



# **BUSINESS PAPER**

## **LOCAL PLANNING PANEL MEETING**

**Wednesday 23 February 2022  
at 6:30pm**



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**1 DA/1132/2021 - CONSTRUCTION OF A DWELLING HOUSE - 6 YALLAMBEE ROAD, BEROWRA**

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**EXECUTIVE SUMMARY**

**DA No:** DA/1132/2021 (Lodged on 27 October 2021)

**Description:** Construction of a dwelling house

**Property:** Lot 1, DP 867365, No. 6 Yallambee Road, Berowra

**Applicant:** A Team Building Group Pty Ltd

**Owner:** Mr Christopher Peter White and Mrs Noni Maree White

**Estimated Value:** \$519,382

**Ward:** A Ward

- The application involves the construction of a two-storey dwelling house.
- The application complies with the relevant development standards of the *Hornsby Local Environmental Plan 2013* and prescriptive measures of the Hornsby Development Control Plan 2013.
- A total of 14 submissions have been received in respect of the application.
- The application is required to be determined by the Hornsby Council Local Planning Panel as 10 or more unique submissions were received by way of objection.
- It is recommended that the application be approved.

**RECOMMENDATION**

THAT Development Application No. DA/1132/2021 for construction of a dwelling house at Lot 1 DP 867365, No. 6 Yallambee Road, Berowra be approved subject to the conditions of consent detailed in Schedule 1 of LPP Report No. LPP3/22.

## BACKGROUND

On 27 October 2021, the subject application was lodged.

On 29 October 2021, the application was publicly notified until 23 November 2021.

On 3 November 2021, Complying Development Certificate No. 211428/01 (Council Ref: CDP/1184/2021) was approved by a Private Certifier for the demolition of existing structures on the subject site.

On 16 November 2021, Council requested an amended Landscape Plan illustrating the location of four replacement trees to be planted on the site.

On 19 November 2021, the applicant submitted the requested Landscape Plan.

On 15 December 2021, Council requested amended architectural plans to address concerns regarding building articulation and tree preservation.

On 30 January 2021, the applicant submitted amended architectural plans and an amended BASIX certificate to address Council's concerns.

## SITE

The 617.3m<sup>2</sup> site is located at the intersection of Yallambee Road and Anembo Road, Berowra and contains a single storey dwelling house and a garden shed. The site falls 1.35 metres from the north (rear) to the south (front).

The site is not bushfire or flood prone. The site is burdened by a 1 metre and variable width Easement to Drain Water and a Restriction on the Use of Land.

The locality is characterised by one and two storey dwelling houses in a landscaped setting reflective of a low-density residential area.

## PROPOSAL

The application proposes the construction of a two-storey dwelling house.

The ground floor would comprise a porch, double garage, lounge room, powder room, kitchen, dining and family room, pantry, laundry and an alfresco area.

The first floor would comprise four bedrooms, walk-in wardrobe, en-suite, bathroom, WC and a rumpus room.

Three trees would be removed with another one impacted by the development.

## ASSESSMENT

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

### 1. STRATEGIC CONTEXT

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

*The Greater Sydney Region Plan - A Metropolis of Three Cities* has been prepared by the NSW State Government to guide land use planning decisions for the next 40 years (to 2056). The Plan sets a strategy and actions for accommodating Sydney's future population growth and identifies dwelling

targets to ensure supply meets demand. The Plan also identifies that the most suitable areas for new housing are in locations close to jobs, public transport, community facilities and services.

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

The proposed development would be consistent with the *Greater Sydney Region Plan - A Metropolis of Three Cities* and the *North District Plan*, by maintaining the housing supply targets for the region.

## **2. STATUTORY CONTROLS**

Section 4.15(1)(a) requires Council to consider “*any relevant environmental planning instruments, draft environmental planning instruments, development control plans, planning agreements and regulations*”.

### **2.1 Hornsby Local Environmental Plan 2013**

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

#### **2.1.1 Zoning of Land and Permissibility**

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

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

The proposed development is defined as a ‘*dwelling house*’ and is permissible in the zone with Council’s consent.

#### **2.1.2 Height of Buildings**

Clause 4.3 of the *HLEP* provides that the height of a building on any land should not exceed the maximum height show for the land on the Height of Buildings Map. The maximum permissible height for the subject site is 8.5m. The proposal complies with this provision with a maximum building height of 7.25m.

#### **2.1.3 Heritage Conservation**

Clause 5.10 of the *HLEP* sets out heritage conservation provisions for Hornsby Shire. The site does not include a heritage item, is not in the vicinity of a heritage item and is not located in a heritage conservation area. Accordingly, no further assessment regarding heritage is necessary.

#### **2.1.4 Earthworks**

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

The submitted Statement of Environmental Effects states that “*minor ground disturbance is required to provide a level platform to site the building footprint*”. The Waste Management Plan (WMP) indicates that an estimated 5m<sup>3</sup> of excavated material would be generated during the construction phase intended for “*re-use for backfill under slab*” and “*remove top soil and stockpile for use in landscaping*”. It further states that no excavated material would be removed from the site.

Council’s assessment of the proposed earthworks is provided below in accordance with Clause 6.2 of the *HLEP*.

(a) *The likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development,*

Comment: The proposed earthworks are unlikely to have a detrimental effect on the drainage patterns given that stormwater from the property would still flow towards the south to Yallambee Road.

(b) *The effect of the development on the likely future use or redevelopment of the land,*

Comment: The earthworks would not likely restrict future use or redevelopment of the land.

(c) *The quality of the fill or the soil to be excavated, or both,*

Comment: It is not anticipated that fill would be imported to facilitate the proposed works. Furthermore, it is not anticipated that any excavated material would be removed from the site. Notwithstanding, a condition is recommended in Schedule 1 that any and all excavated material removed from the site must be classified by a suitably qualified person and disposed of at an approved waste management facility.

(d) *The effect of the development on the existing and likely amenity of adjoining properties,*

Comment: Appropriate conditions have been recommended in Schedule 1 of this report to limit amenity impacts during the construction period.

(e) *The source of any fill material and the destination of any excavated material,*

Comment: A condition has been recommended that any and all excavated material removed from the site must be classified by a suitably qualified person and disposed of at an approved waste management facility.

(f) *The likelihood of disturbing relics,*

Comment: Council records do not show the property as being host to any relics.

(g) *The proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,*

Comment: The proposed works would not be located in proximity to any environmentally sensitive area. Subject to appropriate erosion and sediment conditions, it is considered that any adverse impacts can be mitigated.

(h) *Any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

Comment: Conditions are recommended that erosion and sediment controls be in place prior to the commencement of any works.

In summary, the proposal is acceptable with respect to Clause 6.2 of the *HLEP*.

## **2.2 State Environmental Planning Policy (Exempt and Complying Development Codes) 2008**

*State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (NSW Housing Code)* provides exempt and complying development codes that have State-wide application.

The Policy also identifies types of development that are of minimal environmental impact that may be carried out without the need for development consent and types of complying development (including dwelling houses) that may be carried out in accordance with a complying development certificate.

The proposal in this application may not be approved as complying development because it requires the removal of 3 trees to facilitate its construction. Other than tree removal, the proposal dwelling would comply with the other prescriptive requirements of Part 3 'Housing Code' of the Policy.

## **2.3 State Environmental Planning Policy No. 55 Remediation of Land**

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

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

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

## **2.4 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 (Cert. No. 1244518S\_02) for the proposed development which meets the requirements of the SEPP.

## **2.5 State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017**

The application has been assessed against the requirements of *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 (Vegetation SEPP)*. This Policy seeks to protect the biodiversity values of trees and other vegetation in non-rural areas of the State, and to preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation.

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

Section 2.7.5 of this report provides an assessment in accordance with Part 1B.6.1 of the HDCCP.

## **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 proposal would comply with the requirements of the Policy.

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

Section 3.42 of the *Environmental Planning and Assessment Act 1979* states that a DCP provision will have no effect if it prevents or unreasonably restricts development that is otherwise permitted and complies with the development standards in relevant Local Environmental Plans and State Environmental Planning Policies.

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

## 2.8 Hornsby Development Control Plan 2013

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

<b>HDCP – Part 3.1 Dwelling Houses</b>			
<b>Control</b>	<b>Proposal</b>	<b>Requirement</b>	<b>Complies</b>
Site Area	617.3m <sup>2</sup>	N/A	N/A
Building Height	7.25m	8.5m	Yes
No. storeys	2	max. 2 + attic	Yes
Site Coverage	25%	50%	Yes
Floor Area	247m <sup>2</sup>	380m <sup>2</sup>	Yes
Setbacks			
- <i>Front (Yallambee Road)</i>	6m	6m	Yes
- <i>Secondary (Anembo Road)</i>	3.1m	3m	Yes
- <i>Side (east)</i>			
<i>Ground floor</i>	3.1m	0.9m	Yes
<i>First floor</i>	4.1m	1.5m	Yes

- <i>Rear</i>			
<i>Ground floor</i>	9.6m	3m	Yes
<i>First floor</i>	9.6m	8m	Yes
Landscaped Area (% of lot size)	59%	30%	Yes
Private Open Space			
- <i>minimum area</i>	>24m <sup>2</sup>	24m <sup>2</sup>	Yes
- <i>minimum dimension</i>	>3m	3m	Yes
Car Parking	2 spaces	2 spaces	Yes

**ITEM 1**

As detailed in the above table, the proposed development complies with the prescriptive requirements within the *HDCP*. The following matters are further discussed with regard to compliance with the prescriptive requirements:

### 2.8.1 Setbacks

During the notification period, a submission was received raising concerns regarding the front setback of the proposed dwelling house.

The Hornsby DCP provides for a minimum 6m front boundary (primary frontage) 6m to local roads. 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 adjoining properties at Nos. 2 and 4 Yallambee Road have existing front setbacks greater than 7.6m. The subject site is irregular in shape with a tapering length of 39.38m to 28.11m from west to east, a difference of 11.27m.

The proposed dwelling would have a variable front setback, 6m at the south-eastern corner of the garage to the south-eastern corner of the property, 7.7m front setback from the southern corner of the front porch and the southern corner of the ground floor level lounge room would be set back 8m from the front boundary.

The front setbacks featured within the subject proposal would be consistent with that of more recent development within Yallambee Road such as at No. 10, which features a two-storey dwelling house set back a minimum of 6.5m from the front boundary.

In consideration of the constraints of the site and the points above, the proposed dwelling house would complement the streetscape and provide a front setback which allows for the planting of trees along the front boundary.

The proposal meets the desired outcomes of Part 3.1.2 Setbacks of the *HDCP* and is considered acceptable.

### 2.8.2 Design Details

One public submission raised concerns regarding building articulation, specifically in relation to the western elevation facing the Anembo Road secondary frontage.

The Hornsby DCP prescriptive measure 3.1.8(b) recommends that “*extensive blank or unarticulated walls to street frontages are discouraged*” and 3.1.8(d) which states that “*dwelling houses on corner allotments should be designed to provide elevations that address both street frontages*”.

Amended architectural plans submitted on 30 January 2022 illustrate a western elevation which introduces additional windows and modulation which assists in articulating the building façade.

The proposal meets the desired outcomes of Part 3.1.8 Design Details of the HDCP and is considered acceptable.

### **2.8.3 Privacy**

The desired outcome of Part 3.1.6 Privacy of the HDCP is to encourage “*development that is designed to provide reasonable privacy to adjacent properties*”.

The application proposes a first-floor level rumpus room which would not comply with prescriptive measure 3.1.6(a) of the HDCP which states that living and entertaining area of dwelling houses should be located on the ground floor.

In assessing this non-compliance, it is noted that the rumpus room would be served by one window, oriented towards the backyard of the subject site, and located more than 9m from the rear boundary. Overlooking from the use of this window would be directed primarily to the private open space of the subject site and would not unreasonably impact the levels of privacy currently enjoyed by adjoining properties.

