



# **LATE ITEM MEMO BUSINESS PAPER**

**(Items 4 and 5)**

**GENERAL MEETING**

**Wednesday 12 October 2016**

**at 6:30PM**



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**ITEM 4**      **PL68/16** - Development Application - Five Storey Residential Flat Building Comprising 36 Units - 10-16 Station Street, Thornleigh

*Additional information with **CHANGE** to Recommendation*

The proposed development involves drainage of inter-allotment stormwater over properties No. 8 Station Street and Nos. 5 – 7 Thornleigh Street, Thornleigh. Properties Nos. 8 and 10 Station Street currently benefit from a drainage easement over Nos. 5 – 7 Thornleigh Street. However, Nos. 12, 14 and No. 16 Station Street do not benefit from the existing easement.

The original condition did not include the property at No. 8 Station Street with regard to provision of an easement. Therefore, Condition No.1 for Deferred Commencement requires amendment to read:

**1. Deferred Commencement**

Pursuant to Section 80(3) of the Environmental Planning and Assessment Act 1979, this consent does not operate until the following information is submitted to Council:

- a) The registration and creation of an easement to drain water from the site at Lots 10,11 and 12, Sec 4 DP 1854, Nos. 12, 14 and 16 Station Street, Thornleigh over the downstream property SP 94031, Nos. 5 – 7 Thornleigh Street and Lot 8 Sec 4 DP 1854, No. 8 Station Street, Thornleigh.

Such information must be submitted within 24 months of the date of this notice.

Upon Council's written satisfaction of the above information, the following conditions of development consent apply:

**RECOMMENDATION**

THAT Development Application No. DA/686/2016 for demolition of existing structures and the erection of a five storey residential flat building comprising 36 units with basement car parking at Lots 9-12, Sec 4 DP 1854, Nos. 10-16 Station Street, Thornleigh be approved as a deferred commencement pursuant to Section 80(3) of the *Environmental Planning and Assessment Act 1979* subject to the conditions of consent detailed in Schedule 1 of Group Manager's Report No. PL68/16 as amended by Late Item Memo No. LM14/16.

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**Attachments:**

There are no attachments for this report.

File Reference: DA/686/2016

Document Number: D07071325

**ITEM 5**      **PL69/16** - Further Report - Development Application - Torrens Title Subdivision of One Allotment into Three Lots - 88 Malton Road, Beecroft

*Additional information with **NO CHANGE** to Recommendation*

Two late submissions have been received raising concerns regarding the subject application. The issues raised in the submissions are generally covered in Group Managers report No. PL69/16. However, the issues are addressed below to assist Councillors in consideration of the matter.

**1. Beecroft-Cheltenham Heritage Conservation**

**Submission:** The submission comments that the removal of trees for the proposal and future construction of dwelling houses would have a substantial impact on the Heritage Conservation Area (HCA).

**Response:** Council's heritage assessment notes that a number of trees are proposed to be removed as part of the subdivision proposal at the rear and around the building envelopes for future development. The loss of these trees would reduce the canopy cover and immediate landscape character of the subject site. However, the proposal includes a restricted development area (E) at the rear of the site where a group of remnant forest trees are to be retained, which would continue to contribute to the landscaped area. In summary, the future development of the site at the rear would have an impact on the remaining tree cover on the upper section of the site. However, no heritage concern is raised as a group of remnant forest trees, characteristic of the conservation area are maintained in a restricted development area at the rear of the site.

**Submission:** The submission suggests that the subdivision would not retain the built pattern in the area.

**Response:** The new allotments are of a size and dimension that enable a new dwelling to be built with minimal impact on the streetscape or conservation area. The front allotment has an approved dwelling under construction. The building envelopes for the rear allotments shown on the subdivision plan are consistent with existing orientation of buildings and setbacks.

Therefore, the construction of future dwellings at the rear of the site does not raise concerns about impact on the streetscape. The subdivision pattern is consistent with what has occurred on either side of the subject site. Furthermore, the proposed lots are larger than other battleaxe lots that immediately adjoin the site and are consistent with the size of allotments recently approved for the subdivision of land on the opposite side of the street at Nos 79-87 Malton Road pursuant to DA/94/2013.

