



BUSINESS PAPER

GENERAL MEETING

**Wednesday 9 August 2017
at 6:30PM**



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AGENDA AND SUMMARY OF RECOMMENDATIONS

PRESENT

NATIONAL ANTHEM

OPENING PRAYER/S

Pastor Jonathan Shanks of Hornsby Baptist Church will open tonight's meeting in 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 of the non-confidential parts of the meeting 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. No other persons are permitted to record the Meeting, unless specifically authorised by Council to do so."

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 General Meeting held on 12 July, 2017 be confirmed; a copy having been distributed to all Councillors.

PETITIONS

PRESENTATIONS**RESCISSION MOTIONS****MAYORAL MINUTES****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*

OFFICE OF THE GENERAL MANAGER

Nil

CORPORATE SUPPORT DIVISION**Page Number 1**

Item 1 CS21/17 SCHEDULE OF COUNCIL MEETINGS AND ORDER OF BUSINESS TO APPLY AT THOSE MEETINGS - OCTOBER 2017 TO SEPTEMBER 2018

RECOMMENDATION

THAT Council:

1. Adopt the schedule of ordinary Council meetings for the period October 2017 to September 2018 as set out in Attachment 1 of Deputy General Manager's Report No. CS21/17.
2. Adopt the order of business for the ordinary Council meetings to be held in the period October 2017 to September 2018 as set out in Attachment 2 of Deputy General Manager's Report No. CS21/17.

Page Number 4

**Item 2 CS25/17 INVESTMENTS AND BORROWINGS FOR 2016/17 - STATUS FOR PERIOD
ENDING 30 JUNE 2017 (PRE-AUDIT)**

RECOMMENDATION

THAT the contents of Deputy General Manager's Report No. CS25/17 be received and noted.

Page Number 7

**Item 3 CS24/17 YOUR COMMUNITY PLAN 2013-2023 - IMPLEMENTATION AND END OF
TERM REPORT**

RECOMMENDATION

THAT the contents of Deputy General Manager's Report No. CS24/17 be received and noted.

ENVIRONMENT AND HUMAN SERVICES DIVISION

Nil

PLANNING DIVISION

Page Number 12

**Item 4 PL30/17 DEVELOPMENT APPLICATION - SENIORS LIVING DEVELOPMENT
COMPRISING 10 DWELLINGS - 18-20 CARDINAL AVENUE, BEECROFT**

RECOMMENDATION

THAT Development Application No. DA/1578/2016 for demolition of existing structures and construction of a Seniors Living development comprising 10 self-care dwellings and community title subdivision at Lot 16 DP 23858, Nos. 18 - 20 Cardinal Avenue, Beecroft be approved subject to the conditions of consent detailed in Schedule 1 of Group Manager's Report No. 30/17.

Page Number 51

**Item 5 PL35/17 DEVELOPMENT ASSESSMENT - SUBDIVISION OF ONE ALLOTMENT INTO
THREE LOTS - 2A MANOR ROAD, HORNSBY**

RECOMMENDATION

THAT Development Application No. DA/1143/2016 for the Torrens Title subdivision of one allotment into three lots at Lot 1 DP 1181742, No. 2A Manor Road, Hornsby be approved subject to the conditions of consent detailed in Schedule 1 of Group Manager's Report No. PL35/17.

Page Number 77

Item 6 PL27/17 DEVELOPMENT APPLICATION - INDUSTRIAL BUILDING COMPRISING OF WAREHOUSE UNITS, CHILDCARE CENTRE, SHOPS AND SIGNAGE - 242 NEW LINE ROAD, DURAL

RECOMMENDATION

THAT Council assume the concurrence of the Secretary of the Department of Planning and Environment pursuant to Clause 4.6 of the *Hornsby Local Environmental Plan 2013* and approve Development Application No. DA/29/2017 for construction of a two storey industrial building comprising two warehouse units, 79 place childcare centre, food and drink premises, two neighbourhood shops, signage, strata subdivision and first use at Lot 2 DP 270769, No.242 New Line Road, Dural 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. PL27/17.

Page Number 113

Item 7 PL37/17 REPORTING VARIATIONS TO DEVELOPMENT STANDARDS

RECOMMENDATION

THAT the contents of Group Manager's Report No. PL37/17 be received and noted.

INFRASTRUCTURE AND RECREATION DIVISION

Page Number 116

Item 8 IR13/17 TENDER RFT13/2017 - LICENCE OF ROFE PARK TENNIS COURTS, GALSTON ROAD HORNSBY HEIGHTS

RECOMMENDATION

THAT:

1. Council decline to invite fresh tenders for the licence of Rofe Park Tennis Court, Galston Road Hornsby Heights as Council has tested the market and further tendering or fresh applications are not likely to produce a better result.
2. The Acting General Manager be delegated authority to enter negotiations and execute a management agreement for the Rofe Park Tennis Court, Galston Road Hornsby Heights with the incumbent operator including the seeking of Ministerial approval.

Page Number 119

Item 9 IR12/17 TENDER RFT15/2017 – LICENCE OF RUDDOCK PARK TENNIS COURTS, CORAL HEATH AVENUE WESTLEIGH

RECOMMENDATION

THAT:

1. Council accept the tender submission received from Westleigh Tennis Club Inc for RFT15/2017 – Licence of Ruddock Park Tennis Courts, Coral Heath Avenue Westleigh.
2. The Acting General Manager be delegated authority to execute the licence agreement with Westleigh Tennis Club Inc.

Page Number 122**Item 10 IR10/17 TENDER RFT16/2017 - LICENCE OF DURAL PARK TENNIS COURTS, QUARRY ROAD DURAL****RECOMMENDATION**

THAT:

1. Council accept the tender submission received from Hills District Tennis Association Inc (Rental Structure 1), for RFT16/2017 – Licence of Dural Park Tennis Courts, Quarry Road Dural.
2. The Acting General Manager be delegated authority to execute the licence agreement with Hills District Tennis Association Inc.

Page Number 126**Item 11 IR11/17 TENDER RFT14/2017 – LICENCE OF THOMAS THOMPSON PARK TENNIS COURTS, CEDARWOOD DR CHERRYBROOK****RECOMMENDATION**

THAT:

1. Council accept the tender submission received from Cherrybrook Tennis Coaching Centre for RFT14/2017 – Licence of Thomas Thompson Park Tennis Courts, Cedarwood Drive Cherrybrook.
2. The Acting General Manager be delegated authority to execute the licence agreement with Cherrybrook Tennis Coaching Centre.

Page Number 129**Item 12 IR14/17 REQUEST FOR TREE REMOVAL - 12A VICTORY STREET, ASQUITH****RECOMMENDATION**

THAT Council refuse consent to remove one *Eucalyptus botryoides* (Bangalay) located at the front of the property at 12A Victory Street, Asquith.

CONFIDENTIAL ITEMS**Item 13 EH7/17 WASTE COLLECTION CONTRACT UPDATE**

This report should be dealt with in confidential session, under Section 10A (2) (c) (d) of the Local Government Act, 1993. This report contains information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business; AND contains commercial information of a confidential nature that would, if disclosed (i) prejudice the commercial position of the person who supplied it; or (ii) confer a commercial advantage on a competitor of the council; or (iii) reveal a trade secret.

PUBLIC FORUM – NON AGENDA ITEMS**QUESTIONS OF WHICH NOTICE HAS BEEN GIVEN****MAYOR'S NOTES**

Page Number 133

Item 14 MN8/17 MAYOR'S NOTES FROM 1 TO 31 JULY 2017**NOTICES OF MOTION**

Page Number 134

Item 15 NOM8/17 LISGAR GARDENS: NOMINATION AS AN INTERNATIONAL CAMELIA GARDEN OF EXCELLENCE**COUNCILLOR BROWNE TO MOVE**

THAT Council:

1. Authorise the Deputy General Manager Infrastructure and Recreation to prepare a submission for the nomination of Lisgar Gardens as an International Camellia Garden of Excellence and to undertake any necessary work to meet the evaluation criteria, provided it is within the resources currently allocated to Lisgar Gardens; and
2. Become a full member of Camellia Ark Australia.

Page Number 136

Item 16 NOM9/17 IMPROVEMENT OF THE DUFFY AVENUE, CHILVERS ROAD AND THE ESPLANADE INTERSECTION, THORNLEIGH

COUNCILLOR BROWNE TO MOVE

THAT Council authorise the Deputy General Manager Infrastructure and Recreation to evaluate, as a matter of priority, options to realign the offset intersection into a simple four way layout, consult with the public and prepare a detailed estimate to secure funding to allow delivery of the project in 2018/2019 Financial year. The options should also consider any other initiatives including a review of the speed limit by Roads and Maritime Services (RMS).

SUPPLEMENTARY AGENDA**MATTERS OF URGENCY****QUESTIONS WITHOUT NOTICE**

1 SCHEDULE OF COUNCIL MEETINGS AND ORDER OF BUSINESS TO APPLY AT THOSE MEETINGS - OCTOBER 2017 TO SEPTEMBER 2018

EXECUTIVE SUMMARY

- In accordance with Clauses 5 and 15 of its Code of Meeting Practice, Council annually determines a schedule of meeting dates for the following year and the order of business to apply at those meetings.
- It is proposed that the practice of holding one General Meeting per month be maintained for 2017/18, with that Meeting to be held on the second Wednesday of each month (excluding January); and that Workshop Meetings and Councillor briefing sessions continue to be held on other Wednesdays of the month, with appropriate notice being provided as required.
- It is also proposed that the existing order of business be maintained for 2017/18.

RECOMMENDATION

THAT Council:

1. Adopt the schedule of ordinary Council meetings for the period October 2017 to September 2018 as set out in Attachment 1 of Deputy General Manager's Report No. CS21/17.
2. Adopt the order of business for the ordinary Council meetings to be held in the period October 2017 to September 2018 as set out in Attachment 2 of Deputy General Manager's Report No. CS21/17.

PURPOSE

The purpose of this Report is to recommend a proposed schedule of ordinary meeting dates for the period October 2017 to September 2018, and the order of business to apply at those meetings.

BACKGROUND

Council last considered its schedule of meetings and order of business at those meetings at the 14 September 2016 General Meeting – refer Deputy General Manager's Report No. CS32/16. At the Meeting, Council decided to maintain the practice of holding one General Meeting per month with that Meeting to be held on the second Wednesday of each month (excluding January) and that Workshop Meetings and Informal Briefings sessions continuing to be held as required, and with appropriate notice being provided, on the first, third, fourth and/or fifth Wednesdays of each month (except January).

DISCUSSION

Schedule of Meetings

In accordance with Clauses 5 and 15 of the Code of Meeting Practice, Council annually determines a schedule of ordinary meeting dates for the following year and the order of business to apply at those meetings. Such determinations generally occur in September of each year, at the same meeting at which the Deputy Mayor is elected. Due to the local government elections being held on 9 September 2017, no Council Meeting will be held in September this year. As such, it is appropriate that the schedule of meetings and order of business for those meetings be considered and determined at the 9 August 2017 Council Meeting.

Section 2(1) of Council's current Code of Meeting Practice states the following in respect of ordinary meetings:

***Ordinary Meetings** are meetings of Council, other than extraordinary meetings, held during each year on such regular days and at such regular times as Council may appoint. They include:*

***General Meetings** which are held at 6.30pm on the second Wednesday of each month (excluding January) to consider all relevant matters.*

***Workshop Meetings** which are held at 6.30pm on the first, third, fourth and/or fifth Wednesdays of each month as required (excluding January) to consider all relevant matters, especially those where a presentation by Council staff or an external person or organisation is required.*

It is noted that Informal Briefings of Councillors are also held as required, generally on Wednesdays where a General or Workshop Meeting has not been scheduled.

A proposed schedule of General Meeting and Workshop Meeting dates for the period from October 2017 to September 2018 has now been drafted and is attached to this Report. The draft schedule of Meetings maintains the existing structure of one General Meeting per month which considers both planning and other matters, as well as providing for Workshop Meetings and Informal Briefings of Councillors as required.

Order of Business

In respect of the order of business to apply at General and Workshop Meetings, a proposed order of business of General Meetings and Workshop Meetings for the period from October 2017 to

September 2018 has now been drafted and is attached to this Report. The draft order of business maintains the existing structure with no changes proposed.

BUDGET

There are no budgetary implications associated with this Report.

POLICY

This Report has been prepared in accordance with the requirements of Council's Code of Meeting Practice and the Local Government Act and Regulations.

CONCLUSION

The existing schedule of holding one monthly General Meeting on the second Wednesday of the month (except for January) is working well and the Council Meetings process appears to be running smoothly and efficiently. As such, no changes are proposed to the meeting schedule or to the order of business for the next 12 months. This does not, of course, preclude the incoming Council from further considering these matters following the September 2017 local government election.

RESPONSIBLE OFFICER

The officer responsible for the preparation of this Report is the Manager, Governance and Customer Service – Robyn Abicair, who can be contacted on 9847 6608.

ROBYN ABICAIR
Manager - Governance and Customer Service
Corporate Support Division

GARY BENSLEY
Deputy General Manager - Corporate Support
Corporate Support Division

Attachments:

1. [ViewView](#) Schedule of Council Meetings October 2017 - September 2018
2. [ViewView](#) Council Meetings Order of Business - October 2017 - September 2018

File Reference: F2004/07032
Document Number: D07238847

2 INVESTMENTS AND BORROWINGS FOR 2016/17 - STATUS FOR PERIOD ENDING 30 JUNE 2017 (PRE-AUDIT)

EXECUTIVE SUMMARY

- This Report provides details of Council's investment performance for the period ending 30 June 2017 as well as the extent of its borrowings at the end of the same period.
- Council invests funds that are not, for the time being, required for any other purpose. The investments must be in accordance with relevant legislative requirements and Council's policies and the Chief Financial Officer must report monthly to Council on the details of funds invested.
- All of Council's investments have been made in accordance with the Local Government Act, the Local Government (General) Regulation and Council's Investment of Surplus Funds Policy and Investment Strategy.
- In respect of Council's cash and term deposit investments, the annualised return for the month of June 2017 was 2.66% compared to the benchmark of 1.50%. The annualised return for the 2016/17 year was 2.75% compared to the benchmark of 1.52%.
- In respect of Council borrowings, the weighted average interest rate payable on outstanding loans taken out from June 2007 to date, based on the principal balances outstanding is 7.16%.

RECOMMENDATION

THAT the contents of Deputy General Manager's Report No. CS25/17 be received and noted.

PURPOSE

The purpose of this report is to advise Council of funds invested in accordance with Section 625 of the Local Government Act; to provide details as required by Clause 212(1) of the Local Government (General) Regulation and Council's Investment of Surplus Funds Policy; and to advise on the extent of Council's current borrowings.

BACKGROUND

A report is required to be submitted for Council's consideration each month detailing Council's investments and borrowings and highlighting the monthly and year to date performance of the investments. Initial investments and reallocation of funds are made, where appropriate, after consultation with Council's financial investment adviser and fund managers.

DISCUSSION

Council invests funds which are not, for the time being, required for any other purpose. Such investment must be in accordance with relevant legislative requirements and Council Policies, and the Chief Financial Officer must report monthly to Council on the details of the funds invested.

Council's investment performance for the month ending 30 June 2017 is detailed in the attached document. In summary, the At-Call and Term Deposits achieved an annualised return of 2.66% for June 2017, compared to the benchmark of 1.5%. The annualised return for the year was 2.75% compared to 1.52%.

In respect of Council borrowings, the weighted average interest rate payable on outstanding loans taken out from June 2007 to date, based on the principal balances outstanding is 7.16%. The Borrowings Schedule as at 30 June 2017 is also attached for Council's information.

CONSULTATION

Appropriate consultation has occurred with Council's financial investment adviser in the preparation of this Report.

BUDGET

Budgeted investment income for 2016/17 is \$3,000,000 with an average budgeted monthly income of \$250,000. Total investment income for the year ended 30 June 2017 was \$4,505,000. Approximately 40% of the investment income received by Council relates to externally restricted funds (e.g. Section 94 monies) and is required to be allocated to those funds. All investments have been made in accordance with the Local Government Act, the Local Government (General) Regulation and Council's Investment of Surplus Funds Policy and Investment Strategy.

CONCLUSION

The investment of Council funds and the extent of its borrowings as at 30 June 2017 are detailed in the documents attached to this Report. Council's consideration of the Report and its attachments ensures that the relevant legislative requirements and Council protocols have been met in respect of those investments and borrowings.

RESPONSIBLE OFFICER

The officer responsible for the preparation of this Report is the Chief Financial Officer – Glen Magus, who can be contacted on 9847-6635.

GLEN MAGUS
Chief Financial Officer - Financial Services
Corporate Support Division

GARY BENSLEY
Deputy General Manager - Corporate Support
Corporate Support Division

Attachments:

1. [ViewView](#) HSC Investments Holdings Report (pre-audit) - June 2017
2. [ViewView](#) HSC Borrowings Schedule - June 2017

File Reference: F2004/06987-02
Document Number: D07251908

3 YOUR COMMUNITY PLAN 2013-2023 - IMPLEMENTATION AND END OF TERM REPORT

EXECUTIVE SUMMARY

- The Office of Local Government's (OLG) integrated planning and reporting framework requires that all councils develop a community strategic plan and that at the end of their term, a report is presented outlining the effectiveness of the community strategic plan in achieving the council's objectives.
- Due to the proposed amalgamation with Ku-ring-gai Council and subsequent legal action by them causing uncertainty as to when Council's term would end, "A Snapshot of the Hornsby Shire in 2016" document was presented to Council in August 2016 to meet the legislative requirement of an end of term report (see Deputy General Manager's Report No. CS26/16).
- The Snapshot of the Hornsby Shire in 2016, as Council's end of term report, comprises a report on the implementation and effectiveness of Council's community strategic plan, Your Community Plan 2013-2023, since its adoption in 2013 and reflects back over the first four years of Council's term outlining the characteristics of Hornsby Shire in 2016. The Key Achievements addendum has now been updated to cover the extended five year term of Council.
- The document details improvements in a wide range of issues including in the area of community connectedness, evidenced by high rates of volunteerism and neighbourliness, and also in better than average health related behaviours resulting in lower mortality rates than most of NSW.
- Actions taken by the current Council ensured the financial sustainability of the organisation during this term. This in turn has enabled the planning and implementation of numerous significant capital works projects, including the completion of the Hornsby Aquatic and Leisure Centre.

RECOMMENDATION

THAT the contents of Deputy General Manager's Report No. CS24/17 be received and noted.

PURPOSE

The purpose of this Report is to meet the legislative requirement that an end of term report outlining progress on the implementation of Council's community strategic plan must be presented to the final meeting of an outgoing council.

BACKGROUND

At the 10 August 2016 General Meeting, Council considered Deputy General Manager's Report No. CS26/16 and resolved that the document titled "A Snapshot of the Hornsby Shire in 2016" attached to Deputy General Manager's Report No. CS26/16 be received and noted. Because the local government reform process resulted in doubt about when the end of term for Hornsby Shire's elected representatives would be, the Snapshot document was presented at the August 2016 Council meeting to ensure that the legislative requirement for end of term reporting was met at that time.

The recent decision by the NSW Government not to proceed with the amalgamation of Hornsby and Ku-ring-gai Councils, and the OLG's advice of 18 November 2016 that *'Under the Local Government Act 1993, any council subject to a pending merger proposal that has not been merged by 10 April 2017 will need to have an election date set (likely to be 9 September 2017) and the election conducted. The election will only be conducted if the merger does not proceed prior to the election date'*, will see a Hornsby Shire Council election held on 9 September 2017. As such, the end of term report is required to be presented to this final meeting of the outgoing Council.

DISCUSSION

About the document

The end of term report titled "A Snapshot of the Hornsby Shire in 2016" contains expanded reporting to better reflect the characteristics of the Shire. The document includes comment on major community issues such as social capital, demographic trends, the local economy, transport issues, recreational trends and the local environment.

While Council delivers many of the services that impact on residents' quality of living, Council is not the only influencer of a person's sense of quality of life, and the Snapshot of the Hornsby Shire in 2016 addresses social, environmental, economic, health, transport, safety and civic leadership objectives over the past four years.

The report comprises two elements (which are flowed into the single publication titled "A Snapshot of the Hornsby Shire in 2016"):

- A report on the implementation and effectiveness of the Hornsby Shire Community Plan 2010-2020 since its adoption in 2010.
- A Key Achievements addendum covering this term of Council from September 2012, now updated to include the five year extended term of office to July 2017 and attached.

Council first published a baseline snapshot document describing the state of play in Hornsby Shire in 2010. The document was updated in 2012 and has now been updated to reflect Hornsby Shire in 2016. It includes trend data so the reader can track progress over a broad range of issues.

What it shows

The Snapshot of the Hornsby Shire in 2016 document demonstrates positive trends in personal health and mortality rates. Many people rate their health as 'excellent', they tend to be more active and are less likely to be overweight than many parts of NSW. On the other hand there are more fall-related hospitalisations and binge drinking rates are higher than the NSW average. 89% of persons over 16

years of age feel safe walking down their street after dark – this is the best result across NSW. Speeding is the number one reason for motor vehicle accidents in the Shire with those aged between 17 and 25 years being featured prominently in speed related road crashes.

The Bureau of Crime Statistics figures indicate that over the past five years trends in violent offences in the Shire are declining. Over the same period incidents of vandalism and graffiti on Council property have also declined. Economic data confirms the prosperity of the Shire. The Shire's gross regional product has increased over the past four years to \$6,853 million in 2015. There are over 15,000 businesses in the Shire providing 54,527 jobs, and the unemployment rate is lower than the NSW and Australian average.

Retaining the bushland character of the Shire and improving the local environment are major concerns for many people. Council has helped 'green' the Shire by giving residents approximately 160,000 native plants for their gardens over the past four years. Water monitoring probes at representative creeks across the Shire continue to show that water quality at the majority of sites is in excellent or very good condition.

Hornsby Shire Council is a major contributor to wellbeing in the Shire, and is also the largest employer in the Shire. Its role is to:

- Provide community leadership, having regard to the long term and cumulative effects of its decisions
- Be the custodian and trustee over public assets
- Manage, develop, protect, restore, enhance and conserve the environment of the shire
- Facilitate the development, improvement and coordination of its local communities.

Some of Council's service highlights over the past five years include:

- The completion of the review of planning controls for the Hornsby West Side Precinct.
- The gazettal of the Hornsby Local Environmental Plan and Development Control Plan in October 2013, providing a new planning framework for development in the Shire
- Joining the "Scores on Door" program which provides local food businesses with the opportunity of prominently displaying their food safety and hygiene credentials
- The adoption of the Waitara Park Plan of Management which will deliver a range of new recreation opportunities including a new sport and community centre for the Police Citizens Youth Club. This indoor sports facility has now commenced construction
- Reaching agreement with the State and Federal Governments to partly fill Hornsby Quarry with clean excavated material from the NorthConnex tunnel project. Filling commenced May 2017
- The purchase of 34 acres of land at Westleigh from Sydney Water - to be used for recreation and sport
- The construction of a new synthetic sports field at Pennant Hills Park
- The adoption of the West Epping Oval Plan of Management providing the opportunity for a detailed design to be completed and then tendered. As this facility is in the area transferred to the new City of Parramatta Council, that Council will now be able to immediately proceed to construction of a range of significant recreation improvements at West Epping Oval

- The negotiation of two bio-banking agreements with the NSW Government totalling \$3.8 million which will fund the restoration of Upper Pyes Creek and New Farm Road bushland reserves, and management of weed control of critically endangered Sydney Blue Gums at Dog Pound Creek Thornleigh
- The propagation of 200,000 plants by volunteers at Council's Community Nursery. The plants are provided to residents, schools and public land projects
- The adoption of the Community and Cultural Facilities Strategic Plan in August 2015 which will establish a long term strategic approach to Council's provision of community and cultural facilities over the next 10-20 years
- Completed planning and received development consent for a new community centre and playground at Storey Park, Asquith
- The commencement of construction of a new Community Recycling Centre at Thornleigh which will replace the ewaste service with a one stop shop. Funding of the facility will be through a grant from the NSW Environment Protection Authority
- Securing the University of Newcastle Learning Hub for the Hornsby CBD.

During the period, Council also spent \$172 million undertaking a number of major capital upgrades including:

- Hornsby Aquatic and Leisure Centre
- Galston Aquatic and Leisure Centre
- Hornsby Mountain Bike Trail
- Kangaroo Point park works
- Parsley Bay and McKell Park upgrades
- Heritage Steps improvements
- Hornsby CBD drainage works.

A comprehensive list of local improvement projects is available on Council's website at hornsby.nsw.gov.au/council/noticeboard/building-a-better-shire.

CONSULTATION

In the preparation of this Report there was consultation with 3,750 residents who were engaged in an online survey and focus groups to determine current results for community sense of belonging, perceptions of safety, use of local sustainable transport, working locally and use of leisure and recreation facilities.

BUDGET

There are no budgetary implications associated with this Report.

POLICY

There are no policy implications associated with this Report.

CONCLUSION

Actions taken by the current Council ensured the financial sustainability of the organisation during this term. This has enabled the planning and implementation of numerous significant services and capital works projects over five years.

RESPONSIBLE OFFICER

The officer responsible for the preparation of this Report is the Manager Strategy and Communications - Julie Williams, who can be contacted on 9847 6790.

GARY BENSLEY

Deputy General Manager - Corporate Support
Corporate Support Division

STEPHEN FEDOROW

Acting General Manager
General Manager Division

Attachments:

1. [View](#) Key Achievements - September 2012 to July 2017
[View](#)

File Reference: F2015/00476

Document Number: D07250152

4 DEVELOPMENT APPLICATION - SENIORS LIVING DEVELOPMENT COMPRISING 10 DWELLINGS - 18-20 CARDINAL AVENUE, BEECROFT

EXECUTIVE SUMMARY

DA No: DA/1578/2016 (Lodged on 23 December 2016)

Description: Demolition of existing structures and construction of a Seniors Living development comprising 10 self-care dwellings and community title subdivision

Property: Lot 16 DP 23858, Nos. 18-20 Cardinal Avenue, Beecroft

Applicant: CDG Pty Ltd

Owner: Mr K M Taylor

Estimated Value: \$3,090,712

- The application involves demolition of existing structures and construction of a Seniors Living townhouse development comprising 10 self-care dwellings and community title subdivision.
- The proposal generally complies with *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004* and is designed with regard to the *Seniors Living Policy Urban Design Guidelines for Infill Development*.
- The site is within a bush fire prone area. The NSW Rural Fire Service has granted a Bush Fire Safety Authority for the proposed development.
- 12 submissions have been received in respect of the application.
- It is recommended that the application be approved.

RECOMMENDATION

THAT Development Application No. DA/1578/2016 for demolition of existing structures and construction of a Seniors Living development comprising 10 self-care dwellings and community title subdivision at Lot 16 DP 23858, Nos. 18 - 20 Cardinal Avenue, Beecroft be approved subject to the conditions of consent detailed in Schedule 1 of Group Manager's Report No. 30/17.

BACKGROUND

On 21 September 2016, the applicant attended a Pre DA Meeting (PL/81/2016) with Council officers concerning the proposed Seniors Living development. At the meeting, the applicant was requested to address access requirements, bush fire prone land, Seniors Living design criteria for neighbourhood character and 'Fearnley Park', and the existing affordable rental housing flats.

SITE

The regular shaped site has an area of 2,620m² with a frontage of 42.975m to the eastern side of Cardinal Avenue and a depth of 60.96m. The rear boundary includes a frontage of 27.5m to Fearnley Park which includes public open space, remnant bushland and a watercourse.

The site has an average fall of 6% to the south eastern corner of the site.

The site is within a bushfire prone area. The fire threat is localised to the area surrounding Fearnley Park.

The transport corridor for the North West Rail Link tunnel traverses below Fearnley Park.

The site includes an existing single storey residential flat building containing three flats comprising 1 x 1 bedroom and 2 x 2 bedroom flats and a three car detached garage. The flat building followed the 1965 conversion of a Federation period dwelling house on the site. The house once formed part of a larger land holding until subdivided in 1952 when Fearnley Park was dedicated to Council and the existing surrounding allotments fronting Chapman Avenue, Cardinal Avenue and Hannah Street, were registered in DP 23858.

Fearnley Park is a heritage item of local significance. The remnant street trees within the Cardinal Avenue road reservation are also listed as a heritage item.

The site includes a remnant tree (Sydney Blue Gum) at the frontage of the site.

The surrounding developments include single and two storey dwelling houses on relatively large lots. A dual occupancy style development comprising two dwelling houses adjoins the northern side boundary.

The site is located 1.1km west of Beecroft Railway Station. A bus route is located within 400m of the site on Copeland Road (Routes 635 and 651) and on Hannah Street with connection to Beecroft Railway Station and to Castle Hill and West Pennant Hills.

PROPOSAL

The proposal is for demolition of existing structures and construction of a Seniors Living development comprising 10 self-care dwellings. The proposal includes community title subdivision.

The proposed townhouses include 10 x 3 bedroom dwellings with attached garages. The proposed dwellings include detached (Unit 3), semi-detached (Units 1, 2, 4, 5, 6 and 7) and attached dwellings (Units 8, 9 and 10). Units 4, 5, 6 and 7 are single storey. The proposed dwellings are clustered around a central driveway.

The central driveway and vehicle turning head provide vehicle and pedestrian access. A second existing vehicle crossing is proposed for driveway access to proposed Unit 9 at the frontage.

The proposal includes regrading of the existing footpath between the site and the bus stop on Copeland Road, Beecroft.

ASSESSMENT

The development application has been assessed having regard to '*A Plan for Growing Sydney*', the '*Draft North District Plan*' 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 A Plan for Growing Sydney and (Draft) North District Plan

A Plan for Growing Sydney has been prepared by the NSW State Government to guide land use planning decisions for the next 20 years. The Plan sets a strategy and actions for accommodating Sydney's future population growth and identifies dwelling targets to ensure supply meets demand. The Plan identifies that the most suitable areas for new housing are in locations close to jobs, public transport, community facilities and services.

