



the bushland shire

creating a living environment

BUSINESS PAPER

PLANNING MEETING

**Wednesday, 1 February, 2012
at 6.30PM**

TABLE OF CONTENTS**AGENDA AND SUMMARY OF RECOMMENDATIONS****RESCISSION MOTIONS****ITEMS PASSED BY EXCEPTION / CALL FOR SPEAKERS ON AGENDA ITEMS****DEVELOPMENT APPLICATIONS****A Ward Deferred****A Ward**

- Item 1 PLN12/12 Development Application - Infrastructure - Telecommunications facility - 609 Old Northern Road, Glenhaven 1

B Ward Deferred**B Ward**

- Item 2 PLN13/12 Alterations and additions to existing dwelling within a cluster housing development - 6 Blamey Way Cherrybrook 17

C Ward Deferred**C Ward**

- Item 3 PLN14/12 Development Application - Subdivision of one lot into two lots - 37 Boronia Street, Cheltenham..... 31

GENERAL BUSINESS

- Item 4 PLN15/12 Reporting Variations to Development Standards 53
- Item 5 PLN16/12 State Environmental Planning Policy 65 and Residential Flat Design Code Review 55
- Item 6 PLN17/12 NSW Government review of housing opportunities on landowner nominated sites 63
- Item 7 PLN18/12 Improving The NSW Planning System - Issues Paper 72

QUESTIONS OF WHICH NOTICE HAS BEEN GIVEN**MAYORAL MINUTES****NOTICES OF MOTION****SUPPLEMENTARY AGENDA****MATTERS OF URGENCY****QUESTIONS WITHOUT NOTICE**

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 7 December, 2011 be confirmed; a copy having been distributed to all Councillors.

PETITIONS**RESCISSION 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 PLN12/12 DEVELOPMENT APPLICATION - INFRASTRUCTURE - TELECOMMUNICATIONS FACILITY - 609 OLD NORTHERN ROAD, GLENHAVEN**

RECOMMENDATION

THAT Development Application No. 1167/2011 for the erection of a mobile phone tower at Lot 476 DP 752053, No. 609 Old Northern Road, Glenhaven be approved subject to the conditions of consent detailed in Schedule 1 of this report.

B WARD DEFERRED**B WARD****Page Number 17**

- Item 2 PLN13/12 ALTERATIONS AND ADDITIONS TO EXISTING DWELLING WITHIN A CLUSTER HOUSING DEVELOPMENT 6 BLAMEY WAY CHERRYBROOK**

RECOMMENDATION

THAT Development Application No. 1026/2011 for alterations and additions to an existing dwelling-house at Lot 24 DP 858122, No. 6 Blamey Way, Cherrybrook be approved subject to the conditions of consent detailed in Schedule 1 of this report.

C WARD DEFERRED**C WARD****Page Number 31**

- Item 3 PLN14/12 DEVELOPMENT APPLICATION - SUBDIVISION OF ONE LOT INTO TWO LOTS - 37 BORONIA STREET, CHELTENHAM**

RECOMMENDATION

THAT Development Application No. 1040/2011 for subdivision of one lot into two and alterations and additions to the existing dwelling at Lot 6 DP 965313, No. 37 Boronia

Avenue, Cheltenham be approved subject to the conditions of consent detailed in Schedule 1 of this report.

GENERAL BUSINESS

Page Number 53

Item 4 PLN15/12 REPORTING VARIATIONS TO DEVELOPMENT STANDARDS

RECOMMENDATION

THAT Council note the contents of Executive Manager's Report No. PLN1/12.

Page Number 55

Item 5 PLN16/12 STATE ENVIRONMENTAL PLANNING POLICY 65 AND RESIDENTIAL FLAT DESIGN CODE REVIEW

RECOMMENDATION

THAT a submission based on the discussion contained in Executive Manager's Report No. PLN9/12 be forwarded to the Department of Planning and Infrastructure for its consideration as part of the public consultation stage of the review of *State Environmental Planning Policy 65 – Design Quality of Residential Flat Development* and *Residential Flat Design Code*.

Page Number 63

Item 6 PLN17/12 NSW GOVERNMENT REVIEW OF HOUSING OPPORTUNITIES ON LANDOWNER NOMINATED SITES

RECOMMENDATION

THAT:

1. A submission based on the discussion contained in Executive Manager's Report No. PLN10/12 concerning the NSW Government review of housing opportunities be forwarded to the Department of Planning and Infrastructure concerning landowner nominated sites and stating that:
 - 1.1 Council confirms its support for the progression of investigations for the release of South Dural for urban purposes.
 - 1.2 Any release of lands at South Dural and/or North Glenhaven should be accompanied by a funding and delivery plan for the associated infrastructure works.
2. A copy of the submission be forwarded to Local Members of Parliament for their information.

Page Number 72

Item 7 PLN18/12 IMPROVING THE NSW PLANNING SYSTEM - ISSUES PAPER

RECOMMENDATION

THAT a submission be forwarded to the Planning Review Panel commending it on the consultation undertaken to date and noting that the issues identified in the Issues Paper includes those identified by Council in its previous submission to the Review.

QUESTIONS OF WHICH NOTICE HAS BEEN GIVEN

MAYORAL MINUTES

NOTICES OF MOTION

SUPPLEMENTARY AGENDA

MATTERS OF URGENCY

QUESTIONS WITHOUT NOTICE

**1 DEVELOPMENT APPLICATION - INFRASTRUCTURE -
TELECOMMUNICATIONS FACILITY - 609 OLD NORTHERN ROAD,
GLENHAVEN**

Development Application No:	DA/1167/2011
Description of Proposal:	Infrastructure – Telecommunications facility
Property Description:	Lot 476 DP 752053, No. 609 Old Northern Road, Glenhaven
Applicant:	Optus C/- Aurecon Australia Pty Ltd
Owner:	Syesun Pty Ltd
Statutory Provisions:	Hornsby Shire Local Environmental Plan 1994 Rural BA (Small Holdings – Agricultural Landscapes) Telecommunications Act 1997 State Environmental Planning Policy (Infrastructure) 2007
Estimated Value:	\$125,000
Ward:	A

RECOMMENDATION

THAT Development Application No. 1167/2011 for the erection of a mobile phone tower at Lot 476 DP 752053, No. 609 Old Northern Road, Glenhaven be approved subject to the conditions of consent detailed in Schedule 1 of this report.

EXECUTIVE SUMMARY

1. The application proposes the erection of a mobile phone tower, cabling and a shed for the storage of equipment.
2. The proposal complies with the relevant provisions of the Environmental Planning and Assessment Act 1979, the Telecommunications Act 1997, and the Hornsby Shire Local Environmental Plan 1994.
4. Thirty-five submissions and one petition have been received in respect of the application.
5. It is recommended that the application be approved.

HISTORY OF THE SITE

On 15 May 1996, Council approved DA/57/1996 for the erection of a Telstra Mobile Phone Base Station at the subject site, however the proposal did not proceed. The subject application was lodged with Council on 1 November 2011.

THE SITE

The site has an area of 4,604sqm, is located on the eastern side of Old Northern Road and falls to the street. The site contains an existing retail plant nursery, "Flower Power", including a shop and ancillary café, substantial outdoor display areas, storage sheds, car parking and landscaping.

The area of the site for the proposed facility is located at the northern boundary, adjacent to the access handle servicing 613 Old Northern Road and is 125 metres from Old Northern Road. The area is currently used for the storage of goods in relation to the retail plant nursery. There is no significant vegetation present on site.

THE PROPOSAL

The application proposes the erection of a telecommunications facility, being a mobile phone tower.

The tower consists of a 30 metre high pole, with 3 antennae extending 2.5 metres above the pole, and a 600 mm dish attached to the pole at a 25 metre height. An equipment shed measuring 3 metres x 2.5 metres would be located adjacent to the pole, enclosed within a 3 metre high metal fence. Sub-terrain cabling including fibre-optics and mains would connect to a pit located on the western side of the site.

In relation to the predominant use of the site as a retail plant nursery, 'Flower Power', the tower would be located adjacent to the storage and pick up point for landscape supplies. Parking is available on site to accommodate employees for intermittent maintenance works.

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 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 development would not be inconsistent with the Strategy and would provide improved communications facilities for an increase in population.

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. Telecommunications Act 1997

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

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

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

2.2 Hornsby Shire Local Environmental Plan 1994

The subject land is zoned Rural BA (Small Holdings – Agricultural Landscapes) under the *Hornsby Shire Local Environmental Plan 1994 (HSLEP)*. The objectives of the Rural BA zone are:

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

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

2.3 State Environmental Planning Policy (Infrastructure) 2007

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

As the proposal involves the construction of a new telecommunications tower on land zoned Rural BA (Small Holdings – Agricultural Landscapes) the communications facility requires development consent under Part 4 of the *Environmental Planning and Assessment Act 1979*.

Proposal for communications facilities are required to be prepared - consideration of the principles contained within the *NSW Telecommunications Facilities Guideline including Broadband*. These principles address design and minimising visual impact, attempting where possible co-location with existing facilities, health standards with regards to EME and maximising compliance with relevant policies.

The proposed development satisfies the principles of the *Guideline* through a site selection process, utilising modern design elements and demonstrating compliance with the EME standards established by the Australian Communications and Media Authority. Non-compliance with Council's setback controls is addressed within the report and considered acceptable.

2.4 Sydney Regional Environmental Plan No. 20 – Hawkesbury and Nepean Rivers

Sydney Regional Environmental Plan No. 20 contains general planning considerations and strategies to be considered by the consent authority as to the impacts of development on the scenic quality of the area, water quality, aquaculture, recreation and tourism.

The proposed development would not impact upon the health or use of the catchment. Subject to a recommended condition of consent relating to sediment and erosion control measures being implemented and maintained, the proposed development would be consistent with the objectives of the *Sydney Regional Environmental Plan No. 20*.

2.5 Rural Lands Development Control Plan (DCP)

The DCP implements the objectives of the rural zones in regulating development to enhance agricultural productivity, and protect the rural landscape. It provides guidance for achieving strategic economic, social and environmental outcomes, as well as controls for general and specific development types for the rural zones.

The development involves the erection of a telecommunications tower, improving services for the rural community of the area. The development is consistent with the desirable economic and social outcomes for the area by improving connectivity.

The DCP does not include specific controls for communications facilities.

2.5.1 Setbacks

The DCP requires development to maintain a minimum setback of 15 metres from all property boundaries. The tower and ancillary infrastructure would be located 1.3 metres from the northern boundary.

The objective of the element is to complement the rural character and maintain the privacy of adjoining properties. The applicant provided the following statement justifying the location of the proposed tower on the site, as opposed to the location approved for the Telstra tower in 1996:

“Optus understand that Telstra lodged, and had approved, a DA for a similar telecommunications facility in 1995 (sic). The location of Telstra’s proposed facility differs to that of Optus’ current proposal here. It is noted that the Telstra proposal was on the ‘eastern’ boundary of the property, approximately 150m from the proposed Optus site. Optus investigated a number of locations on the Flower Power lot, and the final location proposed here by Optus was the site that was agreed upon by the landowner, and taking into account the many considerations of Optus (and the landowner). It is felt that the Telstra location provided a much higher degree of visual intrusiveness in the area, and would be viewed as a standalone vertical element, whereas the proposed Optus location is viewed against natural screening. It is noted, also, that the proposed Telstra location was further distanced from a residential dwelling; however, Optus has taken into account all factors when considering the siting of a telecommunications facility and concludes that the proposed location is the most suitable on the lot.”

The numerical setback controls aim to ensure that the built form does not detract from the character of the area. The proposed tower and ancillary structures would be setback 125 metres from Old Northern Road with the lower half screened by existing vegetation. The ancillary structures would be in keeping with the scale of development in relation to the retail plant nursery, and the residential built form present on the Hills Shire Council side of Old Northern Road. The variation to the setback control would therefore, not impinge upon the rural character of the area and is considered acceptable.

3 ENVIRONMENTAL IMPACTS

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

3.1 Natural Environment

The site is primarily developed for a retail plant nursery. The proposed development has a minimal building footprint and would not impact on the natural environment.

3.2 Built Environment

3.2.1 Visual Impact

Council received several objections concerned with the visual impact of the development on the area. While the 30 metre tower would protrude above established building and tree heights, and be situated at the high point of the site (RL 197.32), it would not adversely impact upon vistas and would form a minor visual element in the context of the surrounding environment. Mature vegetation within the site and adjacent to the site boundaries would obscure the base of the tower. The presence of power poles and transmission lines at the Glenhaven Road and Old Northern Road intersection would lessen the visual impact of the proposed tower on this view corridor. The applicant states that the proposal represents “*a development within a lot that has existing bulk and scale (in the form of [Flower Power]) and*

provides a setback site is considered to be the most appropriate location for Optus' proposed facility."

The applicant also submits that the proposal utilises the best available technology to minimise the scale of the tower and antennae whilst maximising utility: *"the use of the turret headframe to mount the antennas rather than a bulky triangular frame"* contributes to mitigating the visual impact of the development.

