



BUSINESS PAPER

GENERAL MEETING

**Wednesday 13 August 2014
at 6:30 PM**



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AGENDA AND SUMMARY OF RECOMMENDATIONS

PRESENT

NATIONAL ANTHEM

OPENING PRAYER/S

Pastor Andrew Maxwell, from Asquith Church of Christ, will open 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 acknowledge we are on the traditional lands of the Darug and Guringai Peoples. We pay our respects to elders past and present."

AUDIO RECORDING OF COUNCIL MEETING

Statement by the Chairperson:

"I advise all present that tonight's meeting is being audio recorded for the purposes of providing a record of public comment at the meeting, supporting the democratic process, broadening knowledge and participation in community affairs, and demonstrating Council's commitment to openness and accountability. The recordings of the non-confidential parts of the meeting will be made available on Council's website once the Minutes have been finalised. All speakers are requested to ensure their comments are relevant to the issue at hand and to refrain from making personal comments or criticisms. No other persons are permitted to record the Meeting, unless specifically authorised by Council to do so."

APOLOGIES / LEAVE OF ABSENCE

POLITICAL DONATIONS DISCLOSURE

Statement by the Chairperson:

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

If a Councillor or employee has received a reportable political donation or gift from a person or organisation who has made a relevant planning application or a submission in respect of a relevant planning application which is on tonight's agenda, they must declare a non-pecuniary conflict of interests to the meeting, disclose the nature of the interest and manage the conflict of interests in accordance with Council's Code of Conduct."

DECLARATIONS OF INTEREST

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

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

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

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

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

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

OR

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

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

CONFIRMATION OF MINUTES

THAT the Minutes of the General Meeting held on 9 July 2014 be confirmed; a copy having been distributed to all Councillors.

PETITIONS

PRESENTATIONS**RESCISSION MOTIONS****ITEMS PASSED BY EXCEPTION / CALL FOR SPEAKERS ON AGENDA ITEMS**Note:

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

*Persons wishing to address Council on **non agenda matters**, are permitted to speak after all items on the agenda in respect of which there is a speaker from the public have been finalised by Council. Their names will be recorded in the Minutes under the heading "Public Forum for Non Agenda Items".*

GENERAL BUSINESS

- *Items for which there is a Public Forum Speaker*
- *Public Forum for non agenda items*
- *Balance of General Business items*

GENERAL MANAGER'S DIVISION

Nil

CORPORATE SUPPORT DIVISION**Page Number 1****Item 1 CS19/14 REVIEW OF COUNCIL'S PRIVACY MANAGEMENT PLAN****RECOMMENDATION****THAT:**

1. Council adopt the updated Privacy Management Plan attached to Deputy General Manager's Report No. CS19/14.
2. A copy of the adopted Privacy Management Plan be provided to the Information and Privacy Commission.

Page Number 4**Item 2 CS27/14 PECUNIARY INTEREST AND OTHER MATTERS RETURNS - DISCLOSURES BY COUNCILLORS AND DESIGNATED PERSONS**

RECOMMENDATION

THAT Council note the Disclosure of Pecuniary Interests and Other Matters Returns recently lodged with the General Manager have been tabled as required by the Local Government Act.

Page Number 7

Item 3 CS29/14 INVESTMENTS AND BORROWINGS FOR 2013/14 - STATUS FOR PERIOD ENDING 30 JUNE 2014

RECOMMENDATION

THAT the contents of Deputy General Manager's Report No. CS29/14 be received and noted.

ENVIRONMENT AND HUMAN SERVICES DIVISION**Page Number 10**

Item 4 EH14/14 REQUEST FOR TENDER NO. RFT19/2014: PHOTOVOLTAIC (PV) SYSTEMS FOR HORNSBY LIBRARY AND EPPING LIBRARY

RECOMMENDATION

THAT Council accept the submission of Autonomous Energy Pty Ltd to design, supply and install a 79.75kW PV system at Hornsby Library and a 20kW PV system at Epping Library.

Page Number 14

Item 5 EH17/14 COMMUNITY DONATIONS PROGRAM

RECOMMENDATION

THAT Council:

1. Allocate \$3,000 to the Mayor's Youth Trust Fund.
2. Allocate \$5,000 to the Emergency Relief Fund.
3. Allocate \$5,000 to the Fee Waiver Requests Fund.
4. Assist unsuccessful applicants to identify alternative funding opportunities for their programs.

PLANNING DIVISION**Page Number 17**

Item 6 PL46/14 DEVELOPMENT APPLICATION - FIVE STOREY RESIDENTIAL FLAT DEVELOPMENT COMPRISING 48 UNITS - 30-34 KEELER STREET AND 4 HEPBURN AVENUE, CARLINGFORD

RECOMMENDATION

THAT Development Application No. DA/1229/2013 for demolition of existing structures and construction of a five storey residential flat building comprising 48 units with basement car parking at Lot 1 DP832966, Lot 10 DP30015, Lot 9 DP30015 and Lot 2 DP832966 Nos. 30-34 Keeler Street and 4 Hepburn Avenue, Carlingford be approved subject to the conditions of consent detailed in Schedule 1 of Group Manager's Report No. PL46/14.

Page Number 63

- Item 7 PL60/14 DEVELOPMENT APPLICATION - FIVE STOREY RESIDENTIAL FLAT DEVELOPMENT COMPRISING 91 UNITS - 35-39 BALMORAL STREET, WAITARA**

RECOMMENDATION

THAT Development Application No. DA/1062/2013 for demolition of existing structures and the erection of 4 x five storey residential flat buildings comprising 91 units with basement car parking at Nos. 35, 35A, 37 and 39 Balmoral Street, Waitara be approved subject to the conditions of consent detailed in Schedule 1 of Group Manager's Report No. PL60/14.

Page Number 108

- Item 8 PL51/14 FURTHER REPORT - DEVELOPMENT APPLICATION - ALTERATIONS AND ADDITIONS TO A DWELLING-HOUSE - 139 COPELAND ROAD, BEECROFT**

RECOMMENDATION

THAT Development Application No. DA/1449/2013 for alterations and additions to a dwelling house including the construction of a garage at Lot 4, DP 529564, No. 139 Copeland Road Beecroft be refused for the reasons detailed in Schedule 1 of Group Manager's Report No. PL51/14.

Page Number 122

- Item 9 PL61/14 FURTHER REPORT - DEVELOPMENT APPLICATION - SECTION 96(2) - CONSTRUCTION OF AN AFFORDABLE RENTAL HOUSING DEVELOPMENT - 3 AND 5 FULBOURNE AVENUE, PENNANT HILLS**

RECOMMENDATION

THAT the application pursuant to Section 96(2) of the *Environmental Planning and Assessment Act, 1979*, for modification of Development Application No. DA/1021/2010/A for construction of an affordable rental housing development comprising 8 townhouses at Lot 16 DP 10203, Lot 15 DP 10203, Nos. 3 and 5 Fulbourne Avenue, Pennant Hills be refused for the reason detailed in Schedule 1 of Group Manager's Report No. PL61/14.

Page Number 137**Item 10 PL57/14 REPORTING VARIATIONS TO DEVELOPMENT STANDARDS****RECOMMENDATION**

THAT the contents of Group Manager's Report No. PL57/14 be received and noted.

Page Number 140**Item 11 PL53/14 DESIGN QUALITY OF HIGH DENSITY DEVELOPMENT****RECOMMENDATION**

THAT:

1. Council endorse progression of the Design Excellence Planning Proposal attached to Group Manager's Report No. PL53/14 and forward the Planning Proposal to the Minister for Planning seeking a Gateway Determination to exhibit the Proposal.
2. Should the Minister determine under Section 56(2) of the *Environmental Planning and Assessment Act 1979* that the matter may proceed without significant amendment to the Proposal, Council publicly exhibit the Planning Proposal in accordance with the Gateway Determination.
3. Following the exhibition, a report on submissions received in response to the public exhibition be presented to Council.
4. The Group Manager, Planning Division prepare an internal policy for referring development applications over 10 storeys in height to a suitably qualified urban design / architecture consultant for review against the design excellence clause (once implemented).

Page Number 149**Item 12 PL54/14 REPORT ON SUBMISSIONS - DRAFT VOLUNTARY PLANNING AGREEMENT - 26-30 ORARA STREET AND 39 WAITARA AVENUE, WAITARA****RECOMMENDATION**

THAT:

1. Council adopt and execute the Voluntary Planning Agreement attached to Group Manager's Report No. PL54/14 to dedicate land zoned RE1 Public Recreation under *Hornsby Local Environmental Plan 2013* and known as Property Nos. 26, 28 and 30 Orara Street, Waitara and 39 Waitara Avenue, Waitara at no cost to Council for future use as a local park.
2. The Mayor and General Manager be authorised to sign the Agreement on behalf of Council.

INFRASTRUCTURE AND RECREATION DIVISION

Page Number 154

Item 13 IR12/14 REQUEST FOR CONTRIBUTION TO PENNANT HILLS HIGH SCHOOL SPORTSGROUND UPGRADE

RECOMMENDATION

THAT Council:

1. Authorise the payment of \$50,000 to Pennant Hills High School for the upgrade of its top oval.
2. Authorise the General Manager to negotiate terms for the transfer of the funds in a way that protects Council's investment and guarantees continued access to the school's sportsgrounds for community sports groups.

PUBLIC FORUM – NON AGENDA ITEMS

QUESTIONS OF WHICH NOTICE HAS BEEN GIVEN

MAYOR'S NOTES

Page Number 157

Item 14 MN8/14 MAYOR'S NOTES 1 TO 31 JULY 2014

MAYORAL MINUTES

Page Number 158

Item 15 MM6/14 PASSING OF KEITH WOODWARD - FORMER SHIRE CLERK - HORNSBY SHIRE COUNCIL

RECOMMENDATION

THAT:

1. Council express its sincere condolences to Mr Keith Woodward's family and the community of Hornsby in respect of Mr Woodward's recent passing.
2. A message of sympathy be forwarded to Mr Woodward's family on behalf of Council.

NOTICES OF MOTION

SUPPLEMENTARY AGENDA

MATTERS OF URGENCY

QUESTIONS WITHOUT NOTICE

1 REVIEW OF COUNCIL'S PRIVACY MANAGEMENT PLAN

EXECUTIVE SUMMARY

- Under the Privacy and Personal Information Protection Act, Council is required to adopt and maintain a Privacy Management Plan.
- Council adopted its first Privacy Management Plan in 2001. It was based on a Model Privacy Management Plan for Local Government distributed by the then Department of Local Government.
- The Office of Local Government has issued a new Model Privacy Management Plan to reflect changes in State legislation which have occurred since 2000. The new Model Plan has been prepared by, and in consultation with, appropriate industry bodies.
- A thorough review of the new Model Plan has been undertaken by staff and it indicates that the Model Plan adequately meets Council's requirements.
- It is proposed that the updates to the Model Plan made by the Office of Local Government also be incorporated in Council's Privacy Management Plan.

RECOMMENDATION

THAT:

1. Council adopt the updated Privacy Management Plan attached to Deputy General Manager's Report No. CS19/14.
2. A copy of the adopted Privacy Management Plan be provided to the Information and Privacy Commission.

PURPOSE

The purpose of this Report is to provide Council with details of a review that has recently been undertaken of Council's Privacy Management Plan (PMP) and to recommend adoption of an updated PMP.

BACKGROUND

Under the Privacy and Personal Information Protection Act (PPIPA), Council is required to maintain a PMP which outlines its policies and practices in complying with PPIPA and the Health Records and Information Privacy Act (HRIPA). The PMP should inform the public about how their personal information will be used, stored and accessed after it is collected by Council; and provide information to Council staff about their obligations in relation to handling personal information and when it can and cannot be disclosed, used or collected. Council adopted its first PMP in 2001, based on a Model Privacy Management Plan for Local Government distributed to councils in 2000 by the then Department of Local Government.

DISCUSSION

A new Model Privacy Management Plan for Local Government has been issued by the Office of Local Government (OLG) to reflect changes in State legislation which have occurred since 2000 e.g. the commencement of HRIPA in 2004 and the replacement of the Freedom of Information Act by the Government Information Public Access Act in 2010.

A thorough review of the new Model Plan has been undertaken and it indicates that the Model Plan adequately meets the intentions and obligations of Council with regard to privacy considerations when dealing with members of the public. It is proposed, therefore, that the updates to the Model Plan made by the OLG also be incorporated in Council's PMP – see track changes in the attached document.

Once adopted, a copy of Council's new PMP will be provided as required to the NSW Information and Privacy Commission.

BUDGET

There are no budgetary implications associated with this Report.

POLICY

Council's PMP, which is one of the documents included in Council's Policy Register, is the subject of this Report.

CONCLUSION

The OLG's Model Privacy Management Plan for Local Government has been prepared by, and in consultation with, appropriate industry bodies. With the addition of some minor amendments to reflect Hornsby Shire Council specifically, it is considered that the Model Plan adequately satisfies Council's requirements and practices with respect to incorporating appropriate privacy management principles in its operations. It is proposed, therefore, that the updates to the Model Plan made by the OLG also be incorporated in Council's Privacy Management Plan.

RESPONSIBLE OFFICER

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

ROBYN ABICAIR
Manager - Governance and Customer Service
Corporate Support Division

GARY BENSLEY
Deputy General Manager
Corporate Support Division

Attachments:

1. Privacy Management Plan - Amended

File Reference: F2006/00609

Document Number: D03020550

2 PECUNIARY INTEREST AND OTHER MATTERS RETURNS - DISCLOSURES BY COUNCILLORS AND DESIGNATED PERSONS

EXECUTIVE SUMMARY

- Section 449 of the Local Government Act (the Act) details the statutory requirements in respect of the lodgement of Disclosure of Pecuniary Interests and Other Matters Return/s by Councillors and Designated Persons.
- Section 450A(2) of the Act requires that Returns lodged under Section 449 are to be tabled at the next available Council meeting.
- In line with Section 450A(2), this Report provides for the tabling of Return/s recently lodged with the General Manager.

RECOMMENDATION

THAT Council note the Disclosure of Pecuniary Interests and Other Matters Returns recently lodged with the General Manager have been tabled as required by the Local Government Act.

PURPOSE

The purpose of this Report is to table the Disclosure of Pecuniary Interests and Other Matters Returns lodged by Councillors/Designated Persons who have left, commenced with, or internally transferred to a relevant position within Council.

BACKGROUND

Section 449(1) of the Act requires a Councillor or Designated Person to complete and lodge with the General Manager a Disclosure of Pecuniary Interests and Other Matters Return within three months after becoming a Councillor or a Designated Person. Section 449(3) requires a Councillor or Designated Person holding that position at 30 June in any year to complete and lodge with the General Manager a Return within three months after that date. Section 449(5) states that nothing prevents a Councillor or Designated Person from lodging more than one Return in any year.

Section 450A(2) of the Act requires that Returns lodged under Section 449 are to be tabled at a meeting of Council. Returns lodged under Sections 449(1) and 449(3) are to be tabled at the first meeting held after the last day for lodgement under those Sections; and Returns lodged for any other reason are to be tabled at the first meeting after their lodgement.

Council's procedures in respect of the disclosing of interests have been developed to cater for the election/appointment/employment/retirement/resignation/etc. of Councillors or Designated Persons. These procedures:

- Require all Councillors and Designated Persons who hold that position at 30 June in any year to submit Returns to the General Manager by 30 September in that year (i.e. they are lodged under S449(3)). These Returns are tabled at the October General Meeting of Council in that year.
- Require newly elected Councillors or newly appointed Designated Persons to submit Returns to the General Manager within three months of their election/appointment (i.e. they are lodged under S449(1)). These Returns are tabled at the next available General Meeting of Council.
- Require those Councillors or Designated Persons who are leaving Council (because of retirement, resignation, etc.) to submit Returns to the General Manager by their last day with Council. These Returns are tabled at the next available General Meeting of Council.

DISCUSSION**Returns Lodged in Accordance with Section 449(1) and/or 449(5) of the Local Government Act and Council's Procedures**

Council last considered the tabling of Disclosure of Pecuniary Interests and Other Matters Returns under these Sections of the Act at the General Meeting held on 11 June 2014 (see Deputy General Manager's Report No. CS14/14). Since that Report was prepared, two additional Returns have been lodged with the General Manager and are now tabled as required by the Act.

Date Lodged	Councillor/Designated Person (Position)	Reason for Lodgement
23 May 2014	Traffic Ranger	Resignation
22 July 2014	Development Assessment Officer	New appointment

BUDGET

There are no budgetary implications associated with this Report.

POLICY

There are no policy implications associated with this Report.

CONCLUSION

In line with the requirements of the Act, it is necessary for the Returns recently lodged with the General Manager to be tabled at this General Meeting.

RESPONSIBLE OFFICER

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

ROBYN ABICAIRE
Manager - Governance and Customer Service
Corporate Support Division

GARY BENSLEY
Deputy General Manager
Corporate Support Division

Attachments:

There are no attachments for this report.

File Reference: F2013/00386
Document Number: D03210302

3 INVESTMENTS AND BORROWINGS FOR 2013/14 - STATUS FOR PERIOD ENDING 30 JUNE 2014

EXECUTIVE SUMMARY

- Council may invest funds that are not, for the time being, required for any other purpose. The investments must be in accordance with relevant legislative requirements and Council's policies. The Chief Financial Officer must report monthly to Council on the details of funds invested.
- This Report provides details of Council's investment performance for the period ending 30 June 2014. It indicates that for total investments, the annualised return for the month of June was 3.66% compared to the benchmark of 2.50%. The annualised return for the year ending 30 June 2014 was 3.70% compared to the benchmark of 2.53%.
- All investments have been made in accordance with the Local Government Act, the Local Government (General) Regulation and Council's Investment of Surplus Funds Policy and Investment Strategy.
- In respect of Council borrowings, the weighted average interest rate payable on loans taken out from June 2004 to June 2014, based on the principal balances outstanding, is 5.88%.
- Council's investment portfolio is unable to be applied to reducing current outstanding loan balances, due in part to the estimated cash-flow requirements associated with the Hornsby Aquatic Centre during 2013/14. Also, opportunities to renegotiate Council's existing loans to attain a lower interest rate are negated by the break costs which would apply.

RECOMMENDATION

THAT the contents of Deputy General Manager's Report No. CS29/14 be received and noted.

PURPOSE

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

BACKGROUND

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

DISCUSSION

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

Council's investment performance for the month ending 30 June 2014 is detailed in the attached document and summarised below:

- The At-Call and Term Deposits achieved an annualised return of 3.75% for June compared to the benchmark of 2.50%.
- The Capital Guaranteed Note achieved an annualised return of 0% for this period. No interest will be accrued for the remaining life of the security. Longreach Tri-sector (\$1 million) will be fully redeemed at maturity in September 2014.
- For total investments, the annualised return for June was 3.66% compared to the benchmark of 2.50%. The annualised return for the year was 3.70% compared to the benchmark of 2.53%.

In respect of Council borrowings, the weighted average interest rate payable on loans taken out from June 2004 to June 2014, based on the principal balances outstanding, is 5.88%. It is noted that the opportunity to renegotiate Council's existing loans to attain a lower interest rate is negated by the break costs which would apply. The weighted average interest rate payable on loans indicates that Council's cost of borrowing is low even when compared to present rates that could be obtained. The Borrowings Schedule as at 30 June 2014 is attached for Council's information.

CONSULTATION

Appropriate consultation has occurred with Council's financial investment adviser and fund managers.

BUDGET

Budgeted investment income for 2013/14 was increased from \$720,000 to \$1,240,000 as part of the September 2013 Quarter Budget Review. Investment income for the year ending 30 June 2014 was \$1,900,000 of which \$58,000 relates to the fair value adjustment of the Capital Guaranteed Notes. Approximately 31% of the total investment income received by Council relates to externally restricted funds (e.g. Section 94 monies) and is required to be allocated to those funds. All investments have been made in accordance with the Local Government Act, the Local Government (General) Regulation and Council's Investment of Surplus Funds Policy and Investment Strategy.

CONCLUSION

The investment of Council funds for the period ending 30 June 2014 is detailed in the documents attached to this Report. Council's consideration of the Report and its attachments ensures that the relevant legislative requirements and Council protocols have been met in respect of those investments.

RESPONSIBLE OFFICER

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

GLEN MAGUS

Chief Financial Officer - Financial Services
Corporate Support Division

GARY BENSLEY

Deputy General Manager
Corporate Support Division

Attachments:

1. HSC Investment Portfolio as at 30 June 2014 (Pre-Audit)
2. HSC Borrowings Schedule as at 30 June 2014

File Reference: F2004/06987

Document Number: D03246497

4 REQUEST FOR TENDER NO. RFT19/2014: PHOTOVOLTAIC (PV) SYSTEMS FOR HORNSBY LIBRARY AND EPPING LIBRARY

EXECUTIVE SUMMARY

- Council has received grant funding available through the NSW Government's Waste and Sustainability Improvement Program to reduce energy consumption.
- The proposed contract to supply and install solar photovoltaic systems on Hornsby and Epping Libraries would reduce Council's reliance on the grid to power these facilities and reduce Council's utility costs at these facilities.
- Request for Tender No. RFT 19/2014 – Photovoltaic Systems for Hornsby Library and Epping Library was called by Council in May 2014 and 12 submissions were received.
- Following assessment, the tender evaluation panel considered that the submission from Autonomous Energy Pty Ltd is the preferred option based on a combination of payback period, reliability, provision of post installation services, warranties and performance, experience and cost.
- It is recommended that Council accept Autonomous Energy Pty Ltd as the preferred tenderer to supply and install a 79.75kW PV system at Hornsby Library and a 20kW PV system at Epping Library.

RECOMMENDATION

THAT Council accept the submission of Autonomous Energy Pty Ltd to design, supply and install a 79.75kW PV system at Hornsby Library and a 20kW PV system at Epping Library.

PURPOSE

The purpose of this Report is to provide a recommendation for the acceptance of Request for Tender No. RFT19/2014: Photovoltaic (PV) Systems for Hornsby Library and Epping Library.

BACKGROUND

Council has received grant funding under the Waste and Sustainability Improvement Program to reduce Council's energy consumption.

The installation of solar photovoltaic (PV) panels is a reliable and low maintenance way to reduce power costs as electricity tariffs rise, and to reduce the dependence on power from the electricity grid.

Facilities that consume power during daylight hours and are open every day of the week are ideal candidates for PV systems.

A tender to supply and install a PV system at Epping Library and to extend the existing PV system at Hornsby Library was advertised on 6 May 2014.

DISCUSSION

A public tender notice was advertised in the Sydney Morning Herald and on Tenderlink on 6 May 2014 with a closing date of 28 May 2014.

The scope of works required under this tender includes the design, supply and installation of solar PV systems at Hornsby and Epping Libraries.

A total of 12 tenders were received for Request for Tender No. RFT 19/2014 from the following companies:

- Autonomous Energy Pty Ltd
- Westinghouse Solar Pty Ltd (CBD Energy)
- Energy Matters Pty Ltd
- Harelec Services (Jarcon Pty Ltd)
- Kawa Australia Pty Ltd (Conergy)
- Natural Solar Pty Ltd
- Nu Energy
- K2 Solar (RED 8 Roofing)
- RF Industrial Pty Ltd
- Solar Technology Australia Pty Ltd
- Solgen Energy Pty Ltd
- Sungevity Australia Pty Ltd

A summary of tender submissions, along with full evaluation details have been placed on file (F2014/00160). Excepting this report, the summary and details of the tenders received are to be treated as commercial in confidence in accordance with the Local Government Act 1993.

Tender Evaluation

As part of the evaluation process weighted and non-weighted evaluation criteria were developed and scored by the evaluation panel:

The criteria included:

- Meeting Australian Standards
- Warranties and Performance
- Environmental Practices
- Financial Details of Proposal
- Past Performance and Experience
- Skills, Qualifications & Experience of the Project Team
- References
- Contribution to Local Business and Industry
- Quality Assurance Systems
- Any Other Information
- Tender WHS Management Systems
- Detailed Breakdown of Works

The tender evaluation panel carefully assessed all the tender submissions taking into account the overall cost and the non-price related criteria as described above.

Following assessment, the evaluation panel identified a shortlist of five preferred tenders that were then re-evaluated on the basis of warranties and the provision of post installation services such as monitoring, payback and reliability. Following the re-evaluation process, Autonomous Energy Pty Ltd was selected as the preferred tenderer.

As a result of known quality and reliability issues that have plagued the solar panel industry in recent years, the Evaluation Panel recommended the LG brand solar modules offered by Autonomous Energy which, despite costing more, are known to be reliable products with proven longevity and performance.

Detailed information on the tender evaluation criteria and the weightings of the criteria are contained in the confidential tender evaluation report that can be found in Attachment 1.

BUDGET

The works to be completed under T19/2014 will be funded by a grant that council has received through the NSW Government's Waste and Sustainability Improvement Payment scheme to implement energy efficient actions within Council operations. A budget of \$250,000 has been allocated for this project.

POLICY

There are no policy implications associated with this Report.

CONCLUSION

The installation of solar PV systems at Hornsby and Epping libraries would reduce Council's reliance on the grid to power these facilities and reduce Council's utility costs at these facilities.

Tenders to design, supply and install solar PV systems were called in May 2014 and following evaluation, the tender panel considered the tender from Autonomous Energy Pty Ltd to be the most beneficial to Council.

Accordingly, the tender panel has recommended that the tender from Autonomous Energy Pty Ltd to be accepted.

RESPONSIBLE OFFICER

The officer responsible for the preparation of this Report is the Manager Natural Resources – Diane Campbell – who can be contacted on 9847 6903.

DIANE CAMPBELL

Manager - Natural Resources

Environment and Human Services Division

STEPHEN FEDOROW

Group Manager

Environment and Human Services Division

Attachments:

1. Confidential Tender Evaluation Report - *This attachment should be dealt with in confidential session, under Section 10A (2) (d) of the Local Government Act, 1993. This report contains commercial information of a confidential nature that would, if disclosed (i) prejudice the commercial position of the person who supplied it; or (ii) confer a commercial advantage on a competitor of the council; or (iii) reveal a trade secret.*

File Reference: F2014/00160

Document Number: D03143103

5 COMMUNITY DONATIONS PROGRAM

EXECUTIVE SUMMARY

- Council's Community Donations Program provides financial assistance to local community groups or organisations to deliver projects that address identified needs and provide support to Hornsby Shire residents.
- A budget of \$60,000 is allocated for the Community Donations Program and nine applications for funding in the current round were received, totalling \$30,510.
- Following assessment, three applications being the Mayors Youth Trust (\$3,000), Emergency Relief Fund (\$5,000) and the Fee Waiver Request Fund (\$5,000) are recommended for funding.
- Council staff are available to assist unsuccessful applicants to identify alternative funding opportunities that may better align with their proposed projects, or advise on how to revise their submissions in order to satisfy Council's policy framework for future applications.
- In addition to the Community Donations Program, Council provides significant annual support to community and sporting groups in areas such as foregone rental on the use of Council buildings and subsidies to sporting groups in respect of their use of sports grounds. During the 2013/14 financial year, such subsidies were estimated at approximately \$2,900,000.
- Other Council initiatives to assist community groups include a Community Fundraising Barbeque Trailer that is available for use by community groups as part of their fundraising activities.

RECOMMENDATION

THAT Council:

1. Allocate \$3,000 to the Mayor's Youth Trust Fund.
2. Allocate \$5,000 to the Emergency Relief Fund.
3. Allocate \$5,000 to the Fee Waiver Requests Fund.
4. Assist unsuccessful applicants to identify alternative funding opportunities for their programs.

PURPOSE

The purpose of this Report is to provide Council with the information required to allocate funds from the Community Donations Program.

BACKGROUND

Council's Community Donations Program (the Donations Program) is designed to reflect Council's commitment to its community development role and to encourage participation in creative and relevant community driven events and activities within the Shire that address the diverse needs identified in Council's Community Plan.

It does this by providing financial assistance to local community groups or organisations in accordance with Council's Donations and Grants – Council Cash and Non-Cash Policy (<http://hsconline.hornsby.nsw.gov.au/appenquiry/user/policy>).

The Donations Program policy objectives are:

- To create a vibrant culture within the Shire by supporting cultural and community based projects, events and activities occurring throughout the year. Priority will be given to groups that deliver an event within Council's Healthy Living Festival and/or Festival of the Arts.
- To improve awareness and use of cultural and community services and resources within the Shire.
- To increase participation at local events and community development activities within the local community, building a sense of community and promoting social inclusion.

A budget of \$60,000 has been allocated to the Donations Program in 2014/15, and nine applications for funding have been received. Attachment 1 provides an overview of the applications and an officer recommendation.

DISCUSSION

Council officers with expertise in the relevant policy areas have assessed the community applications for financial assistance in accordance with Council's Donations and Grants – Council Cash and Non Cash Policy and made recommendations for funding.

Following assessment, three applications being the Mayors Youth Trust (\$3,000), Emergency Relief Fund (\$5,000) and the Fee Waiver Request Fund (\$5,000) are recommended for funding. The remaining applications were not considered to have adequately satisfied the policy criteria and accordingly, funding is not recommended.

Council staff are available to assist unsuccessful applicants to identify alternative funding opportunities that may better align with their proposed projects, or advise on how to revise their submissions in order to satisfy Council's policy framework for future applications

Other Council Donations to the Community

In 2006, Council resolved in respect of Report No. CC24/06, that:

"As part of its consideration of the annual donations program, Council be provided with relevant information regarding:

- a) *Foregone rental for community groups' use of Council buildings.*
- b) *Subsidies to sporting groups in respect of their use of sports grounds.*
- c) *Any other financial assistance provided by Council to community groups."*

During the 2013/2014 financial year, Council subsidies to community and sporting groups were estimated at approximately \$2,900,000.

Other Council initiatives to assist community groups include a Community Fundraising Barbeque Trailer that is available for use by community groups as part of their fundraising activities. Further details regarding the trailer including bookings can be found at <http://www.hornsby.nsw.gov.au/my-lifestyle/events/community-barbeque-trailer>.

BUDGET

A budget allocation of \$60,000 is available for the Community Donations Program.

POLICY

The 2013/14 Donations Program has been conducted in accordance with Council's Donations and Grants – Council Cash and Non Cash Policy.

CONCLUSION

Nine funding applications have been received in the current funding round of Council's Community Donations Program and following assessment, three applications being the Mayors Youth Trust (\$3,000), Emergency Relief Fund (\$5,000) and the Fee Waiver Request Fund (\$5,000) are recommended for funding.

Council staff are available to assist unsuccessful applicants to identify alternative funding opportunities that may better align with their proposed projects, or advise on how to revise their submissions in order to satisfy Council's policy framework for future applications.

Other Council initiatives to assist community groups include a Community Fundraising Barbeque Trailer that is available for use by community groups as part of their fundraising activities.

RESPONSIBLE OFFICER

The officer responsible for the preparation of this Report is the Manager, Community Services – David Johnston – who can be contacted on 9847 6800.

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Environment and Human Services Division

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Environment and Human Services Division

Attachments:

1. Community Donations Program Funding Recommendations

File Reference: F2013/00283
Document Number: D03234402

6 DEVELOPMENT APPLICATION - FIVE STOREY RESIDENTIAL FLAT DEVELOPMENT COMPRISING 48 UNITS - 30-34 KEELER STREET AND 4 HEPBURN AVENUE, CARLINGFORD

EXECUTIVE SUMMARY

- DA No:** DA/1229/2013 (lodged 5 November 2013)
- Description:** Construction of a five storey residential flat building containing 48 units with basement car parking
- Property:** Lot 1 DP832966, Lot 10 DP30015, Lot 9 DP30015 and Lot 2 DP832966, Nos. 30 - 34 Keeler Street and 4 Hepburn Avenue, Carlingford
- Applicant:** Australian Consulting Architects Pty Ltd
- Owners:** Mr and Mrs Karthigeyan, Mr Alva George Scarr, Ms Emma Hing PO Luk, Mr Eulsoo Park and Mrs Carolyn Lea Terry
- Estimated Value:** \$9,981,360
- Ward:** C
- The application proposes demolition of existing structures and erection of a five storey residential flat building comprising 48 units with basement car parking.
 - The proposal generally complies with the *Hornsby Local Environmental Plan 2013*, *State Environmental Planning Policy No. 65 – Design Quality Residential Flat Building* and the *Hornsby Development Control Plan*. The application proposes the removal of Blue Gum High Forest (BGHF) and is the subject of an offer to enter into a Planning Agreement to offset the loss of canopy area in accordance with Council's Green Offset Code.
 - Six submissions have been received in respect of the application.
 - It is recommended that the application be approved.

