



*the bushland shire*

*creating a living environment*

# **BUSINESS PAPER**

## **PLANNING MEETING**

**Wednesday, 2 February, 2011  
at 6.30pm**

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## **AGENDA AND SUMMARY OF RECOMMENDATIONS**

### **PRESENT**

### **NATIONAL ANTHEM**

### **OPENING PRAYER/S**

Rev. Geoff Collison of St. Johns Anglican Church, Beecroft 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 1 December, 2010 be confirmed; a copy having been distributed to all Councillors.

## **PETITIONS**

## **MAYORAL MINUTES**

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**NOTICES OF MOTION****Page Number 1****Item 1      NOM1/11 INVESTIGATIONS REGARDING THE INCLUSION OF  
SOUTH DURAL ON THE NSW GOVERNMENT'S METROPOLITAN  
DEVELOPMENT PROGRAM****COUNCILLOR SMART TO MOVE**

THAT Council write to the Minister for Planning:

1. Requesting an update on, and timeframe for completion of the NSW Government's investigations of South Dural for inclusion on the NSW Government's Metropolitan Development Program.
2. Reaffirming its advice dated 2 September 2009 stating that Council supports the NSW Government's progression of investigations of South Dural for inclusion on the NSW Government's Metropolitan Development Program.
3. Requesting that the NSW Government progress investigations of the release of South Dural for urban purposes as a matter of urgency so as to ensure that Council is well placed to deliver sufficient additional housing in the Hornsby local government area as a possible component of the third tranche of Council's Housing Strategy to meet the NSW Government's housing supply targets identified in the North Subregion Draft Subregional Strategy.

**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.*

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**DEVELOPMENT APPLICATIONS****A WARD DEFERRED****A WARD****Page Number 2****Item 2     **PLN1/11 DEVELOPMENT APPLICATION - TELECOMMUNICATIONS FACILITY - 47 MCKAY ROAD HORNSBY HEIGHTS******RECOMMENDATION**

THAT Development Application No. DA/1414/2010 for the erection of a telecommunications facility including mobile phone tower and associated equipment shelter at Lot 1 DP 622005 (No. 47) McKay Road, Hornsby Heights be approved subject to the conditions of consent detailed in Schedule 1 of this report.

**B WARD DEFERRED****B WARD****Page Number 18****Item 3     **PLN5/11 DEVELOPMENT APPLICATION - ALTERATIONS AND ADDITIONS TO THE EXISTING 'WOOLWORTHS' TENANCY FOR AN INTERNAL RETAIL PACKAGED LIQUOR OUTLET CHERRYBROOK SHOPPING CENTRE, 41 - 47 SHEPHERDS DRIVE, CHERRYBROOK******RECOMMENDATION**

THAT Development Application No. 1138/2010 for alterations and additions to the existing 'Woolworths' tenancy for an internal retail packaged liquor outlet at Lot 1 DP 816893 be approved subject to the conditions of consent detailed in Schedule 1 of this report.

**C WARD DEFERRED****Page Number 35****Item 4     **PLN6/11 DEVELOPMENT APPLICATION - CONSTRUCTION OF AN AFFORDABLE RENTAL HOUSING DEVELOPMENT COMPRISING EIGHT TOWNHOUSES - 3 & 5 FULBOURNE AVENUE PENNANT HILLS******RECOMMENDATION**

THAT Development Application No. DA/1021/2010 for the demolition of existing dwellings and the construction of an affordable housing development comprising eight townhouses at Lot 16 and Lot 15 DP 10203 (Nos 3 & 5) Fulbourne Avenue, Pennant Hills be approved subject to the conditions of consent detailed in Schedule 1 of this report.

**C WARD****Page Number 60**

- Item 5      PLN14/11 DEVELOPMENT APPLICATION - SUBDIVISION OF ONE ALLOTMENT INTO TWO - 16 TRELAWNEY STREET THORNLEIGH**

**RECOMMENDATION**

THAT Council assume the concurrence of the Director-General of the Department of Planning pursuant to State Environmental Planning Policy No. 1 and approve Development Application No. 1204/2010 for the subdivision of one allotment into two allotments at CP SP 37391, (No. 16) Trelawney Street, Thornleigh subject to the conditions of consent detailed in Schedule 1 of this report.

**Page Number 72**

- Item 6      PLN15/11 DEVELOPMENT APPLICATION - CONSTRUCTION OF A GOLF DRIVING RANGE AND GOLF CENTRE - 142 - 178 PENNANT HILLS ROAD, THORNLEIGH**

**RECOMMENDATION**

THAT Development Application No. 1245/2010 for the construction of a Golf Driving Range and Golf Centre at Lot 1 DP 633292, (Nos. 142 – 178) Pennant Hills Road, Thornleigh be approved for the reasons detailed in the independent town planning consultant's report – *AECOM Australia Pty Ltd* and reproduced in Schedule 1 of this report.

**GENERAL BUSINESS****Page Number 85**

- Item 7      PLN13/11 REPORTING VARIATIONS TO DEVELOPMENT STANDARDS**

**RECOMMENDATION**

THAT Council note the contents of Executive Manager's Report No. PLN13/11.

**Page Number 87**

- Item 8      PLN16/11 TOWNHOUSE PLANNING PROPOSAL - REPORT ON SUBMISSIONS**

**RECOMMENDATION**

THAT:

1. Council forward the attached *Townhouse Planning Proposal* to the Minister for Planning for gazettal pursuant to Sections 58 and 59 of the *Environmental Planning and Assessment Act 1979*, with the following amendments:

- 1.1 Delete the proposed boundary extension for the Mount Colah Commercial Centre *Housing Strategy* precinct; and
- 1.2 Include a section of road reserve at the frontage of property Nos. 396-398 Pacific Highway, Hornsby in the Mildred Street, Hornsby townhouse precinct.
2. Draft amendments to the *Medium Density Multi-Unit Housing Development Control Plan* including key principles diagrams identifying local traffic improvements be prepared and presented to Council for adoption for exhibition.
3. Submitters be advised of Council's resolution.

### **SUPPLEMENTARY AGENDA**

### **CONFIDENTIAL ITEMS**

### **QUESTIONS OF WHICH NOTICE HAS BEEN GIVEN**

### **QUESTIONS WITHOUT NOTICE**



**1 INVESTIGATIONS REGARDING THE INCLUSION OF SOUTH DURAL ON THE NSW GOVERNMENT'S METROPOLITAN DEVELOPMENT PROGRAM**

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COUNCILLOR SMART TO MOVE

THAT Council write to the Minister for Planning:

1. Requesting an update on, and timeframe for completion of the NSW Government's investigations of South Dural for inclusion on the NSW Government's Metropolitan Development Program.
2. Reaffirming its advice dated 2 September 2009 stating that Council supports the NSW Government's progression of investigations of South Dural for inclusion on the NSW Government's Metropolitan Development Program.
3. Requesting that the NSW Government progress investigations of the release of South Dural for urban purposes as a matter of urgency so as to ensure that Council is well placed to deliver sufficient additional housing in the Hornsby local government area as a possible component of the third tranche of Council's Housing Strategy to meet the NSW Government's housing supply targets identified in the North Subregion Draft Subregional Strategy.

**Attachments:**

There are no attachments for this report.

File Reference: F2011/00003

Document Number: D01579000

**2 DEVELOPMENT APPLICATION - TELECOMMUNICATIONS FACILITY -  
47 MCKAY ROAD HORNSBY HEIGHTS**

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<b>Development Application No:</b>	DA/1414/2010
<b>Description of Proposal:</b>	Erection of a Telecommunications Facility including a Mobile Phone Tower and Associated Equipment Shelter.
<b>Property Description:</b>	Lot 1 DP 622005 (No. 47) McKay Road, Hornsby Heights
<b>Applicant:</b>	Telstra Corporation Ltd
<b>Owner:</b>	Sydney Water
<b>Statutory Provisions:</b>	Hornsby Shire Local Environmental Plan 1994 Special Uses A (Community Purposes)
<b>Estimated Value:</b>	\$250,000
<b>Ward:</b>	A

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**RECOMMENDATION**

THAT Development Application No. DA/1414/2010 for the erection of a telecommunications facility including mobile phone tower and associated equipment shelter at Lot 1 DP 622005 (No. 47) McKay Road, Hornsby Heights be approved subject to the conditions of consent detailed in Schedule 1 of this report.

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**EXECUTIVE SUMMARY**

1. The application proposes erection of a 42 metre high telecommunications tower, including associated antennas and equipment shelter.
2. The proposal is satisfactory with regard to relevant legislation including the Environmental Planning and Assessment Act 1979, Telecommunications Act 1997 and the Hornsby Shire Local Environmental Plan 1994.
3. Two submissions and a petition with seven signatories objected to the development.
4. It is recommended that the application be approved.

## THE SITE

The site has an area of 6129m<sup>2</sup> and is located on the western side of McKay Road Hornsby Heights. The property is known as the 'Hornsby Heights Reservoir Trig Station.' The site contains a 23 metre high water tower which is located in the north western corner of the site. There is an 11 metre high water tank which is located centrally on the site. Along the frontage of the site, there is a screen of mature trees and vegetation.

On the northern and western boundary, the site adjoins Crown land and Berowra Valley Regional Park. To the south and east, the site adjoins existing residential dwellings.

## THE PROPOSAL

The application proposes the erection of a new telecommunications facility involving the erection of a new 35 metre monopole supporting Telstra antennas. The existing Rural Fire Service and Police equipment would be relocated from the water tower to the proposed Telstra monopole, and would be located on the turret mount at 38 metres. The highest point of the structure would be 42.02 metres. The associated equipment would be sited at the base of the pole.

The Telstra installation would consist of the following:

- 35 metre monopole accommodating six Telstra panel antennas. Each antenna measures 2.63 metres in height, 0.37 metres in width and 0.12 metre in depth.
- An associated equipment shelter measuring 3.28 metre in length, 2.28 metres in width and 2.995 metres in height is to be located close to the base of the pole.
- The feeder cables would be located in an elevation cable tray between the equipment shelter to the proposed pole.
- The colour of the monopole would be matt grey and the equipment shed would be coloured green.

Vehicular access to the development is proposed to be provided via an existing driveway fronting McKay Road.

The applicant has indicated that the proposed installation is designed to significantly improve the quality and continuity of 3G coverage and services to the Hornsby Heights area which due to the topography and network capacity constraints, is not adequately services by Telstra's existing Next-G facilities in the surrounding area. The proposal has an added public benefit in that it improves emergency services (Police and Rural Fire Service) telecommunications infrastructure.

## 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.

## STRATEGIC CONTEXT

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

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

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

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

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

## 1. 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 Telecommunications Act 1997

Under Division 3 of Part 1 of Schedule 3 of the *Telecommunications Act 1997* a carrier has the right to install a telecommunications facility for purposes connected with the supply of a carriage service if:

- the carrier is authorised to do so by a facility installation permit.*
- the facility is a low impact facility.*
- the facility is a temporary facility for use by a defence organisation for defence purposes.*
- the facility is installed before 1 July 2000 for the sole purpose of connecting a building, structure, caravan or mobile home to a line that forms part of a telecommunications network that was in existence on 30 June 1997.*

The proposal does not fall within the exempt provisions of Schedule 3 of the Act and therefore relevant State legislation applies. Council is the consent authority for the proposal.

### 2.2 State Environmental Planning Policy (Infrastructure) 2007

The Infrastructure SEPP provides provisions that allow telecommunications infrastructure providers to be either exempt or complying development for a range of telecommunications facilities, subject to criteria including health and amenity considerations.

However, as the land is zoned Special Uses and the proposal involves the construction of a new telecommunications tower, the infrastructure requires development consent under Part 4 of the Act.

### 2.3 Hornsby Shire Local Environmental Plan 1994

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

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

The proposed development is defined as a 'utility installation' under the HSLEP and is permissible in the zone with Council's consent. The proposed development is consistent with the objectives of the zone.

Clause 18 of the HSLEP sets out heritage conservation provisions within the Hornsby area. The site does not contain a heritage item nor is it located in the vicinity of a heritage item. The site is not sited within a heritage conservation area.

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

Hornsby Shire is located within the catchment of the Hawkesbury Nepean River. Part 2 of SREP 20 contains general planning considerations and strategies to be considered by the consent authority as to the impacts of development on the scenic quality of the area, water quality, aquaculture, recreation and tourism.

Subject to recommended condition of consent relating to sediment and erosion control measures being implemented and maintained, the proposed development is consistent with the objectives of the Sydney Regional Environmental Plan No. 20.

### 2.5 State Environmental Planning Policy No. 55 - Remediation of Land

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

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

The site history suggests that it is unlikely that the site would be contaminated and therefore further assessment under SEPP 55 is not warranted.

## 2. ENVIRONMENTAL IMPACTS

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

### 3.1 Natural Environment

The site comprises bushland consistent with *Community D – Grey Gum Scribbly Gum Woodland* (Smith and Smith 2009) and cleared areas comprising an area of 200sqm. There are no threatened plants recorded on the site. Based on Council officers assessment, it is unlikely that the proposed development would have a significant impact on threatened species, populations and communities and their habitat as listed under the *Threatened Species Conservation Act 1995*.

The proposed development would necessitate the removal of two trees from the site. Both of these trees proposed to be removed are not identified as ‘significant trees’ under Council’s Tree Preservation Order.

The proposed development would have no adverse impact on the natural environment.

### 3.2 Built Environment

#### 3.2.1 Visual Impact

Given its height, the proposed facility has the potential to have a significant visual impact in the locality. To address this matter, the applicant provided the following Visual Amenity Impact Statement:

*“The proposed installation involving a new pole with antennas and ground based equipment would have minimal impact on the general use of the land at the Water Reservoir site and the land would remain unaffected by the proposal.*

*The surrounding trees and foliage would screen the majority of the pole and shelter from surrounding vantage points, however, the upper reaches of the pole and antennas would be visible from limited vantage points. Nevertheless, the slimmest available structure has been utilised and the antennas have been sensitively clustered tightly atop, as opposed to being mounted on a larger bulky head frame. Furthermore, the facility would be positioned within a public utility site next to an existing water tank and water tower. Accordingly, the proposal is not considered to have a detrimental impact the surrounding area and would not be intrusive when viewed short and longer distances.*

*The facility would occupy a foot print of 54m<sup>2</sup> adjacent to the existing water tanks within the Special Uses zone. Utilising a narrow footprint and minimising the pole height to the lowest possible level whilst still achieving acceptable coverage would have a negligible impact on the surrounding area and would ensure the development is compatible with the environmental capabilities. Accordingly, the principal use of the land would remain unaffected and continue to offer similar levels of amenity as at present.*

*The proposal before Council is the optimum solution in the cell search area and has been designed (slender and uncluttered in nature) so as to minimise environmental impact while providing optimum coverage levels. This proposal would have minimum affect on visual amenity and therefore constitutes an appropriate form of development at the site.”*

It is acknowledged that views of the facility from the adjoining residential properties would be generally limited to the upper portion of the tower. The visual impact of the tower has

been minimised by way of a slimline design. The most visual part of the tower would be the headframe. However, the design of the headframe is compact, with relatively flat antennas. The applicant advised that the height of the facility has been determined to provide the desired coverage and it needs to clear the nearby trees to work and stop signal reflection.

From a distance, the tower would not be visually dominant and would be partially screened when viewed from McKay Road and The Crest by existing vegetation, water tanks, topography and alignment of the road.

The colour of the tower would be matt grey and the equipment shed would be pale eucalypt in colour to reduce the visual impact in the context of the surrounds.

Given that there is an existing water tank and water tower on the site, the proposed telecommunications tower would not be a stand alone structure. It is considered that the proposed tower would not be visually prominent in its setting. The existing visual amenity of the locality would be largely maintained and visual disturbance would be minor.

### **3.2.2 Health Impact – Electromagnetic Radiation**

Telecommunication carriers must adhere to Commonwealth Legislation and Regulation that is administered by the Australian Communications and Media Authority (ACMA).

In 2003, ACMA adopted *Radio Communications (Electromagnetic Radiation – Human Exposure) Standard 2003* which relates to continuous exposure of the general public to radio frequency electromagnetic energy (RF EME) from mobile phone stations.

This technical standard was prepared by the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA) and is the same as that recommended by the International Commission for Non-Ionising Radiation Protection (ICNIRP), an agency associated with the World Health Organisation.

The Standard operates by placing a limit on the strength of the signal (or RF EME) that operators can transmit to and from any network base station. The Standard has a significant safety margin, or precautionary approach built into it.

In order to demonstrate compliance with the Standard, ARPANSA have a prediction report based on a standard methodology to analyse the maximum potential impact of any new facility. The maximum EME level from the proposed site, once operational, has been estimated as being 0.34% of the ACMA mandated exposure limit using the predictive report methodology.

