



LATE ITEM MEMO BUSINESS PAPER

(Items 6 and 8)

GENERAL MEETING

**Wednesday 10 May 2017
at 6:30PM**



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ITEM 6 PL16/17 - Development Application - Dwelling House - 10 Yallambee Road, Berowra**Additional information with *CHANGE* to Recommendation**

Conditions recommended in Schedule 1 of Group Manager's Report No. PL16/17 reference a Tree Location and Protection Zone Plan and a Stormwater Management Plan which did not form part of the report attachments. These plans have been enclosed for the information of Councillors.

A late submission has also been received which raises a number of matters with respect to the application and assessment contained in the Group Manager's Report. These matters are addressed as follows:

1. Report makes incorrect statements regarding SEE

The submission comments that the report is incorrect in stating "*A submission suggests that Council should not accept the SEE as it has been prepared by a former employee of Hornsby Council.*"

On further review, it is acknowledged that the original submission states that Council should not rely on the SEE because it has been prepared under the name of an individual, not under the name of that person's business with an ABN. Although the submission states the name of the consultant and comments that the consultant is a former employee of Hornsby Council, the submission does not state that the SEE should not be accepted as valid due to the fact it was prepared by a former employee.

In Section 5.1.5 of Group Manager's Report PL 16/17, it is noted that there is no requirement in Schedule 1, part 2 of the *EP&A Regulation* for an SEE to be prepared on a company letterhead and include the ABN or be signed. The SEE submitted with the application provides sufficient detail to enable Council to properly assess the application and satisfies the requirements of the *Regulation*.

For clarity, the planning consultant who prepared the SEE has not worked at Council for over 10 years. The primary assessment officer for this application has not worked with, or had any personal relationship with, the planning consultant. Furthermore, the assessment officer commenced with Council within the last 8 years being after the consultant left Council.

2. Species Impact Statement required

The submission comments that a Species Impact Statement is required to be submitted as part of the application to address the impacts on 2 x *Syzygium paniculatum* (Magenta Lilly Pilly) located at No. 8 Yallambee Road.

The NSW Office of Environment and Heritage advise that a Species Impact Statement is needed:

- *if the assessment of significance finds the development likely to affect threatened species, populations, ecological communities or their habitats*

- *if there is reasonable doubt about the likely impacts of a development, or where detailed information is not available.*

The larger of the two trees is located within the rear yard of No. 8 Yallambee Road, with the second located within the front yard. The Trees Protection Zones (TPZ) of the 2 x *Syzygium paniculatum* (Magenta Lilly Pilly) trees will not be impacted by the proposal. Therefore, an Assessment of Significance ('seven part test') was not required.

Council's ecological assessment concludes that the 2 x *Syzygium paniculatum* (Magenta Lilly Pilly) trees are worthy of protection notwithstanding that the endemic nature or origin of these trees is questionable (i.e. bird dispersed or planted) and difficult to prove. The subject trees do not occur within their known typical habitat range. The NSW OEH threatened species profile website, *Syzygium paniculatum* (Magenta Lilly Pilly) occurs on gravels, sands, silts and clays in riverside gallery rainforests and remnant littoral rainforest communities. The remnant vegetation associated with the Berowra area is typically dry sclerophyll ridgetop open woodland on sandstone and is not a rainforest community.

Nevertheless, as a precautionary measure and in recognition of the conservation status of this species (listed as Vulnerable under the Commonwealth EPBC Act and Endangered under NSW TSC Act), adverse impacts to these trees and others of the same species that form part of the contiguous wider local population should be avoided. The ability of the retained trees within the local population to provide fruit and have its genetics spread by mobile vectors such as birds, possums and Grey-headed Flying foxes will not be interrupted or adversely affected as the works will not adversely impact on trees to be retained.

Therefore, Council's ecological assessment concludes that there will be no significant impact upon the local population of the 2 x *Syzygium paniculatum* (Magenta Lilly Pilly) located on the adjoining property. There is no reasonable doubt about the impacts of the development on the threatened species and therefore, a request to Director General of the Office of Environment and Heritage for Species Impact Statement requirements is not necessary.

3. Conditions for Pier and Beam or Cantilevered Construction Should be applied

The submission requests that pier and beam construction be used for the dwelling where development encroaches within the TPZ of trees on adjoining properties. The submission references a late memo prepared for a separate application considered at a Council meeting on 12/10/2016, relating to a proposed subdivision at property No. 88 Malton Road Beecroft. The Late Memo No. LM 16/16 states '*Works can occur within TPZs, however this work needs to be sensitive construction techniques – eg building on piers*'. The submission states that Council should not apply one set of requirements to one application and not apply the same requirements to another proposal.