RECOMMENDATION

THAT Development Application No. DA/1229/2013 for demolition of existing structures and construction of a five storey residential flat building comprising 48 units with basement car parking at Lot 1 DP832966, Lot 10 DP30015, Lot 9 DP30015 and Lot 2 DP832966 Nos. 30-34 Keeler Street and 4 Hepburn Avenue, Carlingford be approved subject to the conditions of consent detailed in Schedule 1 of Group Manager's Report No. PL46/14.

BACKGROUND

The subject land was rezoned from Residential A (Low Density) to Residential C (Medium-High Density) on 2 September 2011 as part of Council's *Housing Strategy*.

SITE

The site comprises four allotments, Nos. 30, 32 and 34 Keeler Street and 4 Hepburn Avenue and is located at the north-western corner of the intersection of Keeler Street and Hepburn Avenue. The site is irregular in shape with an area of 2,680m². The site has a frontage to Keeler Street of 47.86m and a secondary frontage of 56.6m to Hepburn Avenue. The site has a slope of 11% from Hepburn Avenue to the western side of the site. The adjoining properties at Nos. 36-38 Keeler Street are identified as flood prone land.

Existing improvements on the allotments include four dwelling-houses with associated garages and carports. Vehicular access to the site is via existing driveways fronting Keeler Street and Hepburn Avenue.

The site and adjoining properties contain a number of exotic and native planted trees and locally indigenous specimens including two significant *Eucalyptus pilularis* (Blackbutt) trees centrally located within the rear half of the site. The trees form part of Blue Gum High Forest Critically Endangered Ecological Community listed under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* and the NSW *Threatened Species Conservation Act 1995*.

The site forms part of the 'Carlingford Road, Carlingford' precinct rezoned for medium-high density housing in accordance with the Hornsby Shire Housing Strategy in September 2011. The precinct is bounded by Carlingford Road, Pennant Hills Road, Keeler Street and Hepburn Avenue. The surrounding developments include single and two storey residential dwellings to the north and west and a cluster housing development exists at No. 38 Keeler Street. Development applications for five storey residential flat buildings have been approved and are currently being constructed within the precinct.

The site is located within close proximity to Carlingford Court Shopping Centre located on the northern side of Carlingford Road.

PROPOSAL

The proposal involves the demolition of existing structures on the site and construction of a five storey residential flat building comprising 48 units with two levels of basement car parking.

The unit mix would comprise of 10 x 1 bedroom, 32 x 2 bedroom and 6 x 3 bedroom units. The units would be accessed via a centrally located lift and include balconies that face the front, rear and side property boundaries.

The development would be accessed from Keeler Street via a driveway located adjacent to the western property boundary. A total of 68 residential car parking spaces, including 10 visitors parking spaces are proposed in two basement levels.

ASSESSMENT

The development application has been assessed having regard to the '*Metropolitan Plan for Sydney 2031*', 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). The following issues have been identified for further consideration.

1. STRATEGIC CONTEXT

1.1 Metropolitan Plan for Sydney and (Draft) North Subregional Strategy

The *(Draft) Metropolitan Strategy for Sydney 2031* is a broad framework to provide for Sydney's growth to help plan for housing, employment, transport, infrastructure, the environment and open space. 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 North Subregion comprises Hornsby, Kuring-gai, Manly, Warringah and Pittwater Local Government Areas. The *Draft North Subregional Strategy* acts as a framework for Council in its preparation of the *Comprehensive LEP* by the end of 2013.

Within the North Subregion, the *Draft Metropolitan Strategy* proposes:

- Population growth of 81,000 from the current 2011 baseline of 529,000
- Housing growth of 37,000 from the current 2011 baseline of 204,000
- Employment growth of 39,000 from the current 2011 baseline of 186,000

The proposed development would be consistent with the *Metropolitan Plan for Sydney 2031* by providing 44 additional dwellings and would contribute to 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 Local Environmental Plan 2013

The relevant provisions of the Plan are discussed below.

2.1.1 Land Use Zones and Permissibility

The subject land is zoned R4 (High Density Residential) zone under the *Hornsby Local Environmental Plan 2013 (HLEP)*. The objectives of the zone are:

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

The proposed development is defined as ‘residential flat building’ under the HLEP and is permissible in the zone with Council's consent.

2.1.2 Height of Buildings

Clause 4.3 of the *HLEP* provides that the height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map. The maximum permissible height for the subject site is 17.5 metres. The proposal complies with this provision.

2.1.3 Heritage Conservation

Clause 5.10 of the *HLEP* sets out heritage conservation provisions for Hornsby Shire. The site is not in the vicinity of a heritage item or conservation area and is not subject to consideration for heritage conservation. Therefore, no further assessment in this regard is necessary.

2.1.4 Earthworks

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

Council's assessment of the proposed earthworks and excavation concludes that the proposal is satisfactory subject to conditions regarding submission of a dilapidation report assessing the impact of the excavation on the adjoining properties.

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

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

The site has been used for residential purposes and is unlikely to be contaminated. No further assessment is considered necessary in this regard.

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

The Policy provides for design principles to improve the design quality of residential flat development and for consistency in planning controls across the State.

The applicant has submitted a "Design Verification Statement" prepared by a qualified designer stating how the proposed development achieves the design principles of *SEPP 65*. The design principles of *SEPP 65* and the submitted design verification statement are addressed below.

2.3.1 Principle 1 – Context

Design Principle 1 is as follows:

Good design responds and contributes to its context. Context can be defined as the key natural and built features of an area.

Responding to context involves identifying the desirable elements of a location's current character or, in the case of precincts undergoing a transition, the desired future character as stated in planning and design policies. New buildings will thereby contribute to the quality and identity of the area.

The subject site is located within a precinct zoned for five storey residential flat buildings in close proximity to Pennant Hills Road and the Carlingford Court shopping centre. The desired future character of the area, as outlined in the *Hornsby Development Control Plan (HDCP)*, is that of a high density residential precinct incorporating five storey developments in garden settings with parking in basements.

The submitted 'Design Verification Statement' indicates that the proposal responds to the desired future character of the precinct as envisaged by Council. Once the development of the precinct is completed, the proposal would be consistent with development on surrounding sites and would be in

keeping with the desired built form. The proposed building would contribute to the identity and future character of the precinct.

The development responds suitably to the 'context' principle of SEPP 65, considering the desired future character of the area.

2.3.2 Principle 2 – Scale

Design Principle 2 is as follows:

Good design provides an appropriate scale in terms of the bulk and height that suits the scale of the street and the surrounding buildings.

Establishing an appropriate scale requires a considered response to the scale of existing development. In precincts undergoing a transition, proposed bulk and height needs to achieve the scale identified for the desired future character of the area.

The scale of the development is generally in accordance with the required building height and setbacks for the precinct and provides an architectural composition that achieves the required pavilion built form to minimize bulk and scale. The scale of the development is considered appropriate for the site and consistent with the desired future character of the precinct.

2.3.3 Principle 3 – Built Form

Design Principle 3 is as follows:

Good design achieves an appropriate built form for a site and the building's purpose, in terms of building alignments, proportions, building type and the manipulation of building elements.

Appropriate built form defines the public domain, contributes to the character of streetscape and parks, including their views and vistas, and provides internal amenity and outlook.

The proposed building is well articulated on each elevation with a juxtaposition of vertical planes with horizontal framed elements with appropriate building indentations and balcony projections. The finishes proposed are a combination of acrylic render paint finishes, aluminium frames, metal cladding and glass. Low pitched roofs above the pavilion forms and an increased top storey setback would minimise bulk and scale of the building. The proposal complies with the built form principle of SEPP 65.

2.3.4 Principle 4 – Density

Design Principle 4 is as follows:

Good design has a density appropriate for a site and its context, in terms of floor space yields (or number of units or residents).

Appropriate densities are sustainable and consistent with the existing density in an area or in precincts undergoing a transition, are consistent with the stated desired future density. Sustainable densities respond to the regional context, availability of infrastructure, public transport, community facilities and environmental quality.

The HLEP does not incorporate floor space ratio requirements for the site. The density of the development is governed by the height of the building and the required setbacks. The proposed density is considered to be sustainable as it responds to the regional context, availability of infrastructure, public transport, community facilities and environmental quality and is acceptable in terms of density.

2.3.5 Principle 5 – Resource, Energy and Water Efficiency

Design Principle 5 is as follows:

Good design makes efficient use of natural resources, energy and water throughout its full life cycle, including construction.

Sustainability is integral to the design process. Aspects include demolition of existing structures, recycling of materials, selection of appropriate and sustainable materials, adaptability and reuse of buildings, layouts and built form, passive solar design principles, efficient appliances and mechanical services, soil zones for vegetation and reuse of water.

The applicant has submitted a BASIX Certificate for the proposed development. In achieving the required BASIX targets for sustainable water use, thermal comfort and energy efficiency, the proposed development achieves the design criteria and is considered acceptable in this regard.

2.3.6 Principle 6 – Landscape

Design Principle 6 is as follows:

Good design recognises that together landscape and buildings operate as an integral and sustainable system, resulting in greater aesthetic quality and amenity for both occupants and the adjoining public domain.

Landscape design builds on the existing site's natural and cultural features in responsible and creative ways. It enhances the development's natural environmental performance by co-ordinating water and soil management, solar access, micro-climate, tree canopy and habitat values. It contributes to the positive image and contextual fit of development through respect for streetscape and neighbourhood character, or desired future character.

Landscape design should optimise useability, privacy and social opportunity, equitable access and respect for neighbour's amenity, and provide for practical establishment and long term management.

The application includes a landscape concept plan providing landscaping along the street frontage, side and rear boundaries and within the rear building indentation. Additionally, large trees are proposed along the Keeler street frontage and medium sized trees, shrubs and hedges are proposed along the Hepburn Avenue frontage which would soften the appearance of the development when viewed from the street. Deep soil zones are provided around the building envelope to the north, west and Keeler Street and Hepburn Avenue street frontages which would enhance the natural environmental performance of the development and provide an appropriate landscaped setting.

Given the above, the proposal satisfies the intent of the 'Landscaping' principle of SEPP 65.

2.3.7 Principle 7 – Amenity

Design Principle 7 is as follows:

Good design provides amenity through the physical, spatial and environmental quality of a development.

Optimising amenity requires appropriate room dimensions and shapes, access to sunlight, natural ventilation, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas, outlook and ease of access for all age groups and degrees of mobility.

The proposed units are designed to achieve natural ventilation, solar access and acoustic privacy. All units incorporate balconies accessible from living areas and privacy has been achieved through appropriate design. Storage areas would be provided in each unit. This is addressed in Section 2.4.6. The proposal would provide convenient and safe access via a central lift connecting the basement and all other levels. The proposal satisfies the 'Amenity' principle of SEPP 65.

2.3.8 Principle 8 – Safety and Security

Design Principle 8 is as follows:

Good design optimises safety and security, both internal to the development and for the public domain.

This is achieved by maximising overlooking of public and communal spaces while maintaining internal privacy, avoiding dark and non-visible areas, maximising activity on streets, providing clear, safe access points, providing quality public spaces that cater for desired recreational uses, providing lighting appropriate to the location and desired activities, and clear definition between public and private spaces.

The design orientates the balconies and windows of individual apartments towards the street, rear and side boundaries, providing passive surveillance of the public domain and communal open space areas. Both the pedestrian and vehicular entry points are secured and visibly prominent from Keeler Street or Hepburn Avenue.

The proposal includes an assessment of the development against crime prevention controls in the Design Verification Statement and the Statement of Environmental Effects. A Crime Risk Assessment was submitted with the application which indicates that the proposed design provides for secure entries and passive surveillance of the public domain from both the ground level and upper level residential apartments. Appropriate conditions of consent for building security are recommended for the safety and security of future occupants of the proposed development. Subject to the imposition of conditions, the proposal is supported in respect of safety and security.

2.3.9 Principle 9 – Social Dimensions and Housing Affordability

Design Principle 9 is as follows:

Good design responds to the social context and needs of the local community in terms of lifestyles, affordability, and access to social facilities.

New development should optimise the provision of housing to suit the social mix and needs in the neighbourhood or, in the case of precincts undergoing transition, provide for the desired future community.

New development should address housing affordability by optimising the provision of economic housing choices and providing a mix of housing types to cater for different budgets and housing needs.

The HDGP includes prescriptive measures for housing choice and for adaptable housing to provide for aging in place. The proposal provides a varied housing mix and adaptable housing and is supported in respect to this Principle.

2.3.10 Principle 10 – Aesthetics

Design Principle 10 is as follows:

Quality aesthetics require the appropriate composition of building elements, textures, materials and colours and reflect the use, internal design and structure of the development. Aesthetics should respond to the environment and context, particularly to desirable elements of the existing streetscape or, in precincts undergoing transition, contribute to the desired future character of the area.

The architectural treatment of the building is consistent with the design principles contained within the *RFDC* and *HDCCP*. The aesthetic quality of the building would contribute to the desired future character of the precinct. The details of the assessment of the built form and the aesthetics of the development are contained in Section 2.13 of this report.

2.4 SEPP 65 - Residential Flat Design Code

SEPP 65 also requires consideration of the *Residential Flat Design Code*, *NSW Planning Department 2002*. The *Code* includes development controls and best practice benchmarks for achieving the design principles of *SEPP 65*. The following table sets out the proposal's compliance with the *Code*:

Residential Flat Design Code			
Control	Proposal	Requirement	Compliance
Deep Soil Zone	27%	Min 25%	Yes
Communal Open Space	25%	25-30%	Yes
Ground Level Private Open Space	25m ² Min Dimension <4m	25m ² Min Dimension 4m	No Yes
Minimum Dwelling Size	1 br – 64.75m ² 2 br – 75.11m ² 3 br – 95m ²	1 br – 50m ² 2 br – 70m ² 3 br – 95 m ²	Yes Yes Yes
Unit Depth and Maximum Kitchen Distance	8.6m – 10.5m (U103, 107, 307, 404 and 405)	8m (Max)	No
Minimum Balcony Depth	2m	2m	Yes
Ceiling Heights - Residential Floors	2.7m	2.7m (Min)	Yes
Total Storage Area	1 br - > 6m ³ 2 br - > 8m ³ 3 br - > 10m ³ Majority of units contain more than 50% of internal storage areas accessible from the	6m ³ (Min) 8m ³ (Min) 10 m ³ (Min) 50% accessible from the apartments	Yes Yes Yes No

	apartments except for Units 310, 403, 408 & 409. Basement Storage Area = 306.08m ³	Basement Storage Area required (376 m ³ / 2 = 188m ³)	Yes
Dual Aspect & Cross Ventilation	29/48 = 60.4%	60%	Yes
Adaptable Housing	31.25% (15/48)	10%	Yes

As detailed in the above table, the proposed development complies with the prescriptive measures within the *Residential Flat Design Code (RFDC)* other than the minimum dimensions of the ground floor open space and the maximum kitchen distance for some units. Below is a brief discussion regarding the relevant development controls and best practice guidelines.

2.4.1 Building Separation

The proposed building depth and the design of the building facades are in accordance with the requirements of the *HDCCP* as discussed in Section 2.13. The *RFDC* requires a building separation of 12m between the unscreened habitable areas or balconies increasing to 18m from the fifth level, for two adjoining residential flat buildings.

The northern and western façades of the proposed development do not comply with this requirement. The matter is discussed in Section 2.13 of this report.

2.4.2 Ground Floor Apartments and Private Open Space

The private open space areas for units G01, G03, 108, 109, 110 and 111 do not comply with the *Code's* best practice for the 25m² minimum open space areas and 4 metre minimum width dimension for ground floor open spaces. Notwithstanding, the proposed ground floor terraces and balconies are considered appropriate for the respective ground floor units in respect to dwelling size, aspect, unit configuration and amenity.

The private open space areas have been designed in accordance with the requirements of Council's Hornsby Development Control Plan 2013. The DCP states that the deep soil area within the setbacks of the development should be retained as communal open space. The objective of this control is to provide a landscape setting to the development. As such, the minor numerical non-compliance is considered minor and is acceptable in this instance.

2.4.3 Apartment Layout

The proposed development includes a mix of single aspect and corner units including one, two and three bedroom apartments. The majority of units would be well ventilated and some corner units would be provided with dual aspect balconies.

The *RFDC* requires that the back of a kitchen should be no greater than 8m from a window. Of the 48 units proposed, 5 units contain kitchens where the back wall is up to 10.5m from a window. These units offer an open layout with natural light and ventilation. Accordingly, the minor non-compliance is acceptable with respect to residential amenity.

The proposed apartment layouts are functional and satisfy the *RFDC* requirements for internal privacy, access to sunlight, natural ventilation and acoustic privacy. The apartment layout and mix achieves the intent of the best practice requirements of the *RFDC* and is acceptable in this regard.

2.4.4 Internal Circulation

The proposed development includes access to all floors via a lift. The number of units on each level for the first, second and third floor levels is 11 units which does not meet the *Code's* requirements for the number of units accessed (less than 8) off an internal corridor. Due to the irregular shape of the site, the internal lift corridors form a "U-shaped" plan and the distance from the furthest unit to the lift is between 15m – 20m. However, the corridors are interspersed by windows which allow natural sunlight into the space and almost half of the units on each level are dual aspect units which demonstrate a high level of amenity for corridors and units. In this regard, the safety and amenity of people circulating within each level is not compromised and the non-compliance is considered acceptable.

The ground floor foyer also provides direct, level access from the north-eastern side of the property to the communal open space at the northern rear of the site.

The proposal is acceptable with respect to the requirements of the *RFDC* for internal circulation.

2.4.5 Acoustic Privacy

The internal layout of the residential units is designed such that for a majority of units, noise generating areas would adjoin each other wherever possible. Storage or circulation zones would act as a buffer between units. Bedrooms and service areas such as kitchens, bathrooms and laundries would be grouped together wherever possible. The proposal is consistent with the *RFDC* for acoustic privacy.

2.4.6 Storage

The storage areas are provided within the apartments and additional storage areas are within the basement levels. The majority of units (92%) contain more than 50% of internal storage areas accessible from the apartments except for Units 310, 403, 408 and 409 due to internal layout constraints. These units have a shortfall of up to 1m³ as prescribed under the *RFDC*. However, the storage space provided in the basement exceeds the *RFDC* requirement by over 100m³. In this regard, the minor non-compliance is considered acceptable.

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

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

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

The application has been assessed against the requirements of *SEPP 32*, which 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 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 underutilised land within the Shire.

2.7 State Environmental Planning Policy (Infrastructure) 2007

The application has been assessed against the requirements of *State Environmental Planning Policy (Infrastructure) 2007*. This Policy contains State-wide planning controls for developments adjoining busy roads. The development is not classified as a Traffic Generating Development in accordance with Clause 104 and Schedule 3 of *SEPP (Infrastructure)*. Therefore, referral of the application to the RMS is not required.

2.8 Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

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

The proposal includes details of stormwater management of the site by providing an on-site detention system. Council's assessment of the proposal in this regard concludes that the development is satisfactory. A condition is recommended with respect to installation of sediment and erosion control measures prior to, and during, construction.

The proposed development would have minimal potential to impact on the Sydney Harbour Catchment subject to implementation of recommended conditions.

2.9 Threatened Species Conservation Act 1995

The site contains significant vegetation identified as BGHF which is listed as an Endangered Ecological Community listed under the *Threatened Species Conservation Act 1995*.

The applicant has submitted a Flora and Fauna Report including an assessment of the site pursuant to Clause 5A of the *Environmental Planning and Assessment Act, 1979*. The report submits that the proposal would not result in a significant impact on the Blue Gum High Forest (BGHF) ecological community in the locality. An assessment of the environmental impact of the development is held in section 3.1 of this report.

2.10 Green Offset Code (2012)

Council's *Green Offset Code (2012)* was adopted on 20 June 2012. The purpose of the Code is to provide guidance on the approach to conducting offsets for the loss of healthy native trees and vegetation in Hornsby Shire, integrating the regulatory requirements of the environmental legislation and policies.

The Code applies to development that would impact on native vegetation and requires consideration of the following Principles:

- The Principle of Avoid, Minimise and Mitigate.
- The Precautionary Principle.
- The Principle of Net Gain.
- The Principle of Avoiding the Effects of Cumulative Impacts.

The Code provides for offset actions to protect, enhance, manage and create habitat on receiving land that is ecologically suitable and appropriate. Contributions made into this program will go towards restoration and revegetation works on Council managed land.

The application includes a VPA to offset the loss of Blue Gum High Forest (BGHF) on the site. The VPA includes a monetary contribution of \$47,049 to offset the loss of BGHF and enable Council, through its Bushcare Program, to rehabilitate and regenerate bushland on an area of Council land. The monetary contribution offered to Council is in accordance with the formulas and rates outlined in the Code for the removal of 408.9 square metres of BGHF canopy.

2.11 Section 93F Environmental Planning and Assessment Act, 1979

The proposed VPA has been submitted pursuant to Section 93F of the *Environmental Planning and Assessment Act, 1979*. Council has a *Policy on Planning Agreements* which embodies the legislative criteria and sets the framework governing the use of Planning Agreements within Hornsby Shire. The Policy includes the following 'acceptability test' of a proper planning purpose to ensure that Planning Agreements:

- Are directed towards proper or 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 VPA would offset the loss of BGHF from the site and facilitate bushland regeneration works on Council land. Under Council's Policy on Planning Agreements, bushland regeneration works are listed as an appropriate planning benefit for a planning agreement. The VPA has been reviewed by Council's Solicitor and is considered to be directed to a legitimate planning purpose and would facilitate an appropriate outcome through bushland regeneration.

It is an appropriate environmental outcome for Council to enter into a VPA in this instance to balance the opportunity for sustainable development against the environmental attributes of the locality. The VPA is considered to satisfy the above acceptability test and is consistent with Council's *Policy on Planning Agreements*.

A condition is recommended requiring the applicant to enter into a VPA with Council to offset the loss of BGHF on the site. In accordance with Section 93G of the *Environmental Planning and Assessment Act, 1979* the VPA was required to be publically notified and available for public inspection for a period of 28 days before being entered into. In this regard, the VPA was notified from 11 June 2014 to 9 July 2014 and 1 submission was received which is addressed in Section 5.1.9 of the report.

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

On 1 March 2013, the *Environmental Planning and Assessment Act, 1979* was amended so that a DCP provision will have no effect if it has the practical effect of "*preventing or unreasonably restricting development*" that is otherwise permitted and complies with the development standards set out in relevant Local Environmental Plans and State Environmental Planning Policies.

The principal purpose of a development control plan is to provide guidance on the aims of any environmental planning instrument that applies to the development; facilitating development that is permissible under any such instrument; and achieving the objectives of land zones under any such instrument. The provisions of a development control plan made for that purpose are not statutory requirements.

2.13 Hornsby Development Control Plan 2013

The proposed development has been assessed having regard to the relevant performance and prescriptive design requirements within the *Hornsby Development Control Plan 2013 (HDCP)*. The following table sets out the compliance of the proposal with the various elements of the DCP:

Hornsby Development Control Plan 2013			
Control	Proposal	Requirement	Compliance
Site Width	47.86m (Keeler Street)	30m	Yes
	56.6m (Hepburn Ave)	30m	Yes
Height	5 storeys – 17.5m	5 storeys – 17.5m	Yes
Lowest Residential Floor Above Ground	<1.5m	Max - 1.5m	Yes
Height of Basement above ground	Approx. 10m ² >1m	Max – 1m	No
Maximum Floorplate Dimension	38.4m (E -W)	35m	No
	37m (N - S)	35m	No
Building Indentation	4m x 4m (Keeler St)	4m x 4m	Yes
	4m x 8m (Hepburn Ave)		Yes
	4m x 4m (West side)		Yes
Front Setback (Primary Frontage - Keeler Street)	10m – 15m	10m	Yes
	8m (for 4m length) < 1/3 frontage	8m < 1/3 of frontage (12.3m length)	Yes
	7m (balconies)	7m (balconies)	Yes
Eastern Side Setback (Secondary Frontage - Hepburn Ave)	6m – 7m 14.5m reduced to 4m – 5m	6m 1/3 frontage (12.3m) can be reduced to 4m	Yes No

Western Side Setback	6m 9.5m length reduced to 4m	6m 1/3 frontage (12.3m) can be reduced to 4m	Yes Yes
Northern Rear Setback	10m 8m (for 8m length) < 1/3 frontage of north western rear 7m (balconies) except for Units G02, 108, 208, 308 & 406	10m 8m < 1/3 of frontage (9m length) of north eastern rear 7m (balconies)	Yes Yes No
Top Storey Setback From Ground Floor	North - 0m for a building length of 4m East – 0m for a length of 4m	3m additional	No
Basement Parking Setback	6m – 8m front 2m – 6m rear 4m eastern side 4m western side	7m front 7m rear 4m sides 4m sides	No No Yes Yes
Basement Ramp Setback	2m (western side)	2m	Yes
Parking	58 resident spaces 10 visitor spaces 11 bicycle spaces in the basement	50 resident spaces 7 visitor spaces 10 bicycle spaces in the basement and 5 bicycle visitors spaces	Yes Yes No
Deep Soil Landscaped areas	Front 4m wide Rear 3m - 7m wide Eastern side – 4m wide Western Side – 4m wide	7m wide 7m wide 4m wide 4m wide	No No Yes Yes
Private Open Space with Min Width 2.5m	1 br units >10m ² (U409 = 8.5m ²) 2 br units (U109, 209 & 304) = 9m ² - 10.5m ² 3 br units (UG01) = 13.8m ²	1 br units 10m ² (min) 2 br units 12m ² (min) 3 br units 16m ² (min)	No No No
Communal Open Space with minimum dimension 4m	25% and 105m ² of principal communal open space	25% and at least 50m ² of principal communal open space	Yes

Solar Access	73%	70%	Yes
Housing Choice	1 br unit - 21%	10% of each type (min)	Yes
	2 br unit – 66.5%	10% of each type (min)	Yes
	3 br unit - 12.5%	10% of each type (min)	Yes
Adaptable Units	16/48 = 33%	30%	Yes

As detailed in the above table, the proposed development does not comply with a number of the prescriptive measures within the *HDCP*. The matters of non-compliance are detailed below, as well as a brief discussion regarding the desired outcomes and the prescriptive measures.

2.13.1 Desired Future Character

The site is included in the Carlingford Road, Carlingford Precinct which was rezoned from Residential A (Low Density) to Residential C (Medium-High Density) on 2 September 2011 as part of Council's *Housing Strategy*.

The proposed building is in accordance with required key principles for the future character of the precinct for well-articulated five storey residential flat buildings in landscaped settings with underground car parking. The proposal complies with the desired outcome for the precinct.

2.13.2 Design Quality – SEPP 65

The proposed development is designed in accordance with the design principles of *SEPP 65* except the building separation from the western and northern property boundaries. Refer to discussion in Sections 2.3 and 2.4.

2.13.3 Site Requirements

The *HDCP* requires sites to have a minimum frontage of 30 metres. The subject site has a frontage of 56.6m to Keeler Street and 47.86m to Hepburn Avenue and complies with this requirement.

The *HDCP* also requires the following:

Where a development proposal results in an adjoining site within the precinct with no street frontage or a primary street frontage of less than 30m, proponents should demonstrate that orderly and economic development of the site can be achieved under this DCP.

Where a property is likely to be isolated by a proposed development and it cannot be demonstrated that orderly and economic development (isolated) site can be achieved, applicants should provide documentary evidence that genuine and reasonable attempt has been made to purchase an isolated site based on a fair market value.

A drainage easement runs along the adjoining western properties, on the eastern property boundary of No. 38 Keeler Street, in between Nos. 36 and 38 Keeler Street. As a result, property Nos. 36 and No. 38 Keeler Street are indicated as being flood prone. The drainage pipe within the easement is sited at the lowest grade within the precinct and is connected to a network of pipes to the north of Carlingford Road and thus cannot be relocated. No. 38 Keeler Street has a frontage of approximately 23m and a cluster housing development currently exists on site. No. 36 Keeler Street has a frontage of approximately 17m and a freestanding single storey dwelling house exists on the site. Approval of the proposed development would result in the isolation and potential sterilisation of No. 36 Keeler Street for future five storey development.

In accordance with the provisions of the DCP, the Applicant sought to resolve the isolation of No. 36 by making genuine and reasonable attempts to acquire the site at a fair market value. Details of the attempts made to acquire No. 36 were submitted with the Application and include a statutory declaration outlining the offers made by the landowner to purchase No. 36 and a letter of offer sent by the landowner's solicitor. These attempts to acquire No. 36 were unsuccessful.

Further to the above, the landowner of No. 36 contact Council to confirm that the developer had been in contact and had made offers to purchase the site, however these offers were considered well below expectations and concluded that he had "no interest in holding further negotiations with the applicant now or in the future". The landowner advised that he was aware that approval of the proposed development would isolate his site and did not oppose the development.

Based on the above, the proposal is considered to be acceptable in respect to the *HDCP* prescriptive measures for site consolidation.

2.13.4 Height Requirements

The proposed building complies with the 17.5 metre maximum height limit. However, portions of the proposed basement car park would project more than 1m above finished ground level. However, these portions are located in the middle of the residential flat building and contain a floor area of approximately 10m². When viewed from the public domain (Keeler Street and Hepburn Avenue), the building presents as a five storey residential flat building and the variation is considered negligible. Accordingly, the proposed development is satisfactory in respect to built form.

2.13.5 Setbacks

As noted in the table above, sections of the building do not comply with the setback requirements as follows:

Northern Rear Setback

Whilst the proposal achieves the numerical requirement of a 10m setback which can be reduced to 8m for a maximum of 1/3 of the building width, the rear balcony setback presents a non-compliance with the *HDCP* requirements. Due to the irregular shape of the site, the balcony serving Unit G02 has a 6m -7m setback from the rear property boundary and the balconies serving Units 108, 208, 308, 406 have (in part) a 2m setback from the south eastern corner of the adjoining property at No. 199A Carlingford Road.

The non-compliance to the balcony serving Unit G02 is for an area of 3.3m² which is approximately 9% of the total balcony area. A 2.5m wide planter box including a *Plumeria Rubra*s plant which grows to a height of 4m is proposed along the balcony length. This would alleviate any privacy impacts to the northern adjoining property. The encroachment would not further impact on the deep soil zones as the basement already encroaches within the rear setback.

The non-compliance to the balconies serving Units 108, 208, 308 and 406 from the irregular shape of the site due to the consolidation of No. 4 Hepburn Avenue. To ensure that minimal overlooking impacts result from the encroachments of these balconies, a condition is recommended that 1.8m high, movable privacy screens are to be erected along the northern and western sides of the balcony fronting the living rooms of units 108, 208, 308 and 406.

With conditions, the non-compliances to the rear, northern side setback would ensure a well-articulated building form that incorporates landscaping, open space and adequate separation between buildings. The units provide open, useable terrace areas and provide for the amenity of future

occupants and accordingly meet the desired outcome for a five storey residential flat building. It is considered that the numerical non-compliances with respect to balcony setbacks are minor and acceptable on merits.

Eastern Side Setback (Hepburn Avenue)

The proposal does not comply with the eastern side setback requirements of the *HDCP* that prescribes 1/3 of the frontage (12.3m) can be reduced to 4m. The proposal includes a side setback of between 4m - 5m for a length of 14.5m. The non-compliance includes a 2.5m wide stairwell with a 5m side setback from the eastern property boundary that provides access to the basement. The stairwell adjoins a 4m x 6m building indentation which exceeds the building indentation requirements of the *HDCP*.

The building indentation, vertical and horizontal blade elements and wrap around balconies presents a well-articulated eastern façade. Additionally, the landscape plan indicates that 4 x *Tristanopsis laurina* new street trees which grow to a mature height of 12m and 6 x *Banksia serrata* native buffer trees which also grow to a mature height of 12m would be planted on the Hepburn Avenue street frontage. These trees would obscure the eastern façade. In this regard, the minor encroachment is considered to be acceptable.

Basement Parking Setback

Whilst all basement parking side setbacks comply with the requirements of the *HDCP*, the proposal does not comply with the front and rear basement parking setback requirements.

The front basement parking setback has an encroachment of up to 0.7m for a total length of 16m. However, on average the basement parking is setback 7m from the front property boundary. The minor non-compliance would have a negligible impact on the provision of deep soil landscaping and open space areas and is considered acceptable.