This is considered to be low, noting that carriers are permitted to operate base stations with EME levels up to 100% of the ACMA standard. Based on the information submitted, the predicted EME exposure falls well within acceptable levels.

### **3.2.3 Access**

Vehicular access to the site is proposed to be provided via an existing driveway fronting McKay Road. The applicant has indicated that the proposed equipment would require maintenance approximately four times a year or as required in the event of an electricity failure or other similar event. This maintenance would be undertaken by one vehicle.

The applicant has indicated that the construction and major repairs for the facility would be undertaken on Sydney Water land. However, for general maintenance purposes access to the facility would be gained via the existing fire fighting access track located on the adjoining property (at No. 49 McKay Road) which is owned by the Crown. The applicant has advised that to facilitate access, Telstra has entered into an access licence agreement with the Department of Climate Change and Water.

It is considered that access to the site is satisfactory.

### **3.3 Social Impacts**

The development would make a positive social contribution to the local community by improving telecommunication services, including emergency services communication infrastructure.

### **3.4 Economic Impacts**

The proposal would not have an adverse economic impact on the locality.

## **3. SITE SUITABILITY**

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

### **4.1 Site Selection**

The applicant is required to demonstrate the selected site is the most appropriate one for the facility. Public submissions raised concern with regard to the location of the proposed facility and two submissions have requested that the facility be relocated further to the west or within the Berowra Valley Regional Park.

Telstra has considered two other potential sites for the location of a new mobile phone tower to increase mobile phone coverage in the Hornsby Heights area. Option One included the use of one of the existing light poles at Montview Park. This option would require replacement of an existing lighting pole with a new telecommunications monopole. A tower in this location would be considered more sensitive to the community as Montview Park is surrounded by residential properties to the north, south and west. Option Two included the use an industrial site at No. 8 Kookaburra Road. The site is located in close proximity to sensitive land uses including a public school at Somerville Road and is also surrounded by residential developments on its southern, eastern and western boundaries. The applicant has indicated that both of these alternative sites do not satisfy Telstra’s coverage requirements.

The applicant’s preferred option is the Sydney Water reservoir site at No. 47 McKay Road, Hornsby Heights. On the northern and western boundary, the site adjoins land which is zoned Environmental Protection B (River Catchments) and is owned by the Crown. To the south and east, the site adjoins residential developments and is occupied by two large water tanks. In this location, the proposed tower would not present a hazard to any nearby residential developments (as discussed in section 3.2.2) and the proposal is also not likely to adversely affect the visual amenity of the area, since the top of the pole and antennas would be visible from only limited residential areas. The location of the facility on the water reservoir site would have the least environmental impact compared to the facility being located on the adjoining Crown land, which would require clearing of bushland. In order to locate the



proposed tower within the Berowra Valley Regional Park approval would be required from the National Parks and Wildlife Service.

It is considered that given the screening of the proposal by the existing trees, water tank and water tower, the proposal is well located. The site would provide optimal telecommunication coverage and meets Telstra’s objectives for the area.

It is considered that the subject land is suitable for the proposed development.

**4. PUBLIC PARTICIPATION**


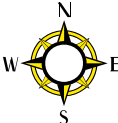
Section 79C(1)(d) of the Act requires Council to consider “any submissions made in accordance with this Act”.

**5.1 Community Consultation**

The proposed development was placed on public exhibition and was notified to adjoining and nearby landowners between 24 November 2010 and 16 December 2010 in accordance with Council’s Notification and Exhibition Development Control Plan. During this period, Council received two submissions and a petition. The map below illustrates the location of those nearby landowners who made a submission that are in close proximity to the development site.



**NOTIFICATION PLAN**

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

- Construction of a tower which is too close to residential properties and should be relocated further to the west on the adjoining Crown land or the Berowra Valley Regional Park.
- A tower which is too high.
- Adverse impact to property values.
- Detrimental health impacts.

Furthermore, a submission raised concern that Telstra should be requested to provide justification with respect to the need for improved coverage in the area.

The merits of the matters raised in community submissions have been addressed in the body of the report with the exception of the following:

### **5.1.1 Justification to be provided by Telstra for the proposed facility**

A public submission raised concern that Telstra should provide evidence of who specifically has requested the improved coverage to justify the application. The applicant advised that Telstra cannot give out personal details of customer complaints for privacy reasons, however, the following statement has been provided with regard to the purpose of the proposal:

*“Telstra regularly undertakes detailed assessments of its mobile telecommunications network to evaluate its performance and service capabilities, especially in the face of increasing consumer demand for services such as wireless broadband. Evaluation methods include a combination of drive surveys, statistical measures, computer modelling of coverage and the evaluation of customer complaints.*

*As a result of these assessments, Telstra is aware that improved indoor and outdoor mobile network coverage is required in the Hornsby Heights area. The area currently experiencing unreliable service is roughly bounded by Margaret Avenue to the south, The Crest to the north, Herman Crescent to the east and Berowra Valley to the west.*

*This area is not being adequately serviced by the surrounding Telstra Next-G Network sites, which can be found at Rofe Park, Galston Road, Hornsby; Ku-ring-gai Chase Road, Mt Colah and 601 Pacific Highway, Mt Colah. These existing facilities do not provide reliable service across Hornsby Heights due to a number of technical constraints including distance and topography which play important roles in limiting service provision.*

*Additionally, the surrounding sites do not provide service to Hornsby Heights because of constraints on network capacity. Each facility has a finite capacity to handle multiple simultaneous users so once that capacity is reached, a mobile network facility will drop calls, and wireless broadband connections would become unworkably slow.*

*Mobile network planning must take into account not just the provision of basic signal coverage, but also the likely demands on capacity (both now and in the future) to*

*allow for the increasing use of capacity ambitious services such as wireless broadband.*

*The new facility proposed at Hornsby Heights would link up with Telstra's existing sites in the wider area and would therefore improve the current shortfall in network coverage and ensure that sufficient network capacity is maintained to service the current and likely consumer demand in the Hornsby Heights area.*

*The result should be a more reliable local service with fewer call drop-outs and better call quality. The new facility would also ensure the provision of dependable, fast-speed wireless broadband services, that allows for greater range of mobile phone services such as transmission of live footage and faster data speeds for downloading information from the wireless broadband connections. This can only be delivered by local facilities that offer good quality, indoor coverage.*

*In summary, there is a technical requirement for a new 3G facility to provide a high level of indoor and outdoor network radio coverage. The proposed facility would service the area with improved mobile network reception and a greater capacity for high speed wireless broadband services. It would also address the lack of service continuity being experienced across Hornsby Heights."*

The proposed development would increase the availability and quality of mobile services in the area. The existing Police and Rural Fire Service equipment would be relocated from the water tower to the proposed Telstra tower to achieve better coverage.

### **5.1.2 Impact to property values**

Concerns have been raised about the impact of the proposed facility on property values. No documentary evidence has been submitted to suggest that the increase in telecommunications infrastructure in residential settings has had any impact on property values. Notwithstanding, the impact of a development on individual property values is not a matter for consideration under Section 79C of Act.

### **5.2 Public Agencies**

The development application was referred to the NSW Rural Fire Service (RFS) for comment. The RFS raised no objections to the proposal.

## **5. THE PUBLIC INTEREST**

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

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

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

## CONCLUSION

The proposal involves the erection of a 42 metre high telecommunications tower, including associated antennas and equipment shelter.

The proposal is satisfactory with regard to relevant legislation including the Environmental Planning and Assessment Act 1979, Telecommunications Act 1997 and the Hornsby Shire Local Environmental Plan 1994.

The proposal would result in some electromagnetic radiation, however, based on the information submitted, the predicted EME exposure falls well within acceptable levels.

The proposed tower is not considered to be visually intrusive in its setting and residential visual amenity would be largely maintained.

The proposal is satisfactory and is recommended for approval.

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

SCOTT PHILLIPS  
Executive Manager  
Planning Division

### Attachments:

1. Locality Plan
2. DA Plans
3. Site Access Plan
4. EME Precautionary Approach Checklist
5. Summary of RF EME Levels

File Reference: DA/1414/2010  
Document Number: D01565209

**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>Sheet No.</i>	<i>Title</i>	<i>Drawn by</i>	<i>Dated</i>
N25726 – Issue 6	S1	Site Access and Locality Plan	Telstra Corporation Limited	17.08.10
N25726 – Issue 1	S1-1	Site Access and Locality Plan – Sheet 2	Telstra Corporation Limited	17.08.10
N25726 – Issue 5	S3	Site Elevation	Telstra Corporation Limited	17.08.10

<i>Document Title.</i>	<i>Prepared by</i>	<i>Dated</i>
Site Specific Notes (Reference No. N25726 – Issue 5, Sheet S0)	Telstra Corporation Limited	17.08.10
Planning Report (Reference No. NA03077.01)	Urbis Pty ltd	October 2010

**2. Removal of Existing Trees**

This development consent only permits the removal of trees numbered 1 & 2 as identified on Site Tree Location Plan. 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. Sydney Water – Quick Check**

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

*Note: Refer to [www.sydneywater.com.au](http://www.sydneywater.com.au) or telephone 13 20 92 for assistance.*

**REQUIREMENTS PRIOR TO THE COMMENCEMENT OF ANY WORKS****5. Erection of Construction Sign**

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

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

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

**6. Protection of Adjoining Areas**

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

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

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

## 7. Toilet Facilities

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

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

## 8. Erosion and Sediment Control

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

*Note: On the spot penalties up to \$1,500 may be issued for any 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 7am and 5pm Monday to Saturday.

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

### 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. Council Property

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

**OPERATIONAL CONDITIONS****12. Noise – Plant and Machinery**

The level of total continuous noise emanating from operation of all the plant, including air conditioning units and processes in all buildings (LA10) (measured for at least 15 minutes) in or on the above premises, must not exceed the background level by more than 5dB(A) when measured at all property boundaries.

**13. Site Compliance Certificate**

A Site Compliance Certificate issued by a NATA accredited service must be submitted to Council for the site at 47 McKay Road, Hornsby confirming the operating EME levels once operational. The site must be assessed and found to comply with the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA)'s Radiation Protection Standards and the RF Human Exposure Limits as specified by the Australian Communications and Media Authority (ACMA).

**14. Telecommunications Facility**

The telecommunications facility on the site must be operated in compliance with, but not limited to:

- a) Australian Radiation Protection and Nuclear Safety Agency's (ARPANSA) *'Radiation Protection Standard for Maximum Exposure Levels to Radiofrequency Fields – 3kHz to 300 GHz'*, (2002).
- b) The Australian Communication Industry Forum Code (ACIF), *Industry Code C564:2004, Deployment of Mobile Phone Network Infrastructure*, (2002).
- c) The Australian Communications Authority (ACA), *Radiocommunications (Electromagnetic Radiation – Human Exposure) Standard*, (2003).

**- 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 Australian Standard AS4970-2009 "Protection of Trees on Development Sites".*

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](http://www.dialbeforeyoudig.com.au) for free information on potential underground pipes and cables within the vicinity of the development site.

**3 DEVELOPMENT APPLICATION - ALTERATIONS AND ADDITIONS TO THE EXISTING 'WOOLWORTHS' TENANCY FOR AN INTERNAL RETAIL PACKAGED LIQUOR OUTLET - CHERRYBROOK SHOPPING CENTRE, 41 - 47 SHEPHERDS DRIVE, CHERRYBROOK**

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<b>Development Application No:</b>	DA/1138/2010
<b>Description of Proposal:</b>	Alterations and Additions to the Existing 'Woolworths' Tenancy for an Internal Retail Packaged Liquor Outlet.
<b>Property Description:</b>	Lot 1, DP 816893 No. 41 – 47 Shepherds Drive, Cherrybrook Cherrybrook Shopping Centre
<b>Applicant:</b>	Woolworths Limited
<b>Owner:</b>	BNY Trust Company of Australia Limited
<b>Statutory Provisions:</b>	Hornsby Shire Local Environmental Plan 1994 Business A (General) zone
<b>Estimated Value:</b>	\$370,000
<b>Ward:</b>	B

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**RECOMMENDATION**

THAT Development Application No. 1138/2010 for alterations and additions to the existing 'Woolworths' tenancy for an internal retail packaged liquor outlet at Lot 1 DP 816893 be approved subject to the conditions of consent detailed in Schedule 1 of this report.

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**EXECUTIVE SUMMARY**

1. The application proposes alterations and additions to the existing 'Woolworths' tenancy for an internal retail packaged liquor outlet.
2. The proposal complies with the requirements of the Hornsby Shire Local Environmental Plan 1994 and the relevant Development Control Plans
4. Four submissions have been received in respect of the application.
5. It is recommended that the application be approved.

## HISTORY OF THE SITE

The site is currently used as a shopping centre known as ‘Cherrybrook Shopping Village’.

## THE SITE

The site, known as Nos. 41-47 Shepherds Drive - Lot 1 DP 816893, is located on the northern side of Shepherds Drive between Kenburn Avenue and Macquarie Drive, Cherrybrook, a distance of approximately 350 metres. The size of the land is 2.954 hectares and generally has a rectangular shape with splayed north-eastern and south-western side boundaries.

An existing local shopping centre is constructed on the land, with the buildings set back from the street frontage recessed into the hillside and retained along Shepherds Drive.

The site comprises two components namely, the upper level (Lot 1), which contains the existing shopping centre, car park, car wash and child care centre, and a lower level (Lot 2) at the eastern end of the site, adjacent to the intersection with Macquarie Drive, where a Caltex / Woolworths Service Station outlet is located under separate Stratum title with a concrete slab over, upon which the existing shopping centre car park is partly located.

The site falls approximately 2.5m from northwest to the southeast to the edge of the existing car park, which is elevated above Shepherds Drive at a height ranging from 1 to 6 metres.

## THE PROPOSAL

The application proposes alterations and additions to the existing ‘Woolworths’ tenancy for an internal retail packaged liquor outlet.

The gross floor area of the retail packaged liquor outlet is 125sqm and comprises the retail space and a coolroom. The store would utilise the existing Woolworths stockroom, kitchen facilities and WC for staff.

The floor area of the proposed retail packaged liquor outlet would replace a portion of the retail floor area of the existing supermarket.

The proposed operating hours of the retail liquor store would be between 8am and 10pm Monday to Saturday and 10am to 10pm Sunday. It is proposed to erect two signs above the two entry points to the store, one of which is accessed via the existing shopping mall and the second entry point is accessed internally from the supermarket.

The proposal would utilise the approved car parking facilities within the site.

## ASSESSMENT

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

### 1. STRATEGIC CONTEXT

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

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

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

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

The proposed development would be consistent with the draft Strategy by providing additional jobs in the locality.

## 2. STATUTORY CONTROLS

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

### 2.1 Hornsby Shire Local Environmental Plan 1994

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

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

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

Clause 15 of HSLEP prescribes that the maximum floor space ratio (FSR) of development within the Business A (General) zone is 1:1. The proposed development does not increase the existing FSR for the site as the floor area of the proposed retail packaged liquor outlet would replace a portion of the retail floor area of the existing supermarket.

Clause 18 of HSLEP sets out heritage conservation provisions within the Hornsby area. The site is located in the vicinity of heritage items, which are identified in the HSLEP as being of local heritage significance. These items include “The Lakes of Cherrybrook” opposite the site in Shepherds Drive and two stands of remnant bushland within the adjoining Greenway Park.

The proposed development is located within the existing shopping centre and would not result in an adverse impact upon the adjoining heritage items and their significance.

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

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

Clause 9 of SEPP 19 relates to land adjoining land zoned or reserved for public open space. The Lakes of Cherrybrook is located opposite the site in Shepherds Drive and Greenway Park surrounds the site to the rear. Both sites are zoned Open Space A (Public Recreation - Local) under the HSLEP.

The proposal is locate wholly within the existing footprint of the shopping centre and does not affect bushland on the adjoining open space lands.

## **2.3 State Environmental Planning Policy No. 44 - Koala Habitat Protection**

The Policy requires Council to consider whether development upon land with an area greater than 1 hectare will have an adverse impact upon potential koala habitat. As the site is cleared and contains an existing shopping centre, further consideration of the SEPP is not required.

## **2.4 State Environmental Planning Policy No. 64 - Advertising and Signage**

This Policy aims to improve the amenity of urban and natural settings by managing the impact of outdoor advertising. In accordance with Part 3, Clause 9, the proposed signage is defined as a 'business identification sign' and the provisions of Part 3 of the Policy do not apply.

The proposed signs are located wholly within the existing shopping centre complex and are not visible from the street. The signage is considered to be consistent with the provisions of SEPP 64, in that it meets the objectives to be compatible with the desired amenity and visual character of the area and satisfies the assessment criteria in Schedule 1 of the SEPP and is considered to be acceptable in terms of its impact.

