



BUSINESS PAPER

LOCAL PLANNING PANEL MEETING

**Wednesday 25 March 2020
at 6:30PM**



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Local Planning Panel

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1 DEVELOPMENT APPLICATION - TORRENS TITLE SUBDIVISION OF AN EXISTING MULTI-UNIT HOUSING DEVELOPMENT - 23 WESTWOOD STREET, PENNANT HILLS

EXECUTIVE SUMMARY

DA No: DA/1100/2019 (Lodged on 3 December 2019)

Description: Torrens title subdivision of an approved multi-unit housing development comprising two detached dwellings into two lots

Property: Lot 3 DP 35906, No. 23 Westwood Street, Pennant Hills

Applicant: MB Town Planning

Owner: Mr Matthew Brian Dawson and Ms Jin Cao

Estimated Value: \$39,700

Ward: B

- The proposal does not comply with the *Hornsby Shire Local Environmental Plan 2013 (HLEP)* with regard to Clause 4.1 'Minimum subdivision lot size'. The applicant has made a submission in accordance with Clause 4.6 'Exceptions to development standards' of the *HLEP* to vary the minimum 500m² lot size development standard. The submission is considered well founded and is supported.
- The application is required to be determined by the Hornsby Council Local Planning Panel as the proposal would contravene the *HLEP* development standard for minimum subdivision lot size by more than 10 percent.
- No submissions have been received in respect of the application.
- It is recommended that the application be approved.

RECOMMENDATION

THAT the Hornsby Shire Council Local Planning Panel 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/1100/2019 for Torrens title subdivision of an approved multi-unit housing development comprising two detached dwellings into two lots at Lot 3 DP 35906, No. 23 Westwood Street, Pennant Hills subject to the conditions of consent detailed in Schedule 1 of LPP Report No. LPP4/20.

BACKGROUND

Upon gazettal of the then *Hornsby Shire Local Environmental Plan 1994 (HSLEP)* in July 1994, Hornsby Shire was exempted from the provisions of the now repealed NSW State Government's urban consolidation policies, namely *Sydney Regional Environmental Plan No. 12 Dual Occupancy (SREP12)* and *State Environmental Planning Policy No. 25 Residential Allotment Sizes (SEPP25)*.

The exemption was granted as a result of the housing initiatives embodied within the *HSLEP* which presented an alternative solution to meet both local and State housing objectives. The *HSLEP* incorporated higher density residential zones around transport and employment nodes, such as the Hornsby Town Centre. The *HSLEP* also permitted multi-unit housing at a density of one dwelling per 350m² of land area within the Residential A (Low Density) zone. In accordance with Clause 4(2) of the *HSLEP*, *SREP 12* and *SEPP 25* no longer applied to Hornsby Shire.

The then Minister for Urban Affairs and Planning subsequently repealed the right to separate titles on dual occupancy developments. However, despite the repeal of *SREP12* and *SEPP25*, the subdivision of dual occupancies with reduced lot sizes was still possible under the *HSLEP*.

On 15 December 1995, to bring the *HSLEP* in accordance with State Government policies, *HSLEP (Amendment No. 8)* was gazetted to preclude the subdivision of multi-unit housing developments where proposed allotment sizes were less than the minimum allotment size under Clause 14 (Density).

In September 2013, the *Hornsby Local Environmental Plan 2013 (HLEP)* was gazetted which permitted a minimum allotment size of 500m² and prohibited 'multi-unit housing' and 'dual occupancies' within the R2 Low Density Residential zone.

SITE HISTORY

On 18 October 1988, Council approved Development Application No. DA/236/88 for the erection of a single storey dwelling to the rear of the existing dwelling (dual occupancy).

APPLICATION HISTORY

On 10 January 2020, Council requested amendments to the submitted plans to address Council's concerns including lot size inconsistencies amongst the submitted plans and concerns that the proposed common boundary would encroach into the existing driveway to be retained on Lot B.

On 4 February 2020, Council received revised plans in response to Council's request.

SITE

The 1,128m² irregular shaped site is located on the western side of Westwood Street Pennant Hills and contains two detached single storey dwellings and two shed outbuildings.

The site experiences a fall of 1 metre to the front boundary, representing a gradient of approximately 2%. The site is not burdened by any easements or restrictions.

The site is surrounded by low density residential land uses comprising a mixture of single and two storey dwellings and several subdivided battle-axe allotments in the vicinity.

PROPOSAL

The application proposes Torrens title subdivision of an allotment of an approved multi-unit housing development comprising 2 detached dwellings.

Proposed Lot 231 would have an area of 687.1m² (789.7m² including access handle) and would contain the existing dwelling to the rear of the site.

Proposed Lot 232 would have an area of 337.9m² and would contain the existing dwelling to the front of the site. The provision of a hardstand car parking space and vegetation screening is proposed to the front of the dwelling on Lot 232. Vehicular access to this lot would be provided via a proposed right of carriageway over Lot 231.

The subdivision would be serviced by the existing on-site stormwater detention system which drains to Council's drainage system along Westwood Street.

The development would utilise the existing vehicular access and driveway adjoining the southern side boundary.

The application necessitates the removal of one tree to facilitate the construction of the proposed hardstand parking space.

ASSESSMENT

The development application has been assessed having regard to the *Greater Sydney Region Plan – A Metropolis of Three Cities*, the *North District Plan* and the matters for consideration prescribed under Section 4.15 of the *Environmental Planning and Assessment Act 1979* (the Act). The following issues have been identified for further consideration.

1. STRATEGIC CONTEXT

1.1 Greater Sydney Region Plan - A Metropolis of Three Cities and North District Plan

The Greater Sydney Region Plan - A Metropolis of Three Cities has been prepared by the NSW State Government to guide land use planning decisions for the next 40 years (to 2056). 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 also 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 released the North District Plan which includes priorities and actions for 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 the *Greater Sydney Region Plan - A Metropolis of Three Cities* and the *North District Plan*, by providing an additional residential allotment capable of being sold separately which will enable potential home buyers the opportunity to purchase affordable housing in the locality.

2. STATUTORY CONTROLS

Section 4.15(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 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 with Council's consent.

2.1.2 Minimum Subdivision Lot Size

Clause 4.1 of the *HLEP* prescribes that the minimum subdivision lot size is not to be less than shown for the land on the minimum lot size Map, which is 500m².

The proposed subdivision would result in Lot 231 having an area of 687.1m² excluding access and would comply with the minimum subdivision lot size development standard. Proposed Lot 232 would have an area of 337.9m² which would result in a 32.42% variation to the minimum lot size development standard.

The application is supported by a submission pursuant to Clause 4.6 of *HLEP* to vary the minimum 500m² allotment size development standard, which is discussed below in Section 2.1.4 of this report.

2.1.3 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 existing dwelling to the rear of the site exhibits a height of 4.6m and the dwelling to the front of the site is 4.5m in height.

Accordingly, the proposal complies with Clause 4.3 of the *HLEP*.

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 the development standards in circumstances where strict compliance with those standards would, in any particular case, be unreasonable or unnecessary or tender to hinder the attainment of the objectives of the zone.

Clause 4.6 applies to this development as proposed Lot 232 would have an area of 337.9m² representing a 32.42% variation to the 500m² 'minimum subdivision lot size' development standard.

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 dwellings located on the site are existing and are proposed to be retained as part of this application. The proposed boundary between the two proposed dwelling houses will be slightly adjusted from the existing middle boundary. As part of this subdivision, the middle boundary will be pushed slightly towards the rear dwelling, which will increase the amount of*

land for the front dwelling. Whilst there is a proposed non-compliance with the lot size control, the subdivision will actually increase the amount of land allocated to the front dwelling, in turn enhancing the useability of the site for future residential uses.

- The current use of the site is a detached dual occupancy, within which the subject site is located, is a prohibited use within the R2 zone. This proposed development for the subdivision of the existing lot into two separate lots, will create two dwelling houses. With regard to the permissible uses under the current zoning of the site, a dwelling house is permissible. Therefore, the proposed compliance with the lot size control is considered to be reasonable due to the change in use from a prohibited to a permissible use.
- With the exception of providing more suitable on-site car parking provisions and minor landscaping works, no physical works are proposed to the existing dwellings. The site as currently configured has been inclusive of a detached dual occupancy since 1988. This equates to over 30 years whereby the site has been configured in a way that is similar to that of a subdivided property.
- The proposed development will not impact on the residential capacity of the subject site. However, the subdivision of land will enable the potential for more affordable housing within a locality that does not provide for many alternative housing options. Following the subdivision of the site, the two lots can (if so desired) be sold separately which will allow potential home buyers the opportunity for buying land that has proven to be of a suitable size for residential purposes.
- The subject site is uneven in shape and comprises of a total area of 1128m². In order to maintain the existing dwellings on site and continue to reflect the existing site conditions following the subdivision of land, the proposed front lot will inevitably be of a size that is below the minimum lot size.
- The use of the existing detached dual occupancy has existed for approximately 30 years. As a result, the existing site conditions and surrounding land will be maintained through the retention of these dwellings that have become a part of the existing character of Westwood Street.
- There is no existing heritage item or conservation area located within close proximity to the site. As a result, no adverse impacts will be generated on surrounding heritage areas from this proposed contravention to the minimum subdivision lot size control.
- An increase in the land area allocated to the front dwelling is proposed. That allows an increase in private open space for the existing front dwelling, ensuring that the proposed subdivision will enhance the liveability for residents within the front dwelling.
- The previously approved driveway and car parking space (allocated to the front dwelling), has been amended as part of this proposal. The parking space has now been provided in the front setback to enable the retention of the existing landscaping between the two dwellings. The proposed hardstand space will be suitably screened by native Australian plants and treated pine posts, which will be reflective of vegetation in the surrounding locality. This proposed design will enable the existing landscaping and private open space to be retained for the front dwelling, which will continue to enhance the environmental characteristics of the site.
- The proposed development would be in the public interest because it is consistent with the objectives of the development standard. Those objectives are:

