are recognised, protected, enhanced and maintained. The Plan addresses matters related to biodiversity, ecology and environment protection; public access to, and use of, foreshores and waterways; maintenance of a working harbour; interrelationship of waterway and foreshore uses; foreshore and waterways scenic quality; maintenance, protection and enhancement of views and boat storage facilities.

It is considered that the proposed development is not inconsistent with the aims and objectives of the Plan. Notwithstanding, the proposal involves works that would require specific conditions to be imposed regarding erosion and sediment control measures. These matters are addressed in Schedule 1.

2.5 Water Management Act 2000

The site adjoins Devlins Creek.

The *Water Management Act 2000* includes provision for prescribed activities within 40 metres of a watercourse. Subdivision is a controlled activity under the Act and requires the

approval of the Department of Water and Energy. In this regard the application is ‘integrated development’ and was referred to the Department for assessment.

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

2.6 Residential Subdivision Development Control Plan

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

Residential Subdivision Development Control Plan			
Control	Proposal	Requirement	Compliance
Site Area	1534.7m ²	N/A	N/A
Allotment Size			
Lot 1	600m ²	600m ²	Yes
Lot 2	934.7m ²	600m ²	Yes

As detailed in the above table, the proposed development complies with the prescriptive standards within Council’s Residential Subdivision DCP. The merits of the proposal, as well as a brief discussion on compliance with relevant performance standards are detailed below.

2.6.1 Allotment Layout and Design

Proposed lot 1 can accommodate a 200 sqm indicative building envelope in compliance with the DCP allotment layout and design performance criteria.

Proposed lot 2 is relatively large and accommodates a 200 sqm building envelope with a minimum dimension of 10 metres in compliance with the DCP allotment layout and design performance criteria. It is noted that lot 2 has been designed to provide a riparian buffer zone to protect the watercourse on the adjoining property.

2.6.2 Landscaping

The proposed subdivision includes adequate areas for future landscaping to ensure privacy of future and existing residents.

A submission received raises the following concerns:

- (a) *The plan of subdivision indicated that seven significant trees will be adversely impacted by the proposed building platforms and associated driveways / turning areas. This is contrary to the Residential Subdivision DCP Landscaping-Prescriptive Measures; proposed building envelopes etc should have a minimum setback of 4m from trees and groups of trees which have been assessed as significant’.*

Council's assessment of the proposal included a detailed examination of the existing trees on site which noted that Trees numbered 1 – 7 would be adversely affected by the proposed building envelopes and driveway access. None of these trees have been assessed as significant and Tree number 5 is exempt from Council's Tree Preservation Order.

Notwithstanding, no trees are proposed to be removed as part of the application and recommended conditions of consent have been imposed to ensure that during site works and construction, protective barriers will be placed around trees to be retained.

- (b) *On the basis of professional tree advice, the Trust believes that the 4 metre setback is insufficient for the larger trees on this site. Council is urged to adopt and apply the recently released Australian Standard AS4970 – 2009 Protection of trees on development sites when assessing this application.*

The recent *Australian Standard 4970-2009 Protection of trees on development sites* has been prepared to provide recommendations and guidance for arboriculturists when assessing trees on development sites. This is a guideline only. Each tree is assessed on its individual merit taking into account site constraints which may result in the recommended distances being reduced, whilst still achieving the same outcome of retaining the tree. These matters would be further considered at development application for dwellings stage.

- (c) *The DCP also requires that 'Applications should be accompanied by a survey plan indicating the precise location of existing trees'. The plan of subdivision submitted indicates that the tree positions and sizes shown are estimated. This raises the question as to how can this plan be relied upon by Council in any accurate assessment?*

The applicant has provided written advice stating that the survey plan complies with Council's requirements and indicates the precise location of the trunks of all existing trees.

The applicant's response states that the notation on the plan, '*tree positions and sizes shown are estimated*' is necessary to allow for the occasional leaning tree which is most difficult to show on a plan. The leaning tree may have a spread of 5 metres in one direction and only two metres in another.

- (d) *The Beecroft Cheltenham Civic Trust expresses serious concerns with regard to the extent of crown reduction that may be necessary to make safe the larger canopy trees proposed for retention, as they will overhang future dwellings proposed for the site. Extensive pruning may very well destroy significant healthy native trees not impacted by the ground and building works.*

All trees are protected under Council's Tree Preservation Order and all applications with regards to these trees will be assessed on their own merits.

2.6.3 Drainage Control

The proposed stormwater drainage system is to be piped to the existing watercourse which adjoins the site's eastern boundary.

A stormwater detention system is recommended for the subdivision. The detention system, together with recommended conditions of the Department of Water and Energy, would ensure no adverse impact on the watercourse and downstream properties as a result of the development.

2.6.4 Utility Services

All public utilities are available on site. A recommended condition requires that the applicant must submit written evidence that satisfactory arrangements have been made to service the proposed development from Energy Australia and Sydney Water.

2.6.5 Acoustics

The site is not affected by adverse noise impacts.

2.6.6 Fencing

No fencing is proposed as part of the application.

2.6.7 Heritage

The heritage listed 'Fearnley Park' at property No. 86X Hannah Street, Beecroft is located on the opposite side of the road and would not be adversely affected by the development proposal.

2.6.8 Section 94 Contributions

The applicant would be required to make a payment of a contribution towards the cost of transport and traffic management, library and community facilities, civic improvements, stormwater drainage, bushfire protection and Section 94 administration in accordance with Sections 94, 94B and 94C of the Environmental Planning and Assessment Act 1979 and Hornsby Shire Council's Development Contributions Plan 2007-2011. A condition has been imposed to ensure the payment of s94 contributions for the development.

2.7 Waste Minimisation and Management Development Control Plan

The primary purpose of this Development Control Plan is to provide planning strategies and controls to promote waste minimisation and management.

The applicant has submitted a satisfactory waste management plan in accordance with the requirements of the DCP.

3. ENVIRONMENTAL IMPACTS

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

3.1 Natural Environment

The site and adjacent creek line of Lot 1 DP 406979 contains trees that are consistent with Council's vegetation mapping of *Blackbutt Gully Forest - Community L* (Smith and Smith 2008). The area mapped as containing Sydney Turpentine Ironbark Forest Endangered Ecological Community comprises the area for the existing dwelling and does not comprise of remnant canopy species with exception of large remnant trees at the front of the property which are considered necessary to be retained.

Council's assessment of the proposal included a detailed examination of the existing trees on site which noted the following:

- Trees numbered 5, 19, 21, 22, 22, 23, 25, 26 located within the property are exempt from Council's Tree Preservation Order.
- Trees numbered 1 – 7 may be adversely affected by the proposed building envelopes and driveway access. None of these trees have been identified as being significant.

In accordance with Section 5A of the *Environmental Planning and Assessment Act 1979*, it is considered that the proposal would not have a significant impact upon species, populations and communities listed under the *Threatened Species Conservation Act 1995* and a Species Impact Statement would not be required. Therefore, no further information is required from the applicant regarding matters listed under the *Threatened Species Conservation Act 1995*.

Notwithstanding the above, no trees are proposed to be removed as part of the application and recommended conditions of consent have been imposed to ensure that during site works and construction, protective barriers would be placed around trees to be retained.

3.2 Built Environment

The site is located within a low density residential area. The proposed subdivision is of acceptable design in addressing the street and in providing for residential amenity, private open space, landscaping, vehicle access and parking.

A submission raises concerns with regards to the potential loss of on-street car parking as a result of a second driveway for the newly created lot and the increase in traffic along Hannah Street.

The proposed development would generate an additional nine daily traffic movements in accordance with the RTA's *Guide to Traffic Generating Developments*. Council's engineering assessment of the development considered that the proposed lots are of sufficient size to cater to off-street parking for any future development and existing development within the street is well set back to allow for adequate off-street parking to cater to the residents needs. Accordingly, this objection does not warrant refusal of the application.

3.3 Social Impacts

The proposed development would have a positive social impact upon the locality.

3.4 Economic Impacts

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

4. SITE SUITABILITY

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

There is no known hazard/risk associated with the site with respect to bushfire, landslip and subsidence that would preclude approval of the proposed development. However, part of the land the subject of the development is identified as being below the 1:100 year flood level.

The application includes a drainage report prepared by GJ McDonald Consulting Engineers and Council’s engineering assessment of the proposal raised concludes that dwelling could be appropriately constructed on site without being adversely affected by flooding.

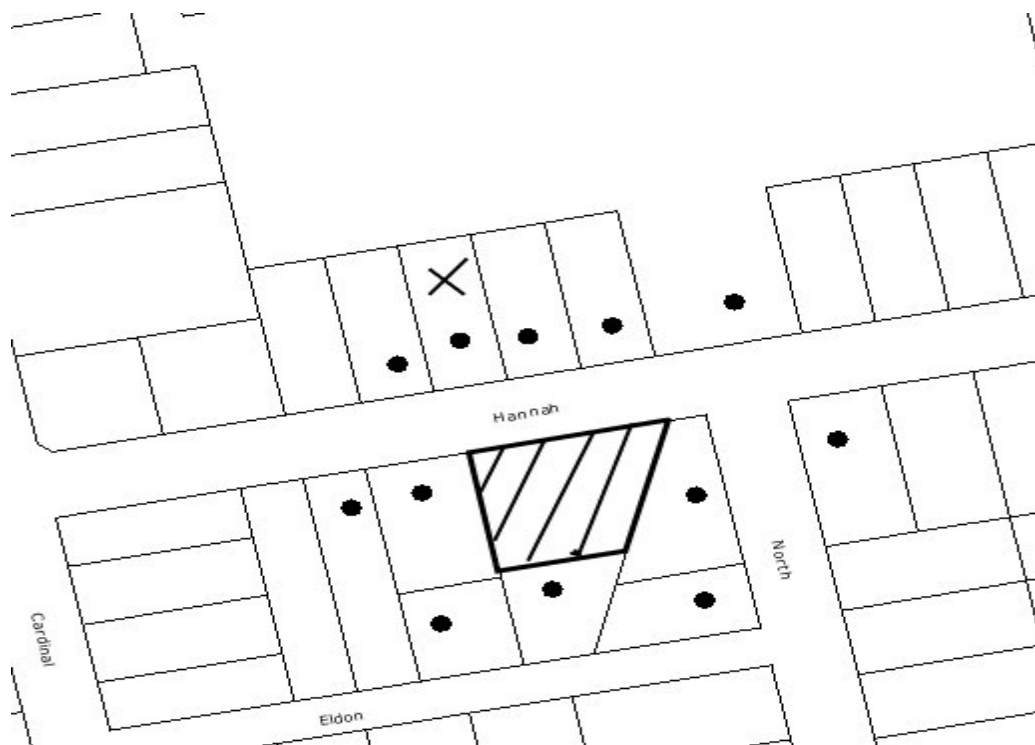
The site is located in close proximity to public transport, shops, schools, sporting and community facilities and is well located for residential development.

