



BUSINESS PAPER

LOCAL PLANNING PANEL MEETING

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



TABLE OF CONTENTS

GENERAL BUSINESS

Local Planning Panel

Item 1	LPP34/20 Section 8.2 Review - Demolition of Existing Structures and Construction of a Two Storey Child Care Centre - No. 9 Stuart Avenue, Normanhurst.....	1
Item 2	LPP35/20 Development Application - Construction of 29 Attached Townhouses with Basement Car Parking - 487- 495 Pacific Highway, Asquith.....	54

1 SECTION 8.2 REVIEW - DEMOLITION OF EXISTING STRUCTURES AND CONSTRUCTION OF A TWO STOREY CHILD CARE CENTRE - NO. 9 STUART AVENUE, NORMANHURST

EXECUTIVE SUMMARY

DA No:	DA/893/2019 (Review lodged on 6 August 2020)
Description:	Section 8.2(1)(a) Review - Demolition of existing structures and construction of a two-storey child care centre
Property:	Lot 91 DP 8354, No. 9 Stuart Avenue, Normanhurst
Applicant:	Gardner Wetherill and Associates (Ross Gardner)
Owner:	Mr. Mehrak Tavana and Mrs. Saharnaz Pourbozorgi
Estimated Value:	\$1,472,112
Ward:	B

- The Section 8.2(1)(a) review involves the demolition of existing structures and construction of 40 place, two storey child care centres.
- The proposal complies with the *Hornsby Local Environmental Plan 2013*, the *Hornsby Development Control Plan 2013* and *State Environmental Planning Policy (Educational Establishments and Childcare Facilities) 2017* with respect to landscaping, privacy, noise, traffic and safety, site suitability, contamination, setbacks, tree preservation and sunlight access.
- A total of 21 submissions have been received in respect of the Section 8.2 Review 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 as a deferred commencement consent.

RECOMMENDATION

THAT the Hornsby Local Planning Panel approve the Section 8.2(1)(a) review of Development Application No. DA/893/2019 for demolition of existing structures and construction of a two-storey child care centre at Lot 91 DP 8354, No. 9 Stuart Avenue Normanhurst as a deferred commencement consent pursuant to Section 4.16(3) of the *Environmental Planning and Assessment Act 1979* subject to the conditions of consent detailed in Schedule 1 of LPP Report No. LPP34/20.

BACKGROUND

On 27 September 2019, DA/893/2019 (the original development application) was lodged with Council. A total of 86 submissions by way of objection were received to the original development application.

On 27 May 2020, the Hornsby Local Planning Panel refused the development application on the following grounds:

1. *The proposed development is unsatisfactory in respect to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 as the proposed development is not consistent with the objectives of the R2 zone with respect to the Hornsby Local Environmental Plan 2013 as the development would not provide suitable child care facilities to meet the day to day needs of residents.*
2. *The proposed development is unsatisfactory in respect to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 as the proposed development does not satisfy Clause 23 of State Environmental Planning Policy (Educational Establishments and Childcare Facilities) 2017 and the Child Care Planning Guideline 2017 as follows:*
 - 2.1 *The proposal is contrary to the planning objectives within Part 1.3 of the Guideline in that the proposal is not compatible within the existing context and neighbouring land uses and the proposal does not adequately minimise adverse impacts on adjoining properties and the neighbourhood.*
 - 2.2 *The proposal is contrary to the 'design principles of Part 2 of the Guideline in relation to built form, landscaping, safety, amenity, privacy, solar access and noise.*
 - 2.3 *The proposal is contrary to the Part 3 considerations of the Guideline with respect to Part 3.1 Site Selection and Location, Part 3.2 Local Character, Streetscape and the public domain interface, Part 3.3 Building Orientation, Envelope and Design, Part 3.4 Landscaping, Part 3.5 Visual and Acoustic Privacy and Part 3.6 Noise and Pollution and Part 3.8 Traffic, Parking and Pedestrian Circulation.*
3. *The proposed development is unsatisfactory in respect to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 as the removal of tree No. 1 would pose a detrimental impact to the streetscape and the 'major' incursion into the TPZ of tree No. 4 would pose an adverse impact to the vitality of the tree and is unacceptable with respect to State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017.*
4. *The proposed development is unsatisfactory in respect to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 as the application has not adequately demonstrated whether the site is free of contaminants or whether the site is suitable for children in accordance with the requirements of State Environmental Planning Policy No. 55 Remediation of Land.*
5. *In accordance with Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposal does not comply with the desired outcome and the prescriptive measures of Hornsby Development Control Plan 2013 (HDGP) as follows:*
 - 5.1 *The proposal does not comply with the 'Tree Preservation' prescriptive measures within Parts 1B.6 of the HDGP as the removal of tree No. 1 would pose a detrimental impact to the streetscape and consideration should be given to its retention through the reconfiguration of the carpark layout, including the relocation of the proposed driveway and reduction of car parking spaces within the front setback. In addition, the*

development would generate a 'major' incursion into the TPZ of tree No. 4 and would pose an adverse impact to its life expectancy.

- 5.2 *The proposal does not comply with the 'Transport and Parking' prescriptive measures within Part 1C.2.1 of the HDCP as the existing traffic conditions in the vicinity of the site would not be suitable for a child care facility on safety grounds.*
- 5.3 *The proposal does not comply with the 'Waste Management' prescriptive measures within Part 1C.2.3 of the HDCP as the bin carting route includes a ramp and would not allow for safe manoeuvrability of the 660L bins.*
- 5.4 *The proposal does not comply with the 'Noise and Vibration' prescriptive measures within Part 1C.2.5 of the HDCP as the proposed 2.2m high acoustic fences are considered excessive in height and would have an adverse visual impact to adjoining properties.*
- 5.5 *The proposal does not comply with the 'Scale' prescriptive measures within Part 7.1.2 of the HDCP as the proposed development would adversely impact on the amenity of adjoining properties with regard to amenity, noise, landscaping, privacy and bulk and scale.*
- 5.6 *The proposal does not comply with the minimum 2 metre building setback along the northern and southern side boundaries in accordance with the 'Setbacks' prescriptive measures within Part 7.1.3 of the HDCP.*
- 5.7 *The proposal does not comply with the 'Privacy, Security and Sunlight' prescriptive measures within Part 7.1.6 of the HDCP as the main entry landing, elevated pathways and balconies would pose a privacy impact to adjacent residential properties.*
- 5.8 *The proposal does not comply with the 'Landscaping' prescriptive measures within Part 7.1.4 of the HDCP as landscaping within the northern and southern setbacks would not provide adequate vegetation density and screening along the front of the site to appropriately screen the parking spaces from the adjoining properties.*
6. *In accordance with Section 4.15(1)(c) of Environmental Planning and Assessment Act 1979, it is considered that the site is not suitable for the proposed development.*
7. *Pursuant to the provisions of Section 4.15(1)(b) and (e) of Environmental Planning and Assessment Act 1979, it is considered that the proposed development would not be in the public's interest.*

On 6 August 2020, the applicant requested a Section 8.2(1)(a) review of the determination of DA/893/2019 for demolition of existing structures and construction of a 71 place two storey child care centre. Amended plans were submitted as part of the Section 8.2(1)(a) review. The proposed revisions primarily involve:

- A reduction in the bulk and scale of the development.
- A reduction in the number of child places from 71 to 40.
- A reduction in the number of car parking spaces from 18 to 12.
- A reduction in the height of the front carpark by 724mm.
- An increase in the landscaping width along the northern and southern side boundaries.

- The relocation of the bin storage area to be nearer to the Stuart Avenue frontage.
- Deletion of the elevated entry platform adjacent to the southern side boundary and the relocation of the entry door to be further from the adjacent residential land use.
- A reduction in size of the upper floor balcony from 140m² to 85m².
- A reduction in the floor area of the centre from 759m² to 411m².
- Deletion of the north facing doors servicing the upper floor level director's office and stairs.
- A reduction in the height of the pedestrian pathways along the side setbacks.
- A reduction in the height of the child care centre building.
- The provision of additional information with regard to contamination sampling and traffic generation.
- Relocation of the driveway to be further south and a greater distance to the bend in the Road.

On 8 September 2020, Council requested amendments to the Detailed Site Investigation (DSI) to include additional contamination sampling locations and asbestos sampling. The requested information was received by Council on 16 October 2020.

On 16 October 2020, Council re-notified the amended application to the public in accordance with the notification requirements of the Hornsby Community Participation Plan (CPP).

SITE

The 1,628.8m² site is located on the eastern side of Stuart Avenue, Normanhurst and contains a single storey dwelling house and shed outbuildings to the rear.

The site experiences an average fall of 11% (9m) to the rear, eastern boundary.

Stuart Avenue is a low-density residential street with a streetscape predominantly comprising single storey dwelling houses.

The two adjoining properties to the south at Nos. 11 and 11A Stuart Avenue comprise a stepped two storey dwelling house with swimming pool and a single storey dwelling house, respectively. The two adjoining properties to the north at Nos. 7 and 7A Stuart Avenue contain stepped dwelling houses and ancillary outbuildings. The adjacent battle-axe property to the rear at No. 18A Campbell Avenue contains a two-storey dwelling house.

The site adjoins *NSW Land and Housing Corporation* social housing at No. 4 Stuart Avenue and a BP service station on the corner of Pennant Hills Road and Stuart Avenue, with both located across the street. The Queen of Peace Catholic Church is located at No. 18 Stuart Avenue, 150m south of the site.

The site is not bushfire or flood prone and is not burdened by any easements or restrictions.

The site is moderately vegetated and contains several large trees, in particular tree No. 1 within the front setback. The rear of the site contains remnant canopy trees characteristic of Blue Gum High Forest, listed as a Critically Endangered Ecological Community under the NSW Biodiversity Conservation Act 2016.

The site benefits from a drainage easement through No. 18A Campbell Avenue at the rear of the site.

Normanhurst Railway Station is located approximately 950m walking distance from the site. A bus stop servicing the *Transport for NSW* '589' bus route is located directly across Stuart Avenue,

connecting the site to Hornsby Town Centre. In addition, the bus stop services numerous school bus routes.

The site does not contain a heritage item, is not in the vicinity of a heritage listed item and is not located within a heritage conservation area.

PROPOSAL

The Section 8.2(1)(a) review seeks demolition of existing structures and construction of a purpose-built two storey child care centre.

The centre would cater for a maximum of 40 children within the following age groups:

- 0-2 years 08 Children
- 2-3 years 15 Children
- 3-5 years 17 Children

The lower ground floor level would comprise two indoor play rooms, an outdoor balcony play area, a lift, kids WC, store room, disabled WC and stairs. The ground floor would contain an indoor play room, outdoor balcony play area, cot room, staff room, WC, laundry, a lift, bottle preparation room, kids WC, reception, directors office, meeting room, kitchen and stairs.

The landscaped outdoor play area to the rear of the site would be serviced by stairs from the lower ground floor balcony and walkways along the southern and northern side boundaries.

An open carpark would be provided to the front of the site comprising 12 car parking spaces, including 1 disabled space.

A pedestrian access ramp is proposed to the southern side of the frontage which would provide direct access to the front entry of the centre.

One tree is proposed to be removed to facilitate the proposed development. Landscaping is proposed within the front, side and rear setbacks, including the planting of 2 trees along the front boundary and 7 trees within the side and rear setbacks. Additionally, 424 shrubs would be planted to the perimeter of the site.

A boundary fence would be installed along the perimeter of the site, achieving a maximum height of 2.2m at the rear boundary and tapering to a height of 1.2m at the front boundary.

A 1.25m high acoustic barrier would be installed to the southern and northern elevations of the carpark, with 1.1m high acoustic barriers installed to the northern and southern elevations of the upper floor balcony. The southern and northern elevations of the lower floor balcony would include a 1.1m high acoustic barrier. In addition, privacy screens are proposed to be installed to the side elevations of the lower floor level balcony.

The proposed operating hours of the child care centre would be 7:00am to 6:30pm, Monday to Friday.

The centre would be staffed by a maximum of 7 educators.

Two business identification signs have been proposed as part of this application, located on the front façade of the child care centre and affixed to the front fence.

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

A Metropolis of Three Cities – the Greater Sydney Region Plan 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 key targets such as dwelling numbers, infrastructure planning, liability, sustainability and productivity.

Part 3 of the strategy relates to "Infrastructure and Collaboration" and a key objective is to provide services and infrastructure to meet communities' changing needs. Further, the strategy cites changing demographics will affect the types and distribution of services required in neighbourhoods.

Over the next 16 years to 2036, the number of infants aged 0–4 years is projected to increase by 85,000. The identified challenge for Hornsby Shire would be to provide additional infrastructure for students and young people. The proposed child care centre would be consistent with the objectives of the strategy by providing 40 additional child care places.

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 R2 zone are:

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

The proposed development is defined as a "*centre-based child care facility*" and is permissible in the zone with Council's consent. The proposed development would provide facilities and services to meet the day to day needs of residents and would contribute in meeting the increasing demand for child care in Hornsby Shire.

2.1.2 Height of Buildings

Clause 4.3 of the *HLEP* provides that the height of a building on any land should not exceed the maximum height shown for the land on the Height of Buildings Map. The maximum permissible height for the subject site is 8.5m. The proposal would have a height of 8.27m and complies with this provision.

2.1.3 Heritage Conservation

A submission has been received raising concerns that the proposed demolition of the dwelling house would result in a loss of heritage in the locality.

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.

2.1.4 Earthworks

Clause 6.2 of the *HLEP* notes 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 application was supported by a Geotechnical Investigation report prepared by Geotechnical Consultants Australia.

It is anticipated that the proposed development would require excavation works for the building footings and service trenches, with locally deep excavations for the proposed lift shafts. Council's assessment has determined that the proposed development would require the removal of 200m³ of excavated material and the utilisation of 1.6m of fill to the rear portion of the building.

The submitted Geotechnical Report raises no concerns with the proposed development with regard to earthworks, subject to the following recommendations:

- The preparation of a dilapidation survey report on adjacent properties and infrastructures.
- Constant supervision of any excavations during construction.
- The depth and strength of the underlying bedrock material (including natural soils) should be confirmed either prior or during construction.
- Geotechnical inspections of foundations.
- Monitoring of any groundwater inflows during construction.
- Classification of all excavated material transported from the site.

Council concurs with the recommendations of the Geotechnical Assessment. The proposed earthworks would not detrimentally impact the surrounding natural and built environment with regard to drainage patterns and soil stability of the locality.

The proposal complies with Clause 6.2(3)(h) of the *HLEP* and is considered acceptable in this regard.

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

State Environmental Planning Policy (Educational Establishments and Childcare Facilities) 2017 (Childcare SEPP) commenced on 1 September 2017.

Clause 23 of the *Childcare SEPP* requires Council to consider the relevant provisions of the Child Care Planning Guideline 2017 (CCPG).

The CCPG will generally take precedence over the HDCP with the exception of building height, side and rear setbacks and car parking rates.

An assessment of the application against Part 1.3 *Planning objectives*, Part 2 *Design quality principles*, Part 3 *Matters for consideration* and Part 4 *Applying the National Regulations to development proposals* is provided below:

Part 1.3 - What are the planning objectives?

The planning objectives contained within Part 1.3 of the CCPG include requirements that child care facilities are compatible with the existing streetscape, context and neighbouring land uses and that they seek to minimise adverse impacts of development on adjoining properties and the neighbourhood.

As per the discussion provided in response to Part 3 of the CCPG, the proposal is considered consistent with these objectives.

Part 2 - Design quality principles

As per the discussion provided in response to Part 3 of the CCPG, the proposal is considered consistent with the design quality principles of Part 2 in relation to built form, landscaping, safety and amenity, privacy, solar access and noise.

Part 3.1 - Site selection and location

Submissions have been received raising concerns that:

- Child care centre developments should be located away from service stations for safety reasons.
- The submitted Detailed Site Investigation (DSI) is generally inadequate and indicates high levels of nickel and lead within the rear outdoor play area.

The objectives of Part 3.1 of the CCPG include that the siting of child care centres should be clear of potential environmental contaminants. In addition, Part 3.1 encourages that the land characteristics be suitable for the scale of the development with regard to adjacent properties.

Centre-based child care facilities are a permissible land use within the R2 low density residential zone. The site is located approximately 950m from the Normanhurst Railway Station. The site is not flood prone or bushfire prone. The site experiences an average slope of 10% to the rear boundary. The site is located approximately 20m from a BP service station at the corner of Pennant Hills Road and Stuart Avenue and a social housing development at No. 4 Stuart Avenue.

Council's assessment of the original Development Application raised concerns that the finished floor level of the front carpark (FFL 181.6 AHD) was elevated above the natural ground level of the adjacent private open space areas and swimming pool of Nos. 7A and 11 Stuart Avenue by 2.6m and 3.6m, respectively. In conjunction with the previously proposed 1.5m side boundary setbacks of the carpark, it was considered that the visual and amenity impacts of the carpark to these adjacent properties were significant and was not supported. In addition, concerns were raised with the originally submitted Preliminary Site Investigation (PSI), which was deemed inadequate as onsite contamination borehole sampling was not undertaken despite the presence of a BP service station within 20m upslope of the site. Although the submitted PSI indicated that the 'risk' of site contamination to be low, the application did not demonstrate whether the site was free of contaminants.

With regard to the subject S8.2 Review Application, the application proposes extensive design changes to the original child care centre comprising a significant reduction in bulk and scale, a 724mm reduction in the height of the front carpark and a reduction in the intensity of its use as

evidenced through a reduction in child care places from 71 children to 40 children. As detailed throughout the body of this report, the application has demonstrated that the redesigned centre accommodates for the site constraints relating to land gradient, pedestrian safety, site contamination and vehicular traffic

Section 2.6 of this report addresses site contamination and remediation works.

The revised scale of the proposed development is consistent with the capability of the site and is considered acceptable.

The proposal meets the objectives of Part 3.1 of the CCPG and the proposal is supported in this regard.

Part 3.2 - Local character, streetscape and the public domain interface

Submissions have been received raising concerns that the proposed development would result in the removal of tree No. 1 which positively contributes to the streetscape.

The objectives of Part 3.2 of the CCPG include that child care centre developments should contribute to and recognise existing streetscape qualities and integrate car parking into the building and site landscaping design.

Stuart Avenue is a low-density residential street with a streetscape predominantly comprising single storey dwelling houses. The child care centre would present to the streetscape as a single storey structure and two storey at the rear of the site. The proposal includes provision for acoustic barriers around the perimeter of the carpark and a 1.2m high front fence which would be visible from the street.

Tree No. 1 (*Cheese Tree*) proposed to be removed is a large canopy tree within the front setback along this section of Stuart Avenue. The tree positively contributes to the streetscape and consideration has been given to its retention through the reconfiguration of the carpark layout, including the relocation of the proposed driveway and reduction of car parking spaces within the front setback (see Section 3.1.1 of this report). To replace the canopy, cover currently provided by the *Cheese Tree*, the application proposes replacement planting in the form of two *Water Gum* trees within the front setback.

The proposal meets the objectives of Part 3.2 of the CCPG and is supported in this regard.

Part 3.3 - Building orientation, envelope and design

The objectives of Part 3.3 of the CCPG stipulate that child care centres should be orientated to minimise visual privacy and minimise noise impacts and respond to the adjacent built form.

Council's assessment of the original application raised privacy and noise generation concerns as the main entrance and landing to the child care centre building was to be orientated towards and located 1.75m from the southern side boundary, with a height of approximately 2.99m above the adjacent private open space (178.2 AHD). Likewise, Council's assessment of the original application raised concerns that the two doors servicing the ground floor level director's office and stairs to the northern side elevation would have been orientated towards the private open space of the adjacent property at No. 7A Stuart Avenue. It was determined that the finished floor level of the director's office door (181.19 AHD) and the door to the stairs (180.13 AHD) would have been located 3.19m and 2.13m above the adjoining open space, respectively.

In addition, Council's assessment of the original Development Application determined that the originally proposed orientation of the main entry landing and side access doors would result in noise

generation, overlooking and the gathering of persons at locations most sensitive to the adjacent property at No. 11 Stuart Avenue. The design of the entry to the child care centre was considered inappropriate in this respect.

The subject s8.2 Review Application has sought to address Council's original concerns through the deletion of the elevated entry platform and door adjacent to the southern side boundary and the provision of an entry door at the centre of the front façade, orientated towards the street and located approximately 8.4m from the nearest residential property. In addition, the revised proposal has deleted the two doors servicing the ground floor level director's office and stairs to the northern side elevation. It is considered that the s8.2 Review has adequately addressed Council's original privacy and noise concerns resulting from the elevated entry platform and doors and is deemed acceptable in this regard.

The proposal meets the objectives of Part 3.3 of the CCPG and the proposal is supported in this regard.

Part 3.4 – Landscaping

The objectives of Part 3.4 of the CCPG include that existing landscaping should be retained where feasible and should take into account the streetscape when siting car parking areas. The CCPG also encourages large trees within car parking areas to create a cool outdoor environment.

Landscaping is proposed within the front, side and rear setbacks, including the planting of 2 large *Water Gum* trees along the front boundary and 7 trees within the side and rear setbacks. Additionally, 424 shrubs would be planted around the perimeter of the site.

As discussed earlier, Tree No. 1 which is proposed to be removed is a large canopy tree that positively contributes to the streetscape and provides substantial shade to the front of the site. The proposal does not comply with the CCPG in this regard. Further discussion with regard to landscaping and tree preservation is provided in Sections 2.9.7, 2.9.8 and 3.1.1 of this report.

Part 3.5 - Visual and Acoustic Privacy and Part 3.6 - Noise and Air Pollution

A submission has been received raising concerns that the walkways, parking area, balconies and outdoor play areas would result in unacceptable noise impacts to the adjacent property at No. 11 Stuart Avenue and other adjoining properties.

The objectives of Part 3.5 of the CCPG include that child care centres minimise overlooking of internal living areas and private open spaces at adjoining sites through appropriate building layout including pathway, window and door locations. The objectives of Part 3.6 of the CCPG include that a suitably qualified acoustic professional prepare an acoustic report to identify an appropriate noise level for a child care centre facility. The s8.2 Review has been supported by an Acoustic Report prepared by Day Design Pty Ltd (Revision C).

A boundary fence would be installed along the perimeter of the site, achieving a maximum height of 2.2m at the rear boundary and tapering to a height of 1.2m at the front boundary.

A 1.25m high acoustic barrier would be installed to the southern and northern elevations of the carpark, with 1.1m high acoustic barriers installed to the northern and southern elevations of the upper floor balcony. The southern and northern elevations of the lower floor balcony would include a 1.1m high acoustic barrier. In addition, privacy screens are proposed to be installed to the side elevations of the lower floor level balcony.

Council's assessment of the original Development Application raised concerns that the elevated main entry landing, side access doors, elevated pathways and carparking area would have facilitated

unreasonable overlooking and noise emissions to the private open space areas of the adjacent properties at Nos. 7, 7A, 11 and 11A Stuart Avenue and was not supported. The subject S8.2 review Application has sought to address Council's reasons for refusal through the deletion of the elevated entry platform adjacent to the southern side boundary and the relocation of the entry door to be further from adjacent residential land uses, a reduction in the height of the pedestrian pathways along the side setbacks, the deletion of the north facing doors servicing the upper floor level director's office and stairs, a 724mm reduction in the height of the front carpark and the provision of a 1.75m high privacy screen along the southern elevation of the access pathway. Through a comprehensive redesign of the child care centre, it is considered that the proponent has adequately addressed each of Council's original concerns with regard to Parts 3.5 and 3.6 of the *CCPG*.

Council assessment of the acoustic requirements of the child care centre are discussed in detail in Section 2.9.5 of this report.