## **2.5 State Environmental Planning Policy (Exempt and Complying Developments Code) 2008**

This Policy aims to provide streamlined assessment processes for development that complies with specified development standards.

On 5 May 2004, Council issued Development Consent No. 341/2004 for the fitout of the Woolworths supermarket within the Cherrybrook Village Shopping Centre. Accordingly, it would appear that the proposed development could have been lodged as a complying development application under *Part 5 General Commercial and Industrial Code* of the SEPP. Notwithstanding, the applicant would need to make their own enquiries in this regard.

## **2.6 Sydney Regional Environmental Plan No. 20 - Hawkesbury Nepean River**

Sydney Regional Environmental Plan No. 20 aims to protect the environment of the Hawkesbury/Nepean River system by ensuring that the impacts of future land uses are considered in a regional context. Part 2 of the Plan requires Council to consider total catchment management, environmentally sensitive areas, water quality, water quantity, cultural heritage, flora and fauna, riverine scenic quality, agriculture/aquaculture and fishing,

recreation and tourism, rural residential development, urban development and the Metropolitan Strategy.

The proposal is consistent with the objectives of the Sydney Regional Environmental Plan and would not impact on water quality.

## 2.7 Draft State Environmental Planning Policy (Competition) 2010

The NSW Government has released a proposed state-wide planning policy which removes artificial barriers on competition between retail businesses. The draft SEPP is a relevant matter for consideration under s.79 of the Act.

This draft SEPP proposes:

- The commercial viability of a proposed development may not be taken into consideration by a consent authority, usually the local council, when determining development applications;
- The likely impact of a proposed development on the commercial viability of other individual businesses may also not be considered unless the proposed development is likely to have an overall adverse impact on the extent and adequacy of local community services and facilities, taking into account those to be provided by the proposed development itself; and
- Any restrictions in local planning instruments on the number of a particular type of retail store in an area, or the distance between stores of the same type, will have no effect.

Whilst submissions received raised concerns that there was an existing retail liquor shop within the centre thereby negating the need for a second liquor shop, there are no planning grounds to refuse the application based on potential competition between retail businesses.

## 2.8 Business Lands Development Control Plan

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

<b>Business Lands Development Control Plan</b>			
<b>Control</b>	<b>Proposal</b>	<b>Requirement</b>	<b>Compliance</b>
<b>Site Area</b>	2.954ha	N/A	N/A
<b>Existing Floor Area of Centre</b>	9604.6m <sup>2</sup>	N/A	N/A
<b>Floor Space Ratio</b>	0.32:1	1:1	Yes
<b>Liquor Outlet Floor Area</b>	125m <sup>2</sup>	N/A	N/A
<b>Site Cover</b>	unchanged	N/A	N/A

<b>Car Parking</b>	Unchanged	463 spaces approved	Yes
<b>Setbacks</b>	Unchanged		Yes
<b>Signage</b>	2 signs	3 signs	Yes

As detailed in the above table, the proposed development complies with the prescriptive standards within Council's Business Lands DCP. A brief discussion on compliance with relevant performance standards are detailed below.

### 2.8.1 Density

The proposed retail packaged liquor outlet would replace 125sqm of the approved retail floor area of the existing supermarket. Therefore there would be no net increase in floor area for the development and the density of the existing development on the site remains unchanged.

### 2.8.2 Car Parking

The existing development on the site includes provision for 463 approved car parking spaces. As the proposed retail packaged liquor outlet would replace a portion of the approved retail floor area of the existing supermarket, there is no net increase in floor area for the development and therefore no additional car parking is required.

### 2.8.3 Signage

The proposal includes the erection of two signs for the use which satisfies the requirement of a maximum total of three signs per site. The signage is located within the shopping centre and would not be visible from Shepherds Drive.

### 2.8.4 Acoustics

The DCP requires that the operating hours of all commercial activities be restricted to 7 am and 6 pm, Monday Wednesday and Friday, 7 am and 9 pm on Thursday and 8 am to 4 pm on Saturdays, with no work being undertaken on Sundays and Public Holidays.

The application for the retail packaged liquor outlet proposes the following hours of operation:

Monday to Saturday	8am to 10pm
Sunday	10am to 10pm

Condition No. 3 of Development Consent No. 2215/2002 granted on 21 May 2003 and subsequently modified on 4 December 2003, 7 April 2004, 1 November 2004 and 20 November 2005 states:

3. *The hours of use of the shopping Centre shall be 7.00am to 10.00pm, 7 days per week.*

As the proposed hours of the retail packaged liquor outlet are within the approved hours of operation for the shopping centre, a reduction in the operating hours in line with the performance criteria of the DCP would not be consistent with the objectives of the Business

C (Neighbourhood) zone or the intent of the commercial centres role to provide goods and services to the local community.

### 2.8.5 Crime Prevention

The objective of the control element is:

*"To reduce crime risk and minimise opportunities for crime."*

Concern has been raised that the proposed development would result in an increase in youths and underage drinkers congregating in the shopping centre and the adjacent park. The proposed development was referred to the NSW Police Service for comments and further discussion is provided in Section 5.2.1 of this report.

Furthermore, the existing shopping centre has security during the hours of operation and condition No. 97 of Development Consent No. 2215/2002 requires the shopping centre to maintain a security management plan.

### 2.8.6 Contributions

As previously stated, the proposed alterations to the existing Woolworths supermarket to provide a retail packaged liquor outlet do not increase the existing floor area. Accordingly, Section 94 contributions are not required to be levied.

## 2.9 Car Parking Development Control Plan

The primary purpose of this DCP is to provide parking controls for the development. The shopping complex has an approved shared parking provision for all tenancies. As the proposal is for a retail liquor outlet within the existing Woolworths and no increase to the existing retail floor area is proposed, the proposal is considered consistent with the provisions of Council's Car Parking Development Control Plan.

## 2.10 Outdoor Advertising Development Control Plan

The primary purpose of the Plan is to control the visual impact of advertisements and advertising structures on the environment and to provide adequate opportunities for the community to advertise their goods and/or services.

The application proposes the erection of two signs:

**Sign 1** - wall sign 1200mm x 600mm, located above the entry from the mall; and

**Sign 2** - wall sign 1200mm x 600mm, located above the internal entry from the 'Woolworths' checkout area.

This type of signage is classified as 'wall signs' under the Outdoor Advertising Development Control Plan. The Development Control Plan provides the following development controls for wall signs.

- (a) *where it is illuminated, shall not be less than 2.6m above the ground;*
- (b) *shall not extend laterally beyond the wall of the building to which it is attached;*



- (c) *shall not project above the top of the wall to which it is attached;*
- (d) *shall not have an area greater than 4.5 sqm. This includes window signs (painted or mounted);*
- (e) *shall not cover any window or architectural projections.*

The proposed signs are consistent with the requirements for wall signs in the DCP and conditions are recommended to ensure the signs are maintained in a presentable and satisfactory state of repair if consent is granted.

### **2.11 Access and Mobility Development Control Plan**

The primary purpose of this DCP is to assist proponents and Council in ensuring the requirements for equality of access in the *Disability Discrimination Act 1992* are satisfied when building work is proposed.

The proposed development is consistent with the objectives of the Access and Mobility Development Control Plan.

### **2.12 Cherrybrook Precinct Development Control Plan**

The primary purpose of this DCP is to provide controls for the Cherrybrook Precinct. The subject site is included within the precinct and complies with the provisions of the DCP and the Cherrybrook Precinct Masterplan.

### **2.13 Waste Minimisation and Management Development Control Plan**

The primary purpose of this Development Control Plan is to provide planning strategies and controls to promote waste minimisation and management. Subject to recommended conditions of consent relating to disposal of waste being implemented, the proposed development is consistent with the objectives of the Plan.

## **3. ENVIRONMENTAL IMPACTS**

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

### **3.1 Natural Environment**

The proposed development would not necessitate the removal of any trees from the site and would not have a negative impact on the natural environment of the area.

### **3.2 Built Environment**

The proposed works would not be visible from Shepherds Drive. As such, the proposed retail liquor premises would have minimal impact on the existing streetscape of the shopping centre or the built environment of the locality.

### **3.3 Social Impacts**

The proposed development would cater to the daily and regular needs of the community residing in the Cherrybrook area and would not have a negative social impact on the locality. An assessment of whether the development satisfies the public interest test is held at Section 6 of this report.

### **3.4 Economic Impacts**

The proposal would not have a negative economic impact on the locality.

## **4. SITE SUITABILITY**

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

The site is not known to be subject to subsidence, flooding or landslip. A small section in the south of the site is identified as bushfire prone land. In accordance with Section 79BA of the Environmental Planning and Assessment Act 1979 and that the proposed development is located wholly within the existing shopping centre on the site, Council is satisfied that the development conforms to the specifications and requirements of ‘*Planning for Bushfire Protection 2006*’.

## **5. PUBLIC PARTICIPATION**



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

### **5.1 Community Consultation**

The proposed development was placed on public exhibition and was notified to adjoining and nearby landowners between 4 November 2010 and 25 November 2010 in accordance with Council’s Notification and Exhibition Development Control Plan. During this period, Council received four submissions. The map below illustrates the location of those nearby landowners who made a submission that are in close proximity to the development site.



**NOTIFICATION PLAN**

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

- loss of social amenity,
- impact on the wellbeing of teenagers;
- the current adequate availability of alcohol;
- the unsuitability of combining groceries and alcohol sales;
- the avoidance of further criminal activity,
- liquor shop is a quarter of the area of the supermarket leading to a reduction in grocery lines due to reduction of supermarket floor area;
- there is already an existing liquor outlet in the centre;

- the application was refused last year;
- youth will drink alcohol in the park opposite the shopping centre;

The merits of the matters raised in community submissions have been addressed in the body of the report with the exception of the following:

### 5.1.1 Application refused last year

Council has not received a previous application for a retail package liquor outlet on the site. The submission is most likely referring to the proponent's preparation of the Community Impact Statement (CIS) for the proposed packaged liquor licence application to the NSW Office of Liquor, Gaming and Racing (OLGR) that would have been notified to surrounding residences and Council. The OLGR is the statutory body that regulates liquor licences. A search of the OLGR website indicates that a packaged liquor licence has not yet been applied for by the applicant. Furthermore, a packaged liquor licence would not be granted by the OLGR until such time as a development consent or approval (if required) is granted.

## 5.2 Public Agencies

The development application was referred to the following public agencies:

### 5.2.1 NSW Police

The application was reviewed by the Licensing Officer and the Crime Prevention Officer from the Eastwood Local Area Command of the NSW Police Force. No objection was raised to the proposed development subject to the imposition of the recommendations provided.

## 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.

In *Double Bay Marina Pty Ltd v Woollahra Council [2009] NSWLEC 1001*, the Commissioner suggested a relatively new planning principal: discerning the public interest in development applications. The Commissioner noted that consideration of the public interest ought to be broken into three steps:

1. *Defining the public whose interest is being invoked.*
2. *Defining the benefit towards which a proposal claims to make a contribution (or from which it is claimed to detract).*
3. *Making explicit the weight given to the public interest relative to other considerations.*

It could be argued that there is a public benefit for the establishment of the development by way of providing customers the convenience of purchasing groceries and packaged liquor at

the same time. In addition, the development would improve competition, as there is an existing liquor store in the shopping centre.

As previously stated, submissions raised concerns that the proposed development could result in a proliferation of the supply of alcohol in the Shire, potential for secondary supply to minors and social problems resulting from alcohol abuse and possible criminal activity which would be to the public detriment. However, there is no indication that the proposed development would result in these impacts, rather the consumption of alcohol generally does result in social consequences within the community. In this regard, the public dis-benefit of the development would not be grounds for the refusal of the application.

The proposed development would provide private benefit to shareholders in the company.

Similar to the public dis-benefit of the development, it could be argued that there is an indirect private dis-benefit of the development by way of immediate neighbours possibly witnessing youth drinking alcohol and creating noise in the park opposite the shopping centre. However, it should be noted that the shopping centre has security monitoring the site and shops during operating hours which addresses such impacts.

Notwithstanding the above, the possible public detriment of the development is beyond the scope of the assessment of the development application as this societal issue is a wider public policy consideration which sets the policy and framework for assessment of the suitability of retail alcohol outlets in urban areas.

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

## CONCLUSION

The application proposes alterations and additions to the existing 'Woolworths' tenancy for an internal retail packaged liquor outlet.

The proposal would not generate any additional floor space or alter the appearance of the approved commercial centre on site. The proposed development would utilise the approved car parking facilities on site and would not result in additional traffic generation.

The development generally meets Council's planning controls and is satisfactory having regard to the matters for consideration pursuant to Section 79C of the *Environmental Planning and Assessment Act, 1979*.

Council received four submissions during the public notification period and appropriate controls and conditions have been imposed to minimise disruption to residential amenity.

Having regard to the circumstances of the case, approval of the application is recommended for approval.

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

SCOTT PHILLIPS  
Executive Manager  
Planning Division

**Attachments:**

1. Locality Plan
2. Architectural Plans

File Reference: DA/1138/2010  
Document Number: D01561195

**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:

*Architectural Plans prepared by Woolworths Limited*

<i>Plan No.</i>	<i>Plan Title</i>	<i>Rev</i>	<i>Dated</i>
L1	Liquor Control Plan	E	22 December 2009
L2	Combined Liquor Plan	E	22 December 2009

*Supporting Documentation*

<i>Document Title</i>	<i>Prepared by</i>	<i>Dated</i>
Statement of Environmental Effects	Andrew Martin Planning	September 2010
Community Impact Statement	BSV	13 September 2010
Statement of Impact	BSV	13 September 2010

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

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

## REQUIREMENTS PRIOR TO THE COMMENCEMENT OF ANY WORKS

### 3. Erection of Construction Sign

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

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

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

### 4. Waste Management Plan

Prior to issue of the Construction Certificate, A *Waste Management Plan Section One – Demolition Stage, Section Two – Design Stage, Section Three – Construction Stage and Section Four – Use and On-going Management* as applicable, covering the scope of this project is required to be submitted to Council in accordance with the *Waste Minimisation and Management Development Control Plan*.

## REQUIREMENTS DURING CONSTRUCTION

### 5. Waste Management Plan - Work Practices

Appropriate work practices must be employed to implement the *Waste Management Plan Section One – Demolition Stage and Section Three – Construction Stage* as applicable.

## OPERATIONAL CONDITIONS

### 6. Hours of Operation

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

Monday to Wednesday	8am to 10pm
Sunday & Public Holidays	10am to 10pm

### 7. Fire Safety Statement - Annual

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



**CONDITIONS OF CONCURRENCE – NSW POLICE**

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.

**8. Installation of Safety and Security Measures**

The following safety and security measures must be installed in the premises:

- a. CCTV cameras must be installed inside the business, capturing customers coming into and leaving the business. CCTV cameras must also be recording the money transactions and there should be a TV displaying to the customers that they are being recorded. There needs to be adequate signage displayed to inform customers that CCTV is being used. The CCTV should be of high quality and should capture customer's faces as they enter the liquor store. This enables Police to better identify offenders. CCTV cameras must be suitably placed throughout the store and ensure that they cover all areas of the store. Mirrors must be used in areas that are difficult to supply adequate surveillance.
- b. A safe designed and installed to the relevant Australian Standards must be installed and bolted to the floor to store cash and valuables.
- c. The doors to the manager's office and the area into the cash handling area must be fitted with security coded locks.
- d. A duress facility must be incorporated to enable staff to activate the system manually in the event of an emergency, such as a robbery.
- e. Lighting must be designed to the relevant Australian and New Zealand Lighting Standards and a lighting maintenance policy must be established for the development.

**- END OF CONDITIONS -**

**ADVISORY NOTES**

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

**Environmental Planning and Assessment Act, 1979 Requirements**

The Environmental Planning and Assessment Act, 1979 requires:

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

### **Long Service Levy**

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

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

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

### **Disability Discrimination Act**

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

### **Food Authority Notification**

The *NSW Food Authority* requires businesses to electronically notify the Authority prior to the commencement of its operation.

*Note: NSW Food Authority can be contacted at [www.foodnotify.nsw.gov.au](http://www.foodnotify.nsw.gov.au).*

### **Council Notification – Food Premises**

Prior to the commencement of the business, the operator is requested to contact Council's Environmental Health Team to arrange an inspection for compliance against the relevant legislation and guidelines outlined in this approval.