The rear basement parking setback has a varying setback of between 2m – 6.5m for a total length of 29m. However, this is as a result of the irregular shape to the site due to the amalgamation of No. 4 Hepburn Avenue. Adequate deep soil zones (25%) are provided within the development, including a communal open space area which is located at the northern corner of the site. In this regard, the non-compliance is considered acceptable.

Top Storey Setback

The majority of the building incorporates a 3m building setback for the top storey on the front, rear and side setbacks. However, minor portions of the northern, eastern and western top storey setbacks do not comply with the numerical requirements of the *HDCP*. These non-compliance are considered as satisfactory under Section 2.12.7 and the majority of these non-compliances are located on the rear elevation which is not visible from the street.

The non-compliances on the western, Keeler Street elevation are predominantly located within the building indentation and the façade is well articulated as it has been treated with protruding balconies, vertical and horizontal blade walls and panels, stepped levels of the building, flat roof and a juxtaposition of finishes and colours including acrylic render, profiled metal cladding, alucobond cladding, aluminium frames and glass balustrades and windows. The top storey setbacks generally comply with the numerical requirements of the *HDCP*. The proposal would contribute to a well-articulated building form and is therefore considered to be acceptable.

2.13.6 Deep Soil Landscaping

The landscaping provisions of the *HDCP* prescribe that a 7m wide deep soil landscaped area is to be provided at the front and rear boundaries and a 4m wide deep soil landscaped area is to be provided at the side boundaries. The proposal incorporates a 4m wide deep soil on the side setbacks. However, does not comply with the 7m wide deep soil landscaped areas to the front and rear boundaries.

The front setback includes hardstand areas such as pathways and planter boxes with resulting deep soil areas between 3m – 12m. Notwithstanding, the landscape plan indicates that a number of large, mature canopy trees would be planted within this deep soil area including an advanced *Eucalyptus pillularis* as a replacement canopy tree which would grow to a mature height of 30m and 2 x *Stenocarpus sinuatus* trees which would grow to a mature height of 20m. The overall landscaped area is 7m wide and the roots from the proposed canopy trees would still be able to grow under the footpath and planter boxes. In this regard, the proposed non-compliance to the front deep soil landscaping setback is considered acceptable.

The proposal does not comply with the rear deep soil landscaping requirement in that the basement encroaches within this area and results in a 3m – 6.5m wide deep soil landscaped area. The non-compliance to the basement parking setback has been addressed in Section 2.13.5. Additionally, the proposal includes provision for the planting of an advanced large *Eucalyptus pillularis* tree and 2 x medium *Banksia serrata* trees and terrace planting within the planter boxes including 3 x small *Plumeria rubra* trees. Due to the constraints incurred by the irregular shape of the site, the non-compliance to the rear deep soil landscaping setback is considered acceptable as the proposal achieves the required area of open space and provides a useable space easily accessible to future occupants.

The extent of hard stand areas is confined to the southern and eastern side of the site and reasonable provision has been made for deep soil areas to accommodate mature canopy trees, within the front, rear and side setbacks and achieves an appropriate landscape setting. In this regard, the non-compliances are considered to be acceptable.

Subject to conditions and on-going maintenance of the landscaped areas, the development would achieve a landscape setting that is generally consistent with the desired future character of the precinct.

2.13.7 Building Articulation

Indentation

The proposed development provides a mid-elevation, minimum 4m by 4m vertical indentation in each façade of the building, which complies with the DCP requirement. The indentation creates the appearance of separate building pavilions, which is further accentuated by corresponding roofs above each pavilion element.

The proposed building has a maximum floorplate of 38.4m (East to West) and 37m (North to South) which exceeds the maximum floorplate length of 35m in the *HDCP*. The building length is largely attributed to the site consolidation pattern. The adjacent property has not been amalgamated with the subject site which would provide the opportunity for 2 smaller buildings. However, as indicated above, the adjacent property owner is unwilling to negotiate a sale of the site to facilitate an alternative built form outcome.

The design of the proposed development is considered suitable given that the overall building bulk and massing has been successfully tempered through the use of recessed bays, appropriate roof design, fenestration, textures and materials.

Articulation

The articulation of the building facades has been achieved in the following ways:

- The proposed building is stepped to conform with the topography of the site. The building has been vertically stepped, three steps being provided on the ground, fourth and the fifth storey across 50% of the width of each façade along with a four storey high vertical solid panels.
- The building is well articulated with regard to the treatment of the façades, size and placement of windows, balconies, vertical panels, indentations and setback variations to minimise the bulk and scale of the building.
- The facades have been divided into vertical 'panels', no wider than 8 metres except for a 9.5m panel on the western elevation. However, this panel cannot be viewed from the street, is vertically stepped in on the fourth floor and the overall western façade achieves the desired articulation.
- The façade treatment, interesting fenestration, protruding balconies, planter boxes, vertical and horizontal blade walls and panels, stepped levels of the building, flat roof that minimises the bulk and scale and would contribute to the streetscape.
- The building would incorporate a varied use of finishes including acrylic render, profiled metal cladding, alucobond cladding, aluminium frames and glass balustrades and windows and contemporary colours.

The design of the floor plates, the proposed indentations and the articulation of the facades have been assessed as satisfactory.

2.13.8 Open Space

The proposed communal open space areas comply with the prescriptive area requirements. A principal communal open space area of at least 50sqm with a minimum dimension of 4m has been provided at the rear, northern corner of the site. The principal communal open area would receive in excess of 2 hours of sunlight between 9am – 3pm during mid-winter and can be accessed from the foyer via an entry door centrally located on the eastern side of the building which provides convenient access from all dwellings.

The majority of proposed private open space areas achieve the prescriptive area requirements apart from 5 out of 48 units. Units G01, 109, 209, 304 and 409 have an open space area with a minimum width of 2.5m that is less than the required 10m² for 1 bedroom units, 12m² for 2 bedroom units and 16m² for 3 bedroom units. However, the overall area complies with the prescriptive measures and would accommodate the provision of outdoor seating furniture and activities and an area for clothes drying. The private open space area for unit 409 is undersized by 1.5m². The open space area could be increased to 10m² and comply with the front setback requirements. A condition is recommended that the private open space area for unit 409 be increased.

Subject to conditions, it is considered the proposed private and communal open space areas achieve the desired outcome for active recreation areas with privacy and access to sunlight.

2.13.9 Privacy and Security

Given the orientation of the site, and the site constraints derived from an irregular shaped allotment, a number of balconies and primary living areas would front the side and rear boundaries. Apart from the balconies on the southern corner of the site serving units 102, 202, 302 and 402, full height privacy screens or louvers are proposed for balconies facing the western side boundary which do not numerically achieve the separation requirements as per *SEPP 65* or the *HDCP*.

To ensure that adequate privacy is maintained for the non-compliant units on the southern corner of the site, a condition is recommended that a 1.8m high privacy screen/louvre is to be erected on the western side of the balconies serving units 102, 202, 302 and 402.

Due to the irregular shape of the site, the balconies serving units 108, 208, 308 and 406 are setback 2m from the south eastern corner of No. 199A Carlingford Road which does not comply with the 6m building separation requirement as prescribed under the *RFDC* and Council's *HDCP*. To ensure that maximum protection of privacy is maintained, a condition is recommended requiring 1.8m high, movable privacy screens to be erected along the north and western sides of the balcony fronting the living rooms of units 108, 208, 308 and 406.

The ground floor balcony serving unit 108 would directly face the communal open space at the rear northern corner of the site and would be required to be suitably screened by landscaping and privacy screens. A condition is recommended that landscape screening be provided in front of the balcony.

In terms of security, the proposal includes safe, clear and direct pedestrian entrance to the centrally located foyer of the building from Keeler Street. A separate pedestrian entry is also located along the Hepburn Street frontage. Passive surveillance is achieved by the orientation of private open space and living room windows of units to the street and rear, communal open spaces on the site.

The proposal complies with the privacy and security requirements of the *RFDC* and *HDCP* and would not compromise the privacy of future occupants or adjoining neighbours.

2.13.10 Sunlight and Ventilation

The applicant has submitted solar access diagrams demonstrating compliance of individual units with solar access requirements. As the site is located within a redevelopment precinct, the solar access analysis has taken into account the overshadowing impacts from future five storey developments on adjoining sites. The applicant submits that 73% of the units would receive a minimum 2 hours solar access between 9am and 3pm during the Winter Solstice. Based on Council's assessment, the proposal would comply with the sunlight access requirements for units under the *HDCP* and is acceptable in this regard.

The solar access diagrams submitted with the application demonstrate the overshadowing impacts of the development to adjoining properties at 9am, 12pm and 3pm on June 21. The proposed building would not detrimentally impact upon the north-eastern property on the opposite side of Keeler Street known as No. 28 Keeler Street as there would be least 4 hours of solar access provided to the private open space area. The proposed building would overshadow the western adjoining property at No. 36 Keeler Street between 9am and 12pm. However, the north facing windows of the dwelling house at No. 36 Keeler Street would maintain solar access between 12pm and 3pm. The potential five storey developments on the northern and western sides would be required to demonstrate compliance with the solar access and setbacks requirements for five storey developments governed by the *RFDC* and the *HDCP*. This would be assessed in future applications.

2.13.11 Housing Choice

The proposed development includes a mix of one, two and three bedroom units and adaptable housing units which complies with the prescriptive measures. Sixteen out of 48 units are proposed as adaptable units which exceed the 30% requirement of the *HDCP*. The proposal complies with the prescriptive measures of the *HDCP* and the *RFDC*.

2.13.12 Vehicle Access and Parking

The proposed car parking complies with the required spaces for residents and visitor spaces and provides for 1 motor cycle space. The proposed car park is accessed via a 6.35m wide driveway (excluding traffic islands) from Keeler Street. Whilst the driveway width, ramp gradients and aisle widths are assessed as satisfactory, a traffic island is proposed in the middle of the driveway for the placement of an intercom for access by the driver of a vehicle. A condition is recommended that requires the length of the traffic island to be reduced to ensure there is no obstruction to the service area of a garbage collection vehicle.

The basement level includes storage areas for residents and 11 bicycle parking spaces which results in a shortfall of 4 bicycle spaces. A condition is recommended for the provision of an additional 4 bicycle spaces in accordance with the controls for transport and parking under the *HDCP*. With conditions, the proposal complies with the prescriptive measures of the *HDCP* and the *RFDC*.

2.13.13 Stormwater Management

The development proposes to connect to Council's piped drainage system located to the north-west of the subject property which links to Carlingford Road via an underground on-site detention (OSD) tank and rainwater tank located at the front, southern corner of the site within the driveway. Council's engineering assessment concludes that subject to conditions recommended in Schedule 1, the OSD and stormwater management system would minimise the effects of flooding and maintain natural environmental flows. Additionally, subject to sediment and erosion control measures being implemented on site during construction, the proposal would comply with the desired outcomes of the *HDCP*.

2.13.14 Waste Management

The proposal includes a waste management plan with details of waste management during the demolition, construction and use phases of the building works. However, further details are required prior to the issue of a Construction Certificate as per recommended conditions in Schedule 1 of this report.

A garbage chute and a recycling bin is provided on each level. For 48 dwellings, the development would require 4 x 660 litre garbage bins serviced twice weekly plus 10 x 240 litre recycling bins serviced weekly. However, the site caretaker will require 13 x 240 L recycling bins to avoid having to decant bins or swap half full bins around. There also needs to be 1 x 660 L paper/cardboard recycling bin serviced weekly. Conditions have been recommended to ensure that these services can be provided.

The bin storage area next to the garbage chute service area is sufficient in size to store bins that would not be in use under the chute or in the waste facility rooms on each residential level. A 4 x 660 L bin carousel is shown on the plans and is considered acceptable. No bulky waste storage area has been provided. A condition is recommended that requires a bulky storage area of at least 8m² be provided within the basement.

The proposal provides a bin collection area on the western side of the driveway. Subject to conditions requiring the removal of any traffic islands that would obstruct the service area of a waste collection vehicle, a small rigid waste collection vehicle would be able to reverse onto the site and park on the driveway while servicing the bins and then leave the site in a forward direction.

Subject to recommended conditions, the proposed development is satisfactory in respect to the *HDCP*.

2.13.15 Accessible Design

The development proposes continuous barrier free access to all floors via a lift. The proposal complies with the requirements of the *HDCP* with regard to the provision of adaptable and accessible units. The disabled car spaces within the basement levels are designed to comply with *AS2890.6 - 2009 Parking facilities – Off street parking for people with a disability*.

Subject to recommended conditions, the application is assessed as satisfactory with regard to the *HDCP*.

2.13.16 Tree and Vegetation Preservation

The proposed development includes the removal of 2 significant trees (tree No. 1, and 2 Blackbutt *Eucalyptus pilularis*). Subject to conditions requiring replacement planting, the removal of this tree is considered to be satisfactory. This is addressed under Section 3.1 of this report.

2.14 Section 94 Contributions Plans

Hornsby Shire Council Section 94 Development Contributions Plan 2012-2021 applies to the development as it would result in the addition of 44 residential units in lieu of the four existing residences. Accordingly, 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 site and neighbouring properties contain a mix of locally indigenous, native and exotic tree species.

The subject site contains two significant *Eucalyptus pilularis* (Blackbutt) trees which are proposed for removal numbered T1 and T2 as outlined in the Arboricultural Impact Assessment Report. The trees are centrally located within the rear half of the site and form part of Blue Gum High Forest Critically Endangered Ecological Community listed under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* and the NSW *Threatened Species Conservation Act 1995*.

The Arboricultural Impact Assessment includes a resistograph assessment of Tree No. 1 which notes that the tree has developed a cavity in the crotch of the first order branches. Tree No. 2 has a trunk wound at the basal area. As outlined in the report, the removal of tree No. 1 would impact on the retention of tree No. 2 and would significantly decrease the space available for development due to the size of the Tree Protection Zone (TPZ) of this tree. Council's environmental assessment of the report concurs with the findings of the report.

In addition, replacement planting has been proposed to offset the loss in accordance with Council's Green Offsets Code, where the negative impacts of tree removal may be offset through other positive actions. The Code provides for an appropriate offset ratio for the replacement of Remnant Endangered Ecological Community trees as 5:1 which are to be planted within the subject site. Having regard to this and the Voluntary Planning Agreement to offset the loss of BGHF from the site, as discussed in Section 2.10, the proposal's impact on significant vegetation does not warrant refusal of the application. It is considered to be an appropriate environmental outcome for Council to enter into a Green Offset agreement in this instance to balance the opportunity for sustainable development against the environmental attributes of the locality.

3.1.1 Stormwater Management

The development proposes to connect to Council's piped drainage system on Carlingford Road via an underground on-site detention (OSD) tank and rainwater tank located at the front, southern corner of the site within the driveway to control the discharge of water from the site. This has been addressed as satisfactory under Section 2.13.13 of this report.

3.2 Built Environment

3.2.1 Traffic

Council has undertaken an assessment of the overall traffic impact of the redeveloped precinct on the locality and has undertaken additional traffic modelling for the Carlingford Housing Strategy precinct to confirm road and other improvements required to facilitate future development within the precinct.

In summary, the updated traffic model concludes that the following mitigation measures will be effective in maintaining the current level of service under existing and future conditions:

- Signalisation of the intersection of Carlingford Road with Hepburn Avenue;
- Continue with the proposal in the Housing Strategy DCP to prohibit left turn movements from Keeler Street into Pennant Hills Road;
- Installation of traffic calming devices in Keeler Street; and
- Provision of an intersection treatment/roundabout on Keeler Street at Hepburn Avenue or Rickard Street.

Accordingly, at its meeting on 20 November 2013, Council resolved that amendments to the Hornsby DCP identifying the additional recommended traffic improvements to support development of the Carlingford precinct be adopted. In accordance with Council's resolution, the HDCP amendments came into force on 12 December 2014.

The applicant submitted a Traffic and Parking Impact Report for the proposed development. The estimate of the traffic generated by the proposed development is 14 vehicle trips in peak hours. An Intersection Assessment was included in the report which assessed the existing traffic controls and intersections of Pennant Hills Road with Carlingford Road, Pennant Hills Road with Keeler Street, Carlingford Road with Hepburn Avenue during weekday peak hours. The assessment concludes that the projected increase in traffic activity as a result of the proposed development is "statistically insignificant" and would not have unacceptable traffic implications in terms of road network capacity. Council's Traffic assessment concurs with this assessment.

3.3 Social Impacts

The residential development would improve housing choice in the locality by providing a range of household types. The location of the development is in close proximity to Carlingford Court Shopping Centre and Carlingford Commercial Centre, allowing equitable, direct access to retail, business, recreational, health and educational facilities for all ages.

3.4 Economic Impacts

The development would result in a positive economic impact on the locality via employment generation during construction and minor increase in demand for local services following completion of the development.

4. SITE SUITABILITY

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

There is no known hazard or risk associated with the site with respect to landslip, subsidence, flooding and bushfire that would preclude development of the site. For the reasons detailed in this report, it is considered that the site is suitable to accommodate 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 19 November 2013 and 4 December 2013 in accordance with Council's *Notification and Exhibition Development Control Plan*. During this period, Council received 5 submissions; however 1 submission from the owner of No. 36 Keeler Street was subsequently withdrawn. A draft voluntary planning agreement was also notified between 11 June 2014 and 9 July 2014 in accordance with Section 93G of the *Environmental Planning and Assessment Act, 1979*. During this period, Council received 1 submission.

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	
1 SUBMISSION RECEIVED OUT OF MAP RANGE (No. 17 Darwin Street, Carlingford)			

Five submissions objected to the development, generally on the grounds that the development would result in:

- Unacceptable traffic on local streets;
- Limited public transport;
- Unacceptable overshadowing of adjoining properties;
- Unacceptable noise from traffic during construction;
- Safety of children at nearby schools;
- Development that is excessive in bulk and scale;
- Development may result in vibration and damage to adjoining properties;
- Exacerbation of the poor condition of existing roads;

- Devaluation of adjoining properties;
- “Complete imbalance of ethnic mix”;
- Unsightly waste storage and maintenance of units and gardens; and
- The removal of 2 significant trees which are part of the BGHF.

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 Limited Public Transportation

The site is located within 300m from Carlingford Court and Carlingford Road which contains a number of bus stops to Carlingford Station and Epping Station.

5.1.2 Unacceptable Noise from Traffic During Construction

Conditions are recommended under Schedule 1 to ensure that minimal noise impacts result from traffic during construction including requirements restricting construction hours, a Traffic Control Plan detailing vehicle movements, traffic management plan and pedestrian and cyclist access and safety.

5.1.3 Safety of Children at Nearby Schools

The proposed development would not result in increased traffic safety impacts for children and other pedestrians when compared to existing conditions.

5.1.4 Development May Result in Vibration and Damage to Adjoining Properties

Conditions are recommended under Schedule 1 to provide a dilapidation report for all adjoining properties to ensure that there are no detrimental structural impacts as a result of the development.

5.1.5 Exacerbation of the Poor Condition of Existing Roads

Maintenance of existing road infrastructure is a separate issue that does not form part of the development assessment and is not a matter for consideration under Section 79C of the *Environmental Planning and Assessment Act 1979*.

5.1.6 Devaluation of Adjoining Properties to the East of Hepburn Avenue Who Are Not Within the Housing Strategy Precinct

Submissions received raised concern that property values will be affected for those properties not located within the Housing Strategy Precinct. However, it is not a requirement of the *Environmental Planning and Assessment Act 1979* to consider the potential impact of development on property values.

5.1.7 Complete Imbalance of Ethnic Mix

This is not a matter for consideration under Section 79C of the *Environmental Planning and Assessment Act, 1979*.

5.1.8 Unsightly Waste Storage and Maintenance of Units

Waste management and maintenance of landscaping have been addressed as conditions of consent under Schedule 1. The maintenance of units and communal landscaping and open space areas would be governed by the body corporate.

5.1.9 Draft Voluntary Planning Agreement

A concern has been raised in community submissions that the 408.9 square metres canopy coverage calculated under Council's Green Offset Code is insufficient to compensate for the loss of the interconnected ecological system and heritage value that surrounds the BGHF community on the site. These trees are not identified as heritage listed trees under Schedule 5 Environmental heritage of Council's HDGP. As addressed in Section 2.10 Green Offset Code (2012), the calculation and monetary contribution offered to Council is in accordance with the formulas and rates outlined in the Code and the VPA is considered to be suitable.

5.2 Public Agencies

The development application was not referred to any Public 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.

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 seeks approval for the demolition of existing structures and construction of a five storey residential flat building comprising 48 units and basement car parking.

The proposal includes the removal of a significant group of trees identified as Blue Gum High Forest (BGHF). The proposed tree removal is the subject of an offer to enter into a Planning Agreement to offset the loss of 408.9 square metres of BGHF canopy area in accordance with *Council's Green Offset Code (2012)*.

The proposed development is generally in accordance with the development controls for the *Hornsby Development Control Plan 2013* and would contribute to the future desired five storey residential character of the precinct. With conditions, the minor non-compliance with prescriptive measures for basement height, setbacks, maximum floor plate dimensions, bicycle parking, deep soil landscaping and open space are considered acceptable. The proposal complies with the design principles of *SEPP 65* and the *Residential Flat Design Code*.

The proposal would result in a development that would be in keeping with the desired future character of the precinct.

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 - Development Assessment
Planning Division

JAMES FARRINGTON
Group Manager
Planning Division

Attachments:

1. Locality Map
2. Site Plan
3. Landscape Plans
4. Floor Plans
5. Elevations and Sections
6. Shadow Plans

File Reference: DA/1229/2013
Document Number: D03093441

SCHEDULE 1

GENERAL CONDITIONS

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

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

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

1. Approved Plans and Supporting Documentation

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

Plan No.	Plan Title	Drawn by	Dated
DA-01 G	Survey Plan	Australian Consulting Architects	July 2014
DA-02 G	Site Analysis Plan	Australian Consulting Architects	July 2014
DA-03 G	Site Plan	Australian Consulting Architects	July 2014
DA-04 G	Basement	Australian Consulting Architects	July 2014
DA-05 G	Ground Floor	Australian Consulting Architects	July 2014
DA-06 G	First Floor	Australian Consulting Architects	July 2014
DA-07 G	Second Floor	Australian Consulting Architects	July 2014
DA-08 G	Third Floor	Australian Consulting Architects	July 2014
DA-09 G	Fourth Floor	Australian Consulting Architects	July 2014
DA-10 G	Fifth Floor	Australian Consulting Architects	July 2014
DA-11 G	Roof Plan	Australian Consulting	July 2014

Plan No.	Plan Title	Drawn by	Dated
		Architects	
DA-12 G	North and South Elevations	Australian Consulting Architects	July 2014
DA-13 G	East and West Elevations	Australian Consulting Architects	July 2014
DA-14 G	Sections	Australian Consulting Architects	July 2014
DA-15 G	Driveway/Ramp Sections	Australian Consulting Architects	July 2014
DA-16 G	Perspectives	Australian Consulting Architects	July 2014
DA-17 G	Perspectives	Australian Consulting Architects	July 2014
DA-19 G	Winter Shadow Analysis	Australian Consulting Architects	July 2014
DA-20 G	Winter Shadow Diagram Ground Level	Australian Consulting Architects	July 2014
DA-21 G	Winter Shadow Diagram Level 1	Australian Consulting Architects	July 2014
L_201 E	Landscape Plan Ground Floor South	Formed Gardens P/L	June 2014
L_202 E	Landscape Plan Ground Floor North	Formed Gardens P/L	June 2014
L_203 E	Landscape Plan Level 1 and 4	Formed Gardens P/L	June 2014
L_501 E	Landscape Details	Formed Gardens P/L	June 2014
F01	Finishes Schedule	Australian Consulting Architects	Nov 2013
SK000-SK006 (7 Sheets)	Concept Stormwater Plans	Martens & Associates	14 Feb 2014
	Site Tree Locations Plan	Hornsby Shire Council	15 Jan 2014

Document Title	Prepared by	Dated
Statement of Environmental Effects	Planning Ingenuity	28 Oct 2013
Basix Certificate No. 510251M	Basirius	23 Oct 2013
Arboricultural Impact Statement Ref. 15021	Urban Tree Management	5 May 2014

Rev.3		
Landscape Management Plan (Issue E)	Formed Gardens P/L	June 2014
Traffic and Parking Report	Varga Traffic Planning P/L	7 Feb 2014
Waste Management Plan	Australian Consulting Architects	15 Feb 2014
SEPP 65 Overall Compliance Analysis	Australian Consulting Architects	April 2014
SEPP 65 Unit Analysis	Australian Consulting Architects	April 2014

2. Amendment of Plans

The approved plans are to be amended as follows:

- a) 4 additional bicycle spaces shall be included in the basement area in accordance with the controls for transport and parking under the *HDCCP*.
- b) 1.8m high movable privacy screens shall be erected along the northern and western sides of the balconies fronting the living rooms of units 108, 208, 308 and 406 as marked in red on the approved plans.
- c) Landscape screening shall be provided in front of the balcony serving Unit 108 to maintain privacy for residents from the communal open space area.
- d) The private open space area for Unit 409 shall be increased to 10m².
- e) To ensure adequate waste management services are provided the following are required:
 - i) In addition to the 10 x 240L recycling bins, 3 x 240L recycling bins are required to be provided in the basement level to avoid the site caretaker having to decant or swap half full bins around.
 - ii) An additional 1 x 660L paper/cardboard recycling bin serviced weekly is to be provided within the basement level.
- f) The traffic island shall be reduced in length to ensure that there is no obstruction for the garbage collection vehicle (as marked in red on the approved plans).

3. Removal of Existing Trees

This development consent only permits the removal of tree numbered 1, 2, 3, 4, 6, 7, 12, 13, 14, 15 and 16 as identified on the Site Tree Locations Plan prepared by Hornsby Council dated 16/1/14. The removal of any other trees requires separate approval in accordance with the Tree and Vegetation Chapter 1B.6 Hornsby Development Control Plan (HDCCP).

4. Project Arborist

A Project Arborist is to be appointed prior to commencement of any works in accordance with the AS 4970-2009 (1.4.4) and to provide monitoring and certification throughout the demolition and development process.

REQUIREMENTS PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE**5. Building Code of Australia**

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

6. Contract of Insurance (Residential Building Work)

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.

7. Water/Electricity Utility Services

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

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

8. Accessible Units

The details of fit-outs of all accessible units and details of adaptable units must be provided with the Construction Certificate Plans.

9. Dilapidation Report

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

10. 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 must be kept in a clean, tidy and safe condition at all times.

11. 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.

12. Waste Management Details

The following waste management requirements must be complied with:

- a) The basement bin storage room and chute service room, waste facility for ground floor residents, and the waste collection point on the ground level next to the driveway, are to be as per DA-04 Basement floor plans and DA-05 Ground floor plan dated July 2014.

13. Construction Vehicles

All construction vehicles associated with the proposed development are to be contained on site as no construction zones will be permitted on Keeler Street or Hepburn Avenue in the vicinity of the site.

14. Construction Traffic Management Plan

A Construction Traffic Management Plan detailing construction vehicle routes, number of trucks, hours of operation, access arrangements and traffic control should be submitted to Council prior to the issue of a construction certificate.

15. 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 to offset the loss of Blue Gum High Forest (BGHF) under Council's Green Offset Code (2012). The terms of the VPA must include but not be limited to the following:

- a) The Applicant must pay Council a monetary contribution of \$47,049 towards the replacement of 408.9m² of BGHF lost from the site as result of the development.
- b) 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.

16. Section 94 Development Contributions

In accordance with Section 80A(1) of the *Environmental Planning and Assessment Act 1979* and the *Hornsby Shire Council Section 94 Development Contributions Plan 2012-2021*, the following monetary contributions shall be paid to Council to cater for the increased demand for community infrastructure resulting from the development:

Description	Contribution (4)
Roads	\$31,296.40
Open Space and Recreation	\$547,384.65
Community Facilities	\$76,326.05
Plan Preparation and Administration	\$2,250.30
TOTAL	\$657,257.40

being for 10 x 1 bedroom units, 32 x 2 bedroom units, 6 x 3 bedroom units and including a credit for 4 existing allotments.

- a) If the contributions are not paid within the financial quarter that this consent is granted, the contributions payable will be adjusted in accordance with the provisions

of the Hornsby Shire Council Section 94 Development Contributions Plan and the amount payable will be calculated at the time of payment in the following manner:

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

Where:

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

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

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

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

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

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

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

REQUIREMENTS PRIOR TO THE COMMENCEMENT OF ANY WORKS

17. Tree Protection Barriers

Tree protection fencing must be erected around trees numbered 5, 8, 9, 10 and 11 to be retained at the measured TPZ as outlined in AS4970 (2009) 'Protection of Trees on Development Sites. The tree fencing must be constructed of 1.8 metre 'cyclone chainmesh fence'.

A certificate from the project Arborist (AQF 5) is to be submitted to the Principal Certifying Authority stating that all tree protection measures are in accordance with AS 4970 (2009) prior to commencement of works.

18. 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.

19. 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.

20. 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*.

21. 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

22. Works Near Trees

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

All works within the measured Tree Protection Zone (TPZ) as outlined in AS4970 - 2009 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 methods used to preserve the tree.

Tree sensitive construction techniques as outlined in AS4970 - 2009 such as pier and beam construction and hand excavation are to be undertaken for all works within the TPZ of any trees to be retained.

Excavation for the installation of stormwater services within the measured TPZ shall be carried out using the thrust boring method. Tunnel boring shall be carried out at least 1 metre beneath natural ground surface at the trees to minimise damage and fill required within the trees root system.

No tree roots of 30mm or greater in diameter located within the measured TPZ, shall be severed or injured in the process of any site works during the construction period. Tree roots between 10mm and 30mm diameter, severed during excavation, shall be cut cleanly by hand.

A qualified and experienced arborist is to be on-site overseeing the work to ensure that the roots are cut cleanly and that the works will not adversely affect the longevity of 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 the TPZ of any tree to be retained.

23. 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.

24. 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 must be disposed of to an authorised recycling and/or waste disposal site and/or in accordance with an approved waste management plan;
- b) Demolition works, where asbestos material is being removed, must be undertaken by a contractor that holds an appropriate licence issued by WorkCover NSW in accordance with Chapter 10 of the *Occupational Health and Safety Regulation 2001* and Clause 29 of the *Protection of the Environment Operations (Waste) Regulation 2005* ;and
- c) On construction sites where 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.

25. 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.

26. Excavated Material

All excavated material removed from the site must be classified in accordance with the Department of Environment, Climate Change and Water NSW *Waste Classification Guidelines* prior to disposal to an approved waste management facility and 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; and
- b) The finished floor level(s) are in accordance with the approved plans.

28. Waste Management Details

Waste management during the demolition and construction phase of the development must be undertaken in accordance with the approved Waste Management Plan. Additionally written records of the following items must be maintained during the removal of any waste from the site and such information submitted to the Principal Certifying Authority within fourteen days of the date of completion of the works:

- a) The identity of the person removing the waste.
- b) The waste carrier vehicle registration.
- c) Date and time of waste collection.
- d) A description of the waste (type of waste and estimated quantity).
- e) Details of the site to which the waste is to be taken.
- f) The corresponding tip docket/receipt from the site to which the waste is transferred (noting date and time of delivery, description (type and quantity) of waste).
- g) Whether the waste is expected to be reused, recycled or go to landfill.

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

REQUIREMENTS PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE

Note: For the purpose of this consent, a reference to 'occupation certificate' shall not be taken to mean an 'interim occupation certificate' unless otherwise stated.

29. Maintain Canopy Cover

To maintain canopy cover, the submitted Landscape Plan prepared by Formed Gardens Pty Ltd – Issue E dated June 2014 must be adhered to.

30. Fulfilment of BASIX Commitments

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

31. Sydney Water – s73 Certificate

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

32. 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 to an existing Council piped drainage system via an onsite detention system.
- b) For connection to Council pit, a construction certificate application is to be submitted to Council (as council is the authority to approve a plan for connection to Council system).
- c) Be designed by a qualified Hydraulic Engineer.

33. Onsite Detention System

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

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

34. Boundary Fencing

Fencing must be erected at the sole cost of the applicant, along the western side and rear property boundaries behind the front building alignment to a height of 1.8m.

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

35. Privacy

To ensure adequate provision of privacy is maintained the following is required:

- a) 1.8m high movable privacy screens are to be erected along the northern and western sides of the balconies fronting the living rooms of units 108, 208, 308 and 406 as marked in red on the approved plans.
- b) Suitable landscape screening is to be provided in front of the balcony serving Unit 108 to maintain privacy for residents from the communal open space area.