The proposal meets the objectives of Parts 3.5 and 3.6 of the *CCPG* and is considered acceptable.

Part 3.7 Hours of operation

Part 3.7 of the *CCPG* indicates that the hours of operation within areas where the predominant land use is residential should be confined to the core hours of 7.00am to 7.00pm weekdays.

The proposed hours of use of the childcare facility comply with this requirement.

Part 3.8 Traffic, parking and pedestrian circulation

Part 3.8 of the *CCPG* indicates that a Traffic and Parking Study should be prepared to support the proposal to quantify potential impacts on the surrounding land uses and demonstrate how impacts on amenity will be minimised. In addition, the *CCPG* indicates that child care facilities proposed within narrow roads should ensure that safe access can be provided to and from the site and that vehicles can enter and leave the site in a forward direction.

Section 2.9.3 of this report addresses parking, traffic and pedestrian circulation.

The following table sets out the proposal's compliance with the measures of Part 4 of the *CCPG*:

Child Care Planning Guideline 2017 – Part 4				
Control	Original DA	Proposal (S8.2)	Requirement	Compliance
Unencumbered indoor space	3.59m ² per child	5.25m ² per child	3.25m ² per child	Yes
Unencumbered outdoor space	7.3m ² per child	13.95m ² per child	7m ² per child	Yes
Storage				
- External	0.42m ³ per child	0.5m ³ per child	0.3m ³ per child	Yes
- Internal	0.24m ³ per child	1m ³ per child	0.2m ³ per child	Yes
On site laundry	Provided on site	Provided on site	Provided on site	Yes

Child toilet facilities	Provided on site	Provided on site	Provided on site	Yes
Administration space	Provided on site	Provided on site	Provided on site	Yes
Nappy change facilities	Provided on site	Provided on site	Provided on site	Yes
Solar Access for outdoor play	34%	41%	30-60% solar access	Yes

ITEM 1

As detailed in the above table, the proposed development complies with Part 4 of the CCPG.

Clause 25 of the *Childcare SEPP* contains non-discretionary development standards. This prevents the consent authority from imposing more onerous standards or refusing an application on the basis that they have not been complied with. An assessment of the application against Clause 25 of the *Childcare SEPP* has been carried out below:

Centre-based child care - non-discretionary development standards

- (a) *Location - the development may be located at any distance from an existing or proposed early childhood education and care facility.*

Submissions have been received raising concerns that there are already a number of child care centres in the vicinity.

Whilst there are other child care centres within the vicinity of the site, the child care centre can be located at any distance from an existing or proposed childhood education and care facility in accordance with Clause 25(a) of the *Childcare SEPP*.

- (b) *Indoor or outdoor space*

- (i) *For development to which clause 107 (indoor unencumbered space requirements) or 108 (outdoor unencumbered space requirements) of the Education and Care Services National Regulations applies - the unencumbered area of indoor space and the unencumbered area of outdoor space for the development complies with the requirements of those clauses, or*
- (ii) *For development to which clause 28 (unencumbered indoor space and useable outdoor play space) of the Children (Education and Care Services) Supplementary Provisions Regulation 2012 applies - the development complies with the indoor space requirements or the useable outdoor play space requirements in that clause;*

Comment: The regulations require a minimum of 3.25m² of unencumbered indoor play area and a minimum of 7m² of unencumbered outdoor play area per child. The proposal complies with this requirement.

- (c) *Site area, site coverage and site dimensions—the development may be located on a site of any size, cover any part of the site and have any length of street frontage or any allotment depth.*

Comment: The site has an area of 1,628.8m² and is considered acceptable.

- (d) *Colour of building materials or shade structures—the development may be of any colour or colour scheme unless it is a heritage item or in a heritage conservation area,*

Comment: The centre would not be located within a heritage conservation area and is sited more than 125m from the landscape heritage item at Thornleigh Golf Centre.

In summary, the proposed centre-based child care centre would comply with the *Childcare SEPP* provisions and is assessed as satisfactory in this regard.

2.3 Children (Education and Care Services) Supplementary Provisions Regulation 2019

On 1 September 2019, the *Children (Education and Care Services) Supplementary Provisions Regulation 2012* was repealed and the *Children (Education and Care Services) Supplementary Provisions Regulation 2019* came into force. Clause 28 of the repealed regulations provided the functional space requirements for child care centre premises, including maximum number of child places and minimum outdoor and indoor play area requirements.

The *Children (Education and Care Services) Supplementary Provisions Regulation 2019* does not stipulate provisions with regard to functional space requirements, and instead delegates these provisions to the *Child Care Planning Guideline 2017*.

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

State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 (Vegetation SEPP) commenced 25 August 2017 and aims to protect the biodiversity and amenity values of trees within non-rural areas of the state.

Part 3 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 (HDCP)* prescribes works that can be undertaken with or without consent to trees.

Section 3.1.1 of this report addresses proposed tree removal.

2.5 State Environmental Planning Policy No. 64 Advertising and Signage

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.

SEPP 64 defines a 'business identification sign' as a sign that identifies or names a building or the nature of the business. The proposed signage complies with the definition of business identification signs under the *SEPP*.

Division 1 Clause 9 of *SEPP 64* indicates that the Policy does not apply to 'business identification signs'. However, the Policy requires that the consent authority must consider the assessment criteria within Schedule 1 of *SEPP 64* when assessing any sign. An assessment of the application with regard to *SEPP 64* is provided below:

State Environmental Planning Policy No. 64		
Control	Requirement	Assessment
Division 1, 2 and 3 development controls		
<i>Objectives</i>	Does the proposal satisfy the objectives in Clause 3 of the <i>SEPP</i> ?	Yes

Schedule 1 – Assessment Criteria (to be considered for all advertising structures including “business identification signs”)		
<i>Character of the area</i>	<p>Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located?</p> <p>Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?</p>	<p>The sign to be affixed to the front fence would have dimensions of 1m x 1.3m and is considered to be of a small scale. The signage would be consistent with the future character of the area.</p> <p>There is no particular theme regarding outdoor advertising within the locality</p>
<i>Special areas</i>	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	The proposal would not detract from the visual quality of the residential area
<i>Views and vistas</i>	<p>Does the proposal obscure or compromise important views?</p> <p>Does the proposal dominate the skyline and reduce the quality of vistas?</p> <p>Does the proposal respect the viewing rights of other advertisers?</p>	<p>The proposed signage will not obscure or compromise any important views.</p> <p>No</p> <p>The signage would not obstruct any views to other advertisements in the area.</p>
<i>Streetscape, setting or landscape</i>	<p>Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape?</p> <p>Does the proposal contribute to the visual interest of the streetscape, setting or landscape?</p> <p>Does the proposal reduce clutter by rationalising and simplifying existing advertising?</p> <p>Does the proposal screen unsightliness?</p> <p>Does the proposal protrude above buildings, structures or tree canopies in the area or locality?</p> <p>Does the proposal require ongoing vegetation management?</p>	<p>The scale and proportion of the proposed signage is suitable for the site and locality</p> <p>The proposed sign would positively contribute to the visual interest of the streetscape and setting</p> <p>The proposed signage would provide for a neat, uncluttered finish.</p> <p>The proposed signage will not screen unsightliness.</p> <p>The sign would not protrude vertically above structures or buildings</p> <p>The signage does not require ongoing vegetation management</p>

<i>Site and building</i>	<p>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?</p> <p>Does the proposal respect important features of the site or building, or both</p> <p>Does the proposal show innovation and imagination in its relationship to the site or building, or both?</p>	<p>The proposal would be compatible with the scale and proportion of the existing building on the site.</p> <p>The proposed sign respects the architectural features of the existing building and site and would complement the features of the site and building</p> <p>Yes</p>
<i>Associated devices and logos</i>	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?	The signage does not have any lights or safety devices
<i>Illumination</i>	<p>Would illumination result in unacceptable glare?</p> <p>Would illumination affect safety for pedestrians, vehicles or aircraft?</p> <p>Would illumination detract from the amenity of any residence or other form of accommodation?</p> <p>Can the intensity of the illumination be adjusted, if necessary?</p> <p>Is the illumination subject to a curfew?</p>	<p>The signage is not illuminated</p> <p>N/A</p> <p>N/A</p> <p>N/A</p> <p>N/A</p>
<i>Safety</i>	<p>Would the proposal reduce the safety for any public road?</p> <p>Would the proposal reduce the safety for pedestrians or bicyclists?</p> <p>Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas?</p>	<p>The proposed signage will not reduce the safety of any public road.</p> <p>The proposed signage will not reduce the safety for pedestrians or cyclists.</p> <p>The proposed signage will not reduce pedestrian safety or impact sightlines from public areas.</p>

2.6 State Environmental Planning Policy No. 55 Remediation of Land

Submissions have been received raising concerns that:

- Child care centre developments should be located away from service stations for safety reasons;

- There are minor inaccuracies within the submitted Detailed Site Investigation relating to the location and names of nearby facilities and natural landmarks; and
- The submitted Detailed Site Investigation (DSI) is generally inadequate and indicates high levels of nickel and lead within the rear play area.

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.

As discussed in Section 2.2 of this report, Council's assessment of the original Development Application raised concern with the submitted Preliminary Site Investigation (PSI). The PSI was deemed inadequate as onsite borehole sampling had not been undertaken for contamination assessment despite the presence of a service station approximately 20m upslope of the site. The application did not adequately demonstrate whether the site is free of contaminants or whether the site is suitable for its proposed use a child care centre. Accordingly, Council recommended that a Detailed Site Investigation (DSI) be conducted with on-site contamination sampling.

A Detailed Site Investigation (DSI) prepared by Neo Consulting dated 28 June 2020 was submitted in support of the subject S8.2 Review Application to address uncertainties regarding whether heavy metals and contaminants are present on the site. Council's Environmental Protection assessment raised concerns with the DSI, including that:

- A 2-dimensional systematic method had not been undertaken to ensure full and uniform investigation of the site had been carried out.
- The DSI report did not provide any data, equations or workings to support that the average concentration of contaminants is less than the acceptable limit
- The site inspection undertaken on 5 June 2020 was erroneous in its methodology and collection of samples, contrary to *NSW Environment Protection Authority (NSW EPA) Sampling design Guidelines (1995)*.

To address Council's concerns, a revised DSI prepared dated 9 October 2020 was submitted to Council. The revised DSI indicates that on 30 September 2020 a further site inspection was undertaken whereby 10 soil samples from a total of 5 boreholes were retrieved. The boreholes were evenly spread across the site, taken in proximity to both buildings and the site boundary. A duplicate sample was taken to be used for 'Quality Assurance/Quality Control' purposes, to ensure no bias occurred during laboratory testing.

It is acknowledged that many of the soil samples taken during the original site inspection (5 June 2020) contained results which breached the Health Investigation Levels for lead and nickel (borehole sites BH3.1 and BH3.2). Notwithstanding, the resampling conducted in accordance with *NSW Environment Protection Authority (NSW EPA) Sampling design Guidelines (1995)* that took place on 30 September 2020 depicted that heavy metals were below the Health Investigation Levels. The

revised DSI raises no concerns to the use of the site as a child care centre, subject to recommendations that:

- *The onsite structures require a Hazardous Material Survey prior to demolition, to ensure there is no harmful hazardous substance that can cause injury to individuals. This should be conducted by a suitably qualified Licenced Asbestos Assessor or Environmental Consultant.*
- *Any soils requiring removal from the site, as part of future site works, should be classified in accordance with the "Waste Classification Guidelines, Part 1: Classifying Waste" NSW EPA (2014).*
- *If any unexpected occurrence happens on the site, all work activity should be ceased temporarily, and an environmental consultant should be notified immediately.*

Council's Environmental Protection Assessment concurs with the recommendations of the revised DSI and has determined the site acceptable for its proposed use as a child care centre, subject to conditions.

2.7 Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

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

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

2.8 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.

2.9 Hornsby Development Control Plan 2013

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

Hornsby Development Control Plan 2013				
Control	Original DA	S8.2	Requirement	Compliance

Site Area	1,628.8m ²	1,628.8m ²	N/A	N/A
Floor Area	759m ²	411m ²	430m ²	Yes
Site Coverage	22%	19%	30%	Yes
Height	8.4m	8.27m	8.5m	Yes
No. of Storeys	2 storeys	2 storeys	max. 2 storey	Yes
Number of Children	71	40	max. 40	Yes
Recreation Space				
- Indoor	3.59m ² per child	5.25m ² per child	3.25m ² per child	Yes
- Outdoor	7.3m ² per child	13.95m ² per child	7m ² per child	Yes
Landscaping	30%	42%	min. 45%	No
Car Parking (@ 1/ 4 children)	18 spaces	12 spaces	10 spaces	Yes
Setbacks				
- Front	30m	27m	6m	Yes
- Side (north)	1.75m – 3m	2m	2m	Yes
- Side (south)	1.75m – 3m	2m	2m	Yes
- Rear	17.5m	23.5m	8m	Yes
- Carpark	min. 1.56m	2m	2m	Yes

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

2.9.1 Site Requirements

Submissions have been received raising concerns that child care centre developments should be located away from service stations for safety reasons.

The *HDCEP* provides selection criteria that aim to encourage the location of community land uses to minimise potential land use conflicts. The *HDCEP* recommends that community uses should be separated from intensive, offensive or hazardous land uses. It also suggests that the preferred location would be corner sites, sites adjacent to non-residential uses and sites with a frontage to a park.

The site is located approximately 20m from a BP service station at the corner of Pennant Hills Road and Stuart Avenue. Section 2.6 of this report further addresses site contamination and remediation.

The proposal complies with Part 7.1.1 Site Requirements of the HDCP and is considered acceptable in this regard.

2.9.2 Scale

A submission has been received raising concerns that the ground floor level of the child care centre (the lower floor balcony) would be elevated greater than 1.5m above the existing ground level when viewed from the southern side elevation.

The HDCP provides that the floor area of a child care centre should be 430m², and the maximum number of children should be 40 children.

The previously refused Development Application proposed a floor area of 759m² (including the balconies) and a capacity of 71 children, which was deemed contrary to the requirements of the HDCP. Council's assessment of the original Development Application recommended that consideration be given to a reduction in the bulk and scale of the development to alleviate concerns relating to privacy, amenity, sunlight access, traffic and noise impacts to adjacent properties.

The subject s8.2 Review Application exhibits a comprehensive redesign of the child care centre comprising a reduction in bulk and scale, as evidenced through a reduction in the floor area of the centre from 759m² to 411m², a reduction in building height to 8.27m and a reduction in child care places from 71 to 40. It is considered that the proponent has adequately addressed Council's original concerns with regard to bulk and scale and the revised proposal is deemed acceptable in this regard.

In addressing the submission, it is acknowledged that the finished floor level of the lower floor level balcony was originally proposed to be between 1.4m - 2.54m above the existing ground level. The revised proposal has reduced the finished floor level to be between 1.15m – 1.77m above the existing ground level. As the balcony would be sited 3m from the southern side boundary and would incorporate acoustic and privacy screening, no concerns are raised with regard to visual bulk or amenity when viewed from properties to the south.

The proposal complies with Part 7.1.1 Site Requirements of the HDCP and is considered acceptable in this regard.

2.9.3 Transport, Parking and Traffic

A Traffic and Parking Impact Assessment (Issue I) prepared by Transport and Traffic Planning Associates accompanied the proposal as amended.

Submissions have been received raising concerns with regard to the existing traffic conditions adjacent to the site, along with concerns that the 40-place child care centre would exacerbate those traffic and safety issues, summarised as follows:

- The development would pose a detrimental impact to vehicle and pedestrian safety along Stuart Avenue.
- The street is narrow, and motorists often navigate onto the other side of the road during peak hours due to the banked-up cars at the traffic lights and vehicles parked adjacent to the kerb.
- The site is located at a bend in the road and there is poor vehicle visibility and line of sight.

- There is constant traffic and queuing of cars at the traffic lights at the intersection of Pennant Hills Road with Stuart Avenue.
- Bus stops servicing local schools are sited directly across the site and Stuart Avenue is subject to frequent bus services.
- The driveway servicing the townhouse development across the street at No. 4 Stuart Avenue is directly opposite the proposed vehicular access for the development, resulting in substantial traffic through this section of Stuart Avenue.
- A significant number of bins are positioned adjacent to the street prior to garbage collection for the adjoining townhouse development. Due to the large number of bins, the waste truck is required to double park for a number of minutes, creating an obstacle for vehicles and posing an impact to the safety of children.
- Motorists utilise the service station as a 'rat run' to avoid the traffic lights at Pennant Hills Road.
- The BP Service Station is located approximately 20m upslope of the site which generates traffic.
- The Queen of Peace Catholic Church holds frequent services, including funeral services with vehicle convoys during peaks hours.
- On-street parking is limited along Stuart Avenue.
- There is insufficient on-site parking, resulting in an overflow of parking onto the street. In addition, staff cars would be 'parked in' by visitor car parking spaces.
- The submitted Traffic Report is erroneous as it has not addressed nearby feeder streets, the BP service station, school buses, the Pennant Hills Road intersection and underestimates traffic in the locality and was undertaken during the COVID-19 pandemic.

Traffic

It is acknowledged that there is significant concern from the community that substantial existing northbound traffic occurs along Stuart Avenue (particularly during morning hours), resulting in the banking up of vehicles at the traffic lights.

Appendix B of the submitted Traffic and Parking Impact Assessment (TPIA) (Issue I) provides Sydney Coordinated Adaptive Traffic System (SCATS) traffic data for the Pennant Hills Road and Stuart Avenue intersection. SCATS collect traffic volume data using detectors at traffic signals. This data can be used to measure existing traffic volume including lane and/or turning counts. Using the SCATS data, the TPIA has summarised the existing AM and PM peak vehicle movements as follows:

		AM	PM
Pennant Hills Road	Northbound	2,120	2,747
	Right Turn	14	19
	Southbound	2,210	2,005
	Left Turn	45	82
Stuart Avenue	Right Turn	23	17
	Left Turn	86	41

This data indicates a two-way traffic flow along Stuart Avenue of 168 vehicles per hour in the AM peak and 159 vehicles per hour in the PM peak. Council's traffic assessment concurs with the conclusions of the TPIA that the operation of the intersection is satisfactory during the AM and PM peak periods.

Traffic Generation

The *RTA Guide to Traffic Generating Developments* (GTGD) prescribes a rate of 0.8 vehicle trips per child during the 7am to 9am peak period and 0.7 vehicle trips per child during the 4pm to 6pm peak period for child care centres. Accordingly, the development would generate 32 trips in the AM peak and 28 trips in the PM peak.

The former *Roads and Traffic Authority* (RTA) published its Guide to Traffic Generating Developments in the mid-1990s. This document drew on the results of a number of trip generation and parking demand surveys covering a wide range of business and land uses. These surveys had been progressively conducted since 1978. The trip generation and parking requirement data in the Guide is becoming increasingly out-of-date, with the last analysis being conducted in 1992. Given the significant expansion in the child care sector in recent years, the RTA identified a need to collect fresh trip generation and parking demand data for child care centres to assist with traffic impact assessment and planning. Accordingly, a child care centre study was undertaken for the *NSW Roads and Maritime Services* (RMS) in 2015, which assessed 12 sites in the Sydney Metropolitan Area and 2 Regional sites, including 4 Long Day Care and 2 Pre-School sites.

In accordance with the results of this study, the proposed 40-place child care centre would generate 24 trips in the AM peak and 14 trips in the PM peak. The submitted Traffic and Parking Impact Assessment considers the traffic volume generated by the proposed development to be of a "*minor magnitude*" as:

- These movements will be split into 4 directions at the intersection.
- The operation of the intersection is quite satisfactory at the present time.
- The current peak traffic flows on Pennant Hills Road will reduce significantly with the completion of NorthConnex.

Council's traffic assessment concurs with the conclusions of the submitted Traffic and Parking Impact Assessment that the child care centre would not substantially contribute to traffic along Stuart Avenue.

NorthConnex

Since the submission of the Traffic and Parking Impact Assessment, NorthConnex, a nine-kilometre twin tunnel that links the M1 Pacific Motorway at Wahroonga to the Hills M2 Motorway at West Pennant Hills opened on 31 October 2020. NorthConnex allows motorists to bypass 21 sets of traffic lights along Pennant Hills Road. It is estimated that NorthConnex will redirect around 5,000 trucks and buses each day off Pennant Hills Road into the tunnel.

Peak traffic flows on Pennant Hills Road and the locality have reduced significantly as a result of the recently completed NorthConnex.

Sight Distances / Safety

Council's assessment of the original Development Application raised concerns that the existing sight distances to the front of the site were inadequate around the bend in the road and that the proposed driveway was unnecessarily close to the bend. Concerns were also raised to the scale of the

development, which exacerbated these concerns. To improve sight distances and ensure safe vehicular ingress and egress from site, Council's traffic assessment recommended that the following be undertaken:

- The installation of *'No Parking, 7am-10am, 3pm-6:30pm, Mon-Fri'* along the nature strip to the front of the site.
- The installation of *'Mail Zone'* signs 3m either side of the Australia Post mail box, and the bus stop be converted to a *'Bus Zone'* from the *'Mail Zone'* sign to the northern side of the driveway at No. 2-4 Stuart Avenue.
- The driveway be located towards the southern side of the frontage, where there is good sight distance for egressing drivers.

The subject 8.2 Review has proposed to relocate the driveway to be towards the southern side of the frontage and is considered to be a notable improvement to the previous design on safety grounds. Subject to conditions recommended under Schedule 1 requiring the imposition of a *'Mail Zone'*, *'Bus Zone'* and installation of *'No Parking, 7am-10am, 3pm-6:30pm, Mon-Fri'* signage along the nature strip to the front of the site, the proposal is deemed acceptable on traffic and safety grounds.

On Site Parking

The HDCP requires a minimum of 1 on-site car parking space per 4 children (which equates to 10 spaces for the proposed 40 children). The car park would comprise of 12 car parking spaces including one disabled parking space and five allocated staff car parking spaces, which would comply with this requirement.

Concerns have been raised by the community that there would be insufficient on-site parking, resulting in an overflow of parking onto the street. The HDCP requirement for the provision of a minimum of 1 on-site car parking space per 4 children takes into consideration the need for staff to park on site and is considered acceptable in this regard.

The Section 8.2 Review provides a turning bay to the north-western corner of the car park to allow vehicles to turn around and egress in a forward direction.

The amended carpark design provides a pedestrian pathway to the southern side of the car park, providing dedicated pedestrian access from the street to the front entry of the centre. The proposal as amended has addressed Council's concerns with the original car park design regarding pedestrian/vehicle conflict.

On Street Parking

Kerbside parking is permitted on both sides of Stuart Avenue in the vicinity of the site.

As the proposed development complies with the on-site parking rates of the *HDCP*, it is anticipated that the proposed on-site car parking would provide ample parking spaces to prevent the use of on-street parking.

2.9.4 Waste Management

The proposed development would generate a demand for 2 x 660L garbage bins and 3 x 240L recycling bins, serviced weekly.

The original Development Application proposed a bin storage room integrated with the child care building adjacent to the building entry. Council's assessment of the original proposal raised concerns that the 660L bins would have been difficult to manoeuvre through a 'switchback' ramp to the street

frontage when at capacity and recommended that consideration be given by the proponent to relocating the bin storage to the car park area to avoid utilisation of the 'switchback' ramp.

The subject s8.2 Review has sought to address Council's concerns through the relocation of the bin storage to the north-western corner of the car park and the deletion of the 'switchback' ramp from the proposal. The revised bin carting route would comprise the use of either the 5% gradient driveway or the 10% gradient pedestrian pathway to deliver the bins to the street frontage prior to collection. Council's waste management assessment has determined that the revised proposal satisfactorily addresses Council's original concerns with regards to bin manoeuvrability and storage and raises no concerns to the proposal as amended.