- (1) *The objectives of this clause are as follows:*
- (a) *To provide for the subdivision of land at a density that is appropriate for the site constraints, development potential and infrastructure capacity of the land.*
 - (b) *To ensure that lots are of a sufficient size to accommodate development.*
- *In relation to objective (a), the proposed subdivision of land will be appropriate with regard to the site constraints. Since approval was granted for the existing detached dual occupancy in 1988, the site has suitably functioned with regard to any potential site constraints.*
 - *The development potential has already been reflected by the existing dwellings that are located on site, which are proposed to be retained as part of this development application. As a result, it is considered that the existing dwellings will continue to be appropriate for the site constraints.*
 - *Regarding objective (b), both lots have proven to be of a suitable size to accommodate development, considering the previous approval and subsequent existence of both dwellings located on site for approximately 30 years.*
 - *The proposed development would also be in the public interest because it is consistent with the objectives of the zone. Those objectives 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.*
 - *In relation to the first objective, the proposed development will continue to meet the housing needs of the community within a low-density residential environment. The subdivision of land will be consistent with the surrounding properties that neighbour the subject site, as they have all been previously subdivided.*
 - *The proposed development will also enable the adjoining properties and other land uses in the area to continue to meet their daily needs. The functioning of the subject site will continue to be for residential purposes, with the existing dwellings also being retained. Therefore, the proposed subdivision of land will in no way affect neighbouring land.*

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 minimum subdivision lot size development standard is considered well founded for the following reasons:

- The proposal would convert a prohibited 'dual occupancy' development to a permissible use (dwelling house) within the R2 Low Density Residential zone under the *HLEP*.
- The proposal includes minimal changes to the approved built form, and therefore, the proposal would have a negligible impact on the existing streetscape or the amenity of adjoining properties.
- Approval of the application for Torrens title subdivision would not alter the intensity or scale of the existing development on the site.
- The proposal is both site specific and accords with the objective of the zone as the proposal would allow the existing dwellings to be on separate titles, thereby adding economic value and versatility to existing housing stock.
- The proposal would result in allotments consistent with the objectives of the development standard. This is evident as the existing dual occupancy development on the site demonstrates that the proposed allotments are capable of accommodating dwelling houses with the necessary ancillary services including stormwater and sewer.
- No environmental or planning implications would arise should the application be approved.
- The two lots could be sold separately which would allow potential home buyers the opportunity to buy affordable land that has proven to be of a suitable size for residential purposes.
- The 1,128m² site area is of adequate size to facilitate a *HLEP* compliant subdivision of one allotment into two lots greater than 500m² in area. The non-compliant front lot is a consequence of the existing triangular lot shape and the retention of both dwellings on the site.
- The demolition of the two dwellings to allow for a reconfiguration of the subdivision lot pattern resulting in *HLEP* compliant lot sizes would result in unnecessary demolition waste and forfeit of functional housing stock.

Based on this assessment, it is considered that compliance with the development standard would be unreasonable and unnecessary in the circumstances of the case. The proposal would not result in a precedent given the unique circumstances of the site involving an approved multi-unit housing development on the site.

Accordingly, the submitted Clause 4.6 submission is supported in this instance.

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, is not in the vicinity of a heritage item and is not located in a heritage conservation area. 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 proposed hardstand car space would be constructed on-grade and the extent of the earthworks required for the proposed hardstand parking space would be minor and consistent with Clause 6.2 of the *HLEP*.

Subject to compliance with the recommended conditions, the proposal is considered acceptable in this regard.

2.1.7 Flood Planning

The site is not identified as a flood planning area on the Flood Planning Map and further assessment under Clause 4.6 of the *HLEP* is not required.

2.2 State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017

State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 (Vegetation SEPP) aims to protect the biodiversity and amenity values of trees within non-rural areas of the state.

Part 3, Clause 9(2) of the *Vegetation SEPP* states that a Development Control Plan may make a declaration in any manner relating to species, size, location and presence of vegetation. Accordingly, Part 1B.6.1 of the Hornsby Development Control Plan 2013 (HDCCP) prescribes works that can be undertaken with or without consent to trees and objectives for tree preservation.

The application has been assessed against the requirements of the *Vegetation SEPP* and it has been determined that the proposal would meet the objectives of the *Vegetation SEPP*. This matter is addressed in Section 3.1.1 of this report.

2.3 State Environmental Planning Policy No. 55 Remediation of Land

The application has been assessed against the requirements of *State Environmental Planning Policy No. 55 Remediation of Land (SEPP 55)* under which consent must not be granted to the carrying out of any development on land unless the consent authority has considered whether the land is contaminated or requires remediation for the proposed use.

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.

An examination of Council's records and aerial photography has determined that the site has been historically used for residential purposes. It is not likely that the site has experienced any significant contamination, and further assessment under *SEPP 55* is not required.

2.4 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.

2.5 Section 3.42 Environmental Planning and Assessment Act, 1979 - Purpose and Status of Development Control Plans

Section 3.42 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.

2.6 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:

Subdivision of one lot into two:

HDCP – Part 6 – Subdivision			
Control	Proposal	Requirement	Complies
Site Area	1,128m ²	N/A	N/A
Lot Area			
- Lot 231 (excluding access)	687.1m ²	500m ²	Yes
- Lot 232	337.9m ²	500m ²	No
Minimum Lot Width at Frontage			
- Lot 231	22m	12m	Yes
- Lot 232	12.5m	12m	Yes
Accessway Width			
- Carriageway (existing)	2.35m – 3.5	3m	No
- Landscape Verge	0.3m – 3.25m	0.5m	No

Existing dwelling house on proposed (Lot 231):

HDCP – Part 3.1 Dwelling Houses			
Control	Proposal	Requirement	Complies
Dwelling House height	4.6m	8.5m	Yes

No. storeys	1 storey	max. 2 + attic	Yes
Site Coverage	37.5%	50%	Yes
Floor Area	253m ²	380m ²	Yes
Setbacks			
- <i>Front</i>	2m	900mm	Yes
- <i>Side (north)</i>	1.75m (existing)	900mm	Yes
- <i>Side (south)</i>	2.2m (existing)	900mm	Yes
- <i>Rear</i>	1.9m – 9.8m (existing)	3m	No
Landscaped Area (% of lot size)	31%	30%	Yes
Private Open Space			
- <i>minimum area</i>	>24m ²	24m ²	Yes
- <i>minimum dimension</i>	>3m	3m	Yes
Car Parking (3 bed dwelling)	2 spaces	2 spaces	Yes

Existing dwelling house on proposed (Lot 232):

HDCP – Part 3.1 Dwelling Houses			
Control	Proposal	Requirement	Complies
Dwelling House height	4.5m	8.5m	Yes
No. storeys	1 storey	max. 2 + attic	Yes
Site Coverage	31.5%	55%	Yes
Floor Area	99m ²	270m ²	Yes
Setbacks			
- <i>Front</i>	8.7m (existing)	6m	Yes
- <i>Side (west)</i>	1.25m	900mm	Yes
- <i>Side (south)</i>	1.2m	900mm	Yes
- <i>Rear (north)</i>	2.78m - 11.6m (existing)	3m	No
Landscaped Area (% of lot size)	51%	15%	Yes
Private Open Space			
- <i>minimum area</i>	>24m ²	24m ²	Yes

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- <i>minimum dimension</i>	>3m	3m	Yes
Car Parking (2 bed dwelling)	1 space	1 space	Yes

As detailed in the above table, the proposed development generally complies with the prescriptive measures within Part 6 of the *HDCP*, with the exception of lot size, accessway width and building setbacks. The matters of non-compliance are detailed below, as well as a brief discussion on compliance with relevant desired outcomes and Part 1C General Controls.

2.6.1 Lot Size

As discussed under Sections 2.1.2 and 2.1.4 of this report, the existing dual occupancy development demonstrates that the site is of sufficient size and shape to accommodate two dwelling houses. The proposed Torrens title subdivision would not alter the intensity or scale of the existing development on the site and would convert a prohibited '*dual occupancy*' development to a permissible use within the R2 Low Density Residential zone under the *HLEP*.

The proposal would not have a detrimental impact on the existing streetscape or the amenity of adjoining properties and is considered acceptable in this regard.

2.6.2 Accessway

2.6.2.1 Utilisation of Existing Accessway

The construction of a new vehicular crossing and driveway has not been proposed as part of this application.

Council's *Vehicular Crossing Specification 2018* encourages the construction of a new vehicular crossing for Torrens title subdivision developments incorporating a shared accessway. Section 1.6.1 of the specification indicates that existing vehicular crossings and driveways may be utilised if the crossing has previously been approved by Council and is in reasonable condition.

The existing vehicular crossing and driveway was constructed in accordance with the consent conditions of DA/236/88 to facilitate shared vehicular access to both dwelling houses on the site.

Council's engineering assessment raises no concerns to structural integrity and utilisation of the existing crossing and driveway, subject to a recommended condition requiring the creation of a right of carriageway over Lot 231 benefiting both lots.

