



the bushland shire

creating a living environment

BUSINESS PAPER

PLANNING MEETING

**Wednesday, 1 September, 2010
at 6.30pm**

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AGENDA AND SUMMARY OF RECOMMENDATIONS

PRESENT

NATIONAL ANTHEM

OPENING PRAYER/S

Rev. Ann Hogan from Hornsby Uniting Church, Hornsby, 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. Speakers are requested to ensure their comments are relevant to the issue at hand and to refrain from making personal comments or criticisms."

APOLOGIES / LEAVE OF ABSENCE

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."

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 4 August, 2010 be confirmed; a copy having been distributed to all Councillors.

PETITIONS

MAYORAL MINUTES

NOTICES OF MOTION**RESCISSION MOTIONS****MATTERS OF URGENCY****ITEMS PASSED BY EXCEPTION / CALL FOR SPEAKERS ON AGENDA ITEMS***Note:*

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

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

Item 1 PLN58/10 DEVELOPMENT APPLICATION - SUBDIVISION OF ONE LOT INTO TWO LOTS - 1 YOORANA PLACE CASTLE HILL

RECOMMENDATION

THAT Council assume the concurrence of the Director-General of the Department of Planning pursuant to State Environmental Planning Policy No. 1 and approve Development Application No. 732/2010 for the subdivision of one lot into two lots at Lot 9905 DP 776087 (No. 1) Yoorana Place Castle Hill subject to the conditions of consent detailed in Schedule 1 of this report.

C WARD DEFERRED**C WARD****Page Number 12**

Item 2 PLN35/10 DEVELOPMENT APPLICATION - SUBDIVISION OF ONE LOT INTO TWO - 39 HANNAH STREET BEECROFT

RECOMMENDATION

THAT Development Application No. 1470/2009 for the subdivision of one lot into two at Lot 9 DP 7484 (No. 39) Hannah Street Beecroft be approved subject to the conditions of consent detailed in Schedule 1 of this report.

Page Number 35**Item 3 **PLN46/10 DEVELOPMENT APPLICATION - ERECTION OF A DWELLING-HOUSE - 2 MAROOTA WAY BEECROFT******RECOMMENDATION**

THAT Development Application No. DA/362/2010 for the erection of a dwelling-house at Lot 3, DP 270639, No. 2 Maroota Way, Beecroft be approved subject to the conditions of consent detailed in Schedule 1 of this report.

Page Number 54**Item 4 **PLN53/10 DEVELOPMENT APPLICATION - ERECTION OF A DWELLING-HOUSE - 5 MAROOTA WAY, BEECROFT******RECOMMENDATION**

THAT Development Application No. DA/567/2010 for the erection of a dwelling-house at Lot 5 DP 270639, No. 5 Maroota Way, Beecroft be approved subject to the conditions of consent detailed in Schedule 1 of this report.

GENERAL BUSINESS**Page Number 70****Item 5 **PLN57/10 HOUSING STRATEGY DEVELOPMENT CONTROL PLAN******RECOMMENDATION**

THAT:

1. The *draft Housing Strategy Development Control Plan* attached to Executive Manager's Report No. PLN57/10 be exhibited.
2. The draft amendments to the Medium Density Multi-Unit Housing, Medium/High Density Multi-Unit Housing, High Density Multi-Unit Housing, Business Lands, and Berowra Cowan Development Control Plans be exhibited.
3. Following the exhibition, a report on submissions be presented to Council.

Page Number 79**Item 6 **PLN61/10 POTENTIAL REZONING OF INDUSTRIAL LAND IN KOOKABURRA ROAD HORNSBY HEIGHTS******RECOMMENDATION**

THAT Council not further investigate the rezoning of properties Nos. 2A-14 Kookaburra Road, Hornsby Heights from Industrial B (Light) to a residential zoning for the following reasons:

1. The rezoning of productive industrial lands for residential purposes is inconsistent with State Government policies and the recommendations of the *Ku-ring-gai and Hornsby Subregional Employment Study* which aim to protect employment lands from redevelopment for other purposes to ensure the retention of employment opportunities in the Shire.
2. Significant residential incentives would need to be provided to facilitate the conversion of existing industrial uses for residential purposes which would result in development that is out of character with surrounding development and higher density housing in an out of centre location.

QUESTIONS OF WHICH NOTICE HAS BEEN GIVEN

SUPPLEMENTARY AGENDA

QUESTIONS WITHOUT NOTICE

**1 DEVELOPMENT APPLICATION - SUBDIVISION OF ONE LOT INTO TWO LOTS
1 YOORANA PLACE CASTLE HILL**

Development Application No:	DA/732/2010
Description of Proposal:	Subdivision of one lot into two lots
Property Description:	Lot 9905 DP 776087 (No. 1) Yoorana Place Castle Hill
Applicant:	Projectvision International Pty Ltd
Owner:	Projectvision International Pty Limited
Statutory Provisions:	Hornsby Shire Local Environmental Plan 1994 Residential A (Low Density)
Estimated Value:	Nil
Ward:	B

RECOMMENDATION

THAT Council assume the concurrence of the Director-General of the Department of Planning pursuant to State Environmental Planning Policy No. 1 and approve Development Application No. 732/2010 for the subdivision of one lot into two lots at Lot 9905 DP 776087 (No. 1) Yoorana Place Castle Hill subject to the conditions of consent detailed in Schedule 1 of this report.

EXECUTIVE SUMMARY

1. The application proposes the Torrens title subdivision of one lot into two lots to create separate allotments for the two existing detached dwellings on the property.
2. The proposal does not comply with the minimum allotment size for the Residential A zone in the Hornsby Shire Local Environmental Plan 1994. However, pursuant to SEPP 1, the proposed variation to the development standard is supported as the development does not alter the existing physical conditions or relationship between the two existing dwellings.
3. No submissions have been received in respect of the application.
4. It is recommended that the application be approved.

HISTORY OF THE SITE

On 5 October 2005 Council approved Development Application No. 2303/2004 for a multi unit development comprising alterations to the existing dwelling and addition of a new dwelling on the existing allotment.

THE SITE

The allotment has an area of 993 sqm, is located on the corner of Yoorana Place and David Road, and experiences a 13% fall to the south western corner of the site.

The site has a 23m frontage to David Road and a 33m frontage to Yoorana Place. The site accommodates a two storey dwelling house located on the southern side of the site and accessed via a driveway from David Road. A second two storey dwelling approved under DA/2303/2004 has been constructed on the northern portion of the site with access via Yoorana Place.

The allotment is located in close proximity to New Line Road. The surrounding land uses comprise single and two storey dwelling houses. A single storey dwelling house is located on the northern side of the allotment. The allotment to the rear (north-west) of the site comprises a two storey dwelling house.

THE PROPOSAL

The application proposes the Torrens title subdivision of one lot into two lots to create separate allotments for the two existing detached dwellings on the property. The northern lot (No. 1A) has an area of 426.8sqm while the southern lot (No. 1) has an area of 566.72sqm.

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 is consistent with the draft Strategy.

2. STATUTORY CONTROLS

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

2.1 Hornsby Shire Local Environmental Plan 1994

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

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

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

Clause 14 of the HSLEP prescribes that the minimum allotment size of development within the Residential A zone is 500sqm. The application does not comply with this development standard as proposed Lot 1A is 426.8sqm. The applicant addresses this requirement by submitting an objection to the development standard pursuant to State Environmental Planning Policy No. 1 as discussed further at Section 2.2 of this report.

Clause 15 of HSLEP prescribes that the maximum floor space ratio (FSR) of development within the Residential A zone is 0.4:1. The applicant addresses this requirement by demonstrating that proposed Lot 1A and Lot A would have a FSR of 0.31:1 and 0.34:1 respectively.

2.2 State Environmental Planning Policy No. 1 – Development Standards

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

The applicant has submitted an objection to the requirement for compliance with the minimum 500 sqm lot size development standard pursuant to Clause 14 of the HSLEP.

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

1. *the objectives of the standard are achieved notwithstanding non-compliance with the standards;*
2. *the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*

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

The applicant's grounds for objection under SEPP No. 1 rely on point 1 above in respect to this application, as summarised in the following:

- *The development controls and the associated objectives are expressed in terms of the environmental capacity of the land. This has been determined to be 500sqm/ dwelling. The subject site represents 99.34% of the land area necessary for 2 dwellings at this environmental capacity. This miniscule departure from this density standard is of no significance relative to the standard and its objective.*
- *This non-compliance is minor in both aggregate terms and in relation to each proposed allotment. It would be possible to contrive a subdivision in which both lots were close to the minimum area. However this would negate the logic of the natural line of division established by the existing retaining wall.*
- *The proposal is consistent with the objectives of the standard.*
- *There is no physical change to existing conditions or relationships between dwellings. The 2 dwellings are not linked by any architectural or siting factors.*
- *The result is incapable of being distinguished from a fully complying development.*
- *Given the inconsequential departure from the density aspect of the standard, the fact the 2 dwellings exist, and the fact that the proposed line of subdivision is natural and logical, variation of the standard in the circumstances would be consistent with the objects of the Act and SEPP No.1.*
- *Failure to vary the standard in the circumstances would not change anything from a planning perspective, but would unnecessarily and unreasonably constrain the reasonable economic use of the land.*

For the reasons detailed in this report, it is considered that strict compliance with the minimum allotment size standard is unnecessary and unreasonable, and that the SEPP No. 1 objection is well founded and is supported.

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. The following table sets out the proposal's compliance with some of the prescriptive standards of the Plan.

Residential Subdivision Development Control Plan			
Control	Proposal	Requirement	Compliance
Density (Lot size) Lot 1 Lot 1A	566.72 sqm 426.8 sqm	500sqm	No
FSR Lot 1 Lot 1A	0.31:1 0.34:1	0.4:1	Yes
Site Coverage Lot 1 Lot 1A	25% 21%	40%	Yes
Private Open Space Lot 1 Lot 1A	60+60 sqm 190 sqm	120sqm 100sqm	Yes Yes
Landscaping Lot 1 Lot 1A	62% 68%	45%	Yes Yes
Setbacks <u>Lot 1</u> Primary Rd (David) Secondary Rd (Yoorana) Side (west) Rear (north)	No change No change 5.7m 1.0m	9m 3m 1m 3m	N/A N/A Yes No*
<u>Lot 1A</u> Front/road Side (north) Side (south) Rear (west)	No change No change 3.5m No change	9m 1m 1m 3m	N/A N/A Yes N/A
Carparking Lot 1 Lot 1A	2 spaces 2 spaces	2 spaces 2 spaces	No change No change

As detailed in the above table, the proposed development does not comply with a number of prescriptive standards within Council's Residential 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 (Lot Size)

The *'density'* element of the DCP requires development to promote a low density residential environment and provide for lots of sufficient size to satisfy user requirements.

Proposed Lot No. 1A does not comply with the minimum site area of 500sqm prescribed within Clause 14 of the Hornsby Shire LEP. As previously discussed at Section 2.2 of the report, a variation to the minimum lot size is supported as the development does not alter the existing physical conditions or relationship between the two existing dwellings. The proposed subdivision boundary could be amended to achieve a less substantial numerical variation by including part of the private open space area to the west of the dwelling in Lot 1 within proposed Lot 1A. This would result in a minimum allotment area variation for each allotment of 496.76sqm. However, insisting on such a modification would achieve a less desirable outcome given the location and configuration of existing private open space areas.

The proposed subdivision pattern does not alter the existing built form that is sympathetic to the established character of the area. It is considered that compliance with the development standard is unreasonable and unnecessary in the circumstances of the case.

2.3.2 Setbacks

The *'setback'* element of the DCP requires the rear setback of existing dwellings to be a minimum of 3m, or 5m where the private open space is located at the rear of the existing dwelling house.

The rear (northern) boundary setback of the dwelling on No. 1 Yoorana Place is 1 metre, which does not comply with the prescriptive controls in the DCP. The private open space for the dwelling is located on the eastern (side) and the southern (front) property boundary, which was approved as part of the assessment of DA/2303/2004. The proposed development does not change the existing impact in respect of the separation of buildings.

The consent conditions recommend that the site boundary be relocated 0.775m further to the north to coincide with an existing retaining wall which is a logical location for the allotment boundary. The modified lot areas would be 585sqm and 408sqm for Nos. 1 and 1A respectively. The reduced allotment area for No. 1A Yoorana Place still complies with the prescriptive DCP controls for residential subdivision discussed above, including FSR, site coverage, open space and landscaping.

2.4 Section 94 Contributions

The previous application DA/2303/2004 included a consent condition requiring Section 94 Contributions for the additional dwelling. Accordingly, as the impact of development on community services and infrastructure does not change, it is not appropriate to levy additional contributions as part of this subdivision application.

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

There is no impact on the natural environment as a result of the proposed development.

3.2 Built Environment

There is no impact on the built environment as a result of the proposed development.

3.3 Social Impacts

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

3.4 Economic Impacts

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

4. SITE SUITABILITY

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

The site does not have any natural or built site constraints such as flooding or bushfire risk. The proposed development is consistent with the zone objectives for low density housing.

5. PUBLIC PARTICIPATION


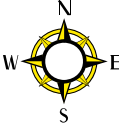
Section 79C(1)(d) of the Act requires Council to consider “*any submissions made in accordance with this Act*”.

5.1 Community Consultation

The proposed development was placed on public exhibition and was notified to adjoining and nearby landowners between 28 June 2010 and 27 July 2010 in accordance with Council’s Notification and Exhibition Development Control Plan. During this period, Council received no submissions. The map below illustrates the location of those nearby landowners who were notified of the development and are in close proximity to the development site.



NOTIFICATION PLAN

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

No referrals to external public agencies were required.

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 development would be in the public interest.

CONCLUSION

The application proposes the Torrens title subdivision of one lot into two lots to create separate allotments for the two existing detached dwellings on the property.

The proposal is consistent with the aims and objectives contained within the relevant State and Regional Environmental Planning Policies, the Hornsby Shire Local Environmental Plan 1994, and the Development Control Plans that are applicable to the site. The proposal does not comply with the prescriptive density control for the Residential A zone in the Hornsby Shire Local Environmental Plan 1994. However, pursuant to SEPP 1, the proposed variation to the development standard is supported.

The development is unlikely to result in any significant impacts upon the natural or built environments, or have any negative social or economic impacts. Given this, and the recommended conditions, it is recommended that the application be approved.

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

ROD PICKLES
Manager - Assessment Team 2
Planning Division

PAUL DAVID
Manager - Subdivision & Development
Engineering Services
Planning Division

SCOTT PHILLIPS
Executive Manager
Planning Division

Attachments:

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

File Reference: DA/732/2010
Document Number: D01463750

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>
Dwg SY.02 Site Plan	Projectvision	10.6.10

2. Amendment of Plans

The approved plans are to be amended as follows:

- a. The common boundary between No. 1 and No. 1A Yoorana Place is to be relocated 0.775m further to the north, in proximity of the existing retaining wall. The modified lot areas would be approximately 585sqm and 408sqm for Nos. 1 and No. 1A Yoorana Place respectively.

REQUIREMENTS PRIOR TO THE ISSUE OF A SUBDIVISION CERTIFICATE

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

3. Sydney Water – s73 Certificate

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

4. Boundary Fencing

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

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

- 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.

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.

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.

**2 DEVELOPMENT APPLICATION - SUBDIVISION OF ONE LOT INTO TWO
39 HANNAH STREET BEECROFT**

Development Application No:	DA/1470/2009
Description of Proposal:	Subdivision of one lot into two.
Property Description:	Lot 9 DP 7484 (No. 39) Hannah Street, Beecroft
Applicant:	P S Graham & Associates
Owner:	Mr C G Cheng
Statutory Provisions:	Hornsby Shire Local Environmental Plan 1994 Residential AS (Low Density – Sensitive Lands)
Estimated Value:	N/A
Ward:	C

RECOMMENDATION

THAT Development Application No. 1470/2009 for the subdivision of one lot into two at Lot 9 DP 7484 (No. 39) Hannah Street Beecroft be approved subject to the conditions of consent detailed in Schedule 1 of this report.

EXECUTIVE SUMMARY

1. The application proposes the subdivision of one lot into two lots.
2. The proposal generally complies with the Hornsby Shire Local Environmental Plan and the Residential Subdivision Development Control Plan.
3. The application proposes the removal of a significant group of trees identified as Blue Gum High Forest. The proposed tree removal is the subject of an offer to enter into a Planning Agreement to offset the loss of Blue Gum High Forest in accordance with Council's Green Offset Code.
4. Three submissions were received to the application.
5. It is recommended that the application be approved.

THE SITE

The site has an area of 1,693.5m², is of dimensions 19.8m x 85.4m and is located on the southern side of Hannah Street. The site has a gradual fall from the frontage and falls more steeply over the rear half of the site. The site contains an existing single storey brick and tile dwelling, with an elevated deck and lower ground floor at the rear. Large trees and remnant bushland identified as Sydney Blue Gum High Forest feature at the rear half of the site.

The area is characterised by low density residential development with more recent battleaxe subdivisions and larger houses. The eastern and western side boundaries of the site adjoin existing battleaxe lots with two storey dwelling houses.

A piped watercourse within a drainage easement crosses the south east corner of the site. The watercourse forms a tributary of Devlins Creek. The local topography is undulating with steeper sections.

