



*the bushland shire*

*creating a living environment*

# **BUSINESS PAPER**

## **PLANNING MEETING**

**Wednesday, 4 May, 2011  
at 6.30pm**

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## **AGENDA AND SUMMARY OF RECOMMENDATIONS**

### **PRESENT**

### **NATIONAL ANTHEM**

### **OPENING PRAYER/S**

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

### **ACKNOWLEDGEMENT OF RELIGIOUS DIVERSITY**

Statement by the Chairperson:

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

### **ABORIGINAL RECOGNITION**

Statement by the Chairperson:

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

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

Statement by the Chairperson:

*"I advise all present that tonight's meeting is being audio recorded for the 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*

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*a relevant planning application which is on tonight's agenda, they must declare a non-pecuniary conflict of interests to the meeting, disclose the nature of the interest and manage the conflict of interests in accordance with Council's Code of Conduct."*

## **DECLARATIONS OF INTEREST**

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

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

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

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

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

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

*OR*

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

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

## **CONFIRMATION OF MINUTES**

THAT the Minutes of the Planning Meeting held on 6 April, 2011 be confirmed; a copy having been distributed to all Councillors.

## **PETITIONS**

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**MAYORAL MINUTES****Page Number 1****Item 1 MM4/11 BROTHELS IN THE HORNSBY SHIRE**

THAT Council writes to the Minister for Planning and Infrastructure requesting that he reviews the *Standard Instrument* with a view to removing requirements that mandate the permissibility of brothels within comprehensive local environmental plans.

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

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

**DEVELOPMENT APPLICATIONS****A WARD DEFERRED****A WARD****Page Number 2****Item 2 PLN39/11 DEVELOPMENT APPLICATION - RECREATION FACILITY  
7 VISION VALLEY ROAD, ARCADIA****RECOMMENDATION**

THAT Development Application No. 61/2011 for alterations and additions to an existing recreation facility at Lot 11 DP 217208, No. 21 Geelans Road, Arcadia be approved subject to the conditions of consent detailed in Schedule 1 of this report.

**B WARD DEFERRED**

**B WARD****Page Number 16**

- Item 3     PLN32/11 DEVELOPMENT APPLICATION - SECTION 96(2) - MULTI-UNIT HOUSING DEVELOPMENT - 33 PACIFIC HIGHWAY, WAHROONGA**

**RECOMMENDATION**

THAT Development Application No. 878/2007/B for the demolition of a motel and erection of a multi-unit housing development comprising 33 dwellings and strata title subdivision at Lot 1 DP 780083, Lot 2 DP 780083, (No. 33) Pacific Highway, Wahroonga be approved as detailed in Schedule 1 of this report.

**C WARD DEFERRED****C WARD****Page Number 51**

- Item 4     PLN37/11 DEVELOPMENT APPLICATION - SUBDIVISION OF ONE LOT INTO TWO - 37 CARDINAL AVENUE BEECROFT**

**RECOMMENDATION**

THAT Development Application No. 1375/2010 for the subdivision of one lot into two at Lot 22 DP 21629, No. 37 Cardinal Avenue, Beecroft be refused for the reasons detailed in Schedule 1 of this report.

**Page Number 62**

- Item 5     PLN38/11 DEVELOPMENT APPLICATION - DWELLING-HOUSE 156 BEECROFT ROAD, BEECROFT**

**RECOMMENDATION**

THAT Development Application No. 935/2010 for the demolition of a dwelling-house and the erection of a dwelling-house at Lot A, DP 396364, No. 156 Beecroft Road, Beecroft be approved subject to the conditions of consent detailed in Schedule 1 of this report.

**Page Number 80**

- Item 6     PLN40/11 DEVELOPMENT APPLICATION - SECTION 96(2) - SUBDIVISION OF ONE LOT INTO TWO - 39 HANNAH STREET BEECROFT**

**RECOMMENDATION**

THAT Development Application No. 1470/2009/A for the subdivision of one lot into two at Lot 9 DP 7484, No. 39 Hannah Street Beecroft be refused for the reasons detailed in Schedule 1 of this report.

**GENERAL BUSINESS**

**Page Number 88**

**Item 7      PLN41/11    REPORTING    VARIATIONS    TO    DEVELOPMENT  
   STANDARDS**

**RECOMMENDATION**

THAT Council note the contents of Executive Manager's Report No. PLN41/11.

**SUPPLEMENTARY AGENDA**

**CONFIDENTIAL ITEMS**

**Item 8      PLN43/11 UPDATE REPORT IN RESPECT OF LEGAL ACTIONS  
   CONCERNING HORNSBY QUARRY**

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

**QUESTIONS OF WHICH NOTICE HAS BEEN GIVEN**

**QUESTIONS WITHOUT NOTICE**

## 1 BROTHELS IN THE HORNSBY SHIRE

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### **BACKGROUND**

Hornsby Shire Council has been consistent in its opposition to brothels over many years. Despite never approving a brothel in the Shire, the Land and Environment Court has imposed two brothels on the residents of Hornsby and is set to permit a third brothel after Council found itself little option than to agree to consent orders for a refused brothel in George Street Hornsby.

### **DISCUSSION**

Council has felt powerless to stop brothels, which our community has said are out of character with our area and contrary to the values of Hornsby residents. However, the NSW Government's *Standard Instrument*, which is being imposed on all communities in NSW, mandates that Council must allow brothels in the Shire. Our community upholds a strong family focus and Council wants to maintain a high quality of life for the Shire's residents. It is for this reason that Council wishes to seek an exemption of brothels and sex services in the Hornsby Shire. This is a matter of Council doing the responsible thing for our residents.

### **RECOMMENDATION**

THAT Council writes to the Minister for Planning and Infrastructure requesting that he reviews the *Standard Instrument* with a view to removing requirements that mandate the permissibility of brothels within comprehensive local environmental plans.

NICK BERMAN  
Mayor

### **Attachments:**

There are no attachments for this report.

File Reference: F2004/07513  
Document Number: D01649462



**2 DEVELOPMENT APPLICATION - RECREATION FACILITY  
7 VISION VALLEY ROAD, ARCADIA**

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<b>Development Application No.:</b>	DA/61/2011
<b>Description of Proposal:</b>	Alterations and Additions to an Existing Horse Training Establishment
<b>Property Description:</b>	Lot 11 DP 217208, No. 21 Geelans Road, Arcadia
<b>Applicant:</b>	Maitland and Butler Pty Ltd
<b>Owner:</b>	The Uniting Church in Australia Property Trust
<b>Statutory Provisions:</b>	Hornsby Shire Local Environmental Plan 1994 Rural AA (Large Holdings – Agricultural Landscapes) Zone Environmental Protection B (River Catchment) Zone
<b>Estimated Value:</b>	\$60,000
<b>Ward:</b>	A

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**RECOMMENDATION**

THAT Development Application No. 61/2011 for alterations and additions to an existing recreation facility at Lot 11 DP 217208, No. 21 Geelans Road, Arcadia be approved subject to the conditions of consent detailed in Schedule 1 of this report.

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**EXECUTIVE SUMMARY**

1. The application proposes alterations and additions to an existing horse boarding and training establishment.
2. A Red Sticker has been placed against the application resulting in it being referred to Council's Planning Meeting for determination.
3. The proposal complies with the *Hornsby Shire Local Environmental Plan, 1994* and the *Rural Lands Development Control Plan*.
4. Three public submissions have been received in respect of the application (two objections and one support).
5. It is recommended that the application be approved.

## HISTORY OF THE SITE

On 26 February 1969, Council granted consent to Development Application No. 38/1960 for a church-operated Youth and Adult Conference Centre. The approved development included the construction of a main conference centre building, two attached dormitory buildings, a caretaker's residence, a swimming pool, an amphitheatre, several ball game courts and an artificial lake in the south-western corner of that site, accessed from Vision Valley Road. It also included the construction of a motel (with associated recreation building), a caravan park and sports oval towards the east and south-east of that site, with access from Geelans Road.

On 12 November 1970, Council approved Development Application No. 147/1970 for the same development as described above, following the expiry of the abovementioned 12-month consent.

On 12 February 1999, Council granted consent to Development Application No. 269/1998 for the erection of a fourth single-storey accommodation lodge (Lodge 4) partly on (No. 5A) Vision Valley Road and partly on the subject site.

On 20 December 1999, Council approved Development Application No. 2600/1999 for the alterations and additions to the existing conference and recreation centre.

On 28 January 2011, Development Application No. 61/2011 was lodged for the alterations and additions to the existing animal boarding and training establishment ancillary to the existing recreation facility. This application is the subject of this report.

On 2 March 2011, Council approved Development Application No. 1474/2010 for the alterations and additions to an existing recreation facility ('Ropes Course').

## THE SITE

The subject site is located on the northern side of Geelans Road. The site is one of five allotments, which make up the 30 hectare '*Vision Valley Conference and Recreation Centre*' facility (hereafter 'Vision Valley'). The Centre provides camps and retreats for organisation and school groups.

Vision Valley comprises a number of buildings and recreational facilities including:

- Four lodges accommodating a total of 224 beds.
- A conference centre containing a dining room and large auditorium and meeting rooms.
- A chapel with seating for up to 100 people including a kitchen, bathrooms and large open veranda overlooking the lake.

Outdoor facilities include a large playing field located at the eastern end of the site, two swimming pools, volleyball court, a 'pirate ship' playground and large amphitheatre. Existing recreational facilities on the site include a flying fox, giant swing, rock climbing, archery, horse riding and water activities.

The conference centre is located within a natural bushland setting and surrounded by steep embankments and sand stone rock outcrops. The site is located at the headwaters of Halls Creek (a tributary of Berowra Creek).

## THE PROPOSAL

The proposal involves the relocation of the dressage ring and associated fencing of an existing horse boarding and training establishment, which operates in conjunction with the Vision Valley Recreation Centre. The proposal is an attempt to address operational concerns raised by the adjacent property owner located at the eastern side of the existing dressage ring being No. 23 Geelans Road.

The dressage ring would be expanded to include a sand arena and its total area would be 2,252m<sup>2</sup>. The proposal would replace the existing jumping paddock, whose activities would move further away from the neighbours at (No. 23) Geelans Road. The extension to the arena would require filling of the land to a depth of 1.7 metres to form a level area. The land has a fall of 6.5 metres towards the property to the east.

The riding programs currently operate at the following times:

- Monday to Friday from 8:30 am to 5:30 pm,
- Saturdays from 8:30 am to 4:00 pm; and
- Sundays from 9:00 am to 1:00 pm.

The current hours of operation would remain unchanged.

It is noted that the facilities are also used by the carers who reside on the site for their private use at times outside the usual working hours.

The applicant has stated that no more than eight horses or less would be used for lessons involving the use of the dressage ring, at any one time.

Following the relocation of the dressage ring, the previous training area would be used for grazing of two horses only. This area would be equally divided perpendicular to the boundary fence. A fence line is to be established to limit access to the horses within nine metres of the adjoining residence to the east being (No. 23) Geelans Road. A line of 'Photinia' plants would be planted to visually screen the neighbour's residence from the grazing area.

## ASSESSMENT

The development application has been assessed having regard to the 'Metropolitan Plan for Sydney 2036', 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 Plan for Sydney 2036 and (Draft) North Subregional Strategy

The *Metropolitan Plan for Sydney 2036* 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 2036;

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 its preparation of the *Comprehensive LEP* by the end of 2011.

The *Draft North 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 *Metropolitan Plan for Sydney 2036* or the draft Strategy.

## 2. STATUTORY CONTROLS

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

### 2.1 Hornsby Shire Local Environmental Plan 1994

The subject site is zoned Rural AA (Large Holdings – Agricultural Landscapes) zone under the *Hornsby Shire Local Environmental Plan 1994 (HSLEP 1994)*.

The existing dressage ring is defined as an “*animal boarding and training establishment*”, which is a permissible land use within the Rural AA zone pursuant to the zoning control table contained within Clause 7 of the *HSLEP 1994*.

The objectives of the Rural AA zone are:

- to restrain population growth, maintain the rural character of the area and ensure that existing or potentially productive agricultural land is preserved in large land holdings.*
- to promote agricultural use of land and provide for a range of compatible land uses which maintain the agricultural and rural environment of the area.*
- to ensure development is carried out in a manner that improves the environmental qualities, and is within the servicing capacity, of the area.*

The proposal is ancillary to the current use of the site. Given the minor nature and proposed location of the development, it is considered that the proposed dressage ring would have a negligible impact upon the surrounding area. The proposal complies with the objectives of the zone.

### 2.2 State Environmental Planning Policy No. 20 – Hawkesbury-Nepean River

The site is located within the catchment of the Hawkesbury-Nepean River. As such, the land is subject to the *SREP No. 20* provisions. The aim of the Plan is to protect the environment of the Hawkesbury-Nepean River system by ensuring that the impacts of the development are considered in the regional context. The Plan addresses matters related to water quality,

significant vegetation habitats, extraction, environmental heritage and scenic quality, recreation and tourism and agriculture.

The proposed development would have the potential to impact on the water quality of the catchment of the Hawkesbury-Nepean River system during construction. In this regard, appropriate measures designed to prevent the escape of sediment laden waters from the site are required and have been recommended as a condition of approval.

### 2.3 Rural Lands Development Control Plan

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

<b>Rural Lands Development Control Plan</b>			
<b>Control</b>	<b>Proposal</b>	<b>Requirement</b>	<b>Compliance</b>
<b>Site Area</b>	30 Ha	N/A	N/A
<b>Area of dressage ring</b>	2,252m <sup>2</sup>	N/A	N/A
<b>Setbacks</b>			
Northern side	573.45m	15m	Yes
Front/Geelans Road	70m	15m	Yes
Eastern side (No. 23 Geelans Road)	42m	15m	Yes
Western side (No. 17 Geelans Road)	91.85m	15m	Yes

A brief discussion on compliance with relevant performance standards under the *Rural Lands Development Control Plan* is provided below.

#### 2.3.1 Keeping of Animals and Animal Boarding or Training Establishment

The objectives of Council's *Development Control Plan (DCP)* seek to ensure that the keeping of animals and their associated activities do not impact on surrounding residents or the environment.

The *DCP* states that noise from animals should not adversely impact upon adjoining residents, albeit acknowledging that a certain level of animal noise should be tolerated within a rural area. The proposal would be located at a considerable distance from residences with the closest dwelling being approximately 42 metres away (to the east). This is an improvement on the existing circumstances which locates the dressage ring adjacent to the common property boundary of 23 Geelans Road. It is considered that the dressage ring is unlikely to result in any uncharacteristic or unacceptable noise, as the proposal would:

- Be located at a considerable distance from adjoining residences, with the closest dwelling being 42 metres (to the east).
- Replace an existing dressage ring.
- Is ancillary to an existing land use.

- Be used relatively infrequently and for limited time periods during daytime.
- Be supervised by trained staff.
- Be unlikely to result in any additional traffic and thus, no additional vehicular noise.

It is noted that the existing jumping paddock would cease when the proposed dressage ring is operational. Once the proposed extension to the sand arena has taken place, the area known as the jumping paddock would be used for grazing of horses. The applicant has stated that a fence line would be installed at nine metres from the eastern boundary of the site so as to limit the number of horses grazing adjacent to the adjoining dwelling to the east, (No. 23 Geelans Road).

It is recommended that a dense screen of trees or shrubs be planted three metres from the eastern side boundary so as to establish an appropriate level of privacy in relation to the adjoining residence. In addition, it is recommended that a condition be imposed that limits the number of horses grazing within nine metres of the adjoining dwelling. This outcome would ensure that the paddock does not become overgrown and unhealthy, but does not overly expose the residents in the adjoining dwelling from excessive noise impacts from horses.