Whilst the proposal would not comply with prescriptive measures, it still meets the desired outcomes of Part 3.1.6 Privacy of the HDCP and is considered acceptable.

### **2.8.4 Sunlight Access**

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

Section 3.1.5(a) of the HDCP requires 50 per cent of the principal private open space of the subject site to receive at least 3 hours of unobstructed sunlight access between 9am and 3pm during the day of the winter solstice and prescriptive measure 3.1.5(b) requires 50 per cent of the principal private open space on any adjoining property to receive at least 3 hours of unobstructed sunlight access between 9am and 3pm.

An assessment of the submitted shadow diagrams confirms that the subject site and eastern adjoining property, No. 4 Yallabee Road would receive at least 3 hours of unobstructed sunlight access between 9am and 3pm.

### **2.8.5 Tree Preservation**

Part 1B.6 Tree and Vegetation of the HDCP seeks to protect prescribed trees listed under the *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017*.

To address the tree impacts arising from the proposed works, the application includes an Arboricultural Impact Assessment (AIA) prepared by Seasoned Tree Consulting dated 18 October 2021.

The AIA identifies 15 trees in proximity to the proposal located on the subject site, adjoining properties and road reserve of which 4 are recommended for removal to facilitate works associated with construction of the dwelling house.

Trees numbered T1 (Saucer Magnolia), T3 (Frangipani) and T4 (Camellia) would require removal as they would be within the footprint of the proposed dwelling house. The AIA states that these 3 trees are eligible for removal under 'exempt tree work' as defined under the HDCP because they are located within 3m of the existing dwelling. The AIA also recommends that T7 (Bottlebrush) be removed as it is in poor structural condition.

Tree T7 was removed by Council on 28 October 2021 in response to a service request (No. 147547) received on 18 October 2021 in relation to the poor condition of the tree.

Tree numbered T2 (Shiny Xylosma) located on the eastern adjoining property, No. 4 Yallambee Road would be subject to a minor encroachment (0.9m<sup>2</sup>) into its tree protection zone (TPZ) due to the proposed rainwater tank slab and ground disturbance works. Additionally, pruning of the canopy would be required to provide clearance for the dwelling.

The AIA suggests that tree T2 and all other identified trees can be retained in a viable condition subject to the installation of tree protection measures and the supervision of works that may impact the health and condition of these trees by a project arborist.

To offset the loss of 3 trees, a submitted Landscape Plan proposes 6 replacement plantings of Lilly Pilly (*Acmena smithii*) along the rear boundary.

Council's arboricultural assessment raises no objections to the removal of trees numbered T1, T3 and T4 subject to the provision of compensatory planting.

During the notification period, submissions were received raising the following concerns regarding anticipated tree impacts:

- The AIA does not recognise all trees on the property. For example, the report does not identify a row of trees along the eastern or western side of the driveway and trees along the front, south-western and western side boundaries.
- The proposal would directly impact tree T2 which substantially overhangs the subject site.
- The AIA does not provide information regarding the percentage of pruning required for the canopy of T2 nor the percentage encroachment into the TPZ and whether it is major or minor.
- With the use of scaffolding in the construction of the eastern wall, significant pruning of T2 would be required for accessibility. The AIA's tree protection recommendations for T2 are ineffectual because the fencing would need to be moved.

In response to the above concerns regarding the protection of tree T2, Council requested the applicant relocate the dwelling house towards the west to reduce its encroachment into the TPZ. Amended architectural plans were submitted on 30 January 2022 illustrating an increased eastern setback of 3.1m. This increase ensures that the previous 0.9m<sup>2</sup> TPZ encroachment is eliminated and any anticipated canopy pruning is reduced.

With respect to the recognition of all trees on the property, architectural plans illustrate that there is adequate separation between the proposed development footprint and the front, south-western and western side boundaries for the trees along these boundaries to remain. Notwithstanding, Council's arboricultural assessment has determined that these trees are of heights less than 3m and their removal may be undertaken as 'exempt tree work' if warranted.

Subject to the implementation of the arboricultural recommendations and replacement planting, no objections are raised to the proposal in terms of its anticipated impacts to trees.

## **2.9 Section 7.12 Contributions Plans**

Hornsby Shire Council Section 7.12 Contributions Plan 2019-2029 applies to the development as the estimated costs of works is greater than \$100,000. Should the application be approved, an appropriate condition of consent is recommended requiring the payment of a contribution in accordance with the Plan.

## **3. ENVIRONMENTAL IMPACTS**

Section 4.15(1)(b) of the Act requires Council to consider *“the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality”*.

### **3.1 Natural Environment**

#### **3.1.1 Tree and Vegetation Preservation**

The proposed development would necessitate the removal of 3 trees from the site. The application has been supported by an AIA that assess all 3 trees to be removed as possessing low to medium retention value.

The AIA concludes that the 3 trees should be removed to facilitate the proposal and replaced to offset the loss. Replacement plantings has been discussed in Section 2.8.5 of this report.

Council’s assessment of the proposal supports the conclusions of the AIA and it is considered that the removal of the 3 trees is acceptable in the circumstances of the case as there would be no net loss of trees from the site and would allow for new plantings to enhance the landscaped setting of the locality.

#### **3.1.2 Stormwater Management**

Roof water collected from the proposed dwelling house would be connected to a rainwater tank with a minimum volume of 3,000L, in accordance with BASIX requirements. Overflow from the rainwater tank would be disposed via a connection to Council’s existing street drainage system along Yallambee Road.

Council’s engineering assessment raises no objection to the proposed stormwater concept plan, subject to conditions.

### **3.2 Built Environment**

#### **3.2.1 Built Form**

As identified under Section 2.8 of this report, the proposed dwelling house complies with all prescriptive measures that relate to height, bulk and scale for development in low-density residential areas.

#### **3.2.2 Traffic**

The proposed dwelling house accommodates two car parking spaces which complies with Council’s off-street parking requirements for residential developments.

### 3.3 Social Impacts

The proposed dwelling house would make a positive social contribution by providing for the housing needs of the community within a low-density residential environment.

### 3.4 Economic Impacts

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

## 4. SITE SUITABILITY

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

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

## 5. PUBLIC PARTICIPATION

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

### 5.1 Community Consultation

The proposed development was placed on public exhibition and was notified to adjoining and nearby landowners between 29 October 2021 and 23 November 2021 in accordance with the Hornsby Community Engagement Plan. During this period, Council received 14 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	
13 SUBMISSIONS RECEIVED OUT OF MAP RANGE			

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

- Unacceptable visual impacts to the Anembo Road streetscape.
- Unacceptable visual impacts to the Yallambee Road streetscape.
- The removal of trees from the property.
- The inadequate provision of landscaped areas and replacement planting.
- A dwelling of a bulk and scale that does not conform with the constraints of the property.

The merits of the matters raised in community submissions have been addressed in the body of the report.

**5.2 Public Agencies**

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

## 6. THE PUBLIC INTEREST

Section 4.15(1)(e) of the Act requires Council to consider “*the public interest*”.

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

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

### CONCLUSION

The application proposes the construction of a dwelling house.

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

Council received 14 submissions during the public notification period. The matters raised have been addressed in the body of the report.

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

The reasons for this decision are:

- The proposed development complies with the requirements of the relevant environmental planning instruments and the Hornsby Development Control Plan 2013.
- The proposed development does not create unreasonable environmental impacts to adjoining development with regard to visual bulk, sunlight access, amenity or privacy.

*Note: At the time of the completion of this planning report, no persons have made a Political Donations Disclosure Statement pursuant to Section 10.4 of the Environmental Planning and Assessment Act 1979 in respect of the subject planning application.*

### RESPONSIBLE OFFICER

The officer responsible for the preparation of this report is Lawrence Huang.

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

ROD PICKLES  
Manager - Development Assessments  
Planning and Compliance Division

**Attachments:**

1.  Locality Plan
2.  Architectural Plans
3.  Shadow Diagrams

File Reference: DA/1132/2021

Document Number: D08305970

**ITEM 1**

**SCHEDULE 1****GENERAL CONDITIONS**

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

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

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

**ITEM 1****1. Approved Plans and Supporting Documentation**

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

*Approved Plans*

<b>Plan No.</b>	<b>Plan Title</b>	<b>Drawn by</b>	<b>Dated</b>	<b>Council Reference</b>
P-01 Issue C	Site Plan & Analysis	GJ Gardner	26.02.2022	
P-02 Issue C	Ground Floor Plan	GJ Gardner	26.02.2022	
P-03 Issue C	Level One Floor Plan	GJ Gardner	26.02.2022	
P-04 Issue C	Buildings Elevations	GJ Gardner	26.02.2022	
P-05 Issue C	Building Elevations	GJ Gardner	26.02.2022	
P-08 Issue C	Building Sections	GJ Gardner	26.02.2022	
P-09 Issue C	Building Sections	GJ Gardner	26.02.2022	
P-11 Issue C	Concept Landscape Plan	GJ Gardner	26.02.2022	
P-12 Issue C	Erosion & Sediment Plan	GJ Gardner	26.02.2022	

*Supporting Documentation*

<b>Document Title</b>	<b>Prepared by</b>	<b>Dated</b>	<b>Council Reference</b>
BASIX Certificate No. 1244518S_02	Energy Advance	26.01.2022	D08337161
Arboricultural Impact Assessment Report	Seasoned Tree Consulting	18.10.2021	D08280956
Waste Management Notes (Dwg No. P-13 Issue C)	GJ Gardner	26.02.2022	D08337160

**2. Removal of Trees**

- a) This development consent permits the removal of three trees numbered T1, T3 and T4 as identified in Appendix 1A (page 25) of the Arboricultural Impact Assessment prepared by Seasoned Tree Consulting dated 18 October 2021.

- b) No consent is granted for the removal of trees numbered T2, T5, T6 and T8 as these trees contribute to the established landscape amenity of the area.

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

### 3. Tree Pruning

- a) This development consent permits the pruning of tree numbered T2 as identified in Appendix 1 – Tree Location/Site Plan (page 24) of the Arboricultural Impact Assessment prepared by Seasoned Tree Consulting dated 18 October 2021.
- b) Pruning works must be less than 10 percent of the foliage area in accordance with *Australian Standard AS4373 Pruning of amenity trees*.
- c) All pruning work must be undertaken by an arborist with minimum AQF3 qualifications.

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

### 4. Construction Certificate

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

### 5. Section 7.12 Development Contributions

- a) In accordance with Section 4.17(1) of the *Environmental Planning and Assessment Act 1979* and the *Hornsby Shire Council Section 7.12 Development Contributions Plan 2019 - 2029*, \$5,193.80 must be paid towards the provision, extension or augmentation of public amenities or public services, based on development costs of \$519,382.
- b) The value of this contribution is current as of 31 January 2022. If the contributions are not paid within the financial quarter that this consent is granted, the contributions payable will be adjusted in accordance with the provisions of the Hornsby Shire Council Section 7.12 Development Contributions Plan and the amount payable will be calculated at the time of payment in the following manner:

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

Where:

**\$C<sub>PY</sub>** is the amount of the contribution at the date of Payment.

**\$C<sub>DC</sub>** is the amount of the contribution as set out in this Development Consent.

**CPI<sub>PY</sub>** is the latest release of the Consumer Price Index (Sydney – All Groups) at the date of Payment as published by the ABS.

**CPI<sub>DC</sub>** is the Consumer Price Index (Sydney – All Groups) for the financial quarter at the date of this Development Consent.

- c) The monetary contributions shall be paid to Council prior to the issue of the first Construction Certificate.

