



the bushland shire

creating a living environment

BUSINESS PAPER

PLANNING MEETING

**Wednesday, 3 November, 2010
at 6.30 pm**

TABLE OF CONTENTS

AGENDA AND SUMMARY OF RECOMMENDATIONS

MAYORAL MINUTES

NOTICES OF MOTION

RESCISSION MOTIONS

MATTERS OF URGENCY

ITEMS PASSED BY EXCEPTION / CALL FOR SPEAKERS ON AGENDA ITEMS

DEVELOPMENT APPLICATIONS

A Ward Deferred

A Ward

- Item 1 PLN70/10 Development Application - Section 82A Review - Demolition and Subdivision of One Lot into Two - 20 Warruga Crescent, Berowra Heights..... 1
- Item 2 PLN71/10 Development Application - Section 82A Review - Residential Alterations and Additions - Lot 11A, DP 409358 Dusthole Point, Berowra Creek..... 27

B Ward Deferred

B Ward

C Ward Deferred

C Ward

GENERAL BUSINESS

- Item 3 PLN76/10 Wahroonga (North) Heritage Conservation Area 46
- Item 4 PLN78/10 Promotion of Heritage Events in 2011..... 55
- Item 5 PLN79/10 Reporting Variations to Development Standards 61

CONFIDENTIAL ITEMS

- Item 6 PLN77/10 Progression of Legal Action Concerning Hornsby Quarry

QUESTIONS OF WHICH NOTICE HAS BEEN GIVEN

SUPPLEMENTARY AGENDA

QUESTIONS WITHOUT NOTICE

AGENDA AND SUMMARY OF RECOMMENDATIONS

PRESENT

NATIONAL ANTHEM

OPENING PRAYER/S

Rev. Neil Dawson of Thornleigh Community Baptist Church, Thornleigh 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 purposes of providing a record of public comment at the meeting, supporting the democratic process, broadening knowledge and participation in community affairs, and demonstrating Council's commitment to openness and accountability. The recordings will be made available on Council's website once the Minutes have been finalised. All 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 6 October, 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****Page Number 1**

**Item 1 PLN70/10 DEVELOPMENT APPLICATION - SECTION 82A REVIEW -
DEMOLITION AND SUBDIVISION OF ONE LOT INTO TWO
20 WARRUGA CRESCENT, BEROWRA HEIGHTS**

RECOMMENDATION

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

Page Number 27

**Item 2 PLN71/10 DEVELOPMENT APPLICATION - SECTION 82A REVIEW -
RESIDENTIAL ALTERATIONS AND ADDITIONS
LOT 11A, DP 409358 DUSTHOLE POINT, BEROWRA CREEK**

RECOMMENDATION

THAT Council assume the concurrence of the Director General of the Department of Planning and approve Development Application No. 327/2009 for alterations and additions to an existing dwelling at Lot 11A DP 409358 Dusthole Point Berowra Creek subject to the conditions of consent detailed in Schedule 1 of this report.

B WARD DEFERRED**B WARD****C WARD DEFERRED****C WARD**

Page Number 61

**Item 5 PLN79/10 REPORTING VARIATIONS TO DEVELOPMENT
STANDARDS**

RECOMMENDATION

THAT Council note the contents of Executive Manager's Report No. PLN79/10.

CONFIDENTIAL ITEMS

**Item 6 PLN77/10 PROGRESSION OF LEGAL ACTION CONCERNING
HORNSBY QUARRY**

This report should be dealt with in confidential session, under Section 10A (2) (g) of the Local Government Act, 1993. This report contains advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.

QUESTIONS OF WHICH NOTICE HAS BEEN GIVEN

SUPPLEMENTARY AGENDA

QUESTIONS WITHOUT NOTICE

**1 DEVELOPMENT APPLICATION - SECTION 82A REVIEW - DEMOLITION AND SUBDIVISION OF ONE LOT INTO TWO
20 WARRUGA CRESCENT, BEROWRA HEIGHTS**

Development Application No:	DA/616/2009
Description of Proposal:	Demolition of a garage and subdivision of one lot into two
Property Description:	Lot 2 DP 553883 (No. 20) Warruga Crescent, Berowra Heights
Applicant:	BBC Consultant Planners
Owner:	Mr Patrick Noel Moran Ms Clare Holly Moran
Statutory Provisions:	Hornsby Shire Local Environmental Plan 1994- Residential A (Low Density) Zone
Estimated Value:	\$35,000
Ward:	A

RECOMMENDATION

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

EXECUTIVE SUMMARY

1. On 4 November 2009, Council refused Development Application No. 616/2009 for the retention of an existing dwelling, the demolition of a garage and the subdivision of one allotment into two.
2. Pursuant to Section 82A of the Environmental Planning and Assessment Act, 1979 (the Act), a request has been made for Council to review its determination.
3. The proposal complies with the provisions of the Hornsby Shire Local Environmental Plan 1994 and is generally consistent with the requirements of Council's Residential Subdivision Development Control Plan.
4. Eight submissions have been received in respect of the application.

5. It is recommended that Council changes the determination and approves the application, subject to conditions.

HISTORY OF THE APPLICATION

On 4 November 2009, Council at its Planning Meeting considered Executive Manager's Report PLN87/09 concerning the subject development application and resolved:

"THAT Development Application No. 616/2009 for the demolition of a garage and the subdivision of one allotment into two at Lot 2 DP 553883 (No. 20) Warruga Crescent, Berowra Heights, be refused on the following grounds:

- 1. The configuration of the proposed lots is unacceptable.*
- 2. The size of the proposed lots is inadequate having regard to the scope of the site.*
- 3. The configuration of proposed car parking for the existing dwelling is unacceptable.*
- 4. The subdivision would create an unacceptable precedent and is not in the public interest."*

On 18 August 2010 an application was lodged pursuant to Section 82A of the Act requesting Council to review its determination.

On 10 September 2010, Council was served with a Class 1 Appeal to the Land and Environment Court against Council's refusal of DA/616/2009. The matter is set down for Hearing on 10 December 2010.

HISTORY OF THE SITE

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

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

5. Pursuant to the provisions of Section 79C(1)(a)(iii) and (c) of the Environmental Planning and Assessment Act, 1979 and Council's Residential Subdivision and Dwelling House Development Control Plans, the proposed subdivision is considered deficient in regard to the provision of minimum access handle width.
6. Pursuant to the provisions of Section 79C(1)(e) of the Environmental Planning and Assessment Act, 1979 the proposed subdivision is not considered to be in the public interest.

THE SITE

The subject property is an irregular shaped battleaxe allotment located on the southern side of Warruga Crescent. The allotment slopes towards the rear with an average grade of 11.3% from the north-western corner to the south-eastern corner. The site has an area of 1151 m² (1037 m² excluding access handle).

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

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

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

THE PROPOSAL

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

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

The floor space ratio of the existing dwelling on lot 2 would be 0.2:1.

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

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

Proposed lot 2 would comprise an irregular shaped allotment to be accessed by the same R.O.W and would accommodate the existing dwelling. Two car spaces are proposed to be

located on the south-western side of the dwelling house in a stacked arrangement and a driveway proposed for access to the car spaces from the common turning area. The construction the vehicular turning area and driveway would require the demolition of the existing steps and construction of a retaining wall in front of the dwelling house. Pedestrian access to the dwelling house from this turning area would be provided via a set of stairs.

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

ASSESSMENT

1. STRATEGIC CONTEXT

1.1 Metropolitan Strategy – (Draft) North Subregional Strategy

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

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

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

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

2. STATUTORY CONTROLS

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

2.1 Section 82A - Environmental Planning and Assessment Act, 1979

The application for review of Council's refusal of DA/616/2009 is made pursuant to Section 82A of the Act. In accordance with the provisions under Section 82A, the applicant may make amendments to the development. Council is to notify the application and to take into consideration any submissions in carrying out the review. The notification and assessment of the application are in accordance with Section 82A.

The submitted plan for the proposed subdivision of one lot into two is the same plan as previously considered by Council. The application includes additional information with regard to the building envelope on proposed Lot 1 and the vehicular swept paths for proposed lot 2.

Reasons for Refusal

On 4 November 2009, Development Application No. 616/2009 was refused by Council on the following grounds:

1. *The configuration of the proposed lots does not comply with the “Allotment Design” element of the Residential Subdivision Development Control Plan.*
2. *The size of the proposed lots does not comply with the “Density” element of the Residential Subdivision Development Control Plan.*
3. *The configuration of proposed car parking for the existing dwelling is unacceptable in that it does not comply with the “Vehicular Access and Parking” element of the Dwelling House Development Control Plan.*
4. *The subdivision would create an unacceptable precedent and is not in the public interest.*

The grounds for refusal of the application are considered with regard to the additional information submitted by the applicant under relevant headings as follows:

2.1.1 Allotment Design

The *Residential Subdivision Development Control Plan (RSDCP)* requires that subdivisions should result in useable allotments which provide pleasant streetscapes, maximise energy efficiency and mitigate environmental impacts.

The proposed shapes of the allotments are an outcome of the existing dwelling on the site, which is proposed to be retained. Retention of the existing dwelling is problematic as it creates irregular shaped allotments that do not strictly comply with the design standards under the *RSDCP*. The existing dwelling is old and is modest in design having a limited life-span. It is anticipated that the dwelling would be replaced with a more modern dwelling in the short term.

A superior outcome for the site would be to demolish the dwelling and create more regular shaped allotments. Notwithstanding this, the applicant has demonstrated that it would be possible to design two satisfactory dwellings on the lots as currently proposed. The applicant has submitted additional information which demonstrates that Lot 1 can accommodate a building envelope with a minimum dimension of 10 metres. On that basis, it is considered that the allotment design satisfies the objectives of the *RSDCP* and Item 1 of the grounds for refusal is satisfactorily addressed.