Given the above assessment, the proposal would not generate adverse noise impacts.

### **2.3.2 Traffic and Parking**

The proposal seeks to relocate an existing jumping paddock. The dressage ring caters for visitors in conjunction with the existing facilities at the Vision Valley Recreation Centre. It is not expected that the development would generate additional patronage and therefore, there would not be any additional traffic to and from the site.

## **2.4 Code for the Keeping of Animals and Schedule 2 Local Government (General) Regulation 2005**

The proposal has been assessed having regard to Council's *Code for the Keeping of Animals*. The Code provides standards which may be considered by Council in the assessment of a development application.

Part 3 of the Code provides specific controls for the keeping of horses, including:

- *Horses must not be kept within nine metres of a dwelling, and*
- *horse yards must be enclosed so as to prevent the escape of horses and prevent them from coming within the distance prescribed (nine metres).*

The Code has been drafted in Accordance with the provisions of Schedule 2 of the *Local Government (General) Regulation 2005*, which states:

1. *Horses and cattle must not be kept within nine metres (or such greater distance as the council may determine in a particular case) of a dwelling, school shop, office, factory, workshop, church or other place of public worship, public hall or premises used for the manufacture, preparation or storage of food.*

2. *The floors of stables must be paved with concrete or mineral asphalt or other equally impervious material, and must be properly graded to drain.*
3. *Horse yards and cattle yards must be so enclosed as to prevent the escape of horses and cattle.*
4. *The standards in this clause apply to a person only if the council has served an order under section 124 of the Act to that effect on the person.*

As suggested in the Regulation, the restriction on the 'keeping of animals' does not prevent the 'grazing of animals'. In this context, the restriction relates to the stabling of horses, which should not be within nine metres of the adjoining dwelling. The relocation of the dressage ring away from the adjoining dwelling is consistent with the intention of the Regulation (and Code).

The applicant has stated the existing jumping arena is to become grazing space for two horses only. A fence line would be established so as to control horses accessing the paddock within nine metres of the adjoining residence. In addition a row of trees would be planted within the nine metre separation zone, which when mature would provide a visual privacy screen to the adjoining residence.

The adjoining resident has stated that airborne dust during windy weather, top soil loss during rainfall and loose horse manure may adversely impact adjacent bushland. In response to these issues the applicant has stated that the arena would be hosed on a daily basis as part of the maintenance procedure. A condition is recommended for the horse yard to be sited, constructed and drained as to prevent manure and refuse being washed or deposited onto any adjoining property.

The proposed dressage ring is considered to be acceptable with respect to the requirements within Council's *Code for the Keeping of Animals* and the *Local Government (General) Regulation 2005*.

### **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 necessitate the removal of a small Stringybark tree. The tree has significant damage at the root crown (there is a small cavity and evidence of termite activity). It is recommended that the tree be removed and replacement planting be undertaken in a more appropriate location as detailed in section 2 of this report.

#### **3.2 Built Environment**

Given the proposed siting of the dressage arena on the site and the required tree planting, it is considered that the proposed development would not have any detrimental impacts upon the built environment.

### **3.3 Social Impacts**

The proposed development would not have any negative social impacts, as it is consistent with the zoning and approved use of the site.

### **3.4 Economic Impacts**

The proposed development would not have any negative economic impacts.

## **4. SITE SUITABILITY**

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

### **4.1 Bushfire Risk**

The land is identified as being bushfire prone. The proposal was referred to the NSW Rural Fire Service in accordance with Section 79BA of the *Environmental Planning and Assessment Act 1979*.

The Service reviewed the plans and documentation submitted for the proposal and raised no concerns or issues in relation to bushfire risks.

## **5. PUBLIC PARTICIPATION**

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


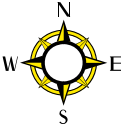
### **5.1 Community Consultation**

The proposed development was placed on public exhibition and was notified to adjoining and nearby landowners between 8 February and 1 March 2011 in accordance with Council’s *Notification and Exhibition Development Control Plan*. During this period, Council received three public 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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The submissions objected to the development, generally on the grounds that the development would result in:

- Increase of traffic on local streets.
- Unacceptable noise from activities at the centre.
- Unacceptable dust and erosion as a result of the operation of the horse training establishment.
- The removal of a significant tree.

One submission supported the development and made the following observations:

- The development provides an increase in much needed services in the locality.
- The Horse Centre at Vision Valley has been operating on the premises at Geelans Road for a long time. The Horse Centre’s vision is to make horse riding available to all members in the community so they can enjoy outdoor rural pursuits that are not available to them at home.

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

## 6. THE PUBLIC INTEREST

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

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

The application is considered to have satisfactorily addressed Council’s 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 relocation of the existing dressage ring would be in the public interest.

### CONCLUSION

The application proposes the relocation of the dressage ring and associated fencing of an existing horse boarding and training establishment, which operates in conjunction with the Vision Valley Recreation Centre.

The proposal satisfies the objectives of the *Hornsby Shire Local Environmental Plan 1994* and Council’s *Rural lands Development Control Plan*. The development improves existing impacts on an adjoining dwelling and provides an opportunity for Council to impose conditions that mitigate future impacts. It is considered unlikely the proposed development would result in any detrimental impacts upon the natural and/or built environments, or have any negative or economic impacts.

The proposal is suitable for the site and is recommended for approval subject to conditions of consent.

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

ROD PICKLES  
Manager - Assessment Team 2  
Planning Division

SCOTT PHILLIPS  
Executive Manager  
Planning Division

#### Attachments:

1. Locality Plan
2. Site Plan
3. Plan indicating the relocation of the dressage ring extension

File Reference: DA/61/2011  
Document Number: D01638733

**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</i>	<i>Drawn by</i>	<i>Dated</i>
Site Plan – Drawing No. WES38-S01	Maitland and Butler Pty Ltd	28.01.2011
Dressage Ring Location Plan – Drawing No. WES38-S02	Maitland and Butler Pty Ltd	28.01.2011

**2. Removal of Existing Trees**

This development consent only permits the removal of the tree numbered T1 located within the proposed envelope as identified on Plan No. WES38-S02 prepared by Maitland and Butler. 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.

**REQUIREMENTS PRIOR TO THE COMMENCEMENT OF ANY WORKS****4. Erosion and Sediment Control**

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

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

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

## REQUIREMENTS DURING CONSTRUCTION

### 5. 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.

### 6. Disturbance of Existing Site

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

### 7. Landfill

Landfill must be constructed 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.

### 8. Excavated Material

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

### 9. Works near Trees

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

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.

**OPERATIONAL CONDITIONS****10. Landscaping**

A dense screen of trees or shrubs must be planted and maintained as indicated in red/shown clouded on the approved plans, to establish visual privacy for the adjoining dwelling at 23 Geelans Road. The trees must be of native species, indigenous to the area, having non-invasive root system and obtain a mature growth height of approximately 3 to 4 metres.

**11. Keeping of Horses**

- a. A fence line must be constructed to limit the number of horses grazing within nine metres of the adjoining dwelling at 23 Geelans Road to two (2) horses at any one time.
- b. No other activities (other than the grazing of horses) are to occur within nine metres of the dwelling at 23 Geelans Road.
- c. The horse yard must be sited, constructed and drained as to prevent manure and refuse being washed or deposited onto any adjoining property or public place.
- d. The occupier or owner of the premise must provide a box or bin impervious to moisture and flies for the reception of all manure or refuse in such stable or horse yard. The occupier or owner must cause such horse yard to be cleaned and hosed daily.

**- 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 (02) 9847 6760.
- A principal certifying authority to be nominated and Council notified of that appointment prior to the commencement of any works.
- Council to be given at least two days written notice prior to the commencement of any works.
- Mandatory inspections of nominated stages of the construction inspected.

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

### **Tree Preservation Order**

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

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

*All distances are determined under Australian Standard AS 4970-2009 "Protection of Trees on Development Sites".*

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

**3 DEVELOPMENT APPLICATION - SECTION 96(2) - MULTI-UNIT HOUSING DEVELOPMENT  
33 PACIFIC HIGHWAY, WAHROONGA**

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<b>Development Application No:</b>	DA/878/2007/B
<b>Description of Proposal:</b>	Section 96(2) modification to an approved multi-unit housing development
<b>Property Description:</b>	Lots 1 and 2 DP 780083 (No. 33) Pacific Highway, Wahroonga (known as the Spanish Motel)
<b>Applicant:</b>	Architects & Partners
<b>Owner:</b>	Citystar International Pty Ltd
<b>Statutory Provisions:</b>	Hornsby Shire Local Environmental Plan 1994 Residential B (Medium Density) Zone
<b>Estimated Value:</b>	\$5,000,000
<b>Ward:</b>	B

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**RECOMMENDATION**

THAT Development Application No. 878/2007/B for the demolition of a motel and erection of a multi-unit housing development comprising 33 dwellings and strata title subdivision at Lot 1 DP 780083, Lot 2 DP 780083, (No. 33) Pacific Highway, Wahroonga be approved as detailed in Schedule 1 of this report.

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**EXECUTIVE SUMMARY**

1. The application proposes to modify the design of an approved three storey multi-unit housing development to incorporate a total of 33 dwellings.
  2. The application relies on existing use rights under the *Environmental Planning & Assessment Act, 1979*. The modified proposal does not comply with the numerical requirements of the *Hornsby Shire Local Environmental Plan 1994 (HSLEP)* nor Council's *Medium Density Development Control Plan*. However, the application facilitates a transition in the landuse from a prohibited motel to a residential apartment building, which is a permissible use within the zone.
  3. Two submissions have been received in respect of the application.
  4. It is recommended that the application be approved.
-

## HISTORY OF THE APPLICATION

On 7 May 2008 Council at its Planning Meeting approved Development Application No. 878/2007 for the demolition of an existing motel and erection of a multi-unit housing development comprising 23 dwellings and strata title subdivision.

On 7 May 2010 a Section 96(2) application was submitted to increase the number of residential units from 23 to 33, and relocate the driveway. The NSW Roads and Traffic Authority refused to grant concurrence to the proposal. Consequently, the application was refused under delegated authority on 22 December 2010.

On 2 February 2011 the current Section 96(2) application was submitted and is the subject of this report.

## HISTORY OF THE SITE

In July 1960, Council approved an application for a motel containing 21 rooms on the site. Modifications and extensions to the motel were approved in 1960, 1965 and 1977. The site continues to be used as a motel.

## THE SITE

The site has an area of 2,326sqm and is located on the western side of Pacific Highway at Wahroonga. The site has a frontage to Pacific Highway of 45.5m, a northern boundary of 49.5m, southern boundary of 65.5m and a western boundary of 37.6m. A public pathway runs alongside the northern boundary of the site.

The site falls generally from the east (front) to the west (rear) with an average gradient of 6%.

The site contains a development known as the 'Spanish Motel'. The 'Spanish Motel' contains 26 rooms, a swimming pool and restaurant and conference room. The 'Spanish Motel' is a part one and part two storey building.

The site is surrounded by a variety of land uses. The property to the north contains a retirement village. The properties to the east include dwellings at low and medium densities. The property to the south contains a nursing home with the heritage item known as "Strathnoon" and the properties to the west contain 2 storey dwelling-houses.

## APPROVED DEVELOPMENT

The approved design of the development involves the construction of a three storey multi unit housing development with 23 units and two levels of basement car parking with 41 parking spaces. The materials and finishes of the building comprise a mixture of face brick and rendered brick with a tiled pitched roof. (Refer to Attachments 3 and 4)

## THE MODIFICATION

The proposed modifications involve a redesign of the approved building, and includes:

- (a) Building Envelope and Façade Treatment:
  - Maintaining a similar building footprint on the ground floor, but increasing the



size of the building footprint on the upper two levels.

- Increasing the floor space ratio from 1.09:1 to 1.12:1.
- Providing a more contemporary treatment to the façade.
- Altering the roof form from a pitched roof to a flat roof.
- Altering the orientation of units to accommodate the increased number of units.

(b) Unit Number, Mix and Amenity:

- Increasing the number of residential units from 23 to 33.
- Altering the unit mix from 12 x 2 bed and 11 x 3 bed units to 22 x 1 bed and 11 x 2 bed units.
- Increasing the proportion of single aspect south facing units.
- Decreasing the minimum balcony areas.

(c) Landscape Setting:

- Relocating the active communal recreation/BBQ area to the rear.
- Altering communal landscaping around the boundary.

(d) Vehicle Access and Parking:

- Retaining the approved driveway in a similar location.
- Increasing the size of the waste collection area.
- Minor modifications to the approved basement.

## ASSESSMENT

The development application has been assessed having regard to the *'Metropolitan Plan for Sydney 2036'*, 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 Plan for Sydney 2036 and (Draft) North Subregional Strategy

The *Metropolitan Plan for Sydney 2036* 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 2036; 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 its preparation of the *Comprehensive LEP* by the end of 2011.

The *Draft North 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 33 dwellings and would contribute towards housing choice in the locality.

The proposed development would be consistent with the *Metropolitan Plan for Sydney 2036*.

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

The proposal constitutes an amendment to the original development consent under Section 96(2) of the Act. Pursuant to Section 96(2), Council may consider an application to amend development consent provided that, inter alia:

- “(a) *it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if any at all), and*
- “(b) *it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and*
- “(c) *it has notified the application in accordance with the regulations, and*
  - “(i) *the regulations, if the regulations so require, or*
  - “(ii) *a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
- “(d) *it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.*”
- “(e) *In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters*

*referred to in section 79C (1) as are of relevance to the development the subject of the application.*

With respect to (a), it is considered that the proposal, as amended is substantially the same as the development originally approved as it remains a three storey residential flat building.

With respect to (b) the amended development was referred to the Roads and Traffic Authority as a concurrence authority. The RTA has granted concurrence to the development.

With respect to (c) and (d), the amended application was advertised and two submissions were received.

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

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

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

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 B zone is 0.6:1. The approved scheme had an FSR of 1.09:1 and the modified scheme proposes to increase the FSR to 1.12:1. However, the site benefits from existing use rights as discussed below.

Clause 18 of the *HSLEP* sets out heritage conservation provisions within the Hornsby area. The property is located within the vicinity of property Nos. 8A and 31 Pacific Highway, Wahroonga (*house* and "*Strathnoon*") which are listed as heritage items of local significance under the provisions of Schedule D (Heritage Items) of the *HSLEP 1994*. The application was considered by the Council's Heritage Committee and no concerns were raised regarding the impact of the development on the heritage significance of the adjacent item.

## **2.3 Environmental Planning and Assessment Act, 1979 - Part 4 – Existing Uses**

The site is zoned Residential B (Medium Density) and a "motel" is a prohibited land use within that zone under the *HSLEP*. The current use of the site as the Spanish Motel is protected by existing use rights in accordance with the Act.

Clause 106 of the Act states that an existing use is:

- "(a) *the use of a building, work or land for a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for Division 4A of Part 3 or Division 4 of this Part, have the effect of prohibiting that use, and*

- (b) *the use of a building, work or land:*
- (i) *for which development consent was granted before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use, and*
  - (ii) *(ii) that has been carried out, within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse.”*

Development consent was granted for the construction of a motel in 1960 under the County of Cumberland Planning Scheme, prior to the commencement of the Hornsby Planning Scheme. The use has continued and expanded, with Council's consent, since that original approval. Following a review of Council's records, the application and inspections of the site, Council officers are satisfied that the site benefits from existing use rights.