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

*Note: The Hornsby Shire Council Section 7.12 Development Contributions Plan may be viewed at [www.hornsby.nsw.gov.au](http://www.hornsby.nsw.gov.au) or a copy may be inspected at Council's Administration Centre during normal business hours.*

#### REQUIREMENTS PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

##### **6. Building Code of Australia**

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

##### **7. Contract of Insurance (Residential Building Work)**

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

##### **8. Notification of Home Building Act 1989 Requirements**

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

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

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

#### **9. Sydney Water – Approval**

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

*Note: Building plan approvals can be obtained online via Sydney Water Tap in<sup>TM</sup> through [www.sydneywater.com.au](http://www.sydneywater.com.au) under the Building and Development tab.*

#### **10. Identification of Survey Marks**

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

#### **11. Stormwater Drainage**

The stormwater drainage system for the development must be designed for an average recurrence interval (ARI) of 20 years and be gravity drained in accordance with the following requirements:

- a) Discharge to the existing system that connects to Council's pipe within the Yallambee Road reserve.
- b) The stormwater drainage system must be designed by a qualified hydraulic engineer.

#### **12. Internal Driveway/Vehicular Areas**

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

- a) The driveway grade must not exceed 25 percent and changes in grade must not exceed 8 percent per metre.
- b) Longitudinal sections shall be submitted to the principal certifying authority in accordance with the relevant sections of *AS 2890.1*.

#### **13. Appointment of a Project Arborist**

- a) To ensure the trees that must be retained are protected, a project arborist with AQF Level 5 qualifications must be appointed to assist in ensuring compliance with the conditions of consent and provide monitoring reports as specified by the conditions of consent.
- b) Details of the appointed project arborist must be submitted to Council and the PCA with the application for the construction certificate.

**REQUIREMENTS PRIOR TO THE COMMENCEMENT OF ANY WORKS****14. Erection of Construction Sign**

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

**15. 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.*

**16. Toilet Facilities**

- a) To provide a safe and hygienic workplace, toilet facilities must be available or be installed at the works site before works begin and must be maintained until the works are completed at a ratio of one toilet for every 20 persons employed at the site.
- b) Each toilet must:
  - i) Be a standard flushing toilet connected to a public sewer.
  - ii) Be a temporary chemical closet approved under the *Local Government Act 1993*.

**17. Erosion and Sediment Control**

To protect the water quality of the downstream environment, erosion and sediment control measures must be provided and maintained throughout the construction period in accordance with the manual '*Soils and Construction 2004 (Bluebook)*', the approved plans, Council specifications and to the satisfaction of the principal certifying authority. The erosion and sediment control devices must remain in place until the site has been stabilised and revegetated.

*Note: On the spot penalties may be issued for any non-compliance with this requirement without any further notification or warning.*

#### **18. Installation of Tree Protection Measures**

- a) Trees to be retained and numbered T2, T5, T6 and T8 as identified in the Arboricultural Impact Assessment prepared by Seasoned Tree Consulting dated 18 October 2021 must have tree protection measures for the ground, trunk and canopy installed by the project arborist for the duration of construction works, in accordance with the Tree Protection Plan (Appendix 1A, page 25) prepared by Seasoned Tree Consulting dated 18 October 2021.
- b) Tree protection fencing for the trees to be retained numbered T2, T5, T6 and T8 must be installed by the engaged AQF 5 project arborist and consist of 1.8 metre high temporary fencing panels installed in accordance with *Australian Standard AS4687-2007 Temporary fencing and hoardings*.
- c) The installation of all required tree protection fencing must include shade cloth attached to the fencing to reduce transport of dust, particulates and liquids from entering the tree protection zone.
- d) All tree protection zones must have a layer of wood-chip mulch at a depth of between 150mm and 300mm.

#### **19. Waste Management Details**

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

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

#### **20. Garbage Receptacle**

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

### **REQUIREMENTS DURING CONSTRUCTION**

#### **21. Construction Work Hours**

- a) All works on site, including earth works, must only occur between 7am and 5pm Monday to Saturday.
- b) No work is to be undertaken on Sundays or public holidays.

#### **22. Environmental Management**

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

**23. Council Property**

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

**24. 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.

**25. Excavated Material**

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

**26. Landfill Not Permitted**

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

**27. Survey Report**

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

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

**28. Waste Management**

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

**29. Prohibited Actions Within the Fenced Tree Protection Zone**

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

- a) Soil cutting or filling, including excavation and trenching.

- b) Soil cultivation, disturbance or compaction.
- c) Stockpiling storage or mixing of materials.
- d) The parking, storing, washing and repairing of tools, equipment and machinery.
- e) The disposal of liquids and refuelling.
- f) The disposal of building materials.
- g) The siting of offices or sheds.
- h) Any action leading to the impact on tree health or structure.

**30. Maintaining the Health of Trees Approved for Retention**

The appointed project arborist must monitor and record any and all necessary actions required to maintain tree health and condition for trees numbered T2, T5, T6 and T8 on the approved plans.

**31. Maintaining Tree Protection Measures**

Tree Protection Measures must be maintained by the project arborist in accordance with Condition Nos. 18 and 29 of this consent for the duration of works.

**32. Approved Works Within Tree Protection Zones**

- a) Where tree root pruning is required for the installation of piers, driveway or underground services, the pruning must be overseen by the AQF 5 project arborist and must be undertaken as follows:
  - i) Using sharp secateurs, pruners, handsaws or chainsaws with the final cut being clean.
  - ii) The maximum diameter of roots permitted to be cut is 40mm.
- b) No changes of grade within the tree protection zone (TPZ) of retained tree numbered T2 on the approved plans, are permitted.
- c) To minimise impacts within the TPZ of trees numbered T2, T5, T6 and T8 on the approved plans, the installation of services must be undertaken as follows:
  - i) The AQF 5 project arborist must be present to oversee the installation of any underground services which enter or transect the tree protection.
  - ii) The installation of any underground services which either enter or transect the designated TPZ must be undertaken manually.
  - iii) For manually excavated trenches the AQF 5 project arborist must designate roots to be retained. Manual excavation may include the use of pneumatic and hydraulic tools.
- d) Where scaffolding is required, ground protection must be installed beneath the scaffolding in the following order:
  - i) Installation of a 100mm deep layer of woodchip.
  - ii) Installation of geotextile fabric ground covering.
  - iii) Installation of scaffold boarding above the woodchip and geotextile fabric.

**33. Building Materials and Site Waste**

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

**REQUIREMENTS PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE****34. Fulfilment of BASIX Commitments**

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

**35. Damage to Council Assets**

To protect public property and infrastructure, any damage caused to Council's assets as a result of the construction or demolition of the development must be rectified by the applicant in accordance with AUS-SPEC Specifications ([www.hornsby.nsw.gov.au/property/build/aus-spec-terms-and-conditions](http://www.hornsby.nsw.gov.au/property/build/aus-spec-terms-and-conditions)). Rectification works must be undertaken prior to the issue of an Occupation Certificate, or sooner, as directed by Council.

**36. Replacement Tree Requirements**

- a) The trees approved for removal under this consent, being trees numbered T1, T3 and T4 must be offset through replacement planting of a minimum of 3 trees.
- b) All replacement plantings must be species selected from the '*Trees Indigenous to Hornsby Shire (as of 1 September 2011)*' document available for viewing on the Hornsby Council's website <http://www.hornsby.nsw.gov.au/environment/flora-and-fauna/tree-management/indigenous-trees>
- c) The location and size of tree replacement planting must comply with the following:
  - i) All replacement trees must be located in either front or rear setbacks and planted 4m or greater from the foundation walls of the approved development.
  - ii) The pot size of the replacement trees must be a minimum 45 litres.
  - iii) All replacement trees must be a minimum of 3m in height.
  - iv) All replacement trees must have the potential to reach a mature height greater than 10m.

**37. Final Tree Certification**

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

- a) All tree protection requirements complied with the as approved tree protection plan for the duration of construction works.
- b) All completed works relating to tree protection and maintenance have been carried out in compliance with the conditions of consent and approved plans.
- c) Dates, times, and reasons for all site attendance.

- d) All works undertaken to maintain the health of retained trees.
- e) Details of tree protection zone maintenance for the duration of works.
- f) A statement to confirm that tree replacement planting meets NATSPEC guidelines and the approved landscape plan.

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

### **38. Landscaping of Site**

All pervious areas of the site and the road reserve adjoining the site must be appropriately landscaped with suitable (preferably indigenous) turf, trees and shrubs to complement the development and prevent erosion of soil in accordance with the approved Landscape Plan.

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](http://www.hornsby.nsw.gov.au).

**- END OF CONDITIONS -**

#### **ADVISORY NOTES**

The following information is provided for your assistance to ensure compliance with the *Environmental Planning and Assessment Act, 1979*, *Environmental Planning and Assessment Regulation 2000*, other relevant legislation and Council's policies and specifications. This information does not form part of the conditions of development consent pursuant to Section 4.17 of the Act.

#### **Environmental Planning and Assessment Act 1979 Requirements**

The *Environmental Planning and Assessment Act 1979* requires:

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

#### **Long Service Levy**

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

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

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

#### **Tree and Vegetation Preservation**

**ITEM 1**

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

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

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

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

### **Covenants**

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

### **Dial Before You Dig**

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

### **Telecommunications Act 1997 (Commonwealth)**

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

### **Asbestos Warning**

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

[www.environment.nsw.gov.au](http://www.environment.nsw.gov.au)

[www.adfa.org.au](http://www.adfa.org.au)

[www.safework.nsw.gov.au](http://www.safework.nsw.gov.au)

Alternatively, telephone the SafeWork NSW on 13 10 50.

**2 DA/581/2020 - ALTERATIONS AND ADDITIONS TO EXISTING WAREHOUSE AND STRATA SUBDIVISION - 35E SEFTON ROAD, THORNLEIGH**

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**EXECUTIVE SUMMARY**

**DA No:** DA/581/2020 (Lodged 21 July 2020)

**Description:** Alterations and additions to existing warehouse and strata subdivision

**Property:** Lot 7 DP 1260122, No. 35E Sefton Road, Thornleigh

**Applicant:** Thornleigh Holdings Pty Ltd

**Owner:** Thornleigh Holdings Pty Ltd

**Estimated Value:** \$973,500

**Ward:** B Ward

- The proposed development does not comply with the maximum building height development standard prescribed under Clause 4.3 'Height of buildings' of the *Hornsby Local Environmental Plan 2013*. A request to contravene the development standard in accordance with Clause 4.6 'Exceptions to development standards' has been submitted. The request is considered to be well founded.
- A total of 57 submissions have been received in respect of the application.
- The application is required to be determined by the Hornsby Local Planning Panel as the proposal would contravene the *HLEP* development standard for maximum height of buildings by more than 10 percent. The application is also required to be determined by the Hornsby Council Local Planning Panel as 10 or more unique submissions were received by way of objection.
- It is recommended that the application be approved.

**RECOMMENDATION**

THAT Hornsby Local Planning Panel assume the concurrence of the Secretary of the Department of Planning and Environment pursuant to Clause 4.6 of the *Hornsby Local Environmental Plan 2013* and approve Development Application No. DA/581/2020 for alterations and additions to an existing industrial building and strata subdivision at Lot 7 DP 1260122, No. 35E Sefton Road, Thornleigh subject to the conditions of consent detailed in Schedule 1 of LPP Report No. LPP1/22.

## BACKGROUND

On 30 September 1976, Council at its meeting resolved to approved development application No. 135/76 for extension to an existing industrial premises for use as a can making factory and warehouse.

On 10 July 2018, Complying Development Certificate No. J180296 (Council ref: CDP/663/2018) was issued for the demolition of an existing industrial building at No. 50A Duffy Avenue, Thornleigh. The approved Demolition Plan illustrates that a 3,704m<sup>2</sup> 'existing warehouse' was retained.