*Note: Council's Environmental Health Officer can be contacted on 02 9847 6745.*

**4 DEVELOPMENT APPLICATION - CONSTRUCTION OF AN AFFORDABLE RENTAL HOUSING DEVELOPMENT COMPRISING EIGHT TOWNHOUSES 3 & 5 FULBOURNE AVENUE PENNANT HILLS**

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<b>Development Application No:</b>	DA/1021/2010
<b>Description of Proposal:</b>	Construction of an affordable rental housing development comprising eight townhouses.
<b>Property Description:</b>	Lot 16 and Lot 15 DP 10203 (Nos. 3 & 5) Fulbourne Avenue, Pennant Hills.
<b>Applicant:</b>	Mr Ram Shanker Kangatharan C/- Glendinning Minto & Associates
<b>Owner:</b>	Mr R S Kangatharan
<b>Statutory Provisions:</b>	Hornsby Shire Local Environmental Plan 1994 Residential A (Low Density) Zone State Environmental Planning Policy Affordable Rental Housing 2009
<b>Estimated Value:</b>	\$2,700,000
<b>Ward:</b>	C

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**RECOMMENDATION**

THAT Development Application No. DA/1021/2010 for the demolition of existing dwellings and the construction of an affordable housing development comprising eight townhouses at Lot 16 and Lot 15 DP 10203 (Nos 3 & 5) Fulbourne Avenue, Pennant Hills be approved subject to the conditions of consent detailed in Schedule 1 of this report.

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**EXECUTIVE SUMMARY**

1. The application proposes the demolition of two existing dwelling houses and the construction of an affordable housing development containing eight townhouses.
  2. The proposal complies with the development standards contained within State Environmental Housing Policy (Affordable Rental Housing) 2009.
  3. Council on 1 December 2010 resolved to defer consideration of the application subject to consultation with residents.
  4. The matters raised in Council's resolution insofar as further consultation with residents has now been addressed.
-

5. It is recommended that the application be approved.

### **DEFERRAL OF THE APPLICATION**

On 1 December 2010 Council's Planning Committee first considered the subject application and resolved (with relevance to the development application):

*THAT Council:*

- 1. Defer consideration of this matter to the 2 February 2011 Planning Meeting to allow the professional consultant engaged by the residents to put in a submission regarding this proposal given the issues raised. The report of the Executive Manager accompanying this submission should include further information on how the Affordable Housing SEPP may address shortages of rental housing in the Hornsby Shire Local Government Area.*

### **Meeting with Residents**

A meeting with concerned residents was held on 14 December 2010 to provide a forum for residents to discuss issues of concern with Council staff and the applicant. The meeting commenced at 4.30pm and concluded at 6.45pm.

At the meeting the Executive Manager Planning provided an overview of the application of the SEPP Affordable Rental Housing with regard to; affordable housing for key workers in locations with access to employment; planning incentives for private sector development of affordable rental housing; limited take-up of the development incentives in Hornsby LGA; and the eligibility criteria for affordable rental housing according to household income. Council's notification requirements for development applications were also discussed.

The residents planning consultant outlined the issues of concern detailed in his submission including; need for consultation with residents; impact on heritage and residential character; excessive driveways with vehicles required to reverse near adjoining child care centre; zoning objectives and design guidelines; catalyst for similar development; and need to design for single storey with single driveway operation.

The applicant's planning consultant advised of the potential to amend the proposal to delete the driveway adjacent to the child care centre. Such amendment would result in the loss of a garage space and a visitor car parking space. The consultant commented that the amendment may result in a compromised outcome. The consultant also provided advice concerning the amended proposed stormwater drainage system to increase the detention capacity, provide for water saving and recycling and minimise any increase in runoff, in order to maintain the pre-development 1 in 100 year flood level. A copy of the amended stormwater drainage plans are attached to this report.

The Executive Manager Planning discussed the non-discretionary planning assessment criteria under the SEPP and responded to residents questions concerning requirements for the proposal in respect to car parking, traffic safety, stormwater design and residential density.

### **Further Submissions**

Following Council's resolution on 1 December 2010 further submissions were received from eight residents. The submissions reiterated previous concerns and included additional concerns which are noted and commented on as follows:

Additional Concerns	Comment
Difficulty of enforcement of affordable rental housing for target group.	Condition No. 33 is considered appropriate to address this concern.
Need for installation of 'no parking' signs for traffic safety of child care centre.	Post development on-street car parking should be monitored to determine need.
Need for privacy screens to first floor windows to prevent overlooking of child care centre.	Privacy screening is considered unwarranted in respect to commercial land use and the requirements of Council's Community Uses Development Control Plan.
Need for child care centre to be advised of construction work.	Additional condition No. 13AA is recommended.
Need for management control of storm water drainage system to ensure efficiency and prevent mosquitoes.	Condition No. 26d is considered appropriate. In this regard a copy of the terms and conditions of Council's covenant are attached to this report.
Unreliable electricity supply and need for substation.	Condition No. 7 requires evidence of satisfactory supply prior to a Construction Certificate being issued.
Impacts of air conditioning systems.	The proposed buildings are designed for energy efficiency and comply with BASIX requirements, reducing the need for air conditioning.
Need for management of common property to prevent obstruction/resident conflict.	Additional condition No. 35 is recommended to prohibit parking of vehicles other than in approved car parking spaces.
Council to exercise duty of care to ensure safety and well being of community in approving development.	Council's duty of care is implicit in the assessment and determination of development applications in accordance with the legislation.
Inadequate car parking will increase traffic congestion and reduce safety Yarrara Road. Car parking is inadequate as 50% of dwellings are not required for affordable rental housing and the existing 50 place child care centre has 5 car parking spaces.	Post development monitoring of traffic management is noted as above.

### Housing Market Analysis

The applicant submitted a housing market analysis for the Hornsby LGA prepared by Housing NSW. The analysis identifies the Hornsby LGA within the Outer North Sydney property market and provides comparative data with adjoining LGAs and the Greater Metropolitan Region.

Key parameters in the analysis include a growing population, high housing need, low proportion of private rental housing (17.2%), high proportion of housing stress (62%) and small proportion of public housing (1.2%).

Key findings include; lack of affordable housing for rental and purchase; need for more one bedroom, studio and boarding house accommodation; and limited affordable housing opportunities for older people.

A copy of the analysis is attached to this report.

## **THE SITE**

The site comprises two allotments located on the southern side of Fulbourne Avenue. The site has an area of 2,089.5m<sup>2</sup>, is of regular shape with a frontage of 41.5m and depth of 50.5m. The site has an average fall of 6% to the rear south western corner.

The site includes two existing single storey dwelling houses. A 1.8m wide stormwater drainage easement is located over the south east corner of the site. The trees on the site mainly include previously planted species other than a number of remnant trees in the western rear part of the site.

The surrounding locality comprises a low density residential area of single and two storey dwelling houses. The adjoining property at No. 1 Fulbourne Avenue on the corner of Yarrara Road operates as a child care centre. The adjoining dwelling house at No. 7 Fulbourne Avenue is an item of environmental heritage of local significance. The Main Northern Rail Corridor is located 45m east of the site parallel to Yarrara Road.

The site is located 500m north east of Pennant Hills shops and Railway Station.

## **THE PROPOSAL**

The proposal includes the demolition of the two existing dwelling houses and the construction of eight townhouses comprising two x 2 storey duplex at the front of the site and a two storey building containing four townhouses at the rear of the site. The townhouses include four x 3 bedroom and four x 4 bedroom dwellings. Five townhouses include attached single storey garaging and living space. Open car parking spaces at the rear are proposed for three of the dwellings.

The proposal includes a central accessway that separates the two buildings at the frontage and provides access to the building at the rear.

## **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 NSW State Plan**

Priority of E6 of the *NSW State Plan* is 'Housing Affordability'. The *Plan* notes that:

*Strong economic growth for the last 10 years has seen home values rise dramatically across many parts of NSW. Alongside this however, there has been a corresponding increase in difficulty for many people in affording housing.*

*The Government considers housing affordability from two perspectives. Firstly, from the perspective of the first home buyer for whom purchasing a home is increasingly difficult. Secondly, from the perspective of the most vulnerable households – the frail aged, people with disabilities, people with mental illness and people at risk of homelessness – who face poor health, educational or other social outcomes due to high housing costs or overcrowding.*

A key lever of Priority E6 was the introduction of State Environmental Planning Policy (Affordable Rental Housing) 2009. Being a recent planning initiative, Hornsby local government area is only now seeing development applications for this type of housing. Therefore, it is important to carefully consider development proposals in the context of this strategic planning objective as well as more established local planning controls.

## **1.2 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 six dwellings and would improve housing choice in the locality.

## **2. STATUTORY CONTROLS**

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

### **2.1 Hornsby Shire Local Environmental Plan 1994**

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

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

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

The compliance of the development with the zone objectives must be read in the context of the aims of State Environmental Planning Policy (Affordable Rental Housing) 2009. An assessment of the application against the SEPP is held at section 2.2 of this report.

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

Clause 15 of the HSLEP prescribes that the maximum floor space ratio (FSR) of development within the Residential A zone is 0.4:1. The proposal exceeds this requirement and relies on the provisions of State Environmental Planning Policy (Affordable Rental Housing) 2009 which permits a maximum floor space ratio of 0.75:1. To the extent of any inconsistency between the HSLEP and the SEPP, the provisions of the SEPP prevail.

Clause 18 of the HSLEP sets out heritage conservation provisions within the Hornsby area. The site adjoins an item of environmental heritage at No. 7 Fulbourne Avenue (house). The application includes a Heritage Impact Assessment of the proposed development. This matter is addressed in section 2.3 of this report.

## **2.2 State Environmental Planning Policy (Affordable Rental Housing) 2009**

The application has been assessed against the requirements of State Environmental Planning Policy (Affordable Rental Housing) 2009 (SEPP – Affordable Rental Housing). This Policy provides State-wide planning controls for delivery of affordable rental housing through planning incentives to increase rental housing close to business centres and to expand the role of non-profit housing providers. The Policy also provides for the retention of existing affordable housing and for housing support for disadvantaged people.

The Policy applies to the majority of Council’s residential land use zones for sites within 800 metres walking distance of a railway station or 400 metres of a bus stop with an hourly bus service.

For the subject site, the Policy provides for a maximum building height of 8.5m and a maximum floor space ratio of 0.75:1 with at least 50% of dwellings to be used for affordable rental housing for a period of 10 years.

Affordable housing is defined under the Policy according to a household income level being less than 120% of the median household income (Sydney Statistical Division). The affordable rental housing accommodation is to be managed by a registered community housing provider.

The Policy includes development standards and applies design criteria for low rise and high rise developments. For the subject site, the *Seniors Living Policy: Urban Design Guidelines for Infill Development* is to be taken into consideration, subject to the provisions being consistent with the Policy. The following table sets out the proposal’s compliance with the prescriptive standards of the Policy:



<b>SEPP - Affordable Rental Housing</b>			
<b>Control</b>	<b>Proposal</b>	<b>Requirement</b>	<b>Compliance</b>
<b>Site Area</b>	2,089.5m <sup>2</sup>	450m <sup>2</sup>	Yes
<b>Floor Space Ratio</b>	0.60:1	0.75:1	Yes
<b>Dwelling Size</b>	141m <sup>2</sup> – 167m <sup>2</sup>	Min 95m <sup>2</sup> – 3 br +	Yes
<b>Height</b>	8.5m	8.5m	Yes
<b>Car parking</b>	10 spaces	4 spaces (0.5 per dwlg)	Yes
<b>Solar Access</b>	100%	70%	Yes
<b>Deep Soil Zone</b>	28%	15%	Yes
<b>Landscaped Area</b>	717m <sup>2</sup>	280m <sup>2</sup>	Yes

As detailed in the above table, the proposed development complies with the prescriptive standards within the Policy. Below is a brief discussion on compliance with design principles and best practice standards within the *Urban Design Guidelines for Infill Development*.

### 2.2.1 Responding to Context

The immediate locality is characterised mainly by single storey older style detached dwellings with open landscaped frontages in the streetscape. Front setbacks are variable and there is a mix of building materials and finishes and housing styles.

The proposed development provides a contemporary architectural form and includes a mix of materials and finishes. The development maintains the existing building alignment along the lower southern side of the street. The proposal introduces a new built form and style of housing but would maintain the existing pattern of buildings in the streetscape.

The development makes good use of internal/external spaces and incorporates sustainable building practices that are more efficient than the majority of existing dwellings in the locality.

### 2.2.2 Site Planning and Design

The site is of uniform shape and is situated on the lower side of the street. The site does not include any significant constraints to development other than the stormwater drainage easement across the south eastern corner of the site.

The proposed townhouses are oriented north south living and open space areas are primarily located on the northern elevation of the dwellings, to maximise solar access. The proposed dwelling design would achieve a high level of energy efficiency and amenity.

Separate driveways are provided for dwellings 1 and 4. A central accessway provides a shared pedestrian and vehicular access to the proposed rear dwellings and vehicular access for units 2 and 3. The dwellings at the frontage have independent pedestrian access.

### 2.2.3 Impacts on Streetscape

The proposal includes informal private open space within the front setback which is inconsistent with the streetscape.

The proposed buildings have a minimum front setback of 8.6m. The proposed private open space areas extend to within 2.8m of the front boundary and are enclosed with 1.2m high tubular steel fencing with brick piers. Being enclosed by 1.2m high fences, the front courtyards of units 1 to 4 are not intended to be used as formal private areas. Instead, the courtyards take advantage of the northern elevation and improve internal/external living and amenity. This results in a sustainable and environmentally efficient design outcome.

Landscaping for privacy is proposed at the immediate frontage. The proposed landscaping would provide effective screening of the private open space areas. The first floor component of the two front buildings would present as the dominant element in the streetscape.

Subject to implementation of the landscape plan the proposal is considered acceptable in respect to impact on the existing streetscape.

### 2.2.4 Impacts on Neighbours

The proposed development is considered acceptable in respect to privacy and amenity to the adjoining child care centre and the adjoining heritage listed dwelling subject to the construction of new boundary fencing. The proposed buildings would not overshadow neighbouring properties to the extent of any non-compliance with the *Urban Design Guidelines For Infill Development*.

The proposed rear townhouse building is setback 4.9m from the rear boundary. The ground floor levels of the proposed dwellings are 1.2m above natural ground level at the rear boundary. To minimise overlooking of adjoining properties from the rear patios, the proposal includes privacy screens 1.5m above the floor level fixed to the rear boundary fence. A 3m wide deep soil landscaping area is proposed along the rear of the development in compliance with the Policy. The proposed landscaping area includes planting along the boundary which would provide some screening of the development. The majority of the proposed deep soil zone at the rear of the site is proposed for lawn area.

To prevent overlooking of the adjoining rear properties, privacy louvers are proposed for the first floor windows. The privacy screening reduces the visual amenity impacts of rear open space areas of adjoining properties in Stevens Street.

The *Urban Design Guidelines For Infill Development* include controls for the rear 25% of the site to be single storey. However, the SEPP – Affordable Rental Housing provides for a building height of not more than 8.5m which prevails to the extent of the inconsistency with the Guidelines.

Having regard to the aims of the SEPP – Affordable Rental Housing, this is considered to be an acceptable outcome.

### 2.2.5 Internal Site Amenity

The fin walls of the proposed buildings give separation and identity to individual dwellings within the development.

Fences and landscaping provide suitable screening for proposed private open space areas. The use of louvers for first floor windows and balcony screens minimises privacy impacts within the development. The proposed private open space areas comply with the required 35m<sup>2</sup> of landscaping per dwelling.

Five of the eight dwellings have single car garages. The proposed open car parking spaces in the frontage of Units 6 and 7 are not allocated to those units and would detract from their amenity, as the 'ownership' of the spaces is in conflict with the front entries and immediate outlook of these units. Whilst car ownership is reduced for low income households as recognised by the Policy with the requirement for 0.5 spaces per dwelling, the provision of a separate common parking area should be of design to minimise amenity impacts. To address this impact, it is recommended that low height screen fencing be provided between unit 5 car space and unit 6 as well as unit 8 car space and unit 7.

The proposed design does not provide adequate space for landscape treatment to provide transition and separation between the internal driveway/shared pedestrian access and the dwelling entries, resulting in dominance of the central accessway which detracts from the architectural style of the development and amenity. It would be open to Council to require the removal of car parking spaces to improve this amenity. Whilst that would result in the development maintaining the required number of car parking spaces under SEPP – Affordable Rental Housing, a reduction in car parking is considered to be an inferior outcome due to the density of the development. Therefore on merit, the development is considered acceptable in its current form.

The proposed dwelling entries at the frontage and central access to the rear dwellings are clearly defined access points to the development. Casual surveillance of the access points is achieved within the development minimising opportunities for crime.

The site is in the vicinity of the rail corridor. The rail line is elevated in relation to the site and results in noise impacts. Rail Corp recommends noise mitigation measures for the proposed development, which have been included as a recommended condition of consent.

