
BUSINESS PAPER

PLANNING MEETING

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

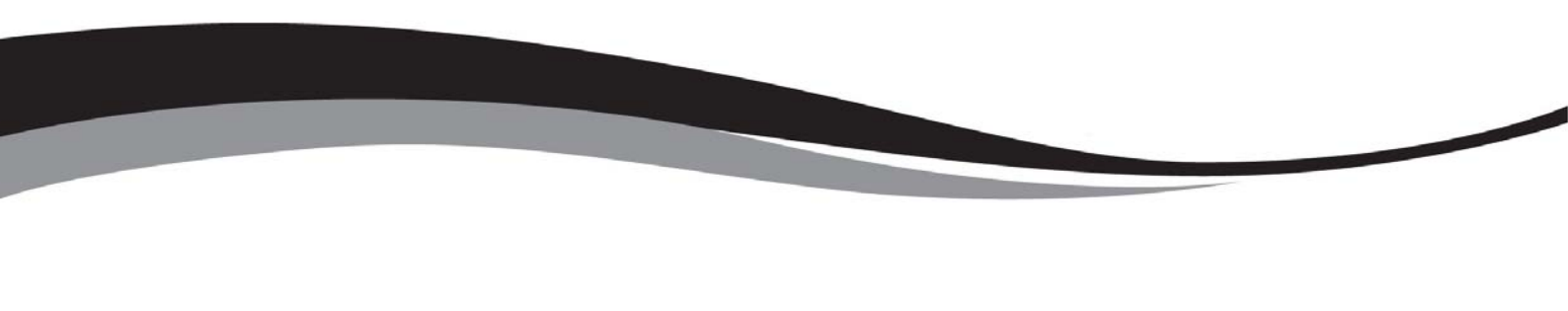


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QUESTIONS OF WHICH NOTICE HAS BEEN GIVEN

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AGENDA AND SUMMARY OF RECOMMENDATIONS

PRESENT

NATIONAL ANTHEM

OPENING PRAYER/S

ACKNOWLEDGEMENT OF RELIGIOUS DIVERSITY

Statement by the Chairperson

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

ABORIGINAL RECOGNITION

Statement by the Chairperson:

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

AUDIO RECORDING OF COUNCIL MEETING

Statement by the Chairperson:

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

APOLOGIES

DECLARATIONS OF INTEREST

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

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

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

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

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

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

OR

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

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

POLITICAL DONATIONS DISCLOSURE

Statement by the Chairperson:

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

CONFIRMATION OF MINUTES

THAT the Minutes of the Planning Meeting held on 4 November, 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

**Item 1 PLN94/09 DEVELOPMENT APPLICATION - RURAL SUBDIVISION -
BOUNDARY ADJUSTMENT - 2753 & 2785 - 2801 OLD NORTHERN
ROAD, GLENORIE**

RECOMMENDATION

THAT Council, seeks the concurrence of the Director-General of the Department of Planning to approve Development Application No. 1017/2009 for a boundary adjustment of two existing allotments to create two new allotments at Lot 149 DP 752014, known as No. 2785 - 2801 (or 1827 - 1837) Old Northern Road, Glenorie and Lot 148 DP 752014, known as No. 2753 Old Northern Road, Glenorie subject to the conditions of consent detailed in Schedule 1 of this report.

B WARD DEFERRED

B WARD

Page Number

**Item 2 PLN90/09 DEVELOPMENT APPLICATION - ERECTION OF A 7
STOREY MIXED USE BUILDING - SECTION 96(2) - THE WALK, 228 -
234 PACIFIC HIGHWAY HORNSBY**

RECOMMENDATION

THAT Development Application No. 1564/2008 for the erection of a seven storey mixed use development incorporating retail and commercial floor space and twenty eight residential units at Lot A and B DP 304557 (No. 228 – 234) Pacific Highway, Hornsby be modified pursuant to Section 96(2) of the Environmental Planning and Assessment Act 1979 and subject to conditions of consent detailed in Schedule 1 of this report.

C WARD DEFERRED

C WARD

Page Number

**Item 3 PLN95/09 DEVELOPMENT APPLICATION -ALTERATIONS AND
ADDITIONS TO BRICKPIT PARK - 1B DARTFORD ROAD AND 142-178
PENNANT HILLS ROAD THORNLEIGH**

RECOMMENDATION

THAT Development Application No. 1088/2009 for alterations and additions to an existing sports stadium at Lot 3 DP 604958 and Lot 1 DP 633292 (No. 1B) Dartford Road and (Nos. 142-178) Pennant Hills Road, Thornleigh be approved subject to the conditions of consent detailed in Schedule 1 of this report.

Page Number

**Item 4 PLN96/09 DEVELOPMENT APPLICATION - TWO LOT SUBDIVISION
AND 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

**Item 5 PLN98/09 PLANNING PROPOSAL TO ENABLE EXHIBITION OF AN
AMENDED HOUSING STRATEGY**

RECOMMENDATION

THAT:

1. Council facilitate the exhibition of an amended *Housing Strategy* by forwarding the attached *Planning Proposal* to the Minister for Planning seeking a “gateway” determination pursuant to Section 56(1) of the *Environmental Planning and Assessment Act, 1979*.
2. Should the Minister determine under Section 56(2) of the *Environmental Planning and Assessment Act, 1979* that the matter may proceed, Council publicly exhibit the amended *Housing Strategy* in accordance with the consultation strategy outlined in the Planning Proposal (or as otherwise directed by the Minister).
3. The General Manager be delegated authority to endorse the exhibition material.
4. 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 - RURAL SUBDIVISION - BOUNDARY
ADJUSTMENT
2753 & 2785 - 2801 OLD NORTHERN ROAD, GLENORIE**

Development Application No:	DA/1017/2009
Description of Proposal:	Boundary adjustment of two existing allotments to create two new allotments.
Property Description:	Lot 149 DP 752014, known as No. 2785 - 2801 (or 1827 - 1837) Old Northern Road, Glenorie and Lot 148 DP 752014, known as No. 2753 Old Northern Road, Glenorie
Applicant:	Barrie Green & Associates
Owners:	Mr Thomas Leonard Byrne Mr Scott Kenneth Alexander Ms Deborah Anne Harris
Statutory Provisions:	Hornsby Shire Local Environmental Plan 1994 Rural AR (Large Holdings - Rural Landscapes) zone and Environmental Protection B (River Catchment) zone
Estimated Value:	Nil
Ward:	A

RECOMMENDATION

THAT Council, seeks the concurrence of the Director-General of the Department of Planning to approve Development Application No. 1017/2009 for a boundary adjustment of two existing allotments to create two new allotments at Lot 149 DP 752014, known as No. 2785 - 2801 (or 1827 - 1837) Old Northern Road, Glenorie and Lot 148 DP 752014, known as No. 2753 Old Northern Road, Glenorie subject to the conditions of consent detailed in Schedule 1 of this report.

EXECUTIVE SUMMARY

1. The application proposes a boundary adjustment between two existing allotments.
2. The proposal does not comply with the minimum lot size pursuant to Clause 14 of the Hornsby Shire Local Environmental Plan 1994. The submitted objection to the minimum lot size development standard is well founded with regard to State Environmental Planning Policy No. 1 – Development Standards.

3. No submissions have been received in respect of the application.
4. It is recommended that the application be referred to the Director-General of the Department of Planning seeking his concurrence to the approval of the application.

THE SITE

The site has a total area of 11.31 hectares, which comprises two existing lots; Lot 148 of 9.245 hectares and Lot 149 of 2.064 hectares. The land is located on the eastern side of Old Northern Road and falls to the east. The site is bounded by Crown land to the east.

Lot 148 contains two buildings which are located on the northern extremity of the allotment. The plan of proposed subdivision identifies the two buildings as residences, however, the applicant has provided further advice stating that the southern building is a shed. Access is gained via two separate driveways from Old Northern Road. The remainder of the site is underscrubbed bushland.

Lot 149 has an existing residence and detached garage which is located on the northern extremity of the allotment and access is gained via an existing driveway from Old Northern Road. A dam is located adjacent to the southern boundary. The remainder of the site is underscrubbed bushland.

THE PROPOSAL

The proposal involves a boundary adjustment between No. 2785 - 2801 and No. 2753 Old Northern Road, Glenorie, which involves 8405m² of land being transferred from No. 2785 - 2801 to No. 2753.

This would result in No. 2753 Old Northern Road, Glenorie (proposed Lot 482) increasing in area from 2.064 ha to 2.873 ha and No. 2785 - 2801 Old Northern Road, Glenorie (proposed Lot 481) decreasing in area from 9.245 ha to 8.436 ha. The purpose of the boundary adjustment, as stated by the applicant, is to increase the usable area of proposed Lot 482 and to provide a greater side setback to the existing dwelling and the northern boundary on proposed Lot 482.

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 a boundary adjustment 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 AR (Large Holdings - Rural Landscapes) and partly zoned Environmental Protection B (River Catchment) under Hornsby Shire Local Environmental Plan 1994 (HSLEP).

The objectives of the Rural AR (Large Holdings - Rural Landscapes) zone are:

- to restrain population growth and maintain the rural character of the area.*
- to provide for a range of compatible land uses, including agriculture, which maintain the 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 Environmental Protection B (River Catchment) 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 recognize 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.

The proposed development is consistent with the zone objectives, as the proposed subdivision would not alter the land use within the area and would maintain the rural character of the area. Further, the boundary adjustment would not result in an additional dwelling entitlement on either allotment.

Clause 14 of the HSLEP prescribes that the minimum area per allotment within the Rural AR zone is 10 hectares and within the Environmental Protection B zone is 40 hectares. The

existing allotments and the proposed boundary adjustment 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 (SEPP 1) Development Standards and this matter is addressed in Section 2.2 of this report.

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 provides flexibility in applying development standards and enables a consent authority to vary a standard where strict compliance would be unnecessary, unreasonable, or tend to hinder the objectives of the Act. Where there is a variation to a development standard, the application must be accompanied by a SEPP 1 objection.

The applicant submitted an objection against Council's adherence to the minimum 10 hectare lot size development standard under Clause 14 of the HSLEP. Proposed Lot 481 has an area of 8.436 hectares including approximately 3.6 hectares within the Rural AR zone. Proposed Lot 482 has an area of 2.873 including approximately 0.871 hectares within the Rural AR zone. The remainder of each of the lots is zoned Environmental Protection B.

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 submits that strict compliance with the density requirements is unreasonable and unnecessary for the following reasons:

- *The proposed boundary variation would preserve the rural character and environmental value of the area. There would be no fragmentation of good agricultural or environmental land. The distance between any dwelling to be located*

would be such that the rural character would be preserved. The lots concerned are adjacent to Crown Land and so the area in general is sparsely populated.

- *The proposed development would provide for the maintenance of the rural environment by providing a very low density housing situation and an area for agricultural pursuits which is considered to be compatible with the surrounding rural residential character of the location. The soil is such that it is difficult to support any commercial agricultural purposes. The land is most suited to fruit and vegetable production for household use only. This type of development is typical of the area where there is a small cleared area surrounding the dwelling and the dwelling is adjacent to large areas of uncleared bushland.*
- *This boundary variation would only enhance the existing situation in regard to building location and the general rural environmental feel of the area. It is not intended to create any additional allotments but rather, is seeking approval to make optimal and best use of an already existing undersized allotment.*
- *The development would not intensify the use of each parcel and would maintain the existing character of the Glenorie area.*

It is considered that the applicant's SEPP 1 submission is well founded and that compliance with the development standard would be unreasonable and unnecessary in the circumstances of the case. Accordingly, the SEPP 1 objection is supported.

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

2.3 State Environmental Planning Policy No. 55 - Remediation of Land

Clause 7 of *State Environmental Planning Policy No. 55 - Remediation of Land* requires Council to consider whether land is contaminated prior to granting consent to the carrying out of 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 would be remediated before the land is used for that purpose.

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

2.4 Rural Fires Act 1997

The site is identified as bushfire prone land. The development application for subdivision is '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 the imposition of conditions of consent.

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.

The proposed boundary adjustment would not adversely impact on the River or its 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 (Rural Lands 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
Area			
<i>Lot 481</i>			
- Rural AR	3.600 ha	10 ha	No
- Env. Pro. B	4.836 ha	40 ha	No
- Total	8.436 ha		
<i>Lot 482</i>			
- Rural AR	0.871 ha	10 ha	No
- Env. Pro. B	2.002 ha	40 ha	No
- Total	2.873 ha		
Setbacks			
<i>Lot 481</i>			
- road	5m	15m	No
- side (north)	40m	15m	Yes
- side (south)	30m	15m	Yes
- rear	>300m	15m	Yes
<i>Lot 482</i>			
- road	11m	15m	No
- side (north)	28m	15m	Yes
- side (south)	82m	15m	Yes
- rear	160m	15m	Yes

The proposed development does not comply with the minimum lot area prescriptive standard within Council's Rural Lands DCP or the minimum front setback requirement. 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 proposed boundary adjustment is consistent with the rural holdings in the locality and maintains the pattern of rural development along Old Northern Road. The proposed boundary adjustment would not alter the each of the site's ability to undertake similar rural activities to that which currently occur.