2.1.2 Density

The proposed allotments comply with the minimum allotment sizes as prescribed in the *Hornsby Shire local Environmental Plan 1994 (HSLEP)*. Additionally, the *RSDCP* requires allotment sizes to be increased with the slope of the land. Given that the slope of the land is 11.3 %, the proposed allotment sizes should be a minimum of 510 – 520 sq metres to comply with the prescriptive measures within the *RSDCP*. The proposed allotment size for both lots is 500 sq metres which does not comply with the requirements of *RSDCP*.

The section 82A review application includes the following additional information in support of the proposal:

“The lots have an overall gentle grade and do not contain natural or cultural features that require protection and are not constrained by bushland, drainage or bushfire risk. The slope of the land poses no significant constraint and does not limit or restrict their development potential. The proposal demonstrates that the allotment can comfortably accommodate suitable building envelopes, ancillary building, private open space, access and car spaces.”

Given the above and that the proposed allotments can accommodate a reasonably sized dwelling house, a building envelope and private open space areas in addition to driveways, the minor non-compliance with regard to allotment sizes within the *RSDCP* is considered acceptable. The application satisfactorily addresses Item 2 of the grounds for refusal.

2.1.3 Vehicular Access and Parking

Proposed lot 2 includes two hard stand car spaces in a stacked arrangement within the front and side setback. The car spaces for both allotments are accessed via an access handle off Warruga Crescent. The following matters have been considered in this regard:

2.1.3.1 Access Handle

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

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

2.1.3.2 Car Parking

Council’s Dwelling House Development Control Plan (DHDCP) requires that car parking be provided behind the building line. The car parking for lot 2 is proposed in front of the existing dwelling house, which does not comply with the requirements of the DHDCP.

The applicant has provided the following information in support of the application:

“The requirement to provide a car parking behind the building line is applicable to traditional subdivision where lots have a road frontage and a predominant building line is evident. It is submitted that this control has no work to do in this case where the application is for a subdivision of an existing battleaxe allotment. There is no building line, nor front setback to consider.

Furthermore, vehicle swept turning path plans indicate that the parking spaces as shown on the plan are appropriately designed and can be readily accessed enabling vehicles to enter and leave the sites in a forward direction. The additional information

provided within Section 82A Review application shows that safe and convenient access can be provided to parking and meet the requirements of the DCP.”

An engineering assessment of the vehicle swept paths, submitted with this application is considered satisfactory. The proposed parking spaces within Lot 2 are satisfactory and comply with the objectives of the element “Vehicular Access and Parking” within the Dwelling House DCP, which require the provision of safe and convenient parking for residents.

The application satisfactorily addresses Item 3 of the grounds for refusal.

2.1.4 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 an acceptable impact. The minor non-compliance with a limited number of numerical provisions of the relevant Development Control Plans would not hinder the orderly and economic use of the land as it would result in two satisfactory dwellings on both the subdivided allotments.

Accordingly, the proposed subdivision would not create an undesirable precedent for the locality and it is considered that the approval of the proposed development would not be inconsistent with the public interest.

2.2 Hornsby Local Environmental Plan 1994

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

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

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

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

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

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

The application has been assessed against the requirements of Sydney Regional Environmental Plan No. 20. This Policy provides controls to protect the environment of the Hawkesbury-Nepean system, including its water quality. The plan addresses matters related to water quality, significant vegetation habitats, extraction, environmental heritage and scenic quality, recreation and tourism, and agriculture.

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

2.4 Residential Subdivision Development Control Plan

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

Residential Subdivision Development Control Plan			
Control	Proposal	Requirement	Compliance
Density			
Lot 1	500 m ²	510 m ²	No
Lot 2	500 m ²	510 m ²	No
FSR			
Lot 2	0.2:1	0.4:1	Yes
Site cover			
Lot 2	23%	40%	Yes
Building Envelope			
Lot 1	200 m ²	200 m ²	Yes
Minimum Dimension			
Lot 1	7 m	10 m	No

Car parking			
Lot 1	2 spaces	2 spaces	Yes
Lot 2	2 spaces	2 spaces	Yes
Private Open Space			
Lot 1	120 m ²	120 m ²	Yes
Lot 2	100 m ²	80 m ²	Yes
Landscaping			
Lot 1	45%	45%	Yes
Lot 2	50%	45%	Yes
Width of Access handle	3.8 m	4 m	No
Setbacks			
Lot 1			
Front	1m	1m	Yes
Eastern side	6 m	1m	Yes
Western side	7 m	1 m	Yes
Rear	1m	3 m	No
Lot 2			
Front	7m	1m	Yes
Eastern side	Existing retained		
Western side	Existing retained		
Rear	Existing retained		

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

2.4.1 Density

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

2.4.2 Design

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

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

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

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

2.4.3 Setbacks

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

2.4.4 Solar access

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

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

2.4.5 Private Open Space & Landscaping

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

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

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

2.4.6 Drainage Control

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

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

2.4.7 Privacy

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

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

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

2.4.8 Access Handle

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

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

2.5 Berowra Cowan Development Control Plan

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

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

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

2.6 Dwelling House Development Control Plan

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

2.6.1 Car Parking

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

2.7 Car Parking Development Control Plan

The development’s compliance with the relevant requirements of the Car Parking DCP has been addressed in this report.

2.8 Sustainable Water Development Control Plan

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

2.9 Section 94 Contributions Plan

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

3. ENVIRONMENTAL IMPACTS

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

3.1 Natural Environment

3.1.1 Trees

The site comprises a number of exotic and native planted trees and locally indigenous specimens including *Eucalyptus spp.*, *Callistemon spp.*, *Cupressus spp.*, *Liquidamber spp.*,

Camellia spp., Macadamia spp., Syagrus spp. & Baobab spp. The proposal would require the removal of one tree to facilitate the construction of the car spaces within lot 2.

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

3.1.2 Water Quality

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

3.2 Built Environment

The impact of the proposed allotment on the built environment has been addressed in detail within Section 2 of this report.

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

3.3 Social Impacts

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

3.4 Economic Impacts

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

4. SITE SUITABILITY

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


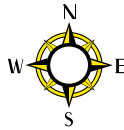
The site does not constitute bushfire prone land. The site is suitable for the development.

5. PUBLIC PARTICIPATION

The Section 82A Review Application was placed on public exhibition and was notified to adjoining and nearby landowners between 2 September 2009 and 16 September 2009 in accordance with Council's Notification and Exhibition Development Control Plan. During this period, Council received eight 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	
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Eight submissions objected to the development, generally on the following grounds that the development would result in:

- Unacceptable Stormwater runoff and flooding of the downstream properties and Woodcourt Road.
- Encroachment of easement into the adjoining property at No. 14 Woodcourt Road resulting in adverse impacts.
- Unacceptable impact on the privacy of the properties located at the lower level.
- Non-compliance with regard to width and gradient of driveway providing access to the subdivided allotments.
- Undersized allotments in the locality, given the steep gradient of the site.
- Irregular allotment shapes not complying with the subdivision pattern of the locality.
- Removal of trees within the site.
- Overshadowing of the adjoining dwellings due to the new dwelling.
- Increase in the impervious areas on the site with no useable spaces.
- Unacceptable width of driveway being less than 4 metres.

- Unacceptable vehicular access and parking to the site.
- Undesirable precedent for the area.
- Devaluation of the adjoining properties.
- Insufficient parking within the site resulting in on-street parking for visitors to the site and residents.
- Unacceptable increase in noise and density.
- Restriction of views for the residence within No. 18 Warruga Crescent.

Additionally the objectors made the following observations:

- Demolition of the garage would have adverse impact on the surrounding environment due to possible presence of asbestos.
- It is unclear whether the proposed building envelope includes a garage or a carport and whether that would cause overlooking opportunities.
- The proposed location of the car spaces would require excavation of the site and construction of retaining walls. The proposal does not include these details.

The merits of the matters raised in community submissions have been addressed in the body of the report and further expanded as follows:

5.1 Drainage Control

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

Council's engineering assessment of the application concludes that drainage control on site is satisfactory subject to recommended conditions regarding amendment to the layout of the pipe near Woodcourt Road. In order to maintain the amenity of the adjoining properties, a condition is recommended to relocate the easement at a distance of 1 metre from the property boundary of Lot 3 DP 553883 (No. 14) Woodcourt Road, located to the east of No. 16 Woodcourt Road.

Given the above, the proposal would improve the current drainage situation in the locality and is considered acceptable.

5.2 Solar Access

The allotments are north-south orientated. The private open space areas are proposed to be orientated in a north-south direction to receive sufficient solar access. The existing dwelling

house is single storey and would not have an adverse impact on the adjoining development with regard to overshadowing.

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

5.3 Privacy

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

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

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

5.4 Tree Removal

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

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

5.5 Noise

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

5.6 Restriction of Views

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

5.7 Car spaces

The proposal is for subdivision of the subject property only. Details of location of car spaces or garage and the associated excavation within lot 1 would be assessed under a separate application.

5.8 Asbestos

Recommended conditions of development consent would ensure the safe removal of asbestos from the site.

CONCLUSION

The applicant has requested that Council review its decision to refuse DA/616/2009 for the subdivision of one lot into two lots, retention of the existing dwelling and demolition of the garage.

The applicant has provided additional information demonstrating that a suitable building envelope can be accommodated within proposed lot 1. Vehicular swept paths submitted with the application demonstrate that the proposed car spaces within lot 2 are safe and convenient.

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

It is recommended that Council approve the application.