Clause 41 of the *Environmental Planning and Assessment Regulation 2000* states in part:

- “(1) An existing use may, subject to this Division:*
- (a) be enlarged, expanded or intensified, or*
  - (b) be altered or extended, or*
  - (c) be rebuilt, or*
  - (d) be changed to another use, but only if that other use is a use that may be carried out with or without development consent under the Act....”*

The proposed development is defined as ‘demolition’, ‘multi-unit housing’ and ‘subdivision’ and is permitted pursuant to Clause 7 of the *HSLEP*. The proposed use is permissible within the zone, in accordance with Clause 41(1)(d) stated above. The approved development was made under the ‘Existing Use’ provisions of the Act and Regulation. If constructed, the existing use rights on the site would be extinguished.

The proposal does not comply with clause 15(1) ‘floorspace ratio’ of the *HSLEP* which permits a maximum FSR of 0.6:1, where as the approved development had an FSR of 1.09:1, and the modified proposal has an FSR of 1.12:1. Furthermore the proposal does not comply with the planning controls within Council's *Medium Density Development Control Plan*.

The application relies on having existing use rights to vary the required floorspace ratio development standard that would otherwise be applicable to multi-unit dwellings and depart from the DCP controls that would otherwise be applicable.

Section 108(3) of the Act establishes that:

- “(3) An environmental planning instrument may, in accordance with this Act, contain provisions extending expanding or supplementing the incorporated provisions, but any provisions (other than incorporated provisions) in such an instrument that, but for this subsection, would derogate or have the effect of derogating from the incorporated provisions have no force or effect while the incorporated provisions remain in force.”*

The *HSLEP* under Clause 15 provides a maximum floorspace ratio of 0.6:1 for the land. The proposal seeks approval for a floorspace ratio of 1.12:1. The floorspace ratio provision is, for the purposes of the Act, a ‘derogation’ and therefore, in accordance with Section 108(3), those provisions would have no force or effect. Accordingly, the proposed development is to be considered on merit, in accordance with the applicable provisions of Section 79C of the Act.

### **Planning Principles for Merit Assessment of Existing Use Right Applications**

The Land and Environment Court has, in the decision of Senior Commissioner Roseth in the matter of *Fodor Investments v Hornsby Shire Council [2005] NSWLEC 71*, established certain planning principles for determining the merits of redevelopment when existing use rights apply. Senior Commissioner Roseth stated:

*“A common theme running through the judgments that have established legal principles in relation to existing use rights is that they identify the matters that do not apply to the assessment of applications. Apart from confirming that s79(c) of the Act applies, they are silent on the considerations that should inform the assessment of such applications. For this reason, it is useful to establish criteria for the assessment of proposals on land with existing use rights.”*

*Four questions usually arise in the assessment of existing use rights developments, namely:*

- (1) *How do the bulk and scale (as expressed by height, floor space ratio and setbacks) of the proposal relate to what is permissible on surrounding sites?*

The proposal seeks to demolish the existing motel with a floorspace ratio of 0.4:1 and erect a multi-unit housing development comprised of 33 units with a floorspace ratio of 1.12:1. The overall FSR of the development is slightly larger than approved under the current development. This has largely been achieved by increasing the size of the building footprint, increasing the size of the common lobby area and limiting the size of balconies.

The overall height of the building is similar to the approved multi-unit housing development. The modification of the approved roof, from a pitched roof to a flat roof, decreases the overall height of the building.

The proposed modification to the building footprint results in greater building bulk being located adjacent to the site’s southern and western boundaries, which is an interface with residential properties. This modified building bulk would not have not have a significant impact on privacy or overshadowing, as compared to the original consent. The quantifiable impacts of the development on the adjacent residential properties is discussed further under Section (3) below.

- (2) *What is the relevance of the building in which the existing takes place?*

This application does not propose to reuse the existing motel buildings.

- (3) *What are the impacts on adjoining land?*

*The impact on adjoining land should be assessed as it is assessed for all development. It is true that where, for example, a development control plan requires three hours of sunlight to be maintained in adjoining rear yards, the*

*numerical control does not apply. However, the overshadowing impact on adjoining rear yards should be reasonable.*

The modified impacts on the neighbouring properties from this Section 96 application include overshadowing and privacy impacts.

The extent of overshadowing from the modified scheme to the neighbouring residential properties is reasonable taking into account the existing motel building and the existing approved redevelopment. The shadow diagrams submitted demonstrate that the closest nursing home window, on the southern boundary, would not be significantly overshadowed by the new building for at least three hours in mid winter. In addition, the overshadowing on the dwelling houses to the west would be similar to the existing approved scheme.

The privacy impacts on the adjacent residential properties to the west and south is reasonable. The modified scheme now results in additional balconies facing the western and southern boundaries. This has been addressed in the plans by the inclusion of fixed privacy screens on the lower level balconies and a planter box on the upper (3<sup>rd</sup> storey) balcony.

(4) *What is the internal amenity?*

The level of amenity proposed to the modified units would be inconsistent with Council's *Medium Density DCP*. However, the level of internal amenity is generally consistent with provisions of the *SEPP 65 Residential Flat Design Code*. This is discussed further at Section 2.4 of this report.

## **2.4 State Environmental Planning Policy No. 65**

The amended plans comprise a redesign of the approved scheme. The proposed development is three storeys in height and *SEPP 65* would ordinarily apply. However, this property enjoys existing use rights, therefore this Policy serves as an appropriate guide only, in terms of built form and internal amenity. The application has been assessed in accordance with the principles of *SEPP 65* and the *Residential Flat Design Code (RFDC)* as follows:

### **Principle 1: Context**

*Good design responds and contributes to its context. Context can be defined as the key natural and built features of an area.*

The key built features of the locality are defined by the building height, setbacks, landscaping and architectural style (*per Project Venture Developments v Pittwater Council [2005]*). In this regard the amended development is consistent with the approved scheme in that it has a similar overall height of three storeys and similar minimum ground floor setbacks. The setbacks provide opportunity for landscaping adjacent to the property boundaries which is consistent with the established character of the area.

The architectural style chosen is not similar to the existing character of the locality. The character of the area as established by the *Medium Density DCP* is to encourage low rise buildings with pitched and gabled rooflines. This roof form has been provided in the adjacent heritage item, the residences to the rear and in the townhouses on the opposite side of the Pacific Highway. In comparison the proposal is a modern building design with a flat roof. The heritage impact assessment submitted with the application advised that “*appropriate options for a site in proximity to a building such as Strathnoon may be to mimic the roof form and pitch fully of the heritage item, or to provide a roof form that is of a sufficiently modern*

*form to distinguish itself from the original building, which also enables the original roof form to be the dominant feature in the precinct. This proposal has selected the latter option. This is an improvement on the previously approved Development application which was neither a modern form nor a replica form.”*

The Council’s Heritage Committee has not raised any concerns regarding the compatibility of the proposed architectural style with the locality. As such there are no concerns regarding the consistency of the development with the context.

### **Principle 2: Scale**

*Good design provides an appropriate scale in terms of the bulk and height that suits the scale of the street and the surrounding buildings.*

The surrounding residential area has a predominant building height of up to two storeys. The existing consent has a building height of up to three storeys. The modified scheme has a similar building height, albeit with a flat roof.

### **Principle 3: Built Form**

*Good design achieves an appropriate built form for a site and the building’s purpose, in terms of building alignments, proportions, building type and the manipulation of building elements. Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including views and vista, and provides internal amenity and outlook.*

The modified built form has limited impact on the locality and achieves a reasonable level of internal amenity.

### **Principle 4: Density**

*Good design has a density appropriate for a site and its context, in terms of floor space yields (or number of units or residents). Appropriate densities are sustainable and consistent with the existing density in an area or, in precincts undergoing a transition, are consistent with the stated desired future density. Sustainable densities respond to the regional context, availability of infrastructure, public transport, community facilities and environmental quality.*

The site is located within a medium density zone where a maximum floorspace ratio of 0.6:1 applies.

The Metropolitan Plan for Sydney 2036 defines medium density housing as between 25 to 60 net dwellings per hectare. This application increases the number of residential dwellings from 23 to 33 apartments. This achieves an increase in net density from 99 to 142 dwellings per hectare. Therefore using the definitions in the metropolitan strategy, the approved and modified proposal is for a high density development.

The proposed development benefits from existing use rights, therefore the planning controls that derogate from the merit assessment do not strictly apply. The property is located approximately 600m from Waitara Railway Station, which is within an area well served with public transport and within close proximity to other facilities.

**Principle 5: Resource, Energy And Water Efficiency**

*Good design makes efficient use of natural resources, energy and water throughout its full life cycle, including construction.*

A BASIX Certificate has been obtained, which includes specific commitments relating to water, solar access and energy efficiency. In addition, passive solar design is also addressed for the top level, west facing units, which will incorporate a retractable awning.

**Principle 6: Landscape**

*Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in greater aesthetic quality and amenity for both occupants and the adjoining public domain.*

New landscaping is proposed within the building setbacks at the interface with the adjoining sites. The provision of car parking below the building allows for increased landscaping, in particular, deep soil planting.

The application proposes to use all of the southern setback to Strathnoon for private courtyards. Furthermore, the landscaping along the southern boundary would be set two metres below existing ground level which would limit the potential for landscape screening to reduce the visual impact of the development to adjoining residents. It also results in very little communal landscaping, which is inconsistent with the rules of thumb for “open space” within the *Residential Flat Design Code*. This is addressed by consent conditions.

The landscape design has relocated the approved active communal area (with BBQ) and communal drying area from the front setback to the rear setback area which is supported.

**Principle 7: Amenity**

*Good design provides amenity through the physical, spatial and environmental quality of a development. Optimising amenity requires appropriate room dimensions and shapes, access to sunlight, natural ventilation, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas, outlook and ease of access for all age groups and degrees of mobility.*

The Planning Principles do not suggest that development on sites with existing use rights have lower amenity than development generally. Therefore the rules of thumb within the *Residential Flat Design Code* are a relevant consideration. See below:



Issue	Rule of Thumb	Compliance
<b>Building Depth</b>	<i>Developments that propose wider than 18m must demonstrate how satisfactory day lighting and natural ventilation is achieved.</i>	<b>No</b> Building depths of 25m proposed. However the applicant has demonstrated that adequate day lighting and cross-ventilation is available.
<b>Building Separation</b>	<i>Within a development and between adjoining sites, min building separation of: * 12m between habitable rooms/balconies * 9m between habitable rooms and non-habitable rooms * 6m between non-habitable rooms  Note: a habitable room means any room for normal domestic activities, including living, dining, bedrooms, study, kitchens etc.</i>	<b>No</b> There is 9m separation (rather than 12m) between the principle private open space at No. 8 Netherby Street and west facing balcony at Unit No. 33. There is 7.5m separation (rather than 12m) between the bedroom windows of the adjacent nursing home and the balconies of the south facing units. However, the modified development provides for 6m minimum side and rear boundary setbacks, which is consistent with the approved scheme. The potential privacy conflicts from the western and southern facing balconies is addressed by the provision of fixed privacy screens and/or a planter.
<b>Communal Open Space and Deep Soil Zones</b>	<i>Min 25-30% of the site area to be communal open space. Min 25% of the open space area to be a deep soil zone.</i>	<b>Yes</b> At least 25% of the site is able to be common open space, with deep soil.
<b>Daylight Access</b>	<i>3 hrs of direct sunlight in mid winter to 70% of units living rooms and balconies.</i>	<b>Yes</b> 76% of units achieve sunlight access. Some of the south facing units are designed so that the top floor apartments have skylights over the living rooms and balconies to gain sunlight.
<b>Single Aspect Units</b>	<i>20% units (max) single aspect Limit single aspect units with a southerly aspect to a maximum of 10% of the total units.</i>	<b>No</b> 36% of apartments are south only facing. However the design generally still allows for daylight access and cross ventilation, and a Basix Certificate is also provided to address energy efficiency.
<b>Cross-ventilated units:</b>	<i>60% units (min)</i>	<b>Yes</b> 20/33 units (60%) have cross ventilation.
<b>Back of kitchen to window</b>	<i>8m (max)</i>	<b>Mostly Yes</b> The extent of variation is very limited and the majority of apartments comply.
<b>Balcony depth</b>	<i>2m (min)</i>	<b>Yes</b>
<b>Ceiling height</b>	<i>2.7m (min)</i>	<b>Yes</b> Complies
<b>Unit storage</b>	<i>6m<sup>3</sup>/unit (1 bed units) 8m<sup>3</sup>/unit (2 bed units)</i>	<b>Unknown</b> Storage shown on basement plans. Addressed by consent condition.

**Principle 8: Safety And Security**

*Good design optimises safety and security, both internal to the development and for the public domain.*

The design of windows and location of living areas of all units allows for greater casual surveillance than the existing motel. The main entrance provided to the building is clearly identified at the street front and lighting is able to be provided along pathways.

**Principle 9: Social Dimensions**

*Good design responds to the social context and needs of the local community in terms of lifestyles, affordability, and access to social facilities. New developments should optimise the provision of housing to suit the social mix and needs in the neighbourhood or, in the case of precincts undergoing transition, provide for the desired future community.*

The *Residential Flat Design Code* states that a variety of dwelling types should be provided and that barrier free access should be provided to at least 20% of dwellings. The proposal seeks to provide the following one and two bedroom units. In addition, four of the units are provided as adaptable housing which is consistent with the Council's *Access and Mobility DCP*. While the proposal does not provide any studio or three bedroom apartments, it does however make a contribution to the housing stock of the Shire and assists in providing affordable housing given the modest size of the apartments. The site is well located and serviced by public transport, with easy access to the Hornsby Town Centre.

**Principle 10: Aesthetics**

*Quality aesthetics require the appropriate composition of building elements, textures, materials and colours and reflect the use, internal design and structure of the development.*

Council's Heritage Committee has not raised concerns regarding the aesthetics of the built form taking into account its location adjacent to a heritage item.

**2.5 State Environmental Planning Policy (Infrastructure) 2007**

The proposed development is located adjacent to the Pacific Highway and *SEPP (Infrastructure) 2007* would ordinarily apply. However, this property enjoys existing use rights, therefore this Policy serves as an appropriate guide only.

Clause 102 of the *SEPP* requires that if the development is for residential purposes, the building includes appropriate measures to ensure that the following LAeq levels are not exceeded:

- (a) *in any bedroom in the building—35 dB(A) at any time between 10 pm and 7 am,*
- (b) *anywhere else in the building (other than a garage, kitchen, bathroom or hallway)—40 dB(A) at any time.*

The above was not required for the existing approval as the *SEPP* commenced after the original development application was lodged. However, taking into account the increase in density proposed by this Section 96(2) application, it is appropriate that the units are acoustically attenuated from road traffic noise. Furthermore the applicable planning

principles do not suggest that development on sites with existing use rights may have lower amenity than development generally.

It is probable that internal noise levels cannot be achieved with windows open in some units. Therefore an alternative mechanical ventilation system for some of the units may be necessary. The need for acoustic attenuation is addressed by consent conditions.

## 2.6 Medium/ High Density Multi-Unit Housing Development Control Plan

The development comprises multi-unit housing within the Residential B (Medium Density) zone, accordingly the provisions of the *Medium Density DCP* would ordinarily apply. However, since the proposal is for a three storey apartment building, the provisions of the *Medium/High Density Multi-Unit Housing DCP* are also considered as a guide in the table below.