2.6.2 Setbacks

The existing dwellings on each of the lots do not comply with the 15 metre front setback requirement. The boundary adjustment would not alter that situation. Existing vegetation and the fall of the land screen the dwellings and the non-compliance with the front setback requirements of the Rural Lands DCP does not warrant refusal of the application.

2.6.3 Drainage Control

The proposed boundary adjustment does not alter the existing drainage control on the allotments and would not have a detrimental impact on the neighbouring creeks.

2.6.4 Fences and Gates

The proposed boundary adjustment would not warrant the requirement for new fencing due to the bushland setting, the topography of the land and the bushfire risk.

2.6.5 Contributions

The application does not create any additional allotments; accordingly Section 94 Contributions are not required.

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 boundary adjustment does not involve the removal of any existing trees or native vegetation and maintains physical characteristics of the site. The bushland areas of the site are within the Environmental Protection B (River Catchment) zone. Existing Lot 148 has a restriction on the use of the land to protect the bushland areas. The restriction would be retained on the same area within proposed Lot 481 and Lot 482.

3.2 Built Environment

The proposed development includes the retention of the existing dwellings and buildings on each of the lots.

The boundary adjustment would increase the setback distance of the existing dwelling on proposed Lot 482 from the side boundary and would provide an effective buffer between the allotments.

As previously stated, the plan of proposed subdivision identifies two residences on proposed Lot 481. A search of Council’s records indicates that consent has not been granted for ‘*multi-unit housing*’ on proposed Lot 481 and Council sought further clarification from the applicant with regards to the two buildings.

The applicant provided the following response: “*The southern ‘residence’ appears to be a metal shed*” and included photos of the structure.

A site inspection indicates that the structure is capable of being used as a separate dwelling. Accordingly it is recommended that the Plan of Subdivision be amended to delete the reference to 'residence' on the southern structure and that prior to issuing a subdivision certificate, Council be satisfied that the structure is not capable of being used as a second dwelling on the allotment.

3.3 Social Impacts

The proposal would not result in a population increase and would maintain the rural character of the locality.

3.4 Economic Impacts

The proposed boundary adjustment would not alter each of the existing lots ability to remain viable for a range of rural pursuits.

4. SITE SUITABILITY

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

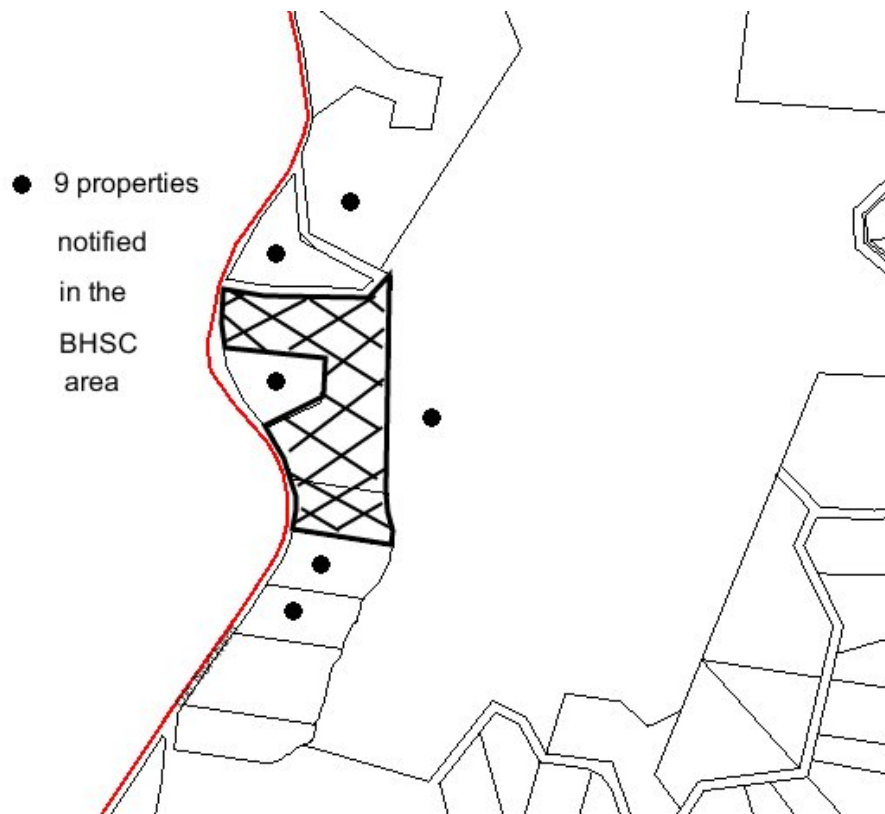
There is no known hazard/risk associated with the site with respect to flooding, landslip and subsidence that would preclude approval of the proposed development. However, the land is identified as being subject to bushfire risk. The NSW Rural Fire Service considered the proposed subdivision and raised no objection to the proposal subject to the imposition of conditions of consent.

5. PUBLIC PARTICIPATION

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

5.1 Community Consultation

The proposed development was placed on public exhibition and was notified to adjoining and nearby landowners between 1 September 2009 and 22 September 2009 in accordance with Council's Notification and Exhibition Development Control Plan. During this period, Council received no submissions. The map over page illustrates the location of those nearby landowners who were notified of the development.



NOTIFICATION PLAN

• PROPERTIES NOTIFIED	X SUBMISSIONS RECEIVED	 PROPERTY SUBJECT OF DEVELOPMENT	
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5.2 Public Agencies

The development application is Integrated Development under the Act in requiring the concurrence of the NSW Rural Fire Service (RFS). The RFS raised no objection to the proposal subject to the imposition of conditions of consent.

6. THE PUBLIC INTEREST

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

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

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

CONCLUSION

Consent is sought for a boundary adjustment between two existing rural allotments.

The proposed boundary adjustment is considered satisfactory in maintaining the rural character of the locality, notwithstanding the minimum lot size applicable for the subject Rural AR zone and Environmental Protection B zone.

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 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 recommended for approval subject to the concurrence of the Director-General of the Department of Planning in accordance with *Planning Circular PS 08-003* concerning the variation to development standards.

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. [View](#) Locality Plan
2. Subdivision Plan

File Reference: DA/1017/2009
Document Number: D01274894

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>
9696 Sheet 1 Rev A	Plan of Proposed Subdivision	Barrie Green and Associates	20 July 2009
9696 Sheet 2 Rev A	Plan of Proposed Subdivision	Barrie Green and Associates	20 July 2009

2. One Dwelling per Allotment

Prior to the issue of a subdivision certificate, the applicant must make arrangements for Council to inspect the building on Lot 481 identified as 'outbuilding/shed' and Council be satisfied that it is not capable of being used as a 'dwelling-house'.

GENERAL TERMS OF APPROVAL - NSW RURAL FIRE SERVICE

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

3. Asset Protection Zone - Lot 481

At the issue of subdivision certificate and in perpetuity, the land surrounding the existing dwelling on proposed lot 481, to a distance of 30 metres, or to the property boundary, shall be maintained as an asset protection zone (APZ) as outlined within section 4.1.3 and Appendix 5 of '*Planning for Bush Fire Protection 2006*' and the *NSW Rural Fire Service* document '*Standards for asset protection zones*'.

Reason: 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.

4. Asset Protection Zone - Lot 482

At the issue of subdivision certificate and in perpetuity, the land surrounding the existing dwelling on proposed Lot 481, to a distance of 60 metres, or to the property boundary, shall be maintained as an asset protection zone (APZ) as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service document 'Standards for asset protection zones'.

Reason: 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.

5. Water and Utilities

In recognition that no reticulated water supply exists, a 20,000 litre water supply shall be provided for the existing dwelling on proposed Lots 481 and 482 for fire fighting purposes.

Reason: The intent of measures is to provide adequate services of water for the protection of buildings during and after the passage of bush fire, and to locate gas and electricity so as not to contribute to the risk of fire to a building.

6. Design and Construction

The existing dwelling on proposed Lots 481 and 482 are required to be upgraded to improve ember protection. This is to be achieved by enclosing all openings (excluding roof tile spaces) or covering openings with a non-corrosive metal screen. Where applicable, this includes any sub floor areas, openable windows, doors, vents, weepholes and eaves.

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

- 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.

NSW Rural Fire Service

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

**2 DEVELOPMENT APPLICATION - ERECTION OF A 7 STOREY MIXED USE BUILDING - SECTION 96(2)
THE WALK, 228 - 234 PACIFIC HIGHWAY HORNSBY**

Development Application No:	DA/1564/2008/A
Description of Proposal:	Erection of a seven storey mixed use development incorporating retail and commercial floor space and twenty eight residential units – (Section 96(2))
Property Description:	The Walk, 228 – 234 Pacific Highway, Hornsby
Applicant:	Lacetip Pty Ltd
Owner:	Lacetip Pty Ltd
Statutory Provisions:	Hornsby Shire Local Environmental Plan 1994 Business F (Town Centre) Zone
Estimated Value:	\$ 10,449,810
Ward:	B

RECOMMENDATION

THAT Development Application No. 1564/2008 for the erection of a seven storey mixed use development incorporating retail and commercial floor space and twenty eight residential units at Lot A and B DP 304557 (No. 228 – 234) Pacific Highway, Hornsby be modified pursuant to Section 96(2) of the Environmental Planning and Assessment Act 1979 and subject to conditions of consent detailed in Schedule 1 of this report.

EXECUTIVE SUMMARY

1. The application proposes to modify an approved development comprising seven storey mixed use development incorporating retail and commercial floor space and thirty two residential units by altering the internal layout, reducing the number of retail tenancies, reducing the number of residential units to twenty-eight and corresponding external alterations.
2. The proposal generally complies with the relevant provisions within the Hornsby Shire Local Environmental Plan 1994, State Environmental Planning Policy No. 65 and the Hornsby Town Centre Development Control Plan.
3. Three submissions have been received in respect of the application.

4. It is recommended that the application be approved.

HISTORY OF THE SITE

On 17 November 2004, Council approved DA/485/2004 for the erection of an eight storey mixed use development comprising ground floor commercial and thirty residential units on the subject property. That application lapsed on 17 November 2009.

THE SITE

The subject site is located on the south-eastern corner of the Pacific Highway and Edgeworth David Avenue and has an area of 1181.2 sq metres. It is an irregular shaped allotment with frontages of 19.68m to the Pacific Highway, 36.57m to Edgeworth David Avenue and 39m to the Northshore Railway corridor. The site falls approximately 2m from the north-western corner to the south-eastern corner.

The access to the site is provided via a 3.05 metre wide driveway located along the eastern boundary of the site with vehicular access provided from Edgeworth David Avenue. This driveway also acts as the right of carriageway providing access to No. 10 Edgeworth David Avenue, adjoining the site to the east.

The current improvement on the site includes a two storey commercial building, known as "The Walk" with at-grade parking provided at the rear. The commercial building includes shops at the ground level fronting Pacific Highway and Edgeworth David Avenue. Nine commercial suites are located on the first floor. The pedestrian access to the first floor level is provided off Edgeworth David Avenue.

The site is located in the Hornsby town centre, being within 1 km of the Hornsby railway station and is surrounded by a mix of land uses including commercial, residential and educational establishments. The Westfield Shopping Centre is located to the north of the site on the opposite side of Edgeworth David Avenue. The adjoining building to the east includes a medical centre and retail premises. The development is located in close proximity to a number of high-density residential and mixed use developments. A ten storey high density residential development exists on the opposite side of the rail corridor to the south of the site.

THE APPROVED DEVELOPMENT

On 3 June 2009, Council approved DA/1564/2008 comprising the following components:

- Five retail premises on the ground floor to be accessed from Pacific Highway and Edgeworth David Avenue. Three of the units included a mezzanine level for storage of goods. A disabled unisex toilet was proposed to be located on the ground floor to cater for the retail premises.
- Two storeys of commercial premises (first and second floor). The details of uses and the number of tenancies were not proposed within this application. The proposal included the delineation of floor space to be dedicated for the purpose of office or business premises in the future. The commercial floors included a common lobby with toilets and other services being located on each floor.
- The gross floor area proposed for employment generating development was 3,148 sq metres.

- Four storeys of residential development including thirty two units (third to seventh floor). The development included the following mix of residential units:
 - 4 x studio units
 - 4 x 1 bedroom units
 - 20 x 2 bedroom units
 - 4 x 3 bedroom units

Eight units were proposed to be located on each floor. The units at the third floor (lowermost residential) level included courtyards for use as private open space while all the units on the upper floors are provided with balconies. Part of the roof terrace was proposed to be used as private open space for units located at the top level of the development. Additional storage areas were proposed for all units in the upper basement level. The development included one adaptable unit located on the third floor.