5. PUBLIC PARTICIPATION



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

5.1 Community Consultation

The proposed development was placed on public exhibition and was notified to adjoining and nearby landowners between 19 August 2009 and 9 September 2009 in accordance with Council’s Notification and Exhibition Development Control Plan. During this period, Council received two submissions. The map below illustrates the location of those landowners who made a submission that are in close proximity to the development site.



NOTIFICATION PLAN

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

Two submissions objected to the development, generally on the following grounds:

- Application does not address SEPP 19
- The adverse impact of the development on significant trees on the site and potential removal of significant trees;
- Use of recently released Australian Standards when assessing tree impacts;
- Survey Plan does not show 'precise' location of trees;
- Unacceptable traffic on local streets;
- Loss of on-street car parking.

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

5.2 Public Agencies

The development application is Integrated Development under the Act. Accordingly, the application was referred to the following Agency for comment:

5.2.1 Department of Water and Energy

The Department of Water and Energy has raised no objection to the proposal subject to the General Terms of Approval granted and the issuing of a Controlled Activity Approval prior to issue of the Construction Certificate.

6. THE PUBLIC INTEREST

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

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

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

CONCLUSION

The application proposes the demolition of the existing dwelling and detached garage and the Torrens title subdivision of one allotment into two.

The proposed development generally maximises the development opportunity of the site available under Council's planning controls. The proposal has been assessed as satisfactory pursuant to Section 79C of the Environmental Planning and Assessment Act, 1979, the Hornsby Shire Local Environmental Plan, 1994 and Council's Residential Subdivision, Development Control Plan.

The development is considered to be acceptable in relation to environmental impacts and is considered to be in the public interest.

Approval of the application is recommended.

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

ROD PICKLES
Manager - Assessment Team 2
Planning Division

PAUL DAVID
Manager - Subdivision & Development
Engineering Services
Planning Division

SCOTT PHILLIPS
Executive Manager
Planning Division

Attachments:

1. Locality Plan
2. Subdivision Plan

File Reference: DA/897/2009
Document Number: D01230499

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 relevant legislation, planning instruments and Council policies affecting the land and does not disrupt the amenity of the neighbourhood or impact upon the environment.

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

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

1. Approved Plans and Supporting Documentation

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

<i>Plan No.</i>	<i>Plan Title</i>	<i>Drawn by</i>	<i>Dated</i>
S14660	Plan of Proposed Subdivision	PS Graham & Associates	26 July 2009

<i>Document No.</i>	<i>Prepared by</i>	<i>Dated</i>
Statement of Environmental Effects	PS Graham & Associates	28 July 2009
Waste Management Plan	PS Graham & Associates	28 July 2009
Drainage Report Ref: 09012.doc	GJ McDonald Consulting Engineers	August 2009

REQUIREMENTS PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE**2. Water/Electricity Utility Services**

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

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

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

REQUIREMENTS PRIOR TO THE COMMENCEMENT OF ANY WORKS**3. 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.

4. 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.

5. Tree Protection Barriers

Tree protection fencing must be erected around trees numbered 8, 10, 11, 12, 13, 14, 15, 16 and 17 to be retained at a 4 metre setback. The tree fencing must be constructed of 1.8 metre 'cyclone chainmesh fence' or star pickets spaced at 2 metre intervals, connected by a continuous high-visibility barrier/hazard mesh at a height of 1 metre.

To avoid injury or damage, trees numbered 1, 2, 3, 6 and 7 must have trunks protected by 2 metre lengths of 75mm x 25mm hardwood timbers spaced at 80mm secured with galvanised wire (not fixed or nailed to the tree in any way).

REQUIREMENTS DURING CONSTRUCTION**6. 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.

7. 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.

8. Environmental Management

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

9. Works near Trees

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

All works (including driveways and retaining walls) within 6 metres of any trees required to be retained (whether or not on the subject property, and pursuant to this consent or the *Tree Preservation Order*), must be carried out under the supervision of an *'AQF Level 5 Arborist'* and a certificate submitted to the principal certifying authority detailing the method(s) used to preserve the tree(s).

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

10. Bushland Protection during Construction

To ensure the protection of bushland during construction, the applicant must ensure that all machinery to be cleaned of soil and debris before entering the site to prevent the spread of weeds and fungal pathogens.

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

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

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

11. Setback from Prescribed Stream

A buffer setback of 10 metres must be provided from the crest of the watercourse to any construction works. The setback area must be suitably vegetated with native grasses and groundcovers consistent with *Blackbutt Gully Forest (Community L)* species as per the Hornsby Council planting guide, *Indigenous Plants for the Bushland Shire*, available at Council or on Council's web site: www.hornsby.nsw.gov.au – “Native Vegetation Communities of Hornsby Shire” (Smith and Smith 2008) to facilitate the filtration of surface runoff.

REQUIREMENTS PRIOR TO THE ISSUE OF A SUBDIVISION CERTIFICATE

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

12. Sydney Water – s73 Certificate

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

13. Stormwater Drainage

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

- a. Connected directly to Devlins Creek in accordance with Council's Sustainable Water Best Practices Manual and Development Control Plan.
- b. An inter-allotment stormwater drainage system to service the proposed lot with pits being constructed in situ.

14. 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. Approval obtained from all relevant utility providers that all necessary conduits be provided and protected under the crossing.

a.

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.

15. Road Works

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

- a. A kerb and gutter and pavement along the full frontage of the proposed subdivision, together with footpath formation, necessary drainage and sealing of road pavement between the existing pavement and lip of the gutter.
- b. The existing road pavement to be saw cut a minimum of 300 mm from the existing edge of the bitumen and reconstructed.

16. 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.

17. Creation of Easements

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

- a. An inter-allotment drainage easement(s) over each of the burdened lots.
- b. A restriction over the pipeline and the flow path for a 100 year average recurrence interval storm. The "*Restriction on the Use of Land*" over the affected lots is to prohibit the alteration of the final floodway shape and the erection of any structures, including fencing, in the floodway without the written permission of Council. The terms of this restriction must be obtained from Council.
- c. A "*Restriction on the Use of Land*" for any lot adjacent to the floodway, requiring the finished floor level of any habitable room to be not less than 500mm and the garage 300mm above the 100 year average recurrence interval storm level. The levels must be related to *Australian Height Datum*.
- d. The creation of a "*Positive Covenant*" over the proposed Lot 1 requiring that any future development is to provide an on-site detention system. The on-site

detention system is to have a storage capacity of 5 cubic metres and a maximum discharge of 8 litres per second into Council's drainage system in accordance with Council's prescribed wording.

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

18. Works as Executed Plan

A works-as-executed plan(s) must be prepared by a registered surveyor and submitted to Council for completed road pavement, kerb & gutter, interallotment drainage and vehicular crossings.

19. 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.

20. Maintain Canopy Cover

To maintain canopy cover, four medium to large trees selected from Council's booklet '*Indigenous Plants for the Bushland Shire*' such as *Syncarpia glomulifera* or *Acmena smithii* are to be planted on the subject site. The planting location shall not be within 4 metres of the foundation walls of a dwelling or in-ground pool. The pot size is to be a minimum 25 litres and the trees must be maintained until they reach the height of 3 metres. Trees must be native to Hornsby Shire and reach a mature height greater than 10 metres.

21. Restriction as to User - Protection of Land from Future Development

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

Any weed removal work undertaken in the Riparian Buffer Zone is to be undertaken in accordance with recognised bush regeneration methods in accordance with '*Recovering bushland on the Cumberland Plain: Best practice guidelines for the management and restoration of bushland – Department of Conservation 2005*';

Note: The Guideline is available at: www.environment.nsw.gov.au, publications.

Any plantings are to comprise of *Blackbutt Gully Forest (Community L)* species as per the Hornsby Council planting guide, *Indigenous Plants for the Bushland Shire*, available at Council or on Council's web site: www.hornsby.nsw.gov.au – "Native Vegetation Communities of Hornsby Shire" (Smith and Smith 2008). Landscape plants must be non-invasive and not have the potential to spread into the surrounding bushland.

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

22. s94 Infrastructure Contributions

The payment to Council of a contribution of \$19263.30* for one additional lot towards the cost of infrastructure identified in Council's Development Contributions Plan 2007-2011.

*Note: * The value of contribution is based on a rate of \$19263.30 per additional lot and is current as at 8 October 2009. The contribution will be adjusted from this date in accordance with the underlying consumer price index for subsequent financial quarters.*

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

GENERAL TERMS OF APPROVAL - DEPARTMENT OF WATER AND ENERGY

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

23. General Terms of Approval

These General Terms of Approval (GTA) only apply to the controlled activities described in the plans and associated documentation relating to DA/897/2009 and provided by Council:

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

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

24. Controlled Activity Approval

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

25. Erosion and Sediment Control Plan

The consent holder must prepare or commission the preparation of:

- (i) Erosion and Sediment Control Plan

26. Discharge Points

The consent holder must stabilise drain discharge points to prevent erosion in accordance with a plan approved by the Office of NSW Water.