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

ROD PICKLES
Manager - Assessment Team 2
Planning Division

PAUL DAVID
Manager - Subdivision & Development
Engineering Services
Planning Division

SCOTT PHILLIPS
Executive Manager
Planning Division

Attachments:

1. Locality Plan
2. Subdivision Plan
3. Tree Plan
4. Vehicle Swept Paths
5. Building Envelope Plan
6. Stormwater management plan

File Reference: DA/616/2009

Document Number: D01500237

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>
Plan of Proposed Subdivision	PS Graham and Associates	13/08/2010
Stormwater Concept Plan	PS Graham and Associates	Received by Council on 21/09/2009

2. Removal of existing Trees

This development consent only permits the removal of tree numbered T3 as identified on Plan No. S.14700 prepared by PS Graham and Associates dated 13/08/2010. The removal of any other trees requires separate approval under Council's Tree Preservation Order.

3. Amendment of Plans

The "Stormwater Concept Plan" approved in condition 1 of this development consent is to be amended as follows:

- a. The piping layout within Lot 12 DP 816320 (No. 16 Woodcourt Road) is to be altered as marked in red
- b. The proposed easement through Lot 12 DP 816320 (No. 16 Woodcourt Road) is to be relocated to a distance of 1 metre from the eastern boundary adjoining Lot 3 DP 553883 (No. 14) Woodcourt Road. The setback is to be maintained along the entire length of the easement as marked in red in the Stormwater concept Plan.

REQUIREMENTS PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE**4. Easement Over Downstream Land**

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

5. Building Code of Australia

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

6. Water/Electricity Utility Services

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

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

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

REQUIREMENTS PRIOR TO THE COMMENCEMENT OF ANY WORKS**7. Erection of Construction Sign**

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

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

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

8. Erosion and Sediment Control

Erosion and sediment control measures must be provided and maintained throughout the construction period in accordance with the manual *‘Soils and Construction 2004*

(*Bluebook*)', the approved plans, Council specifications and to the satisfaction of the principal certifying authority. The erosion and sediment control devices must remain in place until the site has been stabilised and revegetated.

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

REQUIREMENTS DURING CONSTRUCTION

9. Construction Work Hours

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

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

10. Demolition

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

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

11. 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.

12. Works near Trees

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

All works (including driveways and retaining walls) within four metres of trees numbered T26, T27A, T27B, T27C, T27D (as marked on the approved plans)

required to be retained (whether or not on the subject property, and pursuant to this consent or the *Tree Preservation Order*), must be carried out under the supervision of an 'AQF Level 5 Arborist' and a certificate submitted to the principal certifying authority detailing the methods used to preserve the trees.

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

REQUIREMENTS PRIOR TO THE ISSUE OF A SUBDIVISION CERTIFICATE

13. Sydney Water – s73 Certificate

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

14. Stormwater Drainage

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

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

Note: This condition should be read in conjunction with condition No. 3.

15. Internal Driveway/Vehicular Areas

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

- a. The driveway be a rigid pavement.
- b. The driveway grade must not exceed 25 percent and changes in grade must not exceed 8 percent. Parking and turning areas are not to exceed 5 percent grade.
- c. The driveway pavement be a minimum 3 metres wide, 0.15 metres thick reinforced concrete with F72 steel reinforcing fabric and a 0.15 metre sub-
- d. base.
- e. The existing driveway be removed unless a chartered structural engineer certifies that it is capable of remaining stable under an 8 tonne traffic loading.
- f. 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.

- g. Retaining walls required to support the carriageway and the compaction of all fill batters to be in accordance with the requirements of a chartered structural engineer.
- h. 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.
- i. Planting of landscaping strips 0.5 metres wide along both sides of the length of the driveway.
- j. Conduit for utility services including electricity, water, gas and telephone be provided.

16. 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.

17. Creation of Easements

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

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

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

Note: This condition should be read in conjunction with condition No. 3.

18. Works as Executed Plan

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

19. Boundary Fencing

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

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

20. s94 Infrastructure Contributions

The payment to Council of a contribution of \$ 19827.80* 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 \$ 19827.80 per additional lot and is current as at 5 October 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:
- A construction certificate prior to the commencement of any works. Enquiries regarding the issue of a construction certificate can be made to Council's Customer Services Branch on 9847 6760.
- A principal certifying authority to be nominated and Council notified of that appointment prior to the commencement of any works.
- Council to be given at least two days written notice prior to the commencement of any works.
- Mandatory inspections of nominated stages of the construction inspected.
- An occupation certificate issued before occupying any building or commencing the use of the land.

Long Service Levy

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

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

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

Tree Preservation Order

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

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

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

Subdivision Certificate Requirements

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

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

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

Fees and Charges – Subdivision

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

Dial Before You Dig

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

Asbestos Warning

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

www.environment.nsw.gov.au

www.nsw.gov.au/fibro

www.adfa.org.au

www.workcover.nsw.gov.au

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

House Numbering

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

**2 DEVELOPMENT APPLICATION - SECTION 82A REVIEW - RESIDENTIAL ALTERATIONS AND ADDITIONS
LOT 11A, DP 409358 DUSTHOLE POINT, BEROWRA CREEK**

Development Application No:	DA/327/2009
Description of Proposal:	Alterations and additions to an existing dwelling (Section 82A Review)
Property Description:	Lot 11A, DP 409358 Dusthole Point, Berowra Creek
Applicant:	Miss Elyse Grogan
Owner:	Mr Matthew Alan McLennan
Statutory Provisions:	Environmental Protection E (River Settlements) Zone
Estimated Value:	\$ 200,000
Ward:	A

RECOMMENDATION

THAT Council assume the concurrence of the Director General of the Department of Planning and approve Development Application No. 327/2009 for alterations and additions to an existing dwelling at Lot 11A DP 409358 Dusthole Point Berowra Creek subject to the conditions of consent detailed in Schedule 1 of this report.

EXECUTIVE SUMMARY

1. On 3 February 2010, Council refused under delegated authority, Development Application No. 327/2009 for alterations to an existing dwelling including the addition of an upper floor.
2. Pursuant to Section 82A of the Environmental Planning and Assessment Act, 1979 (the Act), a request has been made for Council to review its determination.
3. The proposal does not comply with the floor space ratio development standard contained in the Hornsby Shire Local Environmental Plan 1994 for the Environmental Protection E (River Settlements) zone. The applicant's objection to the standard, submitted pursuant to State Environmental Planning Policy No. 1 – Development Standards, is considered well founded in accordance with established legal principle and is supported.

4. The proposal complies with the Sydney Regional Environmental Plan No. 20 Hawkesbury Nepean River, the Hornsby Shire Local Environmental Plan 1994 (HSLEP) and is generally consistent with the River Settlements Development Control Plan. There is a non compliance with the 'Height' and 'Density' element of the River Settlements Development Control Plan, however the non compliances would not have any significant impact and the variation is supported in this report.
5. No submissions have been received in respect of the application.
6. It is recommended that Council changes the determination and approves the application, subject to conditions.

HISTORY OF THE APPLICATION

On 27 March 2009, DA/327/2009 for alterations and additions to the existing dwelling house was lodged with Council.

The draft Amendment No. 97 to the Hornsby Shire Local Environmental Plan 1994 was exhibited in March 2009 for public comments. Amendment No. 97 to Hornsby Shire Local Environmental Plan 1994 was gazetted in January 2010 which amended the floor space ratio for the Environmental Protection E Zone from 0.4:1 to 0.3:1. The Amendment did not include a savings and transitional provision.

On 3 February 2010, Development Application No. 327/2009 was refused under delegated authority on the following grounds:

- “1. The proposal does not comply with the objective (b) and (c) of the Environmental Protection E zone. The development does not accommodate low-density housing in accordance with the environmental sensitivity and infrastructure limitations of the area and is not within the environmental capacity of the site.*
- 2. The proposal does not comply with Clause 15 of the Hornsby Shire Local Environmental Plan 1994 (Amendment No. 97) as it exceeds the maximum permissible floor space ratio of 0.3:1. An objection under the State Environmental Planning Policy No. 1 has not been submitted to Council.*
- 3. The proposal is unsatisfactory pursuant to section 79C(1)(c) of the Environmental Planning and Assessment Act 1979 as it fails to demonstrate that the site is suitable for the proposed development having regard to environmental constraints.*
- 4. The proposal does not comply with Clause 10 “Services” of the Hornsby Shire Local Environmental Plan 1994 as the proposed subsurface dispersal area is insufficient to cater for the increased potential effluent volume resulting from an increase in the maximum potential occupancy of the dwelling.*
- 5. The proposal does not comply with the element “Effluent Disposal” within Council’s River Settlements Development Control Plan.*
- 6. The proposal does not comply with the “Water Quality” and “Environmentally Sensitive Areas Policy” within Clause 6 and “Sewerage Systems or works” within Clause 11 of the Sydney Regional Environmental Plan No. 20.*

7. *The existing septic tank is partially located within the adjoining property located to the west of the site (Lot 10 DP 18039). Owners consent from the neighbouring property has not been provided with the application. The proposal does not comply with Clause 49 of the Environmental Planning and Assessment Regulation 2000 in this regard.*

Having addressed Council's reasons for refusal, on 24 August 2010, a request for Council to review its determination was lodged pursuant to Section 82A of the Act.

THE SITE

The site has an area of 556 sq metres and is located on the southern side of Hawkesbury River, at Dusthole Point. Access to the site is via an existing jetty and pontoon.

A 2 metre high seawall is constructed all along the frontage of the property above the Mean High Water Mark. A set of stairs leads to the first level of the development from the pontoon. This level includes an in ground swimming pool and an open deck. A 2.5 metre high sandstone retaining wall forms the southern (rear) boundary of this level area.

The site currently accommodates a split level dwelling set back at a distance of 5 metres from the river bank. The dwelling house includes a non-habitable sub floor area with the living areas being located at the first floor level. A covered open space area is located on the eastern side of the building. The gross floor area of the existing dwelling house is 113.8 sq metres.