The proposal complies with the waste management requirements of Part 1C.2.3 of the HDCP and is considered acceptable in this regard.

2.9.5 Noise and Vibration

Submissions have been received raising concerns that:

- The walkways, parking area, balconies and outdoor play areas would result in unacceptable noise impacts to the adjacent property at No. 11 Stuart Avenue and other adjoining properties.
- The recommendation within the submitted acoustic report for educators to discourage loud play is impractical.

The HDCP requires that child care centres be accompanied by an acoustic report that demonstrates the development is sited and designed to minimise the effect of noise and vibration on surrounding sensitive land uses. The s8.2 Review has been supported by an Acoustic Report prepared by Day Design Pty Ltd (Revision C).

Council assessment of the original Development Application raised concerns that the 71-place centre would exceed recommended noise limits to the adjacent properties at No. 7 and 11A Stuart Avenue. Council advised that consideration be given to a reduction in overall child numbers through a comprehensive redesign of the development to reduce noise and amenity impacts to adjoining residential receivers.

With regard to the subject s8.2 Review, the acoustic assessment has adopted noise limit of 51dBA for the adjacent residential receivers. Section 5.4.1 of the Acoustic Report indicates that without the implementation of the proposed acoustic attenuation measures, the centre would exceed recommended noise limits to the ground floor level of the adjacent property at No. 7 Stuart Avenue by +4dBA. Section 7 of the report provides recommendations to reduce the noise received at No. 7 Stuart Avenue and other adjoining properties through:

- *The installation of acoustic barriers along the length of the carpark, side and rear elevations of the balconies.*
- *The installation of 1.8m-2.2m high boundary fencing along the rear and side boundaries.*
- *The installation of a sound absorptive insulation be fixed below the soffit and within the mechanical plant area.*
- *The limiting of the number of children outside at any one time as follows:*

Scenario 1:

- *0-2-year old = 8*

- 2-3-year-old = 15
- 3-5-year-old = 0

Scenario 2:

- 0-2-year old = 8
- 2-3-year old = 0
- 3-5-year old = 10

Subject to the implementation of the noise attenuation measures outlined under Section 7 of the Acoustic report, operational use of the proposed development would comply with the adopted noise limit of 51dBA for the adjacent residential receivers.

The proposed noise management procedures of the Plan of Management correspond with the recommendations of the Acoustic Report; accordingly, a condition of consent is recommended in Schedule 1 requiring compliance with the Plan of Management and that cumulative noise generation from the use of the premises is not to exceed background +10 dB(A) up to a total of 2 hours per day.

The proposal meets the objectives of the *CCPG and the HDCP* and is considered acceptable, subject to conditions.

2.9.6 Privacy

Submissions have been received that the development may facilitate overlooking into the private open space and living areas of the adjacent properties at No. 11 and 11A Stuart Avenue.

Council's assessment of the original Development Application raised concerns that:

- The main entrance to the child care centre building would have been orientated towards the southern side boundary and would have been serviced by an elevated pedestrian landing, approximately 2.99m above the adjacent private open space at No. 11 Stuart Avenue.
- The 140m² upper floor level outdoor play area should be predominantly provided at natural ground level to mitigate overlooking into the private space areas of adjacent properties.
- The two doors servicing the ground floor level director's office and stairs to the northern side elevation would have been orientated towards the private open space of the adjacent property at No. 7A Stuart Avenue, located 3.19m and 2.13m above the adjoining open space, respectively.

The subject s8.2 Review Application has sought to address privacy concerns through the deletion of the elevated entry platform and door adjacent to the southern side boundary, the provision of an entry door at the centre of the front façade and the provision of a 1.75m high privacy screen along the southern elevation of the access pathway. In addition, the revised proposal has indicated the deletion of the two doors servicing the ground floor level director's office and stairs to the northern side elevation.

With respect to the upper floor balcony, its size has been reduced from 140m² to 85m² and includes the provision of a 1.1m high frosted acoustic barrier along its side elevations. The upper floor balcony would be directly accessible from the 0-2-year indoor play room and is intended to provide exclusive outdoor play space to all children within this age group (8 children) at any one time. Although it is anticipated that no privacy impacts would eventuate from the children using the upper floor balcony, concern is raised to its use by educators within close proximity to the open space areas of the

adjacent residential properties at Nos. 7, 7A, 11 and 11A Stuart Avenue. To ensure that privacy is maintained to the adjacent properties, a condition has been recommended in Schedule 1 requiring that a 1.5m high privacy screen be erected along the southern, northern and rear elevations of the upper floor balcony.

In addition, to ensure that privacy impacts do not arise from the internal areas of the child care centre, a condition has been recommended under Schedule 1 requiring the installation of translucent film to the windows along the side elevations, with the exception of the highlight windows.

It is considered that the S8.2 Review Application has adequately addressed Council's original privacy concerns and would comply with the privacy requirements of Part 7.1.6 of the HDCP.

2.9.7 Minimum Landscaped Area

The provisions of the HDCP requires that a minimum of 45% of the site is to be landscaped area. The original application provided for a landscaped area of 30% of the site, contrary to the requirements of the HDCP.

The s8.2 Review proposes to increase the landscaped area of the site, from 30% to 42% coverage. Correspondingly, the proposal as amended includes the planting of an additional 107 shrubs to the perimeter of the site when compared to the original development proposal. The additional landscaping can be attributed to extensive design changes including the reduction in the size of the front carpark, the increase in the width of landscaping along the side boundaries and a significant reduction in the footprint of the building. The non-compliance is considered negligible and can be attributed to the provision of a 25m² sandpit within the rear setback.

It is determined that the proponent has addressed Council's original landscaping concerns and the proposal is acceptable in this regard.

2.9.8 Landscaping (Front Setback)

Where a carpark is proposed within the front setback, the HDCP requires that a minimum 2m landscaped setback be provided from all property boundaries within the front setback area.

Within the frontage of the site, the original application included a 2m wide landscaped setback to the front boundary, and a 1.56m wide landscaped area to the southern and northern side boundaries adjacent to the car park. Council's assessment of the original Development Application raised concerns that the 1.56m wide strips of landscaping within the northern and southern setbacks would not have provided adequate vegetation density and screening along this section of the site to appropriately screen the elevated parking spaces from the adjoining properties.

The s8.2 Review addresses Council's previous concerns through the provision of a 3m wide landscaped setback to the front boundary and a 2m wide landscaped area along the length of both side boundaries. Accordingly, the density of landscaping within these setbacks has also been increased.

The proposal would not comply with the side boundary landscaping requirements of the *HDCP* and is considered unacceptable.

2.9.9 Sunlight Access

Submissions have been received raising concerns that solar access would be restricted to the adjacent properties to the south at No. 11 and 11A Stuart Avenue. In addition, a submission argues

that the 2.2m high boundary fence adjacent to No. 11A Stuart Avenue would be excessive and should be reduced to a 1.8m lapped and capped fence, for solar access reasons.

The HDCP states that on 22 June 50% of the principal private open space on any adjoining residential property should receive a minimum of 3 hours of unobstructed solar access between 9am and 3pm.

The submitted shadow diagrams demonstrate that the private open space adjacent properties to the south at Nos. 11 and 11A Stuart Avenue would receive a minimum of 3 hours of unobstructed solar access between 9am and 3pm in June. The proposal has demonstrated compliance with the prescriptive requirements of the HDCP with regard to height and setbacks for child care centre development and low-rise development in the zone.

On balance, it is considered that the provision of a 2.2m high boundary fence to the rear of the site would provide acoustic attenuation benefits that would reasonably compensate for the loss of sunlight access received at No. 11A Stuart Avenue.

The proposal would meet the sunlight access provisions of the HDCP and is considered acceptable in this regard.

2.9.10 Setbacks

The original Development Application proposed a 1.75m setback from the northern and southern side boundaries, contrary to the 2m side setback requirements of the HDCP. The proposal as amended has increased the side boundary setbacks to 2m along the northern and southern side boundaries.

The proposal would meet the setback provisions of the HDCP and is considered acceptable in this regard.

2.10 Section 7.12 Contributions Plans

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 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 Tree and Vegetation Preservation

Submissions have been received raising concerns that the proposed development would result in the removal of tree No. 1 which positively contributes to the streetscape.

The application has been accompanied by an Arboricultural Impact Assessment prepared by Temporal Tree Management.

The rear of the site contains remnant canopy trees characteristic of Blue Gum High Forest, listed as a Critically Endangered Ecological Community under the NSW *Biodiversity Conservation Act 2016*. The

site contains trees which satisfy Council's criteria for being individually important, identified as tree Nos. 1, 4, 11, 14, and 17.

One tree is proposed to be removed within the front setback to facilitate construction of the proposed car park, identified as tree No. 1 (*Cheese Tree*). The report identified tree No.1 to be a native tree of 'fair' health and structure with a 'long' useful life expectancy and a high 'A1' retention value. The tree positively contributes to the streetscape and accordingly, in Council's assessment of the original Development Application, it was recommended that consideration be given to its retention through the reconfiguration of the carpark layout, including the relocation of the proposed driveway and reduction of car parking spaces within the front setback.

The s8.2 Review has sought to address Council's concerns through significant design changes within the front carpark area. Despite these revisions, it is acknowledged that retention of tree No. 1 has proved problematic as a result of its expansive 12.12m Tree Protection Zone (TPZ) as identified in the submitted Arborist Report. It is considered that the retention of tree No. 1 would require a redesign of the development comprising:

- The provision of a driveway adjacent to either the northern or southern side boundary, effectively resulting in the deletion of the proposed landscaping strips within these setbacks.
- Relocating the car park to be further east or the deletion of car parking spaces Nos. 1 and 2.

Provided an application for development is otherwise reasonable and supportable, it is considered that the removal of one tree is not sufficient grounds to warrant or sustain a refusal. On balance, the removal of tree No. 1 would facilitate the construction of an otherwise compliant child care centre development and is deemed acceptable in this instance. To ensure future canopy cover to the front of the site, a condition has been recommended requiring the planting of 2 *Water Gum* trees in accordance with the submitted landscape plan.

The proposal as revised would not encroach into the TPZ of any trees to be retained on the subject site or adjacent sites, including tree Nos. 4 and 17 which were detrimentally impacted under the original development proposal.

To ensure the preservation of trees on the site and adjacent sties, conditions have been recommended under Schedule 1 requiring that a project arborist be appointed to oversee the installation of tree protection fencing and any works within the TPZ of trees to be retained.

On balance, the proposal meets the tree and vegetation preservation requirements the HDCP and is deemed acceptable in this instance.

3.1.2 Stormwater Management

The proposal as amended indicates the installation of an on-site detention system with all stormwater from the development drained to a proposed drainage easement over the adjacent property to the rear at No. 18A Campbell Avenue Normanhurst.

Council's stormwater assessment raises no concerns with the proposed method of stormwater disposal, subject to recommended conditions including a deferred commencement condition indicating that the consent does not operate until the proposed easement to drain water over Lot B DP 379644 (No. 18A Campbell Avenue Normanhurst) is registered with the NSW Land Registry Services (NSW LRS).

3.2 Built Environment

3.2.1 Access and Mobility

The application is supported by a Disability Access Report prepared by Lindsay Perry Access. The report concludes that the proposed development complies with the relevant accessibility provisions of *Disability (Access to Premises - Building) Standards 2010*.

3.3 Social Impacts

The proposed child care centre would make a positive social contribution to the local community by providing services for the needs of local residents. This is consistent with the State Government's 'A Metropolis of Three Cities' which identifies the need to provide an additional 85,000 child care places by 2036.

3.4 Economic Impacts

The proposal would have a minor positive impact on the local economy by generating an increase in employment opportunities.

4. SITE SUITABILITY

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

The site is capable of accommodating the proposed development.

The application has proposed extensive design changes to the original child care centre comprising a significant reduction in bulk and scale and a reduction in the intensity of its use as evidenced through a reduction in child places from 71 children to 40. The application has demonstrated that the redesigned centre addresses the site constraints relating to land gradient, pedestrian safety, site contamination and vehicular traffic.

The revised scale of the proposed development is consistent with the capability of the site and is considered acceptable.

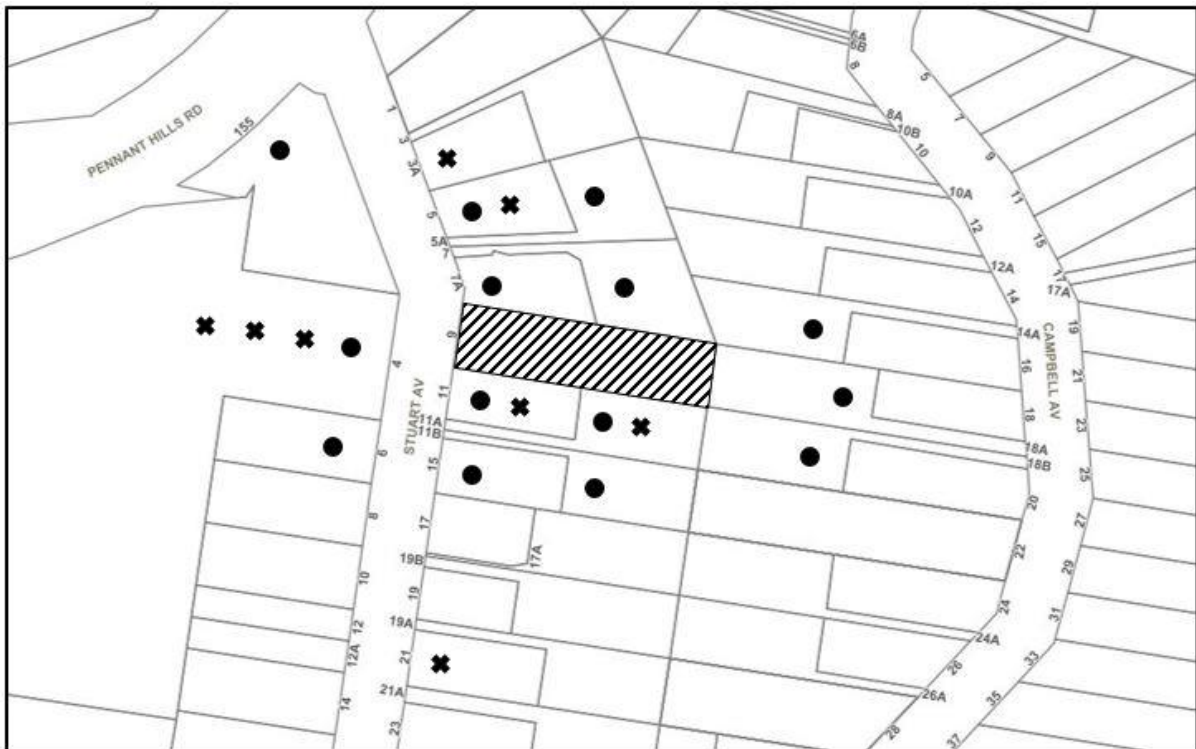
5. PUBLIC PARTICIPATION



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

5.1 Community Consultation

The proposed development was placed on public exhibition and was notified to adjoining and nearby landowners between 6 August 2020 and 27 August 2020 in accordance with the requirements of the Hornsby Community Participation Plan. The proposal as amended was re-notified to adjoining, nearby landowners and objectors between 16 October 2020 and 10 November 2020. During these periods, Council received a total of 21 submissions. The map below illustrates the location of those nearby landowners who made a submission that are in close proximity to the development site.

Note: A significant number of submissions did not provide a residential address and were treated as anonymous objections. Only submissions that enclosed residential addresses within the map range have been included in the map below.

**NOTIFICATION PLAN**

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

21 submissions objected to the development, generally on the grounds that:

- Child care centre developments should be located away from service stations for safety reasons.
- There are already a number of child care centres in the vicinity.
- The existing traffic conditions adjacent to the site are not suitable for a child care centre, summarised as follows:
 - The development would pose a detrimental impact to vehicle and pedestrian safety along Stuart Avenue.
 - The street is narrow, and motorists often navigate onto the other side of the road during peak hours due to the banked-up cars at the traffic lights and vehicles parked adjacent to the kerb.
 - The site is located at a bend in the road and there is poor vehicle visibility and lines of sight.
 - There is constant traffic and queuing of cars during at the traffic lights at the intersection of Pennant Hills Road with Stuart Avenue.
 - Bus stops servicing local schools are sited directly across the site and Stuart Avenue is subject to frequent bus services.

- The driveway servicing the townhouse development across the street at No. 4 Stuart Avenue is directly opposite the proposed vehicular access of the proposed development, resulting in substantial traffic through this section of Stuart Avenue.
- A significant number of bins are positioned adjacent to the street prior to garbage collection for the adjoining townhouse development. Due to the large number of bins, the waste truck is required to double park for a number of minutes, creating an obstacle for vehicles and posing an impact to the safety of children.
- Motorists utilise the service station as a 'rat run' to avoid the traffic lights at Pennant Hills Road.
- The BP Service Station is located approximately 20m upslope of the site which generates traffic.
- The Queen of Peace Catholic Church holds frequent services, including funeral services with vehicle convoys during peaks hours.
- On-Street Parking is limited along Stuart Avenue.
- The walkways, parking area, balconies and outdoor play areas would result in unacceptable noise impacts to the adjacent property at No. 11 Stuart Avenue and other adjoining properties.
- The development may facilitate overlooking into the private open space and living areas of the adjacent properties at No. 11 and 11A Stuart Avenue.
- Solar access would be restricted to the adjacent properties to the south at No. 11 and 11A Stuart Avenue. In addition, a submission argues that the 2.2m high boundary fence adjacent to No. 11A Stuart Avenue would be excessive and should be reduced to a 1.8m lapped and capped fence, for solar access reasons.
- The proposed development would result in the removal of tree No. 1 which positively contributes to the streetscape.
- There is no pedestrian footpath along the nature strip to the front of the site.
- The proposed development would pose a detrimental impact to the value of properties in the area.
- Additional noise and congestion would occur during construction of the development.
- The notification sign was not erected to the front of the property during notification of the application.
- There is insufficient on-site parking, resulting in an overflow of parking onto the street. In addition, staff cars would be 'parked in' by visitor car parking spaces.
- The proposed 40 place child care centre may be increased to a larger capacity child care centre over time.
- The submitted Traffic Report is erroneous as it has not addressed nearby feeder streets, the BP service station, school buses, the Pennant Hills Road intersection and underestimates traffic in the locality and was undertaken during the COVID-19 pandemic.

- Minor inaccuracies within the submitted Detailed Site Investigation relating to the location and names of nearby facilities and natural landmarks.
- The subject S8.2 Review Application should instead be a new Development Application as the proponent is seeking Council to undertake a new assessment.
- The ground floor level of the child care centre would be elevated greater than 1.5m above the existing ground level.
- Uncertainty regarding whether the side elevation windows would be frosted, screened or otherwise.
- The submitted Detailed Site Investigation (DSI) is generally inadequate and indicates high levels of nickel and lead within the rear play area.
- The recommendation within the submitted Acoustic Report for educators to discourage loud play is impractical.
- The proposed demolition of the dwelling house would result in a loss of heritage in the locality.

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 Pedestrian Footpath

A submission has been received raising concerns that there is no pedestrian footpath along the nature strip to the front of the site, posing a safety risk to children.

To improve pedestrian mobility along the frontage, a condition of consent has been recommended under Schedule 1 requiring the construction of a pedestrian footpath along the nature strip adjacent to the front of the property.

5.1.2 Devaluation of Properties

Submissions have been received raising concerns that the proposed development would detrimentally affect the value of neighbouring properties.

In addressing this concern, Section 4.15 of the *Environmental Planning and Assessment Act 1979* does not require Council to take into consideration the impact of a development on the value of nearby properties.

5.1.3 Noise and Congestion During Construction

Submissions have been received raising concerns that excessive noise and vehicle congestion would occur during construction of the development.

In addressing these submissions, the preliminary Construction Management Plan (CMP) prepared by Gardner Wetherill & Associates supported the application, providing appropriate actions with regard to traffic management, site access and noise management during construction. A condition has been recommended under Schedule 1 requiring the submission of a final CMP prior to the issue of a Construction Certificate.

5.1.4 Notification Sign

A submission has been received raising concerns that the notification sign was not erected to the front of the property during notification of the application.

On 6 August 2020, Council notified the application to the public in accordance with the notification requirements of the *Hornsby Community Participation Plan* (CPP). Upon request by Council staff on 13 August 2020, Council received photographic evidence of the sign affixed along the front boundary.

5.1.5 Future Increase in Child Numbers

Submissions have been received raising concerns that the proposed 40 place child care centre may be increased to a larger capacity child care centre over time.

In addressing these submissions, it is noted that an operational condition has been recommended under Schedule 1 restricting the child care centre to a maximum of 40 child places at any one time. Any future proposal to increase the capacity of the child care centre would need to comply with the Hornsby DCP and Child Care Planning Guideline 2017. requirements with regard to acoustic impacts, traffic, privacy, car parking and indoor and outdoor play space requirements.

5.1.6 New Development Application

A submission has been received raising concerns that the subject s8.2 Review should instead be a new Development Application as the proponent is seeking Council to undertake an assessment of new plans.

It is acknowledged that there are two alternate pathways that the proponent can utilise to seek the approval of the subject child care centre, either through the lodgement of a new Development Application or through the lodgement of an s8.2 Review Application. As the proponent is seeking to overturn the original decision of the Hornsby Local Planning Panel, it is considered that a S8.2 Review Application is an appropriate pathway in this instance.

It is noted that a s8.2 of the Act allows for the lodgement of additional and/or revised information to be assessed by Council.

5.2 Public Agencies

The development application was not 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 demolition of existing structures and construction of a purpose-built 2 storey child care centre.

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 21 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 development complies with the requirements of the relevant environmental planning instruments, the Hornsby Development Control Plan 2013 and the Child Care Planning Guideline 2017.
- The proposed development does not create unreasonable environmental impacts to adjoining development with regard to visual bulk, overshadowing, solar access, amenity, privacy, noise generation, traffic, safety and tree preservation.

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.  Architectural Plans
3.  Landscape Plan
4.  Plan of Management
5.  Stormwater Plans
6.  Original Refused DA Plans

File Reference: DA/893/2019
Document Number: D08029879

SCHEDULE 1**1. Deferred Commencement**

- a) Pursuant to Section 4.16(3) of the *Environmental Planning and Assessment Act 1979*, this consent does not operate until the proposed easement to drain water over Lot B DP 379644 (No. 18A Campbell Avenue Normanhurst) is registered with the NSW Land Registry Services (NSW LRS).
- b) Such information must be submitted within 36 months of the date of this notice.

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

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.

2. Approved Plans and Supporting Documentation

The development must be carried out in accordance with the plans and documentation listed below and endorsed with Council's stamp, except where amended by Council and/or other conditions of this consent:

Approved Plans:

Plan No.	Plan Title	Drawn by	Dated	Council Reference
DA1200, Rev J	Site Plan	Gardner Wetherill Associates	14.10.20	
DA1201, Rev K	Ground Level Plan	Gardner Wetherill Associates	14.10.20	
DA1202, Rev K	Lower Ground Plan	Gardner Wetherill Associates	14.10.20	
DA1500, Rev J	Elevations – Sheet 1	Gardner Wetherill Associates	14.10.20	
DA1501, Rev J	Elevations – Sheet 2	Gardner Wetherill Associates	14.10.20	

Plan No.	Plan Title	Drawn by	Dated	Council Reference
DA1600, Rev J	Sections	Gardner Wetherill Associates	14.10.20	
133.20(19)/285'A'	Landscape Plan	iScape Landscape Architecture	21.07.20	

Supporting Documents:

Document Title	Prepared by	Dated	Council Reference
Waste Management Plan	Ross Gardner	27.07.20	D07972436
Stormwater Drainage Report (NE190258_R01)	ACOR Consultants	28.07.20	D07972434
Plan of Management	Urbanesque Planning	July 2020	D07972430
Environmental Noise Assessment	Day Design Pty Ltd	27.07.20	D07972423
Detailed Site Investigation	Neo Consulting	23.10.20	D08037272
Arboricultural Impact Assessment	Temporal Tree Management	4.03.19	D07882764

3. Amendment of Plans

- a) To comply with Councils requirement in terms of privacy, the approved plans are to be amended as follows:
 - i) A 1.5-metre-high close-form lattice/louvre/solid screen must be erected along the southern, northern and rear elevations of the upper floor balcony.
 - a. The screen must have no individual openings more than 30mm wide and have a total of all openings less than 30% of the surface area of the screen.
 - ii) The installation of translucent/frosted glazing to the windows along the side elevations, with the exception of the highlight windows.
- b) These amended plans must be submitted with the application for the Construction Certificate.