2.6.2.2 Accessway Width

The *HDCP* prescribes a minimum accessway width of 3.5m, comprising a 3m wide carriageway and a 500mm wide landscape verge. The existing driveway to be retained achieves a width of between 2.35m to 2.95m and the landscape verge is between 300mm to 3.25m in width, which is contrary to the requirements of the *HDCP*.

In support of this variation, it is calculated that a *HDCP* compliant 3.5m wide accessway would comprise an approximate landscaped area of 14m², assuming the provision of a 500mm wide landscaping verge for the length of the 28m long battle-axe handle. In comparison, the proposed development would provide an approximate landscaped area of 20m² along the access handle. It is considered that the proposed development would provide for suitable landscaping along the accessway and is deemed acceptable in this regard.

With respect to the variable width of the carriageway to be retained (2.35m-3.5m), Council's engineering assessment has determined that the width of the driveway, whilst not complying with the 3m wide *HDCP* requirement, would continue to maintain safe and suitable vehicular access to both dwellings as has been afforded to the site since 1988. It is noted that the reconstruction of the carriageway would result in the demolition of stormwater services located beneath, which are relied upon to service the proposed subdivision.

On balance, the proposed retention of the accessway is considered appropriate given the circumstances of the case.

2.6.3 Setbacks

2.6.3.1 Rear Setback (Lot 231)

The dwelling to be retained on proposed Lot 231 is setback between 1.9m-9.8m from the existing rear boundary, contrary to the 3m rear boundary setback requirement of the *HDCP*.

The proposal does not include any changes to the approved built form within proposed Lot 231. Consequently, the existing rear boundary setback would be retained as approved under Development Application No. DA/236/88 for the construction of the rear dwelling.

The proposal would not have any impact on the amenity of adjoining properties and is considered acceptable in this regard.

2.6.3.2 Rear Setback (Lot 232)

The dwelling to be retained on proposed Lot 232 would be located between 2.78m-11.6m from the existing northern, rear boundary fence.

In support of this variation, it is noted that the rear boundary setback would remain unchanged as a result of the proposal. Accordingly, the proposal would not adversely contribute to bulk and scale and would not pose a detrimental impact to the privacy and amenity of adjacent properties.

The proposal would not pose a detrimental impact on the amenity of adjoining properties and is supported in this instance.

2.6.4 Transport and Parking

The *HDCP* encourages the provision of car parking spaces to be behind the building line of dwelling houses to maintain the streetscape.

The existing dwelling to the rear of the site (Lot 231) contains an integrated two car garage and complies with the car parking provisions of the *HDCP*.

With regard to the existing dwelling to the front of the site (Lot 232), the site is not accompanied by formalised car parking spaces, which is contrary to the *HDCP* requirement for the provision of a single car parking space to service dwelling houses with 0-2 bedrooms.

As indicated on the survey plan approved on 18 October 1988 under Development Application No. DA/236/88, a single uncovered parking space with dimensions of 3m (w) x 5.7m (l) was to be provided to service the front dwelling, located between the dwelling and shed to be retained on Lot 232. Historical aerial imagery dated between 2009 and 2019 indicates that the parking space was not constructed, and rather the space was utilised as a fenced private open space area. In addition, the aforementioned aerial photography demonstrates that occupants of the front dwelling frequently utilised the landscaped area within the front setback for parking purposes.

In keeping with the *HDCP* requirement for the provision of a single parking space on the front lot, the application proposes the provision of an uncovered hardstand parking space with turning area to the front of the dwelling on proposed Lot 232. To screen the parking space from the street, vegetation screening has been proposed to the front of the parking space. The merits of the proposed vegetation screening are discussed in Section 3.1.1 of this report.

It is acknowledged that the proposed parking space would not be provided behind the building line of the dwelling on proposed Lot 232, contrary to the requirements of the *HDCP*. Consideration has been given to the provision of the car space to the rear of the dwelling, however the space would be located at a considerable distance to the front entrance and would reduce the private open space area afforded to the dwelling.

On balance, it is considered that the proposed hardstand parking space would improve the existing parking arrangement on the site and is deemed acceptable in this regard.

2.7 Section 7.11 Contributions Plans

The existing dual occupancy development was approved prior to the gazettal of all previous Development Contribution Plans adopted by Council. A Section 7.11 Contribution is not applicable as the development would not increase demand for services and no additional dwellings are proposed.

3. ENVIRONMENTAL IMPACTS

Section 4.15(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 hardstand car parking space to the front of the site would necessitate the removal of 1 tree, identified as a ‘Norway spruce’ (*picea abies*).

Council’s tree assessment has determined that the non-indigenous tree exhibits an approximate height of 3m, is of average health, with a medium safe useful life expectancy. The tree does not positively contribute to the streetscape and its removal would allow for the provision of a car parking space at the most appropriate location on the lot.

To screen a parked vehicle from the street, the application proposes the construction of a horizontal lattice with vine plantings to the front of the hardstand parking space. Concerns are raised that the vine plantings would require continuous upkeep and would not provide adequate screening until fully matured. To ensure that the vegetation screening would be effective at the time of planting, a condition has been recommended in Schedule 1 requiring that the lattice and vine plantings be deleted from the plans and a stand of 5 evergreen trees be planted forward of the parking space with a minimum height of 3m at the time of planting.

Subject to the recommended conditions, the proposal meets the desired outcomes of Part 1B.6 Tree and Vegetation Preservation of the *HDCP* and is deemed acceptable.

3.1.2 Stormwater Management

The subdivision would be serviced by the existing on-site stormwater detention system located beneath the driveway to Council’s drainage system along Westwood Street.

Council's stormwater assessment has determined that the existing method of stormwater disposal would be suitable to service the proposed subdivision, subject to a recommended condition requiring the creation of an easement for services over the accessway.

The proposal meets the desired outcomes of Part 1C.1.2 Stormwater Management of the *HDCP* and is deemed acceptable in this regard.

3.2 Built Environment

3.2.1 Built Form

The application would not alter the existing built form on the site, with the exception of the addition of a hardstand car parking space and vegetation screening to the front of the dwelling on Lot 232.

The proposed vegetation screening to the front of the hardstand parking space would effectively obscure a parked vehicle from the street and would positively contribute to the streetscape.

3.2.2 Traffic

The proposed subdivision would not result in an increase in density on the site as the existing dwellings would be retained. Accordingly, it is anticipated that the proposal would pose a neutral impact to traffic in the locality and is considered acceptable.

3.3 Social Impacts

The residential subdivision would improve housing mix in the locality by enabling the existing dwellings to be either owner occupied or rented. 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.

3.4 Economic Impacts

The proposal is both site specific and accords with the objectives of the zone as the proposal would allow the existing dwellings to be on separate titles, thereby adding economic value and versatility to existing housing stock.

Accordingly, the proposal would have a minor positive impact on the local economy in conjunction with other new low-density residential development in the locality.

4. SITE SUITABILITY

Section 4.15(1)(c) of the Act requires Council to consider "*the suitability of the site for the development*".

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

5. PUBLIC PARTICIPATION

Section 4.15(1)(d) of the Act requires Council to consider "*any submissions made in accordance with this Act*".

5.1 Community Consultation

for the community. Accordingly, it is considered that the approval of the proposed development would be in the public interest.

CONCLUSION

The application proposes the Torrens title subdivision of an approved multi-unit housing development comprising two detached dwellings.

The application does not comply with the *HLEP* in respect to the minimum 500m² lot size. The applicant submitted a *Clause 4.6 Variation to Development Standard* to the minimum lot size development standards. The objection is considered well founded with regard to the approved development on the site and the principles established by the Land and Environment Court.

Having regard to the circumstances of the case and consideration of the *Clause 4.6 Variation to Development Standards*, approval of the application is recommended.

The reasons for this decision are:

- The request under Clause 4.6 of *Hornsby Local Environmental Plan 2013* to vary to the minimum allotment size is well founded. Strict compliance with the development standard is unreasonable and unnecessary in the circumstances of the case and there are sufficient environmental planning grounds to justify the variation to the development standard.
- There are no visual or physical impacts associated with the proposed subdivision as there will be no change to the built form as a result of this proposed subdivision
- The proposed development does not create unreasonable environmental impacts to adjoining development with regard to tree and vegetation preservation, stormwater, vehicle access, earthworks, amenity or privacy.

Note: At the time of the completion of this planning report, no persons have made a Political Donations Disclosure Statement pursuant to Section 10.4 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 Thomas Dales.

CASSANDRA WILLIAMS
Major Development Manager - Development
Assessments
Planning and Compliance Division

ROD PICKLES
Manager - Development Assessments
Planning and Compliance Division

Attachments:

1.  Locality Map
2.  Proposed Site Plan
3.  Revised Subdivision Plan

File Reference: DA/1100/2019

Document Number: D07854171

ITEM 1

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.

ITEM 1

1. Approved Plans

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	Council Reference
Rev A	Proposed Site Plan	apwdesign	20.02.2020	
N/A	Subdivision Plan	Gregory Jon Frith	30.01.2020	

2. Removal of Existing Trees

- a) This development consent permits the removal of 1 tree identified in red on the approved site plan prepared by apwdesign dated 20.02.2020.
- b) The removal of any other trees requires separate approval in accordance with the Tree and Vegetation Chapter 1B.6 Hornsby Development Control Plan 2013 (HDCCP).

3. Amendment of Plans

- a) To comply with Council's requirement in terms of landscaping and streetscape, the approved site plan prepared by apwdesign dated 20.02.2020 is to be amended as follows:
 - i) The horizontal lattice and vine plantings to the front of the hardstand parking space are to be deleted;
 - ii) A stand of five evergreen trees with a minimum growth height of 4-5 metres are to be planted to the front of the hardstand parking space.
- b) These amended plans must be submitted with the application for the Subdivision Works Certificate.