The design of the proposal therefore, would minimise the visual impact on the area.

3.2.1.1 Legal Decisions

The Land and Environment Court developed a set of planning principles to assess the impact of development on adjoining properties following the decision in *Pafburn v North Sydney Council*. The proposed development is discussed in relation to these principles as follows:

1. *How does the impact change the amenity of the affected property(ies)? How much sunlight, view or privacy is lost as well as how much is retained?*

Maintaining views is the primary amenity issue regarding the development. The closest dwelling, at 615 Old Northern Road, would be approximately 40 metres from the tower which would be visible from the dwelling. The design of the tower utilises the best available technology, and is situated so as to minimise its impact on the landscape. There are no significant views from the adjoining dwellings in the direction of the proposed tower, and as such, the impact of the proposal on the amenity of the area with regards to impact on views has been minimised.

2. *How necessary and/or reasonable is the proposal causing the impact?*

The proposed development would improve mobile phone coverage for the area and is therefore, considered reasonable.

3. *How vulnerable to the impact is the property receiving the impact? Would it require the loss of reasonable development potential to avoid the impact?*

The proposed development would not restrict the development potential of adjoining properties.

4. *Does the impact arise out of poor design? Could the same amount of floor space and amenity be achieved for the proponent while reducing the impact on neighbours?*

The use of the turret headframe to mount the antennas rather than a bulky triangular frame contributes to mitigating the visual impact of the development. The siting of the tower is optimum for achieving coverage and minimising amenity impacts on the area.

5. *Does the proposal comply with the planning controls? If not, how much of the impact is due to the non-complying elements of the proposal?*

Non-compliance with the setback controls is considered acceptable as the scale and siting of the tower does not detriment the rural character of the area. The proposed tower is an important piece of infrastructure that strikes a balance between responding to demand for services and minimising impacts on the visual amenity of the area.

As such, the impact of the development is considered acceptable.

3.2.2 Acoustics

Acoustic impacts have been addressed within the Statement of Environmental Impacts as follows:

“The only noise emitted by the facility would be associated with a small air conditioning unit located within the proposed Optus shelter, which would produce a sound level similar to that of domestic air conditioners. Due to the location of the proposed facility, it is not expected that the noise generated by the facility would impact on the surrounding properties.”

Appropriately worded conditions are recommended in Schedule 1 to mitigate potential noise impacts.

3.2.3 Access

The proposed development would be situated within the ‘Flower Power’ retail garden nursery adjacent to a stock yard. Vehicular access is provided via Old Northern Road, and there is sufficient parking on site to accommodate employees during construction and maintenance.

It is considered that access to the site is satisfactory.

3.3 Social Impacts

The proposed telecommunication facility has given rise to an increased community concern regarding public safety. The matters for concern regarding the proposed development are addressed below.

3.3.1 Health Impact - Electromagnetic Radiation

The proposed facility involves the generation of electromagnetic energy. Several submissions raise concerns regarding electromagnetic energy emitted from the proposed development.

Telecommunication carriers must adhere to Commonwealth Legislation and Regulation that is administered by the Australian Communications and Media Authority (ACMA). In 2003, ACMA adopted the *Radio Communications (Electromagnetic Radiation - Human Exposure) Standard 2003* which relates to continuous exposure of the general public to radio frequency electromagnetic energy (RF EME) from mobile phone stations.

This technical standard was prepared by the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA) and is the same as that recommended by the International Commission for Non-Ionising Radiation Protection (ICNIRP), an agency associated with the World Health Organisation. The Standard operates by placing a limit on the strength of the signal (or RF EME) that operators can transmit to, and from, any network base station. The Standard has a significant safety margin, or precautionary approach built into it.

To demonstrate compliance with the Standard, the applicant has provided a report which predicts the EME from the proposed facility. The report concludes that the maximum EME level would be 0.096% of the ACMA mandated exposure limit using the predictive report methodology.

The report also includes measures at sensitive sites in the vicinity of the proposed development. The predicted EME exposure at the closest residential property, being 615 Old Northern Road, is 0.0036% of the ACMA mandated exposure limit. The Kindalin Childcare Centre located at 1 Glenhaven Road would experience an exposure level 0.017% of the ACMA mandated exposure limit, and the Veterinary Hospital located at 442 Old Northern Road would experience an exposure level 0.039% of the ACMA mandated exposure limit.

These are considered to be low, noting that carriers are permitted to operate base stations with EME levels up to 100% of the ACMA standard. Based on the information submitted, the predicted EME exposure falls well within acceptable levels. Appropriately worded conditions are recommended within Schedule 1 to ensure that EME are restrained to levels prescribed by the relevant agencies.

Several submissions objecting to the development comment that the application of the precautionary principle should justify refusal of the application. The precautionary principle was applied in the case of *Telstra v Hornsby* to determine the suitability of a site for a mobile phone tower where the health impacts on the surrounding population were uncertain. In his determination, CJ Preston concluded that the risk of adverse health impacts as a result of EME has been addressed in the preparation of the standards developed by ARPANSA, and adopted by the ACMA. The precautionary principle is therefore applied in the implementation of the Standard.

3.4 Economic Impacts

Submissions raise concerns regarding the devaluation of properties due to the development. However, this is not a matter for consideration under the provisions of Section 79C of the Act.

The development would contribute positively to the local economy by improving telecommunications connectivity.

4. SITE SUITABILITY

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

4.1 Site Selection

The applicant provided a summary discussion on potential sites for the proposed development. Four sites were discounted due to their proximity to schools and insufficient radiofrequency transmission as a result of terrain and distance. Furthermore, the applicant states that “*the selection of the site has taken into account all the issues that Section 5.1 of the ACIF Code requires*”.

At the proposed location, the proposed facility would not cause any significant adverse impact to the amenity of residents in the immediate area and would not provide any significant visual impact. Given that the location of the facility would be partially screened by existing trees and the Flower Power buildings, the proposed facility is appropriately located.

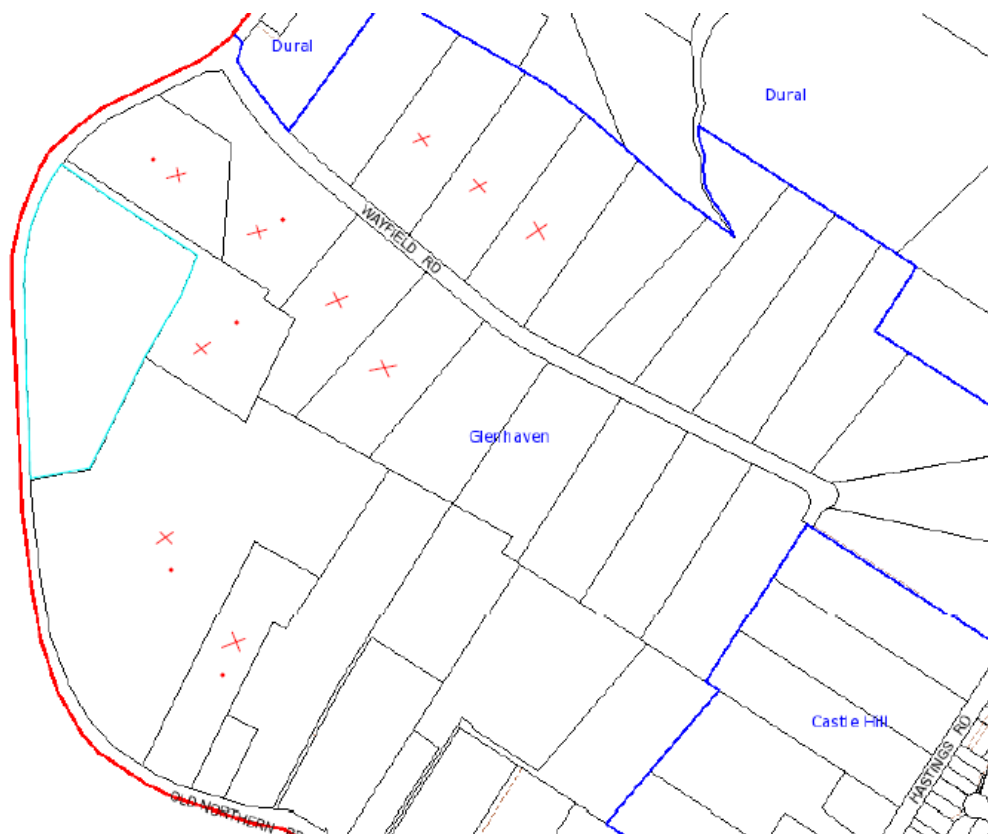
The applicant has demonstrated that the site is the most suitable to minimise impacts on the surrounding area.

5. PUBLIC PARTICIPATION


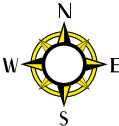
Section 79C(1)(d) of the Act requires Council to consider “any submissions made in accordance with this Act”.

5.1 Community Consultation

The proposed development was placed on public exhibition and was notified to adjoining and nearby landowners between 15 November 2011 and 6 December 2011 in accordance with Council’s *Notification and Exhibition Development Control Plan*. During this period, Council received 35 submissions and 1 petition. The map below illustrates the location of landowners who made a submission and are in close proximity to the development site.



NOTIFICATION PLAN

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

Council received 35 submissions and 1 petition containing 97 signatures objecting to the proposal generally on the following grounds:

- The health impacts from mobile phone towers are uncertain, particularly on young people. The development should not be approved until there is consensus on the evidence.

- Council and the applicant have not undertaken sufficient community consultation.
- Due diligence has not been afforded in consideration of the health impacts on sensitive land uses within the vicinity of the proposed development, being the childcare, veterinary hospital, nursing homes and residential areas. The highest predicted readings occur at the childcare centre.
- There are no provisions to monitor the EME, and for Council to decommission the tower should the stated levels be exceeded.
- The development would have an adverse impact on property values within the area.
- The visual amenity of the area would be affected.
- The proposal has not taken into consideration other locations.
- The current quality of mobile coverage is sufficient to render the proposal unnecessary.

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

6. THE PUBLIC INTEREST

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

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

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

CONCLUSION

The application proposes the erection of a mobile phone tower, cabling and a shed for the storage of equipment.

The application has been assessed in accordance with the relevant provisions under the Telecommunications Act 1997, Hornsby Shire Local Environmental Plan 1994 and the Rural Lands DCP and is considered acceptable.

The proposed EME levels are substantially below the prescribed standard set by the ACMA. The concerns raised within the submissions have been addressed within the report and conditions of consent are recommended to maintain the amenity of the area.

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

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

GARRY MAHONY
Acting Manager - Assessment Team 2
Planning Division

JAMES FARRINGTON
Acting Executive Manager - Planning
Planning Division

Attachments:

1. Locality Plan
2. Overall Site Plan
3. Site Layout and Setout Plan
4. Elevations

File Reference: DA/1167/2011
Document Number: D01835807

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>
S8697-G2 Overall Site Plan	Aurecon	10.10.11
S8697-G3 Site Layout and Setout Plan	Aurecon	10.10.11
S8697-G4 Site Elevation	Aurecon	10.10.11

<i>Document No.</i>	<i>Prepared by</i>	<i>Dated</i>
Summary of Estimated RF EME Levels NSA Site No (2156011)	'yes' Optus	21.10.11

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.

REQUIREMENTS PRIOR TO THE COMMENCEMENT OF ANY WORKS**3. Erection of Construction Sign**

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

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

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

4. 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.

5. 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

6. 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.

7. 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.

8. 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.

9. Excavated Material

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

REQUIREMENTS PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE

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

10. 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.

11. External Lighting

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

OPERATIONAL CONDITIONS

12. Noise – Plant and Machinery

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

13. Site Compliance Certificate

A Site Compliance Certificate issued by a NATA accredited service is to be submitted to Council for the site at 609 Old Northern Road, Glenhaven NSW 2156 – Lot 476 DP 752053 confirming the operating EME levels, within one month of the commencement of the operation of the facility. The site is to be assessed and found to comply with the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA)'s Radiation Protection Standards and the RF Human Exposure Limits as specified by the Australian Communications and Media Authority (ACMA).

14. Telecommunications Facility

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

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

- END OF CONDITIONS -

ADVISORY NOTES

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

Environmental Planning and Assessment Act, 1979 Requirements

The 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.

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 ALTERATIONS AND ADDITIONS TO EXISTING DWELLING WITHIN A CLUSTER HOUSING DEVELOPMENT - 6 BLAMEY WAY CHERRYBROOK

Development Application No:	DA/1026/2011
Description of Proposal:	Alterations and additions to existing dwelling-house within a cluster housing development
Property Description:	Lot 24 DP 858122, 6 Blamey Way Cherrybrook
Applicant:	V.R. Drafting & Design
Owner:	Choice Pc Pty Ltd
Statutory Provisions:	Hornsby Shire Local Environmental Plan 1994 Residential A (Low Density)
Estimated Value:	\$49,500
Ward:	B

RECOMMENDATION

THAT Development Application No. 1026/2011 for alterations and additions to an existing dwelling-house at Lot 24 DP 858122, No. 6 Blamey Way, Cherrybrook be approved subject to the conditions of consent detailed in Schedule 1 of this report.