<b>Medium Density Multi-Unit Housing Development Control Plan, and Medium/High Density Multi-Unit Housing Development Control Plan</b>				
<b>Control</b>	<b>Proposal</b>	<b>Approved</b>	<b>Medium DCP Requirement</b>	<b>Medium/High DCP Requirement</b>
<b>Density</b>	1.12:1	<i>1.09:1</i>	0.6:1 (LEP)	1.2:1
<b>Site Cover</b>	47%	<i>45%</i>	<i>40%</i>	40%
<b>Ceiling Height</b>	9.4m	<i>8.9m</i>	<i>7m</i>	9m
<b>Building Length</b>	45m	<i>43.2m</i>	<i>30m</i>	45m
<b>Unbroken Wall Length</b>	15m	<i>7.9m</i>	<i>10m</i>	30m
<b>Private Open Space</b>	8m <sup>2</sup> / dwg	<i>12m<sup>2</sup>/dwg</i>	20-80m <sup>2</sup> /dwg	8-12m <sup>2</sup> /dwg
<b>Landscaping</b>	47%	<i>54%</i>	45%	50%
<b>Setbacks</b>				
. Front / Road	8m	<i>8m</i>	9m	9m
. Side (south)	6m	<i>6m</i>	3m	6m
. Side (north)	6m	<i>6m</i>	3m	6m
. Rear Setback (west)	6m (L1-2) 6m (L3)	<i>6m (L1-2) 10-12m (L3)</i>	3m	6m
<b>Carparking</b>	33 resident 7 visitor	<i>34 (required) 41 (proposed)</i>		40

The application relies on having existing use rights to vary the required floorspace ratio and depart from the applicable DCP controls. Accordingly, the proposed development is to be considered on merit, as previously addressed in this report.

### 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 does not contain any trees. The trees on the neighbouring property to the south “Strathnoon” contribute to the setting of the heritage item. The plans propose to undertake earthworks in the vicinity of these trees. A comparison of the survey plan and proposed site plan indicates a cut in the order of 2 metres adjacent to the southern boundary. This is inconsistent with the recommendations of the *Arboricultural Impact Report* that assumes a driveway that is setback in the order of 3 metres from the neighbouring southern boundary. To address this issue, the consent conditions require the retaining wall to be relocated 3 metres from the southern boundary. This would limit the impact on the Strathnoon’s trees. It would also ensure that any screen planting provided along the southern boundary is more effective as it would be located on existing ground level.

#### 3.2 Built Environment

The compatibility of the development with the locality has previously been addressed above.

##### 3.2.1 Vehicular Access

A previous Section 96 application DA/878/2007/A proposed to relocate the approved driveway from the northern to the southern boundary. The RTA did not support the relocation of the approved driveway given the proximity to the driveway at the adjoining property and concerns regarding sight distances. The current application DA/878/2007/B, locates the driveway adjacent to the northern boundary, in a similar location to the existing approval. The RTA has not raised any objection to the application.

##### 3.2.2 Waste Servicing

The application provides for garbage storage within a basement and a waste collection area in the front setback. The applicant proposes to construct a garbage hoist in the front setback to provide for the movement of the waste bins from the basement to the collection area.

The recommended consent conditions require a garbage bin cleaning facility to be provided within the basement bin rooms to eliminate the need for a large roofed structure to be erected in the front setback. Consent conditions also require the bins to be ordinarily stored within the basement, rather than within the collection area.

#### 3.3 Social Impacts

The development does not have a significant social impact on the locality.

#### 3.4 Economic Impacts

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

**4. SITE SUITABILITY**

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

The development involves a redesign of an approved three storey residential apartment building.

**5. PUBLIC PARTICIPATION**


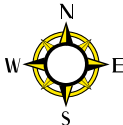
Section 79C(1)(d) of the Act requires Council to consider “*any submissions made in accordance with this Act*”.

**5.1 Community Consultation**

The proposed development was placed on public exhibition and was notified to adjoining and nearby landowners between 10 February 2011 and 3 March 2011 in accordance with Council’s *Notification and Exhibition Development Control Plan*. During this period, Council received two submissions. The map below illustrates the location of those 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>	
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Two submissions supported, or were neutral to the development and made the following observations:

- Request that fixed privacy screening, landscaping screening and a 2.1m high boundary fence with the western boundary be implemented as proposed.
- Request that the bamboo proposed adjacent to the western boundary be a ‘clumping’ variety to avoid invasion onto adjacent properties.

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 Western Interface Planting**

The approved landscape plan proposes to plant “*Timor Black Bamboo*” along the western property boundary which is a clumping variety of black bamboo as requested by the neighbouring resident.

## **5.2 Public Agencies**

The development application is Integrated Development under the Act. Accordingly, the application was referred to the following Agencies for comment:

### **5.2.1 Roads and Traffic Authority**

The RTA has advised that it raises no objection to the Section 96(2) application.

## **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 modification of a multi-unit housing development would be in the public interest.

## **CONCLUSION**

The proposed Section 96(2) application involves a complete redesign of the three storey residential apartment building approved on the site.

While the proposal does not comply with the planning controls within the *Hornsby Shire LEP* or the *Medium Density Development Control Plan*, the modified development is substantially the same as the existing approval. The site enjoys existing use rights and the merit assessment of the proposal indicates that the modifications have an acceptable relationship with the existing context, with appropriate consent conditions.

It is recommended that the application be approved.

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

ROD PICKLES  
Manager - Assessment Team 2  
Planning Division

SCOTT PHILLIPS  
Executive Manager  
Planning Division

**Attachments:**

1. Locality Plan
2. Site Plan
3. Approved Floor Plans
4. Approved Elevations
5. Proposed Floor Plans
6. Proposed Elevations
7. Proposed Sections
8. Shadow Plans
9. Photomontage

File Reference: DA/878/2007/B  
Document Number: D01624026

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**SCHEDULE 1**


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<b>Date of this modification:</b>	4 May 2011
<b>Details of this modification:</b>	Modification to approved multi-unit housing development comprising 33 units, strata subdivision and demolition.
<b>Conditions Deleted:</b>	1 to 89 of DA/878/2007
<b>Conditions Added:</b>	1 to 56
<b>Conditions Modified:</b>	Nil

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**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>
Survey Plan	Kerrcorp Architects	26.11.07
A001, Issue A - Site Analysis Plan	Architects + Partners	1.02.11
A002, Issue A – View Analysis	Architects + Partners	1.02.11
A101, Issue A – Basement 2 Plan	Architects + Partners	1.02.11
A102, Issue A – Basement 1 Plan	Architects + Partners	1.02.11
A103, Issue A – Ground Floor Plan	Architects + Partners	1.02.11
A104, Issue A – First Floor Plan	Architects + Partners	1.02.11
A105 Issue A – Second Floor Plan	Architects + Partners	1.02.11
A106, Issue A – Roof Plan	Architects + Partners	1.02.11



A201, Issue A – North Elevation	Architects + Partners	1.02.11
A202, Issue A – South Elevation	Architects + Partners	1.02.11
A203, Issue A – East Elevation	Architects + Partners	1.02.11
A204, Issue A – West Elevation	Architects + Partners	1.02.11
A205, Issue A – Streetscape Elevation (Pacific Highway)	Architects + Partners	1.02.11
A301, Issue A - Sections	Architects + Partners	1.02.11
A401, Issue A – Landscaped Area	Architects + Partners	1.02.11
A402, Issue A – Solar access & cross ventilation	Architects + Partners	1.02.11
A501, Issue A – Shadow Diagram Winter 21 June	Architects + Partners	1.02.11
A502, Issue A – Detailed Shadow Diagram 21 June	Architects + Partners	1.02.11
A503, Issue A – Detailed Shadow Diagram 21 March	Architects + Partners	1.02.11
A504, Issue A – Detailed Shadow Diagram 21 September	Architects + Partners	1.02.11
A505, Issue A – Detailed Shadow Diagram 21 December	Architects + Partners	1.02.11
A601, Issue A – Schedule of Materials & Finishes	Architects + Partners	1.02.11
10-0231, Issue B – Landscape Plan	Site Design	27.1.11

<i>Document No.</i>	<i>Prepared by</i>	<i>Dated</i>
10166. Traffic and Parking Assessment Report	Varga Traffic Planning	28.1.11
Heritage Impact Statement	Integrated Design Associates	October 2010
2010/0247 R1.1 BCA Assessment Report	Steve Watson & Partners	April 2010
Waste Management Plan	Cadmedia	1.2.11
Basix Certificate 306059M	-	15.4.10

## 2. Amendment of Plans

The development plans identified in condition No. 1 are to be amended as follows:

- a. Accommodate a garbage hoist, to provide access between the basement waste storage areas and the ground level waste collection area, as generally indicated in the concept plans SK104 and SK104 dated 4.3.11 (see D01623431). The garbage hoist may reduce the size of the bin collection area, but it is not to result in the bulky item storage area being less than 10sqm.
- b. The waste storage rooms in the basement are to incorporate facilities for bin washing. The waste collection area in the front setback is for the temporary storage of bins and is to comprise a 1.2m high wall only.

- c. The proposed retaining wall adjacent to the southern boundary is to be relocated 3 metres to the north, as indicated in red on the approved plans. Existing ground levels are to be maintained within 3 metres of the southern property boundary.
- d. The communal open space area is to include deep soil landscaping adjacent to the southern boundary. The minimum communal landscaped area is indicated in red on the approved plans.
- e. The open space area immediately adjacent to the southern façade of Unit 8 is to be allocated to Unit 8.

### 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. Fire Safety Upgrade

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

- a. The building is to comply with Parts C, D, and E of the Building Code of Australia
- b. A report under Section J of the BCA is to be submitted to the PCA with the Construction Certificate

#### 5. Dilapidation Report

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

#### 6. 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.*

#### 7. 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.*

## 8. Water/Electricity Utility Services

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

*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.*

- 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*.

## 9. Roads Act

The applicant is to obtain an approval from the Roads and Traffic Authority under Section 138 of the Roads Act prior to issue of the construction certificate.

## 10. Waste Management Design

The bin rooms, garbage chute and related devices are to be designed in accordance with the provisions of Hornsby Shire Council's *Waste Minimisation and Management Development Control Plan*, particularly in regard to a water/hose for cleansing, graded floors with drainage to sewer, robust door(s), sealed/impervious surfaces, adequate lighting and ventilation.

## 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 directly to Council's street drainage system in Netherby St generally in accordance with the plans prepared by Brian O'Mara & Associates Pty Ltd drawing No 24105 STW-04B & STW-08C. The stormwater plans are to be amended so that the stormwater drainage pipeline discharges into pit No 2084.

## 12. On Site Stormwater Detention

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

- a. Have a capacity of not less than 27 cubic metres, and a maximum discharge (when full) of 69 litres per second.
- 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. Not be constructed in a location that would impact upon the visual or recreational amenity of residents.

## 13. Internal Driveway/Vehicular Areas

The driveway and parking areas on site must be designed in accordance with *Australian Standards 2890.1, 2890.2, 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 changes in grade must not exceed 8 percent.
- d. The vehicular crossing shall have a minimum width of 5.5m at the property boundary alignment and this width shall extend into the property by 6m. The maximum grade between the face of kerb and the 6m setback from the property boundary shall be 5% or 1 in 20 in accordance with AS 2890.1.
- e. Prior to occupation, all parking areas and driveways are to be line marked and signposted.
- f. Parking, loading and manoeuvring areas are to be used solely for such purposes.

## 14. Vehicular Crossing

A separate application under the *Local Government Act, 1993* and the *Roads Act, 1993* must be submitted to Council for the installation of a new vehicular crossing and the removal of the redundant crossing. The vehicular crossing must be

constructed in accordance with Council's *Civil Works Design, 2005* and the following requirements:

- a. Any redundant crossings to be replaced with integral kerb and gutter.
- b. The footway area to be restored by turfing.
- c. The vehicular crossing shall have a minimum width of 5.5m at the property boundary alignment and this width shall extend into the property by 6m. The maximum grade between the face of kerb and the 6m setback from the property boundary shall be 5% or 1 in 20 in accordance with AS 2890.1.

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

### **15. Traffic Control Plan**

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

- a. Arrangements for public notification of the works.
- b. Temporary construction signage.
- c. Permanent post-construction signage.
- d. Vehicle movement plans.
- e. Traffic management plans.
- f. Pedestrian and cyclist access/safety.
- g. Arrangements for public notification of the works.
- h. Temporary construction signage.
- i. Permanent post-construction signage.
- j. Vehicle movement plans.
- k. Traffic management plans. Pedestrian and cyclist access/safety.

### **16. Construction Management Plan**

In order to enable unencumbered movement of traffic in the public road during construction works, a Construction Management Plan, including a Traffic Management Plan and scaled construction plan prepared by a suitably Chartered and Qualified Chartered Engineer and Qualified Worksite Traffic Controller shall be prepared and submitted with the Construction Certificate according to the following requirements:-

- (a) A copy of the plans shall be submitted for consideration and written approval by Hornsby Shire Council's prior to the release of the Construction Certificate.
- (b) The plans shall detail the order of construction works and arrangement of all construction machines and vehicles (including the parking of workers private vehicles) being used during all stages.
- (c) In order to prevent injury, accident and loss of property, no building materials, work sheds, vehicles, machines or the like shall be allowed to remain in the road reserve area without written consent of Hornsby Shire Council.
- (d) The Plan shall be generally in compliance with the requirements of the Road and Traffic Authority's "Traffic Control at Worksites Manual 1998" and detailing:-
  - (i) Public notification of proposed works;
  - (ii) Long term signage requirements;
  - (iii) Short term (during actual works) signage;
  - (iv) Vehicle Movement Plans, where applicable;
  - (v) Traffic Management Plans;
  - (vi) Pedestrian and Cyclist access and safety;
- (e) The plans shall indicate traffic controls including those used during non-working hours and shall provide pedestrian access and two-way traffic in the public road to be facilitated at all times.

### 17. Fire Safety Schedule

In accordance with clause 168 of the Environmental Planning and Assessment Regulation 2000 fire safety measures must be implemented in the building. A schedule of all proposed and existing Essential Fire Safety Measures to be installed in the building (e.g.: hydrants, hose reels, exit signs, smoke control systems) shall be submitted with the Construction Certificate application and distinguish between the existing and proposed fire safety measures. Should the Construction Certificate involve the use of an alternate solution, the application must also be accompanied by details of the performance requirements that the alternate solution is intended to meet and the assessment methods used to establish compliance with those performance requirements.

## REQUIREMENTS PRIOR TO THE COMMENCEMENT OF ANY WORKS

### 18. 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.*

## **19. 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.*

## **20. 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*

## **21. Erosion and Sediment Control**

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

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

**REQUIREMENTS DURING CONSTRUCTION****22. 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.

**23. Waste Management – Work Practices**

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

To demonstrate compliance with the Waste Management Plan, when any waste is removed from the site, written records must be made of:

- a. The identity of the person removing the waste;
- b. The waste carrier vehicle registration;
- c. A description of the waste (type of waste and estimated quantity);
- d. The site to which the waste is to be taken;
- e. The corresponding tip docket/receipt from the site to which the waste was taken;
- f. Whether the waste is expected to be reused, recycled or go to landfill.

**24. 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 2005*.
- 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.



**25. Survey Report – Finished Floor Level**

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

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

**26. 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.

**27. Street Sweeping**

Street sweeping must be undertaken following sediment tracking from the site along The Pacific Highway during works and until the site is established.

**28. Works near Trees**

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 on the site or an adjacent lot.

**29. 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.

**30. Landfill**

Landfill must be constructed 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.

### 31. Excavated Material

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

#### REQUIREMENTS PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE

*Note: For the purpose of this consent, a reference to 'occupation certificate' shall not be taken to mean an 'interim occupation certificate' unless otherwise stated.*

### 32. Fulfilment of BASIX Commitments

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

### 33. Footpaths

A concrete footpath must be constructed along the full frontage of the subject site in the Pacific Highway and from the Pacific to Netherby St within the public pathway and in accordance Council's *Civil Works Design and Construction Specification, 2005* and the following requirements:

- a. The existing footpath being removed.
- b. Pouring of the concrete footpath to the full frontage of the subject site.
- c. The land adjoining the footpath to be fully turfed.
- d. Segmental block paving to be constructed along the full width of the footway over the full frontage to the site, including the planting of street trees in suitable grates or bays in the footway area.
- e. Any public utility adjustments to be carried out at the cost of the applicant and to the requirements of the relevant public authority.
- f. Council written consent under Sec 138 of the Roads Act is to be obtained prior to the works being undertaken.

