



the bushland shire

creating a living environment

BUSINESS PAPER

PLANNING MEETING

**Wednesday, 7 December, 2011
at 6.30pm**

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AGENDA AND SUMMARY OF RECOMMENDATIONS**PRESENT****NATIONAL ANTHEM****OPENING PRAYER/S****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 acknowledge we are on the traditional lands of the Darug and Guringai Peoples. We pay our respects to elders past and present."

AUDIO RECORDING OF COUNCIL MEETING

Statement by the Chairperson:

"I advise all present that tonight's meeting is being audio recorded for the purposes of providing a record of public comment at the meeting, supporting the democratic process, broadening knowledge and participation in community affairs, and demonstrating Council's commitment to openness and accountability. The recordings will be made available on Council's website once the Minutes have been finalised. All speakers are requested to ensure their comments are relevant to the issue at hand and to refrain from making personal comments or criticisms."

APOLOGIES / LEAVE OF ABSENCE**POLITICAL DONATIONS DISCLOSURE**

Statement by the Chairperson:

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

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

DECLARATIONS OF INTEREST

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

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

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

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

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

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

OR

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

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

CONFIRMATION OF MINUTES

THAT the Minutes of the Planning Meeting held on 2 November, 2011 be confirmed; a copy having been distributed to all Councillors.

PETITIONS**RECISSION MOTIONS**

ITEMS PASSED BY EXCEPTION / CALL FOR SPEAKERS ON AGENDA ITEMS*Note:*

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

DEVELOPMENT APPLICATIONS**A WARD DEFERRED****A WARD****Page Number 1****Item 1 PLN72/11 DEVELOPMENT APPLICATION – DWELLING HOUSE
6 TALBOT WAY, BEROWRA**

THAT Council assume the concurrence of the Director-General of the Department of Planning and Infrastructure pursuant to State Environmental Planning Policy No. 1 and approve Development Application No. DA/1056/2011 for a dwelling-house at Lot 35, DP 270489, No. 6 Talbot Way Berowra, subject to the conditions of consent detailed in Schedule 1 of this report.

B WARD DEFERRED**B WARD****C WARD DEFERRED****C WARD****Page Number 22****Item 2 PLN70/11 DEVELOPMENT APPLICATION – SUBDIVISION OF
FIVE LOTS INTO FOUR, CONSTRUCTION OF THREE
DWELLING-HOUSES AND RETENTION OF EXISTING HERITAGE
LISTED DWELLING 115 BEECROFT ROAD BEECROFT****RECOMMENDATION**

THAT Council assume the concurrence of the Director-General of the Department of Planning and Infrastructure pursuant to State Environmental Planning Policy No. 1 and approve Development Application No. 605/2011 for subdivision of five allotments into four, construction of three dwelling-houses and retention of the existing heritage listed dwelling at Lots 1-5 DP 2073, No. 115 Beecroft Road, Beecroft subject to the conditions of consent detailed in Schedule 1 of this report.

GENERAL BUSINESS**CONFIDENTIAL ITEMS**

QUESTIONS OF WHICH NOTICE HAS BEEN GIVEN

MAYORAL MINUTES

NOTICES OF MOTION

SUPPLEMENTARY AGENDA

MATTERS OF URGENCY

QUESTIONS WITHOUT NOTICE

**1 DEVELOPMENT APPLICATION - DWELLING-HOUSE
6 TALBOT WAY, BEROWRA**

Development Application No:	DA/1056/2011
Description of Proposal:	Erection of a dwelling-house
Property Description:	Lot 35, DP 270489, No. 6 Talbot Way, Berowra
Applicant:	Greenfield DA Services
Owners:	Mr Allan Miralles Villanueva and Mrs Aileen Lariza Villanueva
Statutory Provisions:	Hornsby Shire Local Environmental Plan 1994 Residential AS (Low Density- Sensitive Lands) zone
Estimated Value:	\$420,000
Ward:	A

THAT Council assume the concurrence of the Director-General of the Department of Planning and Infrastructure pursuant to State Environmental Planning Policy No. 1 and approve Development Application No. DA/1056/2011 for a dwelling-house at Lot 35, DP 270489, No. 6 Talbot Way Berowra, subject to the conditions of consent detailed in Schedule 1 of this report.

EXECUTIVE SUMMARY

1. The application proposes the erection of a dwelling-house.
2. The proposal generally complies with the Hornsby Shire Local Environmental Plan 1994 (HSLEP), Council's Dwelling House, Heritage and Berowra/Cowan Development Control Plans (DCP).
3. The proposal does not comply with the 0.4:1 floor space ratio development standard contained in the HSLEP. Consequently, the application has been supported by a submission under State Environmental Planning Policy No. 1 (SEPP 1) seeking approval of a variation to this development standard.
4. Two submissions have been received raising objections to the proposal. One submission has also been received requesting additional time to consider the proposal.
5. It is recommended that the application be approved.

HISTORY OF THE SITE

The site is located within the grounds of the former “La Mancha Caravan Park”, which operated from 1959, prior to the gazettal of the Hornsby Shire Local Environmental Plan (HSLEP) in 1994 and the Hornsby Planning Scheme Ordinance in 1977.

The site was approved as part of a multi-lot, Community title subdivision of the Caravan Park on 25 October 2005 under DA /957/2005 and is known as the “Illoura Estate”.

On 7 June 2006, Council approved Development Application No. 166/2006 for the erection of a dwelling-house. This application subsequently lapsed.

On 3 August 2011, Council approved Development Application No. 479/2011 for the erection of a dwelling-house at No. 6 Talbot Way, Berowra. Development consent was subsequently declared invalid by the Land and Environment Court following a Third Party Appeal. The basis of the declaration is that the application was not accompanied by a submission under *State Environmental Planning Policy No. 1* (SEPP 1).

On 7 October 2011, Development Application No. 1056/2011 was lodged with Council for the erection of a dwelling-house. The design and construction of the dwelling-house as depicted in the plans and specifications and as described in any other information furnished with the application are the same information as submitted to Council under Development Application No. 479/2011. The application is the subject to this report.

THE SITE

The vacant, 450m² site is located on the southern side of Talbot Way Berowra and has a 10 % fall to the rear, south-western boundary. The site is burdened by a 1.5 metre wide easement for drainage adjacent to the rear boundary and a restriction-as-to-user. The site has access to a 1 metre wide easement to drain water to the reserve at the rear and is located within a bush fire prone area.

The former “La Mancha Caravan Park” site, (Nos. 899 – 903 Pacific Highway Berowra) is listed as a heritage item of local significance under the provisions of Schedule D (Heritage Items) of the HSLEP. The inventory sheet states that the property represents “*prominent cultural plantings of Radiata Pines from circa 1930s on prominent hilltop site beside highway*”.

Adjacent development within the “Illoura Estate” is characterised by a predominance of contemporary styled, two storey dwelling-houses surrounded by well established landscaped areas. The visual character of development when viewed from the streets within the subdivision is large dwellings with an absence of front fencing.

THE DEVELOPMENT

The application proposes the erection of a two storey dwelling-house comprising a double garage, laundry, toilet, kitchen/family/meals room, pantry, alfresco area, media/rumpus room and a living room at ground floor level. The first floor would incorporate 4 bedrooms, 3 walk-in-robos, an ensuite, a bathroom, a rumpus room and a balcony.

No significant trees would be removed or adversely impacted by the proposed development.

THE 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). The following issues below 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 2012.

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 *Metropolitan Plan for Sydney 2036* and *Draft North Subregional Strategy* as it would contribute to the achievement of the dwelling target for the Shire.

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) zone under the 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 a “dwelling-house” 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 AS (Low Density-Sensitive Lands) zone is 0.4:1. The proposed development has a FSR of 0.67:1, which does not comply with this standard.

The subject land is identified as containing a heritage item, pursuant to Schedule D of the HSLEP 1994. Clause 18(6) provides that development consent cannot be granted unless a heritage assessment has been considered. The Statement of Environmental Effects dated 5 October 2011 submitted with the development application contains a heritage assessment, which was considered in the assessment of the application.

2.2 Sydney Regional Environmental Plan No. 20 – Hawkesbury Nepean River

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

The proposal is consistent with the environmental capability of the site and subject to implementation of recommended conditions relating to sediment and erosion control, the development would prevent adverse impacts on water quality. The development complies with SREP 20 in this regard.

2.3 State Environmental Planning Policy No. 1 – Development Standards

The proposal would have a floor space ratio of 0.67:1 which departs from the 0.4:1 development standard as contained within Clause 15 of the HSLEP. To address this matter, the applicant has submitted an objection to the standard under State Environmental Planning Policy No. 1 (SEPP 1).

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

The NSW Land and Environment Court in *Wehbe v Pittwater Council* [2007] NSWLEC 827 has expressed the view that there are 5 different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the Policy as follows:

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

unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.