THE PROPOSAL

The proposal is for the subdivision of one lot into two. The existing dwelling is proposed to be retained.

Proposed lot 1 has an area of 703m² and a frontage of 15.81m to Hannah Street. The lot includes the existing dwelling. The lot has right of carriageway over the access handle for proposed lot 2 to enable access to two proposed car parking spaces at the rear of the existing dwelling. The lot has an average fall of 9% to the rear boundary.

Proposed lot 2 is a battleaxe lot and has an area of 817.4m², excluding the access handle. The lot has an average fall of 17% to the rear boundary. The lot includes approximately 50 trees the majority of which are identified as Sydney Blue Gum High Forest species. Trees Nos. 18, 21, 34, 35, 42, 44, 45, 48, 49, 53, 54, 56, 58, 59 and 61 are identified as significant trees. The application proposes the removal of 1 significant tree (No. 21) and a Planning Agreement to offset the loss of 400m² of Blue Gum High Forest.

ASSESSMENT

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

1. STRATEGIC CONTEXT

1.1 Metropolitan Strategy – (Draft) North Subregional Strategy

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

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

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

The proposed development would be consistent with the draft Strategy by providing an additional allotment and would improve housing 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 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 ‘subdivision’ under the HSLEP and is permissible in the zone with Council’s consent.

Clause 14 of the HSLEP prescribes a minimum area of 600m² for an allotment within the Residential AS zone. The proposed subdivision complies with this requirement.

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 proposal complies with this requirement.

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 a heritage item. The application includes a heritage statement.

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 Threatened Species Conservation Act 1995

The lower half of the site includes Blue Gum High Forest identified as a critically endangered ecological community under Schedule 1A of the Act.

The Beecroft area also provides habitat for Gang Gang Cockatoos listed as an endangered population under Schedule 1 of the Act.

The applicant submitted a Flora and Fauna Report prepared by ecologist Dr Stephen Ambrose, who carried out an assessment of the site pursuant to Clause 5A of the Environmental Planning and Assessment Act, 1979. The report determined the proposal would not be likely to have a significant effect on the status of Blue Gum High Forest or the life cycle of Gang Gang Cockatoos (an assessment of the environmental impact of the development is held in section 3.1 of this report).

2.4 Green Offset Code

The application includes a proposed Planning Agreement to offset the loss of Blue Gum High Forest on the site.

The Code was adopted by Council 17 March 2010. The objective of the Code is to protect significant vegetation, to ameliorate negative environmental impact of development and provide for environmental enhancement and restoration.

The Code applies to development that would impact on native vegetation and requires consideration of the following Principles:

- *The Principle of Avoid, Minimise and Mitigate.*
- *The Precautionary Principle.*
- *The Principle of Net Gain.*
- *The Principle of Avoiding the Effects of Cumulative Impacts.*

The Code provides for offset actions to protect, enhance, manage and create habitat on receiving land that is ecologically suitable and appropriate.

2.5 Section 93F Environmental Planning and Assessment Act, 1979

The application includes a proposed Planning Agreement submitted pursuant to Section 93F of the Act. Council has in place a *Policy on Planning Agreements* which embodies the legislative criteria and sets the framework governing the use of Planning Agreements within Council's area. The Policy includes the following 'acceptability test' of a proper planning purpose to ensure that Planning Agreements:

- *Are directed towards proper of legitimate planning purposes, ordinarily ascertainable from the statutory planning controls and other adopted planning policies applying to development.*

- *Provide for public benefits that bear a relationship to development that are not wholly unrelated to the development.*
- *Produce outcomes that meet the general values and expectations of the public and protect the overall public interest.*
- *Provide for a reasonable means of achieving the relevant purposes and outcomes and securing the benefits.*
- *Protect the community against harm.*

The proposed Planning Agreement is to offset the loss of trees that form Blue Gum High Forest by payment of a monetary contribution for the restoration of an area of Blue Gum High Forest on land owned by Council. The Policy provides for bushland regeneration works as an appropriate planning benefit under a Planning Agreement.

A copy of the proposed Planning Agreement forms are attachment to this report.

The applicant initially proposed to offset within Fearnley Park, Beecroft. However a more suitable receiving site has been determined at Ray Park, Carlingford (refer to discussion in Section 3.1).

Section 93G of the Act provides that a planning agreement cannot be entered into unless a copy of the proposed planning agreement has been available for inspection by the public for 28 days. Should Council approve the application, a condition is recommended for the applicant to enter into a Planning Agreement, prior to the issue of a Construction Certificate.

2.6 Residential Subdivision Development Control Plan

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

Residential Subdivision Development Control Plan			
Control	Proposal	Requirement	Compliance
Lot size	Lot 1 – 703m ² Lot 2 – 817.4m ²	Lot 1 - 600m ² Lot 2 – 702m ²	Yes
Floor space ratio	Lot 1 – 0.32:1	0.4:1	Yes
Site coverage	Lot 1 – 32%	40%	Yes
Car parking	Lot 1 – 2 spaces	Lot 1 – 2 spaces	Yes
Setbacks	Lot 1 – East side 0.5m - Rear 11.5m	1m 3m	No Yes
Private open space	Lot 1 – 188m ²	120m ²	Yes

Accessway	4m	4m	Yes
Building envelope	200m ² min dimension 2m	200m ² min dimension 10m	No

As detailed in the above table, the proposed development generally complies with the prescriptive standards within Subdivision DCP other than the non-compliance with the prescriptive requirement for building envelope and setbacks. Below is a discussion of the non-compliance, as well as a brief discussion on compliance with relevant performance standards.

2.6.1 Density

The proposed lots comply with the lot area requirement for a larger lot size on steeper sites.

2.6.2 Lot Layout and Design

Proposed lot 1 is of satisfactory area and dimensions to accommodate the existing dwelling house. The dwelling includes an elevated deck at the southern elevation which would detract from privacy of residents of proposed lot 2. A condition is recommended for installation of a privacy screen on the deck.

Proposed lot 2 occupies a south facing slope and includes 68 trees of which 17 trees are identified as significant trees. The proposed indicative building envelope is designed to retain significant trees Nos. 18 and 34. The application includes floor plans for a future two storey dwelling within a 200m² building envelope and having a total floor area of 255m². The indicative building envelope does not comply with the prescriptive measure for a building envelope with a minimum dimension of 10m. It is considered the non-compliance with the prescriptive measure would not warrant refusal of the application.

The submitted floor plan does not comply with Council's criteria for solar access to living areas. Notwithstanding, it is considered a two storey dwelling house could be designed generally within the proposed indicative building envelope, retain the significant trees Nos. 18 and 21 and comply with Council's design criteria for residential amenity. Consideration for a two storey development would be acceptable with regard to adjoining two storey dwellings and the north-south orientation of the site.

Refer also to discussion in 2.6.4 and 2.6.5.

2.6.3 Setbacks

The existing dwelling on proposed lot 1 has a 0.5m boundary setback. The proposed setback does not comply with the Subdivision DCP requirement for a 1m boundary setback to the proposed access handle. The non-compliance is considered acceptable as the 4m wide accessway would meet the deemed to satisfy criteria of the Building Code of Australia in respect to building setbacks from boundaries.

2.6.4 Solar Access

The existing dwelling on proposed lot 1 is acceptable in respect to solar access.

Proposed lot 1 occupies a south facing slope and is disadvantaged in respect to solar access. The proposed lot however is relatively large. It is considered solar access to living areas of a future dwelling could be achieved without adversely impacting on privacy and solar access of adjoining residents, subject to appropriate design.

2.6.5 Private Open Space

The existing dwelling on proposed lot 1 includes an elevated 60m² rear deck and open space area of 128m². The amenity of the private open space at the rear of the dwelling is diminished by the two proposed car parking spaces. There is however adequate area for open space and car parking given the rear deck area.

Proposed lot 2 includes a large area of private open space located at the rear. The area however is subject to restriction to retain Blue Gum High Forest limiting use for active recreation. The proposed area also has limited access to sunlight due to the south facing slope and the existing trees to be retained. Given the relatively large lot area, design for private open space with access to sunlight is considered to be a matter to be addressed in application for a future dwelling house.

2.6.6 Accessway Design

The proposed accessway of lot 2 is 4m wide and is subject to a right of carriageway for proposed Lot 1 to access the car parking spaces located at the rear of the existing dwelling. The proposed access and car parking arrangement complies with accessway design criteria and sufficient space is available for any future garage/car port.

The proposed accessway is elevated 1.3m above natural ground level at the southern end. Adequate space is available for screening of the accessway from neighbouring residents. The adjoining dwelling is at a lower level in relation to the site. The existing lapped and capped timber fencing along the eastern boundary would adequately screen the proposed accessway. Conditions are recommended for the accessway to be landscaped and for the driveway to be coloured concrete or stencilled.

Subject to recommended conditions the proposal complies with the Residential Subdivision DCP accessway design element objective.

2.6.7 Landscaping

Future residential development of proposed Lot 2, would involve the removal of Trees Nos 15-17, 19-33 and potentially Trees Nos. 36 - 39 that would equate to an area of 400m² of Blue Gum High Forest.

The removal of trees within a 400m² area is considered acceptable for future residential development, subject to the applicant entering into a Planning Agreement for the regeneration of Blue Gum High Forest and the retention of the significant trees on the site comprising trees Nos. 18, 34, 35, 42, 44, 45, 48, 49, 53, 54, 56, 58, 59 and 61.

Significant Tree No. 21 would not be able to be retained and replacement tree planting on-site is recommended.

The proposed development is in non-compliance with the landscaping element objective to preserve significant groups of trees, however, with respect to the proposed Planning Agreement to offset the loss of trees and the recommended Restricted Development Area

over the rear of the site, the non-compliance with the element objective would not warrant refusal of the application.

2.6.8 Drainage Control

The site has access to an existing stormwater drainage easement over the south east corner of the lot. The existing system is adequate for the proposed subdivision. The proposed stormwater drainage is along the eastern side boundary. Appropriate conditions are recommended to protect existing trees along the drainage line.

A stormwater drainage detention system is recommended for the additional allotment to minimise impacts on downstream waterways.

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 applicant submitted a Flora and Fauna Assessment for the proposed subdivision which included a 7 part assessment of significance for Blue Gum High Forest (BGHF) and the endangered population of Gang-Gang Cockatoos and other threatened species that may occur on the site. The report determined the proposal would not have a significant impact on the status of Blue Gum High Forest or the life cycle of Gang Gang Cockatoos.

The subject site forms an isolated pocket of Blue Gum High Forest surrounded by existing dwellings. The proposed offset within Ray Park embellishes an existing area of Blue Gum High Forest and provides for the restoration and enhancement of the ecological community within an existing reserve. The proposed offset is considered a good result in maintaining viable areas of Blue Gum High Forest given the 7 part test assessment determined the loss of the existing trees would not significantly impact on the critically endangered ecological community.

The report also included a proposal to compensate for the loss of trees on the site as follows:

The following trees are likely to require removal for the proposed development: nine Sydney Blue Gums (Trees Nos. 17, 18, 20, 21, 22, 24, 26, 31 & 32), one Blackbutt (Tree No. 28), one Sweet Pittosporum (Tree No 19), four Illawarra Flame Trees (Tree Nos. 16, 25, 29 & 30), one Firewheel Tree (Tree No. 23), one Weeping Paperbark (Tree No. 27) and one Jacaranda (Tree No. 33).

Therefore, eleven BGHF trees (nine Sydney Blue Gums, one Blackbutt and one Sweet Pittosporum) would be removed from the subject site as part of the development. It is proposed to compensate for the loss of these trees by providing Hornsby Shire Council funds for the purchase and planting of 44 BGHF trees (36 Sydney Blue Gums, four Blackbutts and four sweet Pittosporums) in Council managed land.

Council's *Green Offset Code* has the following formula for proposing an offset in this location:

1. *The site is considered an "Urban Remnant" of Blue Gum High Forest (BGHF) and under the code can be determined on a case by case basis. Council would consider a multiplier of 5:1 for offsetting on public land as reasonable in this case. This is based on a recent Land and Environment court case, Black vs Kuring-gai Council where the NSW Department of Environment, Climate Change and Water (DECCW) recommended this multiplier for restoration and enhancement works in a BGHF public reserve (area already conserved). The Court agreed and a lump sum amount for restoration and enhancement was calculated on the basis of the number of hours required by a bush regenerator at \$37 per hour to restore the calculated offset area in a public reserve.*
2. *The loss of BGHF on the site should be calculated by determining how many square metres (m2) will be removed for the development; building envelope, access and services and cleared private open space. The accepted 'enhancement' works cost formula within the code is quoted at \$15,000 per hectare per annum for a period of three years. The accepted 'creation' works cost formula is 30,000 per hectare for a period of five years.*

The proposed subdivision results in the loss of 400 m2 of BGHF taking into account a normal dwelling constructed on the newly created allotment.

400 x 5 = 2000 m2 (.2ha) to be recreated (including the planting of trees to replace lost canopy), restored, and enhanced on public land.

As the receiving site for this is to be public land, Council can nominate a site where revegetation and enhancement works are needed. After consultation with Bushland Operations staff, a BGHF site in Ray Park, Carlingford has been determined as the preferred suitable site for a proposed offset. The area to be recreated where revegetation (including the replacement of canopy trees) would occur is approximately 500 m2 and the adjoining area to receive weeding and bush regeneration (1500m2) could make up the additional offset area to the required 2000m2. Attached is a map of the proposed offset area

Offset formula:

0.158 ha restored and enhanced @ \$15,000 per ha per annum for 3 years = \$7,110.

0.042 ha to be revegetated @ \$30,000 per ha per annum for 3 years (to be consistent with the restoration component in this case) = \$3,780.

Project management fee for offset on public land can be costed at 5% of the overall cost of the project or \$545 in this case.

Total cost of the proposed offset: \$11,435

The area of BGHF at the rear of the site is recommended to be retained including significant Trees Nos. 42, 44, 45, 48, 49, 53, 54, 56, 58, 59 and 61 within an area 13m x 19.81m and

subject to a Restriction As To User on title to the land. The area is also to provide for on-site replacement tree planting.

The applicant has made a formal offer to enter into a Planning Agreement to offset the loss of Blue Gum High Forest. The offer however is for replacement of an area of 120m² which is considered disproportionate to the area proposed for residential development on Lot 2. A condition is recommended for the applicant to enter into a Planning Agreement for replacement of 400m² of BGHF as calculated above. The Planning Agreement to be prepared in accordance with Section 93F of the Act and Council's *Policy on Planning Agreements*.

3.2 Built Environment

The proposal retains the existing dwelling and vehicular crossing and would not detract from the existing streetscape.

The traffic generated by one additional lot would not impact on the efficiency of the local road network.

3.3 Social Impacts

The proposal 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 lower half of the site includes Blue Gum High Forest, a critically endangered ecological community under the Threatened Species Conservation Act 1995. Subject to the loss of the BGHF area being offset in accordance with Council's *Green Offset Code* and the protection of the residual BGHF, the site is suitable for the proposed development.

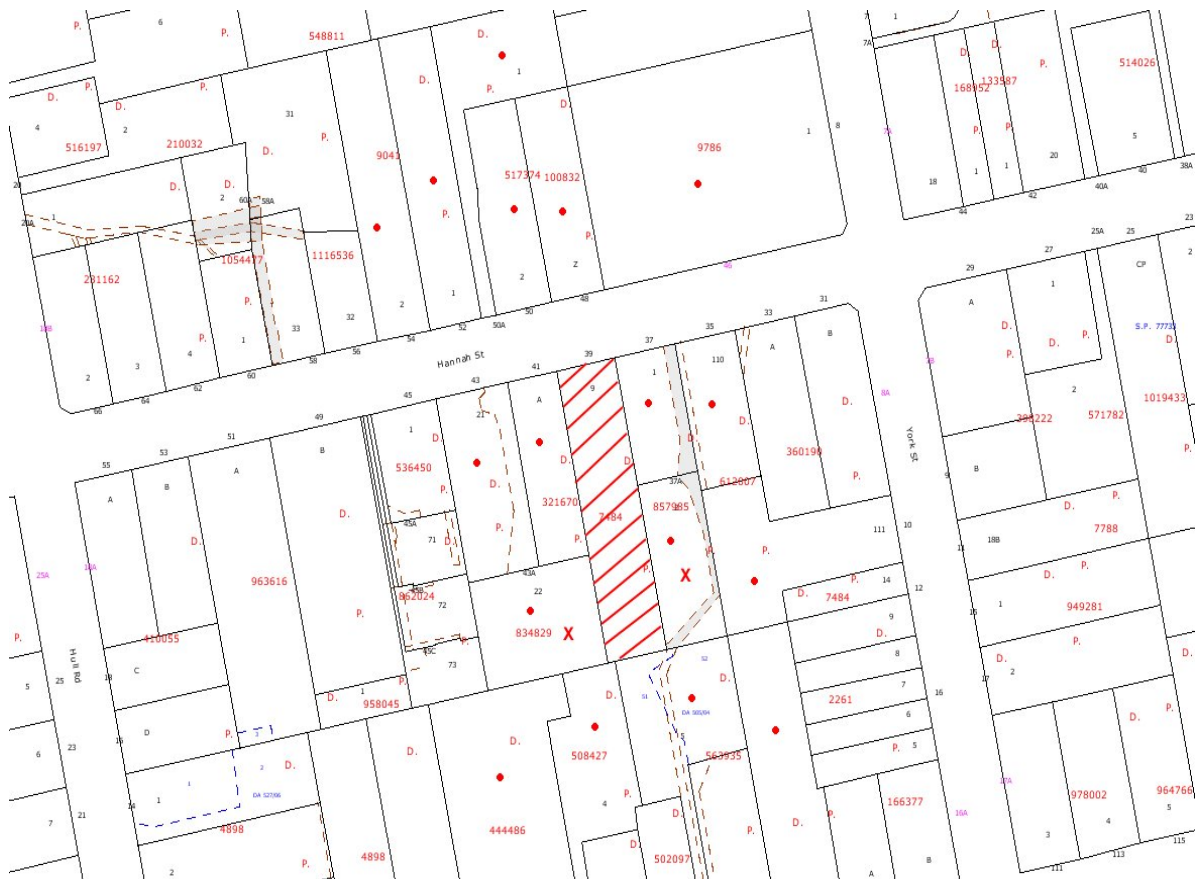
The site is not within a bushfire prone area.