27. Erosion and Sediment Control Works

The consent holder must establish all erosion and sediment control works and water diversion structures in accordance with a plan approved by the NSW Office of Water. These works and structures must be inspected and maintained throughout the working period and must not be removed until the site has been fully stabilised.

28. Riparian Corridor

The consent holder must establish a riparian corridor along Devlin Creek in accordance with a plan approved by the NSW Office of Water.

- 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.

Tree Preservation Order

To ensure the maintenance and protection of the existing natural environment, it is an offence to ringbark, cut down, top, lop, remove, wilfully injure or destroy a tree outside 3 metres of the approved building envelope without the prior written consent from Council.

Note: A tree is defined as a single or multi-trunked wood perennial plant having a height of not less than three (3) metres, and which develops many branches, usually from a distance of not less than one (1) metre from the ground, but excluding any plant which, in its particular location, is a noxious plant declared as such pursuant to the

Noxious Weeds Act 1993. This definition of 'tree' includes any and all types of Palm trees.

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

Fines may be imposed for non-compliance with Council's *Tree Preservation Order*.

Subdivision Certificate Requirements

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

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

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

Fees and Charges – Subdivision

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

Dial Before You Dig

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

Asbestos Warning

Should asbestos or asbestos products be encountered during demolition or construction works you are advised to seek advice and information 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.

House Numbering

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

8 REPORTING VARIATIONS TO DEVELOPMENT STANDARDS

EXECUTIVE SUMMARY

In accordance with the Department of Planning's *Planning Circular PS 08-14*, Council is required to report variations to development standards for development applications approved under delegated authority, which relied upon State Environmental Planning Policy No. 1 - Development Standards (SEPP 1).

PURPOSE

The purpose of this report is to advise Council of determined development applications involving a SEPP 1 variation to a development standard relating to the period 1 July 2009 to 30 September 2009.

BACKGROUND

The Department of Planning issued Circular PS 08-014 on 14 November 2008. The purpose of the Circular was to remind councils of their responsibilities to monitor the use of the Director-General's assumed concurrence under State Environmental Planning Policy No. 1. Councils were reminded of the need to keep accurate records of the use of SEPP 1 and to report on a quarterly basis.

The Circular also provides that Councils are required to adopt the following four measures in response to the findings of the recent ICAC investigation into corruption allegations affecting Wollongong City Council:

1. *Establish a register of development applications determined with variations in standards under SEPP 1;*
2. *Require all development applications where there has been a variation greater than 10% in standards under SEPP 1 to be determined by full council (rather than general manager or nominated staff member);*
3. *Provide a report to each council meeting on the development applications determined where there had been a variation in standards under SEPP 1;*
4. *Make the register of development applications determined with variations in standards under SEPP 1 available to the public on the council's website.*

DISCUSSION

Prior to August 2009, all development applications involving a SEPP 1 objection were determined by Council. Accordingly, it has not become necessary until this time to provide Council with a quarterly report pursuant to *Planning Circular PS 08-14*.

In accordance with Point 3 of the Department's Circular, attached hereto is a list of development applications determined under delegated authority involving a SEPP 1 variation to a development standard for the period 1 July 2009 to 30 September 2009.

A copy of the attachment to this report is also reproduced on Council's website.

BUDGET

There are no budget implications.

POLICY

There are no policy implications.

CONSULTATION

There was no consultation in the preparation of this report.

TRIPLE BOTTOM LINE SUMMARY

Triple Bottom Line is a framework for improving Council decisions by ensuring accountability and transparency on social, environmental and economic factors. It does this by reporting upon Council's strategic themes.

As this report simply provides Council with information and does not propose any actions which require a sustainability assessment, no Triple Bottom Line considerations apply.

RECOMMENDATION

THAT Council note the contents of Executive Manager's Report No. PLN85/09.

ROD PICKLES
Manager - Assessment Team 2
Planning Division

SCOTT PHILLIPS
Executive Manager
Planning Division

Attachments:

1. SEPP 1 Return

File Reference: F2004/07599
Document Number: D01256707

9 HERITAGE FESTIVAL 2010

EXECUTIVE SUMMARY

The National Trust organises an annual Heritage Festival to promote an awareness of heritage and conservation throughout Australia. The Trust coordinates a series of events throughout the Festival and encourages local councils and the community to do the same.

Council's Town Planning Services Branch is coordinating events to take place as part of the Hornsby Shire Heritage Festival 2010 to be held from 9 April to 24 April 2010. Council's Heritage Advisory Committee has been involved in the event planning. This Report provides further details of the programme and budget for the Heritage Festival 2010.

PURPOSE/OBJECTIVE

The purpose of this report is to seek Council's endorsement of a programme of events and budget for the Heritage Festival 2010 and request that the judging of Council's annual Heritage Awards be delegated to Council's Heritage Advisory Committee.

DISCUSSION

Every year, the National Trust organises a Heritage Festival to promote an awareness of heritage and conservation throughout Australia. The Trust coordinates a series of events throughout the Festival and encourages local councils and the community to do the same.

Council has held its own Heritage Festival each year since 1994. The Festival aims to promote heritage conservation and education within the Shire and has included guided cruises, plaque ceremonies, talks, bushwalks and other community events. Publicity is provided through the National Trust's advertising and publications, as well as Council's own promotion of events.

Following Council's endorsement, the organisation of events will be finalised and dates for each event confirmed. Quotes for most events have been obtained and are discussed in this report.

DISCUSSION

The National Trust has advised that the upcoming Heritage Festival will be held from 9 April to 24 April 2010 and is two weeks in duration (details of the Festival are attached). For the Festival, the National Trust has adopted the theme "The Making of Our Nation" which will mark the 200th Anniversary of Governor Lachlan Macquarie's 12 year tenure as the 5th Governor of the colony of New South Wales. Governor Macquarie is widely recognised as being a visionary responsible for instigating hundreds of public works programs which transformed the new colony to an economically independent civilisation. The theme endeavours to identify who and what has played an important role in shaping our nation at the local level.

At its meeting on 12 October 2009, Council's Heritage Advisory Committee agreed that the following events should be considered for the Heritage Festival 2010:

- **Hawkesbury River Boat Trip:** As per previous years, a guided Hawkesbury River Boat Trip would depart from Brooklyn. A local historian would guide a boat trip from Brooklyn, following the historic development of the Hawkesbury River settlements, including Brooklyn, Mooney Mooney, Dangar Island and Bar Island. The focus would be on the history of the construction of major transport infrastructure including the Hawkesbury River road and railway bridges. The duration of the trip would be approximately three (3) hours. Numbers would be limited to a maximum of fifty (50) people and there would be a small booking fee (\$10.00) for the event. A suitable boat would be chartered.
- **Open Day at Fagan Park:** The Friends of Fagan Park are organising an annual Open Day within Fagan Park. Farm machinery and blacksmith demonstrations, and a parade of old farm vehicles will be arranged throughout Netherby Homestead and the Rural Museum.
- **Library Exhibition:** Each year, the Hornsby Shire Historical Society, in conjunction with Council's Local Studies Library, coordinates a display within Council libraries which reflects the theme of the NSW Heritage Festival. The exhibition would be shown from 9 April to 24 April 2010, during opening hours, at the Hornsby, Epping and Pennant Hills libraries.
- **Aboriginal Heritage Walk:** An Aboriginal guide, in conjunction with a local historian, would lead a guided walk providing a commentary of the philosophical, cultural and historical issues concerning both Aboriginal and European culture in Hornsby Shire. The duration of the walk would be approximately two and a half hours. Numbers would be limited to twenty (20) people and there would be no charge for the event. The location of the walk is under discussion.
- **Heritage Walk – Hornsby Rail Yards:** This walk would include a talk on the various buildings that comprise the Hornsby Rail Yards and the importance of the railway in the development of the Shire. The tour would include a visit to the Hornsby Rail Yards Signal Box. The duration of the walk would be approximately two hours. Numbers would be limited to twenty (20) people and there would be no charge for the event. Final approval for access to the Rail Yards is currently being sought.

Details for all events would be finalised following Council's endorsement of the proposed events.

Heritage Awards

Each year, Council has offered awards to recognise and publicly acknowledge work undertaken on items of heritage significance, or the education and promotion of heritage conservation. The Hornsby Shire Heritage Awards form part of the Heritage Festival celebrations. Nominations for the annual awards will be called in time for the presentation of the Awards at the Council Meeting on Wednesday, 5 May 2010.

The awards consist of three categories:

Category A: Work involving the preservation, restoration, reconstruction or maintenance of a heritage item.

Category B: Work involving either (a) the erection of a sensitively designed new building in a Heritage Conservation Area or in close proximity to a heritage item; or (b) a sensitively designed extension or alteration to an existing heritage item or building in a Heritage Conservation Area.

Owen Nannelli Memorial Award (Category C): This award is in honour of the contributions of the late Councillor Owen Nannelli to heritage conservation within the Shire and will be awarded to a group or individual who has made an outstanding contribution to the education and promotion of heritage within the Shire.

Winners of categories A and B are awarded a commemorative bronze plaque to attach to the dwelling/structure and a framed certificate. Participants who receive a 'highly commended' award for categories A and B and winners of the Owen Nannelli Memorial Award are presented with a framed certificate.

To enable the timely exhibition of entries during the Heritage Festival and the presentation of the awards at the Council Meeting on 5 May 2010, it is recommended that the final judging of Council's annual Heritage Awards be delegated to Council's Heritage Advisory Committee.

Advertising

The Heritage Festival events will be advertised in Council's Calender of Events, Bushland Shire News, advertisements in local newspapers and by the distribution of a free postcard outlining the events. The postcard will be placed in libraries and Council offices and distributed to historical societies.