In regard to whether the objection may be well founded, it is considered that Point 1 is most relevant. The applicant's SEPP 1 objection contends that *"The proposal is considered to be consistent with the objective relevant to the floor space ratio design standard in that the intensity and scale of the proposed dwelling is in accordance with the subject site's environmental capacity and remains consistent with the established low density residential zone objectives."*

The applicant has supported the proposal by noting that:

- (a) *"dwelling-houses within the subdivision have a floor space ratio of 0.3:1 to 0.7:1, therefore the proposed floor space ratio of the dwelling is consistent with the bulk and scale of existing dwelling(s) within this locality;*
- (b) *the proposed dwelling complements the low density development of the locality and does not place any adverse increase capacities of the infrastructure network;*
- (c) *the proposed dwelling complements the low density residential character of the locality and will not generate adverse increase in vehicular or pedestrian traffic to the locality; and*
- (d) *the proposed dwelling is designed to be compatible with the bulk and scale of established residential development in the locality."*

The applicant's SEPP 1 application concludes that *"while contravening the numerical controls of Clause 15(1), (the development) still achieves the relevant objectives."*

In addition, the fourth point in *Wehbe v Pittwater Council* is also relevant, as both Council and the NSW Land and Environment Court have consented to numerous developments within the "Illoura Estate" that are in excess of the 0.4:1 development standard. Of the 59 residential allotments within the "Illoura Estate", 39 dwelling-houses exceed the 0.4:1 floor space ratio development standard, including 15 in excess of 0.5:1 and 9 in excess of 0.6:1.

In granting these consents, the 0.4:1 development standard as it has been applied in the Illoura Estate *"has been virtually abandoned or destroyed by the Council's own actions"*. Approval of the subject application would be consistent with these previous consents, as *"compliance with the standard"* would be *"unnecessary and unreasonable."*

On 27 February 2009, *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (SEPP) commenced operation. Under the SEPP, the *NSW Housing Code* (Code) outlines how residential developments, including detached one and two storey dwelling-houses, home extensions and other ancillary development, such as swimming pools, can proceed on lots of greater than 450m² in size as complying development with Council or accredited certifier approval.

The SEPP is not applicable in this instance, as the site is heritage-listed in Schedule D (Heritage Items) of the HSLEP. However, the introduction of the Codes SEPP indicates that there is a general acceptance in the metropolitan context that a density/floorspace ratio of approximately 0.67:1 on a 450m² allotment is compatible with the character of typical

'suburban' single dwelling areas. The 0.67:1 FSR of the proposed dwelling-house would be consistent with the floor area permissible under the SEPP.

Similarly, the Court has established that, in areas comprising relatively small allotments, restricting the FSR to less than 0.5:1 may unreasonably limit potential to increase the size of existing dwelling-houses to cater for the level of residential amenity and changing social demand for housing which is now expected. This is seen as an obstacle to satisfying the objectives of the *Environmental Planning and Assessment Act, 1979* which encourages the orderly and economic use of land.

With respect to the orderly and economic use of this land, the additional floor space would not impinge on the environmental and amenity aspects of the site and the underlying objectives of the zoning. In this regard, the objection under SEPP 1 is sustained. In addition, the Land and Environment Court and Council have approved other developments within the subdivision that are consistent in terms of bulk and scale to the proposal currently under consideration. Accordingly, the SEPP 1 objection submitted with the development application is well founded.

2.4 Dwelling House Development Control Plan

The proposed development has been assessed having regard to the relevant performance criteria and design requirements of Council's Dwelling House DCP. The following table sets out the proposal's compliance with the relevant prescriptive measures of the Plan:

Dwelling House Development Control Plan			
Control	Proposal	Requirement	Compliance
FSR	0.67:1	0.4:1	No
Site coverage	44%	40%	No
Height	8.8m	9m	Yes
No. of Storeys	2	2	Yes
Length of Building	18.3m	24m	Yes
Unbroken Wall length	8.2m	10m	Yes
Private Open Space	103m ²	120m ²	No
Landscaping	45%	45%	Yes
Car parking	2 spaces	2 spaces	Yes
Cut and Fill	0.8m	1m	Yes
Solar access	-	-	No
BASIX Certificate	362555S	-	Yes

Setbacks			
- Front	4.2m	6m	No
- Side (east)	1.3m	1 m	Yes
- Side (west)	2.5m	1 m	Yes
- Rear	5.6m	3m	Yes

As detailed in the above table, the proposed development does not comply with a number of prescriptive measures within the DCP. The matters of non-compliance are detailed below, as well as a discussion on compliance with relevant performance measures.

2.4.1 Scale

The proposal has a floor space ratio of 0.67:1 which does not comply with the 0.4:1 prescriptive measure of the Scale element.

Developments within the “Illoura Estate” have been approved with floorspace ratios that range between 0.3:1 and 0.68:1. The 0.67:1 FSR of the development is not inconsistent with the bulk and scale of a significant proportion of dwelling-houses within the “Illoura Estate” and would not result in adverse impacts on the character and identity of the surrounding dwelling-houses.

The proposal also takes into consideration the environmental and topographical constraints of the site. The additional floor space would not impinge on the environmental and amenity aspects of the site and the underlying objectives of the zoning.

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

2.4.2 Site Coverage

The proposal has a site coverage of 44% which does not comply with the 40% prescriptive measure of the Scale element. The proposed site coverage is not inconsistent with the site coverage of development within the “Illoura Estate”.

The purpose of this control is to ensure there is sufficient area on the site for landscaping, outdoor recreation and cloths drying. Furthermore, impervious surfaces should be minimised to reduce stormwater runoff.

The proposed design provides for adequate open space for landscaping, recreation activities and cloths drying. With respect to stormwater run off, the “Illoura Estate” incorporates a ‘water sensitive urban design’ which collects stormwater from all roofed areas and all hard surfaces on the Estate and the water is put back into the ground.

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

2.4.3 Setbacks

The objectives of the Setbacks element are to encourage development to “*complement the streetscape, provide for landscaping and protect the privacy and sunlight to neighbouring properties.*”

The 4.2 metre front boundary setback to the front porch does not comply with the 6 metre prescriptive measure of the Setbacks element. The remainder of the front façade of the dwelling-house would be set back between 4.9 metres and 5.8 metres from the front boundary.

The front boundary setback would be consistent with other dwelling-houses in the “Illoura Estate” and in particular would be consistent with the 4m front setbacks of the dwelling houses at Nos. 4 and 8 Talbot Way. As a consequence, the development would have no detrimental visual or amenity impacts on the established streetscape character of the area.

The setbacks from the side and rear property boundaries comply with the prescriptive measures of the Setbacks element.

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

2.4.4 Design

The objective of the Design element is to seek building “*design that is consistent with and enhances the character and amenity of the local area, has regard for environmental characteristics and energy efficiency*”.

The two storey design of the proposal is consistent in terms of the built form, materials, textures, scale, height, bulk roof form, setbacks between buildings and the style and location of driveways with other dwelling-houses in the “Illoura Estate”.

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

2.4.5 Height

The objective of the Height element is to encourage building height to be “*consistent with residential development in the local area and that maximises privacy, solar access and views*”.

The proposed 8.8 metre height complies with the prescriptive measure of the Height element which states that “*Two storey dwelling-houses should generally not exceed 9m in height measured vertically from the natural ground level to the ridge line*”.

The purpose of this control is to ensure that the height of a development is consistent with other residential development and that reasonable levels of privacy, solar access and views are maintained.

The height of the proposal would be consistent with the similar two-storey dwelling-houses in the “Illoura Estate” and the solar access and privacy impacts on adjacent properties would be within reasonable limits. These impacts are discussed in more detail under the headings “Privacy” and “Solar Access”.

The impact of the development on views has been considered with respect to the NSW Land and Environment Court’s planning principles of view sharing that arose from the judgement of *Tenacity Consulting v Warringah Council*. The principal of view sharing involves a four step assessment to decide whether view sharing is reasonable and involves an assessment of the views affected, the part of the property to which the views are obtained, the extent of the impact and the reasonableness of the proposal that is causing the impact.

In assessing the views that may be affected, it is noted that the principle outlooks from the adjacent premises No. 4 and 8 Talbot Way face north towards trees, landscaped areas and other dwelling-houses within the “Illoura Estate” and south, towards portions of the Berowra Valley Regional Park.

The height and sitting of the development would have an acceptable impact on these views to the north and south and its appearance when viewed from these adjacent premises would be consistent with what can be seen elsewhere in the subdivision.

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

2.4.6 Privacy

The objective of the Privacy element is to encourage development “*that ensures reasonable privacy in the home and the private open space for existing and future residents*”.

The first floor level rumpus room and balcony do not comply with the prescriptive measures of the Privacy element which states that “*Where the proposed dwelling-house is two storeys, the living and entertaining areas should be located on the ground floor level*”.

To address this issue, the rumpus room windows within the western side elevation would be of “highlight” style, to prevent a direct line of sight towards the adjacent premises, No. 4 Talbot Way.

The adjacent 2m² balcony is orientated north towards Talbot Way only, is restricted in terms of useable space and would not allow overlooking of the living room windows or private open spaces of the adjacent premises.

Views from the remaining first floor level windows would be from non-active rooms, including bedrooms, a bathroom and an ensuite. The windows are considered to be acceptable in terms of maintaining privacy, as views from such rooms would be much less frequent than from a living room or other actively used room. It is also common for such windows to be fitted with curtains or blinds that would further restrict views to neighbouring properties.

As the site slopes towards the rear boundary, the “raised” floor level of the structure and the corresponding height of the “Alfresco area” off the family room at the rear of the development, may allow overlooking of the private open space of the adjacent property at No. 4 Talbot Way. To address this issue, a condition is recommended requiring the erection of a 1.5 metre high privacy screen along the north western elevation.