### 2.3 Heritage Development Control Plan

The site adjoins an item of environmental heritage at No. 7 Fulbourne Avenue (house) which is an item of local significance as an Inter-War weatherboard cottage.

Council's Heritage Committee raised objections to the proposed development on grounds that the bulk and scale of the proposed development is out of character and not sympathetic with the adjoining heritage item.

A *Heritage Impact Report* was submitted in support of the application. The report notes:

*The new buildings occupy a site adjoining the item and separated from it by some distance allowing for appropriate landscape separation. Additionally, the new buildings are set below the road level and have overall heights that are compatible with the adjoining development on both sides of the site. The*

*increased density of development will not be highly obvious from the street due to the fall of the site and the screening effect of the retained vegetation.*

The applicant notes the concerns of the Heritage Committee. However, the applicant considers that the merits of the application coupled with the minor impact on the heritage item are such that the proposal should be supported in its current form.

The officer's assessment of the application concurs with the opinion of the applicant and therefore recommends that Council not require amendments to the design of the buildings. The development would be set back to enable landscaping to sufficiently screen the development to minimise impacts and would result in a development that relates positively to the streetscape.

### **3. ENVIRONMENTAL IMPACTS**

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

#### **3.1 Natural Environment**

The site includes twenty trees comprising a mix of exotic, introduced native and remnant trees.

The proposed development would necessitate the removal of six trees from the site. None of the trees to be removed are identified as 'significant trees'. Tree No. 20, a Brush Box (*Lophostemon confertus*) located in the south eastern part of the site, is identified as good and worthy of preservation and is to be retained.

The submitted landscape plan includes locally indigenous plant species and is considered acceptable in respect to replacement of existing trees proposed for removal.

#### **3.2 Built Environment**

The design of the proposed townhouses provides for cost effective construction of energy efficient housing with functional floor plans and an acceptable standard of accommodation for large families. The proposed built form however is predicated on reduced car parking provision in accordance with the provisions of the SEPP – Affordable Rental Housing.

Given that 50% of the development is required for this purpose for a relatively short time (10 years) compared to the economic life of the development, the large 3 and 4 bedrooms dwellings are compromised by the comparative deficiency of the car parking provision for accommodation of this size. However, under Clause 14 of the Policy, a consent authority must not refuse consent to development on car parking grounds when 0.5 spaces per dwelling are provided. It is acknowledged that to facilitate affordable housing in the strategic context, inconsistencies may arise with local planning expectations.

The proposal retains the existing vehicle crossings in the street maintaining this aspect of the streetscape. The eastern crossing is adjacent to the adjoining child care centre. To ensure adequate sight distance at the frontage, the floor height of the garage for Unit 4 and its driveway are at an appropriate level with the footpath.

Bin storage is proposed within the respective dwelling areas. Collection at the road frontage is considered acceptable for the proposal.

The proposed development includes a mix of materials; sheet metal, face brick, weatherboard, aluminium louvers and privacy shutters. The mix of materials and proposed finishes complement the architectural style of the development and result in a high quality design that would enhance the existing streetscape.

### **3.3 Social Impacts**

The proposed development would be of positive social impact in providing affordable rental accommodation particularly for large families, thus reducing social disadvantage and fostering inclusive and diverse communities. This is a key priority of the *NSW State Plan*.

### **3.4 Economic Impacts**

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

## **4. SITE SUITABILITY**

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

### **4.1 Flooding**

The stormwater drainage easement over the south eastern part of the site is subject to an overland flow path for the 1 in 100 year flood. The proposed floor levels would be a minimum of 500mm above flood height. The submitted flood study recommends minor excavation work at the rear of proposed Units 7 and 8 to maintain pre-development flood levels.

Subject to implementation of the recommendations of the flood study the proposal would not adversely impact on downstream properties.

The development is otherwise considered suitable for the site.

## **5. PUBLIC PARTICIPATION**


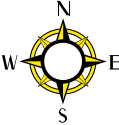
Section 79C(1)(d) of the Act requires Council to consider “*any submissions made in accordance with this Act*”.

### **5.1 Community Consultation**

The proposed development was placed on public exhibition and was notified to adjoining and nearby landowners between 7 September and 30 September 2010 in accordance with Council’s Notification and Exhibition Development Control Plan. During this period, Council received thirteen submissions. The map below illustrates the location of those nearby landowners who made a submission that are in close proximity to the development site.



**NOTIFICATION PLAN**

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

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

- Lack of car parking.
- Unacceptable residential density.
- Negative impact on streetscape and residential character.
- Impact on heritage item.
- Impact on traffic safety.
- Overshadowing and privacy impacts.
- Lack of space for children’s recreation and for clothes drying.
- Building height > 3.6m.
- Unacceptable number of bins for waste collection.

The merits of the matters raised in community submissions have been addressed in the body of the report with the exception of the following:

### 5.1.1 Boundary fence

It is considered to be a reasonable request that the applicant be required to construct the boundary fence at nil cost to the neighbouring property owner. A recommended condition of consent has been included in Attachment A.

### 5.2 Public Agencies

The development application was referred to NSW Transport (Rail Corp) in respect development in the vicinity of the rail corridor.

Rail Corp raised no objection to the proposal subject to a condition for compliance with noise mitigation measures.

## 6. THE PUBLIC INTEREST

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

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

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

## CONCLUSION

Consent is sought for demolition of two existing dwelling houses and construction of an affordable housing development comprising eight townhouses.

The proposed affordable housing development complies with the development standards prescribed under the SEPP – Affordable Rental Housing in respect to floor space ratio, car parking, landscaping, deep soil zones, solar access and dwelling size. The proposed townhouses would provide accommodation for low income families and conditions are recommended to ensure the accommodation is managed for this purpose.

The proposed townhouses are designed for energy efficiency and achieve a cost effective quality design standard. The non-discretionary development standards to facilitate the provision of this form of housing result in a shortfall in parking which has implications for the standard of accommodation and internal site amenity. In this regard the provisions of the SEPP – Affordable Rental Housing prevail notwithstanding the concerns raised in public submissions.

The concerns raised in public submissions concerning privacy are considered to have been addressed by the provision of fixed screens and landscaping. It is considered the proposed development would not significantly detract from the residential character of the locality.

The proposed development is therefore recommended for approval subject to recommended conditions.

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.

SCOTT PHILLIPS  
Executive Manager  
Planning Division

**Attachments:**

1. Locality Plan
2. Amended Stormwater Drainage Plans
3. Terms of Positive Covenant
4. Housing Market Analysis
5. Demolition Plan
6. Survey Plan
7. Site Analysis Plan
8. Floor Plans
9. Elevations
10. Perspective Front Elevation
11. Sections
12. Landscape Plan
13. Overland Flow Path

File Reference: DA/1021/2010  
Document Number: D01561494



**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>
DA 00 - Calculations	GGF Architects	04/11/10
DA 01 – Site Analysis	GGF Architects	04/11/10
DA 02 - Demolition	GGF Architects	27/07/10
DA 03 – Gnd Floor Plan	GGF Architects	04/11/10
DA 04 – 1st Floor Plan	GGF Architects	04/11/10
DA 05 - Elevations	GGF Architects	04/11/10
DA 06 - Elevations	GGF Architects	04/11/10
DA 07 - Sections	GGF Architects	04/11/10
108.10/179 'A'	ISCAPE Landscape Architecture	November 2010

**2. Removal of Existing Trees**

This development consent only permits the removal of tree(s) numbered T1 –T7, T12, T14, T17 and T19 as identified on Drawing No. DA 02 prepared by GGF Architects dated 27/07/10. The removal of any other trees requires separate approval under Council's Tree Preservation Order.

**3. Amendment of Plans**

The approved plans are to be amended as follows:

- a. Screen fencing 1.2m high is to be erected at the frontage of Unit 7 and Unit 6 to provide screening of the car parking spaces at the frontage of the units.

**REQUIREMENTS PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE****4. Building Code of Australia**

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

**5. Contract of Insurance (Residential Building Work)**

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

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

**6. Notification of Home Building Act, 1989 Requirements**

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

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

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

**7. Water/Electricity Utility Services**

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

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

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

## **8. Noise – Rail Corridor**

An acoustic assessment is to be submitted to Council prior to the issue of a construction certificate demonstrating how the proposed development will comply with the Department of Planning’s document titled “Development Near Rail Corridors and Busy Roads- Interim Guidelines.

## **9. Foundation Design**

Foundations are to be designed by a Structural Engineer to extend below the level of the Council-controlled drainage system.

## **10. On Site Stormwater Detention**

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

- a. Have a capacity of not less than 27 cubic metres, and a maximum discharge (when full) of 40 litres per second.
- b. Have a surcharge/inspection grate located directly above the outlet and accessible exterior of the dwellings.
- c. Discharge from the detention system to be controlled via 1 metre length of pipe, not less than 50 millimetres diameter or via a stainless plate with sharply drilled orifice bolted over the face of the outlet discharging into a larger diameter pipe capable of carrying the design flow to an approved Council system.
- d. Where above ground and the average depth is greater than 0.3 metres, a ‘pool type’ safety fence and warning signs to be installed.
- e. Not be constructed in a location that would impact upon the visual or recreational amenity of residents.

## **11. Stormwater Drainage**

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

- a. Connected to the on-site detention system and then the existing Council piped drainage system, using a full depth 900 mm x 900 mm Council standard junction pit on-line, stepirons and grated pit cover.

- b. The existing depression be constructed to contain the 1 in 100 year *Average Recurrence Interval* storm event as per overland flow design prepared by Acor Appleyard (reference GO100353).
- c. Minimum floor levels are to be set at least 500mm above the 100 year design storm level as set out by Acor Appleyard.
- d. Fencing in the area affected by the design overland flow shall be constructed as described by Acor Appleyard.
- e. Pier and beam method construction adjacent to easements to the depth of the invert of proposed and existing pipes.

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

## **12. Internal Driveway/Vehicular Areas**

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

- a. Design levels at the front boundary be obtained from Council.
- b. The driveway be a rigid pavement.
- c. The driveway grade must not exceed 25 percent and transitions for changes in grade must not exceed 8 percent per plan metre.
- d. The driveway pavement be a minimum 3 metres wide, 0.15 metres thick reinforced concrete with F72 steel reinforcing fabric and a 0.15 metre sub-base.
- e. The pavement have a kerb to one side and a one-way cross fall with a minimum gradient of 2 percent and a lintel and pit provided at the low points and on grade.
- f. Retaining walls required to support the carriageway and the compaction of all fill batters to be in accordance with the requirements of a chartered structural engineer.
- g. The provision of safety rails where there is a level difference more than 0.3 metres and a 1:4 batter can not be achieved.
- h. Conduit for utility services including electricity, water, gas and telephone be provided.

**REQUIREMENTS PRIOR TO THE COMMENCEMENT OF ANY WORKS****13. 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.*

**13A. Notification of Schedule of Works**

A Schedule of Works must be provided to the management of the adjoining Pennant Hills Preschool Kindergarten detailing the construction phases of the development.

**14. Erosion and Sediment Control**

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

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

**15. Dilapidation Report**

A 'Dilapidation Report' is to be prepared by a chartered engineer detailing the condition of adjoining properties and assets in the public road and submitted to Hornsby Shire Council.

**16. Toilet Facilities**

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

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

- c. have an on-site effluent disposal system approved under the *Local Government Act, 1993*

### 17. Tree Protection Barriers

Tree protection fencing must be erected around trees numbered 20 to be retained at a 3 metre setback. The tree fencing must be constructed of 1.8 metre 'cyclone chainmesh fence' or star pickets spaced at 2 metre intervals, connected by a continuous high-visibility barrier/hazard mesh at a height of 1 metre.

## REQUIREMENTS DURING CONSTRUCTION

### 18. 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.

### 19. 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.

### 20. 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.

### 21. Council Property

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

## 22. Vehicular Crossing

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

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

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

## 23. 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 5 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.*

### 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.*

## 24. Sydney Water – s73 Certificate

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

## 25. Damage to Council Assets

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

## 26. Creation of Easements

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

- a. A drainage easement 3 metres wide located centrally over the Council pipeline within the burdened lot in favour of Council and in accordance with the terms set out in *Memorandum B5341305V* filed with the *NSW Department of Lands*.
- b. A restriction over the pipeline and the flow path for a 100 year average recurrence interval storm. The "*Restriction on the Use of Land*" over the affected lots is to prohibit the alteration of the final floodway shape and the erection of any structures, including fencing, in the floodway without the written permission of Council. The terms of this restriction must be obtained from Council.
- c. A "*Restriction on the Use of Land*" for any lot adjacent to the floodway, requiring the finished floor level of any habitable room to be not less than 500mm and the garage 300mm above the 100 year average recurrence interval storm level. The levels must be related to *Australian Height Datum*.
- d. The creation of an appropriate "*Positive Covenant*" and "*Restriction as to User*" over the constructed on-site detention/retention systems and outlet works, within the lot in favour of Council in accordance with Council's prescribed wording. The position of the on-site detention system is to be clearly indicated on the title.
- e. To register the OSD, easement, and restriction on the use of land "*works-as-executed*" details of the on-site-detention system must be submitted verifying that the required storage and discharge rates have been constructed in accordance with the design requirements. The details must show the invert levels of the on site system together with pipe sizes and grades. Any variations to the approved plans must be shown in red on the "*works-as-executed*" plan and supported by calculations.

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

## **27. Maintain Canopy Cover**

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

## **28. Fulfilment of BASIX Commitments**

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

## **29. Completion of Landscaping**

A certificate must be provided by a practicing landscape architect, horticulturalist or person with similar qualifications and experience certifying that all required landscaping works have been satisfactorily completed in accordance with the approved landscape plans.



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

### **30. Boundary Fencing**

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

### **31. Consolidation of Allotments**

All allotments the subject of this consent must be consolidated into one allotment.

*Note: The applicant is recommended to submit the plan of subdivision to consolidate allotments to the NSW Department of Lands at least 4-6 weeks prior to seeking an occupation certificate.*

### **32. s94 Infrastructure Contributions**

The payment to Council of a contribution of \$99,287.35\* for 6 additional dwellings towards the cost of infrastructure identified in Council's Development Contributions Plan 2007-2011.

*Note: \* The value of contribution is current as at 9 November 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.*

### **33. Restriction as to User – Affordable Rental Housing**

To inform current and future owners that the townhouse development on the site is for affordable rental housing, a Restriction as to User must be created under Section 88B of the *Conveyancing Act 1919* identifying the following:

- (a) The development is for affordable rental housing pursuant to State Environmental Planning Policy (Affordable Rental Housing) 2009 for a period of 10 years from the date of the issue of the occupation certificate.
- (b) The dwellings identified as Units Nos. 2, 3, 5 and 8 on the approved plans must be used for the purpose of affordable housing pursuant to Clause 6 of State Environmental Planning Policy (Affordable Rental Housing) 2009.
- (c) The dwellings identified as Units Nos. 2, 3, 5 and 8 on the approved plans must be managed by a *registered community housing provider* as defined in the Housing Act 2001.

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

**OPERATIONAL CONDITIONS****34. Landscaping Maintenance**

All of the approved landscaping for the development must be continually maintained to ensure screening for privacy and the presentation of the development.

**35. Driveway Operation**

The internal accessway and manoeuvring areas are to be unobstructed at all times. The parking of vehicles on site is prohibited other than in approved car parking spaces.

**- END OF CONDITIONS -**

**ADVISORY NOTES**

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

**Environmental Planning and Assessment Act, 1979 Requirements**

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

**Long Service Levy**

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

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

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

### **Tree Preservation Order**

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

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

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

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

### **Dial Before You Dig**

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

### **Asbestos**

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

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

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

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

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

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

### **House Numbering**

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

**5 DEVELOPMENT APPLICATION - SUBDIVISION OF ONE ALLOTMENT INTO TWO  
16 TRELAWNEY STREET THORNLEIGH**

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<b>Development Application No:</b>	DA/1204/2010
<b>Description of Proposal:</b>	Subdivision of One Allotment into Two
<b>Property Description:</b>	CP SP 37391, (No. 16) Trelawney Street, Thornleigh
<b>Applicant:</b>	Red Gum Town Planning Services
<b>Owner:</b>	Unit 1 – Mr James P Ranieri and Mrs Anne G Ranieri Unit 2 – Mr Phillip L Abadee and Ms Elizabeth M Millington
<b>Statutory Provisions:</b>	Hornsby Shire Local Environmental Plan 1994 Residential A (Low Density) Zone
<b>Estimated Value:</b>	Nil
<b>Ward:</b>	C

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**RECOMMENDATION**

THAT Council assume the concurrence of the Director-General of the Department of Planning pursuant to State Environmental Planning Policy No. 1 and approve Development Application No. 1204/2010 for the subdivision of one allotment into two allotments at CP SP 37391, (No. 16) Trelawney Street, Thornleigh subject to the conditions of consent detailed in Schedule 1 of this report.