5. PUBLIC PARTICIPATION


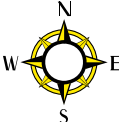
Section 79C(1)(d) of the Act requires Council to consider "*any submissions made in accordance with this Act*".

5.1 Community Consultation

The proposed development was placed on public exhibition and was notified to adjoining and nearby landowners between 2 December 2009 and 16 January 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"> • PROPERTIES NOTIFIED 	X SUBMISSIONS RECEIVED	 PROPERTY SUBJECT OF DEVELOPMENT	
1 SUBMISSIONS RECEIVED OUT OF MAP RANGE			

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

- Unacceptable impact on environmentally significant site;
- Unacceptable loss of visual amenity, landscape quality and habitat;
- Adverse impact on significant trees;
- Loss of trees identified under Threatened Species Conservation Act;
- Adverse amenity impact from turning area operation;
- Limited private open space for existing dwelling.

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

5.2 Public Agencies

Notification of public agencies was not a statutory requirement for the proposed development.

6. THE PUBLIC INTEREST

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

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

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

CONCLUSION

Consent is sought for subdivision of one lot into two. The site is relatively large and includes trees identified as Blue Gum High Forest over the lower half of the site.

The proposed subdivision involves removal of trees to provide for a future dwelling house and is subject to a proposed Planning Agreement to offset the loss of Blue Gum High Forest in accordance with Council’s *Green Offset Code*. The proposed Planning Agreement is considered acceptable subject to the offset area within Ray Park, Carlingford being increased to 2,000m². Conditions are recommended to protect remaining significant trees on the site and to conserve a residual area of Blue Gum High Forest.

The proposal retains the existing dwelling which includes an elevated rear terrace. A condition for screening the terrace is recommended for privacy of existing and future residents. The proposed accessway over the existing driveway is acceptable subject to conditions for provision for car parking for the existing dwelling and screening of the accessway turning head to minimise amenity impact for neighbouring residents.

The proposed subdivision complies with the Residential Subdivision Development Control Plan in respect to density, setbacks, private open space, drainage control and accessway design. The proposed non-compliance with the landscaping element objective to retain a significant group of trees is acceptable subject the applicant entering into a Planning Agreement to offset the loss of the trees and would not warrant refusal of the application.

The concerns raised in public submissions are considered to be addressed by the recommended conditions.

The application is recommended for approval.

ROD PICKLES
Manager - Assessment Team 2
Planning Division

PAUL DAVID
Manager - Subdivision & Development
Engineering Services
Planning Division

SCOTT PHILLIPS
Executive Manager
Planning Division

Attachments:

1. Locality Plan
2. Subdivision Plan
3. Driveway Plan
4. Concept Dwelling Plan
5. Tree Schedule Plans
6. Planning Agreement
7. Ray Park Offset Area

File Reference: DA/1470/2009
Document Number: D01414620

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. 14748 A	P S Graham & Associates	05-11-09

<i>Document No.</i>	<i>Prepared by</i>	<i>Dated</i>
D01461356 – Voluntary Planning Agreement for provision of offsets for Blue Gum High Forest	Hunt & Hunt	Undated
D01418106 – Arboricultural Impact Assessment Report	Mark Hartley	11 March 2010

2. Removal of Existing Trees

This development consent only permits the removal of trees numbered 11, 12, 13, 15, 16, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32 and 33 as identified on Plan No. S 14748A prepared by P S Graham & Associates dated 05-11-09. The removal of any other trees requires separate approval under Council's Tree Preservation Order.

REQUIREMENTS PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE**3. Voluntary Planning Agreement**

Pursuant to section 93F of the Environmental Planning and Assessment Act 1979, the applicant must prepare and enter into a Voluntary Planning Agreement (VPA) with

Hornsby Shire Council for the offsetting of the loss of Blue Gum High Forest under Council's Green Offset Code (2007).

The terms of the VPA must include but not be limited to the following:

- a. The Applicant agrees to pay Council a monetary contribution of \$11,435 towards the replacement of 400m² of Blue Gum High Forest lost from the site as result of the development.
- b. Hornsby Shire Council agrees to provide an area of 2,000m² within Ray Park, Carlingford being Lot 44 DP 210615, for revegetation, restoration and enhancement of Blue Gum High Forest.
- c. In addition to the above, the applicant agrees to pay all costs (including Council's costs) associated with the preparation, public notification, legal costs and administration costs of the VPA.

4. Building Code of Australia

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

5. Water/Electricity Utility Services

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

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

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

6. Dilapidation Report

A 'Dilapidation Report' is to be prepared by a 'chartered structural engineer' detailing the structural condition of the adjoining property at 37A Hannah Street and the existing retaining structures along the common boundary.

7. 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.

REQUIREMENTS PRIOR TO THE COMMENCEMENT OF ANY WORKS

8. Erection of Construction Sign

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

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

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

9. Toilet Facilities

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

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

10. Erosion and Sediment Control

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

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

11. Tree Protection Fencing

Prior to the commencement of on-site works, tree protection fencing must be erected around Tree 18. The tree fencing must be constructed of 1.8 metre cyclone chainmesh fence. The tree protection fencing must be maintained in good working order until the completion of all building or development works. Penalties apply for non-compliance.

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. Environmental Management

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

14. Screening of Existing Deck

To provide for privacy of existing and future residents of the development a 1.5 high screen must be erected on the rear terrace of the existing dwelling.

15. Screening of Turning Head

A solid 1.5m high lapped and capped timber fence or similar decorative solid fence measured from the top of the pavement, must be fixed to the eastern side of the turning head where the turning head is elevated more than 300mm above ground level.

16. Tree Protection

- a. The Applicant must 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 during the construction phase. The Arborist shall be present on site to monitor excavation works to assess the impact of the works on the root zone of all retained trees. All works shall be done in accordance with *Australian Standard AS 4970-2009, "Protection of trees on development sites"*.
- b. Excavation works within 4 metres of the retained native trees (particularly Tree 18) must be undertaken by hand excavation methods under the supervision of a qualified arborist in such a manner that is non-injurious to any tree roots revealed. Tree roots between 10mm and 50mm diameter, revealed during excavation, shall be cut cleanly by a sharp hand saw. The severance of tree roots greater than 50mm in diameter is strictly forbidden.

- c. The driveway within 4 metres of Tree 18 is to be of pier and beam construction with piers being located no closer than 3 metres to the trunk of the tree. The driveway edge shall be located no closer than 1 metre to the edge of the trunk. The excavation for the piers must be hand dug with no roots greater than 50mm being severed. A qualified and experienced arborist is to be on-site overseeing the work to ensure that the roots are cut cleanly and that the works will not adversely affect the longevity of the trees.
- d. To prevent the spread of weeds and fungal pathogens such as Cinnamon Fungus (*Phytophthora cinnamomi*) and Chytrid Fungus (*Batrachochytrium dendrobatidis*), all machinery shall be cleaned of soil and debris before entering the subject site.
- e. All tree removal and tree pruning shall be undertaken in accordance with Australian Standard AS4373-1996 (Pruning of Amenity Trees) and shall be carried out in a manner that does not adversely affect retained indigenous trees.

REQUIREMENTS PRIOR TO THE ISSUE OF A SUBDIVISION CERTIFICATE

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

17. Sydney Water – s73 Certificate

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

18. 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. A construction certificate shall be obtained prior to the commencement of these works.
- b. Connected to an existing Council piped drainage system.
- c. An inter-allotment stormwater drainage system to service the proposed lot with pits being constructed in situ. Any drainage pipe to be located within the tree protection area of any tree shall be tunnel bored under the tree roots.
- d. The roof and stormwater drainage system from the existing dwelling to be connected to the proposed inter-allotment drainage system.

19. Internal Driveway/Vehicular Areas

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

- a. Design levels at the front boundary be obtained from Council.

- b. The driveway shall be a rigid pavement.
- c. The driveway grade must not exceed 25 percent and changes in grade must not exceed 8 percent.
- d. The driveway pavement shall be a minimum 3 metres wide, 0.15 metres thick reinforced concrete with F72 steel reinforcing fabric and a 0.15 metre sub-base.
- e. The pavement have a kerb to one side and a one-way cross fall with a minimum gradient of 2 percent and a lintel and pit provided at the low point.
- f. The provision of a turning area in accordance with the Australian Standards AS 2890.1-2004 85th percentile design template and covered by a Right of Access to enable vehicles to enter and leave the site in a forward direction. The construction of any driveway and turning area within the tree protection area of Tree No.18 shall be design and constructed as a suspended slab in order to protect the health of the tree.
- g. The provision of safety rails where there is a level difference more than 0.3 metres and a 1:4 batter can not be achieved.
- h. Planting of landscaping strips 0.5 metres wide along both sides of the length of the driveway.
- i. Conduit for utility services including electricity, water, gas and telephone be provided. All existing overhead assets including electricity and telecommunications cabling shall be relocated underground at no cost to Council.
- j. The provision of two car parking spaces for Lot 1 in accordance with Council's Dwelling House Development Control Plan. All car parking spaces shall be sealed to an all weather standard.
- k. No encroachments including eaves gutters are permitted over the Right of Access.
- l. The driveway must be in coloured concrete or stencilled to minimize visual impact.

20. Vehicular Crossing

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

- a. Any redundant crossings to be replaced with integral kerb and gutter.
- b. The footway area to be restored by turfing.

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

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

21. Damage to Council Assets

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

22. Creation of Easements

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

- a. A right of access and easement for services 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 Council's drainage system in accordance with Council's prescribed wording.

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

23. Removal of Existing Structures

Any structure that traverses the proposed allotment boundaries must be demolished prior to the release of the subdivision certificate.

24. Boundary Fencing

- a. Fencing must be erected along all property boundaries behind the front building alignment to a height of 1.8 metres.
- b. Fencing of the proposed common boundary must provide for the safe manoeuvring of vehicles.
- c. Fencing materials must not include sheet metal.

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

25. Works as Executed Plan

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

certificate from a registered surveyor certifying that all pipelines and associated structures lie wholly within any relevant easements.

26. Conservation of Blue Gum High Forest

- a. A restriction on the use of the land shall be created under Section 88B of *The Conveyancing Act 1919* to preserve the remnant Blue Gum High Forest including Trees numbered 42, 44, 45, 48, 49, 53, 54, 56, 58, 59 and 61. The restriction prohibits building work including paving, excavation or construction, removal of native vegetation (trees, shrubs and groundcovers), stock piles, changes to soil aeration or hydrological capacity, open cut trenching, movement of machinery, and spillage/disposal of building waste occurring within the area marked in red diagonal lines on the approved plans. This area is to be considered the “*Restricted Development Area*”.
- b. A restriction on the use of the land shall be created under Section 88B of *The Conveyancing Act 1919* requiring the retention of significant Blue Gum High Forest Trees 18, 34 and 35 denoting that ‘*no excavations, soil level changes or construction works with exception any driveway construction as approved by Council are permitted with the Tree Protection Zone (TPZ) of these trees*’.
- c. The Applicant must plant a minimum of five Blue Gum High Forest tree species on site to compensate the loss Tree 21 a significant Sydney Blue Gum tree. The replacement trees shall be planted within the ‘*Restricted Development Area*’. Trees shall be a minimum 25 litres in pot size purchased from a recognised nursery which stocks locally indigenous Blue Gum High Forest species. Trees will be protected with tree guards. All saplings that die must be replaced within one calendar month. Documentation of this purchase shall be submitted to Council’s Bushland and Biodiversity Management Team prior to the release of the Subdivision Certificate. The location of these tree plantings shall be included in the Section 88B instrument of the newly formed deposited plan.
- d. Seed must be collected from Sydney Blue Gum (*Eucalyptus saligna*) trees prior to their removal. This must be undertaken by a qualified arborist or native seed collecting company engaged by the Applicant. The seed must be donated to the Hornsby Shire Community Nursery located at Pennant Hills, via Council’s Bushland and Biodiversity Management Team, for propagation and future replanting within the local area.
- e. All environmental weeds, noxious and invasive plants are to be removed and suppressed using an appropriate bush regeneration methods prior to the release of the release of the subdivision certificate.

27. s94 Infrastructure Contributions

The payment to Council of a contribution of \$19,827.80* for one additional lot towards the cost of infrastructure identified in Council’s Development Contributions Plan 2007-2011.

*Note: * The value of contribution is based on a rate of \$19,827.80 per additional lot and is current as at 16 August 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.

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

Fees and Charges – Subdivision

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

Tree Preservation Order

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

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

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

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

Dial Before You Dig

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

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.

Smoke Alarms – Existing Dwelling

Smoke alarms must be installed in the existing building in accordance with the requirements of the Building Code of Australia.

**3 DEVELOPMENT APPLICATION - ERECTION OF A DWELLING-HOUSE
2 MAROOTA WAY BEECROFT**

Development Application No:	DA/362/2010
Description of Proposal:	Erection of a dwelling-house
Property Description:	Lot 3, DP 270639, No. 2 Maroota Way, Beecroft
Applicant:	Propec P/L
Owner:	Mr Joydeep Singh and Mrs Sarbjit Kaur
Statutory Provisions:	Hornsby Shire Local Environmental Plan, 1994 Special Uses A (Community Purposes)
Estimated Value:	\$400,000
Ward:	C

RECOMMENDATION

THAT Development Application No. DA/362/2010 for the erection of a dwelling-house at Lot 3, DP 270639, No. 2 Maroota Way, Beecroft be approved subject to the conditions of consent detailed in Schedule 1 of this report.

EXECUTIVE SUMMARY

1. The application proposes the erection of a two storey dwelling-house on a vacant site.
2. The proposal generally complies with the Hornsby Shire Local Environmental Plan 1994 and Council's Dwelling House Development Control Plan (DCP).
3. A Red Sticker has been placed against the application requiring it to be referred to Council for determination.
4. Three submissions have been received in respect of the application.
5. It is recommended that the application be approved.

HISTORY OF THE SITE

The site was formerly part of the grounds of the Mount St Benedict's Convent. The site was surplus to the school's needs and was created as part of a multi-lot subdivision in December 2003 under DA/2457/2002.

THE SITE

The vacant, 685.6m² site is located on the low, southern side of Maroota Way, Beecroft on the corner of Hull Road. The site has an 18% fall from the front, north-east to the rear, south-west corner.

The site has a primary front boundary of 19.7m to Maroota Way. The rear boundary is 16m wide, the western side boundary facing Hull Road is 36.3m long and the eastern side boundary is 46m long. An "estate entry" brick fence with decorative columns stands along the western side of the site facing Hull Road. An easement to drain water 1.2m wide dissects the property towards the southern rear boundary.

The allotment is within an eight lot residential subdivision. Each lot is currently vacant. The wider surrounding residential development is characterised by an eclectic blend of one and two storey dwelling-houses, ranging from modest, post-war design to houses of a more contemporary appearance, each surrounded by well established trees and landscaped areas.

The site is located within the Beecroft/Cheltenham Heritage Conservation Area, is in the vicinity of property No. 449D Pennant Hills Road, Pennant Hills, (Mount St Benedict's Convent and Grounds) and the Hull Road - Road Reserve ("Street trees") which are listed as heritage items of local significance under the provisions of Schedule D (Heritage Items) of the HSLEP.

A Eucalyptus *Saligna* located in the rear yard forms part of the Blue Gum High Forest Critically Endangered Ecological Community listed under the *Threatened Species Conservation Act, 1995* and the *Environment Protection and Biodiversity Conservation Act, 1999*.

THE PROPOSAL

The application proposes the erection of a split level, two storey dwelling-house incorporating a kitchen, living room, dining room, lounge, study, bar, laundry, entry foyer and two bathrooms on the ground floor and three bedrooms, each with an ensuite, a rumpus room and a balcony on the first floor.

A basement level garage is proposed at the rear of the dwelling-house. Vehicle access would be provided via an opening to be made in the brick fence facing Hull Road and the roof of the garage would serve as a deck with outdoor cooking facilities.