The NSW Government will use the subregional planning process to define objectives and set goals for job creation, housing supply and choice in each subregion. Hornsby Shire has been grouped with Hunters Hill, Ku-ring-gai, Lane Cove, Mosman, North Sydney, Ryde, Northern Beaches and Willoughby to form the North District. The Greater Sydney Commission has realised the draft North District Plan which includes priorities and actions for the Northern District for the next 20 years. The identified challenge for Hornsby Shire will be to provide an additional 4,350 dwellings by 2021 with further strategic supply targets to be identified to deliver 97,000 additional dwellings in the North District by 2036.

The proposed development would be consistent with '*A Plan for Growing Sydney*' and '*Draft North District Plan*' by providing additional dwellings and would contribute to housing choice in the locality. The proposal would provide seniors housing facilitating the opportunity for people to age in place.

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 Local Environmental Plan 2013

The proposed development has been assessed having regard to the provisions of the *Hornsby Local Environmental Plan 2013 (HLEP)*.

2.1.1 Zoning of Land and Permissibility

The subject land is zoned R2 Low Density Residential under the *HLEP*. The objectives of the R2 zone are:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

The proposed development is defined as 'seniors housing' and is prohibited in the R2 Low Density Residential zone under *HLEP*.

The proposed development is subject to the provisions of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004* which prevails to the extent of any inconsistency with *HLEP*. The proposal is permitted in accordance with Clause 4 of the SEPP where land is zoned for urban purposes and where residential development is permitted.

2.1.2 Height of Buildings

Clause 4.3 of the *HLEP* provides that the height of a building on any land should not exceed the maximum height shown for the land on the Height of Buildings Map. The maximum permissible height for the subject site is 8.5m. The proposal complies with this provision.

2.1.3 Heritage Conservation

Clause 5.10 of the *HLEP* sets out heritage conservation provisions for Hornsby Shire.

The site is located in the vicinity of heritage street trees in Cardinal Avenue (Item No.68), Chapman Avenue (Item No.71) and in Hannah Street (Item No.98), and adjoins Fearnley Park – No.86X Hannah Street, Beecroft (Item No.110) which area listed under Schedule 5 of the *HLEP*.

The site is not in a heritage conservation area. Council's heritage consultant's assessment of the property concludes that the existing building, whilst meeting some criteria, does not sufficiently meet local listing in its own right as a heritage item.

The heritage items in the vicinity of the site are landscape items including street trees, and Fearnley Park. The impact of the proposal on the heritage items is addressed below.

Street Trees

A large tree (Tree No. 1 – Sydney Blue Gum) is located on the Cardinal Avenue front boundary of the subject site and is proposed to be removed. This tree contributes to the character and setting of the remnant trees in Cardinal Avenue, Chapman Avenue, Hannah Street and in Fearnley Park.

Council's assessment of the proposed removal of the tree is that the tree would pose a safety risk to persons occupying the property or to road users and is recommended for removal.

The large Sydney Blue Gum tree should preferably be retained on heritage grounds. However, as the tree is identified as dangerous, its removal is appropriate subject to a replacement tree being planted in a similar location on site, together with planting additional trees on the road reserve in front of the subject site to compensate for the loss of the Sydney Blue Gum.

Fearnley Park

The Park is listed as having high local significance, conserving indigenous forest trees giving local Australian identity and a natural landscape element to the local area and streetscape. The site was subdivided in 1951 creating Fearnley Park, which is surrounded by residential development, remnant indigenous trees, rear gardens and fences.

The proposed Seniors Living development is located in close proximity to the Park boundary which reduces the current openness of the Park setting and views to the Park from Cardinal Avenue.

Council's heritage consultant raised concerns regarding the impact of the proposal on the character and setting of the Park. To address these concerns, the applicant amended the plans by providing an articulated design, 3 metre rear setback, removal of the main roof over alfresco areas and open space/landscaping adjoining the Park boundary. A black metal 1200mm high open palisade style fence is proposed along the boundary with a common 1.0m wide landscaped strip.

Views to the Park across other private property are currently limited. The open character of the Park in relation to the site would be reduced by the proposal. However, the landscaping, single storey design and open fencing are considered to reduce the adverse impacts on the setting of the park. To further soften/screen the development, additional evergreen screen tree planting (3-4 metres height) is recommended along the Park boundary.

Summary

The proposed development as amended would have minimal impact on the heritage items in the vicinity, subject to replacement planting on site and the nature strip to compensate for the loss of the significant Sydney Blue Gum (Tree No. 1) and to enhance the significance of the heritage listed street trees in Cardinal Ave. To further reduce and soften the impact of the proposed development on Fearnley Park, additional evergreen screen trees should be provided on the eastern side of dwelling No.5 and on either side of the pedestrian pathway. The landscape plan is recommended to be amended to include additional trees.

Conditions are recommended for the landscape plan is to be amended to include:

- a) A replacement tree planted in a similar location as the Sydney Blue Gum (T1) with an indigenous tree species that is capable of achieving a similar height and appearance.
- b) Additional street trees (preferably two) planted on the nature reserve in front of the subject site, which are of a similar native species as the street listed trees in Cardinal Avenue.
- c) Additional evergreen screen tree planting (3-4 metres height) on the eastern (Park) side of the development to further soften/screen the development from Fearnley Park.

2.1.4 Earthworks

Clause 6.2 of the *HLEP* states that consent is required for proposed earthworks on site. Before granting consent for earthworks, Council is required to assess the impacts of the works on adjoining properties, drainage patterns and soil stability of the locality.

Council's assessment of the proposed works and excavation concludes that the proposal is primarily at grade and involves limited cut and fill works of less than 1m depth.

The proposal would have minimal impacts resulting from earthworks subject to recommended conditions for erosion and sediment control measures.

2.2 Rural Fires Act 1997

The site is within a bushfire prone area. The proposed Seniors Living development is subject to approval of the NSW Rural Fire Service pursuant to Section 100B of the *Rural Fires Act 1997*.

The NSW Rural Fire Service has granted a Bush Fire Safety Authority for the proposed development subject to recommended conditions. The conditions require the site to be maintained as an inner protection area, design for utilities and fire hydrant, provision of an emergency/evacuation plan, construction to BAL 12.5 standard and landscaping, in accordance with the *Planning for Bush Fire Protection Guidelines 2006*.

2.3 State Environmental Planning Policy No. 55 – Remediation of Land

State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55) requires that Council must not consent to the carrying out of development on land unless it has considered whether the

land is contaminated or requires remediation for the proposed use. A search of Council's records and aerial images reveals a site history of use for residential purposes.

The application includes a Preliminary Site Investigation Report dated 24/11/2016. The report notes asbestos containing material (ACM) had been used in the construction of the building and ACM fragments were observed in a bin near the small shed. The report recommends a detailed site Investigation.

The applicant submitted a Detailed Site Investigation Report dated 22/12/2016. The investigation detected no asbestos in the 11 samples taken from the site and hydrocarbons, pesticides and heavy metals were below detection limits. However, lead was detected above acceptable levels for residential use in three samples. The contamination is restricted to within two metres of the north east and eastern margins of the existing building.

The applicant submitted a Remediation Action Plan (RAP), dated 31/01/2017. The plan includes appropriate measures for the removal of the estimated 17m³ of contaminated material and for validation of the remediation.

Subject to validation of the remediation of the site in accordance with the RAP, the site would be suitable for the proposed residential use. A condition is recommended in this regard.

2.4 State Environmental Planning Policy (Affordable Rental Housing) 2009

The application has been assessed against the requirements of Part 3 of *State Environmental Planning Policy (Affordable Rental Housing) 2009* in respect to the proposed demolition of the existing residential flat building containing 1 x 1 bedroom and 2 x 2 bedroom flats on the site and the provisions of Part 3 of the Policy for retention of existing affordable rental housing.

The applicant submitted a Retention of Affordable Rental Housing Report (RARH Report) dated April 2017 prepared by a social planning consultant. The report is accompanied by a Property Inspection Report dated 5 May 2017.

The RARH Report notes the existing flats are vacant, dilapidated and in need of significant upgrading. The necessary renovations would likely result in the accommodation renting above the 'low cost' category. The report notes that Part 3 of the Policy does not apply to *SEPP Seniors Housing*.

The RARH Report includes a comprehensive socio-economic and demographic analysis of the suburb of Beecroft and notes the smaller proportion of units, low wage occupations, renters, public housing, unemployment and migration levels lower than the average for the Hornsby LGA and Greater Sydney. The suburb has a high proportion of people in the over 55 years age bracket and the suburb's residents overall are generally wealthier than those in other parts of the LGA.

The Policy applies to low-rental residential buildings as at 20 January 2000. The applicant has not obtained details of rents paid at 20 January 2000 but submits the rents would have been at the low cost housing level. Clause 50 of the Policy requires a consent authority to consider the following:

- (a) *whether there is likely to be a reduction in affordable housing on the land to which the application relates,*

Comment: The RARH Report states that the existing flats are sub-standard, are currently vacant and that significant renovation would be required to meet rental standards whereby the accommodation would no longer be low cost rental.

The flats were tenanted when the development application was lodged. The sub-standard condition of the three flats is confirmed by the submitted Property Inspection Report.

The loss of the three low cost rental housing units would not result in a significant reduction in affordable housing in the area.

- (b) *whether there is available sufficient comparable accommodation to satisfy the demand for such accommodation,*

Comment: The RARH Report states that the current average rent for Beecroft is \$700 per week. The rent for an affordable housing rental would be between \$400-\$560/pw based on Housing NSW determination for affordable housing rental @ 20-25% discount to the market rent.

The report identifies available affordable housing accommodation in Beecroft at the 20-25% discount to the market rent level based on an average weekly household income of \$2,423 (2011 Census). Notwithstanding, it should be noted the stated market rent would be severely unaffordable for people on fixed incomes, for example a pensioner couple on \$880/pw (SGS Rental Affordability Index, May 2017).

- (c) *whether the development is likely to cause adverse social and economic effects on the general community,*

Comment: The RARH Report states that as the existing accommodation is vacant, the loss of the three flats is unlikely to generate adverse social and economic effects. Further, the proposal would generate positive impacts through the provision of suitable accommodation for seniors and downsizing making available family accommodation and enabling seniors to remain in their local community.

- (d) *whether adequate arrangements have been made to assist the residents (if any) of the building likely to be displaced to find alternative comparable accommodation,*

Comment: The RARH Report states the former residents of the three existing units have found alternative accommodation.

- (e) *the extent to which the development contributes to any cumulative loss of affordable housing in the local government area.*

Comment: The RARH Report states the loss of the three low rental flats is unlikely to result in any significant impacts in terms of cumulative loss of affordable housing.

- (f) *the structural soundness of the building, the extent to which the building complies with any relevant fire safety requirements and the estimated cost of carrying out work necessary to ensure the structural soundness of the building and the compliance of the building with the fire safety requirements,*

Comment: The submitted Visual Property Inspection Report details extensive rebuilding and repair required to bring the building to an appropriate standard (estimated cost \$605,750). The report includes the following comment:

Therefore the overall condition of the areas inspected in the context of its age, type and general expectations of similar properties is below average. The building and its parts show some significant defects and/or very poor non-tradesman like workmanship and/or long term neglect and/or defects requiring major repairs or reconstruction of major building elements.

- (g) *whether the imposition of a condition requiring the payment of a monetary contribution for the purposes of affordable housing would adequately mitigate the reduction of affordable housing resulting from the development.*

Comment: The RARH Report states that the loss of the three existing low cost flats is not significant in the context of available affordable housing in Beecroft and that a contribution is not warranted.

Summary

The RARH Report's assessment of above matters (a) to (g) is acceptable in demonstrating the proposed loss of the three existing low cost rental flats would not significantly impact on the availability of affordable rental housing in the Beecroft area, due primarily to the condition assessment of the existing accommodation as being sub-standard.

2.5 State Environmental Planning Policy (Building Sustainability Index – BASIX) 2004

The application has been assessed against the requirements of *State Environmental Planning Policy (Building Sustainability Index – BASIX) 2004*. The proposal includes a BASIX Certificate for the proposed Seniors Living townhouses and is considered to be satisfactory.

2.6 State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP)

The *SEPP* is the prevailing planning instrument for the development of housing for aged and disabled persons in NSW and provides for hostels, residential care facilities, self-contained dwellings and multi-storey dwellings, on land zoned for urban purposes.

The *SEPP* includes land use planning provisions, design principles, development standards and criteria specific to meet the housing needs of seniors and people with a disability. An assessment of the proposal in accordance with the relevant requirements of the *SEPP* is provided below.

2.6.1 Self-contained Dwellings

Pursuant to Clause 13 of the *SEPP* the proposed development is defined as:

“in-fill self-care housing” is seniors housing on land zoned primarily for urban purposes that consists of 2 or more self-contained dwellings where none of the following services are provided on site as part of the development: meals, cleaning services, personal care, nursing care.

Pursuant to Clause 40, the proposed development complies with the *SEPP* development standards for site size, site frontage, height including single storey height at the rear 25% of the site (refer to table in Section 2.6.6).

Pursuant to Clause 18, a condition is recommended for a Positive Covenant on the title of the proposed community title lots restricting occupation to seniors or people with a disability.

2.6.2 Access and Useability

The application includes an Accessibility Assessment Report prepared by City Plan Services dated 20 December 2016, which details the proposals access requirements for people with a disability or who are older, in accordance with the Building Code of Australia 2016 (BCA), Australian Standards for Access and Mobility including the Disability (Access to Premises – Building) Standards 2010 and the *SEPP* standards for access and useability.

The *SEPP* includes mandatory standards for access to shops, banking, commercial, medical and community services and recreation facilities pursuant to Clause 26. These facilities and services must be accessible within 400m of the site or the site must be within a 400m accessible distance of a bus stop for transport to the services and facilities.

The site is within 392m of a bus stop on Copeland Road serviced by bus routes 635 and 651. The bus stop includes a bus shelter. An existing pedestrian refuge in Copeland Road is available for safe access to/from the bus stop on the opposite side of Copeland Road. An existing pedestrian refuge at the frontage of the subject site would enable future residents to safely cross Cardinal Avenue to access the paved footpath which connects with the bus stop.

The paved footpath connection to/from the bus stop(s) would meet the *SEPP* maximum gradient criteria subject to regrading works. Conditions are recommended for the regrading works to be carried out and for certification of compliance with the *SEPP* gradient criteria.

Subject to recommended conditions, the proposed Seniors Living development would have compliant access to shops and services pursuant to Clause 26 of the Policy.

Pursuant to Clause 41 of the *SEPP* the proposed development must comply with the accessibility and useability standards in Schedule 3 of the Policy. The submitted Accessibility Assessment Report includes a detailed assessment of the proposal in respect to the accessible useability standards which include criteria for wheelchair, car accommodation, dwelling floor plan, power outlets, kitchens and bathroom design. A condition is recommended for the proposal to comply with the accessibility and useability standards under Schedule 3 of the Policy.

2.6.3 Bush Fire Prone Land

The *SEPP* includes provision under Clause 27 for the consent authority to be satisfied the proposal satisfies the *Planning for Bushfire Protection Guidelines 2006*. The site is identified as Bush Fire Prone Land – Vegetation Buffer. The bushfire affected land involves an area of approximately 11.4 hectares centred on Fearnley Park.

The NSW Rural Fire Service would grant a Bush Fire Safety Authority for the proposed development subject to recommended conditions for the site to be maintained as an inner protection area, design for utilities and fire hydrant, provision of an emergency/evacuation plan, BAL 12.5 construction and landscaping.

2.6.4 Water and Sewer

Pursuant to Clause 28 of the *SEPP* the consent authority must be satisfied that the proposal will have a reticulated water system and adequate facilities for disposal of sewerage. The existing site is serviced by Sydney Water reticulated town water and sewer connection.

A condition is recommended for the proposal to meet the Sydney Water requirements. Subject to the recommended condition, the proposal is satisfactory in respect to Clause 28.

2.6.5 Design Principles

The *SEPP* includes provision under Clauses 31 to 37 for the proposal to have regard to the following design principles.

a. Neighbourhood Amenity and Streetscape

The proposed townhouse development is designed with regard to the residential character of the area in adopting the setback controls and in complementing the surrounding built form in scale, materials and finishes.

The proposal would result in the loss of a large Sydney Blue Gum (Tree No. 1) at the frontage of the site and in the streetscape. The tree is assessed by Council as unsafe and is recommended for removal. The removal of the tree is acceptable subject to conditions for replacement tree planting.

b. Visual and Acoustic Privacy

The living area and private open space areas for each dwelling are located at ground floor level and would not substantially detract from the visual and acoustic privacy of neighbours subject to the implementation of the proposed landscaping and fencing.

The application includes an Environmental Noise and Vibration Assessment dated 19 June 2017. The current background noise levels of the site and the NSW Industrial Noise Policy acceptable limit of 5 dBA above background noise levels in a suburban residential area are as follows:

<u>Time Period</u>	<u>Background Level</u>	<u>Background + 5 dBA</u>
Day (7am to 6pm)	40 dBA	45 dBA
Evening (6pm to 10pm)	39 dBA	44 dBA
Night (10pm to 12pm)	36 dBA	41 dBA

The expected noise emission levels from the proposed development involve the operation of vehicles on the accessway and garage doors. The noise levels are assessed to be within the acceptable noise limit.

The proposed development may involve the installation of air conditioning systems and other plant. A condition is recommended for an acoustic assessment to be undertaken following occupation of the development.

c. Solar Access and Design for Climate

The proposed roof design and building height would meet Council's criteria for 3 hours of unobstructed sunlight access between 9am and 3pm, 22 June, to neighbouring resident private open space areas and meet the *SEPP* requirements pursuant to Clause 33.

d. Stormwater

The proposed stormwater runoff from the development will be connected to Council's drainage system in Cardinal Avenue, Beecroft via stormwater detention and treatment systems.

The proposed drainage system is satisfactory in respect to the *SEPP Seniors Living* requirements pursuant to Clause 34 subject to recommended conditions for stormwater detention.

e. Crime Prevention

The proposed seniors living development is satisfactory in design to minimise crime by enabling casual observation of approaches to dwellings and clearly defining common and private ownership areas. A condition is recommended for key card access to the gate connecting with Fearnley Park.

The proposal is designed with regard to Clause 35 of *SEPP* subject to recommended conditions.

f. Accessibility

The proposed development would have a safe pedestrian link to public transport subject to recommended conditions for the footpath gradients to comply with the *SEPP* criteria.

The proposed car parking provision would provide safe convenient access for residents.

The proposal complies with the accessibility requirements of Clause 36 of the *SEPP*.

g. Waste Management

The proposed waste collection area at the frontage of the site would meet the *SEPP* design criteria to maximise recycling pursuant to Clause 37 and be accessible for residents.

The proposed bin bay and bulky waste collection area within the front setback complies with the waste facility design criteria in Section 1C.2.3 of the *Hornsby Development Control Plan 2013*.

2.6.6 Development Standards

The proposed development has been assessed having regard to the development standards within the *SEPP*. The following table sets out the proposal's compliance with the mandatory standards under Clause 40 and discretionary standards under Clause 50:

SEPP Seniors Living – Clause 50 Development Standards			
Control	Proposal	Requirement	Compliance
Site Size (Clause 40)	2,620m ²	1,000m ²	Yes
Site Frontage (Clause 40)	42.9m	20m	Yes
Maximum Building Height (Clause 40)	6.95m	8m	Yes
Building Height Rear 25% Site (Clause 40)	Single Storey	Single Storey	Yes
Floor Space Ratio (Clause 50)	0.487:1	0.5:1	Yes
Landscaped Area (Clause 50)	27%	30%	No
Solar Access (Clause 50)	70%	70%	Yes
Deep Soil Zone (Clause 50)	15%	15%	Yes
Private Open Space (Clause 50)	> 3m x 3m > 17m ²	3m x 3m 15m ²	Yes
Car Parking (Clause 50)	18 resident 2 visitor	15 resident	Yes*

* Parking space size does not comply with accessible design requirements

As detailed in the above table, the proposed development does not comply with the Clause 50 development standards relating to car parking and landscaped area. The matters of compliance are discussed below, as well as a brief discussion on compliance with the accessibility and useability standards under Schedule 3 of the Policy.

a. Development Standards (Clause 40)

The proposed seniors living development includes two storey and single storey built form. The design of the roof form with dormer windows, gables, roof pitch and transition to single storey, contributes to the built form of the development and is generally consistent with the residential character of the area.

The site is of appropriate size to accommodate the scale of development proposed pursuant to the provisions of the *SEPP* for in-fill self-care housing.

b. Landscaped Area

The proposal does not meet the minimum landscape area requirement. Pursuant to the *SEPP* the landscaped area is defined as follows:

***landscaped area** means that part of the site area that is not occupied by any building and includes so much of that part as is used or to be used for rainwater tanks, swimming pools or open-air recreation facilities, but does not include so much of that part as is used or to be used for driveways or parking areas.*

The proposed driveway and central turning area for the seniors living development reduces the available area for landscaping. The proposed landscaping however is satisfactory in meeting design guidelines as follows:

- landscaping of areas at the frontage to complement the streetscape;
- landscaping of areas between buildings to maintain existing garden patterns;
- landscaping of private open space areas for amenity and privacy screening;
- provision of a landscaped edge to Fearnley Park; and
- planting of canopy trees.

Conditions are recommended for additional planting of locally indigenous trees to complement the existing heritage listed street trees, replacement of the Sydney Blue Gum at the frontage with 1 x *Syncarpia glomulifera* (Turpentine) and planting of additional trees along the site boundaries. Subject to recommended conditions, the proposal is acceptable in respect to the minor non-compliance with the minimum landscaping area requirement.

To enhance the interface with the public domain, conditions are recommended for provision of seating in the landscaped frontage area, footpath treatment and upgrading of the pedestrian refuge in Cardinal Avenue.

Subject to recommended conditions the proposal is satisfactory in respect to the provisions of the *SEPP* and the *Seniors Living Policy Urban Design Guidelines for Infill Development*.

c. Car Parking

The eight proposed double garages (6m x 6m) and two single garages (6m x 5.5m) and the two visitor car parking spaces would total 20 car parking spaces and comply with the *SEPP Seniors Living* requirement for 0.5 spaces per bedroom (30 @ 0.5 = 15 spaces). However, pursuant to Clause 41, a proposal should also comply with the accessibility and useability standards under Schedule 3.

Item 5 of Schedule 3 requires private car accommodation to comply with the AS 2890 specification for off street car parking for disabled access. In this regard, the submitted Accessibility Assessment Report includes the following comment:

AS/NZS2890.6-2009 is the applicable design standard for car parking as this is the BCA adopted standard as per Section 3 of the SEPP.

The provision of 1 accessible car space per dwelling is considered to meet the design standards of the SEPP with regards to accessibility.

The minimum clearance for an assessable space under AS/NZS2890.6-2009 is 2.4m with a required shared area of 2.4m provided adjacent to the accessible parking space. The total minimum clearance required for accessibility is 4.8m.

The current car parking spaces for each dwelling complies with the minimum width requirements under AS/NZS2890.6-2009.

If disabled car parking provision is required for future residents, the proposed garages would comply with the *SEPP* design criteria including the 2.5m ceiling clearance and meet the Schedule 3 development standard requirement. Any reduction in the total number of car parking spaces then provided is acceptable given the proposal includes 5 additional spaces to the standard.

The proposed accessway, turning head and single driveway would comply with the *Hornsby Development Control Plan 2013* prescriptive measures for vehicular access.

d. Accessibility and Useability Standards

The mandatory accessibility and useability standards under Schedule 3 of the *SEPP* include; wheelchair access, pathway security lighting, letterbox location and design, private car accommodation and interior design standards for seniors.

The submitted Accessibility Assessment Report dated 20 December 2016 includes an assessment of the proposal against the Schedule 3 criteria. The proposal complies, or is capable of complying, with the criteria other than the following design modification requirements:

- Doorway circulation spaces ground floor and first floor to cater for ambulant devices.
- Kitchen circulation space.
- Laundry circulation space and accessible path of travel to any clothes line.

The necessary modifications would be addressed in further design preparation for construction.

A condition is recommended for compliance with the standards under Schedule 3 of the *SEPP*.

2.6.7 Seniors Living Policy Urban Design Guidelines for Infill Development

The Guidelines accompany the *SEPP* to address the design principles under Clauses 31 to 37 as discussed above in Section 2.6.5. The guidelines includes design principles and better practice with rules of thumb for site planning and design, impacts on streetscape, impacts on neighbours and internal site amenity.

The proposed built form, landscaping, vehicular access and residential amenity are satisfactory in response to the Guidelines.

2.6.8 Subdivision

The proposal includes community title subdivision of the seniors living development including a community lot. The 10 proposed house lots each accommodate the 10 respective dwellings and private open space areas. The proposed Community lot includes the accessway, common open space at the frontage, a 1m wide strip along the eastern boundary adjoining Fearnley Park and resident pathway connection to the Park.

Pursuant to Clause 21 of the *SEPP*, land on which development is carried out may be subdivided with development consent.

The application includes a Community Management Statement for the proposed community title scheme. The proposed community title scheme is appropriate for the development.

2.7 Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

The application has been assessed against the requirements of *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005*. This Policy provides general planning considerations and strategies to ensure that the catchment, foreshores, waterways and islands of Sydney Harbour are recognised, protected, enhanced and maintained.

Subject to the implementation and installation of sediment and erosion control measures and stormwater management to protect water quality, the proposal would have minimal potential to impact on the Sydney Harbour Catchment.

2.8 Clause 74BA Environmental Planning and Assessment Act, 1979 - Purpose and Status of Development Control Plans

Clause 74BA of the *Environmental Planning and Assessment Act, 1979* states that a DCP provision will have no effect if it prevents or unreasonably restricts development that is otherwise permitted and complies with the development standards in relevant Local Environmental Plans and State Environmental Planning Policies.

The principal purpose of a development control plan is to provide guidance on the aims of any environmental planning instrument that applies to the development; facilitate development that is permissible under any such instrument; and achieve the objectives of land zones. The provisions contained in a DCP are not statutory requirements and are for guidance purposes only. Consent authorities have flexibility to consider innovative solutions when assessing development proposals, to assist achieve good planning outcomes.

2.9 Hornsby Development Control Plan 2013

The *Hornsby Development Control Plan 2013 (HDCP)* applies to all land within Hornsby Shire and came into effect on 11 October 2013. As discussed in Section 2.1.1 of this report, the development is prohibited within the R2 Low Density Residential zone pursuant to the *HLEP*. Accordingly, the HDCP provisions do not apply to this development.

However, as a guide the design principles of the *HDCP* have been considered with respect to stormwater management, noise and vibration, waste management, crime prevention, landscaping, and services and lighting. The proposal is generally consistent with the provisions of the *HDCP*.

2.10 Section 94 Contributions Plans

Hornsby Shire Council *Section 94 Contributions Plan 2012-2021* applies to the development as it would result in an additional 10 seniors living dwellings in lieu of the three existing dwellings. Accordingly, the requirement for a monetary Section 94 contribution is recommended as a condition of consent.

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

3.1.1 Tree and Vegetation Preservation

The proposed development would necessitate the removal of two trees from the site. Tree No. 1 *Eucalyptus saligna* – Sydney Blue Gum is in decline and recommended for removal. Tree No. 2 *Ficus* – Fig is an exotic species and exempt from Council’s tree protection requirements. The proposed removal of the two trees is acceptable subject to recommended conditions for replacement planting with locally indigenous trees and implementation of the submitted landscaping plan.

3.1.2 Stormwater Management

The proposed stormwater drainage system is designed for connection to Council’s system in Cardinal Avenue. The system includes on-site stormwater detention (OSD), rainwater reuse and stormwater filtering, to minimise impacts on downstream waterways.

Subject to recommended conditions for design in accordance with Council’s Civil Works Specification and stormwater treatment facility to meet the proposed pollution reduction targets, the proposed stormwater drainage system is acceptable.

3.2 Built Environment

3.2.1 Built Form

The proposed development would comprise single and two attached and detached dwellings in brick construction with tiled roof. The proposed built form with dormer windows, hipped roofs and gables would contribute to the residential character of the area.

The visual impact on the streetscape would be mitigated by the presentation of the dwellings fronting the street, the proposed curved driveway and the landscaping at the frontage.

Refer also to discussion in Section 2.1.3.

3.2.2 Traffic

A traffic and parking assessment has been submitted with the proposal which estimates that the proposed development would generate an additional 4.5 to 6.5 vehicle trips per hour.

The proposed additional traffic demand is within the capacity of the local road network.

The proposed accessway would be adjacent to the existing pedestrian refuge in Cardinal Avenue at the frontage. The accessway would be in a similar location to an existing driveway to be removed at the frontage of the site and is acceptable.

3.3 Social Impacts

The proposal would increase housing opportunities with provision of additional housing for seniors enabling downsizing and freeing up existing dwelling houses for families. Accordingly, the proposal would be of positive social benefit for the wider community.

3.4 Economic Impacts

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

4. SITE SUITABILITY

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

4.1 Bushfire Risk

The land is identified as being subject to bushfire risk from bushland in Fearnley Park.

A Bushfire Safety Authority has been granted by the NSW Rural Fire Service for the proposal subject to recommended conditions.

5. PUBLIC PARTICIPATION

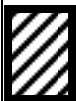

Section 79C(1)(d) of the Act requires Council to consider *“any submissions made in accordance with this Act”*.

5.1 Community Consultation

The proposed development was placed on public exhibition and was notified to adjoining and nearby landowners between 18 January and 18 February 2017. The public exhibition period was extended to 20 February 2017 for correct placement of the notification sign, in accordance with the Notification and Exhibition requirements of the *HDGP*. During this period, Council received 12 submissions. The map below illustrates the location of those nearby landowners who made a submission that are in close proximity to the development site.