With these measures in place, the proposal meets the objectives of the Privacy element and is considered acceptable.

2.4.7 Solar Access

The objective of the Solar Access element is to encourage development “*that ensures reasonable solar access to living areas within dwellings and the open spaces around dwellings*”.

The shadows cast from the proposal would allow the north-facing windows to the living areas of the adjacent dwelling-house at No. 8 Talbot Way to receive 3 hours of sunshine over a portion of their surface on 22 June (the winter solstice). The amount of sunlight entering

into these windows is sufficient to facilitate adequate solar amenity for the adjoining occupants.

The shadows cast by the proposal in relation to the private open space at the rear of the adjacent premises at No. 8 Talbot Way do not comply with the prescriptive measures of the Solar Access element which states that “*Unless site conditions dictate, dwelling-houses should be designed to allow at least 4 hours of sunshine to the private open space required for adjacent and proposed dwelling between 9am and 3pm on 22 June*”. In assessing this variation to the 4 hour prescriptive measure as it relates to the private open spaces of the adjacent dwelling-house at No. 8 Talbot Way, the following points are noted:

- the dwelling-houses erected along the southern side of Talbot Way in the vicinity of the proposal are 2 storey in height and are orientated to the north east;
- given the size of the respective allotments and the height, bulk and scale of the dwelling-houses thereon, there is significant overshadowing by each dwelling-house of their respective private open spaces in the 6 hour period between 9am and 3pm;
- the extent of this overshadowing, exacerbated by the contours of the rear yard areas which fall to the south, results in development which does not comply with the prescriptive measure as it relate to sunlight over the required 120m² area of private open space;
- there is a “shared” overshadowing impact on the private open spaces of the adjacent properties in Talbot Way by way of a “domino effect”, particularly between at 12 noon and 3pm, and
- the solar access impacts caused by the subject proposal would be consistent with the extent of overshadowing that already exists in the rear yards of the adjacent allotments in Talbot Way.

Given these circumstances, it is considered that the development would ensure a reasonable level of solar access is provided to the open spaces around the adjacent dwelling-house at No. 8 Talbot Way on 22 June (the winter solstice).

The development is consistent with the Planning Principle handed down by Senior Commissioner Moore in *The Benevolent Society v Waverley Council* [2010] NSWLEC 1082, namely:

- The overshadowing cast is not a result of poor design; and
- The area of the adjoining property’s private open space which will receive sunlight is useable and is accessible from the living area. The area will be subjected to adequate solar amenity.

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

2.4.8 Private Open Space

The objective of the Private Open Space element is to encourage development “*that provides adequate useable private open space to support residential outdoor activities and use*”.

Whilst the 103m² of private open space at the rear of the premises does not comply with the 120m² prescriptive measure, this space, including an “Alfresco” area, is directly accessible via sliding doors off the Family room, is not inconsistent with similar development in the “Illoura Estate” and is a minor variation from the prescriptive measure. The “Illoura Estate” is also provided with community facilities which include a swimming pool, community hall, tennis court and play ground.

The proposal meets the objectives of the Private Open Space element and is considered acceptable.

2.4.9 Landscaping

The objectives of the Landscaping element are to encourage development “*that reinforces the function of a street and enhances the amenity of dwelling-houses*” and to “*conserve significant trees, groups of trees and trees that add to the environmental character of the area or natural vegetation*”.

There are no significant trees on the site or in the vicinity of the proposal that would be impacted by the development.

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

2.5 Heritage Development Control Plan

The proposed development has been assessed having regard to the relevant objectives of Council’s Heritage DCP.

Schedule D (Heritage Items) of the HSLEP 1994 identifies the grounds of the former “La Mancha Caravan Park” as having local heritage significance due to the existence of ‘*prominent cultural plantings of Radiata Pines from circa 1930s on prominent hilltop site beside highway*’.

The development would have no impact on the heritage significance of the site as no Radiata Pine trees would be affected by the proposal.

2.6 Berowra / Cowan Development Control Plan

The proposed development has been assessed having regard to the relevant objectives of Council’s Berowra / Cowan DCP.

The development would not be contrary to the residential strategies identified with the DCP in that the development would provide balanced, efficient and sustainable housing.

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 proposal would not impact upon any trees, satisfies the objectives of the Flora and Fauna Protection element of Council's Dwelling House DCP and is considered acceptable.

As the property is in a bushfire prone area, appropriated bushfire conditions recommended by the NSW Rural Fire Service are included in the consent.

3.2 Built Environment

The proposal would not be out of character with the established built form of residential development in the area and would be consistent with the form of development permitted in the locality.

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

3.3 Social or 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 has the capacity to support the dwelling-house and the proposal would be consistent with the established residential character of the surrounding subdivision known as the "Illoura Estate".

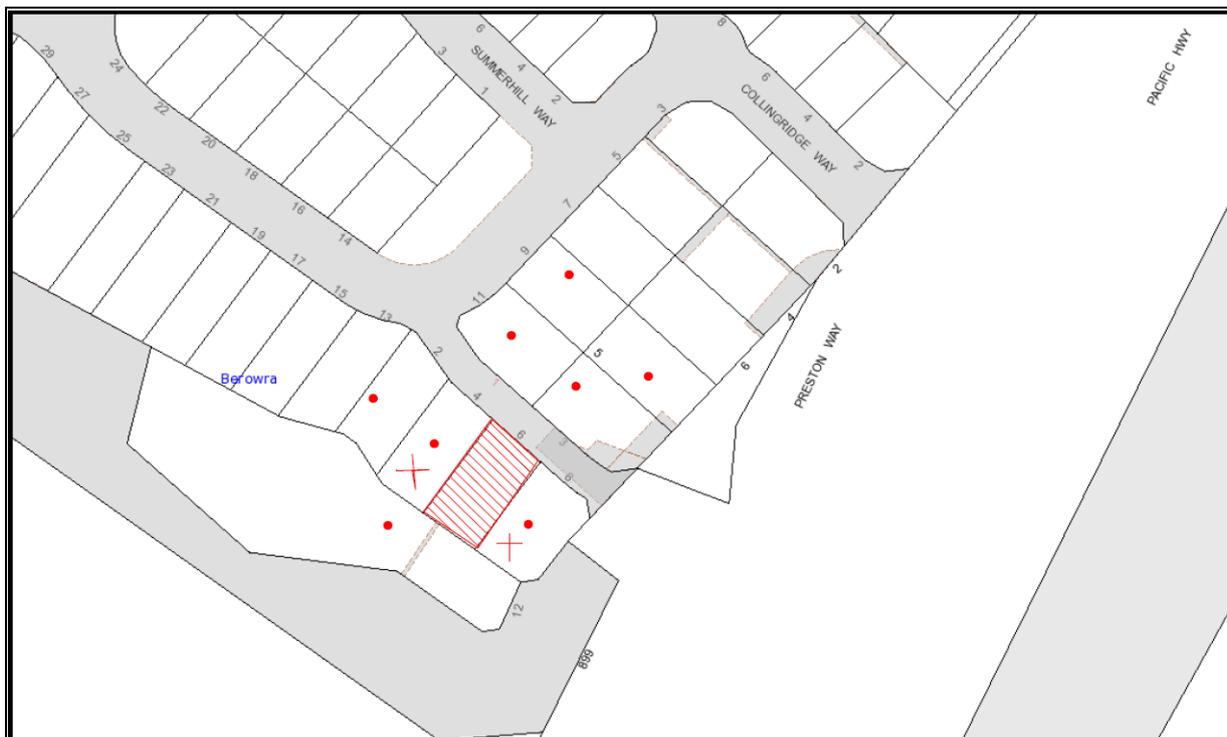
The site is considered suitable for the development.

5. PUBLIC PARTICIPATION

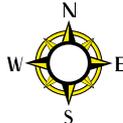
Section 79C(1)(d) of the Act requires Council to consider "*any submissions made in accordance with this Act*".

5.1 Community Consultation

The proposed development was placed on public exhibition and was notified to adjoining and nearby landowners and the managers of the community title (Community Association DP 270489) between 7 October 2011 and 21 October 2011 in accordance with Council's Notification and Exhibition Development Control Plan. During this period, Council received 3 submissions, including 1 from the strata manager on behalf of the "Illoura Estate" Community Association. The map below illustrates the location of the nearby landowners who made the submissions.



NOTIFICATION PLAN

<ul style="list-style-type: none"> • PROPERTIES NOTIFIED 	<p>X SUBMISSION RECEIVED</p> <p>* Submission from the Illoura Estate Community Assoc.</p>	 PROPERTY SUBJECT OF DEVELOPMENT	
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The submissions objected to the proposal, generally on the grounds that the development would result in unacceptable impacts in terms of scale, setbacks, design, height, privacy, solar access, private open space and landscaping. These issues have been addressed in Part 2.4 of this report under the relevant headings.

The Illoura Community Association’s submission noted that it had previously “*provided its approval for the construction of a house at 6 Talbot Way*” and requested that Council “*not approve the amended application until the Community Association has provided its consent*”.

Subsequent advice from the owner has confirmed that approval was granted by the Illoura Community Association to the plans (Revision G) currently under consideration.

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 proposes the erection of a two-storey dwelling-house in a style that would generally be in keeping with the development in the surrounding low density residential zone.