ASSESSMENT

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

1. STRATEGIC CONTEXT

1.1 Metropolitan Strategy – (Draft) North Subregional Strategy

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

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

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

The proposed development would be consistent with the draft Strategy by providing an additional dwelling and would contribute towards housing stock 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 Special Uses A (Community Purposes) under Hornsby Shire Local Environmental Plan, 1994 (HSLEP). The objectives of the Special Uses A zone are:

- to provide for the cultural needs of the community;*
- to identify land for the provision of community services and facilities; and*
- to ensure that the community uses are compatible with the amenity of the area in which they are located.*

The proposed development is defined as a “dwelling-house” under the HSLEP and is permissible in the Special Uses A zone with Council's consent. The Special Uses A (Community Purposes) zoning for this site has been retained following the subdivision of surplus land formerly owned by the Mount St Benedict's Convent.

In respect to the impending Standard Local Environmental Plan, this Special Uses A zone will change to an R2 - Low Density Residential zoning. In this regard, the proposal has been assessed in terms of the surrounding Residential AS (Low Density-Sensitive Lands) zone. The objectives of the Residential AS 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.*

- (c) *to provide for development that is within the environmental capacity of a sensitive low density residential environment.*

Clause 15 of the HSLEP prescribes the maximum floor space ratio (FSR) requirements for development within the Residential, Business and Industrial zones. As the subject site is zoned Special Uses A, the FSR development standard is not applicable. Notwithstanding, consideration has been given to the FSR controls on the adjoining Residential AS zone which prescribes a maximum FSR of 0.4:1. The development has an FSR of 0.45:1, which does not comply with this standard. However, as the FSR development standard is not applicable, the applicant is not required to submit a SEPP 1 objection in support of the application.

Clause 18 of the HSLEP sets out heritage conservation provisions within the Hornsby area. The site is located within the Beecroft/Cheltenham Heritage Conservation Area and is in the vicinity of a heritage listed property, namely the Mount St Benedict's Convent and Grounds at No. 449D Pennant Hills Road, Pennant Hills.

The objective of the Heritage element of the Dwelling House DCP requires "*The retention of heritage items and conservation of the heritage values in heritage conservation areas to provide continuity with the past*".

It is considered that the heritage value of the Hull Road streetscape would not be impacted and that the proposal is consistent with the evolving development in the locality. The development would not have any detrimental impacts on the surrounding heritage conservation area or the nearby heritage listed items.

2.2 State Environmental Planning Policy (Exempt and Complying Development)

On 27 February 2009, SEPP (Exempt and Complying Development Codes) commenced operation. Under the SEPP, the NSW Housing Code outlines how residential developments including detached one and two storey dwelling-houses, home extensions and other ancillary development, such as swimming pools, can proceed on lots of greater than 450m² in size as complying development with Council or accredited certifier approval.

The subject allotment is excluded from the SEPP on the basis that the land is located within a heritage conservation area. However, as the site adjoins a non-heritage conservation area, relevant development standards under the Code have been taken into consideration in assessing the merits of the proposal against similar development in the locality. The areas of non-compliance are discussed in the following sections of this report.

2.3 Dwelling House Development Control Plan

Pursuant to Section 79C (1) (a) (iii) of the *Environmental Planning and Assessment Act, 1979* the proposed development has been assessed having regard to the relevant performance and prescriptive design requirements of Council's Dwelling House DCP. The following table sets out the proposal's compliance with the prescriptive measures of the Plan:

Dwelling House Development Control Plan			
Control	Proposal	Requirement	Compliance
FSR	0.45:1	0.4:1	No
Site coverage	32%	40%	Yes
Height	8.5m	<9m	Yes
Car parking	2 spaces	2 spaces	Yes
Length of Building	24.8m	24m	No
Unbroken Wall length	9.97m	10m	Yes
Private Open Space	151m ²	120m ²	Yes
Landscaping	61%	45%	Yes
Setbacks			
- Front	6.75m	6 m	Yes
- Side (east)	1.37m	1 m	Yes
- Side (west)	3.52m	3 m	Yes
- Rear	10.56m	3 m	Yes

As detailed in the above table and following public notification of the application, the following matters require further assessment:

2.3.1 Scale

To control the bulk and scale of residential development, the Scale element of the DCP requires that “*The maximum floor space ratio for dwelling-houses is 0.4:1*”.

The floor space ratio (FSR) for the proposal has been calculated at 0.45:1. To address this non-compliance, the applicant has made a submission in support of the proposal which justifies the variation to the 0.4:1 development standard. The submission notes that the building appears as a two storey structure when viewed from Hull Road, is sympathetic to the slope of the site, complies with the planning guidelines in terms of private open space, solar access and privacy and is consistent with residential development in the area.

Council’s assessment of the proposal in terms of the bulk and scale has also had regard to the provisions of the recently enacted *NSW Housing Code*, which provides that the maximum gross floor area for complying development within the Hornsby Local Government Area Beecroft as being:

- 330m², if the lot has an area of at least 450m² but less than 600m²;
- 380m², if the lot has an area of at least 600m² but less than 900m²; and
- 430m², if the lot has an area of at least 900m².

In this instance, the subject site has an area of 686m² and the development would have a floor area of 321m², which satisfies the requirement of the Code.

Given that the recently introduced Code is now enacted in many parts of the Shire, it is anticipated that more developments, including those on sites on the opposite side of Hull Road, would be approved under this Code. These anticipated developments will significantly change the characteristics of dwelling-houses in the surrounding area. Consequently, whilst Council has always applied a maximum FSR of 0.4:1 for dwelling-houses in the low density residential zones within the Shire under the HSLEP, the introduction of the Code will change the effect of this standard.

It is considered that the bulk and scale of the development would not impinge on the environmental and amenity aspects of the site and the underlying objectives of the zoning and would provide accommodation that would not detract from the scale and variety of dwelling-houses elsewhere in the subdivision.

In summary, it is considered that in the circumstances of the case, the proposed scale of the development would not detract from the character of the locality and therefore a variation to the development standard that would otherwise apply, is acceptable.

2.3.2 Design

The proposal addresses the environmental and topographical constraints of the site by way of a split level design and a building height of 8.5m which would be consistent with other contemporary dwelling-houses in the local area. A balance between the cement-rendered base and face bricks above, together with openings and variations of roof form and pitch in the eastern and western elevations ensures that the dwelling-house results in an acceptable presentation to both street frontages and reduces monotonous or symmetrical design elements.

The contemporary style of the proposal is consistent with the existing and evolving form of development in the locality in terms of window size and placement and the roofing materials that would be used. In terms of glare, the selection of materials would not result in glare nuisances to surrounding properties.

The proposal would not have significant visual or amenity impacts to the adjoining properties and the Hull Road streetscape, meets the objectives of the Design element of the DCP and is considered acceptable.

2.3.3 Privacy

The proposed first floor level rumpus room, the balconies within the front and rear facades and the open deck above the garage do not comply with the prescriptive measures of the Privacy element of the DCP, which requires active use living rooms and areas to be located at ground floor level to minimise overlooking of the recreational and living areas of neighbouring properties.

In this instance, the first floor level balcony off the master bedroom faces Maroota Way only and would not allow overlooking of the private open spaces of adjoining properties.

Whilst nominally at ground floor level, the outdoor deck above the garage may overlook the adjacent premises, No. 4 Maroota Way. To address this issue, the application proposes a 1.8m high privacy screen along the eastern elevation.

The first floor level rumpus room has no windows within the eastern elevation and to address concerns about a possible loss of privacy from the adjacent balcony in relation to the property

No. 4 Maroota Way, a condition of consent is recommended requiring the glass balustrade to be raised to a height of 1.2m and be fitted with translucent glazing.

With this condition, the proposal meets the objectives of the Privacy element of the DCP and is considered acceptable.

2.3.4 Drainage

The application proposes that all collected roof water would be discharged to the drainage easement in the rear yard via a 5,000 litre rainwater tank to be installed in accordance with the BASIX commitment.

A covenant on the property title requires the installation of an on-site detention system for the subject site. A condition of consent is recommended requiring that the detention tank and associated drainage pipes be located in a position that would not impact on the drainage easement.

The plans indicate that there would be no development or alterations to levels in the vicinity of this easement.

The proposal meets the objectives of the Drainage Control element of the DCP and is considered acceptable.

2.3.5 Vehicle Access and Parking

The location of the garage at the rear of the dwelling-house would require an opening to be made in the brick fence facing Hull Road. This opening would not detract from the character of the existing streetscape.

The design of the driveway and the opening in the brick fence would allow adequate vision towards the unformed footpath and in both directions along Hull Road.

The gradients shown on the longitudinal section for the proposed vehicular crossing and driveway do not comply with Council's Dwelling House DCP and Australian Standard AS 2890.1. In order to provide safe and efficient vehicular access to the proposed garage, a condition is recommended requiring the finished floor level of the garage to be lowered from RL 160.00 AHD to RL 159.25 AHD.

With this condition, the proposal meets the objectives of the Vehicle Access and Parking element of the DCP and is considered acceptable.

2.4 Heritage Development Control Plan

Clause 18 of the HSLEP sets out heritage conservation provisions within Hornsby Shire. The site is located within the Beecroft/Cheltenham Heritage Conservation Area, is in the vicinity of a heritage listed property, namely the Mount St Benedict's Convent and Grounds at No. 449D Pennant Hills Road, Pennant Hills and the Hull Road - Road Reserve ("Street trees") which are listed as heritage items of local significance under the provisions of Schedule D (Heritage Items) of the HSLEP.

The objective of the Heritage element of the Dwelling House DCP requires "*The retention of heritage items and conservation of the heritage values in heritage conservation areas to provide continuity with the past*".

Given that the Maroota Way subdivision is located substantially lower than the Mount St Benedict's Convent and Grounds and noting that the street trees in Hull Road would not be affected by this development, the proposal would not impact on the heritage listed items.

The development is also located on the boundary of the Beecroft/Cheltenham Heritage Conservation Area. Notwithstanding this conservation status, the character of the surrounding residential development in Hull Road is typified by an eclectic blend of one and two storey dwelling-houses, ranging from modest, post-war design to houses of a more contemporary appearance.

In this regard, the proposal would be consistent with the established character of the surrounding heritage conservation area and the Hull Road streetscape and would not detract from the heritage values of the nearby listed items.

3. ENVIRONMENTAL IMPACTS

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

3.1 Natural Environment

3.1.1 Flora and Fauna Protection

The site forms part of the Blue Gum High Forest Critically Endangered Ecological Community listed under the *Threatened Species Conservation Act, 1995* and the *Environment Protection and Biodiversity Conservation Act, 1999*. There are three protected trees on the site or in the vicinity of the site, namely a *Eucalyptus saligna* in the rear yard, an *Agophora costata* on the nature strip and another *Eucalyptus saligna* on the adjacent property, No. 4 Maroota Way. None of these trees would be affected by the proposed development and the trees would be retained.

Subject to a condition requiring the installation of protection measures for the tree in the rear yard of the subject property, the proposal meets the objectives of the Flora and Fauna Protection element and is considered acceptable.

3.2 Built Environment

The proposed dwelling-house would not be out of character with the evolving form of residential development approved elsewhere in the subdivision and would be consistent with the form of development permitted in the locality.

The approval of this development would not detract from the character of the area and would not set an undesirable precedence for similar developments in the immediate neighbourhood.

3.3 Social and Economic Impacts

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

4. SITE SUITABILITY

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

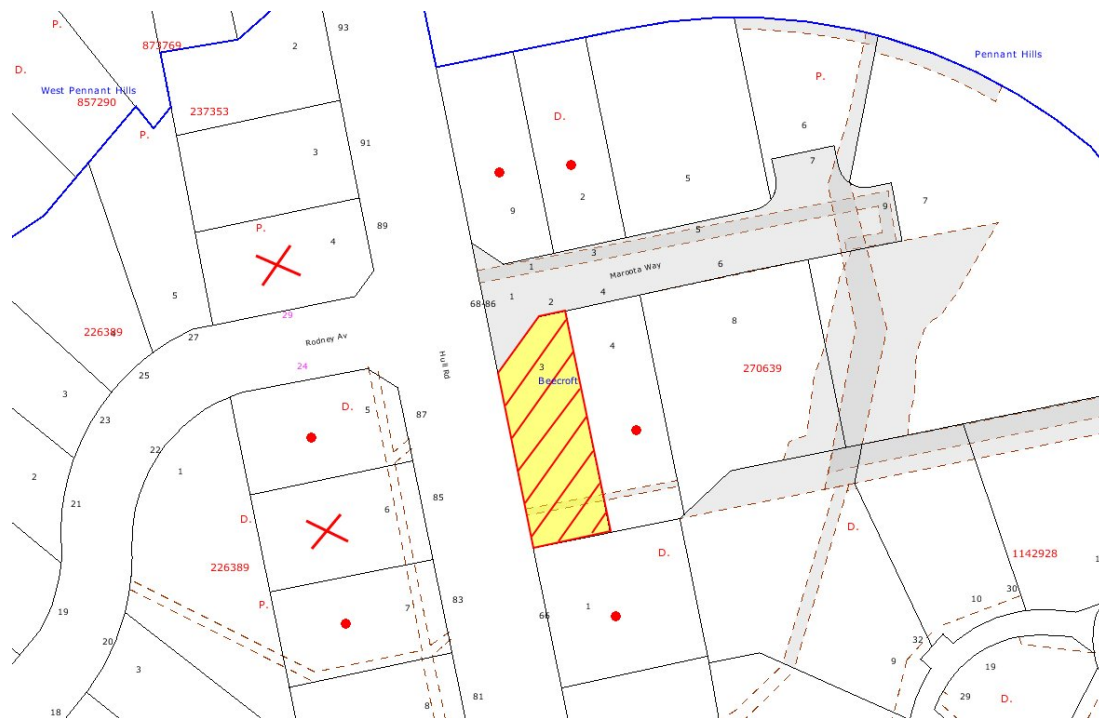
The site is appropriately zoned to accommodate the proposal and there are no natural or built hazards preventing the construction of the dwelling-house and associated works. The site is considered suitable for the development.

5. PUBLIC PARTICIPATION

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

5.1 Community Consultation

The proposed development was placed on public exhibition and was notified to adjoining and nearby landowners between 26 March, 2010 and 9 April, 2010 and again between 18 June, 2010 and 2 July, 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"> • PROPERTIES NOTIFIED 	<ul style="list-style-type: none"> X SUBMISSIONS RECEIVED 	PROPERTY SUBJECT OF DEVELOPMENT	
1 SUBMISSION RECEIVED OUT OF MAP RANGE			

Three submissions objected to the proposal, generally on the grounds that the development would result in excessive bulk and scale, excessive height and glare and stormwater drainage problems. Concerns were also expressed regarding traffic and pedestrian safety and the removal of trees.

The merits of the matters raised in these submissions have already 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 dwelling-house would be in the public interest.

CONCLUSION

This application proposes the erection of a dwelling-house in a style that would be in keeping with the evolving character of the surrounding residential zone.

The development would have a gross floor area of 310.7m² which exceeds the 0.4:1 FSR requirement for the site. The applicant has made a submission in justification for the non-compliance with the floor space ratio. The submission satisfactorily justifies the non-compliance with the prescriptive measures of the Scale element of the Dwelling House DCP and approval of the application would not set an undesirable precedent for the area.

Having regard to the assessment of the proposed development and the circumstances of the case, it is recommended that the application be approved.

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

SIMON EVANS
Manager - Assessment Team 1
Planning Division

SCOTT PHILLIPS
Executive Manager
Planning Division

Attachments:

1. Locality Plan
2. Site Plan
3. Basement Floor Plan
4. Ground Floor Plan
5. First Floor Plan
6. Elevations
7. Roof Plan
8. Section A-A
9. Shadow Diagram
10. Sediment Control Plan
11. Stormwater Concept Plan
12. Landscape Plan
13. Cut and Fill Plan

File Reference: DA/362/2010
Document Number: D01433569

CONDITIONS OF APPROVAL

GENERAL CONDITIONS

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

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

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

1. Approved Plans and Supporting Documentation

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

<i>Plan No.</i>	<i>Drawn by</i>	<i>Dated</i>
Page 2 of 15 - Version D Page 3 of 15 - Version D - (as Modified) Pages 4 - 6 of 15 - Version E Pages 7 - 13 of 15 - Version D Pages 14 of 15 - Version D - (Deleted) Pages 15 of 15 - Version D	Chris Jamieson (for Propec P/L)	01/03/2010

2. Amendment of Plans

The approved plans are to be amended as follows:

- a. The finished floor level of the garage is to be lowered from RL160.00 to RL 159.25 to ensure that vehicular access can be achieved in accordance with Hornsby Shire Civil Works Specification and Australian Standard As 2890.1.
- b. The drive way long section is to be modified to correspond with the lowering of the finished floor level of the garage. All embankments within the nature strip adjacent to the vehicular crossing must have a maximum batter of 1 in 4 (25%).

Note: - Driveway levels at the property boundary and at the footpath must be obtained from Council prior to the issuance of a Construction Certificate.

3. Protection of Existing Trees

All works, including driveways, the stormwater detention system, sewage and stormwater drainage lines and retaining walls within 5m of the trees to be retained, namely the *Eucalyptus saligna* in the rear yard, the *Angophora costata* on the nature

strip and the *Eucalyptus saligna* on the adjacent property, Lot 4 Maroota Way are prohibited.

Note: 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 5 metres of these trees to be retained.

