



*the bushland shire*

*creating a living environment*

# **BUSINESS PAPER**

## **PLANNING MEETING**

**Wednesday, 5 May, 2010  
at 6.30pm**

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## **AGENDA AND SUMMARY OF RECOMMENDATIONS**

### **PRESENT**

### **NATIONAL ANTHEM**

### **OPENING PRAYER/S**

Rev. Ian Millican of St. Mark's Anglican Church, Berowra will be opening the Meeting in prayer.

### **ACKNOWLEDGEMENT OF RELIGIOUS DIVERSITY**

Statement by the Chairperson

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

### **ABORIGINAL RECOGNITION**

Statement by the Chairperson:

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

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

Statement by the Chairperson:

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

### **APOLOGIES / LEAVE OF ABSENCE**

### **PRESENTATIONS**

The Mayor to present the 2010 Heritage Awards.

### **POLITICAL DONATIONS DISCLOSURE**

Statement by the Chairperson:

*"In accordance with Section 147 of the Environmental Planning and Assessment Act 1979, any person or organisation who has made a relevant planning application or a submission in respect of a relevant planning application which is on tonight's agenda, and who has made a reportable political donation or gift to a Councillor or employee of the Council, must make a Political Donations Disclosure Statement."*

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*If a Councillor or employee has received a reportable political donation or gift from a person or organisation who has made a relevant planning application or a submission in respect of a relevant planning application which is on tonight's agenda, they must declare a non-pecuniary conflict of interests to the meeting, disclose the nature of the interest and manage the conflict of interests in accordance with Council's Code of Conduct."*

## **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.*

## **CONFIRMATION OF MINUTES**

THAT the Minutes of the Planning Meeting held on 7 April, 2010 be confirmed; a copy having been distributed to all Councillors.

## **PETITIONS**

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**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****B WARD DEFERRED****B WARD****Page Number 1**

**Item 1     PLN12/10 DEVELOPMENT APPLICATION - MODIFICATION TO APPROVED SUBDIVISION - REMOVAL OF A TREE - 26A OSBORN ROAD, NORMANHURST**

**RECOMMENDATION**

THAT Development Application No. 2392/2004/B for a modification to the consent for the subdivision of one allotment into two at Lot 5 DP 28463 (No. 26A) Osborn Road Normanhurst be approved subject to the conditions of consent detailed in Schedule 1 of this report.

**C WARD DEFERRED****C WARD****Page Number 24**

**Item 2     PLN17/10 DEVELOPMENT APPLICATION - ALTERATIONS TO AN EXISTING DWELLING AND SUBDIVISION OF ONE LOT INTO TWO 8 CHORLEY AVENUE CHELTENHAM**

**RECOMMENDATION**

THAT Development Application No. 1340/2009 for alterations to an existing dwelling and subdivision of one lot into two at lot 144 DP 12364 (No. 8) Chorley Avenue, Cheltenham be approved subject to the conditions of consent detailed in Schedule 1 of this report.

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**Page Number 44****Item 3     **PLN25/10 DEVELOPMENT APPLICATION - ALTERATIONS AND ADDITIONS TO EXISTING MOTOR SHOWROOM - 320 PENNANT HILLS ROAD PENNANT HILLS******RECOMMENDATION**

THAT Development Application No. 118/2010 for alterations and additions to an existing motor showroom and new signage at lot 201 DP 1105214 (No. 320) Pennant Hills Road, Pennant Hills be approved subject to the conditions of consent detailed in Schedule 1 of this report.

**GENERAL BUSINESS****Page Number 61****Item 4     **PLN26/10 REPORTING VARIATIONS TO DEVELOPMENT STANDARDS******RECOMMENDATION**

THAT Council note the contents of Executive Manager's Report No. PLN26/10.

**Page Number 63****Item 5     **PLN27/10 AMENDMENTS PLANNING PROPOSAL 2009 - REPORT ON SUBMISSIONS******RECOMMENDATION**

THAT:

1. Council adopt the amended Planning Proposal attached to Executive Manager's Report No. PLN27/10 to:
  - 1.1 rezone and permit strata subdivision at property No. 218 Brooklyn Road, Brooklyn
  - 1.2 update the listing of heritage items in accordance with the recommendations of *Heritage Review Stage 4*, with the exception of the following items:
    - CWA Building, Hornsby Park Pacific Highway, Hornsby
    - Property Nos. 3-5 Hannah Street, Beecroft;
  - 1.3 implement the recommendations of the *Hornsby West Side Conservation Area Review*.
2. Consideration of the heritage listing of "CWA Building, Hornsby Park Pacific Highway, Hornsby" and "Property Nos. 3-5 Hannah Street, Beecroft" be deferred for

further consideration following finalisation of the Old Mans Valley Park Masterplan/Hornsby Pool Plans and Council's *Housing Strategy*, respectively.

3. The provisions of the Planning Proposal relating to permitting strata subdivision of property No. 218 Brooklyn Road be deferred for consideration as part of a future Planning Proposal when the car parking works have been undertaken.
4. The Planning Proposal be forwarded to the Department of Planning for gazettal.
5. Council endorse the amendments to the *Heritage, Dwelling-House, Residential Subdivision, Low, Medium, and Medium/High Density Multi-Unit Housing, Dural Village Centre, River Settlements, Rural Lands and Extractive Industries Development Control Plans* attached to Executive Manager's Report No. PLN27/10.
6. The Heritage Inventory Sheet for property No 33 Wongala Crescent Beecroft be amended to:
  - correct the photograph of the rear garden;
  - remove reference to the radiata pine and concrete cancer; and
  - delete the management recommendations regarding the gate.
7. Submitters be advised of Council's resolution.

## **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 - MODIFICATION TO APPROVED  
SUBDIVISION - REMOVAL OF A TREE  
26A OSBORN ROAD, NORMANHURST**

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<b>Development Application No:</b>	DA/2392/2004/B
<b>Description of Proposal:</b>	Section 96(2) modification to an approved subdivision of one lot into two lots by removing a tree
<b>Property Description:</b>	Lot 5 DP 28463 (No. 26A) Osborn Road Normanhurst
<b>Applicant:</b>	Mr Gregory Kenneth Wynne
<b>Owner:</b>	Mr. Gregory Wynn & Mr. Peter Egan
<b>Statutory Provisions:</b>	Hornsby Shire Local Environmental Plan 1994 – Residential A (Low Density) Zone
<b>Estimated Value:</b>	No amendment to original cost of works
<b>Ward:</b>	B

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**RECOMMENDATION**

THAT Development Application No. 2392/2004/B for a modification to the consent for the subdivision of one allotment into two at Lot 5 DP 28463 (No. 26A) Osborn Road Normanhurst be approved subject to the conditions of consent detailed in Schedule 1 of this report.

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**EXECUTIVE SUMMARY**

1. DA/2392/2004 for the subdivision of one allotment into two at the subject property was approved by Council on 19 July 2005.
2. The application proposes modifications to the approved development by amending a condition to facilitate the removal of a Blackbutt tree located on the access handle of the allotment.
3. The application also involves the proposed correction of discrepancies between two conditions of the development consent, one involving the width of the driveway and the other involving the tree trunk protection measures for the Blackbutt tree.



4. The application does not alter the compliance of the proposal to the provisions of Hornsby Shire Local Environmental Plan 1994 (HSLEP) and the Residential Subdivision Development Control Plan (RSDCP).
5. Three submissions have been received objecting to the proposal.
6. It is recommended that the proposed modifications to the development consent be approved.

## HISTORY OF THE APPLICATION

On 19 July 2005 Council approved DA/2392/2004 for the subdivision of one allotment into two. The access handle has a maximum width of 3.66 metres. The following conditions were imposed regarding the width of the proposed access driveway and the retention of a Blackbutt tree (marked as tree 4E on the approved plans, being located partly on the adjoining property to the north):

- “11. The internal driveway and parking areas are to be designed and constructed in accordance with Australian Standard 2890.1.*
13. *Construction of the proposed right of carriageway and a common turning area in accordance with the following requirements:-*
  - a. *Construction of 150mm thick reinforced concrete pavement with F72 steel reinforcing fabric;*
  - b. *The pavement width shall be a minimum width of 3.0 metres;*
  - c. *The pavement shall have a kerb to one side and a one-way crossfall with a minimum gradient of 2%; and*
  - d. *The grades of the driveway shall be comply with the requirements of AS2890.1*
55. *A permanent suspended driveway shall be constructed prior to release of the linen plan with the piers being no closer than 3 metres to the trunks of the trees. The driveway edge should be located no closer than 1 metre to the edge of the trunk. The excavation for the piers must be hand dug with no root greater than 50mm severed. Prior to commencement of any site preparation or construction on Lot 52 the suspended driveway shall be in place to prevent root zone impact on trees adjoining the driveway. Tree labelled 4E on the updated Tree Appraisal Report (prepared by PMA, March 2005), a Blackbutt (*Eucalyptus pilularis*) must be protected from any root-zone impact during construction and during future use of the accessway. The suspended driveway must be permanent and maintained in good order during the lifetime of the development.*
56. *Upon completion of the works and prior to the issue of a subdivision certificate, a SULE assessment prepared by a qualified arborist attesting to the health and status of the tree labelled 4E on the updated Tree Appraisal Report (prepared by PMA March 2005) is to be submitted to Council certifying that the tree has been maintained in its current condition as determined in the tree appraisal report prepared by PMA dated March 2005. In the event that the specified tree is found*

*damaged, dying or dead as a result of any negligence by the applicant or its agent, or as a result of the construction works at any time during the construction period it will be considered a non-compliance with consent conditions. Penalties apply for non-compliance.*

63. *The root zones of native plants 3, 4, 5, 4A, 4E, 5B, 15C, 15D, 15E on the adjoining properties shall be protected by:*
- a. *Maintaining the suspended driveway;*
  - b. *Prohibiting excavation, trenching or soil disturbance within the drip line of any native shrub or tree to be retained without the prior written consent of Council; and*
  - c. *Prohibiting placement of goods, materials, stockpiles, temporary buildings or parking of vehicles / machinery within the drip line of any native shrub or tree to be retained on the subject site.”*

The development consent included a Restricted Development Zone within the site to avoid adverse impact on the existing Blue Gum High Forest within the site. In addition, trees on the adjoining properties were recommended to be protected.

On 26 May 2009, a Section 96(1) application to modify DA/2392/2004 was lodged with Council proposing that:

- Condition 55 be amended by deleting the reference to the suspended driveway being maintained permanently within the Critical Root Zone (CRZ) of the tree numbered 4E located on the boundary of the site and the adjoining property to the north;
- Condition 56 be deleted; and
- Condition 63 be amended to delete any reference to retention of tree numbered 4E.

The purpose of the proposed amendments to the above conditions were to facilitate the removal of the tree numbered 4E (the subject Blackbutt tree) located on the boundary of the site and the adjoining northern property and to achieve compliance with conditions Nos. 11 and 13 requiring the driveway to be a minimum 3 metres wide.

On 4 June 2009, Council approved the modification to the application in the following terms:

1. Deletion of condition Nos. 55 and 56.
2. Addition of condition No. 69 detailing building works near trees to be retained on the site.

Therefore, that consent did not approve the removal of tree No. 4E located on the driveway.

Subsequent discussions and meetings with the applicant revealed that tree No. 4E (Blackbutt) is partly located on the boundary of the property and partly on No. 26 Osborn Road (adjoining property to the north, adjacent to the access driveway. The trunk of the tree is

located 1 metre within the driveway indicating that a 3 metre wide driveway could not be physically built within the 3.66 metre wide access handle without the removal of the tree.

Consequently, the applicant lodged the current application on 21 July 2009 requesting the deletion of condition 63 to facilitate the removal of the Blackbutt tree and to facilitate practical compliance with condition Nos. 11 and 13 relating to a 3 metre wide driveway within a 3.66 metre wide access handle.

## **THE SITE**

The site is a battleaxe allotment located on the western side of Osborn Road with an area of 1574 sq metres and a gradient of approximately 14% towards the north-western corner of the site. A dwelling is located towards the eastern end of the site.

Vehicular access to the site is gained via a 3.66 metre wide access handle off Osborn Road. The property contains remnant Blue Gum High Forest, an Endangered Ecological Community scheduled under the Threatened Species Conservation Act, 1995.

A Blackbutt (*Eucalyptus pilularis*) is located on the access handle along the northern boundary of the property, being partly located within the site and partly within the access handle of the adjoining northern property (No. 26 Osborn Road, Normanhurst). The tree is 35 metres high, consists of a double trunk and has a canopy overlap with many other (mainly introduced) trees within the allotments named No. 26 and No. 24 Osborn Road.

## **THE APPROVED DEVELOPMENT**

The approved development involves the subdivision of one allotment into two including the following:

- Proposed Lot 51 having an area of 544.5 sq metres (excluding access) and the retention of the existing dwelling. Access to the above allotment is via the 3.66 metre wide existing access handle.
- Lot 52, with an area of 727.2 sqm (excluding access) located to the rear of lot 51. Vehicular access to proposed Lot 52 is gained via a 3.66 metre wide battle-axe handle fronting Osborn Road.

## **THE PROPOSED MODIFICATION**

The application proposes the modification to the approved development by way of amendment to condition No. 63 insofar as deleting any reference to the retention of tree No. 4E.

The applicant has indicated that the modification would result in the ability to achieve compliance with conditions No. 11 and 13 which require a 3 metre wide pavement to be constructed in accordance with the relevant Australian Standards. The applicant contends that the retention of the tree would not result in a safe accessway for future occupants of the site and would restrict emergency access to the battleaxe allotments. The practical application of the condition would deteriorate in the future with the growth of the tree trunk and the further reduction of the width of the driveway.

The consent from the neighbouring property at No. 26 Osborn Road has been included with the application as the tree is partly located within that property.

As an alternative to the removal of the tree, the applicant first contacted the owners of the adjoining southern property to acquire some land for widening the right-of-way which would allow for the retention of the Blackbutt tree. However owner's consent was declined thus giving the applicant no other option than to request the removal of the tree.

An Assessment of significance of the tree (7 part test) has been conducted pursuant to section 5A of the Environmental Planning & Assessment Act. The ecologist's assessment notes that the tree is significant however, concludes that the removal of the tree would not have a significant impact on the Blue Gum High Forest located within the site.