One of the objectives of this zone is “*to control the intensity and scale of development of land so that development will be in accordance with the land’s environmental capacity and zone objectives.*” To meet these objectives, Council prescribes a floor space ratio (FSR) for dwelling-houses in a low density zone of 0.4:1 in Clause 15 of the HSLEP.

Dwelling-houses within the “Illoura Estate” are characterised by developments previously approved by both Council and the NSW Land and Environment Court with floor space ratios that vary from between 0.3:1 and 0.68:1. The subject development would have a FSR of 0.67:1 which exceeds the 0.4:1 FSR development standard.

In seeking approval for a variation to this standard, the applicant has lodged an objection under the provisions of SEPP 1. In consideration of this objection and the views of the NSW Land and Environment Court as to how an objection may be well founded, it is noted that the 0.4:1 development standard for development in the “Illoura Estate” “*has been virtually abandoned or destroyed by the Council’s own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable*”. It is noted that of the 59 residential allotments within the subdivision, over 66% of the dwelling-houses therein exceed the 0.4:1 floor space ratio development standard.

The proposed 0.67:1 FSR is within the range of developments already approved within the “Illoura Estate”. As a consequence, the development would be consistent with the bulk and scale of a significant proportion of residential development in the surrounding “Illoura Estate,” would not result in adverse impact on the character and identity of the area and is consistent with the objectives of the HSLEP 1994.

Submissions were received from the owners of the adjacent premises No.s 4 and 8 Talbot Way, raising objections to the proposal. A letter was also received from the strata management of the “Illoura Estate” requesting additional time to consider the proposal. The issues raised in submissions have been addressed in the body of the report.

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

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

RECOMMENDATION

THAT Development Application No. DA/1056/2011 for the erection of a dwelling-house at Lot 35, DP 270489, No. 6 Talbot Way, Berowra be approved, subject to the conditions attached to this report.

SIMON EVANS
Manager - Assessment Team 1
Planning Division

JAMES FARRINGTON
Acting Executive Manager
Planning Division

Attachments:

1. Locality Plan
2. Floor Plans
3. Site Plans
4. Shadow Diagram
5. Elevations/Sections Plans
6. Drainage Plan
7. Statement of Environmental Effects

File Reference: DA/1056/2011
Document Number: D01774532

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>
Job No. HT173: Sheets 1/10 to 10/10: Rev G	Hotondo Homes	Latest revision 04.03.11

REQUIREMENTS PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

2. Building Code of Australia

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

3. 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.

4. 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.

5. Sydney Water – Quick Check

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

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

6. Asset Protection Zones

To provide sufficient space and maintain reduced fuel loads so as to ensure radiant heat levels of buildings are below critical limits and to prevent direct flame contact with a building, at the commencement of building works and in perpetuity the entire property must be managed as an Inner Protection Area (IPA) as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones'.

7. Design and Construction

To withstand the potential impacts of bushfire attack, the following conditions apply:

- a. New construction on the south-west elevation must comply with Section 8 (BAL 40) Australian Standard AS395-2009 'Construction of buildings in bush fire-prone areas' and Section A3.7 Addendum Appendix 3 of 'Planning for Bushfire Protection';
- b. New construction on the north-west, north-east and southern elevations must comply with Section 7 (BAL 29) Australian Standard AS395-2009 'Construction of buildings in bush fire-prone areas' and Section A3.7 Addendum Appendix 3 of 'Planning for Bushfire Protection'; and
- c. Roofing must be gutterless or guttering and valleys must be screened to prevent the build up of flammable material. Any materials used must be non-combustible.

REQUIREMENTS PRIOR TO THE COMMENCEMENT OF ANY WORKS**8. Erection of Construction Sign**

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

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

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

9. Toilet Facilities

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

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

10. Erosion and Sediment Control

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

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

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

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

12. Council Property

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

13. Disturbance of Existing Site

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

14. 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; and
- b. the finished floor levels 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.

15. Fulfilment of BASIX Commitments

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

16. 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 to the existing inter-allotment drainage system.

17. 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; and
- c. The driveway grade must not exceed 25 percent and changes in grade must not exceed 8 percent.

18. Vehicular Crossing

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

- a. The footway area to be restored by turfing; and
- b. Approval must be 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.

19. 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.

20. Retaining Walls

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

21. Installation of Privacy Devices

To establish and maintain a reasonable level of privacy towards the private open space of the adjoining property No. 4 Talbot Way, a 1.5 metre high close-form lattice/louvre or solid privacy screen must be erected along the north-western elevation of the ground floor level "Alfresco area".

- 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; and
- 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 3 metres, and which develops many branches, usually from a distance of not less than 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 for free information on potential underground pipes and cables within the vicinity of the development site.

2 DEVELOPMENT APPLICATION - SUBDIVISION OF FIVE LOTS INTO FOUR, CONSTRUCTION OF THREE DWELLING-HOUSES AND RETENTION OF EXISTING HERITAGE LISTED DWELLING 115 BEECROFT ROAD BEECROFT

Development Application No:	DA/605/2011
Description of Proposal:	Subdivision of five allotments into four, construction of three dwelling-houses and retention of existing heritage listed dwelling
Property Description:	Lots 1- 5 DP 2073, No. 115 Beecroft Road, Beecroft
Applicant:	Wagstaff Enterprises Pty Ltd
Owner:	Mr C. P. Harris
Statutory Provisions:	Hornsby Shire Local Environmental Plan 1994 Residential AS (Low Density - Sensitive Lands)
Estimated Value:	\$730,000
Ward:	C

RECOMMENDATION

THAT Council assume the concurrence of the Director-General of the Department of Planning and Infrastructure pursuant to State Environmental Planning Policy No. 1 and approve Development Application No. 605/2011 for subdivision of five allotments into four, construction of three dwelling-houses and retention of the existing heritage listed dwelling at Lots 1-5 DP 2073, No. 115 Beecroft Road, Beecroft subject to the conditions of consent detailed in Schedule 1 of this report.

EXECUTIVE SUMMARY

1. The application proposes Torrens title subdivision of five allotments into four, construction of three new dwellings and retention of the existing heritage listed dwelling.
2. The proposal does not comply with the density control for the Residential AS (Low Density- Sensitive Lands) zone in the Hornsby Shire Local Environmental Plan 1994. However, pursuant to SEPP 1, the proposed variation to the development standard is supported as the proposed lots are larger than the existing allotments and the subdivision pattern is similar to the adjoining properties. The three detached

dwellings to be constructed are designed in response to the size of the proposed lots. The development would be compatible with the locality.

3. Fifteen submissions, including an objection from the Beecroft Cheltenham Civic Trust, have been received in respect of the application.
4. It is recommended that the application be approved.

HISTORY OF THE SITE

On 31 August 2011, Council's Compliance Officer inspected the property and found that a timber paling fence had been erected along the southern side of the property fronting Beecroft Road and works had been carried out on the existing heritage listed cottage. Council issued an Order on the property owner to cease carrying out any building works at the premises. In response to the Order, the owner made representations to Council detailing the extent of the works to the cottage.

On 7 September 2011, the Order was rescinded and the owner was permitted to carry out maintenance works on the dwelling. It was acknowledged that the erection and location of the timber fence would be considered as part of the assessment of this application.

HISTORY OF THE APPLICATION

On 15 June 2011, Development Application No. DA/605/2011 was lodged for the Torrens title subdivision of five allotments into four, construction of three dwellings and retention of the existing heritage listed dwelling. The application is the subject of this report.

On 15 August 2011, the applicant submitted revised plans which provide the following modifications:

- Driveway access from The Crescent and two car parking spaces for the heritage listed building on proposed Lot 1.
- A 1.8 metre hedge screen along The Crescent frontage to achieve the private open space area for the heritage listed building on proposed Lot 1.
- Increased front setback to 5 metres for the proposed dwellings on Lots 3 and 4.
- Provision of a 1.8 metre timber lapped fence along the Beecroft Road frontage and between each of the proposed lots.

Furthermore, the applicant submitted the following additional information:

- Details of works and maintenance proposed to be undertaken to the heritage listed building.
- Photomontage, revised landscape plan, schedule of finishes and an erosion and sediment control plan.

In response to Council's heritage assessment of the application, on 4 October 2011, the applicant submitted an archaeological assessment.

THE SITE

The site is comprised of five existing allotments known as Lots 1, 2, 3, 4 and 5 in DP 2073 and is located on the corner of Beecroft Road and The Crescent. The site experiences a moderate grade from the southern to the northern property boundary. The site is irregular in shape and has a total area of 1864m². The area of each of the existing lots is as follows:

Existing Number	Lot	Existing Lot Area
1		379 m ²
2		373 m ²
3		359 m ²
4		367 m ²
5		386 m ²
TOTAL Area:		1864 m ²

The site contains an existing heritage listed dwelling located adjacent to the western property boundary. There is an existing dilapidated shed/garage located adjacent to the northern western property boundary.

The site contains a number of exotic, native and locally indigenous trees.

The site is located opposite the Beecroft Tennis Club and lawn tennis courts on the western side of The Crescent. The Beecroft Scout and Guide Hall is opposite the site on the northern side of The Crescent. The recreation/community facilities adjoin the Northern Railway corridor and 'The Village Green'. To the east, the site adjoins an existing two storey dwelling house.