REQUIREMENTS PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

4. Building Code of Australia

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

5. Contract of Insurance (Residential Building Work)

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

a.

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

6. Notification of Home Building Act, 1989 Requirements

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

a. In the case of work for which a principal contractor is required to be appointed:

i. The name and licence number of the principal contractor.

ii. The name of the insurer by which the work is insured under Part 6 of that Act.

b. In the case of work to be done by an owner-builder:

i. The name of the owner-builder.

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

Note: If arrangements for doing the residential building work are changed while the work is in progress so that the information notified becomes out of date, further work must not be carried out unless the principal certifying authority

for the development to which the work relates (not being Council) has given Council written notification of the updated information.

7. Sydney Water – Quick Check

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

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

REQUIREMENTS PRIOR TO THE COMMENCEMENT OF ANY WORKS

8. Structural Engineering Details – Front Boundary Wall

The existing ground levels adjacent the brick front boundary wall facing Hull Road will require excavation for the vehicular driveway. In this regard, structural engineering details must be provided with the application for the construction certificate to ensure that the structural adequacy of this wall is maintained. All structures shall be located wholly within the development site.

9. Internal Driveway/Vehicular Areas

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

- a. The driveway be a rigid pavement;
- b. The driveway grade must not exceed 25 percent; and
- c. The driveway grade must not exceed 25 percent and changes in grade must not exceed 8 percent per plan metre.

10. Vehicular Crossing

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

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

b.

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.

11. 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.

12. Toilet Facilities

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

- a. be a standard flushing toilet connected to a public sewer; or
- b. be a temporary chemical closet approved under the *Local Government Act, 1993*.

13. Tree Protection Barriers

Tree protection fencing must be erected around the Sydney Blue Gum (*Eucalyptus saligna*) in the rear yard area at a 2m setback. The protection fencing must be constructed of 1.8m 'cyclone chainmesh fence' or star pickets spaced at 2m intervals, connected by a continuous high-visibility barrier/hazard mesh at a height of 1m and be maintained in good condition for the duration of the construction period.

14. 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**15. 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.

16. 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.

17. Bushland Protection during Construction

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

18. 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.

19. Survey Report – Finished Floor Levels

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

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

REQUIREMENTS PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE

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

20. Fulfilment of BASIX Commitments

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

21. Installation of Privacy Devices

In order to maintain an element of privacy towards future development at the adjoining property No. 4 Maroota Way, the height of the balustrade serving the first floor level balcony off the rumpus room is to be raised to 1.5m above floor level and the proposed glazing is to be frosted or translucent.

22. On Site Stormwater Detention

An on-site stormwater detention system must be designed by a chartered civil engineer for an average recurrence interval of 20 years. The system must be gravity drained and connected to the existing inter-allotment drainage system, must be located clear of the drainage easement that dissects the property and must be constructed in accordance with the following requirements:

- a. Have a capacity of not less than 5 cubic metres, and a maximum discharge (when full) of 8 litres per second;
- b. Four copies of the construction drawings of the proposed system are to be prepared by a suitably qualified chartered professional engineer or registered surveyor for approval by Council's Engineer prior to commencement of building works; and
- c. On completion of the system, works as executed details prepared by a suitably qualified chartered professional engineer or registered surveyor are to be submitted to Council to verify the construction of the facility in accordance with the design requirements. Any variations must be shown in red and supported by calculations.

23. Creation of Easements

The following easements shall be created under s88E of the *Conveyancing Act 1919*:

- a. An appropriate "*Positive Covenant*" and "*Restriction as to User*" over the constructed on-site detention (OSD) system and outlet works within the lot in favour of Council in accordance with Council's prescribed wording. The position of the on-site detention system is to be clearly indicated on the title.
- b. To register the OSD easement, the restriction on the use of land "*works-as-executed*" details of the on-site-detention system must be submitted verifying that the required storage and discharge rates have been constructed in accordance with the design requirements. The details must show the invert levels of the on-site 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. Damage to Council Assets

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

25. Retaining Walls

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

- END OF CONDITIONS -**ADVISORY NOTES**

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

Environmental Planning and Assessment Act, 1979 Requirements

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

Long Service Levy

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

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

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

Tree Preservation Order

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

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

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

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

Dial Before You Dig

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

**4 DEVELOPMENT APPLICATION - ERECTION OF A DWELLING-HOUSE
5 MAROOTA WAY, BEECROFT**

Development Application No:	DA/567/2010
Description of Proposal:	Erection of a dwelling-house
Property Description:	Lot 5, DP 270639, No. 5 Maroota Way, Beecroft
Applicant:	Mr. Robert Rahi
Owner:	Mr. Robert Rahi
Statutory Provisions:	Hornsby Shire Local Environmental Plan 1994 Special Uses A (Community Purposes)
Estimated Value:	\$400,000
Ward:	C

RECOMMENDATION

THAT Development Application No. DA/567/2010 for the erection of a dwelling-house at Lot 5 DP 270639, No. 5 Maroota Way, Beecroft be approved subject to the conditions of consent detailed in Schedule 1 of this report.

EXECUTIVE SUMMARY

1. The application proposes the erection of a two storey dwelling-house on a vacant site.
2. The proposal generally complies with the Hornsby Shire Local Environmental Plan 1994 and Council's Dwelling House Development Control Plan (DCP).
3. A Red Sticker has been placed against the application requiring it to be referred to Council for determination.
4. One submission has been received in respect of the application.
5. It is recommended that the application be approved subject to the applicant entering into a Voluntary Planning Agreement (VPA) with Hornsby Council to offset the loss of four Blue Gum Trees on the site in accordance with Council's Green Offset Code - (2007).

HISTORY OF THE SITE

The site was formerly part of the grounds of the Mount St Benedict's Convent. The site was surplus to the school's needs and was created as part of a multi-lot subdivision in December 2003 under DA/2457/2002.

On 4 February, 2009 Council refused development application DA/1013/2008 for the subdivision of Lot 5 into two lots, generally on grounds that the resultant lots could not accommodate a 200m² building envelope clear of significant trees identified as Sydney Blue Gum High Forest that were growing on the lot.

During the subsequent appeal hearing before the NSW Land and Environment Court (Proceedings No. 11156 of 2008), evidence was presented which suggested that the subdivision could proceed, subject to the (then) applicant agreeing to the replacement of the significant trees located on Lot 5 with sixteen compensatory plantings on Lot 7, together with a restrictive covenant being placed on the title of Lot 7 to protect these trees in perpetuity. The applicant objected to the recommended restrictive covenant and subsequently discontinued the appeal.

THE SITE

The vacant, 1250m² site is located on the northern side of Maroota Way, Beecroft. The site has a 9m fall from the rear, north eastern to the front, south western corner.

The site contains remnant indigenous trees including four *Eucalyptus saligna* (Sydney Blue Gum). These trees form part of a remnant Blue Gum High Forest Critically Endangered Ecological Community listed under the *Threatened Species Conservation Act, 1995*, which was mapped by Smith and Smith (2008).

The allotment is within an eight lot residential subdivision. Each allotment is currently vacant. The wider surrounding residential area is characterised by an eclectic blend of one and two storey dwelling-houses, ranging from modest, post-war design to houses of a more contemporary appearance, each surrounded by well established trees and landscaped areas.

The site is located within the Beecroft/Cheltenham Heritage Conservation Area, is in the vicinity of property No. 449D Pennant Hills Road, Pennant Hills, (Mount St Benedict's Convent and Grounds) and the Hull Road - Road Reserve ("Street trees") which are listed as heritage items of local significance under the provisions of Schedule D (Heritage Items) of the HSLEP.

THE PROPOSAL

The application proposes the erection of a three storey dwelling-house incorporating a garage, ancillary storage space, vehicle manoeuvring area and an 8,000 litre rainwater storage tank on the basement level and four bedrooms, a living room, study, dining room, family room, kitchen, laundry, two bathrooms and a covered terrace on the ground floor. A family room and balcony would be located at an attic level within a raised section of the roof. A swimming pool is proposed in the rear yard area.

Four *Eucalyptus saligna* (Sydney Blue Gum) trees would be removed from the site to allow for the development to proceed.

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 listed for consideration prescribed under Section 79C of the *Environmental Planning and Assessment Act 1979* (the Act). Subsequently, the following issues have been identified for further consideration.

1. STRATEGIC CONTEXT

1.1 Metropolitan Strategy – (Draft) North Subregional Strategy

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

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

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

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

2. STATUTORY CONTROLS

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

2.1 Hornsby Shire Local Environmental Plan, 1994

The subject land is zoned Special Uses A (Community Purposes) under Hornsby Shire Local Environmental Plan 1994 (HSLEP). The objectives of the Special Uses A zone are:

- to provide for the cultural needs of the community;*
- to identify land for the provision of community services and facilities; and*
- to ensure that the community uses are compatible with the amenity of the area in which they are located.*

The proposed development is defined as a "dwelling-house" under the HSLEP and is permissible in the Special Uses A zone with Council's consent. The Special Uses A (Community Purposes) zone for this site has been retained following the subdivision of surplus land formerly owned by the Mount St Benedict's Convent.

In respect to the impending Standard Local Environmental Plan, this Special Uses A zone will change to a R2 - Low Density Residential zoning. In this regard, the proposal has been

assessed in terms of the surrounding Residential AS (Low Density-Sensitive Lands) zone. The objectives of the Residential AS zone are:

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

Clause 15 of the HSLEP prescribes the maximum floor space ratio (FSR) requirements for development within the Residential, Business and Industrial zones. As the subject site is zoned Special Uses A, the FSR development standard is not applicable. Notwithstanding, consideration has been given to the FSR controls on the adjoining Residential AS zone which prescribes a maximum FSR of 0.4:1. The development has an FSR of 0.44:1, which does not comply with this standard. However, as the FSR development standard is not applicable, the applicant is not required to submit a SEPP 1 objection in support of the application.

Clause 18 of the HSLEP sets out heritage conservation provisions within Hornsby Shire. The site is located within the Beecroft/Cheltenham Heritage Conservation Area, is in the vicinity of property No. 449D Pennant Hills Road, Pennant Hills, (Mount St Benedict's Convent and Grounds) and the Hull Road - Road Reserve ("Street trees") which are listed as heritage items of Regional and local significance respectively, under the provisions of Schedule D (Heritage Items) of the HSLEP.

The objective of the Heritage element of the Dwelling House DCP requires "*The retention of heritage items and conservation of the heritage values in heritage conservation areas to provide continuity with the past*".

It is considered that the heritage value of the Hull Road streetscape would not be impacted and that the proposal is consistent with the evolving development in the locality. The development would not have any detrimental impacts on the surrounding heritage conservation area or the nearby heritage listed items.

2.2 State Environmental Planning Policy (Exempt and Complying Development)

On 27 February 2009, SEPP (Exempt and Complying Development Codes) commenced operation. Under the SEPP, the NSW Housing Code outlines how residential developments including detached one and two storey dwelling-houses, home extensions and other ancillary development, such as swimming pools, can proceed on lots of greater than 450m² in size as complying development with Council or accredited certifier approval.

The subject allotment is excluded from the SEPP on the basis that the land is located within a heritage conservation area. However, as the site adjoins a non-heritage conservation area, relevant development standards under the Code have been taken into consideration in assessing the merits of the proposal against similar development in the locality.

2.3 Dwelling House Development Control Plan

Pursuant to Section 79C (1)(a)(iii) of the *Environmental Planning and Assessment Act, 1979* the proposed development has been assessed having regard to the relevant performance and

prescriptive design requirements of Council's Dwelling House DCP. The following table sets out the proposal's compliance with the prescriptive measures of the Plan:

Dwelling House Development Control Plan			
Control	Proposal	Requirement	Compliance
FSR	0.44:1	0.40:1	No
Site coverage	38%	40%	Yes
Height	8.7m	<9m	Yes
Car parking	3 spaces	2 spaces	Yes
Length of Building	21m	24m	Yes
Unbroken Wall length	11.58m	10m	No
Private Open Space	400m ²	120m ²	Yes
Landscaping	53%	45%	Yes
Setbacks			
- Front	6.69m	6 m	Yes
- Side (east)	3.27m	1 m	Yes
- Side (west)	6m	3 m	Yes
- Rear	13m	3 m	Yes

As detailed in the above table and following public notification of the application, the following matters require further assessment.

2.3.1 Scale

To control the bulk and scale of residential development, the Scale element of the DCP requires that "*The maximum floor space ratio for dwelling-houses is 0.4:1*".

The FSR for the proposal has been calculated at 0.44:1. To address this non-compliance, the applicant has made a submission in support of the proposal which justifies the variation to the 0.4:1 development standard. Consideration has been given to the 1250m² allotment size which would allow a much larger dwelling-house to be developed than would be the case on smaller allotments in the subdivision.

Given that the 50m² of excess floor area is located entirely below ground level and would be used for a vehicle turning area, carparking and storage, the bulk and scale of the development would not impinge on the environmental and amenity aspects of the site and the underlying objectives of the zoning and would provide accommodation that would not detract from the scale and variety of dwelling-houses elsewhere in the subdivision. In other words, should Council insist on a development that complies with the development standard, it would have the same bulk, scale and appearance when viewed from the street.

In summary, it is considered that in the circumstances of the case, the proposed scale of the development would not detract from the character of the locality and therefore a variation to the development standard that would otherwise apply is acceptable.

The proposal meets the objectives of the Scale element of the DCP and is considered acceptable.

2.3.2 Design

The proposed design addresses the topographical constraints of the site by locating 73m² of floor area at the basement level, with the roof space being utilised to create an attic level rather than a “full height” extra storey. The proposed 8.7m building height and 38% site coverage complies with Council’s 9m height and 40% site coverage controls respectively.

The proposed 11.58m unbroken wall lengths on the eastern and western elevations do not comply with the 10m prescriptive measure of the Design element. It is considered that the proposal is acceptable in this instance and is a minor variation to the development standard. The articulation provided through large windows and varying levels and the increased side boundary setbacks also contribute to an acceptable presentation to the street and neighbouring properties and prevents monotonous or symmetrical design elements.

The proposed 2.7m cut to establish a level platform for the basement level garage does not comply with the 1m prescriptive measure of the Design element of the DCP. This excavation is considered acceptable in this instance, as it is located wholly within the building envelope and would not be visible from the street or surrounding properties.

The proposal would not have significant visual or amenity impacts to the adjoining properties, meets the objectives of the Design element of the DCP and is considered acceptable.

2.3.3 Privacy

The proposed attic level family room, located within the roof space of the dwelling-house, does not comply with the prescriptive measure of the Privacy element of the DCP which requires living areas to be located at ground level.

It is considered that the proposal is acceptable in this instance as the sill height of the windows within all four elevations would be 2.5m above the finished floor level and the balcony within the southern elevation faces Maroota Way only which would not allow overlooking of the private open spaces or living rooms of adjacent properties.

The proposal meets the objectives of the Privacy element of the DCP and is considered acceptable.

2.4 Heritage Development Control Plan

Clause 18 of the HSLEP sets out heritage conservation provisions within Hornsby Shire. The site is located within the Beecroft/Cheltenham Heritage Conservation Area, is in the vicinity of a heritage listed property, namely the Mount St Benedict’s Convent and Grounds at No. 449D Pennant Hills Road, Pennant Hills and the Hull Road - Road Reserve (“Street trees”) which are listed as heritage items of local significance under the provisions of Schedule D (Heritage Items) of the HSLEP.

The objective of the Heritage element of the Dwelling House DCP requires “*The retention of heritage items and conservation of the heritage values in heritage conservation areas to provide continuity with the past*”.

Given that the Maroota Way subdivision is located substantially lower than the Mount St Benedict’s Convent and Grounds and noting that the street trees in Hull Road would not be affected by this development, the proposal would not impact on the heritage listed items.

The development is also located on the boundary of the Beecroft/Cheltenham Heritage Conservation Area. Notwithstanding this conservation status, the character of the surrounding residential development in Hull Road is typified by an eclectic blend of one and two storey dwelling-houses, ranging from modest, post-war design to houses of a more contemporary appearance.

In this regard, the proposal would be consistent with the established character of the surrounding heritage conservation area and the Hull Road streetscape and would not detract from the heritage values of the nearby listed items.

3. ENVIRONMENTAL IMPACTS

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

3.1 Natural Environment

The site contains four remnant indigenous trees including four *Eucalyptus saligna* (Sydney Blue Gum) trees. These trees form part of a remnant Blue Gum High Forest (BGHF) Critically Endangered Ecological Community listed under the *Threatened Species Conservation Act, 1995*.

The applicant has submitted a Flora and Fauna Assessment including a Seven-Part Test which concluded that these trees could be removed without having a significant impact on the local population of Blue Gum High Forest. Council’s environmental assessment of the report concurs with the findings of the Seven Part Test.

As detailed in this report, Council refused DA/1013/2008 for the subdivision of this lot into two lots on 4 February 2009, generally on the grounds that the resultant lots could not accommodate a 200m² building envelope clear of significant trees identified as Sydney Blue Gum High Forest (BGHF).

