



the bushland shire

creating a living environment

BUSINESS PAPER

PLANNING MEETING

**Wednesday, 6 October, 2010
at 6.30pm**

TABLE OF CONTENTS

AGENDA AND SUMMARY OF RECOMMENDATIONS

MAYORAL MINUTES

NOTICES OF MOTION

RESCISSION MOTIONS

- Item 1 RM1/10 PLN35/10 Development Application - Subdivision of One Lot Into Two Lot 9, DP 7484 (No. 39) Hannah Street, Beecroft1

MATTERS OF URGENCY

ITEMS PASSED BY EXCEPTION / CALL FOR SPEAKERS ON AGENDA ITEMS

DEVELOPMENT APPLICATIONS

A Ward Deferred

A Ward

- Item 2 PLN51/10 Development Application - Medium Density Multi-unit Housing Development - 25 - 29 Turner Road Berowra Heights3
- Item 3 PLN63/10 Development Application - Alterations and Additions to an Existing Church - 155 - 157 Galston Road Hornsby Heights.....31
- Item 4 PLN67/10 Development Application - Mixed Use Building Comprising Nine Residential Units and One Commercial Unit
1 and 3 Haldane Street, Asquith61

B Ward Deferred

B Ward

C Ward Deferred

C Ward

- Item 5 PLN39/10 Development Application – Dwelling-House - 54B Beecroft Road, Beecroft91
- Item 6 PLN24/10 Development Application - Mixed Use Building Comprising of Five Residential Units and One Commercial Unit - 22 Oxford Street Epping102

GENERAL BUSINESS

- Item 7 PLN69/10 Kangaroo Point Planning Proposal - Report on Submissions.....140

SUPPLEMENTARY AGENDA

CONFIDENTIAL ITEMS

QUESTIONS OF WHICH NOTICE HAS BEEN GIVEN

QUESTIONS WITHOUT NOTICE

AGENDA AND SUMMARY OF RECOMMENDATIONS

PRESENT

NATIONAL ANTHEM

OPENING PRAYER/S

Rev. Ian Millican of St. Mark's Anglican Church, Berowra will be opening the meeting in prayer.

ACKNOWLEDGEMENT OF RELIGIOUS DIVERSITY

Statement by the Chairperson:

"We recognise our Shire's rich cultural and religious diversity and we acknowledge and pay respect to the beliefs of all members of our community, regardless of creed or faith."

ABORIGINAL RECOGNITION

Statement by the Chairperson:

"We recognise the traditional inhabitants of the land we are meeting on tonight, the Darug and Guringai Aboriginal people, and respect is paid to their elders and their heritage."

AUDIO RECORDING OF COUNCIL MEETING

Statement by the Chairperson:

"I advise all present that tonight's meeting is being audio recorded for the purposes of providing a record of public comment at the meeting, supporting the democratic process, broadening knowledge and participation in community affairs, and demonstrating Council's commitment to openness and accountability. The recordings will be made available on Council's website once the Minutes have been finalised. All speakers are requested to ensure their comments are relevant to the issue at hand and to refrain from making personal comments or criticisms."

APOLOGIES / LEAVE OF ABSENCE

POLITICAL DONATIONS DISCLOSURE

Statement by the Chairperson:

"In accordance with Section 147 of the Environmental Planning and Assessment Act 1979, any person or organisation who has made a relevant planning application or a submission in respect of a relevant planning application which is on tonight's agenda, and who has made a reportable political donation or gift to a Councillor or employee of the Council, must make a Political Donations Disclosure Statement."

If a Councillor or employee has received a reportable political donation or gift from a person or organisation who has made a relevant planning application or a submission in respect of

a relevant planning application which is on tonight's agenda, they must declare a non-pecuniary conflict of interests to the meeting, disclose the nature of the interest and manage the conflict of interests in accordance with Council's Code of Conduct."

DECLARATIONS OF INTEREST

Clause 52 of Council's Code of Meeting Practice (Section 451 of the Local Government Act, 1993) requires that a councillor or a member of a Council committee who has a pecuniary interest in a matter which is before the Council or committee and who is present at a meeting of the Council or committee at which the matter is being considered must disclose the nature of the interest to the meeting as soon as practicable. The disclosure is also to be submitted in writing (on the form titled "Declaration of Interest").

The Councillor or member of a Council committee must not be present at, or in sight of, the meeting of the Council or committee:

- (a) at any time during which the matter is being considered or discussed by the Council or committee.*
- (b) at any time during which the Council or committee is voting on any question in relation to the matter.*

Clause 51A of Council's Code of Meeting Practice provides that a Councillor, Council officer, or a member of a Council committee who has a non pecuniary interest in any matter with which the Council is concerned and who is present at a meeting of the Council or committee at which the matter is being considered must disclose the nature of the interest to the meeting as soon as practicable. The disclosure is also to be submitted in writing (on the form titled "Declaration of Interest").

If the non-pecuniary interest is significant, the Councillor must:

- a) remove the source of conflict, by relinquishing or divesting the interest that creates the conflict, or reallocating the conflicting duties to another Council official.*

OR

- b) have no involvement in the matter by absenting themselves from and not taking part in any debate or voting on the issue as if the provisions of Section 451(2) of the Act apply.*

If the non-pecuniary interest is less than significant, the Councillor must provide an explanation of why they consider that the interest does not require further action in the circumstances.

CONFIRMATION OF MINUTES

THAT the Minutes of the Planning Meeting held on 1 September, 2010 be confirmed; a copy having been distributed to all Councillors.

PETITIONS

MAYORAL MINUTES**NOTICES OF MOTION****RESCISSION MOTIONS****Page Number 1****Item 1 RM1/10 PLN35/10 DEVELOPMENT APPLICATION - SUBDIVISION OF ONE LOT INTO TWO - LOT 9, DP 7484 (NO. 39) HANNAH STREET, BEECROFT****COUNCILLOR MCMURDO TO MOVE**

THAT the resolution adopted at the Planning Meeting held on 1 September 2010 in respect of Item Number 2, PLN35/10 Development Application – Subdivision of One Lot Into Two – 39 Hannah Street, Beecroft namely:-

THAT

- A. Development Application No. 1470/2009 for the subdivision of one lot into two at Lot 9 DP 7484 (No. 39) Hannah Street, Beecroft be approved subject to the conditions of consent detailed in Schedule 1 of Executive Manager's Report No. PLN35/10 as amended by the following requirements:

1. Condition No. 15 be amended to read:

15. Screening of Turning Head

A solid 1.5m high lapped and capped timber fence (or a similar decorative solid fence to the written satisfaction of the owner of 37A Hannah Street) measured from the top of the pavement, must be fixed to the eastern side of the turning head where the turning head is elevated more than 300mm above ground level.

- B. The Executive Manager, Environment be requested to review the appropriateness of the offset values and calculations specified in the Offsets Code to determine whether they accurately reflect the value for offsetting the loss of bushland as a result of development proposals.

be, and is hereby rescinded.

NOTE: The above Recission Motion is supported by COUNCILLORS MARTIN and HUTCHENCE

NOTE: In the event of the proposed Rescission Motion being adopted, the following motion is proposed.

1. "The proposed subdivision is unsatisfactory in respect to Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act, 1979 as the proposal does not comply with the Residential Subdivision Development Control Plan.

- 1.1 The proposed removal of trees on the site does not comply with the landscaping element objective to preserve significant trees, groups of trees and trees that add to the environmental character of the area or natural vegetation.
2. The proposed subdivision is unsatisfactory in respect to Section 79C(1)(b) of the Environmental Planning and Assessment Act, 1979 as the proposal would result in the loss of a significant group of trees identified as Blue Gum High Forest, a critically endangered ecological community.
 - 2.2 The proposed offset for the loss of the Blue Gum High Forest community on the site is inconsistent with Council's Green Offset Policy.
 - 2.3 The proposal would effectively negate the viability of the site to support Blue Gum High Forest.
3. The proposal is unsatisfactory in respect to Section 79C(1)(e) of the Environmental Planning and Assessment Act, 1979 as the proposal is not in the public interest.

MATTERS OF URGENCY

ITEMS PASSED BY EXCEPTION / CALL FOR SPEAKERS ON AGENDA ITEMS

Note:

Persons wishing to address Council on matters which are on the Agenda are permitted to speak, prior to the item being discussed, and their names will be recorded in the Minutes in respect of that particular item.

DEVELOPMENT APPLICATIONS

A WARD DEFERRED

A WARD

Page Number 3

**Item 2 PLN51/10 DEVELOPMENT APPLICATION - MEDIUM DENSITY
MULTI-UNIT HOUSING DEVELOPMENT - 25 - 29 TURNER ROAD
BEROWRA HEIGHTS**

RECOMMENDATION

THAT Development Application No. 616/2010 for a multi-unit housing development comprising ten townhouses at Lot 100 DP 1043150, Nos. 25 – 29 Turner Road, Berowra Heights be approved subject to the conditions of consent detailed in Schedule 1 of this report.

Page Number 31

- Item 3 PLN63/10 DEVELOPMENT APPLICATION - ALTERATIONS AND ADDITIONS TO AN EXISTING CHURCH - 155-157 GALSTON ROAD HORNSBY HEIGHTS**

RECOMMENDATION

THAT Development Application No. 819/2010 for alterations and additions to an existing church at Lots 1, 2 & 3 DP 221543 (Nos. 155-157) Galston Road, Hornsby Heights be approved subject to the conditions of consent detailed in Schedule 1 of this report.

Page Number 61

- Item 4 PLN67/10 DEVELOPMENT APPLICATION - MIXED USE BUILDING COMPRISING NINE RESIDENTIAL UNITS AND ONE COMMERCIAL UNIT - 1 AND 3 HALDANE STREET, ASQUITH**

RECOMMENDATION

THAT Council assume the concurrence of the Director-General of the Department of Planning pursuant to State Environmental Planning Policy No. 1 and approve Development Application No. 603/2010 for demolition of existing structures, construction of a part two and part three storey building comprising nine residential units and one commercial unit with basement car parking and strata subdivision at Lot 26 and 25 DP 8797, Nos. 1-3 Haldane Street, Asquith subject to the conditions of consent detailed in Schedule 1 of this report.

B WARD DEFERRED

B WARD

C WARD DEFERRED

C WARD

Page Number 91

- Item 5 PLN39/10 DEVELOPMENT APPLICATION – DWELLING-HOUSE - 54B BEECROFT ROAD, BEECROFT**

RECOMMENDATION

THAT Development Application No. DA/364/2010 for the erection of a single storey dwelling-house at Lot 11, DP 1123895, No. 54B Beecroft Road, Beecroft, be refused for the reasons detailed in Schedule 1 of this report.

Page Number 102**Item 6 PLN24/10 DEVELOPMENT APPLICATION - MIXED USE BUILDING
COMPRISING FIVE RESIDENTIAL UNITS AND ONE COMMERCIAL
UNIT - 22 OXFORD STREET EPPING****RECOMMENDATION**

THAT Council assume the concurrence of the Director-General of the Department of Planning pursuant to State Environmental Planning Policy No. 1 and approve Development Application No. 253/2010 for the demolition of an existing building and the erection of a four storey building comprising five residential units and one commercial unit with ground level car parking at Lot 4 DP 10221 (No. 22) Oxford Street Epping, subject to the conditions of consent detailed in Schedule 1 of this report.

GENERAL BUSINESS**Page Number 140****Item 7 PLN69/10 KANGAROO POINT PLANNING PROPOSAL - REPORT ON
SUBMISSIONS****RECOMMENDATION**

THAT:

1. Council forward the attached Kangaroo Point Planning Proposal to the Minister for Planning for gazettal pursuant to Section 59 of the Environmental Planning and Assessment Act 1979.
2. Council prepare amendments to the Kangaroo Point Community Masterplan in the Brooklyn Development Control Plan to aim to ensure that any future commuter berthing facility is limited to a maximum of 25 boats of up to 4.5m in length and within the existing wet lease area (Licence No. L201707).
3. Any future provision of commuter berthing and car parking at Kangaroo Point be funded by river residents (including the land value component) and the detailed financial arrangements concerning the acquisition, construction and occupation of a commuter berthing proposal at Kangaroo Point be the subject of further discussion and a report to Council.
4. Submitters be advised of Council's resolution.

SUPPLEMENTARY AGENDA**CONFIDENTIAL ITEMS****QUESTIONS OF WHICH NOTICE HAS BEEN GIVEN****QUESTIONS WITHOUT NOTICE**

**1 PLN35/10 DEVELOPMENT APPLICATION - SUBDIVISION OF ONE LOT INTO TWO
LOT 9, DP 7484 (NO. 39) HANNAH STREET, BEECROFT**

COUNCILLOR MCMURDO TO MOVE

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THAT

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A solid 1.5m high lapped and capped timber fence (or a similar decorative solid fence to the written satisfaction of the owner of 37A Hannah Street) measured from the top of the pavement, must be fixed to the eastern side of the turning head where the turning head is elevated more than 300mm above ground level.

- B. The Executive Manager, Environment be requested to review the appropriateness of the offset values and calculations specified in the Offsets Code to determine whether they accurately reflect the value for offsetting the loss of bushland as a result of development proposals.

be, and is hereby rescinded.

NOTE: The above Recission Motion is supported by COUNCILLORS MARTIN and HUTCHENCE

NOTE: In the event of the proposed Rescission Motion being adopted, the following motion is proposed.

1. "The proposed subdivision is unsatisfactory in respect to Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act, 1979 as the proposal does not comply with the Residential Subdivision Development Control Plan.

- 1.1 The proposed removal of trees on the site does not comply with the landscaping element objective to preserve significant trees, groups of trees and trees that add to the environmental character of the area or natural vegetation.

2. The proposed subdivision is unsatisfactory in respect to Section 79C(1)(b) of the

Environmental Planning and Assessment Act, 1979 as the proposal would result in the loss of a significant group of trees identified as Blue Gum High Forest, a critically endangered ecological community.

- 2.2 The proposed offset for the loss of the Blue Gum High Forest community on the site is inconsistent with Council's Green Offset Policy.
- 2.3 The proposal would effectively negate the viability of the site to support Blue Gum High Forest.
3. The proposal is unsatisfactory in respect to Section 79C(1)(e) of the Environmental Planning and Assessment Act, 1979 as the proposal is not in the public interest.

Attachments:

1. Attachment

File Reference: DA/1470/2009

Document Number: D01484947

**2 DEVELOPMENT APPLICATION - MEDIUM DENSITY MULTI-UNIT
HOUSING DEVELOPMENT
25 - 29 TURNER ROAD BEROWRA HEIGHTS**

Development Application No:	DA/616/2010
Description of Proposal:	Medium Density Multi-unit Housing Development comprising ten townhouses and basement carpark
Property Description:	Lot 100 DP 1043150 (Nos. 25 – 29) Turner Road, Berowra Heights
Applicant:	Mr Paul Viscardi
Owner:	Allengreen Apartments Pty Ltd
Statutory Provisions:	Hornsby Shire Local Environmental Plan 1994 – Business A (General) Zone
Estimated Value:	\$ 2.5 million
Ward:	A

RECOMMENDATION

THAT Development Application No. 616/2010 for a multi-unit housing development comprising ten townhouses at Lot 100 DP 1043150, Nos. 25 – 29 Turner Road, Berowra Heights be approved subject to the conditions of consent detailed in Schedule 1 of this report.

EXECUTIVE SUMMARY

1. The application proposes the erection of ten, two-storey townhouses with an associated basement car park.
 2. The proposal generally complies with the provisions of the Hornsby Shire Local Environmental Plan 1994 and Council's Medium-Density Multi-Unit Housing Development Control Plan.
 3. The proposal does not comply with the provisions of the Turner Road Commercial Centre Masterplan contained within Council's Business Lands Development Control Plan as it does not provide for a mixed-use development on the subject property.
 4. Two submissions have been received in respect of the application.
 5. It is recommended that the application be approved.
-

HISTORY OF THE SITE

On 13 November 2001 Council approved DA/2023/2001 for the subdivision of one allotment into two. The subject property (Lot 100 DP 1043150) was created as a result of this subdivision.

On 18 December 2002 Council refused DA/1838/2002 for the erection of a three-storey residential flat building comprising twenty-eight units and basement car parking. An appeal was lodged with the Land and Environment Court against Council's deemed refusal of the application. On 11 July 2003 the Land and Environment Court dismissed the appeal.

On 3 March 2004 Council refused DA/1906/2003 for the erection of a three-storey mixed use development comprising ten commercial units, sixteen residential units and basement car parking.

On 3 August 2005 Council refused DA/1587/2004 for the erection of a three-storey mixed used development comprising seven commercial units, fifteen residential units and basement car park.

On 6 April 2006 Council adopted the Turner Road Commercial Centre Masterplan. The subject property formed a part of this Masterplan.

THE SITE

The subject property is a vacant allotment located on the south-western side of Turner Road at its intersection with Kita Road and Cambewarra Crescent. It has an area of 2458 sq metres.

The site is 'L' shaped, with frontages of 88 metres and 51 metres to Turner and Kita Roads, respectively. The allotment slopes gradually (2.9 % slope) towards the northern corner at the junction of the three roads. One mature pine tree is located within the road reserve at the northern corner of the site.

Access to the site is provided via a 11.5 metre wide driveway along the south-eastern boundary of the property. The driveway narrows to 6.2 metres and continues across part of the south-western boundary. This section of the site is burdened by a right-of-carriageway benefitting the shopping centre that adjoins the southern side of the property. This right-of-way provides access to the hardware store within the shopping centre and to a section of the basement carpark.

The site is surrounded by predominantly single and two storey dwellings and commercial development.

The Berowra Village Centre and Marketplace shopping centre are within close proximity and the site is adjoined to the rear by a commercial warehouse development. Commercial development in the business precinct comprises a mixture of one and two storey buildings.

THE PROPOSAL

The proposal involves the erection of ten, two-storey townhouses comprising a medium density multi-unit housing development. The development is proposed to be in three blocks. Six attached townhouses front Turner Road and four townhouses front Kita Road, located in two separate blocks divided by the proposed driveway. Units 1 to 4 would have a floor area of 127 sq metres and Units 5 to 10 would have a floor area of 121.5 sq metres.

Each townhouse would have a typical floor plan with the primary living areas located on the ground floor and three bedrooms located on the upper floor. Each unit would include landscaped courtyards with pergolas fronting the street with individual pedestrian access and private open space areas at the rear. The development would incorporate one adaptable unit in the complex. The maximum building height would be 7.5 metres above natural ground level.

Car parking for the development is provided at the basement level. Vehicular access is provided by a 6 metre wide driveway off Kita Road. Double garages are provided for each unit. Stairs would provide access from the garages to the living areas of the individual units. Two visitors' parking spaces are provided for the development.

Stormwater is to be collected and piped to an on-site detention system and drained to Kita Road. The upper surface of the detention tank would be tiled and landscaped for use as a common recreation area for the residents of the complex. The area would be accessed via two pathways from Kita Road and Turner Road.

ASSESSMENT

The development application has been assessed having regard to the '2005 City of Cities Metropolitan Strategy', the 'North Subregion (Draft) Subregional Strategy' and the matters for consideration prescribed under Section 79C of the *Environmental Planning and Assessment Act 1979* (the Act). Subsequently, the following issues have been identified for further consideration.

1. STRATEGIC CONTEXT

1.1 Metropolitan Strategy – (Draft) North Subregional Strategy

The Metropolitan Strategy is a broad framework to secure Sydney's place in the global economy by promoting and managing growth. It outlines a vision for Sydney to 2031; the challenges faced, and the directions to follow to address these challenges and achieve the vision. The draft North Subregional Strategy acts as a framework for Council in the preparation of a new Principal LEP by 2011.

The draft Subregional Strategy sets the following targets for the Hornsby LGA by 2031:

- Employment capacity to increase by 9,000 jobs; and
- Housing stock to increase by 11,000 dwellings.

The proposed development would be consistent with the draft Strategy by providing ten additional medium density residential units and would improve housing choice in the locality.

2. STATUTORY CONTROLS

Section 79C(1)(a) requires Council to consider "*any relevant environmental planning instruments, draft environmental planning instruments, development control plans, planning agreements and regulations*".

2.1 Hornsby Shire Local Environmental Plan 1994

The subject land is zoned Business A (General) Zone under the Hornsby Shire Local Environmental Plan 1994 (HSLEP). The objectives of the zone are:

- (a) *to encourage economic growth and employment opportunities.*
- (b) *to accommodate the retail, commercial and social needs of the community.*
- (c) *to encourage development that improves the health, vitality, cultural environment and social environment within the area.*

The proposed development is defined as “multi-unit housing” under the HSLEP and is permissible in the zone with Council’s consent.

The proposed development involves medium density residential development in an area which is well serviced by retail and commercial uses. The proposal would support and strengthen the economy of the businesses in the locality. It would accommodate the social needs of the community and improve the health, vitality, cultural and social environment of this area. Given the above, it is considered that the proposal is not inconsistent with the zone objectives. (This matter has been discussed in detail in section 2.7.1 of this report.)

Clause 15(2) of the HSLEP prescribes that the maximum floor space ratio (FSR) of development for the purpose of multi-unit housing only within the Business A zone is 0.6:1. The applicant addresses this requirement by proposing a FSR of 0.5:1.

Clause 18 of the HSLEP sets out heritage conservation provisions within the Hornsby area. The street trees within the Turner Road reserve and the property at No. 24 Turner Road are listed as heritage items of local significance pursuant to Schedule D of the HSLEP.

An assessment of the impact of the development on the heritage item identified that no trees within the road reserve directly adjoin the site. The proposal would not have any impact on the heritage listed trees. The house at No. 24 Turner Road is located on the opposite side of the road and at a considerable distance from the proposed development. Accordingly, it is concluded that the development would not result in any adverse impact on the heritage significance of this item and is assessed as satisfactory in this regard.

2.2 State Environmental Planning Policy No. 55 - Remediation of Land

The application has been assessed against the requirements of State Environmental Planning Policy No. 55. This Policy provides State-wide planning controls for soil contamination and proposed remedies.

The site has been vacant and does not have a history of land uses which would typically result in soil contamination. Accordingly no further assessment in this regard is considered necessary.

2.3 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 units and is considered to be satisfactory.

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

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

The proposal is consistent with the environmental capability of the site and includes a satisfactory Stormwater Management Plan. Subject to implementation of recommended conditions relating to sediment and erosion control, the development would prevent adverse impacts on water quality. The development complies with SREP 20 in this regard.

2.5 Berowra Cowan Development Control Plan

The application has been assessed against the requirements of Berowra Cowan Development Control Plan. The Plan aims to provide a detailed planning strategy and development guidelines to protect the natural and built environment of the Berowra Heights area. The compliance of the proposal with the relevant strategies within this DCP are discussed below:

2.5.1 Residential Strategy

The proposed development complies with the Residential Strategy element of the DCP as it would provide medium density housing in an area which is connected to a bus route and is located in close proximity to the commercial, retail and medical facilities of Berowra Heights.

2.5.2 Commercial Strategy

The Commercial strategy of the DCP identifies that development should make efficient use of under-utilized land and encourage integration of housing within the business precincts wherever possible. The Turner Road Commercial Centre Masterplan, incorporated in the Berowra Cowan Development Control Plan, applies to the subject site. The matter has been discussed in section 2.7 of this report.

2.6 Business Lands Development Control Plan

The application has been assessed against the requirements of the Business Lands Development Control Plan (BLDCP). The BLDCP applies to the site, being located in a Business A Zone. The BLDCP provides guidelines primarily for commercial developments. The relevant matters have been discussed in section 2.7 and 2.8 of this report.

2.7 Turner Road Commercial Centre Masterplan

The Turner Road Commercial Centre Masterplan provides planning principles, strategies and the specific development controls for the locality. Compliance of the proposal with the development controls within the Masterplan is discussed below:

2.7.1 Desired Future Character

The Masterplan envisages the continuation of commercial uses within Area 3 of the Turner Road commercial centre and identifies the subject property to be suitable for two-storey mixed use (commercial/residential) development with below ground car parking, landscape treatment and integration with the adjoining IGA shopping complex.

While the proposal incorporates a two storey development with basement car parking in accordance with the Masterplan, the proposed medium density townhouse style residential development does not incorporate mixed use development in accordance with the Masterplan. The applicant has provided a detailed Economic Assessment report to support this non-compliance. The report notes the following:

- *There is approximately 6300 sq metres of existing retail floor space in Berowra and Brooklyn at a rate of 550 sq metres per 1000 persons.*
- *The best performing speciality retailers would continue to be located within the Berowra Village Shopping Centre on Turner Road, benefitting from their proximity to Coles.*
- *The subject property is relatively isolated from both Coles and the existing IGA shopping centres. The lack of connectivity with these retail anchors would limit the attractiveness for prospective commercial tenants for the site.*
- *Due to the continued “pull” of higher order departmental stores and speciality retail in Hornsby, there would be limited scope on economic grounds of developing further speciality retail or commercial development in the area.*

On the basis of the above, the applicant’s economic assessment concludes that Berowra is well supplied with retail floor space and that the demand for retail or commercial floor space on the subject site is very limited. The tightly contained urban footprint of Berowra would result in limited housing and population growth in the future, equating to limited retail demand. In the event that further retail and commercial floor space is constructed on the subject site, the tenancies would experience a high level of vacancy.

In addition to the above report provided by the applicant, it is noted that the Kuring-Gai and Hornsby Subregional Employment Study (May 2008) also considers commercial and retail development prospects in the Berowra and Berowra Heights area. The report indicates that within the Berowra Heights Commercial Centre, there is a floorspace supply potential of 13,242 sq metres. In light of the forecast demand in the 2006-2031 periods, the centre has an excess supply of 13,335 sq metres, the floorspace supply potential being more than ten times the demand. The Study recommends that some of the employment lands should be rezoned in the future to reduce this excess floorspace supply.

It is considered that the proposal would cater to the current market demand and comply with the Metropolitan Strategy by improving housing choice in the locality. The proposed medium density development would integrate well with the existing commercial and retail floor space within the commercial centre and increase the number of potential users. The proposal as such complies with the overall vision of the precinct to introduce townhouse style, low scale developments integrating with the surrounding low density character of the locality.

Given the above, the non-compliance with regard to the Masterplan is considered acceptable.

2.7.2 Design Objectives and Height

The development would result in a two-storey development blending with the adjoining low-density areas in accordance with the design objectives of the Masterplan. The dwelling units would not overshadow public areas. The design would result in a well defined corner treatment and appropriate landscaping along the Turner Road frontage with space for

additional tree planting within the front setback areas of the dwelling units. The proposal would result in liveable space in accordance with good environmental practices.

2.7.3 Site Amalgamation

‘Area 3’ comprises an existing shopping village and the subject property, which is vacant. Amalgamation of the two sites is not feasible and is inconsistent with Council’s previous decision to approve the subdivision of the land. The development retains the existing right-of-way providing access to a section of the adjoining shopping village and would not prevent the redevelopment of the adjoining sites.

2.7.4 Building Design

The proposed development would not comply with the desired form within the Masterplan as it would not incorporate ground floor retail and commercial premises. However, it provides landscaped areas in accordance with that identified in the Masterplan and provides active street frontage as pedestrian access to the individual units have been provided from the street.

The roof form would comprise a combination of pitched and gabled rooflines. The proposed colours and materials would be face brickwork as preferred in the Masterplan. The front elevations of each of the units would incorporate a balcony at the upper level and pergolas at the lower level fronting the street. The proposal incorporates underground parking that does not protrude above natural ground, reducing the overall bulk of the development.

2.7.5 Setbacks

The Masterplan specifies zero setbacks to street frontages and a 10 metre setback to the corner of Kita Road and Turner Road. The setbacks are specified considering the future developments to be retail/commercial in nature with shop-top housing. It is noted that the Medium Density Multi-unit Housing Development Control Plan requires a minimum 6 metres front setback for townhouse style development.

In order to achieve a balance between the two requirements, the development proposes a front setback of 3 to 3.5 metre to the street frontages. A section of the upper level balcony would encroach within the front setback and the proposed pergolas would have a zero setback to the street (Turner Road frontage). This would ensure active street frontage along with scope for landscaping along the entire frontage of the site. The proposal also retains a 5 metre setback to the corner which is to be landscaped. The entrance patio and the upper level balcony of Unit 4 would be located at this corner to provide a distinct design element for the development.

2.7.6 Street Level Design

The design of the townhouses includes a well articulated façade to achieve a varied built form and avoid a monotonous streetscape. The design would maintain a continuous frontage as desired in the Turner Road Commercial Centre Masterplan and clearly define the corner.

The design also includes only one vehicular access from Kita Road to avoid break up in the streetscape and also to minimise vehicular conflict within Turner Road.

2.7.7 Safety and Security

The townhouses are designed to provide an active street frontage. Balconies and windows are provided at the front and the rear respectively for passive surveillance by residents. Individual garages have been provided with lock up facilities. Access to the units is located inside the garages to provide additional safety. The right-of-way providing access to the shopping complex is separated from the proposed development to provide additional security for the residents.

The development is assessed as satisfactory against safety and security provisions as outlined within the Masterplan.

2.7.8 Acoustics

To maintain acoustic privacy for future residents, the design of the development and the site layout incorporates the following acoustic attenuation measures:

- The family areas on the ground floor and two bedrooms on the first floor have been located fronting the rear yard.
- A 1.2 metre high masonry retaining wall (supporting the raised rear yards) topped with a 1.5 metre high timber fence is provided along the southern-western and south-eastern boundaries.
- The units are setback 3 metres from the Turner Road frontage.

The above design elements would contribute towards maintaining acoustic privacy to the future occupants and are considered satisfactory.

2.8 Medium Density Multi-Unit Housing Development Control Plan

The proposed development is to be located within a Business Zone and the Medium Density Multi-Unit Housing Development Control Plan (Housing DCP) does not apply to this site. However the application proposes medium density residential development only. Therefore, it has been assessed having regard to the relevant performance and prescriptive design standards within Council's Housing DCP as a guide only. The following table sets out the proposal's compliance with the prescriptive standards of the Plan:

Medium Density Multi-Unit Housing Development Control Plan			
Control	Proposal	Requirement	Compliance
Density	10 dwellings/2458m ²	10 dwellings/2260m ²	Yes
Minimum frontage	30m (min)	81m (Turner Road) and 42m (Kita Road)	Yes
Site Cover	31.5%	40%	Yes
Height to ceiling	5.5m	7m	Yes

Open Space			
Unit 1	84m ²	80m ²	Yes
Unit 2	65.8m ²	80m ²	No
Unit 3	68m ²	80m ²	No
Unit 4	87m ²	80m ²	Yes
Unit 5	70m ²	60m ²	Yes
Unit 6	60m ²	60m ²	Yes
Unit 7	60m ²	60m ²	Yes
Unit 8	60m ²	60m ²	Yes
Unit 9	60.4m ²	60m ²	Yes
Unit 10	61.4m ²	60m ²	Yes
Car parking	2 spaces/unit	2 spaces/unit	Yes
Visitors' Parking	2 spaces	2 spaces@ 1 space/5 dwellings	Yes
Dimension of double garage	6m x 5.6m	6m x 5.6m	Yes
Minimum headroom for car parking	2.4m	2.3m	Yes

As detailed in the above table, the proposed development does not comply with a number of prescriptive standards within Council's Housing DCP. The matters of non-compliance are detailed below, as well as a brief discussion on compliance with relevant performance standards.

2.8.1 Density

The proposal involves two types of medium density residential units. Units 1 to 4 would have gross floor area of 127 sq metres (extra large dwellings) and Units 5 to 10 would have a gross floor area of 121.5 sq metres (large dwellings). Council's Housing DCP requires the minimum site area for large dwellings to be 210 sq metres and that for extra large dwellings to be 250 sq metres.

The proposal complies with the density requirement as detailed in the above table and is acceptable with regard to density.

2.8.2 Privacy

The design of the development aims at maintaining visual privacy of the proposed units. The rear sections of the yards of each of the units have been raised by 1 to 1.2 metres above the level of the primary living areas. A 1.5 to 1.8 metre high fence would be located above this raised area to visually screen the ground level family and recreational areas from the rear driveway and the shopping centre. The units do not include balconies to avoid overlooking opportunities. Screen planting is proposed along the boundaries separating the private open space areas for the individual units to minimise overlooking from the first floor of the adjoining units.

The proposed development is considered acceptable in regard to privacy and satisfies the element objective.

2.8.3 Solar Access

The DCP requires that all medium density multi-unit housing developments should provide at least three hours of solar access to 50% of the private open spaces and to the north facing windows of the proposed and adjacent dwellings between 9 am and 3 pm during winter solstice.

Unit 1 and 2 do not comply with the requirements of the Housing DCP with regard to solar access. Units 3 to 10 would provide satisfactory solar access to the private open space areas during winter solstice.

The layout of the site is such that units 5 to 10 would be orientated in a north-south direction and units 1 to 4 would be orientated in an east-west direction. In order to improve the Turner Road and Kita Road streetscape and avoid high fences, the dwelling units cannot be designed to provide a northerly aspect to the private open space areas.

In this regard, it is noted that The Australian Model Code for Residential development (AMCORD) requires two hours of solar access to the ground level private open space areas (for areas with temperate and cool climate). Given that both Units 1 and 2 would provide at least two hours of solar access to the ground level private open space and that the rear yards of 80% of the units would receive in excess of three hours of solar access during winter solstice, the proposal is considered to be acceptable.

The living area windows for the dwelling units have been orientated to the north wherever possible and would receive more than three hours of solar access during Winter Solstice.

2.8.4 Open Space

The Housing DCP requires that 60 sq metres of private open space be provided to units with gross floor area of 85 to 125 sq metres and 80 sq metres of private open space be provided to units with gross floor area greater than 125 sq metres.