EXECUTIVE SUMMARY

1. The application proposes alterations and additions to an existing dwelling-house within a cluster housing development.
2. The proposed alterations and additions exceed the floor space ratio development standard under *Hornsby Shire Local Environmental Plan 1994* by 37%. The non-compliance is the subject of an objection under *State Environmental Planning Policy No. 1 – Development Standards*. The objection is considered well founded and is supported.
3. No submissions have been received in respect of the application.
4. It is recommended that the application be approved.

HISTORY OF THE SITE

The existing dwelling-house forms part of a cluster housing development that was approved by Council under *State Environmental Planning Policy No. 25 – Residential Allotment Sizes*, on 24 October 1994 (DA/272/1994). The development comprises semi-detached dwellings on Torrens title allotments ranging in size from 240m² to 756m².

THE SITE

The site has an area of 367.1m², forms part of a cluster housing development and is located on the northern side of Blamey Way. A two storey, semi-detached dwelling-house is sited on the land. A portion of a right of way is over part of the frontage. The site has a 9% fall to the frontage.

The cluster housing development comprises of 57 dwellings and is in proximity to New Line Road to the south and Cherrybrook Technology High School to the north.

THE PROPOSAL

This application proposes alterations and additions comprising of a rumpus room, guest bedroom, bathroom and toilet to the ground floor at the north eastern elevation of the existing multi-unit housing dwelling. The proposal increases the floor area from 134 m² to 177 m².

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 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*.

2. STATUTORY CONTROLS

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

2.1 Hornsby Shire Local Environmental Plan 1994

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

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

The proposed development is defined as “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 Low Density Residential zone is 0.4:1. The proposed development has an FSR of 0.55:1 in non-compliance with this standard. To address this matter, the applicant submitted an objection to the standard under *State Environmental Planning Policy No. 1 – Development Standards*. Refer to discussion in Section 2.2.

Clause 18 of the *HSLEP* sets out heritage conservation provisions within Hornsby Shire. Clause 18 is not applicable to this application as the subject property is not located within a Heritage Conservation Area and does not adjoin a heritage item.

2.2 State Environmental Planning Policy No. 1 – Development Standards

The application has been assessed against the requirements of *State Environmental Planning Policy No. 1 – Development Standards (SEPP 1)*. This policy provides flexibility in the application of development standards in circumstances where strict compliance with those standards would be unreasonable or unnecessary or tend to hinder the attainment of the objectives of the Act.

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

1. *The objectives of the standard are achieved notwithstanding non-compliance with the standard;*
2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*
3. *The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*

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

In regard to whether the objection may be well founded, the applicant (in summary) submits that:

- *The proposed addition will not affect any neighbouring properties as it will not affect overshadowing, privacy, noise, height, solar access, or amenity.*
- *The proposal is only single storey and will not add bulk and will appear to be in keeping with surrounding development.*
- *The established streetscape is well maintained as the design of the addition is in keeping with the existing residence with the use of the same building materials and hip roof design.*

The matters listed above have been taken into consideration in assessing the merits of the *SEPP 1* objection. The proposed alterations and additions complement the existing cluster housing development which generally exceeds the residential density provisions under the *HSLEP*.

The applicant's *SEPP 1* submission is supported as the proposed additions cannot be viewed within the streetscape and comply with other various elements of the *Low Density Multi-Unit Housing DCP*, which aim to control the intensity of development and protect the amenity of adjoining properties. The proposed development maintains the integrity of the established streetscape and amenity of adjoining properties.

The submitted *SEPP 1* objection is therefore considered well founded in respect to the above Principles Nos. 1, 2 and 3.

2.3 Sydney Regional Environmental Plan No. 20: Hawkesbury – Nepean Rivers

Sydney Regional Environmental Plan No. 20 aims to protect the environment of the Hawkesbury – Nepean Rivers system by ensuring that the impacts of future land uses are considered in a regional context.

The site is located within the catchment of the Hawkesbury – Nepean Rivers. Part 2 of *Sydney Regional Environmental Plan No. 20* contains general planning considerations and strategies, and requires Council to consider the impact of any proposal on water quality, riverine scenic quality, aquaculture, recreation and tourism.

Water quality is the only relevant issue for the assessment of this proposal and would be addressed by conditions requiring the implementation of sediment and erosion control measures. The proposed development would therefore, have negligible impacts on the water quality of the catchment area.

2.4 State Environmental Planning Policy (Exempt and Complying Development)

On 27 February 2009, *State Environmental Planning Policy (Exempt and Complying Development Codes)* commenced operation. Under the SEPP, the NSW Housing Code outlines how residential developments, including home extensions and other ancillary development, can proceed on lots of greater than 200 m² in size as complying development with Council or accredited certifier approval.

The SEPP would be applicable to the existing dwelling as it is a separate Torrens title lot. However, the proposed rear setback does not comply with the setback provisions. Accordingly, the proposal is subject to a development application. Notwithstanding the proposal would be in accordance with the other provisions of the Code.

2.5 Cherrybrook Precinct Development Control Plan

The *Cherrybrook Precinct DCP* provides a detailed planning strategy and guidelines for development within the Cherrybrook Precinct. The *Cherrybrook Masterplan* ensures that residential subdivision promotes the garden suburb character of the Cherrybrook Precinct while the Residential Strategy protects residential amenity through setback, height and acoustic requirements.

The proposed additions would be consistent with the objectives of the *Cherrybrook DCP* and are considered acceptable.

2.6 Low Density Multi-Unit Housing Development Control Plan

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

Low Density Multi-Unit Housing Development Control Plan			
Control	Proposal	Requirement	Compliance
FSR	0.55:1	0.4:1	No
Site Cover	38%	40%	Yes
Height	2.4 m	3.6 m	Yes
Setbacks			
Front (southern)	Unchanged	6 m	Yes
Rear (northern)	1.13 m	3 m	No
Side (west)	Unchanged	1 m	Yes
Side (east)	1.04 m	1 m	Yes

Car parking	2 spaces	2 spaces	Yes
Private Open Space	77 m ²	120 m ²	No
Landscaping	41%	45%	No
Storeys	1 storeys	2 storeys	Yes

As detailed in the table above, the proposal does not comply with the prescriptive measures of the Density, Setbacks, Landscaping and Private Open Space. These issues are addressed as follows:

2.6.1 Density

The proposal would have a gross floor area of 177 m² and a FSR of 0.55:1 which does not comply with the 0.4:1 development standard of the *HSLEP 1994*. The proposal is considered acceptable in this instance as the scale of the existing dwelling is consistent with the bulk and scale of existing dwellings within the cluster housing development. The additional floor space would not detract from the environmental and amenity aspects of the site. Furthermore, the proposal would not result in the loss of solar access or privacy for adjacent development.

The development forms part of a cluster housing development approved under *State Environmental Planning Policy No. 25 – Residential Allotment Sizes* which provided a maximum allowable FSR of 0.5:1. The proposal would equate to a 15.8 m² variation of the 0.5:1 FSR.

The dwelling-house would provide accommodation that would not detract from the scale and variety of dwelling-houses in the immediate locality. The non-compliance with the *Low Density Multi-Unit Housing DCP* density provisions is therefore, considered acceptable.

2.6.2 Setbacks

The proposed 1.13 metre (northern) rear boundary setback does not comply with the 3 metre prescriptive measure of the Setbacks element. This non-compliance is considered acceptable in this instance as there would be negligible visual impacts on adjoining properties. The encroaching structure is single storey in height while the natural ground level of the adjoining properties to the north, namely Nos. 14 and 16 Forrest Glen, are located above the natural ground level of the subject property. Accordingly, the proposed development is considered to be low scale development which does not compromise the amenity of adjacent properties in respect to visual impact, loss of privacy or overshadowing.

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

2.6.3 Landscaping

The proposed 41% landscaped area does not comply with the 45% prescriptive measure of the Landscaping element. The proposal is considered acceptable in this instance as it is a minor variation to the requirement. Furthermore, the available landscaped area contributes to the amenity of the dwelling by providing lawn and paved areas that is consistent with the

landscaping of surrounding development. The proposed landscaped area is suitable to provide private open space to facilitate active recreation for occupants.

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

2.6.4 Private Open Space

The existing private open space would be reduced to 77 m² as a result of the proposed additions would not comply with the 120 m² prescriptive measure of the Private Open Space element. This non-compliance is considered acceptable in this instance as there is adequate usable private open space to accommodate both outdoor recreation activities as well as providing space for service functions such as storage or clothes drying.

The private open space would be usable and complement the amenity of the development as it would receive adequate solar access due to its northerly aspect and it is directly accessible from the active living areas of the dwelling.

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

2.6.5 Design

The design of the proposed addition is consistent with the existing dwelling and surrounding residential development. There is no landform modification proposed and there is sufficient articulation incorporated in the design to avoid monotonous and symmetrical development.

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

3. ENVIRONMENTAL IMPACTS

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

3.1 Natural Environment

The site does not contain any significant vegetation. The proposal does not require the removal of any trees and would have negligible impacts on the surrounding natural environment.

3.2 Built Environment

The proposal would complement the established built form of the existing cluster housing development.

3.3 Social and Economic Impacts

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

4. SITE SUITABILITY

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

The subject site has not been identified as bushfire prone, flood prone or environmentally sensitive lands. The site is considered to be capable of accommodating the proposed development. The scale of the proposed development is consistent with the capability of the site and is considered acceptable.

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 13 October 2011 and 10 November 2011 in accordance with Council’s *Notification and Exhibition Development Control Plan*. Council received no submissions.

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 alterations and additions to the existing dwelling would be in the public interest.

CONCLUSION

The application proposes alterations and additions to existing dwelling-house within a cluster housing development.

The proposal does not comply with the 0.4:1 floor space ratio development standard contained in the HSLEP. The application has been supported by an objection under *State Environmental Planning Policy No. 1 – Development Standards* for a variation to this development standard.

The existing dwelling forms part of a cluster housing development under State Environmental Planning No. 25 – Residential Allotment Sizes which permitted a maximum 0.5:1 FSR.

The proposal would equate to a 15.8m² variation on the original permissible FSR and would generally be consistent with the scale of dwellings within the existing cluster housing development. The submitted SEPP 1 objection is considered well founded with regard to the principles established by the Land and Environment Court.

No submissions have been received in respect of the application.

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.

GARRY MAHONY
Acting Manager, Assessment Team 2
Planning Division

JAMES FARRINGTON
Acting Executive Manager
Planning Division

Attachments:

1. Locality Plan
2. Site Plan
3. Survey Plan
4. Existing Floor Plan
5. Proposed Floor Plan
6. Elevations
7. Elevations and Sections

File Reference: DA/1026/2011
Document Number: D01818870

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>
4236A3 Sheet 1-6 of 6	V & R Design	23 June 2011
12421	Hammond Smeallie & Co Pty Ltd	28 March 2011

2. Use of Materials

The finished surface materials, including colours and textures of the building and hard paved areas, must blend with the surrounding environment and must be non-glare.

REQUIREMENTS PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE**3. Building Code of Australia**

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

4. Contract of Insurance (Residential Building Work)

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

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

5. Notification of Home Building Act, 1989 Requirements

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

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

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

6. Sydney Water – Quick Check

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

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

REQUIREMENTS PRIOR TO THE COMMENCEMENT OF ANY WORKS

7. Erection of Construction Sign

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

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

8. Erosion and Sediment Control

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

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

REQUIREMENTS DURING CONSTRUCTION**9. 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.

Note: This consent does not give right of access to the site via Council's park or reserve. Should such access be required, separate written approval is to be obtained from Council.

10. Disturbance of Existing Site

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

REQUIREMENTS PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE

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

11. 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 connected to the existing internal drainage system.

12. 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.

- END OF CONDITIONS -

ADVISORY NOTES

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

Environmental Planning and Assessment Act, 1979 Requirements

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

Long Service Levy

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

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

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

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.

Tree Preservation Order

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

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

Noxious Weeds Act 1993. This definition of 'tree' includes any and all types of Palm trees.

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

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

3 DEVELOPMENT APPLICATION - SUBDIVISION OF ONE LOT INTO TWO LOTS - 37 BORONIA STREET, CHELTENHAM

Development Application No:	DA/1040/2011
Description of Proposal:	Subdivision of one lot into two lots and alterations and additions to the existing dwelling-house
Property Description:	Lot 6 DP 965313, No. 37 Boronia Avenue, Cheltenham
Applicant:	Ray Fuggle & Associates Pty Ltd
Owner:	Ms Susan Ash and Ms Sally Ash
Statutory Provisions:	Hornsby Shire Local Environmental Plan 1994 Residential AS (Low Density – Sensitive Lands)
Estimated Value:	\$15,000
Ward:	C

RECOMMENDATION

THAT Development Application No. 1040/2011 for subdivision of one lot into two and alterations and additions to the existing dwelling at Lot 6 DP 965313, No. 37 Boronia Avenue, Cheltenham be approved subject to the conditions of consent detailed in Schedule 1 of this report.