During the subsequent appeal hearing at the NSW Land and Environment Court (Proceedings No.11156 of 2008), evidence was presented which suggests that the subdivision could proceed subject to the applicant agreeing to the replacement of the four Sydney Blue Gums growing on the subject Lot 5 with sixteen compensatory plantings on adjacent Lot 7, together with a restrictive covenant being placed on the title of the receiving site to protect the Blue Gum High Forest in perpetuity. The applicant at the time, Vigor Master P/L, objected to the recommended restrictive covenant, however subsequently discontinued the appeal.

Having regard to the Land and Environment Court proceedings, the current applicant, Robert Rahi, in accordance with Council’s Green Offset Code (2007), requested that Council consider entering into a Voluntary Planning Agreement (VPA) under Section 93F of the *Environmental Planning and Assessment Act, 1979*.

If supported, the terms of the agreement would allow for the removal of the four Sydney Blue Gums from the subject site, with the loss of the trees being offset with the planting of twenty Sydney Blue Gums onto Council's Hull Road Reserve. The applicant would also make a monetary contribution in the amount of \$9,450 towards the provision of these trees and their long term maintenance by Council.

Council's environmental assessment notes that the subject Lot 5 is in close proximity to the Hull Road Reserve, that this reserve has been identified as being suitable for restoration and enhancement and that there is sufficient area for the additional twenty compensatory trees to grow and thrive. Accordingly, it is considered to be an appropriate environmental outcome for Council to enter into a Green Offset agreement in this instance to balance the opportunity for sustainable development against the environmental attributes of the locality.

Council's *Green Offset Code* has the following formula for proposing an offset in this location:-

The area of disturbed BGHF on the subject = 2000m²

Area to be restored and enhanced = 0.2ha @ \$15,000 per hectare per annum for a period of 3 years = \$9,000

Project management fee for offset on public land is costed at 5% of the overall cost of the project or \$450.00 in this case.

Total cost of the proposed offset = \$9,450.00

3.2 Built Environment

The proposed dwelling-house would not be out of character with the evolving form of residential development approved elsewhere in the subdivision and would be consistent with the form of development permitted in the locality.

The approval of this development would not detract from the character of the area and would not set an undesirable precedence for similar developments in the immediate neighbourhood.

3.3 Social and Economic Impacts

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

4. SITE SUITABILITY

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

The site is appropriately zoned to accommodate a dwelling-house. There are no natural or built hazards preventing the construction of a dwelling-house. The site is considered suitable for the development.

5. PUBLIC PARTICIPATION


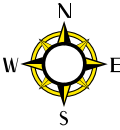
Section 79C (1) (d) of the Act requires Council to consider “any submissions made in accordance with this Act”.

5.1 Community Consultation

The proposed development was placed on public exhibition and was notified to adjoining and nearby landowners between 18 May 2010 and 1 June 2010 in accordance with Council’s Notification and Exhibition DCP. During this period, Council received one submission. The submission was made by a respondent located out of the map range.



NOTIFICATION PLAN

<ul style="list-style-type: none"> • PROPERTIES NOTIFIED 	<p>X SUBMISSIONS RECEIVED</p>	 <p>PROPERTY SUBJECT OF DEVELOPMENT</p>	
<p>1 SUBMISSION RECEIVED OUT OF MAP RANGE</p>			

The submission objected to the development relating to bulk and scale, design, height and site coverage. The merits of the matters raised in the submission 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 dwelling house would be in the public interest.

CONCLUSION

This application proposes the erection of a dwelling-house in a style that would be in keeping with the evolving character of the surrounding residential zone.

The development would have a gross floor area of 550m² which exceeds the 0.4:1 FSR requirement for the site. Consideration has been given to the large allotment size and the incorporated design elements which address the topographical contours of the site while being sympathetic to the visual amenity, solar access and privacy enjoyed by adjoining properties.

The planting of twenty Blue Gum trees in the Hull Road Reserve to compensate for the removal of four Sydney Blue Gums from Lot 5 would result in a long term benefit to the preservation of this endangered species. Approval of the application would not set an undesirable precedent for the area.

Having regard to the assessment of the proposed development and the circumstances of the case, it is recommended that the application be approved.

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

SIMON EVANS
Manager - Assessment Team 1
Planning Division

SCOTT PHILLIPS
Executive Manager
Planning Division

Attachments:

1. Locality Plan
2. Site Plan
3. Landscape Plan
4. Floor Plan
5. Elevations
6. Shadow Plan
7. Tree Plan
8. Schedule of Finishes

File Reference: DA/567/2010
Document Number: D01443883

CONDITIONS OF APPROVAL

GENERAL CONDITIONS

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

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

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

1. Approved Plans and Supporting Documentation

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

<i>Plan No.</i>	<i>Drawn by</i>	<i>Dated</i>
6111 DA 01 - Issue A	Zhinar Architects	May 2010
6111 DA 03-04 Issue A	Zhinar Architects	May 2010
6111-C DA01-02 Issue A		
3146 – Contour Survey	HKMA Engineers	29-04-2010
Tree Survey	Garry Edwards and Associates	06-11-2009
Landscape Plan 1 of 1 Rev B	Urban Tree Management	Undated
	Distinctive Living Design	4-05-2010

2. Removal of Existing Trees

This development consent permits the removal of trees numbered 1, 2, 3 and 4 from the site. 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. Voluntary Planning Agreement

Pursuant to section 93F of the Environmental Planning and Assessment Act 1979, the applicant must prepare and enter into a Voluntary Planning Agreement (VPA) with Hornsby Shire Council for the offsetting of trees numbered 1, 2, 3 and 4 under Council's Green Offset Code (2007).

The terms of the VPA must include but not be limited to the following:

- a. The Applicant agrees to pay Council a monetary contribution of \$9,450 towards the planting and maintenance by Council of 20 Sydney Blue Gums on Hull Road Reserve.
- b. Hornsby Council agrees to provide an area of 2,000m² in the Hull Road Reserve to allow for the planting of twenty Sydney Blue Gums and to nurture these trees for a period of 3 years after planting.
- c. In addition to the above, the applicant agrees to pay all costs (including Council's costs) associated with the preparation, public notification, legal costs and administration costs of the VPA.

4. Building Code of Australia

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

5. Contract of Insurance (Residential Building Work)

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

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

6. Notification of Home Building Act, 1989 Requirements

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

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

Note: If arrangements for doing the residential building work are changed while the work is in progress so that the information notified becomes out of date, further work must not be carried out unless the principal certifying authority

for the development to which the work relates (not being Council) has given Council written notification of the updated information.

7. Sydney Water – Quick Check

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

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

REQUIREMENTS PRIOR TO THE COMMENCEMENT OF ANY WORKS

8. Erection of Construction Sign

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

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

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

9. Toilet Facilities

Toilet facilities must be available or provided at the site before works begin and must be maintained until the works are completed at a ratio of one toilet for every 20 persons employed at the site. Each toilet must be a temporary chemical closet approved under the *Local Government Act, 1993*.

10. Erosion and Sediment Control

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

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

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

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

12. Council Property

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

13. 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.

REQUIREMENTS PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE

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

14. Fulfilment of BASIX Commitments

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

15. Stormwater Drainage

The stormwater drainage system for the development must be designed and constructed for an average recurrence interval of 20 years and be connected directly to the street drainage system.

16. Internal Driveway/Vehicular Areas

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

- a. The driveway must be a rigid pavement;
- b. The driveway grade must not exceed 25 percent and changes in grade must not exceed 8 percent;
- c. Conduit for utility services including electricity, water, gas and telephone must be provided.

17. Damage to Council Assets

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

18. Retaining Walls

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

19. Swimming Pool Requirements

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

- a. All waste water from the pool's filtration system must be piped to *Sydney Water's* sewer system.
- b. The filtration motor and pump, or spa heater and blower unit must be housed in a soundproofed structure. Sound from the equipment must not exceed 5(dBA) above ambient noise levels at any residential property boundary.

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

- END OF CONDITIONS -

ADVISORY NOTES

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

Environmental Planning and Assessment Act, 1979 Requirements

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

- Council to be given at least two days written notice prior to the commencement of any works.
- Mandatory inspections of nominated stages of the construction inspected.
- An occupation certificate to be issued before occupying any building or commencing the use of the land.

Long Service Levy

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

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

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

Tree Preservation Order

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

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

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

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

Dial Before You Dig

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

5 HOUSING STRATEGY DEVELOPMENT CONTROL PLAN

EXECUTIVE SUMMARY

At its meeting on 7 July 2010, Council considered a report concerning the *Hornsby Shire Housing Strategy*. Council resolved (in part) that a *Development Control Plan (DCP)* be prepared and reported to Council, based on the key principles diagrams and five storey controls exhibited as part of the *Housing Strategy* and incorporating a number of changes.

In accordance with Council's resolution, a *draft Housing Strategy DCP* has been prepared and is attached to this report. The *draft DCP* would apply to 5 storey residential and mixed use precincts and 8-10 storey mixed use precincts. Council's existing *Medium Density and High Density Multi-Unit Housing DCPs* would apply to the remaining *Housing Strategy* precincts (townhouse and 8-10 storey residential development). Draft amendments to relevant existing DCPs have also been prepared and are attached to this report.

It is recommended that the *draft Hornsby Shire Housing Strategy DCP* and associated DCP amendments be exhibited for public comment.

PURPOSE

The purpose of this report is to present a *draft Housing Strategy DCP* for endorsement for exhibition.

BACKGROUND

At its meeting on 7 July 2010, Council considered a report concerning the *Housing Strategy Planning Proposal*. Council resolved (in part) to forward the *Planning Proposal* (incorporating a number of amendments) to the Department of Planning (DOP) and request that the Minister defer the making of the Plan until the State Government gives its unqualified commitment to provide services such as roads, public transport, hospitals and schools to meet the new demand. Council also resolved that a DCP be prepared and reported to Council, based on the key principles diagrams and five storey controls exhibited as part of the *Housing Strategy* and incorporating the following changes:

- Amend the Stokes Avenue, Asquith precinct key principles diagram to specify that access should be provided via Stokes Avenue where possible.
- Review the controls for the Beecroft Road, Beecroft precinct in the context of the Beecroft/Cheltenham Heritage Conservation Area.
- Specify the use of locally indigenous species in landscaping controls.
- Include mapped pedestrian networks and links to open space.
- Include a requirement to prevent single properties being left isolated and undevelopable.

- Include a reference to the recommendations of NSW Health's *Healthy Urban Development Checklist* and the National Heart Foundation's *Blueprint for an Active Australia*, particularly recommendations for creating precincts that enable active and well-connected lifestyles.

In accordance with Council's resolution, the *Housing Strategy Planning Proposal* has been forwarded to the DOP and a draft *Housing Strategy DCP* has been prepared.

DISCUSSION

This report summarises the contents of the *draft DCP* and recommends that Council exhibit the *DCP* in accordance with legislative requirements.

Draft Development Control Plan

The *draft Housing Strategy DCP* has been prepared in accordance with the key principles diagrams and development controls exhibited as part of the *Housing Strategy*. The *draft DCP* contains 4 parts, comprising an introduction, controls for residential development, controls for mixed use development, and town centre linkage diagrams.

The *Housing Strategy DCP* would apply to 5 storey residential and mixed use precincts and 8-10 storey mixed use precincts. Council's existing *Medium Density and High Density Multi-Unit Housing DCPs* would continue to apply to the townhouse and 8-10 storey residential *Housing Strategy* precincts.

Part 1 of the *draft DCP* contains controls relating to 5 storey residential multi-unit housing development. Part 2 contains controls relating to 5 storey and 8-10 storey mixed use development. Each part is divided into primary control elements, comprising desired outcomes and prescriptive measures. The control elements include Height, Setbacks, Floorplates and separation, Design and Articulation, Open Space, Amenity, Housing Choice, Landscaping, Parking and Key development principles (including key principles diagrams). Part 3 contains Town Centre Linkage Diagrams, which map pedestrian and cyclist desire lines and links to open space, shops and schools.

Amendments in accordance with Council's resolution

In accordance with Council's resolution on 7 July 2010, a number of amendments have been incorporated into the *DCP* as outlined below.

Amendments

The key principles diagram for the Stokes Avenue, Asquith precinct has been amended to specify that access should be provided via Stokes Avenue where possible. The use of locally indigenous species has been specified, where practical, in landscaping controls. A requirement to prevent single properties being left isolated and unable to be developed has been included in the Key development principles element. Mapped pedestrian networks and links to open space have been included in the form of Town Centre Linkage Diagrams.

Review of controls for the Beecroft precinct

The Beecroft Road, Beecroft precinct is the only precinct locality within a heritage conservation area. Accordingly, an urban design consultant and heritage consultant have

reviewed the controls for the precinct in the context of the Beecroft/Cheltenham Heritage Conservation Area. The review identifies that important development principles for the precinct include the retention of visually prominent trees in the residential portion of the precinct and a traditional “main street” design for the business zoned portion, including a masonry design character.

The key principles diagram for the Beecroft Road precinct has been amended to delete the reference to a varied skyline, to ensure the built form is controlled through upper level setbacks and recessive roof forms. The Articulation and Design elements for residential and mixed use development have been amended to insert new controls specific to Beecroft, which require brick facades with continuous awnings along shopfronts and brick residential facades with balconies framed behind the face of exterior walls.

Active Living Recommendations

Controls for active living have been included within the Open Space element of the *draft DCP*. These controls are based on the key actions and recommendations contained within the National Heart Foundation’s *Blueprint for an Active Australia* and NSW Health’s *Healthy Urban Development Checklist*.

Blueprint for an Active Australia

The *Blueprint* was produced by the National Heart Foundation of Australia in 2009, in part, to assist governments increase physical activity levels. The document incorporates ten key action areas at national, state and locals levels. There are two key action areas applicable to development controls as outlined below.

Key Action No. 2 - Regulate to provide a built environment that supports active living.

Key Action No. 3 - Actively encourage, support and facilitate more walking, cycling and public transport use.

These key actions encourage the following principles to be considered when planning urban environments:

- increasing the density of housing, particularly around services and shops and making alternate modes of transport more viable;
- increasing accessibility to public transport, shops, schools, services and open space;
- prioritising pedestrian and cyclist networks over motorists;
- providing accessible and usable open space;
- providing safe bicycle parking amenities and shower facilities within workplaces; and
- urban design that increases surveillance.

The first two principles were considered by Council when selecting precincts for the *Housing Strategy*. Precincts evaluated for increased density were identified based on selection criteria which included proximity to services and shops, train stations and strategic bus corridors to reduce car reliance. Precincts were also chosen on the basis of proximity to existing open space with opportunity for improvements. The level of walkability to transport nodes, commercial centres, educational facilities, open space and community facilities was also assessed.

The *draft DCP* includes Town Centre Linkage Diagrams showing connections to public open space and desire lines for both pedestrians and cyclists. The draft controls include provisions for bicycle storage and parking, shower facilities within workplaces, safe and accessible entrances to buildings for pedestrians and cyclists, and the orientation of living areas and active ground floor retail frontages to assist increase passive surveillance.

Healthy Urban Development Checklist

The *Checklist* was produced by NSW Health in February 2010 as part of its initiative to promote healthy communities in NSW. The checklist covers 10 issues in relation to planning policies and strategies as outlined below.

Healthy Food - agricultural lands should be preserved and access to fresh, nutritious, local and affordable food encouraged. *Housing Strategy* precincts were identified within existing urban areas to preserve agricultural lands.

Physical Activity - physical activity should be promoted including opportunities for walking, cycling and other forms of active transport to frequent destinations to meet every day basic needs such as shops, transport stops, parks and schools. Access to quality and usable recreational facilities and outdoor spaces is also encouraged. *Housing Strategy* precincts were identified based on selection criteria including proximity to services and shops, train stations and strategic bus corridors to reduce car reliance and promote other modes of transport such as walking and cycling. The level of walkability to transport nodes, commercial centres, educational facilities, open space and community facilities was also assessed. The *DCP* includes pedestrian network maps showing connections to public open space.

Housing - dwelling diversity and the provision of affordable, adaptable and accessible should be provided. The *Housing Strategy* proposes multi-unit dwellings of various sizes and types in locations which currently lack this form of housing, providing choice and affordability. The *DCP* includes controls for dwelling diversity and adaptable and accessible housing. The *DCP* requires a mix of 1, 2 and 3 bedroom units with at least 10% of each unit type. At least 10% of proposed dwellings are required to be accessible by people with impaired mobility and at least 30% of proposed dwellings should be adaptable to meet the needs of residents as they age.

Transport and Physical Connectivity - reduction of car dependency is promoted and active transport encouraged, including provision of bicycle parking and cycle routes, availability of public transport services and encouragement of infill development. As discussed above, *Housing Strategy* precincts were identified based on selection criteria including proximity to services and shops, train stations and strategic bus corridors to reduce car reliance and promote other modes of transport such as walking and cycling. The *DCP* includes pedestrian and cycling linkage maps and controls for the provision of bicycle storage and parking and shower facilities within workplaces.

Quality Employment - employment opportunities should be in close proximity to housing. Precincts for the *Housing Strategy* are located in close proximity to public transport and commercial centres.

Community Safety and Security - crime prevention and community safety is promoted. The *DCP* includes controls requiring safe and accessible entrances to buildings for pedestrians and cyclists, and the orientation of living areas and active ground floor retail frontages to assist increase passive surveillance.