4. Construction/ Subdivision Works Certificate

- a) A Subdivision Works Certificate is required to be approved by Council or a Private Certifying Authority prior to the commencement of any subdivision works under this consent.
- b) The Subdivision Works Certificate plans must be consistent with the Development Consent plans.

REQUIREMENTS PRIOR TO THE ISSUE OF A CONSTRUCTION/ SUBDIVISION WORKS CERTIFICATE

ITEM 1**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. Utility Services

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

- a) *Ausgrid* – a letter of consent demonstrating that satisfactory arrangements have been made to service the proposed development.
- b) *Telstra / NBN Co.* - a letter of consent demonstrating that satisfactory arrangements have been made to service the proposed development.

8. Car Parking

The approved hardstand car parking space and turning area must be designed, constructed and a Construction Certificate issued in accordance with *Australian Standards AS2890.1, AS3727* and the following requirements:

- a) The car parking space and turning area be constructed of concrete.
- b) The car parking and turning path grade must not exceed 25 percent and changes in grade must not exceed 8 percent.

REQUIREMENTS PRIOR TO THE COMMENCEMENT OF ANY WORKS
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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 DEMOLITION AND CONSTRUCTION

12. 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.

13. Environmental Management

To prevent sediment run-off, excessive dust, noise or odour emanating from the site during the construction, 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*.

14. 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.

15. 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 suitably 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.

16. 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* and *Protection of the Environment Operations (Waste) Regulation 2014* prior to disposal to an approved waste management facility and be reported to the principal certifying authority prior to the issue of a Subdivision Certificate.

REQUIREMENTS PRIOR TO THE ISSUE OF A SUBDIVISION CERTIFICATE

17. 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.

18. 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.

19. Creation of Easements

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

- a) A right of access and easement for services over the access corridor.

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

20. Replacement Tree Requirements

- a) The tree approved for removal under this consent must be offset through replacement planting of a minimum of 5 evergreen trees.
- b) The location and size of tree replacement planting must comply with the following:
 - i) A stand of 5 evergreen trees must be planted forward of the parking space;
 - ii) The pot size of the replacement trees must be a minimum 45 litres.

- iii) All replacement trees must be a minimum of 3 metres in height at the time of planting.
- iv) All replacement trees must have the potential to reach a mature height greater than 4-5 metres.

21. Preservation of Survey Marks

A certificate by a Registered Surveyor must be submitted to the Principal Certifying Authority, certifying that there has been no removal, damage, destruction, displacement or defacing of the existing survey marks in the vicinity of the proposed development or otherwise the re-establishment of damaged, removed or displaced survey marks has been undertaken in accordance with the Surveyor General's Direction No.11 – "**Preservation of Survey Infrastructure**".

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 4.17 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

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). (HDCCP 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 the Hornsby Development Control Plan 2013.

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.

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.

Note: At the present time Hornsby Shire Council is the only authority that can be appointed as a PCA for subdivision works within the Shire.

Fees and Charges – Subdivision

All fees payable to Council as part of any construction, compliance or subdivision certificate or inspection associated with the development (including the registration of privately issued certificates) are required to be paid in full prior to the issue of the subdivision certificate. Any additional Council inspections beyond the scope of any compliance certificate required to verify compliance with the terms of this consent will be charged at the individual inspection rate nominated in Council's Fees and Charges Schedule.

Dial Before You Dig

Prior to commencing any works, the applicant is encouraged to contact *Dial Before You Dig* on 1100 or www.dialbeforeyoudig.com.au for free information on potential underground pipes and cables within the vicinity of the development site.

Asbestos Warning

Should asbestos or asbestos products be encountered during demolition or construction works, you are advised to seek advice and information prior to disturbing this material. It is recommended that a contractor holding an asbestos-handling permit (issued by *SafeWork 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.adfa.org.au

www.safework.nsw.gov.au

Alternatively, telephone the *SafeWork NSW* on 13 10 50.

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.

House Numbering

The house numbering for this subdivision shall be:

Lot	Street Number	Street Name	Street Type	Locality
<i>232 (front)</i>	<i>23</i>	<i>Westwood</i>	<i>Street</i>	<i>Pennant Hills</i>
<i>231 (rear)</i>	<i>23A</i>	<i>Westwood</i>	<i>Street</i>	<i>Pennant Hills</i>

2 DEVELOPMENT APPLICATION - HORNSBY LIBRARY REFURBISHMENT - HORNSBY CENTRAL LIBRARY, 28 - 44 GEORGE STREET, HORNSBY

EXECUTIVE SUMMARY

DA No: DA/1042/2019 (Lodged on 13 November 2019)

Description: Hornsby Central Library Refurbishment

Property: Lot 1 DP 795575 & Lot 1 DP 517285, No. 28 - 44 George Street, Hornsby

Applicant: Hornsby Shire Council

Owner: Hornsby Shire Council

Estimated Value: \$ 4,418,939

Ward: B

- The application involves the internal refurbishment and reconfiguration of the existing Hornsby Central Library including external façade improvements and signage.
- The application involves land owned by Hornsby Shire Council and is required to be determined by the Hornsby Local Planning Panel. An independent assessment of the development application has been undertaken by *Key Urban Planning*.
- A total of 3 submissions have been received in respect of the application.
- The assessment report by *Key Urban Planning* is attached to this report for the Hornsby Planning Panel's consideration. The independent consultant's report recommends that the application be approved.

RECOMMENDATION

THAT Development Application No. DA/1042/2019 for the refurbishment and reconfiguration of the Hornsby Central Library including external façade improvements and signage at Lot 1 DP 795575 and Lot 1 DP 517285, No. 28-44 George Street, Hornsby be approved subject to the conditions of consent detailed in Schedule 1 of LPP Report No. LPP5/20

ASSESSMENT

In accordance with the referral criteria and procedural requirements for Independent Hearing and Assessment Panels, the assessment of the development application has been referred to an independent town planning consultant as the landowner is Hornsby Shire Council. The report by *Key Urban Planning* is held at Attachment 1 of this report.

CONCLUSION AND REASONS FOR RECOMMENDATION

The application proposes the internal refurbishment and reconfiguration of the existing Hornsby Central Library including external façade improvements and signage

Council has referred the applicant to an independent town planner to carry out an assessment of the application. The assessment concludes that the application should be approved.

Council received 3 submissions during the public notification period. The matters raised have been addressed in the body of the report.

It is recommended that the Hornsby Local Planning Panel approve the application in accordance with the recommendations in the report prepared by *Key Urban Planning* and the conditions of consent 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 10.4 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 Peter Fryar from *Key Urban Planning*.

CASSANDRA WILLIAMS
Major Development Manager - Development
Assessments
Planning and Compliance Division

ROD PICKLES
Manager - Development Assessments
Planning and Compliance Division

Attachments:

1.  Locality Map
2.  Consultant's Report
3.  Architectural Plans

File Reference: DA/1042/2019

Document Number: D07858312

ITEM 2

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.

ITEM 2

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	Council Reference
1902-SK 01 C	Site & roof plan	Rolfe Crystal Architect	1 July 2019	
1902-SK 02 C	Proposed ground floor plan	Rolfe Crystal Architect	16 Aug 2019	
1902-SK 03 C	Proposed upper floor plan	Rolfe Crystal Architect	1 Aug 2019	
1902-SK 04 C	Proposed lower floor plan	Rolfe Crystal Architect	1 Aug 2019	
1902-SK 05 C	Proposed sections	Rolfe Crystal Architect	1 July 2019	
1902-SK 06 C	Site & roof plan	Rolfe Crystal Architect	9 Aug 2019	

Supporting Documentation:

Document Title	Prepared by	Dated	Council Reference
Performance Solution Report	Access-I Pty Ltd	24 July 2019	D07804158

Document Title	Prepared by	Dated	Council Reference
Schedule of finishes	ODCM	21/8/2019	D07804163
Statement of Environmental Effects	Stimson and Baker Planning	August 2019	D07804164
Waste Management Plan	Hornsby Shire Council	November 2019	D07804177
BCA Report	Metro Building Consultancy	12 November 2019	D07804182
DDA Report	Metro Building Consultancy	12 November 2019	D07804185
Waste Storage Plan	Rolfe Crystal as amended by Council	29 August 2019	D07870137
General Terms Approval Letter	Sydney Trains	7 February 2020	D07852393

ITEM 2

2. Construction Certificate

- a) A Construction Certificate is required to be approved by Council or a Private Certifying Authority prior to the commencement of any construction works under this consent.
- b) The Construction Certificate plans must be consistent with the Development Consent plans.

REQUIREMENTS PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

3. Building Code of Australia

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

4. Fire Safety Upgrade

To ensure the protection of persons using the building and to facilitate egress from the building in the event of a fire, the application for a construction certificate must demonstrate that it would comply with the following Category 1 fire safety provisions:

- a) The Fire Resistance Level of internal and external columns and floors is unknown. The existing sprinkler system provides necessary fire protection/ suppression of the building and shall be extended to provide cover to all areas of the building. Design of the sprinkler system extension, its capability and the basis of design shall be submitted with the construction certificate. Plans and specifications of the system shall be endorsed by a competent fire safety practitioner.