NOTIFICATION PLAN

• PROPERTIES NOTIFIED	X SUBMISSIONS RECEIVED	 PROPERTY SUBJECT OF DEVELOPMENT	
ONE SUBMISSION RECEIVED OUT OF MAP RANGE			

Twelve submissions objected to the development. The grounds for objection are addressed as follows:

5.1.1 Existing boundary fencing

A submission raises concerns that the existing concrete block fencing on the southern side boundary is adequate and the proposed 1.8m high timber fencing is not required. The existing fencing is considered adequate to maintain privacy to adjoining properties and would not require replacement.

A submission raises concerns regarding amenity impacts on the northern boundary which has an open style weldmesh fence which would require replacement for the proposal. It is considered to be a reasonable request that the applicant be required to construct a 1.8m high hardwood timber boundary fence at nil cost to the neighbouring property owner. A recommended condition of consent has been included in Schedule 1.

5.1.2 Existing Sewer

A submission raises concerns regarding capacity of the existing sewer for the proposed development. The site is serviced by Sydney Water which is the regulatory authority for the sewer. A condition is recommended for the requirements of Sydney Water to be met by the proposal.

5.1.3 Affordable Rental Housing

Submissions comment that the submitted Affordable Rental Housing Report is inadequate.

The submitted report was replaced by a further report dated April 2017 prepared in accordance with the '*Guidelines for Retention of Existing Affordable Rental Housing*'. Refer to discussion in Section 2.4.

5.1.4 Heritage Significance

Submissions comment that the submitted Statement of Heritage Impact omitted the relationship between the existing building 'Rivington' and Fearnley Park and the significance of the existing building.

Council obtained an independent heritage review of the proposal and the submitted Statement of Heritage Impact. The review included an assessment of the existing building against criteria in the NSW Heritage Manual. The review determined that while the building would meet two of the criteria (*Criterion (a) Historical Development, and Criterion (f) Rarity*), the level of identification would not merit listing as a heritage item.

Refer also to discussion in Section 2.1.3.

5.1.5 Solar Access

Submissions raise concerns that the proposal would overshadow adjoining residents.

The proposed development comprises single and two storey dwellings with single storey eave heights adjoining the side boundaries.

The proposal is satisfactory in respect to Council's planning controls for solar access for low density housing. Adjoining properties would maintain a minimum 3 hours of unobstructed sunlight to private open space areas during Winter Solstice. Refer also to discussion in Section 2.6.5 c.

5.1.6 Overdevelopment

Submissions raise concerns that the proposed Seniors Living development is prohibited in the R2 Low Density Residential zone and that the dwelling density is excessive for the area.

The proposed development for 10 seniors living dwellings has a floor space ratio of 0.487:1 in compliance with the maximum 0.5:1 floor space ratio applicable to the site in accordance with the *SEPP (Housing for Seniors or People with a Disability)* which prevails to the extent of any inconsistency with *HLEP*.

Refer also to discussion in Section 2.1.1.

5.1.7 Townhouses Not For Seniors

A submission raises concern that the proposed two storey dwellings are not designed for seniors aging in place.

The proposal is designed for compliance with the accessibility and useability standards of the *SEPP* and would meet the standards subject to recommended conditions. Refer also to discussion in Section 2.6.6 d.

A condition is recommended for occupation of the development in accordance with the *SEPP*.

5.1.8 Privacy and Amenity Impacts

A submission raises concerns that the proposal would detract from privacy and amenity.

The proposed development includes bedrooms only at the upper level and has dwellings orientation primarily to the front and the rear

The proposed development is designed with regard to neighbourhood privacy and amenity. Refer to discussion in Section 2.6.5.

5.1.9 Loss of Significant Tree

Submissions raise concerns that the proposal would remove a significant tree (Tree No. 1 *Eucalyptus saligna* – Sydney Blue Gum) within a biodiversity buffer zone for Blue Gum High Forest.

Tree No. 1 is assessed by Council as a safety risk and is recommended for removal pursuant to Section 1B.6.1 of *HDGP*. The tree is not within 50m of land identified as Terrestrial Biodiversity on the *HLEP* map and is not subject to the ecological protection provisions under Clause 6.4 of *HLEP*.

Subject to a recommended condition for replacement tree planting of locally indigenous tree species, the removal of Tree No. 1 is acceptable.

5.1.10 Traffic and Car Parking

Submissions raise concerns the proposal would add to traffic congestion and would have inadequate parking.

The submitted Traffic and Parking Assessment concludes the proposal would have no unacceptable parking implications and relatively minor traffic demand on the local road network. The assessment is supported with respect to the generally low traffic generation rates for seniors living developments in accordance with the *RMS Guide to Traffic Generating Developments* and the capacity of the local road network.

Adequate parking is provided for the development including 2 visitor car parking spaces.

5.2 Public Agencies

The development application was referred to the NSW Rural Fire Service for comment.

The Fire Service has granted a Bush Fire Safety Authority pursuant to Section 100B of the *Rural Fire Act 1997* for the proposed development, subject to recommended conditions.

6. THE PUBLIC INTEREST

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

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

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

CONCLUSION

The proposal is for demolition of existing structures and construction of a seniors living development comprising 10 self-care housing dwellings and community title subdivision.

The proposed development generally complies with the *SEPP (Housing for Seniors of People with a Disability)* subject to recommended conditions for upgrading of the existing public footpath for connection to public transport on Copeland Road. The proposed dwellings are designed with regard to the *Seniors Living Policy Urban Design Guidelines for Infill Development* and would contribute to the residential character of the area.

The proposed demolition of the existing building and the proposed development of the site for seniors living is acceptable in respect to the heritage significance of Fearnley Park. The existing building 'Rivington' does not warrant heritage listing in accordance with Council's heritage assessment.

The site includes an area of contaminated land. Subject to remediation, the site is suitable for the proposed development in accordance with *SEPP 55*.

The NSW Rural Fire Service has granted a Bush Fire Safety Authority for the proposed Seniors Living development.

The application is recommended for approval subject to conditions in Schedule 1 of this report.

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.

RESPONSIBLE OFFICER

The officer responsible for the preparation of this Report is the Manager – Development Assessments – Rodney Pickles, who can be contacted on 9847 6731.

ROD PICKLES
Manager - Development Assessment
Planning Division

JAMES FARRINGTON
Group Manager
Planning Division

Attachments:

- 1.[ViewView](#) Locality Map
- 2.[ViewView](#) Survey Plan
- 3.[ViewView](#) Floor Plans
- 4.[ViewView](#) Elevations and Sections
- 5.[ViewView](#) Landscape Plan
- 6.[ViewView](#) Subdivision Plan
- 7.[ViewView](#) Footpath Detail

File Reference: DA/1578/2016

Document Number: D07226079

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.	Plan Title	Drawn by	Dated
SK1w	Ground Floor Plan	Brooks Architects Projects	27.06.17
SK2k	First Floor Plan	Brooks Architects Projects	26.07.17
SK3o	Elevations	Brooks Architects Projects	07.06.17
-	Schedule of Finishes	Brooks Architects Projects	-
DWG No. 16-056	Landscape Plan	Jocelyn Ramsay & Assoc	29.05.17
7170	Plan of Proposed Community Title Subdivision	Alan Turner	06/06/2017
SK1a	Footpath Gradient Plan 01	Brooks Architects Projects	14.11.16
SK2a	Footpath Gradient Plan 02	Brooks Architects Projects	14.11.16
SK3a	Footpath Gradient Plan 03	Books Projects Architects	14.11.16
SK4a	Footpath Gradient Plan 04	Brooks Architects Projects	14.11.16

SK30	Footpath Detail Cnr Hannah St + Cardinal Ave	Brooks Architects	Projects	21.08.16
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Document Title	Prepared by	Dated
Tree Assessment	Anderson Environmental	21/12/2016
Statement of Heritage Impact	Archnex Designs	December 2016
Visual Property Inspection Report	Inspect It	5 May 2017
Retention of Affordable Housing Report	Sarah George Consulting	April 2017
Accessibility Assessment Report	City Plan Services	20 Dec 2016
Geoenvironmental Detailed Site Investigation	Anderson Environmental	22/12/2016
Remediation Action Plan	Anderson Environmental	31/01/2017
Traffic and Parking Assessment	John Coady Consulting P/L	20 Dec 2016
Stormwater Management Plan	C&M Consulting Engineers	December 2016
Environmental Noise and Vibration Assessment	Day Design Pty Ltd	19 June 2017
Bushfire Protection Assessment	ABPP	20.12.2016
Community Management Statement (Draft)	O'Brien Legal, Solicitors	Undated
Waste Management Plan	Michael Gremmo	20/12/16
BASIX Certificate No. 787426M	Gradwell Consulting	22 Dec 2016

2. Removal of Existing Trees

- a) This development consent permits the removal of trees numbered 1 and 2 as identified on Page 7 of the Tree Assessment prepared by Anderson Environmental dated 21/12/2016.
- b) The removal of any other trees requires separate approval by Council in accordance with the Tree and Vegetation Chapter 1B.6 Hornsby Development Control Plan (HDCP).

3. Construction Certificate

- a) A Construction Certificate is required to be approved by Council or a Private Certifying Authority prior to the commencement of any works under this consent.
- b) A separate Construction Certificate must be obtained from Council for all works within the public road reserve under S138 of the *Roads Act*.
- c) A separate Construction Certificate must be obtained from Council for all works within drainage easements vested in Council.
- d) The Construction Certificate plans must not be inconsistent with the Development Consent plans.

4. Section 94 Development Contributions

- a) In accordance with Section 80A(1) of the *Environmental Planning and Assessment Act, 1979* and the *Hornsby Shire Council Section 94 Development Contributions Plan 2014-2024*, the following monetary contributions must be paid to Council to cater for the increased demand for community infrastructure resulting from the development:

Description	Contribution (4)
Roads	\$9,049.95
Open Space and Recreation	\$59,186.90
Community Facilities	\$22,753.20
Plan Preparation and Administration	\$190.90
TOTAL	\$91,180.95

being for 10 Seniors Housing dwellings and including credit for 1 x 1 bedroom and 2 x 2 bedroom units

- b) The value of this contribution is current as at 11 July 2017. If the contribution is not paid within the financial quarter that this condition was generated, the contribution payable will be adjusted in accordance with the provisions of the Hornsby Shire Council Section 94 Development Contributions Plan and the amount payable will be calculated at the time of payment in the following manner:

$$\frac{\$C_{PY}}{CPI_{DC}} = \frac{\$C_{DC} \times CPI_{PY}}{CPI_{DC}}$$

Where:

$\$C_{PY}$ is the amount of the contribution at the date of Payment

$\$C_{DC}$ is the amount of the contribution as set out in this Development Consent

CPI_{PY} is the latest release of the Consumer Price Index (Sydney – All Groups) at the date of Payment as published by the ABS.

CPI_{DC} is the Consumer Price Index (Sydney – All Groups) for the financial quarter at the date applicable in this Development Consent Condition.

- c) The monetary contribution must be paid to Council:
- prior to the issue of the Subdivision Certificate where the development is for subdivision; or
 - prior to the issue of the first Construction Certificate where the development is for building work; or
 - prior to issue of the Subdivision Certificate or first Construction Certificate, whichever occurs first, where the development involves both subdivision and building work; or
 - prior to the works commencing where the development does not require a Construction Certificate or Subdivision Certificate.

Note: It is the professional responsibility of the Principal Certifying Authority to ensure that the monetary contributions have been paid to Council in accordance with the above timeframes.

Council's Development Contributions Plan may be viewed at www.hornsby.nsw.gov.au or a copy may be inspected at Council's Administration Centre during normal business hours.

REQUIREMENTS PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

5. Building Code of Australia

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

6. Contract of Insurance (Residential Building Work)

Where 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, this contract of insurance must be in force before any building work authorised to be carried out by the consent commences.

7. Notification of Home Building Act, 1989 Requirements

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

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

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

8. Utility Services

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

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

9. Identification of Survey Marks

A registered surveyor must identify all survey marks in the vicinity of the proposed development. Any survey marks required to be removed or displaced as a result of the proposed development shall be undertaken by a registered surveyor in accordance with Section 24 (1) of the Surveying and Spatial Information Act 2002 and following the Surveyor General's Directions No.11 – **"Preservation of Survey Infrastructure"**.

10. Stormwater Drainage

The stormwater drainage system for the development must be designed for an average recurrence interval (ARI) of 20 years and be gravity drained via an on-site detention and water quality treatment facility in accordance with the following requirements:

- a) Connected directly to Council drainage network by constructing a kerb inlet pit in-front of the development and extending a 375mm diameter pipe to the nearest Council pit.
- b) Be designed by a Chartered Professional Civil/ Hydraulic Engineer of the Institution of Engineers, Australia in accordance with Hornsby Shire Council Civil Works Specifications.

11. On Site Stormwater Detention

An on-site stormwater detention system must be designed by a chartered civil engineer and constructed in accordance with the following requirements:

- a) Storage capacity to accommodate volume from up to 20 years ARI (average recurrence interval) storms and a maximum discharge (when full) limited to 5 years pre development rate.
- b) Have a surcharge/inspection grate located directly above the outlet. Discharge from the detention system to be controlled via 1 metre length of pipe, not less than 50 millimetres diameter or via a stainless plate with sharply drilled orifice bolted over the face of the outlet discharging into a larger diameter pipe capable of carrying the design flow to an approved Council system.
- c) Where above ground system is proposed and the average depth is greater than 0.3 metres, a 'pool type' safety fence and warning signs to be installed
- d) Not be constructed in a location that would impact upon the visual or recreational amenity of residents.
- e) Detail calculations are to be shown in construction certificate plan.
- f) An overflow/escape path shall be incorporated in the design.

12. Water Quality/Bio Retention System

- a) Stormwater discharging from the development site is to be treated to achieve the quality specified in Council's Development Control Plan 2012 (table 1C.1.2(b) Urban Stormwater Quality
- b) MUSIC model and Hornsby Shire Council Music- link report are to be submitted prior to issue of a construction certificate Council's parameters are to be used in the model.
- c) Prior to occupation of the premises, a Chartered Civil/Hydraulic Engineer of the Institution of Engineers, Australia is to certify that works have been completed in

accordance with the approved construction plan and the measures will achieve the targets specified in the condition.

13. Vehicular Crossing

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

- a) The vehicular crossing shall be at 90 (ninety) degrees to the Cardinal Avenue carriageway.
- b) A passing bay of 6m long and 5.5m wide shall be constructed at the intersection of the Cardinal Avenue with the vehicular crossing.
- c) Design levels at the front boundary must be obtained from Council for the design on the internal driveway;
- d) Any redundant crossings must be replaced with integral kerb and gutter;
- e) The footway area must be restored by turfing;
- f) Approval must be obtained from all relevant utility providers that all necessary conduits be provided and protected under the crossing

Note: An application for a vehicular crossing can only be made to one of Council's Authorised Vehicular Crossing Contractors. You are advised to contact Council on 02 9847 6940 to obtain a list of contractors.

14. Internal Driveway/Vehicular Areas

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

- a) Design levels at the front boundary shall be obtained from Council.
- b) The driveway must be a rigid pavement.
- c) Conduit for utility services including electricity, water, gas and telephone must be provided. All existing overhead assets including electricity and telecommunications cabling shall be relocated underground at no cost to Council. A certificate from an appropriately licensed contractor shall be submitted to the principal certifying authority certifying that the service conduits have been installed in accordance with the relevant utility provider and Australian Standards.
- d) Longitudinal sections along both sides of the access driveway shall be submitted to the principal certifying authority in accordance with the relevant sections of AS 2890.1. The maximum grade shall not exceed 1 in 4 (25%) with the maximum changes of grade of 1 in 8 (12.5%) for summit grades and 1 in 6.7 (15%) for sag grades. Any transition grades shall have a minimum length of 2 metres. The longitudinal sections shall incorporate the design levels obtained by Council.

15. Road Works

All road works approved under this consent must be designed in accordance with Council's *Civil Works Design and Construction Specification 2005* and the following requirements:

- a) Footpath is to be constructed along the frontage of the property.
- b) Access footpath (pathway) from the development site to the nearest bus stop on Copeland Road shall be upgraded to comply with *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004*. Any steps provided with the upgrading shall have hand rails complying with relevant standards and nature strip landscaped to Council's requirement. Details are to be provided with a construction certificate.
- c) No work is to commence within the road reserve until approval under Section 138 of the Roads Act is obtained from Council. In this regard a construction certificate application is to be submitted to Council.

16. Construction Traffic Management Plan

In order to enable unencumbered movement of traffic in the public road during construction works, a Construction Management Plan, including a Traffic Management Plan and scaled construction plans prepared by a suitably Chartered and Qualified Chartered Civil Engineer and Qualified Worksite Traffic Controller shall be prepared and submitted to Hornsby Shire Council for approval according to the following requirements:

- a) A copy of the plans shall be submitted for consideration and written approval by Hornsby Shire Council prior to the release of the Construction Certificate.
- b) The plans shall detail the order of construction works and arrangement of all construction machines and vehicles being used at the same time during all stages.
- c) The CTMP plans shall be in accordance with the approved Development Application plans and the Development Consent conditions.
- d) In order to prevent injury, accident and loss of property, no building materials, work sheds, vehicles, machines or the like shall be allowed to remain in the road reserve area without the written consent of Hornsby Shire Council.
- e) The Plan shall be generally in compliance with the requirements of the Road and Traffic Authority's "Traffic Control at Worksites Manual 1998" and detailing:
 - i) Public notification of proposed works;
 - ii) Long term signage requirements;
 - iii) Short term (during actual works) signage;
 - iv) Vehicle Movement Plans, where applicable;
 - v) Traffic Management Plans;
 - vi) Pedestrian and Cyclist access and safety;
- f) The plans shall indicate traffic controls including those used during non-working hours and shall provide pedestrian access and two-way traffic in the public road to be facilitated at all times.
- g) The plans shall include the proposed truck routes to and from the site including details of the frequency of truck movements at the different stages of the

development. The plan shall also include details of parking arrangements for all employees and contractors.

- h) The Applicant and all employees of contractors on the site must obey any direction or notice from the Prescribed Certifying Authority or Hornsby Shire Council in order to ensure the above.
- i) If there is a requirement to obtain a Work Zone, partial Road Closure or Crane Permit an application to Hornsby Shire Council is to be made prior to the issue the Construction Certificate

17. Acoustical Treatment

The seniors living development must be carried out in accordance with the recommendations contained within the Environmental Noise and Vibration Assessment Report No. 6115-1.1R Rev A prepared by Day Design Pty Ltd dated 19 June 2017.

18. Accessible Design

The seniors living development must be carried out in accordance with the recommendations contained within the Accessibility Assessment Report dated 20 December 2016 prepared by City Plan Services.

REQUIREMENTS PRIOR TO THE COMMENCEMENT OF ANY WORKS

19. Erection of Construction Sign

- a) A sign must be erected in a prominent position on any site on which any approved work is being carried out:
 - i) Showing the name, address and telephone number of the principal certifying authority for the work;
 - ii) 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
 - iii) Stating that unauthorised entry to the work site is prohibited.
- b) The sign is to be maintained while the approved work is being carried out and must be removed when the work has been completed.

20. 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; and/or
- 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.

21. Toilet Facilities

- a) To provide a safe and hygienic workplace, toilet facilities must be available or be installed 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.
- b) Each toilet must:
 - i) be a standard flushing toilet connected to a public sewer; or
 - ii) be a temporary chemical closet approved under the *Local Government Act 1993*; or
 - iii) have an on-site effluent disposal system approved under the *Local Government Act 1993*.

22. Erosion and Sediment Control

To protect the water quality of the downstream environment, 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 may be issued for any non-compliance with this requirement without any further notification or warning.

REQUIREMENTS DURING DEMOLITION AND CONSTRUCTION**23. Construction Work Hours**

All works 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.

24. Demolition

To protect the surrounding environment, 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 must 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*; and
- c) On construction sites where any building contain asbestos material, a standard commercially manufactured sign containing the words 'DANGER ASBESTOS REMOVAL IN PROGRESS' and measuring not less than 400mm x 300mm must be displayed in a prominent position visible from the street.

25. 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.

26. Street Sweeping

To protect the surrounding environment, Street sweeping must be undertaken following sediment tracking from the site along Cardinal Avenue during works and until the site is established.

The street cleaning services must undertake a street 'scrub and dry' method of service and not a dry sweeping service that may cause sediment tracking to spread or cause a dust nuisance.

27. Council Property

To ensure that the public reserve is kept in a clean, tidy and safe condition during construction works, no building materials, waste, machinery or related matter is to be stored on the road or footpath.

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.

28. 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.

29. Landfill

Landfill must be constructed in accordance with Council's 'Construction Specification 2005' and the following requirements:

- a) Prior to fill material being imported to the site, a certificate shall be obtained from a suitable qualified environmental consultant confirming the fill wholly consists of Virgin Excavated Natural Material (VENM) as defined in Schedule 1 of the *Protection of the Environment Operations Act, 1997* or material approved under the *Department of Environment and Climate Change's* general resource recovery exemption.
- b) A compaction certificate is to be obtained from a suitably qualified geotechnical engineer verifying that the specified compaction requirements have been met.
- c) These certificates must be included with the application for an occupation certificate.

30. Excavated Material

All excavated material removed from the site must be classified by a suitably qualified person in accordance with the Department of Environment, Climate Change and Water NSW Waste Classification Guidelines prior to disposal to an approved waste management facility and be reported to the principal certifying authority prior to the issue of an Occupation Certificate.

31. Waste Management

All work must be carried out in accordance with the approved waste management plan.

32. Traffic Control Plan Compliance

The development must be carried out in accordance with the submitted Traffic Control Plan (TCP).

33. Council Property

To ensure that the public reserve is kept in a clean, tidy and safe condition during construction works, no building materials, waste, machinery or related matter is to be stored on the road or footpath.

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.

34. 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 OR 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.

35. Fulfilment of BASIX Commitments

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

36. Sydney Water – s73 Certificate

A s73 Certificate must be obtained from Sydney Water and submitted to the PCA.

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.

37. Water Saving Urban Design

A Water Saving Urban Design (WSUD) is to be constructed generally in accordance with the engineering report and plans prepared by C&M Consulting Engineers. The Water Quality Targets as detailed within the report and Hornsby Shire Councils DCP are to be achieved in the design and supported by a MUSIC model.

38. Certification of WSUD Facilities

Prior to the issue of an Occupation Certificate a certificate from a Civil Engineer is to be obtained stating that the WSUD facilities have been constructed and will meet the water quality targets as specified in the Hornsby Shire Councils DCP.

39. Site Remediation Verification

The applicant must provide documentation from a suitably qualified environmental consultant verifying that the site has been remediated in accordance with the NSW Environment Protection Authority's Contaminated Sites – Guidelines for Consultants Reporting on Contaminated Sites, the Contaminated Sites- Sampling Design Guidelines Contaminated Sites – Guidelines for the NSW Site Auditor Scheme and the recommendations of the Remedial Action Plan prepared by Anderson Environmental dated 31 January 2017.

40. Damage to Council Assets

To protect public property and infrastructure, any damage caused to Council's assets as a result of the construction or demolition of the development must be rectified by the applicant in accordance with Council's Civil Works Specifications. Rectification works must be undertaken prior to the issue of an Occupation Certificate, or sooner, as directed by Council.

41. Planter Boxes / On-slab Planting

Any on-slab planter boxes must include waterproofing, subsoil drainage (proprietary drainage cell, 50mm sand and filter fabric) automatic irrigation, minimum 500mm planting soil for shrubs and minimum 1000mm planting soil for trees and palms and 75mm mulch.

Free-standing planter boxes (as shown on paving adjacent to Unit 9) are to be deleted from the scheme, replaced with planting into natural or retained ground.

42. Retaining Walls / Cut and Fill

Elevation of the groundplane is not to exceed 500mm at the south-western corner of the property where it sits in relation to the property frontage and neighbouring driveway and garage of 100 Hannah Street.

43. Pedestrian Access

To facilitate safe travel to the Cardinal Avenue pedestrian crossing refuge:

- a) A footpath is required within the verge, linking between the refuge crossing and the main pedestrian site entry.
- b) Safe pedestrian egress on graded paths is required from Unit 9 to the roadway crossing refuge, which may be achieved on site (within the site frontage) or within the public verge.
- c) Pathways are to have a minimum width of 1.5 metres, minimum 100mm thickness, 25MpA with reinforcing.
- d) The existing kerb ramp at the crossing location is to meet current standards for wheelchair accessibility.
- e) All path construction is required to comply with *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004*.
- f) The access gate to Fearnley Park is to be secured with resident key card access.

44. Communal Space

A rest area/ waiting bay and/ or meeting place is to be provided on site, furnished with seating.

NB: Additional pavement within the frontage towards the north-western corner of the property would be acceptable, including path connection across the verge to access such an area.

45. Additional Tree Planting

- a) Provide 1 x *Syncarpia glomulifera* (*Turpentine*) at the front of the site.
- b) Provide a planting of 1 x *Angophora costata* (*Sydney Red Gum*) in the verge between proposed driveway entries.
- c) Street Tree Plantings to be installed at minimum 100 litre pot size in mulch beds with hardwood staking and ties, with staking retained in place for a period of Landscape Establishment.
- d) Provide a minimum of four (4) additional trees to the southern side boundary alignment that are capable of reaching 6 metres at maturity (eg. *Elaeocarpus*, *Lagerstroemia* and/ or *Pyrus*).
- e) Provide a minimum of three (3) additional trees to the northern side boundary alignment that are capable of reaching 6 metres at maturity (eg. *Elaeocarpus*, *Lagerstroemia* and/ or *Pyrus*).
- f) Provide a minimum of one (1) additional large native tree to the southern side boundary alignment that is capable of reaching 10 metres at maturity (eg. *Syncarpia glomulifera* or *Angophora costata*).
- g) Trees required to property setbacks are to be installed at minimum 45 litre pot size.

46. Completion of Landscaping

A certificate must be submitted to the PCA by a practicing landscape architect, horticulturalist or person with similar qualifications and experience certifying that all required landscaping works have been satisfactorily completed in accordance with the approved landscape plans.

Note: Advice on suitable species for landscaping can be obtained from Council's planting guide 'Indigenous Plants for the Bushland Shire', available at www.hornsby.nsw.gov.au.

47. Boundary Fencing

- a) The existing concrete block fence on the southern side boundary is to be retained for the development.
- b) A 1.8m high hardwood timber boundary fence must be constructed at nil cost to the neighbouring property owner along the northern boundary of the site. The fence is to taper to 1.0m from the front building alignment to the front boundary.

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

48. Restriction on Occupation – Housing for Seniors or People with a Disability

A restriction as to user must be created under s88B of the Conveyancing Act, 1919 and registered, requiring the dwellings approved under this consent to be solely used for the accommodation of:

- a) Seniors (55+ age) or people with a disability;

- b) People who live within the same household as seniors or people with a disability; and
- c) Staff employed to assist the administration and provision of services to housing provided under *SEPP (Housing for Seniors or People with a Disability) 2004*.

Note: The restriction must nominate Council as the authority to release, vary or modify the restriction.

49. External Lighting

- a) To protect the amenity of adjacent premises, all external lighting must be designed and installed in accordance with *Australian Standard AS 4282 – Control of the Obtrusive Effects of Outdoor Lighting*.
- b) Certification of compliance with this Standard must be obtained from a suitably qualified person and submitted to the PCA with the application for the Construction Certificate.

50. Dwelling Numbering

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

51. Acoustic Certificate

On completion of all works and prior to the issue of an Occupation Certificate, the certifier is to be provided with a certificate from a qualified acoustic engineer/consultant certifying that all acoustic works have been completed in accordance with the recommendations contained in the Environmental Noise and Vibration Assessment prepared by Day Design Pty Ltd dated 19 June 2017.

52. Works as Executed Plan

A works-as-executed plan(s) must be prepared by a registered surveyor and submitted to Council footpath, on-site detention and water quality treatment systems. 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.

53. Creation of Easements

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

- a) The creation of an appropriate "*Positive Covenant*" and "*Restriction as to User*" over the constructed on-site detention and water quality treatment systems and outlet works, within the lots in favour of Council in accordance with Council's prescribed wording. The position of the on-site detention system and water quality treatment system is to be clearly indicated on the title.
- b) To register the positive covenant and the restriction on the use of land, "*works-as-executed*" details of the on-site-detention system and water quality treatment system must be submitted verifying that the required storage and discharge rates and water quality treatment measures have been constructed in accordance with the design requirements. The details must show the invert levels of the on-site system together with pipe sizes and grades and details of water quality treatment measures. Any

variations to the approved plans must be shown in red on the “works-as-executed” plan and supported by calculations

54. Preservation of Survey Infrastructure

Prior to the issue of a construction certificate, a registered surveyor shall identify all survey marks in the vicinity of the proposed development. Any survey marks required to be removed or displaced as a result of the proposed development shall be undertaken by a registered surveyor in accordance with Section 24 (1) of the Surveying and Spatial Information Act 2002 and following the Surveyor General's Directions No.11 – “**Preservation of Survey Infrastructure**”.

55. Completion of Works and Compliance Certificate

All engineering works identified in this consent are to be completed and a Compliance Certificate issued prior to the release of occupation permit.

56. Provision for National Broadband Network (NBN)

Provision must be made for fibre ready passive infrastructure (pits and pipes) generally in accordance with NBN Co's pit and pipe installation guidelines to service the proposed development. A certificate from NBN Co or Telstra must be submitted to the PCA that the fibre optic cabling provided for the development complies with MDU Building Design Guides for Development.

OPERATIONAL CONDITIONS

57. 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.

An acoustic assessment is to be undertaken by a suitably qualified environmental consultant within 60 days of occupying the site in accordance with the *Environment NSW Industrial Noise Policy (2000)*, *Council's Policy and Guidelines for Noise and Vibration Generating Development (Acoustic Guidelines V.5, 2000)* and the *DECC's Noise Guide for Local Government (2004)*. The assessment must be submitted to Council for review. Should the assessment find that noise from the premise exceeds 5dB(A) above background noise levels, appropriate measures must be employed to rectify excessive noise.