The submission notes that condition No. 28(d) requires pier and beam construction for works within the TPZ of the 3 x *Eucalyptus sieberi* (Silvertop Ash) located on the subject site and this measure should be applied to protect trees on adjoining properties.

Council's tree assessment notes that the proximity of the alfresco area / deck at the rear of the dwelling would result in a significant encroachment into the TPZ of trees 6, 7 and 7a, the significant Silvertop Ash trees located on the subject site. Council's assessment determined that these trees would be adversely impacted as a result of the encroachment. To address Council's concern, the applicant modified the proposal (in plans dated 30/01/2017) by deleting the slab on ground construction for the alfresco areas and replacement with a deck on piers. Condition No. 28 (d) is recommended to ensure construction works for the deck include sensitive construction techniques.

As addressed in Section 3.1.5 of Council's report, an incursion to the TPZ of Liquidamber (tree 13) located on the adjoining property occurs. However, this incursion is minor and Council's tree assessment concludes that the incursion would not have a detrimental impact on the long term health or management of the tree which is typically a robust species. As a result, a condition for pier and beam construction is not necessary to ensure the protection of trees on the adjoining property. Subject to conditions for an arborist to be on site to supervise works and for tree protection conditions to be complied with, the proposal would not adversely impact on the health of the trees.

4. Tree Protection Conditions Negligible when compared to other DAs

The submission notes that the tree protection conditions are inadequate when compared to other recent DAs approved by Council. The submission notes that more than 20 standard tree protection conditions are missing. An example of a separate report with detailed tree conditions was provided as part of the submission.

Tree conditions are prepared for each application and are considered with respect to a number of factors including the attributes of the site, nature of the development, location and condition of trees, extent of building works and the level of excavation. As discussed in Section 3.1.5 of Group Manager's Report PL16/17, Council's tree assessment has evaluated the impact on trees and a number of conditions are recommended for tree protection, including the requirement for an arborist to be on site to supervise works, tree protection fencing and tree protection measures during construction. The conditions recommended are adequate to ensure the protection of trees on site and adjoining properties.

5. Protection of Magenta Lilly Pilly in front yard of No. 8 Yallambee Road

The submission suggests that conditions should be included for tree protection fencing to ensure the protection of the *Syzygium paniculatum* (Magenta Lilly Pilly) and all other trees located in the front yard of the adjoining property. The Magenta Lilly Pilly is located 1 metre north of the side boundary and has a tree protection zone of 2 metres. Apart from the planting of shrubs, no works are proposed within the TPZ of this tree. To address the submitter's concern, the Tree Protection Site Plan is recommended to be amended to include tree protection fencing setback 1 metre from the northern side boundary of the site.

6. Magenta Lilly Pilly within No. 12 Yallambee Road

The submission notes that although the Magenta Lilly Pilly located within the front setback of No. 12 Yallambee Road has been lopped to waist height, the tree exhibits substantial re-growth and should be taken into consideration.

Council's tree assessment notes that the tree has been lopped to waist height and is no longer considered a tree for the purpose of Council's assessment. The removal of the tree has been referred to Council's solicitor for further action.

7. Rock removal should be undertaken by saw

The submission suggests that excavation controls should be applied to ensure the adjoining dwelling is not adversely impacted by rock hammering. The submitter recommends that a condition be applied that requires rock removal to be undertaken by sawing instead of rock hammering wherever practicable. The submission notes that the requirement for a dilapidation report alone would not prevent damage to adjoining properties.

The proposal involves minor excavation works to a depth of less than 1 metre and accordingly, a condition requiring rock sawing is not considered warranted in this instance and may not be practical. The excavation works associated with the development are unlikely to result in damage to adjoining properties.

8. Front Setback not consistent with adjoining dwellings

The submission comments that the front setback of the dwelling-house is not compatible with adjacent development as the dwelling would be forward of the dwelling at No. 12 Yallambee Road. The submission also comments that the proposal cannot be accepted as consistent with the desired outcomes of the setback provisions within Part 3.1.2 of the HDCP.

The desired outcome of Part 3.1.2 of the HDCP is to:

- (a) *Setbacks that are compatible with adjacent development and complement the streetscape.*
- (b) *Setbacks that allow for canopy trees to be retained and planted along the front and rear property boundaries.*

As addressed in Section 2.9.2.1 of Group Manager's Report PL 16/17, the adjoining properties comprise older style dwellings with large setbacks. Due to the trapezoidal shape of the site, the front façade of the proposed and existing dwellings in this section of the street are not parallel to the front boundary.