**EXECUTIVE SUMMARY**

1. The application proposes the Torrens title subdivision of one lot into two lots to create separate Torrens title allotments for the two existing detached dwellings on the property.
2. The proposal does not comply with the minimum allotment size for the Residential A Zone within the Hornsby Shire Local Environmental Plan 1994. However, pursuant to the State Environmental Planning Policy No. 1 – Development Standards, the proposed variation to the development standard is supported as the development does not alter the physical conditions or relationship between the two existing dwellings.
3. No public submissions have been received in respect of the application.

4. It is recommended that the application be approved.

## **HISTORY OF THE SITE**

On 22 June 1989, Council approved Development Application No. 256/1989 to create a dual occupancy under the provisions of Sydney Regional Environmental Plan No. 12 – Dual Occupancy.

On 12 July 1990, Council approved Subdivision Certificate No. 463/1990 for Lot 2 DP 22762 to create two strata lots. The subdivision did not create any common property, with each dwelling contained entirely within separate lots.

## **THE SITE**

The allotment has an area of 970 m<sup>2</sup>, is located on the south corner of Trelawney Street and Loch Maree Avenue and experiences a 16% fall to the east side.

The site has a 62 metre frontage to Trelawney Street and a 6.85 metre frontage to Loch Maree Avenue. The site accommodates a two storey weather board dwelling-house located on the western side of the allotment and accessed via a driveway from Trelawney Street. A second two storey dwelling approved under DA/1255/1989 has been constructed on the eastern portion of the site with separate access via Trelawney Street. The dwellings are each located on separate strata titled part-lots.

The allotment is located in close proximity to Pennant Hills Road (Cumberland Highway) to the west. There are single and two storey dwelling-houses surrounding the site. A significant group of trees namely ‘Garden Group’ is located to the north of the site and is listed as a heritage item of local significance under the Hornsby Shire Local Environmental Plan 1994.

## **THE PROPOSAL**

The application proposes the re-subdivision of the site to convert the allotment from a two lot strata title subdivision into a two lot Torrens title subdivision. The existing detached dwellings on the property would each be located on a separate Torrens title allotment. The eastern lot (Lot No. 1) has an area of 419 m<sup>2</sup> while the western lot (Lot No. 2) has an area of 551 m<sup>2</sup>.

## **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 objectives of the draft Strategy.

## 2. STATUTORY CONTROLS

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

### 2.1 Hornsby Local Environmental Plan 1994

The site is zoned Residential A (Low Density) under the Hornsby Shire Local Environmental Plan 1994 (HSLEP).

The zone objectives 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 environment capacity of a low density residential environment.*

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

The proposed development complies with the zone objectives, as the proposal already exists and no works have been proposed.

Clause 14 of the HSLEP prescribes that the minimum allotment area of development within Residential A zones is to be 500 m<sup>2</sup>. The application does not comply with the development standard as proposed Lot 1 is 419 m<sup>2</sup> in area. The applicant addresses the requirement by submitting an objection to the development standard pursuant to the State Environmental Planning Policy No. 1 as discussed further under the relevant heading of this report.

Clause 15 of the HSLEP prescribes that the maximum floor space ratio (FSR) of development within Residential A Zones is 0.4:1. The applicant addresses this requirement by demonstrating that the existing dwellings on proposed Lot No. 1 and lot 2 would have a floor space ratio of 0.3:1 and 0.25:1 respectively.

### 2.2 State Environmental Planning Policy No. 1 – Development Standards

The application has been assessed against the requirements of State Environmental Planning Policy No. 1 – Development Standards (SEPP 1). This policy provides flexibility in the application of development standards in circumstances where strict compliance with those

standards would, in particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objectives of the Act.

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

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

The applicant made a written submission in accordance with the SEPP 1, which is summarized (in italics) as follows:-

- *The variation proposed involves a lot size of 419 m<sup>2</sup>, which represents a shortfall of 81 m<sup>2</sup> or a 16% variation to the minimum lot size of 500 m<sup>2</sup>. This lot reflects that currently in place on the site registered on a Strata Plan. There will be no visually perceptible increase or change to the scale of development present on the site. The proposed variation will maintain the housing needs of the residents and is entirely compatible within its low density context. The level of development currently existing on the site and maintained under the proposed subdivision is also within the environmental capacity of the area.*
- *The granting of consent to such a variation will not adversely affect or thwart the intent of the lot size standard nor does it create an undesirable precedent as the subdivision reflects the existing dual occupancy development approved under a now repealed State planning instrument.*
- *The proposed variation to the lot size control will not result in any loss of views, increase in overshadowing or loss of privacy to any neighbouring properties or any broader amenity impact on the locality.*
- *There will be no increase in the total number of dwellings present on the site and no subsequent increase in parking demand. Further, the proposed subdivision is along the exact same lines and boundaries as that currently in place.*

- *The proposal will allow for the registration of the lots as entirely separate and unencumbered titles better reflecting the layout currently on the site. Each existing dwelling will be maintained and will not represent an increase in development intensity (in floor space terms) relative to the proposed new lots in which they will sit. Further, any further development or improvements to the dwellings can comfortably be accommodated within the requirements of the relevant Development Control Plan (i.e. Dwelling House Development Control Plan).*

For the reasons detailed in the applicant's submission, it is considered that strict compliance with the minimum allotment size is unnecessary and unreasonable and that the submitted SEPP No. 1 objection is acceptable and is supported in the circumstances of the case.

### 2.3 Sydney Regional Environmental Plan No. 20 – Hawkesbury Nepean River

Council is required to consider the impact of a proposal located in the Hawkesbury-Nepean River Catchments, on water quality, urban and rural residential development, scenic quality, environmental heritage, recreation and tourism.

The proposal does not involve any building works and therefore further assessment under the Plan is not required.

### 2.4 Residential Subdivision and Low Density Multi-Unit Housing Development Control Plans

The proposed development has been assessed having regard to the relevant performance and prescriptive design standards within Council's Residential Subdivision and Low Density Multi-Unit Housing Development Control Plans. The following table sets out the proposal's compliance with the prescriptive standards of the Plan:

<b>Residential Subdivision and Low Density Multi-Unit Housing Development Control Plans</b>			
<b>Control</b>	<b>Proposal</b>	<b>Requirement</b>	<b>Compliance</b>
<b>Site Area</b>	970 m <sup>2</sup>	N/A	N/A
<b>Allotment Size</b> *Lot No. 1 *Lot No. 2	419 m <sup>2</sup> 551 m <sup>2</sup>	500 m <sup>2</sup> 500 m <sup>2</sup>	No Yes
<b>Floor Space Ratio</b> *Lot No. 1 (dwelling) *Lot No. 2 (dwelling)	0.3:1 0.25:1	0.4:1 0.4:1	Yes Yes
<b>Site Coverage</b> *Lot No. 1 (dwelling) *Lot No. 2 (dwelling)	31% 29%	40% 40%	Yes Yes
<b>Height</b> *Lot No. 1 (dwelling) *Lot No. 2 (dwelling)	2 storeys 2 storeys	Existing Existing	Unchanged Unchanged



<b>Private Open Space</b> *Lot No. 1 (dwelling) *Lot No. 2 (dwelling)	314 m <sup>2</sup> 443 m <sup>2</sup>	120 m <sup>2</sup> 120 m <sup>2</sup>	Yes Yes
<b>Car Parking</b> *Lot No. 1 (dwelling) *Lot No. 2 (dwelling)	2 spaces 2 spaces	Existing Existing	Unchanged Unchanged
<b>Landscape</b> *Lot No. 1 (dwelling) *Lot No. 2 (dwelling)	>45% >45%	45% 45%	Yes Yes
<b>Setbacks</b> *Lot No. 1 (dwelling) Front/Trelawney St East Side West Side Rear  *Lot No. 2 (dwelling) Front/Trelawney St (POS) East Side West Side (POS) Rear	7.75 m 7.85 m Nil – 2.95 m 0.70 m  3.45 m – 6.10 m 5.25 m – 11.15 m 10.25 m – 12.60 m 1.30 m – 6.10 m	Existing Existing Existing Existing  Existing Existing Existing Existing	Unchanged Unchanged Unchanged Unchanged  Unchanged Unchanged Unchanged Unchanged

As detailed in the above table, the proposed development does not comply with the element “Density” within Council’s Residential Subdivision Development Control Plan. The matter of non-compliance is explained below, as well as a brief discussion on compliance with other relevant performance standards.

#### 2.4.1 Density

The ‘Density’ element of the Residential Subdivision Development Control Plan requires development to provide for lots of sufficient size to satisfy use requirements. Proposed Lot 1 does not comply with the minimum allotment area of 500 m<sup>2</sup> prescribed within Clause 14 of the HSLEP. As previously discussed at Section 2.2 of this report, a variation to the minimum lot size is supported as the development does not alter existing physical conditions or relationship between the two existing dwelling-houses.

The proposed subdivision seeks to provide separate Torrens title for each of the existing dwellings. The bulk, scale and density of the existing development would not be modified by the current proposal. It is considered that the compliance with the development standard is unreasonable and unnecessary in the circumstances of the case.

#### 2.4.2 Setbacks

The proposed subdivision does not involve any alterations to the front, rear and side setbacks of the existing detached dwellings.

#### 2.4.3 Fencing

No new fencing has been proposed as part of this application. As this development application does not alter the physical layout of the land, no additional requirements are considered necessary.

#### **2.4.4 Landscaping**

The proposal does not involve the removal of any vegetation. Proposed lots would achieve the required level of landscaping of 45% as stipulated under Council's Low Density Multi-Unit Housing Development Control Plan. The proposal seeks to subdivide a development, which was approved under the Sydney Regional Environmental Plan No. 12. The development complied with the requirements at that time and the current proposal does not seek to reduce the provision of landscaping for the site in general, the proposal is considered acceptable in this regard.

#### **2.4.5 Section 94 Contribution**

The proposal would not result in an increase in demand for infrastructure and community services. Accordingly, payment of a section 94 contribution would not be required.

#### **2.5 Car Parking Development Control Plan**

This DCP provides car parking controls for development. The proposal complies with the DCP and does not propose any alterations to the current parking arrangement within the site.

### **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 Built Environment**

The site is located in the close proximity of a group of trees known as 'Garden Group', which is listed a heritage item of local significance under Schedule D of the Hornsby Shire Local Environmental Plan 1994. The proposed development application does not involve physical alterations or additions to the existing dwellings that would impact on its significance. Accordingly, no objection is raised to the proposal in heritage grounds.

#### **3.2 Social Impacts**

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

#### **3.3 Economic Impacts**

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

### **4. SITE SUITABILITY**

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

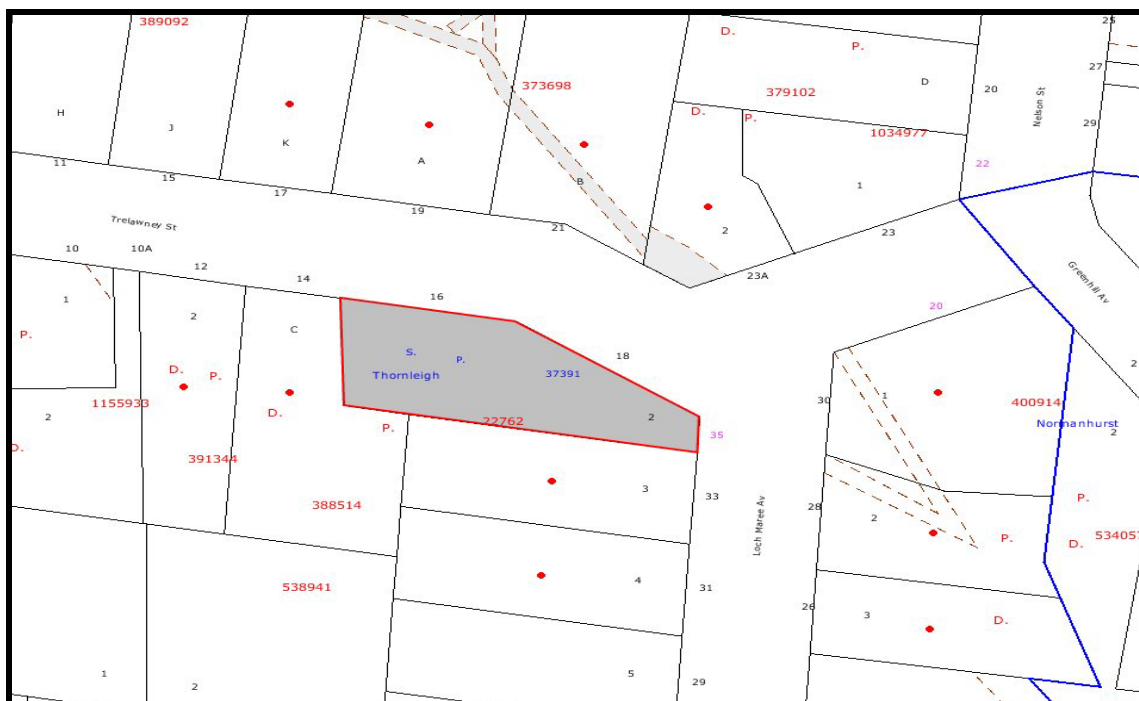
The site does not have any natural or built site constraints such as flooding or bushfire risk. The proposed development would be generally consistent with the zone objectives for low density housing.

### 5. PUBLIC PARTICIPATION

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

#### 5.1 Community Consultation

The proposed development was placed on public exhibition and was notified to adjoining and nearby landowners between 7 October and 29 October 2010 in accordance with Council’s Notification and Exhibition Development Control Plan. During this period, Council did not receive any public submissions. The map below illustrates the location of those nearby landowners were notified of the development application.



**NOTIFICATION PLAN**

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

No referrals to external agencies were required.

### 6. THE PUBLIC INTEREST

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

The public interest is an overarching requirement, which includes the consideration of the matters discussed in this report. Implicit to the public interest is the achievement of future

built outcomes adequately responding to and respecting the future desired outcomes expressed in environmental planning instruments and development control plans.

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

## CONCLUSION

The application proposes the re-subdivision of a strata subdivision allotment resulting in two Torrens title allotments for an existing two unit multi-unit housing development.

The proposal is generally consistent with the relevant requirements as contained within SEPP 1, HSLEP and the respective Development Control Plans. The proposal does not comply with the prescriptive density control for the Residential A zones in the HSLEP. However, in accordance with SEPP 1, the proposed variation to the development standard is supported.

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

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

ROD PICKLES  
Manager - Assessment Team 2  
Planning Division

PAUL DAVID  
Manager - Subdivision & Development  
Engineering Services  
Planning Division

SCOTT PHILLIPS  
Executive Manager  
Planning Division

### Attachments:

1. Locality Plan
2. Site Plan
3. Floor Plans
4. First Floor Plan
5. Indicative Stormwater Concept Plan (existing)
6. Stormwater Concept Plan (2/16 Trelawney Street)

File Reference: DA/1204/2010  
Document Number: D01578533

**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:

<b><i>Plan</i></b>	<b><i>Provided by</i></b>	<b><i>Lodged on</i></b>
Site Plan	Red Gum Town Planning Services	29.09.2010
Ground Floor Plan	Red Gum Town Planning Services	29.09.2010
First Floor Diagram	Red Gum Town Planning Services	29.09.2010
Stormwater Concept Plan (2/16 Trelawney Street)	Red Gum Town Planning Services	29.09.2010
Indicative Stormwater Concept Plan (Existing)	Red Gum Town Planning Services	29.09.2010

**REQUIREMENTS PRIOR TO THE ISSUE OF A SUBDIVISION CERTIFICATE**

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

**2. Sydney Water – s73 Certificate**

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

**- END OF CONDITIONS -**

**ADVISORY NOTES**

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

**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.

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

**Fees and Charges – Subdivision**

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

**House Numbering**

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

**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 Australian Standard 4970-2009 “Protection of Trees on Development Sites”.*

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

**6 DEVELOPMENT APPLICATION - CONSTRUCTION OF A GOLF DRIVING RANGE AND GOLF CENTRE  
142 - 178 PENNANT HILLS ROAD, THORNLEIGH**

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<b>Development Application No.</b>	1245/2010
<b>Description of Proposal:</b>	Construction of a Golf Driving Range and Golf Centre
<b>Property Description:</b>	Brickpit Park, Lot 1 DP 633292, (Nos. 142 – 178) Pennant Hills Road, Thornleigh
<b>Applicant:</b>	Thornleigh Golf Centre Pty Ltd
<b>Owner:</b>	Hornsby Shire Council
<b>Statutory Provisions:</b>	Hornsby Shire Local Environmental Plan 1994 Industrial A (General) Zone Open Space A (Public Recreation – Local) Zone
<b>Estimated Value:</b>	\$3,750,000
<b>Ward:</b>	C

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**RECOMMENDATION**

THAT Development Application No. 1245/2010 for the construction of a Golf Driving Range and Golf Centre at Lot 1 DP 633292, (Nos. 142 – 178) Pennant Hills Road, Thornleigh be approved for the reasons detailed in the independent town planning consultant's report – *AECOM Australia Pty Ltd* and reproduced in Schedule 1 of this report.