Developments surrounding the site consist of one and two storey residential developments of varied style and scale. A two storey development exists on the northern side of the site located close to the crest of the river.

THE PROPOSAL

The proposal involves the following:

- Minor internal alterations to the lower level to include an open plan living, family and study area with a toilet and kitchen.
- Construction of an upper level to include a lounge area, three bedrooms and bathrooms and balcony.
- The upper floor would extend further towards the rear and would rest on poles over an existing rock outcrop
- The roof line would be extended to cover the existing deck and proposed balcony.

The proposal would result in a gross floor area of 227.8 sq metres.

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 contributing 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 Section 82A Review

The application for review of Council's refusal of DA/327/2009 is made pursuant to Section 82A of the Act. In accordance with the provisions under Section 82A, the applicant may make amendments to the development. Council is to notify the application and to take into consideration any submissions in carrying out the review. The notification and assessment of the application are in accordance with Section 82A.

To address Council's reasons for refusal, the submitted plan for the proposed alterations and additions includes an amendment to the ground floor plan by deleting the study room and incorporating an open-plan layout. In addition, the applicant has submitted further information including an objection pursuant to State Environmental Planning Policy No. 1 (SEPP 1) and an amended on-site sewerage management plan. The relevant matters are considered in the following sections of this report.

2.2 Hornsby Local Environmental Plan 1994

2.2.1 Clause 7 – Zone Objectives

The subject land is zoned Environmental Protection E (River Settlements) Zone under the Hornsby Local Environmental Plan 1994 (HSLEP). The objectives of the zone are:

- (a) *To protect the natural environment of sensitive areas within the catchment of the Hawkesbury River.*

- (b) *To accommodate low density housing that is consistent with the environmental sensitivity, infrastructure limitations and access limitations of the area.*
- (c) *To protect the scenic quality and water quality of the area and promote development that is within the environmental capacity of the area.*

The proposed development is defined as “dwelling house” under the HSLEP and is permissible in the zone with Council’s consent.

The proposed addition to the dwelling would have no significant impact on the environmentally sensitive area subject to conditions for sediment and erosion controls, waste water management and excavation procedures. The proposal complies with objective (a) in this regard.

The proposal would maintain the low density residential character of the area and would not significantly alter the building envelope of the dwelling. The amended proposal has reduced the number of bedrooms and demonstrates that it is within the servicing capacity of the locality. Therefore, it is assessed as satisfactory against clause (b) the HSLEP.

The proposal would not detrimentally impact on the scenic quality of Berowra Creek as the proposed extension would not be highly visible from the waterfront. The amended proposal would be within the environmental capacity of the area and would have minimal impact on water quality subject to conditions. The proposal complies with objective (c) in this regard.

Given the above, it is considered that the amended proposal satisfies Item 1 of grounds for refusal.

2.2.2 Floor space ratio

Clause 15 of the HSLEP prescribes that the maximum Floor Space Ratio (FSR) of development within the Environmental Protection E (River Catchment) Zone is 0.3:1. The proposed alterations and additions would result in a FSR of 0.36:1, exceeding the maximum permissible FSR. The original application did not include an objection pursuant to State Environmental Planning Policy No. 1 – Development Standards (SEPP 1) to support the variation.

The section 82A review application includes an objection pursuant to SEPP 1 in support of the proposal and this is addressed in Section 2.3 of this report.

2.2.3 Sewage services

Clause 10 of the HSLEP prescribes that adequate sewerage services be provided for any development.

The applicant has provided additional details regarding the proposed septic tank system on the site. The amended proposal has reduced the number of bedrooms in order to reduce the total area required for effluent disposal for the development and provides the details of a suitable effluent management system on the site. The submitted on-site sewerage management report demonstrates that 100 sq metres of effluent disposal area can be provided at the rear which is assessed as satisfactory.

Further, it is also noted in the submitted survey plan that the existing septic tank within the site is partially located within the neighbouring property to the west of the site (Lot 10 DP

18039). Owner's consent from the neighbouring property has been included in the application as it would require alterations to the septic tank.

Given the above, it is considered that the amended proposal satisfactorily addresses the Item Nos. 4 and 7 of the grounds for refusal.

2.3 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 FSR development standard for the Environmental E (River Settlements) zone has reduced from 0.4:1 to 0.3:1 as part of Amendment No. 97 to the HSLEP. The original application was lodged in March 2009 well before the amendment of the HSLEP on 29 December 2009 and was under assessment at that time. The amendment did not include savings provisions for applications lodged prior to the amendment date. The proposal results in a FSR of 0.4:1. The section 82A Review application includes a SEPP 1 objection against the adherence to the revised FSR standard.

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

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

It is considered that the abovementioned circumstances are relevant matters to consider in respect of this application.

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

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

The amended proposal would be consistent with the objectives of the FSR standard of the HSLEP as the proposal is consistent with the zone objectives of the Environmental Protection E (River Settlements) zone. Furthermore, the proposal is considered acceptable in terms of intensity and scale as the additions would not significantly alter the building footprint of the dwelling. Whilst the proposal exceeds the maximum permissible floor area, the scale of the development is in keeping with the bulk, scale and intensity of the surrounding dwellings on Berowra Creek. The proposed development is considered to be within the environmental capacity of the site and would have minimal impact on the natural environment subject to conditions. In this regard the proposal achieves the objectives of the FSR standard and the non compliance is considered well founded.

The applicant submits that strict compliance with the FSR requirement is unreasonable and unnecessary for the following reasons:

- *The proposed first floor addition is compatible with the scale and massing of the existing dwelling and designed within the existing building footprint.*
- *The additional floor area would not impact on the scenic or environmental qualities of the locality with the proposed addition presenting an acceptable built form for this waterfront property.*
- *The proposed additional floor area is within the existing building footprint and would have no impact on the natural site features such as existing trees/vegetation surrounding the dwelling resulting in minimal impacts (if any) on the water catchment.*
- *The proposed first floor addition would not obstruct water views from the adjoining properties or the bushland reserve.*
- *The proposal would not result in additional amenity impacts to the adjoining residential properties with regard to overshadowing or loss of privacy. The shadow cast by the additional floor area falls onto the rear of the subject site and the adjoining unformed road between 9am and 3pm at mid winter.*
- *The first floor addition accommodates bedrooms with the impact on privacy from bedroom windows not as significant concern as overlooking from living areas.*
- *The dwelling subject to the alterations and addition is compatible with the scale and density of housing in the locality.*
- *The proposed alterations and additions to the dwelling meet the Density objective and performance criteria contained in Part 3 – DCP River Settlements and the Scale provisions contained in DCP – Dwelling Houses. The bulk and scale of the dwelling subject to the alterations and additions is consistent with the bulk, scale and intensity of residential development fronting Berowra Creek.*

It is considered that the applicant's SEPP 1 submission is well founded and that compliance with the development standard would be unreasonable and unnecessary in the circumstances of the case. Accordingly, the SEPP 1 objection is supported and is considered that the application satisfactorily addresses Item No. 2 of the ground for refusal of the original application.

2.4 Sydney Regional Environmental Plan No. 20 – Hawkesbury - Nepean River

The relevant matter of the Sydney Regional Environmental Plan No. 20 (SREP-20) is discussed below.

2.4.1 Clause 6 - Environmentally Sensitive Areas and Water Quality

Clause 6 of SREP-20 requires the quality of environmentally sensitive areas to be protected and adverse impacts on water quality to be minimised.

Dusthole Point is identified as an Environmentally Sensitive Area due to its location within the riverine corridor of the Hawkesbury River, riparian land, vegetation, habitats and scenic qualities. The proposal, as amended includes adequate effluent disposal area to cater for this scale of development. To ensure the protection of the environmentally sensitive areas, conditions have been recommended regarding excavation and for sediment and erosion control measures to be implemented.

Subject to conditions the proposal would have minimal impact on the water quality of the Hawkesbury Nepean Catchment and is consistent with the strategies of SREP No. 20 with respect to 'Environmentally sensitive areas' and 'Water Quality'.

2.4.2 Clause 11 - Sewerage Systems or works

As discussed in Section 2.2.3 of this report, the application is assessed as satisfactory with regard to the proposed sewerage system on the site.

In this regard, the application addresses the Item No. 6 of the grounds for refusal of the original application satisfactorily.

2.5 River Settlements Development Control Plan

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

River Settlement Development Control Plan			
Control	Proposal	Requirement	Compliance
Storeys	2	2	Yes
Site cover	42%	30%	No
Setback			
Front (River)	5m	2m	Yes
Side (west)	Existing unchanged		
Side (east)	Existing unchanged		
Rear building limit	2m – 7m	Not specified	Yes

The compliance of the proposed development with the relevant development standards of the DCP are provided below:

2.5.1 Site Cover

The development exceeds the maximum site coverage on the site. The existing development covers more than 30 % of the site area. The proposed development would result in a minor extension of the upper floor to the rear of the site which would not be visible from the river. This extension would result in further non-compliance with the DCP with regard to site coverage as the site area is only 556 sq metres. Given that the additional covered area would not be visible from any public area or the river, the non-compliance is considered acceptable.

2.5.2 Design

The proposal involves the construction of an upper floor and minor alterations to the lower floor of the building. The extension would increase the height of the building by an additional storey and the resultant development would have the appearance of a three storey structure due to the existing elevated terrace and retaining walls.

However, it is noted that the development would be two-storey in height when considered with regard to the existing ground levels and it would not protrude over the tree canopy. Given that the existing dwellings in close proximity to the development have similar heights, it is considered that the dwelling would not be visually obtrusive and would blend with the established character of the area.

Further the proposed extension would be set back from the foreshore and would not have any adverse impact on the absorption capacity of the river. The external appearance of the additional floor would match the existing dwelling and is considered acceptable.

