



BUSINESS PAPER

WORKSHOP MEETING

**Wednesday, 14 November, 2012
at 6:30 PM**



TABLE OF CONTENTS

AGENDA AND SUMMARY OF RECOMMENDATIONS

RESCISSION MOTIONS

ITEMS PASSED BY EXCEPTION / CALL FOR SPEAKERS ON AGENDA ITEMS

GENERAL BUSINESS

General Manager's Division

Nil

Corporate Support Division

Nil

Environment and Human Services Division

Nil

Planning Division

- Item 1 PL44/12 Further Report - Section 82A Review of Development Application - Demolition of a Tennis Court and Subdivision of One Allotment into Two Lots - 17 Cannan Close Cherrybrook..... 1

Infrastructure and Recreation Division

Nil

PUBLIC FORUM – NON AGENDA ITEMS

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

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.

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.

Persons wishing to address Council on **non agenda matters**, are permitted to speak after all items on the agenda in respect of which there is a speaker from the public have been finalised by Council. Their names will be recorded in the Minutes under the heading "Public Forum for Non Agenda Items".

GENERAL BUSINESS

- *Items for which there is a Public Forum Speaker*
- *Public Forum for non agenda items*
- *Balance of General Business items*

GENERAL MANAGER'S DIVISION

Nil

CORPORATE SUPPORT DIVISION

Nil

ENVIRONMENT AND HUMAN SERVICES DIVISION

Nil

PLANNING DIVISION**Page Number 1**

Item 1 PL44/12 FURTHER REPORT - SECTION 82A REVIEW OF DEVELOPMENT APPLICATION - DEMOLITION OF A TENNIS COURT AND SUBDIVISION OF ONE ALLOTMENT INTO TWO LOTS - 17 CANNAN CLOSE CHERRYBROOK

RECOMMENDATION

THAT Council assume the concurrence of the Director-General of the Department of Planning and Infrastructure pursuant to *State Environmental Planning Policy No. 1* and approve the Section 82A review of Development Application No. DA/186/2012 for demolition of a tennis court and subdivision of one allotment into two lots at Lot 1035 DP 812942, No. 17 Cannan Close, Cherrybrook subject to the conditions of consent detailed in Schedule 1 of Group Manager's Report No. PL44/12.

INFRASTRUCTURE AND RECREATION DIVISION

Nil

PUBLIC FORUM – NON AGENDA ITEMS**QUESTIONS OF WHICH NOTICE HAS BEEN GIVEN****MAYORAL MINUTES**

NOTICES OF MOTION

SUPPLEMENTARY AGENDA

MATTERS OF URGENCY

QUESTIONS WITHOUT NOTICE

**1 FURTHER REPORT - SECTION 82A REVIEW OF DEVELOPMENT APPLICATION -
DEMOLITION OF A TENNIS COURT AND SUBDIVISION OF ONE ALLOTMENT INTO TWO
LOTS - 17 CANNAN CLOSE CHERRYBROOK**

EXECUTIVE SUMMARY

DA No:	DA/186/2012 (Lodged 25 May 2012)
Description:	Demolition of a tennis court and subdivision of one allotment into two lots
Property:	Lot 1035, DP 812942, No. 17 Cannan Close, Cherrybrook
Applicant:	Mr Alex Du
Owner:	Mrs Suying Chen
Estimated Value:	\$7,500
Ward:	B

- Pursuant to Section 82A of the *Environmental Planning and Assessment Act, 1979 (the Act)*, a request has been made for Council to review its determination.
- At its meeting on 17 October 2012, Council resolved to defer consideration of the application for an onsite meeting with available Councillors, applicant and adjoining property owners.
- An onsite meeting was held on 25 October 2012. At the conclusion of the meeting, it was noted that the matter would be referred to the Council Workshop on 14 November 2012 for determination.
- The existing dwelling on proposed Lot A would exceed the applicable floor space ratio development standard of the *HSLEP 1994*. The applicant has made a submission pursuant to *SEPP No. 1* to vary the standard. The submission is considered well founded and is supported.
- It is recommended that Council change the determination and approve the application.

RECOMMENDATION

THAT Council assume the concurrence of the Director-General of the Department of Planning and Infrastructure pursuant to *State Environmental Planning Policy No. 1* and approve the section 82A review of Development Application No. DA/186/2012 for demolition of a tennis court and subdivision of one allotment into two lots at Lot 1035 DP 812942, No. 17 Cannan Close, Cherrybrook subject to the conditions of consent detailed in Schedule 1 of Group Manager's Report No. PL44/12.

BACKGROUND

On 16 May 2012, Council considered Executive Manager's Report PLN30/12 regarding the subject application and resolved that DA/186/2012 be refused for the following reasons:

- 1.1 *Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposal is unsatisfactory as the State Environmental Planning Policy No. 1 objection relating to non-compliance with the applicable floor space ratio provision is not well founded.*
- 1.2 *The proposal is unsatisfactory in respect to Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, as the proposed subdivision layout is contrary to the objective of the Residential Subdivision DCP to enhance the established character of the area.*
- 1.3 *Pursuant to the provisions of Section 79C(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development would not be in the public interest.*
- 1.4 *Pursuant to Section 79C(1)(b) of the Environmental Planning and Assessment Act 1979, the proposed subdivision would result in a residual allotment in which the size and shape of private open space is insufficient having regard to the size of the dwelling on the land.*
- 1.5 *Pursuant to Section 79C(1)(b) of the Environmental Planning and Assessment Act 1979, the proposed subdivision would result in a dwelling that is inconsistent with the established streetscape.*

On 25 May 2012, the applicant made application for a review of the determination under Section 82A of the Act.