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**EXECUTIVE SUMMARY**

1. The application proposes the construction of a golf driving range and golf centre.
2. Council is the owner of the land. In accordance with Council's adopted policies '*PSA1 Proposed Council Developments*' and '*Practice Note No. 7 Assessment Practice*', and independent assessment of the development application has been undertaken by *AECOM Australia Pty Ltd*.
3. The proposal complies with the relevant provisions of:-
  - i. Hornsby Shire Local Environmental Plan 1994, and
  - ii. The Brickpit Park Plan of Management.



4. No public submissions have been received in respect of the application.
5. The report by *AECOM Australia Pty Ltd* is attached to this report for Council's consideration. The independent consultant's report recommends approval of the application.

## ASSESSMENT

In accordance with Council's adopted policies '*PS41 Proposed Council Developments*' and '*Practice Note No. 7- Assessment Practice*', the assessment of the development application has been referred to an independent town planning consultant. The report by *AECOM Australia Pty Ltd* is held at Attachment 2 of this report.

## CONCLUSION

The proposal involves the construction of a golf driving range and golf centre.

No public submissions have been received concerning the proposal.

Council has referred the application to an independent planning consultancy to carry out an assessment of the application. The report concludes that the application should be approved.

It is recommended that Council approved the application in accordance with the recommended conditions of consent prepared by *AECOM Australia Pty Ltd* and held at Schedule 1 of this report.

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

ROD PICKLES  
Manager - Assessment Team 2  
Planning Division

SCOTT PHILLIPS  
Executive Manager  
Planning Division

### Attachments:

1. Locality Plan
2. Consultant's Report
3. Site Plan and Earthworks Plan
4. Landscape Plans
5. Perimeter Fence System Plan
6. Club House Plans
7. Stormwater Concept Plan
8. Waste Store and Concept Plan

File Reference: DA/1245/2010  
Document Number: D01578580

**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:

<b><i>Plan No.</i></b>	<b><i>Drawn by</i></b>	<b><i>Dated</i></b>
B64\DA\A01	OPRA Architects	05/10/10
B64\DA\A02	OPRA Architects	05/10/10
B64\DA\A03	OPRA Architects	05/10/10
B64\DA\A04	OPRA Architects	05/10/10
B64\DA\B64waste	OPRA Architects	14/11/10
Landscape details sheet 1	OPRA Architects	14/11/10
Landscape details sheet 2	OPRA Architects	25/11/10
Landscape details sheet 3	OPRA Architects	25/11/10
Silt Control Plan H-02	Building Services Engineers Pty Ltd	05/10/10
Site Survey	Craig and Rhodes Surveyors Pty Ltd	March 2010
Stormwater Concept Plan – Drawing No. H-01	Building Services Engineers	5/10/10

<b><i>Document</i></b>	<b><i>Prepared by</i></b>	<b><i>Dated</i></b>
Statement of Environmental Effects	Glendinning Minto and Associates	October 2010

**2. Retention of Terra Street access**

The existing access to Brickpit Park from Pennant Hills Road near Terra Street is to be maintained to allow access to the skate park, sports stadium and playground.

### 3. Retention of Existing Trees

This development consent does not permit the removal of trees identified on Plan No. 11-01 prepared by Building Services Engineers dated 5-10-2010. The removal of any other trees requires separate approval under Council's Tree Preservation Order.

## REQUIREMENTS PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

### 4. Miniature golf course detail

Detailed plans of the 36 hole miniature golf course proposed at the western end of the site must be provided and approved by Council prior to the issue of a Construction Certificate for the miniature golf course.

### 5. Water/Electricity Utility Services

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

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

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

### 6. Internal Driveway/Vehicular Areas

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

- a. The driveway grade must not exceed 15 percent and transitions for changes in grade must not exceed AS 2890.2 requirements for MRV's.
- b. The pavement be designed and constructed as either concrete or asphaltic concrete seal full depth pavement according to Council's Design and Construction Specification 2005.
- c. The pavement shall have a kerb to one side and a one-way cross fall with a minimum gradient of 2 percent and kerb inlet pits provided on grade and at sag points.
- d. 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.
- e. 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.
- f. Parking and access area lighting shall be designed and constructed in accordance with AS 1158.

- g. All parking areas and driveways are to be sealed to an all weather standard, line marked and signposted;
- h. Conduit for utility services including electricity, water, gas and telephone be provided.

## 7. On Site Stormwater Detention

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

- a. Have a detained volume of not less than which contains the 20 year average recurrence interval (ARI) storm from the driving range catchment, and a corresponding maximum discharge (when full) for that catchment's predevelopment 5 year ARI flow rate.
- b. Have a surcharge/inspection grate located directly above the outlet.
- c. Discharge from the detention system to be controlled via 1 metre length of pipe, not less than 50 millimetres diameter or via a stainless plate with sharply drilled orifice bolted over the face of the outlet discharging into a larger diameter pipe capable of carrying the design flow to an approved Council system.
- d. Where above ground and the design storm depth is greater than 0.3 metres, a warning sign indicating ponding depth during the design storm should be provided.
- e. Not be constructed in a location that would impact upon the visual or recreational amenity of facility users.

## 8. 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 from the proposed on-site detention and pavement system drainage to the existing Council-controlled piped drainage system within the skate park land adjacent to the north, with consent of the owner, Hornsby Shire Council.
- b. The drainage system be designed and constructed as a reinforced concrete piped drainage system to contain the 20 year Average Recurrence Interval storm event from the upstream catchment.

## 9. Range fence post footings and gabion walls

To ensure sufficient area to install the range fence posts footings near gabion walls details must be provided prior to the issuing of a construction certificate.

**10. Earthworks surrounding range post footings**

The grade of all banks associated with the range post footings must be no greater than 1:4.

**11. Revised Waste Management Plan**

The submission of a revised *Waste Management Plan – Section Four – Use and Ongoing Management* is required including:

- a. Location and dimensions of the bin storage room and bin collection point (if not the bin storage room).
- b. Waste generation rates, bin sizes, number of bins and frequency of servicing.
- c. Use of medium-rigid vehicles for waste collection only.
- d. Vehicle turning paths need to be provided to demonstrate that medium rigid waste collection vehicles are able to enter the site, drive to the bin room/collection point and exit in a forward direction.
- e. The bin collection point must be located no greater than 6 metres from the waste collection vehicle parking position, the distance being measured along the bin carting route.
- f. The bins placed at the bin collection point for servicing must be screened from public view.

**12. Bin storage design**

The bin storage room(s) must be designed in accordance with the *Waste Minimisation and Management Development Control Plan* with regards to water/hose for cleansing, graded floors with drainage to sewer, robust door(s), sealed/impervious surfaces, adequate lighting and ventilation.

**13. Building Code of Australia**

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

**REQUIREMENTS PRIOR TO THE COMMENCEMENT OF ANY WORKS****14. Erosion and Sediment Control**

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

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

**15. Landscape Plan**

The landscape plan (B64/DA/B64waste dated 14/11/2010) must be amended to include reference to the following:

- a. In addition to the planting of Wallaby Grass (*Themeda australis*), the planting schedule shall be diversified and combined with other locally native grasses which originate from native Blue Gum Forest including a mixture of some of the following native species:
  - i. Danthnoia tenuoir.
  - ii. Danthnoia racemosa.
  - iii. Echinopgon ovatus.
  - iv. Poa affinis.
  - v. Austrostipa pubecsens.
  - vi. Dichelcahne micranthra.
  - vii. Microlanena stipoides.
  - viii. Entolasia marginate.
- b. Seed stock must be collected from the local vegetation communities comprising the Blue Gum High Forest (BGHF) Critically Endangered Community or Sydney Turpentine Ironbark Forest Endangered Ecological Community listed under the *Threatened Species Conservation Act 1995* from Northern Sydney and/or within a 20 Km radius of the site.

*Notes: \*Seed should be collected by qualified and experienced/licensed seed collectors (Section 91 license No. from DECCW to be provided to Council).*

*\*If seed cannot be purchased in time, the site should be jute matted with no plant material installed until seed obtained at an appropriate collection period can be applied.*

*\*No mulch should be placed on the area outside the lease zone within the BGHF. Application of mulch in areas outside the BGHF area is permitted.*

**REQUIREMENTS DURING CONSTRUCTION**
**16. Council Property**

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

**17. 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.

## **18. 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.

## **19. Street Sweeping**

Street sweeping must be undertaken following sediment tracking from the site along Dartford Road, Thornleigh and Pennant Hills Road, Thornleigh during works and until the site is established.

## **20. Landfill**

Earthworks on site must be undertaken in accordance with Council's '*Construction Specification, 2005*' and the following requirements:

- a. All fill material imported to the site is to wholly consist of Virgin Excavated Natural Material (VENM) as defined in Schedule 1 of the *Protection of the Environment Operations Act 1997* or a material approved under the Department of Environment and Climate Change's general resource recovery exemption.
- b. A compaction certificate is to be obtained from a geotechnical engineer verifying that the specified compaction requirements have been met.

## **21. Excavated Material**

All excavated material removed from the site must be classified in accordance with the Department of Environment, Climate Change and Water NSW *Waste Classification Guidelines* prior to disposal to an approved waste management facility and reported to the principal certifying authority.

## **22. Noise – Plant and Machinery**

The level of total continuous noise emanating from operation of all the plant, including air conditioning units and processes in all buildings (LA10) (measured for at least 15 minutes) in or on the above premises, must not exceed the background level by more than 5dB(A) when measured at all property boundaries.

## **23. 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.*

#### **24. Retention of clay capping**

No actions, works or material during the construction and operation of the proposed development are to penetrate through the clay capping on site at 142-178 Pennant Hills Road, Thornleigh.

#### **25. Settlement**

Should settlement on the site result in troughs, material must be added to smooth/level the surface to achieve a satisfactory slope as opposed to removing material from the site.

### **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.*

#### **26. Sydney Water – s73 Certificate**

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

#### **27. 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.

#### **28. Creation of Easements**

The following forms, sketches and plans must be submitted to Hornsby Shire Council prior to release of the Occupation Certificate;-

- a. The submission of completed Surveyor's Sketches and properly filled-out standard LPMA Forms 13PC and 13RPA for the "*Positive Covenant*" and "*Restriction as to User*", respectively, over the constructed on-site detention system and outlet works, within the development area in favour of Council in accordance with Council's prescribed wording. The position of the on-site detention system is to be clearly indicated on the title as per the Surveyor's Sketch.
- b. "*Works-as-executed*" details of the on-site-detention system must be submitted verifying that the required storage and discharge rates have been



constructed in accordance with the design requirements. The details must show the invert levels of the on site system together with pipe sizes and grades. Any variations to the approved plans must be shown in red on the “works-as-executed” plan and supported by calculations.

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

### **29. 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 systems.

### **30. Completion of Landscaping**

A certificate must be provided by a practicing landscape architect, horticulturalist or person with similar qualifications and experience certifying that all required landscaping works have been satisfactorily completed in accordance with the approved landscape plans.

### **31. Bushland Restoration**

To ensure the regeneration of bushland, the applicant must ensure the following:

- a. All environmental and noxious weeds including African Olive, Broad-leaved Privet, Small-leaved Privet and Bridal Creeper at the western end inside the lease area where the Blue Gum High Forest occurs are to be removed and suppressed using recognised bush regeneration methods in accordance with ‘*Recovering bushland on the Cumberland Plain: Best practice guidelines for the management and restoration of bushland – Department of Conservation 2005*’.

*Note: The Guideline is available at: [www.environment.nsw.gov.au](http://www.environment.nsw.gov.au), publications.*

*Note: Advice on appropriate bush regeneration methods and the removal of noxious and environmental weeds can be obtained from Council’s Bushland and Biodiversity Management Team on 9847 6542.*

### **32. Waste Management Plan compliance**

To confirm compliance with the Waste Management Plans lodged with this Development Application, a report(s) must be prepared by an appropriately qualified person and submitted to the principal certifying authority prior to the issue of the Subdivision/Occupation Certificate, certifying that:

- a. Either
  - i. The Waste Management Plan Section One – Demolition Stage and Section Three – Construction Stage were implemented and at least 60 % waste generated was reused or recycled;

Or

- ii. If the 60% diversion from landfill was not achieved in the Demolition Stage and/or Construction Stage, the Report is to include the reasons why this occurred and certify that appropriate work practices were employed in the demolition and construction stages to implement the Waste Management Plan.
- b. The Report(s) is based on documentary evidence (i.e. tipping dockets/receipts from recycling depots, transfer stations and landfills, audits of procedures etc) which have been attached to the Report.

### **33. Gas removal system**

Any constructed building must have a passive gas removal system in place via a gas drainage layer or sub floor ventilation.

### **34. Car park access**

Access to the car park must be provided by creating an additional leg to the roundabout with the geometry and surface finish of the access consistent with the existing internal road network. Amended plans showing the additional leg to the roundabout are to be provided and approved by Council.

## **OPERATIONAL CONDITIONS**

### **35. Landscape establishment**

The landscape works, the subject of this development consent, must be maintained into the future to ensure the establishment and successful growth of plant material to meet the intent of the landscape design. This shall include but not be limited to watering, weeding, replacement of failed plant material and promoting the growth of plants through standard industry practices.

### **36. Hours of Operation**

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

Monday to Sunday	6:30 am to 10:30 pm
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### **37. Valid waste contractor contract**

The operation must keep written evidence on site of a valid contract with a licensed waste contractor(s) for the regular collection and disposal of the waste and recyclables that are generated on site.

### **38. Use of enclosed bins**

All waste/recyclable materials generated on site must be kept in enclosed bins with securely fitting lids so the contents are not able to leak or overflow.

### **39. Maintenance of clean/tidy site**

The land and adjoining areas are to be kept in clean and tidy conditions at all times. This includes, but is not limited to, stray golf ball retrieval/collection, including

patrols of neighbouring streets to retrieve golf balls at least monthly or more frequently if required or as requested by Council.

**40. Restriction on Advertising**

In accordance with Clause 10 of State Environmental Planning Policy No.64 – Advertising and Signage the content of all approved signage must be restricted to business or building identification and shall not include advertisements.

**41. Car Parking**

All car parking must be operated in accordance with *Australian Standard AS/NZS 2890.1:2004 – Off-street car parking*,

- a. Car parking, loading and manoeuvring areas to be used solely for nominated purposes;
- b. Vehicles awaiting loading, unloading or servicing shall be parked on site and not on adjacent or nearby public roads;
- c. All vehicular entry on to the site and egress from the site shall be made in a forward direction.

**42. Rain Water Tank**

Water collected within any rainwater tank as part of the development must be limited to non-potable uses only.

*Note: NSW Health recommends that the use of rainwater tanks for drinking purposes not occur where a reticulated potable water supply is available.*

**43. Noise**

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

**44. Flag Pole Structures**

The three flag pole structures approved under this consent is decorative only and must not display advertisements.

**- END OF CONDITIONS –**

**ADVISORY NOTES**

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

**Environmental Planning and Assessment Act, 1979 Requirements**

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

**Dial Before You Dig**

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

**Support post placement**

The netting support posts must not be placed over gas lines or penetrate the clay capping.

**Disability Discrimination Act**

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

**Advertising Signage – Separate DA Required**

No advertising signage may be located on the Dartford Road directional signs located at the junctions of Dartford Road/Pennant Hills Road and Milson Parade/Dartford Road.

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

## 7 REPORTING VARIATIONS TO DEVELOPMENT STANDARDS

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### EXECUTIVE SUMMARY

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

### PURPOSE

The purpose of this report is to advise Council of determined development applications involving a SEPP 1 variation to a development standard relating to the period 1 October 2010 to 31 December 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 October 2010 to 31 December 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. PLN13/11.

SCOTT PHILLIPS  
Executive Manager  
Planning Division

**Attachments:**

1. SEPP 1 Return

File Reference: F2004/07599  
Document Number: D01576914

## 8 TOWNHOUSE PLANNING PROPOSAL - REPORT ON SUBMISSIONS

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### EXECUTIVE SUMMARY

At its meeting on 7 July 2010, Council considered a report concerning (in part) a *Townhouse Planning Proposal* prepared to assist meet the shortfall in Council's dwelling obligations caused by the deletion of certain precincts from the *Housing Strategy*. The *Proposal* aims to rezone land to permit townhouses and to amend the boundary of a *Housing Strategy* precinct in Mount Colah.