58. Landscape Establishment

The landscape works must be maintained into the future to ensure the establishment and successful growth of plant material to meet the intent of the landscape design. This must include but not be limited to watering, weeding, replacement of failed plant material and promoting the growth of plants through standard industry practices.

GENERAL TERMS OF APPROVAL – NSW RURAL FIRE SERVICE

The following conditions of consent are General Terms of Approval from the nominated State Agency pursuant to Section 91A of the Environmental Planning and Assessment Act 1979 and must be complied with to the satisfaction of that Agency.

59. Asset Protection Zones

At the commencement of building works and in perpetuity, the entire property shall be managed as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones'.

60. Water and Utilities

Water, electricity and gas are to comply with the following requirements to comply with section 4.2.7 of 'Planning for Bush Fire Protection 2006':

- 60.1 Fire hydrant spacing, sizing and pressures of additional hydrants proposed on site shall comply with AS 2419.1-2005.
- 60.2 A hydrant booster valve shall be installed near the driveway.
- 60.3 No services or hydrants shall be located within parking bays.
- 60.4 Electrical transmission lines shall be located underground.
- 60.5 Reticulated or bottled gas shall be installed and maintained in accordance with Australian Standard AS/NZS 1596:2002: 'The storage and handling of LP gas' and the requirements of relevant authorities. Metal piping shall be used.
- 60.6 All fixed gas cylinders shall be kept clear of all flammable materials and located on the non-hazard side of the development.
- 60.7 If gas cylinders need to be kept close to the building, the release valves shall be directed away from the building and any combustible material.
- 60.8 Polymer sheathed flexible gas supply lines to gas metres adjacent to buildings shall not be used.

61. Evacuation and Emergency Management

An Emergency/Evacuation Plan shall be prepared consistent with section 4.2.7 of 'Planning for Bush Fire Protection 2006'.

62. Design and Construction

New construction shall comply with Australian Standard AS3959-2009 'Construction of buildings in bush fire-prone areas' section 3 and section 5 (BAL 12.5) and section A3.7 of Addendum Appendix 3 of 'Planning for Bush Fire Protection 2006'.

63. Landscaping

Landscaping to the site is to comply with the principles of Appendix 5 of 'Planning for Bush Fire Protection 2006'.

- 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 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 and Vegetation Preservation

In accordance with Clause 5.9 of the Hornsby Local Environmental Plan 2013 a person must not ringbark, cut down, top, lop, remove, injure or wilfully destroy any tree or other vegetation protected under the Hornsby Development Control Plan 2013 without the authority conferred by a development consent or a permit granted by Council.

Notes: A tree is defined as a long lived, woody perennial plant with one or relatively few main stems with the potential to grow to a height greater than three metres (3M). (HDGP 1B.6.1.c).

Tree protection measures and distances are determined using the Australian Standard AS 4970:2009, "Protection of Trees on Development Sites".

Fines may be imposed for non-compliance with both the Hornsby Local Environmental Plan 2013 and the Hornsby Development Control Plan 2013.

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.

Telecommunications Act 1997 (Commonwealth)

If you are aware of any works or proposed works which may affect or impact on Telstra's assets in any way, you are required to contact: Telstra's Network Integrity Team on Phone Number 1800810443.

Asbestos Warning

Should asbestos or asbestos products be encountered during demolition or construction works, you are advised to seek advice and information prior to disturbing this material. It is recommended that a contractor holding an asbestos-handling permit (issued by WorkCover NSW) be engaged to manage the proper handling of this 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.

Rain Water Tank

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

5 DEVELOPMENT ASSESSMENT - SUBDIVISION OF ONE ALLOTMENT INTO THREE LOTS - 2A MANOR ROAD, HORNSBY

EXECUTIVE SUMMARY

DA No: DA/1143/2016 (Lodged 20/9/2016)

Description: Torrens Title subdivision of one allotment into three lots

Property: Lot 1 DP 1181742 – No. 2A Manor Road, Hornsby

Applicant: Mr Maki Petkovski

Owner: Mr Maki Petkovski and Mrs Z Petkovski

Estimated Value: \$75,000

- The application is for the Torrens Title subdivision of one allotment into three lots.
- The proposal generally complies with the *Hornsby Local Environmental Plan (HLEP) 2013* and the *Hornsby Development Control Plan (HDCP) 2013*.
- The proposal involves an item listed on the State Heritage Register and support for the application has been received from the Heritage Council of NSW subject to conditions.
- One submission has been received in respect of the application.
- A Red Sticker has been placed on the application requiring that it be determined at a Council meeting.
- It is recommended that the application be approved.

RECOMMENDATION

THAT Development Application No. DA/1143/2016 for the Torrens Title subdivision of one allotment into three lots at Lot 1 DP 1181742, No. 2A Manor Road, Hornsby be approved subject to the conditions of consent detailed in Schedule 1 of Group Manager's Report No. PL35/17.

BACKGROUND

Between 1907-1925, the Marcus Clark Family developed the property as a residential homestead. Residential use ceased in 1952.

In 1952, the property was sold to the Commonwealth Government and was subsequently developed and used as a rehabilitation hospital until 1987. Over the 35 years of occupation by the Commonwealth, the grounds surrounding the house were developed with an array of buildings to house the hospital.

On 9 January 1989, Council approved Development Application No. 391/1988 for the subdivision of the land into two allotments. The southern lot was to be sold and the northern lot would continue to house the operations of Mt Wilga Private Hospital.

On 9 January 1992, Council approved Development Application No. 419/1991 for *“the conservation and use of Mt Wilga house for administration purposes and meetings, and refurbishment of existing caretaker’s residence”*. These works were known as Stage 1 of the Buddhist Temple and Administration Centre (Soka Gakkai).

On 22 February 1994, Development Application No. 689/1993 for *“the refurbishment of Building 4 for worship and meetings, use of Building 1A for main switchboard and fire pump rooms and site works and services”* was approved by Council. These works were Stage 2 of the Buddhist Temple and Administration Centre.

In June 1999, Soka Gakkai sold the property.

On 24 February 2000, Council approved Development Application No. 2355/1999 for an 81 unit aged housing development.

On 17 December 2008, Development Application No. 928/2007 for a 91 unit aged housing development was approved as a deferred commencement consent.

On 23 May 2011, Development Application No. 1619/2010 was approved for the subdivision of one allotment into two lots at No. 2A Manor Road, Hornsby to create a separate allotment for the heritage listed structure and its curtilage.

On 7 September 2011, Council approved Development Application No. DA/224/2011 for alterations and additions to Mount Wilga Private Hospital. The approval includes the extension of the existing Mount Wilga Private Hospital to provide additional patient wards and associated facilities within a new single storey building wing.

On 17 October 2012, Council approved Development Application No. DA/739/2012 for the Torrens Title subdivision of one allotment into two lots at No. 2A Manor Road, Hornsby. Proposed lot 1 comprised an area of 1.175ha and contained the existing Mt Wilga House. Proposed lot 2 comprised an area of 639m² and would be vacant. Proposed Lot 2 would have a frontage of 21.1 metres to Manor Road.

On 23 June 2015, Council approved Development Application No. DA/669/2014 for the construction of a two storey dwelling house and an attached secondary dwelling on the newly created allotment (Lot 2).

On 19 May 2015, Council approved Development Application No. DA/1430/2014 for alterations and additions to Mount Wilga House involving alterations to the bedrooms, bathrooms and kitchen; the conversion of attic space into a bedroom and media room; a rear verandah addition with underground basement parking; landscape works; an extended driveway; a swimming pool and paving, and the re-

construction of entry gates. Council records indicate that a construction certificate for these works has not been obtained.

On 2 September 2016, Council approved Development Application No. DA/669/2014/A for the removal of the Turpentine tree along the frontage of No. 2 Manor Road.

On 20 September 2016, the subject development application was lodged and is the subject of this report.

APPLICATION HISTORY

On 4 October 2016, Council requested the submission of the required fee payable to the NSW Rural Fire Service pursuant to Clause 66 of the *Environmental Planning and Assessment Regulations 2000*.

On 14 October 2016, Council requested additional information in the form of an Arboricultural Impact Assessment, Bushfire Report, Driveway and Vehicular Crossing Plan and a Statement of Environmental Effects.

On 17 November 2016, Council received additional information in the form of a Statement of Environmental Effects.

On 5 January 2017, Council received additional information in the form of a Bushfire Report.

On 3 February 2017, Council received general terms of approval from the NSW Rural Fire Service for the Integrated Development in accordance with Section 91 of the *Environmental Planning and Assessment Act 1979*.

On 9 February 2017, Council requested additional information from the applicant in the form of a Section 65A approval obtained from the Heritage Council of NSW. The intent of this requested information was to seek clarification from the Heritage Council concerning excavation within the Structural Root Zone of the Turpentine trees along Manor Road, as a means of facilitating the construction of the driveway over proposed Lot 102.

On 28 April 2017, Council received additional information in the form of an amended Vehicular Crossing Plan, Heritage Impact Statement and an Arboricultural Impact Assessment and a Section 65A approval obtained from the Heritage Council of NSW.

On 11 July 2017, Council received an amended Subdivision Plan showing indicative building envelopes on proposed Lots 101 and 102.

On 20 July 2017, Council received additional information in the form of a revised Section 65A approval from the Heritage Council of NSW.

SITE

The site is identified as Lot 1 DP 1181742 and is known as No. 2A Manor Road, Hornsby. The site is located on the corner of Manor Road and Rosamond Street. The land has a moderate slope from the north west to the south eastern boundary.

The site has an area of 1.175 ha and contains Mt Wilga House which is listed on the State Heritage register (SHR). The house is located near the centre of the site in an elevated position. The grounds around Mt Wilga House are landscaped with grassed lawns, interspersed with mature trees and lower vegetation. A significant stand of Turpentine trees is located on the southern side of the site adjacent to Manor Road. There is a disused tennis court in the south-eastern corner of the property.

The site is surrounded by a low-density residential neighbourhood. The area contains detached residential dwellings generally ranging in height from one to two storeys.

The site is bushfire prone with Category 1 vegetation to the south.

The site adjoins Mt Wilga Private Hospital on its northern and western boundary.

PROPOSAL

The proposal is for the Torrens Title subdivision of one allotment into three lots.

Proposed Lot 100 is an irregular shaped allotment with an area of 1.06 hectares and would retain Mount Wilga House and the majority of its curtilage, including all of the northern, eastern and western setbacks. The allotment would be accessed via the existing vehicular access and driveway along Rosamond Street to the north-east.

Proposed Lot 101 is an irregular shaped allotment with an area of 550m² and is currently vacant. The allotment would be accessed via a driveway from Manor Road.

Proposed Lot 102 is an irregular shaped allotment with an area of 600m² and is currently vacant. The allotment would be accessed via a driveway from Manor Road.

Stormwater runoff from proposed Lots 101 and 102 would be drained to Council's street drainage system via an on-site detention system.

ASSESSMENT

The development application has been assessed having regard to '*A Plan for Growing Sydney*', the '*Draft North District Plan*' 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 A Plan for Growing Sydney and (Draft) North District Plan

A Plan for Growing Sydney has been prepared by the NSW State Government to guide land use planning decisions for the next 20 years. The Plan sets a strategy and actions for accommodating Sydney's future population growth and identifies dwelling targets to ensure supply meets demand. The Plan identifies that the most suitable areas for new housing are in locations close to jobs, public transport, community facilities and services.

The NSW Government will use the subregional planning process to define objectives and set goals for job creation, housing supply and choice in each subregion. Hornsby Shire has been grouped with Hunters Hill, Ku-ring-gai, Lane Cove, Mosman, North Sydney, Ryde, Northern Beaches and Willoughby to form the North District. The Greater Sydney Commission has realised the draft North District Plan which includes priorities and actions for the Northern District for the next 20 years. The identified challenge for Hornsby Shire will be to provide an additional 4,350 dwellings by 2021 with further strategic supply targets to be identified to deliver 97,000 additional dwellings in the North District by 2036.

The proposed development would be consistent with '*A Plan for Growing Sydney*' and '*Draft North District Plan*' by providing two additional residential allotments capable of accommodating a future dwelling house and contributing to the achievement of Council's dwelling target.

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 Local Environmental Plan 2013

The proposed development has been assessed having regard to the provisions of the *Hornsby Local Environmental Plan 2013 (HLEP)*.

2.1.1 Zoning of Land and Permissibility

The subject land is zoned R2 Low Density Residential under the *HLEP 2013*. The objectives of the zone are:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

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

2.1.2 Minimum Lot Size

Clause 4.1 of the *HLEP* provides that the subdivision lot size should not be less than the minimum area shown for the land on the Lot Size Map. The minimum lot size for the subject site is 500m². The proposed lots have areas of 550m², 600m² and 1.06 hectares, complying with this provision.

2.1.3 Heritage Conservation

Clause 5.10 of the *HLEP* sets out heritage conservation provisions for Hornsby Shire.

The property, Mount Wilga is heritage item No. 495 (Mount Wilga and grounds) of State significance under the provisions of Schedule 5 (Environmental Heritage) of the *HLEP* and the NSW Heritage Act State Register (Mt Wilga House).

The property is also located in the immediate vicinity of heritage listed item No. 541 at No.45 Rosamond Street (house) and the street trees along Manor Road identified to be of local heritage significance under the provisions of Schedule 5 (Environmental Heritage) of the *HLEP*.

A Heritage Impact Statement has been submitted with the application. The Statement notes that the proposed subdivision is intended to support works to conserve and repair Mount Wilga House for use as a family dwelling. The Statement confirms the owner’s commitment to conserve the heritage item and use all of the funds from the subdivision for the works previously approved by the Heritage Council and Hornsby Council.

The Statement submits that the subdivision would be located on the least significant part of the property. The landscape setting around the house would be retained and historical view lines between the road and the house would be unaffected.

Listing on the State Heritage Register means that the Heritage Council becomes the joint consent authority with the Council for proposed changes that may affect the heritage significance of the item. Prior to the lodgement of this application, the NSW Heritage Council Approval Committee, as delegate of the Heritage Council of NSW, considered a Section 60 application for the subdivision of one

allotment into three. The Committee resolved to approve the application subject to conditions pertaining to conservation works, landscape/tree protection, archival recording and subdivision design.

Specifically, Condition No. 2 of the Section 60 approval is as follows:

Condition No. 2 - *“Funds from the sale of the new lots shall be directed to approved house and garden conservation works as per the s.60 approval dated 10 November 2014”.*

The intent of Condition No. 2 is to facilitate the restoration of Mount Wilga House and surrounds by directing funds from the sale of proposed Lots 101 and 102 towards approved Development Application No. 1430/2014 for works to Mount Wilga House involving alterations to the bedrooms, bathrooms and kitchen; the conversion of attic space into bedroom and media room; a rear verandah addition with underground basement parking; landscape works; an extended driveway; a swimming pool and paving, and the re-construction of entry gates.

Council records indicate that a construction certificate for these works has not been obtained. Consequently, a condition is recommended for the completion of the alterations and additions to the Mount Wilga House approved under DA/1430/2014 prior to the issue of a Subdivision Certificate, to meet the intention of Condition No. 2.

Condition No. 6 of the Section 60 approval is as follows:

Condition No. 6 - *“No excavation or disturbance is permitted within the structural root zone of the line of Turpentine (Syncarpia glomulifera) and the Bunya pine (Araucaria bidwillii) along Manor Road, to ensure these trees’ ongoing health”.*

Council’s tree assessment determined that the proposed location of the vehicular access and driveway over proposed Lot 102 would encroach into the Structural Root Zone (SRZ) of tree No. 4, which would not comply with Condition No. 6 of the approval of the Heritage Council of NSW.

Accordingly, further consultation was undertaken with the Heritage Council to clarify the intent of Condition No. 6. The Heritage Council advised that the condition could be modified to allow for the construction of the driveways whilst maintaining the health of the stand of Turpentine trees along the frontage of Manor Road, subject to conditions.

This Section 60 application was subsequently modified under Section 65A of the *Heritage Act 1977* to allow for minor construction works within the SRZ of the trees along Manor Road. Condition No. 6 was modified as follows:

“No major excavation is permitted within the structural root zone of the line of Turpentine (Syncarpia glomulifera) and the Bunya pine (Araucaria bidwillii) along Manor Road, to ensure these trees’ ongoing health”.

Effectively, the amendment to the Section S65A approval would facilitate the installation of the driveways within the SRZ of the Turpentine trees along Manor Road, subject to the utilisation of tree sensitive construction techniques during construction.

As discussed under Section 3.1.1 of this report, the proposed subdivision and associated vehicular access and driveways serving proposed Lots 101 and 102 would be achievable without compromising the health and longevity of these Turpentine trees, subject to conditions.

In summary, the NSW Heritage Council is the responsible authority for assessing the heritage impacts of the proposal on the State listed heritage item. The Heritage Council has indicated its support for the proposal subject to conditions of consent including that monies obtained from the approval be

used to conserve Mount Wilga House. Council is responsible for evaluation of the application for the other non-heritage matters as addressed in this report.

2.1.4 Earthworks

Clause 6.2 of the *HLEP* states that consent is required for proposed earthworks on site. Before granting consent for earthworks, Council is required to assess the impacts of the works on adjoining properties, drainage patterns and soil stability of the locality.

All earthworks proposed as part of this subdivision would relate to the installation of the proposed vehicular access and driveways over proposed Lots 101 and 102.

The amended Arboricultural Impact Assessment recommends that the driveways be built in accordance with *Australian Standard 4970-2009* and at a maximum depth of 100mm to avoid disturbance to the Structural Root Zone (SRZ) of the Turpentine trees along Manor Road. Conditions are recommended requiring that the two driveways be built on grade to minimise potential disturbance of the SRZ and TPZ of these trees.

Council's engineering assessment of the proposed works and excavation concludes that the works are unlikely to have a detrimental effect on drainage patterns and soil stability in the locality of the development, subject to recommended consent conditions.

2.2 State Environmental Planning Policy No. 55 (Remediation of Land)

The Policy provides guidelines for the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment. Clause 7 requires Council to consider whether land is contaminated prior to granting consent to the carrying out of any development on that land.

Should the land be contaminated, Council must be satisfied that the land is suitable in a contaminated state for the proposed use. If the land requires remediation to be undertaken to make the land suitable for the proposed use, Council must be satisfied that the land will be remediated before the land is used for that purpose.

A search of Council's records and aerial photos indicates the site has a history of residential use. Accordingly, it is not likely that the site has experienced any significant contamination and further assessment under SEPP 55 is not required.

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

The site is located within the catchment of the Hawkesbury Nepean River. Part 2 of this Plan contains general planning considerations and strategies requiring Council to consider the impacts of development on water quality, aquaculture, recreation and tourism.

Subject to the implementation of sediment and erosion control measures and stormwater management to protect water quality, the proposal would comply with the requirements of the Policy.

2.4 Clause 74BA Environmental Planning and Assessment Act, 1979 - Purpose and Status of Development Control Plans

Clause 74BA of the *Environmental Planning and Assessment Act, 1979* states that a DCP provision will have no effect if it prevents or unreasonably restricts development that is otherwise permitted and complies with the development standards in relevant Local Environmental Plans and State Environmental Planning Policies.

The principal purpose of a development control plan is to provide guidance on the aims of any environmental planning instrument that applies to the development; facilitate development that is permissible under any such instrument; and achieve the objectives of land zones. The provisions contained in a DCP are not statutory requirements and are for guidance purposes only. Consent authorities have flexibility to consider innovative solutions when assessing development proposals, to assist achieve good planning outcomes.

2.5 Hornsby Development Control Plan 2013

The proposed development has been assessed having regard to the relevant desired outcomes and prescriptive requirements within the *Hornsby Development Control Plan 2013 (HDCP)*. The following table sets out the proposal's compliance with the prescriptive requirements of the Plan:

Hornsby Development Control Plan 2013 – Part 6 – Subdivision			
Control	Proposal	Requirement	Complies
Site Area	1.175 ha	N/A	N/A
Lot Area			
Lot 100	1.06 ha	500m ²	Yes
Lot 101	550m ²	500m ²	Yes
Lot 102	600m ²	500m ²	Yes
Lot Width (building line)			
Lot 100	93m	12m	Yes
Lot 101	28m	12m	Yes
Lot 102	22m	12m	Yes
Lot 100 – Existing Mt Wilga House			
Setbacks			
- <i>Front</i>	As existing	6m	Yes
- <i>Side (south)</i>	24m	0.9m	Yes
- <i>Side (north)</i>	As existing	0.9m	Yes
- <i>Rear</i>	As existing	5m	Yes
Landscaped Area	88%	45%	Yes
Private Open Space	>24m ²	24m ²	Yes
Car Parking	>2 spaces	2 spaces	Yes
Lot 101 – Proposed Building Envelope			

Building Envelope	200m ²	200m ²	Yes
Setbacks			
- <i>Front</i>	6m	6m	Yes
- <i>Side (west)</i>	1 - 2.8m	0.9m	Yes
- <i>Side (east)</i>	1.2 - 10.3m	0.9m	Yes
- <i>Rear</i>	2.3 - 5m	5m	No
Landscaped Area	54%	20%	Yes
Private Open Space	60m ²	24m ²	Yes
Car Parking	2 spaces	2 spaces	Yes
Lot 102 – Proposed Building Envelope			
Building Envelope	200m ²	200m ²	Yes
Setbacks			
- <i>Front</i>	11.7m	6m	Yes
- <i>Side (west)</i>	1.15 - 1.4m	0.9m	Yes
- <i>Side (east)</i>	1.6 - 3.25m	0.9m	Yes
- <i>Rear</i>	4.5 – 5.35m	5m	No
Landscaped Area	60%	30%	Yes
Private Open Space	100m ²	24m ²	Yes
Car Parking	2 spaces	2 spaces	Yes

As detailed in the above table, the proposed development generally complies with the prescriptive measures within the HDCP, with the exception of the rear setback of proposed Lots 101 and 102. A discussion on compliance with relevant performance requirements is provided below.

2.5.1 Lot Shape

The proposed subdivision would result in an irregular shaped lot (Lot 101) with a curved frontage to Manor Road. The proposed allotment complies with the minimum lot size requirements of the *HLEP* and can accommodate a 200m² building envelope with a 24m² principal private open space area and car parking for two vehicles.

The proposed subdivision would result in an irregular trapezoid shaped lot (Lot 102) with a frontage of 23.39 metres to Manor Road which complies with the minimum lot size requirements of the *HLEP* and

can accommodate a 200m² building envelope with a 24m² principal private open space area and car parking for two vehicles.

The proposal meets the desired outcomes of Part 6.2 Urban Subdivision of the HDCP and is considered acceptable.

2.5.2 Vehicular Access and Parking

Proposed Lot 100 would retain the existing access off Rosamond Street. Proposed Lots 101 and 102 would incorporate a driveway from Manor Road and would have sufficient space to accommodate two car parking spaces on the site.

The development site is located in an R2 Low Density Residential Zone with a 50km/h speed limit and a no parking zone is enforced along the frontages of proposed Lots 101 and 102. It is noted that Manor Road ends in a cul de sac and the flow of vehicular traffic along Manor Road and Rosamond Street is minimal. The additional movement of vehicles as a result of the proposed lots would be minor and would not pose any significant risk to pedestrians or vehicles along Manor Road.

The application is assessed as satisfactory with regard to car parking, traffic and vehicular access.

2.5.3 Setbacks

Table 6.2(c) within Part 6.2.1(h) of the HDCP states that the proposed building envelope should be set back at a minimum distance of 5 metres from the rear boundary. The indicative building envelope over proposed Lots 101 and 102 would be set back at a distance of 2.3 - 5m and 4.5 – 5.35m respectively, which would not comply with this prescriptive measure.

Consideration has been given to the relocation of the proposed building envelopes as a means of establishing whether compliance with these setback controls could occur. The indicative building envelope over proposed Lot 101 could be rotated in an anti-clockwise direction which would facilitate compliance with the setback controls of the HDCP. Similarly, the indicative building envelope over proposed Lot 102 could be shifted 2.7 metres towards Manor Road, thus facilitating compliance with this prescriptive measure.

Additionally, it is noted that Table 3.1.2(a) within Part 3.1.2 of the HDCP states that a minimum rear boundary setback of 3 metres should be achieved for any proposed single storey dwelling house. In this regard, a 2.2m² portion of the building envelope over proposed Lot 101 would not comply with this control, which is largely as a consequence of the irregular shaped rear boundary and the skewed placement of the envelope on the Lot.

The potential impact of future dwelling houses on the stand of Turpentine trees adjacent to Manor Road is discussed under Section 3.1.1 of this report.

In summary, a future dwelling house of reasonable size could be sited on either proposed Lots 101 and 102 whilst maintaining compliance with the HDCP setback controls.

2.6 Section 94 Contributions Plans

Hornsby Shire Council Section 94 Contributions Plan 2012-2021 applies to the development as it would result in two additional residential lots. Accordingly, the requirement for a monetary Section 94 contribution is recommended as a condition of consent.

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

3.1.1 Tree and Vegetation Preservation

One submission raises concerns with respect to the potential loss of the Turpentine trees along Manor Road as a result of the small size of proposed Lots 101 and 102 and the construction of future dwellings on these lots.

Council’s assessment of the proposal included a detailed examination of the trees on site in conjunction with the amended Arboricultural Impact Assessment prepared by T.J Hawkeswood Scientific Consulting dated 12 March 2017.

The site contains trees which satisfy Council’s criteria for being individually significant, identified as Tree Nos. T1-T10 on the Tree Location Plan. Further, the eleven trees numbered T1-T11 would satisfy Council’s criteria for being a Significant Group.

Trees Nos. T1-T8 are identified as *Syncarpia glomulifera* (Turpentine) and have been assessed as being in good condition with a high ‘Safe Useful Life Expectancy’ (SULE) rating and are worthy of retention. Tree No. T9 is identified as an *Araucaria cunninghamii* (Hoop Pine) and tree T10 is identified as a *Pinus* sp., both of which are identified as significant specimens.

As indicated in the amended Arboricultural Impact Assessment, no trees would be removed to facilitate the construction of the proposed driveways serving proposed Lots 101 and 102. Council’s tree assessment has determined that the proposed driveway over proposed Lot 102 would encroach into the Structural Root Zone (SRZ) of tree No. T4 (Turpentine). The proposed vehicular access and driveways serving proposed Lots 101 and 102 would also encroach into the Tree Protection Zone (TPZ) of the two Turpentine trees identified as trees Nos. T3 and T4.

As noted in the submitted Arboricultural Impact Assessment, the subsoil within the SRZ to a maximum depth of 10cm would likely contain minor roots that could either be cut or repositioned to facilitate the construction of the driveways. The report recommends that the driveways be built in accordance with *Australian Standard 4970-2009* and at a maximum depth of 100mm to avoid disturbance to the SRZ of these two Turpentine trees.

Consideration has been given to the use of a single shared driveway over proposed Lot 101 as a means of avoiding disturbance of the SRZ of tree T4. Given that the northern side of Manor Road is a ‘no parking zone’, there is no opportunity for on-street parking to the front of the site. A driveway over proposed Lot 102 would facilitate on-site visitor parking.

Additionally, consideration has been given to the impact of future dwelling houses on the Turpentine trees at the front of proposed Lots 101 and 102. The 200m² indicative building envelopes shown on the submitted subdivision plan demonstrate that dwelling houses of reasonable size would be able to be constructed on proposed Lots 101 and 102 outside the SRZ of the trees. The SRZ of trees T1-T8 are calculated to be between a minimum of 2.5m and a maximum of 3.6m. On this basis, the NSW Heritage Council has indicated its support for the proposal as it is of the view that future dwellings could be constructed on the allotments while retaining the trees.

The impact of future dwelling houses on the trees would be the subject of further consideration on receipt of development applications for the houses. Any application would be required to demonstrate

tree sensitive construction techniques to minimise impacts on the trees. Notwithstanding, Council's tree assessment notes that future development would potentially impact on the life expediency of the trees based on a compliant setback of 6 metres from Manor Road and incursion into the TPZ for the trees.

As a precaution to ensure compensatory planting for the potential loss of these trees, a condition is recommended for the planting of a row of 12 locally occurring, indigenous trees adjacent to the southern boundary of proposed Lot 100. The row of trees would provide a buffer between future dwellings and Mount Wilga House. Tree planting would also complement the recommended condition of the Heritage Council that a 3m wide soft soil zone be provided along the boundary to be planted with shrubs and small trees including screen conifers capable of growing to a height of 6m. The species are to be approved by the Heritage Division prior to installation.

The recommended conditions are consistent with the Heritage Impact Statement which states that *"boundary planting along the proposed subdivision rear alignment would create the opportunity to recreate the traditional back-of-house screen planting"*.

3.1.2 Stormwater Management

Stormwater runoff from proposed Lots 101 and 102 would be drained to Council's street drainage system via an on-site detention system. To avoid disturbance of the Turpentine trees adjacent to Manor Road, a condition is recommended requiring the conduit for electricity, water, gas and telephone be located beneath the driveways of proposed Lots 101 and 102.

The proposed stormwater management solution is considered satisfactory and the development would not have any adverse impact on the existing street drainage system nor adjoining properties, subject to the recommended conditions.

3.2 Built Environment

3.2.1 Built Form

The extent of works required as part of the subdivision application is limited to civil works including driveway and stormwater drainage works. Subject to conditions, the proposal would not pose an impact to the surrounding built environment and is considered acceptable.

The Heritage Impact Statement notes that future dwelling should be designed as brick and tile houses with pitched roofs, some gables and openings facing Manor Road with a predominately vertical orientation. The Statement also notes that the scale of the future dwellings should be viewed from Mount Wilga as single storey so they do not challenge the dominance of the Mount Wilga precinct.

Future dwelling houses on the allotments would be the subject of further development applications. The proposed allotments would be capable of accommodating future dwelling houses in accordance with the requirements of the Hornsby Development Control Plan 2013 and the recommendations of the Heritage Impact Statement.