Group Manager's Report PL 16/17 notes that the front setback is calculated from the front wall of the proposed dwelling to the front boundary, measured within the allotment parallel from side boundaries (as indicated on the site plan). The front setback is calculated to be 6.5 metres at the south eastern corner of the dwelling and 17.5 metres at the north-east corner of the dwelling. Using this approach, the dwelling at No. 12 Yallambee Road is assessed as having a setback of 10.7 metres at the southeast corner of the dwelling and 17 metres at the northeast corner of the dwelling. The dwelling at No. 8 Yallambee Road is setback 11.8 metres from Yallambee Road and 16.5 metres from Anembo Road (as the site is located on a corner). The carport in the front yard of No. 8 Yallambee Road is setback 8 metres from Anembo Road.

Under the NSW Housing Code, front setbacks are measured parallel to the lot boundary. When this approach is taken, the closest point of the existing dwelling at No. 12 Yallambee Road is setback 8 metres from the front boundary and the closest point of the dwelling at No. 8 Yallambee Road is setback 8.8 metres. The south-east corner of the proposed dwelling would be setback 4.7 metres from Yallambee Road. In considering the established building line at 8 metres, 14 square metres of the dwelling would encroach into the established building line. This encroachment is minor given that it is restricted to the southeast corner of the dwelling and the majority of the dwelling is setback beyond the established building line. Furthermore, an area of 17 square metres is provided in front of the north-eastern portion of the front façade of the dwelling which is behind the building line. Accordingly, on balance the setbacks of the proposed development are reasonable and would not have a detrimental impact on the streetscape.

Council's assessment concludes that the setbacks of the development are compatible with a low density residential environment and the desired future character of the area. The setback allows for the three significant canopy trees on the site to be retained at the rear of the dwelling and sufficient area to allow for landscaping of the front yard to complement the streetscape character.

9. Replacement Planting

The submission comments that replacement planting should include 10 trees to compensate for the trees illegally removed from the site, plus the 4 trees proposed for removal as part of this application.

In recommending replacement planting, consideration must be given to the extent of landscaped areas post development, provision for private open space and whether there is sufficient area to facilitate growth of new trees. Group Manager's Report PL 16/17 recommends the replanting of a minimum of 6 trees on the site as appropriate (condition No. 36).

10. Tree Assessment Sheet 1 includes insufficient wording

The submission comments that tree assessment sheet 1 prepared by Hornsby Shire Council dated 21/12/16 omits the end of the sentence for the Long SULE (c). As applied, the sentence reads '*Trees of special significance for historical, commemorative or rarity reasons that would*'. It is acknowledged that the sentence is incomplete and should read '*Trees of special significance for historical, commemorative or rarity reasons that would warrant extraordinary efforts to secure their long term retention*'.

The omission of this wording has no impact on the conclusions reached in Council's tree assessment and/or the impact of the development on trees.

11. Inaccuracies on Tree Protection Plan

The submission notes that tree protection plan prepared by Hornsby Council dated 26/02/2017 includes 6 trees on the adjoining property drawn at half the size when compared to the tree protection plan prepared by Council dated 21/12/2016. The submitter notes that carrying out the development in accordance with misinformation provided by Council would have a significant impact on trees.

The TPZs on the tree protection plan is prepared for indicative purposes only. The tree assessment sheet 1 prepared by Council lists each tree and specifies the extent of the TPZ. The tree protection plan includes the location of tree protection fencing to ensure the protection of trees on the adjoining properties.

12. Survey Plan Incorrect

The submission suggests that the southern side boundary on the survey plan is incorrect and is not the location of the recently erected fence dividing fence between No. 10 and 12 Yallambee Road.

A survey plan prepared by a registered surveyor was submitted as part of this application. The survey plan submitted by the applicant is consistent with the length of the allotment boundaries and angles shown in the deposited plan prepared in 1950, which was also prepared by a registered surveyor. Council has not received any evidence to suggest that the boundaries shown on the plans are incorrect.

The architectural plans and site plan prepared by Allcastle Homes are consistent with the boundaries on the survey plan. As addressed in Section 5.1.36 of Group Manager's Report No. PL16/17, the location of the recently erected fence would not impede the development and is a civil matter between the property owners.