Council resolved to forward the *Townhouse Planning Proposal* to the Department of Planning (DOP) requesting authorisation for public exhibition. A Gateway Determination was received indicating that the *Planning Proposal* could be exhibited. Accordingly, the *Proposal* was placed on public exhibition from 23 September 2010 to 22 October 2010.

A total of 37 submissions were received, including 5 submissions from government agencies. The Rural Fire Service (RFS) raises concern with the boundary extension for the Mount Colah Commercial Centre *Housing Strategy* precinct. Accordingly, this report recommends that the boundary extension be deleted from the *Planning Proposal* until the concerns of the RFS have been investigated. Council's internal investigations recommend that an area of road reserve on the Pacific Highway at the frontage of property Nos. 396-398 Pacific Highway, Hornsby be included in the townhouse precinct bounded by Mildred Street, Pacific Highway and Citrus Avenue, Hornsby. This report recommends the inclusion of the road reserve.

Issues raised in submissions are addressed in this report. An amended *Planning Proposal* is attached. It is recommended that Council forward the *Planning Proposal* to the DOP for gazettal and prepare draft amendments to the *Medium Density Multi-Unit Housing Development Control Plan (DCP)* to incorporate key principles diagrams for the new townhouse precincts.

### PURPOSE

The purpose of this report is to review submissions received in response to the exhibition of the *Townhouse Planning Proposal*.

### BACKGROUND

At its meeting on 7 July 2010, Council considered Executive Manager's Report No. PLN44/10 concerning the *Hornsby Shire Housing Strategy*. The report included a *Townhouse Planning Proposal* to assist meet the shortfall in Council's dwelling obligations under the *Metropolitan Strategy* caused by the deletion of certain precincts from the *Housing Strategy*. Council resolved (in part) to forward the *Townhouse Planning Proposal* to the Minister seeking a Gateway Determination under Section 56 of the *Environmental Planning and Assessment (EP&A) Act 1979*.

In accordance with Council's resolution, the *Townhouse Planning Proposal* was forwarded to the DOP on 13 July 2010. A Gateway Determination was received on 24 August 2010, indicating that the *Planning Proposal* could be exhibited for 28 days. Accordingly, the

*Townhouse Planning Proposal* was placed on public exhibition from 23 September 2010 to 22 October 2010.

## DISCUSSION

This report discusses submissions received in response to the public exhibition of the *Townhouse Planning Proposal*.

### **Townhouse Planning Proposal**

The *Townhouse Planning Proposal* aims to rezone land to permit townhouses in out of centre locations along transport corridors in Hornsby, Asquith and Mount Colah to assist increase the supply of this form of housing and ensure Council's dwelling target is met. The *Proposal* also aims to amend the boundary of a *Housing Strategy* precinct in Mount Colah, extending the area in which 5 storey multi-unit development is permissible and including an additional property.

### **Exhibition and review of submissions**

The *Townhouse Planning Proposal* was exhibited from 23 September 2010 to 22 October 2010. The consultation met the statutory requirements of the Gateway Determination including a requirement that the *Proposal* be exhibited for 28 days and notified through a local newspaper, on the Council website and sent to relevant public authorities. Advertisements were placed in the *Hornsby Advocate*, *Hills News* and *Northern District Times*. The *Planning Proposal* and supporting documentation were displayed at Council's Administration Centre, at all libraries, and on the Council website. Letters were sent to property owners proposed to be rezoned and owners within 500m of properties proposed to be rezoned. Letters were also sent to relevant community and industry groups, and referrals were sent to other Divisions of Council.

In accordance with the Gateway Determination, 7 public authorities including the Department of Education and Training, Department of Environment, Climate Change and Water, Department of Housing, Energy Australia, NSW Rural Fire Service, NSW Transport and Infrastructure and the Roads and Traffic Authority were consulted.

A total of 37 submissions (including three received after the exhibition period) have been received, including 5 submissions from public authorities and 4 from Council branches. Fifteen submissions (40%) raise objection to the *Planning Proposal*, 13 submissions (35%) indicate support or no objection, 7 make general comments on the *Planning Proposal* and/or suggest alternative areas and 2 make comment on the *Housing Strategy* which has already been adopted by Council.

Key issues raised in submissions concerning the *Townhouse Planning Proposal* include objections to further development, objections to the extension of the *Housing Strategy* precinct at Mount Colah, objections to density and suggestions for other areas. A summary of submissions is attached to this report. Major issues raised in submissions are addressed below.

### ***Objections to further development***

Submitters comment that further development should not be imposed on the community. Some of the reasons for objection to further development include:



- unnecessary extra development;
- the proposal is negligible in meeting the State Government housing target;
- inadequate local infrastructure;
- detrimental impact on the character of the area; and
- traffic issues.

**Comment:** The precincts identified for townhouse development are required to assist meet Council's dwelling obligations under the *Metropolitan Strategy*. The dwelling yields associated with the *Townhouse Planning Proposal* count towards Council's *Housing Strategy* target. Council consulted with infrastructure providers during the preparation and exhibition of the *Housing Strategy*. Service providers indicated that services either have capacity or can be augmented to meet Council's housing target. Therefore, no amendments are recommended to the *Proposal* based on objections concerning extra development, housing targets and inadequate infrastructure.

Places continue to change, evolve and grow over time to cater for the changing needs of the population. By selecting precincts in particular areas for rezoning, the *Planning Proposal* aims to assist in protecting the low density nature of the remainder of the Shire. Therefore, no amendments are recommended to the *Proposal* based on objections concerning character.

Council's Traffic and Road Safety Branch investigated the *Proposal* and the RTA was consulted during the exhibition of the *Proposal*. No objections were raised. The magnitude of traffic that will be generated as a result of the proposed townhouses is not expected to have an adverse impact on traffic conditions on the road network. Local traffic management improvement works would be identified in key principles diagrams to be drafted for inclusion in Council's *Medium Density Multi-Unit Housing DCP*. The key principles diagrams would be presented to Council and subsequently exhibited as an amendment to the *DCP*. Therefore, no amendments are recommended to the *Proposal* based on objections concerning traffic issues.

**Resolve:** No amendments are recommended as a result of submissions objecting to further development. A report be presented to Council concerning draft amendments to the *Medium Density Multi-Unit Housing DCP*, including the insertion of key principles diagrams identifying traffic improvements.

#### ***Extension of Housing Strategy precinct boundary***

A number of submissions object to the proposal to extend the *Housing Strategy* precinct at Mount Colah due to bushfire issues. One submission was received in support of the proposed extension to the Mt Colah Commercial Centre precinct boundary. The submission, made on behalf of the owner of part of the precinct, comments that the boundary extension will facilitate management of the overall development, particularly in regard to bushfire control.

A submission from the RFS raises concern with the extension to the precinct boundary. The RFS submission raises concern with the ability of future development in the precinct to achieve the aims and objectives of *Planning for Bushfire Protection 2006*. None of the precincts proposed for townhouse development are bushfire prone, and the RFS raises no issues concerning the other precincts proposed as part of the *Townhouse Planning Proposal*.

**Comment:** Council sought clarification from the RFS concerning its submission, as the RFS previously raised no objection to the rezoning of the Mount Colah Commercial Centre precinct during consultation on the *Housing Strategy*. In response, the RFS advises that as a

result of the outcomes of the Royal Commission into the Victorian bushfires, it is currently reviewing and developing policies to cater for high rise development in the future, and that it has requested the Minister to defer the gazettal of the Mount Colah Commercial Centre precinct in the *Housing Strategy Planning Proposal* until the concerns have been investigated.

Council has sought clarification from the DOP concerning the implications of the RFS advice. No response has been received to date. However, in light of the concerns and the pending investigation by the RFS into how increased density is addressed in *Planning for Bushfire Protection 2006*, it would be appropriate to defer the proposed boundary extension at this stage. The proposal should be deleted from the *Townhouse Planning Proposal*. Should the RFS concerns be resolved, the boundary extension should be progressed as part of a separate *Planning Proposal*.

**Resolve:** The proposed extension to the boundary of the Mount Colah Commercial Centre precinct be deleted from the *Townhouse Planning Proposal*, pending the RFS investigation into *Planning for Bushfire Protection* and high rise development.

### ***Objections to density***

A number of submissions raise concerns with the density of townhouse development. Submitters comment that the proposal may lead to more high rise precincts in the future and that townhouses could be 5 storeys in height with no building area controls.

**Comment:** The *Townhouse Planning Proposal* aims to extend the boundaries of a *Housing Strategy* precinct which has previously been adopted to be rezoned to allow 5 storey development. The new precincts identified in the *Proposal* are all proposed to be rezoned to allow 2 storey townhouse development. Once rezoned, Council's existing *Medium Density Multi-Unit Housing DCP* would apply to future townhouse development. The *DCP* contains controls limiting height, setbacks, and building area. The *DCP* would be amended to include key principles diagrams for each precinct, which would be subject to a separate report to Council and public exhibition as discussed above under the heading *Objections to further development*.

**Resolve:** No amendments be made to the *Planning Proposal* as a result of submissions objecting to density.

### ***Suggestions for other areas***

A number of submitters comment that there may be other areas more suitable for further development rather than those identified in the *Proposal*. Other areas suggested in submissions include:

- further north between Mount Colah and Mount Kuring-gai;
- within small concentric circles around the station;
- in the vicinity of Asquith, Mount Colah and Mount Kuring-gai stations;
- in bush areas where no residents will be affected;
- areas on the outskirts of Hornsby Heights, Mount Colah, Mount Kuring-gai and Berowra;
- between the railway and Unwin Road, Wahroonga;
- outskirts of Sydney;
- Asquith shopping area; and

- property Nos. 1101 – 1133 Pacific Highway, Cowan.

A detailed submission for the inclusion of the above properties at Cowan as a townhouse precinct was received from a planning consultant.

**Comment:** Council has identified townhouse precincts in out of centre locations (i.e. outside commercial centre radii specified in the *draft North Subregional Strategy*) and along transport corridors. This meets the requirements of the *Metropolitan Strategy* and is consistent with the methodology used in the *Housing Strategy*. Some of the suggestions in submissions do not meet the *Housing Strategy* methodology such as avoiding bushfire prone land and areas of heavy vegetation, and choosing areas with minimal traffic impacts.

The proposed Cowan precinct requested for inclusion in the planning consultant submission involves bushfire prone land. Given the recent comments from the RFS, Council should continue to avoid bushfire prone land in selecting precincts for housing. Cowan was discussed as a possible location for additional housing in the preparation of the *Housing Strategy*. However, Cowan was removed from consideration due to its limited range of services and shops, low train frequency, lack of sewage system and bushfire prone land.

**Resolve:** No amendments be made to the *Planning Proposal* as a result of submissions suggesting other areas for rezoning.

#### ***Request for minor extension of precinct***

An investigation by Council's Works Division reveals that the precinct bounded by Citrus Avenue, Pacific Highway and Mildred Avenue should be extended into the road reserve to facilitate a road closure, reclassification and sale.

**Comment:** The area of land at the frontage of property Nos. 396-398 Pacific Highway, Hornsby is currently zoned Special Uses B (Transport Corridor). The road reserve is no longer required for a road widening plan which was rescinded in 1992. Council, at its meeting on 20 October 2010 considered Executive Manager's Report No. PLN71/10 concerning the proposed closure and sale of road adjoining property Nos. 396-398 Pacific Highway, Hornsby. Council resolved (in part) to apply for the closure of a small section (approximately 200sqm) of the Pacific Highway at the frontage of the property. To enable the consolidation of the road closure land with the adjoining property, rezoning consistent with the adjoining property is required. This would also assist regularise the zone boundary along the Pacific Highway.

**Resolve:** The proposed precinct bounded by Citrus Avenue, Pacific Highway and Mildred Avenue (Mildred Street precinct) be extended to include the road closure land identified in Executive Manager's Report No. PLN71/10 at the frontage of property Nos. 396-398 Pacific Highway, Hornsby.

## **CONSULTATION**

On 13 July 2010, Council forwarded the *Townhouse Planning Proposal* to the DOP seeking a Gateway Determination by the Minister in accordance with Section 56 of the *EP&A Act*. On 24 August 2010, the DOP issued a Gateway Determination enabling exhibition of the *Planning Proposal*. The *Planning Proposal* was exhibited for community comment in September/October 2010. The *Proposal* was also forwarded to government agencies and other Council Divisions for comment. Thirty-seven submissions have been received and are addressed in this report.

The Environment Division investigated the *Proposal* prior to and during the exhibition of the *Proposal*. The Environment Division has advised that no open space is required to be identified for future acquisition under this *Planning Proposal*.

### STATUTORY CONSIDERATIONS

As part of the consideration of planning proposals, Council is required to consider the relevance of any State Environmental Planning Policy (SEPP) or Ministerial Direction under Section 117 of the *EP&A Act 1979*. An assessment of relevant SEPPs and Section 117 Directions is contained within the attached *Townhouse Planning Proposal*. The *Proposal* is not inconsistent with any SEPP or relevant Section 117 Direction.

To facilitate the gazettal of the *Townhouse Planning Proposal*, Council must submit the *Proposal* to the DOP for the legal instrument (the Local Environmental Plan or LEP) to be drafted and made by the Minister.

### TRIPLE BOTTOM LINE SUMMARY

Triple Bottom Line (TBL) 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. The TBL assessment summary for the *Townhouse Planning Proposal* is as follows:

**Working with our community:** This report is available to the public through Council's web site. The *Planning Proposal* was exhibited through notice in local newspapers, Council's website and letters to relevant property owners.

**Conserving our natural environment:** Precincts for townhouse development have been identified based on least constraints such as the absence of bushfire prone land, vegetation, and by choosing areas with minimal traffic issues. Any new developments resulting from the proposal would be required to comply with BASIX, an assessment tool which sets energy and water reduction targets for house and units.

**Contributing to community development through sustainable facilities and services:** The proposal is based on the principles of active living and situating new housing along transport corridors to encourage public transport use. The proposal assists Council meet its dwelling obligations, allowing Council to retain planning powers and to provide strategic planning at the local level.

**Fulfilling our community's vision in planning for the future of the Shire:** The proposal will enhance the existing built environment by providing opportunity for the development of townhouses, a form which is lacking in the Shire. The proposal aims to meet community needs by providing additional housing to reflect future needs.

**Supporting our diverse economy:** The proposal will result in an increase in density for the identified sites, stimulating redevelopment and renewal. The proposal would have a positive effect on local employment through the construction stages.

**Maintaining sound corporate and financial management:** Council has received funding from the State Government for the *Housing Strategy*, which forms the basis of the current proposal.

**Other Sustainability Considerations:** The negative impacts associated with the *Planning Proposal* have been identified, assessed and avoided where possible in choosing locations for housing.

## CONCLUSION

The *Townhouse Planning Proposal* provides opportunities for townhouse development in out of centre locations along transport corridors in Hornsby, Asquith and Mount Colah to assist increase the supply of this form of housing and ensure Council's dwelling target is met.

The *Proposal* has been exhibited in accordance with the Gateway Determination issued by the DOP. Thirty-seven submissions were received and are addressed in this report. Submissions do not raise any issues that would prevent the progression of the *Planning Proposal*. However, based on submissions, it is recommended that the *Planning Proposal* be amended to delete the proposed extension of the boundary of the Mount Colah Commercial Centre *Housing Strategy* precinct, and to extend the boundary of the Mildred Street townhouse precinct to include the road reserve at the frontage of property Nos. 396-398 Pacific Highway, Hornsby. An updated *Planning Proposal* is attached.

It is recommended that Council forward the updated *Planning Proposal* to the DOP for gazettal, and that draft amendments to the *Medium Density Multi-Unit Housing DCP* be prepared and reported to Council incorporating key principles diagrams for the new townhouse precincts.

## RECOMMENDATION

THAT:

1. Council forward the attached *Townhouse Planning Proposal* to the Minister for Planning for gazettal pursuant to Sections 58 and 59 of the *Environmental Planning and Assessment Act 1979*, with the following amendments:
  - 1.1 Delete the proposed boundary extension for the Mount Colah Commercial Centre *Housing Strategy* precinct; and
  - 1.2 Include a section of road reserve at the frontage of property Nos. 396-398 Pacific Highway, Hornsby in the Mildred Street, Hornsby townhouse precinct.
2. Draft amendments to the *Medium Density Multi-Unit Housing Development Control Plan* including key principles diagrams identifying local traffic improvements be prepared and presented to Council for adoption for exhibition.
3. Submitters be advised of Council's resolution.

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Executive Manager  
Planning Division

**Attachments:**

1. Townhouse Planning Proposal - February 2011
2. Summary of Submissions

File Reference: F2010/00389

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