EXECUTIVE SUMMARY

1. The application proposes subdivision of one lot into two lots and alterations and additions to the existing dwelling-house.
2. The proposal complies with the Hornsby Shire Local Environmental Plan 1994 and the Heritage Development Control Plan. The proposal complies with the Residential Subdivision Control Plan other than the proposed rear setback which is considered acceptable.
3. Fifty five submissions were received to the original proposal which included demolition of the existing Federation era dwelling. In response to the amended proposal to retain the dwelling, eleven submissions were received.
4. It is recommended that the application be approved.

HISTORY OF THE APPLICATION

The development application originally proposed demolition of the existing dwelling-house and subdivision of one lot into two lots. However, the application was subsequently amended to retain the existing dwelling-house.

THE SITE

The site is a regular shaped allotment with an area of 1,421m² located on the northern side of Boronia Avenue and has an average fall of 7% to the site frontage (25.145m). An existing single storey, Federation era dwelling-house is sited on the land. An existing 3.05m wide right of way along the eastern side boundary provides rear access to the residence at No. 150A Beecroft Road, Cheltenham, which adjoins the rear boundary of the site and has a limited setback from the rear boundary (> 1.4m).

The northern side boundary of the site adjoins three allotments with dwelling-houses fronting Murray Road. The surrounding properties comprise single and two storey dwelling-houses, the majority originally of similar era to the subject site. The site is within the Beecroft-Cheltenham Heritage Conservation Area and is in the vicinity of a heritage item at No. 24 Boronia Avenue (house).

The site includes several large trees which contribute to the visual quality of the locality and the streetscape.

The site is 750m west of Cheltenham Railway Station and 1km south of Beecroft Village Shops. The M2 Motorway is 400m south of the site.

THE PROPOSAL

The proposal is for subdivision of one lot into two lots and includes alterations and additions to the existing dwelling. The proposed lots are detailed as follows:

Lot 1 has an area of 820.74m², a frontage of 25.145m, northern side boundary of 32.639m, rear boundary of 25.145m and southern side boundary of 32.639m. The lot includes a proposed 4.0m wide right of way along the southern side boundary for access to the rear lot. The lot has an average fall of 6% to the frontage. The lot includes the existing dwelling-house. The proposal involves demolition of a rear addition to the dwelling to provide a 2.614m setback from the proposed rear boundary. At the frontage the lot includes locally indigenous trees Nos. 17 and 19 which, together with tree No. 20 on adjoining land, are identified as significant trees.

Lot 2 has an area of 600.03m² and is of dimensions 25.145m western boundary, 24.433m northern boundary, 25.17m rear boundary and 23.291m southern boundary. The lot has an average fall of 8% to the western boundary. The proposed lot involves demolition of an existing car port, demolition of the rear addition to the existing dwelling and the removal of two large trees.

The proposed alterations and additions to the existing dwelling include the demolition of the addition at the rear, restoration of the original rear wall including windows, doors and verandah roof, demolition of an internal wall and conversion of a window to a door at the northern elevation to provide access to outdoor open space. Two car parking spaces are proposed with access off the proposed right of way.

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 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 *draft Strategy* by providing an additional residential lot and would contribute towards housing choice in the locality.

2. STATUTORY CONTROLS

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

2.1 Hornsby Shire Local Environmental Plan 1994

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

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

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

Clause 14 of the *HSLEP* prescribes a minimum allotment size of 600m² for subdivision within the Residential AS (Low Density – Sensitive Lands) Zone. The Clause also provides that:

In calculating the area of a battle-axe or hatchet shaped allotment, the area of any accessway, right of carriageway or the like is to be excluded.

The proposed lots are not battle-axe or hatchet shaped allotments. The exclusion of the right of way is therefore, not applicable other than for floor space ratio calculation under Clause 15. Refer also to discussion in Section 2.3.1.

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. Proposed lot 1 complies with this requirement in respect to the existing dwelling.

Clause 18 of the *HSLEP* sets out heritage conservation provisions. In accordance with the provision, the application includes a Heritage Impact Statement in respect to the proposed subdivision and the alterations and additions to the existing dwelling within the Beecroft-Cheltenham Heritage Conservation Area. Refer to discussion in Section 2.4.

2.2 Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

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

Subject to the implementation of erosion and sediment control measures, the proposal would not adversely impact on the catchment or water quality.

2.3 Residential Subdivision Development Control Plan

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

Residential Subdivision Development Control Plan			
Control	Proposal	Requirement	Compliance
Density	Lot 1 – 820.74m ² Lot 2 – 600.03m ²	600m ²	Yes
Floor Space Ratio	Lot 1 – 0.16:1	0.4:1	Yes
Rear Set Back	Lot 1 – 2.614m	3.0m	No
Car parking	Lot 1 – 2 spaces	2 spaces	Yes

Private Open Space	Lot 1 - 120m ²	120m ²	Yes
Accessway Width	4m	4m	Yes

As detailed in the above table, the proposed development does not comply with the prescriptive requirement for rear setbacks within Council's *Residential Subdivision DCP*. The matter of non-compliance as well as a brief discussion on compliance with the relevant performance requirements, are set out below:

2.3.1 Density

The proposed lots are of regular shape and of even slope. The proposed lot areas comply with the 600m² minimum lot area requirement (including the area of the right of way) as the lots are not battleaxe shaped lots. The inclusion of the right of way for the purposes of calculating the area of a regular shaped allotment has been applied by Council for similar developments and follows consideration in defence of an appeal in the Land and Environment Court against refusal of DA/1944/2003 (*Defence Housing Authority v Hornsby Shire Council, Proceedings No. 10831 of 2004*).

The exclusion of the area of the right of way from the site area is required for the purpose of determining floor space ratio, ensuring residential density is maintained in accordance with the objectives of the zoning.

2.3.2 Allotment Layout and Design

The proposed subdivision retains the existing dwelling which involves a reduced rear setback from the common boundary and the provision of private open space along the northern side boundary of proposed Lot 1. In this regard, a similar outcome would result in a future residential development of proposed Lot 2, as detailed in the indicative dwelling plan submitted with the application.

The provision of private open space along the northern boundary of the proposed Lot 1 and the indicative siting of a future dwelling on proposed Lot 2 is considered acceptable with regard to future residential amenity on the basis that:

- The northern boundary adjoins the large rear yards of adjoining dwelling-houses fronting Murray Road providing complementary open space provision between dwellings.
- The proposed open space areas comply with the area and minimum dimension requirements of the *Residential Subdivision DCP*.
- The proposed open space areas at the northern boundary maximise solar access.
- The existing dwelling is retained maintaining the existing streetscape.
- The design of a future dwelling on proposed Lot 2 could address the interface at the common boundary with proposed Lot 1 and the existing dwelling at No. 150A Beecroft Road, to minimise privacy impacts as demonstrated in the indicative dwelling design.

- The proposed lots provide adequate area for vehicle access, manoeuvring and car parking.

The proposed subdivision, in retaining the existing dwelling, is therefore considered acceptable in respect to the allotment layout and design element objectives of the *Residential Subdivision DCP*.

2.3.3 Setbacks

The existing dwelling on proposed Lot 1 complies with the setback requirements other than the proposed 2.614m rear setback. The proposed alterations and additions to the rear elevation of the dwelling include openings that would result in an activity area in close proximity to the common boundary with potential impacts on residential amenity.

The potential impacts on residential amenity would be addressed as follows:

- The plan of the indicative dwelling submitted for proposed Lot 2 demonstrates amenity impacts could be addressed by design to avoiding interface at the common boundary.
- The 2.614m setback would provide a passive outdoor covered living space and subject to solid boundary fencing would contribute to the amenity of the existing dwelling.
- The proposal includes a new open space area for the existing dwelling with access at the northern elevation off the living areas of the dwelling.

The proposed minor non-compliance with the 3.0m rear setback requirement of the *Residential Subdivision DCP* is therefore considered acceptable.

2.3.4 Private Open Space

The proposed private open space for the existing dwelling on proposed Lot 1 includes alterations to the dwelling to provide access off the living areas. The open space area also complies with the prescriptive measures of the *Residential Subdivision DCP* with regard to area, minimum dimensions and solar access.

2.3.5 Landscaping

The proposed subdivision involves the removal of a large Turpentine tree (Tree No. 1) and a Camphor Laurel tree (Tree No. 2) within the indicative building envelope of proposed Lot 2. Tree No. 1 is a locally indigenous tree however, is not assessed as significant. Tree No. 2 is a species exempt under Council's Tree Preservation Order.

The site includes locally indigenous trees at the frontage identified as significant trees including Trees Nos. 17 and 19 which are retained and together with Tree No. 20 on adjoining land, maintain the streetscape character and visual quality of the site.

Tree No. 1 is not identified as a significant tree and its removal together with Tree No. 2 would not result in any non-compliance with the landscaping prescriptive measure of the *Residential Subdivision DCP*.

Refer also to comments in Section 3.1.

2.3.6 Drainage Control

The proposed subdivision involves inter-allotment stormwater drainage to Council's drainage system in Boronia Avenue and complies with the drainage control element objective subject to recommended conditions.

2.3.7 Accessway Design

An existing 3.05m wide right of way along the southern side boundary benefits No. 150A Beecroft Road at the rear of the site. The property No. 150A Beecroft Road is a battleaxe lot with accessway handle off Beecroft Road. The existing right of way provides a secondary rear access.

The proposed subdivision involves the creation of a 4m wide right of way over proposed Lot 1 benefiting proposed Lot 2. The existing 3.05m wide right of way for No. 150A Beecroft Road would be reiterated in the proposed right of way and would remain in place over proposed Lot 2. A condition is recommended for the existing driveway to be formed over proposed Lot 2 for access to be recognised and maintained for No. 150A Beecroft Road.

The proposal includes two car parking spaces for the existing dwelling with access off the proposed 4m wide accessway. The proposed accessway is considered satisfactory in respect to residential amenity of existing and future dwellings subject to a condition requiring the erection of fencing.

Subject to recommended conditions the proposed subdivision complies with the accessway design element objective of the Residential Subdivision DCP.

2.4 Heritage Development Control Plan

At its meeting on 7 November 2011, the Heritage Advisory Committee considered the original proposal for the subdivision of one allotment into two and the demolition of the existing dwelling-house. The Committee reviewed the Heritage Impact Statement (HIS) submitted with the application and noted the assessment contained in the Statement of the significance of the dwelling and the impact of the proposal on the Heritage Conservation Area, inter alia that:

“The loss of the Federation style dwelling in the Boronia Avenue streetscape will detract from the significance of the Conservation Area.”

Accordingly, the Committee agreed that the application does not provide sufficient justification for the proposed demolition of the dwelling. The Committee resolved that consideration of the development application be deferred pending further clarification by the applicant of justification for demolition of the dwelling. Further, the Committee agreed that subject to a revised subdivision proposal being submitted which enables retention of the existing dwelling, that the matter be referred to the Planning Division for consideration.

The amended proposal provides for an increased lot size to facilitate retention of the existing dwelling on proposed Lot 1. Minor alterations to the dwelling are proposed including:

- Removal of the rear sunroom extension;

- Removal of an existing internal wall to enable the conversion of a bedroom into an enlarged lounge room; and
- Conversion of a north facing window into a door to provide direct access to the northern open space area.

The amended proposal addresses the concerns of the Heritage Advisory Committee by providing for the retention of the existing dwelling. The proposed sympathetic modifications to the existing dwelling would have negligible impact upon the contributory qualities of the dwelling. The proposal is therefore in accordance with the requirements of the *Heritage Development Control Plan* in respect to the Beecroft-Cheltenham Heritage Conservation Area.

3. ENVIRONMENTAL IMPACTS

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

3.1 Natural Environment

The site includes 24 trees on, or adjacent to, the site including exotic, native planted and locally indigenous trees. The proposed development would necessitate the removal of four trees from the site as follows:

Tree No. 1 – Turpentine *Syncarpia glomulifera*;

Tree No. 2 – Camphor laurel *Cinnamomum camphora*;

Tree No. 4 – Brush Box *Lophostemon confertus*;

Tree No. 16 – Hinoki False Cypress *Chamaecyparis obtusa* ‘*Crippsli*’.

The trees to be removed are not assessed as ‘significant trees’ in accordance with Council’s tree management criteria. The application has been supported by an arborist report that assesses Trees Nos. 1, 2 and 4 as in ‘poor’ condition and Tree No. 16 in ‘good’ condition.

Council’s assessment of the proposal includes a detailed examination of the existing trees on site and concurs with the arborist report. It is considered that the removal of the trees is acceptable with regard to the number of trees to be retained and the preservation of the existing streetscape.

3.2 Built Environment

The proposed subdivision retains the existing dwelling-house in the streetscape and would generally maintain the residential character of the locality.