36. 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 must be replaced with integral kerb and gutter;
- b) The footway area must be restored by turfing;
- c) Approval must be obtained from all relevant utility providers that all necessary conduits be provided and protected under the crossing.

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

37. 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 must be obtained from Council;
- b) The driveway must be a rigid pavement;

38. 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 concrete footpath and kerb and gutter along the frontage of the development are to be replaced. The nature strip on both sides of the footpath shall be repaired, top soiled and turfed. The existing road pavement to be saw cut a minimum of 300 mm from the existing edge of the gutter reconstructed.
- b) A construction certificate is to be submitted to Council for approval.

Note: Council is the only authority to approve works within Council roads.

39. 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.

40. 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.

41. 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.

42. 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 Civil Works Specifications. Council's Restorations Supervision must be notified for a formwork inspection prior to pouring concrete.

43. Planter Boxes/On Slab Planting

On slab planter boxes must include waterproofing, subsoil drainage (proprietary drainage cell, 50mm sand and filter fabric) automatic irrigation, minimum 500mm planting soil for shrubs

and minimum 1000mm planting soil for trees and palms and 75mm mulch to ensure sustainable landscape is achieved.

44. Tree Planting

Reduce / substitute with smaller trees capable of reaching 10 metres at maturity the number of large tree species to side and rear boundaries so that a maximum of 2 of the proposed specimens of *Eucalyptus saligna* and *E. pilularis* occur on each of those boundaries.

45. 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.

46. Garbage Collection Easement

For the purpose of waste collection, an easement entitling Council, its servants and agents and persons authorised by it to enter upon the subject land and to operate thereon, vehicles and other equipment for the purposes of garbage collection must be granted to Council by the owner of the land.

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

47. Waste Management Details

The following waste management requirements must be complied with:

- a) The garbage room at the basement level must include water or a hose for cleaning, graded floors with drainage to sewer, a robust door, sealed and impervious surface, adequate lighting and ventilation, and must be lockable. The waste facility at each residential level must include sealed and impervious surface, adequate lighting and ventilation.
- b) A report must be prepared by an appropriately qualified person, certifying the following:
 - i) A comparison of the estimated quantities of each waste type against the actual quantities of each waste type.

Note: Explanations of any deviations to the approved Waste Management Plan is required to be included in this report.
 - ii) That at least 60% of the waste generated during the demolition and construction phase of the development was reused or recycled.

Note: If the 60% diversion from landfill cannot be achieved in the Construction Stage, the Report is to include the reasons why this occurred and certify that appropriate work practices were employed to implement the approved Waste Management Plan. The Report must be based on documentary evidence such as tipping dockets/receipts from recycling depots, transfer stations and landfills, audits of procedures etc. which are to be attached to the report.

- iii) All waste was taken to site(s) that were lawfully permitted to accept that waste.
- c) Each unit 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.
- d) Space must be provided for either individual compost containers for each unit or a communal compost container;
Note: The location of the compost containers should have regard for potential amenity impacts.
- e) The bin carting routes must be devoid of any steps.
Note: Ramps between different levels are acceptable
- f) Access to the waste volume handling equipment by unauthorised persons (including residents and waste collectors must be prevented.

48. 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.

49. Unit Numbering

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

50. Safety and Security

The site must include the following elements:

- a) An intercom system must be installed at gate locations to ensure screening of persons entering the units.
- b) The entry doors to the pedestrian foyer is to be constructed of safety rated glass to enable residents a clear line of site before entering or exiting the residential apartments.
- c) Lighting is to be provided to pathways, building foyer entries, driveways and common external spaces.
- d) Security gate access is to be provided to the car parking area allowing residents-only access to private car spaces.

- e) The communal open space, at the rear and north of the site must be illuminated with high luminance by motion sensor lighting.
- f) The driveway and basement car park must be illuminated with low luminance at all times.
- g) Security deadlocks are to be provided to each apartment door.
- h) Peep holes are to be provided to individual apartment doors to promote resident safety.

OPERATIONAL CONDITIONS

51. Landscape Establishment

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

52. Car Parking

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

- 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.

53. Sight Distance

Any proposed landscaping and/or fencing must not restrict sight distance to pedestrians and cyclists travelling along the footpath.

54. Residential Parking Spaces

Residential parking spaces are to be secure spaces with access controlled by card or numeric pad.

55. Visitors Access

Visitors must be able to access the visitor parking spaces in the basement car park at all times.

56. Disabled Parking

All parking for people with disabilities is to comply with AS/NZS 2890.6:2009 Off-street parking for people with disabilities.

57. Bicycle Parking

A total of 15 bicycle spaces are to be provided within the basement level. Bicycle parking spaces are to be designed in accordance with AS 2890.3-1993.

58. Motorcycle Parking

Motorcycle parking spaces are to be designed in accordance with AS 2890.5-1993.

59. Waste Management

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

- a) A site caretaker must be employed and be responsible for moving bins where and when necessary, washing bins and maintaining waste storage areas, ensuring the chute system and related devices are maintained in effective and efficient working order, managing the communal composting area, managing the bulky item storage area, arranging the prompt removal of dumped rubbish, and ensuring that all residents are informed of the use of the waste management system.

60. Provision for SRV to Park On-Site

Provision is to be made for a SRV to park on-site. For this case a reverse in or reverse out manoeuvre from the proposed development is acceptable.

61. 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).

62. 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.

- END OF CONDITIONS -

ADVISORY NOTES

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

Environmental Planning and Assessment Act 1979 Requirements

The Environmental Planning and Assessment Act 1979 requires:

- The issue of a construction certificate prior to the commencement of any works. Enquiries can be made to Council's Customer Services Branch on 9847 6760.

- A principal certifying authority to be nominated and Council notified of that appointment prior to the commencement of any works.
- Council to be given at least two days written notice prior to the commencement of any works.
- Mandatory inspections of nominated stages of the construction inspected.
- An occupation certificate to be issued before occupying any building or commencing the use of the land.

Long Service Levy

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

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

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

Tree and Vegetation Preservation

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

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

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

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

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.

Telecommunications Act 1997 (Commonwealth)

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

Asbestos Warning

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

www.environment.nsw.gov.au

www.nsw.gov.au/fibro

www.adfa.org.au

www.workcover.nsw.gov.au

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

House/Unit Numbering

House/Unit 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 prior to the issue of a Subdivision Certificate. The authorised numbers are required to comply with Council's Property Numbering Policy and be displayed in a clear manner at or near the main entrance to each premise.

7 DEVELOPMENT APPLICATION - FIVE STOREY RESIDENTIAL FLAT DEVELOPMENT COMPRISING 91 UNITS - 35-39 BALMORAL STREET, WAITARA

EXECUTIVE SUMMARY

DA No:	DA/1062/2013 (Lodged 2 October 2013)
Description:	Demolition of existing structures and the erection of 4 x five storey residential flat buildings comprising 91 units with basement car parking.
Property:	Lots 181 and 182 DP 1075672 and Lots 16 and 17 DP6852, Nos. 35, 35A, 37 and 39 Balmoral Street, Waitara
Applicant:	Hewlett Property P/L C/O Mr Ben Hewlett
Owners:	Mr P. and Mrs C. Bonner, Mr L. Petraglia, Mr D. Perigo, Mr C. Saggar and Ms V. Saggar
Estimated Value:	\$16,732,825
Ward:	B

- The application proposes demolition of existing structures and the erection of 4 x five storey residential flat Buildings comprising 91 units with basement car parking.
- The proposal generally complies with the *Hornsby Shire Local Environmental Plan 1994*, *Hornsby Local Environmental Plan 2013*, *State Environmental Planning Policy No. 65 – Design Quality Residential Flat Building*, *Hornsby Shire Housing Strategy Development Control Plan* and the *Hornsby Development Control Plan 2013*.
- One submission has been received in respect of the application.
- It is recommended that the application be approved.

RECOMMENDATION

THAT Development Application No. DA/1062/2013 for demolition of existing structures and the erection of 4 x five storey residential flat buildings comprising 91 units with basement car parking at Nos. 35, 35A, 37 and 39 Balmoral Street, Waitara be approved subject to the conditions of consent detailed in Schedule 1 of Group Manager's Report No. PL60/14.

BACKGROUND

The subject land was rezoned from Residential A (Low Density) to Residential C (Medium-High Density) on 2 September 2011 as part of Council's *Housing Strategy*.

On 2 October 2013, DA/1062/2013 at Nos. 37-39 Balmoral Street, Waitara was lodged with Council for the demolition of existing structures and the erection of a five storey residential flat building comprising 53 units and basement car parking.

On 20 February 2014, amended plans were submitted to include the amalgamation of Nos. 35 and 35A Balmoral Street to DA/1062/2013 at Nos. 37-39 Balmoral Street. The amended application is for the demolition of existing structures and the erection of 4 x five storey residential flat buildings comprising 91 units and basement car parking.

SITE

The site comprises four allotments, Nos. 35, 35A, 37 and 39 Balmoral Street and is located on the western side of the street, 180m south of the intersection of Edgeworth David Avenue and Balmoral Street. The site is regular in shape with a total area of 4043m² and frontage of 60.375m to the street. The site has an average downward slope of 3% to the western rear boundary. A drainage easement with a brick culvert transverses along the southern property boundary.

Existing improvements on the allotments include four dwelling-houses with associated garages and carports. Vehicular access to the site is gained via existing driveways fronting Balmoral Street.

The allotments contain a number of exotic and locally indigenous trees. Eight significant trees exist on the site or within neighbouring properties. Five of these trees are located within the nature strip on Balmoral Street.

The site forms part of a precinct which is undergoing redevelopment. The surrounding developments include single and two storey residential dwellings. Development applications for five storey residential flat buildings have been approved on a number of sites fronting Balmoral Street including DA/1369/2012 at Nos. 9-15 Balmoral Street.

The site is located approximately 400m from Waitara Railway Station, 300m from a bus stop and approximately 1km to the east of the Hornsby Town Centre.

PROPOSAL

The proposal involves the demolition of existing structures within the site and construction of 4 x five storey residential flat buildings comprising 91 units with two levels of basement car parking.

The unit mix would comprise of 29 x 1 bedroom, 54 x 2 bedroom and 8 x 3 bedroom units. The units would be accessed via a lift centrally located in each building and would include balconies fronting the street, rear and side property boundaries.

The development would be accessed from Balmoral Street via a driveway located along the southern boundary of the site. A separate pedestrian entry centrally located at the front of the property would provide access to all levels from the foyers in all four buildings via a landscaped pathway. A total of 100 car parking spaces, including 13 visitors' parking spaces are proposed in two basement levels.

A Council owned drainage easement runs along the southern property boundary which connects to the drainage system in Park Avenue. Upgrade works are proposed to the system as part of this application. The site would drain to the rear with a below ground detention tank proposed at the south western corner of the site.

ASSESSMENT

The development application has been assessed having regard to the '*Metropolitan Plan for Sydney 2031*', 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). The following issues have been identified for further consideration.

1. STRATEGIC CONTEXT

1.1 Metropolitan Plan for Sydney and (Draft) North Subregional Strategy

The *(Draft) Metropolitan Strategy for Sydney 2031* is a broad framework to provide for Sydney's growth to help plan for housing, employment, transport, infrastructure, the environment and open space. 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 North Subregion comprises Hornsby, Kuring-gai, Manly, Warringah and Pittwater Local Government Areas. The *Draft North Subregional Strategy* acts as a framework for Council in its preparation of the *Comprehensive LEP* by the end of 2013.

Within the North Subregion, the *Draft Metropolitan Strategy* proposes:

- Population growth of 81,000 from the current 2011 baseline of 529,000
- Housing growth of 37,000 from the current 2011 baseline of 204,000
- Employment growth of 39,000 from the current 2011 baseline of 186,000

The proposed development would be consistent with the *Metropolitan Plan for Sydney 2031* by providing 87 additional dwellings and would contribute to 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 C (Medium/High Density) 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 medium to high density residential environment.*
- (c) *to provide for development that is within the environmental capacity of a medium to high density residential environment.*

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

Clause 15 of the *HSLEP* prescribes the maximum floor space ratio (FSR) of development within the Residential C zone. Subclause (5) of clause 15 states that "*This clause does not apply to land shown edged heavy black on diagrams 1-8 in Schedule BB.*" The site is identified in Diagram 4 of Schedule BB of the *HSLEP*. Therefore, clause 15 does not apply to the subject site.

Clause 15A of the *HSLEP* prescribes that the maximum building height within the area detailed under Schedule BB is not to exceed 17.5 metres. The proposed building complies with this requirement.

Clause 18 of the *HSLEP* prescribes that Council must take into consideration the likely effect of the proposed development on the heritage significance of a heritage item and its setting, and on the heritage significance of a heritage conservation area, archaeological site or potential archaeological site when determining an application for consent to carry out development on land in its vicinity.

The site is within the vicinity of heritage items at Nos. 28-36 Balmoral Street (Gardens), No. 52 Balmoral Street (Garden Trees), No. 56 Balmoral Street (House). These heritage listed items are located on the eastern side of Balmoral Street and are not within the Balmoral Street, Waitara Housing Strategy Precinct. Council's heritage assessment is that the proposal would not adversely affect the heritage significance or landscape setting of the nearby heritage items should it incorporate a suitable landscaped setting and comply with Hornsby Council's desired built form, siting and design quality requirements for a 5 storey residential flat building. Accordingly, no objections are raised to the proposal on heritage grounds.

2.2 Hornsby Local Environmental Plan 2013

The *Hornsby Local Environmental Plan 2013 (HLEP)* was gazetted by the Minister of Planning on 11 October 2013. The *HLEP* includes a savings provision stating that if a development application is made and not finally determined before the commencement of the *HLEP*, the application must be determined as if the Plan had been exhibited but not commenced. Notwithstanding, the *HLEP* essentially reiterates the current land use zoning and height controls applicable to the site as outlined below.

2.2.1 Zoning

Under the *HLEP*, the subject land is zoned *R4 (High Density Residential)*. The proposed development is defined as 'residential flat buildings' and is permissible within the zone with Council's consent.

2.2.2 Height of Building

Clause 4.3 of the *HLEP* provides that the height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map. The maximum permissible height for the subject site is 17.5 metres. The proposal complies with this provision.

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

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

The site has been used for residential purposes and is unlikely to be contaminated. No further assessment is considered necessary in this regard.

2.4 State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development

The Policy provides for design principles to improve the design quality of residential flat development and for consistency in planning controls across the State.

The applicant has submitted a “Design Verification Statement” prepared by a qualified Architect stating how the proposed development achieves the design principles of *SEPP 65*. The design principles of *SEPP 65* and the submitted design verification statement are addressed below.

2.4.1 Principle 1 – Context

Design Principle 1 is as follows:

Good design responds and contributes to its context. Context can be defined as the key natural and built features of an area.

Responding to context involves identifying the desirable elements of a location’s current character or, in the case of precincts undergoing a transition, the desired future character as stated in planning and design policies. New buildings will thereby contribute to the quality and identity of the area.

The subject site is located within a precinct zoned for five storey residential flat buildings in close proximity to retail shops located at Edgeworth David Avenue and Hornsby Westfield Shopping Centre. The desired future character of the area, as outlined in Council’s *Housing Strategy Development Control Plan*, is that of a high density residential precinct incorporating five storey developments in garden settings with parking in basements.

The applicant’s ‘Design Verification Statement’ indicates that the proposal responds to the desired future character of the precinct as envisaged by Council. Once the development of the precinct is completed, the proposal would integrate with the surrounding sites and would be in keeping with the desired urban form. It is considered that the proposed building would contribute to the identity and future character of the precinct.

The development responds suitably to the ‘context’ principle of *SEPP 65*, considering the desired future character of the area.

2.4.2 Principle 2 – Scale

Design Principle 2 is as follows:

Good design provides an appropriate scale in terms of the bulk and height that suits the scale of the street and the surrounding buildings.

Establishing an appropriate scale requires a considered response to the scale of existing development. In precincts undergoing a transition, proposed bulk and height needs to achieve the scale identified for the desired future character of the area.

The scale of the development is in accordance with the required building height and setbacks for the precinct and the architectural composition of four residential flat buildings of approximately 22m in building length. The buildings are separated by at least 6m wide deep soil landscaping. The scale of the development is considered appropriate for the site and is consistent with the desired future character of the precinct.

2.4.3 Principle 3 – Built Form

Design Principle 3 is as follows:

Good design achieves an appropriate built form for a site and the building’s purpose, in terms of building alignments, proportions, building type and the manipulation of building elements.

Appropriate built form defines the public domain, contributes to the character of streetscape and parks, including their views and vistas, and provides internal amenity and outlook.

The proposed buildings are well-articulated on the north, south east and west external elevations with recessed walls, balcony projections and the appropriate use of materials and finishes. Flat roof forms have been adopted for each building with an increased top storey setback on the external facades to minimise bulk and height of the building and to mitigate amenity impacts to adjoining properties. The proposal complies with the built form principle of SEPP 65.

2.4.4 Principle 4 – Density

Design Principle 4 is as follows:

Good design has a density appropriate for a site and its context, in terms of floor space yields (or number of units or residents).

Appropriate densities are sustainable and consistent with the existing density in an area or in precincts undergoing a transition, are consistent with the stated desired future density. Sustainable densities respond to the regional context, availability of infrastructure, public transport, community facilities and environmental quality.

The HSLEP does not incorporate floor space ratio requirements for the site. The density of the development is governed by the height of the building and the required setbacks. The proposed density is considered to be sustainable as it responds to the regional context, availability of infrastructure, public transport, community facilities and environmental quality and is considered acceptable in terms of density.

2.4.5 Principle 5 – Resource, Energy and Water Efficiency

Design Principle 5 is as follows:

Good design makes efficient use of natural resources, energy and water throughout its full life cycle, including construction.

Sustainability is integral to the design process. Aspects include demolition of existing structures, recycling of materials, selection of appropriate and sustainable materials, adaptability and reuse of buildings, layouts and built form, passive solar design principles, efficient appliances and mechanical services, soil zones for vegetation and reuse of water.

The applicant has submitted a BASIX Certificate for the proposed development. In achieving the required BASIX targets for sustainable water use, thermal comfort and energy efficiency, the proposed development achieves the design criteria and is considered acceptable in this regard.

2.4.6 Principle 6 – Landscape

Design Principle 6 is as follows:

Good design recognises that together landscape and buildings operate as an integral and sustainable system, resulting in greater aesthetic quality and amenity for both occupants and the adjoining public domain.

Landscape design builds on the existing site's natural and cultural features in responsible and creative ways. It enhances the development's natural environmental performance by co-ordinating water and soil management, solar access, micro-climate, tree canopy and habitat

values. It contributes to the positive image and contextual fit of development through respect for streetscape and neighbourhood character, or desired future character.

Landscape design should optimise useability, privacy and social opportunity, equitable access and respect for neighbour's amenity, and provide for practical establishment and long term management.

The application includes a landscape concept plan which provides landscaping along the street frontage, side and rear boundaries and includes landscaping between the four residential flat buildings. There are five significant trees located on the nature strip, two significant trees centrally located at the rear of the site and one significant tree on the adjoining western property. The proposal would retain the significant trees, wherever possible, with appropriate setbacks. Additionally, large trees are proposed along the street frontage intercepted by shrubs and hedges which would soften the appearance of the development when viewed from the street. Deep soil zones that incorporate large canopy trees are provided around the building envelopes which would enhance the development's natural environmental performance and provide an appropriate landscaped setting.

Given the above, the proposal satisfies the intent of the 'Landscaping' principle of SEPP 65.

2.4.7 Principle 7 – Amenity

Design Principle 7 is as follows:

Good design provides amenity through the physical, spatial and environmental quality of a development.

Optimising amenity requires appropriate room dimensions and shapes, access to sunlight, natural ventilation, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas, outlook and ease of access for all age groups and degrees of mobility.

The proposed units are designed to achieve natural ventilation, solar access and acoustic privacy. All units incorporate balconies accessible from living areas and privacy has been achieved through appropriate design. Storage areas have been provided within each unit and within the basement levels. The proposal would provide convenient and safe access via a central lift connecting the basement and all other levels. The proposal satisfies the 'Amenity' principle of SEPP 65.

2.4.8 Principle 8 – Safety and Security

Design Principle 8 is as follows:

Good design optimises safety and security, both internal to the development and for the public domain.

This is achieved by maximising overlooking of public and communal spaces while maintaining internal privacy, avoiding dark and non-visible areas, maximising activity on streets, providing clear, safe access points, providing quality public spaces that cater for desired recreational uses, providing lighting appropriate to the location and desired activities, and clear definition between public and private spaces.

The design orientates the balconies and windows of individual apartments towards the street, rear and side boundaries, providing passive surveillance of the public domain and communal open space areas. Both the pedestrian and vehicular entry points are secured and visibly prominent from Balmoral Street.

The proposal includes an assessment of the development against crime prevention controls in the Design Verification Statement and the Statement of Environmental Effects. The Statement of Environmental Effects has regard to *Crime Prevention Through Environmental Design Principles (CPTED)* and includes details of surveillance, access/egress control, territorial reinforcement and space management such as artificial lighting in public places, landscaping to maintain clear sight lines, security coded door lock or swipe card entry, physical barriers to attract, channel or restrict the movement of people, security gate access to basement car park; intercom access for pedestrians; design with clear transitions and boundaries between public and private space, through gates and enclosures and security cameras located at the entrance of each building.

Subject to the imposition of conditions of consent addressing the above matters, the proposal is supported in respect of safety and security.

2.4.9 Principle 9 – Social Dimensions and Housing Affordability

Design Principle 9 is as follows:

Good design responds to the social context and needs of the local community in terms of lifestyles, affordability, and access to social facilities.

New development should optimise the provision of housing to suit the social mix and needs in the neighbourhood or, in the case of precincts undergoing transition, provide for the desired future community.

New development should address housing affordability by optimising the provision of economic housing choices and providing a mix of housing types to cater for different budgets and housing needs.

The site is located approximately 400m from Waitara Railway Station and approximately 1km from the Hornsby Town Centre, which contains Westfield Shopping Centre. A small shopping centre is located on Edgeworth David Avenue, approximately 200m north of the site. The location of the site allows direct access to retail, educational, health and recreational facilities. The proposed development includes a mix of dwelling types and sizes which complies with the requirement within the *RFDC* to improve housing choice in the locality. In this regard, the development is considered acceptable in terms of social dimensions.

2.4.10 Principle 10 – Aesthetics

Design Principle 10 is as follows:

Quality aesthetics require the appropriate composition of building elements, textures, materials and colours and reflect the use, internal design and structure of the development. Aesthetics should respond to the environment and context, particularly to desirable elements of the existing streetscape or, in precincts undergoing transition, contribute to the desired future character of the area.

The applicant submitted a statement which includes the following comment:

“The proposal creates a well-mannered building with materials and details that are an integral part of the aesthetic. It faithfully interprets the future desired character outlined in Council’s DCP and reduces the scale of the proposal with the articulated layering to the street façade. It also divides the street façade into modules with the use of taller balcony steel portals in the centre of the site with a lower module on the edges achieving a reduced scale edge. The

upper setbacks and the distinct indentation are integrated into the form to create a layered façade which is then reinforced with a careful restrained selection of materials.”

The “articulated layered” architectural treatment of the building is general consistent with the design principles contained within the *Residential Flat Design Code* and *Council’s Housing Strategy Development Control Plan*. The aesthetic quality of the building would contribute to the desired future character of the precinct. The details of the assessment of the built form and the aesthetics of the development are contained in Section 2.12 of this report.

2.5 SEPP 65 – Residential Flat Design Code

SEPP 65 also requires consideration of the *Residential Flat Design Code*, NSW Planning Department 2002. The *Code* includes development controls and best practice benchmarks for achieving the design principles of SEPP 65. The following table sets out the proposal’s compliance with the *Code*:

Residential Flat Design Code			
Control	Proposal	Requirement	Compliance
Deep Soil Zone	30%	Min 25%	Yes
Communal Open Space	30%	25-30%	Yes
Ground Level Private Open Space	<25m ² (Units A104,105, B101-B105, C101, C102, D101-104) Min Dimension <4m (for all Units)	25m ²	No
		Min Dimension 4m	No
Minimum Dwelling Size	1 br – 52m ²	1 br – 50m ²	Yes
	2 br – 70m ²	2 br – 70m ²	Yes
	3 br – 95m ²	3 br – 95 m ²	Yes
Unit Depth and Maximum Kitchen Distance	8m	8m	Yes
Minimum Balcony Depth	2m	2m	Yes
Ceiling Heights - Residential Floors	2.7m	2.7m (Min)	Yes
Total Storage Area	1 br – > 50% x 6m ³ + basement storage	6m ³ (Min)	Yes
	2 br - > 50% x 8m ³ + basement storage	8m ³ (Min)	Yes
	3 br - > 50% x 10m ³ + basement storage	10 m ³ (Min)	Yes
	50% accessible from the apartments	50% accessible from the	Yes

	348m ³ (total basement storage area)	apartments Basement storage area required = 343m ³	Yes
Dual Aspect & Cross Ventilation	65%	60%	Yes
Adaptable Housing	31%	10%	Yes

As detailed in the above table, the proposed development complies with the prescriptive measures within the *Residential Flat Design Code (RFDC)* other than the minimum dimensions of the ground floor open space. Below is a brief discussion regarding the relevant development controls and best practice guidelines.

2.5.1 Building Separation

The proposed building depth and the design of the building facades are in accordance with the requirements of Council's *Housing Strategy Development Control Plan* as discussed in Section 2.12. The *RFDC* requires a building separation of 12m between unscreened habitable areas or balconies increasing to 18m from the fifth level, for two adjoining residential flat buildings. Whilst the internal separation between buildings A, B, C and D are less than required by the *RFDC*, the building separation accords with Council's *Housing Strategy Development Control Plan* as discussed under Section 2.12.

Additionally, corner units on the northern and southern facades of the buildings encroach within this requirement by 1m. The matter is also discussed in Section 2.12 of this report.

2.5.2 Ground Floor Apartments and Private Open Space

The proposal does not comply with the *Code's* best practice for the 4 metre minimum width dimension for ground floor open spaces. However, the proposed ground floor open space areas are appropriate for the respective ground floor units in respect to dwelling size, aspect, unit configuration and amenity with a number of private yards proposed at the rear of the development.

Furthermore, the private open space areas have been designed in accordance with the requirements of Council's *Housing Strategy Development Control Plan*. The DCP states that the deep soil area within the setbacks of the development should be retained as communal open space. The objective of this control is to provide a landscape setting to the development. As such, the numerical non-compliance is considered minor and is acceptable.

2.5.3 Apartment Layout

The proposed architectural composition of four separate buildings includes a mix of single aspect and corner units including one, two and three bedroom apartments. The majority of units would be well ventilated and all units would be provided with balconies that permit direct access from living areas that comply with the required private open space areas and minimum depth requirements of the *RFDC*.

The proposed apartment layouts are functional and satisfy the *RFDC* requirements for internal privacy, access to sunlight, natural ventilation and acoustic privacy. The apartment layout and mix achieves the intent of the best practice requirements of the *RFDC* and is acceptable in this regard.

2.5.4 Internal Circulation

The proposed development includes access to all floors via a lift. The internal corridors meet the *Code's* requirements for the number of units accessed (less than 8) and design for amenity. The ground floor corridors also provide level access to the communal open space.

The proposal is acceptable with respect to the requirements of the *RFDC* for internal circulation.

2.5.5 Acoustic Privacy

The internal layout of the residential units is designed such that noise generating areas would adjoin each other wherever possible. Circulation zones, communal services or fire stairs would act as a buffer between units. Bedrooms and service areas such as kitchens, bathrooms and laundries would be grouped together wherever possible. The proposal is consistent with the *RFDC* for acoustic privacy.

2.5.6 Storage

The storage areas are provided within the apartments and additional storage is provided within the basement levels. Whilst storage cages within the basement are not yet designated to each unit, the total storage area within the basement levels exceed 50% of the storage areas required for 29 x 1 bedroom units, 54 x 2 bedroom units and 8 x 3 bedroom units which complies with the *RFDC*.

The proposal is acceptable with respect to the requirements of the *RFDC* for storage.

2.6 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.

2.7 State Environmental Planning Policy No. 32 – Urban Consolidation (Redevelopment of Urban Land) (SEPP 32)

The application has been assessed against the requirements of *SEPP 32*, which 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 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 Shire.

2.8 State Environmental Planning Policy (Infrastructure) 2007

The application has been assessed against the requirements of *State Environmental Planning Policy (Infrastructure) 2007*. This Policy contains State-wide planning controls for developments adjoining busy roads. Schedule 3 of *SEPP Infrastructure* identifies the types of developments, their relative sizes and parking capacities, considered to be traffic generating developments. In accordance with this list, a residential flat building fronting a road which connects to a classified road within 90m, would be considered as a traffic generating development if it accommodates 75 or more dwellings.

As the proposed residential flat building does not front a road which connects to a classified road within 90m, the development is not classified as a Traffic Generating Development in accordance with Clause 104 and Schedule 3 of *SEPP (Infrastructure)*. Therefore, referral of the application to the Roads and Maritime Services is not required.

2.9 Sydney Regional Environmental Plan No. 20 – Hawkesbury-Nepean River

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

The proposal includes details of soil and water management during construction works. A condition is recommended with respect to installation of sediment and erosion control measures prior to, and during, construction.

The proposed development would have minimal potential to impact on the Hawkesbury-Nepean Rivers Catchment subject to the implementation of recommended conditions.

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

On 1 March 2013, the *Environmental Planning and Assessment Act, 1979* was amended so that a DCP provision will have no effect if it has the practical effect of “*preventing or unreasonably restricting development*” that is otherwise permitted and complies with the development standards set out in relevant Local Environmental Plans and State Environmental Planning Policies.

The principal purpose of a development control plan is to provide guidance on the aims of any environmental planning instrument that applies to the development; facilitating development that is permissible under any such instrument; and achieving the objectives of land zones under any such instrument. The provisions of a development control plan made for that purpose are not statutory requirements.

2.11 Hornsby Development Control Plan 2013

The *Hornsby Development Control Plan (HDCP) 2013* applies to all land within Hornsby Shire and replaces Council’s existing *DCPs*, providing development controls to complement the *HLEP*. The *HDCP* came into effect on 11 October 2013.

The following sections of this report include a detailed assessment of the proposal against Council’s DCP controls that were in force at the time the application was lodged. The *HDCP* is generally a transition of Council’s existing *DCPs*, into a consolidation Plan. Notwithstanding, it is noted that the following controls are inconsistent with the existing DCP requirements and a brief discussion of the *HDCP* requirements is provided below:

2.11.1 Setbacks

The proposed development includes encroachments within 4m of the side setbacks for more than 1/3 of the building length. The northern side boundary for Building A and B and the southern side boundary for Building C and D are inconsistent with the side boundary setback requirements of the *HDCP* in that ½ of the building length (an additional 2m in length) is within 4m of the side setbacks.

The northern side of the site adjoins a child care centre with an outdoor recreational space located at the western rear of the site, and extends approximately 18m from the rear property boundary. The 2m building length encroachments within 4m of the northern side setback include balconies that are

primarily oriented to the rear or front of the site with full height louvres or opaque glass screens attached to the sides to mitigate privacy impacts to the adjoining properties. Accordingly, the non-compliance would not impact on the achievement of daylight access and visual privacy.

The southern boundary of the site adjoins single and two storey dwellings, which would be the subject of a future development application for 5 storey residential flat building(s). The 2m building length encroachments within 4m of the southern side setback lies within the south-western corner balconies and bedroom walls of each building. All bedroom windows within this encroachment are either highlight windows or narrow 600mm wide windows that would pose minimal overlooking impacts to the southern adjoining property. The south western corner balcony of levels 1 to 3 and 5 of Building C are primarily oriented to the rear of the site with full height louvres or opaque glass screens attached to the side to mitigate privacy impacts to the adjoining southern property. Unit C403 on Level 4 does not provide any privacy screens on the southern facade. To ensure adequate privacy is provided, a condition is recommended that a 1.8m high movable privacy screen or opaque glass screen is required to be attached to the southern side of Unit C403. The ground floor south western corner balconies of Building D are also within 4m of the southern side setback. However, a 1.8m side boundary fence would be required along the southern side boundary which would mitigate overlooking impacts to the adjoining southern property. Subject to conditions, the non-compliances would not impact on the achievement of daylight access, visual privacy, and acoustic privacy.