3.3 Social Impacts

The residential subdivision would improve housing supply in the locality. This is consistent with Council's Housing Strategy which identifies the need to provide a mix of housing options to meet future demographic needs in Hornsby Shire.

The proposal would also provide funds to assist in the conservation of a State Heritage Item. In accordance with the stated intent of the development application, a condition is recommended for monies from the proposal to be used to fund conservation works to Mount Wilga House.

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 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”*.

4.1 Bushfire Risk

The application was referred to the Rural Fire Service (RFS) as Integrated Development pursuant to the *Rural Fires Act 1997*. The RFS has raised no objection to the development application, subject to a consent condition requiring that each proposed lot be managed as an Inner Protection Area (IPA).

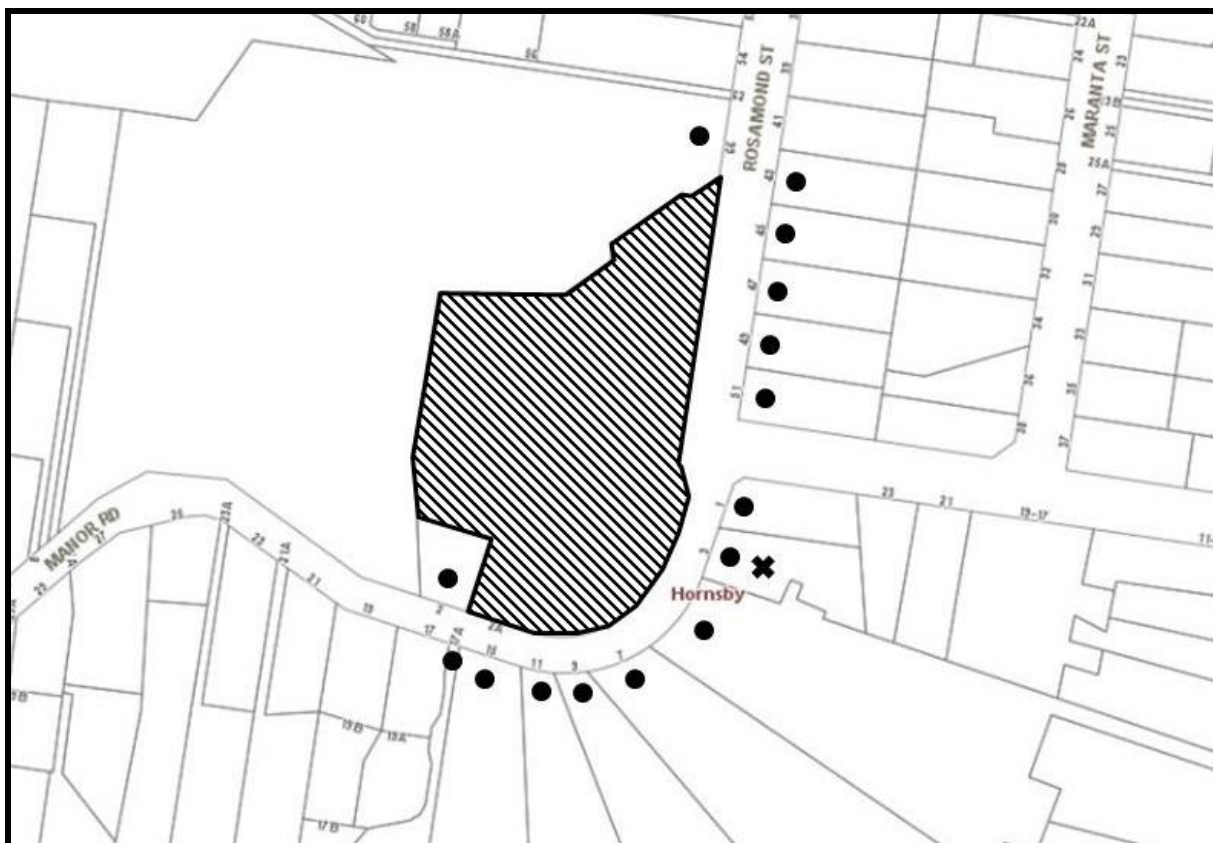
As defined within Appendix 2 of *Planning for Bush Fire Protection 2006*, *“an IPA should provide a tree canopy of less than 15% and should be located greater than 2 metres from any part of the roofline of a dwelling”*. Council’s bushfire assessment has determined that the site comprises an existing tree canopy cover of less than 15% and the proposal would comply with the RFS conditions requiring each proposed lot be managed as an Inner Protection Area (IPA).

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 6 October 2016 and 5 November 2016 in accordance with the Notification and Exhibition requirements of the HDCP. During this period, Council received one submission. The map below illustrates the location of those nearby landowners who made a submission.



NOTIFICATION PLAN

• PROPERTIES NOTIFIED	X SUBMISSIONS RECEIVED	 PROPERTY SUBJECT OF DEVELOPMENT	
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One submission objected to the development, generally on the grounds that the development would result in:

- Small allotments which would not compliment Mount Wilga House; and
- The Turpentine trees along Manor Road would likely be removed as a result of future dwellings on proposed Lots 101 and 102.

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 development would be in the public interest.

CONCLUSION

The proposal is for the Torrens Title subdivision of one allotment into three lots.

The proposed subdivision is considered satisfactory in maintaining an appropriate curtilage to Mount Wilga House and enabling the retention of the row of Turpentine trees along the Manor Road frontage.

The NSW Heritage Council has indicated its support for the proposal which involves subdivision of a State listed heritage item.

The proposed development is considered acceptable with regard to the provisions of the relevant environmental planning instruments applicable to the site and the Hornsby Development Control Plan.

The application is recommended for approval.

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.

RESPONSIBLE OFFICER

The officer responsible for the preparation of this Report is the Manager – Development Assessments – Rodney Pickles, who can be contacted on 9847 6731.

JAMES FARRINGTON
Group Manager
Planning Division

ROD PICKLES
Manager - Development Assessment
Planning Division

Attachments:

- 1.[ViewView](#) Locality Plan
- 2.[ViewView](#) Proposed Subdivision Plan
- 3.[ViewView](#) Tree Location Plan
- 4.[ViewView](#) Landscape Plan

File Reference: DA/1143/2016
Document Number: D07252126

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:

Approved Plans

Plan No.	Plan Title	Drawn by	Dated
Sheet 1 of 1, Issue 4	Plan showing proposed subdivision	C.M.S Surveyors Pty Ltd	10 Mar 2017

Supporting Documentation

Document/plan title	Prepared by	Dated
S60 Application no. 2016/S60/93	Heritage Council of NSW	3 August 2016
S65A Application no. 2017/S65A/13	Heritage Council of NSW	18 July 2017
Statement of Heritage Impact for Subdivision	NBRS + Partner	27 April 2016
Bushfire Safety Assessment for Subdivision	Roger Fenwick	October 2016
Revised Tree Location Plan	Hornsby Shire Council	30 May 2017
Structural Root Zone (SRZ) Plan	Hornsby Shire Council	10 March 2017
Subdivision Plan (including building envelopes)	C.M.S Surveyors Pty Ltd	10 March 2017
Arborist Impact Assessment	Hawkeswood Scientific	12 March 2017

	Consulting	
Statement of Environmental Effects	Unknown	October 2016
Landscape Plan	Hornsby Shire Council	26 July 2017

2. Section 94 Development Contributions

- a) In accordance with Section 80A(1) of the *Environmental Planning and Assessment Act, 1979* and the *Hornsby Shire Council Section 94 Development Contributions Plan 2014-2024*, the following monetary contributions must be paid to Council to cater for the increased demand for community infrastructure resulting from the development:

Description	Contribution (\$)
Roads	\$4,149.25
Open Space and Recreation	\$25,835.50
Community Facilities	\$9,931.95
Plan Preparation and Administration	\$83.35
TOTAL	\$40,000.05

being for two additional allotments.

- b) The value of this contribution is current as at 11 July 2017. If the contribution is not paid within the financial quarter that this condition was generated, the contribution payable will be adjusted in accordance with the provisions of the Hornsby Shire Council Section 94 Development Contributions Plan and the amount payable will be calculated at the time of payment in the following manner:

$$\frac{\$C_{PY}}{CPI_{DC}} = \frac{\$C_{DC} \times CPI_{PY}}{CPI_{DC}}$$

Where:

$\$C_{PY}$ is the amount of the contribution at the date of Payment

$\$C_{DC}$ is the amount of the contribution as set out in this Development Consent

CPI_{PY} is the latest release of the Consumer Price Index (Sydney – All Groups) at the date of Payment as published by the ABS.

CPI_{DC} is the Consumer Price Index (Sydney – All Groups) for the financial quarter at the date applicable in this Development Consent Condition.

- c) The monetary contribution must be paid to Council:
- prior to the issue of the Subdivision Certificate where the development is for subdivision; or
 - prior to the issue of the first Construction Certificate where the development is for building work; or

- iii) prior to issue of the Subdivision Certificate or first Construction Certificate, whichever occurs first, where the development involves both subdivision and building work; or
- iv) prior to the works commencing where the development does not require a Construction Certificate or Subdivision Certificate.

Note: It is the professional responsibility of the Principal Certifying Authority to ensure that the monetary contributions have been paid to Council in accordance with the above timeframes. Council's Development Contributions Plan may be viewed at www.hornsby.nsw.gov.au or a copy may be inspected at Council's Administration Centre during normal business hours.

3. Construction Certificate

- a) A Construction Certificate is required to be approved by Council or a Private Certifying Authority prior to the commencement of any works under this consent.
- b) A separate Construction Certificate must be obtained from Council for all works within the public road reserve under S138 of the *Roads Act*.
- c) A separate Construction Certificate must be obtained from Council for all works within drainage easements vested in Council.
- d) The Construction Certificate plans must not be inconsistent with the Development Consent plans.

REQUIREMENTS PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

4. Appointment of a Project Arborist

- a) A Project Arborist (AQF5 qualified) must be appointed to oversee the installation of tree protection and fencing required to protect the tree root zones. Details of the Arborist must be submitted to Council prior to the commencement of works.
- b) The installation and maintenance of tree protection fencing must be in accordance with Australian Standard AS 4970-2009 (1.4.4).
- c) Tree protection fencing must be erected around trees numbered T1-T8 as identified on the Revised Tree Location Plan prepared by Hornsby Shire Council dated 30 May 2017.
- d) The Tree protection fencing must be in accordance with the required tree protection zones as identified in the Arborist Impact Assessment prepared by Hawkeswood Scientific Consulting dated 12 March 2017.
- e) The Project Arborist (AQF5 qualified) must monitor the integrity of the tree protection methods, recording any modifications or alterations to the tree protection zone fencing for the duration of the construction period.
- f) The Project Arborist (AQF5 qualified) must submit to the Principal Certifying Authority (PCA) a certification/statement confirming that all tree protection measures have been installed in accordance with this consent and the specific requirements of Australian Standard "Protection of Trees on Development Sites" (AS 4970-2009).
- g) All Tree Protection Zones must have a layer of wood-chip mulch installed prior to works commencing and must be maintained throughout the period of construction at

a depth of 150mm – 300mm using material that complies with Australian Standard AS 4454.

5. Vehicular Crossing

- a) A separate application under the *Local Government Act, 1993* and the *Roads Act, 1993* must be submitted to Council for the installation of any new vehicular crossing and the removal of the redundant crossing.
- b) The vehicular crossing must be constructed in accordance with Council's *Civil Works Design 2005*.
- c) Design levels at the front boundary must be obtained from Council for the design on the internal driveway.
- d) Approval must be obtained from all relevant utility providers that all necessary conduits be provided and protected under the crossing.

Note: An application for a vehicular crossing can only be made to one of Council's Authorised Vehicular Crossing Contractors. You are advised to contact Council on 02 9847 6940 to obtain a list of contractors.

6. Internal Driveway/Vehicular Areas

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

- a) The two driveways must be built on or above existing grade.
- b) Conduit for utility services including electricity, water, gas and telephone shall be provided underneath the vehicular crossings and driveways to avoid disturbance of the Turpentine trees adjacent to Manor Road. All existing overhead assets including electricity and telecommunications cabling shall be relocated underground at no cost to Council.
- c) A certificate from an appropriately licensed contractor must be submitted to the principal certifying authority certifying that the service conduits have been installed in accordance with the relevant utility provider and Australian Standards.

7. Building Code of Australia

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

8. Sydney Water – Approval

This application must be submitted to *Sydney Water* for approval to determine whether the development would affect any *Sydney Water* infrastructure, and whether further requirements are to be met.

Note: Building plan approvals can be obtained online via Sydney Water Tap inTM through www.sydneywater.com.au under the Building and Development tab.

REQUIREMENTS PRIOR TO THE COMMENCEMENT OF ANY WORKS

9. Erection of Construction Sign

- a) A sign must be erected in a prominent position on any site on which any approved work is being carried out:
 - i) Showing the name, address and telephone number of the principal certifying authority for the work;
 - ii) 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
 - iii) Stating that unauthorised entry to the work site is prohibited.
- b) The sign is to be maintained while the approved work is being carried out and must be removed when the work has been completed.

10. Toilet Facilities

- a) To provide a safe and hygienic workplace, toilet facilities must be available or be installed 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.
- b) Each toilet must:
 - i) be a standard flushing toilet connected to a public sewer; or
 - ii) be a temporary chemical closet approved under the *Local Government Act 1993*; or
 - iii) have an on-site effluent disposal system approved under the *Local Government Act 1993*.

11. Erosion and Sediment Control

To protect the water quality of the downstream environment, 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 may be issued for any non-compliance with this requirement without any further notification or warning.

REQUIREMENTS DURING CONSTRUCTION

12. Works Within Tree Protection Zones (TPZ)

- a) The two driveways must be built on or above existing grade.
- b) Any necessary excavation within the TPZ of the trees to be retained must be undertaken by using environmentally sensitive methods such as pneumatic or by hand as specified in Section 4.5.5 of Australian Standard AS 4970-2007.
- c) Any root pruning must be recorded and undertaken as specified in Sections 3.3.4, 4.5.4 and 4.5.5 of Australian Standard AS 4970-2009.
- d) The existing grade within the TPZ of all trees to be retained must not be altered.

- e) The installation of all services which enter or transects a designated TPZ must utilise sensitive methods of installation in manually excavated trenches.
- f) The process must be monitored by the project arborist to assess the likely impacts on retained trees.

Note: For manual excavation of trenches the project arborist must advise on roots to be retained and must monitor the works.

Note: Manual excavation may include the use of pneumatic and hydraulic tools. Refer Clause 4.5.3.

13. Construction Work Hours

All works 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. 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.

15. Council Property

To ensure that the public reserve is kept in a clean, tidy and safe condition during construction works, no building materials, waste, machinery or related matter is to be stored on the road or footpath.

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.

16. 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 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:

17. Maintain Canopy Cover

- a) A minimum of twelve medium to large trees selected from Council's booklet *'Indigenous Plants for the Bushland Shire'* such as Turpentine are to be planted at equal spacing along the southern side boundary of the adjacent site at No. 2A Manor Road, as shown in red on the Landscape Plan prepared by Hornsby Shire Council dated 26 July 2017;
- b) The trees shall be planted to complement the landscaping required in accordance with condition 25 a) of this consent;

- c) The trees are to be a minimum of 3 metres in height when planted; and
- d) The trees must reach a mature height greater than 20 metres.

18. Conservation Works

An Occupation Certificate to certify completion of all works for alterations and additions to the Mount Wilga House approved under DA/1430/2014 and the Section 60 Approval dated 10 November, 2014 must be obtained prior to the issuing of a Subdivision Certificate.

19. Sydney Water – s73 Certificate

A s73 Certificate must be obtained from Sydney Water and submitted to the PCA.

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.

20. Creation of Easements

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

- a) The creation of a “*Positive Covenant*” over the proposed Lots 101 and 102 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.

21. Damage to Council Assets

To protect public property and infrastructure, any damage caused to Council’s assets as a result of the construction or demolition of the development must be rectified by the applicant in accordance with Council’s Civil Works Specifications. Rectification works must be undertaken prior to the issue of an Occupation Certificate, or sooner, as directed by Council.

GENERAL TERMS OF APPROVAL – NSW RURAL FIRE SERVICE

The following conditions of consent are General Terms of Approval from the nominated State Agency pursuant to Section 91A of the Environmental Planning and Assessment Act, 1979 and must be complied with to the satisfaction of that Agency.

22. Asset Protection Zones

At the issue of subdivision certificate, each of the proposed Lots shall be managed in perpetuity as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones'.

GENERAL TERMS OF APPROVAL – HERITAGE COUNCIL OF NSW (SECTION S60 APPLICATION)

The following conditions of consent are General Terms of Approval from the nominated State Agency pursuant to Section 91A of the Environmental Planning and Assessment Act, 1979 and must be complied with to the satisfaction of that Agency.

23. Conservation Works

- a) Funds from the sale of the new lots shall be directed to the approved house and garden conservation works as per the s.60 approval dated 10 November 2014.
- b) Periodic reports shall be submitted to the Heritage Division by a suitably qualified and experienced heritage consultant outlining the conservation works carried out in each period and the costs associated with the work. This consultant shall confirm in writing, the completion of the conservation works as per the s.60 approval dated 10 November 2014 to the satisfaction of the Heritage Council or its delegate, prior to the occupation certificate being issued.

24. Subdivision

There shall be no further subdivision of Lot 1 in DP 1181742.

25. Landscape Protection

- a) Provide a 3m wide soft soil zone on the southern boundary of the proposed Lot 100 to be planted with shrubs and small trees including screen conifers capable of growing to a height of 6m. The species are to be approved by the Heritage Division prior to installation.
- b) Provide a soft soil zone on the Manor Road boundary of Lots 101 and Lot 102 to protect the row of Turpentine (*Syncarpia glomulifera*).
- c) No major excavation is permitted within the root zone of the line of Turpentine (*Syncarpia glomulifera*) and the Bunya pine (*Araucaria bidwillii*) along Manor Road, to ensure these trees ongoing health.

26. Archival Recording

Prepare a photographic archival record of the Bowling Green in accordance with Heritage Council of NSW guidelines. Provide a copy of the archival recording to the Heritage Council of NSW and Hornsby Shire Council prior to registering the proposed subdivision.

27. Duration of Approval

This approval shall be void if the activity to which it refers is not physically commenced within five years after the date of the approval or within the period of consent specified in any relevant development consent granted under the Environmental Planning and Assessment Act 1979, whichever occurs first.

GENERAL TERMS OF APPROVAL – HERITAGE COUNCIL OF NSW (SECTION S65A APPLICATION)

The following conditions of consent are General Terms of Approval from the nominated State Agency pursuant to Section 91A of the Environmental Planning and Assessment Act, 1979 and must be complied with to the satisfaction of that Agency.

28. Approved Development

Development must be in accordance with:

- a) Drawing No 747K Issue 4 titled Plan showing proposed subdivision of Lot 1 in DP 1181742 (with new driveways) dated 10 March 2017 prepared by C.M.S. Surveyors Pty Limited.
- b) Arborist Impact Assessment for part of Lot 1 DP 1181742, 2A Manor Road, Hornsby, New South Wales, prepared by Dr Trevor J Hawkeswood dated 12 March 2017.
- c) Addendum to April 2016 Statement of Heritage Impact for Subdivision, dated 17 March 2017.

29. Additional Tree Protection measures

All works to remove turf, clear 100mm depth of topsoil to lay the driveway, construct it and make good afterwards shall be supervised at all times by a qualified arborist with experience working on heritage sites. The name of this arborist and a summary of their appropriate experience shall be provided to and approved by the Heritage Council or its delegate before commencement of any works.

- 30. A scope of proposed tree protection measures shall be prepared by the arborist noted in Condition 29 and shall be provided to the Heritage Council or its delegate for their separate approval, before commencement of any works. The scope of measures shall include the best ground preparation, significant tree elements' protection, mulching and after care of all affected significant turpentine trees, including adjacent trees to the subject works, including ongoing monitoring of the affected trees' condition and health over a period of two (2) years.
- 31. All significant turpentine tree elements, including trunk, lower branches and foliage, structural root system and all roots at depths over 100mm below present ground surface, shall be appropriately protected during topsoil removal and construction works to avoid potential damage to the health and viability of the affected trees. The qualified arborist noted in Condition 29 shall monitor soil removal works and construction works to ensure all significant tree elements are not damaged.
- 32. The arborist noted in Condition 29 shall monitor the health and progress of the affected trees over a two (2) year period, providing six-monthly reports on their progress to and for the separate approval of the Heritage Council or its delegate.
- 33. Removal of sandstone coping should be limited to the width of the driveway crossings. Removed pieces of sandstone coping should be stored on site for future reuse.

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

Tree and Vegetation Preservation

In accordance with Clause 5.9 of the Hornsby Local Environmental Plan 2013 a person must not ringbark, cut down, top, lop, remove, injure or wilfully destroy any tree or other vegetation protected under the Hornsby Development Control Plan 2013 without the authority conferred by a development consent or a permit granted by Council.

Notes: A tree is defined as a long lived, woody perennial plant with one or relatively few main stems with the potential to grow to a height greater than three metres (3M). (HDCP 1B.6.1.c).

Tree protection measures and distances are determined using the Australian Standard AS 4970:2009, "Protection of Trees on Development Sites".

Fines may be imposed for non-compliance with both the Hornsby Local Environmental Plan 2013 and the Hornsby Development Control Plan 2013.

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.

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.

House Numbering

The house numbering for this subdivision shall be:

Lot	Street Number	Street Name	Street Type	Locality
100	2A	Manor	Road	Hornsby
101	2B	Manor	Road	Hornsby
102	2C	Manor	Road	Hornsby

Telecommunications Act 1997 (Commonwealth)

If you are aware of any works or proposed works which may affect or impact on Telstra's assets in any way, you are required to contact: Telstra's Network Integrity Team on Phone Number 1800 810 443.

6 DEVELOPMENT APPLICATION - INDUSTRIAL BUILDING COMPRISING OF WAREHOUSE UNITS, CHILDCARE CENTRE, SHOPS AND SIGNAGE - 242 NEW LINE ROAD, DURAL

EXECUTIVE SUMMARY

- DA No:** DA/29/2017 (Lodged 20 January 2017)
- Description:** Construction of an industrial building comprising 2 warehouse units, 79 place childcare centre, food and drink premises, 2 neighbourhood shops, signage, strata subdivision and first use
- Property:** Lot 2 DP 270769, No.242 New Line Road, Dural
- Applicant:** D242 Pty Ltd
- Owner:** Mr Peter Geoffrey Binet and Mrs Marion Ruth Binet
- Estimated Value:** \$2,922,445
- The proposal does not comply with the maximum 10.5m building height development standard under the *Hornsby Local Environmental Plan 2013*. The applicant has made a submission in accordance with Clause 4.6 'Exceptions to development standards' of the *Hornsby Local Environmental Plan 2013* to vary the building height standard. The submission is considered well founded and is supported.
 - No submissions have been received in respect of the application.
 - It is recommended that the application be approved as a deferred commencement to enable the registration of an easement for bushfire purposes with the NSW Department of Lands over the adjoining property.

RECOMMENDATION

THAT Council assume the concurrence of the Secretary of the Department of Planning and Environment pursuant to Clause 4.6 of the *Hornsby Local Environmental Plan 2013* and approve Development Application No. DA/29/2017 for construction of a two storey industrial building comprising two warehouse units, 79 place childcare centre, food and drink premises, two neighbourhood shops, signage, strata subdivision and first use at Lot 2 DP 270769, No.242 New Line Road, Dural 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. PL27/17.

BACKGROUND

On 13 October 2005, Council approved DA/1811/2004 for Community title subdivision of one allotment into six lots and demolition of the existing Dural Mower Centre.

On 18 September 2013, Council approved a modification to the approved subdivision involving bulk earthworks to provide level pads on each of the approved lots. The approved lots and building envelopes are as follows:

- Proposed Lot 1: 2,461m² access roadway and cul-de-sac allotment abutting the northern side boundary of the parent lot, with ancillary retaining wall/earthworks upon the adjoining site to the north (No.244 New Line Road);
- Proposed Lot 2: 2,182m² allotment with 764m² building footprint (RL199.3 AHD) and frontage to New Line Road;
- Proposed Lot 3: 2,120m² allotment with 742m² building footprint (RL196.0 AHD);
- Proposed Lot 4: 2,351m² allotment with 823m² building footprint (RL193.0 AHD);
- Proposed Lot 5: 2,159m² allotment with 756m² building footprint (RL 190.0 AHD); and
- Proposed Lot 6: 8,429m² allotment with 724m² building footprint (RL187.0 AHD) burdened by the 3.0m wide 'sewer easement' at the rear

On 14 October 2015, Council approved DA/1811/2004/B for modification to the approved landscape plan.

On 8 September 2006, SCC/38/2006 was lodged with Council for subdivision construction works. On 30 May 2016, Council approved SCC/38/2006.

On 16 November 2016, Council approved SC/49/2016. The subdivision was registered with NSW Land and Property Information in early 2017.

On 15 November 2016, a pre lodgement meeting was held between Council officers and the applicant for a development proposal on Lot 2 for construction of a two storey industrial building comprising 2 warehouse units, childcare centre, food and drinks premise, 2 neighbourhood shops and self-storage units within the basement. Council officers advised that a future development application should be accompanied with a Traffic and Parking study, Acoustic report, Air Quality report, Clause 4.6 variation request and advised that the building should be reduced in size and be setback 15m from New Line Road.

The subject application was lodged on 20 January 2017 for the construction of a two storey industrial building comprising 2 warehouse units, 79 place childcare centre, self-storage units, food and drink premises, 2 neighbourhood shops, signage, strata subdivision and first use.

On 1 March 2017, Council requested additional information regarding waste storage, parking survey, water quality, truck access and swept path diagrams.

On 6 April 2017, a meeting was held with the applicant to discuss concerns with regard to height, floor area and setbacks. The applicant was advised that proposed building should be reduced in height along the New Line Road frontage, fire stairs should be light weight structure and not enclosed and the basement self-storage units should be removed and converted to car parking spaces.

On 2 May 2017, amended plans and supporting documents were lodged with Council. The amended plans seek to address Council's concerns regarding the proposal and are the subject of this report.

The following development applications relating to Lots 3, 4, 5 and 6 of the subject subdivision have been approved:

- DA/1409/2016 on Lots 4 and 5 was approved on 5 May 2017 for construction of an industrial building comprising six warehouse units with ancillary office areas and 21 self-storage units.
- DA/1410/2016 on Lot 6 was approved on 12 May 2017 for construction of an industrial building comprising 11 warehouse units with ancillary office areas.
- DA/1530/2016 on Lot 3 was approved on 25 May 2017 for construction of 2 warehouse units with ancillary office areas and basement storage. The entire building would be purpose built for a medical printing business operated by 'Pharmaprint Pty Ltd'.

SITE

The 2,091m² vacant site is located on the eastern side of New Line Road within the Dural Service Centre and accessed via an 8.3m wide accessway known as John Binet Way. *(Note that a minor disparity exists between the 2091m² lot size registered on the Deposited Plan DP27069 and the 2,182m² lot size approved under DA/1811/2004 as a consequence of each allotment in the subdivision being slightly modified).*

The site experiences a fall of 7m towards the rear.

The Dural Service Centre comprises a mix of land uses including industrial, commercial and retail. To the north of the site comprises an industrial development which involves selling of Agricultural equipment. To the south comprises an existing dwelling and a series of sheds and warehouses to the rear. To the immediate west is a mix of rural residential land uses, wholesale nurseries and a restaurant and to the immediate east of the site is vacant land with a proposal currently under assessment with Council for the construction of an industrial building (DA/1530/2016).

The site is bushfire prone.

The site is not a heritage listed item or within a heritage conservation area, however, it adjoins heritage listed street trees along New Line Road which are listed under the provisions of Schedule 5 of the *Hornsby Local Environmental Plan 2013*.

PROPOSAL

The application proposes the construction of a two storey industrial building with basement car parking containing two warehouse units, 79 place childcare centre, food and drink premises, 2 neighbourhood shops, signage, first use and strata subdivision.

The front and northern side elevations would be clad with a corten steel and a natural concrete finish with stone feature walls.

Car parking is proposed via two basement levels with separate entrances for 62 vehicles including 2 accessible car spaces as well as 4 motorbike and 7 bicycle spaces.

The ground floor level would comprise 2 warehouse units, food and drink premises and 2 neighbourhood shops.

The first floor level would include a 79 place childcare centre and comprise 24 places for 0-1 year olds, 25 places for 1-2 year olds and 30 places for 3-4 year olds.

The proposed operating hours of the childcare centre would be from 6am to 6pm Monday to Friday and it is anticipated that the centre will employ 20 staff.

The proposed operating hours of the 2 warehouse units, food and drink premises and 2 neighbourhood shops would be from 7am to 6pm Monday to Saturday.

The proposal includes three wall signs located along the front façade measuring 4.5m² in area.

ASSESSMENT

The development application has been assessed having regard to '*A Plan for Growing Sydney*', the '*Draft North District Plan*' 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 A Plan for Growing Sydney and (Draft) North District Plan

A Plan for Growing Sydney has been prepared by the NSW State Government to guide land use planning decisions for the next 20 years. The Plan sets a strategy and actions for accommodating Sydney's future population growth and identifies dwelling targets to ensure supply meets demand. The Plan identifies that the most suitable areas for new housing are in locations close to jobs, public transport, community facilities and services.

The NSW Government will use the subregional planning process to define objectives and set goals for job creation, housing supply and choice in each subregion. Hornsby Shire has been grouped with Hunters Hill, Ku-ring-gai, Lane Cove, Mosman, North Sydney, Ryde, Northern Beaches and Willoughby to form the North District. The Greater Sydney Commission has realised the draft North District Plan which includes priorities and actions for the Northern District for the next 20 years. The identified challenge for Hornsby Shire will be to provide an additional 4,350 dwellings by 2021 with further strategic supply targets to be identified to deliver 97,000 additional dwellings in the North District by 2036.