Based on a recommendation from the Heritage Advisory Committee, a photograph of the Hawkesbury River Rail Bridge, Brooklyn (copy attached) has been chosen for the postcard. The photograph represents one of the more important pieces of infrastructure that helped facilitate development within and beyond the Shire to reflect the theme for the Festival. This photograph has been chosen for the postcard for the following reasons:

- The photograph depicts a historical view of the Hawkesbury River Rail Bridge which is recommended to be part of the discussion on the Hawkesbury River Boat Cruise during the Heritage Festival 2010, and so is likely to draw interest to the event;
- It is in keeping with the historical photographs used in previous years. The view is a striking image which would attract the attention and interest of the community; and
- The photograph displays part of the transport infrastructure accomplishments of the Hornsby Shire in keeping with the NSW Heritage Festival theme of "The Making of our Nation".

The Hornsby Shire Heritage Advisory Committee endorsed the photograph at its meeting on 12 October 2009. It is recommended that Council endorse the use of the photograph for advertising the Heritage Festival 2010.

BUDGET

An amount of \$5,000 is available for the Heritage Festival 2010 (including the Heritage Awards). The following cost estimates are provided:

Event	Requirements	Cost Estimate \$
Hawkesbury River Boat Trip	Charter of suitable boat (less income for booking fee)	1,500 (- 500)
Open Day at Fagan Park	Nil (advertising included in general Heritage Festival advertising)	Nil
Aboriginal Heritage Walk	Guides	600
Heritage Walk – Hornsby Rail Yards	Nil (advertising included in general Heritage Festival advertising)	Nil
Library Exhibition	Nil (advertising included in general Heritage Festival advertising)	Nil
Heritage Awards	Plaques and framed certificates	600
Advertising	Local papers, brochures, postcard etc	2,800
TOTAL		5,000

Although not all costs have been finalised, it is anticipated that the \$5,000 budget will be adequate for all events and advertising.

CONSULTATION

At its meeting on 12 October 2009, Council's Heritage Advisory Committee endorsed a series of events for consideration as part of the Heritage Festival 2010.

Other groups involved in the events have been consulted in the preparation of this report, including the National Trust, Hornsby Shire Historical Society, Friends of Fagan Park and the various guides and hosts.

TRIPLE BOTTOM LINE SUMMARY

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

- *Working with our community:* The Heritage Festival events have been organised in consultation with key stakeholders and community representatives to cover significant places and events throughout the Shire. All sections of the local community would have access to information on the events via advertising in the local papers, the Festival postcard and information on Council's website.
- *Conserving our natural environment:* The Heritage Festival would promote significant historic places and environments at locations throughout Hornsby Shire. The Heritage Walk event would directly promote the conservation of rail heritage.
- *Contributing to community development through sustainable facilities and services:* The project does not relate directly to the provision of services and facilities.

Accordingly, no adverse impact on opportunities for community development would be expected.

- *Fulfilling our community's vision in planning for the future of the Shire:* The Heritage Festival would facilitate community understanding of the important heritage values within the Shire.
- *Supporting our diverse economy:* The Heritage Festival events do not relate directly to economic development. However, the events would utilise local services to cater for the events.
- *Maintaining sound corporate and financial management:* Council has allocated funds in its annual budget for the project. The Heritage Festival events do not have other corporate or financial implications for Council.
- *Other Sustainability Considerations:* The project would be managed to ensure any potential negative impacts of the events would be minimised.

CONCLUSION

Council's Heritage Advisory Committee has recommended that Council organise a number of events for the Heritage Festival 2010. The events include a Hawkesbury River Boat Trip, Open Day at Fagan Park, Aboriginal Heritage Walk, Heritage Walk at Hornsby Rail Yards, library exhibition and Heritage Awards.

Following endorsement by Council, the details of events would be finalised and promoted. A budget of \$5,000 is available for the Heritage Festival 2010. An estimate of costs indicates that the budget would be adequate for all events and advertising.

It is recommended that Council endorse the Heritage Advisory Committee's proposal for events to be included in the Heritage Festival 2010. To enable the timely exhibition of entries during the Heritage Festival and the presentation of the awards at the Council Meeting on 5 May 2010, it is also recommended that the final judging of Council's annual Heritage Awards be delegated to Council's Heritage Advisory Committee.

RECOMMENDATION

THAT:

1. Council endorse the program of events and budget for the Heritage Festival 2010 as outlined in Executive Manager's Report No. PLN86/09.
2. Council delegate the judging of the Heritage Awards 2010 to Council's Heritage Advisory Committee to enable the timely exhibition of entries during the Heritage Festival and the presentation of awards at the Planning Meeting on 5 May 2010.
3. Council endorse the photograph of the Hawkesbury River Rail Bridge, Brooklyn attached to Executive Manager's Report No. PLN86/09 to be used on the postcard to advertise the Heritage Festival 2010.

KAREN HARRAGON
Acting Manager - Town Planning Services
Planning Division

SCOTT PHILLIPS
Executive Manager
Planning Division

Attachments:

1. National Trust Invitation
2. Hawkesbury River Rail Bridge, Brooklyn - Photograph

File Reference: F2009/00567

Document Number: D01257514

10 ANNUAL AMENDMENTS PLANNING PROPOSAL AND DEVELOPMENT CONTROL PLAN AMENDMENTS

EXECUTIVE SUMMARY

The Director-General of the Department of Planning (DOP) has encouraged councils to prepare only one amendment, or a limited number of housekeeping amendments, to their existing environmental planning instruments each year. Council's Strategic Planning Programme includes the preparation of an annual Amendments Local Environmental Plan (LEP).

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 preparation of a planning proposal for submission to the DOP.

Over the past year, Council has identified planning anomalies to be rectified and minor amendments to be made, to the *Hornsby Shire Local Environmental Plan (HSLEP) 1994* as part of the annual Amendments LEP. This report presents a planning proposal to rezone various lands and implement the recommendations of *Heritage Review Stage 4, East Epping Heritage Review* and *Hornsby West Side Conservation Area Review*.

It is recommended that the Planning Proposal be endorsed for the purpose of seeking a "gateway" determination from the DOP to progress the preparation of Council's 2009 Annual Amendments Planning Proposal. In anticipation of the DOP determining that the matter may proceed, the Planning Proposal should also be endorsed for public exhibition.

PURPOSE/OBJECTIVE

The purpose of this report is to present a Planning Proposal that seeks to rezone lands, address planning anomalies and make minor amendments to the *HSLEP*.

BACKGROUND

The Director-General of the DOP, in a letter to all councils in May 2006, advised that the Department and councils have limited resources available for the progression of amending draft LEPs whilst preparing their new comprehensive LEPs. Councils are encouraged to prepare only one amendment, or a limited number of amendments, to their existing environmental planning instruments each year where councils need to rectify planning anomalies or make minor amendments to existing LEPs.

The Strategic Planning Programme includes the preparation of an Amendments LEP and over the past year, Council has identified a number of amendments to the *HSLEP* to be progressed as part of the LEP.

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 preparation of a planning proposal for submission to the DOP.

This report presents a 2009 Annual Amendments Planning Proposal explaining the effect of, and justification for, the Proposal and also containing a consultation strategy.

DISCUSSION

This report discusses the planning amendments that comprise this year’s Annual Amendments Planning Proposal, namely amendments to:

- rezone and permit strata subdivision at property No. 218 Brooklyn Road, Brooklyn;
- update the listing of heritage items generally in accordance with the recommendations of *Heritage Review Stage 4* and the *East Epping Heritage Review*; and
- implement the recommendations of the *Hornsby West Side Conservation Area Review* by expanding the residential component of the existing Conservation Area.

The report also addresses statutory considerations and provides recommendations, should Council resolve to progress the Planning Proposal.

Property No. 218 Brooklyn Road, Brooklyn

At its meeting on 7 October 2009, Council considered Executive Manager’s Report No. PLN78/09 presenting a request to prepare a draft LEP to permit the strata subdivision of an existing multi-unit housing development. The report also presented a review of the zoning history of the site which indicates that the two small sections of Business A (General) zoned land at the western end of the site are an anomaly and should be rezoned Residential A (Low Density) to reflect the primary zoning of the site. Council resolved 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.*
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.*

In accordance with Part 1 of Council’s resolution, the Planning Proposal seeks to enable the strata subdivision of the existing multi-unit development by providing an exception under Clause 22 of the *HSLEP*. The Planning Proposal also seeks to rezone areas of the property zoned Business A (General) to Residential A (Low Density) under the *HSLEP*.

In accordance with Part 2 of Council’s resolution, Council’s Compliance Team has directed the owner of the property to comply with the terms of the multi-unit housing development consent and provide on-site parking.

Heritage Review Stage 4

At its meeting on 3 June 2009, Council considered Executive Manager's Report No. PLN22/09 presenting a review of submissions and made recommendations in relation to the progression of the *Hornsby Shire Heritage Review Stage 4*. *Heritage Review Stage 4* provides a review of existing heritage listed trees and other items proposed for inclusion or deletion from the heritage list. Council resolved that:

Part A

Council endorse the recommendations of Executive Manager's Report No. PLN22/09 to include, remove and amend items on the heritage list and progress as part of an Annual Amending LEP, with the exception of Property No. 5 Chilcott Road, Berrilee – former Berrilee Public School (Identification No. B9).

Part B

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

At its meeting on 1 July 2009, Council considered Executive Manager's Report No. PLN52/09 presenting further information concerning the proposed listing of No. 5 Chilcott Road, Berrilee as required by Part B of Council resolution. Council resolved (in part) not to progress the heritage listing of the former school building.