Refer also to comments in Section 2.4.

3.3 Social Impacts

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

3.4 Economic Impacts

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

4. SITE SUITABILITY

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

The site is generally not subject to environmental constraints and subject to recommended conditions for protection of significant trees is considered suitable for subdivision as proposed.

5. PUBLIC PARTICIPATION


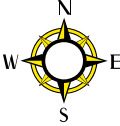
Section 79C(1)(d) of the Act requires Council to consider “*any submissions made in accordance with this Act*”.

5.1 Community Consultation

The proposed development was placed on public exhibition and was notified to adjoining and nearby landowners between 19 October and 9 November 2011 in accordance with Council’s *Notification and Exhibition Development Control Plan*. During this period, Council received 55 submissions. In response to the notification of the amended proposal, Council received 11 submissions. The map below illustrates the location of those nearby landowners who made a submission in response to the amended proposal that are in close proximity to the development site.



NOTIFICATION PLAN

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

Nine submissions including a submission from the Beecroft-Cheltenham Civic Trust, object to the development, generally on the following grounds:

- Reduced lot sizes;
- Removal of landscape trees;
- Loss of privacy;
- Loss of visual amenity;
- Loss of heritage significance;
- Non compliance rear setback;
- Land size incorrect; and
- Lack of open space.

Two submissions support or are neutral to the development and include the following observation:

- The development retains the Federation era existing dwelling-house.

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

5.1.1 Incorrect Lot Size

Council's property information indicates that the site has a land area of 1,416m². However, the submitted survey plan prepared by a registered surveyor indicates that the site has a land area of 1,421m². The discrepancy occurs as a result of the conversion of the lot area from Imperial measure to metric by the Valuer General's Office at the time of metric conversion and is not uncommon for Council records of older properties. It is accepted that the registered surveyor's land area of 1,421m² is correct.

6. THE PUBLIC INTEREST

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

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

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

CONCLUSION

The proposed development, as amended, is for the subdivision of one lot into two lots and alterations and additions to the existing dwelling.

The proposed subdivision is considered acceptable as it retains the existing dwelling which contributes to the Beecroft-Cheltenham Heritage Conservation Area and provides for appropriate residential amenity for residents of the existing dwelling on proposed Lot 1 and future residents of proposed Lot 2 at the rear.

The proposal complies with the Residential Subdivision DCP in respect to density, allotment layout and design, landscaping, private open space, drainage control and accessway design. The proposed minor non-compliance with the 3.0m rear setback is considered acceptable.

The original proposal for demolition of the existing dwelling and subdivision was subject to a high number of public submissions objecting to the demolition of the Federation era dwelling. The majority of the objections have been addressed by the amended proposal which retains the dwelling.

The application is therefore recommended for approval.

GARRY MAHONY
Acting Manager, Assessment Team 2
Planning Division

JAMES FARRINGTON
Acting Executive Manager
Planning Division

Attachments:

1. Locality Plan
2. Survey Plan
3. Partial Demolition, Alteration and Additions Plan
4. Typical Rear Dwelling Plan

File Reference: DA/1040/2011
Document Number: D01836829

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>
L-01/2 – Subdivision Plan	Ray Fuggle & Associates	28/11/11
L-02/2 – Partial Demolition of Existing Dwelling, Plans & Alterations	Ray Fuggle & Associates	28/11/11

<i>Document No.</i>	<i>Prepared by</i>	<i>Dated</i>
D01774238 – Arboricultural Impact Assessment	Urban Tree Management Australia	5 September 2011

2. Removal of Existing Trees

This development consent only permits the removal of tree(s) numbered 1, 2, 4 and 16 as identified on Plan No. L-01/2 prepared by Ray Fuggle & Associates dated 28/11/11. The removal of any other trees requires separate approval under Council's Tree Preservation Order.

REQUIREMENTS PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE**3. Building Code of Australia**

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

4. Contract of Insurance (Residential Building Work)

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

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

5. Notification of Home Building Act, 1989 Requirements

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

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

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

6. Water/Electricity Utility Services

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

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

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.

7. Stormwater Drainage

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

- a. An inter-allotment stormwater drainage system to service the proposed lots with pits being constructed in situ.
- b. The roof and stormwater drainage system from the existing dwelling to be connected to the proposed inter-allotment drainage system.

8. Internal Driveway/Vehicular Areas

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

- a. Design levels at the front boundary be obtained from Council.
- b. The driveway be a rigid pavement to the extent of the proposed access handle at least to Lot 2.
- c. The driveway pavement be a minimum 3 metres wide, 0.15 metres thick reinforced concrete with SL72 steel reinforcing fabric and a 0.15 metre sub-base.
- d. The pavement have a kerb to one side and a one-way cross fall with a minimum gradient of 2 percent, with kerb inlet pits provided on grade and at low points.
- e. Planting of landscaping strips 0.5 metres wide along both sides of the length of the driveway.
- f. Conduit for utility services including electricity, water, gas and telephone be provided and shown on construction plans.

REQUIREMENTS PRIOR TO THE COMMENCEMENT OF ANY WORKS

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. 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*

11. 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.

12. Tree Protection Barriers

Tree protection fencing must be erected around trees numbered 17 and 19 to be retained at a 2 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.

To avoid injury or damage, tree numbered 20 must have its trunk protected by 2 metre lengths of 75mm x 25mm hardwood timbers spaced at 80mm secured with galvanised wire (not fixed or nailed to the tree in any way).

REQUIREMENTS DURING CONSTRUCTION

13. Construction Work Hours

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

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

14. 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.

15. 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.

16. Council Property

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

17. Disturbance of Existing Site

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

18. 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 existing 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.

Note: An application for a vehicular crossing can only be made to one of Council's Authorised Vehicular Crossing Contractors, (or be the subject of a

Construction Certificate Application to Council as the Roads Authority). You are advised to contact Council on 02 9847 6940 to obtain a list of contractors.

19. 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. Vehicle movement plans.
- d. Construction Traffic management plans.

20. Works near Trees

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

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

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

REQUIREMENTS PRIOR TO THE ISSUE OF A SUBDIVISION 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.

21. Sydney Water – s73 Certificate

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

22. 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.

23. Creation of Easements

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

- a. A right of access and easement for services over the access corridor.
- b. An inter-allotment drainage easement(s) over each burdened lot.
- c. The creation of a “*Positive Covenant*” over the proposed Lot 2 requiring that any future development is to provide an on-site detention system. The on-site detention system is to have a storage capacity of 5 cubic metres and a maximum discharge of 8 litres per second into Council’s drainage system in accordance with Council’s prescribed wording.

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

24. Existing Driveway

The existing driveway within the right of way over proposed Lot 2 must be reformed to maintain access to the residence at No. 150A Becroft Road Cheltenham via Boronia Avenue.

25. Boundary Fencing

- a. Fencing must be erected along all property boundaries behind the front building alignment to a height of 1.8 metres.
- b. A solid lapped and capped 1.8m high timber fence must be erected along the common boundary of Lot 1 and Lot 2.

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

26. Works as Executed Plan

A works-as-executed plan(s) must be prepared by a registered surveyor and submitted to Council for completed road assets, internal pavements, kerb & gutter, drainage systems, driveways and services and service conduits.

27. s94 Infrastructure Contributions

The payment to Council of a contribution of \$20,000 for one additional lot towards the cost of infrastructure identified in Council’s Development Contributions Plan 2007-2011.

*Note: * The value of contribution is capped at \$20,000 per additional lot in accordance with Ministerial Direction (Section 94E of the Environmental Planning and Assessment Act 1979) issued on 16 September 2010. In the event that this Direction is repealed or amended, Council will apply the value of the contribution from the date of this consent, adjusted from this date in accordance with the underlying consumer price index for*

subsequent financial quarters. It is recommended that you contact Council to confirm the value of the contribution prior to payment.

- END OF CONDITIONS -

ADVISORY NOTES

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

Environmental Planning and Assessment Act, 1979 Requirements

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

Long Service Levy

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

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

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

Tree Preservation Order

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

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

All distances are determined under Australian Standard AS4970-2009 "Protection of Trees on Development Sites".

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

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.

4 REPORTING VARIATIONS TO DEVELOPMENT STANDARDS

EXECUTIVE SUMMARY

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

PURPOSE

The purpose of this report is to advise Council of determined development applications involving a SEPP 1 variation to a development standard relating to the period 1 October 2011 to 31 December 2011.

DISCUSSION

The Department of Planning and Infrastructure issued *Circular PS 08-014* on 14 November 2008. The purpose of the Circular was to remind councils of their responsibilities to monitor the use of the Director-General's assumed concurrence under SEPP 1. Councils were reminded of the need to keep accurate records of the use of *SEPP 1* and to report on a quarterly basis.

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

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

In accordance with Point 3 of the Department's Circular, attached hereto is a list of development applications determined under delegated authority involving a *SEPP 1* variation to a development standard for the period 1 October 2011 to 31 December 2011.

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

BUDGET

There are no budget implications.

POLICY

There are no policy implications.

CONSULTATION

There was no consultation in the preparation of this report.

TRIPLE BOTTOM LINE SUMMARY

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

RECOMMENDATION

THAT Council note the contents of Executive Manager's Report No. PLN1/12.

JAMES FARRINGTON
Acting Executive Manager - Planning
Planning Division

Attachments:

1. SEPP 1 Return

File Reference: F2004/07599
Document Number: D01809474

5 STATE ENVIRONMENTAL PLANNING POLICY 65 AND RESIDENTIAL FLAT DESIGN CODE REVIEW

EXECUTIVE SUMMARY

In 2002, *State Environmental Planning Policy 65 – Design Quality of Residential Flat Development (SEPP 65)* was gazetted. The *SEPP* aims to improve the design quality of residential flat buildings (RFBs) in NSW. The *Residential Flat Design Code (RFDC)* was prepared to support *SEPP 65* and provides guidelines for the application of the Policy and the design of RFBs.

SEPP 65 has not undergone a substantial review since its gazettal. The Department of Planning and Infrastructure (DP&I) is currently undertaking a review of *SEPP 65* and the *RFDC* to ensure they remain relevant and useful resources.

It is recommended that Council forward a submission to the DP&I indicating its general support for the review and providing suggestions for improvement to *SEPP 65* and the *RFDC*.

PURPOSE

The purpose of this report is to seek endorsement of a submission to the DP&I for consideration as part of the current review of *SEPP 65* and *RFDC*.

BACKGROUND

In 2002, *SEPP 65* was gazetted. The *SEPP* aims to improve the design quality of RFBs in NSW. The *SEPP* contains ten design quality principles which guide the design and assessment of RFBs. It also allows the Minister to form design review panels to give consent authorities independent advice on the design quality of proposals. The *RFDC* was prepared to support *SEPP 65* and provides guidelines for the design of RFBs and the application of the design quality principles.

SEPP 65 has not undergone a substantial review since its gazettal. The DP&I is currently undertaking a review of *SEPP 65* and the *RFDC* to ensure they remain relevant and useful resources for industry and local government. The Department has advised that the review is being conducted in four stages:

- Initial consultation with key stakeholders groups and individuals to inform a Discussion Paper. Stakeholders included local government, State agencies, peak industry bodies, professional associations, Design Review Panel members, architects and landscape architects (May-July 2011);
- Discussion Paper preparation (August-October 2011);

- Public consultation on Discussion Paper – *SEPP 65 & Residential Flat Design Code Review* (November-February 2012); and
- Revision of *SEPP 65* and *RFDC* documents (February-May 2012).

As part of public consultation, written submissions are invited on the Discussion Paper (copy attached) and will be received until 24 February 2012.

DISCUSSION

The DP&I is seeking views on the useability and application of the legislation and accompanying Code to ensure *SEPP 65* and the *RFDC* maintain currency and continue to encourage best practice in the design of RFBs. The objectives of the review are to:

- provide opportunities for input into the review process from a wide range of stakeholders;
- update *SEPP 65* and *RFDC* to ensure that best practice in the planning and design of RFBs continues in NSW; and
- encourage the development of RFBs that are sustainable and affordable.

The scope for submissions on the review is generally unlimited. However, the Discussion Paper contains a number of specific issues for review and a series of questions upon which feedback is sought. Therefore, it would be appropriate for Council to make a submission identifying its general support for the review and providing comments in regards to the top ten issues identified in the Discussion Paper as they relate to the implementation of *SEPP 65* and the *RFDC* in Hornsby Shire. The submission should also include suggestions for amendments for improvements to the legislation and Code. The following discussion identifies the basis for a submission.

1. Application of SEPP 65 to other types of development

The Discussion Paper notes that a number of stakeholders, including councils and industry groups, have suggested that *SEPP 65* and the *RFDC* should apply to development types other than RFBs. *SEPP 65* currently applies to:

- erection of new RFBs;
- substantial redevelopment or refurbishment of an existing RFB; and
- conversion of an existing building to a RFB.

The types of development suggested for consideration under *SEPP 65* and the *RFDC* include serviced apartments, lower scale medium density development (for example villa style and townhouse development), student housing and boarding housing.