2.5.3 Effluent Disposal

The additional information submitted with the application with regard to effluent disposal on the site is assessed as satisfactory as discussed in section 2.2.3 of this report.

It is considered that the application satisfactorily addresses Item 5 of the grounds for refusal.

3. ENVIRONMENTAL IMPACTS

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

3.1 Natural Environment

3.1.1 Trees

The proposal would not result in the removal of any trees on the site and would not have a significant adverse impact on the natural environment of the locality.

4. SITE SUITABILITY

4.1 Bushfire Risk

The land is identified as being subject to bushfire risk. The proposal was referred to NSW Rural Fire Service for comments. No objections were raised from the RFS subject to the implementation of recommended conditions.

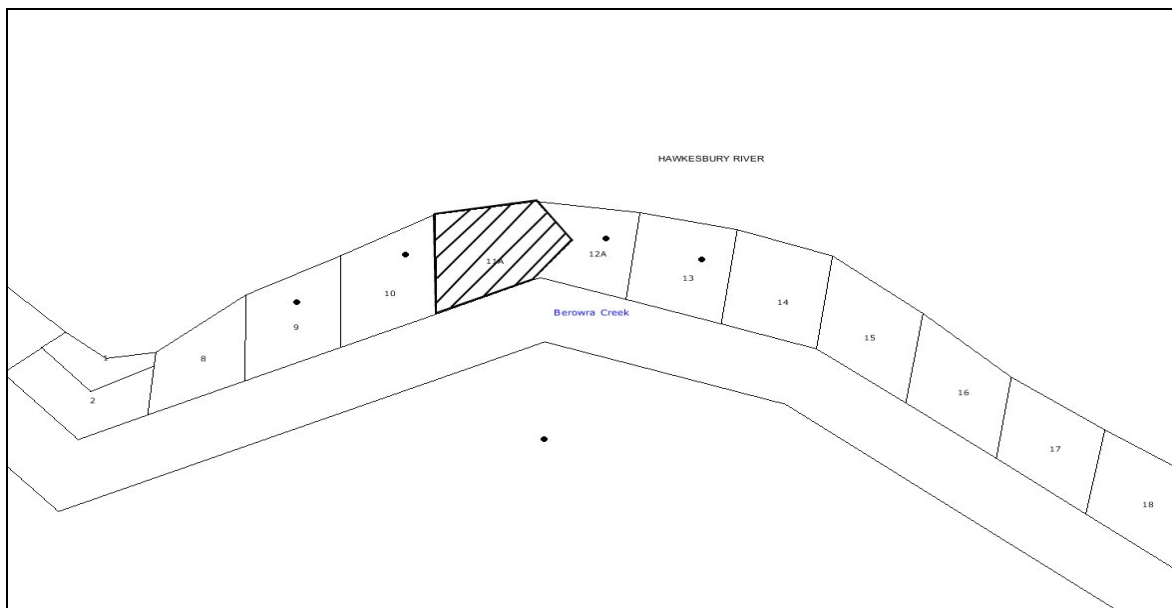
4.2 Impact on environment

The application includes satisfactory information regarding provision of effluent disposal area on the site.

The applicant has demonstrated that the site is suitable for the development and Item 3 of the grounds for refusal has been addressed satisfactorily.

5. PUBLIC PARTICIPATION

The Section 82A Review application was placed on public exhibition and was notified to adjoining and nearby landowners between 9 September and 23 September 2010 in accordance with Council’s Notification and Exhibition Development Control Plan. During this period, Council did not receive any submissions. The map below illustrates the location of those nearby landowners who were notified.



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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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 satisfactorily addresses Council's and relevant agency'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 proposal involves alterations to the lower level of an existing dwelling house and addition of an upper floor. The site has a number of constraints with regard to the steep gradient and lack of space.

The application does not comply with the 0.3:1 floor space ratio development standard under the Hornsby Local Environmental Plan 1994. The Section 82A Review application includes an objection pursuant to State Environmental Planning Policy No. 1 to support the variation to the development standard. It is determined that the objection is well founded and therefore the proposed variation is supported.

The Section 82A Review application also includes an amended effluent disposal report which is assessed as satisfactory. The proposal is assessed as satisfactory against Section 79C of the Act, SREP 20 and is generally consistent with the HSLEP and the River Settlements Development Control Plan. The proposal does not comply with the prescriptive measures for 'Density' and 'Height' in the River Settlements DCP, however these non compliances would not result in any significant impact and the variation is supported. The proposal would not result in adverse social, environmental or economic impacts in the area and approval of the proposal is recommended.

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

ROD PICKLES
Manager - Assessment Team 2
Planning Division

SCOTT PHILLIPS
Executive Manager
Planning Division

Attachments:

1. Locality Plan
 2. Site and Section Plans
 3. Elevation and Floor Plan
 4. Shadow Plan
 5. DA/327/2009 Delegated Report
- File Reference: DA/327/2009
Document Number: D01500613

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>
Floor Plans and Elevations- Issue B	Archwood Design	26/01/2010
Site Plan and Section	Archwood Design	02/12/2008
Sediment and Erosion Control Plan	Archwood Design	Received by Council on 27/03/2009
Stormwater drainage Plan	Kozarovski & Partners	30/01/2008
Survey Plan	Base Surveying	9/9/2008

<i>Document No.</i>	<i>Prepared by</i>	<i>Dated</i>
BASIX Certificate – A4895	NSW Department of Planning	5/12/2008
Bushfire Assessment Report -90239	FPA Australia	Received by Council on 27/03/2009
Effluent Management Report	Blue Mountains Geological & Environmental Services Pty Ltd	November 2009
Amendment to Report for On-Site Effluent Management	Blue Mountains Geo-technical and Environmental Services Pty Ltd	9/02/2010
Objection Pursuant to SEPP 1	Chapman Planning Pty Ltd	Received by Council on 24/08/2010
Schedule of Finishes	-	Received by Council on 27/03/2009

2. Removal of Existing Trees

This development consent does not permit the removal of any trees on 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. Building Code of Australia

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

4. Contract of Insurance (Residential Building Work)

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

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

5. Notification of Home Building Act, 1989 Requirements

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

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

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

REQUIREMENTS PRIOR TO THE COMMENCEMENT OF ANY WORKS**6. Erection of Construction Sign**

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

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

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

7. Erosion and Sediment Control

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

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

REQUIREMENTS DURING CONSTRUCTION**8. Construction Work Hours**

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

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

9. Demolition

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

- a. Demolition material is to be disposed of to an authorised recycling and/or waste disposal site and/or in accordance with an approved waste management plan.
- b. Demolition works, where asbestos material is being removed, must be undertaken by a contractor that holds an appropriate licence issued by *WorkCover NSW* in accordance with Chapter 10 of the *Occupational Health*

and Safety Regulation 2001 and Clause 29 of the Protection of the Environment Operations (Waste) Regulation 1996.

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

10. Environmental Management

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

11. Works near Trees

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

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

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

12. 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.

13. Council Property

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

REQUIREMENTS PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE

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

14. Fulfilment of BASIX Commitments

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

15. Stormwater Drainage – Land Adjoining a Watercourse

In addition to other stormwater drainage requirements under this consent, all headwall outlets must incorporate flow velocity reduction controls (i.e. bedded boulders and small stones) to minimise erosive and scouring impacts to the watercourse. Energy dissipater controls must be landscaped to accommodate outlet sheet flow (forced jump). No engineering works are permitted within the bed of the watercourse.

16. Smoke Alarms – Dwelling Additions

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

17. Wastewater System Approval

An on-site sewage management system, separately approved under the Local Government Act 1993, must be installed, commissioned and certified by a licensed plumber in accordance with Australian Standard 1547 – Onsite Domestic Wastewater Management (2000) and Environment & Health Protection Guidelines – Onsite Sewage Management for Single Households (1998).

The site must include 100 sq metres of effluent disposal area at the rear of the dwelling house.

CONDITIONS OF CONCURRENCE – NEW RURAL FIRE SERVICE

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

18. Asset Protection Zone

To allow emergency service personnel and residents to undertake property protection activities, a defendable space that permits unobstructed pedestrian access is to be provided around the building.

19. Water and Utilities

The intent of this measure is to minimize bushfire attack and provide protection for emergency services personnel, residents and others assisting in the fire fighting activities:

- a. A 5000 litre water supply tank be provided for fire fighting purposes (Refer to Fast Facts 3/08 “water Supply for Fire Fighting Purposes)
- b. A minimum 3 kw (5 hp) petrol or diesel powered fire fighting pump is to be provided to reach all areas of the building. A 19 mm (internal diameter) fire hose and reel is to be connected to the pump.

Note: The above water source may be used for other purposes and allow for circulation of fresh water to avoid health issues provided the tank is kept full

20. Design and Construction

The intent of measures is to ensure buildings are designed and constructed to withstand potential impacts of bushfire attack. The following design standards must be incorporated into the development:

- a. New Construction of the southern elevation of the building must be constructed to comply with Level 3 construction in accordance with Australian Standard AS 3959-1999 'Construction of buildings in bushfire prone areas'.
- b. Roofing must be gutterless or the guttering and valleys screened to prevent build up of flammable material.
- c. Any material used must have a Flammability Index no greater than 5 when tested in accordance with Australian Standard AS 1530.2 – 1993 'Methods for Fire Tests on Building Materials, Components and Structures – Test for Flammability of Materials.'
- d. All exposed timber used in the development be of a fire resistant species as identified in RFA Development Control Note 001. These species include: Blackbutt, Kwila, Red Iron Bark, Red River Gum, Silver Top Ash, Spotted Gum and Turpentine
- e. The screens of all existing windows on the southern elevation must be upgraded to comply with Australian Standard 3959-1999 'Construction of buildings in bushfire prone areas' – Level 3. The screen must be placed over the openable section of the windows.
- f. The northern, eastern and western elevation of the dwelling house must be upgraded to comply with AS 3959-1999 'Construction of buildings in bushfire prone areas' – Level 2.