- b) A schedule of all current and proposed fire safety measures describing the extent and capability and the basis of design shall be submitted with the construction certificate application.
- c) The existing goods lift is situated within a concrete besser block shaft. Further information is needed to be submitted with the construction certificate concerning the lift shutter doors and whether they are fire rated. The lift shutter doors shall be upgraded to achieve Building Code Section C3.10, AS 1735.11 requirements where necessary.
- d) Penetrations and ductwork through fire resisting components of the building (i.e. walls and floors) are required to have appropriate fire dampers and fire seals in accordance with C3.12 and C3.13 of the BCA. A register of existing and required dampers and fire seals shall be provided with the construction certificate application.

5. 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 in™ through www.sydneywater.com.au under the Building and Development tab.

6. Car Parking and Deliveries

All car parking must be constructed and operated in accordance with Australian Standard AS 2890.1 – 2004 – Off Street Car Parking and Australian Standard AS2890.2 - 2002 – Off Street Commercial and the following requirement:

- a) All parking areas and driveways must be sealed to an all-weather standard, line marked and signposted.
- b) Car parking, loading and manoeuvring areas must be used solely for nominated purposes.
- c) Vehicles awaiting loading, unloading or servicing must 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 must be made in a forward direction.

REQUIREMENTS PRIOR TO THE COMMENCEMENT OF ANY WORKS

7. 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.

8. 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; and/or
- d) Have been identified as requiring a temporary hoarding, fence or awning within the Council approved Construction Management Plan (CMP).

Note: Notwithstanding the above, Council's separate written approval is required prior to the erection of any structure or other obstruction on public land.

9. 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*.

10. Garbage receptacle

- a) A garbage receptacle must be provided at the work site before works begin and must be maintained until all works are completed.
- a) The garbage receptacle must have a tight-fitting lid and be suitable for the reception of food scraps and papers.
- b) The receptacle lid must be kept closed at all times, other than when garbage is being deposited.
- c) Food scraps must be placed in the garbage receptacle and not in demolition and construction waste bins.

REQUIREMENTS DURING DEMOLITION AND CONSTRUCTION

11. 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.

12. Demolition

To protect the surrounding environment, all demolition work must be carried out in accordance with *Australian Standard AS2601-2001 – 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; and
- b) Demolition works, where asbestos material is being removed, must be undertaken by a contractor that holds an appropriate licence issued by *SafeWork NSW* in accordance with the *Work Health and Safety Regulation 2017* and be appropriately transported and disposed of in accordance with the *Protection of the Environment Operations (Waste) Regulation 2014*; and
- c) On construction sites where any building contains 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.

13. Environmental Management

To prevent sediment run-off, excessive dust, noise or odour emanating from the site during the construction, 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*.

14. 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.

15. Waste Management

- a) All work must be carried out in accordance with the approved waste management plan.
- b) Storing and stockpiling of waste and construction material on site shall be located within the existing public car park in the area nominated on the Waste Storage Plan dated 3/3/2020 for the duration of the works.

16. Maintenance of public footpaths

Public footpaths must be maintained for the duration of works to ensure they are free of trip hazards, displacements, breaks or debris to enable pedestrians to travel along the footpath safely.

REQUIREMENTS PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE

17. 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.

18. 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.

19. Cooling Towers

- a) All cooling towers must be designed and installed in accordance with the *Public Health Act 1991*, the *Public Health (Microbial Control) Regulation 2000* and *Australian/New Zealand Standard AS/NZS 3666 – Air-Handling and Water Systems of Building*.
- b) Certification of compliance with the Standard must be obtained from a suitably qualified person and submitted to the PCA prior to the issue of an occupation Certificate.

Note: Under Clause 15 of the Public Health (Microbial Control) Regulation 2000, the occupier of the part of premises where a regulated system is installed, must notify the Council of the following particulars:

- *Type of system.*
- *The address of the premises on which the system is installed.*
- *The name, and the residential and business addresses, of the owner of the premises.*
- *If the operation area on the premises is occupied otherwise than by the owner, those particulars in relation to the occupier the telephone numbers at which, during business hours and after business hours, the person or persons referred to in the above point may be contacted.*

20. Preservation of Survey Marks

A certificate by a Registered Surveyor must be submitted to the Principal Certifying Authority, certifying that there has been no removal, damage, destruction, displacement or defacing of the existing survey marks in the vicinity of the proposed development or otherwise the re-establishment of damaged, removed or displaced survey marks has been undertaken in accordance with the Surveyor General's Direction No.11 – "**Preservation of Survey Infrastructure**".

21. Construction of engineering works

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

22. Fire Safety Statement – Final

In accordance with the Environmental Planning & Assessment Regulation 2000, upon completion of the building, the owner must provide Council with a certificate in relation to each fire safety measure implemented in the building.

OPERATIONAL CONDITIONS

23. Business Identification Sign

The business identification signs approved under this consent must not be illuminated, flash, move or display electronic images.

24. 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.

CONDITIONS OF CONCURRENCE – SYDNEY TRAINS

The following conditions of consent are from the nominated state agency pursuant to Section 4.13 of the *Environmental Planning and Assessment Act 1979* and must be complied with to the satisfaction of that agency.

25. Sydney Train Requirements

The applicant shall not at any stage block the corridor access gate on George Street, and should make provision for easy and ongoing 24/7 access by rail vehicles, plant and equipment to support maintenance and emergency activities

- 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 4.17 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.

Disability Discrimination Act

The applicant's attention is drawn to the existence of the *Disability Discrimination Act 1992*. 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 1992*. This is the sole responsibility of the applicant.

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 *SafeWork 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.adfa.org.au

www.safework.nsw.gov.au

Alternatively, telephone the *SafeWork NSW* on 13 10 50.

3 DEVELOPMENT APPLICATION - CHANGE OF USE TO A RETAIL PREMISES - 354-356 GALSTON ROAD, GALSTON

EXECUTIVE SUMMARY

DA No: DA/26/2020 (Lodged on 20 January 2020)

Description: Change of use to a retail/food and drink premises and installation of two flush wall business identification signs

Property: Lot 6 DP 1042134, Nos. 354 – 356 Galston Road, Galston

Applicant: Mr Shane Stevens

Owner: Hadowest Pty Ltd

Estimated Value: \$211,763

Ward: A

- The application involves the change of use of a newsagency located in Shop 3 to a retail/food and drink premises and the installation of two flush wall business identification signs.
- The proposal generally complies with the requirements of the *State Environmental Planning Policy No. 64 Advertising and Signage*, the *Hornsby Local Environmental Plan 2013* and the *Hornsby Development Control Plan 2013*.
- A total of 10 submissions have been received in respect of the application.
- The application is required to be determined by the Hornsby Council Local Planning Panel as 10 or more unique submissions were received by way of objection.
- It is recommended that the application be approved.

RECOMMENDATION

THAT Development Application No. 26/2020 for change of use to a retail premises and food and drink premises at Lot 6 DP 1042134, Nos. 354-356 Galston Road Galston be approved subject to the conditions of consent detailed in Schedule 1 of LPP Report No. LPP6/20.

BACKGROUND

On 20 January 2020, the subject Development Application was lodged with Council.

On 7 February 2020, Council requested additional information in the form of amended Architectural Plans to address Council's concerns with regard to the location of the hand wash basins within the food preparation area and a statement addressing the assessment criteria for signage within Schedule 1 of *State Environmental Planning Policy No. 64 - Advertising and Signage*.

On 11 March 2020, Council received amended Architectural Plans and a written statement addressing Council's concerns.

SITE

The 2,048m² site is located on the northern side of Galston Road and experiences a 7% fall to the rear from the Galston towards the rear boundary.

The site contains a one and two storey building known as the 'Scavo Centre'. The site has access to 37 on site parking spaces located along the Galston Road frontage and within the rear of the site accessed via a driveway on the adjoining property that is subject to a right of way easement. The single storey building faces Galston Road and accommodates 4 shops. A rear two storey building accommodates 4 shop tenancies on an upper level overlooking the side (west) boundary and 2 shop tenancies on the lower level addressing the rear (north) boundary.

The subject shop, known as Unit No.3 has a gross floor area of 100.43m² and is currently occupied as a newsagency.

Six business identification signs are located on the subject tenancy. Three of these signs are flush wall signs and three of these signs are under awning signs.

PROPOSAL

The application proposes the internal fit out, exterior alterations, the installation of 2 business identification signs and the change of use of the premises from a retail shop (newsagent) to newsagent and retail/food and drink premises, in the form of a fruit and food/vegetable/juice/yoghurt shop.

The fit out comprises the installation of a partition wall to separate the newsagent and food and drink business, the fit out of a staff room, the permanent closure of an existing door and construction of a waste storage area.

The newsagent portion involves the installation of shelving and counters. Whereas the food and drink portion involve the installation of sinks, a food preparation area, two fridges, wall shelves, a bench with a display cabinet, a coffee machine and a yoghurt machine.

The external additions involve the installation of two new automatic sliding doors to the Galston Road frontage, a servery window with a counter and an attached stand up benchtop along the western elevation.

The 3 existing wall signs will be removed and replaced with 2 new non-illuminated business identification signs measuring 2.7 metres x 450mm with a total area of 1.215m². The 2 new wall signs would be located on parapets along the southern and eastern elevations.

Demolition works would be undertaken within the existing newsagent occupancy and to parts of the external walls to enable the installation of doors and windows.

The proposed hours of operation of the businesses are as follows:

- 6:30am to 6:30pm, Monday to Friday
- 6.30am to 5pm on Saturday
- 6.30am to 1pm on Sundays
- Closed on Public Holidays

Deliveries to the site would occur during the operational hours.

It is anticipated that a maximum of 4 full time staff would be required to occupy the proposed business.

No trees would be removed by the development.