**2. Impact on the Local Environment**

**Submission:** The applicant has removed trees on the site, including removing Trees Under the 10/50 legislation.

**Response:** The subdivision application can not require the reinstatement of trees lawfully removed under the Rural Fire Service 10/50 Code or require that their loss be mitigated using the Council's Green Offsets Code (2013)..

**Submission:** No proposed building envelope should be within ten metres of any tree to be retained due to the impact on tree cover and local fauna.

**Response:** The applicant submitted a Seven Part Test of Significance for significant fauna species that may occur on the site. The assessment found that there is not likely to be any significant impact on these species and a Species Impact Assessment is not required. There is no significant impact on Biodiversity that warrants refusal of the application. The Asset Protection Zone requirements for vegetation management include that a canopy should not overhang within 2m to 5m of a dwelling. This could be achieved by crown lifting, thinning such as removing smaller secondary branches, and selective pruning to prevent direct flame contact between trees and assets. The requirement for an APZ does not require all trees within 10m of a building to be completely removed. An addendum Bushfire report dated September 2015 confirmed that the land between the 'restricted development zone' and the future dwellings contains scattered trees with a partially maintained understorey. In order to satisfy the Asset Protection Zone prescriptions there will be no need to remove additional trees.

**Submission:** The RFS is not aware of the flora and fauna implications from the development and potential impacts on threatened species.

**Response:** The submitted Flora and Fauna assessment was referred to the RFS in October 2015, prior to its finalisation of General Terms of Approval.

**Submission:** The Bushfire report is incorrect as the wrong type of forest is used for APZ calculations and it advises that it does not contain steep lands greater than 18 degrees.

**Response:** The Bushfire report was reviewed by the RFS and has provides General Terms of Approval. APZ calculations are undertaken using Australian Standard AS3959.

The submission advises that the Bushfire report has used a low open forest for the APZ calculations that is not correct. The Bushfire report advises that there are two forest types to consider, a Low Open Forest to the north-east and a Tall Open Forest to the southwest. The Australian Standard Groups all four forest types into one category, called "Group A Forest". The applicable Table 2.4.2 in AS3959 provides the same Bushfire Attack Level (BAL) calculation for all Group A Forest Types, which is what is used to determine the APZ requirement. Therefore, the forest type does not change the BAL calculation.

The submission contends that the Bushfire report misrepresents the slope of the land. The Bushfire Report (Section 2.4) advises that within the site the land falls fifteen metres across a series of terraces. The Report includes an extract of the survey plan at Page 32 clearly showing the contours of the land. Page 16 advises that the proposed development area does not include steep lands (>18 degrees) which relates to an average slope. In accordance with AS3959 Table 2.2, 18 degrees is equivalent to a slope of 33 percent. The indicative building envelopes are on a gradient with an average slope of 20% to 25%, which is 14 degrees.

**Submission:** The RFS is not aware that Council officers were concerned about the inability of the proposal to meet Planning for Bushfire Protection.

**Response:** The fundamental issue for determining compliance with Planning for Bushfire Protection is determining the bushfire hazard pursuant to AS3959-2009. The RFS was advised by Council in October 2015 that the applicant's Bushfire Report was not correct as it included an obsolete Bushfire Hazard Map. The current Bushfire Map was certified in May 2014 and extends the bushfire hazard to immediately adjoin the western side boundary of the site. Council requested that the RFS take into account this additional information, and the reduced levels and contours on the survey plan and advise if the RFS continues to support the application. Resident submissions were also referred to the RFS in October 2015. The RFS considered this information and provided a new approval for the development in November 2015. The new approval included additional controls for the right of way to Lots 2 and 3.

**Submission:** The Blackbutt Gully Forest should be protected for the public interest.

**Response:** The bushland has not been mapped as significant on the HLEP Terrestrial Biodiversity Map. The width of the vegetation corridor provided at the rear of the site (30m) would be similar to that provided on the adjacent land to the east and west.