The proposed modification to the consent would resolve the contradiction between conditions 11 and 13 regarding the required driveway width and condition 63 requiring the retention of the tree and would be the only practical way to complete works in accordance with the development consent.

## ASSESSMENT

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

### 1. STRATEGIC CONTEXT

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

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

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

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

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

### 2. STATUTORY CONTROLS

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

#### 2.1 Environmental Planning and Assessment Act, 1979 (the Act) - Section 96(2)

The application has been lodged pursuant to Section 96(2) of the Act, which allows the modification of a consent, where the proposal has been notified in accordance with regulatory requirements, is substantially the same development as approved and Council considers the application with regard to Section 79C of the Act and any submissions.

The proposed modification involves the amendment to conditions to facilitate the removal of a tree and facilitate practical compliance with the required width of the access handle. The modification is considered to be substantially the same development as approved.

The application was notified pursuant to Council's Notification & Exhibition DCP and Council received three submissions (refer to Section 5 of this report).

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

The site is zoned Residential A (Low Density) zone. The objectives of the zone are:

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

The proposed modification would not alter the compliance of the original proposal with the objectives of the zone.

## **2.3 Residential Subdivision Development Control Plan**

The proposal to modify the development consent would not alter the compliance of the original proposal with the relevant performance criteria and prescriptive standards contained within the RSDCP. The matters relevant to the current modification are discussed below.

### **2.3.1 Vehicle Access and Parking**

The subject Blackbutt tree is located on the northern boundary of the site adjoining the existing access driveway. The width of the existing driveway measured from the edge of the trunk of the tree to the side boundary is 2.6 metres. Council conducted an engineering assessment of the proposal and in considering the impact of the existing tree on the use of the accessway found that should the tree be retained in its existing form, the resultant width of the access driveway would be a maximum of 2.5 metres adjoining the tree. This does not comply with the required minimum width of 3 metres in accordance with Council's RSDCP and Australian Standards AS 2890.1 – 2002.

Whilst a reduced width handle is acceptable in certain circumstances, it is considered that an access handle width of only 2.5 metres would not provide a safe and efficient entry/exit for future occupants of the allotment.

Access by emergency vehicles would be restricted by the proposed access driveway and the future width of the access driveway is likely to be further reduced as the trunk of the tree expands, thus exacerbating the problem.

## **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

A Blackbutt (*Eucalyptus pilularis*) is located on the access handle along the northern boundary of the property, being partly located within the site and partly within the access handle of the adjoining northern property (No. 26 Osborn Road, Normanhurst). The tree is 35 metres high, consists of a double trunk and has a canopy overlap with many other (mainly introduced) trees within the allotments named No. 26 and No. 24 Osborn Road.

The tree contains small-sized hollows which provide potential roosting habitat for micro bats and upper canopy connectivity to other trees. The tree also functions as a protection buffer (e.g. wind sheltering etc) to other tall large remnant trees in the vicinity. The existing clear distance from the edge of the tree trunk to the southern boundary of the access handle is 2.6 metres.

The applicant has conducted an Ecological Assessment and Assessment of Significance ('7 Part Test') for the subject tree which concludes that the removal of this tree is unlikely to have a significant impact upon the local population of the Blue Gum High Forest Critically Endangered Ecological Community.

Council officers have considered the recommendations of the ecological report and concurs that the subject tree does not form part of mapped Blue Gum High Forest. However, the tree appears to be in good health and provides an ecological function amongst the developed urban landscape.

The removal of the tree would have some adverse impact on the natural environment, but not on the Critically Endangered Ecological Community. The retention of the tree, however, would result in non-compliance with the width of the access handle and would not provide a safe and suitable vehicular access for the future occupants within the Residential A (Low Density) Zone.

The removal of the tree is supported in the circumstances as practical negotiations with the neighbour to obtain a right of carriageway failed and as it was demonstrated that the development would result in a suitable outcome that complies with the desired future character of the locality, satisfies the objectives of the zone and provides safe access to two adjoining allotments (No. 26A and No. 26 Osborn Road).

In order to compensate for the loss of bio-diversity as a result of the proposed modification, the following condition is recommended in accordance with Council's *Offset Code*:

*"A monetary contribution to the value of \$180 is to be made to Council's Community Nursery at Britannia Street to offset the loss of the Eucalyptus pilularis tree. The contribution is to be utilized by Council to grow 6 locally indigenous canopy trees to a suitable pot size for replanting within the Council owned reserves in the Normanhurst area."*

The applicant has raised no objection to the above condition.

### 3.2 Built Environment

The proposal as modified would not have any adverse impact on the built environment within the locality.

**4. SITE SUITABILITY**

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

The suitability of the site for the development was considered at the time of assessment of DA/2392/2004.

**5. PUBLIC PARTICIPATION**



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

**5.1 Community Consultation**

The proposed development was placed on public exhibition and was notified to adjoining and nearby landowners between 18 March 2010 and 1 April 2010 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"> <li>• PROPERTY NOTIFIED</li> </ul>	X SUBMISSION RECEIVED	 PROPERTY SUBJECT OF DEVELOPMENT	
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The submissions objected to the proposed modification on the following grounds:

- A preferred development outcome would be to provide a 3 metre wide driveway for the entire length of the access handle except where it adjoins the tree (width being 2.6 metres) which is an acceptable situation and does not require the removal of the Blackbutt tree.

- The original subdivision was approved on the basis that the tree would be retained on the site. Therefore, the tree should not be removed. The development consent for the subdivision should be revoked.
- The proposed modification would result in detrimental impact on the native flora by removing a significant tree.
- The removal of the tree would take away the shade to the backyard of No. 24 Osborn Road that is currently enjoyed by the occupants.
- The current width of the driveway has allowed emergency vehicles to access to No. 26A Osborn Road in the past and therefore would be able to do so in the future.
- The arborist's report does not include methods of retaining sections of the tree and widening the driveway in the process.

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 Retention of part of the tree**

The proposal to retain a 3 metre wide driveway would require a substantial portion of the tree trunk to be removed. It is unlikely that the tree would survive and therefore is not a recommended option by the arborist.

#### **5.1.2 Solar access to the private open space area**

Removal of the tree would improve solar access to the private open space area for the property at No. 24 Osborn Road. This is considered to be a satisfactory outcome which complies with the objectives of the RSDCP.

#### **5.2 Public Agencies**

DA/2392/2004 was 'Integrated Development' under the Act being bushfire prone land. The proposed modification to the consent does not involve any building works and therefore the proposal was not required to be referred to the NSW Rural Fire Services for further comments.

### **5. THE PUBLIC INTEREST**

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

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

The proposed modification is considered to have satisfactorily addressed Council's 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 modification would be in the public interest.

## 6. CONCLUSION

The Section 96(2) application proposes to modify the consent for the subdivision of one lot into two. The proposed modification involves the removal of a significant tree to facilitate vehicular access to the site.

The application is assessed as satisfactory against Sections 79C and 96(2) of the Act. The amendment of the proposal would not alter the compliance of the proposal with the Hornsby Shire Local Environmental Plan 1994 and Council's Residential Subdivision Development Control Plan.

It is recommended that the removal of the tree and the loss of bio-diversity on the site as a result of the future subdivision be compensated by offset planting elsewhere within the Shire in accordance with Council's *Offset Code*.

Approval of the section 96 (2) 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.

PAUL DAVID  
Manager - Subdivision & Development  
Engineering Services  
Planning Division

SCOTT PHILLIPS  
Executive Manager  
Planning Division

### Attachments:

1. Locality Plan
2. Site Plan Approved
3. Plan of Tree Location

File Reference: DA/2392/2004/B  
Document Number: D01341323

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**SCHEDULE 1**


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<b>Date of 1<sup>st</sup> modification:</b>	4 June 2009
<b>Details of 1<sup>ST</sup> modification:</b>	Alteration to driveway works and removal of a tree located on the driveway
<b>Conditions Added:</b>	69
<b>Conditions Deleted:</b>	55 and 56
<b>Conditions Modified:</b>	63

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<b>Date of this modification:</b>	5 May 2010
<b>Details of this modification:</b>	Modify Condition No. 63 to facilitate removal of the Blackbutt tree located on the access handle and construction of a 3 metre wide driveway.
<b>Conditions Added:</b>	1A, 70
<b>Conditions Deleted:</b>	None
<b>Conditions Modified:</b>	57, 63

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**DEVELOPMENT ENGINEER****Construction Certificate – Subdivision/Engineering Works**

1. A construction certificate must be obtained from either Council or an Accredited Certifier. Engineering design plans and specifications are to be prepared by a chartered professional engineer for any proposed works. The plans and specifications are to be in accordance with development consent conditions, appropriate Australian standards, and applicable Council standards, in particular “Hornsby Shire Council Civil Works - Design and Construction Specification”. Information required to be submitted with a construction certificate is as follows:
  - a. Four (4) copies of compliance certificates relied upon;
  - b. Four (4) copies of the detailed engineering plans in accordance Hornsby Shire Council's Civil Works - Design Specification 1999. The detailed plans may include but are not limited to the earthworks, roadworks, road pavements, road furnishings, stormwater drainage, landscaping and erosion control works and
  - c. Hornsby Shire Council’s approval for the existing roadworks and public drainage is required prior to the issuing of a construction certificate for these works.

**Approved Plans**

- 1A. The development must be carried out in accordance with the approved plans dated 2 May 2005 (Document No. D00190250) as amended in red and endorsed by Council's stamp.

**Principal Certifying Authority**

2. Before any construction works commence, you are required to appoint a Principal Certifying Authority as required by section 81A of the Environmental Planning & Assessment Act, 1979. The Principal Certifying Authority is responsible for ensuring that all the works are carried out in accordance with the approved plans and specifications.

On the date of this consent, Council is the only principal certifying authority for subdivision work.

**Notifying Council of Commencement of Works**

3. It is a requirement of the Environmental Planning and Assessment Act (Section 81A(2)(c)) that you notify Hornsby Council at least two (2) days prior to the intention to commence works.

Where works are to be undertaken in a public place, such notice must be accompanied by evidence of the contractor's Public Liability and Workers' Compensation Insurances. The public risk policy shall be such an amount as determined by Council (not being less than \$10,000,000.00) and shall cover the owner and the Council against any injury, loss or damage sustained by any person, firm or company.

**Hours of Works**

4. In order to maintain the amenity of adjoining properties, site works shall be restricted to between 7.00 am and 6.00 pm, Monday to Friday and 8.00 am to 1.00 pm Saturday.

Site works may extend to 4.00 pm on Saturdays if inaudible on residential properties. No work shall be undertaken on Sundays or public holidays. Plant, goods or materials shall not be delivered to the site outside the approved hours of site works unless otherwise approved by Council.

**Inspections – Engineering**

5. All engineering work required by this consent must be inspected and compliance certificates shall be issued prior to occupancy or issue of the subdivision certificate, whichever occurs first, certifying that the works comply with development consent, construction certificate and Hornsby Shire Council Civil Works - Design and Construction Specification for the following nominated stages:
  - Implementation of erosion control
  - Implementation of traffic control
  - Interallotment drainage pipes

- Interallotment pit construction
- Final erosion control inspection
- Conduits laid within access way corridor prior to backfilling
- Driveways and accessways
- Construction of OSD
- Drainage structures
- Final inspection

### **Sydney Water**

6. A Section 73 compliance certificate under the Sydney Water Act 1994 must be obtained. Application must be made through an authorised Water Servicing Coordinator. Please refer to “Your Business” section of Sydney Water’s web site at [www.sydneywater.com.au](http://www.sydneywater.com.au) then the “e-developer” icon or telephone 13 20 92.

Following application, a “Notice of Requirements” will detail water and sewer extensions to be built and charges to be paid. Please make early contact with the Coordinator, since building of water/sewer extensions can be time consuming and may impact on other services and building, driveway or landscape design.

**The Notice must be submitted to the Principal Certifying Authority prior to the Construction Certificate being issued.**

The Section 73 Certificate must be submitted to the Principal Certifying Authority prior to occupation of the development/release of the plan of subdivision.

### **Roadworks**

7. A Traffic Control Plan (TCP), prepared by a qualified work site traffic controller, is to be submitted with any construction certificate, demonstrating compliance with the Road & Traffic Authority’s Traffic Control At Worksites Manual, 1998, and detailing:-
  - a. Public notification of proposed works.
  - b. Short term (during actual works) signage.
  - c. Vehicle Movement Plans, where applicable.
  - d. Traffic Management Plans.
  - e. Pedestrian and cyclist access/safety.

### **Access Way/Driveway**

8. A separate application under the Local Government Act 1993 and Roads Act 1993 shall be submitted to Council for approval for the following:

- a. the installation of a vehicular footway crossing servicing the development, and the removal of any redundant crossings; and
  - b. the undertaking of work within a public road ( this includes Laneways, Public Pathways, Footways).
9. The vehicular crossing shall be designed and constructed in accordance with Council's Civil Works - Design and Construction Specification 1999.
  10. The cost of repairing any damage caused to Council's assets in the vicinity of the subject site as a result of construction works associated with the approved development is to be paid for by the applicant/developer prior to issue of a subdivision certificate.
  11. The internal driveway and parking areas are to be designed and constructed in accordance with Australian Standard 2890.1.
  12. Reciprocal rights of carriageway and easement for services are to be created over the access corridor under Section 88B of the Conveyancing Act 1919.
  13. Construction of the proposed right of carriageway and a common turning area in accordance with the following requirements:-
    - a. Construction of 150mm thick reinforced concrete pavement with F72 steel reinforcing fabric;
    - b. The pavement width shall be a minimum width of 3.0 metres;
    - c. The pavement shall have a kerb to one side and a one-way crossfall with a minimum gradient of 2%; and
    - d. The grades of the driveway shall be comply with the requirements of AS2890.1

### **Drainage**

14. Construction of an interallotment stormwater drainage system to service the proposed lot. The roof and stormwater drainage system from the existing dwelling shall be connected into the proposed interallotment drainage system.
15. Stormwater drainage from the site shall be designed to satisfactorily drain rainfall intensities for an average recurrence interval of 20 years. The design shall:-
  - a. Be in accordance with Hornsby Shire Council Civil Works – Design Specification 1999;
  - b. Provide for drainage discharge to the existing drainage system; and
  - c. Ensure that the development, either during construction or upon completion, does not impede or divert natural surface water runoff so as to cause nuisance to adjoining properties.