4. Removal of Existing Trees

This development consent permits the removal of one tree numbered '1' as identified on the approved Landscape Plan prepared by iScape dated 21 July 2020.

Note: The removal of any other trees from the site requires separate approval by Council in accordance with Part 1B.6 Tree and Vegetation Preservation of the Hornsby Development Control Plan, 2013 (HDCP).

5. Appointment of a Project Arborist

- a) A project arborist with AQF Level 5 qualifications must be appointed.
- b) Details of the appointed project arborist must be submitted to Council and the PCA for registration with the application for the construction certificate.

6. 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 not be inconsistent with the Development Consent plans.

7. 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*, \$14,721.10 must be paid towards the provision, extension or augmentation of public amenities or public services, based on development costs of \$1,472,112
- (b) The value of this contribution is current as of 2 November 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

8. Dilapidation Report

A 'Dilapidation Report' is to be prepared by a 'chartered structural engineer' detailing the structural condition of the adjoining properties at Nos. 7 (Lot 922 DP 597070), 7A (Lot 921 DP 597070), 11 (Lot 1 DP 596637) and 11A (Lot 1 DP 596637) Stuart Avenue before the commencement of works.

9. 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.

10. Stormwater Drainage

The stormwater drainage system for the development must be designed in accordance with AUS-SPEC Specifications (www.hornsby.nsw.gov.au/property/build/aus-spec-terms-and-conditions) and the following requirements:

- a) Connected directly to Council's street drainage system in Campbell Avenue via the sites on site detention system.
- b) The stormwater drainage system shall be generally in accordance with the plans prepared by ACOR Engineering Consultants (refer to report NE 190258-R01). A Construction Certificate is to be issued by Hornsby Shire Council for all works within Campbell Avenue.
 - i) Where public assets and utilities are impacted by proposed works, the Applicant shall relocate or reconstruct the asset or utility in accordance with the relevant standard at the Applicant's cost.
- c) The proposed stormwater drainage pipeline within Campbell Avenue is to be a minimum of 375mm diameter concrete pipe and be designed to contain the 20-year *Average Recurrence Interval* storm. The pipeline is to be laid under the kerb line in Campbell Avenue and the kerb is to be replaced. The existing pavement is to be saw cut a minimum of 500mm from the lip of gutter and reconstructed.

- d) An inter-allotment stormwater drainage system to service the proposed subdivision with pits being cast in situ or pre-cast concrete pits being used.
- e) Stormwater from the roof and paved areas of the proposed child care centre to be connected to the proposed inter-allotment drainage system via the on-site detention system.

11. On Site Stormwater Detention

An on-site stormwater detention system must be designed by a chartered civil engineer, be generally in accordance with the stormwater design prepared by ACOR Engineering Consultants (refer report NE 190258-R01) and constructed in accordance with the following requirements:

- a) Have a capacity of not less than 27 cubic metres, and a maximum discharge (when full) of 33 litres per second.
- b) Have a surcharge/inspection grate located directly above the outlet.
- c) Discharge from the detention system must be controlled via 1 metre length of pipe, not less than 50 millimetres diameter or via a stainless plate with sharply drilled orifice bolted over the face of the outlet discharging into a larger diameter pipe capable of carrying the design flow to an approved Council system.
- d) Provide for a trash screen at the control pipe.

12. Internal Driveway/Vehicular Areas

The driveway and parking areas on site must be designed, constructed and a Construction Certificate issued in accordance with *Australian Standards AS2890.1, AS2890.2, AS3727* and the following requirements:

- a) Design levels at the front boundary shall be obtained from Council if a private accredited certifier is engaged to obtain a construction certificate for these works.
- b) The driveway be a rigid pavement.
- c) Retaining walls required to support the carriageway and the compaction of all fill batters to be in accordance with the requirements of a chartered structural engineer.
- d) The provision of safety rails where there is a level difference more than 0.3 metres and a 1:4 batter cannot be achieved.

13. Footpath

A concrete footpath must be designed across the full frontage of the subject site at Stuart Avenue in accordance AUS-SPEC Specifications (www.hornsby.nsw.gov.au/property/build/aus-spec-terms-and-conditions) and the following requirements:

- a) Pouring of the concrete footpath to the full frontage of the subject site.
- b) The land adjoining the footpath to be fully turfed.
- c) Any public utility adjustments to be carried out at the cost of the applicant and to the requirements of the relevant public authority.

14. Vehicular Crossing

A separate application under the *Local Government Act 1993* and the *Roads Act 1993* must be submitted to Council for the installation of a new vehicular crossing and the removal of the redundant crossing. The vehicular crossing must be constructed in accordance with AUS-SPEC Specifications (www.hornsby.nsw.gov.au/property/build/aus-spec-terms-and-conditions) the following requirements:

- a) Design levels at the front boundary must be obtained from Council for the design on the internal driveway;
- b) Any redundant crossings must be replaced with integral kerb and gutter;
- c) The footway area must be restored by turfing;

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

15. Identification of Survey Marks

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

16. Construction Management Plan (CMP)

To assist in the protection of the public, the environment and Council's assets, a separate Construction Management Plan must be prepared by a suitably qualified environmental consultant in consultation with a qualified traffic engineer and AQF 5 arborist, and submitted to Council's Compliance Team at:

<https://www.hornsby.nsw.gov.au/property/build/applicationforms> for review and approval.

The CMP must include the following details:

- a) A Construction Traffic Management Plan (CTMP) including the following:
 - i) The order of construction works and arrangement of all construction machines and vehicles being used during all stages.
 - ii) The CTMP plans shall be in accordance with all other plans submitted to Council as part of this development proposal.
 - iii) A statement confirming that no building materials, work sheds, vehicles, machines or the like shall be allowed to remain in the road reserve area without the written consent of Hornsby Shire Council.
 - iv) The Plan shall be in compliance with the requirements of the *Roads and Maritime Services Traffic control at work sites Manual 2018* and detail:
 - a. Public notification of proposed works.
 - b. Long term signage requirements.
 - c. Short term (during actual works) signage.

- d. Vehicle Movement Plans, where applicable.
 - e. Traffic Management Plans.
 - f. Pedestrian and Cyclist access and safety.
 - v) Traffic controls including those used during non-working hours. Pedestrian access and two-way traffic in the public road must be able to be facilitated at all times.
 - vi) Details of parking arrangements for all employees and contractors, including layover areas for large trucks during all stages of works. The parking or stopping of truck and dog vehicles associated with the development will not be permitted other than on the site and the plan must demonstrate this will be achieved.
 - vii) Confirmation that a street 'scrub and dry' service will be in operation during all stages of works.
 - viii) Proposed truck routes to and from the site including details of the frequency of truck movements for all stages of the development.
 - ix) Swept path analysis for ingress and egress of the site for all stages of works.
 - x) Site plans for all stages of works including the location of site sheds, concrete pump and crane locations, unloading and loading areas, waste and storage areas, existing survey marks, vehicle entry, surrounding pedestrian footpaths and hoarding (fencing) locations.
 - xi) The total quantity and size of trucks for all importation and exportation of fill on site throughout all stages of works, and a breakdown of total quantities of trucks for each stage of works.
 - xii) The number of weeks trucks will be accessing and leaving the site with excavated or imported fill material.
 - xiii) The maximum number of trucks travelling to and from the site on any given day for each stage of works.
 - xiv) The maximum number of truck movements on any given day during peak commuting periods for all stages of works.
 - xv) The source site location of any proposed fill to be imported to the site, for all stages of works.
 - xvi) The Plan must state that the applicant and all employees of contractors on the site must obey any direction or notice from the Prescribed Certifying Authority or Hornsby Shire Council in order to ensure the above.
 - xvii) If there is a requirement to obtain a Work Zone, Out of Hours permit, partial Road Closure or Crane Permit, the Plan must detail these requirements and include a statement that an application to Hornsby Shire Council will be made to obtain such a permit.
- b) A Construction Waste Management Plan detailing the following:

- i) Details of the importation or excavation of soil and fill, the classification of the fill, disposal methods and authorised disposal depots that will be used for the fill.
 - ii) Asbestos management requirement and procedures for removal and disposal from the site in accordance with AS 2601–2001 – ‘*The Demolition of Structures*’, and the *Protection of the Environment Operations (Waste) Regulation 2005*.
 - iii) General construction waste details including construction waste skip bin locations and litter management for workers.
- d) A Tree Protection Plan (TPP) prepared by an AQF 5 Arborist in accordance with any approved Arboricultural Impact Assessment and tree location plans, detailing the following:
 - i) A site plan showing tree protection zones (TPZ) and structural root zones (SRZ) of trees to be retained and specific details of tree protection measures inclusive of distances (in metres) measured from tree trunks.
 - ii) Construction methodology to avoid damage to trees proposed to be retained during construction works.
 - iii) Specifications on tree protection materials used and methods within the TPZ or SRZ.
 - iv) Location of dedicated material storage space on site outside of TPZ’s and SRZ’s for retained trees.
- e) A Construction Noise and Vibration Management Plan (CNMP) which includes:
 - i) Existing noise and vibration levels within the proximity of the proposed development site.
 - ii) Details of the extent of rock breaking or rock sawing works forming part of the proposed development works.
 - iii) The maximum level of noise and vibration predicted to be emitted during each stage of construction.
 - iv) The duration of each stage of works where the maximum level of noise and vibration are predicted to be emitted for.
 - v) Details of mitigation measures, inclusive of respite periods, that will meet acoustic standards and guidelines at each stage of works.
 - vi) Details of a complaints handling process for the surrounding neighbourhood for each stage of works.
- f) A Pedestrian Access Management Plan (PAMP) which includes:
 - i) Details of how pedestrian movements will be altered and managed during construction works, particularly during any partial or total closure of footpaths.
- g) Identification of approved sediment and erosion control measures.
- h) A Hazardous Materials Survey of the site is to be submitted for review. The Survey must be prepared by a suitably qualified environmental consultant in accordance with

the *Work Health and Safety Act 2011* and associated Regulations, including laboratory analysis for asbestos and lead on the site and within the soil.

- i) The CMP must detail the contact information for developers, builder, private certifier and any emergency details during and outside work hours.

17. Mechanical Equipment

A mechanical plant noise assessment for all proposed mechanical equipment and site-specific equipment must be undertaken by a suitably qualified Acoustic Consultant and a report certifying that the operation of all proposed equipment will not exceed 46dB(A) at any boundary upon installation must be submitted to the PCA.

18. Acoustic Treatment and Certification

- a) Acoustic fencing must be installed in accordance with the approved architectural plans prepared by Gardner Wetherill Associates, dated 15 October 2020 and Part 5.4 and 7 recommendations within Acoustic Impact Assessment prepared by Day Designs, dated 27 July 2020 and the following requirements:
 - i) The barrier walls shown on the approved architectural plans prepared by Gardner Wetherill Associates, dated 15 October 2020 are to be constructed of either 3 rails 'solid lapped and capped' timber, 10mm thick solid polycarbonate, 6.38mm thick laminate glass or masonry. The construction must be free of visible air gaps (including at the bottom) to provide an impervious sound barrier.
 - b) Acoustic treatment must be installed for the proposed development in accordance with the recommendations contained within the Acoustic Impact Assessment prepared by Day Design, dated 27 July 2020 and the following requirements:
 - i) Windows are to be inoperable to the internal play area (play area 3-5) along the lower ground floor, northern, southern and eastern elevation to control noise emissions from the centre to nearby sensitive receivers.
 - ii) Sound absorptive insulation is to be fixed directly below the lower ground balcony soffit and consist of 100mm thick polyester insulation (density 3.2kg/m³) with a ceiling consisting of a perforated material (mini orb) or perforated fibre cement sheeting with a minimum open area 20%.

19. Building Code of Australia

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

20. 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.

REQUIREMENTS PRIOR TO THE COMMENCEMENT OF ANY WORKS**ITEM 1****21. Local Traffic Committee Consultation**

Prior to the commencement of any works, the applicant must consult with the Local Traffic Committee with respect to the requirements of condition Nos. 32 and 54 and obtain any relevant approvals.

22. 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.
 - 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.

23. 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.

24. 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*.

25. 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.

26. Installation of Tree Protection Measures

- a) Trees to be retained must have tree protection measures for the trunk installed by the project arborist as follows:
 - i) For the duration of demolition works, in accordance with the Tree Protection Plan for prepared by Australis Tree Management dated 4 March 2019.
 - ii) For the duration of construction works, in accordance with Tree Protection Plan prepared by Australis Tree Management dated 4 March 2019.
- b) The circumference of the trunk(s) must be wrapped in hessian material to provide cushioning for the installation of timber planks.
- c) Timber planks (50 x100mm) must be spaced at 100mm intervals and must be attached using adjustable ratchet straps.

REQUIREMENTS DURING DEMOLITION AND CONSTRUCTION**27. Maintaining the Health of Trees Approved for Retention**

The appointed project arborist must monitor and record any and all necessary actions required to maintain tree health and condition for trees to be retained on the subject site and adjacent sites.

28. Approved Works Within Tree Protection Zone

Where tree root pruning is required for the installation of the proposed development, the pruning must be overseen by the AQF 5 project arborist and must be undertaken as follows:

- a) Using sharp secateurs, pruners, handsaws or chainsaws with the final cut being clean.
- b) The maximum diameter of roots permitted to be cut is 50mm.

29. Compliance with CMP

The approved Construction Management Plan (CMP) must be complied with for the duration of works, unless otherwise approved by Council.

30. Unexpected Finds

Should the presence of asbestos or soil contamination, not recognised during the application process be identified during any stage of works, the applicant must immediately notify the PCA and Council.

31. Local Traffic Committee – Works Zone

All construction vehicles associated with the proposed development are to be contained on site or in a Local Traffic Committee (LTC) approved “Works Zone”, and the following requirements:

- a) The site supervisor to be advised that the Works Zone will be deemed to be in effect, and fees will apply, between the dates nominated by the supervisor, or when parking spaces are managed for the sole use of construction vehicles associated with the site.
- b) The Works Zone signs shall be in effect only apply for the times approved by Council, and the time is to be noted on the sign. E.g., ‘Works Zone Mon – Sat 7am – 5pm’.
- c) The applicant is required to supply a sign posting installation plan for referral to the Local Traffic Committee, noting on it the duration of the Works Zone.
- d) The Works Zone is only to be used for the loading and unloading of vehicles. Parking of workers’ vehicles, or storage of materials, is not permitted.

32. 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.

33. 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.

34. 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*.

35. 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.

36. 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.

37. Landfill not Permitted

The importation of fill material associated with earthworks, or structural or engineering works, is not permitted as part of this consent.

38. Excavated Material

All excavated material removed from the site must be classified by a suitably qualified environmental consultant in accordance with the NSW Environment Protection Authority's *Waste Classification Guidelines* and *Protection of the Environment Operations (Waste) Regulation 2014* prior to disposal to a licensed waste management facility. Tipping dockets for the total volume of excavated material that are received from the licensed waste management facility must be provided to the principal certifying authority prior to the issue of an Occupation Certificate.

39. Survey Report

A report(s) must be prepared by a registered surveyor and submitted to the principal certifying authority:

- a) Prior to the pouring of concrete at each level of the building certifying that:
 - i) The building, retaining walls and the like have been correctly positioned on the site.
 - ii) The finished floor level(s) are in accordance with the approved plans.

REQUIREMENTS PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE

40. Asbestos Clearance Certificate

Should any asbestos be encountered during demolition or construction works, an independent licensed asbestos assessor is required to undertake a clearance inspection and provide a clearance certificate, certifying the asbestos has been removed and the site is now suitable for use. The certificate is to be provided to the certifier prior to the issue of an Occupation Certificate.

41. 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 Occupation Certificate.

42. Replacement Tree Requirements

- a) The trees approved for removal under this consent must be offset through replacement planting of a minimum of 9 trees on-site, including 2 *Water Gum* trees within the front setback.
- b) The site is to be landscaped in accordance with the approved Landscape Plan prepared by iScape Landscape Architecture dated 21 July 2020.
- c) All replacement plantings must be trees indigenous to Hornsby Shire, as identified at: <http://www.hornsby.nsw.gov.au/environment/flora-and-fauna/tree-management/indigenous-trees>
- d) The location and size of the 9 replacement trees are to be as follows:
 - i) All replacement trees must be located in the front setback and planted 4 metres or greater from the foundation walls of the approved centre.
 - 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 planting.
 - iv) Planting methods must meet professional (best practice) industry standards.

43. Final Tree Certification

The AQF 5 Project arborist must submit to the Principal Certifying Authority a certificate that includes the following:

- a) All tree protection requirements complied with the as approved tree protection plan for the duration of demolition and/or construction works.
- b) All completed works relating to tree protection and maintenance have been carried out in compliance with the conditions of consent and approved plans.
- c) Dates, times and reasons for all site attendance.
- d) All works undertaken to maintain the health of retained trees.
- e) Details of tree protection zone maintenance for the duration of works.

Note: Copies of monitoring documentation may be requested throughout DA process.

44. Creation of Easements

The following easements are to be created on the title of the property in accordance with the *Conveyancing Act 1919*:

- a) The creation of an appropriate *"Positive Covenant"* and *"Restriction as to User"* over the constructed on-site detention/retention systems and outlet works, within the lots in favour of Council in accordance with Council's prescribed wording. The position of the on-site detention system is to be clearly indicated on the title.
- b) To register the OSD easement, the restriction on the use of land *"works-as-executed"* details of the on-site-detention system must be submitted verifying that the required

storage and discharge rates have been constructed in accordance with the design requirements. The details must show the invert levels of the on-site system together with pipe sizes and grades. Any variations to the approved plans must be shown in red on the “works-as-executed” plan and supported by calculations.

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

45. Works as Executed Plan

A works-as-executed plan(s) must be prepared by a registered surveyor and submitted to Council for completed road pavement, kerb & gutter, public drainage systems, driveways and on-site detention system.

46. 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’.

47. 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.

48. Kitchen Fitout

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 AS4674-2004 – Design and fit out of food premises*, the *Food Act 2003*, and the *Food Regulation 2015 and the Food Standards Code developed by Food Standards Australia New Zealand*. *Food Standards 3.2.2 and 3.2.3* are mandatory for all food businesses.

Note: Walls are to be of solid construction.

49. Grease Trap & Dry Basket Arrestor

An application must be submitted to *Sydney Water* for the installation of a grease trap and dry basket arrestor (floor and sink) in accordance with the ‘*Guidelines for the On-Site Pre-Treatment of Trade Wastewater Discharges – Sydney Water (May 2004)*’.

50. Mechanical Ventilation

Mechanical ventilation is to be provided to the kitchen in accordance with *Australian Standard AS 1668.2-2002* in the instance that the kitchen appliance exceeds the following requirements:

- a) A total maximum electrical power input exceeding 8 kilowatts (kW).
- b) A total gas power input exceeding 29 megajoules per hour (MJ/h).
- c) The total maximum power input to more than one apparatus exceeds.

- d) 0.5kW electrical power for each 1m² of floor area of the room or enclosure.
- e) 1.8MJ gas for each 1m² of floor area of the room or enclosure.

51. Excavated Material Tipping Dockets

Tipping dockets for the total volume of excavated material that are received from the licensed waste facility must be provided to the Principal Certifying Authority prior to the issue of an Occupation Certificate.

52. Acoustic Certification

On completion of all works and prior to the issue of an Occupation Certificate, the certifier is to be provided with a certificate from a qualified acoustic consultant certifying that all acoustic works have been completed in accordance with the Part 5.4 and Part 7 recommendations contained within the Acoustic Impact Assessment report prepared by Day Design, dated 27 July 2020 and this consent.

53. Car Parking

All car parking must be constructed and operated in accordance with *Australian Standard AS/NZS 2890.1:2004 – Off-street car parking* and *Australian Standard AS 2890.2:2002 – Off-street commercial vehicle facilities*, and the following requirements:

- a) All parking areas and driveways are to be sealed to an all-weather standard, line marked and signposted.
- b) All parking for people with disabilities is to comply with *AS/NZS 2890.6:2009 Off-street parking for people with disabilities*.
- c) Car parking, loading and manoeuvring areas to be used solely for nominated purposes.
- d) Vehicles awaiting loading, unloading or servicing shall be parked on site and not on adjacent or nearby public roads.
- e) All vehicular entry on to the site and egress from the site shall be made in a forward direction.
- f) Any proposed landscaping and/or fencing must not restrict sight distance to pedestrians and cyclists travelling along the footpath.

54. Hornsby Shire Local Traffic Committee

To improve safety and sight distances along Stuart Avenue, on-street parking restrictions are to be applied subject to approval from the *Hornsby Shire Local Traffic Committee* as follows:

- a) A 6m long “*Mail Zone*” and 20m long “*Bus Zone*” is to be provided on the western side of Stuart Avenue north of the driveway to No. 2-4 Stuart Avenue.
- b) A “*No Parking, 7-10am, 3-6:30pm, Mon-Fri*” is to be provided along the frontage of No. 9 Stuart Avenue, 16m to the north and 6m to the south of the proposed driveway.

Note: A signage plan is to be prepared showing a 6m long “Mail Zone” and 20m long “Bus Zone” on the western side of Stuart Avenue north of the driveway to No. 2-4 Stuart Avenue for submission to the Hornsby Local Traffic Committee.

A signage plan is to be prepared showing “No Parking, 7-10am, 3-6:30pm, Mon-Fri” along the frontage of No. 9 Stuart Avenue, 16m to the north and 6m to the south of the proposed driveway for submission to the Hornsby Local Traffic Committee.

55. 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 AUS-SPEC Specifications (www.hornsby.nsw.gov.au/property/build/aus-spec-terms-and-conditions). Rectification works must be undertaken prior to the issue of an Occupation Certificate, or sooner, as directed by Council.

56. Retaining Walls

All required retaining walls must be constructed as part of the development.

57. Waste Management Details

Prior to the commencement of any works, the on-going waste collection service must be cancelled, and the bins retrieved by the waste collection service provider.

Note: For residential properties, Council is the waste collection service provider.

OPERATIONAL CONDITIONS

58. Use of Premises

- a) The development approved under this consent shall be used for ‘child care centre’ and not for any other purpose without Council’s separate written consent.
- b) The child care centre shall accommodate a maximum of 40 children.
- c) The hours of operation of the “child care centre” are restricted to those times listed below:

Monday to Friday	7 am to 6.30 pm
Saturday, Sunday & Public Holidays	No work
- d) Waste collection must not occur during the following times:
 - i) During the peak hours of 7.30am to 9.30am and 2.30pm to 4.00pm.
 - ii) After 6pm Monday to Friday.
 - iii) At no time on Saturday or Sunday.

59. 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.