The private open spaces for Units 2 and 3 are 65.8 and 68 sq metres respectively and do not comply with the Housing DCP requirement of 80 sq metres. The applicant has argued that the proposed gross floor area for units 2 and 3 are 127.5 sq metres. Therefore, they can be considered as large dwellings rather than extra large dwellings as categorised in the Housing DCP and the provision of private open space in excess of 60 sq metres is considered to be satisfactory for such units. Numerical compliance with the 80 sq metres requirement is not considered necessary in this case.

The above argument is considered reasonable as proposed Units 1 to 4 are considered to be similar to large dwellings. Further, the dwelling units maintain landscaped setbacks in the front to improve the streetscape, which has contributed towards reducing the rear yard areas. The proposal is assessed as satisfactory with regard to open space.

2.8.5 Vehicle Access and Parking

The development incorporates underground parking provisions with access from Kita Road in accordance with the Turner Road Commercial Centre Masterplan. Each unit is provided

with two car spaces located within lock up garages in the basement level. The proposal also includes provisions for two visitors' car parking spaces.

The development is provided with a separate vehicular access and does not intensify the use of the right-of-way by the shopping centre. This is considered to be suitable as it would reduce vehicular conflict between the two uses and also maintain acoustic privacy for the future residents. Vehicular access to the site from Kita Road is considered to be a preferred design outcome as Turner Road is a busy road and further vehicular crossings may compromise traffic safety.

2.8.6 Fencing

The proposal does not include a front fence. However, a section of the fence enclosing the private open space for Unit 4 would be visible from the Turner Road frontage. A condition is recommended that the fence be setback a minimum 2 metres from the property boundary fronting Turner Road and be screened by suitable landscaping.

2.8.7 Waste Management

The applicant proposes that the waste collection bins to be stored in the garages of the individual units and then be wheeled to the Kita Road frontage for collection. There is sufficient street frontage in Kita Road to accommodate the bins for collection.

In addition to the individual bins, a common bin storage area is also proposed in the basement for recycled items, white goods and green waste. This area would not have garbage truck access and would be occasionally used by the future occupants of the site.

2.9 Car Parking Development Control Plan

The application has been assessed against the requirements of Council's Car Parking Development Control Plan. The application satisfies Council's requirements with regard to car parking as discussed in section 2.7 of this report.

2.10 Access and Mobility Development Control Plan

The proposed development has been assessed having regard to the relevant performance and prescriptive design standards within Council's Access and Mobility Development Control Plan (the Mobility DCP). The following table sets out the proposal's compliance with the relevant prescriptive standards of the Plan:

Access and Mobility Development Control Plan			
Control	Proposal	Requirement	Compliance
Width of stairs	1000mm	1250mm	Yes
Density	1 unit	1 per 5-10 units	Yes
Entrance door width	920mm minimum	760mm minimum	Yes
Width of car space	3.2m	3.2m minimum	Yes

As indicated in the above table the development includes one adaptable unit. A chair lift is to be installed on the stairs of this unit to provide barrier free access to all levels of the unit. Toilet facilities are provided on the ground floor for disabled access. The unit would include a double garage with sufficient space in between two cars to accommodate a wheel chair. Should the garage be utilised for parking one car, the minimum width would be greater than 3.2 metres.

A condition of consent is recommended to maintain a clear opening of 3.2 metres for the garage of the adaptable unit. Subject to the implementation of this condition, the development is considered acceptable with regard to disabled access.

2.11 Waste Management and Minimisation Development Control Plan

The proposal includes a waste management plan and details of on-going waste management on site and is assessed as satisfactory.

2.12 Sustainable Water Development Control Plan

Subject to sediment and erosion control measures being implemented on site during construction, the proposal would comply with the requirements contained within the Sustainable Water Development Control Plan.

2.13 Section 94 Contributions Plan

Council's Section 94 Plan applies to the development as it would result in the generation of additional residential floor space and car parking requirements on the site.

The requirement for a monetary Section 94 contribution has been imposed as a recommended condition of development consent.

3. ENVIRONMENTAL IMPACTS

Section 79C(1)(b) of the Act requires Council to consider *“the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality”*.

3.1 Natural Environment

3.1.1 Trees

The proposed development would not necessitate the removal of any trees from the site. A significant pine tree is located on the landscape verge at the corner of Turner Road and Kita Road. A condition of consent is recommended regarding the retention of this tree.

Subject to the implementation of the above condition the development would not have any adverse impact on the natural environment.

3.1.2 Water

The applicant proposes an on-site-detention system for stormwater management on the site. The on-site detention system is proposed to be located under the common recreational area. The townhouse development would include landscaped areas to minimize the potential of erosion and to re-use stormwater for irrigation purposes.

Subject to compliance with the conditions regarding stormwater management on the site and appropriate sediment-erosion control measures being implemented, the proposal would not have an adverse impact on the water quality of the Hawkesbury-Nepean Catchment.

3.2 Built Environment

The matters in relation to the impact of the development on the built environment have been discussed in section 2 of this report.

The development would provide satisfactory parking arrangements within the site and would not significantly increase traffic generation in the locality. Council's engineering assessment of the traffic impacts of the development is considered to be satisfactory.

3.3 Social Impacts

The development would improve the housing choice in the locality by providing ten additional townhouses that blend with the low-density character of the area. This is consistent with the North Subregion (Draft) Subregional Strategy.

3.4 Economic Impacts

The proposal would have a positive impact on the local economy by generating an increase in demand for local services. The application is supported by an economic impact statement. The matter is discussed in section 2.7 of this report.

4. SITE SUITABILITY

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

The land is not subject to bushfire risk or flooding. The site is considered to be suitable for the proposed development. The suitability of the site for the proposed development is discussed in detail in section 2.7.1 of this report.

5. PUBLIC PARTICIPATION

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

5.1 Community Consultation

The proposed development was placed on public exhibition and was notified to adjoining and nearby landowners between 10/06/2010 and 1/07/2010 in accordance with Council’s Notification and Exhibition Development Control Plan. During this period, Council received two 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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One submission objected to the development, generally on the following grounds:

- The driveway access should be provided from Turner Road rather than Kita Road;
- The proposal would result in further on-street parking on Kita Road;
- The yellow notice has not been placed in an appropriate location.

One submission supported the development and made the following observations:

- The development would provide a suitable development for the locality within the two storey height limit;
- The design suits the locality and underground parking is a preferable option.

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 Yellow Notice

The yellow public exhibition notice was placed at the corner of Turner Road and Kita Road and is considered to be in a suitable location to allow interested residents to comment on the development application.

5.2 Public Agencies

The proposal was not referred to any public agencies for comments.

6. THE PUBLIC INTEREST

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

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

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

CONCLUSION

The proposal seeks approval for the erection of a medium density multi-unit housing development comprising ten, two-storey townhouses on the subject property. It would incorporate a central driveway off Kita Road with underground parking for all units and visitors parking. The proposal retains the existing right-of-way within the site and does not intensify its usage. A separate driveway access is proposed off Kita Road for the future occupants of the site.

The proposed development is to be located within a precinct affected by the Turner Road Commercial Centre Masterplan within Council’s Business Lands Development Control Plan. The nature of the development does not comply with the Masterplan as it does not incorporate any commercial or retail uses. It is demonstrated that further retail or commercial floorspace is not required in Berowra Heights and the proposed development suits the desired future character of the area.

The proposal is consistent with Sydney Regional Environmental Plan No. 20, Hornsby Local Environmental Plan 1994, Council’s Medium Density Multi-unit Housing, Car Parking, Sustainable Water and Access and Mobility Development Control Plans.

Approval of the application is recommended.

Note: At the time of the completion of this planning report, no persons have made a *Political Donations Disclosure Statement* pursuant to Section 147 of the Environmental Planning and Assessment Act 1979 in respect of the subject planning application.

ROD PICKLES
Manager - Assessment Team 2
Planning Division

SCOTT PHILLIPS
Executive Manager
Planning Division

Attachments:

1. Locality Plan
2. Survey Plan
3. Floor Plans
4. Elevations and Sections
5. Landscape Plan
6. Stormwater Management Plans
7. Shadow Diagram
8. Schedule of Finishes

File Reference: DA/616/2010
Document Number: D01439561

SCHEDULE 1**GENERAL CONDITIONS**

The conditions of consent within this notice of determination have been applied to ensure that the use of the land and/or building is carried out in such a manner that is consistent with the aims and objectives of the relevant legislation, planning instruments and Council policies affecting the land and does not disrupt the amenity of the neighbourhood or impact upon the environment.

Note: For the purpose of this consent, the term 'applicant' means any person who has the authority to act on or the benefit of the development consent.

Note: For the purpose of this consent, any reference to an Act, Regulation, Australian Standard or publication by a public authority shall be taken to mean the gazetted Act or Regulation, or adopted Australian Standard or publication as in force on the date that the application for a construction certificate is made.

1. Approved Plans and Supporting Documentation

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

<i>Plan No.</i>	<i>Drawn by</i>	<i>Dated</i>
Existing Site Plan – 1B	Frank Kosztelnik and Associates	April 2010
Basement Plan – 2B	Frank Kosztelnik and Associates	April 2010
Ground Floor Plan – 3B	Frank Kosztelnik and Associates	April 2010
First Floor Plan – 4B	Frank Kosztelnik and Associates	April 2010
Roof Plan – 5B	Frank Kosztelnik and Associates	April 2010
Detailed plan, Adaptable unit details, Elevations and Sections Plan – 6B	Frank Kosztelnik and Associates	April 2010
Elevations – 7B	Frank Kosztelnik and Associates	April 2010
Bin Storage Detail - 11A	Frank Kosztelnik and Associates	April 2010
Landscape Plan	Arthur Lathouris	May 2010
Stormwater drainage Plan Ground Floor – C-1606-01	Pavel Kozarovski	18/05/2010
Stormwater drainage Plan Ground Floor – C-1606-02	Pavel Kozarovski	18/05/2010
Shadow Diagrams	Frank Kosztelnik and Associates	April 2010

<i>Document No.</i>	<i>Prepared by</i>	<i>Dated</i>
External Finishes and Colours	-	-
Schedule of Finishes	Frank Kosztelnik and Associates	Received by Council on 10/9/2010
BASIX Certificate - 309497M	-	28/04/2010

Waste Management Plan	-	26/05/2010
Statement of Environmental Effects	Berzins Environmental Planning Pty Ltd	May 2010

2. Amendment of Plans

- a. The approved plan “*Bin Storage Detail - 11A*” drawn by Frank Kosztelnik and Associates dated April 2010 is to be amended as follows:
 - i. A Bin storage area is to be provided within the garage for each unit in the basement to house one 140 litre garbage bin (560 mm x 608 mm x 929 mm), one 240 litre recycling bin (715 mm x 580 mm x 1080 mm) and one 240 litre green waste bin (715 mm x 580 mm x 1080 mm).
- b. The approved “*Landscape Plan*” drawn by Arthur Lathouris dated May 2010 is to be amended as follows:
 - i. The fence enclosing the private open space of unit 4 fronting Turner Road is to be setback a minimum 2 metres from the property boundary.
 - ii. The landscape plan is to include the amended floor plan layout as approved in Condition 1 of this development consent.
 - iii. Screen planting along the southern fence of Units 6 to 10 and western fence of units 1 to 5 (within the private open space areas) must include *Syzigium australe* ‘Select Form’ or similar native species capable of reaching a mature height of 3 metres planted at 1.5 metre centres in mulched planter beds.

Note: These shrubs shall be installed at minimum 5 litre pot size.
 - iv. Replacement of the proposed *Hymanesporum flavum* species by *Eucalyptus haemastoma* species (or similar local native species capable of reaching a height of 10 metres) within the Kita Road landscape setback.

Note: At least five trees must be planted and installed at minimum 45 litre pot size.

Note: Advice on suitable species for landscaping can be obtained from Council’s planting guide ‘Indigenous Plants for the Bushland Shire’, available at www.hornsby.nsw.gov.au.
- c. The Adaptable unit included in the proposed development is to be amended to include a 3.2 metre wide clear opening for the garage.

REQUIREMENTS PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

3. Building Code of Australia

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

4. Contract of Insurance (Residential Building Work)

In the case of residential building work for which the *Home Building Act, 1989* requires there to be a contract of insurance in force in accordance with Part 6 of that Act, that such a contract of insurance is in force before any building work authorised to be carried out by the consent commences.

Note: This condition does not apply to the extent to which an exemption is in force under Clause 187 or 188 of the Act, subject to the terms of any condition or requirement referred to in Clause 187(6) or 188(4) of the Act, or to the erection of a temporary building.

5. Notification of Home Building Act, 1989 Requirements

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

- a. In the case of work for which a principal contractor is required to be appointed:
 - i. The name and licence number of the principal contractor.
 - ii. The name of the insurer by which the work is insured under Part 6 of that Act.
- b. In the case of work to be done by an owner-builder:
 - i. The name of the owner-builder.
 - ii. If the owner-builder is required to hold an owner-builder's permit under that Act, the number of the owner-builder's permit.

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

6. Water/Electricity Utility Services

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

- a. *Energy Australia* – a letter of consent demonstrating that satisfactory arrangements have been made to service the proposed development.
- b. *Sydney Water* – the submission of a 'Notice of Requirements' under s73 of the *Sydney Water Act 1994*.

Note: Sydney Water requires that s73 applications are to be made through an authorised Sydney Water Servicing Coordinator. Refer to www.sydneywater.com.au or telephone 13 20 92 for assistance.

7. Traffic Management Plan

A Traffic management Plan for the construction phase of the development must be prepared and submitted for approval by the Principle Certifying Authority.

REQUIREMENTS PRIOR TO THE COMMENCEMENT OF ANY WORKS**8. Erection of Construction Sign**

A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

- a. Showing the name, address and telephone number of the principal certifying authority for the work,
- b. 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
- c. Stating that unauthorised entry to the work site is prohibited.

Note: Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

9. 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.

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

10. Toilet Facilities

Toilet facilities must be available or provided 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. Each toilet must:

- a. be a standard flushing toilet connected to a public sewer; or
- b. be a temporary chemical closet approved under the *Local Government Act, 1993*; or

- c. have an on-site effluent disposal system approved under the *Local Government Act, 1993*

11. Erosion and Sediment Control

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 up to \$1,500 may be issued for any non-compliance with this requirement without any further notification or warning.

12. Tree Protection Barriers

Tree protection fencing must be erected around trees numbered T1 as shown on the approved "*Ground Floor Plan – 3A*" to be retained at a 4 metre setback. The tree fencing must be constructed of 1.8 metre 'cyclone chainmesh fence' or star pickets spaced at 2 metre intervals, connected by a continuous high-visibility barrier/hazard mesh at a height of 1 metre.

REQUIREMENTS DURING CONSTRUCTION

13. Construction Work Hours

All work on site (including demolition and earth works) must only occur between 7:00am and 5:00pm Monday to Saturday.

No work is to be undertaken on Sundays or public holidays.

14. Environmental Management

The site must be managed in accordance with the publication '*Managing Urban Stormwater – Landcom (March 2004)*' and the *Protection of the Environment Operations Act 1997* by way of implementing appropriate measures to prevent sediment run-off, excessive dust, noise or odour emanating from the site during the construction of the development.

15. Street Sweeping

Street sweeping must be undertaken following sediment tracking from the site along Turner Road and Kita Road during works and until the site is established.

16. Works near Trees

All required tree protection measures are to be maintained in good condition for the duration of the construction period.

All works (including driveways and retaining walls) within four metres of any tree required to be retained (whether or not on the subject property, and pursuant to this consent or the *Tree Preservation Order*), must be carried out under the supervision of an '*AQF Level 5 Arborist*' and a certificate submitted to the principal certifying authority detailing the method used to preserve the tree.

Note: Except as provided above, the applicant is to ensure that no excavation, filling or stockpiling of building materials, parking of vehicles or plant, disposal of cement slurry, waste water or other contaminants is to occur within 4 metres of any tree to be retained.

17. Council Property

During construction works, no building materials, waste, machinery or related matter is to be stored on the road or footpath. The public reserve is to be kept in a clean, tidy and safe condition at all times.

18. Landfill

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

- a. All fill material imported to the site is to wholly consist of Virgin Excavated Natural Material (VENM) as defined in Schedule 1 of the *Protection of the Environment Operations Act 1997* or a material approved under the *Department of Environment and Climate Change's* general resource recovery exemption.
- b. A compaction certificate is to be obtained from a geotechnical engineer verifying that the specified compaction requirements have been met.

19. Excavated Material

All excavated material removed from the site must be classified in accordance with the *NSW Environment Protection Authority's Environmental Guidelines – Assessment, Classification and Management of Liquid and Non-Liquid Wastes* prior to disposal to an approved waste management facility and reported to the principal certifying authority.

20. Right-of-Access

The right-of-access for the adjoining property at No. 16 Kita Road must be maintained at all times during the construction works on the site and upon completion of the development.

REQUIREMENTS PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE

Note: For the purpose of this consent, any reference to 'occupation certificate' shall also be taken to mean 'interim occupation certificate' unless otherwise stated.

21. Fulfilment of BASIX Commitments

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

22. Sydney Water – s73 Certificate

A s73 Certificate must be obtained from *Sydney Water*.

23. Stormwater Drainage

The stormwater drainage system for the development must be designed and constructed in accordance with Council's *Civil Works – Design and Construction Specification 2005* and be connected directly to Council's street drainage system via the onsite detention system.

24. On Site Stormwater Detention

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

- a. Have a capacity of not less than 30.9 cubic metres for the OSD tank and 12.1 cubic metres for the above ground basin, and a total maximum discharge (when full) of 35 litres per second.
- 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 detention is used and the average depth is greater than 0.3 metres, a 'pool type' safety fence is to be erected around the perimeter of the basin and warning signs are to be installed.
- e. Not be constructed in a location that would impact upon the visual or recreational amenity of residents.

25. Internal Driveway/Vehicular Areas

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

- a. Design levels at the front boundary be obtained from Council.
- b. The driveway be a rigid pavement.
- c. The driveway grade must not exceed 20 percent and changes in grade must not exceed 8 percent.
- d. The access driveway must have a minimum width of 5.5m at the kerb line and this width is to extend to 6m inside the property boundary at a maximum grade of 5%.

26. Vehicular Crossing

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

- a. Any redundant crossings to be replaced with integral kerb and gutter.
- b. The footway area to 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.

27. 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 and be submitted to Council. 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.

28. Damage to Council Assets

Any damage caused to Council's assets as a result of the construction of the development must be rectified in accordance with Council's written requirements and at the sole cost of the applicant.

29. Creation of Easements

The following matters 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 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.

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

31. Retaining Walls

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

32. External Lighting

All external lighting must be designed and installed in accordance with *Australian Standard AS 4282 – Control of the Obtrusive Effects of Outdoor Lighting*. Certification of compliance with the Standard must be obtained from a suitably qualified person.

33. Works as Executed Plan

A works-as-executed plan 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. The plan must be accompanied by a certificate from a registered surveyor certifying that all pipelines and associated structures lie wholly within any relevant easements.

34. Waste Management

- a. A report must be prepared by an appropriately qualified person, certifying that at least 60% of the waste generated during the 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.

- b. The communal waste/recycling storage area indicated in the approved "Basement Plan-2A" must include water/hose for cleansing, graded floors with drainage to sewer, robust doors, sealed/impervious surfaces, adequate lighting and ventilation.
- c. Each dwelling must be provided with an indoor waste/recycling cupboard for the interim storage of a minimum one day's waste generation with separate containers for general waste and recyclable materials.

35. s94 Infrastructure Contributions

The payment to Council of a contribution of \$127,281.60* for nine additional three-bedroom townhouses towards the cost of infrastructure identified in Council's Development Contributions Plan 2007-2011.

*Note: * The value of contribution is current as at 7 September 2010. The contribution will be adjusted from this date in accordance with the underlying consumer price index for subsequent financial quarters.*

It is recommended that you contact Council to ascertain the indexed value of the contribution prior to payment.

OPERATIONAL CONDITIONS**36. Car Parking**

All car parking must be constructed and operated in accordance with *Australian Standard AS 2890.1 – 2004 – Off Street Car Parking* and *Australian Standard 2890.2 - 2002 – Off Street Commercial* and the following requirement:

- a. All parking areas and driveways are to be sealed to an all weather standard, line marked and signposted.
- b. Car parking and manoeuvring areas to be used solely for nominated purposes.
- c. Vehicles, such as removalist trucks awaiting loading, unloading or servicing must be parked on site and not on Turner Road or Kita Road;
- d. All vehicular entry on to the site and egress from the site must be made in a forward direction.
- e. "No Parking" / "No Stopping" restrictions must be provided along the Turner Road frontage of the site.

37. Fire Safety Statement - Annual

On at least one occasion in every 12 month period following the date of the first 'Fire Safety Certificate' issued for the property, the owner must provide Council with an annual 'Fire Safety Certificate' to each essential service installed in the building.

38. Landscape Establishment

The landscape works must be maintained to ensure the establishment and successful growth of plant material including (but not be limited to) watering, weeding, replacement of failed plant material and promoting the growth of plants through standard industry practices.

- 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 regarding the issue of a construction certificate 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 Preservation Order

To ensure the maintenance and protection of the existing natural environment, it is an offence to ringbark, cut down, top, lop, remove, wilfully injure or destroy a tree outside 3 metres of the approved building envelope without the prior written consent from Council.

Note: A tree is defined as a single or multi-trunked wood perennial plant having a height of not less than three (3) metres, and which develops many branches, usually from a distance of not less than one (1) metre from the ground, but excluding any plant which, in its particular location, is a noxious plant declared as such pursuant to the Noxious Weeds Act 1993. This definition of 'tree' includes any and all types of Palm trees.

All distances are determined under British Standard BS 5837: 2005, "Trees in Relation to Construction – Recommendations".

Fines may be imposed for non-compliance with Council's *Tree Preservation Order*.

Disability Discrimination Act

The applicant's attention is drawn to the existence of the *Disability Discrimination Act*. A construction certificate is required to be obtained for the proposed building/s, which will provide consideration under the *Building Code of Australia*, however, the development may not comply with the requirements of the *Disability Discrimination Act*. This is the sole responsibility of the applicant.

Covenants

The land upon which the subject building is to be constructed may be affected by restrictive covenants. Council issues this approval without enquiry as to whether any restrictive covenant affecting the land would be breached by the construction of the building, the subject of this consent. Applicants must rely on their own enquiries as to whether or not the building breaches any such covenant.

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.

House Numbering

House numbering can only be authorised by Council. Before proceeding to number each premise in the development, the allocation of numbers is required to be obtained from Council's Planning Division. The authorised numbers are required to be displayed in a clear manner at or near the main entrance to each premise.

Rain Water Tank

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

Garbage Area at the Basement

The garbage area at the basement would not be accessed by a garbage truck

3 DEVELOPMENT APPLICATION - ALTERATIONS AND ADDITIONS TO AN EXISTING CHURCH 155 - 157 GALSTON ROAD HORNSBY HEIGHTS

Development Application No:	DA/819/2010
Description of Proposal:	Alterations and additions to an existing church
Property Description:	Anglican Church, Lots 1, 2 and 3 DP 221543 (Nos.155 – 157) Galston Road, Hornsby Heights.
Applicant:	St Lukes Anglican Church
Owner:	Anglican Church Property Trust
Statutory Provisions:	Hornsby Shire Local Environmental Plan 1994 – Residential A (Low Density) zone
Estimated Value:	\$ 2.01 million
Ward:	A

RECOMMENDATION

THAT Development Application No. 819/2010 for alterations and additions to an existing church at Lots 1, 2 & 3 DP 221543 (Nos. 155-157) Galston Road, Hornsby Heights be approved subject to the conditions of consent detailed in Schedule 1 of this report.

EXECUTIVE SUMMARY

1. The application proposes demolition of the youth hall, alterations to the existing church and the addition of an education centre ancillary to the church activities.
2. The proposal generally complies with the provisions of Hornsby Shire Local Environmental Plan.
3. The proposal does not comply with Council's Community Uses Development Control Plan with regard to the parking provisions on the site.
3. One submission has been received in respect of the application.
4. It is recommended that the application be approved.

HISTORY OF THE SITE

On 21 May 1981, Council approved a development application for the erection of a new single-storey church hall on the site (Certificate of consent no. 130/81). The development consent restricted the capacity of the church to 150 persons. A total of 15 onsite parking spaces were provided.

On 6 June 1991, Council approved DA/52/1991 for the erection of an additional hall for use by youth groups within the church premises. Condition No. 3 of the development consent required that the maximum number of seats within the church be restricted to 210. No additional parking was required under this development consent.

THE SITE

The subject property is known as St Luke's Anglican Church, Hornsby Heights. It has an area of 4180 sq metres and is located on the western side of Galston Road. The site is irregular in shape with an average slope of 16 % for a distance of 40 metres from Galston Road towards the rear boundary. The site then falls away steeply accommodating undisturbed bushland.

The central portion of the site contains an existing single-storey church with a maximum capacity of 230 patrons, an existing hall and a youth hut. Access to the site is via a driveway off Galston Road. A sealed car parking area comprising fifteen car spaces, is located on the southern section of the site. Two informal car spaces are also located on the site.

The gross floor area of the existing church is 250.6 sq metres. The church rectory is a single-storey dwelling house located on the northern boundary of the site adjacent to the church with separate access from Galston road.

The site comprises a mixture of exotic species and predominantly native trees consistent with *Silvertop Ash - Scribbly Gum Woodland* (Smith and Smith 2008) which is identified as a regional significant vegetation community. The site is adjacent to and continuous with bushland of Berowra Valley Regional Park to the west. The surrounding development generally comprises low density dwelling houses.

THE PROPOSAL

The proposal involves the demolition of the shed and the youth hall and alterations to the existing church by relocating the altar and re-arranging the existing seats. No change to the existing number of patrons is proposed.

Additions to the church building including the following:

Lower ground floor

- A seminar room to be used by patrons for meeting before and after the church services or during the week;
- a meeting room for small groups;
- toilets; and
- deck adjoining the seminar rooms.

Ground floor

- The existing church;
- an office and a reception area for ministry staff;
- a seminar room to be used as the Christian Education Centre;
- a kitchen;
- a break-out room to be used by small groups;
- a podium area adjacent to the church services; and
- a deck at the rear of the education centre.

Carpark and Landscape Works

- Upgrade the existing carpark to provide twenty-six off street car spaces within the site including one accessible car space;
- a formalised covered walkway to provide access from Galston Road and the carpark; and
- Landscaping works proposed around the perimeter of the building.

The current activities within the church are proposed to be continued as per the schedule below:

Day	Time	Activity	Average attendance	Maximum attendance	Frequency
Sunday	8am - 9:15 am	Morning service		22 adults	Weekly
Sunday	9:30am – 11 am	Mid-morning service		80 adults & 25 children	Weekly
Sunday	9:30am – 11:30 am	Kids Church	25	40	Weekly
Tuesday	10am - 12 noon	Ladies Bible Study	12	15	Weekly
Thursday	6:30pm - 8pm	Youth Group	30	40	Weekly
Friday	7:30pm - 9:30 pm	Youth Group	25	35	Weekly
Saturday	8am – 1pm	Dance school (Ballet)	20	30	Weekly
Saturday	2pm – 5pm	Model Train Club	5	10	Fortnightly

In addition to the above the facility would also be utilised for seminars and meetings throughout the year as one-off events, ancillary to the church activities.

Twenty three trees would require removal to facilitate the church additions and car parking area.

ASSESSMENT

The development application has been assessed having regard to the '2005 City of Cities Metropolitan Strategy', the 'North Subregion (Draft) Subregional Strategy' and the matters for consideration prescribed under Section 79C of the *Environmental Planning and Assessment Act 1979* (the Act). Subsequently, the following issues have been identified for further consideration.

1. STRATEGIC CONTEXT**1.1 Metropolitan Strategy – (Draft) North Subregional Strategy**

The Metropolitan Strategy is a broad framework to secure Sydney's place in the global economy by promoting and managing growth. It outlines a vision for Sydney to 2031; the

challenges faced, and the directions to follow to address these challenges and achieve the vision. The draft North Subregional Strategy acts as a framework for Council in the preparation of a new Principal LEP by 2011.

The draft Subregional Strategy sets the following targets for the Hornsby LGA by 2031:

- Employment capacity to increase by 9,000 jobs; and
- Housing stock to increase by 11,000 dwellings.

The proposed development would be consistent with the draft Strategy.

2. STATUTORY CONTROLS

Section 79C(1)(a) requires Council to consider “*any relevant environmental planning instruments, draft environmental planning instruments, development control plans, planning agreements and regulations*”.

2.1 Hornsby Shire Local Environmental Plan 1994

The subject land is zoned Residential A (Low Density) zone under the Hornsby Shire Local Environmental Plan 1994 (HSLEP). The objectives of the zone are:

- (a) *to provide for the housing needs of the population of the Hornsby area.*
- (b) *to promote a variety of housing types and other land uses compatible with a low density residential environment.*
- (c) *to provide for development that is within the environmental capacity of a low density residential environment.*

The proposed development is defined as “place of worship” under the HSLEP and is permissible in the zone with Council’s consent.

The proposed dance school is defined as a “recreation facility” under the HSLEP and is also permissible in the zone with Council’s consent.

Clause 15 of the HSLEP prescribes that the maximum floor space ratio (FSR) of development within the Residential A zone is 0.4:1. The applicant addresses this requirement by proposing a gross floor area of 1039.55 sq metres resulting in a FSR of 0.24:1.

Clause 18 of the HSLEP sets out heritage conservation provisions within the Hornsby area. The site is not listed as a heritage item of local significance under the provisions of Schedule D (Heritage Items) of the Hornsby Shire Local Environmental Plan (HSLEP) 1994. It is not located in the vicinity of a heritage item. No further assessment in this regard is necessary.

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

Clause 7 of *State Environmental Planning Policy No. 55 - Remediation of Land* (SEPP 55) requires Council to consider whether land is contaminated prior to granting consent to the carrying out of any development on that land.

The subject site has been utilised as a place of worship since the 1970s. Therefore the land is unlikely to be contaminated and no further assessment in this regard is necessary.

2.3 State Environmental Planning Policy (Infrastructure) 2007

The application has been assessed against the requirements of *State Environmental Planning Policy (Infrastructure) 2007* (SEPP Infrastructure). This Policy contains State-wide planning controls for developments adjoining rail-corridors and busy roads.

The development is located immediately adjoining a classified road corridor (Galston Road) and the following matters have been considered in this regard:

2.3.1 Development with frontage to a classified road

The proposal is assessed against the requirements of Clause 101 of the SEPP (Infrastructure) as the site has frontage to Galston Road. The development does not require further assessment under this clause as the development does not propose any new vehicular access from Galston Road.

Council's assessment of the proposal concludes that the existing driveway does not comply with AS/NZS 2890.1:2004. Therefore, a condition is recommended to reduce the driveway gradient to 1:20 for the first six metres within the site (Clause 3.3 Gradients of Access Driveways). The development is assessed as satisfactory subject to the implementation of the recommended condition.

2.3.2 Impact of Noise

The application was referred to the NSW Roads and Traffic Authority (RTA) for comments. The RTA has advised that the development should be designed to mitigate the traffic and noise vibration from Galston Road to comply with Clause 102 of the SEPP (Infrastructure).

It is noted that Clause 102 of the SEPP (Infrastructure) does not apply to the development as Galston Road is identified as a road with an annual average daily traffic volume of less than 40,000 vehicles (based on the traffic volume data published on the website of the RTA). Therefore, no further assessment with regard to impact of road noise on the development is required.

2.3.3 Traffic Generating Development

The proposed development provides direct vehicular and pedestrian access to a classified road. Notwithstanding, the development is not classified as a Traffic Generating Development in accordance with Clause 104 and Schedule 3 of the SEPP (Infrastructure) and referral to the Roads and Traffic Authority in this regard is not required.

2.4 Sydney Regional Environmental Plans No. 20 - Hawkesbury-Nepean River

The site is located within the catchment of the Hawkesbury-Nepean River. Council is required to consider the impact of a proposal, located in the Hawkesbury-Nepean River Catchments, on water quality, urban and rural residential development, scenic quality, environmental heritage and recreation and tourism. Conditions of consent are recommended in relation to the installation and maintenance of sediment and erosion control devices to protect water quality which would ensure compliance with SREP No. 20.

2.5 Community Uses Development Control Plan

The proposed development has been assessed having regard to the relevant performance and prescriptive design standards within Council's Community Uses Development Control Plan (Community Uses DCP). The following table sets out the proposal's compliance with the prescriptive standards of the Plan:

Community Uses Development Control Plan			
Control	Proposal	Requirement	Compliance
Site Coverage	20%	40%	Yes
Height	2 storey	Max. 2 storey	Yes
Car parking	26 Spaces	46 Spaces (@1 space/5 seats)	No
Landscaping	>45%	45%	Yes
Setbacks			
- Galston Road frontage	11m	6m	Yes
- Rear	10m	3m	Yes
- Side (north)	3.5m	1m	Yes
- Side (east)	12m	1m	Yes

As detailed in the above table, the proposed development does not comply with the car parking prescriptive measure within Council's Community Uses DCP. The matters of non-compliance are detailed below, as well as a brief discussion on compliance with relevant performance standards.

2.5.1 Density

The 'Density' element of the DCP aims to control the density and scale and development to ensure compatibility with the surrounding area.

It is noted that DA/52/1991 restricted the seating within the church to 210. No further development consents have been issued for an increase of the church capacity. The applicant provides that the existing capacity of the church is 230 and that the proposal does not include an increase to the church capacity. Given that 230 seats do not comply with the conditions of previous development consents, a condition is recommended that the number of seats within the church be restricted to a maximum of 210.