- The gross floor area for residential development on the site was proposed to be 2,396 sq metres.
- Provision of a common recreation area including BBQ facilities located on the terrace for residents of the premises.
- Provision of four levels of basement car parking comprising a total of 108 car spaces with 7 vertical bike racks and 4 motorcycle spaces.
- Provision of a common driveway of variable width along the eastern boundary of the site providing access to the development. The loading and unloading area was proposed to be located at the ground level on the western side of the main driveway. The pedestrian access to the development was proposed from Edgeworth David Avenue.
- The development proposed to incorporate the existing right-of-carriageway and continue providing access to the adjoining development at No. 10 Edgeworth David Avenue. In accordance with the proposal, the right-of-carriageway would, in future, include the entire width of the widened driveway.
- Both commercial and residential bin storage areas were proposed to be located at the ground level adjoining the entrance driveway.
- Provision of a continuous band of awning over the footpath along both frontages of the development.
- Landscaping proposed on the street to activate the street frontage and improve the streetscape.
- The application proposed a floor space ratio of 4.6:1

THE PROPOSED MODIFICATION

The current proposal involves the modification of the approved development in the following ways:

- Two retail premises on the ground floor to be accessed from Pacific Highway and Edgeworth David Avenue. No mezzanine floors are included.
- Two storeys of commercial premises (first and second floor). The commercial floors would include a common lobby with toilets and other services being located on each floor.

The details of the proposed non-residential floor areas are described below:

Commercial and Retail – Gross Floor Area			
	Ground Floor	First Floor	Second Floor
Retail 1	293 m ²		
Retail 2	81 m ²		
Circulation	72 m ²		
Gross Floor Area – Retail	446 m²		
Commercial 1		921.6 m ²	
Commercial 2			890 m ²
Circulation and Services		35.4 m ²	
Circulation and Services			37 m ²
Gross Floor Area – Commercial	1,884 m²		
Gross Floor Area for Employment generating Uses	2,330 m²		

- Four storeys of residential development including twenty-eight units (third to seventh floor).

The development includes the following mix of residential units:

- 8 x 1 bedroom units
- 16 x 2 bedroom units
- 4 x 3 bedroom units

Seven units are proposed to be located on each floor. The units at the third floor (lowermost residential level) include courtyards for use as private open space while all the units on the upper floors are provided with balconies. Part of the roof terrace would be used as private

open space for units located at the top level of the development. Additional storage areas are proposed for all units in the basement. The development includes one adaptable unit located on the third floor.

The details of gross floor areas (GFA) of the residential units are described below:

Residential Development gross floor areas	GFA per unit	Total GFA
Units 1,8,15 and 22 (2 bedroom units)	76m ²	304m ²
Units 7, 14, 21 and 28 (3 bedroom units)	110m ²	440m ²
Units 6, 13, 20 and 27 (2 bedroom units)	77m ²	308m ²
Units 5, 12, 19 and 26 (2 bedroom units)	78m ²	292m ²
Units 4, 11, 18 and 25 (1 bedroom units)	49m ²	196m ²
Units 3, 10, 17 and 24 (1 bedroom units)	49m ²	196m ²
Units 2, 9, 16 and 23 (2 bedroom units)	73m ²	292m ²
Circulation	2m ² / Level	88 m ²
Total GFA on all floors		2,116m²

- Provision of a common recreation area at the roof level.
- Provision of four levels of basement car parking.

The three upper levels of the basement would include the on-site parking spaces for retail, office premises and visitors to residential units. The lowermost level of basement would be dedicated to parking for residents of the premises. The basement also includes bicycle parking spaces and storage areas for residential premises.

The details of car parking provided on site are described below:

Location	No of spaces provided	Comments
Residential		
Basement Level 4	26 spaces	Includes 1 disabled space
Basement Level 3	3 spaces + 5 visitors	
Total Residential	34 Spaces	
Retail		
Basement Level 1	17 spaces	Includes 1 disabled space
Total Retail	17 spaces	
Commercial		
Basement Level 3	15 spaces	Includes 1 disabled space
Basement Level 2	23 spaces	Includes 1 disabled space
Basement Level 1	6 spaces	
Total	44 spaces	
Bicycle & Motorcycle Parking		
Basement Level 4	2 bicycles + 2 Motorcycles	
Basement Level 3	2 bicycles + 2 Motorcycles	
Basement Level 2	2 bicycles + 2 Motorcycles	
Basement Level 1	2 bicycles + 1 Motorcycle	
Total Bicycle and Bike spaces	15 spaces	

- Provision of a common driveway of variable width along the eastern boundary of the site providing access to the development.

The loading and unloading area would be located at the ground level on the western side of the main driveway. A turntable with a 9 metre radius has been provided in this area. The pedestrian access to the development is proposed from Edgeworth David Avenue. The pedestrian entrance would lead to a common lobby providing access to all floors via lifts.

The modified proposal would not be built over the existing right-of-way at any stage. Therefore, the proposal would be setback 3.05 metres from the eastern

boundary at all levels. The development, after completion, would incorporate the existing right-of-carriageway and continue providing access to the adjoining development at No. 10 Edgeworth David Avenue. The right-of-carriageway would, in future, include the entire width of the widened driveway.

- Both commercial and residential bin storage areas are proposed to be located at the ground level adjoining the entrance driveway.
- The design of the development is a contemporary style and would be simple with two curved walls along the eastern and western facades.
- Provision of a continuous band of awning over the footpath along both frontages of the development.
- Landscaping proposed on the street to activate the street frontage and improve the streetscape.

ASSESSMENT

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

1. STRATEGIC CONTEXT

1.1 Metropolitan Strategy – (Draft) North Subregional Strategy

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

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

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

The proposed modification to the development would not alter the compliance of the development to the original proposal in respect to the provisions 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 other prescribed matters."

2.1 Environmental Planning and Assessment Act 1979 – Section 96(2)

Pursuant to Section 96(2) of the Environmental Planning and Assessment Act 1979, Council may consider an application to amend development consent provided that, inter alia:

- “(a) it is satisfied that the development to which the consent as modified relates is substantially the same development, and*
- (b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and*
- (c) it has notified the application in accordance with the regulations, and*
- (d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations.”*

DA/1564/2008 comprises an approval for a seven storey mixed use development comprising retail uses on the ground floor, two floors of commercial uses and thirty two residential units with associated car parking. The proposed modifications reduce the number of units to twenty eight, reduce the number of retail tenancies to two and include commercial uses on the first and second floors. The application also includes basement car parking in four levels.

The height of the building would remain the same. The building would also retain a similar footprint as approved except along the eastern boundary where a 3.05 metre setback is provided clear of the existing right-of-way. The external modifications would only be cosmetic to reflect the internal changes and to provide a simplified yet contemporary façade design to comply with the development controls within the Hornsby Town Centre Development Control Plan and State Environmental Planning Policy No. 65. It is considered that the proposal as amended is substantially the same as the development originally approved. The modifications would result in improved amenity by maximising the number of units with a northerly aspect and retain the right-of-way at all times.

With regard to Section 96(2)(b), the original proposal was referred to the State Rail, NSW Roads and Traffic Authority and NSW Police Force for comments. The modified proposal was also referred to these agencies. The matters have been discussed in detail in Section 5.2 of this report.

In accordance with Section 96(2)(c) and (d) and Council’s Notification Policy, adjoining owners were notified of the application and three submissions have been received. The matters raised by the objectors have been discussed in Section 5.1 of this report.

Despite the application having an estimated value in excess of \$10 million and that the application was lodged after 1 July 2009, Council remains the consent authority for the application. The Joint Regional Planning Panel is not the consent authority for section 96 applications in circumstances where a council was the consent authority for the original application.

2.2 Hornsby Shire Local Environmental Plan 1994

The subject land is zoned Business F (Town Centre) Zone under the Hornsby Shire Local Environmental Plan 1994 (HSLEP). The objectives of the zone are:

- (a) *to encourage economic growth and employment opportunities.*
- (b) *to accommodate the retail, commercial, housing and social needs of the local and regional community.*
- (c) *to encourage development that improves the health, vitality, cultural and social environment within the Hornsby town Centre.*

The proposed uses are defined as “business premises”, “office premises”, “shops” and “multi-unit housing” under the HSLEP and are permissible landuses in the zone with Council’s consent.

The proposed modification to the original consent would not alter the compliance of the development to the zone objectives.

Clause 15(2) of the HSLEP prescribes that the maximum floor space ratio (FSR) for a site located within the Business F Zone should be in accordance with Schedule B. A maximum FSR of 5:1 is permissible on the site provided that the FSR of the residential component does not exceed 2:1. The bonus FSR should be utilised for employment generating development only.

The applicant addresses this requirement by proposing the following FSR:

- FSR for residential component: 1.79:1
- FSR for employment generating development: 1.97:1
- Proposed FSR on site: 3.76:1

The proposal complies with the FSR requirements for the site and is less than the approved FSR of 4.06:1 and is considered acceptable.

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

State Environmental Planning Policy No. 55 (SEPP 55) requires that Council must not consent to the carrying out of any development on land unless it has considered whether the land is contaminated or requires remediation for the proposed use.

The matter was assessed in detail under DA/1564/2008. The proposed modifications would not alter the compliance of the development with SEPP 55.

2.4 State Environmental Planning Policy (Infrastructure) 2007

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

2.4.1 Development in Rail Corridors

The development is located immediately adjoining the Northern Rail Corridor and would require excavation within 25 metres (measured horizontally) of the corridor. Therefore the original development required (and obtained) concurrence of the RailCorp under Clause 85

and 86 of the SEPP (Infrastructure). The modified proposal was also referred to RailCorp for comments. The following matters are considered in this regard:

2.4.1.1 Impact of excavation

The development would involve a bulk excavation to a depth of 10 to 11 metres below the natural ground on land adjoining the Rail Corridor. The excavation would extend to 4.5 metres below the level of the railway track at a lateral distance of 17 metres from the railway lines. The structural pylons would require anchoring with prestressed rock anchors.

The applicant has submitted a Geotechnical Assessment Report during the assessment of the original application assessing the impact of the proposed excavation and the resultant vibration on the structural integrity of the rail corridor. The proposed modification would not alter the methods of excavation or the depth of excavation.

State Rail has reviewed the modified application in this regard and has raised no objection to the development subject to implementation of conditions of consent.

2.4.1.2 Impact of Noise

Clause 87 of the SEPP (Infrastructure) applies to the development as it would be impacted upon by the noise and vibration from the rail corridor and the Pacific Highway. In accordance with the requirements of the SEPP, the modified application has been assessed against the noise related controls contained within the Department of Planning's publication "*Development near Rail Corridors and Busy Roads – Interim Guidelines*".

The original Noise Assessment Report submitted with DA/1564/2008 detailed the construction techniques to attenuate rail noise and vibration and concluded that the development would not exceed the specified noise criteria and L_{eq} levels within Clause 87 of the SEPP (Infrastructure). The Noise Assessment Report would apply to the modified proposal as the building would have similar configuration.

Council's assessment of the modified application concluded that the development is satisfactory subject to the implementation of the previously imposed conditions under DA/1564/2008. State Rail has also reviewed the current application with regard to noise and vibration and raised no objection subject to the maintenance of the conditions of consent under DA/1564/2008.

2.4.1.3 Rail safety issues

The document "*Development near Rail Corridors and Busy Roads – Interim Guidelines*" prescribes guidelines and design elements to be incorporated into a development adjoining a rail corridor to reduce vandalism and improve safety of the infrastructure. State Rail had originally recommended the following conditions in accordance with the guidelines:

- *“Given the possibility of objects being thrown onto the rail corridor from balconies the applicant is required to install adequate measures or to enclose balconies that are within 20 metres of the rail corridor. The measures to be utilised are to be endorsed by RailCorp prior to the issue of the Construction Certificate.*
- *The Applicant is required to install mechanisms that limit the opening of windows or provide awning windows to prevent the throwing of objects onto the*

rail corridor. The measures to be utilised are to be endorsed by RailCorp prior to the issue of the Construction Certificate.”

The application as modified does not include any balconies fronting the rail corridor and therefore the condition requiring enclosure of balconies would not be applicable. The requirement regarding restriction to open-able windows is recommended as a condition of consent.

2.4.2 Development with frontage to a classified road

The modified proposal has been assessed against the requirements of Clause 101 of the SEPP (Infrastructure) as it fronts the Pacific Highway. In accordance with the requirements of the Policy, the development does not propose any vehicular access from Pacific Highway and complies with regard to proposed noise attenuation measures.

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

2.4.3 Traffic Generating Development

The original development was classified as a Traffic Generating Development in accordance with Clause 104 of the SEPP (Infrastructure). The modified development has also been assessed with regard to this clause of the SEPP.

The development as modified would involve access from Edgeworth David Avenue via a common driveway for ingress and egress. A turntable is to be located immediately adjoining the driveway to the west.

The original development application included a Traffic Assessment Report which calculated the trip generation for all components of the development in accordance with the Roads and Traffic Authority (RTA) guidelines and concluded that the development would result in a net increase of only 8 trips per hour during the PM peak period, which is considered negligible. The modified application would reduce the total floor area and therefore no further assessment with regard to traffic generation is considered necessary.