On 17 October 2012, Council resolved to defer consideration of the application to enable an onsite meeting with available Councillors, interested residents and the property owner.

On 22 October 2012, the applicant lodged a Class 1 Appeal in the Land and Environment Court against Council's refusal of the original development application. Notwithstanding, Council may continue to assess and determine the Section 82A Review up until such time that the Court disposes of the appeal.

On 25 October 2012, an onsite meeting was held to discuss the application. The meeting was attended by the applicant, owner, residents of Cannan Close, Councillors (Russell, Tilbury, Berman, Browne, Azizi, Cox and Hutchence), the Group Manager Planning Division and Manager Assessments.

DISCUSSION

At the on-site meeting, Council officers provided an outline of the application. The applicant was invited to comment on the merits of the application and the residents of Cannan Close outlined their issues should the proposal be progressed. In summary, the following matters were discussed at the meeting:

- Area and width of the proposed vacant lot and its consistency with the subdivision pattern in the area.
- Potential impact of a future dwelling on the newly created allotment on the character of Cannan Close.
- Non-compliance with the floor space ratio for the existing dwelling.

An inspection of the adjoining residence at No.15 Cannan Close was undertaken with the Councillors and the owners of the property.

At the conclusion of the site meeting, it was noted that Planning Report No. PLN 24/12 (copy attached) assessing the matter should be referred back to Council for its consideration. The report concludes that based on the planning merits of the case, the application should be approved subject to recommended conditions of consent held at Schedule 1 of this report.

CONCLUSION

The applicant has requested that Council review its decision to refuse DA/186/2012 for the demolition of a tennis court and subdivision of one allotment into two lots. The application was not amended.

The existing dwelling on proposed Lot A does not comply with the 0.4:1 floor space ratio development standard of the *HSLEP 1994*. Consequently, the application has been supported by a submission under *State Environmental Planning Policy No. 1* seeking approval of a variation to this development standard.

The proposal generally complies with the requirements of Council's *Residential Subdivision DCP* other than the maximum floor space ratio which is acceptable with regard to the well founded *SEPP 1* submission.

The development complies with the 500sqm development standard under Clause 14 of *HSLEP 1994*, meets the Residential A zone objectives and is consistent with the objectives of the *Metropolitan Plan for Sydney 2036*.

Twenty seven submissions were received in respect of the original application and nineteen submissions were received in respect of this Section 82A review.

It is recommended that Council change the determination and approve the application.

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

ROD PICKLES
Manager - Development Assessment
Planning Division

JAMES FARRINGTON
Group Manager
Planning Division

Attachments:

1. Planning Report No. PL24/12

File Reference: DA/186/2012

Document Number: D02047232

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:

Plan No.	Drawn by	Dated
A001-A006, A100-A102	Greg Pickworth	21.02.2012

2. Removal of Existing Trees

This development consent only permits the removal of tree(s) numbered 1 to 6 inclusive *Cupressus species* (Cypress Pine) as identified in red on Plan No. A004 prepared by Greg Pickworth dated 21/2/2012. The removal of any other trees requires separate approval under Council's Tree Preservation Order.

3. Amendment of Plans

The approved plans are to be amended as follows:

- a) The proposed building envelope on Lot B as identified on Plan No. A100 prepared by Greg Pickworth dated 21/2/2012 is not approved.

REQUIREMENTS PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE**4. Water/Electricity Utility Services**

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

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

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

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

REQUIREMENTS PRIOR TO THE COMMENCEMENT OF ANY WORKS

5. Erection of Construction Sign

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

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

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

6. 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

7. 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.

8. 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.

9. 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 4 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.

10. 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.

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.

11. Sydney Water – s73 Certificate

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

12. Stormwater Drainage

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

- a) Connected directly to the existing interallotment drainage system that drains to Council's piped drainage system in Darlington Drive.
- b) An inter-allotment stormwater drainage system to service the proposed lots with pits being constructed in situ.

- c) The roof and stormwater drainage system from the existing dwelling to be connected to the proposed inter-allotment drainage system.

Note: A construction certificate shall be obtained prior to the commencement of these works and are to be completed prior to the issue of a subdivision certificate.

13. Damage to Council Assets

Any damage caused to Council's assets including the removal, damage, destruction, displacement or defacing of the existing survey marks 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.

14. Creation of Easements

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

- a) An inter-allotment drainage easement(s) over each of the burdened lots.

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

15. Works as Executed Plan

A works-as-executed plan(s) must be prepared by a registered surveyor and submitted to Council for completed interallotment stormwater drainage system works. The plan(s) must be accompanied by a certificate from a registered surveyor certifying that all pipelines and associated structures lie wholly within any relevant easements.

16. Demolition of Existing Tennis Court

The existing tennis court and any structure that traverses the proposed allotment boundary shall be demolished prior to the release of the subdivision certificate. All disturbed areas shall be reinstated with turf.

17. Boundary Fencing

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

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

18. s94 Infrastructure Contributions

The payment to Council of a contribution of \$20,000 for 1 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 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.

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.

House Numbering

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

Tree Preservation Order

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

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

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

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

Covenants

The land upon which the subject building is to be constructed may be affected by restrictive covenants. Council issues this approval without enquiry as to whether any restrictive covenant

affecting the land would be breached by the construction of the building, the subject of this consent. Applicants must rely on their own enquiries as to whether or not the building breaches any such covenant.