Public Open Space - access to safe green and public spaces is encouraged along with streetscapes that facilitate activity, public art and preservation of places of historic and cultural significance. Precincts for the *Housing Strategy* were chosen on the basis of proximity and walkability to existing open space with opportunity for improvements. Precincts were also identified on the basis of absence of heritage items and heritage conservation areas.

Social Infrastructure - accessible facilities and services to meet the needs of the community and support a diverse population should be provided. The proximity of *Housing Strategy* precincts to public transport allows residents to access social facilities and services such as aged person services, services for persons with a disability and child and youth services.

Social Cohesion and Social Connectivity - environments as mixed use centres are encouraged to promote social interaction, a sense of community and local involvement in planning and community life. There are several mixed use precincts within the *Housing Strategy* that incorporate residential, retail and commercial uses. The *DCP* also includes controls for active frontages and communal open space.

Environment and Health - plans and policies should enhance air and water quality, minimise health effects associated with noise, odour and light pollution, and prevent and mitigate natural and man made hazards. *Housing Strategy* precincts were selected in close proximity to public transport stops and commercial centres, in an attempt to reduce car reliance and promote other modes of transport such as walking and cycling, potentially reducing air pollution. Areas were also chosen in existing residential zones, away from industrial zones. In selecting precincts for the *Housing Strategy*, Council also considered environmental and hazard issues such as proximity to water courses and bushfire prone land.

Amendments to other Development Control Plans

The *draft Housing Strategy DCP* applies to development within 5 storey residential and mixed use precincts and 8-10 storey mixed use precincts. Supplementary amendments are also required to controls within Council's existing DCPs as outlined below.

Medium Density Multi-Unit Housing DCP: The DCP will apply to townhouse precincts and therefore, the DCP should include the key principles diagrams for the Galston Road, Hornsby and Stokes Avenue and Baldwin Avenue, Asquith precincts.

High Density Multi-Unit DCP: The DCP will apply to 8-10 storey residential precincts and therefore, should include the key principles diagram for the Park Avenue, Waitara precinct.

Medium/High Density Multi-Unit Housing DCP: The DCP should be amended to delete reference to setback requirements from Residential A (Low Density) zoned lands within Belair Close which are proposed to be rezoned for 5 storey residential development as part of the *Housing Strategy*.

Business Lands DCP: Setback requirements for the Thompson Corner, Asquith, Carlingford (in part) and Beecroft commercial centres and Masterplans for Beecroft and Berowra should be deleted as development within these areas would be subject to the mixed use controls in the *draft Housing Strategy DCP*.

Berowra/Cowan DCP: The Masterplan for the Pacific Highway, Berowra Commercial Centre should be deleted as development within the Centre would be subject to the mixed use controls in the *draft Housing Strategy DCP*.

Draft amendments to the above *DCPs* are attached to this report. It is recommended that the draft amendments be exhibited with the *draft Housing Strategy DCP*.

CONSULTATION

Draft 5 storey development control guidelines and key principles diagrams were exhibited on two occasions as part of the *Housing Strategy*. The *draft DCP* has been prepared based on the exhibited controls and diagrams, amended in accordance with Council's resolution after consideration of submissions. The preparation of the *draft DCP* has been undertaken in consultation with an urban designer, heritage consultant and Council's Development Assessment and Parks and Landscape Teams.

STATUTORY CONSIDERATIONS

The Environmental Planning and Assessment Amendment (Infrastructure and Other Planning Reform) Act 2005 commenced on 30 September 2005 and made changes to the plan making provisions of the *EP&A Act* in an effort to standardise local environmental plans and clarify the status of *DCPs*. Councils must prepare new Comprehensive LEPs in accordance with the State Government's Standard Instrument. The *Reform Act* also seeks to reduce the number of *DCPs* by allowing only one *DCP* to apply to a site. This means that Council will need to consolidate over thirty *DCPs* into one. However, the *Reform Act* and associated Regulations enables Council to continue to prepare new *DCPs* and amendments to *DCPs* until the gazettal of its Comprehensive LEP.

CONSULTATION STRATEGY

In accordance with the *Environmental Planning and Assessment (EP&A) Regulation*, draft *DCPs* are required to be exhibited for a minimum period of 28 days following endorsement by Council. The exhibition would include the following:

Advertisements in local newspapers

An advertisement would be placed in the newspapers listed below during the exhibition period.

Hills News
Hornsby Advocate
Northern District Times
Bush Telegraph
Monthly Chronicle
(subject to publication deadlines and timeframes)

The advertisement would identify the purpose of the *draft DCP*, where the draft Plan can be viewed and how submissions can be made.

Advertisement on the Council website

The *draft DCP* would be exhibited on the Council website under "On Exhibition" – Town Planning. An update would also be placed on the Housing Strategy page of the website. Council's libraries have access to the website.

Letters to Community and Industry groups

Notification letters would be sent to the following industry and community groups advising of the exhibition of the *draft DCP* and inviting submissions.

Industry Groups

Housing Industry Association
 Royal Australian Institute of Architects
 Urban Development Institute of Australia
 Real Estate Institute of Australia

Community Groups

Hornsby & District Chamber of Commerce
 Beecroft-Cheltenham Civic Trust
 Pennant Hills District Civic Trust
 West Pennant Hills/Cherrybrook Progress Association
 West Pennant Hills Valley Progress Association
 Hornsby Shire Residents and Ratepayer's Association
 Thornleigh/Normanhurst Residents Association
 Berowra & District Community Association

Displays at the Council Administration Building and local libraries

The *draft DCP* would be displayed at the Council Administration Centre, 296 Pacific Highway, Hornsby and all Council libraries.

Referrals to Statutory Authorities

Notification letters and a copy of the *draft DCP* would be sent to the following statutory authorities advising of the exhibition of the draft Plan and inviting submissions.

City of Ryde Council
 Parramatta City Council
 Hills Shire Council
 Gosford City Council
 Hawkesbury City Council
 Ku-ring-gai Municipal Council
 Pittwater Council
 Department of Education and Training
 Department of Environment, Climate Change & Water
 Department of Health
 Department of Human Services – Ageing, Disability & Home Care
 Department of Human Services – Housing NSW
 Department of Planning
 RailCorp
 Transport Infrastructure Development Corporation
 Roads and Traffic Authority
 Hawkesbury Nepean Catchment Management Authority
 NSW Rural Fire Service
 Police and Emergency Services NSW
 State Emergency Service

Referrals to other Divisions/Branches

A copy of the *draft DCP* would be forwarded to the following Divisions/Branches of Council for comment.

Assessment Teams
Parks and Landscape Team
Traffic and Road Safety Branch

Review of Consultation Strategy

Where submissions warrant, the consultation strategy may be reviewed to extend the exhibition period and/or the methods of consultation. This may occur where a submission provides reasonable justification for a request for an extension to the exhibition period or where Council is of the opinion an amendment to the consultation strategy would facilitate greater feedback on the *draft DCP*.

Following the exhibition period, a report on submissions would be presented to Council for its consideration.

TRIPLE BOTTOM LINE SUMMARY

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

A Triple Bottom Line summary was provided in respect of the *Housing Strategy* in Executive Manager's Report No. PLN5/09 considered by Council on 4 February 2009.

CONCLUSION

A *draft Housing Strategy DCP* has been prepared based on the key principles diagrams and development controls exhibited as part of the *Housing Strategy*, incorporating a number of amendments in accordance with Council's resolution on 7 July 2010.

The *draft DCP* applies to 5 storey residential and mixed use precincts and 8-10 storey mixed use precincts. Council's existing *Medium Density and High Density Multi-Unit Housing DCPs* will apply to the townhouse and 8-10 storey residential *Housing Strategy* precincts.

It is recommended that the *draft Hornsby Shire Housing Strategy DCP* and associated DCP amendments be exhibited for public comment.

RECOMMENDATION

THAT:

1. The *draft Housing Strategy Development Control Plan* attached to Executive Manager's Report No. PLN57/10 be exhibited.
2. The draft amendments to the Medium Density Multi-Unit Housing, Medium/High Density Multi-Unit Housing, High Density Multi-Unit Housing, Business Lands, and Berowra Cowan Development Control Plans be exhibited.
3. Following the exhibition, a report on submissions be presented to Council.

JAMES FARRINGTON
Manager - Town Planning Services
Planning Division

SCOTT PHILLIPS
Executive Manager
Planning Division

Attachments:

1. Housing Strategy DCP
2. Draft DCP Amendments

File Reference: F2004/07491-07
Document Number: D01458870

6 POTENTIAL REZONING OF INDUSTRIAL LAND IN KOOKABURRA ROAD HORNSBY HEIGHTS

EXECUTIVE SUMMARY

At its meeting on 7 April 2010, Council resolved that a report be prepared outlining opportunities and constraints to the rezoning of the Kookaburra Road Industrial Precinct to residential.

The rezoning of the precinct for residential purposes would provide opportunity for the implementation of a zoning consistent with adjacent land with the objective of reducing conflict between industrial and residential land uses. Furthermore, the rezoning of the precinct would only result in a minor reduction in employment lands within the Shire. However, rezoning the precinct would not require existing industrial operations to cease. Existing use rights legislation would enable any existing lawful industrial uses to continue even if the precinct is rezoned.

Rezoning the precinct to promote multi-unit housing would be inconsistent with the *Metropolitan Strategy*, *draft North Subregional Strategy* and *Hornsby Shire Housing Strategy*. These documents promote the concentration of dwellings around commercial centres and near public transport. Furthermore, the rezoning of productive industrial land for residential purposes is inconsistent with State Government policies and the recommendations of the *Ku-ring-gai and Hornsby Employment Study*, which seek to protect employment lands from redevelopment for other purposes. Therefore, this report recommends that Council not progress further considerations to rezone the Kookaburra Road Industrial Precinct for residential purposes.

PURPOSE

The purpose of this report is to outline the opportunities and constraints concerning the rezoning of the Kookaburra Road Industrial Precinct at Hornsby Heights for residential uses.

BACKGROUND

In April 2010, amendment to Development Application No. 87/1984/A was lodged for modifications to an approved industrial development at Lot 4 DP 226427 (No. 2A) and Lot 11 DP 701852 (No. 4) Kookaburra Road, Hornsby Heights. The proposal sought to reconfigure the industrial units on the upper floor, extend the units to the allotment at the rear, alter the car park and increase the gross floor area and height of the premises. In response to the exhibition of the proposal, Council received 252 written submissions from 115 residents. A number of the submissions requested that Council rezone the land for residential purposes. The amendment was subsequently withdrawn prior to consideration of Executive Manager's Report No. PLN13/10 at the 7 April 2010 Council meeting.

At its meeting on 7 April 2010, Council resolved that a report be prepared as a matter of urgency (MOU33/10) outlining opportunities and constraints to the rezoning of the industrial land in Kookaburra Road, Hornsby Heights to residential land.

DISCUSSION

This report outlines the opportunities and constraints to rezoning the industrial zoned land at Kookaburra Road, Hornsby Heights to a residential zone. The report does not present a comprehensive and detailed analysis of the implications of rezoning the precinct. Instead, it outlines issues relevant to rezoning the precinct for residential uses. Should Council resolve that consideration of the rezoning of the precinct has merit, a planning proposal should be presented to Council to progress the rezoning.

Kookaburra Road Industrial Precinct

The Kookaburra Road Industrial Precinct, comprising properties Nos. 2A-14 Kookaburra Road, Hornsby Heights is located on the eastern side of Kookaburra Road, north of Galston Road and immediately south of Montview Oval. The precinct is zoned Industrial B (Light) under the *Hornsby Shire Local Environmental Plan (HSLEP) 1994* and has an area of approximately 12,500 sqm. All premises within the precinct are occupied and utilised for industrial purposes.

The industrial precinct is located approximately 400m from the convenience shop at the corner of Galston Road and Somerville Road and more than 1km from the neighbourhood centre on Grevillea Crescent. Access to the nearest railway stations via main roads is approximately 4.2km to Hornsby Station and 5km to Asquith Station.

The site is bounded to the east, west and south by land zoned Residential A (Low Density). Montview Oval is located to the north and is zoned Open Space A (Public Recreation - Local). Thirteen residential properties immediately adjoin, or are located adjacent to, the precinct.

The industrial precinct is characterised by a mix of light industries, car repair stations, warehousing and light manufacturing. Older uses tend to be industrial in appearance, whereas newer developments have an office and warehousing character when viewed from Kookaburra Road. The precinct is identified under the *Ku-ring-gai and Hornsby Subregional Employment Study* as employment lands, which are commonly defined as industrial areas, predominantly accommodating manufacturing, distribution and non-centre urban services, such as panel beating.

It is estimated that approximately 42 jobs are generated within the precinct (based on employment rates as identified in the *Ku-ring-gai and Hornsby Subregional Employment Study*).

Zoning History

The land was used for agricultural purposes up until the late 1950s, with the land being subdivided for industrial purposes in 1965 and the first industrial buildings appearing soon after.

Mapping for the draft *Hornsby Planning Scheme Ordinance (HPSO)* in 1968 proposed to zone the land for industrial purposes, with the land subsequently being zoned Industrial B1 (Light Industrial) under *HPSO (1977)*. This zoning was translated to the current Industrial B (Light) zone under the *HSLEP 1994*.

Residential land to the east of the site in Koala Place was subdivided in 1973 and residential land immediately to the south in Kookaburra Road was subdivided in 2002. Residential land

located opposite the industrial precinct within Kookaburra Road and Willowie Close was subdivided in 1980.

Development Controls

The main controls relating to the Kookaburra Road Industrial Precinct are contained in the *HSLEP 1994* and the *Industrial Lands Development Control Plan (DCP)*.

Hornsby Shire Local Environmental Plan (HSLEP) 1994

The site is currently zoned Industrial B (Light) under the *HSLEP 1994*. The objectives of the Industrial B (Light) zone are:

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

The land uses permissible with development consent in the Industrial B (Light) zone include:

Bus stations; car parks; child care centres; communications facilities; community facilities; demolition; depots; dwellings (used in conjunction with other development permitted in this zone); educational establishments; entertainment facilities; group homes; home occupations; hospitals; light industries; materials recycling facilities; medical centres; motor showrooms; passenger transport terminals; places of worship; plant and equipment hire premises; public buildings; recreation areas; recreation facilities; registered clubs; rural industries; service shop; utility installations; vehicle body repair workshops; vehicle repair stations; veterinary hospitals; warehouses or distribution centres; and subdivision.

Development in the Industrial B zone is subject to a maximum floor space ratio of 1:1 under the provisions of the *HSLEP 1994*.

Industrial Lands DCP

The primary purpose of the *Industrial Lands DCP* is to provide controls for development within the Industrial zones of the Shire. The *DCP* contains density, setbacks, design, vehicle access and car parking, acoustic and heritage elements to promote development that relates to site conditions.

Rezoning the Land to a Residential Zone

In considering the rezoning of the precinct for residential purposes, consideration should be given to applying the Residential A (Low Density); Residential B (Medium Density); Residential C (Medium/High Density) or Residential D (High Density) zones under the *HSLEP 1994*. Within each residential zone, *dwelling-houses; housing for aged or differently abled persons and multi-unit housing* are permitted with consent. However, multi-unit housing is permitted within the Residential A zone at a density of one dwelling per 500 sqm, with increasing density ranges permitted within the Residential B, C and D zones. Under the *HSLEP 1994* the permitted floor space ratio for multi-unit development within the Residential A, B, C and D zones is 0.4:1, 0.6:1, 1.2:1 and 1.6:1 respectively.

The *Environmental Planning and Assessment Regulation 2000 (EPA Regulation)* makes provision for the continuance of existing uses on a parcel of land, after it subsequently becomes prohibited under a new local environmental plan or other environmental planning instrument. Accordingly, rezoning the precinct from Industrial B (Light) to a residential zone which prohibits industrial activity would not prevent the existing industrial activity from continuing to operate.

There appears to be little if not no vacancies within the industrial precinct. Therefore, it could be argued that the existing sites are currently occupied by viable industrial operations. This assumption may be supported by the recent application to extend an existing operation. If any rezoning of the precinct for residential purposes does not provide adequate economic incentive to current owners to redevelop, it is likely that they would continue to use their land for industrial purposes, relying on the existing use rights legislation. Given that the rate of return on industrial floor space is different to the rate of return on residential floor space, an economic feasibility analysis would be required to determine the level of return on residential development necessary to encourage current owners to cease current industrial uses within the precinct. A feasibility report would have regard to all costs associated with the redevelopment of the industrial precinct, such as demolition and remediation of the site to enable residential development. A feasibility report would cost approximately \$10,000. A site contamination analysis would also be required to confirm the suitability of the precinct for residential development. Such an analysis would cost approximately \$20,000.

Rezoning the industrial site to Residential A with a floor space ratio of 0.4:1 would likely provide limited incentive to the current industrial land owners to redevelop their sites. With a permitted floor space ratio of 0.6:1, the Residential B zone may provide greater incentive, however this would need to be confirmed by an economic feasibility analysis. Furthermore, the benefits of providing economic incentive for development should be balanced against the risk associated with the potential loss of 42 jobs during the relocation of the existing industrial uses.