### 3. Suitability of the Site for Subdivision

**Submission:** A dwelling on Lot 2 would erode the privacy of No. 86A Malton Road and the setback provided is inadequate for a landscape screen. A 1.5m side setback is out of character with the area.

**Response:** The house and pool at No. 86A is elevated above Lot 2. The Pool is at RL 96.3m and the verandah appears to be 1m higher at RL 97.3m. The building envelope on Lot 2 ranges from a natural level of RL92 to RL95m. Therefore the 'ground floor' at 86A Malton Road will be up to 2m to 4m higher than the adjacent building.

A dwelling could be designed on Lot 2 with high sills, opaque or non-openable windows, non-habitable rooms and the like along this interface that would minimise privacy conflicts. In accordance with the Planning Principles in **Super Studio v Waverley [2004] NSWLEC 91**, *where proposed landscaping is the main safeguard against overlooking, it should be given minor weight. The effectiveness of landscaping as a privacy screen depends on continued maintenance, good climatic conditions and good luck. While it is theoretically possible for a council to compel an applicant to maintain landscaping to achieve the height and density proposed in an application, in practice this rarely happens.*

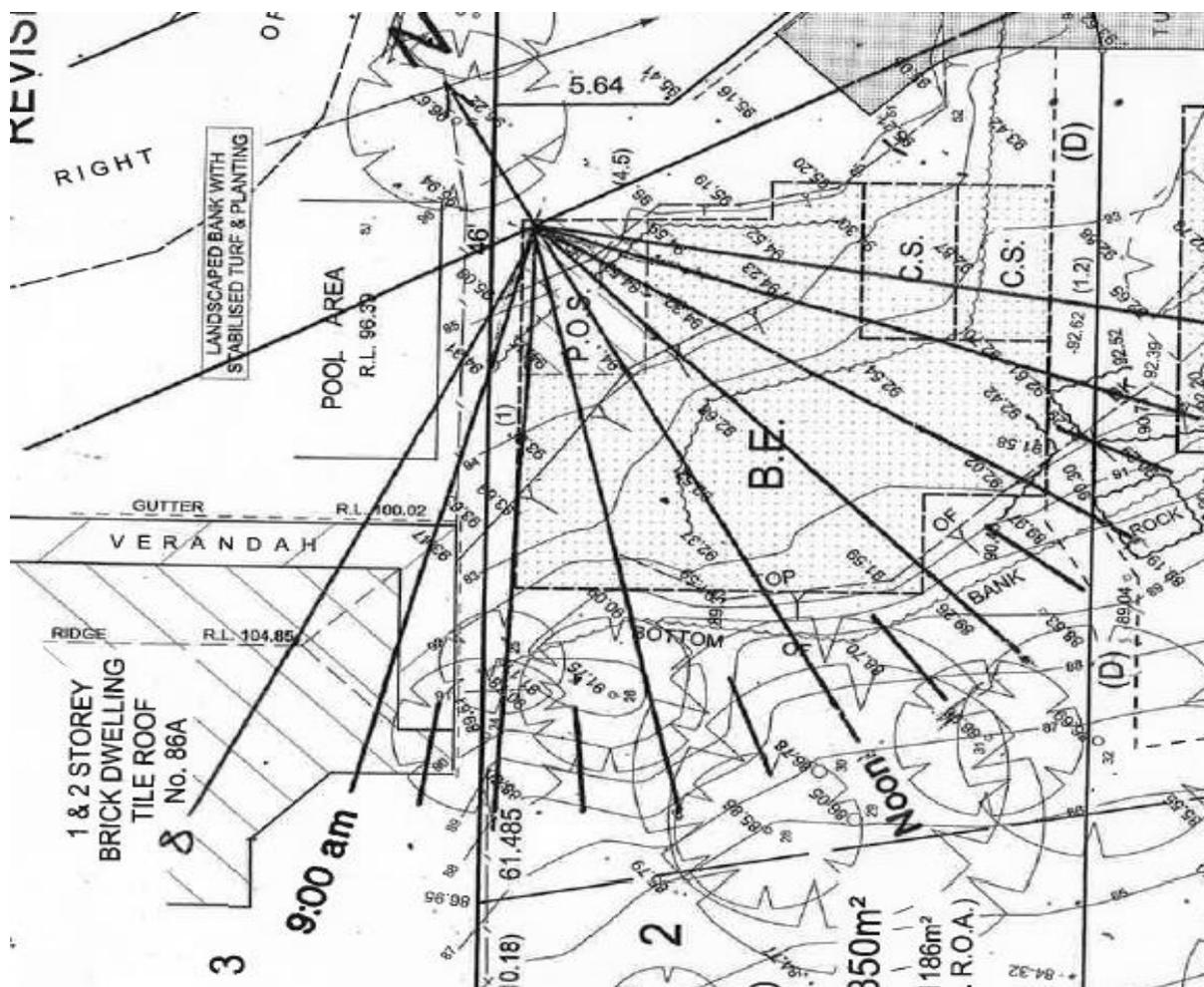
The pattern of development in the area, more often than not, has limited side boundary setbacks in order to maximise the rear setbacks.