The proposal as modified would retain the approved driveway to facilitate HRV access on site. A turntable is proposed at the loading dock location for truck manoeuvring. The RTA has reviewed the modified proposal with regard to traffic generation and raised no objections to the proposed driveway width (8.6 metres - 9.4 metres). The original proposal also included a Service Vehicle Management Plan which would be implemented on site during operation.

Given the above, it is considered that the current application satisfactorily addresses the requirements in relation to a Traffic Generating Development and the vehicular access to the site. The RTA has raised no objection to the development subject to the implementation of conditions of consent.

2.5 State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development

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

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

2.5.1 Principle 1: Context

This matter was assessed in detail under DA/1564/2008.

The modified development maintains retail, commercial and residential floor space within a distinctive, contemporary building form in the core area of the 'Town Centre' and is considered to respond suitably to the 'context' principle of SEPP 65.

2.5.2 Principle 2: Scale

The modified proposal would involve a seven storey building with a three storey podium that extends along both frontages of the site. The proposed modifications would not alter the compliance of the development with the "scale" component of SEPP 65 as opposed to the original development. Therefore no further assessment in this regard is necessary.

2.5.3 Principle 3: Built Form

The proposed development, as modified, presents a distinct architectural design providing an attractive landmark building on this key 'gateway' site within the Hornsby Town Centre.

The details of the elements of the built form have been assessed against the development controls with the Hornsby Town Centre Development Control Plan in Section 2.9 of this report.

2.5.4 Principle 4: Density

The modified development complies with the FSR requirement contained within the HSLEP and complies with the density principle of SEPP 65.

2.5.5 Principle 5: Resource, energy and water efficiency

The modified development includes a BASIX certificate and complies with the requirements with regard to water, thermal comfort and energy. The proposed modifications also comply with the natural ventilation and solar access requirements within the Residential Flat Design Code (RFDC). The details of the above matters have been discussed in Sections 2.5.11 and 2.6 of this report.

2.5.6 Principle 6: Landscape

The modified proposal does not alter the street level planting as approved originally.

The modified proposal does not alter the street level planting as previously approved.

The modified development includes extensive landscaping within the common recreational area at the roof level with associated amenity. The courtyards of the ground level residential units would also incorporate sufficient landscaping to soften the built form.

Given the above, the application satisfies the intent of the 'Landscaping' principle of SEPP 65.

2.5.7 Principle 7: Amenity

The modified application has been assessed against the 'Building Amenity' criteria within the RFDC and is discussed in detail in Section 2.5.11 of this report.

The application is assessed as satisfactory against the 'Amenity' principle of SEPP 65.

2.4.8 Principle 8: Safety and security

The modified proposal features the majority of the balconies and living areas addressing the street frontages to increase the level of observation and 'eyes on the street'. The design has regard to the 'Crime Prevention through Environmental Design (CPTED)' principles and does not include any obvious unobserved areas.

This matter has been discussed in detail in Section 5.2 of this report.

2.5.9 Principle 9: Social dimensions

The modified proposal would not alter the compliance of the original proposal with regard to "social dimensions".

2.5.10 Principle 10: Aesthetics

The modified proposal is generally consistent with the design principles contained within the RFDC. It is considered that the aesthetic quality of the building contributes to the desired future character of the Hornsby town centre.

The details of the assessment of the built form and the aesthetics of the development against the Hornsby Town Centre Development Control Plan controls are contained in Section 2.9 of this report.

2.5.11 The Residential Flat Design Code

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

Residential Flat Design Code			
Site Design			
Issue	Rule of Thumb	Provided	Compliance & Comments
Building Depth	10-18 metres	27 metres maximum for residential section	No
Building Separation	12m increased to 18m from fifth level	6m – 8m from boundary	No

Deep Soil Zone	Min 25%	Not provided	No
Communal open space	25-30%	25%	Yes. Communal open space is provided at the roof top.
Private Open Space (POS) for Ground floor units	Min 25m ² for each unit	POS for all units in the lowest level of residential use exceed 25m ² except Unit 1 (8m ²) and Unit 7 (21m ²)	No
Min Dimension for POS at Ground Level	4m minimum in one direction	Primary courtyard area has 4m minimum dimension for all units	Yes
Pedestrian Access	20% of the dwellings should have barrier free access	Continuous path of travel via lifts provided from street to all units	Yes
Unit Depths			
Issue	Rule of Thumb	Provided	Compliance
<i>Single aspect one bedroom apartments</i>			
Depth and Kitchen distance (Single aspect north facing units)	8m maximum depth and kitchen distance 8m from window	8m maximum depth and kitchen distance maximum 8m from window.	Yes
<i>Two bedroom apartments</i>			
Dimensions for two bedroom corner units (living areas with corner aspects and bedrooms with single aspect)	Maximum (14.3m x 6.3m)	1m x (6.2 – 8)m	Yes
	And 8m depth for single aspect areas	8m	Yes
Depth for single aspect two bedroom units (east facing)	8m maximum	8m maximum	Yes
<i>Three Bedroom corner apartment</i>			
Dimensions	(16 x 8.6)m	14m x 8m (living areas including kitchen) Single aspect areas have	Yes

	And 8m depth for single aspect areas	a max depth 8m	Yes
Building Configuration			
Issue	Rule of Thumb	Provided	Compliance
Balconies	One primary balcony/courtyard and secondary balconies to bedrooms	One primary balcony/courtyard provided to living areas	No. The bedrooms are not provided with secondary balconies. The units fronting railway corridor cannot be provided with open balconies to comply with RailCorp standards. The other units are provided with balconies along the northern or eastern facades. The bedrooms are well ventilated; therefore further balconies are not essential for these units.
Depth of balconies	Minimum depth 2m for primary balconies	> 2m for primary balconies/courtyards	Yes
Ceiling heights - Residential floors	2.7m min height	2.7m	Yes
Ceiling heights - Retail/commercial ground floor	3.3m	4.2m for Ground floor retail and 3 m for Commercial floors	Yes
No. of units accessed from double corridors	Maximum 8	7	Yes
Corridors	Short and clear sights	Corridors lengths are optimised with sufficient foyer spaces	Yes
	Avoid tight corners	No corners provided	Yes
Separation of Uses	Separate residential uses from retail by	Retail located in ground floor with two floors of	Yes

	providing intermediate office space	office areas separating the four levels of residential space above	
Total Storage area - One bedroom units	6m ³ (minimum) with 50% accessible from apartments	8.83 - 9.36m ³ in basement and additional 3m ³ space accessible from apartment	Yes
Total Storage area - Two bedroom units	8m ³ (minimum) with 50% accessible from apartment	8.83 - 9.36m ³ in basement and additional 4m ³ space accessible from apartment	Yes
Total Storage area - Three bedroom units	10m ³ (minimum) with 50% accessible from apartment	9m ³ in basement and additional 5m ³ space accessible from apartment	Yes
Building Amenity			
Issue	Rule of Thumb	Provided	Compliance
Aspect	Optimise northern aspect	57% have northern aspect	Yes
Solar access	70% receive 2 hrs direct sunlight	71% receive 2 hrs direct sunlight	Yes
No of single aspect units with SW-SE aspect	10% maximum	There are no single aspect units that are located to the south, SW or SE.	Yes
Cross ventilated units	60%	60%	Yes
Kitchen with access to natural ventilation	25%	42%	Yes

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

2.5.11.1 Building Depth

The RFDC prescribes that the control over the building depth is important as non-compliance with the above could result in overshadowing and lack of cross-ventilation to the residential units.

The approved development included a building depth of 27 metres and this is unaltered in the modified proposal. As indicated in the table above, applicant has demonstrated that 60 % of

the units are cross-ventilated and 71% of the units would receive 2 hours of direct solar access. Further, the submitted shadow diagrams indicate that the building would not overshadow the private open space areas and the living areas of any adjoining development due to the building layout and separation by the rail corridor. Accordingly, it is considered that the proposed development achieves the objective of the 'Building Depth' control within the RFDC and is acceptable in its current form.

2.5.11.2 Building Separation

The RFDC requires that the building separation between two adjoining developments be 12m and be increased to 18m from the fifth level to provide sufficient solar access and cross ventilation to the upper level units.

The modified proposal would retain 6m – 8m setback from the boundary, as originally approved under DA/1564/2008. Therefore no further assessment in this regard is necessary.

2.5.11.3 Deep Soil Zone

The approved proposal does not provide for any deep soil landscaping area within the site. The modified proposal does not alter this development outcome. Therefore no further assessment in this regard is necessary.

2.5.11.4 Solar Access and Natural Ventilation

The applicant has submitted a detailed SEPP 65 compliance table indicating the compliance of individual units with solar access and natural ventilation controls within the RFDC. As indicated in the table, the units would comply with the above requirements and the proposal is considered acceptable in this regard.

2.5.11.5 Acoustic Privacy

The internal layouts of the residential units in the modified proposal are designed such that noise generating areas of a number of units would adjoin each other. Storage or circulation

zones would act as a buffer between units. Bedrooms and service areas such as kitchens, bathrooms and laundries are also proposed to be grouped together wherever possible.

Continuous walls are proposed to ground level courtyards. Measures to reduce noise transmission from common corridors have been provided within the unit layouts.

The modified proposal complies with the 'Acoustic Privacy' requirements within the RFDC and is assessed as satisfactory.

2.5.11.6 Private Open Space Area

As indicated in the above table, the private open space area for Unit 1 does not comply with the rule of thumb within the RFDC. However, the unit fronts Pacific Highway and the rail corridor. No courtyards have been provided along the rail corridor due to rail safety issues as discussed in Section 2.4 of this report. This has resulted in constraining the useable open space area that can be provided in the ground level for unit 1. Further, the courtyard fronts Pacific Highway and the residents would unlikely use it to the same extent as occupants of other units due to impacts from road noise. Therefore the size of the courtyard for this unit is considered acceptable.

The private open space area for Unit 7 also has minor numerical non-compliance with the requirements of the RFDC. The non-compliance could be mitigated if the courtyard is extended along the western boundary. However, the building adjoins the rail-corridor along the western boundary and any extension to the courtyard would require appropriate screening in the form of a transparent wall or a security mesh. This would have detrimental impact on the streetscape presentation of the building and would not result in much additional useable courtyard area. The courtyard area allocated to this unit would be fully useable by the occupants and is considered acceptable.

2.6 State Environmental Planning Policy (Building Sustainability Index – BASIX) - 2004

The application has been assessed against the requirements of State Environmental Planning Policy (BASIX) 2004 which seeks to encourage sustainable residential development.

The modified proposal includes a BASIX certificate in accordance with the requirements of the SEPP including the list of commitments to be complied with at the construction stage and during the use of the premises. The BASIX certificate achieves the minimum scores for thermal comfort, water and energy.

2.7 State Environmental Planning Policy No. 32 - Urban Consolidation (Redevelopment of Urban Land)

The original application was assessed against the requirements of SEPP 32. The modified proposal would not alter the compliance of the original development with the provisions of SEPP 32. No further assessment under this Policy is necessary.

2.8 Sydney Regional Environmental Plan No. 20: Hawkesbury Nepean River

The original application was assessed against the requirements of Sydney Regional Environmental Plan No. 20 (SREP 20). The modified proposal would not alter the

compliance of the original proposal with the provisions of SREP 20. Therefore no further assessment is necessary.

2.9 Hornsby Town Centre Development Control Plan

The modified proposal has been assessed having regard to the relevant performance and prescriptive design standards contained within Council's Hornsby Town Centre Development

Control Plan (Town Centre DCP). The following table sets out the proposal's compliance with the prescriptive standards of the Plan:

Hornsby Town Centre Development Control Plan			
Control	Proposal	Requirement	Compliance
Height	27m	24m	No

Setbacks			
Pacific Highway (west)	0m	0m	Yes
Edgeworth David Avenue (north)	0m	0m	Yes
Railway Corridor(south)	3.05m	0m	Yes
East	0m	0m	Yes

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

2.9.1 Town Centre Strategy

The modified development does not alter the compliance of the original proposal with the Town Centre Strategy.

2.9.2 Gateway Point

The corner of Pacific Highway and Edgeworth David Avenue is identified as a 'Gateway' point due to its prominent location. The modified elevation includes landmark features including the curved wall and would act as a gateway feature for the town centre.

2.9.3 Views and Vistas

The proposed low rise podium provides space in between the tall buildings and aligns with the vistas along the northern axis of the Pacific Highway and east-west axis along Edgeworth David Avenue.

The design of the residential component of the development on the upper levels would take advantage of views of the surrounding bushland.

2.9.4 Traffic Management

DA/1564/2008 was assessed as acceptable against the "traffic management" provision of the Town Centre DCP. As the FSR of the current modification has been reduced, additional traffic modelling within the Town Centre is not required.

2.9.5 Solar Access

The development does not adjoin a residential development or a public open space area. The adjoining footpath to the north would receive sufficient sunlight between 12 noon and 2 pm on 22 June in accordance with the Town Centre DCP. The applicant has demonstrated that the adjoining eastern property would receive 2 hours of sunshine between 9 am and 3 pm on 22 June.