**Drainage - On Site Detention**

16. The drainage system is to be constructed with an on-site-detention system, having a capacity of not less than 5m<sup>3</sup> and a maximum discharge, when full, of 8 l/s to collect the stormwater from the right of way, as well as the storm water from the existing dwelling. The on-site-detention system shall be located at the end of the right of way. The system shall be designed by a chartered professional civil engineer to the following requirements:

- A surcharge/inspection grate is to be located directly above the outlet.
- Stormwater discharge from the detention system is to be controlled via a one metre length of pipe not less than 50mm diameter discharging into a larger diameter pipe capable of carrying the design flow to Council's gutter/stormwater pit.
- Where the on-site detention system is proposed under the vehicular driveway, the engineer is to certify that the detention tank is structurally capable of withstanding the maximum anticipated traffic loads prior to release of Construction Certificate.
- The on-site detention systems within private or common courtyard areas must be designed so they do not impact on the amenity of the development or the use of such areas.

A compliance certificate is to be submitted to Council which includes work-as-executed details of the on-site-detention system prepared by a chartered professional engineer/registered surveyor verifying that the required storage and discharge volumes have been constructed in accordance with the design requirements. The details are to show the invert levels of the on system as well as the pipe sizes and grades. Any variations to approved plans must be shown in red and supported by calculations.

17. The creation of an appropriate "Positive Covenant" and "Restriction as to User" over the constructed on-site detention/retention systems and outlet works, within both Lot 51 and lot 52 in favour of Council to ensure the continued maintenance and performance of the stormwater management system in accordance with Council's standard wording. The position of the on-site detention system is to be clearly indicated on the Final Plan of Subdivision.

**Easements & Restrictions on Title**

18. Any easement(s) or restriction(s) on Title required by this consent must nominate Hornsby Shire Council as the authority to release, vary or modify the easement(s) or restriction(s).
19. All Section 88B restrictions and covenants created as part of this consent are to contain a provision that they cannot be extinguished or altered except with the consent of Hornsby Shire Council.

20. Each of the proposed lots serviced by the proposed interallotment drainage easement shall have this burden and benefit created pursuant to Section 88B of the Conveyancing Act 1919.
21. The drainage easement over the downstream lot No. 13 DP 12343 shall be registered with Land and Property Information New South Wales (formerly the Land Titles Office) prior to issue of the construction certificate.

### **Subdivision Certificate**

22. Lodgement and approval of a subdivision certificate is required to authorise the Plan of Subdivision.
23. All conditions of the development consent are to be completed prior to the issue of the subdivision certificate.
24. The following documentary evidence is to be submitted to the Principal Certifying Authority prior to the issue of the subdivision certificate:
  - a compliance certificate certifying that all structures within the subject land comply with the Building Code of Australia.
  - a surveyor's certificate stating that no services, drainage lines or accessways encroach over the proposed boundary other than as provided for by easements created by the Final Plan of Subdivision.
25. Suitable provision is to be made for the supply of all relevant services to allotments.

### **Long Service Levy**

26. Under Section 34 of the Building and Construction Industry Long Service Payments Act 1986 any work costing \$25,000 or more is subject to a Long Service Levy. The levy rate is 0.2% of the total cost of the work and shall be paid to either the Long Service Payments Corporation or Hornsby Shire Council. Under section 109F (1) of the Environmental Planning & Assessment Act, 1979 this payment must be made prior to a construction certificate being issued.

### **Works As Executed**

27. A works-as-executed plan prepared by a chartered professional engineer or a registered surveyor must be lodged with Hornsby Shire Council when the engineering works are complete, prior to the release of the subdivision certificate.
28. A compliance certificate shall be submitted (prior to the release of the subdivision certificate) by a registered surveyor indicating that all pipelines and associated structures lie wholly within any easements required by this consent.

### **ENVIRONMENTAL HEALTH & BUILDING SURVEYOR**

#### **Site Works**

29. No site works, including the removal of vegetation or any demolition works, shall be commenced prior to:
- 29.1 A construction certificate being issued.
  - 29.2 Sediment and erosion control measures in accordance with condition No. 48 have been implemented;

### **Demolition**

30. All demolition work is to be carried out in accordance with the applicable provisions of Australian Standard 2601-2001 'The Demolition of Structures'.

*Note:* Applicants are reminded that WorkCover NSW requires all plant and equipment used in demolition work must comply with the relevant Australian Standards and manufacturer specifications.

### **Dust Control**

31. Measures to prevent the emission of dust or other impurities into the surrounding environment are to be implemented during demolition works.

### **Hours of Demolition Works**

32. In order to maintain the amenity of adjoining properties, demolition works shall be restricted to between 7.00 am and 6.00 pm. No demolition works are to be undertaken on Saturdays, Sundays or Public Holidays. Plant, goods or materials shall not be delivered to the site outside the approved hours of site works unless written Council gives consent.

### **Asbestos Removal**

33. Prior to commencement of any work involving the demolition, alteration or addition to any building on the development site, a survey is to be conducted by a competent person to ascertain whether any asbestos materials exist thereon. Asbestos material means any material that contains asbestos.
34. Where asbestos material is found to exist on the development site and that asbestos material is to be removed or disturbed as a result of any proposed demolition, alteration or addition, then all work involving removal and disposal of asbestos material must be undertaken by persons who hold the appropriate licence issued by WorkCover NSW under Chapter 10 of the Occupational Health and Safety Regulation 2001.
35. The collection, storage, transportation or disposal of any type of asbestos waste is to comply with the requirements of clause 29 of the Protection of the Environment Operations (Waste) Regulation 1996.
36. Upon completion of disposal operations, the applicant must lodge with the principal certifying authority, within seven (7) days, all receipts (or certified photocopies) issued by the receiving landfill site as evidence of proper disposal.



**Note:** The person responsible for disposing of the asbestos material shall consult with the Environment Protection Authority to determine the location of an approved landfill site to receive asbestos material.

### **Signs for Demolition Sites**

37. On construction sites where buildings contain asbestos material, a standard commercially manufactured sign containing the words 'DANGER ASBESTOS REMOVAL IN PROGRESS' measuring not less than 400mm x 300mm is to be erected on the site in a prominent position visible from the street. The sign is to be erected prior to any work commencing and is to remain in place until such time as all asbestos material has been removed from the site to an approved waste facility. This condition is imposed for the purpose of worker and public safety and to ensure compliance with Clause 259(2)(c) of the Occupational Health and Safety Regulation 2001.
38. A sign must be erected in a prominent position on the premises, on which the demolition of a building is being carried out, stating that unauthorised entry to the premises is prohibited and showing the name of the builder or other person in control of the premises and a telephone number at which the builder or other person may be contacted during and outside work hours. The sign is to be removed when the demolition of the building has been completed.

### **Signs for Construction Sites**

39. On-site signage is required to clearly identify the PCA and the principal contractor (the coordinator of the building work) pursuant to the *Environmental Planning and Assessment Amendment (Quality of Construction) Act 2003*, s157(1)(c1), Cl 98A, 136C & 227A.

### **Inspections**

40. The demolition works must be inspected by the Principal Certifying Authority to certify that the works comply with the development consent and the approved plans and specifications.

### **Noise**

41. The use of amplified equipment, such as radios and the like during construction stage shall not be used where the noise is audible on any neighbouring property.

### **Disconnection of Utilities**

42. All utilities shall be disconnected in a satisfactory manner so as not to pose any risk or nuisance to the public.

### **Landscaping**

43. All natural landscape features, including natural rock outcrops, natural vegetation, soil and watercourses, are to remain undisturbed except where affected by necessary works detailed on approved plans.

44. The area surrounding the building shall be reinstated to good order as soon as practical after the completion of site works including, where necessary, the establishment of new landscaping.
45. The natural ground levels of private open space areas are not to be altered unless otherwise indicated on the approved plans.

### **Council Property**

46. The land and adjoining areas are to be kept in a clean and tidy condition at all times. Litter and rubbish shall be placed in containers and removed from the site. A waste storage container is to be provided at the commencement of the building work.
47. The cost of repairing any damage caused to Council's assets as a result of construction works associated with the approved development is to be met in full by the applicant/developer prior to the issue of a subdivision certificate.

### **Sediment & Erosion Control**

48. Temporary sedimentation and erosion controls are to be constructed prior to commencement of any work to eliminate the discharge of sediment from the site. The controls are to be designed and installed in accordance with the requirements of Landcom's "Managing Urban Stormwater: Soils and Construction", Volume 1, 4<sup>th</sup> Edition, March 2004, (the Blue Book), and Hornsby Shire Council's "Sustainable Water Best Practices" manual and shall:-
  - be effectively maintained at all times during the course of works and shall not be removed until the site has been stabilised or landscaped to the Principal Certifying Authority's satisfaction.
  - include adequate measures to remove clay from vehicles leaving the site so as to maintain public roads in a clean condition.
  - ensure disturbed areas are rehabilitated with indigenous plant species, landscaped and treated by approved methods of erosion mitigation such as, mulching, and revegetation with native grasses or other suitable stabilising processes within fifteen days of the completion of works.

### **House Numbering**

49. House numbering can only be authorised by Hornsby Shire Council. Before proceeding to number each lot/occupancy in your development, approval must be sought from Council's Planning Division.

Council issues consecutive house numbers according to lot numbers, therefore door numbers are to align with lot numbers. These numbers must correspond, i.e. Lot one, house number 1 or Lot two, unit number 2.

### **PARKS AND LANDSCAPE TEAM**

### **Tree Preservation Order**

50. A Tree Preservation Order exists within the Hornsby Shire whereby the cutting down, topping, lopping, removing or wilful destruction of any tree exceeding 3.0 metres in height (except where exempt as defined under Council's Tree Preservation Order) without prior written consent of Council is prohibited.

Release of the Construction Certificate gives automatic approval to the removal only of those trees located on the subject property within 3 metres of the foundation footprint of an approved residential, commercial or community building, garage or inground swimming pool. Other trees shall not be removed or damaged without an application being made under Council's Tree Preservation Order. Penalties apply for non-compliance.

## BUSHLAND AND BIODIVERSITY TEAM

### **Restriction-As-To-User**

51. A Restriction-As-To-User shall be placed on the southern and eastern part of Lot 52 – the 'Restricted Development Zone' (ADD distances from boundaries) marked in red diagonal lines on the approved plans, to maintain the Blue Gum High Forest endangered ecological community in accordance with the approved Bushland Management Plan. No building work including paving or ancillary building structures (i.e. dwelling, shed, pool, fence, driveway), no clearing of native vegetation (trees, shrubs and groundcovers), no stock piles, no changes to soil aeration or hydrological capacity, no disturbance of bush rock, no open cut trenching, no placement of temporary buildings, no parking or movement of machinery, no spillage/disposal of building chemicals of any description is to occur within the 'Restricted Development Zone'.

### **Positive Covenant**

52. A positive covenant shall be placed on Lot 52 to maintain the remnant Blue Gum High Forest scheduled under the *Threatened Species Conservation Act 1995* as an endangered ecological community. The positive covenant shall require management of the southern and eastern parts of the lot (the 'Restricted Development Zone') to be in strict accordance with the approved Bushland Management Plan. Upon development of Lot 52, bush regeneration and landscaping is to be undertaken in accordance with the approved Bushland Management Plan to conserve the endangered Blue Gum High Forest.

### **Bushland Management Plan**

53. A detailed Bushland Management Plan shall be prepared by a recognised and experienced bushland regeneration company or equivalent, for the restoration of the area delineated on the site plan as "Restricted Development Zone". The Plan must be submitted to and deemed satisfactory by Council's Bushland and Biodiversity Management Team. In preparation of the plan, the consent conditions for the development should be observed. The Plan shall include, but is not limited to the following:
- a. Weed management using bush regeneration techniques;
  - b. Encouragement of natural regeneration from the soil seed bank;

- c. Revegetation works, where required, using a diversity of locally indigenous species and include planting density and source of planting stock;
  - d. Provide landscaping requirements for future landowners including a list of indigenous and non-invasive species that can be planted on the allotment;
  - e. Erosion, sediment and stormwater runoff controls;
  - f. Details of any pathways or structures (e.g. fencing);
  - g. Appropriate map of the site;
  - h. Determine timeframes and assign responsibilities for management actions;
  - i. Specify quantitative performance measures; and
  - j. Monitoring and reporting details (i.e. a compliance and performance report to be provided to Council from an independent ecological consultant).
54. Prior to issue of the Construction Certificate the Applicant shall engage an experienced (*Australian Association of Bushland Regenerators (AABR)*-approved) bush regeneration professional/company to undertake on-going bush regeneration and restoration works as detailed in the approved Bushland Management Plan. Documentation illustrating this commitment including the procedure and duration of works shall be submitted to Council's Bushland and Biodiversity Management Team for approval.
55. **Deleted**
56. **Deleted**
57. Prior to the commencement of any works or site preparations (including excavation of all footings for the suspended driveway (where necessary) and the dwelling, the drainage easement, retaining walls.), the Applicant shall engage a qualified and experienced Arborist to provide expert advice on the implementation of best tree management practices that minimise impacts and promotes the long-term health of the retained trees. The Arborist shall be present on site to monitor any excavation works to minimise the impact of the works on the root zone of all retained trees on adjoining properties as well as the subject site. No mechanical excavation shall be undertaken until root pruning by hand along the perimeter line of such works is completed;
58. All environmental weeds, noxious and invasive plants including Senna/Cassia, Spider Plant/Ribbon Plant, Trad/Wandering Jew, Jasmine, English Ivy, Scotch Broom, Cotoneaster, Moth Vine, Black-eyed Susan, Agapanthus, Asparagus Fern, Fleabane, Impatiens, Large-leaved Privet, Small-leaved Privet, African Olive, Passionfruit, Giant Reed, Ginger Lily, Wild Tobacco, Paspalum, Plantain, Panic Veldtgrass and Prairie Grass are to be removed and suppressed throughout the entire site being subdivided (26A Osborn Road) using appropriate bush regeneration methods prior to release of the final plan. Ongoing bush regeneration and weed control must be undertaken within the Restricted Development Zone in accordance with the Bushland Management Plan to be submitted to Council.