60. Noise

The cumulative noise generation from the use of the premises (including mechanical plant) is not to exceed background +10 dB(A) up to a total of 2 hours per day with background +5dB(A) for the remainder of the day when assessed as a Leq (15 minute) noise contribution

at any point on the residential side of the common boundaries or at any point in or on the adjacent residential properties.

61. Child Care Centre Noise Management

The child care centre must be managed in accordance with the approved Plan of Management prepared by Urbanesque Planning dated July 2020.

62. Waste Management

The waste management on site must be in accordance with the following requirements:

- a) All commercial tenant(s) must keep written evidence on site of a valid contract with a licensed waste contractor(s) for the regular collection and disposal of the waste and recyclables that are generated on site.
- b) All commercial tenant(s) must have a sufficient number of bins to contain the volume of waste and recycling expected to be generated between collection services.
- c) All bins must be returned to the on-site bin storage area promptly after waste and recycling collection services.
- d) A Work, Health & Safety (WHS) risk assessment is to be carried out by a suitably qualified person with qualifications in Work, Health & Safety Legislation with specific regard to waste management. The recommendations of the WHS Risk Assessment are to be implemented as required.

63. Business Identification Signage

The approved business identification signage is not to be illuminated unless otherwise consented to by Council.

- END OF CONDITIONS OF CONSENT -

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). (HDCP 1B.6.1.c).

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

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

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.

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.

ITEM 1

2 DEVELOPMENT APPLICATION - CONSTRUCTION OF 29 ATTACHED TOWNHOUSES WITH BASEMENT CAR PARKING - 487-495 PACIFIC HIGHWAY, ASQUITH

EXECUTIVE SUMMARY

DA No:	DA/1213/2018 (Lodged on 21 November 2018)
Description:	Construction of a two-storey townhouse development with attics comprising 29 town houses over 2 basement car parks
Property:	Lot 4 DP 1003291, Lot 5 DP 1003291, Lot 201 DP 1101906, Lot 1 DP 574708, SP 36755, Nos. 487 - 495 Pacific Highway, Asquith
Applicant:	Australian Aizela Pty Ltd
Owner:	Owners Corporation – SP 36755 Australian Aizela Pty Ltd
Estimated Value:	\$10,747,519
Ward:	A

- The application involves the construction of a 2-storey townhouse development, with attics, comprising 29 units with two separate basement car parks.
- The proposal generally complies with the *Hornsby Local Environmental Plan 2013* and the Hornsby Development Control Plan 2013 with respect to site requirements, car parking and waste management.
- 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 as deferred commencement.

RECOMMENDATION

THAT Development Application No. DA/1213/2018 for the construction of a 2 storey townhouse development, with attics, comprising 29 units with two separate basement car parks at Lot 4 DP 1003291, Lot 5 DP 1003291, Lot 201 DP 1101906, Lot 1 DP 574708 and SP 36755, Nos. 487-495 Pacific Highway, Asquith be approved as a deferred commencement pursuant to Section 4.16(3) of the *Environmental Planning and Assessment Act 1979* subject to the conditions of consent detailed in Schedule 1 of LPP Report No. LPP35/20.

BACKGROUND

The subject land was rezoned from Residential A Low Density to R3 Medium Density Residential on 2 September 2011 as part of Council's Housing Strategy.

On 10 July 2018, Council refused DA/1471/2016 for the demolition of existing structures and construction of a townhouse development comprising 22 units with basement car parking at Nos. 487-493 Pacific Highway Asquith.

The proposed development was refused as a result of site isolation of the corner allotment, No.495 Pacific Highway, Asquith, lack of visitor car parking, and unsatisfactory design for waste management.

The current owners of No. 495 Pacific Highway have now agreed to consolidate with the adjoining 4 lots as part of this application.

APPLICATION HISTORY

On 29 January 2019, Council sent a request for additional information requiring a Construction Management Plan to be submitted to Council for assessment.

On 25 February 2019, the applicant submitted a Construction Management Plan and Waste Management Plan.

On 27 February 2019, Council sent a request for further waste management details and amendments to the plans to modify the bin bay size and location.

On 21 March 2019, Council sent another request for additional information recommending the following design amendments based on advice from the Urban Designer engaged by Council for design excellence comments. The letter requested changes to increase the setback along Rupert Street, increase articulation, building separation and breaks between rows of townhouses, re-orientate the private open space of the front units to protect privacy, increase ceiling heights to 2.4m at attic level, increase deep soil planting at the rear, demonstrate 9 bicycle spaces and two motorcycle spaces on the plans, relocate the bin area to be accessed by units to the south.

The application was submitted to the Roads and Maritime Service (RMS) NSW in accordance with *State Environmental Planning Policy (Infrastructure) 2007 (ISEPP)* for development fronting a classified road. The RMS did not grant concurrence to the proposal. RMS recommended relocating the driveway to the local road, being Rupert Street, to avoid increased traffic along the Pacific Highway.

On 20 May 2019, a meeting was held at Council with the applicant and Urban Designer to discuss the design amendments to the proposed development as requested by Council.

On 20 May 2019, following the meeting at Council, a letter was sent requesting additional information regarding the proposed travel routes along Pacific Highway as indicated in the Construction Traffic Management Plan. Council noted that there was a lack of consistency between the sediment erosion control plan, construction management plan and traffic management plan. Council also requested a revised Arboricultural Impact Assessment and Tree Protection Plan to include trees on the site and adjoining lands that were not accounted for in this document. Council requested further detail of trees on neighbouring properties impacted by the proposed stormwater drainage line. An additional letter requested a Parking Management Plan due to the shortfall in dedicated visitor parking in the basement.

On 24 May 2019, draft architectural plans were provided to Council and the Urban Designer for preliminary comment.

On 10 July 2019, amended architectural plans were submitted to Council and re-notified to the public and sent to RMS.

On 22 July 2019, the RMS responded with a request to relocate the driveway to Rupert Street as per their previous comments dated 21 March 2019.

On 29 August 2018, Council requested additional information to be provided by the applicant to address the traffic safety concerns of the RMS and Council's Traffic Branch regarding the splayed, left-in, left-out driveway on the Pacific Highway. Council recommended a median strip should be provided on the Pacific Highway and that preliminary plans for this to be provided to Council.

On 5 September 2019, the applicant provided a letter justifying the location of the proposed driveway on the Pacific Highway, subject to the satisfaction of Council and not the RMS, in accordance with Clause 101 of *ISEPP*.

On 9 September 2019, a further letter from the applicant was provided justifying the need for a median strip and recommending a 'No right-turn' sign be installed.

On 12 September 2019, amended plans and supporting information including a Traffic Management Plan, Construction and Waste Management Plan and Arboricultural Impact Assessment were provided to Council.

On 31 October 2019, Council sent an email and justification letter to the RMS recommending a median strip be located along the centre line of Pacific Highway as a way to alleviate any traffic safety concerns when entering the site.

On 5 November 2019, Council requested the bulky goods waste area be shown on plans and a bin bay to be enlarged as per Council's previous comments.

On 13 November 2019, amended architectural plans were provided to address Council's previous request.

On 15 November 2019, Council received an email response from RMS stating they did not grant concurrence to the median strip design and the proposed access from Pacific Highway. RMS suggested alternate access off Rupert Street be explored.

On 20 November 2019, Council received a formal letter from the RMS stating they would not provide concurrence in accordance with the *Roads Act 1993*.

On 31st January 2020, Council and the applicant attended a meeting with RMS to discuss the planning and environmental merits of having access from the Pacific Highway. It was agreed at the meeting that the applicant would provide further justification to support access from the Pacific Highway.

On 3 February 2020, the applicant and Council provided RMS with a draft basement plan with overlay of a potential Rupert Street entry ramp demonstrating a 44m length driveway as opposed to a 14m driveway for access from the Pacific Highway.

On 2 March 2020, Council received correspondence from RMS stating again they did not support the proposal or justification for access off the Pacific Highway.

Council had phone discussions with the applicant over the course of March. The applicant informed Council they would communicate with the RMS directly to try and reach a resolution. Council was advised that due to COVID-19 that matters within the RMS were progressing slowly.

10 July 2017, Council had further discussions with RMS to discuss their preliminary thoughts on an alternative driveway option. Council advised the applicant that a split basement design should be explored to divide traffic flow into the site between Rupert Street and the Pacific Highway.

On 14 July 2020, the applicant provided a draft basement design for an upper and lower basement. Pacific Highway access and parking for 21 dwellings within the lower basement and Rupert Street access and parking for 14 dwellings within the upper basement.

On the 27 July 2020, Council submitted the draft basement design with justification to the RMS for their consideration.

On 17 August 2020, Council received correspondence from Transport for NSW (formerly RMS) stating that TfNSW would provide concurrence for the removal of redundant driveways, and construction of the new vehicle crossing on the Pacific Highway. Council advised the applicant to prepare a final set of amended plans based on the draft split basement option.

On 30 September 2020, the applicant provided amended architectural plans and supporting information to Council.

The application was re-notified from the 19 October 2020 until the 2 November 2020.

On 28 October 2020, the applicant provided another set of amended architectural plans which reflected a minor change to the waste bin storage area in the basement and corrected several missing annotations on plans for Unit 21.

SITE

The subject site comprises 5 allotments located on the western side of the Pacific Highway, Asquith.

The subject sites are legally described as Lot 4 DP654739, Lot 5 DP 1003291, Lot 201 DP 1101906, Lot 1 DP 574708 and a dual occupancy Lots 1 and 2 in SP 36755. Each allotment comprises a single dwelling house and a single level dual occupancy on the corner allotment. These lots are currently accessed off the Pacific Highway via existing driveways, except for No. 495 Pacific Highway, which is accessed via Rupert Street.

The site has a total area of 3830m² and a frontage of 78.5 metres along Pacific Highway and 46 metres along Rupert Street. The site located on the corner of Rupert Street and Pacific Highway and has a downward slope of 5 metres from the northern side to the south-western corner (rear).

The site accommodates a number of trees both native and exotic.

The site is opposite an item of heritage (Item No. 24) comprising a Victorian Cottage of local significance at No. 480 Pacific Highway, Asquith.

The site is located approximately 1km north of Asquith Railway Station and the Asquith Commercial Centre. The surrounding developments include low density single and 2 storey residential dwellings on both sides of the Pacific Highway. The locality forms part of a redevelopment precinct zoned for 2 storey townhouse style developments which is undergoing transition.

The properties immediately to the west and south of the site are detached single and 2 storey dwelling houses. The property to the north, across Rupert Street, is currently under construction for a 17-unit townhouse development with basement parking at Nos. 497-501 Pacific Highway, Asquith.

PROPOSAL

The proposal is for the construction of a townhouse development comprising 29 units and 2 separately accessed basement car parks.

The site is currently vacant as a result of demolition of all 5 dwellings approved and demolished under a Complying Development Certificate.

The proposed 29 townhouses development include 27 x 2 storey townhouses over basement parking which are designed with an attic and 2 x single storey “villas” located on the corner of Pacific Highway and Rupert Street. Townhouses 3, 4 and 5 comprise of 3 levels and are located above the 2 ground floor villas.

The development proposes the following unit mix:

- 2 x 2 Bedroom ground floor villas (2 adaptable units)
- 1 x 2 Bedroom townhouses
- 26 x 3 Bedroom townhouses (including 1 adaptable unit)

There are 3 separate blocks of townhouses. There are 2 rows of townhouse which are both orientated inwards, towards the common spaces and walkway. Units 6 to 10 and 11 to 15, have their rear orientated to the Pacific Highway however also include a pedestrian entrance from the Pacific Highway. The block of Units 16 to 26 have their rear, private open spaces orientated towards the western boundary.

The third row of townhouses being Units 27 to 29 are accessed from Rupert Street with entry from Rupert Street, although primarily orientated inwards, towards the common areas. Units 1 to 5 located on the corner of Rupert Street and the Pacific Highway are orientated inwards and accessed through the internal common area.

Basement Level:

The basement would comprise of 2 split basements, one being accessed via left-in left out driveway from the Pacific Highway and the other accessed from Rupert Street. The lower basement from the Pacific Highway would accommodate parking for 21 units with 48 car spaces. The upper level basement from Rupert Street would accommodate parking for 8 units with 16 car spaces. There would be a total of 6 visitor spaces across both basements, 2 sets of fire stairs and one lift in between the upper and lower basement level.

Ground Floor Level:

Each ground floor unit is provided with a living and dining room, kitchen, bathroom and laundry including a front and rear courtyard. The 2 villa homes are single storey, and each contain 2 bedrooms and are designed as adaptable dwellings.

The common area is central within the site and comprises two smaller sections which includes seating and landscaping.

First Floor Level:

Each first-floor level includes bedrooms, small media area, bathroom and Juliet-style balcony orientated to the street frontages or western boundary.

Attic Level:

Each attic level includes one bedroom, however townhouse 3, 4 and 5 each include 2 bedrooms at this level. The attic level includes a small semi-enclosed balcony which is accessed from the bedroom of all units.

The units would be a mixture of face brick in colours “Leisure and Unwind” and a wall rendered in the Dulux colours “raku, winter terrace and off white” and “sunscreen manufactured powdercoat”.

Waste Management:

A central garbage bin storage area is located at the northern end of the site next to Unit 1. Garbage collection would occur from Rupert Street which would be collected and emptied by a Council waste contractor. The bins for the closest units (1 to 7 and 25 to 29) would be stored within the bin enclosure and the remaining bins would be held in the bin storage room within the lower level basement.

An on-site detention system (tank) is located above ground, below the verandah of Units 15 and 16. The stormwater would be gravity drainage via an inter-allotment easement located along the western side of the site and through Nos. 485, 483 and 481 Pacific Highway into a pit in Asquith Oval.

The application proposes the removal 12 trees on-site. Another 2 trees located on neighbouring land would require removal as a result of the stormwater pits.

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 contributing to achieving the dwelling targets for the region.

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 R3 Medium density residential under the *HLEP*. The objectives of the R3 zone are:

- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium 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 ‘*multi dwelling housing*’ and is permissible in the zone with Council’s consent. The proposed development complies with the objectives of the R3 zone.

2.1.2 Height of Buildings

Clause 4.3 of the *HLEP* provides that the height of a building on any land should not exceed the maximum height shown for the land on the Height of Buildings Map. The maximum permissible height for the subject site is 10.5m. The proposal has a height of 10.5m and complies with this provision.

2.1.3 Heritage Conservation

Clause 5.10 of the *HLEP* sets out heritage conservation provisions for Hornsby Shire. The site does not include a heritage item and is not located in a heritage conservation area.

The proposed development is in the vicinity of an item of heritage (Item No. 24 - house) of local significance at No. 480 Pacific Highway, Asquith, opposite the site. The proposed development would utilise natural-toned colours and materials that are sympathetic to the conservation of the item in the vicinity. The proposal would not detract from the significance of the item.

Accordingly, no further assessment is applicable pursuant to Clause 5.10.

2.1.4 Earthworks

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

The proposal includes excavation works for the upper level basement car park to a maximum depth of 3.5m and for the lower level basement of 3.8m.

The application includes a Geotechnical Investigation prepared by STS dated September 2018.

The investigation found the site is located along a geological boundary between Hawkesbury Sandstone and Ashfield Shale of the Wianamatta Group. The subsurface, soil profile features topsoil

and fill to depths of 0.3m to 0.8m over silty clays to a depth of 1.4m to 2.6m underlain by weathered shale and sandstone. The report determined that the proposed basement excavation will encounter topsoil, fill, clays and Class V weathered shale. Excavators without assistance would be able to remove the soils and weathered shale to the proposed depth of excavation. The use of hydraulic rock hammers is not anticipated, however, a condition of consent is recommended that excavation works must be undertaken by sawing instead of rock hammering, wherever practical and detailed within the approved Construction Management Plan.

The geotechnical report includes recommendations for footings in reactive soils, excavation and support, and foundation design.

A condition is recommended that the proposal be designed and constructed in accordance with the recommendations of the geotechnical report. further, to address concerns regarding stability of adjoining properties a dilapidation assessment would be required for adjoining properties as a condition of consent.

Subject to conditions, the proposal is satisfactory in addressing the provisions under Clause 6.2.

2.2 Roads Act 1993

The proposed development involves works in the Pacific Highway at the frontage of the site and is subject to the concurrence of Transport for NSW (TfNSW), formerly known as Roads and Maritime Services (RMS) pursuant to *Section 138 of the Roads Act 1993*.

The proposed works include replacement of redundant vehicle crossings with kerb and gutter and construction of a new vehicle crossing (left in, left out) to service the development along Pacific Highway.

On 17 August 2020, in review of the amended proposal regarding the split basement, TfNSW granted concurrence to access from Pacific Highway subject to conditions providing that the design and construction of the kerb and gutter and vehicle crossing be in accordance with TfNSW requirements and submitted to TfNSW for approval prior to issue of a construction certificate.

Subject to conditions, the proposal is assessed as satisfactory.

2.3 State Environmental Planning Policy (Infrastructure) 2007

The application has been assessed against the requirements of *State Environmental Planning Policy (Infrastructure) 2007 (ISEPP)*. The proposed development has frontage to the Pacific Highway which is a classified State Road and is subject to the provisions under Clause 101 and Clause 102 of the Policy. Pursuant to Clause 101, Council must not grant consent to development on land that has frontage to a classified unless it is satisfied that:

- a) *Where practicable, vehicular access to the land is provided by a road other than the classified road, and*
- b) *The safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of:*
 - i) *The design of the vehicular access to the land, or*
 - ii) *The emission of smoke or dust from the development, or*
 - iii) *The nature, volume or frequency of vehicles using the classified road to gain access to the land, and*

- c) *The development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.*

In respect to Item a) vehicular access is provided from a classified road being the Pacific Highway for 21 units and Rupert Street for 8 units. The split basement design is supported by TfNSW and Council's Traffic Branch as this design alleviates reliance solely on either the classified road or the local road network through Rupert Street.

The application was accompanied by a Traffic and Parking Assessment report and letters of justification from Varga Traffic Planning with respect to the left-in-left out arrangement from the Pacific Highway. The Pacific Highway has 2 vehicular lanes per direction. In terms of carriageway capacity, this equates to 3,800 vehicles per hour. Based on the observed traffic flows, the estimated volume to capacity ratio (the degree of congestion) of the Pacific Highway has been established to be less than 0.50 which is less than 50% of nominal capacity. As such the increase traffic resulting from use of this road by 21 townhouses is considered negligible in terms of traffic flow and congestion.

Due to the topographic fall from Rupert Street vehicle access entirely from this street would be impractical and require extensive excavation to accommodate a long driveway and larger basement. As such, the lower part of the site fronting Pacific Highway is considered the most practical from a design point of view, hence resulting in 2 separate access points for the site.

The TfNSW raised no objection to the proposed vehicle access from Pacific Highway in its review of the proposal for a split basement design.

In respect to Item b) the proposed vehicle access is for vehicles to enter and leave the site in a forward direction. The proposed design ensures left in / left out vehicle movements to the Pacific Highway and is satisfactory for the safety, efficiency and on-going operation of the highway. The proposed traffic generation would not detract from the highway efficiency. Refer to discussion in Section 3.2.2.

The application includes an Acoustic and Air Quality Review prepared by Wilkinson Murray dated 18 August 2016 which concludes the concentrations of pollutants associated with road traffic emissions at the site comply with relevant NSW EPA guidelines.

In respect to Item c) the land has been rezoned for higher density residential development in consultation with TfNSW.

The application includes an Acoustic Assessment report prepared by Acoustic Logic with recommended glazing, construction specifications and mechanical ventilation requirements to ensure noise levels within the proposed development are not exceeded in accordance with levels prescribed by Clause 102 of the *ISEPP* and noise levels comply with the EPA and Australian Standards.

It is considered that the proposed development would not have an adverse impact on the safety, efficiency and ongoing operation of the Pacific Highway.

The proposal is satisfactory in respect to Clause 101 and Clause 102 of the *ISEPP*.

2.4 State Environmental Planning Policy No. 55 Remediation of Land

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

The site has historically been used for residential and aged care purposes and an examination of Council's photographic records has determined that the site is unlikely to be contaminated. No further assessment is considered necessary in this regard.

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

The application has been assessed against the requirements of *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*. The proposal includes a BASIX Certificate for the proposed townhouses and is considered to be satisfactory subject to conditions of consent requiring compliance with the certificates.

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

State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 (Vegetation SEPP) commenced 25 August 2017 and 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 (HDCP) prescribes works that can be undertaken with or without consent to trees and objectives for tree preservation.

Section 3.1.1 of this report provides an assessment in accordance with Part 1B.6.1 of the *HDCP*.

2.7 State Environmental Planning Policy 20 Hawkesbury-Nepean River (No. 2 - 1997)

The application has been assessed against the requirements of *Sydney Regional Environmental Plan No. 20*. This Policy provides controls to protect the environment of the Hawkesbury-Nepean system, including its water quality. The plan addresses matters related to water quality, significant vegetation habitats, extraction, environmental heritage and scenic quality, recreation and tourism, and agriculture.

A condition of consent includes sediment and erosion controls to be implemented before the commencement of construction works. Subject to conditions the proposal would be consistent with the objectives of the Policy.

2.8 Section 7.11 Contributions Plan

Hornsby Shire Council Section 7.11 Contributions Plan 2020-2030 applies to the development as it would result in an additional 11 dwellings. Accordingly, the requirement for a monetary Section 7.11 contribution is recommended as a condition of consent.

2.9 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.

2.10 Hornsby Development Control Plan 2013

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

HDCP – Part 3.2 Medium Density Housing			
Control	Proposal	Requirement	Complies
Site Area	3,830m ²	N/A	N/A
Site Width			
- <i>Pacific Highway</i>	79.7m	30m	Yes
- <i>Rupert Street</i>	45m	30m	Yes
Building Height	10.5m	10.5m	Yes
No. storeys	2+ attic	max. 2 + attic	Yes
Height of Basement Above Ground	nil	max. 1m	Yes
Roof Pitch	Between 3-25 degrees	max. 25 degrees	Yes
Dormer Windows			
- <i>max. width</i>	2m	2m	Yes
- <i>max. separation</i>	2m	2m	Yes
Adaptable Units	3 dwellings (>10%)	min. 10%	Yes
Universal Design	6 dwellings (>20%)	min. 20%	Yes
Setbacks			
- <i>Pacific Highway</i>	7.5-9m	9m	See discussion
- <i>Rupert Street</i>	6.6-7.6m	7.6m	See discussion
- <i>Balcony encroachment</i>	0.5m	1.6m towards front	Yes
Building and Basement Setbacks			
- <i>Side (southern)</i>	3m (front-rear facing)	3m (front-rear facing)	Yes
- <i>Rear (western)</i>	6m	6m	Yes

ITEM 2

- <i>Basement</i>			
- <i>Pacific Highway</i>	4.9-7m	6m	No
- <i>Rupert Street</i>	2-6m	6m	No
- <i>Side (southern)</i>	1.1-3m	3m	No
- <i>Rear (western)</i>	2.9-6m	4m	No
Private Open Space			
- <i>Units 1-4 & 6-29</i>	>24m ² & 3m wide	24m ² / 3m min. width	Yes
- <i>Unit 5</i>	17m ² & 3m wide	24m ² / 3m min. width	No
Deep Soil Landscaped Areas			
- <i>Pacific Highway</i>	4.9-7m	6m	See discussion
- <i>Rupert Street</i>	2-6m	3m	See discussion
- <i>Side (southern)</i>	1.1-3m	3m	See discussion
- <i>Rear (western)</i>	2.9-6m	4m	See discussion
Separation between townhouse	6-8.2m	6-12m	Yes
Communal Open Space			
- <i>minimum area/ 10+ dwellings</i>	225m ²	min. 50m ²	Yes
- <i>minimum dimension</i>	4m	4m	Yes
Sunlight Access			
- <i>Units receive 3 hours</i>	>70%	min. 70%	Yes
- <i>Communal Open Space</i>	2 hours b/w 11am-1pm	2 hours min.	Yes
Car Parking			
- <i>resident</i>	58 spaces	57 spaces	Yes
- <i>visitor</i>	6 spaces	6 spaces	Yes
- <i>motorcycle</i>	2 spaces	2 spaces	Yes
- <i>bicycle</i>	2 spaces	9 spaces	Yes

As detailed in the above table, the proposed development generally complies with the prescriptive measure within the HDCP with the exception of minor variations to setbacks and private open space. The matters of non-compliance are detailed below, as well as a brief discussion on compliance with relevant desired outcomes.