The rail corridor is parallel to The Crescent. The railway and Beecroft Road impact on the acoustic environment of the site.

The site is located 550m south of Beecroft Railway Station and shops. The surrounding locality is generally characterised by Federation era dwelling-houses, large remnant trees and the 'The Village Green' open space recreation area.

THE PROPOSAL

The applicant seeks re-subdivision of five allotments into four, construction of three new dwellings and retention of the heritage listed dwelling. The development would be undertaken in the following stages:

Stage 1

- Consolidation of existing Lots 1, 2 and 3.
- Subdivision to create new Lots 1 and 2.
- Boundary adjustment to existing Lots 4 and 5 to create new Lots 3 and 4.

Proposed Lots	Proposed Lot Areas
1	513.3m ²
2	450 m ²
3	450.2 m ²
4	450.2 m ²

Stage 2

- Demolition of the existing garage on proposed Lot 1.
- Construction of a two storey dwelling and associated works on proposed Lot 2.

Stage 3

- Construction of a two storey dwelling and associated works on proposed Lot 3.

Stage 4

- Construction of a two storey dwelling and associated works on proposed Lot 4.

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). 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 the preparation of a new Comprehensive LEP.

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 *Metropolitan Plan and Draft Subregional Strategy* by providing an additional three dwellings and 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.*
- (c) *to provide for development that is within the environmental capacity of a sensitive low density residential environment.*

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

Clause 14 of the *HSLEP* prescribes that the minimum area of an allotment within the Residential AS (Low Density-Sensitive Lands) zone is 600sqm. The proposed lots do not comply with this requirement. An objection to the development standard pursuant to State Environmental Planning Policy No. 1 (SEPP 1) has been submitted and is discussed further at Section 2.2 of this report.

Clause 15 of the *HSLEP* prescribes that the maximum floor space ratio (FSR) of development within the Residential AS (Low Density-Sensitive Lands) zone is 0.4:1. Development on each of the proposed lots would comply with this development standard.

Clause 18 of the *HSLEP* sets out heritage conservation provisions within Hornsby Shire. The property is listed as a heritage item (“*Carmel*”) of local significance under the provisions of Schedule D (Heritage Items) of the *HSLEP*. The property is also located within the Beecroft/Cheltenham Heritage Conservation Area, which is listed under the provisions of Schedule E (Heritage Conservation Areas) of the *HSLEP*. The property is located within the vicinity of property Nos. 110-118 and Nos. 128-130 Beecroft Road, Beecroft (*house and garden, “Ravenhurst” and garden, fence garden and hedge, house, “Romana House” and Garden*) which are listed as heritage items of local significance under the provisions of Schedule D (Heritage Items) of the *HSLEP*. The development application was referred to Council’s Heritage Advisory Committee and this matter is discussed in detail in section 2.8 of this report.

2.2 State Environmental Planning Policy No. 1 – Development Standards

SEPP 1 provides flexibility in applying development standards and enables a consent authority to vary a standard where strict compliance would be unnecessary, unreasonable or tend to hinder the objectives of the Act. Where there is a variation to a development standard, the application must be accompanied by a SEPP 1 objection.

The applicant submitted an objection against Council's adherence to the minimum 600m² lot size under Clause 14 of the HSLEP.

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

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

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

“Whilst the proposal departs from the requirements of the Principal Development Standard, the merit assessment below demonstrates that the proposed development satisfactorily maintains consistency with the objectives of the Principal Development Standard:

- *“To promote a low-density residential environment and provide for lots of sufficient size to satisfy user requirements.”*

The subject site is currently comprised of five individual allotments. The proposed lot consolidation and re-subdivision effectively reduces the number of lots from five to four.

Comparison between the existing and proposed lot sizes is demonstrated in the table below:

Existing Lot	Existing Area	Proposed Lot	Proposed Area	Net Increase
1	379m ²	1	513.3m ²	134m ²
2	373m ²			
3	359m ²	2	450m ²	91m ²
4	367m ²	3	450.2m ²	83.2m ²
5	386m ²	4	450.2m ²	64.2m ²
Total	1864m²		1864m²	

The reduction in the numbers of lots from five to four, results in an overall net increase in the allotment sizes which provides an improvement to the existing situation and a more desirable planning outcome with regards to desired future character by reducing the existing overall housing density potential which could be achieved if the subject site was developed 'as is.'

Consistency with the established subdivision pattern

The established subdivision pattern in the locality comprises a variety of allotment configurations and sizes. A predominant pattern exists with allotments providing a direct street frontage and regularity in shape. There is a variety of smaller lots together with larger lots.

The proposed allotment configuration and sizes are generally consistent with the established subdivision pattern and configuration within The Crescent and the wider locality. The proposed development would enable orderly residential development of the site and maintain consistency with the residential density and character of the streetscape.

Ability for the lots to be developed in accordance with the provisions of the Hornsby Shire Local Environmental Plan 1994 and the relevant DCPs

While the lot sizes do not achieve the minimum numerical amount of 600m² per lot, detailed architectural plans with dwelling designs are proposed for each of the lots (Lots 2, 3 and 4).

Fundamentally, the architectural plans demonstrate that each resulting allotment can accommodate a dwelling house that achieves consistency with the provisions of Hornsby LEP 1994 and the relevant DCPs.

In this regard, the proposed lots allow for the undertaking of orderly residential development with dwelling-houses that maintain a consistent pattern of development, sense of openness, building separation and a sufficient area of landscape open space that maintains the landscape setting of the locality.

Incentive for the retention of a heritage item

The proposed lot consolidation and re-subdivision would effectively provide the necessary funds for the undertaking of essential conservation works to the existing heritage listed dwelling on the site. The proposed scheme has been considered in detail in the Heritage Impact Statement which demonstrates that there would be no unreasonable impacts on the heritage significance of the site.

The net reduction from five to four lots would reduce the potential housing density and thus reduce the impact on the heritage significance of the site by reconfiguring the lots so that the existing dwelling is located on one lot, ensuring a sufficient landscape curtilage is maintained and sufficient setbacks are achieved to the new dwellings.

On balance, the proposed allotments are an incentive to the retention and protection of the existing heritage item.

Conclusion

The above merit assessment demonstrates that while strict numerical compliance with the development standard is unreasonable and unnecessary in the circumstances of the case, the proposed development is consistent with the objectives and intent of Clause 14 of the Hornsby Shire Local Environmental Plan 1994.

The proposed allotments maintain a consistent subdivision pattern and configuration and would enable the orderly development of the site with the accommodation of residential dwellings on Lots 2, 3 and 4 which achieve compliance with the provisions of the Hornsby LEP 1994 and the relevant DCPs. In this regard, the proposed development 'provides lots of sufficient size to satisfy user requirements.'

The housing density proposed would be consistent with the variety of the housing density and allotment sizes in the locality and would not unreasonably impact on the established streetscape character.

As such, the proposed development does not result in any unreasonable environmental impact, nor set an undesirable planning precedent for future development to emulate within the streetscape."

Based on the reasons contained in this report, it is considered that the applicant's SEPP 1 submission is consistent with the Land and Environment Court's test No. 1 and compliance with the development standard would be unreasonable and unnecessary in the circumstances of the case. The proposal includes the resubdivision of existing undersized lots. The lots created would be larger than the existing allotments and the proposal would reduce the number of non-conforming allotments from five to four. Therefore, the proposal would not create a precedent for the creation of undersized lots. The proposal would not have a negative impact upon the residential environment of the locality and the proposal is not inconsistent with the objectives contained within section 5(a) (i) and (ii) of the Environmental Planning and Assessment Act 1979. Accordingly, the SEPP 1 objection is supported.

2.3 State Environmental Planning Policy No. 55 - Contaminated Lands

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

The site contamination report submitted with the application states that based on an historical review, site inspection and laboratory analysis of soil samples, there appears no reasonable grounds to suspect that any significant soil contamination exists on the site and that no remedial works are deemed necessary. Accordingly, no further assessment in this regard is considered necessary.

2.4 State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

The application has been assessed against the requirements of State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004, which aims to ensure consistency in the implementation of the BASIX scheme throughout the State.

A BASIX Certificate has been submitted as part of this application. A condition is recommended requiring that the applicant demonstrate the fulfilment of BASIX commitments pertaining to the development.

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

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

The applicant has addressed this requirement by providing an erosion and sediment control plan for the construction of the development. Stormwater quality would not be significantly impacted by this residential development subject to appropriate consent conditions.