59. Landscaping is to be composed of locally occurring native species, as listed in the Hornsby Council planting guide, Indigenous Plants for the Bushland Shire, available at Council or on Council's internet site: [www.hornsby.nsw.gov.au](http://www.hornsby.nsw.gov.au).

### **Construction and ongoing management of Lot 52**

60. Prior to commencement of any works on site, including site clearing/preparation, an exclusion zone must be established and maintained around the perimeter of the 'Restricted Development Zone'. This area is to be clearly identified by the placement of a temporary brightly coloured barrier mesh around the perimeter of the area to be protected and weatherproof signage to indicate that no entry into the Zone or removal of the barrier is permitted.
61. In order to preserve the remnant Blue Gum High Forest all locally indigenous trees including Sydney Blue Gum (*Eucalyptus saligna*), Blackbutt (*Eucalyptus pilularis*), White Stringybark (*Eucalyptus globoidea*) and indigenous understorey vegetation, are to remain undisturbed and protected during on-site construction works. No excavation or change of soil level or placement of building materials is to occur within 6 metres of retained indigenous trees, unless approved by Council.
62. Tree Protection Zones shall be maintained around trees number 7 8, 9, 10, 11, 14, 17, 18 (as per the updated *Tree Appraisal Report* prepared by PMA, March 2005) for the duration of on-site works. These trees shall be protected within a temporary barrier fence or brightly coloured barrier mesh secured in place at least 6 metres from the trunk of each tree to protect the tree trunk, root zone and understorey from clearing and damage by equipment or by stockpiling of materials during on-site construction works. The fencing / barrier must be maintained during construction.
63. The root zones of native plants 3, 4, 5, 4A, 5B, 15C, 15D, 15E on the adjoining properties shall be protected by:
- a. Maintaining the suspended driveway wherever necessary; and
  - b. Prohibiting excavation, trenching or soil disturbance within the drip line of any native shrub or tree to be retained and conducting all works in accordance with requirements specified in Condition No. 69.
64. No tree roots of 50mm or greater in diameter located within the setback buffer area of at least 6 metres from retained trees shall be severed or injured in the process of any on-site works. Excavation shall be carried out using hand methods, ensuring tree roots between 10mm and 50mm diameter are cut cleanly while a qualified and experienced Arborist is present to treat cut roots.
65. On completion of construction works all disturbed areas are to be restored to a natural state including the replacement of topsoil and the removal of weeds and building materials.
66. All Illawarra Flame Trees, Silky Oaks, African Olives, Camphor Laurels, Jacaranda, Umbrella Tree, Cestrum, Liquidambar, Murraya and Cotoneasters shall be removed and replacement plantings of the same number of native shrub or tree species shall be made. All of these replacement plantings shall be locally indigenous and comprise species that are found within Blue Gum High Forest Communities.

## Contributions

67. The payment of a contribution towards the cost of transport and traffic management, open space and recreation facilities, library and community facilities, bushland and environmental works, stormwater drainage, bushfire protection and Section 94 administration in accordance with Sections 94, 94B and 94C of the Environmental Planning and Assessment Act, 1979, and Hornsby Shire Council's Development Contributions Plan 2004-2010. **The total contribution shall be \$12,858.80 if paid prior to the end of the quarter of the date of consent.** Following this date, contributions will be adjusted in accordance with the underlying consumer price index for the subsequent financial years, it being noted that there are:-

\* Additional allotments @ \$12,858.80 per dwelling/allotment

This amount is to be paid to Council prior to issue of the construction certificate or the subdivision certificate, whichever occurs first. The contribution rate will be adjusted on an annual basis in accordance with the underlying consumer price index movements if not paid prior to the end of the quarter of the date of consent.

**Note:** A copy of Council's Contributions Plan may be inspected during business hours at the first floor of Hornsby Shire Council's Administration Building located at No. 296 Pacific Highway, Hornsby.

## Fencing

68. All boundaries behind the building line and courtyard areas shall be enclosed with 1.8m fences/screens/walls to protect the privacy of future occupants as well as adjoining owners. Provided that where an adjoining owner agrees to the provision of an alternate fence/screen/wall that fence/screen/wall shall be erected in lieu of the fence required by this condition. The fence/screen/wall is to be erected prior to the occupation of the dwellings or prior to the issue of the subdivision certificate, which ever occurs first.

## Works near Trees

69. All works (including driveways and retaining walls) within three 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 methods used to preserve the trees.

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

## Offset measure

70. A monetary contribution to the value of \$180 is to be made to Council's Community Nursery at Britannia Street to offset the loss of the Eucalyptus pilularis tree. The contribution is to be utilized by Council to grow 6 locally indigenous canopy trees to a suitable pot size for replanting within the Council owned reserves in the Normanhurst area.

**2 DEVELOPMENT APPLICATION - ALTERATIONS TO AN EXISTING DWELLING AND SUBDIVISION OF ONE LOT INTO TWO  
8 CHORLEY AVENUE CHELTENHAM**

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<b>Development Application No:</b>	DA/1340/2009
<b>Description of Proposal:</b>	Alterations to an existing dwelling and subdivision of one lot into two.
<b>Property Description:</b>	Lot 144 DP 112364 (No. 8) Chorley Avenue, Cheltenham
<b>Applicant:</b>	P S Graham & Associates
<b>Owner:</b>	Mrs B L McDonald and Mr R G Rae
<b>Statutory Provisions:</b>	Hornsby Shire Local Environmental Plan 1994 Residential AS (Low Density – Sensitive Lands)
<b>Estimated Value:</b>	\$50,000
<b>Ward:</b>	C

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**RECOMMENDATION**

THAT Development Application No. 1340/2009 for alterations to an existing dwelling and subdivision of one lot into two at lot 144 DP 12364 (No. 8) Chorley Avenue, Cheltenham be approved subject to the conditions of consent detailed in Schedule 1 of this report.

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**EXECUTIVE SUMMARY**

1. The application proposes alterations to an existing dwelling and the subdivision of one lot into two lots.
2. The site was subject to a previous development application (DA/1202/2008) for the demolition of the existing dwelling and the subdivision of one lot into two lots, approved by Council on 4 February 2009.
3. The proposal generally complies with Council's Residential Subdivision Development Control Plan other than the requirements for 4m accessway width and 4m setback from a significant tree. The variation in the accessway width is acceptable in retaining the existing dwelling in the heritage streetscape. Subject to recommended conditions the variation in the tree setback is acceptable.
4. Fourteen submissions have been received in respect of the application.

5. It is recommended that the application be approved.

### **HISTORY OF THE SITE**

On 4 February 2009 Council at its Planning Meeting approved Development Application No. DA/1202/2008 for the demolition of the existing dwelling and the subdivision of one lot into two lots. The officer's report to Council recommended refusal of the application, principally on heritage grounds.

The approved plan involved the creation of a battleaxe lot handle along the eastern boundary of the site to access the newly created lot to the rear.

### **HISTORY OF THE APPLICATION**

The application was lodged on 22 October 2009. An amended plan was submitted 12 April 2010.

The initial proposal involved demolition of the western side wall to provide a 3m wide accessway to the rear lot. The amended proposal is to only demolish the chimney, allow a 2.84m width accessway for proposed Lot 2 and retain the existing driveway for the existing dwelling on Lot 1.

### **THE SITE**

The site has frontage to the northern side of Chorley Avenue and an area of 1,407m<sup>2</sup>. The site is irregular in shape and is of dimensions; frontage 20.115m, western side boundary 60.96m, eastern side boundary 81.08m and rear boundary 30.81m. The site has a fall of 10% to the western side boundary.

The site includes an existing single storey brick dwelling house with tiled roof which was constructed in 1937. The house has a lower floor single garage at the western side of the house. The adjoining properties include dwelling houses of similar age and construction.

The site includes several trees including two large trees located on each side boundary.

The site is located 350m north east of Cheltenham Railway Station and is within the Beecroft-Cheltenham Heritage Conservation Area.

### **THE PROPOSAL**

The proposal is to subdivide one lot into two lots and retain the existing dwelling. Alterations to the dwelling are proposed to allow the construction of a 3m wide accessway along the western boundary. The alterations include the removal of the chimney. The proposed accessway reduces to 2.84m along the western side of the house.

Proposed Lot 1 has an area of 661m<sup>2</sup> and is the site of the existing dwelling, No. 8 Chorley Avenue. The lot includes a 1.175m wide section along the western side of the house. A right of way is proposed over this section for the accessway of Lot 1 along the western side of the house. The existing driveway is retained.

Proposed Lot 2 is an irregular shaped lot of area 746m<sup>2</sup> including the access handle. The lot has an average fall of 15% to the northern boundary. The lot includes two significant trees, Tree No. 24 on the eastern boundary and Tree No. 30 on the western boundary.



Whilst not part of the proposal itself, the application is supported by architectural floor plans of a dwelling-house which demonstrate that a three bedroom, double garage single storey house could be constructed on the land without impacting upon residential amenity.

## 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 insofar as contributing to the increase in housing stock within the Hornsby LGA.

### 2. STATUTORY CONTROLS

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

#### 2.1 Hornsby Shire Local Environmental Plan 1994

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

- to provide for the housing needs of the population of the Hornsby area.*
- to promote a variety of housing types and other land uses compatible with a low density residential environment 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 a minimum area of 600m<sup>2</sup> for an allotment within the Residential AS zone. The development satisfies this criteria.

Clause 15 of the HSLEP prescribes that the maximum floor space ratio (FSR) of development within the Residential AS zone is 0.4:1. The existing dwelling on proposed Lot 1 complies with this requirement. Subject to addressing site constraints, a 256 sqm dwelling could be constructed on proposed Lot 2 in satisfaction of the 0.4:1 FSR. The application has been supported by floor plans that demonstrate that a new dwelling could be constructed on the lot in satisfaction of this development standard.

Clause 18 of the HSLEP sets out heritage conservation provisions within the Hornsby area. The site is within the Beecroft Cheltenham Heritage Conservation Area and is in the vicinity of items of environmental heritage at No. 15 Chorley Avenue (house), No. 8 Cheltenham Road (house) and No. 10 Cheltenham Road (house). Section 2.4 of this report details the heritage implications of the development.

## 2.2 State Environmental Planning Policy – Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

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

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

## 2.3 Residential Subdivision Development Control Plan

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

Subdivision DCP			
Control	Proposal	Requirement	Compliance
Density	Lot 1 – 649.4m <sup>2</sup> (excl ROW) Lot 2 – 647.2m <sup>2</sup> (excl access)	600m <sup>2</sup>	Yes
Floor Space Ratio	Lot 1 – 0.27:1	0.4:1	Yes
Car parking	Lot 1 – 2 spaces	2 spaces	Yes

<b>Private Open Space</b>	Lot 1 – 200m <sup>2</sup>	120m <sup>2</sup>	Yes
<b>Accessway Width</b>	2.84m-3.0m	4m	No
<b>Setback From Significant Tree</b>	0.25m (driveway)	4m	No

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

### 2.3.1 Density

The proposed lots comply with the density prescriptive measures, including floor space ratio and site coverage.

Proposed Lot 2 has an average fall of 15% and complies with the prescriptive measure for larger lot size on steeper sites.

### 2.3.2 Lot Layout & Design

The proposed subdivision as amended is more sympathetic to the existing dwelling on proposed Lot 1 as the house is essentially retained with only the chimney proposed for removal. The proposed lot includes the existing driveway and is generally acceptable in accommodating the existing dwelling house, providing adequate private open space and a suitable living environment for residents.

Proposed Lot 2 is irregular in shape, is elevated to adjoining properties to the north and is constrained by necessary setbacks to significant trees Nos. 30 and 24. The applicant submitted an indicative floor plan detailing a 3 bedroom single storey dwelling in compliance with tree setback requirements. It is considered a single storey dwelling house could be designed for the lot with regard to solar access and privacy of existing and future residents.

The layout and design of the proposed subdivision is considered satisfactory in retaining the existing dwelling in the heritage streetscape. The proposed rear lot while irregular in shape and elevated to adjoining properties to the rear includes sufficient area to accommodate a dwelling house in keeping with the residential character of the area.

A condition is recommended for boundary fencing.

### 2.3.3 Landscaping

The adjoining land on the western boundary includes a large significant tree (No. 30) *Eucalyptus pilularis* (Blackbutt). The Subdivision DCP requires a minimum 4m setback for proposed driveways, construction works, drainage and service trenches. The proposed driveway and easement for services does not comply with this requirement.

Tree No. 30 is a mature tree and encroachment within the setback area is acceptable subject to tree sensitive construction measures, including investigative design for pier and beam, construction at existing grade, tunnel boring, excavation by hand and compaction control. Construction of the driveway and the driveway turning head is recommended at the subdivision stage, to prevent injury to the tree from vehicles in the construction of any future dwelling.

Subject to recommended conditions the non-compliance with the 4m tree setback requirement is considered acceptable.

#### **2.3.4 Accessway Design**

The proposed accessway is 2.84m – 3.0m wide and does not comply with the Subdivision DCP requirement for a 4.0 wide accessway.

The proposed accessway is for access only to the rear lot. The reduction to a width of 2.84m would not impact on the safe operation of the accessway given access is limited to a single dwelling.

The proposed accessway is not of sufficient width to provide 0.5m wide landscaping each side of the driveway. The proposed accessway however allows the existing house to be retained generally without alteration to the heritage streetscape. Subject to condition for coloured concrete or stencilled driveway to complement the existing dwelling, the non-compliance is considered acceptable and a more desirable outcome than the partial demolition of the dwelling.

The proposal would involve duplication of driveways at the frontage. To minimise impact on the streetscape a condition is recommended for a vehicle crossing serving both driveways. The operation of the two driveways is considered satisfactory for traffic safety as vehicles accessing Lot 2 would be required to enter and leave the site in a forward direction.

The amended subdivision plan includes a second car parking space on the driveway at the frontage of the existing dwelling. The proposed car parking space is setback 8m from the frontage and would not detract from the streetscape. The proposed car parking complies with the Subdivision DCP requirement.

#### **2.4 Heritage Development Control Plan**

The property is located within the Beecroft Heritage Conservation Area listed under the provisions of Schedule E (Heritage Conservation Areas) of the HSLEP.