- 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*.

Covenants

The land upon which the subject building is to be constructed may be affected by restrictive covenants. Council issues this approval without enquiry as to whether any restrictive covenant affecting the land would be breached by the construction of the building, the subject of this consent. Applicants must rely on their own enquiries as to whether or not the building breaches any such covenant.

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.

3 WAHROONGA (NORTH) HERITAGE CONSERVATION AREA

EXECUTIVE SUMMARY

In August 2005, Council considered a report concerning the establishment of the Wahroonga (North) Heritage Conservation Area. Council deferred the progression of the Conservation Area based on advice from the Department of Planning (DOP) that the establishment of heritage conservation areas should be investigated as part of a comprehensive Local Environmental Plan (LEP).

Council's heritage consultant has reviewed the merits of progressing the Conservation Area and generally concurs that the area has local heritage significance. The *Review* recommends that the Wahroonga (North) area be listed as a heritage conservation area under *Schedule E (Heritage Conservation Areas)* of the *Hornsby Shire Local Environmental Plan (HSLEP) 1994*.

It is recommended that Council endorse the *Wahroonga (North) Heritage Conservation Area Planning Proposal* attached to this report for submission to the DOP for gateway determination and exhibition.

PURPOSE

The purpose of this report is to present the findings of a review of the Wahroonga (North) Heritage Conservation Area Study and to seek Council's endorsement to submit the *Wahroonga (North) Heritage Conservation Area Planning Proposal* to the DOP for gateway determination and exhibition.

BACKGROUND

In September 2003, Council was presented with a petition from 128 local residents requesting that a draft LEP be prepared to protect the heritage and streetscape qualities of Wahroonga in the area bounded by Myra Street, Alexandria Parade, Edgeworth David Avenue and the F3 Freeway (locality plan attached). Council resolved (in part) that a report be prepared outlining the merits and process involved in preparing a draft LEP to protect the heritage and streetscape qualities of the area.

At its meeting on 5 November 2003, Council considered Executive Manager's Report No. PLN368/03 outlining the merits and process involved in undertaking a heritage study and sought endorsement of a *Study Brief* for the review. Council resolved (in part) that:

- a) Council undertake a heritage assessment to determine whether the Wahroonga (North) area is of heritage significance; and
- b) A report be submitted to Council recommending a consultant to undertake the study together with a further report on funding availability.

In August 2004, Council resolved to appoint heritage consultant Godden Mackay Logan (GML) to undertake a review of the heritage potential of the proposed Wahroonga (North)

Heritage Conservation Area. On 17 August 2005, Council considered Executive Manager's Report No. PLN224/05 presenting the findings of the *Wahroonga (North) Heritage Conservation Area Review (GML Study)* assessing the heritage significance and streetscape qualities of the Wahroonga (North) Study Area. The *GML Study* (copy attached) recommends the establishment of a heritage conservation area including the identification of a number of potential heritage items. Council resolved (in part) to:

- a) Prepare a draft LEP to establish the Wahroonga (North) Heritage Conservation Area in accordance with the recommendations of the *GML Study*; and
- b) Seek the advice of the Department concerning whether the progression of the draft Plan was likely to be supported.

In accordance with Council's resolution, Council sought the Department's support for progression of the draft Plan. In September 2005, the Department advised that the establishment of the heritage conservation area should not be progressed as an amendment to the *HSLEP 1994*, rather that it should be investigated as part of Council's Comprehensive LEP. At its meeting on 2 November 2005, Council resolved (in part) to defer the establishment of the Wahroonga (North) Heritage Conservation Area and investigate the heritage conservation area for inclusion in Council's Comprehensive LEP.

In August 2006, the Minister for Planning advised that draft LEPs for Heritage Conservation Areas would not be progressed until Council's targets for the Subregion have been finalised as part of the *Metropolitan Strategy* and preparation of the *Subregional Strategy*. Council's *Housing Strategy*, to identify precincts for increased residential densities to meet Council's dwelling targets under the *Metropolitan Strategy*, is currently with the DOP awaiting gazettal.

Heritage Review Stage 4 was conducted in 2008 and reviewed items proposed for inclusion or deletion from heritage listing, including items recommended by the *GML Study*. The recommendations from *Heritage Review Stage 4* were incorporated into the *Annual Amendments 2009 Planning Proposal*. The *Planning Proposal* is currently with the DOP awaiting gazettal and includes the heritage listing of the following items within Wahroonga (North):

- 15 Ingalara Avenue (House);
- 22 Ingalara Avenue (House);
- 79 Alexandria Parade (House and fence);
- 58-60 Bundarra Avenue (House and garden); and
- 64 Bundarra Avenue (House).

Given the time that has elapsed since the *GML Study* was completed, Council's heritage consultant, Sue Haertsch Planning, was requested to review the findings and recommendations of the *GML Study* having regard to developments in the area since 2005, applying current best practice methods.

DISCUSSION

This report discusses the major findings of the review of the *GML Study* conducted by Council's heritage consultant and presents a planning proposal to implement the recommendations from the studies.

GML Study

The *GML Study* was conducted in 2005 and assesses the heritage and streetscape qualities of the Wahroonga (North) area using the criteria set out at that time by the Heritage Council of NSW. The *GML Study* determines that the area, as a whole, demonstrates local historic significance for its compact, representative demonstration of major themes and development periods in the history of the Shire.

The Statement of Significance prepared as part of the *GML Study*, refers to the distinctive qualities and retained integrity of the areas diverse subdivision pattern, streetscapes and houses, within a bush suburban setting. The Statement of Significance notes that these features support its recognition and management as a heritage conservation area. Furthermore, the Study Area retains its original subdivision pattern which contributes to the established streetscape of the area.

The area also retains an illustrative collection of housing periods and styles particularly between the 1930s and 1950s. Notable houses include the Horbury Hunt designed Hordern Family residence, *The Highlands*. The endurance of this large estate delayed further subdivision of the area and shaped the street pattern. Significant numbers of inter-war and post-war bungalows, such as those in Ingalara Avenue, also feature in the distinctive character of the area.

In addition to a number of existing heritage items contained within the Study Area, the *GML Study* identifies a significant number of contributory dwellings and potential items, which add to the overall significance and setting of the area. The *GML Study* recommends these contributory dwellings be retained within a designated heritage conservation area and the listing of the potential items.

The *GML Study* recommends that Council establish the area bounded by Myra Street, Alexandria Parade, Edgeworth David Avenue, Wahroonga and the F3 Freeway, as a heritage conservation area under *Schedule E (Heritage Conservation Areas)* of the *HSLEP 1994*. The *GML Study* also recommends that Council amend the development controls contained within the *Heritage Development Control Plan (DCP)* to ensure the controls reflect best practice and provide for the conservation of important heritage values within the area.

The Review

Council has submitted its *Housing Strategy* to the DOP to address its housing obligations under the *Metropolitan Strategy* and *North Subregional Plan*. The *Strategy* does not include the rezoning of lands within the Wahroonga (North) area. Accordingly, it is timely for Council to review the progression of the heritage conservation for the area. It is also prudent that the *GML Study* recommendations be reviewed for currency in the context of development approvals within the area since the *GML Study* was finalised in 2005. In addition to drawing upon the background information provided within the *GML Study*, the *Wahroonga (North) Heritage Conservation Area Review (Review)* by Council's heritage consultant also incorporates:

- recent inspections of the area;
- review of development approvals and court decisions since 2005;
- review of sites identified as contributory within the *GML Study*;
- review of opportunities and threats in the context of heritage and/or streetscape qualities of the area; and
- the application of current best practice heritage methods.

The *Review* (copy attached) generally concurs with the findings of the *GML Study*. However, in respect of character and streetscape, the *Review* identifies distinctions between the northern and southern areas of Wahroonga (North). This differs from the *GML Study*, which discusses the area as a whole. The *Review* identifies a Southern Precinct, bounded by the south side of Oleander Road, Fern Avenue, the F3 Freeway, Alexandria Parade and Myra Street, representing an earlier phase of development and history in the area. This precinct is predominately large, two story houses characteristic of Federation and Inter War styles on large irregular lots. A Northern Precinct bounded by Edgeworth David Avenue, the F3 Freeway, Fern Avenue, Myra Street and Oleander Road, is characterised by small, single storey houses characteristic of the Interwar/Post War style on regular lots.

Analysis of Heritage Significance

The statement of significance prepared as part of the *Review* includes those elements provided by the earlier *GML Study*. However, greater detail is provided concerning the heritage assessment criteria within the *NSW Heritage Manual*. The revised statement provides a stronger basis for the assessment of future works within the area.

The *Review* and the *GML Study* both use the criteria within the NSW Heritage Assessment Manual to determine the heritage significance of the area. The *Review* generally concurs with the *GML Study* that the area has local heritage significance in relation to historic significance, aesthetic/creative, research and rarity criterion. Although the *Review* finds the proposed conservation area has historic associative significance, little evidence was found to support the *GML Study's* reference to the late Robert Klippel. The *Review* supports the *GML Study* findings that the proposed conservation area has local representative significance, but makes more specific reference to the primary development and building phases of the area. In reviewing the social significance at a local level, the *Review* notes that there is insufficient evidence to meet this criterion.

Analysis of Contributory Items

The *Review* provides a building contribution analysis of heritage items, and confirms the location of potential heritage items and contributory items (map of Study area attached). The *Review* also identifies 'neutral' buildings which do not contribute to the significance of the area. The analysis undertaken for the *GML Study* bases the assessment on the elements and buildings that contribute to the significance of the area. The *Review* uses current best practice methods which rely on contribution ratings, placing greater emphasis on significant building phases and historical periods within the area.