The proposed development would be consistent with '*A Plan for Growing Sydney*' and '*Draft North District Plan*' by providing additional employment opportunities and services 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 Local Environmental Plan 2013

The proposed development has been assessed having regard to the provisions of the *Hornsby Local Environmental Plan 2013 (HLEP)*.

2.1.1 Zoning of Land and Permissibility

The subject land is zoned IN2 (Light Industrial) under the *Hornsby Local Environmental Plan 2013 (HLEP)*. The objectives of the IN2 zone are:

- To provide a wide range of light industrial, warehouse and related land uses,

- To encourage employment opportunities and to support the viability of centres,
- To minimise any adverse effect of industry on other land uses,
- To enable other land uses that provide facilities or services to meet the day to day needs of workers in the area; and
- To support and protect industrial land for industrial uses.

The proposed development is defined as 'light industry', 'childcare centre', 'food and drink premises', 'neighbourhood shop' and 'signage' and the uses are permissible in the IN2 Light Industrial zone with Council's consent.

2.1.2 Height of Buildings

Clause 4.3 of the *HLEP* provides that the height of a building on any land should not exceed the maximum height shown for the land on the Height of Buildings Map. The maximum permissible height for the subject site is 10.5m. The proposed building has a maximum height of 15.4m and does not comply with this provision. The non-compliance is addressed below under Section 2.1.4 of this report.

2.1.3 Floor Space Ratio

Clause 4.4 of the *HLEP* provides that the maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map. The maximum permissible floor space ratio for the subject site is 0.7:1. The proposed building has a gross floor area of 1,366.87m² and a floor space ratio of 0.65:1 and complies with this provision.

2.1.4 Exceptions to Development Standards

The application has been assessed against the requirements of Clause 4.6 of the *HLEP*. This clause provides flexibility in the application of development standards in circumstances where strict compliance with those standards would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objectives of the zone.

The proposed development exceeds the maximum building height development standard of 10.5m by 4.3m.

The objective of the height of buildings development standard under Clause 4.3 of *HLEP* is as follows:

To permit a height of buildings that is appropriate for the site constraints, development potential and infrastructure capacity of the locality.

The applicant has made a submission in support of a variation to the development standard in accordance with Clause 4.6 of the *HLEP*. The applicant states the proposed variation is considered to be consistent with the objectives of the control and is justified as follows:

- *The proposed development generally complies with the building height control along the front western elevation;*
- *The variation to the building height control is generally limited to the childcare centre on the first floor level which occupies a small portion of the building footprint below;*
- *The proposed building provides a relatively large setback to New Line Road, with the setback and landscaping contributing to a high quality architectural solution;*

- *The proposed development will not impose any significant or adverse impacts on the amenity of any surrounding land;*
- *Strict compliance with the control would diminish the design quality of the building, and produce no material benefits in terms of the visual appearance of the building and its relationship with surrounding land;*
- *The articulated building form minimises the overall height, bulk and scale, and the building form will not be perceived as visually offensive, jarring, or unsympathetic to the existing or future character of development in the locality;*
- *There are other buildings in the Dural Service Centre locality that do not strictly comply with the building height control such as the Bunnings (13m) at No.248-250 New Line Road and the Resolution Fitness Building (12.5m) at 256 New Line Road; and*
- *The variation is a result of the sloping topography of the site which falls away by 6 metres.*

State Government Guidelines on varying development standards recommend considering the provisions of Clause 4.6 of the LEP and the 'five part test' established by the Land and Environment Court 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 compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.

The applicant's submission to vary the maximum building height development standard is considered well founded for the following reasons:

- The height non-compliance would not be perceptible when viewed from New Line Road as the front elevation complies with the 10.5m building height and the height non-compliance is limited to the childcare centre roof in the middle of the building on the first floor level which occupies 48% (580m²) of the building footprint;
- The height non-compliance is a result of providing a level building platform at the top of a bank which slopes by 4m and providing two separate basement entrances to accommodate a childcare centre to separate children and parents using the childcare centre parking from the warehouse units, shops, bin area and truck loading area which would provide a desirable planning outcome by improving safety;

- The height variation is exaggerated by 1m to 1.5m as the site was previously excavated during the subdivision to provide level building platforms of RL 198.2 and building height is measured from the existing ground level, not the natural ground level;
- The proposal would not set an unacceptable precedent for the precinct, taking into account that the excess height is a result of accommodating a childcare centre which requires two separate basement entrances, providing a level building platform for future uses and the sloping topography of the site and is limited to a small portion of the roof area above the childcare centre;
- Strict compliance with the control would result in a stepped building platform which is not suitable for tenants using the warehouses, childcare centre or shops and would not comply with Building Code Australia Access requirements for people living with disabilities. Further, strict compliance with the height control would result in the building being presented as a single storey structure to New Line Road which would diminish the design quality of the building and produce no material benefits in the visual appearance of the building.
- The height variation would not cause significant adverse impacts to surrounding properties in terms of overshadowing, visual impacts or view loss;
- It is considered that there is sufficient environmental planning grounds to vary the height non-compliance as outlined in the *Four2Five Pty Ltd v Ashfield Council 2015* judgement which stipulated that there must be “*sufficient environmental planning grounds to justify contravening the development standard*” as strict compliance would diminish the design quality of the building both internally and externally, result in extensive amounts of excavation to provide basement car parking which would not comply with Australian Standards for ramp gradients and result in a stepped building platform which would not comply with Building Code Australia Access regulations.
- The proposal is considered to be in the public interest as it achieves consistency with the objectives of the IN2 Light Industrial Zone and the objective of the Height of building development standard. Notwithstanding the building height non-compliance, the application is a reasonable outcome for the site and achieves the aims of the *HLEP and HDCP*; and
- Satisfies the Land and Environment Court’s parameters for a well-founded objection to depart from a development standard.

Based on this assessment, it is considered that compliance with the development standard would be unreasonable and unnecessary in the circumstances of the case. Accordingly, the Clause 4.6 submission is supported.

In respect to the Director-General’s considerations under Clause 4.6, the proposed variation would not raise any matter of significance for State or regional environmental planning. Strict compliance with the standard would not result in an acceptable environmental outcome for the subject site and would not be in the public interest.

2.1.5 Heritage Conservation

Clause 5.10 of the *HLEP* sets out heritage conservation provisions for Hornsby Shire. The site does not include a heritage item and is not located in a heritage conservation area. However, the site adjoins heritage listed street trees on New Line Road, Dural. The tree species which are present are Sydney Blue Gum and Angophora. Some of the trees specimens date back to the 1920s-1930s and act as significant ecological and biological corridor along New Line Road.

The proposed building would not result in an impact to the heritage significance of the existing street character, is setback 16m from New Line Road and would not result in the removal of any street trees on New Line Road. Accordingly, no further assessment regarding heritage is necessary.

2.1.6 Earthworks

Clause 6.2 of the *HLEP* states that consent is required for proposed earthworks on site. Before granting consent for earthworks, Council is required to assess the impacts of the works on adjoining properties, drainage patterns and soil stability of the locality.

The proposal would result in a negligible amount of excavation due to the slope of the land which falls by 6m to the rear and that the site has been previously excavated to create a level building pad established during DA/1811/2004 for Community title subdivision of one allotment into six lots.

Appropriate conditions are recommended to address site stability, downstream water quality, fill quality and amenity of adjoining properties.

Subject to recommended conditions, the proposal is satisfactory in addressing the provisions under Clause 6.2 of *HLEP*.

2.2 State Environmental Planning Policy No 55 – Remediation of Land

State Environmental Planning Policy No. 55 (SEPP 55) requires that Council must not consent to the carrying out of any development on land unless it has considered whether the land is contaminated or requires remediation for the proposed use.

DA/1811/2004 for Community title subdivision of one allotment into six lots and demolition of the existing Dural Mower Centre included a Remedial Action Plan to assess potential contamination of the site. Council's environmental health assessment of the proposal concurred with the results within the Remedial Action Plan that the site is unlikely to be contaminated.

A condition is recommended for excavated material to be classified by a suitably qualified person in accordance with the Department of Environment, Climate Change and Water NSW *Waste Classification Guidelines* prior to disposal to an approved waste management facility.

Subject to a recommended condition of consent, the proposal is satisfactory in respect to SEPP 55.

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

The site is located within the catchment of the Hawkesbury Nepean River. Part 2 of this Plan contains general planning considerations and strategies requiring Council to consider the impacts of development on water quality, aquaculture, recreation and tourism.

Subject to the implementation of sediment and erosion control measures and stormwater management to protect water quality, the proposal would comply with the requirements of the Policy.

2.4 State Environmental Planning Policy (Exempt and Complying Development Codes) 2008

The *Exempt & Complying State Environmental Planning Policy* includes provision for change of use of industrial premises as Complying Development. The proposed first use of unit No.3 and 4 for 'light industrial' would be consistent with the specified uses under Part 5 Division 1 Subdivision 2 of the Policy, enabling the future change of the first use to another use as Complying Development. A condition for the use of the premises is recommended in this regard.

2.5 Rural Fires Act 1997

The site is in a bushfire prone area with the fire threat to the east of the site from the Dural Nature Reserve.

The proposed childcare centre is '*integrated development*' subject to approval of the NSW Rural Fire Service for the issue of a Bush Fire Safety Authority pursuant to Section 100B of the *Rural Fires Act 1997*.

The NSW Rural Fire Service has granted approval for a Bush Fire Safety Authority for the proposed development subject to conditions regarding design and construction requirements, access, evacuation and emergency management and creation of an easement for bushfire purposes over the adjoining property Lot 2 DP 588506 (immediately to the north of the site) for the establishment of an asset protection zone for a distance of 40m from the proposed building.

As the childcare component of the proposed development is contingent on the establishment of a 40m asset protection zone, a deferred commencement condition has been recommended to enable the applicant to register the easement for bushfire purposes with the NSW Department of Lands prior to any construction works.

2.6 State Environmental Planning Policy No. 64 - Advertising and Signage

The aims of *State Environmental Planning Policy No. 64 – Advertising and Signage (SEPP 64)* are to ensure that advertising and signage is compatible with the desired amenity and visual character of an area, to provide effective communication in suitable locations and to ensure signage is of high quality design and finish.

The proposal includes three wall signs measuring 1.7m x 2.7m and a total area of 4.6m² located along the front façade. The proposed signs are non-illuminated signs.

The proposed signs are 'business identification signs' subject to Part 3 of the Policy. Pursuant to Clause 13, the proposed signs are subject to the objectives of the Policy and the assessment criteria under Schedule 1.

The objectives of the Policy are as follows:

1. *To ensure that signage (including advertising);*
 - i) *Is compatible with the desired amenity and visual character of an area, and*
 - ii) *Provides effective communication in suitable locations, and*
 - iii) *Is of high quality and finish, and*
2. *To regulate signage (but not content) under Part 4 of the Act, and*
3. *To provide time-limited consents for the display of certain advertisements, and*
4. *To regulate the display of advertisements in transport corridors, and*
5. *To ensure that public benefits may be derived from advertising in and adjacent to transport corridors.*

The proposed business identification signs would be consistent with the objectives of the Policy.

An assessment of the application with regard to Schedule 1 of *SEPP 64* is provided below:

State Environmental Planning Policy No. 64		
Control	Requirement	Yes/No
Division 1, 2 and 3 development controls		
Objectives	Does the proposal satisfy the objectives in Clause 3 of the SEPP?	Yes
Types of Signs that are not considered to be 'Advertisements'	Is the proposal a business sign?	Yes
Schedule 1 – Assessment Criteria (to be considered for all advertising structures including “business identification signs”)		
Character of the area	Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located?	Yes
	Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?	Yes
Special areas	Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas?	No
Views and vistas	Does the proposal obscure or compromise important views?	No
	Does the proposal dominate the skyline and reduce the quality of vistas?	No
	Does the proposal respect the viewing rights of other advertisers?	Yes
Streetscape, setting or landscape	Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape?	Yes
	Does the proposal contribute to the visual interest of the streetscape, setting or landscape?	Yes
	Does the proposal reduce clutter by rationalising and simplifying existing advertising?	N/A
	Does the proposal screen unsightliness?	No

	Does the proposal protrude above buildings, structures or tree canopies in the area or locality?	No
	Does the proposal require ongoing vegetation management?	No
Site and building	Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located?	Yes
	Does the proposal respect important features of the site or building, or both?	Yes
	Does the proposal show innovation and imagination in its relationship to the site or building, or both?	Yes
Associated devices and logos	Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed?	No
Illumination	Would illumination result in unacceptable glare?	N/A
	Would illumination affect safety for pedestrians, vehicles or aircraft?	N/A
	Would illumination detract from the amenity of any residence or other form of accommodation?	N/A
	Can the intensity of the illumination be adjusted, if necessary?	N/A
	Is the illumination subject to a curfew?	N/A
Safety	Would the proposal reduce the safety for any public road?	No
	Would the proposal reduce the safety for pedestrians or bicyclists?	No
	Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas?	No

As outlined in the above table, the proposed signs are satisfactory in respect to the assessment criteria under Schedule 1 of *SEPP 64*. Refer also to discussion in Section 2.10.7 below.

2.7 Children (Education and Care Services) Supplementary Provisions Regulation 2012

NSW Education and Communities regulates the licensing and operation of childcare centres in accordance with the above Regulation. Clause 28 of the Regulation provides for the functional space requirements of childcare centre premises.

The following table sets out the proposal's compliance with the Regulation:

Control	Proposal	Compliance
Consultation Room	Office / Reception	Yes
Respite Staff Room	Staff Room	Yes
Sleeping Room 0-2 yr	Cot room – 15 cots	Yes
Min 3.25m ² Indoor Play Space per child	>3.25m ²	Yes
Min 7.0m ² Outdoor Play Space per child	>7m ²	Yes
Laundry	Laundry off dining area	Yes
Separate Sink Craft Area	Craft sink can be provided off indoor play area	Yes
Food Preparation Facilities	Kitchen	Yes
Toilets and Washing Facilities	Five separate bathroom /toilets for children and staff	Yes
Nappy Change Facilities	Nappy Change Room	Yes
Storage Facilities	Storerooms – Indoor and Outdoor	Yes

The proposal would meet NSW Education and Communities regulatory space requirements for the operation of a child care centre.

The centre would employ 20 staff members to comply with the respective child ratios as follows:

- 1:4 for children under 2 years (49 children = 12 staff)
- 1:8 for children between 2 and 4 years (30 children = 4 staff)

A condition is recommended that the outdoor play space be adequately shaded in accordance with *The Shade Handbook*, published by the New South Wales Cancer Council in 2008 prior to the issue of the Occupation Certificate.

The proposal is assessed as satisfactory with respect to the provisions of the *Regulation*.

2.8 Draft State Environmental Planning Policy (Educational Establishments and Childcare Facilities) 2017

Draft State Environmental Planning Policy (Educational Establishments and Childcare Facilities) 2017 (draft SEPP) was recently exhibited for public comment by the Department of Planning and Environment until 7 April 2017.

The draft SEPP makes provision for compliance with the space requirements of the *Education and Care Services National Regulations* and the *Children (Education and Care Services) Supplementary Provisions Regulation 2012* and requires the concurrence of the Regulatory Authority for the approval of proposed childcare centres that do not comply. The draft SEPP includes non-discretionary development standards and requires consideration of the *Childcare Planning Guideline* (also exhibited) which includes development control measures for childcare centres and excludes certain requirements under existing Development Control Plans. The draft SEPP includes matters for consideration for proposed centres in IN2 Light Industrial zones; including:

- (a) *whether the proposed development is compatible with neighbouring land uses, including its proximity to restricted premises, sex services premises or hazardous land uses,*

Comment: The subject premises comprises the entire first floor of the building and includes separate access off the right of carriageway and is effectively separated from neighbouring industrial land uses. The proposed childcare centre is not in proximity to restricted premises or sex service premises. There are no hazardous land uses in the vicinity of the site.

- (b) *whether the proposed development has the potential to restrict the operation of existing industrial land uses,*

Comment: The surrounding industrial land uses would continue to operate in accordance with regulatory requirements and consent conditions and would not be impeded by the proposed development.

- (c) *whether the location of the proposed development will pose a health or safety risk to children, visitors or staff.*

Comment: The proposed childcare centre would be contained within the first floor level of the building. The proposed outdoor open space area is elevated above neighbouring industrial land uses. The proposed location would not pose a risk to children, visitors or staff.

The proposed child care centre complies with the space requirements of the *Children (Education and Care Services) Supplementary Provisions Regulation 2012* and would not be inconsistent with the provisions of the draft SEPP or the *Childcare Planning Guideline*.

2.9 Clause 74BA Environmental Planning and Assessment Act, 1979 - Purpose and Status of Development Control Plans

Clause 74BA of the *Environmental Planning and Assessment Act, 1979* states that a DCP provision will have no effect if it prevents or unreasonably restricts development that is otherwise permitted and complies with the development standards in relevant Local Environmental Plans and State Environmental Planning Policies.

The principal purpose of a development control plan is to provide guidance on the aims of any environmental planning instrument that applies to the development; facilitate development that is permissible under any such instrument; and achieve the objectives of land zones. The provisions contained in a DCP are not statutory requirements and are for guidance purposes only. Consent authorities have flexibility to consider innovative solutions when assessing development proposals, to assist achieve good planning outcomes.

2.10 Hornsby Development Control Plan 2013

The proposed development has been assessed having regard to the relevant desired outcomes and prescriptive requirements within the *Hornsby Development Control Plan 2013 (HDCP)*. The following table sets out the proposal's compliance with the prescriptive requirements of the Plan:

Hornsby Development Control Plan 2013			
Control	Proposal	Requirement	Compliance
Site Area	2,091m ²	N/A	N/A
Gross Floor Area	1,366m ²	N/A	N/A
Floor Space Ratio	0:65:1	0:7:1	Yes
Height	2 storeys – 14.8m	2 storeys – 10.5m	No
Site Coverage	40%	35%	No
Front Setback (New Line Road)	16m	15m	Yes
Side Setback (North)	3m to access handle and 12m to No.242 New Line Road	5m	Yes
Side Setback (South)	5.7-6.3m	5m	Yes
Rear Setback	7.7m	15m	No
Driveway Setback	2m	2m	Yes
Car Parking	62 spaces	62 spaces	Yes
Employee Outdoor Area	>10m ²	10m ²	Yes
Maximum number of childcare places	79	90	Yes
Recreation Space • Indoor: 3.25m ² child	260m ²	256.75m ²	Yes

• Outdoor: 7m ² per child	553m ²	553m ²	Yes
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As detailed in the above table, the proposal exceeds the maximum height, setbacks and maximum site coverage HDCP control which is discussed below including a brief discussion on compliance with relevant performance requirements.

2.10.1 Scale

The desired outcomes of Part 5.1.1 of the HDCP concerning Scale recommends that *“Development with a height, scale and intensity compatible with the character of the area”* and *“development that provides appropriate areas for access, car parking and landscaping”*.

The proposed warehouse building would have a site coverage of 40% (838m²) which does not comply with the maximum 35% stipulated for the Dural Service Centre.

The proposed scale of the building would be compatible with similar industrial development within the Dural Service Centre and provides generous setbacks to all boundaries which allows for landscaping within around the perimeter of the site. The proposed building design is architecturally interesting of contemporary appearance using corten steel, a natural concrete finish, variety of window patterns and provides an architectural emphasis in the built form. Accordingly, the non-compliance with the site coverage is considered acceptable.

The proposal is satisfactory in meeting the *HDCP* desired outcomes for scale.

2.10.2 Setbacks

The proposed eastern elevation of the building would be setback 7.7m to the rear boundary which does not comply with the minimum 15m prescribed rear boundary setback controls for the Dural Service Centre.

The Project Architects (MSK Architects) have been engaged by the owners of each allotment within the subject subdivision (Lots 3, 4, 6 and 6) to prepare Development Applications for those allotments. To that end, the individual buildings have been designed with a consistent architectural style and appearance, intended to introduce a new standard of contemporary warehouse buildings within the Dural Service Centre.

The objective of the 15m rear setback for the Dural Service Centre is to provide a buffer to the environmental protection zone at the rear to the Dural Nature Reserve. The proposed setback of the development is to an internal rear boundary only and the development would be located 210m from the Dural Nature Reserve.

The non-compliant rear setback would be compatible with the adjoining development on Lot 3 which is setback 8.25m from the common boundary of the subject site which would provide an appropriate 16m spatial separation between both buildings.

The proposed first floor terrace accommodating the playground area for the childcare centre would be setback 2m to the eastern rear boundary adjoining Lot 3 which could create privacy and amenity impacts for children attending the childcare centre as tenants using the adjoining industrial building might be able to overlook the playground. The western boundary of Lot 3 incorporates a 6.25m wide access handle and a 2m wide landscaped verge which provides adequate separation between the playground and the adjoining industrial building and the playground would be located 8m higher (Relative Level 208.3) than the first floor level terrace and office areas of the adjoining building on Lot 3 (Relative level 199.5) which would not allow overlooking into the playground.

The proposed ground floor basement would protrude the existing ground level by 2.8m and be setback 3.3m to 4.7m from the southern side boundary which does not comply with the maximum 5m setback. The setback of the basement level would not be perceptible from the street as it is located 2m below street level, would provide sufficient area to accommodate landscaping along this boundary and the industrial building would be setback 5.7m to 6.3m along this elevation. Accordingly the non-compliance is considered acceptable.

The proposal is satisfactory in meeting the *HDCP* desired outcomes for setbacks.

2.10.3 Landscaping

The proposed landscaping to the front setback complies with the landscaping requirement that 50% of the required front setback should be landscaped.

The proposed development includes landscaping around the perimeter of the site, providing a hierarchy of trees, shrubs and groundcover. The proposed landscaping includes a series of trees of various sizes within the setbacks to the northern, eastern and western boundaries. The proposed landscaping will soften the visual impact of the building and associated driveways, and improve the overall aesthetic appearance of the development.

2.10.4 Traffic and Parking

The proposed development has a parking requirement of 62 parking spaces in total. 62 parking spaces, including 2 accessible parking spaces have been provided for the development.

A Traffic and Parking Impact Assessment was submitted with the proposal which concludes that the proposed development would generate moderate trips during the weekday AM peak.

During the assessment of DA/1811/2004 for Community title subdivision of one allotment into six lots, traffic impacts of future industrial buildings were considered by the Roads Traffic Authority (Now the Roads Maritime Service) and it was concluded that traffic generation was not an issue for future industrial buildings on each lot provided that the right of carriageway is constructed to accommodate Articulated Rigid Vehicles to enter and leave the site in a forward direction, that the vehicle crossing is to have a 10m wide entry lane and a 10m wide exit lane with the lanes separated by 3m in accordance with the RTA's Guide to Traffic Generating Developments to reduce any traffic safety impacts of vehicles entering and leaving the site and that a central median be constructed along New Line Road to restrict traffic movements to left only and prevent vehicles turning right onto New Line Road.

In addition to the above, the applicant dedicated land to Council at the front of the site adjoining New Line Road and paid a monetary contribution for the construction of a future service lane.

Council's traffic assessment of the current proposal on Lot 2 concludes that the increase in traffic volumes as a result of the proposed development is not considered to have a significant impact on existing traffic volumes on this section of New Line Road.

In addition, the Roads and Maritime Services is currently investigating the provision of a dual carriageway along New Line Road to provide greater traffic capacity. As a consequence, the proposal is considered satisfactory in respect to traffic volumes.

2.10.5 Vehicle Access

Section 5.1.6 – Vehicle Access and Parking of the *HDCP* prescribes that “*each industrial unit/premises should have access to a loading and unloading area on-site*” and “*where a development*

consists of multiple industrial units, at least 1 communal loading area that is capable of accommodating an articulated vehicle should be provided on-site”.

An Articulated Vehicle service bay is proposed along the eastern rear boundary to service each unit via a goods lift. The service bay has been designed to allow for an Articulated Rigid Vehicle (ARV) to manoeuvre in and out of the site and onto the 8.3m wide right of carriageway.

The proposed development would meet the *HDCP* desired outcomes for vehicle access.

2.10.6 Design Details

The proposed building would present well to the street with the façade comprising a proportional mix of glazing, corten steel, natural concrete finish and stone feature walls. The proposed building design would complement neighbouring buildings in terms of architectural expression and design.

The proposal is satisfactory in respect to the desired outcome of the *HDCP* for design details.

2.10.7 Signage

The proposed business identification signs include a wall sign measuring 4.6m² in total signage area.

The *HDCP* prescribes that wall signs should be a maximum of 5m². In this regard the proposed 3 x 4.6m² wall signs are proportional to the scale of the building and would be consistent in size with signs in the locality.

The proposed signs are satisfactory in respect to *SEPP 64* and in this regard, meet the prescriptive measures of *HDCP*.

2.10.8 Waste Management

The site would be serviced by commercial waste collection service vehicles via a loading area designed to accommodate an Articulated Rigid Vehicle. A communal bin area is provided on the lower basement which is directly accessible to the loading area.

Appropriate conditions are recommended for waste collection and management by licenced contractors, for trade waste and maintenance of wastewater devices.

Subject to recommended conditions the proposal would meet the *HDCP* desired outcomes for waste management.

2.10.9 Air Quality

The proposed childcare centre is considered a sensitive land use when considering air quality.

The site is surrounded by industrial land uses. The proposal includes the use of the first floor area of the building for outdoor open space.

The submitted Air Quality Assessment Report includes the following summary of findings:

“The air quality monitoring results show that airborne chemical substances analysed in this assessment were either not detected or below the relevant health criteria at the proposed outdoor play areas on 31st January 2017. It is thus concluded that use of the proposed outdoor play areas is in compliance with the relevant air quality criteria.

The proposed outdoor play areas at the proposed childcare centre development were examined for potential air quality impacts to the children. A range of chemicals have been examined – from contaminants such as Carbon Monoxide (a substance that can cause dizziness when

overexposed) to Benzene (a carcinogenic/cancer-causing substance). However, the results indicate that these hazardous airborne chemical substances were either not detected or below the relevant health criteria at the subject area.

Therefore, persons (especially the children and other persons who may be susceptible to airborne contaminants) would be considered safe in terms of air quality and health impacts, when they are to occupy these outdoors areas. Under the basis of air contaminant exposure, no time limits were derived from the assessment and the subject area can be utilised as much as possible as the area will not accumulate any hazardous airborne substances according to the test results.

It is to be noted that this report only addresses the current levels of air emissions based on existing neighbouring business activities. If there are significant changes in the anthropogenic sources in the area, these would need to be accounted for.

Given the test results from this assessment, it is the opinion of Benbow Environmental that the proposed outdoor play areas at the child care centre are suitable for their intended use in terms of air quality compliance.”

Councils environmental health assessment of the submitted air quality report concludes that the background and on-site air quality is considered satisfactory for the proposed child care centre subject to recommended condition that the childcare centre provides on-going monitoring of air quality to accommodate any changes to adjoining industrial land uses.

2.10.10 Noise Impacts

The site is within an industrial area and the proposed building is located 50m from the nearest dwelling at No.247 New Line Road.

The applicant submitted an Acoustic report which includes an assessment on background noise levels, short term noise levels generated by the outdoor and indoor play areas of the childcare centre.

The assessment includes recommendations for the installation of a 1.5m high noise barrier wall around the perimeter of the outdoor play area, glazing and roof thickness requirements.

Subject to condition for implementation of the report recommendations, the proposal would meet the HDCP desired outcome to minimise noise impacts.

2.10.11 Section 94 Contributions Plans

Hornsby Shire Council Section 94A Contributions Plan 2012 – 2021 applies to the development as the estimated costs of works is greater than \$100,000. Should the application be approved, an appropriate condition of consent is recommended requiring the payment of a contribution in accordance with the Plan.

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

3.1.1 Vegetation Preservation

The site is currently vacant and no trees would be removed by the proposed development. The proposed retaining wall at the front of the property site would be located behind an existing substation and would not impact an existing tree growing on New Line Road.

3.1.2 Stormwater Management

The existing stormwater drainage system designed with the subdivision includes a communal stormwater detention basin.

The proposed stormwater system includes a water quality control facility to achieve the *HDCCP* urban stormwater quality targets and is designed for a 1 in 100 year storm event.

The proposed stormwater drainage system would connect into an existing inter-allotment stormwater easement along the southern boundary via the existing communal on-site detention system located within the private accessway.

Subject to recommended conditions, the proposal is acceptable in respect to the *HDCCP* desired outcomes for stormwater management to protect waterways and maintain environmental flows.

3.2 Built Environment

3.2.1 Built Form

The proposed building would maintain the two storey built form character of the Dural Service Centre and achieves a design that is consistent with the scale of existing buildings along New Line Road.

3.3 Social Impacts

The social impacts of the development on the local and broader community have been considered with specific reference to the potential employment generation. The proposal would provide 1,314m² of gross floor area which would contribute a minor increase in additional employment opportunities post construction. This is consistent with “*A Plan for Growing Sydney*”, prepared by the NSW State Government to deliver 689,000 new jobs by 2031.

In addition to the above, the proposed childcare centre would be of positive social benefit in the provision of childcare centre places and would provide local employment opportunities.

3.4 Economic Impacts

The proposal would have a minor positive impact on the local economy 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 considered to be capable of accommodating the proposed development.