The endorsed heritage list includes property No. 17 Dorset Street, Epping. At its meeting on 7 September 2009, the Hornsby Shire Heritage Advisory Committee discussed the status of the proposed listing of No. 17 Dorset Street, Epping in its consideration of Development Application No. 915/2009 for the demolition of the existing dwelling-house. The Committee noted that the house is a proposed item, but does not constitute a draft heritage item and as such can not be considered under Section 79C of the *Environmental Planning and Assessment Act*. Development Application No. 915/2009 for the proposed demolition of the dwelling was approved on 2 October 2009. Accordingly, it is recommended that the proposed listing of the property not be progressed.

The Planning Proposal proposes the deletion of thirty-two heritage items, comprising twenty-six tree listings and seven built/cultural items. Fifteen additional heritage items, comprising one tree listing and fourteen built/cultural items are recommended for inclusion on Council's heritage list. Eight existing heritage items are recommended for amendment. The Planning Proposal details the proposed listings, deletions and amendments (copy attached).

East Epping Heritage Review

At its meeting on 7 November 2001, Council considered Executive Manager's Report No. PLN346/01 concerning the preparation of a draft LEP and draft DCP amendments to implement the recommendations of the *East Epping Conservation Evaluation and Review Study* and the *East Epping Heritage Review*. Council resolved (in part) to progress the draft LEP to:

- 1.1 include an additional 14 proposed heritage items in Schedule D – Heritage Items; and*

1.2 *include two proposed Heritage Conservation Areas in Schedule E - Heritage Conservation Areas;*

A draft LEP (Amendment No. 76) for the establishment of the East Epping and Essex Street Heritage Conservation Areas and the nomination of 14 properties for heritage listing, was forwarded to the Department on 22 January 2003.

In 2004, the DOP advised that the draft LEP would be unlikely to be progressed due to the perceived conflict between Heritage Conservation Areas and urban consolidation principles, particularly in view of the forthcoming *Epping Town Centre Study*. In March 2009, representatives of the Department advised Council to progress the 14 properties for heritage listing as part of an Amendments LEP. Council at its meeting on 3 June 2009 considered Executive Manager's Report No. PLN22/09 and resolved to progress the proposed *East Epping Review* listings as part of the Annual Amending LEP.

The *East Epping Review* recommends the listing of Nos. 5 and 41 Norfolk Road, Epping. Further information concerning the historical significance of the property has since been reviewed. In 1999, development consent was granted in respect of Nos. 3, 5, and 7 Norfolk Road, for demolition of existing cottages and ancillary structures. The work has subsequently been completed in accordance with the consent and the dwelling at No 3. Norfolk Road demolished. Accordingly, it is recommended that the proposed listing of property No. 3 Norfolk Road not be progressed.

The statement of heritage significance for No. 41 Norfolk Road, identifies that the property is worthy of listing because it represents:

"... a fine example of the Federation Bungaalow style of architecture, clearly demonstrating particular characteristics of the style, including large roof planes, a prominent gable verge, face brickwork, and sparingly decorated timberwork. The detailing and sedate composition of the house contribute to its architectural presence in the streetscape."

In 1998, the Land and Environment Court approved Development Application No. 388/1998 for alterations and additions to property No. 41 Norfolk Road, Epping. The work has subsequently been completed, including significant additions to the front facade of the dwelling. The heritage values of the property have been detrimentally affected. Accordingly, it is recommended that the heritage listing not be progressed.

Accordingly, the Planning Proposal has been prepared to progress twelve of the proposed items recommended by the *East Epping Review*.

Hornsby West Side Conservation Area Review

The proposed Mount Errington Heritage Conservation Area represents an expansion of the residential component of the existing Hornsby West Side Heritage Conservation Area, which is based on the 1896 Mount Errington subdivision. *The Hornsby West Side Heritage Conservation Area Review* notes that the built character of the area is predominately residential, typified by detached houses well spaced on separate lots. Most of the houses of the original subdivision have designs dating from the Federation and Inter-War periods. In general, the housing constructed prior to 1960 has features that unify the character of the area and contribute to the heritage fabric for which the area is significant.

The *Review* recommends that the boundaries of the Mount Errington Precinct be adjusted to include all residential properties that contribute to the heritage significance of the Hornsby West Side Conservation Area. The adjustment of the boundaries is based on the original 1886 and 1897 subdivision surveys.

The *Review* notes that any future development within the boundaries and in the vicinity of a Heritage Conservation Area should be managed with appropriate planning controls to retain the elements that make the area significant and enhance its character and visual qualities. Accordingly, the report recommends a number of conservation management strategies to guide future development of the area to retain and enhance the heritage significance and streetscape qualities. The conservation management strategy elements are summarised below.

Heritage Conservation Area: The *Review* recommends the retention of the Mount Errington precinct as part of the current Hornsby West Side Heritage Conservation Area. To assist identify the three precincts that form the Hornsby West Side Heritage Conservation Area, the *Review* recommends that the precincts should be individually identified as follows:

- Mount Errington Precinct (original subdivision);
- Pretoria Parade Precinct (the residential area surrounding Pretoria Parade); and
- Peat's Ferry Road Precinct (the civic and commercial area).

The *Review* recommends that the areas should be re-named in the *HSLEP* and *Heritage DCP*.

Boundaries of the Heritage Conservation Area: The *Review* recommends that the boundaries of the Mount Errington Precinct should be adjusted to include properties and areas that contribute to the heritage significance of the Hornsby West Side Heritage Conservation Area. The adjustment of the boundaries is based on the boundaries of the original 1886 and 1897 subdivision surveys. The *Review* does not include an analysis of the Conservation Area as it relates to the commercial area and therefore, does not include any recommendations in relation to the significance or boundaries of the Peat's Ferry Road Precinct.

Statement of Significance: The *Review* recommends that the statement of significance contained in the *Review* (copy attached) should be appended to the current inventory sheet for the Hornsby West Side Heritage Conservation Area. The statement should also complement the proposed planning controls to assist in the assessment of the impact of development in the area.

Character Statement: The *Review* includes a detailed character statement for the Mount Errington Precinct of the Hornsby West Side Heritage Conservation Area (copy attached). The *Review* recommends that the statement should be included in Council's *Heritage DCP*.

Contributing Features: The *Review* recommends that Council's *Heritage DCP* should be amended to include guidelines identifying features that contribute to the heritage significance and streetscape qualities of the area. These features should be retained and enhanced on all properties within the Heritage Conservation Area. This includes both existing built and landscape elements and any new development that occurs within the area.

The *Review* identifies contributing features relating to setting, lot sizes, density, setbacks, building design and landscape features. The *Review* notes that the identification of these contributing features in the *Heritage DCP* will encourage good design and protect the significance of the Heritage Conservation Area.

At its meeting on 5 November 2003, Council considered Executive Manager's Report No. PLN361/03 and resolved to forward the LEP for the Hornsby West Side Conservation Area to the DOP for gazettal. Council also resolved that the draft amendments to the *Heritage DCP* for the Mount Errington Heritage Conservation Area, be adopted subject to additional minor amendments.

Draft LEP (Amendment No. 84) for the establishment of the Mount Errington Heritage Conservation Area was forwarded to the DOP for gazettal on 23 April 2004. In 2004, the Department indicated to Council its unwillingness to gazette draft LEPs relating to heritage conservation areas until the Department had undertaken a review of heritage conservation areas and determined its position in consultation with the then NSW Heritage Office. In 2008, the Department advised Council that it should progress the draft LEPs as part of Council's Comprehensive LEP. In August 2009, the Department advised that it was prioritising the delivery of sixty seven councils' new *Standard Instrument* based LEPs by 2011. Council is not on the priority list. Accordingly, the DOP advised that the amendments to the Heritage Conservation Area should be progressed using the new gateway process.

The Planning Proposal has been prepared to expand the boundaries of the existing Hornsby West Side Conservation Area to include residential properties that contribute to the heritage significance of the *Hornsby West Side Conservation Area*. The Planning Proposal also includes the rezoning of the expanded precinct to Residential AS (Low Density – Sensitive Lands), which has a corresponding minimum allotment size of 600m², to reflect and maintain the existing subdivision pattern and landscape characteristics of the area.

Associated draft DCP amendments are also proposed to be exhibited with the draft LEP to update the list of heritage conservation areas contained in relevant DCPs and reflect the proposed amendments supported by Council in 2003.

Draft Development Control Plan Amendments

Following a gateway determination by the DOP for the Planning Proposal to proceed, the draft DCP Amendments would be exhibited concurrently. In accordance with the *EP&A Act*, draft DCP amendments are required to be exhibited for a minimum period of 28 days for public input following endorsement by Council.

Following the exhibition, an assessment of submissions would be undertaken and a further report would be presented to Council for its consideration detailing any recommended amendments to the draft DCP amendments.

The DCP amendments would come into force upon notice being placed in local papers following gazettal of the LEP amendments.

CONSULTATION

A Guide to Preparing Local Environmental Plans has been prepared by the DOP to assist councils in preparing planning proposals and LEPs. In accordance with the *Guide*, the planning proposal is considered to be "low impact", in that:

- a) it is consistent with the pattern of surrounding land uses;
- b) is consistent with the strategic planning framework;
- c) presents no issues with regard to infrastructure servicing;
- d) is not a principal LEP; and
- e) does not reclassify public land.

Being “low impact” the *Guidelines* recommend exhibition for a period of 14 days. However, associated draft DCP amendments are also proposed to be exhibited with the draft LEP. In accordance with the *Environmental Planning and Assessment Act*, draft DCP amendments are required to be exhibited for a minimum period of 28 days.

Accordingly, it is proposed to publicly exhibit the Planning Proposal for a period of 28 days. A consultation strategy relevant to the public exhibition of the draft LEP has been prepared as part of the Planning Proposal for endorsement by the DOP.

Following the exhibition period, a report on submissions will be presented to Council for its consideration.

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](#).

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. An assessment of relevant SEPP and Section 117 Directions is contained in the Planning Proposal.

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.