ASSESSMENT

The development application has been assessed having regard to the *Greater Sydney Region Plan – A Metropolis of Three Cities*, the *North District Plan* and the matters for consideration prescribed under Section 4.15 of the *Environmental Planning and Assessment Act 1979* (the Act). The following issues have been identified for further consideration.

1. STRATEGIC CONTEXT

1.1 Greater Sydney Region Plan - A Metropolis of Three Cities and North District Plan

The Greater Sydney Region Plan - A Metropolis of Three Cities has been prepared by the NSW State Government to guide land use planning decisions for the next 40 years (to 2056). 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 also 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 released the North District Plan which includes priorities and actions for 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 the *Greater Sydney Region Plan - A Metropolis of Three Cities* and *North District Plan*, by providing additional services to support a growing population.

2. STATUTORY CONTROLS

Section 4.15(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 B1 – Neighbourhood Centre under the *HLEP*. The objectives of the zone are:

- *To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood.*

The proposed development is defined as a retail premises and is permissible in the 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 8.5 metres. No changes to the existing building height would occur as the application proposes a change of use and alterations and additions, accordingly no further assessment is required with regards to height of buildings.

2.1.3 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. Accordingly, no further assessment regarding heritage is necessary.

2.2 State Environmental Planning Policy 64 Advertising and Signage

The proposed signage has been assessed against the requirements of *State Environmental Planning Policy No. 64 Advertising and Signage (SEPP 64)*. This Policy provides State-wide planning controls for advertising signs and prevails over other environmental planning instruments including the *HLEP* and the *Hornsby Development Control Plan 2013*. The aims of the Policy 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 two proposed flush wall signs attached to the southern and western elevations are classed as '*business identification signs*' under *SEPP 64* and are subject to assessment under the provisions of Schedule 1 of the Policy. The proposal's compliance with *SEPP 64* is detailed in the table below:

State Environmental Planning Policy 64 - Advertising and Signage		
Control	Requirement	Yes/No
Schedule 1 – Assessment Criteria		
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. The proposed signage is compatible with the existing and desired character of the area.
	Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?	Yes, the existing signage relates to the use and occupier of the site. The proposed business signage would be

		in keeping with the business identification sign theme with colours, typography and style compatible with existing signage within the shopping village and the identity of the proposed business.
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, there are no areas of particular sensitivity that will be affected by the proposed signs.
Views and vistas	Does the proposal obscure or compromise important views?	No. The proposed signage does not obscure or encroach on any important views.
	Does the proposal dominate the skyline and reduce the quality of vistas?	No. The signs do not extend above the roofline of the existing building and would not impact the skyline or any vistas.
	Does the proposal respect the viewing rights of other advertisers?	Yes. The proposed signage respects adjoining advertisements. The removal of three large wall signs and upgrading of signage reduces clutter.
Streetscape, setting or landscape	Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape?	Yes. The proposed sign is of a scale, proportion and form appropriate to the building and the streetscape setting within which the Galston shopping village.
	Does the proposal contribute to the visual interest of the streetscape, setting or landscape?	Yes. The signage will contribute to the visual interest of the setting. The proposed signage will contribute positively to the setting, without creating visual clutter or obtrusively impacting on the streetscape.
	Does the proposal reduce clutter by rationalising and simplifying existing advertising?	The proposed signage can be accommodated without creating visual clutter.
	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? Does the proposal respect important features of the site or building, or both? Does the proposal show innovation and imagination in its relationship to the site or building, or both?	Yes. The signage is in proportion with the context and setting of the area. Yes. The proposal respects and retains the overall features of the area. 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. The signage is simple and does not require lighting devices or structures.
Illumination	Would illumination result in unacceptable glare? Would illumination affect safety for pedestrians, vehicles or aircraft? Would illumination detract from the amenity of any residence or other form of accommodation? Can the intensity of the illumination be adjusted, if necessary? Is the illumination subject to a curfew?	No. The proposed signage does not have any luminance. N/A N/A N/A N/A
Safety	Would the proposal reduce the safety for any public road? Would the proposal reduce the safety for pedestrians or bicyclists? Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas?	No. The signage is designed and located in a manner that does not distract drivers or impact on road safety in adjoining streets. No flashing of illuminated signage is proposed. No No

Based on the assessment above, no objections are raised to the proposed signage and it is considered that the signage would be sympathetic to the area and not detract from any other existing

signage; is of a high-quality design and finish and would provide effective communication for the purpose of the business.

2.3 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.

The site has been historically used for commercial purposes. It is not likely that the site has experienced any significant contamination, and further assessment under *SEPP 55* is not required.

2.4 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.

The implementation of sediment and erosion control measures is not warranted in this instance as no excavation works are proposed as part of this application.

2.5 Section 3.42 Environmental Planning and Assessment Act 1979 - Purpose and Status of Development Control Plans

Section 3.42 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.

2.6 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:

HDCP – Part 4 Business			
Control	Proposal	Requirement	Complies

Car Parking	On merit. To utilise existing parking within the site and on street parking	Restaurant or café (48.35m ² GFA) 15 spaces per 100m ² of GFA 7.5 Spaces required 2.5 spaces required	Yes
		Shop (Newsagent 49.65m ² GFA) 1 space per 20m ² of GFA 7.5 Spaces required	
		<u>Total</u> 10 Car Parking Spaces	
HDCP - Flush Wall Signs			
Control		Requirement	Complies
Should not extend laterally beyond the wall of the building to which it is attached.		The proposal does not extend laterally beyond the building	Yes
Should be flush with the building		The proposed signs would be flush with the structures to which they are attached	Yes
The total area of the wall signs should not exceed 5m ² unless it can be demonstrated that the sign is consistent with the character of the locality in accordance with <i>SEPP No.64</i>		The total signage area does not exceed 5m ²	Yes

As detailed in the above table, the proposed development generally complies with the prescriptive measures within the HDCP. A brief discussion on compliance with relevant performance requirements and Part 1C General Controls is provided below.

2.6.1 Transport and Parking

The desired outcomes of Part 1C.2.1 Transport and Parking of the *HDCP* are to ensure “*development that manages transport demand around transit nodes to encourage public transport usage*”, to ensure “*car parking and bicycle facilities that meet the requirements of future occupants and their visitors*” and to ensure “*development with simple, safe and direct vehicular access*”.

The prescriptive measures of Part 1C.2.1(d) of the *HDCP* states that shops that are located more than 800 metres from a railway station require 1 car space per 20 square metres of Gross Leasable Floor Area (GLFA) and that restaurants and cafes require 15 car spaces per 100 square metres of GLFA.

The premises has a combined GLFA of 113.5m² with the proposed newsagent being 49.65m² in GFLA, the food and drink premises being 48.35m² in GFLA and the waste storage/staff amenities area accounting for the remainder. Based on the parking rates within Part 1C.2.1(d) of the *HDCP* the proposed development would generate a demand for 10 car parking spaces.

On merit it is considered that the proposal would not increase the existing car parking demand on the site as the proposal would utilise the existing parking arrangements for the shopping complex. The complex contains 37 car spaces within two outdoor car parks on the western, northern and southern sides of the building, which would be capable of accommodating the 10 additional car spaces required for the food and drink premises and retail business.

In addition, since the original application for the 'Scavo Centre' shopping complex was approved, numerous applications to change use have been approved, which rely on utilising the existing car parking spaces within the shopping complex and off-site parking along designated parking areas on Galston Road. These businesses include food and drink businesses and other retail businesses such as a supermarket, a deli, and a travel agency. Council also accepts customers who visit the business would likely utilise the services of adjoining retail premises.

In this regard it is considered that the trips to the proposed business would not negatively impact the car parking availability for other business premises within the complex and would result in acceptable impacts with respect to car parking.

The proposal is considered acceptable with respect to the *Transport and Parking* controls under the *HDCP*.

2.6.2 Accessible Design

The desired outcomes of Part 1C.2.2 Accessible Design of the *HDCP* is to ensure "*public accessible buildings provide a safe and continuous path of travel for people with impaired mobility*".

A construction certificate is required to be obtained for the proposed alterations which will provide consideration under the *Building Code of Australia* and disability requirements.

2.6.3 Waste Management

The desired outcome of part 1C.2.3 *Waste Management* of the *HDCP* is to encourage "*waste storage and collection facilities that are designed to encourage recycling, located and designed to be compatible with the streetscape, accessible, clean and safe for users and collectors*".

The proposed retail premises would construct a separate food waste storage area and utilise the existing shared waste bay located to the north of the site, which comprises a number of large garbage bins and recycling bins. It is anticipated that the waste would consist of cardboard boxes, plastic containers and general food waste which would be collected by means of a Council waste pickup or a nominated private waste contractor.

Waste collection vehicles would have unobstructed access to the waste bay to collect commercial waste associated with the operations.

In regard to the disposal of construction waste, a condition has been recommended in Schedule 1 of this report to ensure that waste associated with the demolition and construction is taken to an authorized waste disposal area in accordance with the submitted Waste Management Plan.

2.6.4 Noise and Vibration

The desired outcome of Part 1C.2.5 *Noise and Vibration* of the HDCP is to encourage “*development designed and managed to minimise noise and vibration impacts on the occupants of residential dwellings and other noise sensitive land uses*”.

The proposed hours of operation of the business are as follows:

- 6:30am to 6:30pm, Monday to Friday.
- 6.30am to 5pm on Saturday
- 6.30am to 1pm on Sundays
- Closed on Public Holidays

Deliveries to the site would occur during these operational hours.