<b>Address</b>	<b>Heritage Item</b>
• 15 Chorley Avenue, Cheltenham	House
• 8 Cheltenham Road, Cheltenham	House
• 10 Cheltenham Road, Cheltenham	House
• 19 Norma Crescent, Cheltenham	House

Council's Heritage Advisory Committee previously commented '*that the circa 1937 dwelling house contributes to the significance of the Beecroft-Cheltenham Heritage Conservation Area. The existing dwelling house is part of an intact collection of Inter-War houses within Chorley Avenue. The property contributes to the Conservation Area in its scale, architectural character and landscaping*'.

The proposed subdivision retains the existing dwelling house in the heritage streetscape. The proposal represents reduced impacts on the significance of the Heritage Conservation Area, compared to the development approved under DA/1202/2008. The amended plan involving only the demolition of the chimney at the western side wall would further minimise impact on the contributory significance of the existing dwelling to the Heritage Conservation Area.

## **2.5 Byles Creek Development Control Plan**

The site is within the catchment of Byles Creek. The remnant indigenous trees on the site particularly Tree No. 30, Tree No. 24 and Tree No. 29, contribute to the scenic quality of the locality.

The proposed accessway does not comply with the requirement of the Byles Creek DCP for driveways to be setback a minimum of 4 metres from significant trees. The non-compliance is considered acceptable with regard to recommended conditions for driveway construction involving tree sensitive construction measures to retain significant trees.

## **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 includes a significant tree located on the western boundary of the site. The tree (No. 30), a Blackbutt *Eucalyptus pilularis*, has a height of 24m and trunk diameter of 1.6m, is in good condition and contributes to the visual quality of the locality. The construction of the proposed driveway, car turning area and drainage easement are within the recommended setback area required to protect the long term health and condition of the tree. The adjoining property owner objected to the proposal in respect to impact on the tree which is substantially within the adjoining property (No. 10 Chorley Avenue).

The consent of the adjoining owner would be required for removal of tree No. 30 should the tree decline and become a hazard.

The previous development application (DA/1202/2008) was amended to relocate the accessway to the eastern side boundary, to comply with the accessway width requirement and to meet the required setback from tree No. 30. Notwithstanding, it is considered that subject to the implementation of recommended tree sensitive construction measures, the health of the tree can be maintained. (Refer to discussion in Section 2.3.3.)

Trees numbered 24 and 29 are identified as a significant group of trees identified as '*Sydney Blue Gums Eucalyptus Saligna*' and would be retained. Trees Nos. 24, 29 and 30 are mapped in a transitional zone between Blackbutt Gully Forest and Turpentine – Ironbark Forest (STIF) listed as an '*Endangered Ecological Community*' under the '*Threatened Species Conservation Act 1995*'.

Subject to recommended conditions the proposal would not adversely impact on the natural environment.

### **3.2 Built Environment**

The proposal is the first subdivision in the locality since the original construction of the precinct in the 1920s. The proposal retains the existing dwelling house and would generally maintain the existing streetscape. (Refer also to comments in Section 2.4.)

### **3.3 Social Impacts**

The proposed subdivision would not result in a social impact.

### **3.4 Economic Impacts**

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

## **4. SITE SUITABILITY**

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

The rear area of the site includes a number of large remnant trees and is mapped as forming a transitional zone between Blackbutt Gully Forest and Turpentine – Ironbark Forest (STIF) listed as an ‘*Endangered Ecological Community*’ under the ‘*Threatened Species Conservation Act 1995*’.

Future residential development within this area would need to be sensitively designed to minimize impacts on the ecology.

## **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 4 November and 25 November 2009 in accordance with Council’s Notification and Exhibition Development Control Plan. During this period, Council received 14 submissions. The map below illustrates the location of those nearby landowners who made a submission that are in close proximity to the development site.



**NOTIFICATION PLAN**

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

- Lack of space for safe access and egress;
- Inappropriate alteration to house in heritage area;
- Inadequate driveway width;
- Design constraint for rear lot;
- Adverse impact on amenity and privacy;
- Adverse impact on significant trees;
- Discrepancy with previous plans;
- Impact on endangered vegetation area;
- Non-compliance with the Development Control Plan.

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

## 6. THE PUBLIC INTEREST

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

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

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

### CONCLUSION

Consent is sought for alterations to an existing dwelling and subdivision of one lot into two. The proposed subdivision differs from the previous proposal approved by Council in the location of the accessway along the western side boundary and in retaining the existing dwelling. The subject proposal generally maintains the heritage streetscape and, subject to recommended conditions for tree protection, would ensure impacts on a significant tree located on the western side boundary are minimised.

The proposed non-compliance with the Residential Subdivision DCP requirements for accessway design width and setback from significant trees, is considered acceptable in retaining the existing dwelling in the heritage streetscape and with regard to recommended conditions for tree protection.

The concerns raised by neighbouring residents in submissions in response to the proposal are generally addressed by the amended plan and recommended conditions.

It is recommended that Council approve the application.

PAUL DAVID  
Manager - Subdivision & Development  
Engineering Services  
Planning Division

SCOTT PHILLIPS  
Executive Manager  
Planning Division

#### Attachments:

1. Locality Plan
2. Subdivision Plan
3. Tree Assessment
4. Indicative Floor Plans of Dwelling-House on Proposed Lot 2

File Reference: DA/1340/2009  
Document Number: D01349919



**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>
S.14547 <sub>B</sub>	P S Graham & Associates	17-07-08

**2. Removal of Existing Trees**

This development consent only permits the removal of trees numbered 3, 4, 5, 10, 11, 17, 18 and 19 as identified on Plan No. S.14547<sub>B</sub> prepared by P S Graham & Associates dated 17-07-08. The removal of any other trees requires separate approval under Council's Tree Preservation Order.

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

The proposed drainage easement over downstream property 8 Norma Crescent must be registered with the *NSW Department of Lands*. A copy of the registered transfer granting easement shall be submitted with the Construction Certificate.

**4. 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](http://www.sydneywater.com.au) or telephone 13 20 92 for assistance.*

## 5. 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 Norma Crescent via the proposed interallotment drainage easement.
- b. The drainage system to service the proposed lot shall provide pits to be constructed in-situ.
- c. The roof and stormwater drainage system from the existing dwelling and the proposed access handle driveway to be connected to the proposed inter-allotment drainage system.

## 6. Internal Driveway/Vehicular Areas

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

- a. Design levels at the front boundary be obtained from Council.
- b. The driveway be a rigid pavement designed and constructed 2.8m wide between the street alignment and the north end of the southern elevation wall for the front lot. Subsequently, the driveway shall transition to at least 3m wide at all other locations.
- c. The driveway shall skew slightly to avoid paving near the significant tree on the common boundary with No. 10 Chorley Avenue, and be designed with a pier and beam design to an appropriate bearing strata to avoid compression of soils around the tree.
- d. The driveway grade must not exceed 25 percent and changes in grade must not exceed 8 percent per plan metre.
- e. The driveway pavement be a minimum 0.15 metres thick reinforced concrete with F72 steel reinforcing fabric and a 0.15 metre sub-base, except where a structural pavement design is necessary to avoid tree root zones.
- f. The pavement shall have a kerb on the No. 8 House (eastern) side of the driveway and a one-way cross fall with a minimum gradient of 2 percent to the kerb. For driveway drainage, cast in-situ pits and integrated kerb inlets shall be provided on the kerb line on grade and at low points and connected to the proposed interallotment drainage system.
- g. An appropriate damp proof course shall be constructed for No. 8's external walls in the vicinity of the driveway kerb at least.

- h. Conduit for utility services including electricity, water, gas and telephone shall be provided.
  - i. Concrete pavement strips shall be designed and constructed as necessary to service the existing dwelling.
7. In order to provide for pedestrian and vehicular traffic proposed to be generated by the development, the following shall be designed and constructed at the applicant's cost:-
- a. The existing open swale across the entire Chorley Avenue frontage of the development shall be removed and reconstructed with Council's standard 150mm integral kerb and gutter.
  - b. The alignment and level of the kerb line shall be set by Council's Works Division.
  - c. Construction of Council's standard 300 mm thick road shoulder and seal, with grades and levels designed in accordance with Council's standard.
  - e. The footpath shall, where possible, be graded up between the top of kerb and the boundary at 4%.
  - f. All existing and proposed street trees and services are to be shown on the proposed construction plans to ensure there are no conflicts with these requirements and services or access points to services.
  - g. All proposed designs and constructions shall be in accordance with Council's Design and Construction Specification 2005.
  - h. Designs for works required in the public road shall be prepared by a suitably qualified and Chartered Engineer and submitted for consideration and written approval of Hornsby Shire Council's Subdivisions Branch prior to the release of the Construction Certificate.
  - i. Pursuant to the *Roads Act 1993*, these works, once approved shall be supervised by and constructed to the complete satisfaction of Hornsby Shire Council's Manager, Subdivisions prior to the release of the Subdivision Certificate.

## 8. 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.

### 9. Building Code of Australia

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

## REQUIREMENTS PRIOR TO THE COMMENCEMENT OF ANY WORKS

### 10. 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.*

### 11. 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

### 12. Construction Work Hours

All work on site (including demolition and earth works) must only occur between 7am and 5pm Monday to Saturday.

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

### 13. Demolition

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

- a. Demolition material is to be disposed of to an authorised recycling and/or waste disposal site and/or in accordance with an approved waste management plan.
- b. Demolition works, where asbestos material is being removed, must be undertaken by a contractor that holds an appropriate licence issued by *WorkCover NSW* in accordance with Chapter 10 of the *Occupational Health and Safety Regulation 2001* and Clause 29 of the *Protection of the Environment Operations (Waste) Regulation 1996*.
- c. On construction sites where buildings contain asbestos material, a standard commercially manufactured sign containing the words 'DANGER ASBESTOS REMOVAL IN PROGRESS' measuring not less than 400mm x 300mm must be erected in a prominent position visible from the street.

### 14. Western Side Wall

To replace any void left from removal of the chimney, the existing bricks must be used to infill the void in the wall and in the same brickwork pattern.

### 15. Driveway Visual Impact

To minimise visual impact and to complement the existing dwelling house, the driveway for proposed lot 2 must be in coloured concrete or stencilled.

### 16. 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.

### 17. Works near Trees

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

All works (including driveways and retaining walls) within 4 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.*

### 18. Works near Tree No. 30

Tree numbered 30 *Eucalyptus pilularis* (Blackbutt) is located within the neighbouring property to the west at 10 Chorley Avenue. To ensure any work undertaken will not adversely affect the longevity of the tree the following methods of construction are required:

- a. Prior to work commencing and to avoid mechanical injury or damage, tree numbered 30 is to have its trunk protected by 2m lengths of 75mm x 25mm hardwood timbers spaced at 80mm secured with galvanised wire (not fixed or nailed to the tree in any way). Trunk protection is to be installed prior to the issue of a construction certificate and maintained in good condition for the duration of the construction period. Affixing signage to trees located on site or located on the nature strip is not permitted.
- b. Excavation for the installation of the storm water drainage pipe must be carried out by tunnel boring. Tunnel boring must be carried out at least 1 metre beneath natural ground surface to minimise damage to the trees root system.
- c. Pier and beam construction of the driveway within the nominated restriction zone (15m) must be used with piers being located no closer than 3 metres to the trunk of the tree with all beams being above the natural soil grade.
- d. Excavation for the piers within the nominated restriction zone (15m) must be hand dug to reveal the presence of any roots. Tree roots between 10mm and 50mm diameter, revealed during excavation, must be cut cleanly by a sharp hand saw. The severance of tree roots greater than 50mm in diameter is not permitted. A qualified and experienced arborist is to be on site overseeing the work to ensure no roots greater than 50mm in diameter are severed, and root damage is minimised.
- e. Soil compaction within the Tree Protection Zone (TPZ) must be minimised. Appropriate compaction control methods such as mulching (AS4454) must be used. Vehicular traffic is not permitted within the TPZ of tree 30.
- f. A qualified and experienced arborist (AQF5) is to be on site overseeing the work throughout the development period to ensure all tree protection specifications are maintained.

### 19. Disturbance of Existing Site

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

### 20. 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.

## 21. Vehicular Crossing

A Construction Certificate or an application under the *Local Government Act, 1993* and the *Roads Act, 1993* must be submitted to Council for the installation of a new 5.5m wide vehicular crossing for the proposed access handle and the existing concrete strips servicing the retained dwelling car spaces, 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.

*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.*

## REQUIREMENTS PRIOR TO THE ISSUE OF A SUBDIVISION CERTIFICATE

### 22. Sydney Water – s73 Certificate

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

### 23. Creation of Easements

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

- a. An easement for services, as required, over the access corridor.
- b. An inter-allotment drainage easement(s) over each of the burdened lots.
- c. The creation of a "*Positive Covenant*" over the proposed Lot 2 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 the interallotment drainage system in accordance with Council's prescribed wording.
- d. To register the subdivision plan, "*works-as-executed*" details of all civil works and drainage systems must be submitted verifying that the works 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.*

### 24. Boundary Fencing

Fencing must be erected along all property boundaries behind the front building alignment to a height of 1.8 metres, other than the western boundary fence which

must extend from the front building alignment and taper to a height of 1.0 metres at the front boundary. All fencing must be constructed at the sole cost of the applicant.

*Note: Alternative fencing may be erected subject to the written consent of the adjoining property owner(s).*

## 25. Subdivision Work

The construction of the accessway and driveway turning head for Lot 2, the stormwater drainage works for both lots and works involving the existing dwelling-house, must be completed in accordance with the conditions of this consent and to Council's written satisfaction.

## 26. s94 Infrastructure Contributions

The payment to Council of a contribution of \$19,592.20\* for 1 additional lot towards the cost of infrastructure identified in Council's Development Contributions Plan 2007-2011.

*Note: \* The value of contribution is based on a rate of \$19,592.20 per additional lot and is current as at 13 April 2010. The contribution will be adjusted from this date in accordance with the underlying consumer price index for subsequent financial quarters.*

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

**- END OF CONDITIONS -**

### ADVISORY NOTES

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

### Environmental Planning and Assessment Act, 1979 Requirements

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



- Mandatory inspections of nominated stages of the construction inspected.
- An occupation certificate to be issued before occupying any building or commencing the use of the land.