A Triple Bottom Line summary was provided in respect of *Heritage Review Stage 4* in the previous report to Council, Executive Manager's Report No. PLN32/08, considered by Council on 20 February 2008. A Triple Bottom Line summary was provided in respect of property No. 218 Brooklyn Road, Brooklyn in the previous report to Council, Executive Manager's Report No. PLN78/09, considered by Council on 7 October 2008.

The following Triple Bottom Line summary addresses the strategic themes within Council's Management Plan in respect of the *West Hornsby Conservation Area* and *East Epping Heritage Review*.

- ***Working with our community:*** A consultation strategy has been prepared as part of the Planning Proposal for endorsement by the DOP. It is proposed that public exhibition material will be readily accessible and understandable to all sectors of the community by providing a number of locations and means of communication. The community will be able to obtain hard copy information from Council or download information from Council or the DOP's website.
- ***Conserving our natural environment:*** The Proposal is part of an on-going review of heritage items and conservation areas to assist conserve identified heritage items within the Shire. Council's heritage provisions aim to encourage the ongoing conservation of heritage items.
- ***Contributing to community development through sustainable facilities and services:*** The Proposal does not relate directly to the provision of services and facilities. Accordingly, no adverse impact on opportunities for community development would be expected.
- ***Fulfilling our community's vision in planning for the future of the Shire:*** The Proposal would assist in promoting the conservation of the important heritage values within the Shire.
- ***Supporting our diverse economy:*** The Proposal aims to assist in the conservation of important character elements and heritage values which enhance the attractiveness of the Shire as a place to live and work.
- ***Maintaining sound corporate and financial management:*** The Proposal does not relate directly to corporate and financial management. Accordingly, no adverse impact on management principles would be expected.
- ***Other sustainability considerations:*** The Proposal would not have an adverse impact on the environment of the Shire.

CONCLUSION

Over the past year, Council has identified a number of planning anomalies to be rectified, and minor amendments to be made, to the *HSLEP* as part of the annual Amendments LEP. This report presents a Planning Proposal to rezone various lands and implement the recommendations of the *Heritage Review Stage 4, East Epping Heritage Review* and *Hornsby West Side Conservation Area Review*.

The Planning Proposal should be endorsed for the purposes of seeking “gateway” approval from the DOP to progress the draft LEP pursuant to Section 56(1) of the *Environmental Planning and Assessment (EP&A) Act, 1979*. In anticipation of the DOP issuing a determination under Section 56(2) that the Planning Proposal may proceed, the Planning Proposal should also be endorsed for public exhibition.

RECOMMENDATION

THAT:

1. Council endorse progression of the Planning Proposal attached to Executive Manager’s Report No. PLN89/09 to:
 - 1.1 rezone and permit strata subdivision at property No. 218 Brooklyn Road, Brooklyn;
 - 1.2 update the listing of heritage items in accordance with the recommendations of *Heritage Review State 4* and *East Epping Heritage Review*; and
 - 1.3 implement the recommendations of the *Hornsby West Side Conservation Area Review*.
2. Council forward the Planning Proposal to the Minister of Planning seeking “approval” to progress the preparation of the draft LEP in accordance with Section 56(1) of the *Environmental and Planning Assessment Act 1979*.
3. Should the Minister determine under Section 56(2) of the *Environmental Planning and Assessment Act, 1979*, that the matter may proceed without significant amendment to the Proposal, Council publicly exhibit the Planning Proposal in accordance with the Minister’s determination.
4. The draft amendments to the *Heritage, Dwelling-House, Residential Subdivision, Low Density Multi-Unit Housing, Medium Density Multi-Unit Housing, Medium/High Density Multi-Unit Housing, Dural Village Centre, River Settlements, Rural Lands and Extractive Industries Development Control Plans* as outlined in Executive Manager’s Report No. PLN89/09, be exhibited for 28 days with the exhibition of the Planning Proposal.
5. Following the exhibition, a report on submissions be presented to Council.

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JAMES FARRINGTON
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Attachments:

1. 2009 Annual Amendments Planning Proposal
2. DCP Amendments

File Reference: F2009/00758

Document Number: D01263911

11 WATERWAYS REVIEW PLANNING PROPOSAL

EXECUTIVE SUMMARY

Under the *Hornsby Shire Local Environmental Plan 1994 (HSLEP)*, land below the mean high water mark (MHWM) currently has no statutory zoning. Consequently, subject to Council consent, a variety of activities and developments are possible within the waterways.

To rectify this situation and to assist Council in strategically managing the waterways, draft waterway zonings and other waterways development controls have been recommended for incorporation into the *HSLEP* and Comprehensive Local Environmental Plan (LEP) by the *Hornsby Shire Waterways Review 2005* and the *Review of draft Waterways Local Environmental Plan 2006*, respectively.

Council is not on the Department of Planning (DOP) priority list for the progression of a new principal LEP based on the *Standard Instrument*. As such, the timing for the progression of Council's new Comprehensive LEP is uncertain. To avoid the waterways planning studies losing currency, a planning proposal has been prepared to implement amendments to the *HSLEP* based on the recommendations of the *Waterways Reviews*.

It is recommended that the Planning Proposal be endorsed for the purpose of seeking a "gateway" determination from the DOP to progress the preparation of a draft amending LEP. The balance of the recommendations of the *Waterways Reviews* that cannot be implemented as an amending LEP will be implemented when Council prepares its new Comprehensive LEP.

PURPOSE

The purpose of this report is to present a planning proposal that seeks to implement the recommendations of the *Hornsby Shires Waterways Review 2005 (2005 Review)* and *Review of the Draft Waterways Local Environmental Plan 2006 (2006 Review)*.

BACKGROUND

In 2005, Council undertook the *Hornsby Shires Waterways Review* to evaluate relevant legislation, best practice planning controls and recommend appropriate zoning and development controls for the waterways of Hornsby Shire having regard to environmental constraints and development capacity. The *2005 Review* recommends that the waterways of Hornsby Shire be zoned and that associated amendments be made to the *HSLEP* and relevant Council Development Control Plans (DCPs). At its meeting on 16 November 2005, Council resolved to endorse the preparation of a draft LEP to implement the recommendations of the *2005 Review*.

At its meeting on 2 August 2006, Council considered a report on the progression of the key recommendations of the *2005 Review* in the context of the gazettal of the NSW Government's *Standard Instrument*. The *Standard Instrument* prescribes the form and content of a principal LEP for a local government area. The report noted that the zones, permissible land uses and definitions used in the *Standard Instrument* do not align directly

with those contained in the *draft Waterways LEP 2005*. The report also noted that Council is unable to progress the *draft Waterways LEP 2005* as it is inconsistent with the *Standard Instrument* and recommended a review of the *draft Waterways LEP 2005* in the context of the *Standard Instrument*. Council resolved to undertake a review of the *draft Waterways LEP 2005*.

At its meeting on 7 February 2007, Council considered a report on the findings of the *Review of the Draft Waterways LEP 2006* in the context of the *Standard Instrument*. The Review recommends that a *draft Waterways LEP 2006* be progressed as part of Council's Comprehensive LEP. Council resolved to endorse the preparation of the *draft Waterways LEP 2006* as the first stage of Council's Comprehensive LEP.

At its meeting on 5 September 2007, Council considered a report presenting advice from the DOP concerning progression of Council's Comprehensive LEP. The report noted that there were a number of difficulties and legal uncertainties in preparing Council's new LEP in stages and that it would be simpler to prepare the Plan in one stage. Accordingly, Council resolved to prepare its Comprehensive LEP as a single plan, rather than in stages.

On 10 August 2009, Council received a letter from the DOP advising that it was reprioritising the delivery of new comprehensive LEPs from councils across NSW under the *Standard Instrument LEP* program. Council was originally required to prepare its new LEP by March 2011. The DOP has identified that to ensure the delivery of the program, its resources must be focused. The DOP has included 67 councils on a priority list to ensure that their new LEPs are in place by June 2011. Hornsby Council is not included on the list. The DOP has advised that councils not on the priority list should consult the DOP on how best to progress their plans.

On 11 August 2009, Council wrote to the DOP concerning the progression of Council's new comprehensive LEP. On 28 August 2009, the Department advised that it would assist Council continue to progress the drafting of its new comprehensive LEP. However, Council's strategic planning work and other notified priorities should be progressed as amendments to the *HSLEP*.

At a meeting with representatives of the DOP on 24 September 2009, Council officers sought the DOP's support for the progression of a planning proposal to implement the recommendations from the *Waterways Reviews*. It was submitted that it could not be determined when Council's new Comprehensive LEP would be progressed by the DOP and further delay may result in the planning studies losing their currency. The DOP representatives advised that Council should prepare a planning proposal. Accordingly, a planning proposal has been prepared to seek amendment to the *HSLEP* to implement the recommendations of the *Waterways Reviews*.

DISCUSSION

This report provides a summary of the recommendations of the *Waterways Reviews* and presents a planning proposal to implement their recommendations.