The Residential C and D zones, with maximum floor space ratios of 1.2:1 and 1.6:1 respectively, would provide increased economic incentive. However, these zones promote a density of development (i.e. 3-8 storeys) which is significantly greater than that of the adjoining residential areas. This may result in impacts on the character of the area, overshadowing and loss of privacy. Consideration would also need to be given to the impact of the resultant vehicle movements on the local road system, as well as wider issues associated with locating higher density multi-unit development in out of centre locations. These issues are discussed further below in respect to the *Metropolitan Strategy, draft North Subregional Strategy* and *Hornsby Shire Housing Strategy*.

State Government Policies

In considering the rezoning of the precinct it is appropriate to consider relevant State Government policies in the context of the existing productive employment land and increased residential density.

NSW State Plan

In planning for the State's future, the *State plan: a new direction for NSW* (NSW Government 2006) identifies the need to deliver strong economic growth in a way that meets community needs, is environmentally sustainable and makes the most efficient use of the State's investment in infrastructure.

With strong population growth leading to increasing pressure to rezone existing employment land for housing and other purposes, ensuring the State has an adequate and appropriately located supply of land for employment-generation is one of the Government's most important land management roles. In recognition of this, the Government's [State Plan](#) identifies protecting employment land in existing areas as a core objective.

Metropolitan Strategy – City of Cities: A Plan for Sydney's Future (2005)

The State Government's *Metropolitan Strategy – City of Cities: A Plan for Sydney's Future* (2005) provides a broad framework to facilitate and manage growth and development over the next 25 years. The *Metropolitan Strategy* states that Sydney's population is anticipated to grow by 1.1 million people between 2004 and 2031, from a current population of 4.2 million to 5.3 million. A review of the *Metropolitan Strategy, Sydney Towards 2036* discussion paper (2010), provides a revised population forecast of 6 million by 2036, an increase of 1.7 million since 2006. It also identifies the need for 770,000 new homes and 760,000 more jobs across the Sydney Metropolitan area by 2036.

The *Metropolitan Strategy* contains seven subject areas or strategies, including Economy and Employment, Centres and Corridors, Housing, Transport, Environment and Resources, Parks and Public Places, and Implementation and Governance. The objectives, actions and targets under these strategies are required to be embodied in Council's strategic planning projects.

Part A of the *Metropolitan Strategy* addresses Economy and Employment. The *Metropolitan Strategy* identifies almost 15,000 hectares of land in the Sydney Region zoned for industrial, employment and enterprise purposes. To meet employment targets, the *Metropolitan Strategy* requires the retention of existing employment lands and the identification of new employment lands for industrial purposes. The *Metropolitan Strategy* identifies employment lands as one of three broad locations for job growth in the city. Accordingly, employment lands are essential to Sydney's future competitiveness, employing about a quarter of Sydney's total workforce.

Across Sydney there has been a trend to convert employment lands to uses such as housing, due to high housing demand and positive financial returns from residential development. Such losses of employment lands can be detrimental to Sydney's growth by reducing future opportunities for businesses to locate near assets, infrastructure or labour which would generate associated economic benefits. The loss of employment land in established areas can also increase costs for the community. Workers may need to travel further out to new industrial areas, and business to business transactions may have to be conducted across greater distances.

Although the Kookaburra Road precinct is only 12,500 sqm in area, rezoning the employment land would require Council to demonstrate that the industrial lands are not required for projected employment and the impacts of the loss of employment lands would not be significant in terms of the Subregion. Alternatively, a precinct of similar size would need to be identified within the Shire for rezoning for industrial purposes.

Part C of the *Metropolitan Strategy* addresses Housing, with the vision being to ensure the supply of appropriate and well located higher density housing to meet the needs of Sydney's growing population. The *Metropolitan Strategy* requires that a significant proportion of this housing be concentrated in centres near transit nodes either within 800 metres of a rail station or 400 metres of high frequency bus services. The rezoning of the Kookaburra Road precinct for increased housing opportunities would be inconsistent with this direction.

Draft North Subregional Strategy (2007)

The *draft North Subregional Strategy* applies to the Hornsby and Ku-ring-gai local government areas and has been prepared to implement the objectives of the *Metropolitan Strategy* at the subregional level. The *Subregional Strategy* aims to strengthen the major centre, towns, villages and neighbourhoods and establish a balanced approach to accommodating more residential growth in existing urban areas over the next 25 years.

The *draft North Subregional Strategy* identifies that Hornsby Council is required to provide sufficient zoned land to facilitate the provision of an additional 11,000 dwellings and 9,000 additional jobs by 2031. The *Subregional Strategy* requires that higher density housing should be focused around centres and corridors to take advantage of existing services such as shops and public transport. Concentrating housing growth in centres will allow for improved housing choice, ensure that higher densities are located in close proximity to services and transport, and lead to the creation of more interesting and vibrant places.

Employment Lands for Sydney: Action Plan (2007)

The *Employment Lands for Sydney Action Plan* is part of the State Government's long-term strategy to provide more jobs closer to where people live. The *Action Plan* requires that existing employment lands be retained, in light of the significant rezoning of employment lands in inner and middle ring suburbs, driven by urban consolidation and industrial restructuring. The *Action Plan* seeks to protect these employment lands from development pressure.

Council Studies

The Council studies relevant to Council's consideration of rezoning the precinct for residential purposes are outlined below.

Hornsby Shire Housing Strategy

The *Hornsby Shire Housing Strategy* identifies areas suitable for the provision of additional housing to assist meet Council's housing obligations into the future. The *Strategy* has been prepared in response to the State Government's *Metropolitan Strategy* and *draft North Subregional Strategy*. The *Housing Strategy* identifies opportunities for an additional 2,600 dwellings over the next 10 years.

A concentrated housing model has been adopted, with housing located in planned precincts rather than dispersed throughout urban areas. It was identified that to maximise opportunities for housing close to transport nodes and commercial centres, high density housing is required. Five storey housing is the preferred form of multi-unit housing for the majority of the identified precincts.

At its meeting on 7 July 2010, Council resolved to forward the *Housing Strategy Planning Proposal*, incorporating amendments, to the Minister for Planning and request the Minister defer making the proposal until after the NSW Government has, among other things, given Council a guarantee that it will deliver on all necessary infrastructure commitments. Progression of the *Housing Strategy Planning Proposal* will meet Council's obligations for the provision of additional opportunities for multi-unit housing for the next 10 years. Accordingly, additional lands are not required to be rezoned for residential purposes prior to the next stage of Council's *Housing Strategy*. Furthermore, the rezoning of the Kookaburra

Road precinct would not satisfy the locational criteria for increased housing densities under the *Housing Strategy*.

Ku-ring-gai and Hornsby Subregional Employment Study (2008)

The *Ku-ring-gai and Hornsby Subregional Employment Study* aims to ensure local employment lands strategies facilitate opportunities for the provision of an additional 13,500 jobs within the Subregion by the year 2031, as required by the *Metropolitan Strategy*. The primary objective of the *Study* is to develop a strategy for zoning, land uses and controls for employment lands that is consistent with the hierarchy of commercial centres under the State Government's *Metropolitan Strategy* and *Standard Instrument*.

The *Study* includes key observations and recommendations concerning employment lands within the North Subregion and provides strategic direction for the future role and function of employment lands. A key direction of the *Study* is to protect existing industrial lands and promote industrial centres as competitive places for industrial activity.

The *Study* identifies that the Kookaburra precinct has 6,336 sqm of employment floorspace, with a floorspace supply potential of an extra 4,516 sqm having regard to the permitted floor space ratio. With a forecast decline in industrial sectors and demand for industrial floorspace, the precinct is identified as having more than ten times the supply potential to accommodate forecast demand in the 2006-2031 period.

A land use audit undertaken as part of the *Study* found that the industrial floorspace is occupied by three main Broad Land Use Categories, Freight and Logistics (FL) occupying 3,089 sqm or 50%; local light industrial and urban support (LL) occupying 1,932 sqm; and Manufacturing-Light (ML) occupying 1,315 sqm. The two main land uses within the precinct already occupy a substantial proportion of floorspace in the Hornsby LGA with FL and LL occupying the second and fourth largest amount of floorspace, respectively.

The *Study* suggests that larger centres may be more appropriate for industrial uses. Smaller centres, such as Kookaburra Road, which are isolated from other industrial uses, can prevent businesses from benefiting from economies of scale. The *Study* also observed the trend of industrial sectors relocating to larger sites on the urban fringe to accommodate the need for larger floor area per employee. Therefore, the rezoning of the precinct would not be inconsistent with the findings of the *Study* given the small size of the industrial area.

Evaluation

Rezoning the precinct to Residential A (Low Density) to reflect the zoning of adjacent land would restrict intensification of industrial development within the precinct. However, it would not require existing industrial operations to cease. Existing use rights legislation would enable any existing legal industrial uses within the precinct to continue, even when the land is rezoned to prohibit the use. Redevelopment of the industrial land for residential purposes may only occur when an appropriate economic incentive is provided to land owners as a result of the rezoning process.

A detailed economic feasibility assessment considering all development costs, including demolition and remediation of the industrial land, would be required to determine the level of density that would provide adequate financial incentive to remediate and redevelop the land for residential purposes. Rezoning the site so that redevelopment of only part of the precinct occurs would increase, rather than reduce, conflicts between residential and industrial

occupants. Indeed, financial matters may not be the only factors taken into consideration by owners in determining whether to cease their existing industrial operations.

Although rezoning the land for high density development would provide greater economic incentive, promoting a higher concentration of dwellings in the out of centre location of Kookaburra Road, would be inconsistent with the *Metropolitan Strategy*, *draft North Subregional Strategy*, and *Hornsby Shire Housing Strategy*. However, rezoning the precinct Residential B (Medium Density) would provide additional opportunities for townhouse development which is identified in the *Housing Strategy* as a housing form that is in limited supply in Hornsby Shire. The application of a Residential B zoning would require further investigation in respect of feasibility, capacity of the existing road system and impact on adjoining development.

The rezoning of the productive industrial land for residential purposes is inconsistent with State Government policies and the recommendations of the *Ku-ring-gai and Hornsby Employment Study*, both of which seek to protect employment lands from redevelopment for other purposes. The *Ku-ring-gai and Hornsby Employment Study* also identifies a forecast decline in demand for industrial floorspace and an ‘excess supply’ potential of total industrial floorspace within the Subregion. Although only 12,500 sqm in area and constituting a small proportion of Subregional industrial lands, the precinct is fully occupied, appears to be productive industrial land, provides employment within the Shire and supports local businesses within nearby centres.

Accordingly, it is recommended that Council not progress rezoning of the Kookaburra Road Industrial Precinct for residential purposes.

CONSULTATION

If Council resolves to prepare a planning proposal to rezone the precinct it would be exhibited in accordance with the Department of Planning’s (DOP) *A Guide to Preparing Local Environmental Plans*. A consultation strategy relevant to the public exhibition of the proposal would be prepared as part of any planning proposal prepared for presentation to Council and subsequent endorsement by the DOP.

PROCESS

The State Government’s “*gateway plan-making process*”, has been introduced to assist meet the Government’s target of a 50% overall reduction in the time taken to produce local environmental plans (LEPs) and to allow the steps in the system to be tailored to the complexity of individual LEPs. The new gateway process involves the following steps:

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

Gateway – The Minister (or delegate) determines whether the planning proposal is to proceed. This gateway acts as a checkpoint to ensure that the proposal is justified before further studies are done and resources allocated to the preparation of a plan. If necessary, the proposal is amended. A community consultation process is also determined, including consultation with relevant public authorities.

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

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

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

Should Council resolve to support the progression of rezoning the precinct, a planning proposal should be presented to Council to facilitate the rezoning.

STATUTORY CONSIDERATIONS

As part of Council’s consideration of amendments to LEPs, it is required to consider any relevant State Environmental Planning Policy (SEPP) or Ministerial Direction under Section 117 of the *Environmental Planning and Assessment Act (EPA Act) 1979*. State Environmental Planning Policy No. 55 – Remediation of Land (SEPP No. 55) and Section 117 Directions 1.1 Business and Industrial Zones, 3.1 Residential Zones and 4.4 Planning for Bushfire Protection are most relevant.

SEPP No. 55 – Remediation of Land

SEPP No. 55 requires that prior to rezoning land, Council must consider whether the land is contaminated and if the land is contaminated, whether the land in its contaminated state is suitable (or will be suitable, after remediation) for all the purposes for which the land in the proposed zone concerned is permitted to be used.

Before including land in a particular zone, Council is required to consider the findings of a preliminary investigation of the land carried out in accordance with the contaminated land planning guidelines. The potential for contamination is often linked to past uses of land and a good indicator of possible uses is land zoning. Contamination is more likely to have occurred if the land is currently, or was previously, zoned for industrial or agricultural purposes.

Having previously been used as an orchard and currently being used for a range of industrial purposes, it would be appropriate that a detailed site investigation be undertaken by an appropriately qualified consultant to define the nature, extent and degree of any contamination; and to assess the potential risk posed by these contaminants to health and the environment if the land was to be rezoned for residential purposes. Preparation of this report would require an inspection of each of the sites within the precinct and require consent from land owners for this access, including soil samples being taken.

Section 117 - 1.1 Business and Industrial Zones

This Direction applies when preparing a planning proposal that affects land within an existing or proposed business or industrial zone. The Direction requires that the planning proposal must retain the areas and locations of existing business and industrial zones, and not reduce the total potential floor space area for industrial uses in industrial zones. A planning proposal may be consistent with the Direction, if the provisions of the planning proposal that are inconsistent are justified by a strategy that is approved by the Director-General of the DOP, such as the *Ku-ring-gai and Hornsby Subregional Employment Study*. Should Council support the rezoning of the precinct, the planning proposal would need to demonstrate that the precinct plays a minor role in the provision of industrial lands within the Subregion and larger centres are more appropriate for industrial uses where they can benefit from economies of scale.

Section 117 - 4.4 Planning for Bushfire Protection

This Direction applies when preparing a planning proposal that will affect, or is in proximity to land mapped as bushfire prone land. This Direction aims to protect life, property and the environment from bushfire hazards by discouraging the establishment of incompatible land uses in bushfire prone areas. Part of the precinct and the surrounding residential development are bushfire prone. Although existing residential development in the area is bushfire prone, written advice from the Commissioner of the NSW Rural Fire Service supporting the progression of any planning proposal to rezone land for residential purposes must be obtained.

Planning proposals must also have regard to planning principles for “rezoning to residential land in fire prone areas” contained in the *Planning for Bushfire Protection 2006*. This includes the requirement for a perimeter road, an urban bushland interface, specifying minimum residential lot depths to accommodate asset protection zones and introduction of controls which avoid placing inappropriate developments in hazardous areas, and introduction of controls on the placement of combustible materials in asset protection zones.

FINANCIAL

The Annual Operating Plan for the Town Planning Services Branch has been allocated towards other projects in accordance with the Management Plan and Strategic Planning Program and does not include the necessary funds to prepare a planning proposal. The resource allocation and demands of the Planning Division do not provide the opportunity to undertake the work at this stage without altering the Strategic Planning Program.

The estimated cost for the engagement of a contamination consultant and a land economist to assist in preparing a planning proposal is \$30,000.

OPTIONS

Council has before it the following options:

Option 1 – Retain existing industrial zoning

This option would retain the Industrial B (Light) zone that applies to the site. This option is recommended. Should Council wish to progress this option, an appropriate resolution is contained in the Recommendation.

Option 2 – Resolve to rezone to residential and prepare a planning proposal

This option would be to prepare a planning proposal to rezone the industrial precinct at Kookaburra Road, Hornsby Heights to residential land. An economic feasibility study of residential densities and site contamination analysis should be undertaken in the preparation of the proposal. Should Council wish to progress this option, an appropriate resolution would be:

A planning proposal to rezone properties Nos. 2A-14 Kookaburra Road, Hornsby Heights from Industrial B (Light) to Residential be included in the Strategic Planning Programme for 2011/2012 together with the allocation of appropriate funds in the Town Planning Services Branch Annual Operating Plan.

TRIPLE BOTTOM LINE SUMMARY

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

CONCLUSION

At its meeting on 7 April 2010, Council resolved that a report be prepared outlining opportunities and constraints to the rezoning of the Kookaburra Road Industrial Precinct to residential.

The rezoning of the precinct for residential purposes would provide opportunity for the implementation of a zoning consistent with adjacent land with the objective of reducing conflict between industrial and residential land uses. Furthermore, the rezoning of the precinct would only result in a minor reduction in employment lands within the Shire. However, rezoning the precinct would not require existing industrial operations to cease.

The rezoning of the productive industrial land for residential purposes is inconsistent with State and local government policies. Therefore, this report recommends that Council not progress further considerations to rezone the Kookaburra Road Industrial Precinct for residential purposes.

RECOMMENDATION

THAT Council not further investigate the rezoning of properties Nos. 2A-14 Kookaburra Road, Hornsby Heights from Industrial B (Light) to a residential zoning for the following reasons:

1. The rezoning of productive industrial lands for residential purposes is inconsistent with State Government policies and the recommendations of the *Ku-ring-gai and Hornsby Subregional Employment Study* which aim to protect employment lands from redevelopment for other purposes to ensure the retention of employment opportunities in the Shire.
2. Significant residential incentives would need to be provided to facilitate the conversion of existing industrial uses for residential purposes which would result in development that is out of character with surrounding development and higher density housing in an out of centre location.

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Attachments:

1. Locality Map

File Reference: F2007/00599-03

Document Number: D01468545