On 19 December 2019, the Hornsby Local Planning Panel resolved to approve DA/510/2018 for the Torrens title subdivision of one lot into six as a staged development at No. 50A Duffy Avenue, Thornleigh. The subject site was created as a result of this subdivision.

On 6 June 2019, Complying Development Certificate No. J190194 (Council ref: CDP/493/2019) was issued for the modification of an existing warehouse and construction of a new retaining wall and concrete driveway at No. 50A Duffy Avenue, Thornleigh. The approved 'modification of an existing warehouse' corresponds to works undertaken to the industrial building located on the subject site.

On 25 June 2020, DA/487/2020 was lodged proposing the change of use of the existing industrial building on the site to a warehouse and operating 24 hours per day, 7 days per week. No physical works to the industrial building or the installation of building/ businesses identification signage was proposed as part of this application as these works are proposed with the subject application. DA/487/2020 was subsequently withdrawn by the applicant on 20 August 2021.

## APPLICATION HISTORY

On 21 July 2020, the subject application was lodged.

On 31 July 2020, the application was publicly notified until 13 August 2020.

On 11 August 2020, the public notification period was extended for a further 14 days to 27 August 2020 due to a failure to produce evidence of an erected notification sign.

On 22 September 2020, Council requested amended architectural plans, an amended traffic and parking assessment and swept path diagrams to enable a full and proper assessment of the application to be made.

On 21 January 2021, the application was renotified after the submission of amended architectural plans, an amended acoustic report, an amended traffic and parking assessment report and a noise management plan. The renotification period ended on 11 February 2021.

On 8 June 2021, Council met with the applicant to discuss operating hours as proposed under DA/487/2020 and the building height variation as proposed under the subject application.

On 27 August 2021, Council requested amendment of the application to clarify the proposed development and to maintain consistency between all supporting documentation due to the withdrawal of DA/487/2020.

On 3 September 2021, the applicant submitted an amended Statement of Environmental Effects, an amended Clause 4.6 written request, an amended Waste Management Plan and legal advice with respect to the existing use of the industrial building as a warehouse.

## SITE

The 6,885m<sup>2</sup> battle-axe site is located on the southern side of Sefton Road, Thornleigh and contains an industrial building.

Current vehicle access to the site is from Sefton Road via an access handle to the west.

The site falls 9m from the south (rear) to north (front). The north-western portion of the site is bushfire prone.

The site is surrounded by a mix of land uses with industrial to the east and south, medium density residential to the west and low density residential to the north.

The site is burdened by a 9m and variable width Right of Carriageway, a 9m and variable width Easement for Services, a 9m wide and variable width Easement to Drain Water, a 1m wide Easement for Pedestrian Egress and a 1.5m wide Easement for Letterboxes and Access.

## PROPOSAL

The application proposes alterations and additions to and strata subdivision of an existing industrial building comprising:

- Demolition of the existing roof and increase of building height to 13.4m.
- Construction of 4 internal fire walls to create 5 individual units.
- Construction of 5 loading doors to serve each individual unit.
- Construction of 5 mezzanine offices to serve each individual unit.
- Strata subdivision of the industrial building to create 5 individual units:
  - Unit 1: GFA 677.95m<sup>2</sup> (including 32.92m<sup>2</sup> mezzanine).
  - Unit 2: GFA 713.33m<sup>2</sup> (including 32.85m<sup>2</sup> mezzanine).
  - Unit 3: GFA 740.07m<sup>2</sup> (including 32.85m<sup>2</sup> mezzanine).
  - Unit 4: GFA 740.07m<sup>2</sup> (including 32.85m<sup>2</sup> mezzanine).
  - Unit 5: GFA 737.12m<sup>2</sup> (including 32.85m<sup>2</sup> mezzanine).

The application proposes 39 car parking spaces located south of the building to serve the development.

## ASSESSMENT

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

### 1. STRATEGIC CONTEXT

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

*The Greater Sydney Region Plan - A Metropolis of Three Cities* has been prepared by the NSW State Government to guide land use planning decisions for the next 40 years (to 2056). The *North District Plan* is a guide for implementing *A Metropolis of Three Cities - the Greater Sydney Region Plan* at a District level and is a bridge between regional and local planning.

The plans set strategy and actions for accommodating Sydney's future population growth and identifies key targets such as dwelling numbers, infrastructure planning, liability, sustainability and productivity. An important vision of the strategy involves managing and maintaining industrial land

close to centres and transport in order to ensure critical services are available to support businesses and residents.

Part 5 of the Metropolis of Three Cities relates to “Productivity” and a key objective is to ensure industrial and urban services land is planned, retained and managed. It defines a light industry as a “wide range of business that service other business and populations. Include warehousing, freight and logistics, construction and building supplies, and domestic storage”. The strategy notes that light industry should be located on mixed lot sizes depending on the sizes and needs of the business as well as being located close to surrounding residential and commercial community they directly serve.

The proposed development is considered consistent with *A Metropolis of Three Cities* and the *Northern District Plan*, by retaining industrial land and enabling further development that would serve a range of uses to support a growing population.

## 2. STATUTORY CONTROLS

Section 4.15(1)(a) requires Council to consider “*any relevant environmental planning instruments, draft environmental planning instruments, development control plans, planning agreements and regulations*”.

### 2.1 Hornsby Local Environmental Plan 2013

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

#### 2.1.1 Zoning of Land and Permissibility

The subject land is zoned IN1 General Industrial under the *HLEP*. The objectives of the IN1 zone are:

- *To provide a wide range of industrial and warehouse land uses.*
- *To encourage employment opportunities.*
- *To minimise any adverse effect of industry on other land uses.*
- *To support and protect industrial land for industrial uses.*
- *To permit other land uses that provide facilities or services to meet the day-to-day needs of workers in the area.*

The proposed development would be used as warehousing units falling within the definition of ‘warehouse or distribution centres’ defined in the *HLEP* as follows:

**Warehouse or distribution centre** means a building or place used mainly or exclusively for storing or handling items (whether goods or materials) pending their sale, but from which no retail sales are made, and includes local distribution premises.

‘Warehouse or distribution centres’ are permissible in the zone with Council’s consent. The proposed use is considered consistent with the objectives of the zone as it would support and protect industrial land for industrial uses.

#### 2.1.2 Height of Buildings

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

building height of 13.4m (2.9m/ 27.6% contravention). This departure from development standards is discussed further in Section 2.1.4 of this report.

### 2.1.3 Floor Space Ratio

In accordance with Clause 4.4 of the *HLEP*, the maximum floor space ratio (FSR) for the site is 1:1.

The proposed development would have gross floor area (GFA) of 3608.54m<sup>2</sup>. The site area is 6,885m<sup>2</sup> however, for the purposes of calculating FSR all areas of the site that form part of the access cannot not been included in accordance with Clause 4.1(3A) and 4.1A(4) of the *HLEP*. Consequently, the resulting site area is 5,762m<sup>2</sup>.

Accordingly, the proposed development would have a FSR of 0.62:1 which complies with the development standard.

### 2.1.4 Exceptions to Development Standards

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

The proposed development at its highest point exceeds the maximum building height development standard prescribed under Clause 4.3 of the *HLEP* by 2.9 metres, or 27.6%. The non-compliant area would comprise the entire roof area.

The objective of the height of buildings development standard is to permit building heights that are appropriate for the site constraints, development potential and infrastructure capacity of the locality.

The applicant has made a submission in support of the contravention of Council's development standards in accordance with Clause 4.6 of the *HLEP*. Clause 4.6 provides that development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

- (a) *That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.*
- (b) *That there are sufficient environmental planning grounds to justify contravening the development standard.*

Council must be satisfied that the written request provided by the applicant under Clause 4.6 addresses both the unreasonable and unnecessary test and demonstrates sufficient environmental planning grounds to justify contravening the development standard. These matters are discussed below.

#### 2.1.4.1 Unreasonable or Unnecessary

There are five common methods by which an applicant can demonstrate that compliance with a development standard is unreasonable or unnecessary in the circumstances of the development. Initially proposed for objections under clause 6 of *SEPP 1* in the decision of *Wehbe v Pittwater Council [2007] NSWLEC 827* Pearson C summarised and applied these methods to written requests made under Clause 4.6 in *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009* [61-62]. These five methods are generally as follows:

1. *The objectives of the standard are achieved notwithstanding noncompliance with the standard.*
2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.*
3. *The underlying objective or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.*
4. *The development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.*
5. *The compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.*

It is not required to demonstrate that a development meets multiple methods as listed above, and the satisfaction of one can be adequate to demonstrate that the development standard is unreasonable or unnecessary.

The applicant states that the proposed contravention is considered to be consistent with the objectives of the control and is justified as follows:

- *The proposed development is consistent with the existing (and desired) character of the site and the surrounding area. The existing warehouse building is proposed to be retained in order to facilitate the creation of five warehouse units at the site.*
- *Given that the existing building is set back approximately 55 metres from Sefton Road and approximately 11 metres from the adjoining residential dwellings, the proposal would be adequately screen from the streetscape and separated from the adjoining residential properties and not highly perceptible. It is also noted that when the industrial site is redeveloped to its full potential under other approvals the subject building will not be generally visible from the public road.*
- *The existing building is also set back 9 metres from the western boundary, which provides adequate separation from the residential properties to the west. Therefore, the proposed contravention of the development standard is not anticipated to result in any built amenity impacts such as view loss, privacy loss or increased overshadowing.*
- *Whilst the proposal involves addition of ancillary offices on the mezzanine level, the proposal would only result in a minor increase in floor space ratio (FSR) and is significantly under the maximum FSR permissible on the site.*
- *The predominant building setbacks will be maintained, which are in excess of the setback requirements prescribed under the Hornsby Development Control Plan 2013. By retaining the building setbacks, the proposal will maintain the existing building footprint with no material changes to the bulk and scale of the warehouse building. As such, the proposal is considered to present an appropriate bulk and scale despite the exceedance in building height limit.*
- *While compliance may be achieved by reducing the height and scale of the development, this is considered to undermine the functionality of the warehouse building; and the operational requirements necessary for use by the end-user will be unable to be facilitated. The internal storage requirements seek to ensure that all materials can be protected from the weather and*

*arranged in a manner which allows for ease of access. If the building height proposed was not provided it would cause materials to be stored external to the building which presents an undesirable outcome in terms of visual amenity.*

- *Further, curtailing the building height of the proposed development to 10.5 metres for the site will further prevent the proposal from making full use of its planning potential as the site is constrained by the sloping topography of the site and the adjoining residential dwellings to the west. The sloping topography inevitably contributes to a breach of the height which is unavoidable.*
- *Maintaining existing mature vegetation is a key objective of the proposal, to ensure a high level of amenity and provide a desirable setting. It is therefore unreasonable to achieve strict compliance with the standard on this basis and the fact that the site is encumbered by a right of way, which limits any development footprint.*
- *Achieving a 1:1 FSR that utilises more site area is unachievable in the context of this site given the need to provide adequate setbacks and interface treatment to surrounding properties.*

Council considers the applicant's request to contravene the height development standard to be well founded for the following reasons:

- The height non-compliance would not cause significant adverse impacts to surrounding properties in terms of overshadowing, visual impacts or view loss. The industrial building is set back more than 50m from Sefton Road and more than 15m from the nearest residential dwelling while being separated by an access road and existing vegetation.
- The height non-compliance would, with time, not be highly perceptible when viewed from Sefton Road as the lots north of the subject site, these being Nos. 35A, 35B, 35C and 35D are developed.
- The gross floor area of the development is well within the maximum FSR permitted and provides building setbacks which comply with the prescriptive measures of the HDCP. The building footprint of the existing building would be maintained.
- The development demonstrates adequate separation to sensitive areas in accordance with the prescriptive measures of the HDCP.
- The development would provide for the orderly and economic use of the land whilst providing a range of warehousing units to encourage local employment.
- The development generally meets the objectives of Clause 4.3 Height of Buildings of the HLEP by way of being appropriate with regard to the constraints of the site and its development potential.