13. BASIX Certificate incorrect

The submission suggests that there are discrepancies between the floor areas in the original and the new BASIX Certificate for the dwelling house. The submission comments that whilst the size and floor plan of the main dwelling drawn by Allcastle Homes are identical to the size of the floor plan of the

main dwelling drawn on 30/01/2017, the total floor area for the main dwelling, in the two BASIX Certificates for the two revisions, differs by 50 square metres.

The matter was referred to the applicant's consultant who prepared the BASIX Certificate for comment. Efficient Living, an accredited company that specialises in sustainable building, has confirmed that a typographical error was included in the revised BASIX Certificate in relation to the floor area of the dwelling. However, the error does not impact on the results as the correct areas have been modelled within the Thermal Assessment. The Certificate has been updated to indicate the correct areas and should be referenced in the recommended conditions of consent.

14. Documentation not provided in report attachments

The submission comments that the attachments to Group Manager's Report No. PL16/17 did not include the Tree location and Protection Zone Plan prepared by Council. This document has been prepared by Council and is not a plan submitted by the applicant to be exhibited for public comment. Notwithstanding, to address this concern, a copy of the plan was forwarded to the submitter directly and a copy of the plan is attached for the information of Councillors.

15. Landscape plan and excavation for front fence

The submission comments that the landscape plan indicates 300mm of cut to across the front of the site for the erection of the proposed 1.2 metre high front fence. Council sought clarification from the applicant concerning the purpose of the excavation and whether it is necessary. The applicant has confirmed that it is intended that the fence would be constructed at natural ground. Accordingly, it is appropriate to include a condition of consent to amend the landscape plan.

16. Personal Information

Council has received an application under the Privacy and Personal Information Protection Act (PPIPA) for "*alteration of personal information*" that is allegedly contained within Group Manager's Report No. PL16/17. This matter is being dealt with by Council's Privacy Contact Officer in accordance with the requirements of the PPIPA and involves liaison with the NSW Privacy Commissioner. This is a separate issue to Council's consideration and determination of DA/560/2016.

RECOMMENDATION

THAT Development Application No. DA/560/2016 for erection of a two storey dwelling house on a vacant allotment at Lot 189A DP 367589, No.10 Yallambee Road, Berowra be approved subject to the conditions of consent detailed in Schedule 1 of Group Manager's Report No. PL16/17 as amended as follows:

1. Amend Condition No. 1 to replace reference to BASIX Certificate No. 802687S with BASIX Certificate No. 802687S- 02 dated 9 May 2017.
2. Include an additional condition requiring amendment of the Landscape Plan to state that the front fence shall be constructed at existing ground level to a maximum height of 1.2 metres. Any excavation shall be for the purposes of the fence footings only.