2.10.1 Desired Future Character

Part 3.2.1 of the *HDCP* encourages the following development for the subject site:

- 2-3 storey townhouses with low pitched roofs, wide eaves with additional floor area contained within roof spaces.
- Development designed to achieve setbacks that incorporate soft landscaping and deep soil planting.
- Car parking provided on-site in the form of two split basements.
- A high standard of architectural and urban design quality.
- Developments that incorporate a mix of dwelling sizes.

The proposed development would be 2 to 3 storeys in height with a bedroom and an ensuite contained within the roof space attic. The development provides a mix of townhouse sizes, including two ground floor villas with 3 townhouse units (3, 4 and 5) integrated above, of various orientation.

The proposed buildings comply with side boundary setbacks with the exception of very minor front boundary encroachments and minor basement encroachments, as a result of the driveways from the Pacific Highway and Rupert Street and a pump room.

Car parking is provided in a basement and would provide sufficient deep soil planting zones to the front, side and rear boundaries.

In regard to the standard of architectural and urban design quality, the development was referred to an Urban Design Consultant from GM Urban Design & Architecture who reviewed the proposal on 3 separate occasions from March 2019.

Design amendments were made from the original proposed architectural plans submitted with the application which included; relocation of the Pacific Highway vehicle entry further to the south, re-orientation of Units 26 to 29 to address Rupert Street, providing a break in the row of townhouses between Units 26 and 27 and a break between Units 10 and 11, reorientation of units so entries face each other (front to front) and articulation for every 2 units being stepped in or out. It was recommended that a mixture of townhouse and manor house style could be explored with the unit configuration on the corner of the site. As a result, the villa style and townhouses above arrangement on the corner of Pacific Highway and Rupert Street was implemented to provide further diversity in the overall streetscape appearance.

Further amended plans have since been submitted to Council implementing the upper and lower split basement design. This design was not referred to the urban design consultant as the changes to the overall built form, breaks in buildings, articulation and orientation of units remained generally the same.

The proposed 2 storey plus attic townhouses are well articulated, provide appropriate landscaping and streetscape presentation and would positively contribute to the desired future character of the area.

2.10.2 Building Setbacks

As stated in the above *HDCP* compliance table, there are a small number of building and basement setback non-compliances as noted and discussed below.

- 7.5m frontage Pacific Highway setback. *HDCP* recommends 9m for designated roads.

- 6.6m frontage Rupert Street setback. HDCP recommends 7.6m.

With regard to the frontage setback along Pacific Highway it is considered that the encroachment of 1.5 metres for Units 1 and 2 only is considered minor given the remaining units (6 to 15) all strictly comply with the 9m front setback requirement under the HDCP.

Similarly, with regard to the secondary Rupert Street setback requirement of 7.6m, the minor encroachment of the northern corner of Unit 1 of 1m is negligible within the streetscape. As a result, there is a minor encroachment of the first-floor balconies and attic for Units 3, 4 and 5 which sit directly above ground floor Units 1 and 2. The non-compliance is accepted as the configuration of these units on the corner provides greater articulation and design diversity within the townhouse complex. Furthermore, there is potential for extensive landscaping and deep soil planting to occur within the front setbacks as show on the Ground Floor and Landscape Plan.

It is noted that the remainder of the units being Units 6 to 15 and Units 27 to 29 would fully comply with the front setback requirement along Pacific Highway and Rupert Street.

- The Pacific highway driveway on southern side has 1.1m to 1.7m setback. HDCP recommends driveways or basement ramps up to 6m wide, with deep soil verges at least 2m wide adjacent to the side boundary.

The southern side and rear, western boundary encroachment of the driveway and basement ramps is considered negligible as it is only a small portion of the length of the entire side and rear boundary that would encroach into the 2m setback. Sufficient landscaping in the form of grassed area and a row of plantings are proposed within the 1.7m setback along the Pacific Highway driveway.

- The Rupert street driveway at one corner is 900mm from western rear boundary.

This is acceptable given it is required for a compliant driveway width of 6.1m and only occurs at one point along the driveway. The remainder of the driveway features extensive screen landscaping along this boundary.

- 4.9 - 7m Pacific Highway eastern setback. HDCP recommends 6m.
- 1.6 - 6m Rupert Street. HDCP recommends 6m.
- 1.1 -3 m southern side. *HDCP* recommends 3m.
- 2.9 - 6m minimum western basement setback. *HDCP* recommends 4m.

With respect to the Pacific Highway frontage, the basement encroaches 1.1m in one small section as a result of two disabled access parking spaces within the basement. The remainder of the basement along this elevation has a setback of 7m in excess of the requirement, allowing ample space for deep soil planting.

With respect to Rupert Street setbacks, the non-compliance is a result of hydrant pump room in this location and fire exit stairs. This is a BCA requirement and there is limited opportunity to re-locate the stairs and pump room elsewhere on the site.

As discussed above, the southern side encroachment is a result of the driveway ramp from Pacific Highway including a set fire exit stairs. In this instance the encroachment is supported on the basis that planting can still occur within the 1.1m setback.

With respect to the western basement setback encroachment of 1.1m, this is considered minor non-compliance as a result of the driveway ramp only. The remaining 51m length of basement would comply and provide a setback greater than the 4-metre requirement.

Overall the proposal generally complies with setback controls and the non-compliances are minor in nature and would not result in a significant loss to landscaped areas or deep soil planting.

2.10.3 Building Form and Separation

The objectives of Part 3.2.5 of the *HDCP* are to provide well-articulated buildings separated by garden areas.

The two blocks of townhouses parallel to Pacific Highway would have a 6m separation from each side, while the front 2 rows of townhouses, parallel to Pacific Highway would have a 7m separation. It is noted that the separation between the front row and rear row could not be increased any further as this would result in townhouses encroaching into the Pacific Highway setback and reducing the available area for private open space.

To address any potential privacy concerns, the allotments have been orientated so that the fronts face other fronts and that the rear, private open space is orientated to the road front or the rear of the site. This allows for entrances to be accessed from the common areas and pathways, providing passive surveillance as recommended by Council's Urban Design Consultant. In addition, each second unit is stepped in and out along each row at both ground, first floor and attic level to ensure no direct line of sight into opposite units.

Council's Urban Design Consultant noted that the modifications to the original design have been positive in that the built form, articulation of townhouse blocks and orientation of each unit was improved.

The development meets the objectives of Part 3.2.5 of the *HDCP* and is considered acceptable in this regard.

2.10.4 Sunlight and Ventilation

The prescriptive measure of Part 3.2.9(a) of the *HDCP* states that *"On 22 June, at least 70 percent of dwellings should receive 3 hours of unobstructed sunlight access to at least half of the dwellings principal living room windows and principal private open space area between 9am and 3pm"*.

In the first urban design review, the consultant raised concerns over the lack of sunlight access for internal units and private open spaces as a result of the straight row configuration of townhouse blocks all orientated to Pacific Highway. In response to these concerns, revised plans were submitted with Units 1 to 5 and Units 27 to 29 orientated to the north which allow full solar access to the internal living areas and private open space for these units.

The shadow diagrams indicate that 100% of units would achieve solar access requirements to private open space and 70% of units would receive solar access requirements to internal living rooms for at least 3 hours in the day. The urban design consultant noted that the orientation of the townhouses, boundary setbacks and building separation is considered improved and acceptable with regards to sunlight and ventilation. In addition, the north, east and west facing first floor windows include external shading to protect from direct sunlight.

The proposal meets the desired outcomes of Part 3.2.9 Sunlight and Ventilation of the *HDCP* and is considered acceptable.

2.10.5 Open Spaces

The *HDCP* encourages at least 24m² of private open space per dwelling with a minimum width of 3m which is accessible from internal living areas.

Each of the 29 townhouses would include more than 24m² of private open space directly accessible from living rooms. Unit 5, being a first-floor townhouse has 17m² private open space in the form of two balconies orientated to the Pacific Highway. The variation of 7m² is considered acceptable considering a larger balcony would result in further setback encroachments, amenity and privacy issues.

The private open spaces areas for each unit is considered acceptable.

2.10.6 Privacy and Security

The prescriptive measure of Part 3.2.8(a) of the *HDGP* states that development should “*Orient residential units’ living room and principal private open space areas primarily towards the front and rear of the site, including balconies, to promote privacy to dwellings*”.

Privacy:

The proposal achieves appropriate levels of privacy by incorporating adequate setbacks, building separation, consideration of window and balcony placement, internal design of units as well as fencing and landscaping at ground level.

In accordance with the *HDGP*, a 12m building separation applies to unscreened habitable rooms, balconies and private open space. The two rows of townhouses sited parallel to the Pacific Highway are separated 7-8m. Within the central area, some of the units comprise small entry patios at ground level which would be fenced and only accessed via private key.

Ground floor:

The ground floor accommodates the more active areas including living/dining area, kitchen, laundry and direct access to private open space from living areas.

First floor:

The more passive areas including bedrooms and bathrooms are located on the first floor. Units 3, 4 and 5 contain first floor balconies which are oriented to the street.

The townhouses (Units 16 to 26), parallel to the Pacific Highway have small, Juliet style balconies oriented to the rear at first floor level however these are at a distance of 6m from the rear boundary and are not usable balconies.

Attic:

The attic level features a semi-enclosed balcony which for Units 16 to 26 would be orientated to the rear. The balcony would be located 6m from the rear boundary which is adequate setback and provided a 1.5m high masonry balustrade and wall to avoid potential for overlooking on neighbouring properties.

The attics also feature dormer windows which are orientated inwards towards one another and have an 8.2m separation between the row of townhouses which is considered adequate. These windows would only serve a bathroom and would have negligible privacy impacts.

There are no opposing habitable rooms or balconies windows at the first level that present a privacy issue. First floor bedroom and bathroom windows have been stepped in from opposing windows to alleviate any privacy impacts and create separation. The design incorporates appropriate privacy measures including window screening which is considered acceptable.

Security:

The interface of the three blocks of townhouses with the central common open space corridor includes landscape planters and security fencing to ensure privacy of each unit. As discussed, the units are oriented towards the central walk way which allow private open space to be orientated to the front and rear of the site, which are divided by fencing.

The proposed townhouses each have tandem garage parking with internal stair access. The point of entry to the basement car park is through a security roller door that can only be accessed by residents through the use of a swipe card or electronic key.

In summary, the proposal meets the desired outcomes of Part 3.2.8 Privacy and Security of the *HDCP* and is considered acceptable.

2.10.7 Housing Choice

The proposed development would provide 3 x 2-bedroom dwellings and 26 x 3-bedroom dwellings which does not comply with the *HDCP* requirement which states that a mix of 1, 2- and 3-bedroom dwellings should be provided.

The provision of 2- and 3-bedrooms dwellings is proposed to respond to the current market demand for town house developments and is consistent with Council's resolution on 8 November 2017 to remove the requirement for a dwelling mix for townhouse developments in the *HDCP*.

Furthermore, the precincts of Waitara, Asquith and Hornsby presently undergoing redevelopment comprise a number of residential flat buildings where 1- and 2-bedroom units comprise the majority of units constructed. In addition, the townhouse development directly opposite Rupert Street at No. 497-501 Pacific Highway includes only 3- and 4-bedroom dwellings. Having regard to the overall development precincts, a mix in unit types has been achieved to cater for the demographic diversity of the Hornsby Shire.

The dwelling mix will help to enhance the housing choice within the Hornsby area as well as increase the amount of housing stock.

2.10.8 Vehicular Access and Parking

The proposed development provides for a total of 64 off-street parking spaces comprising of 58 resident parking spaces and 6 visitor spaces. Of these spaces, 3 are accessible car spaces.

The proposed parking would comply with the required 57 residential spaces and 6 visitor spaces in accordance with the *HDCP*.

The proposed car parking arrangement includes 2 car tandem spaces in a lock up garage with internal stairs access for each of the 29 townhouses. The proposed garages include provision for required bicycle spaces (12) and motor cycle parking (2), which is in excess of the required 9 bicycle spaces.

The basement would comprise of 2 split basements, one being accessed via left-in left out driveway from the Pacific Highway and the other accessed from Rupert Street. The lower basement from the Pacific Highway would accommodate parking for 21 units and 48 car spaces. The upper level basement from Rupert Street would accommodate parking for 8 units and 16 car spaces.

The provision of the required visitor car parking is considered warranted for the proposal given no on-street parking is available on the Pacific Highway frontage and the likelihood any surplus car parking would not be available for visitors.

The proposal complies with the *HDCP* car parking prescriptive measures.

2.10.9 Waste Management

The application includes an amended waste management plan prepared by Jeffry Anwar dated 6/11/2020.

An enclosed bin storage bay would be provided near Unit 1 and in the basement near the parking spaces of Units 20 and 21. This would allow all units to be within 50m of a bin storage area. The application also provides a bulky waste storage area of sufficient size adjoining the bin bay.

Each bin bay is accessible by persons with a disability and provides for an accessible path of travel from each adaptable unit to the bin bay. The bin carting route from the basement bin storage room to the ground level bin bay is an accessible path of travel which includes a lift.

Concerns were originally raised with bins presented on the kerbside for collection. Given the large number of bins and the impact this would have, it was recommended that this be deleted from the plans to avoid any future traffic or amenity issues. The latest architectural plans have deleted all kerbside bins along Rupert Street and this is satisfactory.

The site requires 8x 240L garbage bins and 12x 240L recycling bins. The bin bays hold a total of 20x 240L bins. The bin bay nearest Rupert Street has been extended from previous designs to 6.5m x 3.1m which is of a sufficient size to house all of the bins for collection days. The bin bay at the basement level is 2.4m x 5.9m however it is shown with 8 bins due to the usable space being reduced by the stairs above encroaching on the floor to ceiling height at one end. The 8 bins have been assessed as sufficient for use by the units that are over 50m from the ground level bin bay.

The waste collection rear loader vehicle would park on Rupert Street to service the bins directly from the bin bay. This is preferred to having to access the site from the Pacific Highway and servicing from the basement.

Conditions of consent are recommended that a detailed waste management plan be provided to the PCA, a garage collection easement allowing Council to enter the site to collect bin and that all waste collection and management requirements are complied with on an ongoing basis. Subject to recommended conditions, the proposed development is satisfactory with regard to waste management and collection.

2.10.10 Heritage

The proposal would not detract from the heritage significance of the heritage listed house in the vicinity of the site at No. 480 Pacific Highway, Asquith, as discussed in Section 2.1.3.

2.11 Section 7.11 Contributions Plans

Hornsby Shire Council Section 7.11 Contributions Plan 2020-2030 applies to the development as it would result in an additional 29 residential dwellings in lieu of the 5 existing residences. Accordingly, the requirement for a monetary Section 7.11 contribution is recommended as a condition of consent.

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

An Arboricultural Impact Assessment (AIA) prepared by Lee Hancock Consulting Arborists dated 27/9/2018 was provided with the application and a subsequent amended AIA by Red Gum, dated 6 September 2019.

The proposed development would necessitate the removal of 12 trees from the site to accommodate the development. These 12 trees consist of native and exotic species consisting of Black Tea tree, Pine tree, Hackberry, Box Elder Maple, Coral tree, and Willow Bottle Brush. There would be no 'significant trees' identified for removal on the site.

There are another two neighbouring trees which were identified for removal as a result of the inter-allotment drainage line and location of pits. The two trees have been annotated as tree 24 and 27 on the Additional Tree Location and Fencing Plan dated 15/11/2019 prepared by Council. These two trees are not considered significant and could be removed subject to owners consent from properties No. 481 and No. 485 Pacific Highway Asquith. The AIA prepared by Redgum broadly states that the stormwater works would be undertaken manually, using tree sensitive construction.

Council's tree assessment has determined that the proposed trees for removal are not considered significant and no objections are raised to their removal. Council has also determined that works would not generate an incursion into significant trees on adjoining land of more than 10% and therefore can be retained in accordance with *Australian Standard AS 4970-2009 Protection of trees on development sites*. In this regard, conditions have been recommended requiring the installation of tree protection fencing and the appointment of a project arborist to oversee any works within the TPZ of these trees.

Replacement Planting:

Whilst the loss of 12 trees is not ideal, the proposed landscape plan prepared by Vision Dynamics indicates that 91 trees ranging in species from Weeping Bottle brush, Magnolia, Japanese Maple, Blueberry Ash and Rough-barked Apple would be planted along the perimeters of the site. There would also be a number of low and tall shrubs through the common walkway planted in planter boxes.

A condition is recommended for replacement planting to be in accordance with the approved Landscape Plan, with a minimum of 20 trees to be selected from Hornsby Councils Indigenous species list.

The proposal is considered acceptable in regard to tree preservation and landscaping, subject to conditions.

3.1.2 Stormwater Management

The proposed stormwater would be gravity drained to Council's stormwater drainage system in Mills Park via an inter-allotment easement over downstream properties. An easement would be required to be granted by the downstream owners and Council. It is noted that consent in the form of a signed letter from the downstream owners of Nos. 481, 483 and 485 Pacific Highway in September 2016 was submitted with this application.

The proposed stormwater drainage system would be acceptable subject to the implementation of stormwater detentions system and water quality treatment in accordance with the HDCP and owners consent from downstream properties as a deferred commencement condition.

3.2 Built Environment

3.2.1 Built Form

The proposal provides for a contemporary built form that would respond to the topography of the site and the streetscape. The proportions, alignments and articulation provide an appropriate scale relationship between dwellings and create streetscape interest. The proposed external finishes would provide a variety in built form and result in a development outcome consistent with the desired character of the medium density precinct.

3.2.2 Traffic

The site has frontage to a state road, the Pacific Highway and a local road, Rupert Street. The impact of the traffic generated by the proposal, on the state and local road network has been discussed in Section 2.3 of this report.

A Traffic and Parking Assessment report prepared by Varga Traffic Planning (16 September 2020) estimates that the proposed development would generate 18 vehicle trips per hour (vph) during commuter peak periods. The existing six dwellings on the site were predicted to generate approximately 6vph during commuter peak periods.

Accordingly, it is likely that the proposed development will result in a nett increase in the traffic generation potential of the site of approximately 13vph during the AM and approximately 12vph during the PM commuter peak periods.

As discussed, the proposal for a split basement design is supported by TfNSW and Council's Traffic Branch. It is considered that the increase in traffic along Rupert Street as a result of 8 townhouse units is considered negligible and that the section of Pacific Highway in the vicinity would be capable of accommodating increased traffic as the road usage is significantly under capacity.

Conditions of consent have been provided by TfNSW that would form part of the consent which include the provision of a Left In/ Left Out (LILO) driveway to restrict right turn movements.

Conditions of consent are recommended by Council that a "No Parking" sign is proposed approximately 35m from the Pacific Highway intersection to enable garbage trucks to stand in the kerbside lane whilst collecting garbage.

Traffic in the Locality:

Council has undertaken an assessment of the overall traffic impact of the redeveloped precinct on the locality. A Traffic Management Improvement Plan is included in the *HDGP* relating to the Asquith precinct. This includes the extension of Wattle Street to Amor Street, construction of a new roundabout at the junction of Wattle Street, Amor Street and Lords Avenue and restriction of left in, left out movements from Amor Street to Pacific Highway.

Construction Traffic Management:

A Construction Traffic Management Plan (CTMP) was prepared by Matthew Young, 23 February 2019 was submitted with the application. The report indicated the likely movement of construction vehicles during the various phases of demolition, excavation and construction.

It should be noted that the proposal no longer includes demolition of dwellings as this was completed under a Complying development certificate dated 12/8/2019.

The report stipulates that the first excavation phase of development would last 2 months and that average vehicle movements would be 40 on peak days. The approach routes to the site would travel north bound along the Pacific Highway and then turn left into the site in a forward direction. Departure routes would involve exiting in a forward direction onto Pacific Highway and down Rupert Street.

TfNSW recommended conditions of consent which state that demolition and construction vehicles should access the site via Rupert Street as a construction zone would not be permitted on Pacific Highway. Given this, a condition is recommended for a Construction Management Plan to be provided by a suitably qualified consultant as a condition of consent prior to issue of a construction certificate which incorporates TfNSW recommendations with respect to site access. The CMP would also include a construction noise and vibration management plan which would determine construction noise and mitigation measures for each stage of work.

Subject to conditions surrounding traffic management, the proposal is assessed as satisfactory in this regard.

3.3 Social Impacts

The residential development would improve housing choice in the locality by providing a range of house hold types. 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 would have a minor positive impact on the local economy in conjunction with other new residential development in the locality by generating an increase in demand for local services.

4. SITE SUITABILITY

Section 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


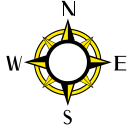
Section 4.15(1)(d) of the Act requires Council to consider *"any submissions made in accordance with this Act"*.

5.1 Community Consultation

The proposed development was placed on public exhibition and was notified to adjoining and nearby landowners between 3 January 2019 and 25 January 2019, 16 July 2019 and 5 August 2019 and then again between 19 October 2020 and 2 November 2020 in accordance with the Hornsby Community Participation Plan. During this period, Council received a total of 11 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	
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11 submissions objected to the development, generally on the grounds that the development would result in:

- Unacceptable traffic on Rupert Street.
- Vehicular entry to the basement car parking from Rupert should be provided from Pacific Highway only.
- Waste collection vehicles stopping on Rupert street would adversely impact on traffic flow, no sign stopping suggested.
- Concerns waste collection would be from Rupert Street kerb side.
- The net increase in traffic on Rupert Street would be greater than stated in the traffic report.
- The traffic report does not address the cumulative impact of future town house development in close proximity to Rupert Street.
- Shortfall in visitor parking in the basement and will lead to people parking on streets, reducing the availability of on street parking for existing local residents.
- Unacceptable noise from construction.
- The removal of a significant trees.

- Devaluation of adjoining properties.
- Development that is excessive in bulk and scale.

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 Sunlight access to No.1 Rupert Street

Submissions raised concerns of sunlight access and overshadowing of No.1 Rupert Street.

As discussed at Section 2.10.3, the application includes shadow diagrams which indicate that from 11am until 3pm the property and private open space of No.1 Rupert Street has direct sunlight access which complies with the HDCP sunlight access and overshadowing requirements.

5.1.2 Privacy impacts on No.1 Rupert Street

Submissions raised concerns over negative privacy impacts as result of the development on No.1 Rupert Street.

As discussed at Section 2.10.5, the proposed development incorporates adequate setbacks with consideration of window and balcony placement. Units 16 to 26 would have their rear orientated to the western boundary, which is the side boundary of No.1 Rupert Street.

The ground floor, private open space of Units 16 to 26 would be adequately screened by landscaping and by a 1.8-metre-high boundary fence. A condition is recommended that a boundary fence to a height of 1.8m is to be provided around all shared boundaries. The first-floor level includes small Juliet balconies which are not considered useable given their size and act as a window feature to allow sunlight and ventilation into the bedroom. The attic level does include a balcony accessed from a bedroom. However, the balcony would be setback 6m from the rear boundary and feature a masonry balustrade that is 1.5 metres high to prevent overlooking into the private open space of neighbours. To ensure the solid balustrade is a minimum of 1.5-metre-high a condition is recommended in Schedule 1.