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

#### **2.1.4.2 Environmental Planning Grounds**

In addition to demonstrating that compliance is unreasonable or unnecessary, Clause 4.6(3)(b) of the HLEP requires that there are sufficient environmental planning grounds to justify contravening the development standard. In demonstrating that sufficient environmental planning grounds exist, it must

be demonstrated that the planning grounds are particular to the circumstances of the development on the subject site (summarised from *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009 [60]*).

In demonstrating the environmental planning grounds, the written request states:

- *The proposal ultimately seeks to facilitate the creation of five warehouse units. The proposed building height is considered a key attribute in creating an internal building environment that would ensure the delivery of warehouse facilities required to support the operations of the future tenants involved and thereby enabling the productive use of the site.*
- *The proposal generally maintains the height experienced on surrounding industrial developments in the vicinity of the subject site. Further, the existing building footprint is proposed to be retained. The density and scale of the proposed built form would therefore remain generally consistent with the adjoining industrial building to the south at SP101715 approved under DA/691/2018, as well as the surrounding industrial development in the Thornleigh industrial area.*
- *The proposed building height is representative of market needs and demands for modernised industrial warehouse and industrial facilities. It is noted that one of the future tenants would operate as a pod type warehouse facility, which would require an internal height of 11.5m to accommodate the stacking of up to three pods within the premise. As shown in the architectural plans, the proposed roof ridge would be 2.9m above the maximum permissible building height of 10.5m.*
- *The proposal has been architecturally designed to increase the roof height and retain the existing building footprint, which complements the built form and scale of the adjoining industrial development located to the south and east of the subject site.*
- *The proposed height variation has been designed to be sympathetic and respectful to the amenity of the adjoining residential properties to the west, particularly with regard to visual bulk, privacy, overshadowing and sunlight access. As demonstrated in the Shadow Diagrams submitted for the subject DA, the neighboring residential properties would continue to receive a minimum of three hours of sunlight on 22<sup>nd</sup> June.*
- *Notwithstanding the numerical departure from the building height development standard, retaining the current building setbacks would ensure the adequate separation distances are provided between the site and the adjoining residential properties. The proposed design approach is considered to present a scale and architectural treatment which do not compromise the scale and amenity of the adjoining R3 Medium Density Residential zone.*
- *The proposed building height variation results from the gradient of the sloping landform of the site. The adopted design approach would retain the current building setbacks and preserve the majority of the existing built form, which is considered to represent a more sustainable solution in comparison to expanding the building footprint of the development.*
- *Particularly, increasing the roof height would minimise the need to increase the building footprint and hence reduce encroachment onto the setback areas. Maintaining the existing building footprint also allows the existing building setbacks to be retained, which continues to provide adequate separation from the adjoining residential properties to the west.*
- *By increasing the building height and not expanding the building footprint, the proposal would provide adequate manoeuvring space to accommodate the access and movement of*

*10.7m and 12.5m Heavy Rigid Vehicles (HRVs) within the site as demonstrated in the Traffic Report.*

- *In addition, the design approach of increasing the height and retaining the existing building footprint would also minimise the disturbance and environmental damage to the landform, which would otherwise be likely to occur if the footprint of the existing building were to be increased.*
- *It is demonstrated in the Acoustic Report that subject to the implementation of the design recommendations, the proposed increase in height would have no adverse or non-compliant acoustic impacts on any nearby residential or commercial receivers during daytime, evening or night-time periods. The Acoustic Report also confirms that the proposed height variation would not affect night-time noise level associated with the development, which is compliant with the relevant acoustic guidelines and requirements.*
- *The proposed increase in height would be limited to the site boundaries and designed to retain the existing building footprint which would ensure that operation of the development can operate in harmony with the recently approved industrial development located to the south.*
- *The proposed increase in height would not create any adverse visual or acoustic amenity impacts for the surrounding sensitive land users. Limiting the building height to a strict 10.5m would not deliver any measurable environmental or amenity benefits nor, would this support the provision of warehouse and industrial uses which caters to the operational needs of the end users and the market needs of the industry.*
- *The proposed development will remain compatible with General Industrial land uses in light of the above.*
- *Compliance with the remaining development standards applicable to the site is achieved.*

Council considers that the environmental planning grounds stated within the written request, with exception to acoustic impacts, are sufficient with respect to Clause 4.6(3)(b) and that the stated grounds are specific to the proposed development and the circumstances of the development site.

With respect to acoustic impacts, the statements made within the written request referring to the conclusions of the Acoustic Report and the acoustic impacts to nearby receivers during daytime, evening and night-time hours are not supported by Council. This matter is further discussed in Section 2.5.2 of this report. The implementation of restricted hours of operation would ensure that acoustic impacts to nearby sensitive receivers would not be unreasonable.

Notwithstanding the acoustic impacts of the proposed development, it is considered that the written request adequately demonstrates compliance with the clause and is acceptable in this regard.

Council further notes that in demonstrating the unreasonable and unnecessary test, the applicant further established environmental planning grounds with respect to the site and the surrounding constraints.

#### **2.1.4.3 Public Interest and Clause 4.6(4)**

Clause 4.6(4) states that development consent must not be granted for development that contravenes a development standard unless:

- (a) *The consent authority is satisfied that -*

- (i) *The applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
  - (ii) *The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) *The concurrence of the Planning Secretary has been obtained.*

With regard to part (i), the written request is considered to adequately address the matter required to be demonstrated as outlined above.

With regard to part (ii), the proposed development is considered to be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

With regard to (b) the concurrence of the Planning Secretary is assumed.

Accordingly, it is considered that the written request satisfactorily responds to the relevant matters required to be addressed under Clause 4.6 and that the Panel, as consent authority, may rely upon the written request and grant development consent to the development application. Should the Panel resolve to approve the application, it should also provide a statement in the reasons for approval that it has satisfied itself of the matters in Clause 4.6(4).

#### **2.1.5 Heritage Conservation**

Clause 5.10 of the *HLEP* sets out heritage conservation provisions for Hornsby Shire. The site does not include a heritage item and is not located in a heritage conservation area. Accordingly, no further assessment regarding heritage is necessary.

#### **2.1.6 Earthworks**

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

The Waste Management Plan submitted at lodgement of the application proposes the removal of 100m<sup>3</sup> or 180 tonnes of excavated material. The architectural plans and Statement of Environmental Effects neglect to identify the area from which this material would be taken.

This was later identified by the applicant to be an error and has been corrected with the submission of an amended Waste Management Plan, received 3 September 2021. No earthworks would be required during the demolition or construction phases of the development.

#### **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.

An assessment of contamination was undertaken as part of Council's assessment of DA/510/2018 for the subdivision of one lot into six. Condition No. 6 of the development consent required a Site Audit Statement (SAS) be issued certifying that the whole site is suitable for future industrial land use.

A SAS was issued by an NSW EPA site auditor on 10 July 2019 certifying that the subject site is suitable for industrial uses subject to compliance with a Long-Term Environmental Management Plan (LTEMP) prepared by JBS&G Australia Pty Ltd dated 2 May 2019.

The LTEMP identifies that there is asbestos present beneath the concrete slab (barrier system) which extends across the subject site. Provided the barrier system is maintained in accordance with the LTEMP, there are no unacceptable health or contamination migration risks associated with the contaminants.

In circumstances where excavations or a breach of the concrete slab/ handstand pavement is required, the LTEMP provides specific requirements to be observed where these works are undertaken.

Whilst it is not anticipated that the proposal would require earthworks as identified in the amended Waste Management Plan, the concrete slab within the industrial building may be breached to facilitate the construction of internal walls. Accordingly, it is recommended that the LTEMP be observed during construction works.

Subject to a condition requiring the implementation of the LTEMP during construction works, the application is considered satisfactory in regard to *SEPP 55*.

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

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

Subject to the appropriate stormwater management to protect water quality, the proposal would comply with the requirements of the Policy.

### **2.4 Section 3.42 Environmental Planning and Assessment Act 1979 - Purpose and Status of Development Control Plans**

Section 3.42 of the *Environmental Planning and Assessment Act 1979* states that a DCP provision will have no effect if it prevents or unreasonably restricts development that is otherwise permitted and complies with the development standards in relevant Local Environmental Plans and State Environmental Planning Policies.

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

### **2.5 Hornsby Development Control Plan 2013**

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

<b>Hornsby Development Control Plan 2013 - Part 5 Industrial</b>
------------------------------------------------------------------

Control	Proposal	Requirement	Compliance
Site Area	6,885m <sup>2</sup>	N/A	N/A
Site Area (excluding right of carriageway)	5,762m <sup>2</sup>	N/A	N/A
Gross Floor Area	3608.54m <sup>2</sup>	N/A	N/A
Floor Space Ratio	0.62:1	1:1	Yes
Ancillary Office Space	164.32m <sup>2</sup> = 4.6%	max. 30%	Yes
Height	13.4m	10.5m	No
No. of Storeys	1 storey	max. 2 storeys	Yes
Setbacks			
- <i>Front (north)</i>	5m (existing)	5m	Yes
- <i>Side (east)</i>	3m (existing)	0m	Yes
- <i>Side (west)</i>	10m (existing)	5m	Yes
- <i>Rear (south)</i>	8m (existing)	0m	Yes
Landscaped Areas (% front setback area)	100%	50%	Yes
Open Space			
- Minimum area	Not provided	10m <sup>2</sup>	No
- Minimum Dimensions	Not provided	2m	No
Parking			
- Car (1 per 100m <sup>2</sup> GLFA)	39 spaces	39 spaces	Yes
- Bicycle (1 per 1000m <sup>2</sup> GFA)	4 racks	4 racks	Yes
- Motorcycle (1 per 50 car parking spaces)	1 space	1 space	Yes

As detailed in the above table, the proposed development does not comply with a number of prescriptive requirements within the *HDCP* in relation to building height and open space. The matters of non-compliance are detailed below, as well as a discussion on compliance with relevant desired outcomes.

### 2.5.1 Use of Premises

On 25 June 2020, DA/487/2020 was lodged on the subject site proposing the change of use of an existing industrial building to a warehouse with 24 hours, 7 days a week operation. In its assessment of the application, concern was raised by Council and submitters with respect to amenity impacts

arising from the 24/7 operation of an industrial development adjoining sensitive receivers (residential developments to the west and north).

On 20 August 2021, the applicant requested to withdraw DA/487/2020. Concurrently, legal advice was submitted with the subject application prepared by Minter Ellison dated 18 August 2021 stating that:

- *The 1976 consent (Application No. 135/76) authorising the use of the main factory building has not been abandoned, was granted without any condition of consent limiting its duration and accordingly may be relied upon indefinitely.*
- *Nothing in the Subdivision Consent (DA/510/2018) impacts the use approved under the 1976 Consent. The granting of a later development consent does not operate to revoke an earlier consent unless there is a condition to that effect, which there is not. Further, multiple development consents can apply to one parcel of land and can all operate provided the implementation of one consent is no longer a practical possibility due to development already undertaken pursuant to another consent. No such issues arise here.*
- *The CDC (CDC No. J190194) approved discrete structural works which do not impact the overall use of the property pursuant to the 1976 Consent. Once those structural works are complete under the CDC, it is effectively “spent”. That CDC operated independently to the 1976 Consent, does not conflict with that consent and has no impact on the validity or operation of that consent; and*
- *The standard conditions under the Codes SEPP limit the hours of operation of “the development” approved pursuant to the CDC. In this case, the “development” approved by the CDC is the “modification of an existing warehouse and construction of a new retaining wall and concrete driveway”. The limit on the hours of operation applying to the CDC through the Codes SEPP is particular to these discrete modification works, rather than to the canning factory use as a whole. Those works have been completed and the standard conditions under the Codes SEPP no longer apply.*
- *The uses approved under the 1976 Consent may continue to be enjoyed which means any person with the benefit of that consent can operate the warehouse with no limits to the hours of operation.*

The intended effect of this legal advice is to demonstrate that the subject site benefits from the continued operation of the 1976 consent which permits a factory and warehousing use. Furthermore, because no conditions were implemented in the 1976 consent limiting the hours of operation, the approved factory and warehousing use may be operated on a 24/7 basis.