2.6 Dwelling House Development Control Plan

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

Dwelling House Development Control Plan			
Control	Proposal	Requirements	Complies
Site Area	1864m ²	N/A	N/A
Lot 1 – Existing Dwelling			
Floor space ratio			
Lot 1 – Existing Dwelling	0.236:1		Yes
Lot 2 – Proposed Dwelling	0.4:1	0.4:1	Yes
Lot 3 – Proposed Dwelling	0.4:1		Yes
Lot 4 – Proposed Dwelling	0.4:1		Yes

Site Cover			
Lot 1 – Existing Dwelling	31.3%		Yes
Lot 2 – Proposed Dwelling	36%	40%	Yes
Lot 3 – Proposed Dwelling	38.6%		Yes
Lot 4 – Proposed Dwelling	32%		Yes
Unbroken Wall Length			
Lot 1 – Existing Dwelling	N/A		N/A
Lot 2 – Proposed Dwelling	9.6m	10m	Yes
Lot 3 – Proposed Dwelling	10.2m		No
Lot 4 – Proposed Dwelling	10.4m		No
Total Building Length			
Lot 1 – Existing Dwelling	N/A		N/A
Lot 2 – Proposed Dwelling	19.3m	24m	Yes
Lot 3 – Proposed Dwelling	19.25m		Yes
Lot 4 – Proposed Dwelling	13.5m		Yes
Private Open Space			
Lot 1 – Existing Dwelling	>120m ²		Yes
Lot 2 – Proposed Dwelling	120m ²	120m ²	Yes
Lot 3 – Proposed Dwelling	120m ²		Yes
Lot 4 – Proposed Dwelling	120m ²		Yes
Landscaping			
Lot 1 – Existing Dwelling	>45%		Yes
Lot 2 – Proposed Dwelling	52%	45%	Yes
Lot 3 – Proposed Dwelling	52%		Yes
Lot 4 – Proposed Dwelling	61%		Yes
Setbacks:			
Lot 1 – Proposed Dwelling			
Front	No change	6m	Yes
Side (East)	2.85m	1m	Yes
Side (West)	No change	1m	Yes
Rear	13.5m	3m	Yes
Lot 2 – Proposed Dwelling			
Front	6m	4-6m	Yes
Side (East)	1.2m	1m	Yes
Side (West)	0.8m	1m	No
Rear	9.5m	5m	Yes
Lot 3 – Proposed Dwelling			
Front	5m – 7.6m	4 – 6m	Yes
Side (East)	1.1m	1m	Yes
Side (West)	0.6m	1m	No
Rear	10.5m	5m	Yes

Lot 4 Proposed Dwelling			
Front	5.6m – 15.7m	4m – 6m	Yes
Side (East)	1.1m	1m	Yes
Side (West)	1m	1m	Yes
Rear	9.5m	5m	Yes
Car Parking			
No. of spaces	2 spaces per dwelling	2 spaces per dwelling	Yes

As detailed in the above table, the proposed development does not comply with the setback and the unbroken wall length prescriptive requirements within Council's *Dwelling House DCP*. The matters of non-compliance are detailed below, as well as a brief discussion on compliance with relevant performance requirements.

2.6.1 Setbacks

The '*setback*' element requires development to complement the streetscape, provide for landscaping and protect the privacy of and sunlight to adjacent dwellings.

The Dwelling House DCP requires a minimum front setback of 6 metres. However, encroachments to 4 metres are permitted for up to one third of the property width. The northern corner of the carport on Lot 4 has a setback of 5.5 metres and a small portion of the bedroom of the proposed dwelling on Lot 3 has a setback of 5 metres. It is considered that the proposed development provides adequate front setbacks and landscaping to minimise impact on the existing streetscape.

The western elevations of the proposed dwellings on Lots 2 and 3 do not comply with the minimum 1 metre side setback requirement of the DCP. The encroachment is limited to the garages and carports of proposed dwellings and are single storey in height.

The proposed setbacks are supported as there is minimal impact on the streetscape. Furthermore, the encroachments would not result in any significant privacy or sunlight implications.

2.6.2 Design

The '*design*' element requires development to be consistent with and enhance the character and amenity of the local area and have regard for environmental characteristics and energy efficiency.

The immediate locality is characterised by single and two storey older style detached dwellings with open landscaped frontages and varying housing styles. Dwellings contain a mix of building materials and finishes.

Although the streetscape in The Crescent is characterised predominantly by single storey dwellings, the site adjoins an existing two storey dwelling on the eastern boundary and the Beecroft Village Green to the north and west. It is considered that the proposed development would fit in with the established streetscape. The design, bulk, scale and setback of the proposed dwellings are compatible with the adjacent properties in The Crescent.

The proposed dwellings on Lots 3 and 4 would have a building wall in excess of 10 metres in length, contrary to the provisions of the DCP. However, the non compliance is considered minor and would have no significant impact on the streetscape or on adjacent properties.

2.6.3 Privacy

The '*privacy*' element requires that existing and future residents be provided with reasonable privacy in their home and private open space.

The proposed dwellings are designed with regard to visual privacy to avoid overlooking neighbouring and future residents. Private open space areas are integrated with the living areas of the dwellings and have regard to acoustic privacy.

2.6.4 Solar Access

The '*solar access*' element requires development to ensure reasonable solar access to living areas within dwellings and to open spaces around dwellings.

Solar access is maintained to neighbouring properties in compliance with Council's DCP requirements. The proposed dwellings would receive a minimum of 4 hours of sunlight to private open space and living areas between 9 am and 3 pm on 22 June. Furthermore, a BASIX certificate has been submitted to ensure the building addresses energy efficiency requirements.

2.6.5 Private Open Space

The '*Private Open Space*' element requires the provision of adequate private open space to support residential outdoor activities and use.

The proposal provides areas of private open space in accordance with the minimum area requirements of the DCP. Open space areas are accessible from internal living areas and comply with the solar access requirements.

2.6.6 Landscaping

The '*landscaping*' element requires developments to provide attractive landscapes that reinforce the function of a street, enhance the amenity of dwellings and to preserve significant stands of trees or natural vegetation.

The element requires at least 45% of each lot to be landscaped. The proposed development complies with this requirement.

The proposal would preserve two significant trees located on the site. These trees on the site are located adjacent to the rear boundary within proposed Lots 3 and 4.

Accordingly, the proposal complies with the landscaping requirements of the DCP.

2.6.7 Vehicle Access and Parking

The '*vehicle access and parking*' element requires vehicular access to be simple, safe and direct. It also requires sufficient and convenient parking for residents and visitors.

In accordance with the provisions of the DCP, two car parking spaces are required to be provided per dwelling. The existing heritage listed dwelling would be provided with an open car parking area. Each of the proposed dwellings on Lots 2 and 3 would be provided with a double garage and the dwelling on proposed Lot 4 would have a double carport. The proposal complies with the car parking requirements of the DCP.

Each dwelling would be provided individual access from The Crescent. The engineering assessment of the application concludes that the development is satisfactory, subject to appropriate conditions.

2.6.8 Fencing

The *'fencing'* element requires fencing to complement the character of the area.

The proposal includes details of fencing to be erected along the southern boundary fronting Beecroft Road and between each of the proposed lots. The proposed fence along the Beecroft Road frontage is not inconsistent with adjacent fencing along Beecroft Road and would not compromise the established streetscape character of the surrounding area. The proposed fencing complies with the requirements of the DCP.

2.7 Residential Subdivision Development Control Plan

The proposed allotments do not comply with the minimum 600m² allotment area requirement within Council's Residential Subdivision DCP. As previously discussed at Section 2.2 of this report, the proposal results in the reduction of the number of existing lots from five to four. This reduction results in a net increase in the size of the allotments. The non-compliance is supported as the development would result in a subdivision pattern consistent with that occurring on adjoining properties to the east.

The size and configuration of the proposed lots enables the construction of a built form that is sympathetic with the established character of the area. The inclusion of proposed dwellings within this application demonstrates that the proposed allotments are capable of accommodating a built form that would have minimal environmental impacts and is generally consistent with the established character of the area.

2.8 Heritage Development Control Plan

The primary purpose of the Plan is to manage the heritage in Hornsby Shire and to provide guidance and outline specific controls for development relating to heritage items and heritage conservation areas.

The property is listed as a heritage item ("*Carmel*") of local significance under the provisions of Schedule D (Heritage Items) of the *HSLEP*. The property is also located within the Beecroft/Cheltenham Heritage Conservation Area, which is listed under the provisions of Schedule E (Heritage Conservation Areas) of the *HSLEP*. The property is located within the vicinity of property Nos. 110-118 and Nos. 128-130 Beecroft Road, Beecroft (*house and garden, "Ravenhurst" and garden, fence garden and hedge, house, "Romana House" and Garden*) which are listed as heritage items of local significance under the provisions of Schedule D (Heritage Items) of the *HSLEP*.

At its meeting on 12 September 2011, the Local Heritage Advisory Committee generally agreed that, prior to any development consent being granted for the property, an assessment should be undertaken by a suitably qualified consultant of the potential archaeological significance of the site. The applicant submitted an archaeological assessment which concludes that the site has low potential to yield archaeological significance for the following reasons:

- a. The dwelling and detached shed are characteristic of a modest scale residential occupation and elements such as cellars, pits and wells are uncharacteristic of the vernacular.
- b. An assessment and comparison of successive aerial photography from circa 1943 onwards did not show evidence of any structures, buildings or distinguished site features.
- c. An inspection of the site did not reveal any occupation deposits, artefacts or relics.

The archaeological assessment recommends that an appropriate condition of consent be imposed requiring that work cease should excavation on the site uncover any artefacts. The submitted archaeological report addresses the concerns raised by the Committee in respect of archaeological significance.

The Committee acknowledged that the proposed subdivision design would address the existing anomaly whereby the heritage listed dwelling is erected over a lot boundary. The re-subdivision of the site from five lots into four would facilitate retention of the heritage item on a single allotment. The Committee also agreed that the subdivision design would provide a sympathetic curtilage to the heritage item and ensure appropriate separation between the item and proposed dwellings.