Accordingly, the application is assessed as satisfactory with regard to the setback requirements of the *HDCP*.

2.11.2 Building Form and Separation

The required minimum separation between buildings on large sites is increased from 6m to 9m under the *HDCP*. The proposed development does not comply with this requirement in that the building separation between Buildings A and C and B and D is between 6m – 9m and the building separation between Buildings A and B and C and D is 6m. However, where the buildings are separated by less than 9m, the facades incorporate highlight windows which serve bedrooms, narrow, louvred windows serving kitchens between Buildings A and B and C and D and privacy screens off balconies which would ameliorate overlooking impacts. Additionally, the buildings each have a maximum floor plate of 22m and are separated by garden areas incorporating deep soil landscaping and large canopy trees.

The proposed building separation is in accordance with Council's *Housing Strategy Development Control Plan* and is discussed under Section 2.12 of this report.

2.11.3 Vehicle Access and Parking

The *HDCP* includes revised car parking requirements with regard to proximity to a railway station and provision for motor cycle parking. In this regard, the proposed car parking would exceed the required spaces for residents and visitor spaces and provide adequate spaces for bicycles and motorcycles.

2.12 Housing Strategy Development Control Plan

The proposed development has been assessed having regard to the relevant performance and prescriptive design requirements within Council's *Housing Strategy Development Control Plan (Housing Strategy DCP)*. The following table sets out the compliance of the proposal with the various elements of the *Housing Strategy DCP*:

Housing Strategy Development Control Plan			
Control	Proposal	Requirement	Compliance
Site Width	60.375	30m	Yes
Height	5 storeys – 17.5m	5 storeys – 17.5m	Yes
Lowest Residential Floor Above Ground	<1.5m	Max - 1.5m	Yes
Maximum Floorplate Dimension	Building A - 22m Building B – 22m Building C – 22m Building D – 22m	35m 35m 35m 35m	Yes Yes Yes Yes
Indent	N/A as maximum dimension for all buildings are <25m	N/A	N/A
Front Setback (Balmoral Street)	Building B - 10m	10m	
	8m (for 7m length) < 1/3 frontage	8m < 1/3 of frontage (7.7m)	Yes
	7m (balconies)	7m (balconies)	Yes
	Building D 10m	10m	
Rear Setback	8m (for 7m length) < 1/3 frontage	8m < 1/3 of frontage (7.7m)	Yes
	7m (balconies)	7m (balconies)	Yes
	Building C 10m	10m	
	8m (for 7m length) < 1/3 frontage	8m < 1/3 of frontage (7.7m)	Yes
Northern Side Setback	7m (balconies)	7m (balconies)	Yes
	Building A - 6m	6m	Yes
	4m (for 9.5m length) > 1/3 frontage	4m < 1/3 frontage (7.7m)	No
	4m (balconies)	4m (balconies)	Yes
	Building B - 6m	6m	Yes

	4m (for 9.5m length) > 1/3 frontage	4m < 1/3 frontage (7.7m)	No
	4m (balconies)	4m (balconies)	Yes
Southern Side Setback	Building C 6m	6m	Yes
	4m (for 9.5m length) > 1/3 frontage	4m < 1/3 frontage(7.5m)	No
	4m (balconies)	4m(balconies)	Yes
	Building D - 7m -9.5m	6m	Yes
	4m (for 9.5m length) > 1/3 frontage	4m < 1/3 frontage(7.5m)	No
	4m (balconies)	4m(balconies)	Yes
Setbacks between adjoining buildings on large sites	Between Building A & C = 6m – 9m	6m	Yes
	Between Building B & D = 6m – 9m	6m	Yes
	Between A & B = 6m	6m	Yes
	Between C & D = 6m	6m	Yes
Top Storey Setback From Ground Floor	<3m to internal elevations facing buildings within site	3m additional	No
Underground Parking Setback	7m front and rear	7m front and rear	Yes
	4m – 6m sides	4m sides	Yes
Basement Ramp Setback	4m	2m	Yes
Parking	100 resident spaces	88 resident spaces	Yes
	13 visitor spaces	13 visitor spaces	Yes
	19 bicycle racks	19 bicycle racks	Yes
	9 visitor bicycle racks	9 visitor bicycle racks	Yes
Landscaped areas	Front and rear - 7m wide	7m wide	Yes
	Sides – 4m wide	4m wide	Yes
Deep Soil Landscaping	7m front	7m front	Yes
	7m rear	7m rear	Yes
	4m sides	4m sides	Yes
	Between Building A & C = 6m – 9m	6m sides	Yes

	Between Building B & D = 6m – 9m Between A & B = 6m Between C & D = 6m	6m sides 6m sides 6m sides	Yes Yes Yes
Private Open Space with Min Width 2.5m	1 br units - 10m ² (min) 2 br units - 12m ² (min) 3 br units - >16m ² (min)	1 br units 10m ² (min) 2 br units 12m ² (min) 3 br units 16m ² (min)	Yes Yes Yes
Communal Open Space with minimum dimension 2.5m	30%	25%	Yes
Solar Access	71%	70%	Yes
Housing Choice	1 br unit – 32% 2 br unit – 59 % 3 br unit - 9%	10% of each type (min) 10% of each type (min) 10% of each type (min)	Yes Yes No
Adaptable Units	31%	30%	Yes

As detailed in the above table, the proposed development does not comply with the prescriptive measures within Council's *Housing Strategy DCP* regarding setback encroachments from side boundaries and for the stepping back of the top level. The matters of non-compliance are detailed below, as well as a brief discussion regarding the desired outcomes and the prescriptive measures.

2.12.1 Desired Future Character

The site is included in the Balmoral Street Waitara Precinct which was rezoned from Residential A (Low Density) to Residential C (Medium-High Density) on 2 September 2011 as part of Council's *Housing Strategy*.

The proposed building is in accordance with required key principles for the future character of the precinct for well-articulated five storey residential flat buildings in garden settings with basement car parking. The proposal complies with the desired outcome for the precinct.

2.12.2 Design Quality – SEPP 65

The proposed development is designed in accordance with the design principles of *SEPP 65* except the building separation on the southern side. Refer to discussion in Sections 2.4 and 2.5.

2.12.3 Site Requirements

The *Housing Strategy DCP* requires sites to have a minimum frontage of 30 metres. The subject site has a frontage of 60.375m to Balmoral Street and complies with this requirement. The original application proposed a five storey residential flat building comprising 53 units on two lots at Nos. 37-39 Balmoral Street, Waitara. Due to the location of a drainage easement that runs along the southern property boundary of No. 35A Balmoral Street, approval of this proposal would have resulted in the isolation of Nos. 35 and 35A Balmoral Street.

On 20 February 2014, amended plans were submitted to include the amalgamation of these two additional lots at Nos. 35 and 35A Balmoral Street to avoid isolation of the sites. As a result, the amended proposal would not result in an isolated site or compromise development in accordance with the *Housing Strategy DCP*.

2.12.4 Height Requirements

The proposed building complies with the 17.5m maximum height limit. The proposed basement car park would not project more than 1.5m above finished ground level. Accordingly, the proposed development is satisfactory in respect to the five storey built form.

2.12.5 Setbacks

As noted in the table above, the proposal complies with the front, rear and setbacks between adjoining buildings on larger site. However, sections of the buildings do not comply with the setback requirements as follows:

Northern Side

The *Housing Strategy DCP* requires that the minimum side setbacks for all buildings and structures to the side boundaries is 6m, which can be reduced to 4m for a maximum of 1/3 of the building width. Approximately half of the building length of Building A and B (an additional building length of 1.8m for each building), are located at a setback of 4m from the northern property boundary which does not comply with the requirements of the *Housing Strategy DCP*.

The majority of the primary living areas on the northern side would be setback 6m from the side boundary increasing to 9m at the top level, facilitating a future building separation of 12 – 18m with the adjoining site in accordance with the *RFDC* and *Housing Strategy DCP*. Privacy screens and highlight windows are proposed for those sections of the balconies and bedrooms, which would have a setback of 4m from the boundary for up to level 4 and 6m for level 5. The non-compliance with the encroachment to 4m for more than 1/3 of building width is for an additional 1.8m in building length at a reduced setback of 4m for both Building A and B is considered minor as it does not impact on the provision of deep soil planting and privacy impacts for the development.

The proposed setbacks on the northern side are assessed as satisfactory with regard to Council's *Housing Strategy DCP* design principles of *SEPP 65*.

Southern Side

Similarly to the northern side setback, approximately half of the building lengths of Building C and D (an additional 2m in building length) are located at a setback of 4m from the southern boundary which does not comply with the requirements of the *Housing Strategy DCP*. Privacy screens and highlight windows are proposed for those sections of the balconies and bedrooms, which would have a setback of 4m from the boundary for up to level 4 and 6m for level 5. It is considered that the development complies with the intent of the prescriptive measures which is to provide for landscaping, open space and separation between buildings. The additional non-compliance of 2m in building length would not have a negative visual impact as the non-compliance relates to the side facades and is not visible from the street. As such, the building length that exceeds the requirement by 2m is minor compared to the overall scale of the building.

Given the above, the non-compliances relating to setback and building separation are acceptable.

The design of the future developments adjoining the subject site on the northern and southern sides would need to ensure that 12-18 metres building separations are maintained between habitable rooms/balconies or else privacy devices provided.

Top Storey Setback

The four residential flat buildings incorporate a 3m additional setback for the top storey on all front, rear and side elevations which contribute to the building articulation when viewed from the front, rear and side property boundaries. However, the internal elevations facing buildings within the site do not comply with this requirement. The eastern elevations of Buildings A and C and the western elevations of Buildings B and D do not have an additional setback for the top storey. Half of the southern elevation of Buildings A and B and half of the northern elevation of Buildings C and D do not have an additional setback for the top storey. Notwithstanding, these internal elevations are not prominent when viewed from the public domain. Large canopy trees that reach a mature height of up to 15m are proposed in between buildings B and D, resulting in the non-compliances posing minimal visual amenity impacts when viewed from the street frontage.

It is considered that the overall intent of the setbacks provision is achieved given that the proposal includes a well-articulated built form that is set back to facilitate landscaping and common open space.

2.12.6 Landscape

The landscaping provisions of the *Housing Strategy DCP* prescribes that a 7m wide landscaped area is to be provided at the front and rear and a 4m wide landscaped area is provided along the side boundaries. The proposal complies with this control. A Landscape Plan was submitted with the application. The landscape plan indicating that adequate deep soil landscaping can be provided within the front and rear setback including *Corymbia Maculata* (Spotted Gums) which grow to a mature height of between 15m-25m. Active recreation spaces of at least 50sqm are provided within the rear setback and the northern side setback, in between Buildings A and B.

The extent of hard stand areas proposed is considered to be minimal, with pathways meandering in between the residential buildings which are located at the main pedestrian entry on Balmoral Street to the lobby entrances for each building. Reasonable provision has been made for deep soil areas in between the buildings to accommodate mature canopy trees such as *Waterhousia floribunda* (Weeping Lilly Pilly) and *Brachychiton acerifolius* (Illawarra Flame Tree), which reach a mature height of up to 15m. Provision has also been made to retain the majority of significant trees located on the street frontage and achieve a landscape setting.

Subject to conditions and on-going maintenance of the landscaped areas, the development would achieve a landscape setting that is generally consistent with the desired future character of the precinct.

2.12.7 Floorplate, Separation and Articulation

Floorplates and Separation

Four residential flat buildings (labelled A, B, C and D) are proposed on this large site, with each building comprising a maximum floorplate of 22m. Buildings A, B, C and D are each separated by a minimum distance of 6m, including an area of deep soil that measures 6m x 6m. Large canopy trees such as *Waterhousia floribunda* (Weeping Lilly Pilly) and *Brachychiton acerifolius* (Illawarra Flame Tree) that reach a mature height of 12-15m and smaller trees and shrubs are proposed within this

landscaped area. The proposed buildings are limited in width and depth and separated by garden areas and comply with the *Housing Strategy DCP*.

Articulation

The articulation of each of the building facades has been achieved in the following ways:

- Buildings A, B, C and D have been vertically stepped, two steps being provided on the ground and the fifth storey across 50% of the width of each façade fronting the front, rear and side boundaries, along with four storey high vertical solid panels.
- Facades have been divided into vertical 'panels', no wider than 8 metres, except for the internal side elevations (eastern elevation of Buildings A and B and western elevation of Buildings C and D) that directly face residential flat buildings. Whilst the wall lengths are 15m, the façade treatment includes a 9m wide three storey height metal clad wall attached to a one storey high aluminium louvred panels interspersed with highlight windows and an 8m wide, four storey high stonewall plane. These two dominant vertical panels are broken up in the middle by a sheer rise of aluminium louvres and painted masonry slabs. Notwithstanding, these vertical panels are located on facades which are not visually prominent from the public domain. It is considered that the minor non-compliance is acceptable, given the low visibility from the public domain and the architectural treatment of these facades.
- All other facades containing 8m wide vertical panels have been visually separated by indentations and projections across the alignment of the exterior walls, balconies and terraces resulting in an articulated layered effect with contrasting taller balcony steel portal modules with lower modules along the edges to reduce scale edge and the desired articulation.
- The façade treatment, size and placement of windows, protruding balconies, vertical panels and stepped levels of the building, flat roofs and large proportion of openings particularly at the topmost storey minimises the bulk and scale and would contribute to the streetscape.
- The building would incorporate neutral colours and a juxtaposition of varied materials and textures.

The design of the floor plates and the articulation of the facades have been assessed as satisfactory.

2.12.8 Open Space

The proposed private open space and communal open space areas comply with the prescriptive area requirements and are designed for active living and to maximise useable space.

The proposed private and communal open space areas achieve the desired outcome for active recreation areas with privacy and access to sunlight.

2.12.9 Privacy

Given the orientation of the site, a number of balconies and primary living areas would front the side boundaries. Privacy louvers and opaque glass screens are proposed for balconies facing side boundaries which do not numerically achieve the separation requirements as per *SEPP 65* or the *Housing Strategy DCP*. The ground floor balconies fronting the communal open spaces at the rear and northern side boundary would be suitably screened by fencing for the rear yards, landscaping including planter boxes and privacy screens.

Highlight windows and opaque glass windows/screens are proposed in many sections of the building to alleviate overlooking opportunities. The proposal complies with the privacy and setbacks

requirements of the *RFDC* and Council's *Housing Strategy DCP* and would not compromise the privacy of future occupants or adjoining neighbours.

2.12.10 Solar Access

The applicant has submitted solar access diagrams demonstrating compliance of individual units with solar access requirements. As the site is located within a redevelopment precinct, the solar access analysis has taken into account the overshadowing impacts from future five storey developments on adjoining sites. The applicant submits that 65 out of the 91 units (71%) would receive a minimum 2 hours solar access between 9am and 3pm on June 21. Based on Council's assessment, the proposal would comply with the sunlight access requirements for units under the *Housing Strategy DCP* and is acceptable in this regard.

The solar access diagrams submitted with the application indicate the overshadowing impacts of the development to adjoining properties at 9am, 12pm and 3pm on June 21. The proposed five storey development would overshadow the existing western adjoining property for 1 hour in the morning at the rear. A proposal for potential five storey development on the western and southern side would need to demonstrate compliance with the solar access and setbacks requirements for five storey developments governed by the *RFDC* and Council's *Housing Strategy DCP*. This would be assessed in a future application.

2.12.11 Housing Choice

The proposed development includes a mix of one, two and three bedroom units and includes adaptable housing units. The proposal complies with the required adaptable housing units and one and two bedroom units. However, only 8 out of 91 units (9%) are three bedroom units which is less than the required 10%. The applicant submits the following planning justification:

"The proposal still provides for a range of unit types, including adaptable units; 1 additional adaptable unit is provided above the 30% requirement; the current market demonstrates that a higher portion of first home buyers are buying 1 and 2 bedroom units because 3 bedroom units exceed first home buyers financial incomes; the constraints of the amalgamation of the two additional sites and generally providing a compliance building setback, has reduced opportunities to increase the size of some units".

The original proposal sought consent for a five storey development on Nos. 37 and 39 Balmoral Street. However, to prevent the isolation of Nos.35 and 35A Balmoral Street due to the location of a drainage easement on the southern property of No, 35 Balmoral Street, amalgamation to the proposal was sought. Due to the constraints of this amalgamation and the provision of an additional adaptable unit provided above the requirements of the *DCP*, the minor non-compliance is considered acceptable.

2.12.12 Vehicle Access and Parking

The proposed basement car park is located on two levels and is accessed via a 6.5m wide driveway from Balmoral Street. Council's *Housing Strategy DCP* requires 91 resident car spaces and 18 visitor car spaces. The proposal provides 100 residential spaces and 13 visitors spaces, including 11 accessible spaces which results in a shortfall of 5 visitors spaces. Notwithstanding, Council's *HDCP* includes revised car parking requirements with regard to proximity to a railway station and provision for motor cycle parking. As the proposal is less than 800m from Waitara Station, the required parking spaces under the new controls would be 88 resident spaces and 13 visitor spaces. In this regard, the proposal exceeds the requirement for residential car spaces and provides sufficient spaces for

visitors. The proposal also provides for 19 resident bicycle spaces, 9 visitor bicycle spaces, 3 motorcycle spaces and adequate storage areas in the basement which exceeds the required spaces for the *Housing Strategy DCP* and *HDCP*.

The parking provision is in accordance with the minimum number of resident car spaces prescribed by the *Housing Strategy DCP* and the shortfall of 5 visitor spaces accords with Council's *HDCP* and is therefore considered acceptable. The driveway width, ramp gradients and aisle widths are assessed as satisfactory.

2.12.13 Balmoral Street Waitara Precinct

The strategy for redevelopment of this precinct is to incorporate five storey residential flat buildings in garden settings with parking in basements. The development would provide for a landscaped setting and a built-form that is consistent with the desired outcome for the Balmoral Street, Waitara Precinct.

The proposal maintains setbacks generally in accordance with the *Housing Strategy DCP* retaining significant trees within the street frontage wherever possible. The development would provide for a landscaped setting and a built-form that is consistent with the desired future outcome for the *Balmoral Street, Waitara Precinct*.

2.13 Waste Minimisation and Management Development Control Plan

The proposal includes a waste management plan with details of waste management during the demolition phase and the construction phase of building works. However, further details are required prior to the issue of a Construction Certificate as per conditions included in Schedule 1 of this report.

For Buildings A, B, C and D, a garbage chute and recycling bin is provided in a small room which is accessible by persons with a disability on each level. Buildings A, B and C each have 23 dwellings and would require 2 x 660 litre garbage bins serviced twice weekly plus 5 x 240L recycling bins serviced weekly. Building D contains 22 dwellings and would also require 2 x 660 litre bins serviced twice weekly plus 5 x 240L recycling bins serviced weekly.

The basement bin rooms for Buildings A, B and D are sufficient in size to house the required number of bins. The basement bin room in Building C is too small and is required to be increased in size to 3.8m deep by 2.8m wide. This is recommended as a condition of consent. Volume handling equipment arrangements have not been provided and are recommended as a consent condition. Provision within the basement for an additional 660 litre bin for paper/cardboard recycling to be serviced weekly is also recommended as a consent condition. The basement also includes an area for placement of unwanted bulky items awaiting collection. All bin transfers between the waste facility on each level, the basement bin room and waste collection point are to be carried out by the site caretaker.

The proposal provides a bin collection area of 32.5m² on the northern side of the driveway easily accessible by the waste collection vehicle. A small rigid waste collection vehicle would be able to reverse onto the site and park on the driveway while servicing the bins and then leave the site in a forward direction.

Subject to recommended conditions, the proposed development is satisfactory in respect to this DCP.

2.14 Access and Mobility Development Control Plan

The proposed development has been assessed having regard to the relevant performance and prescriptive design requirements within Council's *Access and Mobility Development Control Plan*.

The development proposes continuous barrier free access to all floors via a lift. The disabled car spaces within the basement levels are designed to comply with AS2890.6 -2009 *Parking facilities – Off street parking for people with a disability*.

The application is assessed as satisfactory with regard to the *Access and Mobility Development Control Plan*.

2.15 Car Parking Development Control Plan

The proposed development has been assessed having regard to the relevant performance and prescriptive design requirements contained within Council's *Car Parking Development Control Plan*. The matter has been discussed in detail under Section 2.12.12 of this report.

2.16 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*.

2.17 Heritage Development Control Plan

The proposal complies with Council's *Heritage Development Control Plan*. Heritage matters are addressed under Section 2.1 of this report.

2.18 Section 94 Contributions Plans

Hornsby Shire Council Section 94 Development Contributions Plan 2012-2021 applies to the development as it would result in the addition of 87 residential units in lieu of the four existing residences. Accordingly, 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

3.1.1 Trees

The site comprises a number of exotic, native planted trees and locally indigenous specimens.

A number of trees located on the Balmoral Street frontage, at the rear of the site and on adjoining properties satisfy Councils' criteria of significant trees. These trees include tree numbered 1 *Jacaranda mimosifolia* (Jacaranda), tree numbered 3 *Callistemon viminalis* (Bottle Brush), tree numbered 4 *Pinus radiata* (Monterey Pine), trees numbered 5 and 6 *Largerstroemia indica* (Crepe Myrtle), tree numbered 22 *Ceratopetalum gummiferum* (NSW Christmas Bush) and tree numbered 24 *Pittosporum undulatum* (Sweet Pittosporum).

The application is supported by an Arboricultural Impact Assessment Report that notes the proposal would necessitate the removal of twenty eight trees, however only two of these trees are deemed significant (trees numbered 22 and 24). Tree numbered 24 is assessed as in poor condition and tree

numbered 22 is located approximately 10m from the rear property boundary and is within the building footprint of the proposed development.

Council's assessment of the application in this regard concludes that the proposal is satisfactory subject to the protection of five significant trees (one of which is located on the adjoining property) and replacement tree planting.

A landscape plan has been submitted with the application that includes a range of locally native plant species to achieve canopy trees, a shrub layer and ground covers. The landscaping of the site has been discussed in Section 2.12.6 of this report. Subject to conditions and on-going maintenance of the landscaped areas, the development would achieve a landscape setting and would be acceptable with respect to the natural environment.

3.1.2 Stormwater Management

The development proposes to adopt Council's "*Proposed Stormwater Upgrade Works Plans*" which involves the reconstruction of Council storm water drainage easement that runs along the southern property boundary of the site. An Overland Flow Study was submitted with the application. The proposal incorporates the construction of a new culvert with internal dimensions 1.5m wide and 1.2m height. As a flood risk management measure, a free standing wall is also to be constructed along the southern boundary of the easement, adjacent to the proposed site to channel the overland flow along the easement to Park Avenue.

Stormwater from the proposed development would be connected to Council's drainage system located in Park Avenue via a below ground on-site detention (OSD) system to control the discharge of water from the site.

Council's engineering assessment concludes that the proposed reconstruction of Council's drainage easement and the OSD system is satisfactory subject to recommended conditions of consent in Schedule 1.

3.2 Built Environment

3.2.1 Built Form

The buildings would be located within a precinct identified with a future character of five storey residential flat buildings in a landscaped setting with underground car parking. The built form of the proposal would be consistent with the desired future character of the precinct.

3.2.2 Traffic

Council has undertaken an assessment of the overall traffic impact of the redeveloped precinct on the locality.

In the preparation of Council's *Housing Strategy* transport modelling was undertaken to determine the traffic impact precincts to be rezoned as part of the Strategy. Traffic modelling and assessment for the Waitara Precinct established that additional traffic that would be generated in the Precinct would not have a significant impact on existing roadway conditions and intersection performance in the area.

The most significant traffic increase is envisaged to occur on arterial routes such as Edgeworth David Avenue. These increases are mainly attributed to anticipated growth and developments in other regions and to a greater extent to the re-distribution effect arising from the growth in through traffic.

The modelling also established that the existing access to Balmoral Street via Edgeworth David Avenue is unsatisfactory during the morning peak period. Council has recently received approval from RMS for the signalisation of the intersection of Edgeworth David Avenue and Balmoral Street. This program is to be funded by the National Blackspot Program with the works likely to be completed before the end of August 2014.

In accordance with the RMS *Technical Direction (TDT 2013/14)*, which updates the *Guide to Traffic Generating Developments (October 2002)*, the proposed development comprising 91 dwellings would generate 17 vehicle trips per hour (vtp) during the morning peak hour and 14 vtp during the evening peak hour.

A Traffic and Parking Impact Assessment has been submitted with the proposal. The report indicates that Balmoral Street is considered a local road and as such has an environmental capacity of 300 vehicles per hour as defined in the RMS Guide to Traffic Generating Developments. Existing volumes are well below this threshold and an additional 13 vehicles per hour during peak periods would have negligible impact on the environmental capacity of the street. The residential amenity of Balmoral Street would not be adversely affected and the road will continue to operate with a local road function, with volumes that are commensurate with this function.

Council's engineering assessment of the traffic impacts of the development concludes that the proposal is satisfactory.

3.3 Social Impacts

The residential development would improve housing choice in the locality by providing a range of household types. The location of the development is in close proximity to Waitara Railway Station and the Hornsby Town Centre allowing direct access to retail, business, recreational, health and educational facilities for future residents.

3.4 Economic Impacts

The development would result in a positive economic impact on the locality via employment generation during construction and minor increase in demand for local services following completion of the development.

4. SITE SUITABILITY

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

There is no known hazard or risk associated with the site with respect to landslip, subsidence, flooding and bushfire that would preclude development of the site. For the reasons detailed in this report, it is considered that the site is suitable to accommodate 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 first notified to adjoining and nearby landowners between 17 October 2013 and 7 November 2013 in accordance with Council's *Notification and Exhibition Development Control Plan*. During this period, Council received three

submissions. However, two of the three submissions were from the owners of Nos. 35 and 35A Balmoral Street. Following the submission of amended plans including the amalgamation of Nos. 35 and 35A Balmoral Street with 37-39 Balmoral Street, the application was renotified to adjoining properties between 6 March 2014 and 20 March 2014. During this period, Council received one submission.

The map below illustrates the location of the nearby landowner who made a submission on the proposal.



NOTIFICATION PLAN

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

- Overlooking impacts to the adjoining child care centre at No. 41 Balmoral Street;

- Traffic and Safety concerns for children as the proposed vehicular access is in close proximity to the entrance of the child care centre;
- Health risks associated with the demolition of existing dwellings including the air borne pollutants of dust and particles;
- Development that is excessive in bulk and scale and dissatisfaction regarding the rezoning of five storey residential flat development in the precinct due to the resultant impacts of traffic congestion and inadequate street parking and pollution.

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 Overlooking Impacts to Child Care Centre

The proposed development adjoins a single storey child care centre to the north. The overlooking impacts to the open recreational space at the rear of No. 41 Balmoral Street would be predominantly affected by the north western corner of Building A. The northern elevation of Building A includes only highlight windows immediately adjoining the open recreational space. Balconies are screened with opaque glass privacy screens or setback at least 6m from the northern side property boundary. In this regard, minimal overlooking impacts would occur as a result of the proposed development.

5.1.2 Increase in Density Related to the Rezoning of Five Storey Residential Flat Development in the Balmoral Street, Waitara Housing Strategy Precinct

The site has been rezoned to form a part of a high density residential precinct. The proposed density conforms with the development controls within the *Housing Strategy DCP*. The impacts of the high density zone on the surrounding locality had been considered in detail during the rezoning process. No further assessment in this regard is necessary.

5.1.3 Traffic and Safety

Whilst the proposed development would increase the net traffic generation, the proposed increase in vehicle trips per hour is within the environmental capacity of the local road and the traffic and safety impacts for children and other pedestrians would not be exacerbated when compared to existing conditions.

5.1.4 Health Risks Associated with the Demolition of Structures

Subject to recommended conditions of consent regarding construction hours, dust and noise control measures, the proposal would have negligible impact on the surrounding area.

5.2 Public Agencies

The development application was not referred to any Public 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.

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 seeks approval for the demolition of existing structures and construction of four detached, five storey residential flat buildings comprising 91 units and basement car parking.

The proposed development is generally in accordance with the development controls for the 'Balmoral Street, Waitara' Precinct of the *Housing Strategy DCP* and would contribute to the future desired five storey residential character of the precinct. With conditions, the minor non-compliance with prescriptive measures for articulation, privacy, landscaping, setbacks and housing choice are considered acceptable. The proposal complies with the design principles of *SEPP 65* and the *Residential Flat Design Code*.

The proposal would result in a development that would be in keeping with the desired future character of the precinct.

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 - Development Assessment
Planning Division

JAMES FARRINGTON
Group Manager
Planning Division

Attachments:

1. Locality Map
2. Site Plan
3. Landscape Plan
4. Floor Plans
5. Elevations and Sections
6. Shadow Plans

File Reference: DA/1062/2013
Document Number: D03358106

SCHEDULE 1

GENERAL CONDITIONS

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

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

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

1. Approved Plans and Supporting Documentation

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

Plan No.	Plan Title	Drawn by	Dated
A102-A	Site Analysis	Mijollo International	7/2/2014
A2.01D	Basement 1 Plan	Mijollo International	1/7/2014
A2.02D	Basement 2 Plan	Mijollo International	1/7/2014
A2.03F	Level 1 (Ground) Floor Plan	Mijollo International	9/7/2014
A2.04C	Level 2 & 3 Floor Plan	Mijollo International	6/5/2014
A2.05C	Level 4 Floor Plan	Mijollo International	6/5/2014
A2.06C	Level 5 Floor Plan	Mijollo International	6/5/2014
A2.07A	Roof Plan/Site Plan	Mijollo International	7/2/2014
A3.01E	Elevation North & South	Mijollo International	7/7/2014
A3.02E	Elevation East & West	Mijollo International	7/7/2014
A4.01E	Section AA BB	Mijollo International	7/7/2014
A4.02D	Section CC	Mijollo International	1/7/2014
A5.01D	Adaptable Unit Plans	Mijollo International	1/7/2014
A310-A	Finishes Materials Board	Mijollo International	7/2/2014
A520-A	Perspectives	Mijollo International	7/2/2014
A504-A	Shadow Analysis 1	Mijollo International	7/2/2014
A505-A	Shadow Analysis 2	Mijollo International	7/2/2014
A506-A	Shadow Analysis East	Mijollo International	7/2/2014

Plan No.	Plan Title	Drawn by	Dated
A507-A	Shadow Analysis North	Mijollo International	7/2/2014
A508-A	Shadow Analysis West	Mijollo International	7/2/2014
A509-A	Shadow Analysis South	Mijollo International	7/2/2014
A510-A	Shadow Analysis South	Mijollo International	7/2/2014
A515-A	Potential Neighbour Shadow Diagram	Mijollo International	7/2/2014
LPDA14-229/1 - F	Landscape Plan	Conzept Landscape Architects	July 2014
Council Plan No. 554-38 (Sheet Nos. 00-18)	Survey & Design of Major Stormwater Drainage Works Myra Street to Park Avenue, Wahroonga	Bannister & Hunter P/L	12/4/2014
SWMP-01 Rev P2	Stormwater Plans	TDL Engineering Consulting P/L	21/1/2014

Document Title	Prepared By	Dated
Overland Flow Study Report Rev 3	Donovan & Associates	10/7/2014
Traffic Impact Assessment	Traffix	Checked on 7/7/2014
ABSA Certificate No. 1006096679	ESD Synergy	18/2/2014
Basix Certificate No. 528501M	ESD Synergy	18/2/2014
Basix Assessment Report	ESD Synergy	18/2/2014
Statement of Environmental Effects	Caladines Town Planning P/L	19/2/2014
Arborist Report	Tristan Bradshaw	Amended 6/2/2014
Cost Summary Report	Quantus Solutions	13/2/2014
Access Report	Accessibility Solutions (NSW) P/L	13/2/2014
SEPP 65 Design Verification Statement	Mijollo International	13/2/2014
Waste Management Plan	Unnamed	Received on 7/2/2014

2. Amendment of Plans

The Basement Plan is to be amended as follows:

- a) The bin room for Building C is to be increased in size as the other bin rooms (3.8m deep by 2.8m wide).
- b) An additional 1 x 660L paper/cardboard recycling bin serviced weekly is to be provided within the basement level.

The Level 1 (Ground Floor) Plan is to be amended as follows:

- c) To ensure adequate privacy is provided, a 1.8m high movable privacy screen or opaque glass screen is required to be attached to the southern side of Unit C403.