The proposed business would be located at a distance greater than 50 metres from any residential development. It is also noted that the noise generated by the proposed business and the proposed trading hours would be compatible with the adjacent commercial tenancies within the ‘Scavo Centre’ including a café and other properties within the Galston Village Neighbourhood Centre.

In this regard it is considered that the proposed operating hours would not result in an increase in noise levels and is located at a sufficient distance from noise sensitive developments and would pose acceptable noise impacts.

Notwithstanding, a condition is recommended in Schedule 1 of this report in relation to noise generated from any mechanical ventilation installed requiring that all noise generated by the proposed development be attenuated to prevent levels of noise being emitted to adjacent premises which possess tonal, beating and similar characteristics or which exceeds background noise levels by more than 5dB(A).

Subject to conditions, the proposal meets the desired outcomes of Part 1C.2.5 Noise and Vibration of the *HDCP* and is considered acceptable.

2.7 Section 7.12 Contributions Plan

Hornsby Shire Council Section 7.12 Contributions Plan 2019-2029 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 in Schedule 1 requiring the payment of a contribution in accordance with the Plan.

3. ENVIRONMENTAL IMPACTS

Section 4.15(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 Stormwater Management

The proposed change of use and internal fit out does not propose to amend the current stormwater system. All stormwater would be directed to the existing internal stormwater system of the ‘Scavo Centre’.

No concerns are raised with regard to stormwater management.

3.1.2 Environmental Health and Ventilation

Concerns were initially raised by Council with regard to the internal waste storage area and lack of a hand wash basin within 5 metres of the food preparation area. To address these concerns, Council requested additional information in the form of amended Architectural Plans.

In addressing these issues, the applicant submitted amended plans that detail a dedicated waste storage area with a floor waste. The plans also include an annotation that a hand wash basin would be installed within the food preparation area of the 'Arcadian Fruit Box' which is considered acceptable.

Conditions are recommended in Schedule 1 of this report with respect to the fit out and operation of that part of the building to be used for the manufacture, preparation or storage of food for sale to be in accordance with *Australian Standard 4674-2004 Design and fit out of food premises* and other relevant legislation.

A condition is also recommended that a kitchen exhaust system be designed and installed to effectively prevent air pollution in accordance with the *Protection of the Environment Operations Act 1997*.

Subject to conditions, the proposal is considered acceptable with regard to environmental health and ventilation requirements.

3.2 Built Environment

3.2.1 Built Form

The proposed development is of a contemporary style in keeping with the desired future character of Galston Village Masterplan. The proposal would improve the existing presentation of the site and would contribute to the character of the locality.

3.3 Social Impacts

The proposed development would have a positive social impact by providing additional retail uses and food and drink premises in the locality.

3.4 Economic Impacts

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

4. SITE SUITABILITY

Section 4.15(1)(c) of the Act requires Council to consider "*the suitability of the site for the development*".

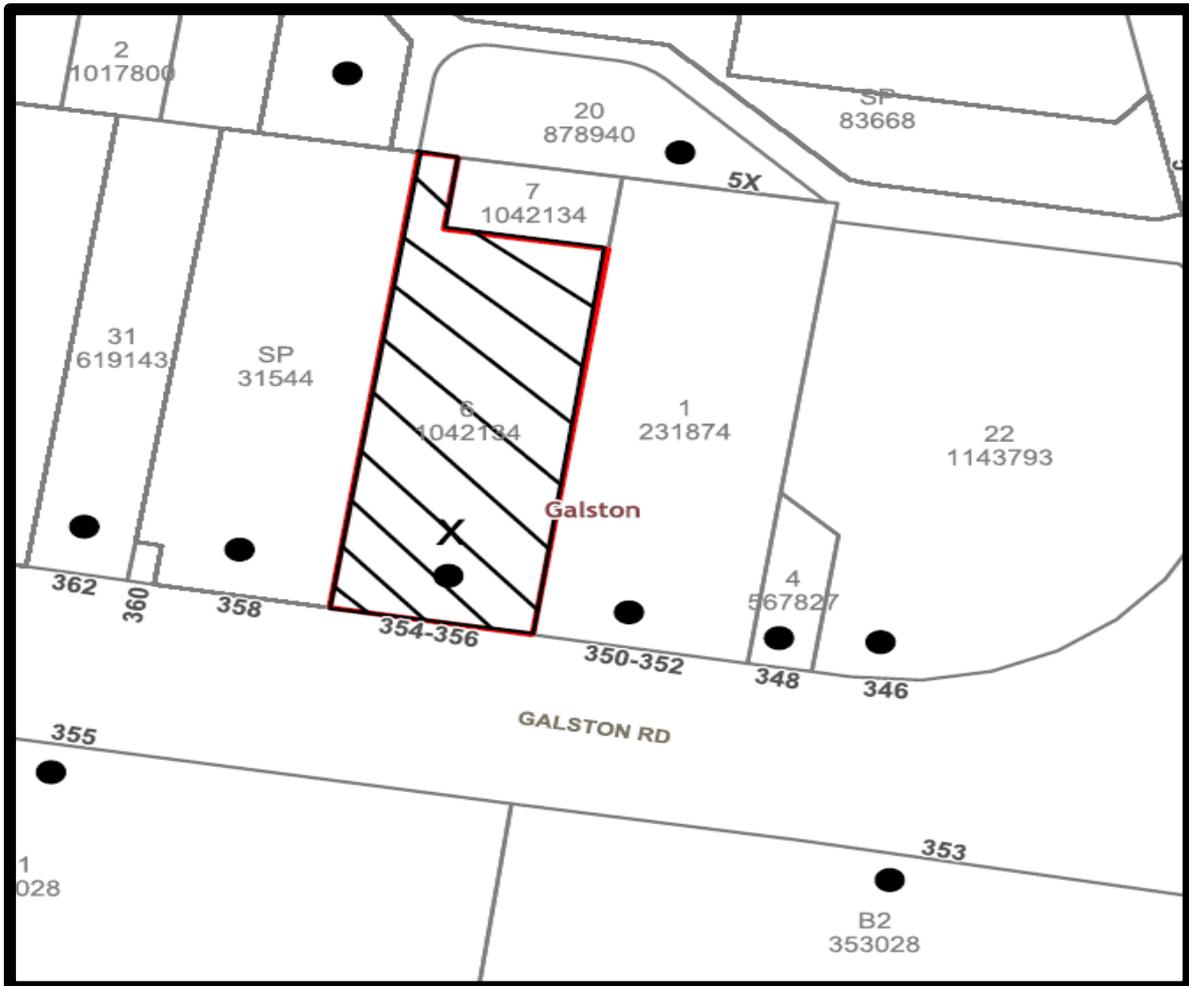
The form of the proposed use is consistent with the capability of the site and is considered acceptable.

5. PUBLIC PARTICIPATION

Section 4.15(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 21 January 2020 and 20 February 2020 in accordance with the *Hornsby Community Participation Plan*. During this period, Council received 10 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	
2 SUBMISSIONS RECEIVED OUT OF MAP RANGE				

Ten submissions (8 of which were from tenancies within the subject site) objected to the development, generally on the grounds that the development would result in:

- Unacceptable competition to other businesses
- Waste
- Parking impacts
- Loss of newsagent
- Loss of space and obstruction of passageway as a result of “outdoor seating”

- Inconvenience from the proposed works

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

5.1.1 Oversupply of Coffee Shops

Submissions have been received raising concerns to the proposed development based on concerns that there is an oversupply of food and drink premises in the Galston Village.

There are currently several existing food and drink premises within the Galston Village shopping area. Submissions raised concerns that the proposal would impact on the trade enjoyed by existing food and drink premises.

In response to this and in accordance with the NSW Land Environmental Court decision *Fabcot Pty Ltd –v- Hawkesbury CC (1997)* the economic impact of a proposed development upon individual traders is not itself a planning consideration and what is instead required is a more general consideration of the impact in the locality. In terms of direct competition between trade competitors the above judgement advised the following:

“Economic competition between individual trade competitors is not an environmental or planning consideration to which the economic effect described in s 90(1)(d) is directed. The Trade Practices Act 1974 (Cth) and the Fair Trading Act 1987 are the appropriate vehicles for regulating economic competition. Neither the Council nor this Court is concerned with the mere threat of economic competition between competing businesses. In an economy such as ours that is a matter to be resolved by market forces, subject to the Trade Practices Act and the Fair Trading Act. It is not part of the assessment of a proposal under the Environmental Planning and Assessment Act for a consent authority to examine and determine the economic viability of a particular proposal or the effect of any such proposal on the economic viability of a trade competitor. Moreover, it is at least arguable from the fact that the Trade Practices Act now applies to local government councils, that if a local council were to refuse or to limit a proposal for development on the ground of competition with a trade competitor, it could be guilty of anti-competitive conduct contrary to Part 4 of that Act.”

Taking into account the above, it is not open to the Council to refuse an application for a food and drink premises on the basis of the threat of economic competition between occupants in the Galston Village.

5.1.2 Waste

Submissions have been received raising concerns with respect to increased waste generation and existing matters relating to the insufficient shared waste storage/collection area and grease traps.

In response to these concerns it is noted that this has been addressed under Parts 2.7.3 and 3.1.2 of this report. Notwithstanding, matters relating to insufficient waste storage areas of other businesses are not a matter of assessment under the *Environmental Planning and Assessment Act 1979*. Matters relating to waste issues should be brought to the attention of the Strata manager for the site in the first instance. Should there be unresolved waste issues that cause a nuisance to adjoining properties or an increase in vermin this shall be brought to the attention of Council's Compliance Team for investigation.

5.1.3 Parking

Submissions have been received raising concerns with respect to the loss of parking.