The broadening of *SEPP 65* to apply to serviced apartments is generally supported. Serviced apartments are similar in building form and function to RFBs and often occur together. This type of development could seamlessly be accommodated within the expansion of the current *RFDC*. The broadening of *SEPP 65* to apply to townhouse and villa developments to assist in improving the design quality of these types of developments is also generally supported.

However, the inclusion of townhouse and villa development, which have a different building form, would require a separate code or at least a separate chapter in the Code. Townhouses and villa developments have been identified in Council's *Housing Strategy* to provide a mix of housing types and a more affordable housing form (as compared to dwelling-houses) within the Shire. Controls for townhouse and villa developments should be prepared so that they are not too onerous such that they impact on the affordability of these developments.

State Environmental Planning Policy (Affordable Rental Housing) 2009 already provides guidance on the development of new affordable rental housing such as boarding houses. To avoid possible confusion, it may be simpler to have only one policy apply to such development. Accordingly, *SEPP 65* should be expanded to apply to serviced apartments, townhouse and villa developments, but not amended to include student housing or boarding housing. Any proposed urban design controls for student housing or boarding housing should be incorporated into the existing *Affordable Rental Housing SEPP*.

2. Inclusion of definitions from the Standard Instrument

To implement the above changes, the definitions within *SEPP 65* would need to be amended and new definitions added. Currently, there are different definitions of a RFB within the *SEPP* and the *Standard Instrument*. *SEPP 65* defines a RFB as a building that comprises:

- (a) *3 or more storeys (not including levels below ground level provided for car parking or storage, or both, that protrude less than 1.2 metres above ground level), and*
- (b) *4 or more self-contained dwellings (whether or not the building includes uses for other purposes, such as shops), but does not include a Class 1a building or a Class 1b building under the Building Code of Australia.*

The definition under the *Standard Instrument* states that a:

Residential flat building means a building containing 3 or more dwellings, but does not include an attached dwelling or multi dwelling housing.

The Discussion Paper notes that the differing definitions can lead to confusion and that this could be rectified with the use of one consistent definition of RFBs, preferably from the *Standard Instrument*. The use of the definition for RFBs from the *Standard Instrument* would result in *SEPP 65* applying to more types of RFBs, such as 2 storey RFB developments. However, the *SEPP* would no longer apply to shop top housing developments as a separate definition of 'shop top housing' is included in the *Standard Instrument*. The use of the definition for RFBs from the *Standard Instrument* is supported as it would provide consistency across policies and result in the improved design quality of more RFBs within the Shire. However, the definitions of 'shop top housing', 'serviced apartments' and 'attached dwelling' within the *Standard Instrument* should also be included to ensure that the *SEPP* applies to all the forms of development discussed above.

SEPP 65 should therefore be amended to contain:

- a definition of 'residential flat buildings' that is consistent with the definition within the *Standard Instrument*; and
- the definition of 'shop top housing', 'serviced apartments' and 'attached dwelling' from the *Standard Instrument*.

3. Design quality principles and RFDC

SEPP 65 contains ten design quality principles for good design. The *SEPP* requires the assessment of RFB applications and draft planning policy against these principles and the *RFDC*. The Discussion Paper notes that a number of stakeholders including councils, industry and peak professional bodies have suggested that the design quality principles could be streamlined and overlapping principles simplified or consolidated. It has also been suggested that the relationship between the design quality principles and the Code should be made clearer and strengthened.

The *RFDC* has three distinct parts, namely local context, site design and building design. A number of related development guidelines appear under each part. *SEPP 65* should be amended so that the ten design quality principles are grouped into three sections to align with the three parts of the *RFDC*.

As there is sometimes overlap or interrelationships between the design quality principles and parts of the *RFDC*, it would also be useful to have a matrix table within the *RFDC* to show the relationship between the design quality principles and the elements of the Code.

4. Statutory weight of RFDC

When determining an application where *SEPP 65* applies, a consent authority is required to consider the *RFDC*. The Code is a set of guidelines that provides benchmarks for better practice in the planning and design of RFBs.

The Discussion Paper notes that there is uncertainty within councils and the community concerning the statutory weight of the *RFDC* in the assessment of developments. The Code was intended as a set of best practice guidelines. Instead the Code has been used by some consent authorities as “controls” against which development must comply. In some cases, the Land and Environment Court has given the same weight to the guidelines within the Code as to controls within Development Control Plans (DCPs).

The Discussion Paper also notes that there are differing opinions amongst stakeholders in regards to the *RFDC* being given statutory recognition and the maintenance of flexibility within the Code. Accordingly, there should be greater clarification within *SEPP 65* as to the role of the guidelines within the *RFDC*. Where a council has an adopted policy concerning the design and development of RFBs, which has been prepared having regard to the Code, those controls should be the primary development standards to be considered during assessment of applications for RFBs. The Code would provide supplementary guidelines. However, if a Council does not have an adopted policy concerning the development of RFBs, then the guidelines within the *RFDC* should be given similar statutory weight as controls within DCPs.

In the case of Hornsby Shire, the *Medium/High and High Density Multi-Unit Housing and Housing Strategy Development Control Plans* provide guidelines for RFB development. These are being incorporated into Council’s new Comprehensive DCP and updated where necessary having regard to *SEPP 65* and the *RFDC*.

5. FSR Guidelines

Within the Primary Development Controls element of the *RFDC*, there are Floor Space Ratio (FSR) guidelines which provide guidance on developing and applying FSR controls for RFBs. The Discussion Paper notes that stakeholders have requested more guidance on aligning FSR and building height controls and determining FSR relative to the size of sites.

In recent times, Council has moved away from the use of FSR controls to control bulk and scale in residential zones. Council has placed greater emphasis on other building envelope controls such as building height and setbacks to manage same. New five and ten storey RFBs in Housing Strategy precincts have no FSR controls. Instead the *Housing Strategy DCP* contains a suite of controls to manage bulk and scale, including building heights, site coverage, setbacks, landscaped area and outdoor living area. A similar approach is employed in the preparation of Council's draft Comprehensive Local Environmental Plan and DCP. Therefore, the *RFDC* should be reviewed and consideration given to the deletion of the section on FSR. Greater emphasis should be placed on the use of building envelope controls, consistent with Council's adopted approach.

6. Parking requirements

The Discussion Paper notes that a number of stakeholders have suggested promoting a further reduction in car use through measures such as car share programs, reduction in number of visitor spaces and provision of bicycle parking. The Discussion Paper also notes that some stakeholders have recommended that *SEPP 65* and/or the *RFDC* be amended to provide for reduced parking provision for sites close to transport and centres.

These recommendations are consistent with the findings of the Hornsby Town Centre Parking Management Review, Epping Town Centre Study and Integrated Land Use Transport Study. The Studies recommend that further investigation and consideration should be given to reducing parking rates for various centres due to their close proximity to rail stations and/or high frequency bus stops on strategic bus corridors.

The *RFDC* should be amended to promote a reduction in car parking rates for sites with good proximity to high frequency public transport and commercial centres.

7. Open Space requirements

The *RFDC* provides rules of thumb for communal and private open space for RFBs. The rules of thumb suggest that 25-30 % of the site area should be communal open space and more if it is a larger site, though this may be varied depending on context, density, site size, availability of public domain or private open spaces. A minimum private open space area for ground floor apartments (25m² with a minimum dimension of 4m) is also specified. The Discussion Paper notes that a number of stakeholders have suggested that flexibility for prescriptive standards concerning open space provision should be considered in relation to local context and density of the development.

The rule of thumb for communal open space within the *RFDC* (25-30% of the site) is generally consistent with the open space controls within Council's *Housing Strategy DCP* (minimum 25% of the site). The rate of communal open space is proportional to the site area, ensuring that as sites increase in size, the amount of required communal open space increases. However, the guideline for private open space for ground floor apartments within the Code is more onerous than the DCP. The *Housing Strategy DCP* contains a sliding scale for private

open space requiring 10m² for 1 bedroom units, 12m² for 2 bedroom units and 16m² for 3 bedroom units. This is generally consistent with the State Government *Housing Code* for small lots, which proposes that a 3 bedroom house/townhouse/unit on a small lot should include a minimum 16m² of private open space.

The *RFDC* should be reviewed concerning the metrics and guidelines for private open space requirements. Consideration should be given to the insertion of a sliding scale requiring rates of private open space based on the size of the unit.

8. Requirements for Apartment Mix and Universal Design

Within the Building Configuration element of the *RFDC*, there are guidelines that seek to ensure that apartments can accommodate a wider range of residents and lifestyle needs for people now and in the future, including apartment layout, apartment mix and flexibility. Currently there are no rules of thumb provided for these guidelines. The Discussion Paper notes this has been identified as an issue by the development industry citing experience that the principles are rarely applied. The Discussion Paper also notes that some stakeholders have suggested that more guidance or a suggested mix of different apartment types should be provided for medium and large developments. It has also been suggested that design consideration should be given to children and the aged as well as catering to the needs of multicultural communities.

Council's *Housing Strategy DCP* requires that developments should include a mix of 1, 2 and 3 bedroom units. At least 10% of each unit type should be provided. It also requires at least 30% of proposed dwellings to be adaptable to meet needs of residents as they age. Therefore, a move towards greater requirements for adaptability and accessibility across NSW would be consistent with Council's approach to requiring dwelling mix and a percentage of adaptable dwellings.

9. Design verification

The *Environmental Planning and Assessment Regulation 2000* requires that a development application for a RFB must be accompanied by a design verification statement from a qualified designer (registered architect) verifying that:

- they designed, or directed the design of the RFB; and
- the design quality principles in *SEPP 65* are achieved for the residential flat development.

The Discussion Paper notes that a number of councils have raised concern that the intention of improving design quality may not be fully met by the current design verification statement requirements as an unregistered person could be responsible for preparing a design. Several councils have suggested that it should be a requirement that a registered architect verifies that they designed the RFB. This recommendation should be supported as it would ensure all aspects of RFBs are professionally designed including building layout and construction details. Accordingly, *SEPP 65* should be amended to require that a registered architect verify that they designed a project, as opposed to overseeing the design.

10. Update policy to remove conflict with BASIX

In the event of any inconsistency between *SEPP 65* and another environmental planning instrument, *SEPP 65* prevails to the extent of the inconsistency. However, the Discussion Paper notes that a number of stakeholders have identified that there are potential conflicts between *SEPP 65* and BASIX, which has been introduced since *SEPP 65* was established. BASIX contains best practice sustainability criteria for energy efficiency, thermal comfort and water efficiency.

The daylight access, natural ventilation, energy efficiency and water conservation guidelines of the *RFDC* should be reviewed and amended accordingly to reduce any conflict or overlaps with BASIX.

Summary

In summary, it would be appropriate for Council to make a submission to the DP&I identifying its general support for the review and providing suggestions for improvements. The suggestions for amendments to *SEPP 65* include the:

- expansion of the *SEPP* to apply to serviced apartments, townhouse and villa developments;
- inclusion of definitions of ‘residential flat buildings’, ‘shop top housing’, ‘serviced apartments’ and ‘attached dwelling’ from the *Standard Instrument*;
- grouping of design quality principles into three sections to align with the three parts of the *RFDC*;
- inclusion of a requirement that a registered architect verify that they designed a project; and
- provision of greater clarification within the *SEPP* concerning the role of the guidelines within the *RFDC*.

The suggestions for amendments to the *RFDC* include the:

- deletion of FSR guidelines and placing greater emphasis on building envelope controls;
- promotion of a reduction in car parking rates for sites with good proximity to high frequency public transport and commercial centres;
- review of metrics and guidelines for private open space requirements;
- inclusion of greater requirements for adaptability and accessibility; and
- reduction of conflicts or overlaps with BASIX.

CONSULTATION

The Manager, Assessment Team 2 has been consulted in the preparation of this report.

TRIPLE BOTTOM LINE SUMMARY

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

CONCLUSION

SEPP 65 has not undergone a substantial review since its gazettal. The DP&I is currently undertaking a review of *SEPP 65* and the *RFDC* to ensure they remain relevant and useful resources. It is recommended that Council forward a submission to the DP&I identifying its general support for the review and providing suggestions for improvement to *SEPP 65* and the *RFDC*.

RECOMMENDATION

THAT a submission based on the discussion contained in Executive Manager's Report No. PLN9/12 be forwarded to the Department of Planning and Infrastructure for its consideration as part of the public consultation stage of the review of *State Environmental Planning Policy 65 – Design Quality of Residential Flat Development and Residential Flat Design Code*.

JASON RAWLIN
Acting Manager - Town Planning Services
Planning Division

JAMES FARRINGTON
Acting Executive Manager - Planning
Planning Division

Attachments:

1. Discussion Paper - SEPP 65 & Residential Flat Design Code Review

File Reference: F2004/07599
Document Number: D01838901

6 NSW GOVERNMENT REVIEW OF HOUSING OPPORTUNITIES ON LANDOWNER NOMINATED SITES

EXECUTIVE SUMMARY

In November 2011, the Department of Planning and Infrastructure (DP&I) advised Council that it has commenced a review to identify sites, in appropriate locations, that will increase dwelling production in the short term. In this regard, Council has been invited to comment on landowner nominated sites at South Dural and North Glenhaven within the adjoining Hills Shire.