3. Removal of Existing Trees

This development consent only permits the removal of tree(s) numbered 2 & 7-33 as identified in the Arborist Report prepared by Tristan Bradshaw dated 6/2/14. 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. Section 94 Development Contributions

In accordance with Section 80A(1) of the *Environmental Planning and Assessment Act 1979* and the *Hornsby Shire Council Section 94 Development Contributions Plan 2012-2021*, the following monetary contributions shall be paid to Council to cater for the increased demand for community infrastructure resulting from the development:

Description	Contribution (4)
Roads	\$105,657.25
Open Space and Recreation	\$1,032,126.00
Community Facilities	\$143,890.60
Plan Preparation and Administration	\$4,311.85
TOTAL	\$1,285,985.70

being for 29 x 1 bedroom units, 54 x 2 bedroom units, 8 x 3 bedroom units and including a credit for 4 existing allotments.

- a) If the contributions are not paid within the financial quarter that this consent is granted, the contributions payable will be adjusted in accordance with the provisions of the Hornsby Shire Council Section 94 Development Contributions Plan and the amount payable will be calculated at the time of payment in the following manner:

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

Where:

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

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

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

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

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

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

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

5. Building Code of Australia

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

6. Contract of Insurance (Residential Building Work)

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.

7. Water/Electricity Utility Services

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

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

8. Accessible Units

The details of all accessible units and details of adaptable units must be provided with the Construction Certificate Plans.

9. Dilapidation Report

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

10. Preservation of Survey Infrastructure

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

11. Swept Path Analysis

A swept path analysis for the SRV garbage vehicle reversing into the site and departing in a forward direction shall be submitted in accordance with AUSTROADS. The analysis is to assume vehicles are parked on the east side of Balmoral Street.

12. Construction Vehicles

All construction vehicles associated with the proposed development are to be contained on site as no construction zones will be permitted on Balmoral Street in the vicinity of the site.

13. Construction Management Plan

A Construction Traffic Management Plan detailing construction vehicle routes, number of trucks, hours of operation, access arrangements and traffic control should be submitted to Council prior to the issue of a construction certificate.

14. Waste Management Details

The following waste management requirements must be complied with:

- a) Vehicle turning paths demonstrating that a small rigid vehicle is able to reverse in and forward out of the site (in accordance with AS 2890.2).

REQUIREMENTS PRIOR TO THE COMMENCEMENT OF ANY WORKS
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15. 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.

16. 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.

17. 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*.

18. Tree Protection Barriers

Tree protection fencing must be erected around trees to be retained at the nominated Tree Protection Zones (TPZ) in accordance with Appendix B as per the Arborist Report prepared by Tristan Bradshaw dated 6/2/14.

19. 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

20. Works Near Trees

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

Soil levels within the Tree Root Zone Section HDCP 1B.6.1 (i) of trees to be retained must be remain at existing grade and undisturbed.

The Principal Certifying Authority is to ensure that all works, including sub-surface trenching for stormwater or other services or the filling or stockpiling of building materials, parking of vehicles or plant, the use of machinery other than hand held, disposal of cement slurry, waste water or other contaminants occurs outside the Tree Root Zone as prescribed in the HDCP Section 1B.6.1(i) of any tree to be retained.

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 must be disposed of to an authorised recycling and/or waste disposal site and/or in accordance with an approved waste management plan;
- b) Demolition works, where asbestos material is being removed, must be undertaken by a contractor that holds an appropriate licence issued by *WorkCover NSW* in accordance with Chapter 10 of the *Occupational Health and Safety Regulation 2001* and Clause 29 of the *Protection of the Environment Operations (Waste) Regulation 2005* ;and
- c) On construction sites where 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. 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.

24. Excavated Material

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

25. 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 must be kept in a clean, tidy and safe condition at all times.

26. 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.

27. Waste Management Details

Waste management during the demolition and construction phase of the development must be undertaken in accordance with the approved Waste Management Plan. Additionally written records of the following items must be maintained during the removal of any waste from the site and such information submitted to the Principal Certifying Authority within fourteen days of the date of completion of the works:

- a) The identity of the person removing the waste.
- b) The waste carrier vehicle registration.
- c) Date and time of waste collection.
- d) A description of the waste (type of waste and estimated quantity).
- e) Details of the site to which the waste is to be taken.
- f) The corresponding tip docket/receipt from the site to which the waste is transferred (noting date and time of delivery, description (type and quantity) of waste).
- g) Whether the waste is expected to be reused, recycled or go to landfill.

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

28. 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; and
- b) The finished floor level(s) are in accordance with the approved plans.

REQUIREMENTS PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE

Note: For the purpose of this consent, a reference to 'occupation certificate' shall not be taken to mean an 'interim occupation certificate' unless otherwise stated.

29. Fulfilment of BASIX Commitments

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

30. Sydney Water – s73 Certificate

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

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 Civil Works Specifications. Council's Restorations Supervision must be notified for a formwork inspection prior to pouring concrete.

32. Boundary Fencing

Fencing must be erected at the sole cost of the applicant, along the northern, southern and western property boundaries behind the front building alignment to a height of 1.8m.

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

33. 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 in accordance with the following requirements:

- a) Connected to an existing Council drainage system via an on-site detention system.
- b) For connection to Council pit, a construction certificate application is to be submitted to Council (as council is the authority to approve a plan for connection to Council system).
- c) Be designed by a Chartered Professional Civil/ Hydraulic Engineer of the Institution of Engineers, Australia.

34. Onsite Detention System

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

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

35. Overland Flow – Replacement of Existing Stormwater Pipe line, Flood Proofing, Floor Levels

- a) The existing Council pipe running through the development site along the southern boundary shall be replaced at the developer's expense (by the developer) in accordance with Councils Plan No 554-38 and include the following:
 - i) 71.1m of length of 1.5m (w) * 1.2m (h) RCBC at 0.59% grade
 - ii) Upstream invert: 172.223m AHD
 - iii) Downstream invert: 171.800m AHD
 - iv) Two pits connecting the pipeline, upstream and downstream are to be constructed in accordance with the Council plan No 554-38
 - v) Overland flow shall be directed to the downstream easement from the development site. Details are to be shown in a construction plan
- b) A construction certificate application is to be submitted to Council (Council is the only authority to issue a Construction certificate for works of its assets).
- c) Any structural wall abutting the overland flowpath shall be flood proofed in accordance with Floodplain Development Manual of New South Wales Government.
- d) Floor levels of habitable rooms of the development abutting the 100 year ARI overland flowpath shall be 0.5m above the 100 year ARI flood levels) and driveway 0.3m to prevent floodwater entering basement parking (at the corresponding point in the flood report by Donovan Associates, E 78957 , Revision A Dated 10 July, 2014.
- e) The finished ground level of the overland flowpath shall be in accordance with report, prepared by Donovan Associates, Job No E78437, Revision 3 dated 10 July, 2014.
- f) No structure is to be erected within the overland flowpath or drainage easement running through the property to impede flow.
- g) Fences across overland flowpath shall be swimming pool type or hinged at 0.5m above the 100 ARI overland flow level.
- h) Flood risk management measures, including construction of wall on southern boundary of the development and erection of warning signs are to be implemented in accordance with the report from Donovan Associates, E78957 dated 10 July 2014 Revision 3 and maintained. The top of the wall shall be a minimum 0.5m above the 1 in 100 year ARI flow level.
- i) A works as executed plan of the finished ground level of the overland flowpath, flood protection wall and warning signs, prepared by a registered Surveyor is to be submitted to Council.

36. 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 must be replaced with integral kerb and gutter;
- b) The footway area must be restored by turfing;

- c) Approval must be obtained from all relevant utility providers that all necessary conduits be provided and protected under the crossing.

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

37. 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.

38. 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) Concrete footpath, kerb and gutter along Waitara Avenue along the frontage of the development are to be replaced. The existing road pavement to be saw cut a minimum of 300 mm from the existing edge of the bitumen and reconstructed. The kerb and gutter heights are to be designed and adjoining road carriageway levels adjusted to direct all street stormwater to the drainage line/overland flowpath (no ponding in front of the development).
- b) A construction certificate is to be submitted to Council for approval.

Note: Council is the only authority to approve works within Council roads.

39. 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.

40. Works As Executed Plan

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

41. Foundation of Structure within Council's Stormwater Pipe Zone of Influence

Foundation of structure in the proximity of Council stormwater pipe/structure shall be carried out by a Chartered Structural Engineer of the Institution of Engineers, Australia ensuring that the Council pipes are not impacted.

After completion of works, a certificate from a Chartered Professional Structural Engineer of the Institution of Engineers, Australia confirming that works have been carried out in a manner that no impact has been created on Council drainage pipes.

42. Creation of Easements

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

- a) A restriction over the pipeline and the flow path for a 100 year average recurrence interval storm. The *"Restriction on the Use of Land"* over the affected lots is to prohibit the alteration of the final floodway shape and the erection of any structures, including fencing in the floodway, storage of any material under the cantilevered section of the development (within the flowpath) and no flood warning signs are to be removed without the written permission of Council.
- b) The creation of an appropriate *"Positive Covenant"* to maintain all the warning signs so as to be visible to members of public all the time and the overland flow protection wall along the southern boundary to the levels constructed with the development and flood proofed.
- c) 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.
- d) 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 onsite 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.

43. Certificate of Preservation of Survey Marks

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

44. Planter Boxes/ On Slab Planting

On slab planter boxes must include waterproofing, subsoil drainage (proprietary drainage cell, 50mm sand and filter fabric) automatic irrigation, minimum 500mm planting soil for shrubs

and minimum 1000mm planting soil for trees and palms and 75mm mulch to ensure sustainable landscape is achieved.

45. Maintain Canopy Cover

In accordance with Hornsby Shire Council Development Control Plan (HDCP), Chapter 1B.6.1 Tree Preservation. Any tree approved to be removed from a site should be replaced with a tree of like habit and indigenous to Hornsby Shire, planted as near as practicable to the location of the removed tree, grown to maturity and replaced if the planting fails to survive and thrive

The planting location shall not be within four metres (4m) of the foundation walls of a dwelling or in-ground pool.

Note: A certificate from suitably qualified and experienced Horticulturalist is to be submitted to the Principal Certifying Authority stating that all plant stock meet the specifications outlined in 'Specifying Trees' (Ross Clark, NATSPEC Books) and that the planting methods were current professional (best practice) industry standards at the time of planting.

46. 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.

47. Garbage Collection Easement

For the purpose of waste collection, an easement entitling Council, its servants and agents and persons authorised by it to enter upon the subject land and to operate thereon, vehicles and other equipment for the purposes of garbage collection must be granted to Council by the owner of the land.

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

48. Waste Management Details

The following waste management requirements must be complied with:

- a) The bin storage room(s) at the basement level must include water or a hose for cleaning, graded floors with drainage to sewer, a robust door, sealed and impervious surface, adequate lighting and ventilation, and must be lockable. The waste facility at each residential level must include sealed and impervious surface, adequate lighting and ventilation.

- b) A report must be prepared by an appropriately qualified person, certifying the following:
 - i) A comparison of the estimated quantities of each waste type against the actual quantities of each waste type.
Note: Explanations of any deviations to the approved Waste Management Plan is required to be included in this report.
 - ii) That at least 60% of the waste generated during the demolition and construction phase of the development was reused or recycled.
Note: If the 60% diversion from landfill cannot be achieved in the Construction Stage, the Report is to include the reasons why this occurred and certify that appropriate work practices were employed to implement the approved Waste Management Plan. The Report must be based on documentary evidence such as tipping dockets/receipts from recycling depots, transfer stations and landfills, audits of procedures etc. which are to be attached to the report.
 - iii) All waste was taken to site(s) that were lawfully permitted to accept that waste.
- c) Each unit 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.
- d) Space must be provided for either individual compost containers for each unit or a communal compost container;
Note: The location of the compost containers should have regard for potential amenity impacts.
- e) The bin carting routes must be devoid of any steps.
Note: Ramps between different levels are acceptable.
- f) Volume handling equipment is to be provided in the bin storage rooms in the basement.

49. 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.

50. Unit Numbering

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

51. Safety and Security

The site must include the following elements:

- a) An intercom system must be installed at gate locations to ensure screening of persons entering the units.

- b) The entry doors to the pedestrian foyer is to be constructed of safety rated glass to enable residents a clear line of site before entering or exiting the residential apartments.
- c) Lighting is to be provided to pathways, building foyer entries, driveways and common external spaces.
- d) Security gate access is to be provided to the car parking area allowing residents-only access to private car spaces.
- e) The communal open space, at the rear and north of the site must be illuminated with high luminance by motion sensor lighting.
- f) The driveway and basement car park must be illuminated with low luminance at all times.
- g) Security deadlocks are to be provided to each apartment door.
- h) Peep holes are to be provided to individual apartment doors to promote resident safety.

OPERATIONAL CONDITIONS

52. Car Parking

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

- 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.

53. Landscaping/Fencing

Any proposed landscaping and/or fencing must not restrict sight distance to pedestrians and cyclists travelling along the footpath.

54. Residential Parking Spaces

Residential parking spaces are to be secure spaces with access controlled by card or numeric pad.

55. Visitor Access

Visitors must be able to access the visitor parking spaces in the basement car park at all times.

56. Disabled Parking

All parking for people with disabilities is to comply with AS/NZS 2890.6:2009 Off-street parking for people with disabilities.

57. Bicycle Parking Spaces

Bicycle parking spaces are to be designed in accordance with AS 2890.3-1993 *Bicycle parking facilities*.

58. Motorcycle Parking Spaces

Motorcycle parking spaces are to be designed in accordance with AS 2890.5-1993.

59. Landscape Establishment

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

60. Waste Management

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

- a) A site caretaker must be employed and be responsible for moving bins where and when necessary, washing bins and maintaining waste storage areas, ensuring the chute system and related devices are maintained in effective and efficient working order, managing the communal composting area, managing the bulky item storage area, arranging the prompt removal of dumped rubbish, and ensuring all residents are informed of the use of the waste management system.

61. 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).

62. 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.

- END OF CONDITIONS -

ADVISORY NOTES

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

Environmental Planning and Assessment Act 1979 Requirements

The Environmental Planning and Assessment Act 1979 requires:

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

Long Service Levy

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

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

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

Tree and Vegetation Preservation

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

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

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

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

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.

Telecommunications Act 1997 (Commonwealth)

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

Asbestos Warning

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

www.environment.nsw.gov.au

www.nsw.gov.au/fibro

www.adfa.org.au

www.workcover.nsw.gov.au

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

House/Unit Numbering

House/Unit 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 prior to the issue of a Subdivision Certificate. The authorised numbers are required to comply with Council's Property Numbering Policy and be displayed in a clear manner at or near the main entrance to each premise.

8 FURTHER REPORT - DEVELOPMENT APPLICATION - ALTERATIONS AND ADDITIONS TO A DWELLING-HOUSE - 139 COPELAND ROAD, BEECROFT

EXECUTIVE SUMMARY

DA No:	DA/1449/2013 (Lodged 27 December 2013)
Description:	Alterations and additions to a dwelling house including the construction of a new garage
Property:	Lot 4, DP 529564, No. 139 Copeland Road Beecroft
Applicant:	Mr Michael Anthony Fornari and Mrs Janette Francis Fornari
Owners:	Mr Michael Anthony Fornari and Mrs Janette Francis Fornari
Estimated Value:	\$200,000
Ward:	C

- The application proposes alterations and additions to a dwelling house including the construction of a garage.
- At its meeting on 9 April 2014, Council resolved to defer the application to enable consideration of an alternative design solution for the garage that is sympathetic with the character of the Beecroft/Cheltenham Heritage Conservation Area.
- Eight submissions have been received in respect of the re-notification of the application.
- The proposal does not comply with the requirements of the Hornsby Development Control Plan 2013 in regards to heritage impacts within the Beecroft/Cheltenham Heritage Conservation Area.
- It is recommended that the application be refused.

RECOMMENDATION

THAT Development Application No. DA/1449/2013 for alterations and additions to a dwelling house including the construction of a garage at Lot 4, DP 529564, No. 139 Copeland Road Beecroft be refused for the reasons detailed in Schedule 1 of Group Manager's Report No. PL51/14.

BACKGROUND

At its Meeting on 9 April 2014, Council considered Group Manager's Report No. PL25/14 for alterations and additions including a garage at the subject property and resolved to defer consideration of the matter to *"enable the Group Manager, Planning Division to facilitate discussions between available Councillors and the applicant, concerning opportunities for an alternative design for the garage that is sympathetic with the character of the Heritage Conservation Area"*.

On 6 May 2014, amended plans were submitted relocating the proposed garage to a position adjacent to the western side boundary of the property.

In accordance with Council's resolution, a site meeting was held on 20 May 2014 to discuss the alternative design options, including the amended proposal submitted on 6 May 2014. The meeting was attended by the applicant, available Councillors and Planning Division officers. At the meeting, discussion included consideration of the following:

- Constraints to providing additional garage parking behind the building line;
- Impacts of a garage in the front setback or views of the dwelling-house and streetscape character;
- Opportunity for landscaping in front of any garage; and
- Impacts of relocating the garage to the western side of the property on the amenity and solar access to the adjacent dwelling.

At the conclusion of the meeting, it was generally agreed that should a garage be supported in the front setback, the proposed relocation of the garage to the western side of the property would have lesser impacts on the character of the Heritage Conservation Area than the original proposal. It was noted that the amended garage location would be referred back to the Heritage Advisory Committee for further consideration prior to the matter being reported to Council for determination.

SITE

The 1,018m² property is located on the northern side of Copeland Road, Beecroft and contains a Federation era dwelling-house surrounded by well-established gardens and landscaped areas.

The site is not flood prone and is not burdened or benefitted by any easements, covenants or rights-of-carriageway.

The rear, north-eastern corner is designated as bushfire prone land.

The site is located within the Beecroft/Cheltenham Heritage Conservation Area and is in the vicinity of numerous heritage-listed properties including *"Chetwynd"* at No. 138 Copeland Road as listed in Schedule 5 of the *Hornsby Local Environmental Plan 2013*.

PROPOSAL

In response to Council's resolution, amended plans were submitted relocating the double garage 11 metres to the west of its original proposed location.

The garage would be set back 7.6 metres from the front boundary and 900mm from the western side boundary of the adjoining property No. 94 Sutherland Road.

The garage has been designed using materials to complement the character of the existing dwelling house and would be orientated so that the timber-clad "tilt door" would face the eastern side boundary rather than the street.

The application also proposes alterations and additions to the dwelling house including:

- Demolition of the single garage at the rear, north-east corner of the site;
- Addition of a bathroom and robe off the main bedroom at the front, south-eastern corner of the dwelling house; and
- A roofed deck with basement storage below at the rear of the dwelling house.

The application also proposes the removal of two trees and the relocation of one tree.

ASSESSMENT

The amended development has been assessed having regard to the '*Metropolitan Plan for Sydney 2031*', 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). The following issues have been identified for further consideration.

1. STRATEGIC CONTEXT

1.1 Metropolitan Plan for Sydney and (Draft) North Subregional Strategy

The *(Draft) Metropolitan Strategy for Sydney 2031* is a broad framework to provide for Sydney's growth to help plan for housing, employment, transport, infrastructure, the environment and open space. 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 North Subregion comprises Hornsby, Kuring-gai, Manly, Warringah and Pittwater Local Government Areas. The *Draft North Subregional Strategy* provided a framework for Council in its preparation of the *Hornsby Local Environmental Plan 2013*.

Within the North Subregion, the *Draft Metropolitan Strategy* proposes:

- Population growth of 81,000 from the current 2011 baseline of 529,000
- Housing growth of 37,000 from the current 2011 baseline of 204,000
- Employment growth of 39,000 from the current 2011 baseline of 186,000

The proposed development would be consistent with the *Metropolitan Plan for Sydney 2031* as it would provide renewed housing stock to address the demands of a growing population.

2. STATUTORY CONTROLS

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

2.1 Hornsby Local Environmental Plan 2013

The subject land is zoned R2 Low Density Residential under the *Hornsby Local Environmental Plan 2013 (HLEP)*. The objectives of the R2 zone are:

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

The proposed development is defined as 'dwelling house' under the *HLEP* and is permissible in the zone with Council's consent.

2.2 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 BASIX Certificate No. A178571 for the alterations and additions to a dwelling house and is considered to be satisfactory with respect to *SEPP BASIX*.

2.3 Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

The site is located within the catchment of Sydney Harbour. *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005* aims to protect the environment of the Sydney Harbour Catchment by ensuring that the impacts of future land uses are considered in a regional context.

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

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

On 1 March 2013, the *Environmental Planning and Assessment Act, 1979* was amended so that a DCP provision will have no effect if it has the practical effect of "preventing or unreasonably restricting development" that is otherwise permitted and complies with the development standards set out in relevant Local Environmental Plans and State Environmental Planning Policies.

The principal purpose of a development control plan is to provide guidance on the aims of any environmental planning instrument that applies to the development; facilitating development that is permissible under any such instrument; and achieving the objectives of land zones under any such instrument. The provisions of a development control plan made for that purpose are not statutory requirements.

2.5 Hornsby Development Control Plan 2013

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

Hornsby Development Control Plan			
Control	Proposal	Requirement	Compliance
Height			
Additions	6.3m	8.5m	Yes
Garage	4.3m	8.5m	Yes
Site Coverage	33%	40%	Yes
Floor Area	332m ²	430m ²	Yes
Setbacks			

Front	7.6m	6m	Yes
Side (east)	1.5m	0.9m	Yes
Side (west)	0.9m	0.9m	Yes
Rear	1.5m	3m	No
Landscaping	40%	40%	Yes
Open Space	130m ²	24m ²	Yes
Vehicle Access & Parking	2 spaces forward of building line	2 spaces behind building line	No

As detailed in the above table, the proposed development does not comply with the rear setback and parking prescriptive requirements within Council's HDCP. The proposed front boundary setback of the garage does not comply with the prescriptive measures of Part 3.1.2 Setbacks of the HDCP in terms of the existing streetscape.

These matters of non-compliance are detailed below, together with a discussion on compliance with the relevant performance requirements.

2.5.1 Setbacks

The desired outcomes of Part 3.1.2(a) Setbacks of the HDCP is to encourage "*setbacks that are compatible with adjacent development and complement the streetscape*" and "*setbacks that allow for canopy trees to be retained along the front and rear property boundaries*".

2.5.1.1 Rear Setback

The proposed 1.5 metre setback of the deck at the rear of the dwelling house does not comply with the 3 metre prescriptive measure. However, as the rear boundary alignment is splayed to the north-west, the non-compliance is considered acceptable in this instance as it would have minimal amenity impacts. The splayed portion of the rear boundary alignment is effectively screened by mature plantings and the north-western portion of the deck would be enclosed, providing increased privacy for the owners and adjoining property owners.

2.5.1.2 Front Setback

The original 7.6 metre front boundary setback of the garage was considered by Council at its meeting on 9 April 2014. The amended location of the garage towards the western side of the property would be set back at the same 7.6 metres, which does not comply with the prescriptive measures of 3.1.2(a) Setbacks of the HDCP which states that "*On local roads, where an existing setback of 7.6m or greater exists, it may be necessary to conform to this setback to maintain the streetscape character*".

The site adjoins property No. 94 Sutherland Road. The dwelling on the adjacent property is orientated towards Sutherland Road with a side setback to Copeland Road. Therefore, relocation of the garage adjacent to the western boundary would, in part, form a transition to the adjacent dwelling.

However, the front boundary setbacks of development on seven nearby properties facing Copeland Road vary from 10.6 metre to 14.5 metres with the adjoining property to the east setback 15 metres from the front boundary. A front setback of 7.6 metres to the garage on the subject property is a significant variation to the 12.5 metre average setback which typifies the streetscape character of nearby development.

The visual impact of this front setback variation is further discussed below in Section 1.2.4 Heritage.

2.5.2 Car Parking

The desired outcome of the Part 3.1.7 Vehicle Access and Parking of the HDCP is to encourage *“development that provides sufficient and convenient parking for residents with vehicular access that is simple, safe and direct”*.

Noting that the existing dwelling house has a front boundary setback of 19.5 metres, the proposed double garage within the front setback does not comply with the prescriptive measures of Section 3.1.7 of the HDCP which requires car parking to be provided behind the building line.

Section 1.C.2.1 of the HDCP requires dwelling houses with three or more bedrooms to provide 2 car parking spaces. The car parking arrangements for the existing dwelling house comply with this requirement, with a single garage in the rear, north-eastern corner of the site providing covered parking for one car and adequate space for at least two additional vehicles that could stand on the existing driveway on the eastern side of the dwelling house, behind the building line.

The proposed double garage would be set back 7.6 metres from the front boundary. This setback is inconsistent with the established streetscape character which is characterised by parking that is located behind the building line, or at the rear of the dwelling house.

2.5.3 Sunlight Access

The desired outcomes of Part 3.1.5 Sunlight Access of the HDCP is to ensure that *“dwelling houses designed to provide solar access to open space areas”* and *“development designed to provide reasonable sunlight to adjacent properties”*.

The prescriptive measures require that the principal private open space of the subject site and adjoining properties receive a minimum of three hours of unobstructed sunlight between 9am and 3pm on the 22 June (the winter solstice).

Objections have been received regarding loss of sunlight and reduced amenity to the adjacent properties at Nos. 94 and 94A Sutherland Road as a result of the relocation of the proposed garage to the western side of the subject site.

The shadow diagrams submitted with respect to the relocated garage confirm that the two adjoining properties would receive the minimum sunlight access requirements in compliance with the prescriptive measures. The development would not overshadow the principal private open space at the rear of No.94A Sutherland Road and the bedroom window within the eastern façade of No. 94 Sutherland Road would have less than 10% of its surface area overshadowed between 9am and 12 noon.

The proposal is considered reasonable in terms of amenity as minimal overshadowing is proposed with adequate separation between the proposed garage and neighbouring properties in accordance with Council’s setback requirements.

The proposal meets the desired outcomes of Part 3.1.5 Sunlight Access of the HDCP and is considered acceptable.

2.5.4 Heritage

The desired outcome of Part 9.3.1 General Design Provisions of the HDCP is to encourage *“Development that complements and is sympathetic to the existing character of the conservation area and the elements that are significant to that character”*.

The site is located within the Beecroft/Cheltenham Heritage Conservation Area and is in the vicinity of the heritage listed Federation period house, *Chetwynd* at No. 138 Copeland Road (Item no. 81) and the pre-cast concrete *Footpath* (Item no. 74). Both these items are identified to be of local significance under provisions of Schedule 5 (Environmental Heritage) of the *Hornsby Local Environmental Plan 2013*.

The objectives of Clause 5.10 of the *Hornsby Local Environment Plan 2013* are:

- *to conserve the environmental heritage of Hornsby,*
- *to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,*
- *to conserve archaeological sites,*
- *to conserve Aboriginal objects and Aboriginal places of heritage significance.*

The prescriptive measure 9.3.1.a of the HDCP states that the *“development should respect the significant characteristics of the Heritage Conservation Area, as detailed in the applicable Character Statement in this Part”*.

The prescriptive measures of Part 9.3.2.b Garages, Carports and Driveways of the HDCP states that:

“garages and carports should not dominate the street elevation or main façade of the building and should be designed to:

- *be consistent with the character statements;*
- *complement the existing dwelling;*
- *present as secondary to the dwelling;*
- *avoid double garages visible from the street; and*
- *preferably compromise open sided carports rather than solid enclosures.”*

Eight objections have been received on heritage grounds to the amended proposal, including a submission from the Beecroft/Cheltenham Civic Trust. The submissions raise concerns that the proposed garage would have unacceptable impacts on the heritage character of the dwelling house, adjoining listed properties and the streetscape character of the surrounding Beecroft/Cheltenham Heritage Conservation Area.

The amended application was also referred to Council's Heritage Advisory Committee (HAC), which provided the following comments:

1. *No objections be raised on heritage grounds to the demolition of the existing garage, the new pedestrian and driveway gates to the front boundary fence, single-storey addition to the rear, single storey side addition and internal modifications;*

2. *Objections be raised on heritage grounds to the construction of the double garage and that a double carport be proposed instead in the same location to retain views of significant features of the dwelling from the street; and*
3. *No objections are raised on heritage grounds to the removal of the Brush Box (T3) subject to its replacement with an appropriate indigenous species with a minimum pot size of 25 litres within the front property boundary.*

Subsequent discussion with the applicant confirmed that the key objectives of the proposal are to provide a secure double garage, to remove the existing garage and maximise the private open space in the rear yard and to construct the addition to the eastern side of the dwelling house to improve the internal amenity of the adjacent master bedroom.

The applicant advised that the carport option proposed by the HAC was not acceptable as it would not provide the same level of security as a lock up garage. The applicant also stated the preference for a garage structure to be viewed from the street rather than the side of a motor vehicle under a carport.

The applicant's objectives are inconsistent with the Part 9.3.2c of the *HDCCP* which states that "*garages and carports should not dominate the street elevation or the main façade of the building*". The prescriptive measures also note that double garages visible from the street should be avoided and a compromise of "*open sided carports rather than solid, enclosed structures*" be provided.

It is acknowledged that the proposed relocation of the garage to the western side of the front yard would not obstruct views of the gable feature and sash windows at the front, eastern side of the dwelling house. However the garage would obscure views of the open verandah.

It is also acknowledged that the relocation of the garage adjacent to the dwelling house at No. 94 Sutherland Road would present as a transition of built form rather than as an isolated structure on the eastern side originally proposed. Furthermore, the pitched tiled roof and masonry walls of the garage would be consistent with the design and appearance of the dwelling house and the amended location would have lesser impacts on the integrity and setting of the dwelling house and its presentation to the street.

However, the amended proposal would compromise the integrity and setting of the streetscape which is typified by a predominance of garages and carports located to the rear or side of other dwelling houses in the area. Approval of the amended proposal would create an undesirable precedent for the Beecroft/Cheltenham Heritage Conservation Area as it would compromise and obscure the streetscape presentation of the house and would have a detrimental impact on the heritage values of the Conservation Area.

The amended proposal does not meet the desired outcome of Part 9.3.1 General Design Provisions of the *HDCCP* and is considered unacceptable.

2.6 Hornsby Section 94A Contributions Plan 2012-2021

The Hornsby Shire Council Section 94A Development Contributions Plan 2012 - 2021 came into force on 5 September 2013. The S94A Plan applies to additions and alterations to residential development, alterations to commercial development, industrial development, residential care facilities, and any other development.

Should Council approve the application, an appropriate condition would be included in any consent granted requiring payment of a development contribution.

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 impact of the proposal on the natural environment was considered by Council's Heritage Advisory Committee (HAC) when the application was originally lodged, as the proposal would involve the removal of two trees numbered T2 and T3 and the replanting of T4.

No objections were raised by the HAC to the removal of T2.

The HAC objected to the removal of T3 (Brush Box) being the advanced tree growing within the front setback of the property, given its contribution to the streetscape. The Brush Box is a species indigenous to Hornsby Shire and its removal should not be permitted as the proposed works would not impact upon the tree. Therefore, its removal is unnecessary.

Tree T4 is located on Council property and should not be permitted to be relocated as there is no reason for its relocation.

The proposal does not meet the prescriptive measures of Part 9.3.3 c. Gardens, Fences and Gates of the HDCP and is considered unacceptable.

3.2 Built Environment

The proposal would have a detrimental impact on the built environment and has been discussed in Section 2.5.4 of this report.

3.3 Social Impacts

The proposal would not have any detrimental social impacts.

3.4 Economic Impacts

The proposal would not have any economic impacts.

4. SITE SUITABILITY

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

4.1 Flooding

The site is not located on flood prone land.

4.2 Bushfire Risk

The land is identified as being partially located on bush fire prone land within the north east corner of the site. Although the proposed works are not within this bush fire affected area, the existing garage to be demolished is within the affected area. No referral to the RFS was required. Recommendations within the Bushfire Protection Assessment prepared by Australian Bushfire Protection Planners should be adopted, if consent is granted.

5. PUBLIC PARTICIPATION

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

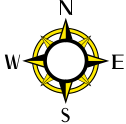
5.1 Community Consultation

The proposed development was placed on public exhibition and was notified to adjoining and nearby landowners between 10 January 2014 and 24 January 2014 in accordance with the notification and exhibition requirements of the HDCP. During this period, Council received 3 submissions.

The amended development proposal was placed on public exhibition and was notified to adjoining and nearby landowners between 13 May 2014 and 27 May 2014. As the notification sign was not erected on the property until the 22 June 2014 the notification period was extended until the 5 June 2014 in accordance with the notification and exhibition requirements of the HDCP.