**Submission:** Council officers have advised that the indicative building plans submitted do not comply with the HDCP and conflict with the adjacent properties.

**Response:** The submitter is referring to a letter sent in December 2015 in response to indicative house plans submitted in September 2015. In response to Council's letter of December 2015, the applicant submitted amended indicative house plans in February 2016. These were included as an attachment to the Council report of 11 May 2016 and discussed within the report. These plans were an improvement on the September 2015 plans. However, it is important to note that these plans were indicative only and would require some modification, and would be subject to a future development application and assessment.

**Submission:** Sunlight and passive heating at 86A will be completely eroded and summer breezes blocked.

**Response:** The front façade and pool at 86A has a north-easterly aspect and enjoys sunlight access. As previously discussed, the house and pool at 86A is elevated above Lot 2. Furthermore, given the orientation of North, there is very little potential future overshadowing of the adjacent land to the south-west



The above diagram demonstrates that there will minimal overshadowing of No.86A Malton Road.

#### 4. Tree Root Protection

**Submission:** The proposed subdivision would have a significant impact on tree roots. The submission requests that a Council arborist to inspect and oversee tree protection work around Tree 47 (on 86A).

**Response:** The new driveway that is part of the subdivision works is located 11 metres from Tree 47. The consent conditions need to relate to the subdivision works, not to a future dwelling house application that has not been lodged.

**Submission:** The tree protection zone of Trees 27 and 36 cut down under 10/50 must not be disturbed and all topsoil must remain as the complete removal of the trees would have a detrimental impact on slop stability.

**Response:** The Geotechnical assessment submitted with the application recommends that the land be stabilised when a new dwelling house is constructed. The Geotechnical Report by JK Geotechnics dated 22 October 2014 for the removal of Tree 27 under the RFS 10/50 legislation advised that:

*“We note that of, in the future, the remainder of the two nominated trees are proposed to be removed then the soil slope would need to be permanently supported by landscape retaining walls or, if preferred, a proprietary geotextile erosion control system.”*

Furthermore, an Engineering assessment by Stubbs Cruickshank dated 5 April 2015 lodged as part of the submission objecting to the application advised that:

*“Further, assuming the roots are removed, I recommend an engineer inspects the property to advise on retaining walls or erosion control system, as recommended by JK Geotechnics and whether the underpinning of floaters is required.”*

Therefore, the Geotechnical assessment does not require that all trees roots be retained in perpetuity, if other stabilising measures are used when the dwellings are constructed. Trees are not approved to be removed at this stage. Land Stability is discussed in detail at 4.3 of Group Managers Report No. PL29/16 of May 2016.

## 5. Density of the Development

**Submission:** The land is too steep and the building envelopes too constrained.

**Response:** The building envelopes indicated are similar in size to other building footprints in the locality. The average gradient over the proposed building envelopes is in the order of 20-25%. As Councillors are aware, there was a subdivision application that was recently considered and approved by the Land and Environment Court on the opposite side of the road at 79-87 Malton Road, pursuant to DA/94/2013. The residential allotments were a similar size, however the building envelopes were on steeper land with an average gradient of 26-33%.