The release of South Dural for urban purposes would be consistent with Council's previous resolution in September 2011 that, subject to being satisfied that all necessary public infrastructure and community services would be in place to accommodate the additional population, the NSW Government should progress investigations to release the precinct for urban purposes to assist Council deliver additional housing in Hornsby Shire as a possible component of the next stage of Council's *Housing Strategy* to meet the NSW Government's housing supply targets.

It is recommended that Council forward a submission to the DP&I identifying its general support for the release of South Dural for urban purposes. The submission should also comment that any release of lands at South Dural or North Glenhaven should be accompanied by a funding plan for the associated infrastructure works with clear delineation between funding to be provided by the proponents and the commitment of funds by the State Government to address the balance of the costs.

PURPOSE

The purpose of this report is to advise Council of the NSW Government review of housing opportunities and seek endorsement of a submission to the Department of Planning and Infrastructure concerning landowner nominated sites in Hornsby Shire.

BACKGROUND

On 16 November 2011, the DP&I advised Council that it has commenced a review of new housing opportunities identified by landowners across the State. This follows a general invitation by the Minister for Planning and Infrastructure to owners of large landholdings to have their land considered by the NSW Government for housing development. Submissions were invited to be received by 29 November 2011.

On 12 December 2011, the Department advised Council of a landowner nominated site in Hornsby Shire and an adjoining landowner nominated site in the Hills Shire. These are the sites of "South Dural" and "North Glenhaven", respectively. The South Dural site is bounded by New Line Road, Old Northern Road and Hastings Road and the North Glenhaven site is generally comprised of land adjoining Glenhaven Road, Old Glenhaven Road, Mills Road, Logie Road, Robson Road, Kylie Avenue and Edgecliff Road, Glenhaven.

Council has been requested to provide comments in relation to the sites and matters for consideration endorsed by the NSW Government against which the sites will be evaluated for their potential rezoning to facilitate housing development. Comments are being invited until 3 February 2012.

DISCUSSION

This report does not present a comprehensive evaluation of the submissions nominating the release of the precincts for urban development. The report responds to the Department's request for Council's comments concerning the consistency of the nominated sites with Council's planning frame-work, timing for the delivery of housing and infrastructure requirements to support any development.

State Government Review of New Housing Opportunities in NSW

The DP&I states that increasing housing supply is a key priority for the NSW Government. Accordingly, the purpose of the review is to identify sites, in appropriate locations, that will increase dwelling production in the short term at no additional cost to the Government.

Following receipt of nominations for landowner sites, the Department is now in the process of reviewing the potential housing opportunities of the sites and input from councils is being sought as part of the process. The Department has advised (letter attached) that matters for consideration as part of the evaluation process include the following:

1. **Housing Delivery:** Identification of sites which are suitable for urban planning and have viable prospects for producing houses in the short term. Consideration will be given to land capability, lead times for undertaking any necessary studies, views of the local council and likelihood of houses being built within 3 years (taking into account land ownership patterns and planning processes).
2. **Infrastructure:** Provision of infrastructure and services for new communities in a timely and efficient manner at no additional cost to Government. No cost to Government may be achieved through either reprioritising existing capital programs or developer funding. Consideration will be given to the willingness of the landowner to finance the planning and infrastructure to deliver the housing.
3. **Strategic Setting:** Support for the broad planned pattern of growth and urban policies. Consideration will be given to consistency with local, State and National strategies, plans and policies.

In the context of the above matters for consideration, the Department is seeking comments from Council specifically in relation to the following:

1. Council's opinion in relation to the prospects of the site delivering housing in the short term;
2. local infrastructure requirements, broad order of costs and implications for Council;
3. consistency with Council's planning framework; and
4. any other matters of relevance to the review.

A CEOs Review Committee, chaired by the Director-General of Premier and Cabinet will oversee the review and make recommendations to the State Government. Conduct of the review will be in accordance with a probity plan reviewed by the Independent Commission Against Corruption. The review is anticipated to be completed in the first quarter of 2012.

South Dural

The area known as the South Dural precinct (map attached) is bounded by Hastings Road, Old Northern Road and New Line Road and is zoned part Rural BA (Small Holdings – Agricultural Landscapes) and part Environmental Protection B (River Catchment) under the *Hornsby Local Environmental Plan 1994*. The precinct is 240 hectares in size and consists of 135 allotments. The precinct also contains a group of allotments zoned Special Uses A (Community Purposes), which are owned by Sydney Water and operated for the purpose of a water reservoir.

Proposal

The submission has been prepared by a consultant on behalf of the South Dural Residents and Ratepayers Group Incorporated (SDRRG) seeking the rezoning of the precinct for urban purposes. The submission indicates that the precinct could yield approximately 3,000 dwellings in a mixture of housing types.

The submission is accompanied by a planning report and technical studies that were prepared in 2009 as part of the request by the SDRRG that the State Government include the precinct on the *Metropolitan Development Program (MDP)*. A copy of the report was also previously forwarded to Council for its information. The main issues raised in the submission supporting the nomination of the precinct are summarised as follows:

- Development of the precinct provides the opportunity for the provision of new detached housing in Hornsby Shire in a market context of limited supply. Furthermore, the release of the precinct would be consistent with the State Government's objective of a 50/50 mix of housing development in Growth corridors and in areas close to transport nodes;
- The precinct is surrounded principally by urban development at Glenhaven, Cherrybrook, Round Corner, Dural and the eastern side of New Line Road. Land within the precinct is largely used for rural-residential development and therefore, is currently providing a limited contribution to agricultural production;
- Principal infrastructure costs associated with development of the precinct include upgrading existing roads, the extension of water and sewer carrier mains, drainage, electricity and communications. Further detailed planning is required concerning the provision of water and sewerage services;
- The immediate road network requires upgrading to cater for 'background growth' in the area. These upgrades should accommodate the development of South Dural. The submission acknowledges that the land owners have offered to assist in the upgrade of New Line Road and Old Northern Road;

- The precinct is approximately 5 minutes from the Franklin Road Station proposed as part of the North West Rail Link;
- Projected expenditure generated by new residents would be approximately \$102 million per year with possible direct local expenditure of \$20.5 million per year. This expenditure would provide greater support for local centres and the Dural Service Centre, and provide additional employment opportunities;
- The existing vegetation corridor along Georges Creek is of significant ecological significance and should be retained as a wildlife corridor and habitat for threatened species;
- The retention of the Georges Creek bushland and riparian corridor, including associated tributaries, creates a bushfire hazard that requires detailed assessment. Appropriate bushfire mitigation measures would be required, including designation of Asset Protection Zones and standards of construction;
- Housing is likely to be staged over a 10 year period (depending on take-up rates) following rezoning of the lands and completion of the extension of services.

Comment

The following discussion evaluates the consistency of the proposal with Council's planning frame work and comments on the timing for the delivery of housing and infrastructure requirements to support any development.

Consistency with Council's Planning Framework

It is acknowledged that the provision of housing at South Dural would assist Council meet its dwelling targets under the State Government's *Metropolitan Strategy* and the *draft North Subregional Strategy*. The *Hornsby Shire Housing Strategy* was gazetted on 2 September 2011 providing opportunities for an additional 2,600 dwellings over the next 10 years. However, a future strategy will be required to identify opportunities for a further 3,900 dwellings to meet the balance of Council's dwelling obligation of 11,000 dwellings by 2036. The provision of additional housing opportunities at South Dural would contribute significantly to the achievement of Council's dwelling target.

South Dural has been the subject of numerous submissions and applications seeking rezoning since 1990. Most recently, at its meeting on 2 September 2009, Council considered a report concerning the report submitted to the DP&I on behalf of the SDRRG in February 2009, titled *South Dural - Land Release Justification Submission*. Council noted that the Department is directly responsible for determining whether to include an area on the *MDP*. Inclusion of land on the *MDP* is required before land can be rezoned for urban purposes. Council resolved to forward a letter to the Department confirming Council's support for the progression of investigations of the precinct for inclusion on the *MDP*.

At its meeting on 2 February 2011, Council considered a Notice of Motion concerning the progression of investigations by the Department and resolved to write to the then Minister for Planning requesting an update on, and timeframe for completion of, the investigations. Council also resolved to request that, subject to being satisfied that all necessary public infrastructure and community services would be in place to accommodate the additional population, the NSW Government progress investigations to release South Dural for urban

purposes as a matter of urgency so as to ensure that Council is well placed to deliver sufficient additional housing in Hornsby Shire as a possible component of the next stage of Council's *Housing Strategy* to meet the NSW Government's housing supply targets.

Accordingly, it would be appropriate for Council to reiterate its position that it supports progression of investigations of the precinct for urban development as the provision of housing at South Dural would assist Council meet its dwelling targets under the State Government's *Metropolitan Strategy* and the *draft North Subregional Strategy*.

Delivery of Housing in the Short Term

Should the release of the area for urban purposes be supported by the State Government, it would then be appropriate to prepare a comprehensive local environmental study (LES) addressing the implications of the rezoning and incorporating a detailed masterplan for the precinct. A number of key steps would be required to be undertaken prior to housing being delivered as outlined in the following table:

Step	Description	Lead Responsibility
Step 1: Rezoning	Detailed local planning is undertaken leading to rezoning of area and development of an infrastructure contributions plan.	DP&I, local council
Step 2: Servicing	Key infrastructure is upgraded to accommodate new dwellings i.e. extension of trunk network of water and sewer to new area.	Infrastructure agencies, developers
Step 3: Subdivision	Approval of development application, construction of works and title registration.	Local council/JRPP/developers
Step 4: Sale	Marketing of land to builders and home purchasers.	Land owner/developers

The proponent's submission acknowledges that, although the studies submitted provide an indication of the development opportunities of the precinct, this work would be required to be reviewed and more detailed investigations undertaken. Public exhibition of any proposal should also be undertaken to ensure the views of the community are included as part of the process.

Previous experience in undertaking planning studies, masterplanning and the preparation of planning proposals has shown that this process would likely take a minimum of 3-5 years. The Council and developers would then have the lead responsibility for the remaining steps in the process, including development application activity/construction and land/housing sale. The proponent's submission indicates that the provision of housing is likely to be staged over a 10 year period (depending on take-up rates) following rezoning of the lands and completion of the extension of services. Accordingly, following any release of the area, it is likely that housing would be provided within the precinct in 5-10 years.

Infrastructure Requirements

The proponent's submission acknowledges that principal infrastructure costs associated with development of the precinct would include the upgrade of existing roads, the extension of water and sewer carrier mains, drainage, electricity and communications. Further detailed planning is required concerning the provision of water and sewerage services.

Urban development may lead to increased patronage on public transport. However, there would still be a heavy reliance on the use of private vehicles given its distance from the nearest transport node. It is acknowledged that the proposed North West Rail Link may provide improved access to public transport for the people of North West Sydney, including South Dural. However, additional traffic that will be generated by the NWRL may impact on the capacity of the local road network and operation of critical intersections. Significant impacts may occur at major intersections along County Drive, Castle Hill Road and New Line Road. The rezoning of the precinct would exacerbate traffic problems unless the road network is upgraded.

In discussions with DP&I representatives over the last few years concerning the rezoning of the precinct, Department representatives have confirmed that issues in relation to servicing and infrastructure need to be addressed prior to the proposal being considered for release for urban development. Specifically, issues in relation to road capacity, water provision, electricity supply and educational facilities have been highlighted.

The proponent's submission does not provide details of what level of funding is proposed in respect of the proposal in terms of either the preparation of a LES or the subsequent funding of services and facilities to the precinct should urban development be supported. However, the submission states that the proponents are committed to reasonable payments concerning the costs of servicing future urban development.

Prior to the release of the area for urban purposes being supported by the State Government, formal commitment should be obtained from key Government agencies concerning the scope and costs of infrastructure works to be undertaken to facilitate development of the precinct. Furthermore, a funding plan should be prepared for the works with clear delineation between funding to be provided by the proponents and the commitment of funds by the State Government to address the balance of the costs.

North Glenhaven

The North Glenhaven precinct (map attached) is generally comprised of land adjoining Glenhaven Road, Old Glenhaven Road, Mills Road, Logie Road, Robson Road, Kylie Avenue and Edgecliff Road, Glenhaven. The precinct has an area of approximately 170 hectares, is located within the Hills local government area and is zoned Rural 1(c) under the *Baulkham Hills LEP 2005*.