Hornsby Shire Waterways Review 2005

The *Hornsby Shires Waterways Review 2005* includes a capability assessment of the waterways which identifies environmental constraints and the capacity for future development to determine the appropriate zoning and development controls. The *2005 Review* also includes a review of legislation (including the *draft Standard Instrument LEP*),

best practice techniques and the roles and responsibilities of key government organisations. The *2005 Review* recommends a series of amendments to the *HSLEP* and Council's DCPs having regard to the *draft Standard Instrument LEP* and other planning documents considered best practice at the time. In summary, the *2005 Review* recommends that:

- All of the waterways be zoned;
- The zoning approach accord with the physical and environmental constraints of the area and provide for:
 - Waterways A (General) - a general zone that permits a broad range of uses which would be applied in limited areas;
 - Waterways B (Scenic) - a more restrictive zone that allows uses consistent with the scenic and environmental qualities of the area which would be applied across the majority of the area;
 - National Parks and Nature Reserves - the existing National Parks and Nature Reserves zone to extend over the water for the areas that fall within the National Park;
 - Environmental Protection A (Waterways) - a revision of the existing Environmental Protection A (Wetlands) zone to extend over both land and water (including existing mapped areas) and be restrictive in the permitted uses.
- The proposed zoning and uses fit as much as possible within the format of the *draft Standard Instrument*;
- Clause 21 of the *HSLEP* be amended to clarify that all forms of dredging (other than maintenance dredging of navigable waters undertaken by a Public Authority) comprise designated development and require the submission of an Environmental Impact Statement (EIS);
- Reclamation be prohibited in all waterways zones;
- Moorings be prohibited in the Environmental Protection A (Waterways) zone;
- Seawalls be prohibited below MHWL;
- Clause 11 of the *HSLEP* not apply to the proposed Waterways A (General) and Waterways B (Scenic) zones, Environmental Protection A (Waterways) zone or the National Parks and Nature reserves zone, where they adjoin land.
- Aquatic communities mapping undertaken by the Department of Primary Industries (DPI) be the basis to identify the boundaries of the Environmental Protection A (Waterways) zone;
- Certain waterways in Brooklyn zoned Business D (Aquatic Service Centres) and Residential AT (Low Density - Tourist Village) be rezoned to the Waterways A (General) zone to reflect that Council is no longer pursuing reclamation strategies; and
- A submission be made to the DOP requesting additional waterways zones and definitions be included in the *Standard Instrument* to enable Council to best regulate development of the waterways.

Council resolved to endorse the preparation of a draft amending LEP to implement the recommendations of the *2005 Review*.

Review of the Draft Waterways Local Environmental Plan 2006

The *Review of the Draft Waterways Local Environmental Plan 2006* was undertaken to evaluate the recommendations of the *2005 Review* in the context of the gazettal of the NSW Government's *Standard Instrument* in March 2006. The *2006 Review* notes that zones, permissible land uses and definitions used in the *Standard Instrument* do not align directly with those contained in the draft Waterways LEP 2005.

As Council is not on the priority list for the *Standard Instrument* LEP Program, the preparation of the draft Waterways LEP 2006 based on the model stand alone LEP is no longer appropriate. Accordingly, the alternate model draft LEP included in the *2006 Review* has been reviewed to progress an amendment to the *HSLEP*.

There are only minor differences between the original 2005 draft Waterways LEP and the 2006 draft amending LEP. These include that there are three new definitions contained, namely "*natural waterbased aquaculture*", "*navigable waters*" and "*waterbody (artificial)*". These definitions were included as they are defined in the *Standard Instrument*. The 2006 draft amending LEP also promotes alternate zones to those zones recommended in the *2005 Review* as the zones originally recommended do not appear in the gazetted version of the *Standard Instrument*. The table below includes a comparison of the zones from the draft LEPs.

2006 Draft Waterways LEP (based on Standard Instrument)	2005 Draft Waterways LEP (based on HSLEP and Draft Standard Instrument)
E2 Environmental Conservation	Environmental Protection A (Waterways)
W1 Natural Waterways	Waterways B (Scenic)
W2 Recreational Waterways	Waterways A (General)
E1 National Parks and Nature Reserves Zones	National Parks and Nature Reserves Zones

While Council could progress the 2006 draft amending LEP, the *Review* notes that there are two significant negative implications. Firstly, the introduction of the option would result in a hybrid of zones and definitions and Council could not bring land based definitions into alignment with the *Standard Instrument*. Secondly, there have been a number of changes to legislation since the *2006 Review* and a number of definitions recommended for insertion have not been included in the latest version of the *Standard Instrument*. Accordingly, the following Planning Proposal has been prepared to best implement the recommendations of both the *Waterways Reviews*.

Waterways Review Planning Proposal

The Planning Proposal seeks to implement the recommendations of the *Waterways Reviews* as an amendment to the *HSLEP*. The principles applied in preparing the Planning Proposal are as follows:

- maintaining the land based definitions under the *HSLEP*;

- including a range of waterways definitions to be inserted into the *HSLEP* as originally recommended but only where they are identified in the *Standard Instrument*;
- avoiding a change in zoning, provision or definition that would have effect across the Shire (i.e. not be restricted to the waterways); and
- maintaining where possible a similar format and zoning approach to that which exists in the *HSLEP*.

The following discussion identifies the various zoning, definition and provision integration issues addressed in the Planning Proposal.

Zoning

There are two land use zoning integration issues which are discussed under the headings of “Environmental Protection Zones” and “National Parks and Nature Reserve Zones”.

Environmental Protection Zones: The Environmental Protection A (Wetlands) zone of the *HSLEP* currently applies to land above and below the MHWL that contains seagrass, mangrove, saltmarsh and other sensitive aquatic and wetland vegetation communities. Both *Waterways Reviews* recommend that a new Environmental Protection based zone be applied to these lands and that the new zone further restrict the permissible land uses. The *2005 Review* also recommends that aquatic communities mapping undertaken by the DPI be the basis to identify the boundaries of the new zone.

A review of DPI mapping and consultation with Council’s Water Catchments Team has been undertaken to identify all sensitive aquatic communities below MHWL. The review determined the boundaries of the Environmental Protection zone in the Planning Proposal below MHWL. However, as both the *Waterways Reviews* recommend that the same zone also apply to sensitive wetland vegetation communities above MHWL and that it be more restrictive than the existing zone, a review of Council’s most recent vegetation community mapping (Smith and Smith 2006) and consultation with Council’s Bushland Biodiversity Team was also undertaken to determine the extent of the Environmental Protection zone above MHWL.

The review identified that the existing Environmental Protection A (Wetlands) zoning above MHWL does not always align with the sensitive wetland vegetation communities identified in Smith and Smith 2006. The variations are particularly evident in the low lying rural areas of the Shire. This results in an integration difficulty as the application of the new more restrictive zoning to the existing Environmental Protection A zone above the MHWL may sterilise agricultural development opportunities. A recent planning circular notes that the application of restrictive Environmental Protection zones over private lands which would sterilise development potential may be tantamount to a reservation and should be avoided.

An option to address this integration difficulty would be to redefine the boundaries of the Environmental Protection zone above the MHWL. However, this requires substantial amendment to the extent of both the environmental protection and surrounding rural zones. The *Waterways Reviews* do not justify zone boundary changes above MHWL. It is more appropriate that this work be undertaken as part of the preparation of the Comprehensive LEP. Accordingly, the Planning Proposal extends the less restrictive Environmental Protection A (Wetlands) zone below the MHWL. Expansion of the existing Environmental Protection A zone below the MHWL also maintains a suite of environmental protection zones in the *HSLEP* that are consistent in format.

National Parks and Nature Reserves Zone: The 2006 draft Waterways LEP seeks to apply the E1 National Parks and Nature Reserve zone over land comprising National Park above and below the MHWM. The original 2005 Review recommends that the existing National Parks and Nature Reserve zone be retained and extended over the water where necessary. The *Standard Instrument's* E1 zone is similar to the existing National Parks and Nature Reserve Zone contained in the *HSLEP*. However, the existing *HSLEP* zoning has been included in the Planning Proposal on the basis that it has a similar format and zoning approach to that which exists in the *HSLEP*.

In summary, the following table shows the zoning promoted by the Planning Proposal and includes a comparison of the zones from the *draft Waterways LEP 2006*.

Planning Proposal (based on Standard Instrument and HSLEP)	2006 Draft Waterways LEP (based on Standard Instrument)
Environmental Protection A (Wetlands)	E2 Environmental Conservation
W1 Natural Waterways	W1 Natural Waterways
W2 Recreational Waterways	W2 Recreational Waterways
National Parks and Nature Reserves Zones	E1 National Parks and Nature Reserves Zones

Land Use Definitions

There are two land use definition integration issues which are discussed under the headings of "Dictionary" and "Land Use Control Tables".

Dictionary: The Planning Proposal seeks to insert the following water based definitions from the *Standard Instrument* recommended by the *Waterways Reviews*, namely "aquaculture", "boat launching ramp", "boat repair facility", "boat shed", "canal estate development", "charter and tourism boating facility", "drainage", "environmental facility", "environmental protection works", "fill", "flood mitigation work", "jetty", "marina", "mean high water mark", "mooring", "natural water-based aquaculture", "navigable waterway" "waterbody", "waterbody (artificial)", "waterbody (natural)", "watercourse", "water recreation structure", "waterway" and "wetland".

The *Waterways Reviews* recommend the introduction of land use definitions into the Dictionary having regard to best practice waterways documents such as *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005*. Council made submissions to the DOP requesting that a number of the definitions be included in the *Standard Instrument* to enable Council to best manage its waterways. However, the current version of the *Standard Instrument* has not included the following definitions promoted by the *Waterways Reviews*, namely "boat industry facility", "boat lift", "commercial marina", "dredging", "flora and fauna enclosure" "intertidal dredging", "maintenance dredging", "mooring pen", "natural waterbody", "navigation aid", "private landing steps", "private marina", "public boardwalk", "public water recreational facility" "public water transport facility", "reclamation", "sea wall", "single mooring", "slipway", "swimming enclosure" and "water recreational facility".

These land use definitions have not been included in the Planning Proposal as their inclusion would be inconsistent with the *Standard Instrument* and therefore, not likely to be supported by the DOP. There are no adverse implications of not inserting the definitions. A review of the land use definitions not included identified that the land uses would all be covered by existing definitions in the *HSLEP* or the *Standard Instrument* definitions that have been

proposed for insertion in the *HSLEP* by the Planning Proposal. The land use translation tables for W1 Natural Waterways and W2 Recreational Waterways zones (copy attached) identify the equivalent definitions.