5.1.3 Complaint over development potential of No. 480 Pacific Highway

Submissions raised concerns over development potential of heritage listed property, opposite the subject site given the redevelopment of land occurring on the western side of Pacific Highway. This is not a matter for consideration in assessing the subject application under the *Environmental Planning and Assessment Act 1979*.

5.1.4 Devaluation of adjoining properties

A submission raised concerns over the devaluation of adjoining properties as a result of the development. This is not a matter for consideration under the *Environmental Planning and Assessment Act 1979*.

5.1.5 Site isolation of No.1 Rupert street

Submissions raised concerns over the site isolation of No. 1 Rupert Street.

It should be noted that the subject application is a result of a previously refused development application (DA/1471/2016) which resulted in the isolation the corner allotment, No. 495 Pacific Highway Asquith. This subject application was lodged to resolve previous issues of site isolation of No.495 Pacific Highway.

At the time that this application was lodged in 21 November 2018, the sites to the west, facing Rupert street being No.1, 3 and 5 Rupert Street were not considered isolated and it was assumed they would amalgamate in the future.

A recent development application DA/538/2019 at No.3 and 5 Rupert Street was refused by Council on the 7 November 2019 on the basis of site isolation of No.1 Rupert Street. Advice was given to the applicant that reasonable attempts would need to be made to purchase No. 1 Rupert Street which is to form part of the re-development of an amalgamation with Nos. 3 and 5 Rupert Street.

A development application DA/231/2020 is currently under assessment by Council for demolition of structures and construction of 7 townhouse units at No. 3 and No. 5 Rupert Street, Asquith.

5.1.6 Concerns over demolition as asbestos

A submission raised concerns over the demolition of existing dwellings and release of asbestos. All structures were demolished during assessment of this application as a safety precaution due to dilapidation and illegal squatting within dwellings. The demolition was approved by a private certifier under a Complying Development Certificate issued on 12 August 2018 and undertaken by appropriate licenced contractors.

5.2 Public Agencies

The development application was referred to the following Agencies for comment:

5.2.1 Transport for New South Wales

As discussed in Section 2.3 of this report, TfNSW has reviewed the proposal and raised no objections subject to recommended conditions of consent.

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 construction of 29 x two-storey plus attic townhouses with 2 separately accessed basement car parks and landscaping. The development would also include the construction of an inter-allotment drainage easement.

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 11 submissions during the public notification periods. The matters raised have been addressed in the body of the report.

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

The reasons for this decision are:

- The proposed development generally complies with and the *Hornsby Local Environmental Plan 2013* and the Hornsby Development Control Plan 2013.
- The proposed development is generally in accordance with the development controls for the Pacific Highway Mount Colah and Asquith Precinct of the HDCP and would contribute to the desired residential character of the precinct, subject to recommended conditions of consent.
- The proposal would result in a development that would be in keeping with the desired future character of the precinct.
- The proposed development does not create unreasonable environmental impacts to adjoining development with regard to visual bulk, overshadowing, solar access, 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 Jasmin Blazevic.

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.  Architectural Plans
3.  Landscape Plan
4.  Tree Protection Plan
5.  Stormwater Concept Plan

File Reference: DA/1213/2018
Document Number: D08041217

ITEM 2

SCHEDULE 1**1. Deferred Commencement**

- a) Pursuant to Section 4.16(3) of the *Environmental Planning and Assessment Act 1979*, this consent does not operate until evidence of creation of easement to drain water over downstream properties is submitted to Council.
- b) This development consent permits the removal of tree(s) numbered T24 and T27 as identified in the Additional Tree Location and Fencing Plan dated 15/11/2019 (D07799164) subject to written owners' consent submitted to Council.
- c) Such information must be submitted within 24 months of the date of this notice.

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

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.

2. Approved Plans and Supporting Documentation

The development must be carried out in accordance with the plans and documentation listed below and endorsed with Council's stamp, except where amended by Council and/or other conditions of this consent:

Approved Plans:

Plan No.	Plan Title	Drawn by	Dated	Council Reference
100, Rev D	Site Plan – Roof Plan	Zhinar Architects	14/09/2020	
102, Rev D	Proposed Ground Floor Plan	Zhinar Architects	14/09/2020	
103, Rev D	Proposed First Floor Plan	Zhinar Architects	14/09/2020	
104, Rev D	Proposed Attic Floor Plan	Zhinar Architects	14/09/2020	
201, Rev D	Proposed Elevations	Zhinar Architects	14/09/2020	
202, Rev D	Proposed Elevations	Zhinar Architects	14/09/2020	
203, Rev D	Proposed Sections	Zhinar Architects	14/09/2020	

Plan No.	Plan Title	Drawn by	Dated	Council Reference
301, Rev D	Material schedule	Zhinar Architects	14/09/2020	
301, Rev D	Material schedule	Zhinar Architects	14/09/2020	
02043_201, 4	Stormwater Drainage Plan Basement Level	C & M Consulting Engineers	29/09/2020	
02043_202, 4	Stormwater Drainage Plan Ground Level	C & M Consulting Engineers	29/09/2020	
02043_701, 4	Sediment & Erosion Control Plan	C & M Consulting Engineers	29/09/2020	
18200, DA1, C	Landscape Concept Plans	Vision Dynamics	30/09/2020	

Supporting Documentation:

Document Title	Prepared by	Dated	Council Reference
Construction Traffic Management Plan	Sbmg Planning – Matthew Young	23/02/2019	D08021859
Construction & Waste Management Plan	Zhinar Architects	Unknown	D08021857
Access Report	Vista Access Architects	14/09/2020	D08021857
Traffic and Parking Assessment Report	Varga Traffic Planning	16/09/2020	D08020391
Stormwater Management Plan, Rev C	C&M Consulting Engineers	Sept 2020	D08020390
Stormwater Management Plan, Rev C	C&M Consulting Engineers	Sept 2020	D08020390
BASIX Certificate No. 1138795M	Gradwell Consulting	29/09/2020	D08020385
Arboricultural Impact Assessment	Redgum Horticultural	6/09/2019	D07754001
Additional Trees and Tree Protection Fencing for Council Trees	C&M Consulting (amended in red by Council)	15/11/2019	D07799164
Air Quality Review	Wilkinson Murray	18/8/2016	D07566694
DA Acoustic Assessment	Acoustic Logic	22/10/2018	D07566692
Waste Management Plan	Jeffry Anwar	6/11/2020	D08043716
Geotechnical Investigation	STS Geoenvironmental	Sept 2018	D07566663

3. Removal of Trees

- a) This development consent permits the removal of trees numbered 1, 2, 4, 5, 6, 8, 9, 10, 11, 17, 18 and 21 as identified on page 19 of Appendix C contained in the Arboricultural Impact Assessment submitted by Red Gum dated September 2019.
- b) Tree 24 and 27 as identified in the Additional Tree Location and Fencing Plan dated 15/11/2019 subject to written owners' consent, are permitted to be removed.

4. Amendment of Plans

- a) To comply with Councils requirement in terms of privacy, the approved plans are to be amended as follows:
 - i) Units 16 to 26 must have a 1.5m high solid balustrade (i.e. brick/masonry) to all attic level balconies.
- b) These amended plans must be submitted with the application for the Construction Certificate.

5. Section 7.11 Development Contributions

- a) In accordance with Section 4.17(1) of the *Environmental Planning and Assessment Act 1979* and the *Hornsby Shire Council Section 7.11 Development Contributions Plan 2020-2030*, the following monetary contributions must be paid to Council to cater for the increased demand for community infrastructure resulting from the development:

Description	Contribution (4)
Roads	\$73,916.85
Open Space and Recreation	\$249,825.50
Community Facilities	\$152,869.65
Plan Preparation and Administration	\$2,388.00
TOTAL	\$480,000.00

being for 24 dwelling house credits.

- b) The value of this contribution is current as at 9 November 2020. If the contribution is not paid within the financial quarter that this condition was generated, the contribution payable will be adjusted in accordance with the provisions of the Hornsby Shire Council Section 7.11 Development Contributions Plan and the amount payable will be calculated at the time of payment in the following manner:

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

Where:

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

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

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

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

- c) The monetary contribution must be paid to Council:
 - 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.

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

6. Retaining Walls

To ensure the stability of the site, structural details of all required retaining walls must be submitted with the application of the Construction Certificate.

7. 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) A separate Construction Certificate must be obtained from Council for all works within the public road reserve under S138 of the *Roads Act*.
- c) The Construction Certificate plans must be consistent with the Development Consent plans.

REQUIREMENTS PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

8. Appointment of a Project Arborist

- a) A project arborist with AQF Level 5 qualifications must be appointed.
- b) Details of the appointed project arborist must be submitted to Council and the PCA for registration with the application for the construction certificate.

9. 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*.

10. 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.

11. 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.

12. Dilapidation Report

A 'Dilapidation Report' is to be prepared by a 'chartered structural engineer' detailing the structural condition of the adjoining properties Lot 9 DP 22501 (No.1 Rupert Street), Lot 12 DP 22501 (No. 1 Rotherwood Avenue), Lot 132 DP 854665 (No. 3A Rotherwood Avenue) and Lot 3 DP 654738 (No. 485 Pacific Highway Asquith). The report must be submitted to Council (devmail@hornsby.nsw.gov.au) prior to issue of the Construction Certificate.

13. Geotechnical Report

The basement excavation and support, groundwater drainage, basement and foundation design shall be designed and undertaken in accordance with Geotechnical Investigation prepared by STS GeoEnvironmental dated September 2018 or a suitably qualified 'chartered structural engineer'.

14. Identification of Survey Marks

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

15. Stormwater Drainage

The stormwater drainage system for the development must be designed in accordance with AUS-SPEC Specifications (www.hornsby.nsw.gov.au/property/build/aus-spec-terms-and-conditions) and the following requirements:

- a) Connected to an existing Council piped drainage system via an on-site detention and a water quality treatment system with the following requirements:
 - i) A separate Application must be made to Council for 'Approval to Connect Stormwater Drainage Outlet to Council's System' with all fees paid, prior to connecting to Council's drainage system.
 - ii) The connection to Council's drainage **pit** must be inspected by a Council Engineer from Council's Planning Division.

*Note: An inspection booking can be made by calling Council on 9847 6760 quoting the Application reference number commencing **SD***

- b) b) The open drain fronting the Pacific Highway shall be replaced by a reinforced concrete pipe of 375mm diameter.

A construction certificate application is to be submitted to Council. Any requirements by Transport for NSW must be complied with.

Note: Council is the only authority that can approve works within road reserves or that is a Council asset.

16. On Site Stormwater Detention

An on-site stormwater detention system must be designed by a civil/hydraulic, who shall be a full member of the Institution of Engineers or Association of Engineers, Scientists and Managers (APESMA) of Australia and constructed in accordance with the following requirements:

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

17. Water Quality/Bio Retention System

A Water Sensitive Urban Design is to be carried out and a water quality treatment system constructed. The stormwater leaving the premises must achieve the quality as specified in Council's Development Control Plan 2013 (table 1C.1.2(b) Urban Stormwater Quality Targets). The design shall be based on Hornsby Council parameters as contained in the MUSIC Model. The design is to be carried out by a Civil/ Hydraulic Engineer who shall be a full member of the institution of Engineers, Australia or Association of Engineers, Scientists and Manager, Australia and approved by the Principal Certifying Authority.

18. Vehicular Crossing

A separate application under the *Local Government Act, 1993* and the *Roads Act 1993* must be submitted to Council for the installation of a new vehicular crossing and the removal of the redundant crossing.

The vehicular crossing must be constructed in accordance with AUS-SPEC Specifications (www.hornsby.nsw.gov.au/property/build/aus-spec-terms-and-conditions) and the following requirements:

- a) The vehicular access from Pacific Highway must be approved by Transport for NSW.

- b) Design levels at the front boundary must be obtained from Council for the design on the internal driveway;
- c) Any redundant crossings must be replaced with integral kerb and gutter;
- d) The footway area must be restored by turfing;
- e) Approval must be obtained from all relevant utility providers that all necessary conduits be provided and protected under the crossing.

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

19. Internal Driveway/ Vehicular Areas

The driveway and parking areas on site must be designed, constructed and a Construction Certificate issued in accordance with *Australian Standards AS2890.1, AS2890.2, AS2890.6* and the following requirements:

- a) Design levels at the front boundary shall be obtained from Council.
- b) The driveway be a rigid pavement.

20. Road Works

All road works approved under this consent must be designed in accordance with AUS-SPEC Specifications (www.hornsby.nsw.gov.au/property/build/aus-spec-terms-and-conditions) and the following requirement:

- a) Existing footpaths along Pacific Highway and Rupert Street are to be replaced.
- b) Kerb and gutter and pavement along Pacific Highway frontage with, necessary drainage and sealing of road pavement between the existing pavement and lip of the gutter is to be constructed in accordance with RMS's requirements:
 - i) The existing road pavement to be saw cut a minimum of 600 mm from the existing edge of the bitumen and reconstructed.
 - ii) The submission of a compaction certificate from a geotechnical engineer for any fill within road reserves, and all road sub-grade and road pavement materials.
 - iii) Complying with all requirements of RMS.
- c) A construction certificate application is to be submitted to Council for footpath and kerb and gutter construction.
- d) The application for kerb and gutter along Pacific Highway shall be submitted with RMS's approved plans.

Note: Council is the only authority to approve works for footpath and kerb and gutter within Council's land and RMS for kerb and gutter along Pacific Highway.

21. Traffic Control Plan

A Traffic Control Plan (TCP) must be prepared by a qualified traffic controller in accordance with the Roads & Traffic Authority's Traffic Control at Worksites Manual 1998 and Australian Standard 1742.3 for all work on a public road. The Traffic Management Plan shall

be submitted and approved by Council's Manager Traffic and Road Safety prior to the issue of a construction certificate. The TCP must detail the following:

- a) Arrangements for public notification of the works.
- b) Temporary construction signage.
- c) Permanent post-construction signage.
- d) Vehicle movement plans.
- e) Traffic management plans.
- f) Pedestrian and cyclist access/safety.

22. Construction Management Plan (CMP)

To assist in the protection of the public, the environment and Council's assets, a separate Construction Management Plan must be prepared by a suitably qualified environmental consultant in consultation with a qualified traffic engineer and AQF 5 arborist, and submitted to Council's Compliance Team at:

<https://www.hornsby.nsw.gov.au/property/build/applicationforms> for review and approval.

The CMP must include the following details:

- a) A Construction Traffic Management Plan (CTMP) including the following:
 - i) The order of construction works and arrangement of all construction machines and vehicles being used during all stages.
 - ii) The CTMP plans shall be in accordance with all other plans submitted to Council as part of this development proposal.
 - iii) A statement confirming that no building materials, work sheds, vehicles, machines or the like shall be allowed to remain in the road reserve area without the written consent of Hornsby Shire Council.
 - iv) The Plan shall be in compliance with the requirements of the Roads and Maritime Services *Traffic control at work sites Manual 2018* and detail:
 - a. Public notification of proposed works.
 - b. Long term signage requirements.
 - c. Short term (during actual works) signage.
 - d. Vehicle Movement Plans, where applicable.
 - e. Traffic Management Plans.
 - f. Pedestrian and Cyclist access and safety.
 - v) Traffic controls including those used during non-working hours. Pedestrian access and two-way traffic in the public road must be able to be facilitated at all times.
 - vi) Details of parking arrangements for all employees and contractors, including layover areas for large trucks during all stages of works. The parking or stopping of truck and dog vehicles associated with the development will not

- be permitted other than on the site and the plan must demonstrate this will be achieved.
- vii) Confirmation that a street 'scrub and dry' service will be in operation during all stages of works.
 - viii) Proposed truck routes to and from the site including details of the frequency of truck movements for all stages of the development.
 - ix) Swept path analysis for ingress and egress of the site for all stages of works.
 - x) Site plans for all stages of works including the location of site sheds, concrete pump and crane locations, unloading and loading areas, waste and storage areas, existing survey marks, vehicle entry, surrounding pedestrian footpaths and hoarding (fencing) locations.
 - xi) The total quantity and size of trucks for all importation and exportation of fill on site throughout all stages of works, and a breakdown of total quantities of trucks for each stage of works.
 - xii) The number of weeks trucks will be accessing and leaving the site with excavated or imported fill material.
 - xiii) The maximum number of trucks travelling to and from the site on any given day for each stage of works.
 - xiv) The maximum number of truck movements on any given day during peak commuting periods for all stages of works.
 - xv) The source site location of any proposed fill to be imported to the site, for all stages of works.
 - xvi) The Plan must state that the applicant and all employees of contractors on the site must obey any direction or notice from the Prescribed Certifying Authority or Hornsby Shire Council in order to ensure the above.
 - xvii) If there is a requirement to obtain a Work Zone, Out of Hours permit, partial Road Closure or Crane Permit, the Plan must detail these requirements and include a statement that an application to Hornsby Shire Council will be made to obtain such a permit.
- b) A Construction Waste Management Plan detailing the following:
- i) Details of the importation or excavation of soil and fill, the classification of the fill, disposal methods and authorised disposal depots that will be used for the fill.
 - ii) Asbestos management requirement and procedures for removal and disposal from the site in accordance with AS 2601–2001 – *'The Demolition of Structures'*, and the *Protection of the Environment Operations (Waste) Regulation 2005*.
 - iii) General construction waste details including construction waste skip bin locations and litter management for workers.

- c) A Tree Protection Plan (TPP) prepared by an AQF 5 Arborist in accordance with any approved Arboricultural Impact Assessment and tree location plans, detailing the following:
 - i) A site plan showing tree protection zones (TPZ) and structural root zones (SRZ) of trees to be retained and specific details of tree protection measures inclusive of distances (in metres) measured from tree trunks.
 - ii) Construction methodology to avoid damage to trees proposed to be retained during construction works.
 - iii) Specifications on tree protection materials used and methods within the TPZ or SRZ.
 - iv) Location of dedicated material storage space on site outside of TPZ's and SRZ's for retained trees.
- d) A Construction Noise and Vibration Management Plan (CNMP) which includes:
 - i) Existing noise and vibration levels within the proximity of the proposed development site.
 - ii) Details of the extent of rock breaking or rock sawing works forming part of the proposed development works.
 - iii) During excavation works, rock removal must be undertaken by sawing instead of rock hammering, wherever practicable;
 - iv) The maximum level of noise and vibration predicted to be emitted during each stage of construction.
 - v) The duration of each stage of works where the maximum level of noise and vibration are predicted to be emitted for.
 - vi) Details of mitigation measures, inclusive of respite periods, that will meet acoustic standards and guidelines at each stage of works.
 - vii) Details of a complaints handling process for the surrounding neighbourhood for each stage of works.
- e) Identification of approved sediment and erosion control measures.
- f) The CMP must detail the contact information for developers, builder, private certifier and any emergency details during and outside work hours.

23. Work Zone

All construction vehicles associated with the proposed development are to be contained on site or in a Local Traffic Committee (LTC) approved "Work Zone".

- a) The site supervisor to be advised that the Works Zone will be deemed to be in effect, and fees will apply, between the dates nominated by the supervisor, or when parking spaces are managed for the sole use of construction vehicles associated with the site.
- b) The Works Zone signs shall be in effect only for the times approved by Council, and the time is to be noted on the sign. E.g., 'Works Zone Mon – Sat 7am – 5pm'.

- c) The applicant is required to supply a sign posting installation plan for referral to the Local Traffic Committee, noting on it the duration of the Works Zone.
- d) The Works Zone is only to be used for the loading unloading of vehicles. Parking of workers' vehicles, or storage of materials, is not permitted.

24. Waste Management Details

The following waste management requirements must be complied with:

- a) Should there be any conflict or confusion between approved plans and/or consent conditions related to the on-going waste management system, then written clarification must be obtained from Council's Waste Branch.
- b) The approved on-going waste management system must not be amended without the written consent of Council's Waste Branch.
- c) A design certificate and detailed plans are to accompany any Construction Certificate application, which demonstrate that the waste storage room at the basement level has been designed to be constructed in accordance with the Waste Minimisation and Management Guidelines and including the following requirements:
 - i) The floor is to be constructed of concrete at least 75mm thick and adequately graded to drain to a Sydney Water approved drainage fitting;
 - ii) The floor must be finished so that it is non-slip, sealed and impervious, and has a smooth and even surface coved at all intersections;
 - iii) The walls and any ceilings must be finished with smooth faced non-absorbent material capable of being cleaned;
 - iv) The room/bay is to be provided with artificial light controllable within the room and adequate ventilation;
 - v) The room/bay is to be provided with an adequate supply of hot and cold water mixed through a centralised mixing valve with hose cock.
 - vi) Each bin storage room/bay must be accessible by persons with a disability after the garbage bins and recycling bins are installed (that is, 1.55m wide access aisle and no stacking of bins 2 or more deep); and
 - vii) have door(s) wide enough and positioned so that the 240 L bins can fit through; and
 - viii) be located no more than 50 m walking distance from each dwelling.
 - ix) The walking path from each accessible/adaptable dwelling to the allocated bin storage area must be an accessible path of travel. The walking path from each dwelling to the allocated bin storage area must not include the public footpath, that is must be wholly within the site.
 - x) The doors are to be robust and lockable (but able to be opened from the inside without a key), with a door opening of no less than 960mm.
 - xi) The ground level bin holding bay must be integrated into the overall design of the development and landscaping to minimise impact on the streetscape, and include screening to a height of no less than 1.5 m.

- xii) The internal dimensions of the ground level bin holding bay must no less than 6.5m x 3.2m with the door centred on the 3.2m side.
- xiii) The internal dimensions of the bin storage room at the basement level must be no less than 5.4m x 2.4m. Internal dimensions do not include wall thickness, support columns, ventilation shafts etc which must be added.
- d) The footpath from the ground level bin bay to the Rupert Street property boundary must have a gradient no steeper than 1:14, be no less than 1.2m wide (including through any gates or doors), must not include any steps, must be smooth hard surface and must not exceed 5m in length. This footpath must be extended from the property boundary to the public footpath along Rupert Street.
- e) There must be no steps along any bin carting route. This includes, but is not limited to, the bin carting route from the ground level bin storage bay to the kerbside, and from the basement bin storage room to the ground level bin storage bay. (Ramps and the service lift are acceptable).
- f) A dedicated bulky waste storage area with an internal area of at least 8 square metres is to be provided at the ground level. The bulky waste storage area must be integrated into the overall design of the development and landscaping to minimise impact on the streetscape, and include screening to a height of no less than 1.5 m.

Note: a 240 L recycling bin is 600 mm wide by 750 mm deep; allow for 75 mm ease around the bin to avoid damage to walls etc from scraping. The door must be wide enough and positioned such that all the bins can fit through. Every bin must be able to be accessed (no stacking of bins two or more deep). Internal dimensions do not include wall thickness, door thickness etc, which must be added. A minimum door width of 800mm is required for accessibility.

REQUIREMENTS PRIOR TO THE COMMENCEMENT OF ANY WORKS

25. 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.

26. 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.
- 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.