The Committee agreed that the bulk, scale, and design of the proposed dwellings would complement the heritage item on the site and streetscape. Furthermore, the proposed dwellings have been located to maximise the retention of significant trees on the site which contribute to the heritage significance of the property and Heritage Conservation Area. However, it was noted that the provision of additional landscaping adjacent to the proposed driveway to service the heritage listed dwelling would contribute to the landscape setting of the item.

The Committee raised no objections to the proposal on heritage grounds subject to the provision of a 1.0 metre wide landscaping strip adjacent to the proposed driveway to service the heritage listed dwelling. Having regard to the recommendations of the archaeological report, a condition is recommended requiring the applicant to notify the Heritage Council of NSW should any relics be uncovered during site works.

2.9 Waste Minimisation and Management Development Control Plan

The proposal complies with the objectives and measures contained within the Waste Minimisation and Management Development Control Plan. A waste management plan has been submitted and would be required to be implemented in accordance with the consent conditions. Residential waste would be collected from the street frontage, which is consistent with the prescriptive controls for Waste Minimisation and Management within the Dwelling House DCP.

2.10 Sustainable Water Development Control Plan

Subject to sediment and erosion control measures being implemented on site during construction, the proposal would comply with the requirements contained within the Sustainable Water Development Control Plan.

2.11 Contributions

The application does not create any additional allotments. Accordingly, a Section 94 Contribution is not required.

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 seven trees from the site. None of the trees to be removed are identified as ‘significant trees’ under Council’s Tree Management Plan. It is considered removal of the nominated trees on the site is acceptable.

The proposed landscaping includes appropriate screen planting for privacy and to complement the proposed buildings.

3.2 Built Environment

The proposal is compatible with the locality and has a negligible impact on the built environment as previously discussed in this report.

3.2.1 Traffic

Given that the proposal involves the reduction of one allotment, the proposed development would not result in additional in traffic generation above that would be otherwise generated from redevelopment of the site in its current subdivision layout. Council’s traffic assessment of the proposal is that the proposed subdivision would generate 36 daily vehicle trips in accordance with the Roads and Traffic Authority’s *Guide To Traffic Generating Developments* and the traffic generation would not impact on the capacity of the local road network.

3.2.2 Drainage

The engineering assessment concludes that stormwater can be drained independently to the street gutter from the proposed lots and Lots 2-4 would each have an on-site detention system in accordance with the Council’s engineering requirements.

3.3 Social Impacts

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

5. PUBLIC PARTICIPATION

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

5.1 Community Consultation

The proposed development was placed on public exhibition and was notified to adjoining and nearby landowners between 27 June 2011 and 20 July 2011 in accordance with Council’s *Notification and Exhibition Development Control Plan*. During this period, Council received fifteen submissions, including a submission from the Beecroft Cheltenham Civic Trust. The map below illustrates the location of those nearby landowners who made a submission and are in close proximity to the development site.



NOTIFICATION PLAN

<ul style="list-style-type: none"> • PROPERTIES NOTIFIED 	<ul style="list-style-type: none"> X SUBMISSIONS RECEIVED 	 PROPERTY SUBJECT OF DEVELOPMENT	
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10 SUBMISSIONS RECEIVED OUT OF MAP RANGE
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The concerns raised in the submissions objecting to the proposed development relate to:

- Insufficient allotment sizes.
- Building design not in keeping with area.
- Unacceptable traffic and safety impacts on local streets.
- Unacceptable overshadowing of the adjoining property.
- Development is excessive in bulk, height and scale.
- The removal of significant trees.
- Loss of privacy.
- Insufficient building setbacks.
- Overdevelopment of the site.
- Inadequate landscaping.
- Insufficient perimeter fencing.
- Insufficient restoration to the heritage listed building.
- Unsatisfactory street numbering.

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

5.1.1 Street Numbering

Public submissions have raised concerns regarding likely changes to the existing property numbers as a result of the requirement to provide new street numbers to the proposed lots. The numbering of properties occurs in accordance with Council's protocol, which is to ensure that there is no duplication of numbers in a street.

5.2 Public Agencies

The application was referred to the following Agency for comment:

5.2.1 Roads and Traffic Authority

The application was referred to the Roads and Traffic Authority. The RTA raises no objections to the proposal and recommends conditions of consent. As an advisory note to Council for consideration, the RTA has suggests that that the entry and exit for vehicles from the proposed lots should be in a forward direction. However, vehicles access to the proposed lots would be gained via The Crescent which is not considered to be a busy road. Council's engineer considers this arrangement satisfactory and in accordance with the requirements of the Residential Subdivision DCP, the provision of a turning area on each of the proposed lots is not warranted.

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 development would be in the public interest.

CONCLUSION

The application proposes the Torrens title subdivision of five lots into four, the erection of three detached dwellings and the retention of an existing heritage listed building.

The proposal is consistent with the relevant aims and objectives contained within the relevant State and Regional Environmental Planning Policies, the Hornsby Shire Local Environmental Plan 1994, and the Development Control Plans which are applicable to the site. The proposal does not comply with the prescriptive density control for the Residential A zone in the Hornsby Shire Local Environmental Plan 1994. However, pursuant to SEPP 1, the proposed variation to the development standard is supported as the proposed subdivision pattern is similar to the adjoining properties and the design would address the existing anomaly whereby the heritage listed dwelling is erected over a lot boundary.

The development is unlikely to result in any significant impacts upon the natural or built environments, or have any negative social or economic impacts. The development provides for additional housing which is consistent with the Metropolitan Strategy. Given this, and the recommended conditions, it is recommended that the application be approved.

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

ROD PICKLES
Manager - Assessment Team 2
Planning Division

PAUL DAVID
Manager - Subdivision & Development
Engineering Services
Planning Division

JAMES FARRINGTON
Executive Manager - Planning
Planning Division

Attachments:

1. Locality Plan
2. Site Plan
3. Subdivision Plan
4. Floor Plans
5. Elevations and Sections
6. Shadow Diagrams
7. Landscape Plan
8. Photo Montages

File Reference: DA/605/2011

Document Number: D01762303

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.

STAGE 1 – SUBDIVISION OF FIVE ALLOTMENTS INTO FOUR**STAGE 2 – DEMOLITION OF THE EXISTING GARAGE ON PROPOSED LOT 1 AND CONSTRUCTION OF A TWO STOREY DWELLING ON PROPOSED LOT 2****STAGE 3 – CONSTRUCTION OF A TWO STOREY DWELLING ON PROPOSED LOT 3****STAGE 4 – CONSTRUCTION OF A TWO STOREY DWELLING ON PROPOSED LOT 4****CONDITIONS APPLICABLE TO ALL STAGES****1. Approved Plans and Supporting Documentation**

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

Architectural Plans

<i>Plan Title.</i>	<i>Drawing No.</i>	<i>Drawn by</i>	<i>Dated</i>
Site Plan and Proposed Development	-	-	August 2011
Proposed Subdivision	2654-1	Warren Eldridge	20.5.11
Proposed Residence Lot 2 – Ground Floor Plan	1780/1/5	Apted Plan Services	May 2011
Proposed Residence Lot 2 – First Floor Plan	1780/2/5	Apted Plan Services	May 2011

Proposed Residence Lot 2 – Elevations	1780/3/5	Apted Plan Services	May 2011
Proposed Residence Lot 2 – Sections	1780/4/5	Apted Plan Services	May 2011
Proposed Residence Lot 3 – Ground Floor Plan	1781/1/5	Apted Plan Services	May 2011
Proposed Residence Lot 3 – First Floor Plan	1781/2/5	Apted Plan Services	May 2011
Proposed Residence Lot 3 – Elevations	1781/3/5	Apted Plan Services	May 2011
Proposed Residence Lot 3 – Sections	1781/4/5	Apted Plan Services	May 2011
Proposed Residence Lot 4 – Ground Floor Plan and First Floor Plan	1782/1/3	Apted Plan Services	May 2011
Proposed Residence Lot 4 – Elevations	1782/2/3	Apted Plan Services	May 2011
Landscape Plan	-	Genesis Garden Design	-

Supporting Plans and Documents

<i>Document Title.</i>	<i>Prepared by</i>	<i>Dated</i>
Sediment and Erosion Control Plan (Reference No. 2654-1)	Warren Eldridge	12.08.11
Heritage Impact Statement (Reference No. EP2011/0106)	Edwards Planning	June 2011
State Environmental Planning Policy No. 1 Objection (Reference No. EP2011/0106)	Edwards Planning	June 2011
Statement of Environmental Effects (Reference No. EP2011/0106)	Edwards Planning	June 2011
Archaeological Assessment (Reference No. EP2011/0106)	Edwards Planning	4 October 2011
Shadow Diagram (Reference: DWG No. 1780/5/5)	-	May 2011
Shadow Diagrams		August 2011

(Reference: DWG No. 1781/5/5)		
Shadow Diagrams (Reference: DWG No. 1782/3/3)		August 2011
Drainage Plan	-	May 2011
Waste Management Plan	Wagstaff Enterprises Pty Ltd	2.06.11
Tree Report	Allison Eldridge	1 June 2011
BASIX Certificate No. 378976S	Wagstaff Enterprises Pty Ltd	30 May 2011
Photomontages	-	Received by Council on 5 October 2011
Schedule of Colours and Finishes	Wagstaff Enterprises Pty Ltd	11 August 2011

2. Removal of Existing Trees

This development consent only permits the removal of trees numbered 2, 4, 7, 8, 12, 13 and 14 as identified on Tree Report prepared by Allison Eldridge dated 1 June 2011. 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. Provision of a 1.0 metre wide landscaping strip adjacent to the proposed driveway to the heritage listed dwelling on Lot 1.