Notwithstanding the above, it is noted that the church has been operating at a 230 seat capacity for a number of years without a complaint history. Accordingly, it is considered appropriate to allow the church to continue operating a 230 seat capacity on a 'trial' basis and Council monitor community feedback. An appropriate condition has been recommended in this regard.

The development complies with the FSR and site coverage applicable to the Residential zone and is considered to be suitable for the subject property.

2.5.2 Site Selection

The 'Site Selection' element of the DCP aims to provide site selection criteria that will encourage the location of special use developments on sites with the lowest potential social and environmental impacts.

The site already contains a place of worship. The proposal involves an up-grade to the existing development and would have a positive social impact on the locality.

2.5.3 Parking and Access

The proposal is assessed as satisfactory with regard to vehicular access from Galston Road, as discussed in section 2.3 of this report. The proposal does not comply with the required number of car spaces for the proposed development. The applicant has provided a parking assessment in this regard. The assessment concludes the following:

- *The existing carpark includes 15 formal car spaces and two additional spaces. The existing church does not comply with Council's Community Uses DCP provisions for parking. Should the church reach its full capacity (230 seats), there is a shortfall of 29 spaces on the site under the current situation.*
- *The Sunday service is the peak hour for the church usage and it is noted that a maximum of 39 cars access the site during that time of which 15 are parked on-site. Up to 24 cars are parked on the nearby streets.*
- *The proposed development does not alter the capacity of the church or the current on-going activities. The upgrade to the car park would result in the provision of 26 spaces on the site which is an improvement to the current situation without altering the capacity of the church.*
- *It is noted that on Easter Sunday in 2009 a maximum of 118 adults attended the church services which is equal to 23.6 spaces. The proposed development would have sufficient car spaces on the site to cater to this attendance in future.*
- *Should the church reach its full capacity, there would be a maximum shortfall of 20 spaces on the site, which is an improvement to the current situation as well.*
- *The car parking area cannot be extended further on the site due to significant bushland being present at the rear.*
- *The provision of compliant parking spaces, upgraded driveway entry and disabled spaces would improve the parking arrangement within the church premise.*

The RTA has advised that Council should ensure that adequate parking provision is made on the site to cater for all patrons and visitors to the site to avoid on-street parking on Galston Road and Evans Road. In this regard, the number of car spaces should be increased to 46 spaces in accordance with Council's Car Parking DCP. However, for the reasons stated in this report, compliance with the RTA's recommendation is not possible in this instance.

Council's traffic assessment of the proposal concludes the following:

- *Traffic Generation*

The RTA Guide to Traffic Generating Developments provides a table of “Environmental capacity performance standards on residential roads”. For local streets the environmental goal is a maximum of 200 vehicles per hour (vph) in the AM peak, with a maximum of 300 vehicles per hour in the PM peak. The traffic to be generated by the proposed activities would be substantially lower than the above figures. The proposed development is considered acceptable in this regard.

- *Car Parking*

The original application was approved for a church with 210 seats and fifteen spaces on the site. This situation is not altered under the proposed development. A condition of this development consent would restrict the capacity of the church to 210 seats (with 230 seat trial). Pursuant to Council’s Community Uses DCP, the maximum number of car spaces required on the site would be 42, the shortfall being a maximum of 16 spaces.

It is considered that the proposed car spaces within the site would be adequate for the number of patrons anticipated to attend functions at the Education Centre on a weekly basis due to the proposed timings, resulting in share parking arrangement.

It is noted that there would be a shortfall of parking spaces within the site for the 9:30am Sunday service, however there is a probability that a section of parishioners would be walking to the church and not travelling by car. Additionally, there is sufficient parking on the residential streets nearby and a road reserve in between the property boundary and Galston Road to accommodate the additional cars that would access the site.

Given the above, the proposal is considered acceptable with regard to car parking provisions on the site and it is not considered that full compliance with the requirements of the Community Uses DCP or the Car Parking DCP is required.

- *Access*

The matters in relation to proposed access to the site have been discussed in section 2.3 of this report. Given that a large number of pedestrians would be accessing the church, Council considers that a pedestrian refuge would be required on Galston Road at a suitable location between the church driveway and Evans Road, subject to approval from the RTA under the provisions of Section 138(2) of the Roads Act 1993.

The proposal was referred to the RTA in this regard. No objections have been raised subject to recommended conditions of consent.

2.5.4 Recreation Space

The proposed development includes an internal foyer area and an outdoor courtyard area which would serve as informal meeting area for the church patrons. The outdoor area at the rear of the building overlooking the bushland would also act as a recreational space in the future.

2.5.5 Acoustics

The proposed development would not result in the increase of church patronage or intensification of the current activities. The proposed building would restrict most of the

activities to occur indoors, which would maintain acoustic amenity of the surrounding residential developments. Most of the church activities would occur during daytime and would not result in unreasonable transmission of noise.

It is noted that the 'Youth Group' activities on Thursday and Friday would occur in the evening up to 9:30 pm. However, the activities are currently on-going within the premises and alterations are proposed to such timings. The proposed development would rather improve the situation by enclosing all activities within the proposed education centre. Therefore, the activity itself would not generate unreasonable noise.

The proposed evening activities would require usage of the car park until 9:30 pm which may result in the generation of noise due to vehicles accessing the site. In order to maintain a reasonable acoustic environment in the locality, a condition is recommended requiring all activities within the premises to be completed by 9:30 pm.

Subject to the implementation of the above conditions, the proposal would maintain acoustic amenity of the area and is assessed as satisfactory.

2.5.6 Landscape

The 'Landscaping' element of the DCP aims to provide attractive landscapes which reinforce the function of the street and enhance the amenity of a building and to preserve significant stands of trees and natural vegetation.

A landscape plan has been submitted by the applicant which includes appropriate planting to complement the development in the streetscape and minimise the visual impact of the car park.

2.5.7 Solar Access

The proposed church satisfies Council's requirement for developments to maintain a minimum of four hours of sunshine to the open space areas of adjoining residential properties, in accordance with the Community Uses DCP solar access requirement.

2.5.8 Crime Prevention

The proposed development has been designed to minimise crime in accordance with CPTED principles by way of clear sightlines, windows that overlook the car parking area and pedestrian access and clearly defined building entry and access.

The proposal complies with the Community Uses DCP crime prevention element objective.

2.6 Car Parking Development Control Plan

The proposed development does not comply with the provisions of Council's Car Parking Development Control Plan. The matter has been discussed in section 2.5.3 of this report.

2.7 Access and Mobility Development Control Plan

The church and the adjoining facilities are single-storey and include level access from Galston Road the car parking area to the building entry. One disabled car space is provided complying with the requirements of the DCP. The applicant has submitted an Access Report which concludes the following:

- *The size of the landing area for the entry ramp to be increased to comply with the Building Code of Australia (BCA)*
- *An accessible path to be provided from the carpark area to the lower level seminar room*
- *The path is to have a maximum grade of 1:20 and include landings at 15 metre intervals*
- *Alterations to the details of the disabled toilet to comply with the BCA and the Disability Discrimination Act*
- *Increase the door widths to 850mm clear opening*
- *Provide an accessible Wc compartment to the lower ground level*

An accessible path (ramp) has been provided for barrier free access to the lower level seminar rooms from the car park. An accessible bathroom has also been added to the lower level. Subject to compliance with the recommended conditions, the proposal is consistent with the objectives of Council's Access and Mobility Development Control Plan.

2.8 Waste Minimisation and Management Development Control Plan

The waste generated by the operation of the proposed development would be collected by commercial waste contractor at the street frontage.

A condition is recommended for compliance with project management best practice during demolition and construction in accordance with the Waste Minimisation and Management Guide.

3. ENVIRONMENTAL IMPACTS

Section 79C(1)(b) of the Act requires Council to consider "*the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality*".

3.1 Natural Environment

3.1.1 Trees

The proposed development would necessitate the removal of twenty-two trees native trees from the site. The trees are consistent with *Silvertop Ash - Scribbly Gum Woodland* Regional Significant Vegetation Community (Smith and Smith 2008). The Rural Fire Service has prescribed that the entire site be maintained as an Inner Protection Area, which may require further removal of trees in the future.

Two trees namely, *Eucalyptus sieberi* - Silvertop Ash and *Eucalyptus eugenioides* located in the landscaped courtyard and the perimeters (marked as T20 and T56 in the Landscape Planting Plan) are considered to be significant and removal of these trees is not supported. Subject to the implementation of recommended conditions regarding the retention of the significant trees on the site, the proposal would not have a significant adverse impact on the natural environment of the locality.

3.1.2 Drainage

The proposal would result in the increase of impervious areas within the site. The application includes a detailed stormwater management plan for the site and appropriate conditions of consent have been included in Schedule 1 to manage on-site stormwater.

3.2 Built Environment

The proposed upgrade to the existing church would be sympathetic to the existing building in design and form. The building would follow the natural slope of the land and appear as a single-storey structure from Galston Road, being screened by the existing vegetation. It is considered that the design approach is sympathetic to the character and amenity of the area.

A schedule of finishes was provided that would compliment the existing streetscape and the surrounding area.

Council's engineering assessment of the traffic impacts of the development concludes that the proposal is satisfactory. The matter has been discussed in section 2.5.3 of this report. It is considered that the proposal would have a positive impact on the built environment of the locality.

3.3 Social Impacts

The development would provide a formalised building for ancillary church activities and have a positive social impact on the locality.

3.4 Economic Impacts

The proposal would not have a negative economic impact on the locality.

4. SITE SUITABILITY

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

4.1 Bushfire Risk

The land is identified as being subject to bushfire risk. The proposal was referred to NSW Rural Fire Service (RFS) for comments. No objections are raised subject to recommended conditions regarding provision of Asset Protection Zone for the site.

5. PUBLIC PARTICIPATION

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

5.1 Community Consultation

The proposed development was placed on public exhibition and was notified to adjoining and nearby landowners between 29 July 2010 and 19 August 2010 in accordance with Council's Notification and Exhibition Development Control Plan. During this period, Council received one submission. The map below illustrates the location of the nearby landowner that 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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One submission objected to the development, generally on the following grounds:

- Unacceptable noise from the seminar rooms and the meeting rooms that open out towards the rear bushland;
- Unacceptable impact on the security of the property at No. 153A Galston Road, due to the location of the carpark;
- Unacceptable traffic on local streets during church activities;
- Development that is excessive in bulk and scale when viewed from the rear of the site and the adjoining battleaxe allotments;

The submission indicated that currently cars leave the premises after 10 pm and generate noise. A noise barrier or a privacy barrier should be provided to screen the seminar rooms and the deck. Further, kerb and guttering should be constructed along the entire frontage of Galston road to formalize on-street parking and a safe footpath area for pedestrians. The submission has raised concerns that during the annual model train exhibition show within the church premises, the car park is closed and the attendees park the cars on the street causing vehicular conflicts.

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

5.1.1 Noise and Privacy

The adjoining property at No. 153A Galston road is located at a distance of 51 metres from Galston Road. The house at No. 153A Galston Road is located at a distance of 28 to 30 metres from the proposed buildings and the carpark, being separated by dense vegetation and bushland. Therefore, it is not considered that the proposed development would have any additional impact on the residents of this property.

The proposal does not intensify the current on-going activities of the church, but proposes to formalise the activities to be enclosed within a contemporary building. The schedule of church operations indicates that most of the activities would be occurring during daytime. Conditions are recommended requiring that noise generated by the activities of the centre not exceed 5 db(A) above the background noise at any time and that the activities do not extend beyond 9:30 pm at night.

Given the above, it is not considered that any further noise barriers or privacy screens are required for this development.

5.1.2 Car Parking

The proposal was referred to the RTA for concurrence to works required on Galston Road and comments regarding the provision of a pedestrian refuge in front of the Church. No objections are raised regarding a pedestrian refuge to improve pedestrian access to the premises. Neither Council nor RTA requires kerb and guttering along this section of Galston Road.

A condition of consent is recommended to ensure that the car park be accessible to the church attendees at all times of the year to reduce vehicular conflict on Galston Road.

5.2 Public Agencies

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

5.2.1 Roads and Traffic Authority

The application requires concurrence from RTA under Section 138 of the Roads Act 1993 as upgrade to the vehicular access fronting a classified road is proposed. RTA has reviewed the application and recommended conditions of consent. The relevant matters are discussed in sections 2 and 3 of this report.

5.2.2 Rural Fire Service

The matter has been discussed in section 4.1 of this report.

6. THE PUBLIC INTEREST

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

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

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

CONCLUSION

The application proposes alterations to an existing church and addition of a Christian education centre with associated meeting rooms and facilities. The application also involves an upgrade to the existing carpark. The proposal does not comply with the requirements of Council's Community Uses Development Control Plan with regard to car parking. Council's traffic assessment concludes that the parking provided on the site is sufficient to cater for the development.

The proposal generally complies with the provisions of the HSLEP, objectives of the Community Uses Development Control Plan and Car Parking Development Control Plan. The application is a permissible use in the zone and is considered to be within the environmental capacity of the site and the locality.

On balance, and having regard to the community benefit of the proposal, it is considered that the development is worthy of Council's consent. Accordingly, the proposed development is recommended for approval.

Note: At the time of the completion of this planning report, no persons have made a *Political Donations Disclosure Statement* pursuant to Section 147 of the Environmental Planning and Assessment Act 1979 in respect of the subject planning application.

ROD PICKLES
Manager - Assessment Team 2
Planning Division

SCOTT PHILLIPS
Executive Manager
Planning Division

Attachments:

1. Locality Plan
2. Site Plan
3. Floor Plans
4. Survey Plan
5. Elevations and Sections
6. Shadow Plans
7. Landscape Plans
8. Erosion Sediment Control Plan

File Reference: DA/819/2010
Document Number: D01472822

SCHEDULE 1**GENERAL CONDITIONS**

The conditions of consent within this notice of determination have been applied to ensure that the use of the land and/or building is carried out in such a manner that is consistent with the aims and objectives of the relevant legislation, planning instruments and Council policies affecting the land and does not disrupt the amenity of the neighbourhood or impact upon the environment.

Note: For the purpose of this consent, the term 'applicant' means any person who has the authority to act on or the benefit of the development consent.

Note: For the purpose of this consent, any reference to an Act, Regulation, Australian Standard or publication by a public authority shall be taken to mean the gazetted Act or Regulation, or adopted Australian Standard or publication as in force on the date that the application for a construction certificate is made.

1. Approved Plans and Supporting Documentation

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

<i>Plan No.</i>	<i>Drawn by</i>	<i>Dated</i>
Site/Roof Plan Issue B	Ridley Smith and Partners Pty Ltd	25/08/2010
Ground Floor Plan Issue B	Ridley Smith and Partners Pty Ltd	25/08/2010
Lower Ground Floor Plan Issue B	Ridley Smith and Partners Pty Ltd	25/08/2010
South and East Elevations Issue A	Ridley Smith and Partners Pty Ltd	7/04/2010
North and West Elevations Issue A	Ridley Smith and Partners Pty Ltd	7/04/2010
Demolition Plan Issue A	Ridley Smith and Partners Pty Ltd	7/04/2010
Sections 1 Issue A	Ridley Smith and Partners Pty Ltd	7/04/2010
Sections 2 Issue A	Ridley Smith and Partners Pty Ltd	7/04/2010
Sections 3 Issue A	Ridley Smith and Partners Pty Ltd	7/04/2010
Landscape Planting Plan - LPP/01/A	JCA Landscape Architects	29/10/2009
Landscape Planting Plan - LPP/02/A	JCA Landscape Architects	29/10/2009
Landscape Planting Plan - LPP/03/A	JCA Landscape Architects	29/10/2009
Erosion and Sediment Control Plan ES-01	Sparks and Partners	16/10/2009
Stormwater Roof and Site Plan SW-01 Issue B	Sparks and Partners	22/04/2010
Stormwater Ground Floor Plan SW-02 Issue B	Sparks and Partners	22/04/2010
Stormwater Lower Ground Floor Plan SW-03 Issue B	Sparks and Partners	22/04/2010
Survey Plan	Base Surveying	11/05/2009

<i>Document No.</i>	<i>Prepared by</i>	<i>Dated</i>
Waste Management Plan	R and F	16/10/2009
Bushfire Hazard Assessment Report	Building Code and Bushfire hazard Solutions Pty Ltd	14/10/2009
Statement of Environmental Effects – Appendix D Schedule of External Finishes	NBRS + Partners	October 2009
Statement of Environmental Effects – Appendix C Schedule of Church Operations	NBRS + Partners	October 2009
Preliminary Building Access Review	NBRS + Partners	10/08/2010

2. Removal of Existing Trees

This development consent only permits the removal of trees numbered 7, 22, 23, 24, 25, 26, 34, 40, 41, 42, 43, 44, 53, 54, 55, 57, 58, 59, 60, 61, 62, 63, 64 as identified on Landscape Planting Plan LPP/02/A prepared by JCA Landscape Architects dated 29/10/2009. The removal of any other trees requires separate approval under Council's Tree Preservation Order.

3. Amendment of Plans

The following approved plans are to be amended to incorporate the location of the accessible pathway to the lower ground floor as marked on Site/Roof Plan Issue B dated 25/08/2010:

<i>Plan No.</i>	<i>Drawn by</i>	<i>Dated</i>
Landscape Planting Plan - LPP/01/A	JCA Landscape Architects	29/10/2009
Landscape Planting Plan - LPP/02/A	JCA Landscape Architects	29/10/2009
Landscape Planting Plan - LPP/03/A	JCA Landscape Architects	29/10/2009
Erosion and Sediment Control Plan ES-01	Sparks and Partners	16/10/2009
Stormwater Roof and Site Plan SW-01 Issue B	Sparks and Partners	22/04/2010
Stormwater Ground Floor Plan SW-02 Issue B	Sparks and Partners	22/04/2010
Stormwater Lower Ground Floor Plan SW-03 Issue B	Sparks and Partners	22/04/2010

REQUIREMENTS PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

4. Building Code of Australia

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

5. Fire Safety Upgrade

To ensure the protection of persons using the building and to facilitate egress from the building in the event of a fire, the application for a construction certificate must demonstrate that it will comply with Parts C, D and E of the Building Code of Australia. Details of all associated works required for such compliance (if any) must be included in the application.

6. Sydney Water – Quick Check

The application must be submitted to a *Sydney Water* ‘Quick Check Agent’ or ‘Customer Centre’ for approval to determine whether the development will affect any *Sydney Water* infrastructure, and whether further requirements are to be met.

Note: Refer to www.sydneywater.com.au or telephone 13 20 92 for assistance.

REQUIREMENTS PRIOR TO THE COMMENCEMENT OF ANY WORKS

7. Erection of Construction Sign

A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

- a. Showing the name, address and telephone number of the principal certifying authority for the work,
- b. 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
- c. Stating that unauthorised entry to the work site is prohibited.

Note: Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

8. Protection of Adjoining Areas

A temporary hoarding, fence or awning must be erected between the work site and adjoining lands before the works begin and must be kept in place until after the completion of the works if the works:

- a. Could cause a danger, obstruction or inconvenience to pedestrian or vehicular traffic.
- b. Could cause damage to adjoining lands by falling objects.
- c. Involve the enclosure of a public place or part of a public place.

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

9. Toilet Facilities

Toilet facilities must be available or provided 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. Each toilet must:

- a. be a standard flushing toilet connected to a public sewer; or
- b. be a temporary chemical closet approved under the *Local Government Act, 1993*; or
- c. have an on-site effluent disposal system approved under the *Local Government Act, 1993*

10. Erosion and Sediment Control

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 up to \$1,500 may be issued for any non-compliance with this requirement without any further notification or warning.

11. Tree Protection Barriers

Tree protection fencing must be erected around trees numbered 20 and 56 as identified on Landscape Planting Plan LPP/02/A, LPP/01/A and LPP/03/A prepared by JCA Landscape Architects dated 29/10/2009 to be retained at a 4 metre setback. The tree fencing must be constructed of 1.8 metre high chain wire fencing (or similar).

REQUIREMENTS DURING CONSTRUCTION

12. Construction Work Hours

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

No work is to be undertaken on Sundays or public holidays.

13. Demolition

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

- a. Demolition material is to be disposed of to an authorised recycling and/or waste disposal site and/or in accordance with an approved waste management plan.
- b. Demolition works, where asbestos material is being removed, must be undertaken by a contractor that holds an appropriate licence issued by *WorkCover NSW* in accordance with Chapter 10 of the *Occupational Health*

and Safety Regulation 2001 and Clause 29 of the Protection of the Environment Operations (Waste) Regulation 1996.

- c. On construction sites where buildings contain asbestos material, a standard commercially manufactured sign containing the words 'DANGER ASBESTOS REMOVAL IN PROGRESS' measuring not less than 400mm x 300mm must be erected in a prominent position visible from the street.

14. Environmental Management

The site must be managed in accordance with the publication *'Managing Urban Stormwater – Landcom (March 2004)* and the *Protection of the Environment Operations Act 1997* by way of implementing appropriate measures to prevent sediment run-off, excessive dust, noise or odour emanating from the site during the construction of the development.

15. Works near Trees

All required tree protection measures are to be maintained in good condition for the duration of the construction period.

All works (including driveways and retaining walls) within **three** metres of any trees required to be retained (whether or not on the subject property, and pursuant to this consent or the *Tree Preservation Order*), must be carried out under the supervision of an 'AQF Level 5 Arborist' and a certificate submitted to the principal certifying authority detailing the methods used to preserve the trees.

Note: Except as provided above, the applicant is to ensure that no excavation, filling or stockpiling of building materials, parking of vehicles or plant, disposal of cement slurry, waste water or other contaminants is to occur within 4 metres of any tree to be retained.

16. Council Property

During construction works, no building materials, waste, machinery or related matter is to be stored on the road or footpath. The public reserve is to be kept in a clean, tidy and safe condition at all times.

17. 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.

18. Landfill

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

- a. All fill material imported to the site is to wholly consist of Virgin Excavated Natural Material (VENM) as defined in Schedule 1 of the *Protection of the Environment Operations Act 1997* or a material approved under the *Department of Environment and Climate Change's* general resource recovery exemption.

19. Excavated Material

All excavated material removed from the site must be classified in accordance with the *NSW Environment Protection Authority's Environmental Guidelines – Assessment, Classification and Management of Liquid and Non-Liquid Wastes* prior to disposal to an approved waste management facility and reported to the principal certifying authority.

REQUIREMENTS PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE

Note: For the purpose of this consent, any reference to 'occupation certificate' shall also be taken to mean 'interim occupation certificate' unless otherwise stated.

20. Sydney Water – s73 Certificate

A s73 Certificate must be obtained from *Sydney Water*.

21. Stormwater Drainage

The stormwater drainage system for the buildings and paved areas must be designed and constructed for an average recurrence interval of 20 years and be gravity drained in accordance with the following requirements:

- a. Roof water for all buildings is to be connected to a rainwater tank. The overflow from the rainwater tank and collected surface water must be disposed of in accordance with Council's design specification; "*On Site Absorption System*", and the following requirements:
 - i. The trench located a minimum of 2 metres from any down stream properties and 1 metre from the side boundaries;
 - ii. The trench laid on contour;
 - iii. The trench be a minimum of 0.5 metres wide, 0.5 metres deep and 2 metres long for every 50 square metres of impervious area; and
 - iv. Overland flow from the trench be spread evenly over the site so as not to discharge water in a concentrated manner onto adjoining land.
- b. Pavement and hard stand area water is to be connected to a Council design specification "*On Site Absorption System*", and the following requirements:
 - i. The trench located a minimum of 2 metres from any down stream properties and 1 metre from the side boundaries;
 - ii. The trench laid on contour;
 - iii. The trench be a minimum of 0.5 metres wide, 0.5 metres deep and 2 metres long for every 50 square metres of impervious area; and
 - iv. Overland flow from the trench be spread evenly over the site so as not to discharge water in a concentrated manner onto adjoining land.

22. Internal Driveway/Vehicular Areas

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

- a. Design levels at the front boundary be obtained from Council.
- b. The driveway be constructed as a sealed all-weather pavement designed by a suitably qualified person.
- c. The driveway grade must not exceed 25 percent and changes in grade must not exceed 8 percent.
- d. The driveway gradient must be reduced to 1:20 for the first six metres within the site in accordance with Clause 3.3 “*Gradients of Access Driveways*” in AS2890.1.
- e. The pavement provides a drainage system capable of draining a 20 year average recurrence interval event to an on-site absorption system.
- f. Retaining walls required supporting the carriageway and the compaction of all fill batters to be in accordance with the requirements of a chartered structural engineer.
- g. The provision of safety rails where there is a level difference more than 0.3 metres and a 1:4 batter can not be achieved.

23. Vehicular Crossing

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

- a. Any redundant crossings to be replaced with graded turf landscaping.
- b. The footway area to be restored by turfing.
- c. The crossing design shall comply with AS2890.1 – 2004, Section 3.2.1 Access Facility Category 2 minimum, being 6.0m to 9.0m wide.
- d. Approval 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.

24. 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 and be submitted to Council. 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.

25. Damage to Council Assets

Any damage caused to Council's assets as a result of the construction of the development must be rectified in accordance with Council's written requirements and at the sole cost of the applicant.

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

27. External Lighting

All external lighting must be designed and installed in accordance with *Australian Standard AS 4282 – Control of the Obtrusive Effects of Outdoor Lighting*. Certification of compliance with the Standard must be obtained from a suitably qualified person.

28. 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.

29. Kitchen Exhaust Installation

A kitchen exhaust system must be designed and installed to effectively prevent air pollution in accordance with the *Protection of the Environment Operations Act 1997*.

30. Pedestrian Refuge

The pedestrian refuge to be designed in accordance with Condition No. 42 is to be completed at no cost to the Council or the Roads and Traffic Authority.

31. Car Parking and Deliveries

All car parking must be constructed and operated in accordance with *Australian Standard AS 2890.1 – 2004 – Off Street Car Parking* and *Australian Standard 2890.2 – 2002 – Off Street Commercial* and the following requirement:

- a. All parking areas and driveways are to be sealed to an all weather standard, line marked and signposted.
- b. Car parking areas to be used solely for nominated purposes.
- c. Vehicles awaiting loading, unloading or servicing shall be parked on site and not on adjacent or nearby public roads;
- d. All vehicular entry on to the site and egress from the site shall be made in a forward direction.
- e. To maintain amenity of the adjoining properties, the carpark must be accessible to the patrons of the premises, at all times of the year.

OPERATIONAL CONDITIONS**32. Use of Premises**

The development approved under this consent must only be used for “a place of worship”, ancillary activities as identified in Statement of Environmental Effects – Appendix C Schedule of Church Operations (dated October 2009) and a “ballet dance school” and not for any other purpose without Council’s separate written consent.

33. Maximum Capacity of Premises

Except as otherwise provided in this condition, the total number of patrons to be accommodated on the subject property at any one time must not exceed 210 (approved under DA/52/1991).

Notwithstanding the above, the capacity of the premises may increase to 230 patrons for a 12 month period (from the date of the occupation certificate) or upon written notice from Council (whichever occurs first) to monitor the impact of the increased capacity on the local neighbourhood.

34. Hours of Operation

The hours of operation of the premise are restricted to those times listed in the approved “Schedule of Church Operations” in Appendix C of the Statement of Environmental Effects prepared by NBRS + Partners dated October 2009.

To maintain amenity of the adjoining properties, the carpark adjoining the church building must be closed at the conclusion of activities every day.

35. 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).

36. Bushfire Management – Protection Zones

The buildings must be constructed and the land managed in such a manner that is consistent with the aim and objectives of the *NSW Rural Fire Service* publication ‘*Planning For Bush Fire Protection 2006*’ and in accordance with the following requirements:

- a. The property around the must be maintained as an ‘*Inner Asset Protection Zone*’ in accordance with the following:
 - i. minimise fine fuel at ground level;
 - ii. only retain vegetation that does not provide a continuous path to building/s for the transfer of fire;
 - iii. only retain shrubs and trees that do not form a continuous canopy and vegetation planted/cleared into clumps rather than continuous rows;
 - iv. do not plant vegetation that retains dead material or deposits excessive quantities of ground fuel.
 - v. Shrubs and trees are pruned or removed so they do not touch or overhand the building/s; and
 - vi. Vegetation is maintained at a sufficient setback from the building/s so plants will not ignite the building/s by direct flam contact or radiant heat emission.
- c. Landscaping works must:
 - i. use of low flammability vegetation species comprising maximum tree cover of less than 30%, and maximum shrub cover less than 20%;
 - ii. provide courtyards/pathways/lawns/ and/or ground cover plantings without flammable woodchips/mulch in close proximity to the building;
 - iii. restrict planting in the immediate vicinity of the building which may, over time, and if not properly maintained, come in contact with the building;
 - iv. not provide planting that forms a continuous canopy to the building (i.e. trees or shrubs be isolated or located in small clusters); and
 - v. use smooth bark species of trees species which generally do not carry a fire up the bark into the crown and avoid deciduous species, climbing species or species with rough fibrous bark, or which

retain/shed bark in long strips or retain dead material in their canopies.

Note: Further information concerning planning for bush fire protection can be found at: www.rfs.nsw.gov.au.

37. Ongoing Protection of Bushland

The natural bushland area of the site identified on the approved plans must remain undisturbed and be protected in perpetuity in accordance with the following requirements:

- a. The bushland area to be fenced off with post and wire (or similar) fencing to prevent vehicular access.
- b. The bushland area to be kept free of environmental and noxious weeds using recognised bush regeneration methods in accordance with '*Recovering bushland on the Cumberland Plain: Best practice guidelines for the management and restoration of bushland – Department of Conservation 2005*'.
- c. Machinery and fertilizer not to be used in the bushland area for maintenance purposes.

38. Fire Safety Statement - Annual

On at least one occasion in every 12 month period following the date of the first 'Fire Safety Certificate' issued for the property, the owner must provide Council with an annual 'Fire Safety Certificate' to each essential service installed in the building.

39. Landscape Establishment

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

CONDITIONS OF CONCURRENCE – NSW RURAL FIRE SERVICE

The following conditions of consent are from the nominated State Agency pursuant to Section 79B of the *Environmental Planning and Assessment Act 1979* and must be complied with to the satisfaction of that Agency.

40. Asset Protection Zone

To inform current and future owners that the land surrounding the approved building must be managed as an Inner Protection Area (IPA), the following matter must be created under s88B of the *Conveyancing Act 1919* prior to the issue of an Occupation Certificate:

- a. The creation of a "Positive Covenant" over Lots 1, 2 and 3 DP 221543 requiring that the entire property be managed as an IPA as outlined within Section 4.1.3 and Appendix 5 of '*Planning for Bushfire Protection 2006*' and the NSW Rural Fire Service's document '*Standards for asset protection zones*'.

41. Design and Construction

- a. New construction on the west, north and south elevations must comply with AS 3959-1999 'Construction of buildings in bushfire prone areas' Section 9.
- b. Any material, element of construction or system when tested to the method described in Part 8.2: "*Test on elements of construction for buildings exposed to simulated bushfire attack-large flaming sources*" in Australian Standard AS 1530.8.2 "*Methods for fire tests on building materials, components and structures*" must comply with Clause 13.8 of that Standard except that flaming of the specimen is not permitted.
- c. The window assemblies must comply with modified Section 9 of AS3959 (as above) **or** the following:
 - i. The window system must be completely protected by a non-combustible and non-perforated bushfire shutter that complies with Section 3.7; and
 - ii. The windows must comply with the following:
 - Window frames and hardware must be metallic
 - Glazing is to be of toughened glass, minimum 5 mm thick;
 - Seals to stiles, head and sills or thresholds are to be manufactured from materials having a flammability index of no greater than 5;
 - The openable portions of the window are to be screened internally or externally using a mesh with an aperture of 2.0 mm, made from corrosion resistant steel or bronze. The frame supporting the mesh must be made of metal;
- d. External doors must comply with modified Section 9 of AS 3959 (as above) **or** the following:
 - i. The doors must be completely protected by a non-combustible and non-perforated bushfire shutter that complies with Section 3.7; and
 - ii. The doors must comply with the following:
 - Doors are to be made of non-combustible material;
 - Externally fitted hardware that supports the panel in its function of opening and closing are to be made of metal;
 - Any glazing incorporated in the doors are to be of toughened glass, minimum 6 mm thick;
 - Seals to stiles, head and sills or thresholds are to be manufactured from silicone;
 - Doorframes are to be constructed of metal;
 - Doors are to be tightly fitted to the doorframe or an abutting door;
 - Weather strips, draught excluders or draught seals are to be installed, if applicable.
- e. New construction on the eastern elevation must comply with AS3959-1999 'Construction of buildings in bushfire prone areas' BAL 40.
- f. Roofing must be gutterless or the guttering and valleys screened to prevent build up of flammable material.

- g. Any material used must have a Flammability Index no greater than 5 when tested in accordance with Australian Standard AS 1530.2 – 1993 ‘Methods for Fire Tests on Building Materials, Components and Structures – Test for Flammability of Materials.’
- h. There must be no exposed timber on the proposed building.

CONDITIONS OF CONCURRENCE – NSW ROADS AND TRAFFIC AUTHORITY

The following conditions of consent are from the nominated State Agency pursuant to Section 79B of the *Environmental Planning and Assessment Act 1979* and must be complied with to the satisfaction of that Agency.

42. Easement for batter

All buildings are to be erected clear of the existing easement for batter.

43. Pedestrian Refuge

- a. A pedestrian refuge is to be constructed on Galston Road in a suitable location (between the church driveway and Evans Road). The refuge must not hinder sight distance/sight lines for vehicles exiting the church driveway.

Note: Should sight lines be hindered, a suitable alternative location for the pedestrian refuge on Galston road must be arranged.