The legal advice was submitted on 3 September 2021 in conjunction with an amended SEE and Clause 4.6 written request. The amended SEE emphasises that “any person with the benefit of that consent (App No. 135/76) can operate the warehouse with no limits to the hours of operation”. It is inferred from this statement that, were the subject application to be approved, the applicant may operate the modified industrial building as a warehouse on a 24/7 basis.

In reviewing the legal advice, it is acknowledged that:

- The 1976 Consent has not been abandoned, irrespective of the cessation of the approved use by the former owners of the land prior to its subdivision under DA/510/2018/B.

- Apart from use of mechanical equipment, there appear to be no restrictions on the operating hours for the factory and warehouse development on Lots 1 and 2, DP 211895, that was authorised by the 1976 Consent.

However, the proposed alterations and additions would involve enlargement and intensification of the warehouse use permitted by the 1976 consent and the likely impacts arising from this intensification must be assessed.

An assessment of the intensification of the warehouse use against the provisions of Section 4.15 of the *Environmental Planning and Assessment Act 1979* is the subject of this assessment report.

### 2.5.2 Noise and Vibration

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

The subject site is located adjacent to medium density residential development to the west at No. 60 Duffy Avenue, Thornleigh (SP 68372) and in proximity to low density residential development to the north along Sefton Road.

To address the anticipated noise impacts arising from the proposal, an ‘Acoustic Considerations’ statement was submitted with the application prepared by NG Childs and Associates dated 14 July 2020. Concurrent to the subject application, DA/487/2020 was lodged proposing 24 hour use of the development for warehousing purposes. An acoustic report was submitted with DA/487/2020 contending that the operation of the warehouse on a 24/7 basis would not present unreasonable acoustic impacts to adjoining sensitive receivers such as to the residential developments to the north and west.

During the notification periods, submissions were received raising concerns that 24/7 operation would result in significant impacts to the residential amenity and quality of life for occupants of residences located to the north and west of the subject site due to noise generated from warehousing activities and vehicle noise.

Council’s assessment of the applicant’s acoustic documentation raised several concerns including:

- The acoustic assessment was not founded on current ambient background noise levels.
- The assessment did not consider the wider noise impacts of 24/7 operation encompassing vehicle trips during daytime, evening and night-time hours. No discussion presented on vehicle noise associated with acceleration/ deceleration while negotiating the access handle, opening and closing of doors and reversing alarms.
- The assessment did not consider the reflection of sound towards nearby sensitive receivers to the west due to the substantial presence of pavement and industrial buildings.
- The assessment did not account for the location of adjoining residences to the west being located at a higher elevation than an existing 3m high acoustic wall located along the western side boundary, thereby negating its intended purpose.

An amended Acoustic Report dated 18 November 2020 and a Noise Management Plan dated 11 December 2020 was submitted for both DA/487/2020 and the subject application in response to Council’s concerns. However, the findings of the amended Acoustic Report were based on only 24

hours of noise monitoring due to alleged vandalising of the monitoring equipment. At Council's request, these documents were reviewed by an independent acoustic consultant, Atkins Acoustics.

The review by Atkins Acoustics was completed on 9 February 2021 and concluded that the following information was missing:

- Additional ambient background noise monitoring conducted over a minimum of 7 days to assess current ambient background levels for exposed noise receptors and establish appropriate noise assessment criteria.
- Clarification of the proposed operating days and hours for the developments at No. 35E Sefton Road.
- Clarification of the operating days and hours, traffic generation for each tenant/ occupier within the site.
- Day, evening and night noise modelling for No. 35E Sefton Road including individual unit and cumulative activities, traffic on the site access road, existing industrial and self-storage units at No. 35 Sefton Road and allowances for future development of the vacant land on Lots 1-4, DP 1250371 inclusive.
- SEL,  $L_{Amax}$  and  $L_{Aeq}$  source noise source data for existing and proposed uses.
- Source noise data referenced as either sound pressure levels at a distance or sound power levels.
- Details and marked up figures (drawings) identifying the location of sources assumed for noise modelling, including traffic along the access road,
- Details and marked up figures (drawings) identifying the location of noise receptors, relative height levels for receptors, relative heights for outdoor forecourt areas, relative height for noise sources, relative surface heights along the site access road, relative heights of the noise wall along the site boundary.
- Updated modelling to address *Noise Policy for Industry* assessment procedures.
- Summary of noise predictions confirming attenuation allowances for distance, barriers, screening, door openings etc.; and
- Practices for management, monitoring and reporting on-site activities and vehicle movements to and from the site.

The conclusions of the review by Atkins Acoustics were relayed to the applicant for a response on 2 March 2021. A meeting was held with the applicant on 8 June 2021 to discuss the progress of both applications in light of the acoustic concerns raised. On 21 July 2021, correspondence was received from the applicant's town planning consultant resolving to reduce the operating hours proposed under DA/487/2020 from 24 hours 7 days to 7am to 7pm Monday to Saturday and no operation on Sundays or public holidays.

DA/487/2020 was later withdrawn on 20 August 2021 and legal advice submitted suggesting that the existing industrial building already benefits from development consent (DA/135/76) granting warehousing use and no restriction to operating hours.

On 14 December 2021, Council received additional correspondence from the applicant stating that they would accept the same hours as currently approved under the CDC with the understanding the hours would be 7am to 7pm. The operational conditions associated with CDC No. J190194 states that

*“if the development involves a new use as something other than a bulky goods premises or other commercial premises and adjoins or is opposite a residential lot within a residential zone or Zone RU5 Village – 7.00am to 7.00 pm Monday to Saturday and no operations on a Sunday or public holiday”.*

While it is recognised that the Consent No. 135/76 may remain operable on the subject site and does not include conditions limiting hours of operation, the proposed alterations and additions represents an intensification of the warehousing use by way of:

- Increasing the floor area of the overall industrial building through construction of 5 mezzanine offices.
- Increasing the volume of the overall industrial building by raising the building height to 13.4m.
- Stata subdividing the industrial building into 5 individual units each capable of accommodating a separate tenant.

As the applicant has failed to demonstrate that continued operation of a warehousing use on a 24/7 basis would not unreasonably impact the residential amenity of adjoining sensitive receivers, the proposal cannot be supported without limitation to the hours of operation.

Consequently, in consideration of the applicant's acceptance of limited operating hours and to maintain consistency with respect to operating hours throughout the industrial complex, namely with the light industrial use at No. 35 Sefton Road, a condition is recommended that the operation of the proposed warehouse units be limited to 7am to 7pm on Monday to Saturday and no operation on Sunday and public holidays.

To further allay concerns regarding the acoustic impacts of the development, conditions are recommended to limit all deliveries to and from the warehousing units be made during the allotted operating hours and that all storage, loading and unloading of goods is undertaken wholly within the units.

Subject to these conditions, it is considered that the amenity impacts arising from the warehousing development can be limited to a reasonable level to the benefit of adjoining sensitive receivers.

### **2.5.3 Scale**

As discussed in Section 2.1.4 of this report, the proposed roof line of the industrial building exceeds the maximum 10.5m building height limit by 27.6% (2.9m).

It is recognised that the height non-compliance would not cause significant adverse impacts to surrounding properties in terms of overshadowing, visual impacts or view loss as the building is set back more than 50m from Sefton Road and more than 15m from the nearest residential dwelling.

Existing setbacks from property boundaries and landscaped areas would not be affected by the proposal, with existing vegetation to assist in screening the visual presence of the building when viewed from Sefton Road and adjoining properties.

The proposal would comply with the other scale requirements of the HDCP including maximum FSR and the maximum number of storeys.

Accordingly, the proposed height exceedance is considered acceptable in respect to the built form of the surrounding industrial and residential development.

### **2.5.4 Vehicular Access and Parking**

During the notification periods, submissions were received raising the following concerns:

- There is insufficient off-street parking for employees, additional kerbside parking along Sefton Road would congest the road compromising safety.
- Sefton Road, Chilvers Road and Larool Crescent are already congested. Increased truck movements would exacerbate this issue.
- Increased truck movements would impact pedestrian safety.

A Traffic and Parking Assessment Report was submitted with the proposal prepared by Terraffic Pty Ltd dated 15 July 2020. An amended report was submitted dated 3 November 2020 in response to Council's concerns regarding the provision of car parking and accessibility to the site by heavy rigid vehicles (HRV). An assessment regarding traffic and parking is provided below.

#### **2.5.4.1 Traffic**

With respect to warehouses, the RMS *Guide to Traffic Generating Developments 2002* provides a peak hour traffic generation of 0.5 trips per 100m<sup>2</sup> of GFA. Applying the traffic generation rate and using a GFA calculation of 3,608.54m<sup>2</sup> for the proposed development, the Report states that a total of 18 vehicle trips per hour (vtp) is anticipated. This remains unchanged from the traffic generation rate of the existing industrial building which has been identified as having a GFA of 3,668.09m<sup>2</sup>.

The Report concludes that *"the proposed development will not have any noticeable or unacceptable effect on the road network serving the site in terms of road network capacity or traffic-related environmental effect"*.

Council's traffic assessment raised no objections to the proposal on traffic grounds based on the estimated vehicle trip generation.

#### **2.5.4.2 Parking**

With respect to parking requirements for industrial and warehousing uses, the HDCP requires 1 space per 100m<sup>2</sup> gross leasable floor area (GLFA) for developments located more than 800m from a railway station. The Report states that the proposed development would have a total GLFA of 3,864.79m<sup>2</sup> with the ancillary mezzanine office space occupying less than 5% of the GLFA. As the overall office component is less than 20% of the total GLFA, only the warehousing car parking rate is applied. Applying the HDCP car parking rates, a total of 39 car parking spaces are required for the proposal.

The Report states that 39 car parking spaces will be provided on site of which 28 would be external spaces and 11 internal. Architectural plans further illustrate that 4 bicycle racks and 1 motorcycle space are provided on site.

The proposal complies with the car parking requirements of the HDCP.

As the application also includes strata subdivision, a condition is recommended to ensure that each unit is allocated sufficient parking in accordance with the car parking rates of the HDCP.

#### **2.5.4.3 Access**

Vehicle and pedestrian access to the site would be via the accessway from Sefton Road.

Prescriptive measure 5.1.6(f) of the HDCP states that *"each industrial unit/premises should have access to a loading and unloading area on-site"*. Measure 5.1.6(g) follows to states that *"where a development consists of multiple industrial units, at least 1 communal loading area that is capable of accommodating an articulated vehicle should be provided on-site"*.

The proposal would include a dedicated loading area for each of the five units measuring 12.5m x 4m for Units 1 to 4 and 12.5m x 4.5m for Unit 5 able to accommodate a HRV. Given that each unit would be adequately served by a loading area, a communal loading area is not required.

Swept paths have been provided within the Report showing that a 12.5m long HRV can service Units 1 to 4 and a 10.7m long HRV can service Unit 5 with egress from the site in a forward direction. Accordingly, the proposed development would provide adequate vehicle access.

In response to the concern raised regarding pedestrian safety at the site frontage, the subject site is served by an existing driveway and a 16.2m wide vehicle crossing approved under DA/510/2018 constructed to the relevant *Australian Standards AS2890.1* and *AS2890.2* which provide requirements for minimum sight distances for driveways. Compliance with these standards ensures that vehicle access to and from the subject site would not pose an unreasonable risk to pedestrian or cyclist safety. The proposal does not seek to alter the current vehicle access arrangement. Swept path diagrams submitted with the application demonstrate that all vehicles anticipated to serve the site would be able to enter and exit in a forward direction. Conditions have been recommended in Schedule 1 requiring that all car parking areas must be constructed and operated in accordance with *AS2890.1* and *AS2890.2* and that any proposed landscaping and/or fencing would not restrict sight distances.