### **Subdivision Certificate Requirements**

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

- A surveyor's certificate certifying that all structures within the subject land comply with the development consent in regard to the setbacks from the new boundaries.
- A surveyor's certificate certifying that all services, drainage lines or access are located wholly within the property boundaries. Where services encroach over the new boundaries, easements are to be created.
- Certification that the requirements of relevant utility authorities have been met.
- 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](http://www.dialbeforeyoudig.com.au) for free information on potential underground pipes and cables within the vicinity of the development site.

### **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.

### **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*.

**3 DEVELOPMENT APPLICATION - ALTERATIONS AND ADDITIONS TO EXISTING MOTOR SHOWROOM  
320 PENNANT HILLS ROAD PENNANT HILLS**

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<b>Development Application No:</b>	DA/118/2010
<b>Description of Proposal:</b>	Alterations and additions to an existing motor showroom and new signage
<b>Property Description:</b>	Lot 201 DP 1105214 (No. 320) Pennant Hills Road, Pennant Hills
<b>Applicant:</b>	Alto Group Pty Ltd
<b>Owner:</b>	Capricorn Constructions Pty Ltd
<b>Statutory Provisions:</b>	Hornsby Shire Local Environmental Plan 1994 Industrial B (Light) Zone
<b>Estimated Value:</b>	\$3,771,033
<b>Ward:</b>	C

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**RECOMMENDATION**

THAT Development Application No. 118/2010 for alterations and additions to an existing motor showroom and new signage at lot 201 DP 1105214 (No. 320) Pennant Hills Road, Pennant Hills be approved subject to the conditions of consent detailed in Schedule 1 of this report.

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**EXECUTIVE SUMMARY**

1. The application proposes alterations and additions to an existing motor showroom and new signage.
2. The proposal satisfies the requirements of Hornsby Shire Local Environmental Plan 1994, the Industrial Lands Development Control Plan and the Pennant Hills Commercial Centre Development Control Plan.
4. One submission has been received in respect of the application.
5. It is recommended that the application be approved.

## HISTORY OF THE SITE

The existing motor showroom on the site was approved by Council in 1988.

## THE SITE

The site has an area of 3,893m<sup>2</sup> and is located on the western side of Pennant Hills Road adjacent to the main northern railway. Stevens Street defines the northern boundary of the site. The western rear boundary is defined by the rail corridor and an access road along the rear of the site. An access road also forms the southern boundary.

The site includes the existing Audi and Mitsubishi motor showrooms.

Motor showrooms predominate south of and opposite the site. The land north of Stevens Street is occupied by medium-high density housing.

## THE PROPOSAL

The proposed alterations and additions include:

Lower Level:

- Alterations to the internal walls and doors to accommodate a new service reception area.
- Modify the existing lunchroom, amenities and locker room.
- Demolish part of the existing storage area at rear of the workshop.
- Replace the existing roller doors at the rear of the workshop.
- Accommodate six service bays.
- Internal modifications to the workshop.
- Reclad part of the northern external wall adjoining Stevens Street.
- Remove the rear awning to the workshop and replace with a new awning extension over the service vehicle car parking.

Upper Level:

- Remove the existing awning at the front of the showroom.
- Demolish the small office at the southern end of the building.
- Extend the showroom towards Pennant Hills Road by demolishing the existing glazed wall and constructing a new glazed wall interwoven with 'Audi's' new signature mesh screen wall.
- Construct an internal mezzanine level above the showroom.

- Internal refurbishment works to provide offices, sales area, lounge and vehicle hand over space.
- Modify the existing amenities.
- Modify the existing vehicle display area and service vehicle parking to improve the onsite vehicle manoeuvrability.
- Extend the stairs and landing to the northern showroom and upgrade the entry area.

The existing Mitsubishi dealership would be relocated to a new showroom currently under construction at 338 Pennant Hills Road, Pennant Hills (DA/1685/2008).

All of the existing vehicular entry and exit points remain unchanged.

The proposed alterations and additions are in accordance with Audi's corporate design theme.

The proposed signage includes:

- Sign A: Audi pylon measuring 1.93m x 6.0m high.
- Sign B: Audi used car sign measuring 1.05m x 2.8m high.
- Sign C: Audi entrance sign measuring 1.05m x 1.25m high.
- Sign D: Audi directional sign measuring 1.05m x 1.77m high.
- Wall Signs – Audi logo 3 @ 4.1m x 1.427m.
- Wall Signs – Audi Alto Pennant Hills 3 @ 0.6 x 8.6m.
- Wall Sign – Audi Service reception 1 @ 0.6m x 8.6m.

The proposed signs would replace the existing signage.

## ASSESSMENT

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

### 1. STRATEGIC CONTEXT

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

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

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

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

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

The proposed development would be consistent with the draft Strategy by providing additional job opportunities 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 Industrial B (Light) under the Hornsby Shire Local Environmental Plan 1994 (HSLEP). The objectives of the zone are:

- to encourage economic growth and employment opportunities.*
- to allow a broad range of light industrial, warehousing and other compatible land uses to locate within the area.*
- to promote development that does not adversely impact on the natural and built environment.*

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

Clause 15 of the HSLEP prescribes that the maximum floor space ratio (FSR) of development within the Industrial B zone is 1:1. The proposed development complies with this requirement.

### 2.2 State Environmental Planning Policy No. 64 – Advertising and Signage

The application has been assessed against the requirements of State Environmental Planning Policy No. 64. This Policy provides State-wide planning controls to regulate signage to ensure advertising signs are compatible with amenity and visual character, communicate effectively and are of good design.

The proposed signs are defined as *building identification signs*, and are subject to assessment under Part 2 and Schedule 1 of the Policy.

The proposed signs are satisfactory in regard to the assessment criteria provided under Schedule 1 of the Policy, concerning the character of the area, views and vistas, streetscape, site and building features, illumination and safety.

The signs do not exceed 20m<sup>2</sup> in area, are less than 8 metres in height and would not require the concurrence of the NSW Roads and Traffic Authority.

### 2.3 Industrial Lands Development Control Plan

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

<b>Industrial Lands Development Control Plan</b>			
<b>Control</b>	<b>Proposal</b>	<b>Requirement</b>	<b>Compliance</b>
<b>Gross Floor Area</b>	1,905m <sup>2</sup>	N/A	N/A
<b>Floor Space Ratio</b>	0.489:1	1:1	Yes
<b>Front Setback</b>	6.5m	5m	Yes
<b>Car parking – 1 space per 130m<sup>2</sup> + 6 per service bay</b>	51 spaces	51 spaces	Yes
<b>Signage – 0.5m<sup>2</sup> per linear metre road frontage</b>	55.85m <sup>2</sup>	58.5m <sup>2</sup>	Yes
<b>Storeys</b>	2 storeys	2 storeys	Yes

The proposed alterations and additions to the existing motor showroom comply with the prescriptive standards within Council's Industrial Lands DCP. The following is a brief discussion on compliance with relevant performance standards.

#### 2.3.1 Density

The proposal involves alterations and additions to the motor showroom increasing the total floor area from 1,896m<sup>2</sup> to 1,905m<sup>2</sup>.

The proposal would not result in a substantive intensification of the operation of the existing motor showroom.

#### 2.3.2 Setbacks

The existing building has a minimum setback of 3.5m to the Pennant Hills Road frontage. The existing setback would remain unchanged by the proposed development.

The proposed additions would involve a minimum front setback of 6.5m. The proposed setback complies with the required minimum 5m main road front setback.

### **2.3.3 Design**

The proposed alterations and additions incorporate the Audi corporate façade treatment colour scheme. The change in the façade includes extensive glazing and a parapet wall above. The parapet at the Pennant Hills Road frontage features a mesh-screen finish. The building height to the top of the parapet is 9m.

The general layout of the showroom and service workshop would remain unchanged with vehicle access provided to the service workshop off Stevens Street and customer access to the vehicle showroom and display areas from Pennant Hills Road.

The presentation of the building would complement the streetscape and is consistent with the recently constructed motor showroom south of the site. The proposal would also comply with the Industrial Land DCP building design performance criteria.

### **2.3.4 Vehicle Access and Parking**

The existing vehicular access for the motor showroom and service workshop including the vehicle loading and unloading facilities would be maintained for the development.

The proposal includes reconfiguring the existing car parking spaces and outdoor car display areas. The proposed car parking area for the service workshop and motor showroom comply with the requirements of the Industrial Lands DCP for 51 car parking spaces. The design and layout of the car parking is considered functional for the respective operations of the motor showroom and workshop.

In a submission, traffic safety was raised as a concern on Stevens Street. To address this concern, a convex safety mirror is required to be erected on the northern side of Stevens Street located opposite the service bay exit. The safety mirror would improve sight lines to vehicles on Stevens Street.

### **2.3.5 Signs**

The proposed signage forms part of the architectural expression of the building as proposed.

The proposed signage complies with the prescriptive measures and performance criteria of the Industrial Lands DCP and SEPP 64.

### **2.3.6 Landscaping**

The existing landscape area is maintained for the proposal and is acceptable.

### **2.3.7 Acoustics**

The proposed development would maintain the motor showroom's existing operating acoustic environment.

The site is adjacent to a medium/high density residential development located on the north side of Stevens Street. To maintain the existing acoustic environment a condition is recommended for background noise levels not to be exceeded by 5dB(A).

The proposed hours of operation for the motor showroom are from 8.00am to 6.00pm Monday to Saturday and 9.00am to 5.00pm Sundays and public holidays. A condition is



recommended to restrict the operation hours of the service workshop to 7.30am to 6.00pm Monday to Friday and to 8.00am to 1pm Saturday.

### **2.3.8 Drainage Control**

There would be no net increase in stormwater runoff from the proposed development. The existing stormwater drainage infrastructure is adequate for the development.

## **2.4 Pennant Hills Commercial Centre Development Control Plan**

The motor showroom is located within the Plan's 'Service Precinct'. The proposed development maintains the present use of the land and complies with the relevant requirements of the Plan in respect to solar access, car parking, density, building design, setbacks and height.

The proposed signage does not comply with the Plan's prescriptive measure for a maximum area for signage of 3m<sup>2</sup> for signs within the Light Industrial Zones. The non-compliance is considered acceptable with regard to streetscape visual impact and integration of the signs with the architectural expression of the building as proposed.

## **3. ENVIRONMENTAL IMPACTS**

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

### **3.1 Natural Environment**

The proposed development maintains the existing landscaping and would not result in an adverse impact on the natural environment.

### **3.2 Built Environment**

The proposed development contributes positively to the built form of the Pennant Hills Service Precinct involving motor showrooms on Pennant Hills Road.

The current traffic generation and vehicle access to the site would remain unchanged.

### **3.3 Social Impacts**

The proposed alterations and additions upgrade to the existing building would assist in maintaining the viability of motor vehicle industry jobs in the locality.

### **3.4 Economic Impacts**

The proposed alterations and additions maintain the economic life of the building.

## **4. SITE SUITABILITY**

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

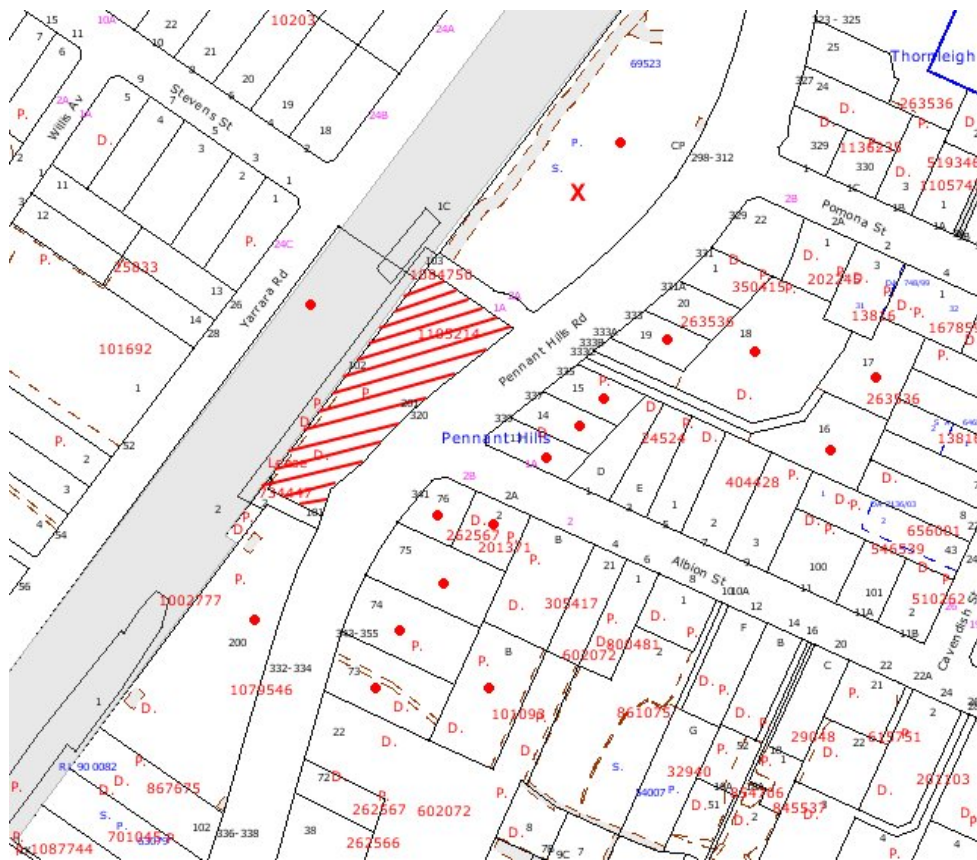
The site comprises an existing motor showroom and is suitable for the proposed development.

**5. PUBLIC PARTICIPATION**


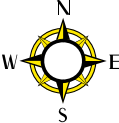
Section 79C(1)(d) of the Act requires Council to consider “any submissions made in accordance with this Act”.

**5.1 Community Consultation**

The proposed development was placed on public exhibition and was notified to adjoining and nearby landowners between 15 February and 11 March 2010 in accordance with Council’s Notification and Exhibition Development Control Plan. During this period, Council received one submission. The map below illustrates the location of the nearby landowner who made a submission.