2.9.6 Eastern Precinct Development Controls

2.9.6.1 Building Design

The modified building design includes a distinctive top, middle and base. The podium would incorporate retail and commercial uses and minimise blank facades in the street wall. The upper floors are proposed to be further set back. Thus the building would step up from the ground ensuring solar access to pedestrian walkways and provide an appropriate pedestrian interface with regard to the scale.

The building would incorporate a curved wall along the Pacific Highway frontage to act as the gateway feature and also simplify the facade treatment on the upper floors. Louvers are proposed to be provided along the western frontage to act as sun-control devices and also provide a variation to the elevation. The materials and colours provide a balance between the horizontal and vertical elements.

Given the above, it is considered that the proposed development complies with the prescriptive measures in relation to building design within the eastern precinct.

2.9.6.2 Height

The original proposal was approved with a building height of 28 metres. The modified proposal reduces this building height to 27.4 metres and is acceptable.

2.10 High Density Multi Unit Housing Development Control Plan

The proposed development has been assessed having regard to the relevant performance and prescriptive design standards within Council's High Density Multi Unit Housing

Development Control Plan High Density Housing DCP. The following table sets out the proposal's compliance with the relevant prescriptive standards of the Plan:

High Density Multi Unit Housing Development Control Plan			
Control	Proposal	Requirement	Compliance
Outdoor Areas – Small units			
Units 3 and 4	26m ² and 25m ²	20m ²	Yes
Units 11, 18, 25, 10, 17 and 24	15 - 16m ²	6m ²	Yes
Outdoor Areas – Medium Units			
Unit 1	8m ²	30m ²	No
Unit 2, 5, 6	33 - 63m ²	30m ²	Yes
Units 8, 15, 13, 20, 12, 19, 9, 16	8 - 14m ²	8m ²	Yes
Unit 22, 23, 24, 25, 26, 27	> 50m ²	8m ²	Yes
Outdoor Areas – Large Units			
Unit 7	21 m ²	40 m ²	No
Unit 14 and 21	28m ²	10m ²	Yes
Unit 28	59 m ²	10m ²	Yes
Car Parking			
Residential	29 spaces	28 spaces	Yes
Residential visitor	5 spaces	5 spaces	Yes

As detailed in the above table, the modified development does not comply with a number of prescriptive standards within Council's High Density Housing DCP. A brief discussion on compliance with the relevant performance standard is discussed below.

2.10.1 Site Coverage Setback

The 'Site Coverage' and 'Setback' provisions contained within the High Density Housing DCP would not apply to this development as it is located within the Town Centre. The development complies with the development controls prescribed by the Town Centre DCP.

2.10.2 Privacy

The High Density Housing DCP prescribes that windows of habitable areas should not face directly onto the windows, balconies of adjoining dwellings.

The modified development fronts two roads and the North Shore rail corridor on the northern western and the southern sides. The units within the development would not front each other and would not impact on occupant's privacy. The ground level courtyards include continuous walls and only the extended section of these yards would be visible from the upper floors.

The adjoining property to the east comprises a commercial development and adequate building separation has been provided between this and the subject site. The impact of the proposed development on the site to the east, with regard to privacy would be considered during the assessment of any future development application on that site.

2.10.3 Private Open space

This matter has been discussed in detail in Section 2.5.11.6 of this report.

2.11 Car Parking Development Control Plan

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

Car Parking Development Control Plan			
Control	Proposal	Requirement	Compliance
Car Parking			
Residential	29 spaces	28 spaces	Yes
Residential visitor	5 spaces	5 spaces	Yes
Retail	17 spaces	17 spaces	Yes
Commercial	44 spaces	44 spaces	Yes
Total Car parking	95	95	Yes
Minimum dimension of car spaces	2.5 m x 5.4 m	2.5 x5.5 m	No
Min headroom for basement	2.4 m	2.3 m	Yes

As indicated in the table above, the proposal generally complies with the car parking requirements within Council's Car Parking DCP.

The proposed development provides for additional bike and motorcycle parking spaces on all levels. The parking provision of the modified proposal is an improvement over the approved development.

A number of car spaces to be used for commercial and retail purposes do not comply with the minimum dimensions prescribed by the Town Centre DCP. However, an engineering assessment of the proposal concludes that the dimensions comply with the relevant Australian Standards and is considered acceptable.

The applicant has provided swept path analysis for heavy rigid vehicle access to the site and a turntable for vehicular manoeuvring. An engineering assessment of the application concludes that the turntable can provide for appropriate truck turning on the site.

The details regarding traffic generation and the accessway to the site are discussed in Section 2.4.3 of this report.

2.12 Access and Mobility Development Control Plan

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

Access and Mobility Development Control Plan			
Control	Proposal	Requirement	Compliance
Lift dimensions	1800mm x 2000mm	1000 x 1100mm	Yes
Density	1 unit	1 per 10 – 49 units	Yes
Entrance door width	800mm minimum	760mm minimum	Yes
Walkway width	1.4m (minimum)	1350mm minimum	Yes
Disabled car space width	3.2m x 5.5m	3.2m x 5.5m (minimum)	Yes
No of disabled car spaces	4 spaces @ 1 space per level	1.9@2% minimum rate	Yes

As detailed in the above table, the modified development complies with the prescriptive standards within Council's Mobility DCP and would include the requirements of the Access Report conditioned as part of the original consent.

2.13 Waste Management and Minimisation Development Control Plan

The original proposal included a waste management plan and details of on-going waste management on site and was assessed as satisfactory. The design of the modified development incorporates a common waste disposal area at the ground level in addition to temporary waste cupboards being provided for each unit.

The application complies with the requirements of Council's Waste Management and Minimisation Development Control Plan.

2.14 Sustainable Water Development Control Plan

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

2.15 Section 94 Contributions Plan

Council's Section 94 Plan applies to the development as it would result in the generation of additional commercial and residential floor space and car parking requirements beyond the existing capacity of the development.

The requirement for a monetary Section 94 contribution has been imposed as a recommended condition of development consent.

3. ENVIRONMENTAL IMPACTS

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

3.1 Natural Environment

The matter was discussed in detail within the assessment of DA/1564/2008. The modified proposal does not change the impact of the development on the natural environment and no further assessment in this regard is necessary.

3.2 Built Environment

3.2.1 Built Form

The modified development would retain the height and bulk of the approved development and therefore would not alter the impact on the locality with regard to built form.

The matters in relation to built form of the modified proposal and the impact on the streetscape are discussed in detail in Sections 2.5 and 2.9 of this report.

3.2.2 Traffic

The proposal is categorised as a Traffic Generating Development. The details in relation to traffic are discussed in Section 2.4.3 of this report.

3.3 Social Impacts

The matter has been assessed in detail within the assessment of DA/1564/2008. No further assessment is necessary.

3.4 Economic Impacts

The matter has been assessed in detail within the assessment of DA/1564/2008. No further assessment is necessary.

4. SITE SUITABILITY

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

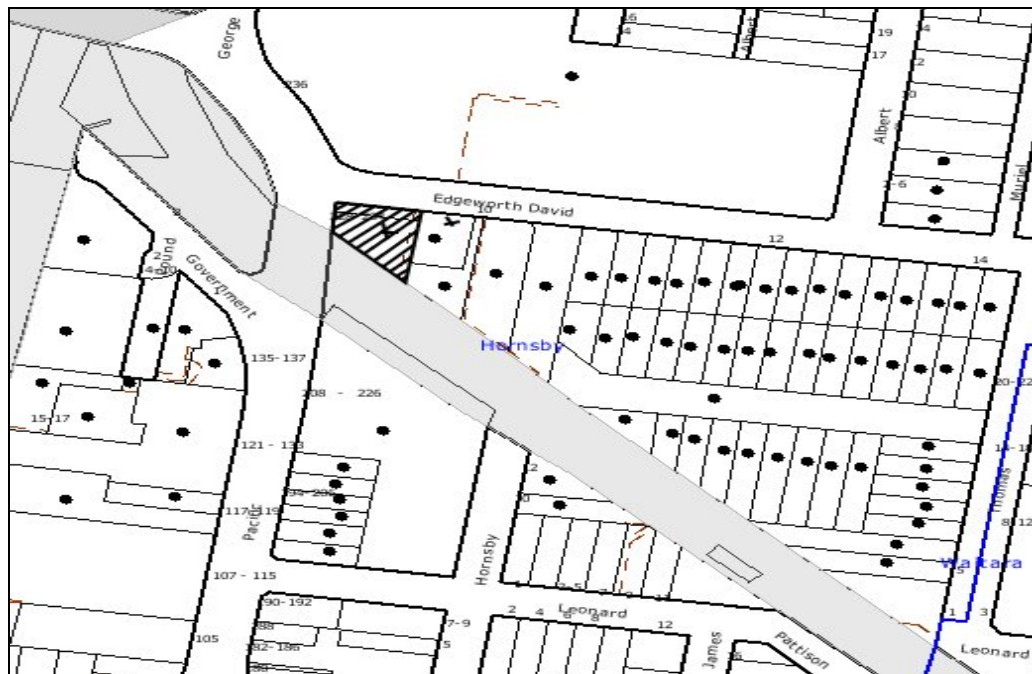
The matter has been assessed in detail within the assessment of DA/1564/2008. No further assessment is necessary.

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 3 September 2009 and 1 October 2009 in accordance with Council’s Notification and Exhibition Development Control Plan. During this period, Council received three 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 	 <ul style="list-style-type: none"> PROPERTY SUBJECT OF DEVELOPMENT 	
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One submission out of map range and one submission by a tenant within the site.

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

- *The application cannot be considered to be substantially the same development and therefore is not a Section 96 modification to the approved development.*
- *The proposal does not include a BCA compliance letter.*
- *The entrance to the ramp would result in vehicular conflict with the access to No. 10 Edgeworth David Avenue.*
- *Trucks, which are longer than 5 metres would not be able to turn within the ROW.*
- *The parking spaces that are at right angles to the ramp would not allow proper vehicle manoeuvring.*
- *The location of the ramps would result in vehicular conflicts.*
- *The ramp may be used by the patients accessing the adjoining eastern property.*
- *The ROW would be blocked during construction works and is unacceptable.*
- *The vehicles egressing from No. 10 Edgeworth David Avenue would have to travel against the ingressing traffic.*
- *The turntable cannot be utilised as a public area.*

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 Right-of-way during construction & works on neighbouring property

The application to modify the consent includes a Construction Management Plan. The Construction Management Plan provides the following details regarding the right-of-way management during construction works on site:

- 80% of the bulk excavation works would be carried out starting from the western boundary and progressing towards the eastern boundary without need to access the ROW.
- A temporary screened fence would be erected clear of the 3 metres ROW to permit unimpeded and uninterrupted access to the neighbouring property adjoining the eastern boundary.
- During this period of excavation, the trucks would load and unload within the site and the ROW would only be used for truck egress.
- During excavation, where the ROW would be impacted, the applicant proposes to construct a “long neck” appliance located on the triangular piece of land at the south-eastern corner, clear of the ROW and the basements. The trucks would however park on the ROW for loading purposes.

- This would cause temporary disruption to the neighbour's access to the car parking area at the rear. In order to resolve this matter, the following options are being proposed by the applicant:
 - Locating all six spaces dedicated to the doctors to the basement for uninterrupted access during construction works. This would require a modification to the strata plan for No. 10 Edgeworth David Avenue.
 - Leasing eleven spaces within the Westfield shopping complex to accommodate the visitors off site. Documentary evidence of which has not been provided to Council.
- "B" class hoardings would be used along both the Pacific Highway and Edgeworth David Avenue frontages, with the site office and worker's amenities located above the hoarding.
- An "A" Class hoarding would be erected along the southern boundary.

A condition is recommended that documentary evidence be provided to Council with regard to temporary arrangement for parking and access for doctors and visitors prior to commencement of works. Based on these arrangements, the application is assessed as satisfactory with regard to the right-of-access provision.

5.1.2 Turntable operation

The turntable would be operated by a licensed person in accordance with the management of the site. A condition of consent is recommended to ensure that the turntable is operated in accordance with a management plan.

5.2 Public Agencies

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

5.2.1 Roads and Traffic Authority

The Roads and Traffic Authority has reviewed the current application and has raised no objection to the development subject to conditions and matters to be considered by Council. These matters have been discussed in detail in Section 2.4.3 of this report.

5.2.2 State Rail

This matter has been discussed in detail in Section 2.4 of this report.

5.2.3 New South Wales Police Force

The development was referred to NSW Police Force, however, to date no comments have been received.

As no comments or correspondence has been received within 21 days of the referral, the application can be determined by Council on the basis that the Police has no objection to the development.

6. THE PUBLIC INTEREST

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

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

The application is considered to have satisfactorily addressed Council's 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 modified development would be in the public interest.

CONCLUSION

The proposal involves a Section 96(2) modification to a seven storey mixed use development by proposing 2116 sq. metres of commercial and retail floor space and twenty-eight residential units.

The proposal reduces the height, floor space ratio and number of retail and residential units. The proposal is considered to be substantially the same development as the approved development.