### 34. Road Works

All road works approved under this consent must be constructed in accordance with Council's *Civil Works Design and Construction Specification, 2005* and the following requirements:

- a. Replacement of existing non standard kerb and gutter across the frontage of the site in Pacific Highway. The kerb and gutter is to be replaced with standard 150mm high integral kerb and gutter. The existing road pavement is to be saw cut a minimum of 300mm from the existing lip of the gutter and reconstructed. The work is to be completed prior to the issue of the Occupation Certificate.

Concurrence from the RTA under Section 138 of the Roads Act is to be obtained prior to the issue of a Construction Certificate for this work. It is also necessary to obtain written approval of this work from Hornsby Shire Council prior to the commencement of the works.

### **35. 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.

### **36. Creation of Easements**

The following easements are to be created on the title of the property in accordance the *Conveyancing Act 1919*:

- a. 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 lots in favour of Council in accordance with Council's prescribed wording. The position of the on-site detention system is to be clearly indicated on the title.
- b. To register the OSD easement, the restriction on the use of land "*works-as-executed*" details of the on-site-detention system must be submitted verifying that the required storage and discharge rates have been constructed in accordance with the design requirements. The details must show the invert levels of the on site system together with pipe sizes and grades. Any variations to the approved plans must be shown in red on the "*works-as-executed*" plan and supported by calculations.

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

### **37. Works as Executed Plan**

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

### **38. Planter Boxes/ On-slab Planting**

On slab planter boxes must include automatic irrigation, subsoil drainage (proprietary drainage cell, 50mm sand and filter fabric) waterproofing, minimum 500mm planting soil for shrubs and minimum 1000mm planting soil for trees and palms and 75mm mulch to ensure sustainable landscape is achieved

### **39. 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).*

#### **40. Boundary Fencing**

Fencing must be erected along the southern and western property boundaries behind the front building alignment to a height of 2.1 metres and at the sole cost of the applicant.

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

#### **41. Installation of Privacy Devices**

The following device(s) must be installed to maintain an element of privacy towards the adjoining properties:

- a. A 1.6 metre high solid or opaque horizontal louvre screen is to be erected along the southern and western facades, angled in a manner to prevent a direct line of sight to the adjacent property/s. These screens are to be located as follows:
  - (i) Along the first floor and second floor of the southern façade, as indicated on plans A104 and A105; and
  - (ii) along the western elevations of Unit Nos. 21 and 22 as indicated on Plan A104.
- b. A 0.6 metre high solid or opaque horizontal louvre screen is to be erected on top of the 1m high pebble garden wall on the Second Floor (Plan A105), along the western facade, angled in a manner to prevent a direct line of sight to the adjacent property/s.

#### **42. External Lighting**

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

#### **43. Noise Intrusion**

In order to mitigate potential noise intrusion from the Pacific Highway all of the dwellings are to be designed and constructed to ensure that the following LAeq levels are not exceeded:

- a. in any bedroom – 35dB(A) at any time between 10pm and 7am, and
- b) anywhere else within the external enclosing walls of the building (other than a garage, kitchen, bathroom or hallway) – 40 dB(A) at any time.

**44. Storage**

The strata plan is to ensure that the following minimum storage areas are allocated to each unit:

6m<sup>3</sup>/ unit (1 bed units)

8m<sup>3</sup>/ unit (2 bed units)

**45. Accessibility**

The development is to be designed and constructed to provide four units that are Adaptable Housing as defined by AS4299. A suitably qualified access consultant is to certify compliance with this condition prior to the issuance of an occupation certificate.

**46. 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 either:

- a. 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
- b. 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.

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.

**47. Waste Storage Facilities**

Each dwelling/kitchen must be provided with an indoor waste/recycling cupboard for the interim storage of a minimum one day's waste/recycling generation with separate containers for general waste and recyclable materials.

Space must be provided for either individual compost containers for each dwelling or a communal compost container; the siting of which will have regard for potential amenity impacts.

**48. Garbage Collection Easement**

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

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

#### **49. Fire Safety Certificate – Final**

In accordance with Part 9, Division 4 of the Environmental Planning & Assessment Regulation, 2000, the owner of the building must, on completion of the building, provide Council with a certificate in relation to each essential fire safety or other safety measure implemented in the building.

#### **50. Dwelling/Unit/Allotment Numbering**

The allocation of unit numbering must be authorised by Council prior to the numbering of each unit in the development.

#### **51. s94 Infrastructure Contributions**

The payment to Council of a contribution of \$173,306.05 for 22 x 1-bed units and 11 x 2-bed units towards the cost of infrastructure identified in Council's Development Contributions Plan 2007-2011. The contribution is based on the following rates:

<b>Dwelling Size</b>	<b>Number</b>	<b>Contribution Rate</b>	<b>Total Contribution</b>
1 bed units	22 units	\$9,699.90/unit	\$213,397.80
2 bed units	11 units	\$11,639.75/unit	\$128,037.25
Motel (credit)	26 rooms	\$6,466.50/bed	\$168,129(credit)
<b>Total</b>			<b>\$173,306.05</b>

*Note: \* The value of contribution is current as at 22 March 2011. 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.*

### **OPERATIONAL CONDITIONS**

#### **52. 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).

#### **53. Car Parking and Deliveries**

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

- a. All parking areas and driveways are to be sealed to an all weather standard, line marked and signposted.
- b. Car parking, loading and manoeuvring areas to be used solely for nominated purposes.
- c. All vehicular entry on to the site and egress from the site shall be made in a forward direction.

#### **54. Ongoing Waste Management**

The waste collection area in the front setback is to be used for the temporary storage of bins that are placed/removed within 24 hours of scheduled bin collection times. All bins are to be otherwise located in the basement waste rooms.

A site caretaker must be employed and be responsible for moving bins to and from the bin storage area(s) and the waste collection point, washing bins and maintaining storage areas, managing the communal composting area, arranging the prompt removal of dumped rubbish, and ensuring all residents are informed of the waste management system.

#### **55. Landscape establishment**

The landscape works 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.

#### **56. Fire Safety Statement - Annual**

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

**- END OF CONDITIONS -**

#### **ADVISORY NOTES**

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

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

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

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

### **Long Service Levy**

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

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

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

### **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*.

### **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.

### **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.

### **Asbestos Warning**

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

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

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

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

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

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

**4 DEVELOPMENT APPLICATION - SUBDIVISION OF ONE LOT INTO TWO  
37 CARDINAL AVENUE BEECROFT**

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<b>Development Application No:</b>	DA/1375/2010
<b>Description of Proposal:</b>	Subdivision of one lot into two
<b>Property Description:</b>	Lot 22 DP 21629, No. 37 Cardinal Avenue, Beecroft
<b>Applicant:</b>	Clarke Dowdle & Associates
<b>Owner:</b>	Mrs A M Randall and Mrs J F Longhurst
<b>Statutory Provisions:</b>	Hornsby Shire Local Environmental Plan 1994 Residential AS (Low Density – Sensitive Lands)
<b>Estimated Value:</b>	N/A
<b>Ward:</b>	C

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**RECOMMENDATION**

THAT Development Application No. 1375/2010 for the subdivision of one lot into two at Lot 22 DP 21629, No. 37 Cardinal Avenue, Beecroft be refused for the reasons detailed in Schedule 1 of this report.

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**EXECUTIVE SUMMARY**

1. The application proposes the subdivision of one residential lot into two.
2. The proposal would result in the removal of significant trees in non-compliance with the Residential Subdivision Development Control Plan and the Heritage Development Control Plan and the proposal would impact on the critically endangered ecological community of Blue Gum High Forest.
3. Two submissions have been received in respect of the application.
4. It is recommended that the application be refused.

## THE SITE

The site has an area of 1,465.1m<sup>2</sup> and is located on the western side of Cardinal Avenue near the intersection with Chapman Avenue. The site has an average gradient of 12% to the frontage. An existing single storey dwelling house is sited on the land. The dwelling includes an existing driveway and vehicle crossing on the southern side of the site. A second concrete strip driveway extends across the frontage of the dwelling and along the northern boundary. The street frontage includes kerb and gutter and concrete footpath.

The site includes several large remnant trees which form part of a critically endangered ecological community (Blue Gum High Forest). Large remnant trees also feature in Cardinal Avenue and surrounding streets. The remnant trees within the road reserve are an item of environmental heritage.

The site is located within a low density residential area with dwelling houses on relatively large lots with remnant trees and undulating topography. Fernleigh Park is in close proximity to the site.

The site is located 300m east of Pennant Hills Road and 1.17 km west of Becroft Railway Station and shops.

## THE PROPOSAL

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

Proposed Lot 221 has an area of 857.1m<sup>2</sup> and is of dimensions 18.345m width x 46.7m depth. The lot includes the existing dwelling house and retains the existing driveway and vehicle crossing. The lot has an average fall of 13% to the frontage. A new vehicle crossing and right of carriageway is proposed for a driveway proposed along the northern side boundary for access to proposed Lot 222. The nature strip at the frontage includes two significant trees (Tree No. 1 and Tree No. 2).

Proposed Lot 222 has an area of 608m<sup>2</sup> and is of dimensions 18.345m width and 33.0m depth. The lot has an average fall of 10% to the common boundary with Lot 221. The lot includes significant trees Nos. 7, 9 and 12. Trees Nos. 6 and 10 on adjoining land are also significant. Access is via the right of carriageway over proposed Lot 221.

## ASSESSMENT

The development application has been assessed having regard to the '*Metropolitan Plan for Sydney 2036*', 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 Plan for Sydney 2036 and (Draft) North Subregional Strategy

The *Metropolitan Plan for Sydney 2036* 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 2036;

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 its preparation of the *Comprehensive LEP* by the end of 2011.

The *Draft North Subregional Strategy* sets the following targets for the Hornsby LGA by 2031:

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

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

## 2. STATUTORY CONTROLS

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

### 2.1 Hornsby Shire Local Environmental Plan 1994

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

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

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

Clause 14 of the HSLEP prescribes a minimum lot area of 600m<sup>2</sup> for subdivision within the Residential AS Zone.

Clause 15 of the HSLEP prescribes that the maximum floor space ratio (FSR) of development within the Residential AS zone is 0.4:1. The existing dwelling on proposed Lot 221 complies with this requirement.

Clause 18 of the HSLEP sets out heritage conservation provisions within the Hornsby area. The Cardinal Avenue road reserve at the frontage of the site includes remnant trees identified as items of heritage of local significance. The impact of the development on these trees is addressed in a later section of this report.

### 2.2 Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

The application has been assessed against the requirements of the Plan which includes planning principles applicable to the site within the upper part of the harbour catchment. The principles incorporate measures to protect water quality, minimise urban runoff, to conserve

water and to ensure the catchment watercourses, wetland, riparian lands and remnant vegetation are protected.

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

### 2.3 Residential Subdivision Development Control Plan

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

<b>Residential Subdivision Development Control Plan</b>			
<b>Control</b>	<b>Proposal</b>	<b>Requirement</b>	<b>Compliance</b>
<b>Density</b>	Lot 221 – 857.1m <sup>2</sup> Lot 222 – 608m <sup>2</sup>	618m <sup>2</sup> 600m <sup>2</sup>	Yes Yes
<b>Floor Space Ratio</b>	Lot 221 – 0.15:1	0.4:1	Yes
<b>Car parking</b>	Lot 221 – 2 spaces	2 spaces	Yes
<b>Private Open Space</b>	Lot 221 - 196m <sup>2</sup>	120 m <sup>2</sup>	Yes

As detailed in the above table, the proposed development complies with the prescriptive standards within Council's Residential Subdivision DCP. The proposal however does not comply with requirements to retain significant trees. The matters of non-compliance are detailed below, as well as a brief discussion on compliance with relevant performance standards.

#### 2.3.1 Density

The proposed subdivision complies with the numeric prescriptive measures for lot size however proposed Lot 222 does not meet the performance criteria for sufficient area to enable the siting of a dwelling and protect significant trees, i.e.:

*Lot sizes are required to enable dwellings and driveways to be sited to protect natural or cultural features and respond to site constraints.*

The siting of the proposed accessway would adversely impact on significant trees within the road reserve being an identified item of environmental heritage. The proposed indicative building envelope would adversely impact on a group of significant trees identified as a critically endangered ecological community 'Blue Gum High Forest'.

#### 2.3.2 Allotment Layout and Design

The site, including the nature strip, is elevated above the street and the roadway. The proposed subdivision would involve the construction of an additional driveway and

excavation works, adversely impacting on significant trees at the frontage (Tree No. 1 and Tree No. 2). Further, the proposal would substantially increase the paved area at the site frontage and detract from the streetscape.

The proposed 200m<sup>2</sup> indicative building envelope on proposed Lot 222 does not comply with the design prescriptive measure which requires a four metre setback from significant trees. Trees Nos. 7, 9, 10 and 12 would be affected by the proposed building envelope. In this regard the proposed lot could not accommodate a 200sqm indicative building envelope in compliance with Residential Subdivision DCP.

It is considered the proposal does not comply with the performance criteria, i.e.:

*Lot design should minimise impacts on the natural environment. Significant landscape features should be incorporated as an integral part of the subdivision.*

Proposed Lot 222 does not include sufficient area to accommodate development permitted within the Residential AS zone and retain significant trees.

### **2.3.3 Landscaping**

The remnant trees within the road reserve and on the site contribute to visual quality and the character of the area.

The proposed subdivision would adversely impact on significant trees (Nos. 1, 2, 5, 6, 7, 9, 10 and 12) and is considered unsatisfactory in respect to the landscaping element objective, i.e.:

*To preserve significant trees, groups of trees and trees that add to the environmental character of the area or natural vegetation.*

*To provide attractive landscapes which reinforce the function of a street and enhance the amenity of the area.*

The loss of significant trees resulting from the proposed subdivision would detract from the environmental character and amenity of the area. (Refer also to discussion in Section 2.4)

### **2.3.4 Accessway Design**

The existing dwelling includes a driveway and vehicle crossing on the southern side and a concrete strip driveway extending across the frontage and along the northern boundary.

The proposed accessway for Lot 222 is 4m wide, located along the northern boundary and includes a splay at the frontage to avoid significant trees. The proposed accessway would require excavation works which would adversely impact on the significant trees within the road reserve.

The location of the existing concrete strip driveway across the frontage of the existing dwelling is considered unsuitable for construction of an alternate accessway for proposed Lot 222 as the access would detract from the amenity of the existing dwelling and be inconsistent with the accessway design element objective, i.e.:

*To ensure vehicular access to all lots within the subdivision is simple, safe, direct and creates a pleasant environment.*

The proposed accessway does not have adequate regard to the environmental constraints of the site and would result in the unacceptable loss of significant trees.