- b. The pedestrian refuge must be designed in accordance with Roads and Traffic Authority (RTA) Technical Direction No. ‘TDT 2002/10’ and be completed and operational prior to the issue of the Occupation Certificate.
- c. The proposed pedestrian refuge must be designed to meet the RTA’s requirements, and endorsed by a suitably qualified and chartered Engineer (i.e. who is registered with the Institute of Engineers, Australia). The design requirements shall be in accordance with the RTA’s Road Design Guide and other Australian Codes of Practice. The certified copies of the civil design plans are to be submitted to the RTA for consideration and approval prior to the release of a Construction Certificate and commencement of road works.
- d. The RTA fees for administration, plan checking, civil works inspections and project management must be paid by the development prior to the commencement of works.
- e. The developer may be required to enter into a Works Authorisation Deed (WAD) for the abovementioned works. Please note that the WAD is to be executed prior to the RTA’s assessment of the detailed civil design plans.
- f. Any road widening along the frontage of the property required to accommodate the proposed pedestrian refuge or any boundary realignment required to facilitate a footway along Galston Road must be dedicated as a road to RTA at no cost.
- g. Any changes to the design and the construction of the gutter crossing on Galston Road must be in accordance with RTA’s requirements. Details of these

requirements should be obtained from RTA's Project Services Manager, Traffic Projects Section, Parramatta.

- h. Detailed design plans of any proposed changes to the gutter crossing must be submitted to RTA for approval prior to the commencement of any road works.

Note: A plan checking fee (amount to be advised upon submission) and lodgement of a performance bond may be required from the applicant prior to the release of the approved road design plans by the RTA.

44. Road Occupancy License

A Road Occupancy License must be obtained from the RTA for any works that may impact on traffic flows on Galston road during construction activities.

45. Construction works

- a. All demolition and construction vehicles are to be contained within the site and vehicles must enter the site before stopping.
- b. A construction zone is not permitted on Galston Road.
- c. The developer is responsible for all public utility adjustment/relocation works, necessitated by the proposed works and as required by the various public utility authorities and/or their agents.

Note: All works/regulatory signposting associated with the proposed development are to be at no cost to the RTA.

46. Stormwater discharge

The post development Stormwater discharge from the subject site onto the RTA drainage system (if any) must not exceed the pre-development discharge.

Note: Should the post development discharge exceed the pre-development discharge, detailed design plans and hydraulic calculations of any changes to the Stormwater drainage system are to be submitted to the RTA for approval, prior to the commencement of any works.

Details should be forwarded to:

*The Sydney Asset Management
Roads and Traffic Authority
PO BOX 973 Parramatta CBD 2124*

A plan checking fee is [payable and a performance bond may be required prior to the issue of RTA approval. With regard to Civil Works please contact RTA's Project Engineer, External Works Ph: 8849 2114

- 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 regarding the issue of a construction certificate 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 Preservation Order

To ensure the maintenance and protection of the existing natural environment, it is an offence to ringbark, cut down, top, lop, remove, wilfully injure or destroy a tree outside 3 metres of the approved building envelope without the prior written consent from Council.

Note: A tree is defined as a single or multi-trunked wood perennial plant having a height of not less than three (3) metres, and which develops many branches, usually from a distance of not less than one (1) metre from the ground, but excluding any plant which, in its particular location, is a noxious plant declared as such pursuant to the Noxious Weeds Act 1993. This definition of 'tree' includes any and all types of Palm trees.

All distances are determined under British Standard BS 5837: 2005, "Trees in Relation to Construction – Recommendations".

Fines may be imposed for non-compliance with Council's *Tree Preservation Order*.

Disability Discrimination Act

The applicant's attention is drawn to the existence of the *Disability Discrimination Act*. A construction certificate is required to be obtained for the proposed building/s, which will provide consideration under the *Building Code of Australia*, however, the development may not comply with the requirements of the *Disability Discrimination Act*. This is the sole responsibility of the applicant.

Covenants

The land upon which the subject building is to be constructed may be affected by restrictive covenants. Council issues this approval without enquiry as to whether any restrictive covenant affecting the land would be breached by the construction of the building, the subject of this consent. Applicants must rely on their own enquiries as to whether or not the building breaches any such covenant.

Advertising Signage – Separate DA Required

This consent does not permit the erection or display of any advertising signs except the signs that exist on the site. Most advertising signs or structures require development consent. Applicants should make separate enquiries with Council prior to erecting or displaying any advertising signage.

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 should be prior to disturbing the material. It is recommended that a contractor holding an asbestos-handling permit (issued by *WorkCover NSW*) be engaged to manage the proper handling of the material. Further information regarding the safe handling and removal of asbestos can be found at:

www.environment.nsw.gov.au

www.nsw.gov.au/fibro

www.adfa.org.au

www.workcover.nsw.gov.au

Alternatively, telephone the *WorkCover* Asbestos and Demolition Team on 8260 5885.

4 DEVELOPMENT APPLICATION - MIXED USE BUILDING COMPRISING NINE RESIDENTIAL UNITS AND ONE COMMERCIAL UNIT 1 AND 3 HALDANE STREET, ASQUITH

Development Application No:	DA/603/2010
Description of Proposal:	Demolition of existing structures, construction of a part two and part three storey building comprising nine residential units and one commercial unit with basement car parking and strata subdivision.
Property Description:	Lot 26 DP 8797, No. 1 Haldane Street, Asquith Lot 25 DP 8797, No. 3 Haldane Street, Asquith
Applicant:	PS Graham and Associates
Owner:	Laloma Enterprises Pty Ltd Mr Robert Terry Gilchrist
Statutory Provisions:	Hornsby Shire Local Environmental Plan 1994 Business C (Neighbourhood)
Estimated Value:	\$2,000,000
Ward:	A

RECOMMENDATION

THAT Council assume the concurrence of the Director-General of the Department of Planning pursuant to State Environmental Planning Policy No. 1 and approve Development Application No. 603/2010 for demolition of existing structures, construction of a part two and part three storey building comprising nine residential units and one commercial unit with basement car parking and strata subdivision at Lot 26 and 25 DP 8797, Nos. 1-3 Haldane Street, Asquith subject to the conditions of consent detailed in Schedule 1 of this report.

EXECUTIVE SUMMARY

1. The application proposes the demolition of existing structures, the construction of a mixed use development comprising nine residential units and one commercial unit and strata subdivision.
2. The proposal exceeds the permitted floor space ratio under Clause 15 of the Hornsby Shire Local Environmental Plan 1994. The submitted objection under State Environmental Planning Policy No. 1 - Development Standards, is supported in this regard.

3. The proposal generally complies with the Business Lands Development Control Plan with the exception of the height of the building and the number of car parking spaces.
4. Two submissions have been received in respect of the application.
5. It is recommended that the application be approved.

HISTORY OF THE SITE

The site is currently used as a neighbourhood shop, dance studio and residence.

THE SITE

The site is located at the south western intersection Haldane Street and Sherbrook Road, Asquith and has an area of approximately 1400 square metres. The site has frontages of 45.33 metres to Haldane Street and 54.42 metres to Sherbrook Road and is located approximately 100 metres from Asquith Railway Station.

Existing development on the site comprises a weatherboard and fibrous cement building with galvanised iron roof with a corner shop, dance studio and residence on No. 1 Haldane Street and a brick dwelling with pressed metal roof known as 'Lornama' on No. 3 Haldane Street.

Immediately opposite the site to the north is St Patricks Catholic School and Church, with Asquith Uniting Church diagonally opposite to the north east. Surrounding development to the east, west and south comprises low and medium density residential development.

The site is located within the vicinity of Haldane Street (Trees, Asquith Station and nature strip), Corner of Sherbrook Road and Baldwin Avenue (Street tree) and properties No. 178 Sherbrook Road (House) and Nos. 1 Royston Parade (Grounds - St Patricks Church) which are listed as heritage items of local significance under the provisions of Schedule D (Heritage Items) of the HSLEP 1994.

THE PROPOSAL

The proposal involves the demolition of the existing buildings and the erection of a part two and part three storey mixed use residential and commercial building. The development is comprised of the following:

- A gross floor area of 943m².
- A commercial unit on the ground floor fronting Haldane Street and Sherbrook Road with an area of 85m².
- Seven, two-storey, two-bedroom terrace dwellings and one, three storey building comprising the commercial unit with two, two-bedroom units above.
- Basement car parking is provided for each dwelling accessed via Haldane Street.
- Commercial and residential bin storage areas are proposed to be located at the ground level for the three storey building, whilst bin storage areas for the seven terrace dwellings are proposed within the front courtyards screened by the front boundary fence and associated landscaping.

- The design of the development is contemporary in style. The materials of construction would include a combination of render, face brickwork and aluminium panels, 'Colorbond' metal roofing, anodised aluminium windows, metal handrails and balusters.
- The design incorporates an awning over the footpath along the Haldane Street and Sherbrook Road frontages of the development adjacent to the commercial space.

ASSESSMENT

The development application has been assessed having regard to the '2005 City of Cities Metropolitan Strategy', the 'North Subregion (Draft) Subregional Strategy' and the matters for consideration prescribed under Section 79C of the *Environmental Planning and Assessment Act 1979* (the Act). Subsequently, the following issues have been identified for further consideration.

1. STRATEGIC CONTEXT

1.1 Metropolitan Strategy – (Draft) North Subregional Strategy

The Metropolitan Strategy is a broad framework to secure Sydney's place in the global economy by promoting and managing growth. It outlines a vision for Sydney to 2031; the challenges faced, and the directions to follow to address these challenges and achieve the vision. The draft North Subregional Strategy acts as a framework for Council in the preparation of a new Principal LEP by 2011.

The draft Subregional Strategy sets the following targets for the Hornsby LGA by 2031:

- Employment capacity to increase by 9,000 jobs; and
- Housing stock to increase by 11,000 dwellings.

The proposed development would be consistent with the draft Strategy by providing additional dwellings that would improve housing choice in the locality. The development also includes an employment generating component that would provide jobs in the locality.

2. STATUTORY CONTROLS

Section 79C(1)(a) requires Council to consider "*any relevant environmental planning instruments, draft environmental planning instruments, development control plans, planning agreements and regulations*".

2.1 Hornsby Shire Local Environmental Plan 1994

The subject land is zoned Business C (Neighbourhood) under the Hornsby Shire Local Environmental Plan 1994 (HSLEP). The objectives of the Business C (Neighbourhood) zone are:

- to encourage economic growth and employment opportunities.*
- to accommodate the retail, service and social needs of the community within the neighbourhood.*

- (c) *to encourage development that improves the health, vitality, cultural environment and social environment within neighbourhood business centres.*

The proposed development is defined as ‘demolition’, ‘multi-unit housing’ and ‘shop’ under the HSLEP and is permissible in the zone with Council’s consent.

The proposed development involves medium density development in an area which is well serviced by retail and commercial uses. Therefore, the proposal would support, strengthen and improve the economy of the businesses in the locality. It would accommodate the social needs of the community and improve the health, vitality, cultural and social environment of this area. Given the above, the proposal complies with the zone objectives.

Clause 15 of the HSLEP prescribes that the maximum floor space ratio (FSR) of development within the Business C (Neighbourhood) zone is 0.5:1. The proposed development does not comply with this requirement and the applicant has submitted a SEPP 1 objection which is discussed in Section 2.2 of this report.

Clause 18 of the HSLEP sets out heritage conservation provisions within the Hornsby area. The site is located within the vicinity of Haldane Street (Trees, Asquith Station and nature strip), corner of Sherbrook Road and Baldwin Avenue (Street tree) and properties No. 178 Sherbrook Road (House) and No. 1 Royston Parade (Grounds – St Patricks Church) which are listed as heritage items of local significance under the provisions of Schedule D (Heritage Items) of the HSLEP.

Council’s heritage assessment concluded that the proposal would not have a detrimental impact on the heritage significance of the above listed items due to the nature of the development and site separation.

2.2 State Environmental Planning Policy No. 1 Development Standards

SEPP 1 provides flexibility in applying development standards and enables a consent authority to vary a standard where strict compliance would be unnecessary, unreasonable, or tend to hinder the objectives of the Act. Where there is a variation to a development standard, the application must be accompanied by a SEPP 1 objection.

The applicant submitted an objection against Council’s adherence to the 0.5:1 FSR development standard under Clause 15 of the HSLEP. The proposed development has a FSR of 0.67:1 and exceeds the permitted floor space by 243.15m².

The Land and Environment Court has expressed the view that there are five different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the Policy:

1. *The objectives of the standard are achieved notwithstanding non-compliance with the standards;*
2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*
3. *The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*

4. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;*
5. *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

The applicant submits that strict compliance with the density requirements is unreasonable and unnecessary for the following reasons:

"The land is included in the Masterplan: Haldane Street, Asquith and Residential B – Asquith Plan in the Medium Density Multi-Unit Housing Development Control Plan. Although the subject land is included in the Residential B – Asquith Plan the site did not receive Residential B zoning due to the long standing presence of the neighbourhood shop on the corner of Haldane Street and Sherbrook Road.

Nine of the proposed units are medium density residential units typical of those in the Residential B (Medium Density) zone. FSR for Residential B (Medium Density) is 0.6:1.

Maintaining the neighbourhood shop is important to the location as there are no other convenience stores east of the railway line. The corner shop caters for staff and school children at Asquith Girls High School, Asquith Public School, St Patrick's School and parishioners of St Patrick's opposite, Uniting Church in Australia diagonally opposite and St John's Anglican Church.

It would appear the presence of the corner shop was responsible for the subject land being zoned Business C (Neighbourhood).

Conclusion

The subject land is included in Council's Residential B - Asquith Plan for Multi-Unit Housing. The land would have been zoned Residential B (Medium Density) but for the existence of a shop located on the corner of Haldane Street and Sherbrook Road for over fifty years.

The corner shop is one commercial unit in the proposal comprising nine dwellings. The corner shop should be maintained because of its value to the community but should not be included in FSR calculations.

Residential development is the dominant part of this proposal and it would be appropriate that the site should have the floor space ratio of Residential B (Medium Density) zoned land consistent with land shown in the Masterplan: Haldane Street being 0.6:1 which includes this land.

In view of the above it is unreasonable and unnecessary that this proposal should comply with the FSR of land zoned Business C (Neighbourhood) as the dominant part of the development is residential and fits the Residential B (Medium Density) zone.

The proposed FSR for residential plus commercial development is 0.67:1 and includes the community shop. The nine residential units have a FSR of 0.6:1 in accordance with the Residential B zone. It is unreasonable and unnecessary that the FSR of 0.5:1 should apply in this instance.”

The objection under SEPP 1 accords with the legislative requirements and it is considered that compliance with the development standard would be unreasonable and unnecessary in the circumstances of the case. Accordingly, the SEPP 1 objection is supported and it is considered the proposal meets the objective of Clause 15, that is, *“To control the intensity and scale of development of land so that development will be in accordance with the land’s environmental capacity and zone objectives.”*

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

The Policy provides guidelines for the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment.

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 potential of the site to contain lead contaminants as a result from car fumes is considered minimal, and typical of any allotment fronting a local road. Given the site history indicates a history of commercial/ residential development, it is not likely that the site has experienced any significant contamination.

Notwithstanding, further investigation of the proposed development site is required following demolition of the existing structures and prior to the commencement of any construction works on the site and appropriate conditions of consent are recommended in Schedule 1.

2.4 State Environmental Planning Policy (Infrastructure) 2007

The application was referred to the Railcorp pursuant to Clause 85-87 of the Infrastructure SEPP in relation to development immediately adjacent to rail corridors; excavation in, above or adjacent to rail corridors; and impact of rail noise or vibration on non-rail development of the Infrastructure SEPP. No response has been received from Railcorp during the consultation period. Accordingly, a recommended condition of development consent requires compliance with Railcorp guidelines.

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

The application has been assessed against the requirements of State Environmental Planning Policy (BASIX) 2004 which seeks to encourage sustainable residential development.

The proposal includes a BASIX certificate in accordance with the requirements of the SEPP including the list of commitments to be complied with at the construction stage and during the use of the premises. The BASIX certificate achieves the required ‘scores’ for thermal comfort, water and energy. The proposal is acceptable in this regard.

2.6 State Environmental Planning Policy No. 32 - Urban Consolidation (Redevelopment of Urban Land)

The application has been assessed against the requirements of SEPP 32. The SEPP requires Council to implement the aims and objectives of this Policy to the fullest extent practicable when considering development applications relating to redevelopment of urban land. The objectives include promotion of the orderly and economic use of land and implementation of a policy of urban consolidation which would promote the social and economic welfare of the State. There are no prescriptive controls within this Policy.

The application complies with the objectives of the Policy as it would promote social and economic welfare of the locality and would result in the orderly and economic use of under utilised land within the Asquith locality.

2.7 Sydney Regional Environmental Plan No. 20 - Hawkesbury - Nepean River

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

Water quality is the only relevant consideration in the assessment of this proposal. The installation and maintenance of sediment and erosion control devices would minimise affects on water quality of the catchment. Recommended conditions of consent would ensure compliance with this Plan.

2.8 Business Lands Development Control Plan

The proposed development has been assessed having regard to the relevant performance and prescriptive design standards within Council's Business Lands Development Control Plan (Business Lands DCP). The following table sets out the proposal's compliance with the prescriptive standards of the Plan:

Business Land Development Control Plan			
Control	Proposal	Requirement	Compliance
Density	0.67:1	0.5:1	No
Height	2 - 3 storeys	2 storeys	No
Car parking	13 spaces	16 spaces	No
Setbacks - Commercial			
Haldane Street	0 metres	Conforms to existing	Yes
Sherbrook Road	0 metres		Yes
Setbacks - Residential			
Haldane Street	6 metres	Conforms to existing	Yes
Sherbrook Road	3 metres		Yes
Side (south)	3 metres		Yes
Side (west)	5 metres		Yes

As detailed in the above table, the proposed development does not comply with a number of prescriptive standards within Council's Business Lands DCP. The matters of non-compliance are detailed below, as well as a brief discussion on compliance with relevant performance standards.

2.8.1 Density

The proposed development fails to comply with the FSR requirement contained within the Business Lands DCP. The proposed 0.67:1 floor space ratio exceeds the permitted floor space by 243.15m². The non-compliance is considered acceptable with regard to the SEPP 1 objection submitted with the application. The proposal is considered satisfactory with regard to density.

2.8.2 Design

The proposed architectural form and scale is compatible with the surrounding residential developments and is consistent with business zoning of the land. The building has been designed with a three storey component at the corner of the site with a circular recess treatment such that it gives form to the intersection of Sherbrook Road and Haldane Street intersection and provides more circulation space for pedestrians at the corner.

The design of the development includes stepping down to two storey terrace dwellings at the interface with the adjoining residential development and contributes to the urban fabric through articulation of the built form.

2.8.3 Height

The proposed development exceeds the maximum building height of two storeys prescribed by the Business Lands DCP. The proposal provides a part three storey building to facilitate the continued provision of a commercial premise with two residential units above. The top two storeys are setback from the front boundary through the provision of a terrace to each unit and would be visually obscured when viewed from Haldane Street and Sherbrook Road.

The non-compliance with regard to building height is considered acceptable and would result in a positive contribution to the streetscape.

2.8.4 Solar Access

The applicant has submitted shadow diagrams demonstrating the extent of shadows cast by the development between 9.00am and 3.00pm on June 22. The adjoining footpath on Sherbrook Road would receive sufficient sunlight between 9.00am and 2.00pm on 22 June in accordance with the Business Lands DCP. At 9.00am shadows would be cast by the proposed development over the open space on the adjoining residential development at No. 5 Haldane Street. However, the applicant has demonstrated that the adjoining residential site, would receive at least two hours of sunshine to living areas and private open space between 9.00 am and 3.00 pm on 22 June.

The proposal is acceptable with regard to solar access.

2.8.5 Vehicle Access and Car Parking

The design and access to the basement car park area has been located where it would have least impact on traffic movement on the road network and provides for vehicles to enter and

leave in a forward direction. The deficiency in respect to the number of car parking spaces is discussed in Section 2.9 of this report.

2.8.6 Residential Development

The dwellings have been designed to promote a mix of housing within close proximity to transport, employment and services.

When the commercial floor area is removed from FSR calculations for the site, the density of the development is consistent with adjoining medium density multi-unit housing located with Haldane Street and the design of the development provides two storey developments at the interface of the adjoining residential zones.

To address privacy and overlooking impacts from the first floor windows of Terraces 7, 8 and 9, a condition is recommended in Schedule 1 requiring that the first floor bedroom windows on the western elevation of the terraces to have a minimum sill height of 1.5m above the finished floor level.

2.8.7 Commercial Centres Hierarchy

To improve the function of the Sherbrook Road, Asquith Neighbourhood Centre, the development proposes to enlarge and retain the existing commercial premise (shop) on the site and provide for nine, two-bedroom dwellings which would provide better integration of within the centre and improve the vitality and urban renewal of the locality.

The proposal ensures the role of the neighbourhood centre to serve the needs of local residents is maintained through the retention of the commercial premise in the development, without undermining the strength of surrounding commercial environments through the provision of numerous commercial premises.

The proposed development is consistent with and reinforces the identified role of the Neighbourhood Centre within the commercial centres hierarchy.

2.9 Car Parking Development Control Plan

The primary purpose of this DCP is to provide parking controls for the development.

Council's Car Parking DCP has a parking requirement of one parking space per 17m² GLFA for retail development in the Business C (Neighbourhood) zone, and one parking space per dwelling less than 100m² with one visitor space per five dwellings. This equates to a parking requirement of eleven parking spaces for the residential component, including two visitor spaces, and five spaces for the retail component.

The proposed development initially had a deficit of one visitor parking space for the residential component and five spaces for the commercial /retail component.

The applicant has subsequently amended the car parking plan to provide for an additional three car parking spaces which would satisfy the visitor car parking requirements of the development and provide off-street car parking for the staff of the commercial/ retail component.

Council's Traffic and Road Safety assessment considered that the deficit in three parking space for the commercial component of the development is acceptable, as the existing shop

does not have on-site parking, there are three existing short stay car parking spaces provided adjacent to the shop on Haldane Street and the development is located within easy walking distance of good public transport.

2.10 Access and Mobility Development Control Plan

The proposed development has been assessed having regard to the relevant performance and prescriptive design standards within Council's Access and Mobility Development Control. In accordance with the requirements of the DCP, an adaptable unit is not required to be provided. Notwithstanding, the proposed development includes provision for an adaptable unit that would be accessible via a central lift and the development includes a continuous path of travel to the commercial unit on the ground floor.

Given the above, the proposal is assessed as satisfactory with regard to access and mobility.

2.11 Sustainable Waters Development Control Plan

The DCP aims to achieve the implementation of sustainable water practices into the management of development in the Hornsby Shire.

Subject to sediment and erosion control measures being implemented on site during construction, the proposal would comply with the requirements contained within the Sustainable Water Development Control Plan.

2.12 Waste Minimisation and Management Development Control Plan

The proposal includes a waste management plan and details of on-going waste management on site. The design of the development incorporates separate commercial and residential bin storage areas to be located at the ground level for the three storey building, whilst bin storage areas for each of the seven terrace dwellings are proposed within the front courtyard screened by the front boundary fence and associated landscaping. In addition, temporary waste cupboards are to be provided for each dwelling.

2.13 Section 94 Contributions Development Control Plan

Section 94 of the Environmental Planning and Assessment Act, 1979 enables Council to levy development contributions towards the cost of community facilities, public works, open space and recreational facilities.

In accordance with Council's Section 94 Contributions Plan this application requires a development contribution for the seven additional dwellings proposed. This is addressed by a condition of consent in Schedule 1. There is no net increase in the commercial floor area of the development and Section 94 contributions have not been levied on this component of the development.

3. ENVIRONMENTAL IMPACTS

Section 79C(1)(b) of the Act requires Council to consider *"the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality"*.

3.1 Natural Environment

The proposed development would necessitate the removal of twenty trees from the site. Council's assessment of the proposal concluded that none of the trees to be removed are identified as 'significant trees'. To compensate for the removal of existing trees the application is supported by a landscape plan that identifies the planting of new trees and vegetation.

Subject to the implementation of recommended conditions during construction, the proposed development would not result in a negative impact on the natural environment.

3.2 Built Environment

The matters in relation to the impact of the development on the built environment has been addressed in section 2.8 of this report.

Council's assessment of the traffic impacts of the development concludes that the development would be acceptable with regard to the level of traffic generated on the local road network.

3.3 Social Impacts

The social impacts of the development on the local and broader community have been considered with specific reference to the potential employment generation within the complex. It is estimated that the development would potentially generate a number of equivalent full time positions post construction. The details of employment generation would be estimated during the assessment of future development applications for the first use of the commercial premise. This is consistent with the North Subregion (Draft) Subregional Strategy that provides a target of 9,000 jobs within the Hornsby LGA by 2031.

The residential component of the development would improve the housing choice in the locality by providing seven additional units which is consistent with the North Subregion (Draft) Subregional Strategy.

3.4 Economic Impacts

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

4. SITE SUITABILITY

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

The site is level, does not contain any significant vegetation or natural watercourses and is not subject to bushfire risk. The property, being located within an existing commercial centre, is considered appropriate in respect to the proposed land uses and is suitable for the development.

5. PUBLIC PARTICIPATION

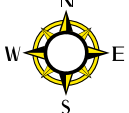
Section 79C(1)(d) of the Act requires Council to consider “any submissions made in accordance with this Act”.

5.1 Community Consultation

The proposed development was placed on public exhibition and was notified to adjoining and nearby landowners between 10 June 2010 and 1 July 2010 in accordance with Council’s Notification and Exhibition Development Control Plan. During this period, Council received two 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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Two submissions objected to the development, generally on the grounds that the development would result in:

- A building that is excessive in height;
- Overshadowing impacts; and
- Privacy impacts.

The merits of the matters raised in community submissions have been addressed in section 2 of this report.

5.2 Public Agencies

The development application is not Integrated Development under the Act, however the site is adjacent to the Northern Rail Line and was referred to Railcorp for comment. No response was received.

6. THE PUBLIC INTEREST

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

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

The application is considered to have satisfactorily addressed Council’s 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 the existing buildings and erection of a part two and part three storey mixed use residential and commercial building with basement car parking.

The proposal exceeds the permitted floor space ratio under Clause 15 of the HSLEP. The submitted objection under SEPP 1 – Development Standards, is supported in this regard.

The development complies with Section 79(c) of the Environmental Planning and Assessment Act 1979 and is generally consistent with the requirements of Council’s Business Lands Development Control Plan.

Approval of the proposal is recommended.

Note: At the time of the completion of this planning report, no persons have made a *Political Donations Disclosure Statement* pursuant to Section 147 of the Environmental Planning and Assessment Act 1979 in respect of the subject planning application.

ROD PICKLES
Manager - Assessment Team 2
Planning Division

SCOTT PHILLIPS
Executive Manager
Planning Division

Attachments:

1. Locality Plan
2. Site Plan
3. Floor Plans
4. Elevations
5. Landscape Plans
6. Shadow Diagram

File Reference: DA/603/2010
Document Number: D01489253

SCHEDULE 1**GENERAL CONDITIONS**

The conditions of consent within this notice of determination have been applied to ensure that the use of the land and/or building is carried out in such a manner that is consistent with the aims and objectives of the relevant legislation, planning instruments and Council policies affecting the land and does not disrupt the amenity of the neighbourhood or impact upon the environment.

Note: For the purpose of this consent, the term 'applicant' means any person who has the authority to act on or the benefit of the development consent.

Note: For the purpose of this consent, any reference to an Act, Regulation, Australian Standard or publication by a public authority shall be taken to mean the gazetted Act or Regulation, or adopted Australian Standard or publication as in force on the date that the application for a construction certificate is made.

1. Approved Plans and Supporting Documentation

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

Survey/ Demolition Plan prepared by PS Graham and Associates

Plan No.	Title	Rev	Dated
S.14694	Detail Survey	-	7 May 2009

Architectural Plans prepared by Architects Becerra

Plan No.	Title	Ref	Dated
A01	Site Plan	B	10 March 2010
A02	Basement Plan	D	14 September 2010
A03	Ground Floor Plan	D	6 August 2010
A04	Level 1 Floor Plan	D	6 August 2010
A05	Level 2 Floor Plan	D	6 August 2010
A06	Elevations	C	6 August 2010
A07	Elevations & Sections	C	6 August 2010
A11	Vehicular Ramp Details	A	6 August 2010

Landscape Plans prepared by Conzept Landscape Architects

Plan No.	Title	Ref	Dated
LPDA 10 – 255/1	Landscape Plan	-	March 2010
LPDA 10 – 255/2	Details Plan	-	March 2010

Hydraulic Plans prepared by GJ McDonald Consulting Engineers

Plan No.	Title	Ref	Dated
09063C.DWG	Roof, Surface & Basement Drainage Layout Plans	-	6 March 2010

09000C.DWG	General Notes, Legend, drainage Calculations & Pit Details	-	6 March 2010
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Concept Strata Subdivision Plans prepared by

Plan No.	Title	Ref	Dated
Sheet 1 of 1	Concept Strata Plan	-	undated
Sheet 1 of 4	Location Plan	-	undated
Sheet 2 of 4	Level 1 Basement Car Parking	-	undated
Sheet 3 of 4	Level 2 Ground Floor	-	undated
Sheet 4 of 4	Level 3 1 st Floor & Level 4 2 nd Floor	-	undated

Supporting Documentation

Document Title	Prepared by	Dated
Statement of Environmental Effects Ref: S.14694	PS Graham and Associates	19 March 2010
DA Noise and Vibration Assessment Report No. 2010385/1504A/R0/HM	Acoustic Logic Consultancy	28 April 2010
Disability Access Report Ref: 1067	Lindsay Perry	9 August 2010
BASIX Certificate No. 299136M_02	Greenview Consulting Assessor No. 20478	17 March 2010
ABSA Certificate No. 26815634	Greenview Consulting Assessor No. 20478	17 March 2010
Waste Management Plan	PS Graham and Associates	11 March 2010
External Materials and Finishes Dwg No. A08 Rev B	Architects Becerra	10 March 2010

2. Amendment of Plans

The plans are to be amended as follows:

- a. The first floor bedroom windows on the western elevation of Terraces 7, 8 and 9 must have a minimum sill height of 1.5m above the finished floor level.
- b. Provision of street tree planting on the Sherbrook Road frontage of the development site, including a minimum of four street trees in a minimum 50 litre pot size in one of the following species: *Eucalyptus haemestoma*, *Gordonia axilaris*, or *Zelcova serrata*.
- c. The minimum clearance from the underside of the awning soffit to the footpath must be 3 metres.
- d. The minimum setback of the awning from the face of kerb must be 300mm.

3. Removal of Existing Trees

This development consent only permits the removal of tree(s) numbered 6, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26 and 27 as identified on Plan No. S.14694 Detail Survey prepared by PS Graham and Associates dated 7 May 2009. The removal of any other trees requires separate approval under Council's Tree Preservation Order.

REQUIREMENTS PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE**4. Building Code of Australia**

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

5. Fire Safety Upgrade

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

- a. The car park is to be ventilated in accordance with AS1668.2 and comply with Part E2 & E4 of the BCA.
- b. The buildings are to comply with Part C3 and Specification C1.1 of the BCA.
- c. The building is to comply with Part D2 and in-particular clause D2.8 of the BCA.

6. Contract of Insurance (Residential Building Work)

In the case of residential building work for which the *Home Building Act, 1989* requires there to be a contract of insurance in force in accordance with Part 6 of that Act, that such a contract of insurance is in force before any building work authorised to be carried out by the consent commences.

Note: This condition does not apply to the extent to which an exemption is in force under Clause 187 or 188 of the Act, subject to the terms of any condition or requirement referred to in Clause 187(6) or 188(4) of the Act, or to the erection of a temporary building.

7. Notification of Home Building Act, 1989 Requirements

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

- a. In the case of work for which a principal contractor is required to be appointed:
 - i. The name and licence number of the principal contractor.
 - ii. The name of the insurer by which the work is insured under Part 6 of that Act.
- b. In the case of work to be done by an owner-builder:
 - i. The name of the owner-builder.
 - ii. If the owner-builder is required to hold an owner-builder's permit under that Act, the number of the owner-builder's permit.

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

8. Sydney Water – Quick Check

The application must be submitted to a Sydney Water ‘Quick Check Agent’ or ‘Customer Centre’ for approval to determine whether the development will affect any Sydney Water infrastructure, and whether further requirements are to be met.

Note: Refer to www.sydneywater.com.au or telephone 13 20 92 for assistance.

9. Water/Electricity Utility Services

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

- a. *Energy Australia* – a letter of consent demonstrating that satisfactory arrangements have been made to service the proposed development.
- b. *Sydney Water* – the submission of a ‘Notice of Requirements’ under s73 of the *Sydney Water Act 1994*.

Note: Sydney Water requires that s73 applications are to be made through an authorised Sydney Water Servicing Coordinator. Refer to www.sydneywater.com.au or telephone 13 20 92 for assistance.

10. Dilapidation Report

A ‘Dilapidation Report’ is to be prepared by a ‘chartered structural engineer’ detailing the structural condition of all adjoining properties.

11. Noise – Rail Corridor

The development must be carried out in accordance with the recommendations contained within the acoustic report submitted with the development application, titled DA Noise and Vibration Assessment, prepared by Acoustic Logic Consultancy and dated 28 April 2010 and the requirements of the Department of Planning’s *Development Near Rail Corridors and Busy Roads – Interim Guideline* and RailCorp’s *Interim Guidelines for Applicants*.

Note: The Department of Planning’s document is available at www.planning.nsw.gov.au (development assessments). The RailCorp document is available at www.railcorp.nsw.gov.au/publications.