5. PUBLIC PARTICIPATION

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

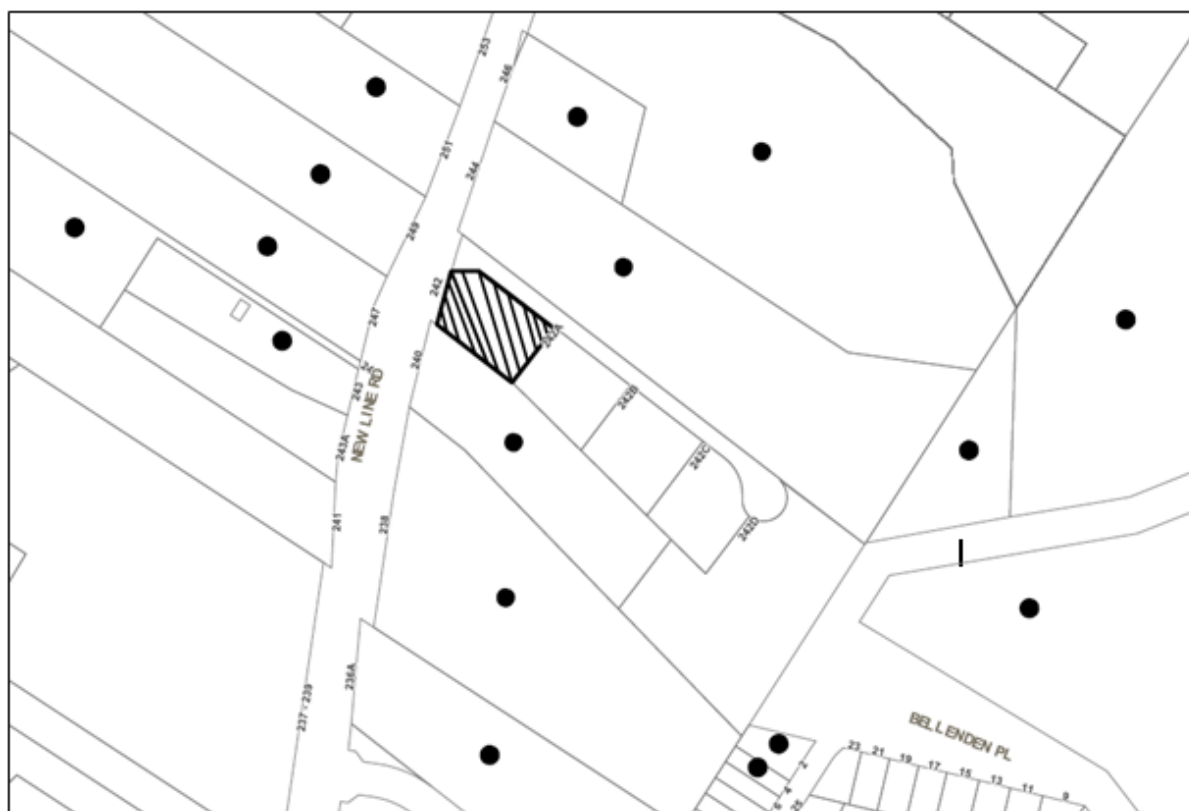
5.1 Public Agencies – NSW Rural Fire Service

The proposed childcare centre was referred to the NSW Rural Fire Service pursuant to Section 100B of the *Rural Fires Act 1997*.



The NSW Rural Fire Service has granted approval for a Bush Fire Safety Authority for the proposed childcare centre subject to conditions concerning asset protection zones, water and utilities, access, evacuation and emergency management and design and construction.

5.2 Community Consultation

The proposed development was placed on public exhibition and was notified to adjoining and nearby landowners between 9 February 2017 and 23 February 2017 in accordance with the Notification and Exhibition requirements of the HDCP. During this period, Council did not receive any submissions.



NOTIFICATION PLAN

• PROPERTIES NOTIFIED	X SUBMISSIONS RECEIVED	 PROPERTY SUBJECT OF DEVELOPMENT	
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6. THE PUBLIC INTEREST

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

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

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

CONCLUSION

The application proposes construction of an industrial building comprising 2 warehouse units, 79 place childcare centre, food and drink premises, 2 neighbourhood shops, signage, strata subdivision and first use.

The application does not comply with the Hornsby Local Environmental Plan 2013 in respect to Clause 4.6 'Height of Buildings'. The applicant has submitted a request to vary the height of building development standard. The objection is considered well founded with respect to Clause 4.6 of the HLEP and the principles established by the Land and Environmental Court.

There were no submissions received in response to the notification of the proposed development.

Having regard to the circumstances of the case and consideration of the Clause 4.6 request, approval of the application as a deferred commencement 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.

RESPONSIBLE OFFICER

The officer responsible for the preparation of this Report is the Manager – Development Assessments – Rodney Pickles, who can be contacted on 9847 6731.

ROD PICKLES
Manager - Development Assessment
Planning Division

JAMES FARRINGTON
Group Manager
Planning Division

Attachments:

1. [ViewView](#) Locality Map
2. [ViewView](#) Site Plan
3. [ViewView](#) Floor Plans
4. [ViewView](#) Elevations
5. [ViewView](#) Shadow Diagram
6. [ViewView](#) Schedule of Finishes and Photomontage
7. [ViewView](#) Landscape Plan

File Reference: DA/29/2017

Document Number: D07202509

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. 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) To protect in perpetuity the approved development, an easement for bushfire purposes over the adjoining property Lot 2 DP 588506 must be registered with the NSW Department of Lands.
- b) The wording of the easement must be in accordance with the NSW RFS General Terms of Approval Condition No.2, (Condition No.48 of this consent).

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:

2. 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>Plan Title</i>	<i>Drawn by</i>	<i>Dated</i>
DA000, Rev 06	Site plan	MSK Architects	3/05/2017
DA100, Rev 06	Ground floor plan	MSK Architects	3/05/2017
DA101, Rev 06	First floor plan	MSK Architects	3/05/2017
DA102, Rev 07	Upper basement plan	MSK Architects	3/05/2017
DA103, Rev 07	Lower basement plan	MSK Architects	3/05/2017
DA104, Rev 06	Roof plan	MSK Architects	3/05/2017

<i>Plan No.</i>	<i>Plan Title</i>	<i>Drawn by</i>	<i>Dated</i>
DA105, Rev 06	Site coverage	MSK Architects	3/05/2017
DA200, Rev 07	Sections 01	MSK Architects	3/05/2017
DA201, Rev 07	Sections 02	MSK Architects	3/05/2017
DA300, Rev 07	Elevations 01	MSK Architects	3/05/2017
DA301, Rev 07	Elevations 02	MSK Architects	3/05/2017
DA302, Rev 06	Front fence elevation	MSK Architects	3/05/2017
DA401, Rev 06	Schedule of finishes	MSK Architects	3/05/2017

<i>Document title</i>	<i>Prepared by</i>	<i>Dated</i>
Childcare Centre DA Acoustic Assessment, 20170002.1/1701A/RO/JL Project	Acoustic Logic	17/01/2017
Traffic and Parking impact assessment, Ref N1615763A (Version 1B)	ML Traffic Engineers	January 2017
Carpark Certification, Ref N1615763A (Version 1B)	ML Traffic Engineers	January 2017
Waste Management Plan	MSK Architects	17/1/2017
DA Access Report	BCA Access solutions	20/12/2016
Air Quality Assessment report, Ref No.161226, Rev 2	Benbow Environmental	9/02/2017
Shadow diagrams, DA400, Rev 05	MSK Architects	13/04/2017
Lower basement, 01753_03, Rev 02	C & M Consulting Engineers	24/04/2017
Upper basement, 01753_202, Rev 01	C & M Consulting Engineers	20/01/2017
Sediment & Erosion plan, 01753_701, Rev 02	C & M Consulting Engineers	24/03/2017
Typical details, 01753_621, Rev 01	C & M Consulting Engineers	24/03/2017

Document title	Prepared by	Dated
Ground floor, 01753_203, Rev 02	C & M Consulting Engineers	24/03/2017
General Terms of Approval, Reference D17/1603	NSW Rural Fire Service	25/07/2017
Bushfire Hazard Assessment Report	Control Line Consulting	13/06/2017

3. Section 94A Development Contributions

- a) In accordance with Section 80A(1) of the *Environmental Planning and Assessment Act, 1979* and the *Hornsby Shire Council Section 94A Development Contributions Plan 2014-2024*, \$29,224.45 must be paid to Council to cater for the increased demand for community infrastructure resulting from the development, based on development costs of \$2,922,445
- b) The value of this contribution is current as at 8 April 2017. If this contribution is not paid within the financial quarter that this condition was generated, the contribution payable will be adjusted in accordance with the provisions of the Hornsby Shire Council Section 94 Development Contributions Plan and the amount payable will be calculated at the time of payment in the following manner:

$$\frac{\$C_{PY}}{CPI_{DC}} = \$C_{DC} \times CPI_{PY}$$

Where:

$\$C_{PY}$ is the amount of the contribution at the date of Payment

$\$C_{DC}$ is the amount of the contribution as set out in this Development Consent

CPI_{PY} is the latest release of the Consumer Price Index (Sydney – All Groups) at the date of Payment as published by the ABS.

CPI_{DC} is the Consumer Price Index (Sydney – All Groups) for the financial quarter at the date applicable in this Development Consent Condition.

- c) The monetary contributions must be paid to Council:
- prior to the issue of the Subdivision Certificate where the development is for subdivision; or
 - prior to the issue of the first Construction Certificate where the development is for building work; or
 - prior to issue of the Subdivision Certificate or first Construction Certificate, whichever occurs first, where the development involves both subdivision and building work; or
 - prior to the works commencing where the development does not require a Construction Certificate or Subdivision Certificate.

Note: It is the professional responsibility of the Principal Certifying Authority to ensure that the monetary contributions have been paid to Council in accordance with the above timeframes.

Council's S94A Development Contributions Plan may be viewed at www.hornsby.nsw.gov.au or a copy may be inspected at Council's Administration Centre during normal business hours.

4. Construction Certificate

- a) A Construction Certificate is required to be approved by Council or a Private Certifying Authority prior to the commencement of any works under this consent.
- b) The Construction Certificate plans must not be inconsistent with the Development Consent plans.

REQUIREMENTS PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE
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5. Easement Over Adjoining Land

To protect in perpetuity the approved development, an easement for bushfire purposes must be created and registered with the NSW Department of Lands pursuant to section 88 of the 'Conveyancing Act 1919' over part of Lot 2 DP588506 immediately to the north of the site in accordance with NSW RFS General Terms of Approval Condition No.2.

Evidence of this registration must be submitted by the applicant to Council prior to the issue of a construction certificate.

6. Building Code of Australia

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

7. Sydney Water – Approval

This application must be submitted to Sydney Water for approval to determine whether the development would affect any Sydney Water infrastructure, and whether further requirements are to be met.

Building plan approvals can be obtained online via Sydney Water Tap inTM through www.sydneywater.com.au under the Building and Development tab.

8. Stormwater Drainage

The stormwater drainage system for the development must be designed in accordance with Council's Civil Works – Design and Construction Specification 2005 and connected to the existing stormwater easement.

9. Certification of Parking and Loading Areas

A certificate is to be submitted to the Principal Certifying Authority from a suitably Qualified Traffic Engineer certifying that the plans for the Construction Certificate comply with AS 2890.1, AS 2890.2 and the development consent requirements.

10. Internal Driveway/Vehicular Areas

The driveway and parking areas on site must be designed, constructed and a Construction Certificate issued in accordance with Australian Standards 2890.1, 2890.2, 3727 and the following requirements:

- a) The driveway be a rigid pavement.
- b) The proposed loading area is to be designed to accommodate an articulated vehicle.

11. Construction Traffic Management Plan

To enable unencumbered movement of traffic in the public road during construction works, a Construction Management Plan, including a Traffic Management Plan and scaled construction plans prepared by a suitably Chartered and Qualified Chartered Civil Engineer and Qualified Worksite Traffic Controller shall be prepared and submitted to Hornsby Shire Council for approval according to the following requirements:

- a) A copy of the plans shall be submitted for consideration and written approval by Hornsby Shire Council prior to the release of the Construction Certificate.
- b) The plans shall detail the order of construction works and arrangement of all construction machines and vehicles being used at the same time during all stages.
- c) The CTMP plans shall be in accordance with the approved Development Application plans and the Development Consent conditions.
- d) To prevent injury, accident and loss of property, no building materials, work sheds, vehicles, machines or the like shall be allowed to remain in the road reserve area without the written consent of Roads and Maritime Services.
- e) The Plan shall be generally in compliance with the requirements of the Road and Traffic Authority's "Traffic Control at Worksites Manual 1998" and detailing:
 - i) Public notification of proposed works;
 - ii) Long term signage requirements;
 - iii) Short term (during actual works) signage;
 - iv) Vehicle Movement Plans, where applicable;
 - v) Traffic Management Plans;
 - vi) Pedestrian and Cyclist access and safety;
- f) The plans shall indicate traffic controls including those used during non-working hours and shall provide pedestrian access and two-way traffic in the public road to be facilitated at all times.
- g) The plans shall include the proposed truck routes to and from the site including details of the frequency of truck movements at the different stages of the development. The plan shall also include details of parking arrangements for all employees and contractors.
- h) The Applicant and all employees of contractors on the site must obey any direction or notice from the Prescribed Certifying Authority or Hornsby Shire Council to ensure the above.

- i) If there is a requirement to obtain a Work Zone, partial Road Closure or Crane Permit an application to Roads Maritime Services is to be made prior to the issue the Construction Certificate.

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

- a) A sign must be erected in a prominent position on any site on which any approved work is being carried out:
 - i) Showing the name, address and telephone number of the principal certifying authority for the work;
 - ii) 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
 - iii) Stating that unauthorised entry to the work site is prohibited.
- b) The sign is to be maintained while the approved work is being carried out and must be removed when the work has been completed.

13. Toilet Facilities

- a) To provide a safe and hygienic workplace, toilet facilities must be available or be installed 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.
- b) Each toilet must:
 - i) be a standard flushing toilet connected to a public sewer; or
 - ii) be a temporary chemical closet approved under the *Local Government Act 1993*; or
 - iii) have an on-site effluent disposal system approved under the *Local Government Act 1993*.

14. 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; and/or
- 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.

15. Erosion and Sediment Control

To protect the water quality of the downstream environment, 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 may be issued for any non-compliance with this requirement without any further notification or warning.

REQUIREMENTS DURING CONSTRUCTION

16. Construction Work Hours

All works 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.

17. Asbestos and Soil Contamination

Should the presence of asbestos or soil contamination, not recognised during the application process be identified during works, the applicant must immediately notify the Principal Certifying Authority (PCA) and Council.

18. Street Sweeping

- a) To protect the surrounding environment, Street sweeping must be undertaken following sediment tracking from the site along New Line Road during works and until the site is established.
- b) The street cleaning services must undertake a street 'scrub and dry' method of service and not a dry sweeping service that may cause sediment tracking to spread or cause a dust nuisance.

19. Construction Traffic Management Plan Compliance

The development must be carried out in accordance with the submitted Construction Traffic Management Plan (TMP).

20. 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.

21. Excavated Material

All excavated material removed from the site must be classified by a suitably qualified person in accordance with the Department of Environment, Climate Change and Water NSW Waste Classification Guidelines prior to disposal to an approved waste management facility and be reported to the principal certifying authority prior to the issue of an Occupation Certificate.

22. Council footpath and Roads Maritime Services Road Reserve

To ensure that the nature strip is kept in a clean, tidy and safe condition during construction works, no building materials, waste, machinery or related matter is to be stored on the road or footpath.

23. 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.

24. Acoustic Treatment

Acoustic treatment including glazed windows and doors, external walls, roof/ceiling construction and acoustic barriers must be provided to the development in accordance with Part 5.5 recommendations contained within the Childcare Centre DA Acoustic Assessment, Document number 20170002.1/1701A/RO/JL prepared by Acoustic Logic dated 17 January 2017.

25. Survey Report

A report(s) must be prepared by a registered surveyor and submitted to the principal certifying authority;

- a) Prior to the pouring of concrete at each level of the building certifying that:
 - i) The building, retaining walls and the like have been correctly positioned on the site; and
 - ii) The finished floor level(s) are in accordance with the approved plans.
- b) Confirming that the waste collection vehicle turning area complies with AS2890.1 – 2004 and AS20890.2 – 2002 for small rigid vehicles (SRV).

REQUIREMENTS PRIOR TO THE ISSUE OF AN OCCUPATION OR SUBDIVISION CERTIFICATE
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26. Wastewater Connection to Sydney Water

All wastewater generated by the warehouse must be connected to Sydney Water's sewerage system.

27. Retaining Walls

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

28. Certification of WSUD Facilities

Prior to the issue of an Occupation Certificate a certificate from a Civil Engineer is to be obtained stating that the WSUD facilities have been constructed in accordance with the approved plans by North Western Surveys and will meet the water quality targets as specified in the Hornsby Shire Councils DCP.

29. Damage to Council Assets

To protect public property and infrastructure, any damage caused to Council's assets as a result of the construction or demolition of the development must be rectified by the applicant

in accordance with Council's Civil Works Specifications. Rectification works must be undertaken prior to the issue of an Occupation Certificate, or sooner, as directed by Council.

30. Creation of Easements

The following easements are to be created on the plan on the title of the property in accordance with the Conveyancing Act, 1919:

- a) The creation of an appropriate "*Positive Covenant*" and "*Restriction as to User*" over the constructed Water Quality Control pit, within the property in favour of Council in accordance with Council's prescribed wording. The position of the Water Quality Control pit system is to be clearly indicated on the title;
- b) To register the Water Quality easement, the restriction on the use of land "*works-as-executed*" details of the Water Quality system must be submitted verifying that the required water quality targets have been constructed in accordance with the design requirements. The details must show the invert levels of the system together with pipe sizes and grades. Any variations to the approved plans must be shown in red on the "*works-as-executed*" plan and supported by calculations;

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

31. Works as Executed Plan

A works-as-executed plan(s) must be prepared by a registered surveyor and submitted to Council for completed road pavement, kerb & gutter, public drainage systems, driveways and the water quality control system.

32. Unit Numbering

All units are to be numbered consecutively commencing at No.1. The strata plan lot number is to coincide with the unit number, e.g Unit 1 = Lot 1. The allocated of unit numbering must be authorised by Council prior to the numbering of each units in the development.

33. 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.

34. Shade Structures

The outdoor play space for the childcare centre must be adequately shaded in accordance with The Shade Handbook, published by the New South Wales Cancer Council in 2008.

35. Food Premises

The fit out and operation of that part of the building to be used for the manufacture, preparation or storage of food for sale, must be in accordance with Australian Standard 4674-2004 – Design and fit out of food premises, the Food Act 2003, and the Food Regulation 2015 and the Food Standards Code developed by Food Standards Australia New Zealand. Food Standards 3.3.1. 3.2.2 and 3.2.3 are mandatory for all food businesses.

Note: Walls are to be of solid construction.

36. Kitchen Exhaust Installation

A kitchen exhaust system must be designed and installed to effectively prevent air pollution in accordance with the Protection of the Environment Operations Act 1997.

37. Grease Trap Installation

A permanent grease trap must be installed for all kitchen wastewater in accordance with the requirements of Australian Standard 3500 1998, National Plumbing Code. A licensed plumber must submit a Certificate of Compliance to the principal certifying authority certifying that all plumbing and drainage works have been carried out in accordance with the prescribed standards.

38. Acoustic Certificate

On completion of all works and prior to the issue of an Occupation Certificate, the certifier is to be provided with a certificate from a qualified acoustic engineer/consultant certifying that all acoustic works have been completed in accordance with the recommendations contained in the Childcare Centre DA Acoustic Assessment, Document number 20170002.1/1701A/RO/JL, prepared by Acoustic Logic dated 17 January 2017.

OPERATIONAL CONDITIONS**39. Use of Premises**

The development approved under this consent shall be for the following uses and not for any other purpose without Council's separate written consent or as Complying Development approved under State Environmental Planning Policy (Exempt and Complying Development Codes) 2008:

Unit 1 Food and drink premises

Unit 1A Neighbourhood shop

Unit 1B Neighbourhood shop

Unit 3 Light industrial

Unit 4 Light industrial

First floor level Childcare centre

40. Number of Children

The childcare centre shall accommodate a maximum of 79 children from the following age ranges:

- 24 places for 0-1 year olds;
- 25 places for 1-2 year olds; and
- 30 places for 3-4 year olds.

41. Waste Records

All commercial tenants must keep written evidence on site of a valid contract with licensed waste contractors for the regular collection and disposal of the waste and recyclables that are generated on site.

42. Hours of Operation

The hours of operation of the premise are restricted to those times listed below:

- a) Childcare centre - 6am to 6pm Monday to Friday (Other than for 4 Saturdays per year for special occasions).
- b) 2 warehouse units, food and drink premises and 2 neighbourhood shops - 7am to 6pm Monday to Sunday.

43. Fire Safety Statement - Annual

On at least one occasion in every 12 month period following the date of the first 'Fire Safety Certificate' issued for the property, the owner must provide Council with an annual 'Fire Safety Certificate' to each essential service installed in the building.

44. Car parking

All car parking must be constructed and operated in accordance with Australian Standard AS/NZS 2890.1:2004 – Off-street car parking, and Australian Standard 2890.2 - 2002 – Off-street commercial vehicle facilities and the following requirements:

- a) All parking areas and driveways are to be sealed to an all weather standard, line marked and signposted.
- b) Car parking, loading and manoeuvring areas to be used solely for nominated purposes.
- c) Vehicles awaiting loading, unloading or servicing shall be parked on site and not on adjacent or nearby public roads;
- d) All vehicular entry on to the site and egress from the site shall be made in a forward direction.
- e) Parking for the childcare centre must be located within basement level 1.

45. Advertising Signs

The advertising signage approved under this consent must not be illuminated, flash, move or display electronic images.

46. Future Air Quality Monitoring

- a) The future owner of the childcare centre is to engage a suitably qualified consultant to prepare an Air Quality Report every 365 days from the start of first operation of the childcare centre to monitor any changes to anthropogenic sources surrounding the development which could impact air quality at the childcare centre.
- b) The recommendations of the Air Quality Report must be adhered to.

GENERAL TERMS OF APPROVAL – NSW RURAL FIRE SERVICE

47. NSW RFS Condition No.1

At the commencement of building works, and in perpetuity, the entire property shall be managed as an Inner Protection Area (IPA) as outlined within section 4.1.3 and Appendix 5 of *'Planning for Bush Fire Protection 2006'* and the NSW Rural Fire Service's document *'Standards for asset protection zones'*.

48. NSW RFS Condition No.2

At the commencement of works, a suitable instrument(s) shall be created pursuant to section 88 of the *'Conveyancing Act 1919'* over part of Lot 2 DP588506 immediately to the north of the site. The instrument shall require/provide rights for the establishment and maintenance of an asset protection zone (APZ) for a minimum distance of 40 metres from the proposed building. This APZ shall be provided in accordance with *'Planning for Bush Fire Protection 2006'* and the NSW Rural Fire Service's document *'Standards for asset protection zones'*.

This restriction can be lifted upon commencement of any future proposed development on the adjacent lot if the hazard is removed as part of the proposal. Hornsby Council shall be nominated as the prescribed authority for variation or removal of the instrument(s).

49. NSW RFS Condition No.3

The provision of water, electricity and gas shall comply with section 4.1.3 of *'Planning for Bush Fire Protection 2006'*.

50. NSW RFS Condition No.4

A Bush Fire Emergency Management and Evacuation Plan shall be prepared consistent with *'Development Planning- A Guide to Developing a Bush Fire Emergency Management and Evacuation Plan December 2014'*.

51. NSW RFS Condition No.5

New construction shall comply with Sections 3 and 5 (BAL 12.5) *Australian Standard AS3959-2009 'Construction of buildings in bush fire-prone areas'* and section A3.7 Addendum Appendix 3 of *'Planning for Bush Fire Protection'*.

- 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 can be made to Council's Customer Services Branch on 9847 6760;
- a principal certifying authority to be nominated and Council notified of that appointment prior to the commencement of any works;
- Council to be given at least two days written notice prior to the commencement of any works;

- mandatory inspections of nominated stages of the construction inspected; and
- an occupation certificate to be issued before occupying any building or commencing the use of the land.

Long Service Levy

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

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

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

Tree and Vegetation Preservation

In accordance with Clause 5.9 of the Hornsby Local Environmental Plan 2013 a person must not ringbark, cut down, top, lop, remove, injure or wilfully destroy any tree or other vegetation protected under the Hornsby Development Control Plan 2013 without the authority conferred by a development consent or a permit granted by Council.

Notes: A tree is defined as a long lived, woody perennial plant with one or relatively few main stems with the potential to grow to a height greater than three metres (3M). (HDCP 1B.6.1.c).

Tree protection measures and distances are determined using the Australian Standard AS 4970:2009, "Protection of Trees on Development Sites".

Fines may be imposed for non-compliance with both the Hornsby Local Environmental Plan 2013 and the Hornsby Development Control Plan 2013.

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 prior to disturbing this material. It is recommended that a contractor holding an asbestos-handling permit (issued by *WorkCover NSW*) be engaged to manage the proper handling of this 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.

Unit Numbering (Strata Units)

All units are to be numbered consecutively commencing at No1. The strata plan lot No is to coincide with the unit number. Eg Unit 1 = Lot 1.

Disability Discrimination Act

The applicant's attention is drawn to the existence of the *Disability Discrimination Act*. A construction certificate is required to be obtained for the proposed building/s, which will provide consideration under the *Building Code of Australia*, however, the development may not comply with the requirements of the *Disability Discrimination Act*. This is the sole responsibility of the applicant.

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.

Advertising Signage – Separate DA Required

This consent does not permit the erection or display of any advertising signs. Most advertising signs or structures require development consent. Applicants should make separate enquiries with Council prior to erecting or displaying any advertising signage.

Tenancy Fit-Out – Separate DA Required

This consent does not permit the fit-out of individual tenancies. A separate development application is required for the fit-out of individual tenancies prior to the occupation of the building.

Food Premises

Prior to the commencement of the business, the operator is requested to contact Council's Compliance and Certification Team to arrange an inspection for compliance against the relevant legislation and guidelines outlined in this approval. *Contact Council's Administration Officer on 9847 6784.*

7 REPORTING VARIATIONS TO DEVELOPMENT STANDARDS

EXECUTIVE SUMMARY

- In accordance with the Department of Planning and Environment'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)* or Clause 4.6 of the *Hornsby Local Environmental Plan - 2013 (HLEP)*.
- Council's consideration of this report ensures Council's obligation to monitor variations to development standards is complied with.

RECOMMENDATION

THAT the contents of Group Manager's Report No. PL37/17 be received and noted.

PURPOSE

The purpose of this report is to advise Council of determined development applications under delegated authority involving a *SEPP 1* or *Clause 4.6* variation to a development standard for the period 1 April 2017 to 30 June 2017.

DISCUSSION

Department of Planning and Environment's *Circular B1*, issued in March 1989, requested that councils monitor the use of the Secretary's assumed concurrence under *SEPP 1* on a quarterly basis. This reporting requirement remains effective.

Monitoring of variations to development standards is important to provide the Department and councils with an overview of the manner in which established development standards are being varied and whether the assumed concurrence is being used as intended. This enables Council and the Department to determine whether development standards are appropriate, or whether changes are required.

The Department 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 Secretary'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 Council 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 Department Circular, attached is a list of development applications determined between 1 April 2017 to 30 June 2017.

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

BUDGET

There are no budget implications.

POLICY

This report addresses Council's reporting obligations for development applications determined where there has been a variation in standards under *SEPP 1*. Under the HLEP 2013, the application of the provisions of *SEPP 1* has been replaced by *Clause 4.6* (exceptions to development standards). The Department of Planning and Environment has advised that the reporting practice for variation to development standards applies to applications involving a submission pursuant to *Clause 4.6* of the HLEP 2013.

CONCLUSION

Council is required to monitor the manner in which development standards are being varied. This assists in determining whether changes are required to relevant standards. This report provides advice to Council on standards varied under delegated authority which relied upon SEPP 1 or Clause 4.6 of the HLEP during the reporting period from 1 April 2017 to 30 June 2017.

RESPONSIBLE OFFICER

The officer responsible for the preparation of this report is the Group Manager Planning Division – James Farrington, who can be contacted on 9847 6750.

JAMES FARRINGTON

Group Manager

Planning Division

Attachments:

1.[View](#) SEPP 1 Returns Quarter - 1 April 2017 to 30 June 2017
[View](#)

File Reference: F2004/07599

Document Number: D07255622

8 TENDER RFT13/2017 - LICENCE OF ROFE PARK TENNIS COURTS, GALSTON ROAD HORNSBY HEIGHTS

EXECUTIVE SUMMARY

- Request for Tender RFT13/2017 has been called for the licence of Rofe Park Tennis Court, Galston Road Hornsby Heights.
- No tenders were received prior to the closing time.
- The incumbent operator has expressed interest in continuing to manage the tennis court through a management agreement.
- The Evaluation Panel has recommended that direct negotiations be entered into with the incumbent operator for a management agreement for the Rofe Park Tennis Court.

RECOMMENDATION

THAT:

1. Council decline to invite fresh tenders for the licence of Rofe Park Tennis Court, Galston Road Hornsby Heights as Council has tested the market and further tendering or fresh applications are not likely to produce a better result.
2. The Acting General Manager be delegated authority to enter negotiations and execute a management agreement for the Rofe Park Tennis Court, Galston Road Hornsby Heights with the incumbent operator including the seeking of Ministerial approval.

PURPOSE

The purpose of this Report is to provide a recommendation for Tender RFT13/2017 Licence of Rofe Park Tennis Court, Galston Road Hornsby Heights.

BACKGROUND

A lump sum tender was called to operate and maintain the single tennis court at Rofe Park, Galston Road, Hornsby Heights for a term of ten years. Open tenders were called in accordance with the Local Government Act and Regulation.

The land upon which the tennis court is situated is known as Rofe Park Crown Reserve R79813 under the care control and management of Council as reserve Trust Manager.

DISCUSSION

A summary of the full evaluation assessment details have been placed on file (F2017/00090).

The objective of the tender is to determine a suitable licensee to enter into a Licence Agreement and pay Council a rental fee for the licence to manage and operate the Rofe Park Tennis Court. The opportunity to use the court for alternative sports or uses was made available to proponents.

A public tender was called on 18 April 2017 with a closing date of 18 May 2017. Tenders were advertised using Tenderlink, Sydney Morning Herald, Hornsby Advocate and Council's website.

No tenders were received prior to the closing time.