## 2.4 Heritage Development Control Plan

The trees within the road reserve at the frontage of the site are locally indigenous trees and are identified as an item of environmental heritage 'Cardinal Avenue Road Reserve Street Trees', under the HSLEP. The heritage significance of the trees within the road reserve is noted in Council's Heritage Inventory as follows:

*This large group of native trees are remnant components (canopy trees) of the Blue Gum High Forest (BGHF) community. Blue Gum High Forest in the Sydney Basin Bioregion is listed as a critically endangered ecological community in the Commonwealth Environment Protection and Biodiversity Conservation Act 1999 and NSW Threatened Species Conservation Act 1995. The BGHF community is typically defined by a mixed age structure and diverse floristic composition. This remnant group is dominated by mature Sydney Blue Gums (*Eucalyptus saligna*), Blackbutts (*Eucalyptus pilularis*) and Turpentine (*Syncarpia glomulifera*). Although fragmented and reduced to only scattered remnant canopy trees, the group is considered to be significant in terms of its natural, representative, rarity, ecological/biodiversity, genetic, visual and aesthetic values. The dramatic size and scale of these mature trees create a distinctive sense of place and bushland aesthetic quality to this suburban landscape. These native trees are part of a larger, albeit highly fragmented and modified BGHF remnant community, which is confined to the surrounding shale-capped ridges and slopes.*

*The Cardinal Avenue group contains some exceptional old growth specimen trees in the public verges and large private gardens. Two massive old growth Sydney Blue Gums (*Eucalyptus saligna*), located on the verges adjacent to No. 11 and No 26 Cardinal Avenue, are amongst the largest known specimens in the Hornsby Shire. Remnant native trees of this age structure, size and scale are now rare. They provide essential habitat for a range of tree-dependant fauna and are of individual significance.*

The proposed development would result in the unacceptable loss of two remnant trees within the road reserve. Tree No. 1 is relatively large with a height of 25m. The loss of the trees would adversely impact on the heritage significance of the Cardinal Avenue group in contributing to a distinctive sense of place and bushland aesthetic quality.

## 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 necessitate the removal of twelve trees of which eight trees are identified as 'significant trees' under Council's Tree Management Plan. It is considered that the removal of the significant trees is unacceptable in the circumstances as the trees form part of a critically endangered ecological community.

The site is mapped as containing Blue Gum High Forest Critically Endangered Ecological Community (CEEC) listed under the *Threatened Species Conservation Act 1995*. This determination includes remnant isolated trees without a native understorey. The site contains *Angophora costata* and *Eucalyptus saligna* trees which form part of NSW Scientific Committee's Determination of listing Blue Gum High Forest as a CEEC.

The applicant has provided a *Flora and Fauna Report* that includes an Assessment of Significance ('seven part test') for Blue Gum High Forest CEEC prepared by Clarke Dowdle and Associate Pty Ltd (dated October 2010). The 'seven part test' states that:

- *'The proposed subdivision would not involve the removal of native vegetation, however clearing may be associated with the construction of a dwelling on the newly created allotment.'*
- *'The single Sydney Blue Gum would be retained and therefore the action proposed is unlikely to cause an adverse impact on the community such that its local occurrence is likely to be placed at risk of extinction'*
- *'It is also unlikely to substantially and adversely affect modify the composition of the ecological community such that its local occurrence is likely to be placed at risk of extinction.'*

The conclusion states that:

*"The proposal would fragment or further isolate the community or affect its long term survival."*

The Arboriculture Assessment prepared by *Advanced Treescape Consulting* dated 8<sup>th</sup> February 2011 states that:

- Tree 1 (*Eucalyptus saligna*) comprises a Tree Protection Zone (TPZ) of 9.6m and a Structural Root Zone (SRZ) of 3.4 metres.
- Tree 2 (*Angophora costata*) comprises a Tree Protection Zone (TPZ) of 3.84m and a Structural Root Zone (SRZ) of 1.7 metres.
- Tree No. 7 (*Angophora costata*) comprises a Tree Protection Zone (TPZ) of 9m and a Structural Root Zone (SRZ) of 3.4 metres.
- Tree No. 9 (*Angophora costata*) comprises a Tree Protection Zone (TPZ) of 8.4m and a Structural Root Zone (SRZ) of 3.4 metres.
- Tree No. 12 (*Angophora costata*) comprises a Tree Protection Zone (TPZ) of 4.92m and a Structural Root Zone (SRZ) of 2.7 metres.
- These trees would not be impacted by the proposal.

It is considered that all of the significant trees would be impacted as a result of driveway for the subdivision and the construction of a future dwelling based upon the size of the TPZs and SRZs of the subject trees described in the *Arboriculture Assessment* prepared by *Advanced Treescape Consulting*.



It is considered that if a future dwelling were to be constructed on proposed Lot 222 the available space for a dwelling and driveway would adversely affect all of these remnant BGHF trees and they would subsequently require removal. Therefore, the proposal would have a significant and an unacceptable impact on the local population of Blue Gum High Forest.

### **3.2 Built Environment**

The proposed subdivision is consistent with the pattern of development occurring in the locality.

### **3.3 Social Impacts**

The proposal would not result in a social impact.

### **3.4 Economic Impacts**

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

## **4. SITE SUITABILITY**

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

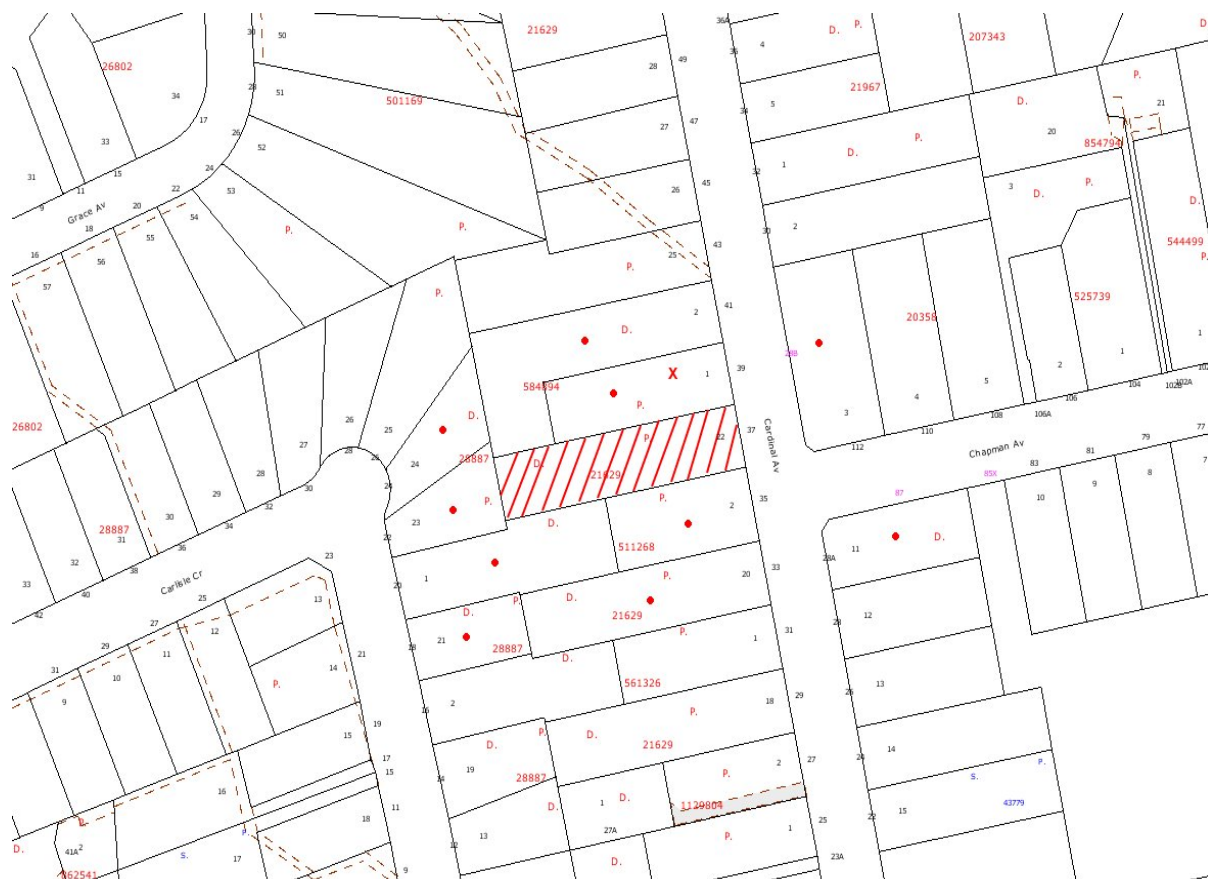
The site includes remnant trees identified as part of a critically endangered ecological community. The site is otherwise suitable for development subject to the remnant trees being conserved and protected.

## **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 8 November and 1 December 2010 in accordance with Council’s Notification and Exhibition Development Control Plan. During this period, Council received two submissions. The map below illustrates the location of the nearby landowner who made a submission, who is in close proximity to the development site.



**NOTIFICATION PLAN**

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

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

- Loss of a Sydney Blue Gum and trees that form part of critically endangered ecological community.

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

**6. THE PUBLIC INTEREST**

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

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

The proposed subdivision would adversely impact on significant trees identified as part of a critically endangered ecological community and would not be in the public interest.

## CONCLUSION

The proposal is for subdivision of one residential lot into two with the retention of the existing dwelling on the site.

The site includes large remnant trees identified as part of a critically endangered ecological community 'Blue Gum High Forest'. The trees within the road reserve are identified as an item of environmental heritage.

The proposal would result in the removal of eight significant trees, impacting on the critically endangered ecological community and the heritage significance of remnant trees within the road reserve. The proposal does not comply with the requirements of the Residential Subdivision DCP in respect to performance criteria for density and allotment design and the element objectives for landscaping and accessway design.

It is recommended that the application be refused.

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

ROD PICKLES  
Manager - Assessment Team 2  
Planning Division

SCOTT PHILLIPS  
Executive Manager  
Planning Division

### Attachments:

1. Locality Plan
2. Subdivision Plan
3. Tree Plan

File Reference: DA/1375/2010  
Document Number: D01636041

**SCHEDULE 1**

1. The proposal is unsatisfactory in respect to Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act, 1979, as the proposal does not comply with the Residential Subdivision Development Control Plan as follows:
  - 1.1 The proposal results in the removal of significant trees and does not meet the density performance criteria.
  - 1.2 The proposal results in the removal of significant trees and does not meet the allotment design performance criteria.
  - 1.3 The proposal does not meet the landscaping element objective.
  - 1.4 The proposal does not meet the accessway design element objective.
2. The proposal is unsatisfactory in respect to Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act, 1979, as the proposal does not comply with the Heritage Development Control Plan as follows:
  - 2.1 The proposal results in the loss of heritage listed remnant trees within the Cardinal Avenue road reserve.
3. The proposal is unsatisfactory in respect to Section 79C(1)(b) of the Environmental Planning and Assessment Act, 1979, as the proposal would result in significant impact on Blue Gum High Forest a critically endangered ecological community under the *Threatened Species Conservation Act 1995*.
4. The proposal is unsatisfactory in respect to Section 79(1)(e) of the Environmental Planning and Assessment Act, 1979, as the proposal is not in the public interest.

**- END OF REASONS FOR REFUSAL -**

**5 DEVELOPMENT APPLICATION - DWELLING-HOUSE  
156 BEECROFT ROAD, BEECROFT**

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<b>Development Application No:</b>	DA/935/2010
<b>Description of Proposal:</b>	Demolition of existing dwelling and erection of a dwelling-house
<b>Property Description:</b>	Lot A, DP 396364, No. 156 Beecroft Road, Cheltenham
<b>Applicant:</b>	Clarendon Homes
<b>Owners:</b>	Dr Selvanayagam Anandasivam and Nirmala Anandasivam
<b>Statutory Provisions:</b>	Hornsby Shire Local Environmental Plan, 1994 Residential AS (Low Density-Sensitive Lands)
<b>Estimated Value:</b>	\$425,460
<b>Ward:</b>	C

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**RECOMMENDATION**

THAT Development Application No. 935/2010 for the demolition of a dwelling-house and the erection of a dwelling-house at Lot A, DP 396364, No. 156 Beecroft Road, Beecroft be approved subject to the conditions of consent detailed in Schedule 1 of this report.

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**EXECUTIVE SUMMARY**

1. The application seeks development consent for the demolition of a dwelling-house and the erection of a dwelling-house.
2. The proposal generally complies with the requirements of the *Hornsby Shire Local Environmental Plan, 1994 (HSLEP)* and Council's *Development Control Plans* applicable to the development.
3. A Red Sticker has been placed against the application and accordingly it has been referred to Council for determination.
4. Four submissions have been received in respect of the application.
5. It is recommended that the application be approved.

## THE SITE

The rectangular, 1,300m<sup>2</sup> site is located on the south western side of Beecroft Road Cheltenham, between Mason Avenue and Murray Road and contains a single storey dwelling-house. The site has a 15% cross-fall from the rear (western) to the front (eastern) corner. Numerous exotic and native trees are growing on the site including three Turpentine and an Angophora in the front yard, all of which have been assessed as significant.

The site is located within the Beecroft Cheltenham Heritage Conservation Area and is in the vicinity of two heritage-listed items, namely the dwelling-house “*Quambi*” at 152 Beecroft Road and the dwelling-house at No. 6 Mason Avenue.

## THE PROPOSAL

The application proposes the demolition of a dwelling-house and the construction of a two storey dwelling-house with a guest room, ensuite, laundry, cellar, kitchen, pantry, meals room, living room, outdoor eating area, media room, store room, study and a single space garage at ground floor level and four bedrooms, two ensuite, a bathroom, a robe room, a gallery and a rumpus room at first floor level.

To address concerns that were raised with respect to the original proposal in terms of its impact on trees growing on or near the site, amended plans and an arborist’s report were submitted. These amended plans and documents are the subject of this report.

## ASSESSMENT

The development application has been assessed having regard to the ‘*Metropolitan Plan for Sydney 2036*’, 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 Plan for Sydney 2036 and (Draft) North Subregional Strategy

The *Metropolitan Plan for Sydney 2036* 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 2036, 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 its preparation of the *Comprehensive LEP* by the end of 2011.

The *Draft North Subregional Strategy* sets the following targets for the Hornsby LGA by 2031:

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

The proposed development would be consistent with the draft Strategy by contributing towards housing choice in the locality.

## 2. STATUTORY CONTROLS

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

### 2.1 Hornsby Shire Local Environmental Plan, 1994

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

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

The proposed development is defined as “demolition” and a “dwelling-house” under the *HSLEP*. Both land uses are permissible in the zone with Council’s consent.

Clause 15 of *HSLEP* prescribes that the maximum floor space ratio (FSR) of development within the Residential AS (Low Density-Sensitive Lands) zone is 0.4:1. The development has an FSR of 0.36:1, which complies with the standard.

Clause 18 of *HSLEP* sets out heritage conservation provisions within the Hornsby Shire. The site is located within the Beecroft Cheltenham Heritage Conservation Area and is in the vicinity of two heritage listed items namely the dwelling-house “*Quambi*” at 152 Beecroft Road and the dwelling-house at No. 6 Mason Avenue. Both these properties are listed as heritage items of local significance under the provisions of Schedule D (Heritage Items) of the *HSLEP*. The heritage impacts of the development are further discussed in Section 2.4 of this report.

### 2.2 Dwelling House Development Control Plan

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

<b>Dwelling House Development Control Plan</b>			
<b>Control</b>	<b>Proposal</b>	<b>Requirement</b>	<b>Compliance</b>
<b>FSR</b>	0.36:1	0.40:1	Yes
<b>Site Coverage</b>	23%	40%	Yes

<b>Height</b>	9m	9m	Yes
<b>Car Parking</b>	2 space	2 spaces	Yes
<b>Length of Building</b>	21.2m	24m	Yes
<b>Unbroken Wall Length</b>	12.3m (south east) 11.3m (north west)	10m	No
<b>Private Open Space</b>	220m <sup>2</sup>	120m	Yes
<b>Landscaping</b>	70%	45%	Yes
<b>Setbacks</b>			
- Front	29m	6m	Yes
- Side (east)	3.07m	1m	Yes
- Side (west)	1.37m	1m	Yes
- Rear	10.52m	3m	Yes

As detailed in the above table, the proposed development does not comply with all prescriptive standards within Council's *Dwelling House Development Control Plan (DCP)*. The matters of non-compliance are detailed below, as well as a brief discuss discussion on compliance with the relevant performance standards.