During this period, Council received 8 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	
FIVE SUBMISSIONS WERE RECEIVED OUT OF MAP RANGE			

Eight submissions objected to the amended development, generally on the grounds that the development would result in:

- Unacceptable impacts on the heritage conservation area; dwelling house, adjoining properties and the streetscape;

- Reduced sunlight access;
- Inappropriate setback of the proposed side addition;
- Lack of an updated heritage report; and
- Safety issues in relation to the proposed vehicle and pedestrian gate.

The merits of the heritage impacts, sunlight access and setbacks concerns raised in community submissions have been addressed in Section 1.2 of this report under the relevant headings. The other issues raised are discussed below as follows:

5.1.1 Safety

The safety issues raised by the owner of No. 141 Copeland Road relate to the relocation of the pedestrian entrance to the dwelling house and the addition of a gate across the driveway. The submission raises concerns that the proposal would create safety issues for pedestrians when cars are exiting No. 141 Copeland Road.

The alterations and additions to the front fence would be in keeping with the existing fence style. The timber palings would be a maximum of 1.4 metres high and the masonry pillars would be a maximum of 1.8 metres high to match the existing fence and would be acceptable on safety grounds.

5.1.2 Heritage Report

A submission raised concerns that an updated Heritage Impact Report in relation to the amended plans relocating the garage from the eastern to western side had not been submitted.

The Heritage Impact Report submitted with the original application provides an assessment of the heritage significance of the dwelling house and surrounding development which is unchanged since that time.

As the proposed relocation of the garage to the western side of the site would reduce the heritage impacts on the dwelling house and streetscape, an updated report was not warranted.

5.2 Public Agencies

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

The application is not considered to have satisfactorily addressed Council's criteria and would provide a development outcome that, on balance, would result in a negative impact for the community. Accordingly, it is considered that the refusal of the proposed development would be in the public interest.

CONCLUSION

Amended plans were submitted on 6 May 2014 in response to a Council resolution at its meeting on 9 April 2014, which deferred consideration to *“enable the Group Manager, Planning Division to facilitate*

discussions between available Councillors and the applicant, concerning opportunities for an alternative design for the garage that is sympathetic with the character of the Heritage Conservation Area”.

These amended plans propose alterations and additions including the relocation of the garage to a position adjacent to the western side boundary of the property. The relocation of the garage would have reduced visual impacts on the architectural features of the existing dwelling house than the previously proposed location. However the proposal would still result in unacceptable impacts on the streetscape and character of the Heritage Conservation Area.

The development does not meet Council's heritage planning controls and is unsatisfactory having regard to the matters for consideration pursuant to Section 79C of the *Environmental Planning and Assessment Act, 1979*.

Council received 8 submissions during the public notification period. The matters raised have been addressed in the body of the report.

Having regard to the circumstances of the case, refusal 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 - Development Assessment
Planning Division

JAMES FARRINGTON
Group Manager
Planning Division

Attachments:

1. Locality Map
2. Site Plan
3. Floor Plans
4. Elevations
5. Existing Site, Floor and Elevation Plans
6. Landscape Plan
7. Shadow Diagram

File Reference: DA/1449/2013
Document Number: D03203272

SCHEDULE 1**REASONS FOR REFUSAL**

1. In accordance with Section 79C(1)(a)(i) of the *Environmental Planning and Assessment Act, 1979*, the proposal does not comply with the desired outcomes and the prescriptive measures of the Hornsby Development Control Plan 2013 Section 9.3.1 – General Design Principles, as the proposal would result in development that does not compliment nor is sympathetic to the existing character of the heritage conservation area and the elements that are significant to that area.
2. Pursuant to Section 79(c)(i)(b) and (e) of the EP&A Act, 1979, approval of the garage would set an undesirable precedent for further inappropriate development and would not be in the public interest.

- END OF REASONS FOR REFUSAL -

9 FURTHER REPORT - DEVELOPMENT APPLICATION - SECTION 96(2) - CONSTRUCTION OF AN AFFORDABLE RENTAL HOUSING DEVELOPMENT - 3 AND 5 FULBOURNE AVENUE, PENNANT HILLS

DA No:	DA/1021/2010/A (Lodged 23 May 2013)
Description:	Section 96(2) modification of an affordable rental housing development to increase the number of dwellings from 8 to 14
Property:	Lot 16 DP 10203, Lot 15 DP 10203, Nos. 3 and 5 Fulbourne Avenue, Pennant Hills
Applicant:	Mr Ram Shanker Kangatharan C/- Glendinning Minto & Associates Pty Ltd
Owner:	Mr R S Kangatharan
Estimated Value:	N/A
Ward:	C

- The application proposes modification of an affordable rental housing development to increase the number of dwellings from 8 to 14.
- The application was considered at Council's General Meeting on 11 June 2014 and deferred for further legal advice as to whether the modification could be considered under Section 96 of the *Environmental Planning and Assessment Act, 1979*, and whether it meets the character test. Further legal advice has been received from Mr Adrian Galasso, Senior Counsel.
- Eighteen submissions have been received in respect of the application.
- A Red Sticker has been placed on the application requiring that the matter be determined at a Council meeting.
- It is recommended that the application be refused as the proposed modification is not substantially the same development as approved.

RECOMMENDATION

THAT the application pursuant to Section 96(2) of the *Environmental Planning and Assessment Act, 1979*, for modification of Development Application No. DA/1021/2010/A for construction of an affordable rental housing development comprising 8 townhouses at Lot 16 DP 10203, Lot 15 DP 10203, Nos. 3 and 5 Fulbourne Avenue, Pennant Hills be refused for the reason detailed in Schedule 1 of Group Manager's Report No. PL61/14.

BACKGROUND

On 2 February 2011, Council approved Development Application DA/1021/2010 for construction of an affordable rental housing development comprising eight townhouses.

State Environmental Planning Policy (Affordable Rental Housing) 2009 was amended on 20 May 2011 to include provision for development proposals to be subject to a local character test.

On 23 May 2013, the subject Section 96(2) application was lodged for modification of consent to increase the number of dwellings from 8 to 12 dwellings through conversion of four of the townhouses to multi dwelling housing.

On 27 November 2013, the subject application was amended to include a basement car park and increase the number of dwellings to 14.

On 23 January 2014, the applicant submitted legal advice that the proposed modification is substantially the same development as approved, and submitted further amended plans to increase the area of landscaping and provide an outdoor clothes drying area for proposed first floor units.

On 17 April 2014, the applicant amended the proposal to include privacy screening and increase the separation between buildings.

On 11 June 2014, Council considered the subject application for modification of consent and resolved to defer the application to seek further independent legal advice as to whether this application should be considered under Section 96 of the *Environmental Planning and Assessment Act, 1979* and whether it meets the intent of the new changes to the legislation in reference to character tests.

In accordance with Council's resolution, Council's solicitor was instructed to seek further legal advice from Senior Counsel. On 30 June 2014, Council received a Memorandum of Opinion from Mr Adrian Galasso, Senior Counsel (SC) in response to Council's resolution (copy attached). On 1 July 2014, Council received an addendum to the advice (copy attached).

SITE

The site comprises two existing allotments located on the southern side of Fulbourne Avenue. The site has an area of 2,089.5m² and is of regular shape with a frontage of 41.5m and depth of 50.5m. The site has an average fall of 6% to the rear, south-western corner.

The site includes two existing single storey dwelling houses. An existing stormwater drainage easement is across the south-east corner of the site. The site includes several trees including a number of locally indigenous trees in the western rear part of the site.

The surrounding locality is a low density residential area. A child care centre on the corner of Fulbourne Avenue and Yarrara Road adjoins the eastern side boundary. The dwelling house adjoining the western side boundary is a heritage item of local significance.

The Main Northern Rail Corridor is located 45m east of the site and parallel to Yarrara Road.

The site is situated 670m north-east of Pennant Hills Railway Station and commercial centre.

APPROVED DEVELOPMENT

The approved development is for the demolition of two existing dwelling houses and construction of eight townhouses comprising two, two storey semi-detached townhouses at the front of the site and a row of four two storey townhouses at the rear of the site.

A central driveway provides access to the rear townhouses.

Each of the two semi-detached townhouse buildings at the frontage of the site includes a separate driveway off Fulbourne Avenue.

The approved townhouses include 4 x 3 bedroom and 4 x 4 bedroom dwellings.

Five of the townhouses include attached single garages. Four open car parking spaces, including a visitor space, are provided off the central driveway turning area.

The approved development has not physically commenced.

PROPOSED MODIFICATION

The proposal is for the modification of the approved plans to convert the townhouses to multi dwelling housing, include a basement car park and increase the number of dwellings from 8 to 14.

The proposed modification includes the following amendments:

- The approved semi-detached town houses at the frontage of the site would be modified to comprise multi dwelling housing with 2 x 1 bedroom ground floor units and 2 x 2 bedroom first floor units, each with entry at ground level. The second semi-detached townhouse building would be redesigned to comprise 2 x 3 bedroom townhouses and include two attached single garages.
- The approved townhouses at the rear of the site would be redesigned into multi dwelling housing comprising 4 ground floor units and 4 first floor units each with separate entry at ground level and containing 6 x 2 bedroom and 2 x 3 bedroom dwellings. The multi dwelling housing building would be constructed over a proposed basement car park.
- The driveway is to be relocated to the western side of the site for access to the proposed basement car park. The basement car park would include 14 resident car parking spaces and 1 visitor space and includes stair access.
- The addition of first floor deck areas to the first floor units and revised window placement at the western and eastern elevations.
- Increase in building height of the proposed multi unit housing building at the frontage by 0.63m and 0.18m at the rear of the site.
- Construction of a garbage storage facility at the street frontage.
- Units 3, 5 and 11 would be provided for affordable rental housing.

ASSESSMENT

The development application has been assessed having regard to the '*Metropolitan Plan for Sydney 2031*', 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). The following issues have been identified for further consideration.

1. STRATEGIC CONTEXT

1.1 Metropolitan Plan for Sydney and (Draft) North Subregional Strategy

The *(Draft) Metropolitan Strategy for Sydney 2031* is a broad framework to provide for Sydney's growth to help plan for housing, employment, transport, infrastructure, the environment and open space. 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 North Subregion comprises Hornsby, Kuring-gai, Manly, Warringah and Pittwater Local Government Areas. The *Draft North Subregional Strategy* acts as a framework for Council in its preparation of the *Comprehensive LEP* by the end of 2013.

Within the North Subregion, the *Draft Metropolitan Strategy* proposes:

- Population growth of 81,000 from the current 2011 baseline of 529,000
- Housing growth of 37,000 from the current 2011 baseline of 204,000
- Employment growth of 39,000 from the current 2011 baseline of 186,000

The proposed modification would be consistent with the *Metropolitan Plan for Sydney 2031* and would provide 6 dwellings in addition to the approved dwellings which would assist in achieving Council's dwelling target.

2. STATUTORY CONTROLS

Section 79C(1)(a) of the *Environmental Planning and Assessment Act, 1979* requires Council to consider "*any relevant environmental planning instruments, draft environmental planning instruments, development control plans, planning agreements and regulations*".

2.1 Environmental Planning and Assessment Act 1979 – Section 96(2)

Pursuant to Section 96(2) of the Act, Council may consider an application for modification of development consent provided that, inter alia:

(2) **Other modifications**

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

- (a) *it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and*
- (b) *it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and*
- (c) *it has notified the application in accordance with:*
 - (i) *the regulations, if the regulations so require, or*
 - (ii) *a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
- (d) *it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.*

- (3) *In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 79C (1) as are of relevance to the development the subject of the application.*
- (4) *The modification of a development consent in accordance with this section is taken not to be the granting of development consent under this Part, but a reference in this or any other Act to a development consent includes a reference to a development consent as so modified.*

The proposed modification has been notified and the submissions received in response considered in the assessment of the application.

The submissions raise concerns that the proposed modification is not substantially the same development as approved. The applicant submitted legal advice concluding that the proposed modification involving an increase in dwelling numbers and change in dwelling type from townhouse to multi-unit housing is substantially the same development as approved pursuant to Section 96(2)(a), primarily as the approved built form would be maintained.

Council's solicitor confirmed the proposed modification would be consistent with decisions of the Land and Environment Court involving modifications that were considered substantially the same development as approved.

In accordance with Council's resolution at its meeting on 11 June 2014, further legal advice has been obtained from Mr Adrian Galasso, Senior Counsel concerning whether the development as modified, is substantially the same development for which consent was originally granted. The legal advice acknowledges that there are arguments supporting the position that the general built form envelopes will remain the same. However, the advice notes that the modified development involves a number of changes that are not insignificant (both quantitative and qualitative) from the approved development as follows:

- Provision of a basement car park;
- Removal of the central driveway and introduction of a boundary access ramp;
- Narrowing of the space between the buildings in the front portion of the site;
- Increase (almost double) in the number of units;
- Reduction in the size of the majority of the units; and
- Alteration in elevations to the built form.

Ultimately, it is Council's role to determine whether the proposed development as modified is substantially as the approved development. However, the legal advice concludes that cumulatively, the above changes are such that it would be open to Council to conclude that the proposed modified development is not substantially the same as that approved. In accordance with the advice of Senior Counsel, it is recommended that the application be refused.

A copy of the legal advice from Senior Counsel forms an attachment to this report.

2.2 Hornsby Local Environmental Plan 2013

The subject land is zoned R2 Low Density Residential under the Hornsby Local Environmental Plan 2013 (HLEP). The objectives of the R2 zone are:

- (a) *To provide for the housing needs of the community within a low density residential environment.*

- (b) *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

The approved and proposed dwellings are defined as 'multi dwelling housing' under HLEP as follows:

Multi dwelling housing means 3 or more dwellings (whether attached or detached) on one lot of land, each with access at ground level, but does not include a residential flat building.

Pursuant to Part 2 of HLEP, residential development other than dwelling houses is prohibited in the R2 Low Density Residential Zone. Consequently, the approved development would be prohibited under the provisions of *State Environmental Planning Policy (Affordable Rental Housing) 2009*.

Notwithstanding the development is prohibited, the subject development consent is valid and could be modified in accordance with Section 96 of the Act, subject to Council being satisfied the modified development is substantially the same as approved taking into consideration the relevant matters under Section 79C.

Clause 4.3 of *HLEP* permits a maximum building height of 8.5 metres for development in the subject R2 Low Density Residential zone. The proposed modification would comply with this requirement.

Clause 5.10 of *HLEP* provides for the conservation of heritage items, heritage conservation areas, archaeological sites and Aboriginal heritage. The proposed modification involves development in the vicinity of a heritage item at No. 7 Fulbourne Avenue, Pennant Hills comprising an Inter-War weatherboard cottage of local significance. The proposed modification generally maintains the approved built form and would not detract from the significance of the adjoining heritage item. Refer to comments in Section 2.8.3

2.3 State Environmental Planning Policy (Affordable Rental Housing) 2009

The application has been assessed against the requirements of *State Environmental Planning Policy (Affordable Rental Housing) 2009 (AHSEPP)*. The provisions of the Policy provide planning incentives for increasing the supply of affordable rental housing and to retain existing rental housing. The planning incentives are applicable for sites that are within walking distance of public transport.

On 20 May 2011, the Policy was amended to exclude private sector medium and high density developments from low density residential areas. The amendments include a local character test and public transport test for permissibility of development under the Policy.

The applicable provisions under Part 2 Division 1 of the Policy in respect to the subject site and the modified development are discussed as follows:

2.3.1 Clause 10 – Development to Which Division Applies

Pursuant to Clause 10, the Policy applies for the purpose of dual occupancies, multi-dwelling housing and residential flat buildings if that form of development is permitted under an environmental planning instrument and the site is within an accessible area.

At the time of the consent approval on 2 February 2011, multi-unit housing was permitted in the Residential A (Low Density) Zone under *HSLEP 1994* with development consent. The site is within an accessible area being within 670m of Pennant Hills Railway Station. The Policy is therefore relevant to the proposed modification.

2.3.2 Clause 13 – Floor Space Ratio

The affordable housing component of the modified proposal comprises 41% of the total gross floor area of 1,187m². Pursuant to Clause 13, the maximum floor space ratio permissible for the proposal is 0.81:1. A floor space ratio of 0.56:1 is proposed for the site.

The proposal includes three affordable housing units in accordance with the provision for a minimum of 20% of units to be for affordable rental housing.

2.3.3 Clause 14 – Standards That Cannot be Used to Refuse Consent

Pursuant to Clause 14, a consent authority must not refuse a development application that complies with the standards for site area, landscaped area, deep soil zones, solar access, parking and dwelling size as assessed in the table below.

Affordable Housing Non-Discretionary Standards			
Control	Proposal	Requirement	Compliance
Site Area	2,089.5m ²	450m ²	Yes
Landscaped Area	Approved - 34% Proposed – 34%	30%	Yes
Deep Soil Zone	Approved - 28% Proposed – 17%	15%	Yes
Solar Access	71% dwellings receive 3 hrs between 9am and 3pm	Min 70% dwellings 3 hrs between 9am and 3pm	Yes
Car Parking	15 spaces	0.5 spaces 1 br x 2 = 1 1 space 2 br x 8 = 8 1.5 spaces 3 br x 4 = 6	Yes
Minimum Dwelling Size	Unit 1, 2 br – 70m ² Unit 2, 3 br – 96m ² Unit 3, 3 br – 96m ² Unit 4, 2 br – 70m ² Unit 5, 1 br – 72m ² Unit 6, 1 br – 72m ² Unit 7, 3 br – 133m ² Unit 8, 3 br – 133m ² Unit 9, 2 br – 74m ² Unit 10, 2 br – 74m ² Unit 11, 2 br – 74m ² Unit 12, 2 br – 74m ² Unit 13, 2 br – 75m ² Unit 14, 2 br – 75m ²	70m ² 95m ² 95m ² 70m ² 50m ² 50m ² 95m ² 95m ² 70m ² 70m ² 70m ² 70m ² 70m ² 70m ²	Yes Yes Yes Yes Yes Yes Yes Yes Yes Yes Yes Yes Yes Yes

As indicated in the above table, the proposed modification complies with the *AHSEPP* non-discretionary standards whereby a consent authority must not refuse development consent.

2.3.4 Clause 15 – Design Requirements

The Policy requires consideration of the Seniors Living Policy *Urban Design Guidelines For Infill Development (SL Design Guidelines)*. The guidelines include consideration of context, site planning and design, impacts on streetscape, impacts on neighbours and internal site amenity.

Responding To Context

The appearance of the approved development in the streetscape would alter in respect to the first floor balconies of proposed Units 13 and 14, the proposed garages and first floor windows of townhouses Unit 7 and Unit 8. The proposed appearance of the development would not be inconsistent with two storey dwelling house development permissible in the low density residential area.

The proposed modification would generally maintain the built form appearance of the approved development and would be acceptable in respect to the *SL Design Guidelines*.

Site Planning and Design

The proposed modification would result in a redesign of the layout and siting of approved buildings and driveways. The reduction in the number of driveways and provision of basement carparking would improve pedestrian safety and the residential amenity of the development. The location of the driveway along the western side boundary would not result in additional amenity impacts on adjoining residents subject to the provision of boundary fencing.

The proposed increase in height of the development would not exceed the 8.5m height limit applicable to the development under the provisions of the *AHSEPP* at the time of the approval.

The proposal would reduce the ground floor rear setback from 5.9m to 5.6m and increase the first floor rear setback from 4.0m to 5.6m. The proposal would replace the recessed ground floor patio areas with external decks setback 3.6m-5.0m from the rear boundary. The proposed decks would reduce the approved patio setbacks by 0.5m which is considered acceptable.

The site planning and design of the proposed modification is consistent with the *SL Design Guidelines*.

Streetscape Impacts

The proposed modification to the development would increase the number of dwellings at the frontage of the site and the size of two first floor balconies.

The proposed modification would retain a 3.8m-4.3m wide landscaped area along the frontage of the site. Front courtyards would be enclosed with fencing comprising brick pier with metal infill panels, and screened by landscaping. The proposal would require modification of the landscape plan in accordance with the modified ground floor plan. The proposed modification would not otherwise significantly detract from the existing streetscape.

Impacts on Neighbours

The proposed modification includes provision of highlight windows and frosted glass treatment to first floor windows to ensure privacy of neighbouring residents.

The operation of the driveway along the western side boundary would not detract from the amenity of adjoining residents subject to the implementation of the current condition for installation of boundary fencing.

Internal Site Amenity

The proposed modification increases the number of dwellings from 8 to 14. Two first floor balconies are proposed for dwelling private open space at the frontage of the proposed western multi dwelling housing building. The two balconies would not detract from the amenity of the streetscape.

The proposed separation between buildings would reduce from 9.5m to 5.0m. The proposed modification includes privacy screens and louvers at the interface between the two buildings to minimise overlooking of dwelling courtyards and unit entries. In this regard, the proposed modification is acceptable in respect to the *SL Design Guidelines* to provide useable private open space areas.

The internal site amenity of the proposed modification is satisfactory in respect to the *SL Design Guidelines*, particularly the modification to provide basement car parking, in lieu of ground level vehicle parking, turning areas and driveway from the central part of the site.

2.3.5 Clause 16A – Character of Local Area

In accordance with Council's resolution on 11 June 2014, legal advice has been received (copy attached) concerning whether the modified development is compatible with the character of the local area. The advice notes that Clause 16A requires Council to consider (but not necessarily be satisfied in respect of an affirmative answer) whether the design of the development is compatible with the local area. Specifically, the advice states that:

Compatibility of the design with the character of the local area is but one of the matters that the Council is required to take into consideration in determining the application, but is not necessarily required to be satisfied as to an affirmative answer before it approves the modification application. Additionally, it is a matter of merit, and in particular fact and degree, as a function of the particular characteristics and character of the local area. That character and those characteristics are not matters with which I have been briefed or about which I am familiar.

For those reasons, and in particular because the engagement of clause 16A (via s96(3), and then s.79C(1)(a)(i)) is as to a merit matter, I do not express an opinion concerning this second question.

An assessment of the modified development in regards to the local character test and design requirements is addressed below.

The surrounding area is a low density residential comprising dwelling houses on suburban lots.

Clause 16A of the Policy provides as follows:

A consent authority must not consent to development to which this Division applies unless it has taken into consideration whether the design of the development is compatible with the character of the local area.

The applicant submits the design of the proposed modification is compatible with the local area for the following reasons:

1. *The proposal is provided with front, side and rear setbacks consistent with the surrounding and adjoining development.*
2. *The proposal provides for two storey dwellings with a conventional pitched roof form reflective of surrounding development.*
3. *The massing of the proposed front buildings is consistent with that of 2 x two storey dwelling houses and which in turn is consistent with a low density outcome.*

4. *The proposal has been designed having regard to the adjoining heritage item.*
5. *The proposal provides for a landscape outcome commensurate with the requirements of the Council.*
6. *The proposal is to incorporate colours and materials reflective of surrounding development.*
7. *The proposal provides for the provision of significant replenishment vegetation in order to maintain the treed character of the local area.*

The proposed modification generally maintains the townhouse built form and building envelope of the approved development. The proposed modification would not significantly change the appearance of the approved development in respect to the pattern of detached dwelling house development in the streetscape.

2.3.6 Clause 17 – Must be Used for Affordable Housing for 10 Years

Pursuant to Clause 17, the affordable housing must be used for a period of 10 years and managed by a registered community housing provider and subject to a restriction on title. A minimum of 20% of dwellings must be for affordable rental housing, pursuant to Clause 13.

The applicant has nominated proposed Units 3, 5, and 11 for affordable rental housing.

2.4 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 submitted BASIX Certificate for the proposed units is satisfactory.

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

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

The approved development was assessed as satisfactory against the objectives of the above *Policy*. No further action is required in respect to the proposed modification.

2.6 Sydney Regional Environmental Plan No. 20 – Hawkesbury-Nepean River

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

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

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

On 1 March 2013, the *Environmental Planning and Assessment Act, 1979* was amended so that a DCP provision will have no effect if it has the practical effect of “*preventing or unreasonably restricting development*” that is otherwise permitted and complies with the development standards set out in relevant Local Environmental Plans and State Environmental Planning Policies.

The principal purpose of a development control plan is to provide guidance on the aims of any environmental planning instrument that applies to the development; facilitating development that is permissible under any such instrument; and achieving the objectives of land zones under any such instrument. The provisions of a development control plan made for that purpose are not statutory requirements.

2.8 Hornsby Development Control Plan 2013

The proposed modification has been assessed against the relevant provisions of the Hornsby Development Control Plan 2013 as follows:

2.8.1 Waste Management

The proposed modification increases the number of dwellings from 8 to 14 and includes an adequate bin storage facility located at the frontage of the site.

The provision of an area at the frontage for the collection of bulky waste items would be required for the proposal. A site caretaker would be responsible for ongoing waste management of the development.

2.8.2 Stormwater Drainage

The proposed basement car park adjoins the overland flow path of Council's stormwater drainage system across the south-east corner of the site. To avoid potential flooding of the basement car park through an open ventilation system, mechanical ventilation of the basement car park would be required for the proposal.

The submitted stormwater drainage concept plan is acceptable for the proposal.

2.8.3 Heritage Conservation

A heritage item adjoins the western boundary of the site and comprises an Inter-War weatherboard cottage (No. 7 Fulbourne Avenue, Pennant Hills).

The proposed modification maintains the approved building envelope other than the proposed basement car park and driveway along the western side boundary. The proposed driveway and basement car park would not detract from the significance of the adjoining heritage item.

2.9 Section 94 Development Contributions

The proposed increase in the number of dwellings would be subject to modification of the required development contribution.

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 modification would not significantly alter the impact of the approved development on the natural environment. Should Council be of the mind to support the proposed modification, the current consent conditions are appropriate for the protection of existing trees to be retained.

The proposal would not adversely impact on downstream water quality subject to implementation of erosion and sediment control measures and the provision of an onsite stormwater detention system.

3.2 Built Environment

3.2.1 Built Form

The proposed modification generally maintains the approved built form of the development which would not significantly detract from the residential character of the locality.

3.2.2 Traffic and Car Parking

The proposed modification includes a total of 15 car parking spaces and complies with the required 15 car parking spaces in accordance with the AHSEPP provisions.

The proposed car parking is considered adequate for the proposed development and would not detract from the efficiency of the local road network.

The proposed modification would result in the approved driveway being relocated from the eastern to the western side of the site, a reduction in the number of driveways from 3 to 2 driveways and a basement car park provided for the development. Accordingly, the proposed modification would result in an improved outcome for traffic safety.

3.3 Social Impacts

The proposed modification would increase opportunities for affordable rental housing and be of positive social impact in addressing demand for well located, affordable housing, in close proximity to public transport and employment.

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 proposed modification would not alter the suitability of the site for residential 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 modification was placed on public exhibition and was notified to nearby landowners and previous respondents between 7 June and 20 June 2013. The notification was extended from 20 June to 4 July 2013 in accordance with Council's notification requirements. During this period, Council received 13 submissions. Amended plans were notified from 3 December to 18 December 2013 when 5 submissions were received. The map below illustrates the location of those nearby landowners who made a submission that are in close proximity to the development site.



NOTIFICATION PLAN

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

Eighteen submissions object to the modification of the development, generally on the following grounds:

- Development not substantially the same as approved;
- Unacceptable traffic safety and inadequate on-street parking;
- Unacceptable streetscape impact;
- Reduced residential amenity and privacy;
- Development inconsistent with residential character;
- Development fails SEPP character test;
- Development does not meet *S L Design Guidelines*.

- Proposal is now prohibited and not in the public interest.

The merits of the matters raised in community submissions have been addressed in the body of the report.

6. THE PUBLIC INTEREST

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

The proposed modification is not substantially the same development as approved. Accordingly approval of the application for modification would not be in the public interest.

CONCLUSION

The application is for the modification of approved plans to convert townhouses to multi dwelling housing, include a basement car park and increase the number of dwellings from 8 to 14.

The legal advice submitted by the applicant and confirmed by Council's solicitor is that the proposed modification is substantially the same development as approved.

Further legal advice from Mr Adrian Galasso, Senior Counsel has been received in accordance with Council's resolution on 11 June 2014. The advice concludes that the modification would not result in development which was substantially the same as that for which the original approval was granted.

The proposed modification complies with the non-discretionary development standards under the *AHSEPP* and is acceptable in respect to the *S L Design Guidelines*.

A total of 18 submissions were received in response to the proposal.

The application is recommended for refusal as the proposed modification is not substantially the same development as approved.

ROD PICKLES
Manager - Development Assessment
Planning Division

JAMES FARRINGTON
Group Manager
Planning Division

Attachments:

1. Minutes of Meeting 11/6/2014
2. Memorandum of Opinion
3. Corrigendum of Minutes

File Reference: DA/1021/2010/A

Document Number: D03363187

SCHEDULE 1

1. The application for modification of development consent is unsatisfactory pursuant to Section 96(2) of the *Environmental Planning and Assessment Act, 1979* as the proposed modification is not substantially the same development as approved.

- END OF REASONS FOR REFUSAL -

10 REPORTING VARIATIONS TO DEVELOPMENT STANDARDS

EXECUTIVE SUMMARY

- In accordance with Department of Planning and Environment's *Planning Circular PS 08-14*, Council is required to report variations to development standards for development applications approved under delegated authority, which relied upon *State Environmental Planning Policy No. 1 – Development Standards (SEPP 1)* or Clause 4.6 of the *Hornsby Local Environmental Plan - 2013. (HLEP)*
- Council's consideration of this report ensures Council's obligation to monitor variations to development standards is complied with.

RECOMMENDATION

THAT the contents of Group Manager's Report No. PL57/14 be received and noted.

PURPOSE

The purpose of this report is to advise Council of determined development applications under delegated authority involving a *SEPP 1* or *Clause 4.6* variation to a development standard for the period 1 April 2014 to 30 June 2014.

DISCUSSION

Department of Planning and Environment's *Circular B1*, issued in March 1989, requested that councils monitor the use of the Secretary's assumed concurrence under *SEPP 1* on a quarterly basis. This reporting requirement remains effective.

Monitoring of variations to development standards is important to provide the Department and councils with an overview of the manner in which established development standards are being varied and whether the assumed concurrence is being used as intended. This enables Council and the Department to determine whether development standards are appropriate, or whether changes are required.

The Department issued *Circular PS 08-014* on 14 November 2008. The purpose of the Circular was to remind councils of their responsibilities to monitor the use of the Secretary's assumed concurrence under *SEPP 1*. Councils were reminded of the need to keep accurate records of the use of *SEPP 1* and to report on a quarterly basis.

The *Circular* also provides that councils are required to adopt the following four measures:

1. Establish a register of development applications determined with variations in standards under *SEPP 1*.
2. Require all development applications where there has been a variation greater than 10% in standards under *SEPP 1* to be determined by full council (rather than General Manager or nominated staff member).
3. Provide a report to Council on the development applications determined where there had been a variation in standards under *SEPP 1*.
4. Make the register of development applications determined with variations in standards under *SEPP 1* available to the public on the council's website.

In accordance with Point 3 of Department Circular, attached is a list of development applications determined April 2014 to 30 June 2014.

A copy of the attachment to this report is also reproduced on Council's website.

BUDGET

There are no budget implications.

POLICY

This report addresses Council's reporting obligations for development applications determined where there has been a variation in standards under *SEPP 1*. Under the HLEP 2013, the application of the provisions of *SEPP 1* has been replaced by *Clause 4.6* (exceptions to development standards). The Department of Planning and Environment has advised that the current reporting practice for variation to development standards will continue to apply for applications involving a submission pursuant to *Clause 4.6* of the HLEP 2013.

CONCLUSION

Council is required to monitor the manner in which development standards are being varied. This assists in determining whether changes are required to relevant standards. This report provides advice to Council on standards varied under delegated authority which relied upon SEPP 1 or Clause 4.6 of the HLEP during the reporting period from 1 April 2014 to 30 June 2014.

RESPONSIBLE OFFICER

The officer responsible for the preparation of this report is the Group Manager – Planning Division – James Farrington who can be contacted on 9847 6750.