12. Design of Bin Storage Areas

- a. Each bin storage area for Terraces 1, 2, 3, 4, 5, 6, and 7 must be of sufficient area to store a set of 3 bins – one red lidded 140 litre garbage bin (560 mm wide, 608 mm deep, 929 mm high), one yellow lidded 240 litre recycling bin (580 mm wide, 715 mm deep, 1080 mm high) and one green lidded 240 litre green waste bin (580 mm wide, 715 mm deep, 1080 mm high).

- b. The shared bin storage area for Terraces 8 and 9 must be roofed and be of sufficient area to house two sets of 3 bins (total of 6 bins), each set consisting of one red lidded 140 litre garbage bin (560 mm wide, 608 mm deep, 929 mm high), one yellow lidded 240 litre recycling bin (580 mm wide, 715 mm deep, 1080 mm high) and one green lidded 240 litre green waste bin (580 mm wide, 715 mm deep, 1080 mm high).

13. Waste Management Plan

Prior to issue of the Construction Certificate, A *Waste Management Plan Section One – Demolition Stage, Section Two – Design Stage, Section Three – Construction Stage and Section Four – Use and On-going Management* as applicable, covering the scope of this project is required to be submitted to Council in accordance with the *Waste Minimisation and Management Development Control Plan*. If the target of 60% waste to reuse or recycling will not be met, then the Waste Management Plan must include the reasons why this will be the case.

14. Detailed Site Investigation

A detailed investigation of the proposed development site must be prepared by a suitably qualified environmental consultant. Such investigation must be undertaken in accordance with NSW Environment Protection Authority's *Contaminated Sites – Guidelines for Consultants Reporting on Contaminated Sites and Contaminated Sites – Sampling Design Guidelines*.

15. Remedial Action Plan

A Remedial Action Plan (RAP) must be prepared by a suitably qualified environmental consultant and submitted to Council should the detailed investigation required reveal contamination exceeding criteria prescribed by the NSW Environment Protection Authority's *Contaminated Sites – Guidelines for the NSW Site Auditor Scheme*.

16. Car Parking and Deliveries

All car parking must be constructed and operated in accordance with *Australian Standard AS 2890.1 – 2004 – Off Street Car Parking* and *Australian Standard 2890.2 – 2002 – Off Street Commercial* and the following requirement:

- a. All parking areas and driveways are to be sealed to an all weather standard, line marked and signposted.
- b. Car parking, loading and manoeuvring areas to be used solely for nominated purposes.
- c. Vehicles awaiting loading, unloading or servicing shall be parked on site and not on adjacent or nearby public roads;
- d. All vehicular entry on to the site and egress from the site shall be made in a forward direction.
- e. An intercom system is required so that the car park gates can be opened from each unit to allow visitors to access the visitor parking space.

- f. The wall on the inside corner to the main car park is to be splayed to enable this turn to be made in one movement.
- g. A convex mirror is to be mounted on the west wall to the main car park to enable exiting vehicles to see if the one lane driveway is clear of entering vehicles.

REQUIREMENTS PRIOR TO THE COMMENCEMENT OF ANY WORKS

17. Erection of Construction Sign

A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

- a. Showing the name, address and telephone number of the principal certifying authority for the work,
- b. 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
- c. Stating that unauthorised entry to the work site is prohibited.

Note: Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

18. 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.

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

19. Toilet Facilities

Toilet facilities must be available or provided 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. Each toilet must:

- a. be a standard flushing toilet connected to a public sewer; or

- b. be a temporary chemical closet approved under the *Local Government Act, 1993*; or
- c. have an on-site effluent disposal system approved under the *Local Government Act, 1993*

20. Erosion and Sediment Control

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 up to \$1,500 may be issued for any non-compliance with this requirement without any further notification or warning.

REQUIREMENTS DURING CONSTRUCTION

21. Construction Work Hours

All work 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.

22. Demolition

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

- a. Demolition material is to be disposed of to an authorised recycling and/or waste disposal site and/or in accordance with an approved waste management plan.
- b. Demolition works, where asbestos material is being removed, must be undertaken by a contractor that holds an appropriate licence issued by *WorkCover NSW* in accordance with Chapter 10 of the *Occupational Health and Safety Regulation 2001* and Clause 29 of the *Protection of the Environment Operations (Waste) Regulation 1996*.
- c. On construction sites where buildings contain asbestos material, a standard commercially manufactured sign containing the words 'DANGER ASBESTOS REMOVAL IN PROGRESS' measuring not less than 400mm x 300mm must be erected in a prominent position visible from the street.

23. Environmental Management

The site must be managed in accordance with the publication '*Managing Urban Stormwater – Landcom (March 2004)*' and the *Protection of the Environment Operations Act 1997* by way of implementing appropriate measures to prevent

sediment run-off, excessive dust, noise or odour emanating from the site during the construction of the development.

24. Council Property

During construction works, no building materials, waste, machinery or related matter is to be stored on the road or footpath. The public reserve is to be kept in a clean, tidy and safe condition at all times.

Note: This consent does not give right of access to the site via Council's park or reserve. Should such access be required, separate written approval is to be obtained from Council.

25. 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.

26. Excavated Material

All excavated material removed from the site must be classified in accordance with the *NSW Environment Protection Authority's Environmental Guidelines – Assessment, Classification and Management of Liquid and Non-Liquid Wastes* prior to disposal to an approved waste management facility and reported to the principal certifying authority.

27. Survey Report – Finished Floor Level

A report(s) must be prepared by a registered surveyor and submitted to the principal certifying authority prior to the pouring of concrete at each level of the building certifying that:

- a. The building, retaining walls and the like have been correctly positioned on the site.
- b. The finished floor level(s) are in accordance with the approved plans.

28. Waste Management Plan - Work Practices

Appropriate work practices shall be employed to implement the *Waste Management Plan Section One – Demolition Stage and Section Three – Construction Stage* as applicable.

REQUIREMENTS PRIOR TO THE ISSUE OF A SUBDIVISION CERTIFICATE

Note: For the purpose of this consent, any reference to 'occupation certificate' shall also be taken to mean 'interim occupation certificate' unless otherwise stated.

29. Fulfilment of BASIX Commitments

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

30. Sydney Water – s73 Certificate

A s73 Certificate must be obtained from *Sydney Water*.

31. Stormwater Drainage

The stormwater drainage system for the development must be designed and constructed for an average recurrence interval of 20 years and be gravity drained and connected directly to Council's street drainage system.

32. On Site Stormwater Detention

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

- a. Have a capacity of not less than 10.1 cubic metres, and the maximum site discharge must not exceed 30 litres per second.
- 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.

33. Internal Driveway/Vehicular Areas

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

- a. Design levels at the front boundary be obtained from Council.
- b. The driveway be a rigid pavement.
- c. The driveway grade must not exceed 25 percent and changes in grade must not exceed 8 percent.

34. Vehicular Crossing

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

- a. Any redundant crossings to be replaced with integral kerb and gutter.

- b. The footway area to be restored by turfing.
- c. Approval 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.

35. Road Works

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

- a. The existing kerb and gutter along the frontage of the development in Haldane Street must be removed and reconstructed with integral kerb and gutter, together with footpath formation, necessary drainage and sealing of road pavement between the existing pavement and lip of the gutter.
- b. The existing road pavement to be saw cut a minimum of 300 mm from the existing edge of the bitumen and reconstructed.

36. 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 and be submitted to Council. 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.

37. Damage to Council Assets

Any damage caused to Council's assets as a result of the construction of the development must be rectified in accordance with Council's written requirements and at the sole cost of the applicant.

38. 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 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.

39. 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.

40. External Lighting

All external lighting must be designed and installed in accordance with *Australian Standard AS 4282 – Control of the Obtrusive Effects of Outdoor Lighting*. Certification of compliance with the Standard must be obtained from a suitably qualified person.

41. Planter Boxes/ On-slab Planting

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

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

43. Waste Management Plan Compliance

To confirm compliance with the Waste Management Plans lodged with this development application, a report(s) must be prepared by an appropriately qualified person and submitted to the principal certifying authority prior to the issue of the occupation certificate, certifying that either:

- a. The Waste Management Plan Section One – Demolition Stage and Section Three – Construction Stage were implemented and at least 60 % waste generated was reused or recycled; or
- b. If the 60% diversion from landfill was not achieved in the Demolition Stage and/or Construction Stage, the Report is to include the reasons why this occurred and certify that appropriate work practices were employed in the demolition and construction stages to implement the Waste Management Plan.

The Report(s) is based on documentary evidence (i.e. tipping dockets/receipts from recycling depots, transfer stations and landfills, audits of procedures etc) which have been attached to the Report.

44. No Parking Signs

No parking signs must be erected to prohibit parking in the waste collection vehicle turning area in the Haldane Street cul de sac.

45. s94 Infrastructure Contributions

The payment to Council of a contribution of \$63,960.60* for seven additional dwellings towards the cost of infrastructure identified in Council's Development Contributions Plan 2007-2011.

*Note: * The value of contribution is current as at 13 September 2010. The contribution will be adjusted from this date in accordance with the underlying consumer price index for subsequent financial quarters.*

It is recommended that you contact Council to ascertain the indexed value of the contribution prior to payment.

46. Validation Certificate

2 A validation report must be prepared by a suitably qualified environmental consultant in accordance with the NSW Environment Protection Authority's *Contaminated Sites – Guidelines for Consultants Reporting on Contaminated Sites* and *Contaminated Sites – Sampling Design Guidelines* validating that the proposed development has been remediated and is suitable for its intended use.

OPERATIONAL CONDITIONS

47. Noise – Plant and Machinery

The level of total continuous noise emanating from operation of all the plant, including air conditioning units and processes in all buildings (LA10) (measured for at least 15 minutes) in or on the above premises, must not exceed the background level by more than 5dB(A) when measured at all property boundaries.

An acoustic assessment is to be undertaken by a suitably qualified environmental consultant within 60 days of occupying the site in accordance with the *Environment NSW Industrial Noise Policy (2000)*, *Council's Policy and Guidelines for Noise and Vibration Generating Development (Acoustic Guidelines V.5, 2000)* and the *DECC's*

Noise Guide for Local Government (2004). The assessment must be submitted to Council for review. Should the assessment find that noise from the premise exceeds 5dB(A) appropriate measures must be employed to rectify excessive noise.

48. Fire Safety Statement - Annual

On at least one occasion in every 12 month period following the date of the first 'Fire Safety Certificate' issued for the property, the owner must provide Council with an annual 'Fire Safety Certificate' to each essential service installed in the building.

49. Landscape Establishment

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

50. On-Going Waste Management

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

- a. Each dwelling/kitchen must be provided with an indoor waste/recycling cupboard for the interim storage of a minimum one day's waste/recycling generation with separate containers for general waste and recyclable materials.
- b. Space must be provided for either individual compost containers for each dwelling or a communal compost container; the siting of which will have regard for potential amenity impacts.
- c. Every bin storage area must be screened from view in all directions

51. Garbage Collection

- a. The site is to be serviced by Council or their authorised Contractor (Domestic Waste Only).
- b. The commercial waste can be serviced by any authorised collection contractor, including Council.
- c. The residential component and non-residential component of the development must have separate and self-contained waste management systems, including separate bin storage rooms. Commercial tenants must be prevented (via signage and other means) from using the residential waste/recycling bins and vice versa.
- d. All commercial tenants 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.

52. Commercial Waste Collection Hours

Due to the close proximity of residential dwellings, commercial waste collection services must only take place within the hours of 9 AM to 7 PM on Sundays and Public Holidays or within the hours of 7 AM to 7 PM on other days.

- 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 regarding the issue of a construction certificate 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 Preservation Order

To ensure the maintenance and protection of the existing natural environment, it is an offence to ringbark, cut down, top, lop, remove, wilfully injure or destroy a tree outside 3 metres of the approved building envelope without the prior written consent from Council.

Note: A tree is defined as a single or multi-trunked wood perennial plant having a height of not less than three (3) metres, and which develops many branches, usually from a distance of not less than one (1) metre from the ground, but excluding any plant which, in its particular location, is a noxious plant declared as such pursuant to the Noxious Weeds Act 1993. This definition of 'tree' includes any and all types of Palm trees.

All distances are determined under British Standard BS 5837: 2005, "Trees in Relation to Construction – Recommendations".

Fines may be imposed for non-compliance with Council's *Tree Preservation Order*.

Disability Discrimination Act

The applicant's attention is drawn to the existence of the *Disability Discrimination Act*. A construction certificate is required to be obtained for the proposed building/s, which will provide consideration under the *Building Code of Australia*, however, the development may not comply with the requirements of the *Disability Discrimination Act*. This is the sole responsibility of the applicant.

Covenants

The land upon which the subject building is to be constructed may be affected by restrictive covenants. Council issues this approval without enquiry as to whether any restrictive covenant affecting the land would be breached by the construction of the building, the subject of this consent. Applicants must rely on their own enquiries as to whether or not the building breaches any such covenant.

Tenancy Fit-Out – Separate DA Required

This consent does not permit the fit-out of individual tenancies. A separate development application is required for the fit-out of individual tenancies prior to the occupation of the building.

Use of Building – Separate DA Required

This consent does not permit the use of the premises for any purpose. Separate development consent is required for the use of the premises prior to the occupation of the building.

Advertising Signage – Separate DA Required

This consent does not permit the erection or display of any advertising signs. Most advertising signs or structures require development consent. Applicants should make separate enquiries with Council prior to erecting or displaying any advertising signage.

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 should be prior to disturbing the material. It is recommended that a contractor holding an asbestos-handling permit (issued by *WorkCover NSW*) be engaged to manage the proper handling of the material. Further information regarding the safe handling and removal of asbestos can be found at:

www.environment.nsw.gov.au

www.nsw.gov.au/fibro

www.adfa.org.au

www.workcover.nsw.gov.au

Alternatively, telephone the *WorkCover* Asbestos and Demolition Team on 8260 5885.

House Numbering

House numbering can only be authorised by Council. Before proceeding to number each premise in the development, the allocation of numbers is required to be obtained from Council's Planning Division. The authorised numbers are required to be displayed in a clear manner at or near the main entrance to each premise.

Rain Water Tank

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

**5 DEVELOPMENT APPLICATION - DWELLING-HOUSE
54B BEECROFT ROAD, BEECROFT**

Development Application No:	DA/364/2010
Description of Proposal:	Erection of a dwelling-house
Property Description:	Lot 11, DP 1123895, No. 54B Beecroft Road, Beecroft
Applicant:	Whiteway House (No 370) Pty Ltd
Owner:	Whiteway House (No 370) Pty Ltd
Statutory Provisions:	Hornsby Shire Local Environmental Plan 1994 - Residential AS (Low Density - Sensitive Lands)
Estimated Value:	\$250,000
Ward:	C

RECOMMENDATION

THAT Development Application No. DA/364/2010 for the erection of a single storey dwelling-house at Lot 11, DP 1123895, No. 54B Beecroft Road, Beecroft, be refused for the reasons detailed in Schedule 1 of this report.

EXECUTIVE SUMMARY

1. The application proposes the erection of a single storey dwelling-house on a vacant, battle-axe allotment.
 2. The proposal generally complies with the Hornsby Shire Local Environmental Plan, 1994 (HSLEP).
 3. The siting of the dwelling-house would require the removal of Tree No. 8 a large, healthy, mature Sydney Blue Gum (*Eucalyptus saligna*).
 4. A Red Sticker has been placed against the application requiring it to be referred to Council for determination.
 5. Two submissions have been received in respect of the application.
 6. It is recommended that the application be refused.
-

HISTORY OF THE SITE

On 25 October 2005, Council approved DA/2021/2004 for a two lot subdivision, thus creating the subject allotment. The development consent included an indicative building envelope within the site to avoid adverse impacts on the existing trees within the site and on adjoining sites.

THE SITE

The vacant, 768.6m², battle-axe site is located on the western side of Beecroft Road, Beecroft. The site, excluding the access handle, has a 10% fall from the north-eastern to the south-western corner.

Surrounding residential development is characterised by an eclectic blend of one and two storey dwelling-houses, ranging from modest, post-war designs to houses of a more contemporary appearance, each surrounded by well established trees and landscaped areas.

The property is located within the Beecroft/Cheltenham Heritage Conservation Area and is in the vicinity of property No. 52C Beecroft Road, Beecroft ("*Glenbower*") which is listed as an item of local significance under the provisions of Schedule D (Heritage Items) of the HSLEP.

The site contains remnant trees from the Blue Gum Shale Forest which is considered to be an Ecologically Endangered Community (EEC).

THE PROPOSAL

This application proposes the erection of a single storey dwelling-house incorporating a double garage, four bedrooms, a bathroom, study, dining room, family room/kitchen, lounge room, laundry, alfresco area and an entrance lobby.

The siting of the dwelling-house would require the removal of a large, mature Sydney Blue Gum (*Eucalyptus saligna*), which Council has assessed as being a significant tree.

Given that the development application seeks consent to erect a dwelling-house which would require the removal of the large, healthy, mature Sydney Blue Gum located approximately in the middle and rear half of the site, the applicant was requested to consider redesigning the development so that the dwelling-house and all associated works would be located no closer than 5m from this tree (No. 8).

Subsequent discussions revealed that the applicant is of the view that the height and age of the tree in question would pose an ongoing physical risk to any dwelling-house and its occupants, irrespective of the setback provided and that it should be allowed to be removed.

ASSESSMENT

The development application has been assessed having regard to the '2005 City of Cities Metropolitan Strategy', the 'North Subregion (Draft) Subregional Strategy' and the matters for consideration prescribed under Section 79C of the *Environmental Planning and Assessment Act 1979* (the Act). Subsequently, the following issues have been identified for further consideration.

1. STRATEGIC CONTEXT

1.1 Metropolitan Strategy – (Draft) North Subregional Strategy

The Metropolitan Strategy is a broad framework to secure Sydney's place in the global economy by promoting and managing growth. It outlines a vision for Sydney to 2031; the challenges faced, and the directions to follow to address these challenges and achieve the vision. The draft North Subregional Strategy acts as a framework for Council in the preparation of a new Principal LEP by 2011.

The draft Subregional Strategy sets the following targets for the Hornsby LGA by 2031:

- Employment capacity to increase by 9,000 jobs; and
- Housing stock to increase by 11,000 dwellings.

The proposed development would be consistent with the draft Strategy by providing an additional dwelling and would contribute towards housing choice in the locality.

2. STATUTORY CONTROLS

Section 79C(1)(a) requires Council to consider “*any relevant environmental planning instruments, draft environmental planning instruments, development control plans, planning agreements and regulations*”.

2.1 Hornsby Shire Local Environmental Plan, 1994

The subject land is zoned Residential AS (Low Density - Sensitive Lands) under Hornsby Shire Local Environmental Plan, 1994 (HSLEP). The objectives of the Residential AS zone are:

- (a) *to provide for the housing needs of the population of the Hornsby area;*
- (b) *to promote a variety of housing types and other land uses compatible with a low density residential environment and sensitive to the land capability and established character of this environment;*
- (c) *to provide for development that is within the environmental capacity of a sensitive low density residential environment.*

The proposed development is defined as a “dwelling-house” under the HSLEP and is permissible in the Residential AS zone with Council's consent.

Clause 15 of HSLEP prescribes that the maximum floor space ratio (FSR) of development within the Residential AS (Low Density - Sensitive Lands) zone is 0.4:1. The applicant addresses this requirement by proposing to erect a dwelling-house with an FSR of 0.31:1, which complies with this development standard.

Clause 18 of the HSLEP sets out heritage conservation provisions within the Hornsby area. The property is located within the Beecroft/Cheltenham Heritage Conservation Area and is in the vicinity of property No. 52C Beecroft Road, Beecroft (“*Glenbower*”) which is listed as an item of local significance under the provisions of Schedule D (Heritage Items) of the HSLEP.

The objective of the Heritage element of the Dwelling House DCP requires “*The retention of heritage items and conservation of the heritage values in heritage conservation areas to provide continuity with the past*”.

It is considered that the heritage values of the Beecroft Road streetscape and the heritage item at 52C Beecroft Road would not be impacted by the development as it is located on a battle-axe lot and would not be visible from the street or the item.

2.2 Dwelling House Development Control Plan

The proposed development has been assessed having regard to Council's Dwelling House Development Control Plan. The following table sets out the proposal's compliance with the prescriptive measures of the Plan:

Dwelling House Development Control Plan			
Control	Proposal	Requirement	Complies
Bulk and Scale			
Floor space ratio	0.31:1	0.4:1	Yes
Site cover	40%	40%	Yes
Setbacks			
Front (south)	4m	1m (battle-axe)	Yes
Side (west)	1.45m	1m	Yes
Side (east)	1.65m	1m	Yes
Rear (north)	5.25m	3m	Yes
Design			
Height	7m	<9m	Yes
Unbroken Wall length	12.2m	10m	No
Building length	24m	24m	Yes
Solar access to living areas		North-facing	Yes
Cut and fill	1m	1m	Yes
Private Open Space	150m ²	120m ²	Yes
Landscaping	45%	45%	Yes
Car Parking			
No. of spaces	2	2	Yes
Garage size	double	N/A	Yes
Driveway gradient		Complies with design template	Yes

Turning Area		Complies with design template	Yes
Solar Access			
Windows to north-facing living rooms on adjoining development to receive 3 hours of sunlight on 22 June (the winter solstice)			Yes
Private open space on adjoining land to receive 4 hours of sunlight on 22 June			Yes
Privacy			
No overlooking of private open spaces on adjoining land from active rooms, decks or balconies			Yes
Living areas on the ground floor only			N/A
Drainage Control			
The drainage system would discharge to an easement in accordance with Council's design criteria			Yes
Energy Efficiency			
Plans comply with the BASIX Certificate			Yes

As detailed in the above table, the proposed development generally complies with the prescriptive elements of Council's Dwelling House DCP. The matter of non-compliance is addressed as follows:

2.2.1 Design

The proposed 12.2m western unbroken wall does not comply with the 10m prescriptive measure of the Design element. It is considered that the proposal is acceptable in this instance as it represents a minor variation to the requirement at ground level. The western wall has sufficient articulation provided by the chosen building materials and the positioning of the windows to avoid a symmetrical or monotonous appearance.

The proposal complies with the objectives of the Design element and is considered acceptable in this regard.

2.4 Heritage Development Control Plan

Clause 18 of the HSLEP sets out heritage conservation provisions within the Hornsby area. The property is located within the Beecroft/Cheltenham Heritage Conservation Area and is in the vicinity of property No. 52C Beecroft Road, Beecroft ("*Glenbower*") which is listed as an item of local significance under the provisions of Schedule D (Heritage Items) of the HSLEP.

The objective of the Heritage element of the Dwelling House DCP requires "*The retention of heritage items and conservation of the heritage values in heritage conservation areas to provide continuity with the past*".

It is considered that the heritage values of the Beecroft Road streetscape and the heritage item at 52C Beecroft Road would not be impacted by the development as it is located on a battle-axe lot and would not be visible from the street or the item.

3. ENVIRONMENTAL IMPACTS

Section 79C(1)(b) of the Act requires Council to consider “*the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality*”.

3.1 Natural Environment

One of the objectives of the Flora and Fauna Protection element of the Dwelling House DCP is “*The conservation of bushland, significant flora and fauna habitats and wildlife corridors from the impacts of development*”.

The site contains indigenous trees including *Eucalyptus saligna* (Sydney Blue Gum). These trees form part of a remnant of Blue Gum High Forest Critically Endangered Ecological Community listed under the *Threatened Species Conservation Act, 1995*. A Sydney Blue Gum (Tree No. 8) located approximately in the middle of the rear portion of the site, would be removed as part of the proposal. Smaller native *Angophora costata*, *Eucalyptus pilularis* and *Eucalyptus saligna* trees occur at rear, north-western corner of the site, away from the proposed building envelope.

The applicant has submitted an Ecological Assessment and Assessment of Significance ('Seven Part Test') prepared by *T. J Hawkeswood Scientific Consulting Pty Ltd* which concludes that the removal of Tree No. 8 would be unlikely to have a significant impact upon the local population of the Blue Gum High Forest Critically Endangered Ecological Community.

Council officers have considered the recommendations of the ecological reports and concur that it is unlikely that the removal of Tree No. 8 would have a significant impact upon threatened species, populations and endangered ecological communities listed under the *Threatened Species Conservation Act, 1995*. However, the tree appears to be in good health and provides an ecological function amongst the developed urban landscape.

The tree also contributes to the character of the surrounding urban landscape which is typified by well maintained gardens interspersed by large, well established trees. This contribution was supported by Council when the subdivision was approved in 2005, following an undertaking by the applicant to relocate the 200m² building envelope 8 metres away from this tree.

Whilst the proposed single storey design meets the height requirements for dwelling-houses on battle-axe allotments, the resultant building envelope unnecessarily requires the removal of Tree No. 8.

In the circumstance of this case, the removal of the tree is not supported as Tree No. 8 appears to be in good health, provides an ecological function amongst the developed urban landscape. It is considered that a dwelling-house could be designed for the site without impacting on this tree or the amenity of adjacent properties in terms of bulk and scale, privacy or overshadowing.

3.2 Built Environment

The proposed dwelling-house would not be out of character with the established built form of residential development in the area and would be consistent with the form of development permitted in the locality.

Should Council adhere to the officer's recommendation to retain the tree, it is likely that a two storey dwelling-house would be proposed on the site. In all likelihood, a two storey dwelling-house would have a greater impact on the amenity of adjoining residents. However, that application would need to be assessed having regard to the individual merits of the case.

3.3 Social and Economic Impacts

There are no anticipated adverse social or economic impacts resulting from the proposed development.

4. SITE SUITABILITY

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

Whilst the site is appropriately zoned to accommodate a dwelling-house, there would be an environmental impact with respect to the removal of a significant tree from the site. Whilst that impact would not be significant from an ecological perspective, there are viable options for the construction of a dwelling-house and the retention of the tree. On that basis, it is considered that the environmental impact is unacceptable.

5. PUBLIC PARTICIPATION

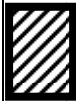
Section 79C(1)(d) of the Act requires Council to consider "*any submissions made in accordance with this Act*".

5.1 Community Consultation

The proposed development was placed on public exhibition and was notified to adjoining and nearby landowners between 29 March, 2010 and 12 April, 2010 in accordance with Council's Notification and Exhibition Development Control Plan. During this period, Council received two submissions. The map below illustrates the location of those nearby landowners who made a submission that are in close proximity to the development site.



NOTIFICATION PLAN

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

Two submissions objected to the development, generally on the grounds that the development would create stormwater problems, was unclear with respect to the extent of excavation to accommodate the garage level and would result in detrimental impacts on trees. These issues are addressed as follows:

5.1.1 Stormwater Drainage.

A piped stormwater drainage system has been established adjacent to the southern side boundary alignment as part of the subdivision. Drawing 934.1/4 demonstrates that all roof and driveway stormwater would be drained to this system.

The proposal meets the objectives of the Drainage Control element and is considered acceptable.

5.1.2 Excavation

The plans and elevations indicate that there would be an excavation up to one metre in depth along the eastern side boundary, stabilised by suitable retaining walls, to establish the finished floor level for the development. This proposal complies with the maximum one metre prescriptive measure of the Design element. The garage floor level would be supported on a suspended slab. No excavations are proposed in the vicinity of this room or the adjacent driveway.

The proposal meets the objectives of the Design element and is considered acceptable.

5.1.3 Removal of trees

The impact of the development on trees has been discussed under Section 3.1 Natural Environment of this report.

5.2 Public Agencies

The development application is not “*Integrated Development*” as defined under the Act and was not required to be referred to any agencies for comment.

6. THE PUBLIC INTEREST

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

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

It is considered in this instance that approval of the proposed dwelling-house would not be in the public interest, as it unnecessarily proposes the removal of a healthy, significant tree from the site and that there is scope for a more sensitive design to be prepared which would allow this tree to be retained.

CONCLUSION

The application proposes the erection of a single storey dwelling-house. Whilst the dwelling-house generally complies with Council’s requirements, the application would require the removal of a *Eucalyptus saligna* (Sydney Blue Gum) from the site. This tree has been assessed as significant, as the tree appears to be in good health and provides an ecological function amongst the developed urban landscape.

It is considered that there is adequate scope to design and position a dwelling-house that would meet the lifestyle expectations of the occupants and the reasonable requirement of Council to conserve “bushland, significant flora and fauna habitats and wildlife corridors from the impacts of development”. Council’s officers have unsuccessfully attempted to negotiate an amendment to the design of the dwelling-house that would result in the retention of the tree.

The proposal would have an unacceptable environmental impact in the circumstances and therefore, it is recommended that the application be refused.

Note: At the time of the completion of this planning report, no persons have made a *Political Donations Disclosure Statement* pursuant to Section 147 of the Environmental Planning and Assessment Act 1979 in respect of the subject planning application.

SCOTT PHILLIPS
Executive Manager
Planning Division

SIMON EVANS
Manager - Assessment Team 1
Planning Division

Attachments:

1. Locality Plan
2. Site Plan
3. Landscape Plan
4. Floor Plan
5. Elevations
6. Sections

File Reference: DA/364/2010
Document Number: D01424175

SCHEDULE 1**REASONS FOR REFUSAL**

1. Pursuant to Section 79(1)(a)(iii) of the *Environmental Planning and Assessment Act, 1979*, the proposal fails to meet the objectives of the Flora and Fauna Protection element of the Dwelling House DCP and therefore is an inappropriate development of the site.
2. Pursuant to Section 79(1)(b) and (c) of the *Environmental Planning and Assessment Act, 1979*, the proposed location of the dwelling-house would unnecessarily require the removal of a Sydney Blue Gum tree (*Eucalyptus saligna*) which appears to be in good health and provides an ecological function amongst the developed urban landscape.
3. Pursuant to Section 79(1)(e) of the *Environmental Planning and Assessment Act, 1979*, it is considered that the proposed development would set an undesirable precedent for similar inappropriate development and is not in the public interest.

- END OF REASON FOR REFUSAL -

**6 DEVELOPMENT APPLICATION - MIXED USE BUILDING COMPRISING FIVE RESIDENTIAL UNITS AND ONE COMMERCIAL UNIT
22 OXFORD STREET EPPING**

Development Application No:	DA/253/2010
Description of Proposal:	Demolition of an existing building and erection of a four storey building comprising five residential units and one commercial unit with ground floor level car parking
Property Description:	Lot 4 DP 10221 (No. 22) Oxford Street Epping
Applicant:	Mr P. W. Brooks
Owner:	Civic Grocery Stores Pty Ltd
Statutory Provisions:	Hornsby Shire Local Environmental Plan 1994 Business A (General)
Estimated Value:	\$1,569,148
Ward:	C

RECOMMENDATION

THAT Council assume the concurrence of the Director-General of the Department of Planning pursuant to State Environmental Planning Policy No. 1 and approve Development Application No. 253/2010 for the demolition of an existing building and the erection of a four storey building comprising five residential units and one commercial unit with ground level car parking at Lot 4 DP 10221 (No. 22) Oxford Street Epping, subject to the conditions of consent detailed in Schedule 1 of this report.

EXECUTIVE SUMMARY

1. The application proposes the demolition of an existing building and the erection of a four storey mixed use residential and commercial building with ground floor car parking.
2. On 18 April 2007 Council approved Development Application No. 926/2006 for the demolition of an existing building and erection of three storey mixed use building comprising four residential units, one commercial unit and car parking on the ground floor.

3. The proposal exceeds the permitted floor space ratio under Clause 15 of Hornsby Shire Local Environmental Plan 1994. The submitted objection under State Environmental Planning Policy No. 1 – Development Standards, is supported in this regard.
4. The proposal complies with the design principles under SEPP 65 Design Quality of Residential Flat Buildings and Council's Business Lands DCP.
5. The application proposes five car parking spaces which is one less than prescribed by Council's Car Parking Development Control Plan. The applicant has proposed to enter into a Voluntary Planning Agreement to provide a monetary contribution in lieu of one car parking space.
6. One submission has been received in respect of the application.
7. It is recommended that the application be approved.

HISTORY OF THE SITE

On 18 April 2007 Council approved Development Application No. 926/2006 for the demolition of an existing building and erection of three storey mixed use development. The approved development is comprised of the following:

- One ground floor commercial unit with an area of 40m².
- Four residential units.
- Parking for five vehicles on the ground floor level.
- A total gross floor area of 372m².

The floor space ratio (FSR) of the approved development is 1.1:1 and exceeded Council's FSR requirements under Hornsby Shire Local Environmental Plan 1994.

THE SITE

The site is located on the eastern side of Oxford Street, between Pembroke and Essex Street. It is known as No. 22 Oxford Street and has an area of 339.2 m². The site is located within the Epping Commercial Centre and is 150 metres north of Epping Railway Station.

The site is regular in shape and has a frontage of 6.7 metres to Oxford Street and a depth of 50.595 metres. It experiences an average fall of 3% to the frontage of the site.

The site contains an existing single storey commercial building with a floor area of 215sqm. The building is currently used for office printing supplies. A 3.66m wide right of carriageway off Pembroke Street traverses the rear of the subject site. Car parking provided is at the rear of the site.

Immediately adjoining the site on its northern boundary is a single storey commercial building. Further to the north is a part three part four storey mixed use development with commercial unit on the ground floor and residential units above. On its southern boundary, the site adjoins a two storey commercial building with an open ground floor car park at the rear.

To the south and on the western side of Oxford Street, there is a four storey mixed use building comprising shops, a post office on the ground floor and residential units on the upper

floors. Located opposite the site and on the western side of Oxford Street, is the Telstra exchange building. To the rear and on the opposite side of the right of carriageway, the site adjoins St Albans Anglican Church property.

The property is located within the vicinity of properties No. 9 Oxford Street (School of Arts), Nos. 10-16 Oxford Street (shops) and Nos. 3-5 Pembroke Street (St Alban's Anglican Church and grounds) which are listed as heritage items of local significance under the provisions of Schedule D (Heritage Items) of the HSLEP 1994.