The proposed modification would be seven storeys in height and would present a visually interesting façade and presentation to Edgeworth David Avenue and the Pacific Highway. The development complies with Section 79C of the Act, the design principles within SEPP 65, the standards within SEPP (Infrastructure) 2007, the HSLEP and the objectives of the development controls within Hornsby Town Centre DCP.

Approval of the proposed modifications to the development 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

SCOTT PHILLIPS
Executive Manager
Planning Division

Attachments:

1. Locality Plan
2. Floor Plans
3. Landscape Plan
4. Photomontage

5. Elevations
6. Section
7. Shadow Plans

File Reference: DA/1564/2008/A
Document Number: D01264572

SCHEDULE 1

Date of modification:	2 December 2009
Details of modification:	Reduce the gross floor area, reduce the number of residential units to twenty-eight, variation to the internal layout, driveway access, inclusion of a turntable in the loading dock and modify external facade.
Conditions Added:	6A, 52
Condition Deleted:	36
Conditions Modified:	1, 18, 29, 34, 35, 37

GENERAL CONDITIONS

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

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

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

1. Approved Plans and Supporting Documentation

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

<i>Plan No.</i>	<i>Drawn by</i>	<i>Dated</i>
Basement 4, DA100-B	Jackson Teece	22/10/2009
Basement 3, DA101-B	Jackson Teece	22/10/2009
Basement 2, DA102-B	Jackson Teece	22/10/2009
Basement 1, DA103-B	Jackson Teece	22/10/2009
Ground Floor, DA104-E	Jackson Teece	9/11/2009
Level 1 Commercial, DA105-B	Jackson Teece	22/10/2009
Level 2 Commercial, DA106-B	Jackson Teece	22/10/2009
Level 3 Residential, DA107 - B	Jackson Teece	22/10/2009
Level 4 Residential, DA108-B	Jackson Teece	22/10/2009
Level 5 Residential, DA109-B	Jackson Teece	22/10/2009

Level 6 Residential, DA110-B	Jackson Teece	22/10/2009
Level 7, DA111-B	Jackson Teece	22/10/2009
Roof Plan, DA112 - B	Jackson Teece	22/10/2009
North Elevation, DA301-B	Jackson Teece	22/10/2009
East Elevation, DA300 - B	Jackson Teece	22/10/2009
South Elevation, DA 303-B	Jackson Teece	22/10/2009
West Elevation, DA302-B	Jackson Teece	22/10/2009
Section AA DA310-B	Jackson Teece	22/10/2009
Landscape Plan Ground DA500-A	Jackson Teece	22/10/2009
Landscape Plan Residential DA501-A	Jackson Teece	22/10/2009
Landscape Plan Roof Terrace DA502-A	Jackson Teece	22/10/2009
Landscape Plant Schedule DA503-A	Jackson Teece	22/10/2009
Adaptable Unit 11 DA600-A	Jackson Teece	22/10/2009
Basement Stormwater Drainage Plan and details Rev – E	Australian Consulting Engineers Pty Ltd	9/11/2009
Ground Floor Stormwater Drainage Plan and details Rev – F	Australian Consulting Engineers Pty Ltd	9/11/2009
First Floor OSD Tank location Rev – F	Australian Consulting Engineers Pty Ltd	9/11/2009
Erosion and Sediment Control Plan and details –Issue D	Australian Consulting Engineers	09/11/2009

<i>Document No.</i>	<i>Prepared by</i>	<i>Dated</i>
Schedule of Colours and Finishes	Jackson Teece	1/09/2009
BASIX certificate No. 271237M	-	2/11/2009
Noise and Vibration Intrusion Report & RailCorp Acoustic Requirements	Day Design Pty Ltd	6/11/2008 & 23/02/2009
Geotechnical Review & Assessment of Geotechnical Affects on the RailCorp Corridor	Douglas Partners	28/10/2008 & 5/12/2008
Environmental Review of Site Contamination	Douglas Partners	5/11/2008
Traffic Report	Traffix Traffic and Transport Planners	7/11/2008
Access Compliance Report	PSE Access Consulting	20/10/2008

Construction Management Plan	Jackson Teece	26/10/2009
Design Verification Statement	Jackson Teece	1/09/2009
BCA Compliance Assessment & BCA Compliance Report	Acro Cert	4/11/2008 & 24/10/2008
Operations Management Plan	API Property Services	March 2009
Stormwater Drainage Summary Report Modelled on Drains	Australian Consulting Engineers Pty Ltd	October 2008

2. Retention of Existing Trees

This development consent only permits the removal of tree numbered T1 as identified on the Site Plan dwg # 8 – 39 Issue C prepared by Innovative Plans dated 26 February 2009. The removal of any other trees requires separate approval under Council's Tree Preservation Order.

REQUIREMENTS PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

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

3. Building Code of Australia

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

4. Contract of Insurance (Residential Building Work)

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

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

5. 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.

6. Dilapidation Report

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

6A. Traffic Management Plan

A Traffic Management Plan must be submitted to Council for review and approval including the following:

- Details of maintenance of rights-of-access for the adjoining property at No. 10 Edgeworth David Avenue
- Provision of parking for doctors and patients off site during the construction phase when the right-of-access is to be blocked.
- Parking provisions for construction vehicles and the zones dedicated for loading and unloading during construction

Note: The parking for the doctors and the patients are to be provided in accordance with the details within the Construction Management Plan

REQUIREMENTS PRIOR TO THE COMMENCEMENT OF ANY WORKS

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

7. Erection of Construction Sign

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

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

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

8. Protection of Adjoining Areas

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

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

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

9. Toilet Facilities

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

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

10. Erosion and Sediment Control

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

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

REQUIREMENTS DURING CONSTRUCTION

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

11. Construction Work Hours

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

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

12. 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.

13. 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.

14. Council Property

During construction works, no building materials, waste, machinery or related matter is to be stored on the road or footpath.

15. Excavated Material

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

16. Survey Report – Finished Floor Level

Reports 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 levels are in accordance with the approved plans.

17. Pile Anchoring

Piles must not be anchored to the foundation or structure of the adjoining property at No. 10 Edgeworth David Avenue.

18. Right of Access

The right-of-access for the adjoining property at No. 10 Edgeworth David Avenue is to be maintained during the construction works. Details submitted under Condition 8 are to be implemented on the site during the times when the right-of-access would be blocked or unavailable to the users of the above property.

REQUIREMENTS PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE

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

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

19. Fulfilment of BASIX Commitments

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

20. Sydney Water – s73 Certificate

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

21. 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 in accordance with plans prepared by Australian Consulting Engineers Job No 08AH349 Rev E (as amended under condition 3).

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

22. On Site Stormwater Detention

An on-site stormwater detention system must be designed by a chartered civil engineer and constructed in accordance with the following requirements:

- a. Have a capacity of not less than 32.6 cubic metres, and a maximum discharge (when full) of 48 litres per second.
- b. The total site discharge not exceeding 48 litres per second.
- c. Have a surcharge/inspection grate located directly above the outlet.

- d. Discharge from the detention system to be controlled via 1 metre length of pipe, not less than 50 millimetres diameter or via a stainless plate with sharply drilled orifice bolted over the face of the outlet discharging into a larger diameter pipe capable of carrying the design flow to an approved Council system.

23. Footpath

A concrete footpath must be constructed along the full frontage of the subject site in accordance Council's *Civil Works Design and Construction Specification, 2005* and the following requirements:

- a. The existing footpath being removed.
- b. The footpath be constructed with Claypave "Monarch Tan" pavers laid on 125mm thick 20mpa concrete along the full width of the footway over the full frontage to the site including the implementation of landscape plan.
- c. Any public utility adjustments to be carried out at the cost of the applicant and to the requirements of the relevant public authority.

24. 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 a separate application under the *Local Government Act 1993* and the *Roads Act 1993* must be submitted to Council. The engineering plans must address the following requirements:

- a. The existing kerb and gutter be removed and a new kerb and gutter be constructed across the frontage of site in Edgeworth David Avenue and the Pacific Highway.
- b. The works to include, where required, the construction of perambulator ramps, line marking, signage and road furnishings.
- c. A new vehicular crossing be constructed.
- d. The existing road pavement to be saw cut a minimum of 300 mm from the existing edge of the bitumen and reconstructed.

25. 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.

26. Traffic Control Plan

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

- a. Arrangements for public notification of the works.

- b. Temporary construction signage.
- c. Permanent post-construction signage.
- d. Vehicle movement plans.
- e. Traffic management plans.
- f. Pedestrian and cyclist access/safety.
- g. Details of pedestrian and vehicular access to the property at No. 10 Edgeworth David Avenue, in accordance with the construction management plan.

27. Creation of Easements

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

- a. A Right of Access to service No. 10 Edgeworth David Avenue.
- b. The creation of an appropriate "*Positive Covenant*" and "*Restriction as to User*" over the constructed on-site detention/retention systems (OSD) and outlet works, within the lots in favour of Council in accordance with Council's prescribed wording. The position of the on-site detention system is to be clearly indicated on the title.
- c. To register the OSD easement, the restriction on the use of land "*works-as-executed*" details of the on-site-detention system and an engineers certificate must be submitted verifying that the required storage and discharge rates have been constructed in accordance with the design requirements. The details must show the invert levels of the on site system together with pipe sizes and grades. Any variations to the approved plans must be shown in red on the "*works-as-executed*" plan and supported by calculations.

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

28. Works as Executed Plan

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

29. Completion of Landscaping

A certificate must be provided by a practicing landscape architect, horticulturalist or person with similar qualifications and experience certifying that all required landscaping works have been satisfactorily completed in accordance with the approved landscape plans, the minimum construction standards identified in the Hornsby Shire Council Landscape Code for development applications and the following additional requirements for works on the street frontages:

- a. The landscape planter verge be edged with bullnose brick header course raised to match level of the kerb.
- b. The soil backfill mix around the rootball shall be an organic soil mix.
- c. Street tree planting to include two (2) *Leptospermum conferta* (Brushbox) planted at a minimum pot size of 75 litres.
- d. Planter box areas to include automatic drip irrigation, subsoil drainage (proprietary drainage cell, 50mm sand and filter fabric), and waterproofing.
- e. 500 mm additional soil depths be provided for shrubs.

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

30. External Lighting

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

31. Garbage Collection Easement

For the purpose of waste collection, an easement entitling Council, its servants and agents and persons authorised by it to enter upon the subject land and to operate thereon, vehicles and other equipment for the purposes of garbage collection must be granted to Council by the owner of the land.

Note: The easement must be in a form prescribed by Council and must include covenants to the effect that parties will not be liable for any damage caused to the subject land or any part thereof or to any property located therein or thereon by reason of the operation thereon of any vehicle or other equipment used in connection with the collection of garbage and to the effect that the owner for the time being of the subject land shall indemnify the Council, its servants, agents and persons authorised by it to collect garbage against liability in respect of any such claims made by any person whomsoever.

32. Cooling Towers

All cooling towers must be designed and installed in accordance with the Public Health Act 1991, the Public Health (Microbial Control) Regulation 2000 and Australian/New Zealand Standard AS/NZS 3666 – Air-Handling and Water Systems

of Buildings. Certification of compliance with the Standard must be obtained from a suitably qualified person.

Note: Under clause 15 of the Public Health (Microbial Control) Regulation 2000 the occupier of the part of premises where a regulated system is installed must notify the Council of the following particulars:

- a. *Type of system.*

- b. *The address of the premises on which the system is installed.*
- c. *The name, and the residential and business addresses, of the owner of the premises.*
- d. *If the operation area on the premises is occupied otherwise than by the owner, those particulars in relation to the occupier the telephone numbers at which, during business hours and after business hours, the person or persons referred to in the above point may be contacted.*

33. Car Park Management Plan

A Car Park Management Plan must be submitted to Council for approval to ensure that long term parking by motorists, not occupying or using the development for any purpose, is prevented during operation of the site.

34. s94 Infrastructure Contributions

The payment to Council of a contribution of \$113753.75* for 50 employees 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 \$2,293.40 per employee, derived from a rate of one employee per 30sqm commercial floor area and is current as at 11 November 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.

35. s94 Infrastructure Contributions

The payment to Council of a contribution of \$ 31,4116.50* for thirty two additional dwellings towards the cost of infrastructure identified in Council's *Development Contributions Plan 2007-2011*.

*Note: * The value of contribution is current as at 11 November 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.

36. Deleted

OPERATIONAL CONDITIONS

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

37. Car Parking and Deliveries

All car parking must be constructed and operated in accordance with *Australian Standard AS 2890.1 – 2004 – Off Street Car Parking* and *Australian Standard 2890.2 – 2002 – Off Street Commercial*, the submitted Delivery Management Plan and the following requirements:

- a. All parking areas and driveways are to be sealed to an all weather standard, line marked and signposted.
- b. Car parking, loading and manoeuvring areas to be used solely for nominated purposes.
- c. Vehicles awaiting loading, unloading or servicing must be parked on site and not on adjacent or nearby public roads;
- d. All vehicular entry on to the site and egress from the site shall be made in a forward direction.
- e. No Parking” / “No Stopping” restrictions are to be provided along the frontages of the site in consultation with the Roads and Traffic Authority.