JAMES FARRINGTON
Group Manager
Planning Division

Attachments:

1. SEPP 1 Returns - Quarter for 1 April 2014 to 30 June 2014

File Reference: F2004/07599
Document Number: D03310359

11 DESIGN QUALITY OF HIGH DENSITY DEVELOPMENT

EXECUTIVE SUMMARY

- At its meeting on 11 June 2014, Council resolved to forward the Hornsby West Side Planning Proposal to the Minister for Planning for finalisation, to amend and re-exhibit the supporting development controls and that a separate report be prepared concerning options for ensuring design quality of future high density development.
- Along with the Hornsby West Side, a number of other planning strategies for Hornsby Shire have recently been gazetted which permit large scale high density development in town centres (Hornsby Shire Housing Strategy and Epping Urban Activation Precinct).
- Options to encourage the highest standard of architecture and urban design include design competitions, establishing an Independent Hearing and Assessment Panel or Design Review Panel, the addition of a design excellence clause in the Hornsby Local Environmental Plan (HLEP) 2013 or referrals to an architecture/urban design consultant. Consideration of these options should apply to all large scale high density development across the Shire.
- It is recommended that a design excellence clause be inserted in the HLEP 2013 applying to development proposals over 10 storeys in height. It is also recommended that development applications be assessed against the clause through a referral to an expert consultant.

RECOMMENDATION

THAT:

1. Council endorse progression of the Design Excellence Planning Proposal attached to Group Manager's Report No. PL53/14 and forward the Planning Proposal to the Minister for Planning seeking a Gateway Determination to exhibit the Proposal.
2. Should the Minister determine under Section 56(2) of the *Environmental Planning and Assessment Act 1979* that the matter may proceed without significant amendment to the Proposal, Council publicly exhibit the Planning Proposal in accordance with the Gateway Determination.
3. Following the exhibition, a report on submissions received in response to the public exhibition be presented to Council.
4. The Group Manager, Planning Division prepare an internal policy for referring development applications over 10 storeys in height to a suitably qualified urban design / architecture consultant for review against the design excellence clause (once implemented).

PURPOSE

The purpose of this report is to address the design quality of high density development by presenting options to ensure that tall buildings are designed to the highest standard of architecture and urban design.

BACKGROUND

At its meeting on 11 June 2014, Council considered Group Manager's Report No. PL41/14 concerning the exhibition of the Hornsby West Side Planning Proposal. Council resolved (in part) to:

1. *Forward the Hornsby West Side Planning Proposal attached to Group Manager's Report No. PL41/14 to the Minister for Planning for finalisation pursuant to Section 59 of the Environmental Planning and Assessment Act 1979.*
2. *Re-exhibit revised Development Control Plan amendments for a period of 28 days incorporating:*
 - 2.1 *Sustainability requirements such as car share schemes, green walls and roofs and thermal efficiency;*
 - 2.2 *A requirement for a wind effects report for buildings over 13 storeys in height;*
 - 2.3 *Provisions addressing State Environmental Planning Policy 65 Design Quality of Residential Flat Buildings;*
 - 2.4 *A minimum site frontage of 40 metres for development over 10 storeys in height;*
 - 2.5 *An increase in the podium height for the Odeon Cinema from two storeys to three storeys;*
 - 2.6 *Administrative amendments including labelling Gateway sites, confirming that the western RSL car park in Ashley Street is included in the Planning Proposal and updating diagrams to reflect traffic modelling recommendations.*
3. *A separate report be prepared and presented to Council concerning options for ensuring design quality of future high density development.*

In accordance with Council's resolution, the Hornsby West Side Planning Proposal was forwarded to the Minister for Planning at the end of June 2014. The revised Development Control Plan amendments are currently on exhibition until 29 August 2014. This report addresses part 3 of Council's resolution to consider options for ensuring design quality of future high density development.

DISCUSSION

This report discusses the legislation which currently applies to high density development in relation to design quality, and provides options for Council to implement additional design quality measures.

State Environmental Planning Policy (SEPP) 65 – Design Quality of Residential Flat Development applies to residential flat buildings of 3 or more storeys containing 4 or more dwellings. The State Government policy seeks to improve the design quality of residential flat buildings in NSW. It contains principles for good design and requires Council to evaluate the design quality of proposed development against the following 10 principles:

Context	<i>Good design responds and contributes to its context. Context can be defined as the key natural and built features of an area.</i>
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<i>Scale</i>	<i>Good design provides an appropriate scale in terms of the bulk and height that suits the scale of the street and the surrounding buildings.</i>
<i>Built form</i>	<i>Good design achieves an appropriate built form for a site and the building's purpose, in terms of building alignments, proportions, building type and the manipulation of building elements.</i>
<i>Density</i>	<i>Good design has a density appropriate for a site and its context, in terms of floor space yields (or number of units or residents).</i>
<i>Resource, energy and water efficiency</i>	<i>Good design makes efficient use of natural resources, energy and water throughout its full life cycle, including construction.</i>
<i>Landscape</i>	<i>Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in greater aesthetic quality and amenity for both occupants and the adjoining public domain.</i>
<i>Amenity</i>	<i>Good design provides amenity through the physical, spatial and environmental quality of a development.</i>
<i>Safety and security</i>	<i>Good design optimises safety and security, both internal to the development and for the public domain.</i>
<i>Social dimensions and housing affordability</i>	<i>Good design responds to the social context and needs of the local community in terms of lifestyles, affordability, and access to social facilities.</i>
<i>Aesthetics</i>	<i>Quality aesthetics require the appropriate composition of building elements, textures, materials and colours and reflect the use, internal design and structure of the development.</i>

The requirement to comply with SEPP 65 and the above principles is reiterated in the Hornsby Development Control Plan 2013 in the chapters relating to residential flat buildings of 3, 5 and 6 or more storeys and the chapter relating to mixed use development. However, during the preparation and exhibition of the Hornsby West Side Planning Proposal, the issue of design quality was raised. In particular, how to ensure that the new tall buildings proposed, which will change the skyline of Hornsby, are designed to the highest standard of architecture and urban design.

A number of planning strategies for Hornsby Shire have recently been adopted or gazetted which permit large scale high density development in town centres and major centres as follows:

- 10 storey Housing Strategy Precincts in Thornleigh, Waitara and Asquith
- 10 and 25 storey development within the Hornsby West Side Precinct
- 15 and 22 storey development within the Epping Town Centre

Any design considerations applying to large scale high density development within the Hornsby West Side precinct should equally apply to all large scale developments across the Shire. Therefore, an appropriate measure of 10 or more stories should apply when considering design quality for all future development within Hornsby Shire.

OPTIONS

The following options are examples of commonly applied methods that Council may apply to encourage the highest standard of architecture and urban design.

Option 1: Design Competition

A Design Competition is a contest between designers to create the winning design for a client's design brief. The landowner/developer is the proponent responsible for funding the competition, prepares the design brief and may either invite a shortlist of architectural design firms to participate or advertise an open competition and call for expressions of interest. Council's role in the process is to facilitate the design jury which would be represented by nominated Council representatives, the applicant and an independent.

A council's planning controls may require a design competition. However, due to the additional cost and effort required of the proponent by a competitive design process, a development bonus in height or floor space is often an outcome of the process.

Advantages

- Encourages high quality and innovative design
- Offers a diversity of architectural responses

Disadvantages

- High cost to applicant
- Difficulty and uncertainty for Council in offering development bonuses to offset the costs
- Winning design may not be feasible to construct
- Costs for staff administration
- Extended timeframes

Option 2: Independent Hearing and Assessment Panel

An Independent Hearing and Assessment Panel (IHAP) is a panel of appropriately qualified people independent of Council which can be established to comment on, or determine a range of development applications on behalf of Council. The establishment of an IHAP would provide the opportunity to call upon independent experts, along with community representatives, to consider the design quality of a proposal. The IHAP could also be given delegation to determine the development application.

Advantages

- Independent development application determination or recommendation
- Panel could include experts in architecture and urban design

Disadvantages

- Costs to Council for remuneration for panel members
- Costs to Council and resources to administer and run the panel
- Extended assessment timeframe

Option 3: SEPP 65 Design Review Panel

SEPP 65 contains provisions for the establishment of Design Review Panels. These Panels can provide independent advice to councils about the quality of developments against the SEPP 65 Design quality principles. The Panels can also provide pre-lodgement design advice to applicants regarding compliance with SEPP 65. The State Government has been conducting a review of SEPP 65 and the Residential Flat Design Code over the past two years. Submissions on the review were received by the Department of Planning and Environment in 2012 and although no further details or recommendations have been released, the Department has confirmed that design review panels are being examined as part of the review of the SEPP.

Advantages

- Independent expert assessment specific to the design quality principles in SEPP 65
- Panel could include experts in architecture and urban design

Disadvantages

- Costs to Council for remuneration for panel members
- Costs to Council and resources to administer and run the panel
- Extended assessment timeframe
- Uncertainty of the future of Design Review Panels due to the review of SEPP 65

Option 4: LEP Clause

Almost half of Sydney councils including Sydney City, The Hills, Strathfield, Liverpool, Parramatta, Warringah, Manly, Gosford and Wyong have a Design Excellence clause in their local environmental plan. There is scope under the Standard Instrument to add a clause under Part 6 – Additional Local Provisions using wording consistent with other gazetted LEPs. Most clauses outline that development consent must not be granted unless, in the opinion of Council, the proposal exhibits design excellence and set out what Council would assess in determining design excellence. A Planning Proposal would be required to be progressed to insert such a clause in the Hornsby Local Environmental Plan 2013.

Advantages

- Adds a statutory requirement for high quality design to Council's planning controls
- Strengthens the design detail elements in the Hornsby Development Control Plan 2013
- Efficient and less complex than setting up a panel

Disadvantages

- Review of design quality remains the responsibility of planning staff/Councillors

Option 5: Referrals to an Architecture/Urban Design Consultant

This option would involve the establishment of a panel of suitably qualified consultants that would be available from time to time to undertake a review of the design merit/quality of proposals. A panel of three or four consultants could be engaged to provide consulting services to Council. Development applications could be referred to a consultant for a design quality referral.

Advantages

- Independent expert assessment of design excellence
- Minimal cost compared to formal panels

Disadvantages

- Costs to Council for remuneration for consultants
- Costs to Council and resources to administer

A combination of Option 4 (LEP clause) and Option 5 (Referrals to a consultant) is recommended. Introducing a design excellence clause in the HLEP would establish a statutory requirement with specific matters which would be required to be addressed in achieving a high standard of architectural and urban design. Having a requirement for design excellence in the HLEP elevates it from the other design and building envelope controls in the HDCP and strengthens the requirement to achieve a built form which responds to the site, locality, landscape and streetscape.

However, the review of design quality against the new HLEP clause would remain the responsibility of planning staff. It is recommended that the Planning Division prepare an internal policy for referring development applications, to which the new LEP clause applies, to a consultant for a design excellence review. This would allow an independent expert assessment of design excellence against the LEP clause at a minimal cost to Council compared to formal panels.

As discussed above, this option would involve the establishment of a panel of architects/urban design consultants that would be available from time to time to comment on whether proposals meet the design excellence criteria. A panel of three or four consultants would be engaged to provide consulting services to Council. Development applications would be referred to a consultant for a design excellence referral as part of the assessment of the application.

A Design Excellence Planning Proposal has been drafted and is attached to this report. The Planning Proposal outlines the objectives, intended outcomes and justification for the proposal and a consultation strategy for endorsement by the Department of Planning and Environment.

The Planning Proposal seeks to amend the HLEP 2013 by addition of the following clause under Part 6 – Additional local provisions:

6.8 Design excellence

- (1) *The objective of this clause is to deliver the highest standard of architectural and urban design.*
- (2) *This clause applies to development involving the construction of a new building or external alterations to an existing building which is, or will be, at least 32.5 metres in height.*
- (3) *Development consent must not be granted to development to which this clause applies unless, in the opinion of the consent authority, the proposed development exhibits design excellence.*
- (4) *In considering whether development to which this clause applies exhibits design excellence, the consent authority must have regard to the following matters:*
 - (a) *whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved,*

- (b) *whether the form and external appearance of the proposed development will improve the quality and amenity of the public domain,*
- (c) *whether the proposed development detrimentally impacts on view corridors,*
- (d) *any relevant requirements of applicable development control plans,*
- (e) *whether the proposed development detrimentally impacts on pedestrian movements and experience,*
- (f) *how the proposed development addresses the following matters:*
 - (i) *the suitability of the land for development,*
 - (ii) *the existing and proposed uses and use mix,*
 - (iii) *any heritage issues and streetscape constraints,*
 - (iv) *the location of any tower proposed, having regard to the need to achieve an acceptable relationship with other towers and/or other development (existing or proposed) on the same site or on neighbouring sites in terms of separation, setbacks, amenity and urban form,*
 - (v) *the bulk, massing and modulation of buildings,*
 - (vi) *street frontage heights,*
 - (vii) *environmental impacts, such as sustainable design, overshadowing and solar access, visual and acoustic privacy, noise, wind and reflectivity,*
 - (viii) *the achievement of the principles of ecologically sustainable development,*
 - (ix) *pedestrian, cycle, vehicular and service access and circulation requirements,*
 - (x) *the impact on, and any proposed improvements to, the public domain,*
 - (xi) *achieving appropriate interfaces at ground level between the building and the public domain,*
 - (xii) *excellence and integration of landscape design.*

Should Council be of a mind to insert the above design excellence clause into the HLEP 2013, it is recommended that Council endorse the exhibition of the attached Design Excellence Planning Proposal by forwarding it to the Department of Planning and Environment for Gateway Determination.

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*. The proposal is not contrary to any SEPP or relevant Section 117 Directions. An assessment of relevant SEPPs and Section 117 Directions is contained in the Planning Proposal.

CONSULTATION

"A guide to preparing local environmental plans" was prepared by the Department of Planning and Environment (2009) to assist councils in preparing planning proposals and LEPs. In accordance with the *Guidelines*, the Planning Proposal is required to be exhibited for a period of 28 days. A consultation strategy relevant to the public exhibition of the draft LEP has been prepared as part of the *Planning Proposal* for endorsement by the Department. Exhibition would involve a newspaper advertisement, notification of Council's website and letters to landowners whose land may be developed up to or greater than 10 storeys.

BUDGET

There are no budget implications for the preparation of the Design Excellence Planning Proposal. However, the implementation of a policy requiring an assessment of design quality against the proposed HLEP design excellence clause would require funding for the referral to an architect or urban design expert. Funding of this process would be absorbed by the Planning Division budget given the higher development application fee anticipated from this scale of development and the limited number of eligible development sites.

POLICY

It is recommended that an internal policy be drafted by the Group Manager, Planning Division to set out:

- the engagement of a panel of architects/urban design consultants;
- the process for referring development applications over 10 storeys in height to a consultant from the panel for an assessment against the design excellence clause (once implemented); and
- an amendment to reporting templates to include comments from the consultant in regard to design excellence as part of the overall assessment of development applications over 10 storeys in height.

The above process would assist Council's assessment officers to undertake rigorous assessment of proposals that exceed 10 storeys. Feedback to developers would be provided throughout the application process with the objective of ensuring that final plans for determination represent an appropriate architectural response and achieve design excellence.

CONCLUSION

There are a number of options available to Council to encourage design excellence. These include Design Competitions, the establishment of an Independent Hearing and Assessment Panel or SEPP 65 Design Review Panel, the inclusion of a Design Excellence clause in the HLEP 2013 or referrals to an architectural review panel.

It is recommended that both a design excellence clause be inserted in the HLEP 2013 and a process for referrals to an architecture/urban design consultant be implemented. A Design Excellence Planning Proposal is attached to this report for Council endorsement for exhibition subject to a Gateway Determination from the Department of Planning and Environment.

RESPONSIBLE OFFICER

The officer responsible for the preparation of this Report is the Manager, Strategic Planning – Fletcher Rayner – who can be contacted on 9847 6744.

FLETCHER RAYNER
Manager - Strategic Planning
Planning Division

JAMES FARRINGTON
Group Manager
Planning Division

Attachments:

1. Design Excellence Planning Proposal - July 2014

File Reference: F2014/00312
Document Number: D03268209

12 REPORT ON SUBMISSIONS - DRAFT VOLUNTARY PLANNING AGREEMENT - 26-30 ORARA STREET AND 39 WAITARA AVENUE, WAITARA

EXECUTIVE SUMMARY

- A draft Voluntary Planning Agreement has been submitted on behalf of the owners of land in relation to Development Application DA/1370/2013 which was approved by the Joint Regional Planning Panel (JRPP) on 29 May 2014.
- The development approval is for construction of three, nine storey residential flat buildings and includes a condition to enter into a Voluntary Planning Agreement with Council for dedication of land.
- The draft Voluntary Planning Agreement proposes the dedication of land zoned RE1 Public Recreation under *Hornsby Local Environmental Plan 2013* and known as Property Nos. 26, 28 and 30 Orara Street, Waitara and 39 Waitara Avenue, Waitara at no cost to Council for future use as a local park.
- At its meeting on 14 May 2014, Council considered a report presenting the draft Voluntary Planning Agreement and endorsed the exhibition material which was placed on public exhibition from 12 June 2014 to 11 July 2014.
- One submission was received in response to the exhibition of the draft Voluntary Planning Agreement. The submission relates to the development application but is addressed in this report.
- It is recommended that Council adopt and execute the Voluntary Planning Agreement.

RECOMMENDATION

THAT:

1. Council adopt and execute the Voluntary Planning Agreement attached to Group Manager's Report No. PL54/14 to dedicate land zoned RE1 Public Recreation under *Hornsby Local Environmental Plan 2013* and known as Property Nos. 26, 28 and 30 Orara Street, Waitara and 39 Waitara Avenue, Waitara at no cost to Council for future use as a local park.
2. The Mayor and General Manager be authorised to sign the Agreement on behalf of Council.

PURPOSE

The purpose of this Report is to review submissions received in response to the exhibition of the draft Voluntary Planning Agreement and to recommend that Council adopt and execute the Agreement.

BACKGROUND

The Orara Street Precinct formed part of the 1994 Hornsby Shire Housing Strategy where it was envisaged that land for open space would be dedicated to Council as future development of the precinct occurred. The (now repealed) Hornsby Town Centre Development Control Plan (HTC DCP) required a public open space area to be provided through the middle of the precinct.

In accordance with the HTC DCP, the western half of the open space area has been dedicated to Council and embellishment works have been carried out in accordance with Council's previous Section 94 Plan 2007 (now repealed). The land is now zoned RE1 Public Recreation under the *Hornsby Local Environmental Plan (HLEP) 2013* and identified on the Land Acquisition Map which formalises Council's obligation to acquire the land.

Council does not presently have a financial strategy or timeframe for acquisition of the land. On 17 April 2014, a draft Voluntary Planning Agreement was submitted on behalf of the owners of land in relation to Development Application DA/1370/2013 for property Nos. 21-39 Waitara Avenue, Waitara and Nos. 20-30 Orara Street, Waitara. The draft Voluntary Planning Agreement proposes the dedication of land zoned RE1 Public Recreation under the HLEP 2013 and known as Property Nos. 26, 28 and 30 Orara Street, Waitara and 39 Waitara Avenue, Waitara at no cost to Council for future use as a local park.

Timing for the transfer of the dedication lands is proposed prior to the issuing of the first Occupation Certificate for DA/1370/2013.

The draft Agreement does not exclude the application of Section 94. Therefore, monetary contributions as required by Council's Section 94 Development Contributions Plan 2012 – 2021 will continue to apply.

Council at its meeting on 14 May 2014, considered Group Manager's Report No. PL33/14 concerning the draft Voluntary Planning Agreement and resolved that:

1. *The draft Voluntary Planning Agreement attached to Group Manager's Report No. PL33/14 be exhibited for 28 days in accordance with the Environmental Planning and Assessment Act 1979.*
2. *The General Manager be delegated authority to endorse the exhibition material.*
3. *Following the exhibition, a report on submissions be presented to Council.*

In accordance with Council's resolution, the draft Voluntary Planning Agreement was placed on public exhibition from 12 June 2014 to 11 July 2014.

DISCUSSION

This report discusses the exhibition of the draft Voluntary Planning Agreement and submissions received during the exhibition period.

Proposed Development

The draft Voluntary Planning Agreement relates to Development Application DA/1370/2013 which proposes the redevelopment of Property Nos. 21-39 Waitara Avenue and Property Nos. 20-30 Orara

Street, Waitara involving the construction of three, nine storey residential flat buildings comprising a total of 295 units with basement car parking and the dedication of a public park to Council.

The proposal was considered by the JRPP at its meeting on 29 May 2014. The Panel considered the proposal to be a suitable use of the site and in the public interest as it:

1. Results in the provision of the public open space that will complete the planned open space connection from Romsey Street to Mark Taylor Oval.
2. Results in buildings consistent with the established high density context in which the site is placed.
3. Secures the site's residential yield and contribution to housing supply potential in a favoured high density housing area located nearby to transport and local services.
4. Adds to the supply and choice of housing in Hornsby Shire.
5. Will not adversely impact on the natural or built environment.

Accordingly, the JRPP approved the Development Application with conditions, including that the applicant prepare and enter into a Voluntary Planning Agreement with Council for the dedication of land zoned RE1 on the site prior to the issuance of a Construction Certificate. The consent provides that the terms of the Voluntary Planning Agreement must include, but not be limited to, the following:

- a) The land is to be dedicated free of cost to Council;
- b) The reason for the Voluntary Planning Agreement is for the development to realise the theoretical development potential of the open space dedication area (had it remained zoned residential) on the balance of the land that is the subject of the DA;
- c) The Voluntary Planning Agreement does not exclude the application of Section 94 to the development; and
- d) The applicant agrees to pay all costs (including Council's costs) associated with the preparation, public notification, legal costs and administration costs of the Voluntary Planning Agreement.

The exhibited draft agreement addresses the above terms.

The conditions of consent also provide the opportunity for a second Voluntary Planning Agreement to be entered into for the embellishment of the public open space. If Council and the applicant enter into a Voluntary Planning Agreement for the embellishment of the land, the amount of monetary contributions may be reduced. Any second Voluntary Planning Agreement would be subject to a separate report to Council and exhibition.

Exhibition and Review of Submissions

In accordance with Section 25D (Public notice of planning agreements) of the *Environmental Planning and Assessment Regulation 2000*, the draft Agreement was exhibited from 12 June 2014 to 11 July 2014. Advertisements were placed in the local newspaper, Council's website and letters were sent to affected property owners. The draft Agreement was also displayed at Council's Administration Centre.

One (1) submission was received from an adjoining owner who raises concern that the excavation required for basement parking for the proposed development may result in structural damage to their adjoining apartment building. The author requests that the applicant be required to prepare a

dilapidation report prior to excavation work commencing and requirement that the developer rectify any damage as a result of the works.

Comment: Although the concern is not relevant to the draft Voluntary Planning Agreement, the matter was addressed as a condition of consent for the Development Application which was approved by the JRPP. The condition requires the preparation of a 'Dilapidation Report' by a 'chartered structural engineer' detailing the structural condition of all adjoining properties.

Recommendation: No amendment be made to the exhibited draft Voluntary Planning Agreement.

CONSULTATION

In accordance with Section 25D (Public notice of planning agreements) of the *Environmental Planning and Assessment Regulation 2000*, the draft Agreement was exhibited for a minimum period of 28 days. The Consultation Strategy included letters to adjoining property owners. The exhibition also involved advertisements in a local newspaper, Council's website and displays at Council's Administration Centre.

The draft Agreement was reviewed by Council's panel solicitor (Marsdens Law Group) in May 2014 to ensure the draft Agreement provides a reasonable means of achieving and securing dedication of the open space. No amendments have been made since Council's panel solicitor reviewed the draft Agreement.

BUDGET

There are no budgetary implications associated with this Report.

POLICY

There are no policy implications associated with this Report.

CONCLUSION

The draft Voluntary Planning Agreement proposing the dedication of land zoned RE1 Public Recreation in Waitara at no cost to Council for future use as a local park was exhibited from 12 June 2014 to 11 July 2014. One (1) submission was received from an adjoining owner who raises concern that the excavation required for basement parking for the proposed development may result in structural damage to their adjoining apartment building. The submission relates to the Development Application which has been approved by the JRPP and the concerns raised are addressed in the conditions of consent.

It is recommended that Council adopt and execute the Voluntary Planning Agreement with the Mayor and General Manager authorised to sign the Agreement on behalf of Council.

RESPONSIBLE OFFICER

The officer responsible for the preparation of this Report is the Manager, Strategic Planning – Fletcher Rayner – who can be contacted on 9847 6744.

FLETCHER RAYNER
Manager - Strategic Planning
Planning Division

JAMES FARRINGTON
Group Manager
Planning Division

Attachments:

1. Attachment 1 - Voluntary Planning Agreement and Explanatory Note

File Reference: DA/1370/2013

Document Number: D03274572

13 REQUEST FOR CONTRIBUTION TO PENNANT HILLS HIGH SCHOOL SPORTSGROUND UPGRADE

EXECUTIVE SUMMARY

- Pennant Hills High School provides its two sportsgrounds for extensive community use. This takes pressure off Council's congested sportsgrounds at Pennant Hills and nearby.
- The combined school and community use has seen the ovals deteriorate to the point where the school needs to spend \$138,000 to upgrade the larger top oval.
- The Principal has requested a \$50,000 contribution from Council to make the required total. If the funds are not available for the oval to be upgraded, the school has advised that it will be forced to close the sportsgrounds to community use.
- It is recommended that terms be negotiated with the Principal to provide the funding and preserve community access to the school ovals.

RECOMMENDATION

THAT Council:

1. Authorise the payment of \$50,000 to Pennant Hills High School for the upgrade of its top oval.
2. Authorise the General Manager to negotiate terms for the transfer of the funds in a way that protects Council's investment and guarantees continued access to the school's sportsgrounds for community sports groups.

PURPOSE

The purpose of this Report is to advise Council on a response to an approach to the Mayor from the Principal of Pennant Hills High School to contribute to an upgrade of the school's ovals so as to allow continuation of their use for community sport.

BACKGROUND

Pennant Hills High School has two sports ovals within its grounds. Primarily used for school sport, the ovals have long been used for community sport as well. The amount of use averages about 10 hours per week in addition to the school sport (see Attachment).

The Principal has asked for assistance to upgrade the surface of the 'top oval'; the oval that is closest to the school buildings and the more heavily used of the two, both by the school and community sports clubs. This use over many years has led to a surface that is very compacted and hard with extensive bare areas. The state of the top oval is unsuited for continued heavy use.

DISCUSSION

Community sports clubs have resorted to the use of the school grounds because grounds that Council supplies in or near to Pennant Hills are fully occupied during the required times, and are very congested for winter training use. There is increasing 'season creep' where codes traditionally confined to winter season use from March to September want to train during the summer season, and Council grounds are either not available through other use, or cannot take the additional wear and tear.

The shortage of sportsground use is at its most acute at Pennant Hills and adjoining suburbs, despite the presence of Pennant Hills Park, Council's largest sports complex. There are plans to increase the availability of access to sportsgrounds and these are expected to be proposed in the Active Living Hornsby Strategy, currently in preparation and expected to be available later in 2014. In the interim, the school grounds are a valuable additional community sports resource and their loss to community sports groups would have a strong impact which Council is not yet in a position to alleviate.

The attachment contains a proposal for the upgrading of the top oval. For a cost of \$136,000, the oval would have its topsoil de-compacted, irrigation and drainage systems installed, and be returfed. The work will improve the oval; however winter wear must still be expected. The Principal has advised that the work cannot proceed without the contribution he has requested from Council, and without the improvements to the oval, the school will not allow community sports groups to continue using the oval.

In discussions with the Principal, Council officers have submitted that Council would require security for any such contribution. It is proposed that the security would be by a suitable means (including an exchange of letters) whereby the school undertook to provide the school ovals for a similar level of community use for a period. The Principal has proposed that the period be reviewed after five years. It is possible that such an agreement would not be able to bind a new Principal. It would be for the incoming Principal to decide for him/herself whether they felt bound by the agreement within that time frame.

CONSULTATION

In the preparation of this Report there was consultation with the Principal of Pennant Hills High School.

BUDGET

The proposed contribution of \$50,000 has not been allocated in the 2014/15 budget. Should Council agree to make a contribution, it would be dealt with in the September 2014 budget review.

POLICY

There are policy implications that will be dealt with in the forthcoming Active Living Hornsby Strategy.

CONCLUSION

The top oval at Pennant Hills High School Council is used extensively by community sport groups. The surface of this oval requires upgrading to allow it to better cope with the range and intensity of use. A contribution of \$50,000 from Council for this work would preserve access to the school ovals by community sports clubs. Terms would need to be negotiated to preserve Council's investment.

RESPONSIBLE OFFICER

The officer responsible for the preparation of this Report is the Manager, Parks and Recreation – Peter Kemp who can be contacted on 9847 6792.

ROBERT STEPHENS

Deputy General Manager

Infrastructure and Recreation Division

Attachments:

1. Pennant Hills High School Sportsground - Schedule of Oval Usage

File Reference: F2007/00723-02

Document Number: D03396987

14 MAYOR'S NOTES 1 TO 31 JULY 2014

Friday 4 July 2014 – The Deputy Mayor Councillor Tilbury, on the Mayor's behalf, officially opened the Hornsby Ku-ring-gai Community College Art Show in Hunter Street, Hornsby.

Tuesday 8 July 2014 – The Mayor was the special guest on Alexi Boyd's Triple H Community Radio Show.

Tuesday 8 July 2014 – The Mayor attended the AFL Youth Representative Carnival at Greenway Park, Cherrybrook.

Tuesday 8 July 2014 – Councillor Singh, on the Mayor's behalf, officially opened the Carers Art Exhibition at Wallarobba Arts Centre.

Thursday 17 July 2014 – The Mayor attended the Retirement lunch for Mrs Bev Cole, Pennant Hills Neighbour Aid at Pennant Hills.

Thursday 17 July 2014 – Councillor Anisse, on the Mayor's behalf, attended the Lions Club of Berowra 41st Changeover Dinner.

Saturday 19 July 2014 – The Mayor attended a Memorial for Neil Maitland at Galston Community Centre.

Tuesday 22 July 2014 – The Mayor and Councillors Gallagher and Singh hosted three Citizenship Ceremonies in the Council Chambers.

Thursday 24 July 2014 – The Mayor hosted students from Barker College for a visit to Council Chambers.

Thursday 24 July 2014 – The Mayor attended the Diocese of Broken Bay – Building Harmony Ramadan Iftar Dinner at Pennant Hills.

Thursday 24 July 2014 – The Mayor attended Ezzy Architects Christmas in July Function in Waitara.

Friday 25 July 2014 – The Mayor and Councillors Anisse, Berman, Browne, Cox and Singh hosted the Annual Rural Fire Service Mayoral Dinner at Hornsby RSL.

Friday 25 July 2014 – Councillor Gallagher, on the Mayor's behalf, attended the Bendigo Bank Berowra Fundraising Cocktail Evening at Wellspring Café, Berowra.

Note: These are the functions that the Mayor, or his representative, has attended in addition to the normal Council Meetings, Workshops, Mayoral Interviews and other Council Committee Meetings.

File Reference: F2004/07053
Document Number: D03392681

15 PASSING OF KEITH WOODWARD - FORMER SHIRE CLERK - HORNSBY SHIRE COUNCIL

Hornsby Shire has lost one of its great leaders with the death of Ronald Keith Woodward who passed away on 22 July 2014 following a short illness. Keith, as he was known by everybody, joined Hornsby Shire Council in 1946 as a junior clerk having previously served in the armed forces as a member of the ground staff of the Royal Australian Air Force.

While working for Council, Keith attended the Sydney Technical College qualifying as a Local Government Clerk. In 1951, he was promoted to the position of Chief Accountant and in 1962 he became Deputy Shire Clerk. He then succeeded Charles Cook as Shire Clerk in 1977 and held Council's most senior staff position until his retirement in 1987.

Keith Woodward was an excellent leader and mentor and was always available to discuss issues or problems with members of the public and staff. He was a true servant of the residents of Hornsby and performed the duties and responsibilities of his position with confidence, competence and humility. He had the respect and admiration of his staff and the elected members alike.

Keith's great passion was the development of Galston's Fagan Park and he was instrumental in the creation of that valuable asset. Along with former Shire Presidents Ron Payne and Gordon Kirby, Keith volunteered many hours to the project, particularly the renovation of the Fagan Homestead.

Hornsby Shire Council would like to express its sympathy to Keith's family and its eternal thanks to Keith for his service and dedication.

RECOMMENDATION

THAT:

1. Council express its sincere condolences to Mr Keith Woodward's family and the community of Hornsby in respect of Mr Woodward's recent passing.
2. A message of sympathy be forwarded to Mr Woodward's family on behalf of Council.

STEVE RUSSELL

Mayor

Attachments:

There are no attachments for this report.

File Reference: F2004/05878

Document Number: D03397409