**Submission:** There should be no buildings in the Tree Protection Zone, resulting in highly constrained and limited developable area.

**Response:** There is a misunderstanding regarding works in Tree Protection Zones. Works can occur in TPZs, however this work needs to be sensitive construction techniques – eg. building on piers.

## 6. Procedural Fairness

**Submission:** The residents have not been able to comment on documentation submitted since May 2016.

**Response:** The documentation submitted relates to matters ordinarily addressed via consent conditions.

Additional information submitted by the applicant including an Integrated Vegetation and Bushfire Management Plan, amended plan of subdivision and amended landscape plan have been available for viewing by members of the public on Council's website since 14 September 2016. The conclusions of the assessment are detailed in the report to Council. Specifically, the report notes the view of Council officers that the Integrated Vegetation and Bushfire Plan is assessed as satisfactory subject to the imposition of conditions of consent that ensure consistency with the landscape plan and clarification of the timeframe for remediation works. Conditions of consent are also recommended for amendments to the landscape plan to be consistent with the Integrated Vegetation and Bushfire Plan.

Consent conditions requiring an Integrated Vegetation and Bushfire Management Plan is ordinarily addressed as a deferred commencement condition, as occurred with the Land and Environment Court approved subdivision at 79-87 Malton Road.

#### 7. Impact on No. 92A Malton Road

**Submission:** The dwelling house to be constructed on Lot 3 would overshadow the outdoor relaxation space at 92A Malton Road. The survey plan incorrectly shows the house at 92A Malton Road.

**Response:** There is no dwelling house proposed. Given that the building envelope on Lot 3 is located partly to the south of 92A, the overshadowing impact is able to be limited. This issue is addressed on Page 13 of General Managers Report PL29/16 as follows:

*Submissions from the neighbouring properties to the east raise concerns that a building in this location would impact on their privacy and a loss of sunlight. Submissions were also concerned that the dwelling at 92A Malton Road was not shown on the plans. Amended plans show the location of the dwelling at 92A setback 8m from the common boundary. The building envelope is sited with a 4.3m setback to the eastern boundary, and the concept plan increases that setback to 7m. To address privacy, the building could be designed with strategically located high sills and with a primary outlook directed to the south towards the bushland on the site. Overshadowing onto No.92A is unlikely to reach the existing dwelling house and the new building on Lot 3 could be designed to provide 3 hours of sunlight to the principle open space area from 11am to 2pm.*

**Submission:** The proposal relies on prior illegal activities, including tree removals and earthworks for the erection of a shed on Lot 3.

**Response:** The subdivision application is to be assessed on its merits. The submission is concerned that a dwelling house on Lot 3 would be elevated on fill. The height, bulk and scale of any future dwelling house on Lot 3 would be the subject of a development application and assessed on its merits. A dwelling house is able to be constructed on Lot 3 as addressed on Pages 12 to 13 of General Managers Report PL29/16 to address the requirements of the Hornsby DCP 2013.

**Submission:** The plan of subdivision incorrectly shows the house at No.92A Malton Road.

**Response:** The location of the dwelling on the applicant's plan is approximate only and is generally in the position depicted on aerial photography. The assessment of the application has also taken into account the location of the dwelling depicted on Council's aerial photography on the GIS system.

**Submission:** The application does not show all the vegetation on the property.

**Response:** The applicant has advised that they have surveyed only the large trees on the site. The trees are located near the existing shed and any removal would need to be assessed as part of any future dwelling house application and there is no need to survey large trees in the Restricted Development Area as there are no works.

**RECOMMENDATION**

THAT Development Application No. DA/320/2015 for Torrens Title subdivision of one allotment into three lots at Lot 41 DP 714483, No. 88 Malton Road, Beecroft be approved subject to the conditions of consent detailed in Schedule 1 of Group Manager's Report No. PL69/16.

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**Attachments:**

There are no attachments for this report.

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