The *Review* concurs with the recommendations for listing of potential heritage items in the *GML Study*. These potential items are currently being progressed as part of the *Annual*

Amendments 2009 Planning Proposal. As a result of development having been completed since 2005, the *Review* identifies a smaller number of contributory buildings. However, the *Review* states that the reduced number still contribute significantly to the character of the area.

Review Recommendations

The *Review* confirms the recommendation of the *GML Study* that the Wahroonga (North) area should be listed as a heritage conservation area, as it meets the criteria and objectives for inclusion. The *Review* also recommends that the area be divided into two precincts, Northern and Southern, and that appropriate development controls be tailored to reflect the differing historic subdivision patterns and building stock of the precincts.

Along with the matters identified in the *GML Study*, the *Review* recommends appropriate controls be progressed to address housing form, gardens and streetscape, including:

- avoiding changes to driveways and the like where mature trees could be affected;
- retention of single storey, modest scale dwellings within the Northern Precinct; and
- flexibility to permit two storey dwellings within the Southern Precinct, where it can be demonstrated that the new building is complemented by an appropriate landscaped setting.

Planning Proposal

The *Review* and *GML Study* both recommend that the Wahroonga (North) area be listed as a heritage conservation area. Council is currently preparing its new Comprehensive LEP, which is a translation of controls within the *HSLEP 1994* in accordance with DOP's *Standard Instrument*. The establishment of a heritage conservation area as part of the Comprehensive LEP would be outside the scope of the translation. Furthermore, the establishment of a conservation area has not been the subject of recent community consultation and the position of the Department is uncertain in relation to the progression of the conservation area. To ensure that consideration of the heritage qualities of the area does not delay the progression of Council's Comprehensive LEP, a separate planning proposal has been prepared for consideration by Council to progress the heritage conservation area.

CONSULTATION

Extensive community consultation was previously undertaken as part of the *GML Study*. However, it has been five years since the *GML Study* was finalised and there have been a number of changes in ownership within the area. Accordingly, it is appropriate to undertake further consultation with the community regarding the establishment of the heritage conservation area.

"A *guide to preparing local environmental plans*" has been prepared by the DOP (2009) to assist councils in preparing planning proposals and LEPs. In accordance with the *Guidelines*, the *Planning Proposal* is considered to be "low impact" and the *Guidelines* recommend exhibition for a period of 14 days. However, it has been a considerable time since the *GML Study* was finalised. Therefore, it is appropriate to exhibit the *Planning Proposal* for a period

of 28 days. A consultation strategy relevant to the public exhibition of the draft LEP has been prepared as part of the *Planning Proposal* for endorsement by the DOP.

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

STATUTORY CONSIDERATIONS

Statutory considerations are discussed below in relation to both the progression of a planning proposal and DCP amendments.

Planning Proposals

The draft *Wahroonga (North) Heritage Conservation Area Planning Proposal* (attached) outlines the objectives, intended outcomes and justification for the proposal, along with a map identifying the boundary of the proposed heritage conservation area and a consultation strategy for endorsement by the DOP. It is recommended that Council facilitate the exhibition of the attached *Planning Proposal* by forwarding it to the DOP seeking a gateway determination.

As part of the consideration of planning proposals, Council is required to consider the relevance of any State Environmental Planning Policy (SEPP) or Ministerial Direction under Section 117 of the *Environmental Planning and Assessment Act, 1979*. The proposal is not contrary to any SEPP or relevant Section 117 Directions. An assessment of relevant SEPPs and Section 117 Directions is contained in the Planning Proposal.

DCP Amendments

The *GML Study* and the *Review* recommend appropriate controls be progressed regarding housing form, gardens and streetscape, to support the heritage conservation area. As the position of the Department is uncertain in relation to the progression of the conservation area, it would be appropriate to receive gateway determination for the proposal prior to extensive work being undertaken on developing controls. Accordingly, it is recommended that controls for the area be incorporated into the heritage section of the Comprehensive DCP, which would be progressed concurrently with the proposal.

OPTIONS

Council has before it the following options:

Option 1 – Progress the Wahroonga (North) Heritage Conservation Area Planning Proposal

This option is to progress the *Planning Proposal* to establish a heritage conservation area for Wahroonga (North) in accordance with the recommendations of the *GML Study* and the *Review*, by forwarding the *Planning Proposal* to the DOP seeking a gateway determination.

Option 2 – Not progress the Wahroonga (North) Heritage Conservation Area Planning Proposal

This option is not to progress the *Planning Proposal* to establish a heritage conservation area within Wahroonga (North). This option would be in recognition of a number of alteration and

additions to contributory items identified by the *GML* Study. An appropriate resolution for this option would be:

1. *Council note the contents of Executive Manager's Report No. PLN76/10 and the Review undertaken by Sue Haertsch Planning regarding the Wahroonga (North) Heritage Conservation Area Review.*
2. *Council not progress a Planning Proposal to establish the Wahroonga (North) Heritage Conservation Area due to recent developments within the area.*

Two reviews investigating the heritage significance of the area have been undertaken by heritage consultants. Both reviews recommend that the area be listed as a heritage conservation area under *Schedule E (Heritage Conservation Areas)* of the *HSLEP 1994*, as the area meets the criteria and objectives for inclusion. Accordingly, based on the recommendation of the reviews, option 1 is recommended.

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.

- *Working with our community:* The *GML Study* involved community information meetings and Council sought comments and feedback concerning the preliminary fieldwork results, the Study and the potential heritage conservation area. A consultation strategy has been prepared as part of the *Planning Proposal* for endorsement by the DOP. It is proposed that public exhibition material would be readily accessible and understandable to all sectors of the community by providing a number of locations and means of communication. The community would be able to obtain hard copy information from Council or download information from Council or the DOP's website.
- *Conserving our natural environment:* The *Planning Proposal* would assist to conserve identified areas of heritage significance within the Shire.
- *Contributing to community development through sustainable facilities and services:* The *Proposal* to implement a heritage conservation area does not relate directly to the provision of services and facilities. Accordingly, no adverse impact on opportunities for community development would be expected.
- *Fulfilling our community's vision in planning for the future of the Shire:* The establishment of the heritage conservation area as recommended within the *Review* would ensure that important heritage values within the Shire are conserved.
- *Supporting our diverse economy:* The *Review* recommends the progression of the heritage conservation area to retain important character elements and heritage values to enhance the attractiveness of the Shire as a place to live and work.
- *Maintaining sound corporate and financial management:* The *Proposal* does not relate directly to corporate and financial management. Accordingly, no adverse impact on management principles would be expected.
- *Other Sustainability Considerations:* The *Proposal* would not have an adverse impact on the environment of the Shire.

CONCLUSION

In 2005, GML undertook a study to assess the heritage and streetscape qualities of the Wahroonga (North) area. Council's heritage consultant has completed a review of the *GML Study* to determine the relevancy of the previous recommendation in respect of recent developments within the area, using current best practice methods. The *Review* generally concurs with the findings of the *GML Study* that the area has local significance in regard to historic, historic associative, aesthetic/creative, research, rarity and representativeness elements.

The *Review* supports the recommendation of the *GML Study* that the Wahroonga (North) area be listed as a heritage conservation area under *Schedule E (Heritage Conservation Areas)* of the *HSLEP 1994*, as it meets the criteria and objectives for inclusion. Accordingly, it is recommended that Council endorse the *Wahroonga (North) Heritage Conservation Area Planning Proposal* attached to this report for submission to the DOP for gateway determination and exhibition.

RECOMMENDATION

THAT:

1. Council endorse progression of the *Planning Proposal* attached to Executive Manager's Report No.PLN76/10 to establish the *Wahroonga (North) Heritage Conservation Area*, by amending *Schedule E (Heritage Conservation Areas)* of the *Hornsby Shire Local Environmental Plan 1994*.
2. Pursuant to Section 56(1) of the *Environmental Planning and Assessment Act 1979*, Council forward the *Planning Proposal* to the Minister for Planning seeking "gateway" determination to progress the preparation of the *Planning Proposal*.
3. Should the Minister determine under Section 56(2) of the *Environmental Planning and Assessment Act 1979* that the matter may proceed without significant amendment to the proposal, Council publicly exhibit the *Planning Proposal* in Accordance with the Minister's determination.
4. Following the exhibition, a report on submissions be presented to Council.
5. Development controls for the area be prepared for inclusion in the heritage section of Council's Comprehensive Development Control Plan.

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SCOTT PHILLIPS
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Attachments:

1. Locality Plan
2. Wahroonga (North) Heritage Conservation Area Review - GML
3. Wahroonga (North) Heritage Conservation Area Review - Sue Haertsch
4. Map of Study Area
5. Wahroonga (North) Heritage Conservation Area Planning Proposal

File Reference: F2004/07639

Document Number: D01511231

4 PROMOTION OF HERITAGE EVENTS IN 2011

EXECUTIVE SUMMARY

Every year Council conducts a Heritage Festival to promote heritage conservation and education within the Shire. Council has previously scheduled this program of heritage events to coincide with the National Trust's annual Heritage Festival in April, to take advantage of the publicity provided through the Trust's advertising and publications. The Heritage Festival typically includes a guided boat cruise, plaque ceremony, talks, bushwalks and other community events.

Opportunities to improve the promotion of Council's heritage events and the promotion of heritage generally in the Shire have been reviewed. Scheduling heritage events to be conducted as part of the Bushland Shire Festival provides a greater opportunity to promote heritage conservation within the Shire by taking advantage of the publicity generated for the Bushland Festival, which directly targets Shire residents in its communication. The Bushland Festival provides greater opportunity to showcase heritage promotion in the Shire to a larger audience, with more than 10,000 people attending the Festival.

To increase participation and promotion of heritage to Hornsby Shire residents, it is recommended that Council endorse the scheduling of heritage events, previously promoted as part of the Heritage Festival, as part of the Bushland Shire Festival.