**NOTIFICATION PLAN**

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

- Unacceptable traffic safety on Stevens Street.

The merits of the matter raised in the submission have been addressed in Section 2.3.4 of the report.

## 5.2 Public Agencies

The proposed development adjoins the northern rail corridor and was referred to RailCorp for comment.

RailCorp advised it had no objections to the proposal and raised no specific conditions or requirements.

## 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 motor showroom alterations and additions and signage would be in the public interest.

## CONCLUSION

Consent is sought for alterations and additions to upgrade an existing motor showroom for an Audi dealership.

The proposal reconfigures the existing floor space, maintains the existing vehicle access and would not result in an intensification of the current use. The proposal complies with requirements of the Industrial Lands DCP in respect to density, setbacks, building design, vehicle access, parking, signs, drainage control and solar access.

The proposal complies with the Pennant Hills Commercial Centre DCP other than the prescriptive measure for signs not to exceed 3m<sup>2</sup>. The non-compliance is considered acceptable.

The traffic safety concerns raised in public consultation would be addressed by recommended condition for a convex safety mirror.

The application is recommended for approval.

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

SCOTT PHILLIPS  
Executive Manager  
Planning Division

**Attachments:**

1. Locality Plan
2. Plan Existing Building
3. Lower Level
4. Upper Level and Mezzanine
5. Roof Plan
6. Elevations East and South
7. Elevations West
8. Elevations North
9. Sections
10. Outdoor Signs

File Reference: DA/118/2010  
Document Number: D01375716

**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>
AUDA-05 Issue B – Lower Level	AS Architects	14/01/2010
AUDA-06 Issue C – Upper & Mezzanine	AS Architects	3/03/2010
AUDA-07 Issue B – Roof	AS Architects	14/01/2010
AUDA-08 Issue B – Lower Level South	AS Architects	14/01/2010
AUDA-09 Issue C – Lower Level North	AS Architects	3/03/2010
AUDA-10 Issue C – Upper Level	AS Architects	3/03/2010
AUDA-11 Issue C – Upper Level North	AS Architects	3/03/2010
AUDA-12 Issue C – Elevations	AS Architects	3/03/2010
AUDA-13 Issue C – East & South Elevation	AS Architects	3/03/2010
AUDA-14 Issue B – West Elevations	AS Architects	14/01/2010
AUDA-15 Issue B – Elevations Showrm Nth	AS Architects	14/01/2010
AUDA-16 Issue B – Sections A & B	AS Architects	14/01/2010
AUDA-17 Issue B – Sections C & D	AS Architects	14/01/2010
AUDA-18 Issue B –	AS Architects	14/01/2010

Sections E & F		
AUDA-19 Issue B – Sections G & H	AS Architects	14/01/2010
AUDA-20 Issue B – Outdoor Signage	AS Architects	14/01/2010

<i>Document No.</i>	<i>Prepared by</i>	<i>Dated</i>
D01335310 – Statement of Environmental Effects	Ryan Planning	February 2010

## REQUIREMENTS PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

### 2. Building Code of Australia

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

### 3. Fire Safety Upgrade

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

- a. Emergency lighting and illuminated exit signs must be provided throughout in accordance with Part E4.2 & E4.5 of the BCA
- b. Fire Hydrants, Fire Hose Reels & Portable Fire Extinguishers must be provided in accordance with Part E1.3, E1.4 & E1.6 of the BCA

## REQUIREMENTS PRIOR TO THE COMMENCEMENT OF ANY WORKS

### 4. 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.*

## 5. 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

### 6. Waste Management Plan

Appropriate work practices shall be employed to implement the *Waste Management Plan Section One – Demolition Stage and Section Three – Construction Stage* as specified in the Statement of Environmental Effects dated February 2010.

### 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.
- b. Demolition works, where asbestos material is being removed, must be undertaken by a contractor that holds an appropriate licence issued by *WorkCover NSW* in accordance with Chapter 10 of the *Occupational Health and Safety Regulation 2001* and Clause 29 of the *Protection of the Environment Operations (Waste) Regulation 1996*.
- c. On construction sites where buildings contain asbestos material, a standard commercially manufactured sign containing the words 'DANGER ASBESTOS REMOVAL IN PROGRESS' measuring not less than 400mm x 300mm must be erected in a prominent position visible from the street.

### 8. Construction Work Hours

All work on site (including demolition and earth works) must only occur between 7am and 5pm Monday to Saturday.

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

## 9. 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.*

## 10. 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.

### OPERATIONAL CONDITIONS

## 11. Hours of Operation

The hours of operation of the Service Workshop are restricted to those times listed below:

Monday to Friday	7.30 am to 6 pm
Saturday	8 am to 1 pm
Sunday & Public Holidays	No work

## 12. 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.



- c. Vehicles awaiting loading, unloading or servicing must be parked on site and not on adjacent or nearby public roads;
- d. All vehicular entry on to the site and egress from the site must be made in a forward direction.

### **13. Traffic and Road Safety**

A convex safety mirror must be erected on the northern side of Stevens Street opposite the service bay exit, to provide a sight line to/from vehicles west bound on Stevens Street and vehicles leaving the service bay driveway onto Stevens Street.

### **14. 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).

### **15. Motor Vehicle Repairs**

The operation of motor vehicle repairs at the premises must be carried out in accordance with the following requirements:

- a. No motor vehicle or part of a motor vehicle which is in the custody of the person carrying on the motor vehicle repair business is to be left standing on any public road or place.
- b. All work to vehicles must be undertaken within the confines of the building.
- c. The removal and dismantling of all mechanical parts is to be conducted in a roofed, concrete floored area that is graded to a drainage point connected to *Sydney Water's* sewer in accordance with its requirements.

### **16. Storage of Flammable and Combustible Goods**

Flammable and combustible liquids must be stored in accordance with *Australian Standard 1940 – The Storage and Handling of Flammable and Combustible Liquids*. A bund wall must be constructed around all work and liquid storage areas to prevent any spillage entering into the stormwater system. The bunded area must provide a volume equal to 110% of the largest container stored and graded to a blind sump so as to facilitate emptying and cleansing.

### **17. Trade Waste**

Liquid trade waste generated on the site must be discharged in accordance with a trade waste agreement with *Sydney Water* and by a licensed liquid trade waste contractor.

### **18. Maintenance of Wastewater Device**

All wastewater and stormwater treatment devices (including drainage systems, sumps and traps) must be regularly maintained in order to remain effective. All solid and

liquid wastes collected from the device must be disposed of in accordance with the *Protection of the Environment Operations Act 1997*.

### **19. 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.

### **20. Excavated Material**

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

### **21. 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.

**- 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.*

### **Disability Discrimination Act**

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

### **Dial Before You Dig**

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

### **Asbestos Warning**

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

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

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

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

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

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

### **Waste Management**

Council encourages the operation to install an indoor waste/recycling cupboard for the interim storage of a minimum one day's waste/recycling generation with separate containers for general waste and recyclable materials within each kitchen/lunch room.

## **4 REPORTING VARIATIONS TO DEVELOPMENT STANDARDS**

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### **EXECUTIVE SUMMARY**

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

### **PURPOSE**

The purpose of this report is to advise Council of determined development applications involving a SEPP 1 variation to a development standard relating to the period 1 January 2010 to 31 March 2010.

### **BACKGROUND**

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

### **DISCUSSION**

In accordance with the Department's Circular, attached hereto is a list of development applications determined under delegated authority involving a SEPP 1 variation to a development standard for the period 1 January 2010 to 31 March 2010.

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

### **BUDGET**

There are no budget implications.

### **POLICY**

There are no policy implications.

### **CONSULTATION**

There was no consultation in the preparation of this report.

### **TRIPLE BOTTOM LINE SUMMARY**

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

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

**RECOMMENDATION**

THAT Council note the contents of Executive Manager's Report No. PLN26/10.

SCOTT PHILLIPS  
Executive Manager  
Planning Division

**Attachments:**

1. SEPP 1 Return

File Reference: F2004/07599  
Document Number: D01378579

## 5 AMENDMENTS PLANNING PROPOSAL 2009 - REPORT ON SUBMISSIONS

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### EXECUTIVE SUMMARY

In November 2009, Council considered a report identifying a number of planning anomalies to be rectified and amendments to be made to the *Hornsby Shire Local Environmental Plan 1994 (HSLEP)* as part of its annual Amendments Local Environmental Plan (LEP) 2009. Council endorsed a Planning Proposal for public exhibition proposing to rezone lands, address planning anomalies and make minor amendments to the *HSLEP*.

The Planning Proposal was exhibited for community comment in February and March 2010 along with supporting Development Control Plan (DCP) amendments. Ten submissions were received in response to the exhibition. The key issues raised in submissions are addressed in this report. Minor amendments to the Planning Proposal and draft DCP amendments are recommended in response to the issues raised in submissions.

It is recommended that Council adopt the amended Planning Proposal attached to this report and forward it to the Department of Planning (DOP) for gazettal.

### PURPOSE

The purpose of this report is to review submissions received in response to the exhibition of the Annual Amendments 2009 Planning Proposal and associated draft DCP amendments.

### BACKGROUND

At its meeting on 4 November 2009, Council considered Executive Manager's Report No. PLN89/09 concerning Council's annual amendments review. The report presented a Planning Proposal to rezone lands, address planning anomalies and make minor amendments to the *HSLEP*. Council resolved that:

1. *Council endorse progression of the Planning Proposal attached to Executive Manager's Report No. PLN89/09 to:*
  - 1.1 *rezone and permit strata subdivision at property No. 218 Brooklyn Road, Brooklyn;*
  - 1.2 *update the listing of heritage items in accordance with the recommendations of Heritage Review Stage 4 and East Epping Heritage Review; and*
  - 1.3 *implement the recommendations of the Hornsby West Side Conservation Area Review with the exception of the rezoning of the precinct to Residential AS (Low Density - Sensitive Lands).*
2. *Council forward the Planning Proposal to the Minister for Planning seeking "approval" to progress the preparation of the draft LEP in accordance with Section 56(1) of the Environmental and Planning Assessment Act 1979.*

3. *Should the Minister determine under Section 56(2) of the Environmental Planning and Assessment Act, 1979, that the matter may proceed without significant amendment to the Proposal, Council publicly exhibit the Planning Proposal in accordance with the Minister's determination.*
4. *The draft amendments to the Heritage, Dwelling-House, Residential Subdivision, Low Density Multi-Unit Housing, Medium Density Multi-Unit Housing, Medium/High Density Multi-Unit Housing, Dural Village Centre, River Settlements, Rural Lands and Extractive Industries Development Control Plans as outlined in Executive Manager's Report No. PLN89/09, be exhibited for 28 days with the exhibition of the Planning Proposal.*
5. *Following the exhibition, a report be prepared for Council's consideration on submissions received.*

In accordance with Council's resolution, on 1 December 2009, the Planning Proposal was forwarded to the DOP seeking a Gateway Determination by the Minister in accordance with Section 56 of the *Environmental Planning and Assessment (EP&A) Act*.

On 30 December 2009, Council received a Gateway Determination from the DOP, indicating that the Planning Proposal should be exhibited. The Gateway Determination was issued with a condition that proposed heritage items from the *East Epping Heritage Review* be removed from the Planning Proposal. The DOP advised that this matter would be addressed in the context of the *Epping Town Centre Study* currently being progressed by Council. Accordingly, the Planning Proposal was amended to reflect the Gateway Determination.

In accordance with the adopted Consultation Strategy, the Commissioner of the Rural Fire Service was consulted prior to the commencement of the exhibition period. No objections were received. The NSW Rural Fire Service noted that future development on bushfire prone land would need to comply with Section 79BA or Section 91 of the *EP&A Act* and may require a bushfire safety authority as per Section 100B of the *Rural Fires Act 1997*.

The Planning Proposal and associated draft DCP amendments were exhibited for community comment between 16 February and 19 March 2010 at Council's Administration Centre, Council's libraries and on the Council website. Letters were sent to affected property owners, two community groups and relevant State Government agencies. An advertisement was placed in the local newspapers on two occasions. Relevant Council branches were also invited to comment on the Planning Proposal and draft DCP amendments.

## **DISCUSSION**

Ten submissions were received in response to the exhibition. Six submissions are generally supportive, or raise no objection to the Planning Proposal and draft DCP amendments including submissions from Sydney Water and the Roads and Traffic Authority. The key issues raised in submissions are outlined below as they relate to each component of the Planning Proposal.

### **CWA Building and Sandstone Steps, Hornsby Park Pacific Highway, Hornsby**

The Planning Proposal seeks to add the CWA Building and Sandstone Steps within Hornsby Park as a heritage item of local significance to Schedule D (Heritage Items) of the *HSLEP*. The CWA Building and Sandstone Steps are located within Hornsby Park, comprising three separate allotments which run from the Pacific Highway to Rosemead Road.

**Submissions:** Council's Environment Division raises concern with the CWA Building being added as an item of local significance to Schedule D (Heritage Items) of the *HSLEP*. The Environment Division's submission notes that Council is currently progressing two projects (preparation of a park masterplan for Old Mans Valley and the redevelopment of Hornsby Pool) that may potentially impact on the proposed heritage listing. The submission suggests that the listing of the CWA Building as a heritage item should be deferred until current investigations, including development options for the projects, are further progressed.

Representatives from the Environment Division have indicated that there is no objection to the listing of the Sandstone Steps, which are located towards the western end of the park, within a separate Lot and DP to the CWA Building.

**Comment:** Heritage Review Stage 4 recognises that the CWA Building is of local heritage significance. However, the heritage significance of the building should be balanced against the community benefit arising from the projects being progressed by the Environment Division. The submission by the Environment Division indicates that current investigations will involve further consideration of heritage issues. Accordingly, it would be appropriate to defer the listing of the CWA Building as a heritage item until investigations have been completed.

With respect to the Sandstone Steps, further investigation has confirmed that the Sandstone Steps referred to within *Heritage Review Stage 4*, are located at the western end of Hornsby Park on Lot 7017, DP 1052646 and the adjacent unmade road reserve immediately to the south. The CWA Building is located at the eastern entrance to the Park adjacent to Pacific Highway, on Lot 7019, DP 1059310. Accordingly, the listing of the Steps would not impact on the projects being progressed by the Environment Division.