In response to these concerns and as detailed under Part 2.7.1 of this report, on merit it is considered that the proposal would not increase the existing car parking demand on the site as the proposal would utilise the existing parking arrangements for the shopping complex.

Trips to the proposed business would not negatively impact the car parking availability for other business premises within the complex and would result in acceptable impacts with respect to car parking availability.

The proposal is considered acceptable with respect to the *Transport and Parking* controls under the *HDCP*.

5.1.4 Loss of Newsagent Tenancy

Submissions have been received raising concerns with respect to loss of a newsagent tenancy.

In response to these concerns the newsagent is proposed to be retained but in a smaller capacity. With respect to the type of businesses within a premises It is noted that this is not a matter of assessment under the *Environmental Planning and Assessment Act 1979* but a matter for the business owner.

5.1.5 Loss of space and obstruction of passageway and hazards as a result of “outdoor seating”

Submissions have been received raising concerns with respect to the obstruction a path adjacent to the servery window and standing benches.

In response to these concerns it is noted that no outdoor seating has been approved as part of this application. Notwithstanding, an operational condition has been recommended in Schedule 1 of this report that no outdoor seating is to be places within the external accessway to enable access to adjoining businesses.

In response to hazards occurring from the proposed development it is noted that these are not matters for assessment under *Environmental Planning and Assessment Act 1979*. Matters relating to access and hazards issues should be brought to the attention of the Strata manager for the site in the first instance.

5.1.6 Inconvenience from the proposed works

Submissions have been received raising concerns to inconveniences from the construction stage to other businesses.

In response to these concerns it is noted inconveniences are inevitable during the construction process, however conditions have been recommended in Schedule 1 of this report requiring that hoarding be installed to protect adjoining businesses and that all waste be disposed of in accordance with the Waste Management Plan submitted with the application.

5.2 Public Agencies

The development application was not required to be referred to any Public Agencies for comment.

6. THE PUBLIC INTEREST

Section 4.15(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 the fit out and change of use of a newsagency to a food and drink premises and a newsagency.

The development generally meets the desired outcomes of Council's planning controls and is satisfactory having regard to the matters for consideration under Section 4.15 of the *Environmental Planning and Assessment Act 1979*.

Council received 10 submissions during the public notification period. The matters raised have been addressed in the body of the report.

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

The reasons for this decision are:

- The proposed generally development complies with the requirements of the relevant environmental planning instruments and the *Hornsby Development Control Plan 2013*.

Note: At the time of the completion of this planning report, no persons have made a Political Donations Disclosure Statement pursuant to Section 10.4 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 Tom Mojsiejuk.

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Team Leader - Major Applications
Planning and Compliance Division

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Major Development Manager - Development
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Planning and Compliance Division

Attachments:

1.  Locality Map
2.  Amended Architectural Plans

File Reference: DA/26/2020
Document Number: D07871978

ITEM 3

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.

ITEM 3**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	Document Number
1 Rev E	Site Layout/Locality Map	Ryder Retail Interiors	05.09.2019	
2 Rev E	Existing Floor Plan/Demolition Plan	Ryder Retail Interiors	05.09.2019	
3 Rev F	Proposed Base Building Works Plan	Ryder Retail Interiors	05.09.2019	
4 Rev F	Proposed Floor Plan	Ryder Retail Interiors	05.09.2019	
5 Rev F	Proposed Floor Finishes	Ryder Retail Interiors	05.09.2019	
6 Rev F	Proposed Reflected Ceiling/Electrical Plans	Ryder Retail Interiors	05.09.2019	
7 Rev F	Internal Sections/Elevations	Ryder Retail Interiors	05.09.2019	
8 Rev F	Internal Sections/Elevations	Ryder Retail Interiors	05.09.2019	

Plan No.	Plan Title	Drawn by	Dated	Document Number
9 Rev G	External Elevations/Signage Details	Ryder Retail Interiors	05.09.2019	

Supporting Documentation

Document Title	Prepared by	Dated	Document Number
Waste Management Plan	Space Plus	17.11.2019	D07841377

ITEM 3

2. Construction Certificate

- a) A Construction Certificate is required to be approved by Council or a Private Certifying Authority prior to the commencement of any construction works under this consent.
- b) The Construction Certificate plans must be consistent with the Development Consent plans.

3. Section 7.12 Development Contributions

- (a) In accordance with Section 4.17(1) of the *Environmental Planning and Assessment Act 1979* and the *Hornsby Shire Council Section 7.12 Development Contributions Plan 2019 - 2029*, **\$2,117.60** must be paid towards the provision, extension or augmentation of public amenities or public services, based on development costs of **\$211,763**.
- (b) The value of this contribution is current as of **11 March 2020**. If the contributions are not paid within the financial quarter that this consent is granted, the contributions payable will be adjusted in accordance with the provisions of the Hornsby Shire Council Section 7.12 Development Contributions Plan and the amount payable will be calculated at the time of payment in the following manner:

$$\text{\$C}_{PY} = \frac{\text{\$C}_{DC} \times \text{CPI}_{PY}}{\text{CPI}_{DC}}$$

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 of this Development Consent.

- (c) The monetary contributions shall be paid to Council:

- (i) Prior to the issue of the Subdivision Certificate where the development is for subdivision; or
- (ii) 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.

Note: The Hornsby Shire Council Section 7.12 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

4. Building Code of Australia

Detailed plans, specifications and supporting information is required to be submitted to the certifying authority detailing how the proposed building work achieves compliance with the National Construction Code - Building Code of Australia. All building work must be carried out in accordance with the requirements of the National Construction Code - Building Code of Australia.

5. Fire Safety Schedule

A schedule of all proposed essential fire safety measures to be installed in the building (e.g. hydrants, hose reels, emergency warning systems etc.) shall be submitted with the construction certificate application. The schedule shall distinguish between existing and proposed fire safety measures.

6. 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 20010 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.

7. Mechanical ventilation

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*.

Note: The concrete floor in the waste storage area must be sealed and a hand wash basin must be within 5 metres of the coffee machine.

REQUIREMENTS PRIOR TO THE COMMENCEMENT OF ANY WORKS

8. 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.
- d) Have been identified as requiring a temporary hoarding, fence or awning within the Council approved Construction Management Plan (CMP).

Note: Notwithstanding the above, Council's separate written approval is required prior to the erection of any structure or other obstruction on public land.

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

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.

REQUIREMENTS DURING DEMOLITION/ CONSTRUCTION ACTIVITIES**11. 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.

12. Demolition

All demolition work must be carried out in accordance with *Australian Standard 2601-2001 – The Demolition of Structures* and the following requirements:

- a) Demolition material is to be disposed of to an authorised recycling and/or waste disposal site and/or in accordance with an approved waste management plan.

- b) Demolition works, where asbestos material is being removed, must be undertaken by a contractor that holds an appropriate licence issued by WorkCover NSW in accordance with Chapter 10 of the Occupational Health and Safety Regulation 2001 and Clause 29 of the Protection of the Environment Operations (Waste) Regulation 2005 ;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.

13. 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.

14. 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.

15. Waste Management

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

REQUIREMENTS PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE

16. Fire Safety Statement – Final

In accordance with the *Environmental Planning & Assessment Regulation 2000*, upon completion of the building, the owner must provide Council with a certificate in relation to each fire safety measure implemented in the building.

17. Grease Trap Waste

Written permission must be obtained from Sydney Water before discharging trade wastewater to the sewer. A dry basket arrestor or bucket trap is necessary if there are floor wastes in the food preparation and handling areas. Floor waste must drain to the grease trap servicing the kitchen.

Note: Refer to the Sydney Water publication 'Managing trade wastewater in the food service industry'. An application must be submitted to Sydney Water, refer to sydneywater.com.au or phone 13 20 92.

18. Food Premises Notification Form

A food premises notification form must be submitted to Council prior to the commencement of the operation.

Note: Hornsby Shire Council's Food Premises notification form can be found at <http://www.hornsby.nsw.gov.au>

19. Council Inspection

- a) Prior to the commencement of the business, the operator must to contact Council's Compliance and Certification Team to arrange a food safety inspection to ensure compliance with the relevant legislation and guidelines outlined in this approval.
- b) A Certificate from Council detailing compliance with the relevant food safety legislation and guidelines shall be submitted to the Principal Certifying Authority.

Note: An inspection can be arranged by contacting Customer Service on 9847 6784.

OPERATIONAL CONDITIONS

20. Use of Premises

The development approved under this consent shall be used for a retail premises and a food and drink premises and not for any other purpose without Council's separate written consent.

21. Hours of Operation

The hours of operation of the premise are restricted to those times listed below:

6:30am to 6:30pm, Monday to Friday.

6.30am to 5pm on Saturday

6.30am to 1pm on Sundays

22. Business Identification Sign

The business identification signage approved under this consent must not be illuminated, flash, move or display electronic images.

23. Noise

All noise generated by the proposed development must be attenuated to prevent levels of noise being emitted to adjacent premises which possess tonal, beating and similar characteristics or which exceeds background noise levels by more than 5dB(A).

24. 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' certifying each essential service installed in the building.

25. Outdoor Seating

To ensure access to other retail premises is not impeded, no consent is granted for any outdoor seating to be placed within the external pathways.

- 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 4.17 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.

Disability Discrimination Act

The applicant's attention is drawn to the existence of the *Disability Discrimination Act 1992*. 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 1992*. 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.

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 *SafeWork 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.adfa.org.au

www.safework.nsw.gov.au

Alternatively, telephone the *SafeWork NSW* on 13 10 50.