27. Installation of Tree Protection Measures

- a) Trees to be retained and numbered 3, 7, 12, 13, 14, 16, 19, 20, 22 and 23 as identified on the Tree Location Plan prepared by as identified on page 37 of Appendix F contained in the Arboricultural Impact Assessment submitted by Red Gum dated September 2019 (TRIM: D07754001) must have tree protection measures for the ground, trunk and canopy installed by the project arborist as follows:
 - i) For the duration of demolition works, in accordance with the Tree Protection Plan for prepared by as identified on page 37 of Appendix F contained in the Arboricultural Impact Assessment submitted by Red Gum dated September 2019 (TRIM: D07754001).
 - ii) For the duration of construction works, in accordance with Tree Protection Plan prepared by as identified on page 37 of Appendix F contained in the Arboricultural Impact Assessment submitted by Red Gum dated September 2019 (TRIM: D07754001).
- b) Trees to be retained located in the Asquith Oval as identified on the Additional Tree Location and fencing Plan prepared by tree Management, dated 15/11/2019 (TRIM: D07799164) must have tree protection measures for the ground, trunk and canopy installed by the project arborist as follows:
 - i) For the duration of installation of the stormwater system.
- c) Tree protection fencing for the trees to be retained numbered 3, 7, 12, 13, 14, 16, 19, 20, 22, 23 and the stand of Council trees in Asquith Oval must be installed by the engaged AQF 5 project arborist and consist of 1.8m high temporary fencing panels installed in accordance with *Australian Standard AS4687-2007 Temporary fencing and hoardings*.
- d) The installation of all required tree protection fencing must include shade cloth attached to the fencing to reduce transport of dust, particulates and liquids from entering the tree protection zone.
- e) The installation of all required tree protection fencing must have a TPZ radius as listed in the Table below:

Tree number	TPZ radius from centre of tree (in meters)
3	5.9 m
7	5.2m

12	3.8m
13	3m
14	3m
15	4.4
16	5.4m
19, 20, 22 and 23	2m

- f) Tree crown protection measures are required and must be installed by the AQF 5 project arborist.
- g) The circumference of the trunks must be wrapped in hessian material to provide cushioning for the installation of timber planks.
- h) Timber planks (50 x100mm) must be spaced at 100mm intervals and must be attached using adjustable ratchet straps.
- i) All tree protection zones must have a layer of wood-chip mulch at a depth of between 150mm and 300mm.,
- j) Where wood-chip mulch is permitted by Council instead of tree protection fencing within the tree protection zones, the wood-chip must be covered with a layer of geotextile fabric and rumble boards.

28. 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.
 - ii) Be a temporary chemical closet approved under the *Local Government Act 1993*.
 - iii) Have an on-site effluent disposal system approved under the *Local Government Act 1993*.

29. 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.

30. Waste Management Details

Prior to the commencement of any works, the on-going waste collection service must be cancelled, and the bins retrieved by the waste collection service provider.

31. 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.
- b) The garbage receptacle must have a tight-fitting lid and be suitable for the reception of food scraps and papers.
- c) The receptacle lid must be kept closed at all times, other than when garbage is being deposited.
- d) Food scraps must be placed in a garbage receptacle and not in demolition and construction waste bins.

REQUIREMENTS DURING EXCAVATION AND CONSTRUCTION
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32. Construction Work Hours

All works on site, including demolition and earth works, must only occur between 7am and 5pm Monday to Saturday.

No excavation or rock sawing/breaking is to occur on Saturdays. No work is to be undertaken on Sundays or public holidays.

33. Council Property

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

34. 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*.

35. Prohibited actions within the fenced tree protection zone

The following activities are prohibited within the approved fenced tree protection zones unless otherwise approved by Council:

- a) Soil cutting or filling, including excavation and trenching.
- b) Soil cultivation, disturbance or compaction.
- c) Stockpiling storage or mixing of materials.
- d) The parking, storing, washing and repairing of tools, equipment and machinery.
- e) The disposal of liquids and refuelling.
- f) The disposal of building materials.
- g) The siting of offices or sheds.

- h) Any action leading to the impact on tree health or structure.

36. Maintaining the health of trees approved for retention

The appointed project arborist must monitor and record any and all necessary actions required to maintain tree health and condition for trees numbered 3, 7, 12, 13, 14, 16, 19, 20, 22, 23 on the approved plans.

37. Maintaining Tree Protection Measures

Tree Protection Measures must be maintained by the project arborist in accordance with conditions of this consent for the duration of works.

38. Approved Works within Tree Protection Zone incursions

- a) Where tree root pruning is required for the installation of piers, driveway or underground services, the pruning must be overseen by the AQF 5 project arborist and must be undertaken as follows:
- i) Using sharp secateurs, pruners, handsaws or chainsaws with the final cut being clean.
 - ii) The maximum diameter of roots permitted to be cut is 50mm.
- b) No changes of grade within the Tree Protection Zone of trees to be retained numbered 3, 7, 12, 13, 14, 16, 19, 20, 22, 23 on the approved plans, are permitted.
- c) To minimise impacts within the Tree Protection Zone (TPZ) of trees numbered T25 and T26 on the approved plans, the installation of services must be undertaken as follows:
- i) The AQF 5 project arborist must be present to oversee the installation of any underground services which enter or transect the tree protection.
 - ii) The installation of any underground services which either enter or transect the designated TPZ must utilise directional drilling only.
 - iii) Excavations for Pits must be undertaken by hand digging only.
- d) Where scaffolding is required, ground protection must be installed beneath the scaffolding in the following order:
- i) Installation of a 100mm deep layer of woodchip.
 - ii) Installation of geotextile fabric ground covering.
 - iii) Installation of scaffold boarding above the woodchip and geotextile fabric.

39. Building materials and Site Waste

The stockpiling of building materials, the parking of vehicles or plant, the disposal of cement slurry, waste water or other contaminants must be located outside the tree protection zones as prescribed in the conditions of this consent of any tree to be retained.

40. Street Sweeping

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

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

41. 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.

42. Survey Report

A report(s) must be prepared by a registered surveyor and submitted to the principal certifying authority:

- a) Prior to the pouring of concrete at each level of the building certifying that:
 - i) The building, retaining walls and the like have been correctly positioned on the site.
 - ii) The finished floor level(s) are in accordance with the approved plans.

43. Landfill not Permitted

The importation of fill material associated with earthworks, or structural or engineering works, is not permitted as part of this consent.

44. Excavated Material

All excavated material removed from the site must be classified by a suitably qualified environmental consultant in accordance with the NSW Environment Protection Authority's *Waste Classification Guidelines* and *Protection of the Environment Operations (Waste) Regulation 2014* prior to disposal to a licensed waste management facility. Tipping dockets for the total volume of excavated material that are received from the licensed waste management facility must be provided to the principal certifying authority prior to the issue of an Occupation Certificate.

45. Compliance with Construction Management Plan

The Council approved Construction Management Plan must be complied with for the duration of works, unless otherwise approved by Council.

46. Waste Management Details

Requirements of the approved Waste Management Plan shall be complied with during all site preparation works, demolition and throughout all construction works. When implementing the Waste Management Plan, the developer is to ensure:

- a) The disposal of any demolition and construction waste must be undertaken in accordance with the requirements of the *Protection of Environment Operations Act 1997*.

- b) All waste on site is to be stored, handled and disposed of in such a manner as to not create air pollution, offensive noise or pollution of land and water as defined by the *Protection of Environment Operations Act 1997*.
- c) Generation, storage, treatment and disposal of hazardous waste is conducted in accordance with the relevant waste legislation administered by the EPA and relevant Occupational Health and Safety legislation administered by WorkCover NSW.
- d) All waste generated (including excavated materials) which cannot be reused or recycled must be transported to a facility which can lawfully accept it.
- e) All materials and resources that are to be stored on site during construction works are contained on the site. The provisions of the *Protection of Environment Operations Act 1997* must be complied with when placing/stock piling loose material, disposal of concrete waste or activities which have potential to pollute drains and water courses.
- f) The storage of waste and recycling containers must be within the boundaries of the development site at all times. Public footways and roads must not be used for the storage of any waste and must be kept clear of obstructions during all construction works.
- g) Additionally, written records of the following items must be maintained during the removal of any waste from the abovementioned waste from the site and such information submitted to the Principal Certifying Authority within fourteen days of the date of completion of the works:
 - i) The identity of the person removing the waste.
 - ii) The waste carrier vehicle registration.
 - iii) Date and time of waste collection.
 - iv) A description of the waste (type of waste and estimated quantity).
 - v) Details of the site to which the waste is to be taken.
 - vi) The corresponding weighbridge tip docket/receipt from the site to which the waste is transferred (noting date and time of delivery, description (type and quantity) of waste).
 - vii) Whether the waste is expected to be reused, recycled or go to landfill.

Note: In accordance with the Protection of the Environment Operations Act 1997, the definition of waste includes any unwanted substance, regardless of whether it is reused, recycled or disposed to landfill.

REQUIREMENTS PRIOR TO THE ISSUE OF AN OCCUPATION OR SUBDIVISION CERTIFICATE

47. Fulfilment of BASIX Commitments

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

48. Replacement Tree Requirements

- a) The trees approved for removal under this consent, being trees numbered 1, 2, 4, 5, 6, 8, 9, 10, 11, 17, 18 and 21 must be offset through replacement planting in accordance with the approved Landscape Plan prepared by Vision Dynamics.
- b) At a minimum 20 of the replacement trees must be species selected from the Council's Indigenous species listing located in the Hornsby Shire Development Control Plan 2013 <https://www.hornsby.nsw.gov.au/environment/flora-and-fauna/tree-management/indigenous-trees>.
- c) The location and size of tree replacement planting must comply with the following:
 - i) All replacement trees must be located in either front or rear setbacks and planted 4 metres or greater from the foundation walls of the approved development.
 - 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.
 - iv) All replacement trees must have the potential to reach a mature height greater than 10 metres.

49. Completion of landscaping

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

Note: Applicants are advised to pre-order plant material required in pot sizes 45 litre or larger to ensure nurseries have stock available at the time of install.

50. Final Certification

The AQF 5 Project arborist must submit to the Principal Certifying Authority a certificate that includes the following:

- a) All tree protection requirements complied with the as approved tree protection plan for the duration of demolition and/or construction works.
- b) All completed works relating to tree protection and maintenance have been carried out in compliance with the conditions of consent and approved plans.
- c) Dates, times and reasons for all site attendance.
- d) All works undertaken to maintain the health of retained trees.
- e) Details of tree protection zone maintenance for the duration of works.

Note: Copies of monitoring documentation may be requested throughout DA process.

51. Submission of Excavated Material Tipping Dockets to Principal Certifying Authority

Tipping dockets for the total volume of excavated material that are received from the licensed waste facility must be provided to the Principal Certifying Authority prior to the issue of an Occupation Certificate.

52. Planter Boxes / On slab planting

On slab planter boxes must include waterproofing, subsoil drainage (proprietary drainage cell, 50mm sand and filter fabric) automatic irrigation, minimum 500mm planting soil for shrubs and minimum 1000mm planting soil for trees and palms and 75mm mulch to ensure sustainable landscape is achieved.

53. Boundary Fencing

- a) The exact location, design and costing for the erection of boundary fencing are to be the subject of negotiation and agreement in accordance with the relevant requirements of the *Dividing Fences Act 1991*.
- b) Fencing must be erected along all property boundaries behind the front building alignment to a height of 1.8 metres.

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

54. Acoustic Treatment and Certification

- a) Acoustic treatment must be installed for the proposed development in accordance with the recommendations contained within Section 4.4 Recommended Construction of the Acoustic Report prepared by Acoustic Logic dated 22/10/2018.
- b) On completion of all works and prior to the issue of an Occupation Certificate, the certifier is to be provided with a certificate from a qualified acoustic consultant certifying that all acoustic works have been completed in accordance with the recommendations contained within the Section 4.4 Recommended Construction and Section 6.2 Mechanical Plant Noise of the Acoustic Report prepared by Acoustic Logic dated 22/10/2018.
 - i) Noise emissions from all mechanical services plant to the closest residential receiver must comply with the noise emission criteria in Section 6.1.3 of the Acoustic Report prepared by Acoustic Logic dated 22/10/2018.

55. Unit Numbering

All units are to be numbered consecutively commencing at No.1. The strata plan lot number is to coincide with the unit number, e.g. Unit 1 = Lot 1. The allocated of unit numbering must be authorised by Council prior to the numbering of each units in the development.

56. Consolidation of Allotments

All allotments the subject of this consent must be consolidated into one allotment.

Note: The applicant is recommended to submit the plan of subdivision to consolidate allotments to the NSW Department of Lands at least 4-6 weeks prior to seeking an occupation certificate.

57. Works as Executed Plan

Works-as-executed plans must be prepared by a registered surveyor and submitted to Council for completed road pavement, kerb & gutter, drainage systems, driveways, on-site detention and water quality treatment system

58. Certification of WSUD Facilities

Prior to the issue of an Occupation Certificate a certificate from a Civil/ Hydraulic Engineer, who is a full member of the Institution of Engineers, Australia or Association of Professional Engineers, Scientists and Managers, Australia is to be obtained stating that the WSUD facilities have been constructed and will meet the water quality targets as specified in the Hornsby Development Control Plan 2013.

59. Creation of Easements

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

- a) The creation of an appropriate *"Positive Covenant"* and *"Restriction as to User"* over the constructed on-site detention/retention, water quality treatment system and outlet works, within the lots in favour of Council in accordance with Council's prescribed wording. The positions of the systems must be to be clearly indicated on the plan of the title.

To register the easements for the constructed on-site detention and water quality treatment systems, *"works-as-executed"* details of the on-site detention and water quality systems must be submitted. The details are to be accompanied by a certificate from a chartered Professional Engineer of the Institution of Engineers, Australia verifying that the required storage and discharge rates have been constructed in accordance with the design requirements and the stormwater leaving the premises will achieve the quality specified in the DCP. The details must show the invert levels of the systems together with pipe sizes and grades and filters/devices. Any variations to the approved plans must be shown in red on the *"works-as-executed"* plan and supported by calculations.

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

60. Certificate of Preservation of Survey Marks

A certificate by a Registered Surveyor shall 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".

61. Completion of Works and Compliance Certificate

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

62. External Lighting

- a) To protect the amenity of adjacent premises, all external lighting must be designed and installed in accordance with *Australian Standard AS4282 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 Occupation Certificate.

63. Garbage Collection Easement

For the purpose of waste collection, an easement entitling Council, its servants and agents and persons authorised by it to enter upon the subject land and to operate thereon, vehicles and other equipment for the purposes of waste collection must be granted to Council by the owner of the land. The waste collection easement must be registered with the NSW Land Registry Services prior to issue of the occupation certificate or the use commencing, whichever is earlier.

Note: The easement must be in a form prescribed by Council and must include covenants to the effect that parties will not be liable for any damage caused to the subject land or any part thereof or to any property located therein or thereon by reason of the operation thereon of any vehicle or other equipment used in connection with the collection of garbage and to the effect that the owner for the time being of the subject land shall indemnify the Council, its servants, agents and persons authorised by it to collect garbage against liability in respect of any such claims made by any person whomsoever.

64. Waste Management Details

The following waste management requirements must be complied with:

- a) Prior to an Occupation Certificate being issued or the use commencing, whichever is earlier, the Principal Certifying Authority must obtain Council's approval of the waste and recycling management facilities provided in the development and ensure arrangements are in place for domestic waste collection by Council.

Note: Waste and recycling management facilities includes everything required for on-going waste management on the site. For example, the bin storage areas, bulky waste storage area, bin collection area, waste collection vehicle access, doors wide enough to fit the bin through, accessibility, bin carting routes etc.

- b) Prior to an Occupation Certificate being issued or the use commencing, whichever is earlier, all external works including but not limited to the vehicular crossover and footpath, must be completed.
- c) A report must be prepared by an appropriately qualified person and submitted to Council's Waste Branch, certifying the following:

- i) A comparison of the estimated quantities of each demolition and construction waste type against the actual quantities of each waste type.

Note: Explanations of any deviations to the approved Waste Management Plan is required to be included in this report

- ii) That at least 60% of the waste generated during the demolition and construction phase of the development was reused or recycled.

Note: If the 60% diversion from landfill cannot be achieved in the Construction Stage, the Report is to include the reasons why this occurred and certify that appropriate work practices were employed to implement the approved Waste

Management Plan. The Report must be based on documentary evidence such as tipping dockets/receipts from recycling depots, transfer stations and landfills, audits of procedures etc. which are to be attached to the report.

- iii) All demolition and construction waste was taken to site(s) that were lawfully permitted to accept that waste.
- d) Each unit must be provided with two separate 15-20 litre containers (one each for general waste and recyclable materials) installed in a cupboard in the kitchen.
- e) The bin storage bays/rooms must include water or a hose for cleaning, graded floors with drainage to sewer, sealed and impervious surface, robust door(s), adequate lighting and ventilation, and be lockable but able to be opened from the inside without a key.
- f) The bin storage bays must be accessible by persons with a disability while comfortably housing all of the bins required to be stored there.
- g) Space must be provided for either individual compost containers for each unit or a communal compost container.

Note: The location of the compost containers should have regard for potential amenity impacts.

- h) There must be a bulky waste storage area of at least 8 square metres at the ground level within 5m walking distance of a pedestrian or vehicular access to the site.
- i) All bin carting routes must be devoid of steps.

65. Car Parking

- a) All car parking must be constructed and operated in accordance with *Australian Standard AS/NZS 2890.1:2004 Off-street car parking* and *Australian Standard AS 2890.2:2002 Off-street commercial vehicle facilities*.
- b) All parking areas and driveways are to be sealed to an all-weather standard, line marked and signposted.
- c) Motorcycle parking spaces are to be constructed in accordance with *AS/NZS 2890.1:2004 Figure 2.7*.
- d) Bicycle parking spaces are to be constructed in accordance with *AS2890.3-1993 Bicycle parking facilities*.
- e) Nine bicycle parking spaces and two motorcycle parking spaces are to be shown on the drawings.

OPERATIONAL CONDITIONS

66. 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).

67. Car Parking Operational

- a) Any proposed landscaping and/or fencing must not restrict sight distance to pedestrians and cyclists travelling along the footpath.
- b) Residential parking spaces are to be secure spaces with access controlled by card or numeric pad.
- c) Visitors must be able to access the visitor parking spaces in the basement car park at all times. Visitor parking spaces are not to be used by residents as storage or parking spaces.
- d) All parking for people with disabilities is to comply with *AS/NZS 2890.6:2009 Off-street parking for people with disabilities*.
- e) Bicycle parking spaces are to be designed in accordance with *AS2890.3-1993 Bicycle parking facilities*.
- f) Motorcycle parking spaces are to be designed in accordance with *AS/NZS 2890.1:2004* Figure 2.7.
- g) Access for garbage vehicles is to satisfy the requirements of Council's Waste Management Branch.

68. Waste Management

The waste management on site must be in accordance with the following requirements:

- a) There must be a sufficient number of bins on site to contain the volume of waste and recycling expected to be generated between collection services.
- b) The development must operate in full compliance with Council's waste management collection requirements.
- c) There must be a sufficient number of bins on site to contain the volume of waste and recycling expected to be generated between collection services.
- d) A site caretaker must be employed and be responsible for moving bins where and when necessary, washing bins and maintaining waste storage areas and signage, managing the communal composting area and worm farm, managing the bulky item storage area, arranging the prompt removal of dumped rubbish, arranging for shopping trolleys to be promptly returned to the local shopping centre(s), ensuring the recycling bins are free of contamination (which includes but is not limited to garbage, plastic bags, clothing, etc.), addressing overflowing bins and pest infestations, liaising with Council on waste matters, and ensuring all residents are informed and kept up to date on the use of the waste management system. The site caretaker must be employed for a sufficient number of hours each week to allow all waste management responsibilities to be carried out to a satisfactory standard.
- e) No waste storage containers are to be located or placed outside of the approved waste storage area at any time except for collection purposes.
- f) Adequate signage is to be provided and maintained on how to use the waste management system and what materials are acceptable for recycling within all waste storage areas of the development. Signage is also to be provided and maintained which clearly identifies which bins (and containers) are to be used for general waste and recycling and what materials can be placed in each bin.

- g) Where the development incorporates strata title subdivision, the by-laws are to clearly set out the management responsibilities for the developments waste management system.

69. Landscape Establishment

The landscape works must be maintained by the Body Corporate to ensure the establishment and successful growth of plant material to meet the intent of the landscape design. This must include watering, weeding, replacement of failed plant material and promoting the growth of plants through standard industry practices.

CONDITIONS OF CONCURRENCE – TRANSPORT FOR NSW (ROADS AND MARITIME SERVICES)

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.

70. TfNSW 1

TfNSW has previously acquired a strip of land for road along the Pacific Highway frontage of the subject property, as shown by blue colour on the attached Aerial – “X”. All buildings and structures, together with any improvements integral to the future use of the site are wholly within the freehold property (unlimited in height or depth), along the Pacific Highway boundary.

71. TfNSW 2

The redundant driveways on the Pacific Highway boundary shall be removed and replaced with kerb and gutter to match existing. The design and construction of the kerb and gutter and vehicle crossing on Pacific Highway shall be in accordance with TfNSW requirements. Details of these requirements should be obtained by email to DeveloperWorks.Sydney@rms.nsw.gov.au.

Detailed design plans of the proposed kerb and gutter and vehicle crossing are to be submitted to TfNSW for approval prior to the issue of a Construction Certificate and commencement of any road works. Documents should be submitted to Development.Sydney@rms.nsw.gov.au. A plan checking fee and lodgement of a performance bond is required from the applicant prior to the release of the approved road design plans by TfNSW.

72. TfNSW 3

All vehicles are to enter and leave the site in a forward direction.

73. TfNSW 4

All vehicles are to be wholly contained on site before being required to stop.

74. TfNSW 5

In accordance with *AS2890.1- 2004 (Parking Facilities, Part 1: Off-street car parking)*, the driveway shall be a minimum of 5.5 metres in width for a minimum distance of 6 metres from

the property boundary with a left-in left-out arrangement for the access driveway along Pacific Highway boundary.

75. TfNSW 6

All demolition and construction vehicles should access the site via Rupert Street. a construction zone will not be permitted on Pacific Highway.

76. TfNSW 7

The developer is to submit design drawings and documents relating to the excavation of the site and support structures to TfNSW for assessment, in accordance with Technical Direction GTD2012/001. The developer is to submit all documentation at least six (6) weeks prior to commencement of construction and is to meet the full cost of the assessment by TfNSW. Documents should be submitted to Development.Sydney@rms.nsw.gov.au.

If it is necessary to excavate below the level of the base of the footings of the adjoining roadways, the person acting on the consent shall ensure that the owner/s of the roadway is/are given at least seven (7) day notice of the intention to excavate below the base of the footings. The notice is to include complete details of the work.

- END OF CONDITIONS -

ADVISORY NOTES

The following information is provided for your assistance to ensure compliance with the *Environmental Planning and Assessment Act 1979*, *Environmental Planning and Assessment Regulation 2000*, other relevant legislation and Council's policies and specifications. This information does not form part of the conditions of development consent pursuant to Section 80A of the Act.

Environmental Planning and Assessment Act 1979 Requirements

The *Environmental Planning and Assessment Act 1979* requires:

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

Long Service Levy

In accordance with Section 34 of the *Building and Construction Industry Long Service Payments Act 1986*, a 'Long Service Levy' must be paid to the Long Service Payments Corporation or Hornsby Council.

Note: The rate of the Long Service Levy is 0.35% of the total cost of the work.

Note: Hornsby Council requires the payment of the Long Service Levy prior to the issue of a construction certificate.

Tree and Vegetation Preservation

Hornsby Development Control Plan 2013 Tree and Vegetation Preservation provisions have been developed under Council's authorities contained in *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017* and the *Environmental Planning and Assessment Act 1979*.

In accordance with these provisions a person must not cut down, fell, uproot, kill, poison, ringbark, burn or otherwise destroy the vegetation, lop or otherwise remove a substantial part of the trees or vegetation to which any such development control plan applies without the authority conferred by a development consent or a permit granted by Council.

Fines may be imposed for non-compliance with the *Hornsby Development Control Plan 2013*.

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

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

Unit Numbering (Strata Units)

All units are to be numbered consecutively commencing at No. 1. The strata plan lot number is to coincide with the unit number. E.g. Unit 1 = Lot 1.

ITEM 2