38. Noise

All noise generated by the proposed development must be attenuated to prevent levels of noise being emitted to adjacent premises which possess tonal, beating and similar characteristics or which exceeds background noise levels by more than 5dB(A).

39. Fire Safety Statement - Annual

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

40. Dewatering

Following the expiry of the dewatering licence (12 month period) the owner of the site must either:

- a. Dispose of all ground water and seepage by tanker to an approved liquid waste facility.

or

- b. Enter into a Trade Waste Agreement with Sydney Water for the disposal of all groundwater.

Note: Permanent dewatering is not approved by the Department of Water and Energy or Hornsby Shire Council

41. Waste Storage area

The waste management on site must be in accordance with the following requirements:

- a. All commercial and retail tenants to retain written evidence of a valid contract with a licensed waste contractor for the regular collection and disposal of the waste and recyclables
- b. Each dwelling be provided with an indoor waste/recycling cupboard for the interim storage of a minimum one day's segregated garbage and recycling generation.
- c. Site security measures be implemented to prevent access to the waste storage rooms by waste removal services.
- d. No steps be located along any of the bin carting routes.

CONDITIONS OF CONCURRENCE – STATE RAIL

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

42. Construction Certificate Plans

The following requirements must be complied with prior to the issue of a Construction Certificate:

- a. A report be prepared by a qualified Electrolysis expert on the Electrolysis Risk of the development from stray currents and the measures to be incorporated to control that risk.
- b. The recommended measures to control the electrolysis risks be included in the construction certificate plans.
- c. Details of mechanisms that limit the opening of windows or provision of awning windows along the elevation fronting the southern boundary of the development (rail corridor) be provided in the construction certificate plans and be endorsed by RailCorp.
- d. All methods to be followed for excavation and construction works be detailed in the construction certificate plans and specifications, in accordance with the methodology detailed in the approved Geotechnical Report prepared by Douglas Partners dated December 2002, Douglas Partners Geotechnical

Review, dated 28 October 2008 and the Assessment of Geotechnical Affects on the RailCorp Corridor, dated 5 December 2008 and be endorsed by RailCorp.

Note: The principal certifying authority must not issue the Construction Certificate or Occupation Certificate prior to written confirmation from RailCorp, should a condition of consent require endorsement by RailCorp.

43. Additional Geotechnical Investigations

The results of the additional geotechnical investigations on site, to be conducted prior to commencing construction works and after demolition of the existing building, in accordance with *item 5.9* of the *Geotechnical Report* prepared by Douglas Partners dated December 2002 must be provided to RailCorp for further review. Additional requirements by RailCorp as a result of such investigations must be complied with at the construction stage of the development.

44. Vibration Monitoring System

A vibration monitoring system must be installed on site to monitor the vibration levels on the adjoining rail corridor for the duration of works. The plan of the proposed method must be submitted to and be endorsed by RailCorp prior to commencement of works on site.

45. Hoarding

Owner's consent must be obtained from RailCorp prior to installation of hoarding along the southern boundary of the site.

46. Reflective materials

Prior to the installation of any light, sign or reflective material, whether temporary or permanent, in the proximity of the rail corridor, approval must be obtained from RailCorp.

47. Risk Assessment Plan

A Risk Assessment/Management Plan and detailed Safe Work Method Statement (SWMS) for the proposed demolition, excavation and construction works are to be submitted to RailCorp for endorsement prior to the commencement of works on site.

Note: RailCorp's representatives may require further conditions to be complied with regard to the above and require the provision of on-site Safe Working supervision for certain aspects of the works.

48. Aerial Operations

Plans and documentation must be submitted to RailCorp incorporating details of all craneage and other aerial operations prior to works commencing on site.

Note: No loads are to be carried over RailCorp's land.

CONDITIONS OF CONCURRENCE – ROADS AND TRAFFIC AUTHORITY

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

49. Driveway Layout

The layout of the access driveway to the site must be in accordance with AS 2890.1 – 2004 and AS 2890.2 – 2002 for heavy vehicle usage.

50. Road Design

Prior to commencement of any works, detailed design plans of the proposed gutter crossing on Edgeworth David Avenue, must be submitted to Council for approval.

Note: All works associated with the proposed development shall be at no cost to RTA

51. Security Basement

Prior to the release of the Construction Certificate, details of the security gate for the residential parking on Basement Level 4 and the means of opening must be submitted to Council.

52. Stormwater discharge

The post development stormwater discharge must not exceed the pre-development stage.

- END OF CONDITIONS -

ADVISORY NOTES

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

Environmental Planning and Assessment Act 1979 Requirements

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

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

Long Service Levy

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

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

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

Tree Preservation Order

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

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

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

Disability Discrimination Act

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

Tenancy Fit-Out – Separate DA Required

This consent does not permit the fit-out of individual tenancies. A separate development application is required for the fit-out of individual tenancies prior to the occupation of the building.

Advertising Signage – Separate DA Required

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

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

www.environment.nsw.gov.au

www.nsw.gov.au/fibro

www.adfa.org.au

www.workcover.nsw.gov.au

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

**3 DEVELOPMENT APPLICATION -ALTERATIONS AND ADDITIONS TO
BRICKPIT PARK
1B DARTFORD ROAD AND 142-178 PENNANT HILLS ROAD THORNLEIGH**

Development Application No:	DA/1088/2009
Description of Proposal:	Alterations and additions to an existing sports stadium – Brickpit Park
Property Description:	Lot 3 DP 604958 and Lot 1 DP 633292, Brickpit Park, (No. 1B) Dartford Road and (Nos. 142-178) Pennant Hills Road, Thornleigh
Applicant:	Hornsby Shire Council
Owner:	Hornsby Shire Council
Statutory Provisions:	Hornsby Shire Local Environmental Plan 1994 Open Space A (Public Recreation - Local) Industrial A (General)
Estimated Value:	\$4,000,000
Ward:	C

RECOMMENDATION

THAT Development Application No. 1088/2009 for alterations and additions to an existing sports stadium at Lot 3 DP 604958 and Lot 1 DP 633292 (No. 1B) Dartford Road and (Nos. 142-178) Pennant Hills Road, Thornleigh be approved subject to the conditions of consent detailed in Schedule 1 of this report.

EXECUTIVE SUMMARY

1. The application proposes alterations and additions to Brickpit Sports Stadium to include two additional courts and associated car parking.
2. The development involves land owned by Council. 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 Pty Ltd.
3. The application complies with the provisions of the Hornsby Shire Local Environmental Plan 1994, Industrial Lands Development Control Plan, Car Parking Development Control Plan and Heritage Development Control Plan.

4. No submissions have been received in respect of the application.
5. The report by Andrews Neil Pty Ltd is attached to this report for Council's consideration. The independent consultant's report recommends approval of the application. Council officers concur with the consultant's recommendation.

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

ROD PICKLES
Manager - Assessment Team 2
Planning Division

SCOTT PHILLIPS
Executive Manager
Planning Division

Attachments:

1. Locality Plan
2. Architectural Plans
3. Consultant's Report

File Reference: DA/1088/2009
Document Number: D01278632

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>
738-53 A01	Peter Hunt Architect	August 2009
738-53 A02	Peter Hunt Architect	August 2009
738-53 A03	Peter Hunt Architect	August 2009
738-53 A04	Peter Hunt Architect	August 2009

<i>Document No.</i>	<i>Prepared by</i>	<i>Dated</i>
Statement of Environmental Effects Hornsby Shire Council	Hornsby Shire Council - Design and Construction Branch - Works Division	August 2009
Parking and Traffic Impact Assessment	Thompson Sanbury Associates	August 2009
Soil Contamination and Geotechnical Investigation	Johnstone Environmental Technologies	December 2000

2. Retention of Existing Trees

This development consent does not permit the removal of any tree, as identified on Plan No. 738-53 A01 prepared by Peter Hunt Architect dated August 2009. The removal of any 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. 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**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.

6. Protection of Adjoining Areas

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

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

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

7. 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*

8. Erosion and Sediment Control

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

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

REQUIREMENTS DURING CONSTRUCTION

9. Construction Work Hours

All work on site (including demolition and earth works) must only occur between 7.00 am and 5.00 pm Monday to Saturday.

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

10. Council Property

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

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.

11. Stormwater Drainage

The stormwater drainage system for the development must be designed and constructed in accordance with Council's Civil Works – Design and Construction Specification 2005 and connected to Council's drainage system.

12. On Site Stormwater Detention

An on-site stormwater detention system must be designed by a chartered civil engineer and constructed in accordance with the following requirements:

- a. Have a capacity to store up to 50 year ARI (average recurrence interval) storm events, and a maximum discharge (when full) limited to 5 year ARI pre-development rate.
- b. Have a surcharge/inspection grate located directly above the outlet.
- c. Where above ground and the average depth is greater than 0.3 metres, a 'pool type' safety fence and warning signs to be installed.
- d. Not be constructed in a location that would impact upon the visual or recreational amenity of residents.

13. Internal Driveway/Vehicular Areas

The driveway and parking areas on site must be designed in accordance with Australian Standards 2890.1 and Hornsby Council Civil Works Specifications.

OPERATIONAL CONDITIONS

14. Car Parking and Deliveries

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

- a. All parking areas and driveways are to be sealed to an all weather standard, line marked and signposted.
- b. Car parking, loading and manoeuvring areas to be used solely for nominated purposes.

CONDITIONS OF CONCURRENCE - RAILCORP

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

15. Excavation

All excavation and structural works are to be undertaken in accordance with the Geotechnical Report prepared by Douglas Partners dated February 2003 and drawings 0301-C1 Rev A, 0301-C2 Rev A, 0301-C3 Rev A and 0301C4-Rev A.

16. Excavation Along the Rail Corridor

All excavation along the length of the rail corridor is to be supervised and monitored by an experienced geotechnical engineer.

17. Acoustic Assessment

An acoustic assessment is to be submitted to Council prior to the issue of a Construction Certificate demonstrating how the proposed development will comply with the department of Planning's Road and Rail Guidelines. A Construction Certificate must not be issued until the measures recommended in the Acoustic Report have been incorporated into the design.

18. Electrolysis Risk

Prior to the issuing of a Construction Certificate the Applicant is to procure a report on the Electrolysis Risk to the development from stray currents, and the measures that will be taken to control that risk. The Applicant is advised to consult an Electrolysis expert. A Construction Certificate must not be issued until the measures recommended in the Electrolysis report have been incorporated into the design.

19. Dilapidation Surveys

Prior to the commencement of works and prior to the issue of the Occupation Certificate, a joint inspection of the rail infrastructure and property in the vicinity of the project is to be carried out by representatives from RailCorp and the Applicant. These dilapidation surveys will establish the extent of any existing damage and enable any deterioration during construction to be observed. The submission of a detailed dilapidation report will be required unless otherwise notified by Council.

20. Risk Assessment

Prior to the issue of a Construction Certificate a Risk Assessment/Management Plan and detailed Safe Work Method Statements (SWMS) for the proposed works are to be submitted to the RailCorp for review and comment on the impacts on rail corridor. The Principle Certifying Authority shall not issue the Construction Certificate until written confirmation has been received from RailCorp confirming that this condition has been satisfied.

21. Use of Conductive Material

No metal ladders, tapes and plant/machinery, or conductive material are to be used within 6 horizontal metres of any live electrical equipment. This applies to train pantographs and 1500V catenary, contact and pull-off wires of the adjacent tracks, and to any high voltage aerial supplies within or adjacent to the rail corridor.

22. Use of Scaffolding

No scaffolding is to be used within 6 horizontal metres of the rail corridor unless prior written approval has been obtained from the rail authority. To obtain approval the applicant will be required to submit details of the scaffolding, the means of erecting and securing this scaffolding, the material to be used, and the type of screening to be installed to prevent objects falling onto the rail corridor.

23. Drainage

Given the site's location next to the rail corridor, drainage from the development must be adequately disposed of/managed and not allowed to be discharged into the corridor unless prior approval has been obtained from RailCorp.

24. Fencing

Prior to the commencement of works appropriate fencing may need to be installed along the rail corridor to prevent unauthorised access to the rail corridor. Details of the type of fencing and the method of erection are to be to RailCorp's satisfaction prior to the fencing work being undertaken. RailCorp may provide supervision, at the developer's cost, for the erection of the new fencing.

25. Cranes and Aerial Operations

The Applicant is required to submit to RailCorp for its endorsement a plan showing all craneage and other aerial operations for the development. The Applicant is advised that no loads are to be carried over RailCorp's land.

26. Compliance

Where a condition of consent requires RailCorp's endorsement the Principle Certifying Authority shall not issue a Construction Certificate or Occupancy Certificate, as the case may be, until written confirmation has been received from RailCorp that the particular condition has been complied with.

- 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 - TWO LOT SUBDIVISION AND
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. On 4 November 2009 Council first considered the subject application at its Planning Meeting and resolved to defer consideration of the matter to allow interested Councillors to inspect the site and obtain a briefing from Council officers on the

impacts of the development on existing vegetation. The site inspection meeting occurred on 2 December 2009.