THE PROPOSAL

The proposal involves the demolition of an existing building and the erection of a four storey mixed use residential and commercial building. The development is comprised of the following:

- A gross floor area of 401.9m² (29.9m² greater than the approved Development Consent No. 926/2006).
- A commercial unit on the ground floor fronting Oxford Street with an area of 40m².
- Five dwellings including one, single bedroom unit and four, two bedroom units. There are two units on each level, apart from the top storey which contains one unit and the loft bedroom of unit 3.
- Five car parking spaces located on the ground floor level. These spaces are accessed via the existing right of carriageway located at the rear of the site. The existing right of carriageway fronts Pembroke Street.
- A turntable is to be provided on the ground floor level to enable vehicles to exit the site in a forward direction.
- Commercial and residential bin storage areas are proposed to be located at the ground level. The residential bin storage area would be located adjacent to the entrance driveway to the parking area. The commercial bin storage area would be located within the parking level adjacent to the turntable.
- The design of the development is contemporary in style. The materials of construction would include face brickwork, Colorbond roofing, powder coated aluminium windows, metal handrails and balusters.
- Provision of an awning over the footpath along the Oxford Street frontage of the development.

ASSESSMENT

The development application has been assessed having regard to the '2005 City of Cities Metropolitan Strategy', the 'North Subregion (Draft) Subregional Strategy' and the matters for consideration prescribed under Section 79C of the *Environmental Planning and Assessment Act 1979* (the Act). Subsequently, the following issues have been identified for further consideration.

1. STRATEGIC CONTEXT

1.1 Metropolitan Strategy – (Draft) North Subregional Strategy

The Metropolitan Strategy is a broad framework to secure Sydney's place in the global economy by promoting and managing growth. It outlines a vision for Sydney to 2031; the challenges faced, and the directions to follow to address these challenges and achieve the vision. The draft North Subregional Strategy acts as a framework for Council in the preparation of a new Principal LEP by 2011.

The draft Subregional Strategy sets the following targets for the Hornsby LGA by 2031:

- Employment capacity to increase by 9,000 jobs; and
- Housing stock to increase by 11,000 dwellings.

The proposed development would be consistent with the draft Strategy by providing an additional five dwellings and would improve housing choice in the locality. The development also includes an employment generating component that would contribute to employment in the locality.

1.2 EPPING TOWN CENTRE

The Metropolitan Sub-Regional Plan identifies Epping commercial centre as a 'Town Centre'. 'A study is currently being undertaken to explore the potential for the Epping commercial centre to accommodate increased residential and employment growth to fulfil its role as a Town Centre in the metropolitan context. The proposed application would not prejudice options for the Town Centre Study.

2. STATUTORY CONTROLS

Section 79C(1)(a) requires Council to consider "*any relevant environmental planning instruments, draft environmental planning instruments, development control plans, planning agreements and regulations*".

2.1 Hornsby Shire Local Environmental Plan 1994

The subject land is zoned Business A (General) under Hornsby Shire Local Environmental Plan 1994 (HSLEP). The objectives of the Business A (General) zone are:

- to encourage economic growth and employment opportunities.*
- to accommodate the retail, commercial and social needs of the community.*
- to encourage development that improves the health, vitality, cultural environment and social environment within the area.*

The proposed development is defined as 'business premises' and 'multi-unit housing' and is permissible in the zone with Council's consent.

The proposed development involves high density development in an area that is well serviced by retail and commercial uses. Therefore, the proposal would support, strengthen and improve the economy of the businesses in the locality. It would accommodate the social

needs of the community and improve the health, vitality, cultural and social environment of this area. Given the above, the proposal complies with the zone objectives.

Clause 15 of the HSLEP prescribes that the maximum floor space ratio (FSR) of development within the Business A (General) zone is 1:1. The proposal exceeds the 1:1 floor space ratio development standard under Clause 15 by 62.7m². The applicant submitted an objection under State Environmental Planning Policy No. 1 – Development Standards in respect to the non-compliance. This matter is discussed in Section 2.2 of this report.

Clause 18 of the HSLEP sets out heritage conservation provisions within the Hornsby area. The site is located in the vicinity of properties No. 9 Oxford Street (School of Arts), Nos. 10-16 Oxford Street (shops) and Nos. 3-5 Pembroke Street (St Alban's Anglican Church and grounds) which are listed as heritage items of local significance under the provisions of Schedule D (Heritage Items) of the HSLEP 1994. The applicant submitted a Heritage Impact Statement in support of the application.

The application was referred to the Heritage Advisory Committee for comment. At the time that the Committee initially considered the proposed development, it raised issues with respect to the streetscape presentation of the proposed building. To address the issues raised by the Committee, the applicant amended the proposal to achieve the following:

- Removal of one car parking space from the ground floor level, which permits the basement to be lowered such that the floor level of commercial unit would match the footpath level.
- The lowering of the commercial finished floor level to allow the entrance of the commercial unit and the residential entry foyer to be relocated forward to achieve a zero front setback. This provides a continuous street wall at the ground level which would be consistent with adjoining developments and the heritage listed shops at Nos. 10-16 Oxford Street.
- The lowering of the floor level has resulted in the reduction of the overall building height by 900mm.

The Heritage Advisory Committee considered the amended proposal and agreed that the amended proposal provides an improved streetscape presentation. The Committee raised no further concerns with respect to the proposal.

2.2 State Environmental Planning Policy (SEPP) No. 1 – Development Standards

The proposed 1.18:1 floor space ratio does not comply with the maximum 1:1 floor space ratio permitted pursuant to Clause 15 of the Hornsby Shire LEP and exceeds the permitted floor space by 62.7sqm.

The application has been assessed against the requirements of SEPP 1.

This Policy provides flexibility in the application of development standards in circumstances where strict compliance with those standards would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objectives specified in section 5(a) (i) and (ii) of the Environmental Planning and Assessment Act.

The Act prescribes that where development could, but for any development standard, be carried out under the Act the person intending to carry out that development may make a

development application in respect of that development, supported by a written objection that compliance with that development standard is unreasonable or unnecessary in the circumstances of the case, and specifying the grounds of that objection.

The Land and Environment Court has expressed the view that there are five different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the Policy:

1. *the objectives of the standard are achieved notwithstanding non-compliance with the standard;*
2. *the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*
3. *the underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*
4. *the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;*
5. *the zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

The applicant provided the following SEPP 1 objection with respect to the non-compliance with Clause 15 of the HSLEP:

Grounds for Objection:

The proposed variation to the development standard has been considered in light of the objectives and potential environmental impacts and strict compliance is considered to be unreasonable and unnecessary for the following reasons:

1. *The proposal is not considered to be excessive in terms of bulk, scale and height and provides a positive contribution to the streetscape. The amended design, whilst increasing floor space slightly, has in fact reduced the height of the proposal by 900mm. The proposal is designed to create a three storey street wall with ground floor level provided with shopfront on the boundary and the upper two levels containing balconies and a parapet wall above. Level 4 is set back approximately 10 metres reducing the presence of the upper level in the streetscape. The building would have a three storey scale comparable with the height and scale of the surrounding development on both sides of Oxford Street and consistent with Epping Commercial Centre Masterplan which aims to provide a 2 to 3 storey height at the street edge.*

The proposed building does not extend to the rear boundary with the ground floor set-back approximately 5.8m from the rear boundary with the adjoining Church property. The rear wall of the residential component is set back between 13 -15 metres from the rear boundary (due to the rear set back being

staggered). This generous setback locates the main bulk of the building well behind the rear building line of the adjoining properties.

The proposed building is of considerably less bulk and height than the mixed use development to the north at 28-30 Oxford Street which extends further east than the proposed development. The proposed building will have a three storey scale to the lane, with the fourth level stepped back slightly. The proposed height would be setback behind the adjoining two storey commercial building immediately to the south. The proposed setback would create a scale which is less imposing than the adjoining two storey commercial building.

- 2. There are examples of relatively recent developments on nearby properties that would exceed the 1:1 FSR development standard. For example, the four storey mixed use development at 28-30 Oxford Street and 1-3 Oxford Street would be well in excess of the 1:1 FSR development standard. The proposed building would be considerably less bulk than these approved developments.*
- 3. The additional FSR does not contribute to unacceptable height or scale in relation to shadow impacts, with the majority of the shadow falling over the lane, the adjoining commercial building to the south and Oxford Street. Therefore, no adverse shadow impacts arise as a consequence of the additional floor space. The shadow impact is consistent with the overshadowing design objectives of the Epping Commercial Centre Masterplan.*
- 4. The generous rear setback provides good spatial separation from the adjoining rectory within the St Albans Anglican Church grounds. The mature vegetation along the western boundary of the Church site also provides a good vegetative screen between the Church grounds and the subject site and other development in Oxford Street.*
- 5. The proposal provides five dwellings (being one additional dwelling than approved under DA926/2006). The proposed dwellings assist in increasing the residential population in the commercial centre consistent with one of the principles of the Epping Commercial Centre Masterplan.*

The proposal is considered to be consistent with the objectives of the development standard as the intensity and scale of the development is considered to be within the environmental capacity of the site and surrounding development.

In terms of the zone objectives the departure from the FSR development standard will assist in achieving the zone objectives as follows:

- 1. The additional floor space together with reconfiguration of the floor planning allows an additional dwelling to be incorporated into the development in comparison to the approved development. Whilst this increase is small, it would assist in increasing the residential population within the Epping Commercial Centre, providing greater population to support the local business and therefore support the local economy.*
- 2. The proposal would reduce the total commercial floor space in the existing building. However, the existing commercial floor space is not high quality and aside from the shop front the other three tenancies are not readily apparent.*

Whilst there is a reduction in commercial floor space, this is not considered to greatly reduce the overall provision of retail commercial or social in needs of the community. In addition, the amended design provides good quality commercial/retail floor space to activate the street.

3. *The proposal and the additional dwelling achieved by the additional floor space (in comparison to the approved development) would increase the residential population within the town centre and add the vitality of the Epping Commercial Centre.*

Variation of the 1:1 FSR development standard would not hinder the objects of the EP & A Act as the proposed development (inclusive of the additional floor space) does not give rise to any adverse impacts to the natural environment, and as discussed above, there are no adverse bulk, scale or height impacts upon the surrounding development or streetscape. The proposal is considered to be consistent with the objectives of the Business A (General) zone, the Business Lands DCP and in particular the Epping Commercial Centre Masterplan and therefore contributes to the orderly economic use and development of land.

The proposal has been amended to address the streetscape concerns raised by Council during the assessment of the DA. The basement has been lowered by the removal of one car which in turn has lowered the height of the building and enabled the provision of a commercial tenancy with direct street access and frontage improving the streetscape outcome.

It is considered that the proposed minor increase to the FSR control would not have detrimental impacts on adjoining properties or streetscape of Oxford Street and achieves a height, scale and bulk anticipated for the Epping commercial area as evidenced by more recent developments that have taken place in Oxford Street.”

The objection under SEPP 1 accords with the legislative requirements and is supported for the applicant’s stated reasons. It is considered the proposal meets the objective of Clause 15 i.e.:

“To control the intensity and scale of development of land so that development will be in accordance with the land’s environmental capacity and zone objectives.”

2.3 State Environmental Planning Policy (SEPP) No. 65 – Design Quality of Residential Flat Development

The application has been assessed against the requirements of the State Environmental Planning Policy No. 65 (SEPP 65). This Policy provides State-wide planning controls for establishing design criteria for the assessment of residential flat developments and for residential components of mixed use developments. The primary aim of SEPP 65 is to “*improve the design quality of residential flat development in New South Wales*”.

The following section of this report includes an assessment of the residential component of the proposed development against the ten principles provided in Part 2 of SEPP 65:

2.3.1 Principle 1: Context

The Metropolitan Sub-Regional Plan identifies Epping Commercial Centre as a Town Centre which may have capacity to accommodate increased residential densities, taking advantage of

its strategic location on the convergence of various rail lines and its close proximity to major employment destinations. A study is currently being undertaken for the Epping Commercial Centre.

Oxford Street is located on the eastern side of Epping Station and is a traditional strip commercial precinct. This street is characterised by a mixture of land uses, including offices, College of Arts, Telstra exchange building, retail shopfronts and shop top housing. The proposed development comprising commercial and residential floor space within the town centre is not inconsistent with the State Government's initiative to increase opportunities in Epping. The proposal responds well to the heritage items located in the vicinity of the site, whilst having regard to new infill development within an area that is undergoing renewal and change.

The proposal is therefore deemed as satisfactory with respect to the surrounding context.

2.3.2 Principle 2: Scale

The proposed development involves erection of a four storey building with a commercial unit on the ground floor with a zero setback. The building follows a zero front setback for three storeys and the fourth storey is setback to minimise the scale and visibility of the building in Oxford Street. The adjoining development at 26-28 Oxford Street is at a similar scale and the proposal is compatible with the scale of the existing terraces located along Oxford Street.

At the rear, the proposed building is setback on each of the levels to provide good spatial separation from the adjoining St Albans Anglican Church grounds. The progressive setback of the building at the rear minimises the impact of the increased bulk of the building when viewed from the Church grounds.

It is considered that the proposed development responds appropriately to the scale of buildings in the street and the existing developments to the rear. The proposal is consistent with the 'Scale' principle of SEPP 65.

2.3.3 Principle 3: Built Form

The proposed building is an appropriate response to the long narrow site in addressing the commercial street frontage and accommodating residential use on the upper floors. The proposed street wall height and setback are compatible with neighbouring developments.

The proposed building includes a light well in the centre of the building, at the northern elevation, which allows for adequate light and ventilation for the proposed dwellings. If the adjoining site is redeveloped in the future, the provision of the light well would allow future redevelopment of the adjoining site to the boundary. The units have been designed to receive adequate solar access and natural ventilation and take advantage of an outlook to the east.

The proposal includes a new awning to be constructed which matches the awning of the adjoining property and would improve pedestrian amenity. The materials selection includes the use of face brick work, powder coated aluminium windows, metal handrails and baluster, and Colorbond roofing. The selection of materials and finishes would complement the adjoining developments.

The proposal is considered satisfactory with regard to this 'Design' principle.

2.3.4 Principle 4: Density

The proposed development fails to comply with the FSR requirement contained within the HSLEP 1994. The proposed 1.18:1 floor space ratio exceeds the permitted floor space to a minor extent by 62.7m². The non-compliance is considered acceptable with regard to the SEPP 1 objection submitted with the application. The proposal is considered satisfactory with regard to the principle of density.

2.3.5 Principle 5: Resource, energy and water efficiency

A BASIX certificate has been issued for the proposed development which confirms that the proposed development would meet the NSW Government's requirements for sustainability. The proposed development is therefore considered to satisfactorily address Principle 5.

2.3.6 Principle 6: Landscape

The site is a commercial site and does not contain any trees or vegetation. The proposed building does not include any area of landscaping. However, the balconies of each of the units are of sufficient size to allow for the placement of container plantings by residents.

2.3.7 Principle 7: Amenity

The building has been designed to provide sufficient solar access to each unit and to ensure that each unit receives adequate natural ventilation. The provision of a lift within the development ensures the development is accessible for all age groups and degrees of mobility.

All apartments have well-dimensioned private open space areas accessible from the principal living areas. The dimensions of the proposed apartments generally satisfy the specific requirements set out in the Residential Flat Design Code (RFDC). The proposed development provides an acceptable degree of visual and acoustic privacy, both internally and to residential neighbours.

The front and rear setbacks of the proposed building generally satisfy the RFDC. The proposal complies with the minimum building separation requirement with the neighbouring residential development to the east.

The application is assessed as satisfactory against the 'Amenity' principle of SEPP 65.

2.4.8 Principle 8: Safety and security

The commercial unit which is located at street level would provide daytime surveillance of Oxford Street. The terrace areas adjoining the principal living area of each dwelling would provide the opportunity for casual surveillance of the surrounding public domain areas.

It is considered that the proposal is generally satisfactory in regards to 'Safety and Security'.

2.3.9 Principle 9: Social dimensions

The development provides a mix of one and two bedroom apartments. The location of the site and unit mix/design is considered to be appropriate for a broad section of the community as the subject site is within Epping Commercial Centre and is in the close proximity to public transport, recreational opportunities and community facilities.

It is considered that the development improves and increases housing choice within the locality and therefore responds positively to the housing needs of the local community in terms of lifestyle and access to social facilities.

The development is assessed as satisfactory with regard to 'Social Dimensions' principle.

2.3.10 Principle 10: Aesthetics

The contemporary design of the building is compatible with the design and scale of the existing developments within the centre. The external finishes would complement the surrounding area and the proposal is generally consistent with the design principles contained within the RFDC. It is considered that the aesthetic quality of the building would contribute to the desired future character of the Epping Commercial Centre.

2.3.11 The Residential Flat Design Code

Clause 30(2) of SEPP 65 requires consent authorities to consider the design quality of the residential flat development when evaluated in accordance with the design quality principles, and the Department of Planning's Residential Flat Design Code (RFDC). The following is an assessment of the proposal against the requirements of the RFDC:

SEPP 65 Residential Flat Design Code		
Part 01 Local Context		
Primary Development Controls	Rule of Thumb	Compliance & Comments
Building Depth	In general, an apartment building depth of 10-18 metres is appropriate. Developments that propose wider than 18 metres must demonstrate how satisfactory day lighting and natural ventilation are to be achieved.	No. Variation supported. The residential component of the building has a maximum depth of approximately 40.6 metres. The depth of the building is considered satisfactory given adequate natural ventilation has been provided to each dwelling and a complying level of solar access to the living area and private open space to at least 70% of the dwellings is achieved.
Building Separation	Separation for buildings up to four storeys in height: - 12m between habitable rooms/balconies - 9m between habitable rooms/balconies and non-habitable rooms. - 6m between non-habitable rooms. Allow zero separation in appropriate contexts.	Yes Both the adjoining commercial buildings are built to the boundary. On this basis the building separation requirement of the RFBC are not achievable for the development. The surrounding development is characterised by buildings built to the boundary. Therefore, zero building separation is appropriate in this context. The building separation between the site (in particular the balcony of Unit 2) and the private courtyard area located on the western side of the adjoining Rectory on the Anglican Church grounds complies with the minimum 12m separation control. There is existing mature vegetation along the western boundary of the Church grounds which provides adequate landscape screening between the site and the adjoining Anglican Church grounds.
Deep Soil Zone	A minimum of 25 percent of the open space area of a site should be a deep soil zone; more is desirable. Exceptions may be made in urban areas where sites are built out and there is no capacity for water infiltration. In these instances, stormwater treatment measures must be integrated with the design of the residential flat building.	Non-compliance. A ground floor carpark will be provided to meet the parking requirements for the residential units, therefore, it is not possible to provide deep soil landscaping.

Part 02 Site Design		
Site Configuration		
Open space	The area of communal open space required should generally be at least between 25 and 30 percent of the site area.	Non-compliance. The proposal involves an infill development within a commercial setting. The communal open space requirement of the RFBC is not achievable for this development.
	The minimum recommended area of private open space for each apartment at ground level or similar space on a structure, such as on a podium or car park, is 25m ² ; the minimum preferred dimension in one direction is 4 metres.	No. Unit 1 is only a one bedroom apartment. Therefore the 22m ² POS area is considered sufficient for this unit.
Safety	Carry out a formal crime risk assessment for all residential developments of more than 20 new dwellings.	Not applicable. The proposed development includes 5 residential dwellings therefore a formal crime risk assessment is not required.
Pedestrian Access	20% of the dwellings should have barrier free access.	Yes Pedestrian access to the residential component of the development has been provided from Oxford Street via a lift. Adequate access from the residential car parking area to each apartment has also been provided.
Vehicle access	Generally limit the width of driveways to a maximum of 6 metres.	Yes The proposal provides for one vehicular access point off the right of carriage way located at the rear which leads to the ground floor level car park. The width of driveway does not exceed 6 metres at the entrance.
	Locate vehicle entries away from main pedestrian entries and on secondary frontages.	Yes The vehicular entrance is located at the rear, away from the main pedestrian entrance which is from Oxford Street.

Part 03		
Building Design		
Building Configuration		
Apartment layout	Single aspect apartments should be limited in depth to 8 metres from a window.	No. Variation supported. Units 1 and 3 are single aspect apartments and have a depth of 8.8 metres and 9.5 metres respectively. The non-compliance with regard to depth of these units are acceptable as habitable spaces in these instances would receive adequate light and ventilation. No single south aspect apartments are proposed within the development.
	The back of a kitchen should be no more than 8 metres from a window.	No. Variation supported. The back of the kitchen of Unit 3 is 9.5 m from a window. The majority of the kitchen is however no more than 8 metres from a window. The non-compliance is minor and does not result in any residential amenity impacts. As such, the variation is supported.
	The width of crossover or cross through apartments over 15 metres deep should be 4 metres or greater to avoid deep narrow apartment layouts.	Not applicable. No crossover or cross-through apartments are proposed.
Apartment Mix	Minimum apartment sizes as follows: - 50m² for 1 bedroom apartment - 70m² for 2 bedroom apartments - 95m² for 3+ bedroom apartments	Yes All of the apartments in the proposed development exceed the minimum apartment sizes.
Balconies	Provide primary balconies for all apartments with a minimum depth of 2 metres.	Yes Balconies with a depth of 2 metres are provided for all apartments.

Ceiling heights	In mixed use buildings: 3.3 metre minimum for ground floor retail or commercial. 3.3m minimum for residential unit on first floor to promote future use flexibility. 2.7 metre minimum height for other residential floors.	No. Variation supported. The commercial unit on the ground floor has a ceiling height of 3 metres and the residential unit on the first floor has a ceiling height of 2.7 metres. All other apartments have ceiling heights at 2.7 metres. Whilst the proposed commercial unit on the ground floor and the residential unit on the first floor do not comply, the non-compliance is considered acceptable on the basis that the proposed development would receive adequate light and ventilation.
Ground Apartments Floor	Optimise the number of ground floor apartments with separate entries and consider requiring an appropriate percentage of accessible units. This relates to the desired streetscape and topography of the site.	Not applicable. No ground floor apartments are proposed.
No. of units accessed from double corridors	Where units are arranged off a double loaded corridor, the number of units accessible from a single core/corridor should be limited to 8.	Yes Only two units are accessed from the each floor level corridor, apart from fourth floor corridor which only provides access to one unit.
Storage	In addition to kitchen cupboards and bedroom wardrobes, provide accessible storage facilities at the following rates: Studio apartments - 6m³ One bedroom apartments - 6m³ Two bedroom apartments - 8m³ Three plus bedroom apartments -10m³	Yes, subject to condition. Storage areas are proposed within each residential unit. However, no storage areas have been provided in the car parking level. A condition is recommended requiring the provision of additional storage space for each unit in the ground floor car parking area.
Part 03		
Building Design		
Building Amenity		
Daylight access	Living rooms and private open spaces for at least 70% of apartments in a development should receive a minimum of 2 hours direct sunlight between 9am and 3pm in mid winter. Limit the number of single aspect apartments with a southerly aspect (SW-SE) to a maximum of 10% of the total number of units proposed.	Yes. The provision of wide balconies and large extent of glazing, would ensure that the units receive adequate levels of daylight. 80% of the units would receive 2 hours of direct solar access. No single aspect apartments in the proposed development face SW or SE.

Natural ventilation	60% of apartments should be naturally cross ventilated.	Yes 60% of apartments would be naturally cross ventilated.
Kitchen with access to natural ventilation	25% of kitchens should have access to natural ventilation	Yes The open plan nature of the proposed apartments combined with large openings would allow for adequate natural cross ventilation.

As detailed in the above table, the proposed development does not comply with some ‘rules of thumb’ within the RFDC. The matters of non-compliance have been discussed in the above table and/or below as well as a brief discussion on compliance with relevant performance standards:

2.3.11.1 Building Depth

The proposal does not comply with the required 10 to 18 metres maximum building depth for the residential component. The proposed development would be located in a business zone with zero setbacks to the boundaries resulting in numerical non-compliance with the building depth.

The RFDC prescribes that the control over the building depth is important as non-compliance with the above could result in overshadowing and lack of cross-ventilation to the residential units. As indicated in the table above, applicant has demonstrated that 60% of the units are cross-ventilated and 80% of the units would receive two hours of direct solar access. Further, the submitted shadow diagrams indicate that the proposed building would not overshadow the private open space areas and the living areas of adjoining St Albans Rectory due to the stepping of the building and separation by right of carriageway.

It is considered that the proposed development achieves the objective of the ‘Building Depth’ control within the RFDC and is acceptable in its proposed form.

2.3.11.2 Building Separation

The RFDC requires that the building separation between two adjoining developments to be a minimum of 12 metres to allow adequate solar access and privacy. The proposal provides a setback of 6 metres from the terrace of unit 2 to the western boundary of the St Albans Church grounds. Levels 3 and 4 are set back a further 2 metres, increasing the setback to 8 metres from the western boundary of the Church. The proposed separation would ensure a 12 metre minimum separation in the event that the adjoining property to the east is similarly developed.

Adequate separation of approximately 18 metres is provided between the terrace of unit 2 and the covered private courtyard area located on the western side of the Rectory. The proposed separation distance and the existing landscaping along the western boundary of the Church grounds would ensure that the proposal would not have detrimental privacy impacts on the adjoining property.

The development is assessed as satisfactory with regard to the 'Building Separation' provision.

2.3.11.3 Deep Soil Zone

The proposal does not provide for any deep soil landscaping area within the site. This conforms to the desired continuous urban wall on the streetscape of Epping Commercial Centre.

2.3.11.5 Acoustic Privacy

The internal layouts of the residential units have been designed such that noise generating areas of majority of the units adjoin each other. Storage spaces, voids or circulation zones would act as a buffer between units. Bedrooms and service areas such as kitchens, bathrooms and laundries are also proposed to be grouped together wherever possible.

The proposal complies with the 'Acoustic Privacy' requirements within the RFDC and is assessed as satisfactory.

2.4 State Environmental Planning Policy – Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

The application has been assessed against the requirements of the Policy which includes planning principles applicable to the site within the upper part of the harbour catchment. The principles incorporate measures to protect water quality, minimise urban runoff, to conserve water and to ensure the catchment watercourses, wetlands, riparian lands and remnant vegetation are protected.

Subject to the implementation of erosion and sediment control measures and stormwater detention, the proposed development would not adversely impact on the catchment or water quality.

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

The application has been assessed against the requirements of State Environmental Planning Policy (BASIX) 2004 which seeks to encourage sustainable residential development.

The proposal includes a BASIX certificate in accordance with the requirements of the SEPP including the list of commitments to be complied with at the construction stage and during the use of the premises. The BASIX certificate achieves the minimum scores for thermal comfort, water and energy.

The proposal is acceptable in this regard.

2.6 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 applicant has addressed this requirement by providing a Soil Contamination Report. The report states that the site is likely to be suitable for the proposed use, subject to a suitably

qualified environmental consultant undertaking a site walkover after demolition works have been completed (when site soils have been exposed) to address uncertainty associated with potential contamination identified in the Preliminary Site Contamination Assessment.

A site walkover after demolition works have been completed (when site soils have been exposed) is not considered to be sufficient to determine potential site soil contamination. Further investigation of the proposed development site is required following demolition of the existing structures and prior to the commencement of any construction works on the site. (Refer to conditions of consent).

2.7 Section 93F Environmental Planning and Assessment Act, 1979

The application includes a proposed Planning Agreement submitted pursuant to Section 93F of the Act. Council has in place a *Policy on Planning Agreements* which embodies the legislative criteria and sets the framework governing the use of Planning Agreements within Council's area. The Policy includes the following 'acceptability test' of a proper planning purpose to ensure that Planning Agreements:

- *Are directed towards proper of legitimate planning purposes, ordinarily ascertainable from the statutory planning controls and other adopted planning policies applying to development.*
- *Provide for public benefits that bear a relationship to development that are not wholly unrelated to the development.*
- *Produce outcomes that meet the general values and expectations of the public and protect the overall public interest.*
- *Provide for a reasonable means of achieving the relevant purposes and outcomes and securing the benefits.*
- *Protect the community against harm.*

The original proposal provided six car parking spaces in the basement level. To facilitate the basement level, the commercial unit on the ground floor was raised appropriately 400mm above the street level, with a recess to the shopfront in order to provide ramps to satisfy AS1428.

The Heritage Advisory Committee initially raised concern with respect to the original proposal with regard to the streetscape presentation of the proposed building. In particular, concern was raised that traditional zero shopfront setbacks to Oxford Street have not been reflected in the facade of the ground floor.

To address the issues raised by the Committee, the applicant submitted amended plans showing deletion of the commercial unit car parking space. The amendment allows the basement to be lowered which results in the reduction of the commercial unit floor level to match the footpath level. The lowering of the commercial unit floor level allows the entrance to the proposed commercial unit to be relocated forward to achieve the requested zero front setback to Oxford Street. The amended proposal provides a continuous wall at the ground level which is consistent with the adjoining development and the heritage listed shops located at 10-16 Oxford Street.

Due to the loss of one car parking space, the applicant has offered to participate in a Voluntary Planning Agreement whereby a contribution would be paid to Council for the shortfall of one car parking for the commercial unit for the sum of \$46,000. There is currently no Section 94 Contribution Plan in place for car parking for the Epping Commercial Centre. The funds would be held in trust by Council and the funds would be allocated for future parking, civic or urban improvements in the Epping Commercial Centre.

A copy of the proposed Planning Agreement forms are attachment to this report.

Section 93G of the Act provides that a planning agreement cannot be entered into unless a copy of the proposed planning agreement has been available for inspection by the public for 28 days. Should Council approve the application, a condition is recommended for the applicant to enter into a Planning Agreement, prior to the issue of a construction certificate.

2.8 State Environmental Planning Policy No. 32 - Urban Consolidation (Redevelopment of Urban Land)

The application has been assessed against the requirements of SEPP 32. The SEPP requires Council to implement the aims and objectives of this Policy to the fullest extent practicable when considering development applications relating to redevelopment of urban land. The objectives include promotion of the orderly and economic use of land and implementation of a policy of urban consolidation which would promote the social and economic welfare of the State. There are no prescriptive controls within this Policy.

The application complies with the objectives of the Policy as it would promote social and economic welfare of the locality and would result in the orderly and economic use of under utilised land within the Epping Commercial Centre.

2.9 Business Lands Development Control Plan

The proposed development has been assessed having regard to the relevant performance and prescriptive design standards within Council's Business Lands Development Control Plan (Business Lands DCP). The following table sets out the proposal's compliance with the prescriptive standards of the Plan:

Business Lands Development Control Plan			
Control	Proposal	Requirement	Compliance
Density	1.18:1	1:1	No
Setbacks (Front/Road)	0 metres	0 metres	Yes
Height	3 storeys	4 storeys	No
Car Parking	5 spaces	6 spaces	No

As detailed in the above table, the proposed development does not comply with a number of prescriptive standards within Council's Business Lands DCP. The matters of non-compliance are detailed below, as well as a brief discussion on compliance with relevant performance standards.

2.9.1 Density

The proposed development fails to comply with the FSR requirement contained within the Business Lands DCP. The proposed 1.18:1 floor space ratio exceeds the permitted floor space by 62.7m². The non-compliance is considered acceptable with regard to the SEPP 1 objection submitted with the application. The proposal is considered satisfactory with regard to density.

2.9.2 Height

The proposed development exceeds the maximum building height of three storeys prescribed by the Business Lands DCP. The proposal provides a four storey building with the top storey setback from the front boundary. Sight line diagrams have been submitted demonstrating that fourth storey would be visually obscured when viewed from Oxford Street.

The non-compliance with regard to building height is considered acceptable.

2.9.3 Design

The original proposal provided a two storey street with the upper two levels stepped back for levels 3 and 4. To address the Heritage Committee issues, the design of the proposed building was amended by creating a three storey street wall with the fourth storey stepped back by approximately 10 metres. The proposed architectural form and scale is compatible with the surrounding developments and is consistent with Epping Commercial Centre Masterplan.

2.9.4 Solar Access

The applicant has submitted shadow diagrams demonstrating shadows cast by the amended development between 9.00am and 3.00pm on June 22. The adjoining footpath on Oxford Street would receive sufficient sunlight between 12 noon and 2 pm on 22 June in accordance with the Business Lands DCP. At 3.00pm shadows would be cast by the proposed development over the rear lane and the open space on the St Albans Church grounds. However, the applicant has demonstrated that the adjoining Church site, in particular the private courtyard area of the Rectory, would receive two hours of sunshine between 9.00 am and 3.00 pm on 22 June.

The proposal is acceptable with regard to solar access.

2.10 Car Parking Development Control Plan

In accordance with the requirements of Council's Car Parking Development Control Plan, six car parking spaces are required to be provided for the proposed development. The amended proposal provides five car parking spaces for the residential units. With regard to a shortfall in car parking spaces, the applicant seeks to enter into a Voluntary Planning Agreement. This matter is discussed in detail in Section 2.7 of this report.

The shortfall of one on-site car parking space and replacement with one on-street space would not adversely impact upon the local road network due to the parking upgrade in the Town Centre and the contribution towards those car parking works via the VPA.

2.11 Access and Mobility Development Control Plan

The proposed development has been assessed having regard to the relevant performance and prescriptive design standards within Council's Access and Mobility Development Control. In accordance with the requirements of the DCP, an adaptable unit is not required to be provided. The proposed development would include a continuous path of travel to the commercial unit on the ground floor. All other levels of the development would be accessible via a central lift.

Given the above, the proposal is assessed as satisfactory with regard to access and mobility.

2.12 Waste Management and Minimisation Development Control Plan

The proposal includes a waste management plan and details of on-going waste management on site. The design of the development incorporates a common waste disposal area at the ground level, in addition to temporary waste cupboards being provided for each unit.