The facility consists of one tennis court without floodlighting. It is unlikely that new tenders will be submitted if Council was to call for fresh tenders. Council has previously called for tenders for the management of the facility without submissions being received.

During the tender period an email was received from the current manager of the Rofe Park tennis court expressing interest in managing the court through a management agreement.

Council acts as the Reserve Trustee of the Rofe Park (R79813) Reserve Trust notified for public recreation in the Government Gazette dated 23 August 1957. Due to Rofe Park (R79813 being Crown Land and under clause 5.3 of the Crown Lands *Direct Negotiations Policy 2016* (the Policy), Council is obliged to seek Ministerial approval to the direct negotiations with the existing operator. It is considered that in this instance direct negotiation with the existing operator is allowed within the Crown Lands *Direct Negotiations Policy*. Council will seek Ministerial approval and anticipates that this will be granted due to no tenders having been received.

BUDGET

If a management agreement is entered into between Council and the operator, Council will receive fair market value for the rental of the facility.

POLICY

There are no policy implications associated with this Report.

CONCLUSION

Based on no tenders being received and the unlikelihood of new tenders being received if Council was to invite submissions for a fresh tender, the Evaluation Panel has recommended that direct negotiations be entered into with the incumbent operator for a management agreement for the Rofe Park Tennis Court, Galston Road Hornsby Heights.

RESPONSIBLE OFFICER

The officer responsible for the preparation of this Report is the Manager, Parks and Recreation – David Sheils - who can be contacted on 9847 6792.

DAVID SHEILS
Manager - Parks and Recreation
Infrastructure and Recreation Division

ROBERT STEPHENS
Deputy General Manager - Infrastructure and
Recreation

Attachments:

1. [ViewView](#) Attachment - Confidential Memo - *This attachment should be dealt with in confidential session, under Section 10A (2) (d) of the Local Government Act, 1993. This report contains commercial information of a confidential nature that would, if disclosed (i) prejudice the commercial position of the person who supplied it; or (ii) confer a commercial advantage on a competitor of the council; or (iii) reveal a trade secret.*
2. [ViewView](#) RFT17/2017 Licence of Rofe Park Tennis Court - signed evaluation report - *This attachment should be dealt with in confidential session, under Section 10A (2) (d) of the Local Government Act, 1993. This report contains commercial information of a confidential nature that would, if disclosed (i) prejudice the commercial position of the person who supplied it; or (ii) confer a commercial advantage on a competitor of the council; or (iii) reveal a trade secret.*

File Reference: F2017/00090
Document Number: D07241576

9 TENDER RFT15/2017 – LICENCE OF RUDDOCK PARK TENNIS COURTS, CORAL HEATH AVENUE WESTLEIGH

EXECUTIVE SUMMARY

- Westleigh Tennis Club is the current long term manager of the tennis court facility at Ruddock Park.
- Request for Tender RFT15/2017 has been called for the licence of Ruddock Park Tennis Courts, Coral Heath Avenue Westleigh. One submission was received for the tender, which was assessed as conforming.
- The proposed licence will be for a term of ten years for the management and operation of the tennis court facility.
- The submission from Westleigh Tennis Club Inc has been recommended as the preferred tender.

RECOMMENDATION

THAT:

1. Council accept the tender submission received from Westleigh Tennis Club Inc for RFT15/2017 – Licence of Ruddock Park Tennis Courts, Coral Heath Avenue Westleigh.
2. The Acting General Manager be delegated authority to execute the licence agreement with Westleigh Tennis Club Inc.

PURPOSE

The purpose of this Report is to provide a recommendation for Tender RFT15/2017 Licence of Ruddock Park Tennis Courts, Coral Heath Avenue Westleigh.

BACKGROUND

A lump sum tender was called to operate and maintain the four tennis court complex at Ruddock Park, Westleigh for a term of ten years. Open tenders were called in accordance with the Local Government Act and Regulation.

The land upon which the tennis court complex is situated is known as Ruddock Park of which Council is owner.

DISCUSSION

A summary of the submitted tenders with full evaluation details have been placed on file (F2017/00092). Excepting this report, the summary and details of the tenders received are to be treated as confidential in accordance with the Local Government Act.

The objective of the tender is to determine a suitable licensee to enter into a Licence Agreement and pay Council a Rental Fee for the licence to manage and operate the Ruddock Park tennis courts. The opportunity to use the courts for alternative sports or uses was made available.

A public tender was called on 18 April 2017 with a closing date of 18 May 2017. Tenders were advertised using Tenderlink, Sydney Morning Herald, Hornsby Advocate and Council's website.

One tender submission was received before the closing time from Westleigh Tennis Club Inc and this was assessed as conforming.

Westleigh Tennis Club is the current long term manager of the tennis court facility, with a strong connection and support of the Westleigh community.

TENDER EVALUATION

As part of the tender process, evaluation criteria were developed and scored by the tender evaluation panel that was determined prior to the closing of tenders. The criteria included both price and non-price evaluations.

Non-price Evaluation

The non-price evaluation criteria included:

- Past performance and experience
- Management and staff resources
- Proposed operational use including Asset Management Plan.

Price Evaluation

The tendered price was evaluated for the tender. Details of the tender evaluation prices are contained in the attached confidential evaluation report. This attachment is deemed confidential under Section 10A (2) (d) of the Local Government Act 1993.

The results of the evaluation indicate that the submission received from Westleigh Tennis Club Inc provides a favourable outcome for Council.

BUDGET

The rental offer proposed by the recommended operator is within Council's market expectations for the facility.

POLICY

There are no policy implications associated with this Report.

CONCLUSION

Based on the evaluation, the tender submitted by Westleigh Tennis Club Inc is considered advantageous for Council. The evaluation panel has recommended that the submission received from Westleigh Tennis Club Inc be accepted for tender RFT15/2017 Licence of Ruddock Park Tennis Courts, Coral Heath Avenue Westleigh.

RESPONSIBLE OFFICER

The officer responsible for the preparation of this Report is the Manager, Parks and Recreation – David Sheils - who can be contacted on 9847 6792.

DAVID SHEILS
Manager - Parks and Recreation
Infrastructure and Recreation Division

ROBERT STEPHENS
Deputy General Manager - Infrastructure and
Recreation
Infrastructure and Recreation Division

Attachments:

1. [ViewView](#) Attachment - Confidential Memo - *This attachment should be dealt with in confidential session, under Section 10A (2) (d) of the Local Government Act, 1993. This report contains commercial information of a confidential nature that would, if disclosed (i) prejudice the commercial position of the person who supplied it; or (ii) confer a commercial advantage on a competitor of the council; or (iii) reveal a trade secret.*
2. [ViewView](#) RFT15/2017 Licence of Ruddock Park Tennis Courts - signed evaluation report - *This attachment should be dealt with in confidential session, under Section 10A (2) (d) of the Local Government Act, 1993. This report contains commercial information of a confidential nature that would, if disclosed (i) prejudice the commercial position of the person who supplied it; or (ii) confer a commercial advantage on a competitor of the council; or (iii) reveal a trade secret.*

File Reference: F2017/00092
Document Number: D07240602

10 TENDER RFT16/2017 - LICENCE OF DURAL PARK TENNIS COURTS, QUARRY ROAD DURAL

EXECUTIVE SUMMARY

- Hills District Tennis Association Inc is the current long term managers of the tennis court facility at Dural Park.
- Request for Tender RFT16/2017 has been called for the licence of Dural Park Tennis Courts, Quarry Road Dural. One submission was received for the tender and this was assessed as conforming.
- The proposed licence will be for a term of ten years for the management and operation of the tennis court facility.
- Hills District Tennis Association has been recommended the preferred tender.

RECOMMENDATION

THAT:

1. Council accept the tender submission received from Hills District Tennis Association Inc (Rental Structure 1), for RFT16/2017 – Licence of Dural Park Tennis Courts, Quarry Road Dural.
2. The Acting General Manager be delegated authority to execute the licence agreement with Hills District Tennis Association Inc.

PURPOSE

The purpose of this Report is to provide a recommendation for Tender RFT16/2017 Licence of Dural Park Tennis Courts, Quarry Road Dural.

BACKGROUND

A lump sum tender was called to operate and maintain the seven tennis court complex at Dural Park, Quarry Road Dural for a term of ten years. Open tenders were called in accordance with the Local Government Act and Regulation.

The land upon which the tennis court complex is situated is known as Dural Park Crown Reserve D500116 under the care control and management of Council as reserve Trust Manager.

DISCUSSION

A summary of the submitted tenders with full evaluation details have been placed on file (F2017/00093). Excepting this report, the summary and details of the tenders received are to be treated as confidential in accordance with the Local Government Act.

The objective of the tender is to determine a suitable licensee to enter into a Licence Agreement and pay Council a Rental Fee for the licence to manage and operate the Dural Park Tennis Courts. The opportunity to use the courts for alternative sports or uses was made available to proponents.

A public tender was called on 18 April 2017 with a closing date of 18 May 2017. Tenders were advertised using Tenderlink, Sydney Morning Herald, Hornsby Advocate and Council's website.

One tender submission was received before the closing time from Hills District Tennis Association Inc and this was assessed as conforming.

The submission provided an offer of set rental over ten years (Rental Structure 1) along with an alternative offer (Rental Structure 2) which sought a financial commitment from Council for capital improvements to the facility over the same period. As Council is unable to guarantee allocated funding for matching contributions to later years in the licence period, Rental Structure 1 is recommended.

Hills District Tennis Association Inc is the current, long term managers of the tennis court facility at Dural Park.

TENDER EVALUATION

As part of the tender process, evaluation criteria were developed and scored by the tender evaluation panel that was determined prior to the closing of tenders. The criteria included both price and non-price evaluations.

Non-price Evaluation

The non-price evaluation criteria included:

- Past performance and experience
- Management and staff resources
- Proposed operational use including Asset Management Plan.

Price Evaluation

The tendered price was evaluated for the tender. Details of the tender evaluation prices are contained in the attached confidential evaluation report. This attachment is deemed confidential under Section 10A (2) (d) of the Local Government Act 1993.

The results of the evaluation indicate that the submission received from Hills District Tennis Association Inc provides a favourable outcome for Council.

BUDGET

The rental proposed by the recommended operator is within Council's market expectations for the facility.

POLICY

There are no policy implications associated with this Report.

CONCLUSION

Based on the evaluation, the tender submitted by Hills District Tennis Association Inc is considered advantageous for Council. The evaluation panel has recommended that the submission received from Hills District Tennis Association Inc (Rental Option 1), be accepted for tender RFT16/2017 Licence of Dural Park Tennis Courts, Quarry Road Dural.

RESPONSIBLE OFFICER

The officer responsible for the preparation of this Report is the Manager, Parks and Recreation – David Sheils - who can be contacted on 9847 6792.

DAVID SHEILS
Manager - Parks and Recreation
Infrastructure and Recreation Division

ROBERT STEPHENS
Deputy General Manager - Infrastructure and
Recreation

Attachments:

1. [ViewView](#) Attachment - Confidential Memo - *This attachment should be dealt with in confidential session, under Section 10A (2) (d) of the Local Government Act, 1993. This report contains commercial information of a confidential nature that would, if disclosed (i) prejudice the commercial position of the person who supplied it; or (ii) confer a commercial advantage on a competitor of the council; or (iii) reveal a trade secret.*
2. [ViewView](#) RFT16/2017 Licence of Dural Park Tennis Courts - signed evaluation report - *This attachment should be dealt with in confidential session, under Section 10A (2) (d) of the Local Government Act, 1993. This report contains commercial information of a confidential nature that would, if disclosed (i) prejudice the commercial position of the person who supplied it; or (ii) confer a commercial advantage on a competitor of the council; or (iii) reveal a trade secret.*

File Reference: F2017/00093
Document Number: D07240562

ITEM 10

11 TENDER RFT14/2017 – LICENCE OF THOMAS THOMPSON PARK TENNIS COURTS, CEDARWOOD DR CHERRYBROOK

EXECUTIVE SUMMARY

- Cherrybrook Tennis Coaching Centre is the current manager of the tennis court facility at Thomas Thompson Park.
- Request for Tender RFT14/2017 has been called for the licence of Thomas Thompson Park Tennis Courts, Cedarwood Drive Cherrybrook. One tender submission was received and this was assessed as conforming.
- The proposed licence will be for a term of ten years for the management and operation of the tennis court facility.
- Cherrybrook Tennis Coaching Centre has been recommended the preferred tender.

RECOMMENDATION

THAT:

1. Council accept the tender submission received from Cherrybrook Tennis Coaching Centre for RFT14/2017 – Licence of Thomas Thompson Park Tennis Courts, Cedarwood Drive Cherrybrook.
2. The Acting General Manager be delegated authority to execute the licence agreement with Cherrybrook Tennis Coaching Centre.

PURPOSE

The purpose of this Report is to provide a recommendation for Tender RFT14/2017 Licence of Thomas Thompson Park Tennis Courts, Cedarwood Drive Cherrybrook.

BACKGROUND

A lump sum tender was called to operate and maintain the four tennis court facility at Thomas Thompson Park, Cedarwood Drive Cherrybrook for a term of ten years. Open tenders were called in accordance with the Local Government Act and Regulation.

The land upon which the tennis court complex is situated is known as Thomas Thompson Park of which Council is owner.

DISCUSSION

A summary of the submitted tenders with full evaluation details have been placed on file (F2017/00091). Excepting this report, the summary and details of the tenders received are to be treated as confidential in accordance with the Local Government Act.

The objective of the tender is to determine a suitable licensee to enter into a Licence Agreement and pay Council a Rental Fee for the licence to manage and operate the Thomas Thompson Park tennis courts. The opportunity to use the courts for alternative sports or uses was made available to proponents.

A public tender was called on 18 April 2017 with a closing date of 18 May 2017. Tenders were advertised using Tenderlink, Sydney Morning Herald, Hornsby Advocate and Council's website.

One tender submission was received before the closing time from Cherrybrook Tennis Coaching Centre and this was assessed as conforming.

Cherrybrook Tennis Coaching Centre is the current managers of the tennis court facility at Thomas Thompson Park.

TENDER EVALUATION

As part of the tender process, evaluation criteria were developed and scored by the tender evaluation panel that was determined prior to the closing of tenders. The criteria included both price and non-price evaluations.

Non-price Evaluation

The non-price evaluation criteria included:

- Past performance and experience
- Management and staff resources
- Proposed operational use including Asset Management Plan.

Price Evaluation

The tendered price was evaluated for the tender. Details of the tender evaluation prices are contained in the attached confidential evaluation report. This attachment is deemed confidential under Section 10A (2)(d) of the Local Government Act 1993.

The results of the evaluation indicate that the submission received from Cherrybrook Tennis Coaching Centre is a favourable outcome for Council.

BUDGET

The rental proposed by the recommended operator is within Councils market expectations for the facility.

POLICY

There are no policy implications associated with this Report.

CONCLUSION

Based on the evaluation, the tender submitted by Cherrybrook Tennis Coaching Centre is considered advantageous for Council. The evaluation panel has recommended that the submission received from Cherrybrook Tennis Coaching Centre be accepted for tender RFT14/2017 Licence of Thomas Thompson Park Tennis Courts, Cedarwood Drive Cherrybrook.

RESPONSIBLE OFFICER

The officer responsible for the preparation of this Report is the Manager, Parks and Recreation—David Sheils - who can be contacted on 9847 6792.

DAVID SHEILS

Manager - Parks and Recreation
Infrastructure and Recreation Division

ROBERT STEPHENS

Deputy General Manager - Infrastructure and
Recreation

Attachments:

1. [ViewView](#) Attachment - Confidential Memo - *This attachment should be dealt with in confidential session, under Section 10A (2) (d) of the Local Government Act, 1993. This report contains commercial information of a confidential nature that would, if disclosed (i) prejudice the commercial position of the person who supplied it; or (ii) confer a commercial advantage on a competitor of the council; or (iii) reveal a trade secret.*
2. [ViewView](#) RFT14/2017 Licence of Thomas Thompson Park Tennis Courts - Signed tender evaluation report - *This attachment should be dealt with in confidential session, under Section 10A (2) (d) of the Local Government Act, 1993. This report contains commercial information of a confidential nature that would, if disclosed (i) prejudice the commercial position of the person who supplied it; or (ii) confer a commercial advantage on a competitor of the council; or (iii) reveal a trade secret.*

File Reference: F2017/00091

Document Number: D07240598

12 REQUEST FOR TREE REMOVAL - 12A VICTORY STREET, ASQUITH

EXECUTIVE SUMMARY

- The owners of 12A Victory Street and a neighbour at 17 Baldwin Avenue, Asquith have sought Council approval for the removal of one *Eucalyptus botryoides* (Bangalay) located at the rear of 12A Victory Street.
- An initial application in 2016 (TA/408/2016) requested the removal of a *Eucalyptus botryoides* (Bangalay) on the basis of tree roots being present inside their backyard, unbalanced trunk that leans towards the neighbour's property (17 Baldwin Avenue); lifting of the ground around the roots; the dropping branches which is a risk to property and a high risk for children and people using the yard.
- This application was inspected and refused on the basis the tree was observed to be in good condition and there was insufficient evidence to support its removal based on the grounds put forward by the applicant.
- In March 2017 an appeal was lodged (TA/820/2014/A) seeking review of Council's decision to allow for the tree's removal. The appeal was accompanied with a tree statement (Attachment 1). Council's arborist had concerns when the species was incorrectly identified within this assessment and was not satisfied the supporting document proved conclusively that the tree should be removed based on its potential for failure.
- The appeal was refused on the basis the reviewing Council arborist observed the tree to be in good condition and there was insufficient evidence to support the removal of the tree based on the grounds proposed by the applicant.
- In the preparation of this Council meeting the resident has supplied an additional information package which includes a second statement by a qualified arborist (Attachment 2), who has raised concerns also about stem lean and potential impacts to the tree associated with an approved new dwelling at 17 Baldwin Avenue.
- The owner has requested that the matter be considered at a General Meeting of Council.
- This Report concludes the *Eucalyptus botryoides* (Bangalay) is structurally sound, healthy and worthy of retention.

RECOMMENDATION

THAT Council refuse consent to remove one *Eucalyptus botryoides* (Bangalay) located at the front of the property at 12A Victory Street, Asquith.

PURPOSE

The purpose of this Report is to provide Council with the information required to consider an application by the owner of 12A Victory Street, Asquith to remove one *Eucalyptus botryoides* (Bangalay), located in the rear yard of the property.

BACKGROUND

In 2016 Council received a tree application (TA/408/2016) seeking approval for the removal of a *Eucalyptus botryoides* (Bangalay) on the basis of tree roots being present inside the applicant's backyard, an unbalanced trunk that leans towards the neighbour's property (17 Baldwin Avenue); the lifting of ground around the roots; dropping branches which poses a risk to property and a high risk for children and people using the yard.

The resulting inspection undertaken by a Council arborist noted a Bangalay to be approximately 5 metres from the dwelling. The tree was assessed and observed to be in good health, condition, and there was evidence of previous pruning events on the property side of the tree canopy. The tree was refused to be removed on the grounds insufficient evidence had been provided. However, consent was granted to provide general crown maintenance by up to 10% to reduce deadwood and epicormic regrowth within the canopy.

In February 2017 an appeal (TA/408/2016/A) was submitted with a statement (Attachment 1). The statement made recommendations for the tree's removal based on assumptions relating to fungal activity, dysfunction due to a stem lean, the presence of termites and deadwood.

Council's arborist conducting the review was not satisfied that these assumptions could be supported. It was noted that the report incorrectly identified the tree species and as such raised questions to the potential for other errors contained in the statement. For example the applicant's report states the tree species to be *Eucalyptus microcorys* (Tallowood) which is not indigenous to Hornsby. If this was the case, Council consent for pruning or removal would not be required. The two tree species are very different in their appearance and growth habit.

A second inspection by a different Council arborist observed a tree with good basal stability, sound trunk tissue and good condition. The canopy alternating branch structure is considered typical for the *Eucalyptus* species and minor stem lean (est.10%) and there was no evidence of fungal pathogen activity or termites.

For this Council meeting another one page statement has been provided by an arborist with an AQF5 level qualification in arboriculture (Attachment 2). This statement suggests there are potential impacts to the tree associated with an approved new dwelling at 17 Baldwin Avenue, Asquith which is yet to be built. Council's arborists disagree with this assessment as the dwelling is not located within the structural root zone and the construction uses pier footings that are sensitive to the root zone.

All tree assessments made by Council arborists were made by visual external inspections. Internal, underground or aerial investigations were not undertaken.

Tree Details

Species	<i>Eucalyptus botryoides</i>
Common Name:	Bangalay
Height (Est.)	25 metres
Diameter at breast height (Dbh)	0.700m

Age:

Mature

Concerns Regarding Safety

The Bangalay was initially requested to be inspected by the owner based on safety concerns and the potential for the tree to fail.

The two different Council arborists who have completed assessments observed well-formed buttress (indicator of good stability), with no evidence of soil heaving or subsidence consistent with trees which are experiencing soil failure in the root zone. Where a lateral limb was removed from the tree it was evident that occluding (closing) of the wound was occurring. Council's arborist also tested the exposed heartwood at the old pruning wound using a synthetic mallet. The tissue was hard and consistent with sound heartwood with no evidence of fungal affected tissue in this area; thus eliminating the issue of decaying woody tissue.

Council's arborists noted the presence of pinhole borer (Ambrosia beetle) damage in the outer layers of bark tissue and the presence of ants, however, was not satisfied there was termite activity present.

No trunk swelling was present or evidence of structural augmentation i.e. bottle butt which is typical of trees which have a subterranean termite nest in the tree base.

The second statement provided by the neighbour raises concerns with potential impacts to the tree associated with future development of 17 Baldwin Avenue, Asquith. Council arborists are satisfied the approved design of the dwelling which employs the use of piers reduces the impacts to the tree and accommodates its retention. It is also noted that Council arborists consider the incursions of the TPZ to be below 20 percent which is permissible on sites especially where sensitive methods of construction are being used which is the case.

Overall it was concluded the tree and its canopy to be consistent with a mature tree in good condition. The canopy branch structure is considered typical for *Eucalyptus botryoides* and minor stem lean (est.10%) and there was no evidence of fungal pathogen activity, decay or termites.

For trees in the urban environment arborists are able to undertake risk assessments by following industry accepted risk assessment criteria. Council's tree officers have applied these criteria in their assessments and determined the risk rating to be 'low' and 'acceptable'.

None of the statements submitted by the applicant or the neighbour quantify the proposed risk using an industry accepted risk criteria method i.e. Quantified Tree Risk Assessment (QTRA) or Tree Risk Assessment Qualification (by the International Society of Arboriculture).

Consideration of Retention of the Tree

The Hornsby Local Environmental Plan and Development Control Plan provide strategic planning instruments aimed at the preservation of Hornsby's trees. The request to remove this tree is measured against these instruments. *Eucalyptus botryoides* (Bangalay) is a species indigenous to Hornsby Shire and therefore requires an approval to prune or remove.

The tree has been assessed by arborists who have concluded it does not pose a risk to human life or is causing or likely to cause substantial damage to property.

There is no evidence of consistent (i.e. every 3 months) large diameter live tissue failures; or evidence of stem dysfunction. The habit of growth is consistent with a tree searching for light on the windward edge in a large grouping of trees.

The tree can be retained with minimal remedial works i.e. deadwood removal and there is currently sufficient setback from the residence.

BUDGET

There are no budgetary implications associated with this Report.

POLICY

The recommendation contained within the Report is consistent with Council's Tree Preservation Measures (HDCP) that provides protection to trees that are indigenous to Hornsby Shire such as the remnant *Eucalyptus botryoides* (Bangalay) and only permits removal of a tree in the case of safety concerns if there are signs that the tree is diseased, dying or dangerous.

CONCLUSION

The Bangalay is a mature and healthy remnant specimen that contributes to the leafy character of the area.

The tree was determined to be in good condition and the risk posed by the tree was assessed in the field using the QTRA system which concluded the risk to be low and acceptable. There is no reason to believe that the tree is at imminent risk of failure or decline and, therefore, can be retained.

Council officers conclude that the tree is worthy of retention and therefore it is recommended that Council refuse the application for consent to the *Eucalyptus botryoides* (Bangalay) located in the rear yard of 12A Victory Street, Asquith.

RESPONSIBLE OFFICER

The officer responsible for the preparation of this Report is the Manager, Parks and Recreation – David Sheils - who can be contacted on x6792.

DAVID SHEILS

Manager - Parks and Recreation
Infrastructure and Recreation Division

ROBERT STEPHENS

Deputy General Manager - Infrastructure and
Recreation

Attachments:

- 1.[ViewView](#) Attachment 1 - 17 Baldwin Street, Asquith Tree Report
- 2.[ViewView](#) Attachment 2 - Tree Analysis

File Reference: TA/408/2016/A

Document Number: D07262685

14 MAYOR'S NOTES FROM 1 TO 31 JULY 2017

Note: These are the functions that the Mayor, or his representative, has attended in addition to the normal Council Meetings, Workshops, Mayoral Interviews and other Council Committee Meetings.

Monday 3 July 2017 – The Mayor attended the Rotary Club of Epping's Annual Changeover Dinner at Epping.

Tuesday 4 July 2017 – The Mayor attended the Unveiling of the Westfield Hornsby Plaque for NAIDOC Week at Hornsby Westfield.

Tuesday 4 July 2017 – The Mayor attended the War on Waste Campaign at Hornsby Library.

Thursday 13 July 2017 – The Mayor attended the opening of the North Shore Craft Group's 60th Anniversary Exhibition at Thornleigh.

Tuesday 18 July 2017 – The Mayor hosted three Citizenship Ceremonies in the Council Chambers.

Wednesday 19 July 2017 – The Mayor attended the Home Based Business Connect You Event at Hornsby.

Thursday 20 July 2017 – The Mayor attended a Service to mark the commencement of Ministry of Reverend Paul Sampson as Rector at All Saints North Epping Anglican Church.

Saturday 29 July 2017 – On behalf of the Mayor, Deputy Mayor Councillor Hutchence attended Mount Colah Soccer Club's 60th Birthday Celebrations at Hornsby RSL Club.

Sunday 30 July 2017 – On behalf of the Mayor, Deputy Mayor Councillor Hutchence attended the Galston Concert 'Organ & Brass' at Galston Uniting Church.

File Reference: F2004/07053
Document Number: D07260105

15 LISGAR GARDENS: NOMINATION AS AN INTERNATIONAL CAMELIA GARDEN OF EXCELLENCE

COUNCILLOR BROWNE TO MOVE

THAT Council:

1. Authorise the Deputy General Manager Infrastructure and Recreation to prepare a submission for the nomination of Lisgar Gardens as an International Camellia Garden of Excellence and to undertake any necessary work to meet the evaluation criteria, provided it is within the resources currently allocated to Lisgar Gardens; and
2. Become a full member of Camellia Ark Australia.

Note from Councillor

As Council's representative for Lisgar Gardens since 1999, recently I invited the Director (for Australia) International Camellia Society, Dr Stephen Utick to outline the merits of nominating Lisgar Gardens as an International Garden of Excellence.

To achieve this nomination would be an incredible achievement with the gardens to have been judged as holding a significant collection of camellias along with information about them. Moreover, the gardens would be internationally acknowledged as being maintained to a high standard, and are rewarding to visit. Camellias are particularly held in high regard by Japanese and Chinese visitors and in Asia and Europe more generally.

Dr Utick has confirmed during a Mayoral Interview on 19 July 2017 that Lisgar Garden satisfies almost all of the International Camellia Society's Garden of Excellence evaluation criteria. Council officers have confirmed that outstanding tasks such as completion of plant labelling, updating of the collection register and inclusion of about 50 additional camellia cultivars could occur with limited cost and within Council's existing resources.

It would be quite a feather in Council's cap if we could achieve Lisgar Gardens being recognised as a Garden of Excellence. It would be only the second garden to achieve this status in NSW and would appropriately acknowledge the significance of Lisgar Gardens and its plant collection.

At this stage whilst the next Congress is in 2018, it is proposed that Council's Nomination would be progressed to the 2020 International Camellia Society Congress which will be held in Japan for ratification. International Judges will visit Lisgar Gardens in the lead up to that Congress.

On a related matter it would also be appropriate that Council formally become a member of Camellia Ark Australia. For a low yearly cost of \$30, membership would provide Council and the Friends of Lisgar Gardens access to a wealth of Camellia specific information and access to numerous rare and valuable Camellia Cultivars for use.

Attachments:

There are no attachments for this report.

File Reference: F2004/07910-03

Document Number: D07264796

16 IMPROVEMENT OF THE DUFFY AVENUE, CHILVERS ROAD AND THE ESPLANADE INTERSECTION, THORNLEIGH**COUNCILLOR BROWNE TO MOVE**

THAT Council authorise the Deputy General Manager Infrastructure and Recreation to evaluate, as a matter of priority, options to realign the offset intersection into a simple four way layout, consult with the public and prepare a detailed estimate to secure funding to allow delivery of the project in 2018/2019 Financial year. The options should also consider any other initiatives including a review of the speed limit by Roads and Maritime Services (RMS).

Note from Councillor

The operation of this intersection has long been of concern for residents in the locality for many years. In recent times it has clearly got a lot worse.

The current operation of this intersection is complex with an offset alignment through the main route. The poor dog leg geometry and complex signal operation leads to inefficiencies. The intersection has been modified a number of times by Council but this has not alleviated the level of public concern about delays and safety. Since the most recent intersection modification, there have been 21 crashes in the past 5 years, with 11 resulting in injuries.

Council has land available to allow realignment of the intersection and there is funding available to allow a full design to be prepared. I understand that Council officers have recently met with Roads and Maritime Services to discuss traffic signal design issues that will need to be resolved to allow realignment of the intersection and Council officers are hopeful of securing funding from RMS for the construction of the required works in 2018.

It is apparent to me that we should authorise the Council officers to commence design works now to ensure the delivery of a much improved intersection in a timely manner.

Attachments:

There are no attachments for this report.

File Reference: F2004/09774

Document Number: D07264869