**Resolve:** It is recommended that consideration of heritage listing of the CWA Building be deferred for further consideration following finalization of the Old Mans Valley Park Masterplan and Hornsby Pool Plans. It is recommended that the listing of the Sandstone Steps be amended to reflect the location of the Sandstone Steps on Lot 7017, DP 1052646 and the adjacent unmade road reserve immediately to the south.

### **Property Nos. 3-5 Hannah Street, Beecroft**

The Planning Proposal seeks to add property Nos. 3-5 Hannah Street, Beecroft as a heritage item (Retail Shops) of local significance to Schedule D (Heritage Items) of the *HSLEP*.

**Submissions:** Two submissions from the property owners object to property Nos. 3-5 Hannah Street, Beecroft being added as an item of local significance to Schedule D (Heritage Items) of the *HSLEP*. The submissions comment that the inventory, which forms part of *Heritage Review Stage 4*, contains a number of inaccuracies including the item name, physical description and Statement of Significance. The owners contest the historical importance of the properties and suggest they do not warrant heritage listing.

**Comment:** Council is progressing a *Housing Strategy* that identifies opportunities for additional housing within planned precincts proposed to be rezoned to permit higher density multi-unit housing. Property Nos. 3-5 Hannah Street, Beecroft are within the Beecroft Road, Beecroft precinct and are being considered for possible rezoning to facilitate 5 storey mixed use development as part of the *Strategy*. Council has been advised previously by the DOP that draft LEPs relating to Heritage Conservation Areas and heritage items will not be progressed in areas close to train stations which may assist Council in fulfilling dwelling



target obligations under the *Metropolitan Strategy*. Accordingly, it would be appropriate to defer consideration of the listing of property Nos. 3-5 Hannah Street, Beecroft as a heritage item until Council has finalised the *Housing Strategy*.

**Resolve:** It is recommended that consideration of the heritage listing of property Nos. 3-5 Hannah Street, Beecroft be deferred for further consideration following finalization of Council's *Housing Strategy*.

### **Property No. 33 Wongala Crescent, Beecroft**

The Planning Proposal seeks to add property No. 33 Wongala Crescent, Beecroft as a heritage item (House and Garden) of local significance to Schedule D (Heritage Items) of the *HSLEP*. The inventory which forms part of *Heritage Review Stage 4* states that the significant features of the property include a faux timber archway (evidence of concrete cancer), pond and a radiata pine. The inventory also recommends liaising with owners regarding presentation, structural integrity and sympathetic addition of gates.

**Submissions:** One submission from the property owner objects to property No. 33 Wongala Crescent being added as an item of local significance to Schedule D (Heritage Items) of the *HSLEP*. The submission comments that the inventory which forms part of *Heritage Review Stage 4* contains an incorrect photo, which does not depict the property. The submission states that the significant features of the property, especially the pond, have been compromised by tree root damage.

**Comment:** Council's Heritage Consultant was requested to review the issues raised in the submission. The Heritage Consultant advises that the house is typical of its type but has rustic features such as the verandah and entrance arch that reflect the construction of the house in an era when the area would have been semi rural. The house appears in reasonable condition but confirms that the entrance arch is showing signs of deterioration (unlikely to be concrete cancer) and the side walls are cracking. The Consultant confirms that the radiata pine thought to be causing damage has been removed and that the photograph of the rear garden is incorrect. However, the Consultant advises that, subject to the updating of the inventory sheet, the property merits listing. It is also noted that a local heritage listing cannot require property owners of heritage items to undertake works. Therefore, the management recommendations within the inventory regarding the gate should be removed.

**Resolve:** It is recommended that the heritage listing of property No. 33 Wongala Crescent, Beecroft be progressed, and that the inventory be amended to:

- correct the photograph of the rear garden;
- remove reference to the radiata pine and concrete cancer; and
- delete the management recommendations regarding the gate.

### **Hornsby West Side Conservation Area**

The Planning Proposal seeks to implement the recommendations of the *Hornsby West Side Conservation Area Review* by expanding the residential component of the existing Conservation Area.

**Submissions:** Two submissions support the expansion of the residential component of the existing Conservation Area as recommended by the *Review*. However, one of the submissions objects to the reduction of minimum block size within the Conservation Area from 800m<sup>2</sup> to 600m<sup>2</sup>.

**Comment:** The draft Planning Proposal presented to Council at its meeting on 4 November 2009 included the proposed rezoning of properties within the Heritage Conservation Area to Residential AS (Low Density – Sensitive Lands). The rezoning of the lands was proposed to provide a consistent zoning with lands within the Beecroft Cheltenham Heritage Conservation Area and in recognition of the landscape qualities and larger allotment sizes that characterise the area. A rezoning of the area to Residential AS would increase the minimum allotment size to 600m<sup>2</sup> (excluding any accessway).

Council endorsed the progression of the Planning Proposal to (in part) implement the recommendations of the *Hornsby West Side Conservation Area Review* with the exception of the rezoning of the precinct to Residential AS (Low Density – Sensitive Lands).

The underlying zoning of the land as Residential A (Low Density) is proposed to be retained. Therefore, the minimum allotment size that applies under the current zoning of 500m<sup>2</sup> (excluding any accessway) will also be retained. It is understood that in resolving to delete the change in zoning from the Planning Proposal, Council was of the view that existing controls in the *Heritage DCP* including design, streetscape, siting and landscaping are adequate to ensure new development is sympathetic to the identified heritage values of the area.

**Resolve:** It is recommended that no amendment be made to the Planning Proposal as a result of the submissions concerning the *Hornsby West Side Conservation Area Review* and minimum lot sizes.

#### **Property No. 218 Brooklyn Road, Brooklyn**

At its meeting on 7 October 2009, Council considered Executive Manager's Report No. PLN78/09 evaluated a submission requesting that the *HSLEP* be amended to permit strata subdivision at property No. 218 Brooklyn Road, Brooklyn.

The Report noted that Development Application No. 2482/02 was approved in April 2003 for alterations and additions to an existing multi-unit housing development and the provision of on-site car parking. The Report noted that works including the construction of balconies and external staircase have been carried out. However, the construction of six car park spaces in the south eastern corner of the site (adjacent to William Street) has not been commenced. The approved vehicle parking area is to be constructed as an elevated concrete slab with retaining wall.

Council resolved that amendments to the *HSLEP* to enable strata subdivision and correct a zoning anomaly at property No. 218 Brooklyn Road be incorporated in Council's Annual Amending Planning Proposal 2009. Council also resolved that prior to forwarding the Planning Proposal to the DOP for gazettal, car parking be provided in accordance with Development Consent No. 2482/2002.

In accordance with Council's resolution, the Planning Proposal seeks to amend Clause 22 – Exceptions of the *HSLEP* to permit strata subdivision at No. 218 Brooklyn Road. The Proposal also seeks to rectify a zoning anomaly by rezoning two small areas of Business A (General) zoned land at the western end of the site to Residential A (Low Density) to provide a consistent zoning across the land. On 27 October 2009, the proponent was requested to undertake the necessary actions to ensure the provision of car parking on-site.

**Comment:** On 22 December 2009, Council received a Section 96(1A) application to delete all the approved carparking on the site pursuant to DA/2482/2002. On 25 February 2010, the Section 96(1A) application was amended to delete four of the six approved carparking spaces. The two spaces identified to be retained are able to be provided at close to existing ground level without the need for extensive retaining walls and cantilevered structures unlike the remaining four spaces.

In the assessment of the application, it was noted that a search of Council's files indicates that historically there were only 4 units in the premises. It is therefore appropriate that carparking be provided on the site as part of DA/2482/2002 to cater for the two additional units. The assessment notes that the provision of 2 additional parking spaces satisfies the requirement in the *Brooklyn DCP* that at least one car parking space be provided per additional dwelling. Accordingly, the amendment to the Development consent was approved on 4 March 2010 under delegated authority.

Notwithstanding the above, the Section 96(1A) amendment does not negate the non-compliance with the Development Consent as car parking has still not been provided on-site. Accordingly, it would be appropriate to defer the provisions of the Planning Proposal relating to permitting strata subdivision of the site for consideration as part of a future Planning Proposal when the car parking works have been undertaken.

**Resolve:** It is recommended that the provisions of the Planning Proposal relating to permitting strata subdivision of property No. 218 Brooklyn Road be deferred for consideration as part of a future Planning Proposal when the car parking works have been undertaken.

### **Property Nos. 22-56 Hillmont Road, Thornleigh**

The Planning Proposal seeks to add property Nos. 22-56 Hillmont Avenue, Thornleigh as a heritage item (Trees) of local significance to Schedule D (Heritage Items) of the *HSLEP*. During the exhibition, it was noted that there is a typographical error for the proposed listing of property Nos. 22-56 Hillmont Avenue, Thornleigh. The Planning Proposal should be amended as follows:

<b>Address</b>	<b>Property Description</b>	<b>Item</b>	<b>Significance</b>
22 <del>40-56</del> Hillmont <del>Road</del> Avenue	Lots 25-26 and 30- <del>34</del> 39, DP 28362, Lots A and B, DP 403196, <i>Lots 4-5 and Lot 7, DP 30002, and Lots 61 and 62, DP 1111312</i>	Trees	L

### **STATUTORY CONSIDERATIONS**

Statutory considerations are discussed below in terms of both the Planning Proposal and draft DCP amendments.

#### **Planning Proposal**

The Planning Proposal is being progressed as part of the new "gateway plan-making process". Community consultation forms part of this process and is only complete when Council has considered any submissions made concerning the Planning Proposal.

Under Section 58 of the *EP&A Act*, Council may vary the Planning Proposal based on consideration of submissions and must forward a copy of the revised Planning Proposal to the Minister. The issues identified in submissions are addressed in this report. Minor amendments are recommended to the Planning Proposal as a result of submissions. The amendments are minor in nature and do not warrant the re-exhibition of the Planning Proposal. The amended Planning Proposal addresses relevant Section 117 Directions and State Environmental Planning Policies required to be considered by Council. It is recommended that the amended Planning Proposal be forwarded to the Minister.

### **Draft Development Control Plan Amendments**

Draft DCP amendments which reflect the amendments to the *HSLEP* were exhibited in accordance with Clause 18 of the *Environmental Planning and Assessment Regulations*. No submissions were received in relation to the draft DCP amendments. Minor amendments are recommended to the draft DCP amendments to reflect the changes to the Planning Proposal and do not warrant re-exhibition. The amended DCP amendments are attached and would come into effect following the gazettal of the LEP amendments.

### **CONSULTATION**

On 1 December 2009, Council forwarded the Planning Proposal to the DOP seeking Gateway Determination by the Minister in accordance with Section 56 of the *EP&A Act*. On 31 December 2009, the DOP issued Council with a Gateway Determination to exhibit the Planning Proposal. Council consulted with relevant Government agencies concerning the Planning Proposal. No objections were received from Government agencies.

The Planning Proposal was exhibited for community comment in February and March 2010. Ten submissions have been received and are addressed in this report.

### **TRIPLE BOTTOM LINE SUMMARY**

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

A Triple Bottom Line summary was provided in respect of *Heritage Review Stage 4* in Executive Manager's Report No. PLN32/08, considered by Council on 20 February 2008. A Triple Bottom Line summary was provided in respect of property No. 218 Brooklyn Road, Brooklyn in Executive Manager's Report No. PLN78/09, considered by Council on 7 October 2009. A Triple Bottom Line summary was provided in respect of the *Hornsby West Side Conservation Area Review* in Executive Manager's Report No. PLN89/09, considered by Council on 4 November 2009.

### **CONCLUSION**

Council has identified a number of planning anomalies to be rectified and minor amendments to be made to the *HSLEP* as part of its 2009 annual Amendments Planning Proposal. A Planning Proposal and associated draft DCP amendments to rectify planning anomalies and make amendments to the *HSLEP* has been prepared in consultation with relevant Government agencies and the community.

No objections were received from Government agencies. Ten submissions were received in response to the exhibition of the Planning Proposal and draft DCP amendments. The issues raised in submissions have been addressed in this report.

It is recommended that Council adopt the Planning Proposal and draft DCP amendments subject to the minor amendments identified in this report and forward the Planning Proposal to the DOP for gazettal.

### **RECOMMENDATION**

THAT:

1. Council adopt the amended Planning Proposal attached to Executive Manager's Report No. PLN27/10 to:
  - 1.1 rezone and permit strata subdivision at property No. 218 Brooklyn Road, Brooklyn
  - 1.2 update the listing of heritage items in accordance with the recommendations of *Heritage Review Stage 4*, with the exception of the following items:
    - CWA Building, Hornsby Park Pacific Highway, Hornsby
    - Property Nos. 3-5 Hannah Street, Beecroft;
  - 1.3 implement the recommendations of the *Hornsby West Side Conservation Area Review*.
2. Consideration of the heritage listing of "CWA Building, Hornsby Park Pacific Highway, Hornsby" and "Property Nos. 3-5 Hannah Street, Beecroft" be deferred for further consideration following finalisation of the Old Mans Valley Park Masterplan/Hornsby Pool Plans and Council's *Housing Strategy*, respectively.
3. The provisions of the Planning Proposal relating to permitting strata subdivision of property No. 218 Brooklyn Road be deferred for consideration as part of a future Planning Proposal when the car parking works have been undertaken.
4. The Planning Proposal be forwarded to the Department of Planning for gazettal.
5. Council endorse the amendments to the *Heritage, Dwelling-House, Residential Subdivision, Low, Medium, and Medium/High Density Multi-Unit Housing, Dural Village Centre, River Settlements, Rural Lands and Extractive Industries Development Control Plans* attached to Executive Manager's Report No. PLN27/10.
6. The Heritage Inventory Sheet for property No 33 Wongala Crescent Beecroft be amended to:
  - correct the photograph of the rear garden;
  - remove reference to the radiata pine and concrete cancer; and
  - delete the management recommendations regarding the gate.
7. Submitters be advised of Council's resolution.

JAMES FARRINGTON  
Manager - Town Planning Services  
Planning Division

SCOTT PHILLIPS  
Executive Manager  
Planning Division

**Attachments:**

1. Planning Proposal - Annual Amendments 2009
2. Draft DCP Amendments

File Reference: F2009/00758  
Document Number: D01380448