The application complies with the requirements of Council's Waste Management and Minimisation Development Control Plan.

2.13 Sustainable Water Development Control Plan

Subject to sediment and erosion control measures being implemented on site during construction, the proposal would comply with the requirements contained within the Sustainable Water Development Control Plan.

2.14 Section 94 Contributions Plan

Council's Section 94 Plan applies to the development as it would result in the generation of additional residential floor space, thus triggering a demand for additional services and infrastructure.

The requirement for a monetary Section 94 contribution has been recommended as a condition of development consent.

3. ENVIRONMENTAL IMPACTS

Section 79C(1)(b) of the Act requires Council to consider "*the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality*".

3.1 Natural Environment

The proposed development is located in a business zone and the construction of the building would not result in a negative impact on the natural environment, subject to implementation of recommended conditions during construction.

3.2 Built Environment

The matters in relation to the impact of the development on the built environment have been discussed in sections 2.3 and 2.9 of this report.

Council's engineering assessment of the traffic impacts of the development concludes that the development is acceptable with regard to the level of traffic generated.

3.3 Social Impacts

The social impacts of the development on the local and broader community have been considered with specific reference to the potential employment generation within the complex. It is estimated that the development would generate a significant number of equivalent full time positions post construction. The details of employment generation would be estimated during the assessment of future development applications for the first use of each premise. This is consistent with the North Subregion (Draft) Subregional Strategy that provides a target of 9,000 jobs within the Hornsby LGA by 2031.

The residential component of the development would improve the housing choice in the locality by providing five additional one and two bedroom units. This is consistent with the North Subregion (Draft) Subregional Strategy.

3.4 Economic Impacts

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

4. SITE SUITABILITY

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

The site is level, does not contain any significant vegetation or natural watercourses and is not subject to bushfire risk. The property, being located within an existing commercial centre, is considered appropriate in respect to the proposed land uses and is suitable for the development.

5. PUBLIC PARTICIPATION

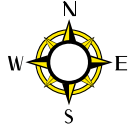
Section 79C(1)(d) of the Act requires Council to consider "*any submissions made in accordance with this Act*".

5.1 Community Consultation

The proposed development was placed on public exhibition and was notified to adjoining and nearby landowners between 25 March 2010 and 15 April 2010 in accordance with Council's Notification and Exhibition Development Control Plan. During this period, Council received one submission. The map below illustrates the location of the nearby landowner who made a submission in close proximity to the development site.



NOTIFICATION PLAN

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

- Overlooking and overshadowing of the private courtyard area of the Rectory.
- Impact on the existing right of carriage way.

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

5.1.1 Impact on existing right of carriage way

The objector has raised concern that the existing right of carriage way is in disrepair and the proposed development would further exacerbate the existing situation and should be rectified. It is considered to be a reasonable request that the applicant be requested remove and reconstruct the existing layback and access crossing to a commercial standard driveway. A recommended condition of consent has been included in Schedule 1.

5.2 Public Agencies

The development application is not Integrated Development under the Act and was not required to be referred to any public agencies.

6. THE PUBLIC INTEREST

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

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

The application is considered to have satisfactorily addressed Council’s 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 the existing building and erection of a four storey mixed use residential and commercial building with ground floor car parking.

The proposal exceeds the permitted floor space ratio under Clause 15 of the Hornsby Shire LEP. The submitted objection under SEPP 1 – Development Standards, is supported in this regard.

The development complies with Section 79(c) of the Environmental Planning and Assessment Act 1979, the design principles within SEPP 65 and Business Lands Development Control Plan.

The application proposes five car parking spaces which is one less than prescribed by Council’s Car Parking Development Control Plan. The applicant has proposed to enter into a Voluntary Planning Agreement to provide a monetary contribution in lieu of one car parking space. There is currently no Section 94 Contribution Plan in place for car parking for the Epping Commercial Centre. The funds would be held in trust by Council and the funds would be allocated for future parking, civic or urban improvements in the Epping Commercial Centre.

Approval of the proposal is recommended.

Note: At the time of the completion of this planning report, no persons have made a *Political Donations Disclosure Statement* pursuant to Section 147 of the Environmental Planning and Assessment Act 1979 in respect of the subject planning application.

ROD PICKLES
Manager - Assessment Team 2
Planning Division

SCOTT PHILLIPS
Executive Manager
Planning Division

Attachments:

1. Locality Plan
2. Floor Plans
3. Elevation and Sections
4. Shadow Diagram
5. Draft Voluntary Planning Agreement

File Reference: DA/253/2010

Document Number: D01368896

SCHEDULE 1**GENERAL CONDITIONS**

The conditions of consent within this notice of determination have been applied to ensure that the use of the land and/or building is carried out in such a manner that is consistent with the aims and objectives of the relevant legislation, planning instruments and Council policies affecting the land and does not disrupt the amenity of the neighbourhood or impact upon the environment.

Note: For the purpose of this consent, the term 'applicant' means any person who has the authority to act on or the benefit of the development consent.

Note: For the purpose of this consent, any reference to an Act, Regulation, Australian Standard or publication by a public authority shall be taken to mean the gazetted Act or Regulation, or adopted Australian Standard or publication as in force on the date that the application for a construction certificate is made.

1. Approved Plans and Supporting Documentation

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

<i>Plan No.</i>	<i>Drawn by</i>	<i>Dated</i>
Sk1f – Level 1 and Basement Plan	Brooks Projects Architects	2.11.09
Sk2g – Levels 2-4 Plans	Brooks Projects Architects	2.11.09
Sk3h – Elevations	Brooks Projects Architects	2.11.09
Sk4g – Elevations and Sections	Brooks Projects Architects	2.11.09
SD1a – Rendered Street Elevation	Brooks Projects Architects	2.11.09
Sediment & Erosion Control Plan – DA01	Ryan Consulting Group	16.02.10 (Revision C)
Site Drainage Plan – DA02	Ryan Consulting Group	16.02.10 (Revision A)

<i>Document No.</i>	<i>Prepared by</i>	<i>Dated</i>
Voluntary Planning Agreement	HLW Ebsworth Lawyers	
Schedule of Colours and Finishes	Brooks Projects Architects	24.08.10
BASIX Certificate No. 295706M_02		20.8.10
Design Verification Statement	Brooks Projects Architects	16.02.10
Site Stormwater Drainage Report	Ryan Consulting Group	17.02.10
Statement of Heritage Impact	Archnex Designs	February 2010
Stage 1 Preliminary Site	Coffey Environments Australia Pty	28.05.10

Contamination Assessment	Ltd	
Waste Management Plan	Horizon Project Solutions Architects	26.06.06

2. Amendment of Plans

The approved plans are to be amended to provide additional 3m³ storage space for one bedroom unit and 4m³ of storage space for two bedroom units in the ground floor car parking level.

REQUIREMENTS PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

3. Voluntary Planning Agreement

Pursuant to section 93F of the Environmental Planning and Assessment Act 1979, the applicant must prepare and enter into a Voluntary Planning Agreement (VPA) with Hornsby Shire Council for payment of a monetary contribution for the shortfall of one car parking for the commercial unit.

The terms of the VPA must include but not be limited to the following:

- a. The Applicant agrees to pay Council a monetary contribution of \$46,000 towards the shortfall of one car parking space for the commercial unit.
- b. Hornsby Shire Council agrees to hold in trust the funds for current or future allocation towards parking, civic or urban improvements in the Epping Commercial Centre.
- c. In addition to the above, the applicant agrees to pay all costs (including Council's costs) associated with the preparation, public notification, legal costs and administration costs of the VPA.

4. Building Code of Australia

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

5. Fire Safety Upgrade

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

- a. Two exits from the basement must comply with section D1.2 of the BCA, and garbage room if enclosed to D2.8 of the BCA.
- b. Openings within 3m of the Boundary must comply with section D3.2 of the BCA

6. Car Parking and Deliveries

2 All car parking must be constructed and operated in accordance with *Australian Standard AS 2890.1 – 2004 – Off Street Car Parking* and *Australian Standard 2890.2 - 2002 – Off Street Commercial* and the following requirement:

- a. All parking areas and driveways are to be sealed to an all weather standard, line marked and signposted.
- b. Car parking, loading and manoeuvring areas to be used solely for nominated purposes.
- c. Vehicles awaiting loading, unloading or servicing shall be parked on site and not on adjacent or nearby public roads;
- d. All vehicular entry on to the site and egress from the site shall be made in a forward direction.

7. Contract of Insurance (Residential Building Work)

In the case of residential building work for which the *Home Building Act, 1989* requires there to be a contract of insurance in force in accordance with Part 6 of that Act, that such a contract of insurance is in force before any building work authorised to be carried out by the consent commences.

Note: This condition does not apply to the extent to which an exemption is in force under Clause 187 or 188 of the Act, subject to the terms of any condition or requirement referred to in Clause 187(6) or 188(4) of the Act, or to the erection of a temporary building.

8. Notification of Home Building Act, 1989 Requirements

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

- a. In the case of work for which a principal contractor is required to be appointed:
 - i. The name and licence number of the principal contractor.
 - ii. The name of the insurer by which the work is insured under Part 6 of that Act.
- b. In the case of work to be done by an owner-builder:
 - i. The name of the owner-builder.
 - ii. If the owner-builder is required to hold an owner-builder's permit under that Act, the number of the owner-builder's permit.

Note: If arrangements for doing the residential building work are changed while the work is in progress so that the information notified becomes out of date, further work must not be carried out unless the principal certifying authority

for the development to which the work relates (not being Council) has given Council written notification of the updated information.

9. Sydney Water – Quick Check

The application must be submitted to a *Sydney Water* ‘Quick Check Agent’ or ‘Customer Centre’ for approval to determine whether the development will affect any *Sydney Water* infrastructure, and whether further requirements are to be met.

Note: Refer to www.sydneywater.com.au or telephone 13 20 92 for assistance.

10. Dilapidation Report

A ‘Dilapidation Report’ is to be prepared by a ‘chartered structural engineer’ detailing the structural condition of all adjoining properties.

11. Detailed Site Investigation

A detailed investigation of the proposed development site must be prepared by a suitably qualified environmental consultant prior to the commencement of any construction works. Such investigation must be undertaken in accordance with NSW Environment Protection Authority’s *Contaminated Sites – Guidelines for Consultants Reporting on Contaminated Sites* and *Contaminated Sites – Sampling Design Guidelines*.

12. Remedial Action Plan

A Remedial Action Plan (RAP) must be prepared by a suitably qualified environmental consultant and submitted to Council should the detailed investigation required reveal contamination exceeding criteria prescribed by the NSW Environment Protection Authority’s *Contaminated Sites – Guidelines for the NSW Site Auditor Scheme*.

REQUIREMENTS PRIOR TO THE COMMENCEMENT OF ANY WORKS
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13. Erection of Construction Sign

A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

- a. Showing the name, address and telephone number of the principal certifying authority for the work,
- b. 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
- c. Stating that unauthorised entry to the work site is prohibited.

Note: Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

14. Protection of Adjoining Areas

A temporary hoarding, fence or awning must be erected between the work site and adjoining lands before the works begin and must be kept in place until after the completion of the works if the works:

- a. Could cause a danger, obstruction or inconvenience to pedestrian or vehicular traffic.
- b. Could cause damage to adjoining lands by falling objects.
- c. Involve the enclosure of a public place or part of a public place.

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

15. Toilet Facilities

Toilet facilities must be available or provided 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. Each toilet must:

- a. be a standard flushing toilet connected to a public sewer; or
- b. be a temporary chemical closet approved under the *Local Government Act, 1993*; or
- c. have an on-site effluent disposal system approved under the *Local Government Act, 1993*

16. Erosion and Sediment Control

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 up to \$1,500 may be issued for any non-compliance with this requirement without any further notification or warning.

REQUIREMENTS DURING CONSTRUCTION**17. Construction Work Hours**

All work 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.

18. Demolition

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

- a. Demolition material is to be disposed of to an authorised recycling and/or waste disposal site and/or in accordance with an approved waste management plan.
- b. Demolition works, where asbestos material is being removed, must be undertaken by a contractor that holds an appropriate licence issued by *WorkCover NSW* in accordance with Chapter 10 of the *Occupational Health and Safety Regulation 2001* and Clause 29 of the *Protection of the Environment Operations (Waste) Regulation 1996*.
- c. On construction sites where buildings contain asbestos material, a standard commercially manufactured sign containing the words 'DANGER ASBESTOS REMOVAL IN PROGRESS' measuring not less than 400mm x 300mm must be erected in a prominent position visible from the street.

19. Environmental Management

The site must be managed in accordance with the publication '*Managing Urban Stormwater – Landcom (March 2004)*' and the *Protection of the Environment Operations Act 1997* by way of implementing appropriate measures to prevent sediment run-off, excessive dust, noise or odour emanating from the site during the construction of the development.

20. Street Sweeping

Street sweeping must be undertaken following sediment tracking from the site along Oxford Street during works and until the site is established.

21. Council Property

During construction works, no building materials, waste, machinery or related matter is to be stored on the road or footpath. The public reserve is to be kept in a clean, tidy and safe condition at all times.

Note: This consent does not give right of access to the site via Council's park or reserve. Should such access be required, separate written approval is to be obtained from Council.

22. Landfill

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

- a. All fill material imported to the site is to wholly consist of Virgin Excavated Natural Material (VENM) as defined in Schedule 1 of the *Protection of the Environment Operations Act 1997* or a material approved under the *Department of Environment and Climate Change's* general resource recovery exemption.

- b. A compaction certificate is to be obtained from a geotechnical engineer verifying that the specified compaction requirements have been met.

23. Excavated Material

All excavated material removed from the site must be classified in accordance with the *NSW Environment Protection Authority's Environmental Guidelines – Assessment, Classification and Management of Liquid and Non-Liquid Wastes* prior to disposal to an approved waste management facility and reported to the principal certifying authority.

24. Survey Report – Finished Floor Level

A report(s) must be prepared by a registered surveyor and submitted to the principal certifying authority prior to the pouring of concrete at each level of the building certifying that:

- a. The building, retaining walls and the like have been correctly positioned on the site.
- b. The finished floor levels are in accordance with the approved plans.

25. Waste Management

Appropriate work practices must be employed to implement the *Waste Management Plan Section One – Demolition Stage and Section Three – Construction Stage* as applicable.

REQUIREMENTS PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE

Note: For the purpose of this consent, any reference to 'occupation certificate' shall also be taken to mean 'interim occupation certificate' unless otherwise stated.

26. Fulfilment of BASIX Commitments

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

27. Sydney Water – s73 Certificate

A s73 Certificate must be obtained from *Sydney Water*.

28. Validation Certificate

A validation report must be prepared by a suitably qualified environmental consultant in accordance with the *NSW Environment Protection Authority's Contaminated Sites – Guidelines for Consultants Reporting on Contaminated Sites* and *Contaminated Sites – Sampling Design Guidelines* validating that the proposed development has been remediated and is suitable for its intended use.

29. Stormwater Drainage

The stormwater drainage system for the development must be designed and constructed in accordance with Council's *Civil Works – Design and Construction Specification 2005* and the following requirements:

- a. Connected directly to Council's street drainage system in Oxford St. The connection to Oxford St from the property boundary is to be constructed with a 100mm x 75mm galvanised section.

30. On Site Stormwater Detention

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

- a. Have a capacity of not less than 2.5 cubic metres, and a maximum discharge (when full) of 9 litres per second.
- 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.

31. Damage to Council Assets

Any damage caused to Council's assets as a result of the construction of the development must be rectified in accordance with Council's written requirements and at the sole cost of the applicant.

32. Creation of Easements

The following covenants and restrictions are to be placed 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.

33. Works as Executed Plan

3 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. The plan(s) must be accompanied by a certificate from a registered surveyor certifying that all pipelines and associated structures lie wholly within any relevant easements.

34. Vehicular Crossing

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

- a. The existing layback and access crossing must be removed and reconstructed to a commercial standard driveway.

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.

35. 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 and be submitted to Council. 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.

36. Retaining Walls

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

37. External Lighting

All external lighting must be designed and installed in accordance with *Australian Standard AS 4282 – Control of the Obtrusive Effects of Outdoor Lighting*. Certification of compliance with the Standard must be obtained from a suitably qualified person.

38. Bin Storage Area

Each bin storage area must be designed and constructed in accordance with Council's *Waste Minimisation and Management Development Control Plan* with regards to water/hose for cleansing, graded floors with drainage to sewer, robust door(s), sealed/impervious surfaces, adequate lighting and ventilation.

39. Waste Management Plan

To confirm compliance with the Waste Management Plans lodged with this Development Application, a report(s) must be prepared by an appropriately qualified person certifying that:

- a. The Waste Management Plan Section One – Demolition Stage and Section Three – Construction Stage were implemented and at least 60 % waste generated was reused or recycled or if the 60% diversion from landfill was not achieved in the Demolition Stage and/or Construction Stage, the Report is to include the reasons why this occurred and certify that appropriate work practices were employed in the demolition and construction stages to implement the Waste Management Plan.
- b. The Report(s) is based on documentary evidence (i.e. tipping dockets/receipts from recycling depots, transfer stations and landfills, audits of procedures etc) which have been attached to the Report.
- c. Each dwelling/kitchen must be provided with an indoor waste/recycling cupboard for the interim storage of a minimum one day's waste/recycling generation with separate containers for general waste and recyclable materials.
- d. The residential component and non-residential component of the development must have separate and self-contained waste management systems, including separate bin storage rooms. Commercial tenants must be prevented (via signage and other means) from using the residential waste/recycling bins and vice versa.

40. Unit Numbering

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

41. s94 Infrastructure Contributions

4 The payment to Council of a contribution of \$55,645.75* for five additional dwellings towards the cost of infrastructure identified in Council's Development Contributions Plan 2007-2011.

*Note: * The value of contribution is current as at 7 September 2010. The contribution will be adjusted from this date in accordance with the underlying consumer price index for subsequent financial quarters.*

It is recommended that you contact Council to ascertain the indexed value of the contribution prior to payment.

OPERATIONAL CONDITIONS**42. Fire Safety Statement - Annual**

5 On at least one occasion in every 12 month period following the date of the first 'Fire Safety Certificate' issued for the property, the owner must provide Council with an annual 'Fire Safety Certificate' to each essential service installed in the building.

43. Waste Management

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

- a. Bins must be placed in the rear laneway against the eastern fence at the entrance to the laneway from Pembroke Street for servicing.
- b. The site is to be serviced by Council or their authorised Contractor (Domestic Waste Only).
- c. The commercial waste can be serviced by any authorised collection contractor, including Council.
- d. All commercial tenants 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.
- e. A site caretaker must be employed and be responsible for moving bins to and from the bin storage area(s) and the waste collection point (at the entrance to the laneway from Pembroke Street), washing bins and maintaining bin storage areas, arranging the prompt removal of dumped rubbish from on and around the site, and ensuring all occupants (residential and commercial) are informed of the waste management system.

- 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 regarding the issue of a construction certificate can be made to Council's Customer Services Branch on 9847 6760.

- A principal certifying authority to be nominated and Council notified of that appointment prior to the commencement of any works.
- Council to be given at least two days written notice prior to the commencement of any works.
- Mandatory inspections of nominated stages of the construction inspected.
- An occupation certificate to be issued before occupying any building or commencing the use of the land.

Long Service Levy

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

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

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

Disability Discrimination Act

The applicant's attention is drawn to the existence of the *Disability Discrimination Act*. A construction certificate is required to be obtained for the proposed building/s, which will provide consideration under the *Building Code of Australia*, however, the development may not comply with the requirements of the *Disability Discrimination Act*. This is the sole responsibility of the applicant.

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.

Tenancy Fit-Out – Separate DA Required

This consent does not permit the fit-out of individual tenancies. A separate development application is required for the fit-out of individual tenancies prior to the occupation of the building.

Advertising Signage – Separate DA Required

This consent does not permit the erection or display of any advertising signs. Most advertising signs or structures require development consent. Applicants should make separate enquiries with Council prior to erecting or displaying any advertising signage.

Asbestos Warning

Should asbestos or asbestos products be encountered during demolition or construction works you are advised to seek advice and information should be prior to disturbing the material. It is

recommended that a contractor holding an asbestos-handling permit (issued by *WorkCover NSW*) be engaged to manage the proper handling of the material. Further information regarding the safe handling and removal of asbestos can be found at:

www.environment.nsw.gov.au

www.nsw.gov.au/fibro

www.adfa.org.au

www.workcover.nsw.gov.au

Alternatively, telephone the *WorkCover* Asbestos and Demolition Team on 8260 5885.

7 KANGAROO POINT PLANNING PROPOSAL - REPORT ON SUBMISSIONS

EXECUTIVE SUMMARY

In November 2009, Council resolved that the *Hornsby Shire Local Environmental Plan (HSLEP) 1994* be amended to permit the construction of a commuter berthing facility at Kangaroo Point. In accordance with Council's resolution, the Kangaroo Point Planning Proposal was presented to Council on 7 April 2010 for endorsement for public exhibition.

The Planning Proposal was exhibited for community comment in July 2010. One hundred and seven submissions were received in response to the exhibition. Key issues raised in submissions include the use of public parking to service commuter berthing, funding of the facility, the approval process, alternative locations for the provision of commuter berthing and the environmental impacts associated with establishing a commuter berthing facility at Kangaroo Point.

It is understood that, in resolving to progress the Planning Proposal, Council was of the view that it would facilitate the provision of commuter berthing facilities in the most convenient and accessible location for river residents compared to commercial marinas at Sandbrook Inlet. Furthermore, the general community would benefit from improved facilities and a higher quality of open space as the proceeds from a commercial lease of any commuter berthing facility could be used to fund refurbishment and maintenance works.

The submissions do not raise any issues that would prevent the progression of the Planning Proposal or any new issues that have not previously been evaluated by Council in considering the future use and management of Kangaroo Point. Accordingly, based on Council's most recent resolution concerning commuter berthing, it is recommended that Council forward the Planning Proposal to the Department of Planning (DOP) for gazettal and prepare amendments to the Kangaroo Point Community Masterplan to limit the size of any future facility.

PURPOSE

The purpose of this report is to review submissions received in response to the exhibition of the Kangaroo Point Planning Proposal.

BACKGROUND

At its meeting on 11 November 2009, Council considered Executive Manager's Report No. EN47/09 concerning a Generic Plan of Management for Planning Districts 5 and 7, including Kangaroo Point. Council resolved (in part) that the *HSLEP* be amended to permit, with development consent, the construction of a commuter berthing facility at Kangaroo Point.

In accordance with Council's resolution, the Kangaroo Point Planning Proposal was prepared in accordance with the State Government's new plan-making process and presented to Council at its meeting on 7 April 2010. The Planning Proposal seeks to permit "marinas" at Kangaroo Point by amending Clause 22(1) – Exceptions of the *HSLEP*. The amendment involves replacing the current exception that permits "houseboat hire premises" with consent

at Kangaroo Point with the “marina” land use. The “houseboat hire premises” land use would be covered by the definition of a “marina” which is:

a building or place used or intended to be used to provide moorings for boats and includes any associated:

(a) slipways, pontoons, jetties, piers or the like; and

(b) facilities for the repair, maintenance and fuelling of, or for the provision of accessories and parts for boats.

Council resolved to progress the Kangaroo Point Planning Proposal for public exhibition. In accordance with Council’s resolution, the Planning Proposal was forwarded to the DOP seeking a Gateway Determination by the Minister for Planning in accordance with Section 56 of the *Environmental Planning and Assessment (EP&A) Act 1979*.

On 10 May 2010, Council received a Gateway Determination indicating that the Planning Proposal should be exhibited. The Gateway Determination was issued with a condition that the Planning Proposal be amended to clarify that houseboat hire facilities remain a permissible use by retaining the “houseboat hire premises” land use and inserting “marina” as a permissible use on the subject land. Accordingly, the Planning Proposal was amended and exhibited for public comment from 1 July 2010 to 30 July 2010.

It is noted that despite the term “marina” being inserted into the *HSLEP* to facilitate commuter berthing at Kangaroo Point, it has been Council’s stated intention that the amending LEP would facilitate the lodgement of a development application for commuter berthing facilities and not a commercial marina.

DISCUSSION

This report discusses submissions received in response to the public exhibition of the Kangaroo Point Planning Proposal.

Exhibition and review of submissions

The Kangaroo Point Planning Proposal was exhibited from 1 July 2010 to 30 July 2010. The Gateway Determination was subject to conditions including a requirement that the Proposal be exhibited for 28 days and notified through a local newspaper, on the Council website and to a number of relevant public authorities.

The consultation met the statutory requirements of the Gateway Determination and included the same methods of consultation undertaken to exhibit the Kangaroo Point Community Masterplan. Advertisements were placed in the *Hornsby Advocate* and *Bush Telegraph* on 1 July and 15 July 2010. The Planning Proposal and supporting documentation were also displayed at Council’s Administration Centre, the Brooklyn and District Community Health and Resource Centre, the Hornsby and Berowra branch libraries and on the Council website.

In accordance with the adopted consultation strategy, public authorities were consulted prior to the commencement of the exhibition period. Ten public authorities, including those stated in the Gateway Determination, were consulted under section 56(2)(d) of the *EP&A Act*. Public authorities were provided a copy of the Planning Proposal and invited to comment from 31 May 2010 to the end of the exhibition period. Twenty five interested individuals,

businesses and community groups involved in the Kangaroo Point Community Masterplan were also provided a copy of the Planning Proposal and invited to comment.

A total of one hundred and seven submissions (including one submission received prior to the exhibition period and sixteen received after the exhibition period) have been received. The submissions comprise individually written letters and emails from one hundred individuals, businesses, community groups, public authorities and Council branches. Fifty (47%) submissions object, forty eight (45%) submissions indicate support, and nine (8%) make comment on the Planning Proposal.

Six submissions were received from public authorities, including the Hawkesbury-Nepean Catchment Management Authority (HNCMA), Roads and Traffic Authority (RTA), NSW Rural Fire Service, Industry and Investment (I&I) NSW, NSW Maritime and the Land and Property Management Authority (LPMA). The following public authorities were notified but did not make a submission: Metropolitan Local Aboriginal Lands Council (MLALC), Gosford City Council, Sydney Water Corporation and Department of Sport and Recreation (Milsons Island).

Eighty nine submissions were received from individuals or local businesses. Ten submissions were received from community groups, namely Friends of Kangaroo Point, Kangaroo Point Management Association (KPMA), Bar Point Safe Boating Rescue and Radio Club, Brooklyn Community Association (BCA) Inc (previously the Brooklyn Ratepayer's Association (BRA)), Milsons Passage Progress Association, Brooklyn Senior Citizens Club, and the Galston Area Residents' Association Inc.

Relevant Council branches were also invited to comment on the Kangaroo Point Planning Proposal. Council's Water Catchments and Environmental Sustainability and Health Teams made comment.

Key issues raised in submissions include the use of public parking to service commuter berthing, funding of the facility, the approval process, alternative locations for the provision of commuter berthing and the environmental impacts associated with establishing a commuter berthing facility at Kangaroo Point. The issues raised in submissions are addressed below.

Background to the existing Masterplan

Submitters, including the BCA and Friends of Kangaroo Point, comment that the Planning Proposal does not consider the recommendations by consultant town planner, Tony Moody in 2002, who recommended against commuter berthing, reserved parking for river residents, reducing the bitumen parking at the top of Kangaroo Point and expansion or intensification of the existing houseboat operations.

Two submitters, including the BCA note that in 2005, the issues currently being considered regarding commuter berthing were extensively addressed in Executive Manager's Report No. PLN63/05. A number of submitters, including the Friends of Kangaroo Point state that the Planning Proposal does not address previous community consultation on the Kangaroo Point Community Masterplan following which open space and no commuter berthing was adopted as the preferred option.

Submitters, including the Friends of Kangaroo Point comment that in 2007, Council hosted a meeting attended by about seventy residents at the Brooklyn Health Centre. It is suggested that at the meeting Council stated that the Kangaroo Point matter had been resolved and the

decision was final. Submissions express disappointment that the Planning Proposal is inconsistent with the commitment given at the meeting.

A number of submitters, including the Galston Area Residents' Association Inc and the Friends of Kangaroo Point express concern that the recommendation for commuter berthing has come from a few interested parties who have a commercial interest, potentially presenting a conflict of interest.

Comment: It is acknowledged that the future of Kangaroo Point has been the subject of analysis and extensive community consultation. Executive Manager's Report No. PLN23/10 (presented to Council at its meeting on 7 April 2010) outlined the background to the preparation of the existing Masterplan and associated Plan of Management. Specifically, the report acknowledged that, in accordance with the recommendations of independent planning and heritage consultants, Council previously resolved not to support commuter berthing at Kangaroo Point.

The Planning Proposal also acknowledges that in 2004, Council considered two options for progression of the Kangaroo Point Masterplan and that Council resolved to adopt the Masterplan option which prohibited commuter berthing at Kangaroo Point. However, the current Planning Proposal aims to implement Council's most recent resolution concerning the provision of commuter berthing at Kangaroo Point.

A chronology outlining the background to the current Kangaroo Point Community Masterplan is attached. The majority of issues raised in submissions have been addressed in previous reports to Council. Relevant extracts from reports to Council are addressed in this report. Furthermore, a copy of Executive Manager's Reports Nos. PLN132/99, PLN307/02, PLN305/03, PLN108/04, PLN63/05, PLN145/08 and PLN23/10 concerning planning for Kangaroo Point are attached in electronic format and have been circulated to Councillors via CD.

In regard to concerns regarding conflicts of interest, Section 451 of the *Local Government Act 1993* requires a member of a Council committee who has a pecuniary interest in any matter to disclose the nature of the interest as soon as practicable.

Planning Proposal

A couple of submissions question the use of the term '*marina*' in the Planning Proposal when the intention is to permit a commuter berthing facility. The Friends of Kangaroo Point comments that the use of the term "*commuter berthing*" is misleading. Users could be retirees who rarely use their vehicles, owners of weekenders or proprietors of overnight accommodation. It is stated that Council cannot guarantee all users of the marina would be landholders, daily commuters or Hornsby Shire residents.

Comment: The aim of the Planning Proposal is to permit a commuter berthing facility at Kangaroo Point. '*Commuter berthing facility*' is not currently defined in the *HSLEP 1994*. In the preparation of the Planning Proposal, the DOP advised that the progression of any Proposal should facilitate the translation of the *HSLEP* into the Standard Instrument template. Council is currently drafting a new Comprehensive LEP based on the Standard Instrument which will supersede the existing *HSLEP*.

'*Commuter berthing facility*' is also not defined in the Standard Instrument. However, in the preparation of Council's Comprehensive LEP, Council cannot introduce new definitions to those contained within the Standard Instrument and therefore, must utilise the definitions

contained in the Instrument. The definition that most closely aligns with commuter berthing is “marina”.

Therefore, the existing land use term ‘*marina*’ under the *HSLEP* is used in the Planning Proposal and the definition of ‘*marina*’ under the Standard Instrument will be implemented when the Comprehensive LEP is progressed. It should be noted that both definitions of ‘*marina*’, as defined below, permit a range of uses not restricted to a commuter berthing facility.

In the *HSLEP*, a ‘*marina*’ is defined as:

a building or place used or intended to be used to provide moorings for boats and includes any associated:

- a) slipways, pontoons, jetties, piers or the like; and*
- b) facilities for the repair, maintenance and fuelling of, or for the provision of accessories and parts for boats.*

In the Standard Instrument, a ‘*marina*’ means:

a permanent boat storage facility (whether located wholly on land, wholly on the waterway or partly on land and partly on the waterway) together with any associated facilities, including:

- a) any facility for the construction, repair, maintenance, storage, sale or hire of boats, and*
- b) any facility for providing fuelling, sewage pump-out or other services for boats, and*
- c) any facility for launching or landing boats, such as slipways or hoists, and*
- d) any associated car parking, commercial, tourist or recreational or club facility that is ancillary to a boat storage facility, and*
- e) any associated single mooring.*

Commuter berthing facility

A number of submissions comment on the scale and funding of any future commuter berthing facility as discussed below.

Scale of the facility

The KPMA suggests a small facility to cater for existing demand. However, a number of submitters, including the Galston Area Residents’ Association Inc, BCA and Friends of Kangaroo Point raise concern that the Planning Proposal would make permissible with development consent a marina of any size.

The Galston Area Residents’ Association Inc comments that a small marina could develop into a large commercial marina like in Berowra Waters. The Friends of Kangaroo Point suggests that there will be pressure to expand the facility beyond the suggested twenty five river residents who do not have berths on commercial marinas.

Comment: It is acknowledged that the Planning Proposal does not limit the size or intensity of any future commuter berthing facility. Section 117 Direction 6.3 states that where a Planning Proposal allows a particular use, it should not propose specific development

standards that are additional to those currently contained in the *HSLEP 1994*. However, controls to limit the size of any future berthing facility could be included in the *Brooklyn DCP*.

The *River Settlements DCP* currently identifies a Permissive Occupancy limit for the Berowra Waters Marina and states that there should be no extensions to the marina unless equivalent swing moorings are reduced. Should Council support the progression of the Planning Proposal, it is recommended that an amendment to the *Brooklyn DCP* be prepared to limit the size of any commuter berthing facility as discussed below under the heading “*Demand for Commuter Berthing at Kangaroo Point*”.

Funding of the facility

A number of submissions comment that the construction of any commuter berthing facility should be funded by the end users of the facility. The Friends of Kangaroo Point also suggests that commercial charges should be levied for the use of the wharf and any parking area. However, a submission notes that the commuter berths and the adjoining reclaimed land are on Crown Land and therefore, Council may not be able to charge rent.