PURPOSE

The purpose of this report is to evaluate options for conducting a program of events to promote heritage conservation and awareness in Hornsby Shire.

BACKGROUND

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

The National Trust has advised that the upcoming Heritage Festival will be held from 2 April to 17 April 2011 and is two weeks in duration (details of the Festival are attached). For the Festival, the National Trust has adopted the theme "Amazing Stories". The theme endeavours to reference the historic places, landmarks, collections and sites which mark tangible connections to history.

Council has held its own Heritage Festival each year since 1994, with the aim of promoting heritage conservation and education within the Shire. Each year the Festival has involved a program of heritage events including boat cruises, plaque ceremonies, talks, bushwalks and other community events.

At its meeting on 27 September 2010, the Local Heritage Advisory Committee discussed events to coincide with the National Trust's Heritage Week to be held in 2011. The Committee noted that a similar program of events has been run over a number of years. The

Committee recommended that the Planning Division investigate alternate options for future festivals and events that continue to promote the conservation of heritage assets within the Shire. The Committee also suggested that it may be appropriate to conduct some events on the program on alternate years.

DISCUSSION

This report outlines options for the promotion of the heritage conservation within the Shire.

Heritage Events as part of National Trust Heritage Festival

Council has held its own Heritage Festival in recent years to coincide with the National Trust's Festival. Events held as part of previous Heritage Festivals conducted by Council have included a Hawkesbury River Boat Trip, an Open Day at Fagan Park (held by the Friends of Fagan Park), an Aboriginal Heritage Walk, a Library Exhibition (curated by the Hornsby Shire Historical Society) and the Hornsby Shire Heritage Awards. To enable the timely exhibition of entries during the Heritage Festival and the presentation of the awards, the final judging of Council's annual Heritage Awards has been delegated in previous years to Council's Heritage Advisory Committee.

The Heritage Festival events are advertised in Council's Calender of Events, National Trust Newsletter and web site, advertisements in local newspapers and by the distribution of a free postcard outlining the events. Postcards are placed in libraries and Council offices and distributed to historical societies.

Due to the nature and location of many of these events, participation is generally restricted to approximately 20 people for each event, with 50 people attending the Hawkesbury River Cruise. In response to the National Trust's advertising, participants are often from outside the Shire, having been made aware of the event by the National Trust which targets those with a current interest in heritage conservation.

A budget of \$5,000 is available within the Town Planning Services Annual Operating Plan for the conduct and advertising of Heritage Festival Events. In the past years, a substantial program of events has been conducted utilising the limited resources available with the support of local historical groups and community representatives. Council has received positive feedback from participants at events and in most instances, booking requests for events have exceeded the spaces available. Furthermore, as a result of promoting the events as part of the National Trust Festival, a number of participants are from outside the Shire. Accordingly, it is appropriate to review options for heritage events to promote heritage conservation within the Shire.

Heritage Events as part of Hornsby Shire Bushland Festival

Since 2009, 10,000 people annually have attended the Bushland Shire Festival at Fagan's Park. The Bushland Shire Festival currently includes heritage themed events with the Friends of Fagan Park opening the Heritage Area of Netherby Homestead and rural museums in Fagan Park as part of the Festival.

Conducting heritage events as part of the Bushland Festival would build on the success of the Festival to include heritage promotion. It is anticipated that this option would involve expansion of the Festival program to include events previously conducted as part of the Heritage Festival. These events include a boat cruise, heritage walks and heritage talks.

The Bushland Shire Festival is promoted to all rate payers in the Shire via a flyer in the rates notice sent in August and in the Bushland Shire News which is distributed to all residents. The event is also promoted in a calendar distributed by Hills Rural newspaper, as well as display advertising in local newspapers.

Scheduling heritage themed events to occur as part of the Bushland Shire Festival provides an opportunity to take advantage of the publicity generated for the Bushland Festival, which directly targets Shire residents in its communication. The Bushland Shire Festival also provides significantly greater opportunity to showcase heritage promotion in the Shire to a larger audience. Therefore, conducting heritage events as part of the Bushland Festival would provide greater opportunities to promote heritage conservation and education within the Shire.

BUDGET

An amount of \$5,000 is available in the current budget for heritage events (including the Heritage Awards). An amount of \$2,800 is allocated from the heritage events budget for advertising.

Although not all costs have been finalised, it is anticipated that the \$5,000 budget would be adequate for all events and advertising should the programming of events proceed either as part of National Trust Heritage Festival activities or as part of the Bushland Shire Festival. However, should Council resolve to conduct heritage events as part of the Bushland Festival, the full budget would be available for the coordination of events, as advertising would be included in promotional material for the Bushland Festival. This may enable additional events to be conducted.

CONSULTATION

At its meeting on 27 September 2010, the Heritage Advisory Committee noted that a similar program of events had been run for the Heritage Festival over a number of years. The Committee recommended that the Planning Division investigate alternate options for future festivals and events that continue to promote the conservation of heritage assets within the Shire.

The Manager, Community Relations Branch was consulted in the preparation of this report.

OPTIONS

Council has before it the following options:

Option 1 – Endorse a program of heritage events as part of the Bushland Shire Festival

This option would involve including a program of heritage events as part of the Bushland Shire Festival 2011, generally consistent with events promoted as part of previous Heritage Festivals.

Option 2 – Endorse a program of heritage events to coincide with the National Trust's annual Heritage Festival

This option would retain the current arrangement, with Council scheduling heritage events to coincide with the National Trust's annual Heritage Festival in April 2011.

Under this option, events would be advertised in local newspapers and by the distribution of a free postcard outlining the events. Council would need to endorse the use of a photograph for advertising the Heritage Festival 2011. A 1942 photograph of boats wedged against trees at Crosslands (copy attached) is suggested, if promotion for this option is required. The photograph represents a story from Hornsby Shire's history, which reflects the National Trust's Festival theme for 2011 – "Amazing Stories". The photograph depicts the story of a series of events during World War II, which saw the regions small boats stored at Crosslands, hit by a wave of water after an upstream river blockage broke.

To enable the timely exhibition of entries during the Heritage Festival and the presentation of the awards at the Council Meeting on 6 April 2011, this option would also require the judging of Council's annual Heritage Awards to be delegated to Council's Heritage Advisory Committee.

An appropriate resolution for this option would be:

1. *Council endorse a programme of events for the Heritage Festival 2011, to coincide with the National Trust's annual Heritage Festival in April 2011, generally in accordance with previous Heritage Festival events.*
2. *Council delegate the judging of the Heritage Awards 2011 to Council's Heritage Advisory Committee to enable the timely exhibition of entries during the Heritage Festival and the presentation of awards at the Planning Meeting on 6 April 2011.*
3. *Council endorse the photograph of a boat at Crosslands attached to Executive Manager's Report No. PLN78/10 to be used on the postcard to advertise the Heritage Festival 2011.*

To increase participation and promotion of heritage to Hornsby Shire residents, it is recommended that Council endorse the scheduling of heritage events, previously promoted as part of the Heritage Festival, as part of the Bushland Shire Festival. Accordingly, option 1 is recommended.

TRIPLE BOTTOM LINE SUMMARY

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

- *Working with our community:* The heritage events are organised in consultation with key stakeholders and community representatives to cover significant places and events throughout the Shire. All sections of the local community would have access to information on the events via advertising in the local papers, promotional material and information on Council's website.
- *Conserving our natural environment:* Appropriate heritage events would promote significant historic places and environments at locations throughout Hornsby Shire.
- *Contributing to community development through sustainable facilities and services:* The conduct of heritage events does not relate directly to the provision of services and facilities. Accordingly, no adverse impact on opportunities for community development would be expected.

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

CONCLUSION

Scheduling heritage events to be conducted as part of the Bushland Shire Festival provides a greater opportunity to promote heritage conservation to Shire residents by taking advantage of the publicity generated for the Bushland Festival, which directs communications to target Shire residents. The Bushland Shire Festival also provides significantly greater opportunity to increase heritage promotion in the Shire, with more than 10,000 people attending the Bushland Shire Festival.

To increase participation and promotion of heritage to Hornsby Shire residents, it is recommended that Council endorse the scheduling of heritage events, previously promoted as part of Heritage Festival, as part of the Bushland Shire Festival.

RECOMMENDATION

THAT:

1. Council endorse a program of heritage events to be conducted as part of the Bushland Shire Festival, generally consistent with events promoted as part of previous Heritage Festivals.
2. Council delegate the judging of the Heritage Awards 2011 to Council's Heritage Advisory Committee to enable the timely exhibition of entries during the Bushland Shire Festival and the presentation of awards at the corresponding Planning Meeting.

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Attachments:

1. National Trust invitation
2. Photograph suggestion

File Reference: F2010/00565
Document Number: D01513380

5 REPORTING VARIATIONS TO DEVELOPMENT STANDARDS

EXECUTIVE SUMMARY

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

PURPOSE

The purpose of this report is to advise Council of determined development applications involving a SEPP 1 variation to a development standard relating to the period 1 July 2010 to 30 September 2010.

DISCUSSION

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

The Circular also provides that Councils are required to adopt the following four measures:

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

In accordance with Point 3 of the Department's Circular, attached hereto is a list of development applications determined under delegated authority involving a *SEPP 1* variation to a development standard for the period 1 July 2010 to 30 September 2010.

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

BUDGET

There are no budget implications.

POLICY

There are no policy implications.

CONSULTATION

There was no consultation in the preparation of this report.

TRIPLE BOTTOM LINE SUMMARY

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

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

RECOMMENDATION

THAT Council note the contents of Executive Manager's Report No. PLN79/10.

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Attachments:

1. SEPP 1 Return

File Reference: F2004/07599
Document Number: D01515534