### 2.5.5 Open Space

The desired outcome of Part 5.1.4 Open Space of the HDCP is to encourage “*development that provides adequate communal open space on-site for employees*”.

This outcome is supported by prescriptive measure 5.1.4(a) which states that “*an outdoor eating and sitting area should be provided on-site at a rate of 1m<sup>2</sup> per employee, with a minimum total area of 10m<sup>2</sup> and a minimum dimension of 2 metres*”.

For the purposes of calculating the required communal open space area, the HDCP recommends an average employee density for industrial uses of 1 employee/ 50m<sup>2</sup> GFA. Accordingly, a minimum 71m<sup>2</sup> of communal open space should be provided.

The proposal does not comply with this requirement as it does not designate an area to be used as communal open space.

In assessing this non-compliance, the following matters have been considered:

- The areas encompassed within the southern and western setbacks would be unsuitable for use as open space because they are driveways and parking spaces.
- The northern and eastern setbacks are existing landscaped areas 662m<sup>2</sup> in area which may be used as communal open space with remnant vegetation in the northern setback to provide shade.
- It is anticipated that each warehouse unit would provide internal eating/sitting areas in a future fit out stage.

Whilst the proposal does not designate an area of use as communal open space, sufficient landscaped area is provided which may be adapted for this purpose. The proposal meets the desired outcome of Part 5.1.4 of the HDCP and is considered acceptable.

### 2.5.6 Sunlight

The desired outcome of Part 5.1.5 Sunlight of the HDCP is to encourage “*development designed to provide reasonable sunlight to sensitive areas*”.

This outcome is supported by prescriptive measure 5.1.5(b) which states that “*On 22 June, 50% of the principal private open space in any adjoining residential property should receive 2 hours of unobstructed solar access*”.

Shadow Diagrams submitted with the application demonstrates that the western adjoining residences would experience overshadowing at 9am on the day of the winter solstice but would be unaffected from noon to 3pm. This complies with the requirements of the abovementioned prescriptive measure.

The proposal would meet the desired outcome of Part 5.1.5 Sunlight of the HDCP and is considered acceptable.

### **2.5.7 Waste Management**

On 3 September 2021, an amended Demolition and Construction Waste Management Plan was submitted providing estimates of the type and volumes of waste and recyclables anticipated during demolition and construction works.

The application also includes an Operational Waste Management Plan stating that each industrial unit would have internal bin storage areas and be serviced by private waste contractors. Swept path diagrams within the amended Traffic and Parking Assessment Report prepared by Terrafic Pty Ltd dated 3 November 2020 demonstrate that all industrial units within the development are accessible to heavy rigid vehicles (HRV).

To ensure that amenity is maintained for adjoining residential properties, a condition is recommended to limit waste collection for the warehouse units to be between 7am to 8pm on weekdays and 8am to 8pm on weekends and public holidays. These collections hours are consistent with those applied to the southern adjoining industrial development at No. 35 Sefton Road.

### **2.5.8 Design Details**

The desired outcome of Part 5.1.8 Design Details of the HDCP is to encourage “*development that contributes positively to the streetscape*”.

During the notification periods, submissions were received raising concern that the modified industrial building would dominate the skyline, would look akin to an aircraft hangar and be an eyesore.

To address these concerns, the following observations have been made:

- The subject site is a battle-axe allotment with four vacant industrial allotments (Nos. 35A, 35B, 35C and 35D Sefton Road) to the north.
- These vacant lots provide more than 50m separation between the subject site and Sefton Road due to the length of the lots.
- It is recognised that while the industrial lots are vacant, there would be visual impacts to the streetscape of Sefton Road from the modified warehouse building. However, once developed, the future buildings on Nos. 35A, 35B, 35C and 35D Sefton Road would screen the warehouse and reduce its street presence.
- An existing 3m high acoustic wall along the western property boundary and trees within the eastern side of the western adjoining residential development assist to screen the proposal when viewed from the west.

- Residential properties to the south would not be visually affected as they are separated from the subject site by another industrial allotment, No. 35 Sefton Road.
- The proposal would maintain a similar footprint and low-pitched roof to the existing industrial building.
- The architectural plans note that the proposed walls and roof of the proposal would be of a colour to match the existing industrial building.

Whilst the proposal would not comply with the building height development standard of the *HLEP* and would increase the perceived bulk and scale of the existing industrial building, it is considered that the visual impact of the proposal on the Sefton Road streetscape would diminish over time due to future development on the northern adjoining industrial allotments.

The proposal would maintain a colour that matches the existing industrial building and is therefore considered consistent with the Thornleigh industrial area.

Given the circumstances, the proposal is considered satisfactory with respect to Part 5.1.8 Design Details of the HDCP.

## **2.6 Section 7.12 Contributions Plans**

Hornsby Shire Council Section 7.12 Contributions Plan 2019-2029 applies to the development as the estimated costs of works is greater than \$100,000. Should the application be approved, an appropriate condition of consent is recommended requiring the payment of a contribution in accordance with the Plan.

## **3. ENVIRONMENTAL IMPACTS**

Section 4.15(1)(b) of the Act requires Council to consider *“the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality”*.

### **3.1 Natural Environment**

#### **3.1.1 Tree and Vegetation Preservation**

The proposed development would not necessitate the removal of any trees from the site. The amended Statement of Environmental Effects dated 2 September 2021 indicates that all existing trees and vegetation on the site is proposed to be retained.

#### **3.1.2 Stormwater Management**

The subject site is served by a stormwater system approved under DA/510/2018. Collected roof water from the development would connect to this existing system.

The proposal would meet the desired outcomes of Part 1C.1.2 Stormwater Management of the HDCP and is considered acceptable.

### **3.2 Built Environment**

#### **3.2.1 Built Form**

Being 13.4m in height, the building would be visible from Sefton Road and adjoining residential development to the west. As discussed in Section 2.5.8 of this report, the design of the building is considered satisfactory in respect to the surrounding industrial and residential environment. The scale

of the building with the existing setbacks would not result in significant shadowing or amenity impacts to adjoining properties.

### **3.2.2 Traffic**

Traffic and parking impacts have been assessed under Section 2.5.4 of this report.

### **3.3 Social Impacts**

The social impacts of the development on the local and broader community have been considered with specific reference to the potential employment generation within the site.

There would be a number of multiplier effects that the development would provide throughout the local and regional economies. These multiplier effects would result from the warehousing and distribution of goods from within the building as well as the increased consumption generated by the increase of employment in the area.

## **4. SITE SUITABILITY**

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

### **4.1 Bushfire Risk**

The north-western corner of the site is mapped as being bushfire prone. However, the portion of the site upon which the subject application relates is not.

The application includes a Bush Fire Assessment Report prepared by Australian Bushfire Consulting Services dated 27 May 2019 which identifies that the subject site is subject to a bushfire attack level rating of BAL-LOW and recommends the site be maintained as an Asset Protection Zone/Inner Protection Area as detailed in the NSW Rural Fire Service’s document ‘*Standards for Asset Protection Zones*’ and Appendix 2 and 5 of *Planning for Bushfire Protection 2006*. As *Planning for Bushfire Protection 2006* has since been superseded by *Planning for Bushfire Protection 2019* as of 1 March 2020, appropriate conditions are recommended to reflect this change.

## **5. PUBLIC PARTICIPATION**

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

### **5.1 Community Consultation**

The proposed development was placed on public exhibition and was notified to adjoining and nearby landowners between 31 July 2020 to 27 August 2020 and again from 21 January 2021 to 11 February 2021 in accordance with the Hornsby Community Engagement Plan. During these periods, Council received a total of 57 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**

<ul style="list-style-type: none"> <li>• PROPERTIES NOTIFIED</li> </ul>	<ul style="list-style-type: none"> <li>X SUBMISSIONS RECEIVED</li> </ul>	 PROPERTY SUBJECT OF DEVELOPMENT	
-------------------------------------------------------------------------	--------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------

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

- Development is excessive in bulk and scale and would have adverse visual impacts to nearby residents.
- Increased building height would overshadow adjoining residences.
- 24/7 operation would adversely residential amenity and quality of life for occupants of adjoining residential developments.
- Service by heavy rigid vehicles would generate noise that would significantly impact surrounding residents.
- Reduction of on-site car parking would exacerbate existing vehicle congestion on Sefton Road.
- Devaluation of adjoining properties.

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 Property Values**

Submissions were received raising concern that the proposal would adversely affect the value of nearby residential properties.

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

## 5.2 Public Agencies

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

## 6. THE PUBLIC INTEREST

Section 4.15(1)(e) of the Act requires Council to consider “*the public interest*”.

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

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

## CONCLUSION AND STATEMENT OF REASONS

The application seeks consent for alterations and additions to an existing industrial building and strata subdivision

Council received 57 submissions during the public notification periods objecting to the proposal generally on the grounds of 24 hour operating hours, bulk and scale, noise generation, traffic generation and car parking. The applicant has subsequently amended the application proposing 7am-7pm Monday to Saturday operating hours consistent with other uses on the site.

The proposal generally complies with the relevant provisions of the *Hornsby Local Environmental Plan 2013* with the exception of the maximum height of buildings development standard. The applicant has made a submission in support of a variation to this development standard in accordance with Clause 4.6 of the *HLEP*. The request is considered well founded.

The proposal generally meets the desired outcomes of the Hornsby Development Control Plan 2013 with the exception of the generation and noise and vibration arising from unrestricted hours of operation. Subject to conditions limiting operating hours, the proposal would be acceptable.

Subject to conditions, the development is satisfactory having regard to the matters for consideration under Section 4.15 of the *Environmental Planning and Assessment Act 1979*.

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

The reasons for this recommendation are:

- The request under Clause 4.6 of *Hornsby Local Environmental Plan 2013* to contravene the ‘Height of buildings’ development standard is well founded. Strict compliance with the development standard is unreasonable and unnecessary in the circumstances of the case and there are sufficient environmental planning grounds to justify the contravention to the development standards.

- The proposed development generally complies with the requirements of the relevant environmental planning instruments and the Hornsby Development Control Plan 2013.
- The development is considered consistent with the State Government's "A Metropolis of Three Cities" and "North District Plan", by retaining industrial land and enabling further development that would serve a range of uses to support a growing population.
- The proposed development does not create unreasonable environmental impacts to adjoining development with regard to visual bulk, solar access, amenity or privacy impacts.

*Note: At the time of the completion of this planning report, no persons have made a Political Donations Disclosure Statement pursuant to Section 10.4 of the Environmental Planning and Assessment Act 1979 in respect of the subject planning application.*

#### **RESPONSIBLE OFFICER**

The officer responsible for the preparation of this report is Lawrence Huang.