ROD PICKLES
Manager - Development Assessment
Planning Division

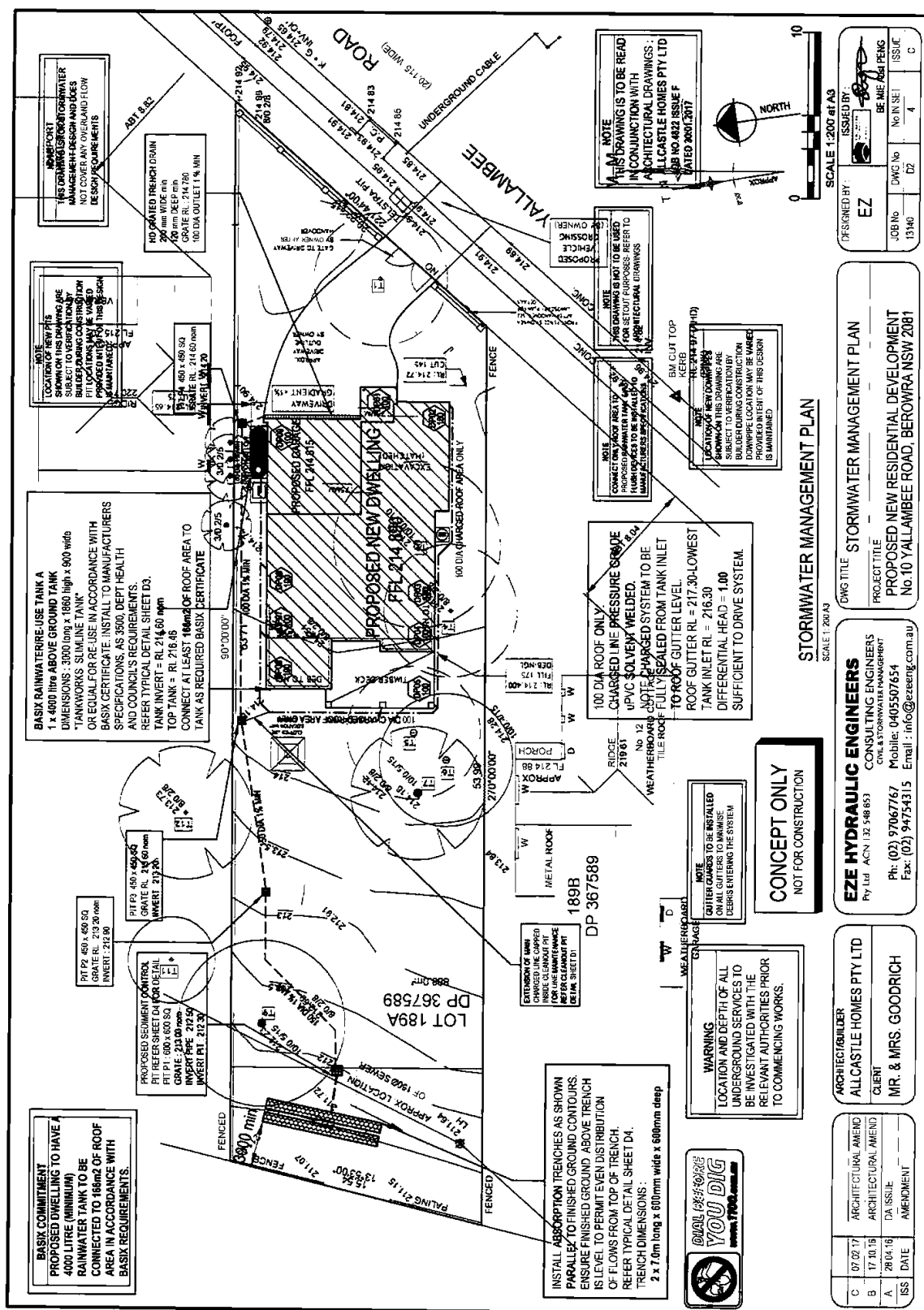
JAMES FARRINGTON
Group Manager
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Attachments:

- 1.[View](#) Tree Location and Protection Plan prepared by Hornsby Shire Council dated 26 February 2017
- 2.[View](#) Stormwater Management Plan prepared by EZE Hydraulic Engineers dated 7 February 2017

File Reference: DA/560/2016
Document Number: D07205378

ATTACHMENT 2 - ITEM 6



ITEM 8 **PL22/17** - Development Application - Subdivision of One Allotment into Three and Construction of Three Dwelling Houses - 14 - 16 Elabana Crescent, Castle Hill

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

A late submission has been received raising concerns that the approved dwelling design may be changed prior to obtaining a construction certificate.

A condition is recommended which requires that the construction certificate plans must be consistent with the approved development plans. Notwithstanding, it is acknowledged that an amended design may be pursued by way of a Section 96 (2) application to modify the dwelling design which would be notified to adjoining property owners.

Should the applicant intend to substantially change the design, a new Development Application would need to be submitted to Council. The applicant could also lodge a Complying Development Certificate with a Private Certifier subject to compliance with State Environmental Planning Policy (Exempt and Comply Development Code) 2008.

In addition, in reviewing the issues raised in submissions, it is noted that the front, first floor balcony of the proposed dwelling at No.16A Elabana Crescent is primarily orientated to the street front. However, there would be potential for overlooking from the side of the balcony into habitable rooms within the adjacent premises at No. 20 Elabana Crescent.

Accordingly, a condition is recommended for a privacy screen to be installed along the northern elevation of the first floor balcony of No.16A Elabana Crescent. Condition No. 29 (iii) for Amendment of Plans should be amended to include a revised point (b) as follows:

- a. A louvered privacy screen must be erected along the northern elevation of the first floor, front balcony to a minimum height of 1.8 metres for the length of the entire side.

RECOMMENDATION

THAT Development Application No. DA/961/2016 for demolition of existing structures, Torrens Title subdivision of one allotment into two lots and construction of three new dwellings as a staged development at Lot 2 DP 1040191, Nos.14-16 Elabana Crescent, Castle Hill be approved subject to the conditions of consent detailed in Schedule 1 of Group Manager's Report No. PL22/17 as amended by Late Item Memo No. LM3/17.

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Attachments:

There are no attachments for this report.

File Reference: DA/961/2016

Document Number: D07209769