A number of submissions including the Bar Point Safe Boating and Rescue Radio Club note that river residents are prepared to self fund a commuter berthing facility. Furthermore, the land is proposed to be leased on a user pays basis similar to that at McKell Park and Berowra Waters. However, a submission notes that where private enterprise is involved, it is reasonable to expect that the owner would seek to maximise return on investment. This may conflict with providing commuter berthing at a reasonable cost to river residents.

Comment: The Planning Proposal does not indicate how any future commuter berthing facility would be funded. However, at its meeting on 17 September 2003, Council considered Executive Manager’s Report No. PLN305/03 concerning a commuter berthing proposal for Kangaroo Point by the KPMA. The report noted that the preferred commuter berthing option involved provision of up to 48 commuter berths in addition to the existing houseboat berths and extended beyond the limits of the existing commercial licence into Seagrass Bay Reserve.

An extension to the commercial licence would require the revocation of the Reserve status by the Minister for Lands or for Council to acquire the land. Representatives of the then Department of Lands advised that the acquisition of the land by Council would best overcome the difficulties posed by the Reservation. Accordingly, the KPMA proposed that it would assist Council fund the acquisition of the area of water required to accommodate the proposed commuter berthing layout by way of paying rent in advance. The KPMA indicated that it would fund the construction of the commuter berthing facility but in return, would require the granting of a long term lease.

The KPMA noted that any car parking demand generated by the commuter berths would be accommodated on Council owned or controlled land at Kangaroo Point classified as Community Land under the *Local Government Act 1993*. However, Community Land cannot be leased or sold for the purposes of secure commuter parking. Commuters would be competing with recreational and other commercial users of the land for the use of public car parking.

At its meeting on 16 March 2005, Council considered Executive Manager’s Report No. PLN63/05 which also noted that the KPMA had suggested that there would be no cost to Council or any other government department in the provision of commuter berthing at

Kangaroo Point. The KPMA noted that commuter berthing would be self funded and suggested that Council would gain, free of cost, a valuable asset.

Should Council resolve to progress the Planning Proposal, it is recommended the Council also resolve that any future provision of commuter berthing and car parking at Kangaroo Point be funded by river residents (including the land value component). Any detailed financial arrangements concerning the acquisition, construction and occupation of a commuter berthing proposal at Kangaroo Point would be the subject of further discussion and a report to Council.

Development application process

A number of submitters, including the BCA and Friends of Kangaroo Point raise concern that any future development application for a marina would not be assessed by Council in the interests of the local community. It is commented that the application would be assessed by the Minister for Planning and the DOP through the Part 3A process.

NSW Maritime requests that any development application for waterside structures, such as marinas, be referred to NSW Maritime for navigation comment during the assessment process.

Comment: Any proposal for a commuter berthing facility would require lodgement of a development application. Depending on the scale of the proposal, the proposal may be classified as a major project under Part 3A of the *Environmental Planning and Assessment Act 1979* and the Minister for Planning would be the consent authority. The proposal may be classified as a major project under *SEPP (Major Development) 2005* if it is a marina facility that is:

1. *Development for the purpose of marinas or other related land or water shoreline facilities that moor, berth or store vessels (excluding dinghies and other small craft) at fixed or floating berths, at freestanding moorings, alongside jetties or pontoons, within dry storage stacks or on cradles in hardstand areas and that:*
 - a) *moor, berth or store more than 30 vessels in Sydney Harbour, Middle Harbour, North Harbour, Botany Bay, Port Hacking, Broken Bay or associated tidal waters, or*
 - b) *moor, berth or store more than 80 vessels in other waters, or*
 - c) *are located in environmentally sensitive areas of State significance but excluding any development that, in the opinion of the Minister, is only of local environmental planning significance.*
2. *A reference in this clause to the number of vessels moored, berthed or stored includes a reference (in the case of an existing facility) to the additional number of vessels moored, berthed or stored at the facility.*

As discussed above, should Council support the progression of the Planning Proposal, it is recommended that an amendment to the *Brooklyn DCP* be prepared to limit the size of any commuter berthing facility. A limit of commuter berthing spaces may prevent a commuter berthing facility being classified as a major project under *SEPP (Major Development) 2005*.

Alternatively, the proposal may be classified as regional development under *SEPP (Major Development) 2005* and be determined by the Sydney West Joint Regional Planning Panel if it is:

- a) *development that has a capital investment value of more than \$10 million,*
- b) *development for any of the following purposes if it has a capital investment value of more than \$5 million:*
 - i. *including wharf or boating facilities,*
- e) *designated development.....*

Demand for commuter berthing at Kangaroo Point

A number of submitters, including the Friends of Kangaroo Point raise concern that the demand for commuter berthing at Kangaroo Point is unclear. The Friends of Kangaroo Point note that no assessment has been made of potential users.

Comment: At its meeting on 16 March 2005, Council considered Executive Manager's Report No. PLN63/05 concerning the exhibition of the Kangaroo Point Community Masterplan. The report included a demand/supply analysis of commuter berthing in the lower Hawkesbury River. The report noted that there is a permanent demand for twenty five river residents (based on full time occupancy of premises) and potential demand (based on dwelling entitlements) for up to ninety five river residents of Hornsby Shire for commuter berthing.

Therefore, should Council support the progression of the Planning Proposal, it is recommended that an amendment to the *Brooklyn DCP* be prepared limiting the size of any commuter berthing facility at Kangaroo Point to a maximum of twenty five commuter berthing spaces to meet the current permanent demand of Hornsby Shire river residents.

Council's responsibility to provide commuter berthing and parking

A number of submissions comment that river residents receive limited services in return for their rates. The submissions note that services normally provided by Council are not available to river residents including garbage collection, water, sewerage, road and parking facilities. Submissions comment that river residents are not provided with equivalent amenity to allow safe access to their houses and, just as Council is responsible for suburban roads which provide access to properties throughout Hornsby Shire, the provision of some basic level of commuter berthing is a Council responsibility. Submissions note that other Hawkesbury River residents in adjacent areas such as Dangar Island, Berowra Waters and Wobba have commuter berthing facilities and request equity with these river residents.

One submission also states that some elderly residents on Milsons Passage are not able to afford what the private marinas charge. A further submission comments that river communities have been priced out of existing marinas by owners of large luxury recreational boats who can afford to pay more to berth their boats.

An alternative view is expressed in submissions that residents bought their cheaper than land based properties with the knowledge that there was no road access and they had to use other facilities to access their properties, such as hiring private berthing. Therefore, Council has no obligation to provide commuter berthing facilities for people who buy land without road access.

Comment: At its meeting on 2 June 1999, Council considered Executive Manager's Report No. PLN132/99 providing an update report on the Kangaroo Point Masterplan. The report noted that a comparative analysis of rates and services between river and mainland residents

does not provide justification for partial or full subsidisation of car parking and commuter berthing for residents of river settlements.

The report noted that river residents have purchased property based on market value. The market value of river settlement properties acknowledges that there is no dedicated public boat mooring and car parking. The provision of boat moorings and car parking by Council, whether they be subsidised or partially subsidised, would be likely to result in an increase in land value for property owners benefited by such an arrangement.

An increase in rates, resulting from higher land values, would not offset the increase in land value. The rate ceiling imposed on rates for local government would not enable a proportionate rise in rates compared to property values. Accordingly, the report noted that it would not be appropriate that Council provide subsidised or partially subsidised boat moorings and car parking for river residents in this instance.

Executive Manager's Report No. PLN63/05 contained the recommendations of the independent planning consultant which also noted that the provision of commuter berthing at Kangaroo Point (irrespective of whether privately or publicly funded) would be equivalent to subsidising the provision of commuter berthing. Council has no obligation to provide dedicated/public car parking and boat moorings for river residents. The provision of subsidised commuter berthing would create an inequitable practice between river residents and other ratepayers by providing the former with a financial advantage. Council only has an obligation to make provision for commuter berthing and parking for Hornsby Shire river residents in its land use planning strategies. This is addressed by zoning lands to permit marina developments in Sandbrook Inlet.

Alternative options for commuter berthing facilities

A number of submitters, including the BCA and Friends of Kangaroo Point refer to a survey of river residents by Gosford City Council in which one hundred and ninety two respondents stated that they would utilise a berthing and parking facility at Mooney Mooney while only nine would choose to do so at Kangaroo Point. Submissions comment that the survey results do not justify the provision of commuter berthing at Kangaroo Point.

Some submissions comment that Gosford Council has indicated its support for commuter berthing and car parking at Mooney Mooney. A number of submitters, including the BCA request that Council investigate the results of the survey with Gosford Council.

Another submission notes that Council has already explored the option of Mooney Mooney for commuter berthing and rejected it. The submission comments that parking problems exist around the boat ramp at Deerubbin Reserve, major dredging would be required and the site is exposed to westerly winds.

A submission suggests that a commuter berthing facility could be provided as an extension to the existing cooperative adjacent to the baths at McKell Park. However, the Friends of Kangaroo Point comments that parking problems at McKell Park have been created by a situation similar to the current proposal, where car storage has been permitted on public land. Friends of Kangaroo Point notes that this matter should have been raised prior to the impending sale of Peat Island Hospital on the northern side of the river which would offer opportunity for the planning of a berthing facility on the land.

A number of submitters, including the Friends of Kangaroo Point and the Galston Area Residents' Association Inc suggest that there are currently adequate marinas to cater for

demand in Brooklyn. Friends of Kangaroo Point notes that there are six marinas operating in Sandbrook Inlet, all of which provide commuter berths as part of their facilities. These commercial operators have had to undertake significant investment in property to accommodate commuters.

One submission notes that river residents were involved in previous discussions with Council concerning the provision of parking at Saltpan Reserve in conjunction with the provision of commuter berthing at nearby commercial marinas. A submission comments that Council's resolution not to progress parking at Saltpan Reserve has resulted in limited parking availability around Sandbrook Inlet Marina and requests that Council reconsider the proposal.

A number of submitters, including the KPMA, Milsons Passage Progress Association and Bar Point Safe Boating and Rescue Radio Club comment that Kangaroo Point is convenient and accessible and is the only suitable site for commuter berthing. Submitters, including the KPMA suggest that the public wharf at Kangaroo Point and nearby berthing facilities do not cater for older people when trying to moor, launch or operate a boat. Submitters comment that the Proposal would facilitate a commuter berthing facility that would provide for safe docking with access at the rear and the side of the boat.

Comment: At its meeting on 16 March 2005, Council considered Executive Manager's Report No. PLN63/05 addressing consultation with Gosford Council regarding regional options for the provision of commuter berthing and parking. The report noted that Gosford Council has consistently indicated that, although there is a demand for commuter berthing from its residents, it does not intend to promote a regional commuter berthing option in the Gosford local government area or financially supporting a similar facility in Hornsby Shire. Accordingly, Council noted that it is appropriate that Council investigate alternative commuter berthing and parking sites within Brooklyn and that it plan for Hornsby Shire river residents only.

By late 2006, Gosford Council determined that a site at the road approach to Deerubbin Reserve (Mooney Mooney) may be suitable for a marina. Discussions between Hornsby and Gosford Councils culminated in the preparation of a Community Questionnaire which was distributed to river residents and property owners in late 2009/early 2010. Gosford Council has provided a compilation of responses and is understood to be considering its position.

Executive Manager's Report No. PLN63/05, considered by Council at its meeting on 16 March 2005 identified that Kangaroo Point was not suitable for commuter berthing and parking due to the attributes and pressures associated with the various competing uses of the site. The report also discussed opportunities within Council's existing planning strategies and both regional and local alternatives for the provision of commuter berthing and parking. The report noted that the provision of secure parking at Saltpan Reserve, in association with the provision of commuter berthing at nearby commercial marinas, provides the most appropriate alternative.

Accordingly, Council resolved to advise river residents that the Kangaroo Point site is not suitable for commuter berthing and parking and invite both river residents and commercial marina proprietors to prepare a joint submission to Council to utilise part of the Saltpan Reserve site for secure parking.

At its meeting on 2 July 2008, Council considered Executive Manager's Report No. PLN145/08 presenting submissions from commercial proprietors in Brooklyn and a representative of Hornsby Shire river residents concerning the use of Saltpan Reserve for secure parking. Commercial marina proprietors advise that they can accommodate the

current commuter berthing and parking needs of Hornsby Shire river residents within their marinas. However, river residents commented that the proposal for the use of Saltpan Reserve does not provide a satisfactory alternative to the use of Kangaroo Point. Council resolved that no further action be taken in respect of investigations for the establishment of secure commuter parking at Saltpan Reserve.

Most recently, on 22 September 2010, the Mayor, Councillor Russell and the General Manager met with the Mayor and General Manager from Gosford Council to discuss the provision of commuter berthing facilities for river residents. Gosford Council representatives indicated that Deerubbin Reserve is unsuitable for the provision of commuter berthing facilities. However, it was indicated that the Council has made representations to the State Government suggesting that facilities such as a marina, rural fire services, parks, library/meeting hall and playgrounds should be considered in plans for the future development of Peat Island. Hornsby Council was encouraged to make similar representations.

Car parking

A number of submitters, including the Friends of Kangaroo Point and the Galston Area Residents' Association Inc raise concern that a commuter berthing facility would limit parking for other users, in particular, tourists and recreational users.

A couple of submitters, including the Friends of Kangaroo Point refer to the recommendation in Tony Moody's report that the sealed parking area on the upper level be reduced to provide more grassed/landscaped areas and improve views of the site from the water. It is suggested that time limited parking should be applied to the upper area of Kangaroo Point in accordance with the principle expressed by the Town Planning consultant that the upper level should not be used for long term commuter parking.

The Friends of Kangaroo Point comments that if a marina is built on the site there would be inadequate provision of car parking due to a number of approved existing, or likely future, uses including customers of Luxury Afloat, cruise operators, restaurants, accommodation providers, water taxis and recreational users of the waterways. The Galston Area Residents' Association Inc, Friends of Kangaroo Point and Brooklyn Senior Citizens Club comment that Kangaroo Point should remain for public recreational use rather than private use as free car storage.

The Friends of Kangaroo Point suggests that a marina should only be permitted if separate parking can be identified for the use. It is suggested that should commuter parking be provided on the site, users should be required to pay for the use of the land in the same way that marina operators in Brooklyn have purchased land for their clients.

Comment: The Kangaroo Point Masterplan identifies the provision of 62 car parking spaces on the site comprising 30 long stay parking spaces on the lower level and 32 short stay parking spaces on the upper levels. The principle for identifying long and short term parking is to minimise the visual impact from the prominent areas of the upper levels of the site.

It is acknowledged that the introduction of commuter berthing at Kangaroo Point would generate demand for parking that would place additional pressure on the public parking arrangements recommended under the Masterplan. The car parking demand associated with the provision of commuter berthing has been addressed in a number of reports to Council including Executive Manager's Reports Nos. PLN132/99, PLN307/02, PLN305/03, PLN108/04 and PLN63/05.

Executive Manager's Report No. PLN23/10 presenting the Planning Proposal noted that any future commuter berthing facility would be reliant on public parking provided to serve all uses at Kangaroo Point. The allocation of secure parking for river residents using the commuter berthing facility may sterilise the opportunity for other uses due to the limited parking available. In determining whether to progress the Planning Proposal, Council should consider the competing community benefits of providing commuter berthing facilities for river residents against the recreational and associated commercial uses promoted under the existing Masterplan.

Environmental impacts

A number of submissions comment on the potential environmental implications of any future commuter berthing facility including impacts on seagrasses, scenic quality and water quality as discussed below.

Seagrasses

The Friends of Kangaroo Point comments that the existing arrangement at Kangaroo Point extends beyond the wet lease boundaries. The provision of a large scale marina would extend these boundaries placing at risk the fragile seagrass beds located nearby. The Galston Area Residents' Association Inc raises concern that seagrass beds would be affected by marina activities, including anchors and speed boat propellers.

Comment: The Water Catchments Team acknowledges that seagrasses are important fish habitats which support recreational and commercial fishing pursuits within the estuary. The Team notes that a marina presents a significant risk to the longevity of local seagrass beds by increasing localised boat traffic and subsequent chance of habitat loss. However, these risks would be reduced comparatively if contained to a commuter berthing facility, depending on the number and size of the boats that would be accommodated at such a facility. A commuter berthing facility would have a degree of environmental impact but not as significant as a marina. The Team comments that environmental risk would be reduced with the implementation of adequate channel and seagrass marking; boat size and number restrictions; and adequate signage at the development application stage.

There are currently no seagrass areas within the wet lease area occupied by Luxury Afloat. However, seagrasses are located in the adjacent Seagrass Bay Reserve. Therefore, should Council support the progression of the Planning Proposal, it is recommended that an amendment to the *Brooklyn DCP* be prepared limiting the size of any commuter berthing facility at Kangaroo Point to within the existing wet lease area.

Scenic quality

A few submitters, including the Friends of Kangaroo Point suggest that commuter berthing at Kangaroo Point would impact on the natural scenic qualities of the land when viewed from the river and would obscure views of the river from the land.

The Hawkesbury-Nepean Catchment Management Authority (HNCMA) comments that the Planning Proposal only mentions the presence of mangrove and seagrass communities. However, the Authority requests that Council consider the impacts of the Proposal on the clearing of other native vegetation on site.

Comment: As discussed above under ‘*Car parking*’, the Kangaroo Point Masterplan identifies long and short term parking to minimise the visual impact from the prominent areas on the upper levels of the site. It is recommended that an amendment to the *Brooklyn DCP* be prepared limiting the size of any commuter berthing facility at Kangaroo Point to within the existing wet lease area to reduce impacts on scenic quality. The impact of any future commuter berthing facility on scenic quality would be considered in the assessment of a development application.

Water quality

The Aquaculture Unit of Industry and Investment NSW (I&I NSW) and Council’s Environmental Sustainability and Health Team note that there are numerous Priority Oyster Aquaculture Areas in the Hawkesbury River estuary, many of which are within 1 km of Kangaroo Point. It is commented that decisions regarding the future development of Kangaroo Point should ensure that estuarine water quality is protected and there is no adverse impact on the local oyster industry. Potential impacts include an increase in the incidence of oil spills and illegal discharge of wastewater from the washing down of boats. The Environmental Sustainability and Health Team notes that potential environmental impacts could be addressed at the development assessment stage.

The Environmental Sustainability and Health Team comment that should the proposal result in the decommissioning of existing pump out facilities at Kangaroo Point, an alternate location for sewage facilities should be identified.

The Bar Point Safe Boating and Rescue Radio Club states that the proposal would have no adverse environmental or social impacts. Submitters, including the Milsons Passage Progress Association suggest that a commuter berthing facility at Kangaroo Point would shorten travel times and associated fuel consumption, with significant reductions in carbon emissions and reduced impact on natural grasses and marine life.

Comment: Given the potential for water and sediment deterioration, restrictions that would be required to reduce this environmental risk include limiting a commuter berthing facility at Kangaroo Point to 25 boats of up to 4.5m in length. As discussed above, limits to the size of a commuter berthing facility should be implemented through an amendment to the *Brooklyn DCP*. The impact of any future commuter berthing facility on water quality would be considered in the assessment of a development application.

The Kangaroo Point Community Masterplan promotes the provision of a sewer pump out facility which is currently located near the new wharf. A commuter berthing facility would be contained within the existing wet lease area currently occupied by *Luxury Afloat*. Accordingly, the existing pump out facility would not be affected. Any proposal would require waste management facilities designed in accordance with Council’s *Waste Minimisation and Management DCP*.

Aboriginal heritage / Heritage

A number of submitters, including the Friends of Kangaroo Point note that the aesthetic and historic significance of Kangaroo Point should be protected for the enjoyment of present and future generations. The submissions raise concern that commuter parking would be located in a high value heritage area.

The Friends of Kangaroo Point notes that the site contains Aboriginal engravings and support the use of the site to promote Aboriginal culture, including the use of the existing building as a local Aboriginal information centre combined with other amenities.

Comment: The *Brooklyn DCP* promotes recognition of the archaeological and historic values of Kangaroo Point through the provision of appropriate interpretation facilities. An interpretation plan should be developed in consultation with relevant stakeholders and include natural history, Aboriginal heritage and European heritage. This should be delivered through a central area in the former restaurant building to directly depict themes; and/or experiential and abstract interpretation on walking paths around the site, as illustrated in the Kangaroo Point Community Masterplan.

In accordance with the Gateway Determination issued by the DOP, the Metropolitan Local Aboriginal Land Council (MLALC) was consulted concerning the proposal. No submission has been received from the MLALC in response to Council's notification of the proposal. Furthermore, the Hornsby Aboriginal and Torres Strait Islander Consultative Committee (HATSICC) was consulted during the exhibition period and raised no objections as the proposal would have no impact on significant Aboriginal components of the site.

Community consultation time frame

The Friends of Kangaroo Point comment that the Planning Proposal has been expedited to give the impression that it is a minor issue. The submission requests an extension to the time frame to consider the Proposal and that Council write to each organisation that provided feedback on the existing Masterplan.

Comment: The Kangaroo Point Planning Proposal was endorsed by Council for the purposes of public exhibition to seek feedback from the community to assist Council in making a decision concerning the progression of the Proposal. The consultation met the statutory requirements of the Gateway Determination and included the same methods of consultation undertaken to exhibit the Kangaroo Point Community Masterplan. Advertisements were placed in two local newspapers on two occasions. The Planning Proposal and supporting documentation were also displayed at Council's Administration Centre, the Brooklyn and District Community Health and Resource Centre, the Hornsby and Berowra branch libraries and on the Council website.

Ten public authorities, including those stated in the Gateway Determination, were consulted under section 56(2)(d) of the *EP&A Act*. Twenty five interested individuals, businesses and community groups involved in the Kangaroo Point Community Masterplan were also notified of the exhibition of the Planning Proposal.

The Gateway Determination required that the Planning Proposal be made publicly available for a period of 28 days and the amending Local Environmental Plan be finalised within 6 months of the Determination. Accordingly, an extension to the exhibition period would not enable completion of the Planning Proposal with the DOP time frame.

The public exhibition period concluded on 30 July 2010 and Council has received over 100 submissions which are addressed in this report. This report on submissions provides Council with an understanding of the community's views to consider when debating the merits of progressing the Proposal.

Masterplan implementation / Site management

A number of submissions comment on the degraded appearance of Kangaroo Point and suggest works be undertaken to implement the recommendations of the Masterplan. The KPMA and Milsons Passage Progress Association comment that provision of a commuter berthing facility would provide a funding opportunity to implement works to the land.

The Friends of Kangaroo Point notes that the rent Council currently receives from the houseboat business and Telstra tower should be adequate to fund the refurbishment and maintenance of the site without the need for monies from any commuter berthing facility.

A submission comments that the location of Kangaroo Point off the freeway makes it unsuitable for a public park. It is suggested that the park is a target for vandals and drug users, requiring full time on site security. However, residents regularly accessing the area as a legitimate commuter access point would provide necessary passive surveillance.

The Friends of Kangaroo Point comments that before any Planning Proposal is discussed, investigations should be carried out concerning the removal of parking signs at the top level, the extension of bitumen parking involving the removal of some grassed area, the removal of the bi-centenary sign erected in 1988 outside the park, and the relocation of the plaque commemorating the construction of the bridge.

Comment: At its meeting on 16 March 2005, Council considered Executive Manager's Report No. PLN63/05 presenting indicative cost estimates for the development of Kangaroo Point in accordance with the Kangaroo Point Community Masterplan. It was estimated that the total cost to develop the site would be \$1,340,375 (including preliminaries and overheads) (as at 2004/2005). The estimates assume that the commercial and community use of the former restaurant building is not viable and that it would be used to provide facilities and amenities for passive recreation uses. The estimates also assume that an upgrade of the caretaker's cottage would be required, and that the disused buildings would be demolished.

Executive Manager's Report No. PLN63/05 also identified possible funding sources for carrying out the works identified in the Masterplan. These include Council revenue funds, Section 94 contributions, State and Federal Government grants, income generated from the commercial use of the site, public/private partnerships, user fees for use of public facilities, tax deductible donations and fundraising. Council resolved that an Implementation Plan should be prepared in consultation with relevant Council Divisions when the future of the former restaurant building is determined and funding details for the commuter berthing proposal have been agreed to by Council, the KPMA and the then Department of Lands. The Implementation Plan should identify:

- the proposed capital works, associated costings and priorities;
- the responsibilities of Council Divisions in implementing the Masterplan, including funding; and
- how the income generated from commercial leases at Kangaroo Point should be used to fund the refurbishment and maintenance of the site.

Executive Manager's Report No. PLN23/10 (which presented a Planning Proposal) noted that should Council not be able to secure a commercial use for the disused restaurant building, it is likely that Council would be required to fund the demolition and restoration of the area of the disused restaurant building, construction of new public toilets, a shaded picnic/BBQ area, associated parking and landscape works. Preliminary costings suggest a budget of up to \$400,000 would be required to complete these works. Council would also need to identify further funds for undertaking other improvements in the park.

Development of former restaurant building

A submission notes that Council is currently conducting an EOI process for the use of the disused building at Kangaroo Point which aims to provide some wider community benefit through the provision of a visitor information and cultural heritage centre. The submission notes that the current Masterplan indicates a guarantee of car parking spaces for the use of the building and questions the impact of the proposal for commuter berthing on the viability of the EOI submissions.

Comment: At its meeting on 16 March 2005, Council considered Executive Manager's Report No. PLN63/05 which included a review of Council's *Car Parking DCP* to determine the car parking demand of the main land uses proposed at Kangaroo Point. Council's *Car Parking DCP* requires 1 car parking space per 7m² of gross leasable floor area (GLFA) for restaurants with a GLFA greater than 100m². The former restaurant building has an upper level footprint of approximately 200m² that could be refurbished and used for a similar or same use. Assuming the restaurant building is refurbished and used for same, the use would generate demand for 29 car parking spaces.

The report determined that, at a minimum, Council should plan for 25 commuter berthing spaces and 50 car parking spaces to meet the current permanent demand for Hornsby Shire river residents. The Kangaroo Point Community Masterplan provides for 62 car parking spaces. The promotion of commuter berthing at Kangaroo Point would sterilise a substantial proportion of the public car parking provided over the site and would impact on the availability of parking for the recreational use of the site and/or the future commercial use of the former restaurant building.

Unauthorised uses at Kangaroo Point

Long Island and Wharf Street Marinas and the Friends of Kangaroo Point note that the current houseboat business operator at Kangaroo Point, being Luxury Afloat, does not have consent to berth commuter boats at the Point. Furthermore, the current operation encroaches approximately 17 metres beyond the licensed area with the Land and Property Management Authority (LPMA).

Comment: Should Council support the progression of the Planning Proposal, the use of Kangaroo Point and adjacent commercial license boundaries for commuter berthing would be permissible with consent and should be regularised by the submission of a development application. However, should Council not support the Planning Proposal, it is recommended that Council investigate, and take action where appropriate, concerning alleged unauthorised uses and development of Kangaroo Point, including the use of the "Luxury Afloat" marina for commuter berthing facilities.

CONSULTATION

On 19 April 2010, Council forwarded the Planning Proposal to the DOP seeking a Gateway Determination by the Minister in accordance with Section 56 of the *EP&A Act*. On 10 May 2010, the DOP issued a Gateway Determination enabling exhibition of the Planning Proposal. Council consulted with relevant Government agencies and no objections were received.

The Planning Proposal was exhibited for community comment in July 2010. One hundred and seven submissions have been received and are addressed in this report.

STATUTORY CONSIDERATIONS

As part of the consideration of planning proposals, Council is required to consider the relevance of any State Environmental Planning Policy (SEPP) or Ministerial Direction under Section 117 of the *Environmental Planning and Assessment Act 1979*. An assessment of relevant SEPPs and Section 117 Directions is contained within the attached Kangaroo Point Planning Proposal. The Proposal is not inconsistent with any SEPP or relevant Section 117 Direction.

To facilitate the gazettal of the Kangaroo Point Planning Proposal, Council must submit the Proposal to the DOP for the legal instrument (the LEP) to be drafted and made by the Minister.

OPTIONS

Council has before it the following options:

Option 1 – Progress the Kangaroo Point Planning Proposal

This option is to forward the Planning Proposal to the Minister for Planning for gazettal to permit marinas with consent at Kangaroo Point.

Option 2 – Not progress the Kangaroo Point Planning Proposal

This option is to not progress the Planning Proposal and maintain the prohibition on commuter berthing at Kangaroo Point consistent with the existing Masterplan. This option would be consistent with previous resolutions by Council that commuter berthing is not an appropriate land use at Kangaroo Point. An appropriate resolution for this option would be:

1. *Council request that the Minister for Planning not progress the Kangaroo Point Planning Proposal to permit commuter berthing for the following reasons:*
 - 1.1 *The proposal would generate additional demand for parking that would alienate important public areas at Kangaroo Point and sterilise public car parking, impacting on the availability of parking for the recreational use of the site and/or the future commercial use of the former restaurant building.*
 - 1.2 *Commuter berthing (irrespective of whether it is privately or publicly funded) would be tantamount to subsidising or partially subsidising the provision of commuter berthing as any proposal would be reliant on public parking at Kangaroo Point.*
 - 1.3 *The proposal would be inconsistent with the broader community desires identified through the Kangaroo Point Community Masterplan.*
2. *Council investigate, and take action where appropriate, concerning alleged unauthorised uses and development of Kangaroo Point, including the use of the “Luxury Afloat” marina for commuter berthing facilities.*
3. *Submitters be advised of Council’s resolution.*

Option 3 – Defer Progression of the Kangaroo Point Planning Proposal

This option is to defer the progression of the Planning Proposal to enable Council to consult with the State Government concerning the possibility of providing commuter berthing facilities at Peat Island and to consider the implications of the current EOI process for the development of the former restaurant building. The State Government is currently considering options for the future use and development of Peat Island. Accordingly, Peat Island may provide an alternative option to Kangaroo Point for the provision of commuter berthing.

Should Council support this option, it would also be appropriate to consult with the DOP concerning the timeframe for the progression of the Planning Proposal. The Gateway Determination requires that the Proposal be finalised within 6 months. Deferral of the Proposal would result in this timeframe not being met. An appropriate resolution for this option would be:

1. *Council defer the progression of the Kangaroo Point Planning Proposal to enable Council to:*
 - 1.1 *consult with the State Government concerning the possibility of providing commuter berthing facilities at Peat Island; and*
 - 1.2 *evaluate the outcome of the Expression of Interest process for the development of the former restaurant building in the context of competing demand for car parking at Kangaroo Point.*
2. *Council consult with the Department of Planning concerning the opportunity to extend the timeframe for the finalisation of the Planning Proposal to enable Council to undertake the actions outlined in Part 1 of the resolution.*
3. *A report be presented to Council following consultation with the State Government and finalisation of the Expression of Interest process.*
4. *Submitters be advised of Council's resolution.*

Council at its meetings on 11 November 2009 and 7 April 2010 provided direction that the HSLEP should be amended to facilitate the construction of a commuter berthing facility at Kangaroo Point. It is understood that, in resolving to progress the Planning Proposal, Council was of the view that it would facilitate the provision of commuter berthing facilities in the most convenient and accessible location for river residents compared to commercial marinas in Sandbrook Inlet. Furthermore, the general community would benefit from improved facilities and a higher quality of open space as the proceeds from a commercial lease of any commuter berthing facility could be used to fund refurbishment and maintenance works.

The submissions do not raise any issues that would prevent the progression of the Planning Proposal or any new issues that have not previously been evaluated by Council in considering the future use and management of Kangaroo Point. Accordingly, based on Council's most recent resolution concerning commuter berthing, option 1 is recommended and an appropriate resolution is contained in the Recommendation. An updated Planning Proposal is attached.

TRIPLE BOTTOM LINE SUMMARY

Triple Bottom Line (TBL) is a framework for improving Council decisions by ensuring accountability and transparency on social, environmental and economic factors. It does this by reporting upon Council's strategic themes.

A Triple Bottom Line summary was provided in respect of the Kangaroo Point Planning Proposal in Executive Manager's Report No. PLN23/10 considered by Council on 7 April 2010.

CONCLUSION

A Planning Proposal to amend the *HSLEP 1994* to permit the construction of a commuter berthing facility at Kangaroo Point was exhibited for community comment in July 2010. One hundred and seven submissions were received in response to the exhibition. Key issues raised in submissions include the use of public parking to service commuter berthing, funding of the facility, the approval process, alternative locations for the provision of commuter berthing and the environmental impacts associated with establishing a commuter berthing facility at Kangaroo Point.

The submissions do not raise any issues that would prevent the progression of the Planning Proposal or any new issues that have not previously been evaluated by Council in considering the future use and management of Kangaroo Point. Accordingly, based on Council's most recent resolution concerning commuter berthing, it is recommended that Council forward the Planning Proposal to the DOP for gazettal and prepare amendments to the Kangaroo Point Community Masterplan to limit the size of any future facility.

RECOMMENDATION

THAT:

1. Council forward the attached Kangaroo Point Planning Proposal to the Minister for Planning for gazettal pursuant to Section 59 of the *Environmental Planning and Assessment Act 1979*.
2. Council prepare amendments to the Kangaroo Point Community Masterplan in the *Brooklyn Development Control Plan* to aim to ensure that any future commuter berthing facility is limited to a maximum of 25 boats of up to 4.5m in length and within the existing wet lease area (Licence No. L201707).
3. Any future provision of commuter berthing and car parking at Kangaroo Point be funded by river residents (including the land value component) and the detailed financial arrangements concerning the acquisition, construction and occupation of a commuter berthing proposal at Kangaroo Point be the subject of further discussion and a report to Council.
4. Submitters be advised of Council's resolution.

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Executive Manager
Planning Division

Attachments:

1. Kangaroo Point Planning Proposal - October 2010
2. Chronology of Kangaroo Point
3. Report PLN132/99
4. Report PLN307/02
5. Report PLN305/03
6. Report PLN108/04
7. Report PLN63/05
8. Report PLN145/08
9. Report PLN23/10

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