Proposal

The submission has been prepared by a consultant on behalf of the "2156 Landowners Association" seeking the rezoning of the precinct for urban purposes". The submission indicates that the precinct could yield approximately 2,000 dwellings based on 12 dwellings per hectare. The submission is accompanied by a consultant report and subdivision concept plan (copy attached). The main issues raised in the submission supporting the nomination of the precinct are summarised as follows:

- The precinct is located adjacent to the North West Growth Centre and therefore, forms a logical extension to the existing residential area. The precinct also adjoins the proposed South Dural precinct;
- Infrastructure including roads, services (sewer, water, electricity, telephone, gas etc), and public transport would be required to support development of the

precinct. However, the precinct adjoins existing urban lands which would be required to be expanded to service the precinct;

- Glenhaven is in urgent need of infrastructure upgrades. Development would provide funding to contribute to these upgrades including funds for improvements to address traffic issues along, and around, Glenhaven Road;
- The area is currently primarily used as rural-residential, with 89% of allotments adjoining the existing urban area of Glenhaven used for residential purposes;
- It is acknowledged that property owners would be required to contribute/or enter into agreements to fund planning and infrastructure. However, the submission comments that as the aim of the review is to provide additional housing for population growth, local and State government should primarily be responsible for costs associated with any land release.

Comment

As indicated above under the discussion concerning the South Dural precinct, it is acknowledged that the release of the precinct would assist in addressing the dwelling targets under the State Government's *Metropolitan Strategy*. However, this aim should be balanced against the value of rural and resource lands. There is a need to establish a clear urban growth boundary to assist in preventing land speculation, impacting on land prices to the point where they more closely reflect the current planning controls rather than speculative development potential. For rural resource lands to be sustainable they require long term security and without this, there will be insufficient capital investment, undermining the future of rural and resource lands.

The proponent's submission acknowledges that, should the Department support in principle, the consideration of the precinct for release for urban purposes, comprehensive local studies would be required to be undertaken. Furthermore, similar to comments concerning South Dural above, prior to any release of the area for urban purposes, formal commitment should be obtained from key Government agencies concerning the infrastructure works required to facilitate development of the precinct. Furthermore, a funding plan should be prepared with clear delineation between funding to be provided by the proponents and the commitment of funds by the State Government to address the balance of the costs.

FINANCIAL IMPLICATIONS

The extent of the work required in undertaking the preparation of a local environmental study (LES) would require significant resources. Where work is required to be undertaken by a consultant, there are additional resourcing implications for Council through the preparation of a project brief, selection of consultants, administration and management of consultants and a working party. Given the scale of the South Dural precinct and the anticipated scope of the LES, it is anticipated that costs for the preparation of a LES and associated planning controls are likely to exceed \$400,000.

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

Should the Department support the release of the area for urban purposes and proceed with the preparation of a LES, it would be appropriate that funding be sourced from the proponent. The proponent should be requested to enter into a binding agreement to fund such a study.

TRIPLE BOTTOM LINE SUMMARY

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

CONCLUSION

The release of South Dural for urban purposes would be consistent with previous resolutions of Council to indicate its support for the progression of investigations of the precinct by the Department of Planning and Infrastructure.

It is recommended that Council forward a submission to the DP&I identifying its general support for the release of South Dural for urban purposes. The submission should also comment that any release of lands at South Dural or North Glenhaven should be accompanied by a funding plan for the associated infrastructure works.

RECOMMENDATION

THAT:

1. A submission based on the discussion contained in Executive Manager's Report No. PLN10/12 concerning the NSW Government review of housing opportunities be forwarded to the Department of Planning and Infrastructure concerning landowner nominated sites and stating that:
 - 1.1 Council confirms its support for the progression of investigations for the release of South Dural for urban purposes.
 - 1.2 Any release of lands at South Dural and/or North Glenhaven should be accompanied by a funding and delivery plan for the associated infrastructure works.
2. A copy of the submission be forwarded to Local Members of Parliament for their information.

JAMES FARRINGTON

Acting Executive Manager
Planning Division

Attachments:

1. Letter from the Department of Planning and Infrastructure
2. South Dural Precinct Concept Plan
3. North Glenhaven Precinct Map and Concept Plan

File Reference: F2004/07492

Document Number: D01838935

7 IMPROVING THE NSW PLANNING SYSTEM - ISSUES PAPER

EXECUTIVE SUMMARY

As part of the NSW Planning System Review, the Planning Review Panel (PRP) has released an Issues Paper that outlines the key issues raised during the listening and scoping stage of the Review.

Council made a submission to the PRP identifying the top 10 issues faced by Council in the implementation of the *Environmental Planning and Assessment (EP&A) Act, 1979* for its consideration as part of the listening and scoping stage of the Review. All of Council's issues have been addressed within the Issues Paper.

It is recommended that Council forward a submission to the PRP commending it on the thorough nature of the consultation undertaken to date and noting that the issues identified in the Issues Paper as being required to be addressed in any future planning system includes those identified by Council in its previous submission on the Review. The submission should also identify that Council looks forward to providing detailed comment on policy options and draft legislation at the Green and White Paper stages.

PURPOSE

The purpose of this report is to review the NSW Planning System Review Issues Paper, entitled, *The way ahead for planning in NSW?*

BACKGROUND

In July 2011, the Minister for Planning and Infrastructure announced the establishment of a PRP to oversee a review of the *EP&A Act* with the intent of providing independent advice to the NSW Government in drafting new planning legislation for the State. The Review will be conducted in four stages:

- Listening and Scoping Stage – to identify the key outcomes and principles for a new planning system (ended in November 2011);
- Issues Paper - focuses on questions concerning issues raised at community forums and stakeholder meetings. The community is invited to provide feedback on the questions raised (ends mid February 2012);
- Green Paper – outlining options for the future planning system and the basis of a legislative scheme (to be released by the end of April 2012); and
- White Paper – setting out the Government's new framework for the NSW planning system, including the draft legislation (details of timing to be released in due course).

As part of the listening and scoping stage of the Review, the PRP held community forums and meetings with key stakeholders throughout NSW. The PRP also invited written submissions. At its meeting on 2 November 2011, Council considered Executive Manager's Report No PLN75/11 concerning the review of the NSW Planning System. The report discussed the top 10 issues faced by Council in the implementation of the *EP&A Act* including suggestions for the drafting of new legislation. Council resolved that:

1. *A submission based on the discussion contained in Executive Manager's Report No. PLN75/11 be forwarded to the Planning Review Panel for its consideration as part of the listening and scoping stage of the NSW Planning System Review.*
2. *A copy of the submission be forwarded to Local Members of Parliament for their information.*

In accordance with Council's resolution, a submission (copy attached) was forwarded to the PRP and copies of the submission were sent to Local Members of Parliament.

On 6 December 2011, the PRP released an Issues Paper that outlines the key issues raised during the listening and scoping stage of the Review. The Issues Paper can be downloaded from the NSW Planning System Review website www.planningreview.nsw.gov.au

The PRP has invited submissions to be made on the Issues Paper. The PRP has advised that feedback on the Paper will assist develop policy options to be released (i.e. the Green Paper) at the end of April 2012. The closing date for submissions is 17 February 2012.

DISCUSSION

This report reviews the NSW Planning System Review Issues Paper having regard to Council's submission forwarded to the PRP for its consideration as part of the listening and scoping stage of the Review.

Issues Paper

The Issues Paper of the NSW Planning System Review, entitled, *The way ahead for planning in NSW?* outlines the key issues raised during the listening and scoping stage of the Review. The Issues Paper also contains feedback questions (copy attached) that represent the matters that the PRP believes should be considered as part of a new planning system for NSW. These have been distilled from the issues outlined under the 6 chapters of the Issues Paper as summarised below.

Chapter A - Introduction: Provides a background to the Review and asks high level questions about what the new planning system might look like.

The Chapter notes that extensive consultation has been undertaken with both key stakeholders and the community during the listening and scoping consultation stage of the Review. This included the holding of 91 community forums across NSW, 70 stakeholder meetings and the receipt of more than 330 written submissions.

The Chapter identifies that some of the issues submitted raise questions of broad principle. The value of flexibility and the idea that 'one size does not fit all' were recurring themes that arose throughout the consultation. The Chapter notes that common concerns about the *EP&A Act* include its lack of relevance given its age, the overly legalistic language and complexity of the provisions. Concerns were also expressed about the overly complicated processes and

the openness of decision making. This was particularly the case in the context of plan making and in development assessment and determination processes.

Chapter B - Key elements, structure and objectives of a new planning system: Explores the key issues around the possible options for a new planning system framework.

The Chapter identifies that it is important to clarify the objectives of the new planning legislation as they will provide the basis for the legislation. The Chapter notes that the new planning legislation will set out the framework for making plans and decisions about development. It will also define roles for those in the planning system, from everyone from the Minister for Planning and Infrastructure to council officers. The Chapter also notes that the new planning legislation will set the basis for community engagement, particularly in relation to how the planning system should serve the social, economic and environmental goals of our society.

Chapter C - Making plans: Explores the key issues and principles relevant to the content and processes of making plans.

The Chapter identifies the issues and principles that relate to both plans that sets out broad land use planning strategies and plans that prescribe specific development standards and controls for an area. The Chapter also identifies issues that are relevant to specific types of plans and policies in the current system (i.e. strategic plans, State Environmental Planning Policies, Local Environmental Plans and Development Control Plans).

Chapter D - Development proposals and assessment: Explores the key issues at the centre of approving and regulating development.

The Chapter notes that members of the community are most likely to be engaged with the planning system when they are seeking to build or when there is a development proposed in their neighbourhood. Accordingly, the most frequently raised topics at the community forums were development proposals and the regulation of carrying out development. The Chapter identifies the issues discussed related to applying for permission to carry out development, the assessment process, decision making and post-approval procedures such as modification of approvals and certification of building works.

Chapter E - Appeals and reviews; enforcement and compliance: Explores the key issues related to appeal and review systems.

The Chapter notes that when it was introduced, the *EP&A Act* was characterised by accountability through rights of appeal and review. However, the extent of rights to appeal or seeking reviews of decisions has remained a matter of controversy since. The Chapter also notes that during the consultation phase, the PRP sought comments about availability of, and processes for, appeals and reviews of decisions, and enforcement and compliance.

Chapter F - Implementation of the new planning system: Explores a range of issues and questions related to implementing a new planning system.

The Chapter notes that a statutory framework is one element that will ensure that a new planning system operates effectively. However, implementation measures must also be developed and considered by government. The Chapter identifies that some of these measures will be of a transitional nature while others may require structural change and financial and/or staffing reallocation or supplementation.

The Chapter identifies that it is unlikely that there will be significant budget increases available to support implementation measures. As a consequence, implementation recommendations will need to be of modest budget cost. Alternatively, if a larger commitment is needed, they will need to be able to be implemented progressively over a number of years. The Chapter notes that this might be the case for increased use of information technology.

Council Submission

The top 10 issues faced by Council in the implementation of the *EP&A Act* including suggestions for the drafting of new legislation were outlined in Executive Manager's Report No. PLN75/11. A submission based on the discussion contained in the report was forwarded to the PRP on 4 November 2011. In summary, the submission discussed the following matters:

- Overly complex system;
- Centralised planning system;
- Accountability, certainty and community confidence;
- Responsive to emerging local issues;
- Transparency in assessment process;
- Streamlined assessment process;
- Highly regulated system;
- Meaningful community involvement in planning process;
- Funding of required infrastructure; and
- Litigious and adversarial system of review.

The Issues Paper addresses all of Council's issues and suggestions for the drafting of new legislation either specifically or generally. Accordingly, there are no outstanding issues raised by Council that have not been included in the Issues Paper and feedback questions identified by the PRP as being required to be addressed.

Council should forward a submission to the PRP commending it on the thorough nature of the consultation undertaken to date and that the issues identified in the Issues Paper as being required to be addressed in any future planning system includes those identified by Council in its previous submission on the listening and scoping stage of the Review. The submission should also identify that Council looks forward to providing detailed comment on policy options and draft legislation at the Green and White Paper stages.

CONSULTATION

Council's Managers, Assessment and Subdivision Teams have been consulted in the preparation of this report.

TRIPLE BOTTOM LINE

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

CONCLUSION

As part of the NSW Planning System Review, the PRP has released an Issues Paper that outlines the key issues raised during the listening and scoping stage of the Review.

Council made a submission to the PRP identifying the top 10 issues faced by Council in the implementation of the *EP&A Act* for its consideration as part of the listening and scoping stage of the Review. All of Council's issues have been addressed within the Issues Paper.

It is recommended that Council forward a submission to the PRP commending it on the thorough nature of the consultation undertaken to date and noting that Council will provide detailed comment on policy options and draft legislation at the Green and White Paper stages.

RECOMMENDATION

THAT a submission be forwarded to the Planning Review Panel commending it on the consultation undertaken to date and noting that the issues identified in the Issues Paper includes those identified by Council in its previous submission to the Review.

JASON RAWLIN
Acting Manager, Town Planning Services
Planning Division

JAMES FARRINGTON
Acting Executive Manager
Planning Division

Attachments:

1. Council's Previous Submission to the Review
2. Issues Paper Feedback Questions

File Reference: F2004/07218-03
Document Number: D01839114