### 2.2.1 Design

The application proposes unbroken wall lengths of 12.3 metres and 11.3 metres within the south eastern and north western elevations respectively, which do not comply with the 10 metre prescriptive measure of the Design element. The purpose of this requirement is to avoid a symmetrical and monotonous design when viewed from adjacent premises. In this instance, there is sufficient articulation incorporated in the design through the inclusion of windows, doorways and indentations to comply with this the objective of this standard.

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

### 2.2.2 Setbacks

The purpose of the setback controls is to ensure that development complements the streetscape, provides for landscaping and maintains reasonable amenity to neighbouring properties in terms of privacy and sunlight.

In this instance, the development would be located 29 metres from the Beecroft Road boundary and would be effectively screened from view behind an existing 2 metre high "besserblock" front fence and a stand of mature trees in the front yard.

The side and rear boundary setbacks of the development comply with the 1 metre and 3 metre prescriptive measures respectively. The impact of the development on adjacent properties in terms of privacy and solar access is addressed in Sections 2.2.3 and 2.2.4 of this report.

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



### 2.2.3 Privacy

The first floor of the proposal includes a rumpus room and an adjacent balcony which does not comply with the prescriptive measures of the Privacy element which seeks to have living and entertaining areas located on the ground floor only. This rumpus room is served by a window within the north western elevation which may allow overlooking of the adjacent premises, No. 154 Beecroft Road. To address this issue, a condition is recommended requiring the sill height to be raised to 1.5m above the finished floor level.

Whilst this rumpus room is also served by three narrow windows within the north eastern façade, they face the driveway, front yard and street only and would have negligible privacy impacts on adjacent properties.

Given the limited 3.2m<sup>2</sup> area of the balcony off the rumpus room, its orientation towards Beecroft Road and its 12 metre setback from the adjacent premises No. 154 Beecroft Road, it is considered that it is acceptable and contributes to the design interest of the façade.

As a 'planning principle', views from the first floor level bedroom windows are considered to be acceptable, on the basis that views from such windows are much less frequent than from a living room or other actively used room. Also, it is common for such windows to be fitted with curtains or blinds that would further restrict views to neighbouring properties. The views of the rear of No. 6 Mason Ave from proposed bedroom 3 would be restricted due to existing landscaping including two large pine trees.

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

### 2.2.4 Solar Access

The shadows cast from the proposal would allow at least four hours of sunshine to the private open space required for the adjacent properties No. 6 Mason Avenue and No. 152A Beecroft Road on 22 June (the winter solstice). The shadows cast from the proposal would allow north facing windows to living areas of these adjacent dwelling-houses to receive three hours of sunshine over a portion of their surface on 22 June.

The proposal meets the prescriptive measures and objectives of the Solar Access element and is considered acceptable.

### 2.2.5 Vehicle Access and Parking

The purpose of this control is to ensure that vehicular access to dwelling-houses is simple, safe and direct and the prescriptive measures for driveways serving properties that front busy road seeks to ensure that vehicles can enter and leave the site in a forward direction. In this regard, a condition is recommended that a turning area be provided. The turning area would have minimal impacts on the existing vegetation, subject to it being laid on grade within the area nominated (shown clouded) on the site plan.

The application proposes a single garage and an open parking space to the side of the proposed driveway which complies with the prescriptive measures of the Vehicle Access and Parking element.

The proposal meets the objectives of the Vehicle Access and Parking element and is considered acceptable.

### 2.2.6 Drainage Control

There is sufficient fall to allow all collected stormwater from the development to be discharged to the street gutter in Beecroft Road.

To minimise impacts on the root zones of the two Cypress trees situated within the adjacent premises No. 6 Mason Avenue, Cheltenham, a condition is recommended requiring all stormwater pipes to be excavated adjacent to the north western side boundary only.

It is noted that the sewer mains of Sydney Water are adjacent to the rear of the site and that excavations for the installation of sewerage lines would be located clear of the south eastern side boundary.

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

### 2.2.7 Acoustics

The purpose of this control is to ensure that development provides a reasonable environment for residents. A condition is recommended to control the days and hours of demolition and construction.

As the application proposes the installation of an air conditioner, a condition is recommended requiring its installation and operation in accordance with the requirements of the *Protection of the Environment Operations Act, 1997*.

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

## 2.3 State Environmental Planning Policy (Exempt and Complying Development)

On 27 February 2009, SEPP (Exempt and Complying Development) commenced operation. Under the SEPP, the Housing Code outlines how residential developments including:

- detached one and two storey dwellings,
- home extensions and
- other ancillary development, such as swimming pools,

can proceed on lots of greater than 450m<sup>2</sup> in size as complying development with council or accredited certifier approval.

Whilst the subject allotment is excluded from the SEPP on the basis that it is in a heritage conservation area, the proposal would, subject to the lowering of the dwelling height by 500mm, comply in all other respects to the development standards under the SEPP, including the setbacks from property boundaries and trees, the placement of windows, density, privacy, landscaping, floor area and site coverage.

## 2.4 Heritage Development Control Plan

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

The existing dwelling-house on the subject premises represents a circa 1950s, brick and tile structure. This building has no heritage significance and it would be unreasonable to require

its retention or redevelopment, given its limited architectural merit. An independent Heritage Impact Statement (HIS) prepared by Sustainable Urbanism and dated September 2010, concludes that “*given the research into the existing house, it is considered that the house is not that significant, and is not important enough to be retained.*” This finding was supported by Council’s Heritage Committee, which raised no objections to its demolition.

The heritage values of the site are enhanced by a stand of significant indigenous trees growing in the front yard. Whilst the proposed dwelling-house is a contemporary design, an independent Heritage Impact Statement (HIS) and Council’s Heritage Committee have both concluded that subject to the exterior building materials being recessive and the roof tiles being either a muted red or a recessive grey colour, the development would not compromise the heritage values of the area or have adverse impacts on the adjacent heritage-listed items at No. 152 Beecroft Road and No. 6 Mason Avenue.

The proposal meets the requirements of Council’s Heritage DCP and is considered acceptable.

### **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**

##### **Flora and Fauna Protection**

The site contains numerous exotic trees. The site also contains a number of native trees, including a group of four trees in the front yard area (three Turpentine trees and an Angophora) that are identified as being significant. Given that the dwelling-house and driveway would be located outside the critical root zone of these trees, the siting of the development is considered to be acceptable and would not impact upon any significant trees.

The development is also in the vicinity of two Cypress trees, (T8 and T9) located on the adjacent property No. 6 Mason Avenue, Cheltenham. To address impacts that the originally designed dwelling-house may have had on these trees, amended plans were submitted relocating the dwelling-house 3.07 metres from the common boundary line. The amended design proposes the use of pier and beam construction and hand excavations for the footings along the south eastern elevation, based on the recommendations contained in an “Arboricultural Impact Assessment” prepared by Adrian Swain dated 09 March, 2011. The modified design of the development is considered acceptable.

Three trees (numbered T6, T7 and T10) would be removed as part of the development. None of these trees are identified as being significant. The removal of these trees would not adversely impact upon the landscape setting of the site.

The proposal meets the objectives of the Flora and Fauna Protection element of Council’s Dwelling House DCP and is considered acceptable.

#### **3.2 Built Environment**

The surrounding area is characterised by houses and landscaped areas that contribute to the heritage values of the Beecroft Cheltenham Heritage Conservation Area. The proposed

dwelling-house would not be out of character with the development permitted in the locality, subject to the design amendments identified in the conditions of consent.

### **3.3 Social and Economic Impacts**

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

## **4. SITE SUITABILITY**

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

The site is appropriately zoned to accommodate a dwelling-house. There are no natural or built hazards preventing the construction of a dwelling-house with the exception of the stand of significant trees located in the front yard area. The plans were amended to ensure these trees are preserved.

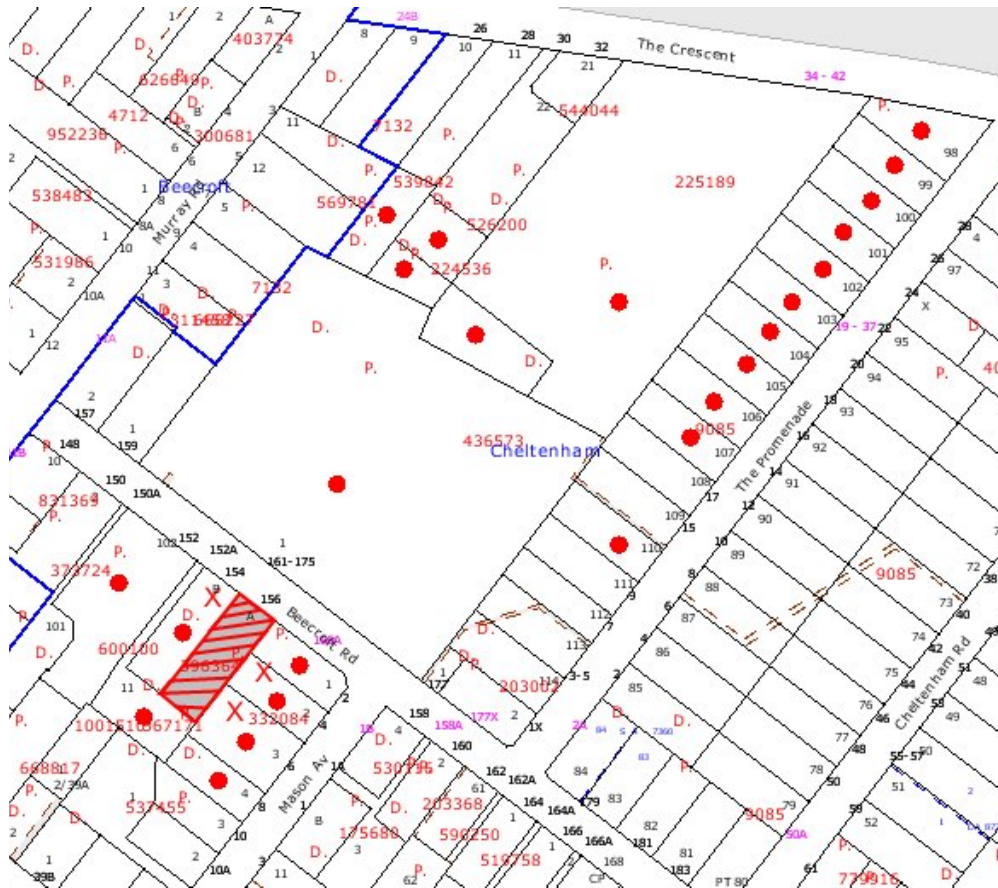
## **5. PUBLIC PARTICIPATION**

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


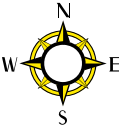
### **5.1 Community Consultation**

The proposed development was placed on public exhibition and was notified to adjoining and nearby landowners between 4 August 2010 and 18 August 2010, in accordance with Council’s Notification and Exhibition DCP. During this period, Council received three submissions.

Amended plans were placed on public exhibition and were notified to adjoining and nearby landowners between 1 February 2011 and 15 February 2011 in accordance with Council’s Notification and Exhibition DCP. During this period, Council received one submission. The map below illustrates the location of the nearby landowner who made a submission to the application.



**NOTIFICATION PLAN**

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

One submission objected to the amended development generally in terms relating to privacy, solar access and the impact on two conifers. The merits of the matters raised in the submission have been addressed in the body of this report.

**6. THE PUBLIC INTEREST**

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

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

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

## CONCLUSION

The application proposed the demolition of a dwelling-house and erection of a two storey dwelling-house in a style that would be in keeping with the surrounding area.

The development 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*.

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. Site Plan
3. Landscape Plan
4. Floor Plans
5. Elevations
6. Section

File Reference: DA/935/2010  
Document Number: D01637397

**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>
29906296 – Pages 2 - 7 Rev 1	Clarendon Homes	03.05.10
L-01	ecodesign	22.06.10

**2. Removal of Existing Trees**

This development consent only permits the removal of 3 trees numbered T6, T7 and T10 as identified on Tree Location Plan prepared by Eco Design (as part of the Report submitted by Arboreport) dated 11 October, 2010. 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. A turning area is to be incorporated into the design of the driveway, as amended (shown clouded) on the site plan, to enable motor vehicles to leave the premises in a forward direction towards Becroft Road. To minimise damage to the adjacent significant trees, the driveway surface is to be laid on grade, without excavation into, or filling of, the surrounding ground.
- b. To minimize impacts of the development on the two Cypress trees, (T8 and T9) located on the adjacent property No. 6 Mason Avenue, all stormwater drainage lines and any other services serving the development are to be located adjacent to the north western side of the property.

- c. To establish an acceptable level of privacy in relation to the adjacent premises No. 154 Beecroft Road, the sill height of the rumpus room window within the north west elevation is to be raised to 1.5 metres above finished floor level.

<b>REQUIREMENTS PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE</b>
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#### **4. Schedule of Finishes**

Documentation from Sustainable Urbanism must be submitted to the principal certifying authority (PCA) with the application for the construction certificate, confirming that the proposed building finishes are in accordance with the recommendations contained within the Heritage Impact Statement prepared by Peter Robinson of Sustainable Urbanism dated September 2010. A copy of this certificate must be submitted to Hornsby Council with the approved construction certificate pursuant to clause 142(2) of the Environmental Planning and Assessment Regulation 2000.

#### **5. Building Code of Australia**

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

#### **6. 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.

#### **7. Notification of Home Building Act, 1989 Requirements**

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

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

*Note: If arrangements for doing the residential building work are changed while the work is in progress so that the information notified becomes out of date,*



*further work must not be carried out unless the principal certifying authority for the development to which the work relates (not being Council) has given Council written notification of the updated information.*

## 8. 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 DEMOLITION OR CONSTRUCTION WORKS

## 9. Tree Protection Barriers

Tree protection barriers must be installed as follows:

- a. Tree protection fencing must be erected around trees numbered T2, T3, T4, T4A and T5 to be retained at a 3 metre setback. This 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. The fencing is to be maintained until building works are completed and the site is stabilised and landscaped.
- b. To protect the two Cypress pine trees numbered T8 and T9 on the adjacent premises No. 6 Mason Avenue, tree protection fencing must be erected adjacent to the south eastern elevation of the dwelling-house at a minimum 2.5 metres from the common boundary line. Two signs with the words “*KEEP OUT - ENVIRONMENTAL PROTECTION ZONE*” measuring not less than 400mm x 300mm must be erected in a prominent position and attached to the protection fencing. This fencing and signage must be maintained until building works are completed and the site is stabilised and landscaped.
- c. 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 the Tree Protection Zones (as determined using the Australian Standard AS 4970-2009) of the trees numbered T2, T3, T4, T4A, T5, T8 and T9 which are all to be retained and protected.

## 10. Erection of Construction Sign

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

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

- c. Stating that unauthorised entry to the work site is prohibited.