6. It is recommended that the application be approved.

HISTORY OF THE APPLICATION

On 4 November 2009 Council first considered the subject application at its Planning Meeting and resolved:

“THAT consideration of 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 deferred to allow interested Councillors to inspect the site and obtain a briefing from Council Officers on the impacts of the development on existing vegetation.”

The applicant was advised of Council’s resolution and a meeting was scheduled for Wednesday 2 December 2009 prior to the next Planning Meeting. At the time of the preparation of this report Council officers were scheduled to attend the site inspection to assist Councillors with their deliberations of the matter.

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			
<i>Lot 1</i>	600m ²	600m ²	Yes
<i>Lot 2</i>	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.

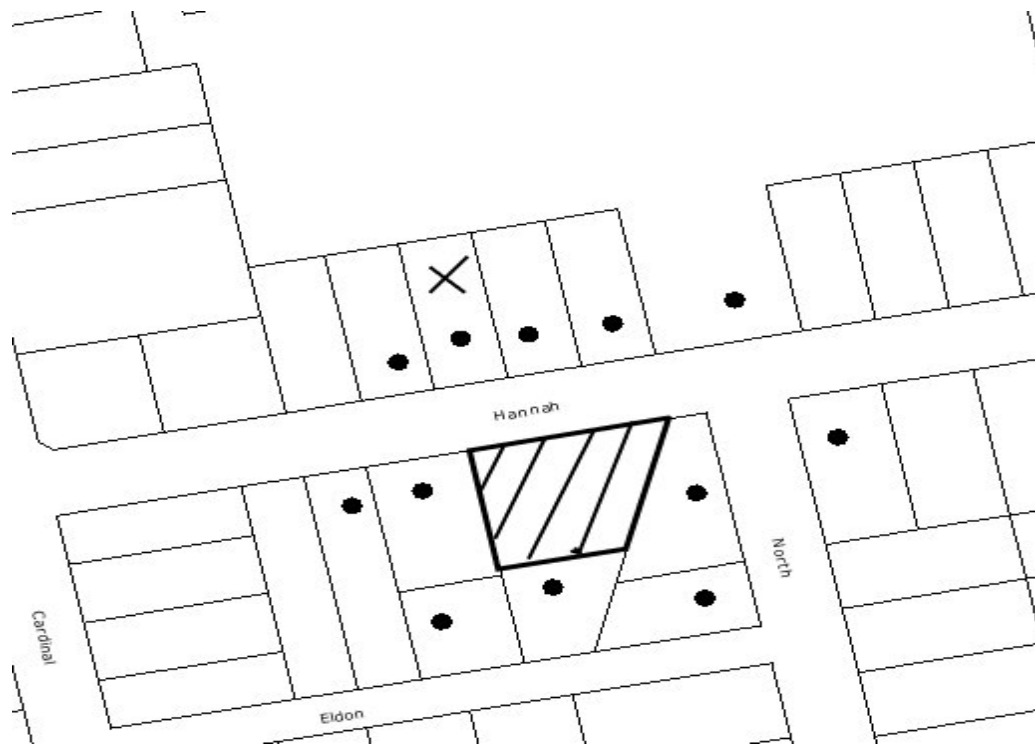
The site is located in close proximity to public transport, shops, schools, sporting and community facilities and is well located for residential development.

5. PUBLIC PARTICIPATION


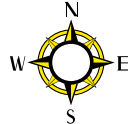
Section 79C(1)(d) of the Act requires Council to consider “*any submissions made in accordance with this Act*”.

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 	<ul style="list-style-type: none"> 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: D01280580

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.

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.

5 PLANNING PROPOSAL TO ENABLE EXHIBITION OF AN AMENDED HOUSING STRATEGY

EXECUTIVE SUMMARY

The *Hornsby Shire Housing Strategy* was exhibited for public comment earlier this year. Many submissions were received, raising objections to the *Strategy*, providing feedback on how it could be improved, indicating support for the *Strategy*, and suggesting other precincts for inclusion.

The submissions provide valuable feedback which has assisted Council in coming up with potential amendments to the *Strategy*, including the deletion of particular precincts, amendments to precinct boundaries or housing forms, and the addition of new precincts.

This report recommends that Council endorse the exhibition of an amended *Strategy*. The exhibition would occur early next year, allowing further public involvement in the process of preparing the amended *Strategy*. In accordance with recent changes to the local plan making system, the exhibition of an amended *Strategy* should be facilitated by the attached planning proposal which sets out Council's objectives in preparing the *Strategy*, the intended outcomes of the *Strategy*, justification for the proposal, and the intended community consultation to be undertaken.

PURPOSE

The purpose of this report is to present the outcome of the exhibition of the *Housing Strategy* and to seek endorsement to exhibit an amended *Housing Strategy* for public comment.

BACKGROUND

At its meeting on 4 February 2009, Council resolved to endorse the exhibition of the *Hornsby Shire Housing Strategy*. The *Strategy* identifies draft precincts (potential areas suitable for the provision of multi-unit housing) to assist meet Council's housing obligations under the *State Government's Metropolitan Strategy* and *draft North Subregional Strategy*.

In accordance with Council's resolution, the *Strategy* was exhibited for public comment from 16 March 2009 to 17 July 2009.

DISCUSSION

This report provides a summary of the outcome of the exhibition of the *Housing Strategy*, and presents a planning proposal to enable the exhibition of an amended *Housing Strategy*.

Exhibition and Review of Submissions

The *Housing Strategy* was exhibited for four months from 16 March 2009 to 17 July 2009. The aim of the public exhibition was to inform residents about why and how the *Strategy* was prepared and to present the draft precincts proposed for rezoning. Advertisements were placed in the *Hornsby Advocate*, the *Northern District Times*, the *Hills News* and on

Council's website. Letters and information packages were sent to property owners within and near the proposed precincts. Letters were also sent to community groups, industry groups and statutory authorities. An internet discussion forum was established, and seven community drop-in sessions were held at various locations.

A total of 1,546 submissions were received during the exhibition period, including individually written letters or emails, form letters and petitions. Submissions received raised objections to the *Strategy* (or aspects of the *Strategy*), provided constructive feedback on how it could be improved, indicated support for the *Strategy*, and suggested other precincts for inclusion. The attached *Housing Strategy Volume 3 - Report on Submissions* provides a summary of submissions. The report does not attempt to capture all of the information put forward in submissions. The report focuses on providing an overview of submissions, along with a snapshot of the reasoning, key local issues identified and suggestions made. A copy of all submissions has previously been provided to Councillors.

The major reasons for objection to the *Strategy* are traffic generation, impacts on character/streetscape, and uncertainty surrounding the provision of infrastructure. Those that specified reasons for supporting the *Strategy* agreed with the methodology for choosing precincts and the location of housing close to existing infrastructure. The submissions provide valuable feedback which has assisted Council in formulating potential amendments to the *Strategy*.

Amendments to the Housing Strategy

The table below lists proposed amendments to the precincts originally identified in the *Strategy*.

PRECINCT NAME	RECOMMENDATION
Berowra	
Berowra Commercial Centre	No change
Berowra Waters Road	Delete
Goodwyn Road	Delete
Rickard Road	Delete
Mt Kuring-gai	
Mt Kuring-gai Commercial Centre	Delete
Mt Colah	
Mt Colah Commercial Centre	No change
Pacific Highway	No change
Asquith	
Lords Avenue	No change
Royston Parade	Delete
Baldwin Avenue	No change
Stokes Avenue	No change
Jersey Street North	No change
Hyacinth Street	Delete 3 storey portion of precinct
Bouvardia Street	Amend boundaries to include the area currently zoned Special Uses A
Pacific Highway	No change
Hornsby	
Belair Close	Allow 8-10 storeys
Waitara	
Balmoral Street	No change
Park Avenue	No change

Palmerston Road	No change
Normanhurst	
Normanhurst Road	Amend boundaries to include existing business zoned land only (to allow multi-unit housing above shops)
Buckingham Avenue	Delete
Thornleigh	
Station Street	No change
Pennant Hills Road Commercial Centre	No change
West Pennant Hills	
Thompsons Corner	No change
Carlingford	
Carlingford Road	No change

The table below lists proposed additional precincts for inclusion in the *Strategy*.

PRECINCT NAME	RECOMMENDATION
Mt Colah	
Judith Avenue	Allow 5 storey residential development
Asquith	
Asquith Shops	Allow 8 -10 storey mixed use development
Hornsby	
Galston Road	Allow townhouses
Linda Street*	Allow 20 storey, part residential, part mixed use development
Pennant Hills	
Fisher Avenue	Allow 5 storey residential development
Beecroft	
Beecroft Road	Allow 5 storey, part residential, part mixed use development
Carlingford	
Dunrossil Avenue	Allow 5 storey residential development
Fleming Street	Allow 5 storey residential development
Milton Street	Allow 5 storey residential development
Darwin Street	Allow 5 storey residential development

*This precinct involves redevelopment of a large number of existing strata units and therefore yields will be counted against Council's long term dwelling target.

Maps indicating the boundaries of the proposed new precincts are included in the planning proposal attached to this report.

It is recommended that Council endorse the exhibition of an amended *Strategy* reflecting the above changes. The exhibition would occur early next year and allow further public involvement in the process and comments on the amended *Strategy*.

PLANNING REFORMS

In July 2009, the State Government announced changes to local plan making. A new system, known as the “gateway plan-making process”, has been established.

The first step in the process is known as a “planning proposal”. Council is responsible for the preparation of a planning proposal for submission to the Department of Planning (DOP), which explains the details of the proposal and outlines the community consultation that is to be undertaken.

The second step is known as the “gateway”. The Minister for Planning determines whether a planning proposal is to proceed. The “gateway” acts as a checkpoint to ensure that the proposal is justified before further studies are done and resources allocated. If necessary, the proposal is amended. A community consultation process is determined, including consultation with relevant public authorities.

The third step is community consultation. The proposal is publicly exhibited for 14 days if deemed to be a “low impact proposal” or 28 days for “other proposals”. The Director-General’s approval must be obtained before any community consultation takes place.

After the exhibition period Council must consider public submissions and can amend the planning proposal as necessary. Once the planning proposal is finalised, the legal instrument which implements the planning proposal (the LEP) is drafted and made by the Minister for Planning.

To facilitate the exhibition of an amended *Housing Strategy*, Council must undertake the first step in the new plan-making process. Accordingly a planning proposal has been prepared. The *Housing Strategy Planning Proposal* (attached) sets out Council’s objectives in preparing the *Strategy*, the intended outcomes of the *Strategy*, justification for the proposal, and the intended community consultation to be carried out.

CONSULTATION

The review of submissions and preparation of the draft amendments to the *Housing Strategy* was overseen by the Housing Strategy Steering Committee which comprises all Councillors, the General Manager, relevant Executive Managers and staff. The Steering Committee met on four occasions to review submissions and identify potential amendments to the *Housing Strategy*. At its meeting on 10 November 2009 the Steering Committee unanimously agreed that an amended *Strategy* should be presented to Council seeking endorsement for public exhibition.

It is proposed to exhibit the amended *Strategy* early next year. A consultation strategy has been prepared as part of the *Planning Proposal* for endorsement by the DOP. The Community Relations Branch will be consulted in the preparation of exhibition material. It is recommended that the General Manager be delegated authority to endorse the exhibition material. Following the exhibition period, a report on submissions would be presented to Council for its consideration.

STATUTORY CONSIDERATIONS

As part of the 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 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 the *Housing Strategy* in Executive Manager's Report No. PLN5/09 considered by Council on 4 February 2009.

CONCLUSION

A number of changes to the *Housing Strategy* are proposed based on consideration of submissions received during the public exhibition period earlier this year. The exhibition of an amended *Strategy* should be endorsed by Council to allow further public involvement in the process of preparing the amended *Strategy*. The *Hornsby Shire Housing Strategy Planning Proposal* should be endorsed and forwarded to the DOP to facilitate an exhibition period early next year.

RECOMMENDATION

THAT:

1. Council facilitate the exhibition of an amended *Housing Strategy* by forwarding the attached *Planning Proposal* to the Minister for Planning seeking a "gateway" determination pursuant to Section 56(1) of the *Environmental Planning and Assessment Act, 1979*.
2. Should the Minister determine under Section 56(2) of the *Environmental Planning and Assessment Act, 1979* that the matter may proceed, Council publicly exhibit the amended *Housing Strategy* in accordance with the consultation strategy outlined in the *Planning Proposal* (or as otherwise directed by the Minister).
3. The General Manager be delegated authority to endorse the exhibition material.
4. Following the exhibition, a report on submissions be presented to Council.

JAMES FARRINGTON
Manager - Town Planning Services
Planning Division

SCOTT PHILLIPS
Executive Manager
Planning Division

Attachments:

1. Housing Strategy Volume 3 - Report on Submissions
2. Housing Strategy Planning Proposal

File Reference: F2004/07491-05

Document Number: D01283486