The Planning Proposal seeks to remove the definitions of “*aquaculture*”, “*marina*” and “*reclamation*” from the *HSLEP* and replace them with the definitions of “*aquaculture*”, “*marina*”, and “*fill*” from the *Standard Instrument* as recommended by the *Waterways Reviews*. There would be no adverse implications of inserting the new definitions in the *HSLEP* in place of the existing definitions as they are consistent and would provide a step towards adopting the *Standard Instrument* format. In the case of introducing the definition of “*fill*” in the place of “*reclamation*”, it would also address a definition anomaly. The current definition of “*reclamation*” only relates to the deposition of material from a river bed only where the definition of “*fill*” refers to the deposition of material from the same or another site.

The *Waterways Reviews* recommend removal of the definition of “*dredging*” from the *HSLEP* and replacing it with the definitions of “*dredging*”, “*intertidal dredging*” and “*maintenance dredging*” from the *Waterways Review*. As discussed above, the new dredging definitions are not included in the *Standard Instrument* and therefore will not be included in the Planning Proposal. Notwithstanding, there would be no adverse implication of removing the definition of “*dredging*” from the *HSLEP*, as “*dredging*” is now controlled by the *Infrastructure SEPP*.

The *Infrastructure SEPP* contains dredging provisions that override LEPs. The *Infrastructure SEPP* permits dredging by any person on any land with consent. Dredging of existing navigation channels is permitted without consent by the *SEPP* when undertaken by a public authority in regard to a port facility, navigation facility or wharf or boating facility. The removal of the definition of dredging would also provide a step towards adopting the *Standard Instrument* format. Accordingly, the Planning Proposal seeks to remove the definition of “*dredging*” from the *HSLEP*.

Land Use Control Tables: The W1 Natural Waterways zone provides three zone objectives in addition to three mandated zone objectives. The W2 Recreational Waterways zone provides four zone objectives in addition to the three mandated zone objectives. The DOP advised in a recent planning circular concerning the drafting of zone objectives that a maximum of three additional objectives can be added and only where they supplement the core objectives.

A review of the recommended objectives identifies that one additional objective per waterways zone should be included to supplement the core objectives of the zones and achieve the intent of the *2006 Review*. Accordingly, appropriate objectives for the waterways zones have been drafted in the Planning Proposal.

The W1 Natural Waterways and W2 Recreational Waterways land use tables refer to both the *Standard Instrument* definitions and definitions recommended for inclusion by the *Waterways Reviews* but not included in the latest version of the *Standard Instrument*. Accordingly, the land use tables have been reviewed to identify where land uses are not defined by the *HSLEP* or *Standard Instrument* definitions proposed for inclusion by the Planning Proposal. The closest available equivalent to the land use definitions have been chosen for inclusion in the land use table. The land uses proposed for introduction to the W1 Natural Waterways and W2 Recreational Waterways zones in the Planning Proposal and the rationale for same is identified in the land use translation tables attached.

Other Provisions

The 2006 Review recommends revision to Clause 21 Designated Development of the *HSLEP* by specifying that all “dredging” other than “maintenance dredging” or dredging undertaken by a public authority is designated development and therefore requires the submission of an EIS. The recommended provision refers to the definitions of “dredging”, “intertidal dredging” and “maintenance dredging”. These are best practice waterway definitions that were recommended for inclusion in the *Standard Instrument* by the *Waterways Reviews* but were not included.

State Environmental Planning Policy (Infrastructure) 2007 (Infrastructure SEPP) has subsequently been gazetted and provides that dredging undertaken by a public authority in the waterways is permissible without consent where associated with wharf or boating facilities. The *Infrastructure SEPP* also provides that dredging undertaken by a private person in the waterways is permissible with consent. Accordingly, the Planning Proposal has been prepared having regard to the *Infrastructure SEPP* by specifying that dredging that requires consent is designated development.

Summary of Planning Proposal

In summary, the Planning Proposal seeks to:

- zone the waterways of Hornsby Shire to reflect the physical and environmental constraints of the area, namely:
 - W1 Natural Waterways - a *Standard Instrument* zone to be applied to the majority of the area to restrict uses consistent with the scenic and environmental qualities of the area;
 - W2 Recreational Waterways - a *Standard Instrument* zone to be limited to areas in Brooklyn and Berowra Waters to permit a broader range of uses consistent with the use of these areas for recreational pursuits;
 - Environmental Protection A (Wetlands) - an existing *HSLEP* zone to extend over the water (i.e. land below the MHW) to protect mangrove, saltmarsh, seagrass and other important aquatic communities;
 - National Parks and Nature Reserves - an existing *HSLEP* zone to be applied to the areas where National Parks extend over the water.
- amend the provisions of clause 11 of the *HSLEP* (Development Near Zone Boundaries) to not apply to the proposed W1 Natural Waterways, W2 Recreational Waterways, Environmental Protection A (Wetlands) or the National Parks and Nature Reserves zones, where they adjoin land;
- prohibit reclamation in all waterways zones;
- specify that dredging that requires consent is designated development; and
- introduce various definitions within the *HSLEP* to accord with the proposed zonings and other draft LEP provisions.

CONSULTATION

The *2005 Review* was overseen by a working party including representatives from the Brooklyn and Berowra Estuary Management Committees. Consultation was also undertaken with relevant Government Authorities and agencies in undertaking the Review, including the Department of Planning, Department of Primary Industries (Fisheries), Department of Environment and Climate Change (National Parks and Wildlife Service), NSW Maritime Authority, Department of Lands, and the adjoining waterway councils of Pittwater, Kuring-gai, Hawkesbury and Gosford.

The *Review* recommends a zoning and development control strategy for the waterways having regard to the interests of the various relevant Government Authorities and agencies.

A Guide to Preparing Local Environmental Plans has been prepared by the DOP to assist Council's in preparing planning proposals. The *Guide* identifies that there are two types of planning proposals (i.e. low impact and other) and each requires a different exhibition period. The Guide identifies a series of qualifiers for low impact planning proposals. The Planning Proposal falls into the "other" category and requires to be exhibited for 28 days as it could be interpreted to not meet one of the qualifiers, namely being consistent with the pattern of surrounding land uses. The Planning Proposal seeks to introduce waterways zonings to the *HSLEP*.

It is proposed to publicly exhibit the Planning Proposal for a period of 28 days. A consultation strategy relevant to the public exhibition of the draft LEP has been prepared as part of the Planning Proposal for endorsement by the DOP. Following the exhibition period, a report on submissions would be presented to Council for its consideration.

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 for a planning proposal will involve 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 a 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 for 14 days if deemed to be a "low impact proposal" or 28 days for "other proposals".

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.

To implement the recommendations of the *Waterways Reviews*, a planning proposal has been prepared. The Planning Proposal sets out Council's objectives or intended outcomes, an explanation of the planning provisions that are to be prepared, justification for the proposal, and the intended community consultation to be carried out.

STATUTORY CONSIDERATIONS

As part of Council's consideration of planning proposals, 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 inconsistent with any SEPP or relevant Section 117 Directions. An assessment of relevant SEPPs and Section 117 Directions are contained in the Planning Proposal.

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.

A Triple Bottom Line summary was provided in respect of the *Review of the Draft Waterways Local Environmental Plan* in Executive Manager's Report No. PLN14/07 considered by Council on 7 February 2007.

CONCLUSION

Under the *HSLEP*, land below the MHWL currently has no statutory zoning. Consequently, subject to Council consent, a variety of activities and developments are possible within the waterways.

To rectify this situation and to assist Council in strategically managing the waterways, draft waterway zonings and other waterways development controls have been recommended for incorporation into the *HSLEP* and Comprehensive LEP by the *Hornsby Shire Waterways Review 2005* and the *Review of draft Waterways Local Environmental Plan 2006*, respectively.

Council is not on the DOP priority list for the progression of a new principal LEP based on the *Standard Instrument*. As such, the timing for the progression of Council's new Comprehensive LEP is uncertain. To avoid the waterways planning studies losing currency, a planning proposal has been prepared to implement amendments to the *HSLEP* based on the recommendations of the *Waterways Reviews*.

The Planning Proposal should be endorsed for the purposes of seeking "gateway" approval from the DOP to progress the preparation of the draft amending LEP. The balance of the recommendations of the *Waterways Reviews* that cannot be implemented as an amending LEP will be implemented when Council prepares its new Comprehensive LEP.

RECOMMENDATION

THAT:

1. Council endorse progression of the Planning Proposal attached to Executive Manager's Report No. PLN91/09 to:
 - 1.1 zone the waterways of Hornsby Shire to accord with the physical and environmental constraints of the area;
 - 1.2 amend the provisions of clause 11 of the Hornsby Shire Local Environmental Plan 1994 (Development Near Zone Boundaries) to not apply to the proposed W1 Natural Waterways, W2 Recreational Waterways, Environmental Protection A (Wetlands) or National Parks and Nature Reserves zones, where they adjoin land;
 - 1.3 prohibit reclamation in all waterways zones;
 - 1.4 specify that dredging that requires consent is designated development; and
 - 1.5 introduce various definitions within the *Hornsby Shire Local Environmental Plan 1994* to accord with the proposed zonings and other draft LEP provisions.
2. The balance of the recommendations of the *Waterways Reviews* that cannot be implemented as an amending Local Environmental Plan be implemented when Council prepares its new Comprehensive Local Environmental Plan.
3. Pursuant to Section 56(1) of the *Environmental Planning and Assessment Act, 1979*, Council forward the Planning Proposal to the Minister of Planning seeking "gateway" determination to progress the preparation of the draft Local Environmental Plan.
4. Should the Minister determine under Section 56(2) of the *Environmental Planning and Assessment Act, 1979* that the matter may proceed without significant amendment to the Proposal, Council publicly exhibit the Planning Proposal in accordance with the Minister's determination.
5. Following the exhibition, a report on submissions be presented to Council.

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Attachments:

1. Zone/Land Use Translation
2. Waterways Review - Planning Proposal

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