REQUIREMENTS PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

CONDITIONS APPLICABLE TO STAGE 1

4. 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.

CONDITIONS APPLICABLE TO STAGES 2, 3 and 4

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.

a.

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

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:

- a. *Energy Australia* – a letter of consent demonstrating that satisfactory arrangements have been made to service the proposed development.

- b. *Sydney Water* – the submission of a ‘Notice of Requirements’ under s73 of the *Sydney Water Act 1994*.

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

REQUIREMENTS PRIOR TO THE COMMENCEMENT OF ANY WORKS

CONDITIONS APPLICABLE TO ALL STAGES

9. 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.

10. 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.

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*; or
- c. have an on-site effluent disposal system 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.

13. Tree Protection Barriers

Tree protection fencing must be erected around trees numbered 5 & 6 to be retained at a 4 metre setback. The tree fencing must be constructed of 1.8 metre 'cyclone chainmesh fence' or star pickets spaced at 2 metre intervals, connected by a continuous high-visibility barrier/hazard mesh at a height of 1 metre.

REQUIREMENTS DURING CONSTRUCTION

CONDITIONS APPLICABLE TO ALL STAGES

14. Relics

Should any archaeological deposits, artefacts and/or relics be uncovered by the excavation or disturbance, work must cease in the affected area (s) and the *Heritage Council of NSW* must be notified. Additional assessment and approval may be required prior to works continuing in the affected area(s) based on the nature of the discovery.

CONDITIONS APPLICABLE TO STAGES 2, 3 and 4

15. Construction Work Hours

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

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

16. 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.

17. 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.

18. Works near Trees

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

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

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

19. 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.

20. 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.

21. 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.

22. 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.

23. Demolition and Construction Vehicles

All demolition and construction vehicles must be contained wholly within the site and vehicles must enter the site before stopping. A construction zone will not be permitted on Beecroft Road.

REQUIREMENTS PRIOR TO THE ISSUE OF A SUBDIVISION CERTIFICATE**CONDITIONS APPLICABLE TO STAGE 1****24. Sydney Water – s73 Certificate**

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

25. Internal Driveway/Vehicular Areas

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

- a. The driveway be a rigid pavement.
- b. The driveway grade must not exceed 25 percent and changes in grade must not exceed 8 percent.
- c. A minimum of two car parking spaces shall be provided for proposed Lot 1 in accordance with Council's Dwelling House DCP.

Note: *A Construction Certificate is required to be submitted and approval obtained prior to the commencement of these works.*

26. Road Works

A separate application under the *Local Government Act 1993* and the *Roads Act 1993* must be submitted to Council for all road works approved under this consent. The design and construction shall be in accordance with Council's *Civil Works Design and Construction Specification, 2005* and the following requirements:

- a. The existing bitumen kerb shall be removed and replaced with a concrete kerb and gutter and pavement along the full frontage of the development site in The Crescent, together with footpath formation, necessary drainage and sealing of road pavement between the existing pavement and lip of the gutter.
- b. The existing road pavement to be saw cut a minimum of 300 mm from the existing edge of the bitumen and reconstructed.
- c. The existing pram ramp in The crescent shall be removed and reconstructed.
- d. A vehicular crossing shall be constructed to provide vehicular access for proposed Lot 1.

Note: *A separate Construction Certificate is required to be submitted and approval obtained from Council prior to the commencement of these works.*

27. Preservation of Survey Marks

A certificate by a Registered Surveyor shall be submitted to the Principal Certifying Authority, certifying that there has been no removal, damage, destruction, displacement or defacing of the existing survey marks in the vicinity of the proposed development or otherwise the re-establishment of damaged, removed or displaced survey marks has been undertaken in accordance with the Surveyor General's Direction No.11 – "*Preservation of Survey Infrastructure*".

28. 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.

29. Creation of Easements

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

- a. The creation of a "*Positive Covenant*" over the proposed Lots 2, 3 and 4 requiring that any future development is to provide an on-site detention system. The on-site detention system is to have a storage capacity of 5 cubic metres and a maximum discharge of 8 litres per second into Council's drainage system in accordance with Council's prescribed wording.

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

30. 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.

31. Maintain Canopy Cover

To maintain canopy cover, 4 medium to large trees selected from Council's booklet *'Indigenous Plants for the Bushland Shire'* are to be planted on the subject site. The planning location shall not be within 4 metres of the foundation walls of a dwelling or in-ground pool. The pot size is to be a minimum 25 litres and the tree(s) must be maintained until they reach the height of 3 metres. Trees must be native to Hornsby Shire and reach a mature height greater than 8 metres.

32. Allotment Numbering

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

33. Boundary Fencing

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

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

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.

CONDITIONS APPLICABLE TO STAGES 2, 3 and 4

34. 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.

35. Vehicular Crossing

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

- a. Any redundant crossings to be replaced with integral kerb and gutter.

- b. The footway area to be restored by turfing.
 - c. Approval obtained from all relevant utility providers that all necessary conduits be provided and protected under the crossing.
- b.
- Note: An application for a vehicular crossing can only be made to one of Council's Authorised Vehicular Crossing Contractors. You are advised to contact Council on 02 9847 6940 to obtain a list of contractors.*

36. Stormwater Drainage – Dwellings

The stormwater drainage system for the development must be designed and constructed for an average recurrence interval of 20 years and be gravity drained in accordance with the following requirements:

- a. Connected directly to Council's street drainage system.

37. 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 5 cubic metres, and a maximum discharge (when full) of 8 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. Where above ground and the average depth is greater than 0.3 metres, a 'pool type' safety fence and warning signs to be installed.
- e. Not be constructed in a location that would impact upon the visual or recreational amenity of residents.

Note: A Construction Certificate is required to be submitted and approval obtained prior to the commencement of these works.

38. Creation of Easements

The following matter(s) must be nominated on the plan of subdivision under s88B of 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.

39. Fulfilment of BASIX Commitments

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

40. 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.

41. Sight Distance

Any landscaping and/or fencing must not restrict sight distance to pedestrians and cyclists.

42. Retaining Walls

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

43. Dwelling Numbering

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

44. Boundary Fencing

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

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

CONDITIONS APPLICABLE TO STAGE 2, 3 AND 4

45. Internal Driveway/Vehicular Areas

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

- a. The driveway be a rigid pavement.
- b. The driveway grade must not exceed 25 percent and changes in grade must not exceed 8 percent.
- c. A minimum of two car parking spaces shall be provided for each dwelling-house in accordance with Council's Dwelling House DCP.

Note: A Construction Certificate is required to be submitted and approval obtained prior to the commencement of these works.

CONDITIONS OF CONCURRENCE - ROADS AND TRAFFIC AUTHORITY

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

46. Redundant Driveways

Any redundant driveways must be removed and the footway is reinstated to match existing.

47. Vehicle Access

Vehicle access to all lots must be from The Crescent. No access is permitted from Beecroft Road.

48. Stormwater Drainage System

Detailed design plans and hydraulic calculations of any changes to the stormwater drainage system must be submitted to the Roads and Traffic Authority (RTA) for approval, prior to the commencement of any works.

Details should be followed to:

The Sydney Asset Management
Roads and Traffic Authority
PO Box 973 PARRAMATTA CBD 2124

A plan checking fee will be payable and a performance bond may be required before the RTA's approval is issued. With regard to the Civil Works requirement please contact the RTA's Project Engineer External Works Ph: 8849 2766.

49. Cost of Works

All works associated with the development must be at no cost of the Roads and Traffic Authority.

50. Noise

The proposed development must be designed so that road noise is mitigated in accordance with the *Department of Environment, Climate Change and Water NSW Road Noise Policy*.

CONDITIONS OF CONCURRENCE – RAILCORP

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

51. Acoustic Assessment

An acoustic assessment must be submitted to the Principal Certifying Authority prior to the issue of a Construction Certificate demonstrating how the proposed development will comply with the Department of Planning's document titled "*Development Near Rail Corridors and Busy Roads – Interim Guidelines*."

52. Electrolysis Risk

Prior to the issue of a Construction Certificate, the applicant is to engage an Electrolysis Expert to prepare a report on the Electrolysis Risk to the development from stray currents. The applicant must incorporate in the development all the measures recommended in the report to control that risk. A copy of the report must be submitted to the Principal Certifying Authority with the application for a Construction Certificate.

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.

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.

Subdivision Certificate Requirements

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

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

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

Fees and Charges – Subdivision

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

Dial Before You Dig

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

Asbestos Warning

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

www.environment.nsw.gov.au

www.nsw.gov.au/fibro

www.adfa.org.au

www.workcover.nsw.gov.au

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

House Numbering

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

Rain Water Tank

It is recommended that water collected within any rainwater tank as part of the development be limited to non-potable uses. *NSW Health* recommends that the use of rainwater tanks for drinking purposes not occur where a reticulated potable water supply is available.

Works to Heritage Listed Dwelling

Any future development application for works to the heritage listed dwelling-house should include details of parking areas and/or structures to be provided to service the dwelling.