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

#### **11. 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*.

#### **12. Erosion and Sediment Control**

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

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

### **REQUIREMENTS DURING DEMOLITION AND CONSTRUCTION**

#### **13. 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.

#### **14. Construction Techniques to Protect Trees**

The dwelling-house and driveway must be constructed using the following techniques to protect trees:

- a. The dwelling-house must be constructed using a drop edge beam to the south eastern boundary incorporating pier and beam footings to avoid severance of the roots for trees numbered T8 and T9 situated on the adjacent premises at No. 6 Mason Avenue; and
- b. All required tree protection measures are to be maintained in good condition for the duration of the construction period. All works, including driveways and retaining walls within 6 metres of any trees required to be retained (whether or not on the subject property, and pursuant to this consent or the *Tree Preservation Order*), must be carried out under the supervision of an

'AQF Level 5 Arborist' and a certificate submitted to the PCA detailing the methods used to preserve the trees.

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

## 15. 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 2005*; and
- 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.

## 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. Disturbance of Existing Site

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

## 18. Survey Report – Finished Floor Level

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

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

**REQUIREMENTS PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE**

*Note: For the purpose of this consent, a reference to 'occupation certificate' shall not be taken to mean an 'interim occupation certificate' unless otherwise stated.*

**19. Fulfilment of BASIX Commitments**

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

**20. Stormwater Drainage**

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

**21. Internal Driveway/Vehicular Areas**

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

- a. Design levels at the front boundary be obtained from Council;
- b. The driveway be a rigid pavement;
- c. The driveway grade must not exceed 25 percent and changes in grade must not exceed 8 percent; and
- d. Conduit for utility services including electricity, water, gas and telephone must be provided.

**22. Vehicular Crossing**

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

- a. The footway area to be restored by turfing; and
- b. Approval obtained from all relevant utility providers that all necessary conduits be provided and protected under the crossing.

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

**23. 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.

**24. Retaining Walls**

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

**25. Installation of Air Conditioner**

To protect the amenity of adjacent properties, the condenser unit for the air conditioner must be sited a minimum of 2 metres from the property boundary of any adjoining residential premises unless a certificate has been prepared by a suitably qualified person confirming that the unit has been tested for heating and cooling on the highest settings and that the noise levels generated do not exceed 5 dB(A) above background noise levels when tested at the property boundary between 8 pm and 10 pm.

**- 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 (PCA) 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*.

## Dial Before You Dig

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

## Asbestos Warning

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

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

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

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

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

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

**6 DEVELOPMENT APPLICATION - SECTION 96(2) - SUBDIVISION OF ONE LOT INTO TWO  
39 HANNAH STREET BEECROFT**

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<b>Development Application No:</b>	DA/1470/2009/A
<b>Description of Proposal:</b>	Section 96(2) modification to remove Tree No. 18 and revise the Voluntary Planning Agreement
<b>Property Description:</b>	Lot 9 DP 7484, No. 39 Hannah Street, Beecroft
<b>Applicant:</b>	P S Graham & Associates
<b>Owner:</b>	Mr C G Cheng
<b>Statutory Provisions:</b>	Hornsby Shire Local Environmental Plan 1994 Residential AS (Low Density – Sensitive Lands)
<b>Estimated Value:</b>	N/A
<b>Ward:</b>	C

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**RECOMMENDATION**

THAT Development Application No. 1470/2009/A for the subdivision of one lot into two at Lot 9 DP 7484, No. 39 Hannah Street Beecroft be refused for the reasons detailed in Schedule 1 of this report.

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**EXECUTIVE SUMMARY**

1. The application proposes to modify a consent for a two lot residential subdivision to allow the removal of Tree No. 18 and to revise the Voluntary Planning Agreement to increase the monetary contribution to \$25,000.
2. The proposed modification does not comply with the landscaping element objective of the Residential Subdivision Development Control Plan and would negatively impact on the natural environment.
3. Four submissions have been received in respect of the application.
4. It is recommended that the application be refused.

## HISTORY OF THE APPLICATION

On 8 October 2010 Council at its Planning meeting approved DA/1470/2009 for the subdivision of one lot into two. The development consent included a condition for the applicant to enter into a Voluntary Planning Agreement to off-set the loss of Blue Gum High Forest on the site.

The Voluntary Planning Agreement was publicly exhibited between 5 January 2011 and 2 February, 2011 and is pending determination of this application before reporting to Council.

## THE SITE

The site has an area of 1,693.5m<sup>2</sup>, is of dimensions 19.8m x 85.4m and is located on the southern side of Hannah Street. The site has a gradual fall from the frontage and falls more steeply over the rear half of the site. The site contains an existing single storey brick and tile dwelling, with an elevated deck and lower ground floor at the rear. The rear of the site includes Blue Gum High Forest and several large trees of which Tree No. 18 was a key factor in the subdivision design, in order to retain the tree.

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

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

Minor works have been undertaken for the subdivision and the vacant allotment is currently listed for sale.

## THE APPROVED DEVELOPMENT

The approved development is for subdivision of one lot into two. Approved Lot 1 has an area of 688m<sup>2</sup> and approved Lot 2 has an area of 758m<sup>2</sup> excluding the access handle. The approval permits the removal of 21 trees from the site. The existing dwelling is retained.

## THE MODIFICATION

The proposed modification is to allow the removal of Tree No. 18 and to review the Voluntary Planning Agreement (VPA) to increase the monetary contribution from \$20,000 to \$25,000.

The applicant submits Tree No. 18, a Sydney Blue Gum (*Eucalyptus saligna*), is a major obstacle to the construction of a dwelling and the sale of approved Lot 2.

## ASSESSMENT

The development application has been assessed having regard to the 'Metropolitan Plan for Sydney 2036', 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. STATUTORY CONTROLS

### 1.1 Section 96(2) Environmental Planning and Assessment Act, 1979

The provision enables Council to modify a development consent if it is satisfied the development is substantially the same, if it has consulted relevant authorities, if it has notified the proposal and considered submissions. In determining the proposed modification Council is to consider relevant matters under Section 79C(1).

Consultation with other authorities is not required for the development. The application was notified in accordance with the provision and, as there is no change proposed to the approved lots, is substantially the same development as approved.

### 1.2 Hornsby Shire Local Environmental Plan 1994

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

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

The proposed modification does not raise any inconsistency with the zoning objectives and is permissible with Council's consent.

Clause 14 of the HSLEP prescribes a minimum lot area of 600m<sup>2</sup> for subdivision within the Residential AS Zone. The proposed modification does not alter the area of the approved lots which comply with this requirement.

Clause 15 of the HSLEP prescribes that the maximum floor space ratio (FSR) of development within the Residential AS zone is 0.4:1. The existing dwelling on approved Lot 1 complies with this requirement.

Clause 18 of the HSLEP sets out heritage conservation provisions within the Hornsby area. The site is within the Beecroft-Cheltenham Heritage Conservation Area and is in the vicinity of a heritage item. It is considered the proposed removal of Tree No. 18 would not impact on the heritage significance of the area.

### 1.3 Residential Subdivision Development Control Plan

The proposed modification to remove Tree No. 18 has been assessed having regard to the relevant performance and prescriptive design standards within the Landscaping Element Objective of Council's Residential Subdivision Development Control Plan (Residential Subdivision DCP).

Tree No. 18 is identified as a significant tree. The proposed removal of the tree does not comply with the landscaping element objective, i.e.:

*To preserve significant trees, groups of trees and trees that add to the environmental character of the area or natural vegetation.*

The approved subdivision plan includes an irregular shaped indicative building envelope designed to retain Tree No. 18. In the assessment of the approved development, dwelling house plans were submitted to demonstrate the building envelope was acceptable in accommodating a future dwelling house appropriate for the site. Similarly, the approved accessway is designed to retain Tree No. 18.

## **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*”.

### **2.1 Natural Environment**

The proposed removal of Tree No. 18 would further diminish Blue Gum High Forest and impact on the critically endangered ecological community. The required Assessment of Significance (‘seven part test’) in accordance with s.5A of the *Environmental Planning and Assessment Act 1979* has not been submitted for the proposed modification.

Of the sixty three trees on the site, the twenty one trees approved for removal are subject to the implementation of a ‘Restricted Development Area’ for restoration and conservation of Blue Gum High Forest on the site. In addition, the applicant is required to enter into a VPA to offset the loss of Blue Gum High Forest on Council owned land at Ray Park Carlingford.

The retention of Tree No. 18 is integral to the approved subdivision plan which by design limits the developable area in order to retain Blue Gum High Forest on the site. The proposed removal of the tree is considered outside the ambit of the VPA which defines an area for replacement planting to off-set Blue Gum High Forest lost to the development of the site. The VPA formed the nexus for Council to approve the subdivision and was only considered appropriate in the circumstances with regard to Council’s bushland restoration work at Ray Park. The proposal to remove the tree for commercial expediency is considered untenable on planning grounds and other options should be considered concerning the sale of the land.

The proposed removal of the tree would further diminish Blue Gum High Forest and impact on the critically endangered ecological community and the natural environment.

### **2.2 Built Environment**

The proposed removal of Tree No. 18 is not required for the installation of utility services or construction of the accessway for approved Lot 2. The applicant has also demonstrated in the original development application that a dwelling could be constructed on the lot without impacting on Tree No. 18.

## **3. SITE SUITABILITY**

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

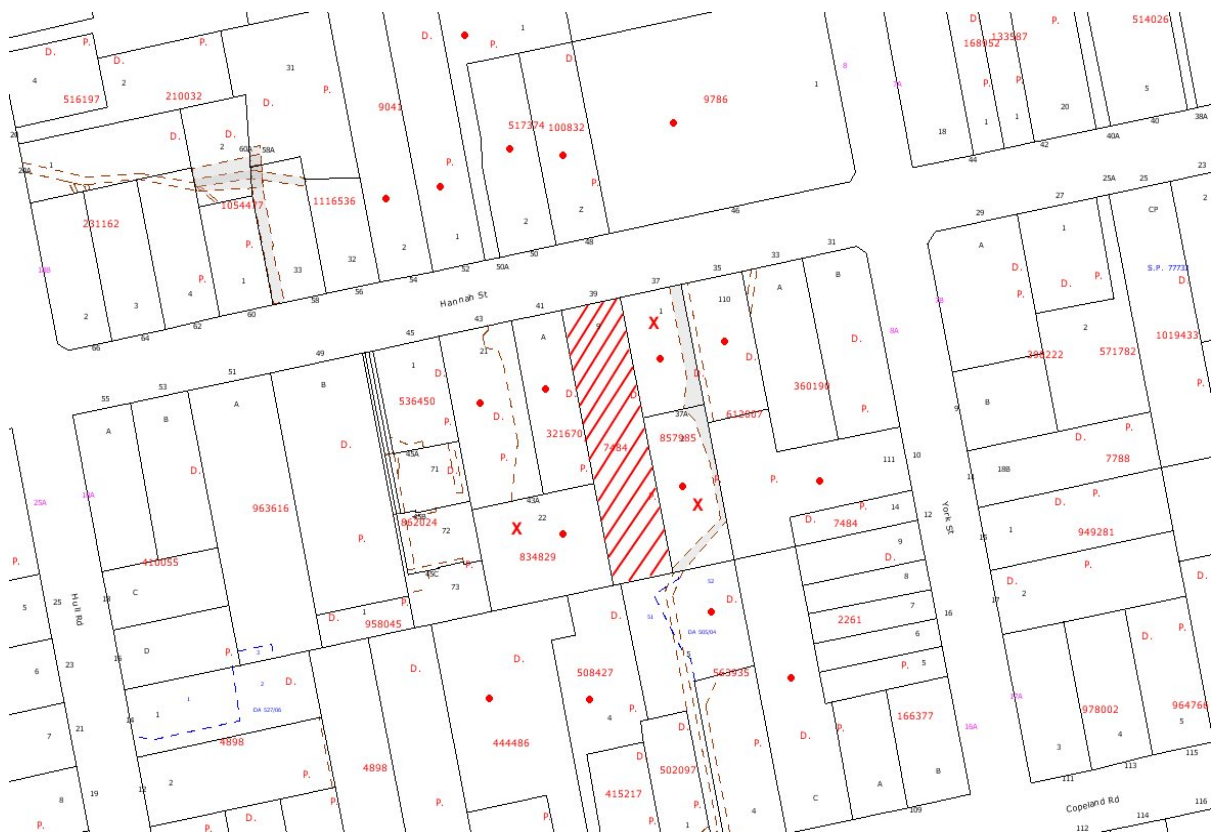
The site includes Blue Gum High Forest and development needs to be sensitively designed to conserve and protect the critically endangered ecological community.

**4. PUBLIC PARTICIPATION**


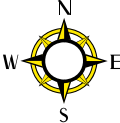
Section 79C(1)(d) of the Act requires Council to consider “any submissions made in accordance with this Act”.

**5.1 Community Consultation**

The proposed development was placed on public exhibition and was notified to adjoining and nearby landowners between 30 March and 13 April 2011 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>	X SUBMISSIONS RECEIVED	 PROPERTY SUBJECT OF DEVELOPMENT	
ONE SUBMISSION OUTSIDE MAP RANGE			

Four submissions objected to the proposed modification, generally on the following grounds:

- Other factors for the no sale;
- Applicant should consider other options to sell the land;
- Approved building site satisfactory to retain Tree No. 18;

- Retention of Tree No. 18 crucial to approved subdivision;
- Loss of Blue Gum High Forest habitat.

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

## 5. THE PUBLIC INTEREST

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

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

The proposed modification would remove a significant tree identified as part of a critically endangered ecological community. It is not considered necessary to remove the tree in order for the subdivision to be completed. Accordingly approval of the application would not be in the public interest.

## CONCLUSION

The proposed modification is to remove Tree No. 18 and revise the Voluntary Planning Agreement to increase the contribution from \$20,000 to \$25,000.

The proposal to remove a significant tree does not comply with the landscaping element objective of the Residential Subdivision DCP. The removal of the tree is not required to complete the subdivision and construct a future dwelling house.

The proposed modification is contrary to the approved subdivision design to retain Blue Gum High Forest and is outside the ambit of the Voluntary Planning Agreement which defined an off-set area for replanting Blue Gum High Forest. The proposal would increase the developable area of approved Lot 2 and further diminishes Blue Gum High Forest on the site.

The proposal is considered not in the public interest.

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. Approved Subdivision Plan

File Reference: DA/1470/2009/A

Document Number: D01645532

**SCHEDULE 1**

1. The proposed modification is unsatisfactory in respect to Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act, 1979, as the proposal does not comply with the Residential Subdivision Development Control Plan as follows:
  - 1.1 The proposal results in the loss of a significant tree in non-compliance with the landscaping element objective.
2. The proposal is unsatisfactory in respect to Section 79C(b) of the Environmental Planning and Assessment Act, 1979, as the proposed modification would impact negatively on the natural environment, as follows:
  - 2.1 The proposed modification to contrary to the approved subdivision design to retain Blue Gum High Forest.
  - 2.2 The proposed modification is outside the ambit of the Voluntary Planning Agreement which formed the nexus for the approval of the development.
  - 2.3 The proposed modification increases the developable area of the site reducing the viability of Blue Gum High Forest on the site.
3. The proposal is unsatisfactory in respect to Section 79C(d) of the Environmental Planning and Assessment Act, 1979, with regard to submissions as follows:
  - 3.1 The applicant has not considered other options to effect the sale of the land.
  - 3.2 The approved building site is satisfactory to retain Tree No. 18
  - 3.3 The retention of significant Tree No. 18 is crucial to the approved subdivision.
4. The proposal is unsatisfactory in respect to Section 79(1)(e) of the Environmental Planning and Assessment Act, 1979, as the proposal is not in the public interest.

**- END OF REASONS FOR REFUSAL -**

## 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 January 2011 to 31 March 2011.

### 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 January 2011 to 31 March 2011.

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. PLN41/11.

SCOTT PHILLIPS  
Executive Manager  
Planning Division

**Attachments:**

1. SEPP 1 Return

File Reference: F2004/07599  
Document Number: D01646060