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

ROD PICKLES  
Manager - Development Assessments  
Planning and Compliance Division

#### **Attachments:**

1.  Locality Plan
2.  Clause 4.6
3.  Legal Advice
4.  Architectural Plans

File Reference: DA/581/2020  
Document Number: D08282596

## SCHEDULE 1

### GENERAL CONDITIONS

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

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

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

# ITEM 2

### 1. Approved Plans and Supporting Documentation

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

<b>Plan No.</b>	<b>Plan Title</b>	<b>Drawn by</b>	<b>Dated</b>	<b>Council Reference</b>
DA-01 Rev. G	Site Plan	Graeme Scott Architect	April 2020	
DA-02 Rev. G	Ground Floor Plan	Graeme Scott Architect	April 2020	
DA-03 Rev. G	North and South Elevations	Graeme Scott Architect	April 2020	
DA-04 Rev. G	East and West Elevations and Section	Graeme Scott Architect	April 2020	
1215 Page L- 01 Issue A	Tree Retention/Removal/and Concept Landscape Plan	Site Design Studios	20.06.2019	

<b>Document Title</b>	<b>Prepared by</b>	<b>Dated</b>	<b>Council Reference</b>
Traffic and Parking Assessment Report	Terraffic Pty Ltd	03.11.2020	D08074176
Demolition and Construction Waste Management Plan	Thornleigh Holdings Pty Ltd	18.05.2020	D08329099
Operational Site Waste Minimisation and Management Plan	Graeme Scott Architect	Undated	D07959611
Long Term Environmental Management Plan	JBS&G Australia Pty Ltd	02.05.2019	D07717295

### 2. Construction Certificate

- a) A Construction Certificate is required to be approved by Council or a Private Certifying Authority prior to the commencement of any construction works under this consent.

- b) The Construction Certificate plans must be consistent with the Development Consent plans.

### 3. No Removal of Trees

This development consent does not permit the removal of any trees on the subject site.

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

### 4. Section 7.12 Development Contributions

- a) In accordance with Section 4.17(1) of the *Environmental Planning and Assessment Act 1979* and the *Hornsby Shire Council Section 7.12 Development Contributions Plan 2019 - 2029*, \$9,735 must be paid towards the provision, extension or augmentation of public amenities or public services, based on development costs of \$973,500.
- b) The value of this contribution is current as of 31 January 2022. If the contributions are not paid within the financial quarter that this consent is granted, the contributions payable will be adjusted in accordance with the provisions of the Hornsby Shire Council Section 7.12 Development Contributions Plan and the amount payable will be calculated at the time of payment in the following manner:

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

Where:

**\\$C<sub>PY</sub>** is the amount of the contribution at the date of Payment.

**\\$C<sub>DC</sub>** is the amount of the contribution as set out in this Development Consent.

**CPI<sub>PY</sub>** is the latest release of the Consumer Price Index (Sydney – All Groups) at the date of Payment as published by the ABS.

**CPI<sub>DC</sub>** is the Consumer Price Index (Sydney – All Groups) for the financial quarter at the date of this Development Consent.

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

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

*Note: In accordance with Ministerial Directions, the payment of contribution fees for development with a cost of works of over \$10 million can be deferred to prior to Occupation Certificate.*

*Note: The Hornsby Shire Council Section 7.12 Development Contributions Plan may be viewed at [www.hornsby.nsw.gov.au](http://www.hornsby.nsw.gov.au) or a copy may be inspected at Council's Administration Centre during normal business hours.*

#### **5. Compliance with Long Term Environmental Management Plan**

All requirements as stipulated by the Long Term Environmental Management Plan prepared by JBS&G Australia dated 2 May 2019 must be complied with throughout the demolition, construction and operation phases of the development.

### **REQUIREMENTS PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE**

#### **6. Building Code of Australia**

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

#### **7. Fire Safety Schedule**

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

#### **8. Sydney Water – Approval**

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

*Note: Building plan approvals can be obtained online via Sydney Water Tap in™ through [www.sydneywater.com.au](http://www.sydneywater.com.au) under the Building and Development tab.*

#### **9. Stormwater Drainage**

The stormwater drainage system for the development must be designed for an average recurrence interval (ARI) of 20 years and be gravity drained in accordance with the following requirements:

- a) Connected to an existing inter-allotment drainage system.

### **REQUIREMENTS PRIOR TO THE COMMENCEMENT OF ANY WORKS**

#### **10. Erection of Construction Sign**

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

#### 11. 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.

#### 12. Toilet Facilities

- a) To provide a safe and hygienic workplace, toilet facilities must be available or be installed at the works site before works begin and must be maintained until the works are completed at a ratio of one toilet for every 20 persons employed at the site.
- b) Each toilet must:
  - i) Be a standard flushing toilet connected to a public sewer.
  - ii) Be a temporary chemical closet approved under the *Local Government Act 1993*.

#### 13. Garbage receptacle

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

### REQUIREMENTS DURING DEMOLITION AND CONSTRUCTION

**14. Construction Work Hours**

- a) All works on site, including demolition, must only occur between 7am and 5pm Monday to Saturday.
- b) No work is to be undertaken on Sundays or public holidays.

**15. Compliance with Long Term Environmental Management Plan**

During construction, where excavations or a breach of the concrete slab/handstand pavement is required, such works must be undertaken in accordance with the specific requirements of the Long-Term Environmental Management Plan prepared by JBS&G Australia Pty Ltd dated 2 May 2019.

**16. Demolition**

To protect the surrounding environment, all demolition work must be carried out in accordance with *Australian Standard AS2601-2001 Demolition of structures* and the following requirements:

- a) Demolition material must be disposed of to an authorised recycling and/or waste disposal site in accordance with the approved waste management plan; and
- b) Demolition works, where asbestos material is being removed, must be undertaken by a contractor that holds an appropriate licence issued by *SafeWork NSW* in accordance with the *Work Health and Safety Regulation 2017* and be appropriately transported and disposed of in accordance with the *Protection of the Environment Operations (Waste) Regulation 2014*; and
- c) On construction sites where any building contain asbestos material, a standard commercially manufactured sign containing the words 'DANGER ASBESTOS REMOVAL IN PROGRESS' and measuring not less than 400mm x 300mm must be displayed in a prominent position visible from the street.

**17. Environmental Management**

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

**18. Council Property**

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

**19. 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.

**20. Maintenance of Public Footpaths**

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

#### 21. Waste Management

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

### REQUIREMENTS PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE OR SUBDIVISION CERTIFICATE

#### 22. Unit Numbering

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

#### 23. Car Parking Allocation

To ensure that future uses have an appropriate allocation of car parking, all units must have the minimum number of car parking spaces allocated to them as per the following table.

<i>Unit No.</i>	<i>Minimum number of spaces</i>
1	7
2	8
3	8
4	8
5	8

#### 24. Sydney Water – s73 Certificate

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

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

#### 25. Damage to Council Assets

To protect public property and infrastructure, any damage caused to Council's assets as a result of the construction or demolition of the development must be rectified by the applicant in accordance with AUS-SPEC Specifications ([www.hornsby.nsw.gov.au/property/build/aus-spec-terms-and-conditions](http://www.hornsby.nsw.gov.au/property/build/aus-spec-terms-and-conditions)). Rectification works must be undertaken prior to the issue of an Occupation Certificate, or sooner, as directed by Council.

#### 26. Landscaping of Site

All pervious areas of the site must be appropriately landscaped with suitable (preferably indigenous) turf, trees and shrubs to complement the development and prevent erosion of soil in accordance with the approved Landscape Plan.

*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](http://www.hornsby.nsw.gov.au).*

## 27. External Lighting

- a) To protect the amenity of adjacent premises, all lighting on the site must be controlled as to not cause a nuisance to other residences in the area. Flashing, moving or intermittent lights or signs are prohibited.
- b) All external lighting must be designed and installed in accordance with *Australian Standard AS 4282 Control of the obtrusive effects of outdoor lighting*.
- c) Lighting outside approved hours of operation must be sensor security lighting only and angled internally at a low level.
- d) Certification of compliance with this Standard must be obtained from a suitably qualified person and submitted to the PCA with the application for the Certificate.

## 28. Fire Safety Statement – Final

In accordance with the *Environmental Planning and Assessment (Development Certification and Fire Safety Regulation) 2021*, upon completion of the building, the owner must provide Council with a certificate in relation to each fire safety measure implemented in the building.

## OPERATIONAL CONDITIONS

### 29. Use of Premises

The development approved under this consent shall be used for 'warehouse and distribution centre' and not for any other purpose without Council's separate written consent.

### 30. Hours of Operation

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

Monday to Saturday	7 am to 7 pm
Sunday & Public Holidays	No work

### 31. Delivery Hours

Deliveries to and from the premise are restricted to those times listed below:

Monday to Saturday	7 am to 7 pm
Sunday & Public Holidays	No deliveries

### 32. Car Parking and Deliveries

All car parking must be constructed and operated in accordance with *Australian Standard AS 2890.1-2004 Off street car parking* and *Australian Standard AS2890.2-2002 Off street commercial* and the following requirements:

- a) All parking areas and driveways must be sealed to an all weather standard, line marked and signposted.
- b) Car parking, loading and manoeuvring areas must be used solely for nominated purposes and not for storage or display of goods, materials or any other equipment.

- c) Vehicles awaiting loading, unloading or servicing must be parked on site and not on adjacent or nearby public roads.
- d) Loading and unloading of vehicles must be undertaken within the nominated loading areas of each unit, wholly within the external walls of the building.
- e) All vehicular entry on to the site and egress from the site must be made in a forward direction.

### 33. 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).

### 34. External Lighting

- a) Lighting outside approved hours of operation must be sensor security lighting only and angled internally at a low level.
- b) Flashing, moving or intermittent lights or signs are prohibited.

### 35. Sight Lines

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

### 36. Waste Management

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

- a) All commercial tenant(s) must keep written evidence on site of a valid contract with a licensed waste contractor(s) for the regular collection and disposal of the waste and recyclables that are generated on site.
- b) All commercial tenant(s) must have a sufficient number of bins to contain the volume of waste and recycling expected to be generated between collection services.
- c) Waste collection services must not take place between 8PM and 7AM weekdays or 8PM and 8AM on weekends and public holidays.
- d) A Work, Health & Safety (WHS) risk assessment is to be carried out by a suitably qualified person with qualifications in Work, Health & Safety Legislation with specific regard to waste management. The recommendations of the WHS Risk Assessment are to be implemented as required.
- e) The management plan for the units must specifically include the management of waste generated on site, litter and dumped rubbish. The site management/owners corporation must be responsible for the prompt removal of litter and dumped rubbish.

*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.*

### 37. Asset Protection Zones

All ground within the subject property must be managed as an Inner Protection Area (IPA) as outlined within Appendix 4 of *Planning for Bush Fire Protection 2019* and the NSW Rural Fire Service's document *Standards for asset protection zones*.

*Note: Further information concerning planning for bush fire protection can be found at: [www.rfs.nsw.gov.au](http://www.rfs.nsw.gov.au).*

### 38. Fire Safety Statement - Annual

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

**- END OF CONDITIONS -**

#### ADVISORY NOTES

The following information is provided for your assistance to ensure compliance with the *Environmental Planning and Assessment Act, 1979*, *Environmental Planning and Assessment Regulation 2000*, other relevant legislation and Council's policies and specifications. This information does not form part of the conditions of development consent pursuant to Section 4.17 of the Act.

#### Environmental Planning and Assessment Act 1979 Requirements

The *Environmental Planning and Assessment Act 1979* requires:

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

#### Long Service Levy

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

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

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

#### Tree and Vegetation Preservation

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

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

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

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

### **Disability Discrimination Act**

The applicant's attention is drawn to the existence of the *Disability Discrimination Act 1992*. A construction certificate is required to be obtained for the proposed building/s, which will provide consideration under the *Building Code of Australia*, however, the development may not comply with the requirements of the *Disability Discrimination Act 1992*. This is the sole responsibility of the applicant.

### **Tenancy Fit-Out – Separate DA Required**

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

### **Advertising Signage – Separate DA Required**

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

### **Subdivision Certificate Requirements**

A subdivision certificate application is required to be lodged with Council containing the following information:

- A surveyor's certificate certifying that all structures within the subject land comply with the development consent in regard to the setbacks from the new boundaries.
- A surveyor's certificate certifying that all services, drainage lines or access are located wholly within the property boundaries. Where services encroach over the new boundaries, easements are to be created.
- Certification that the requirements of relevant utility authorities have been met.
- A surveyor's certificate certifying finished ground levels are in accordance with the approved plans.

*Note: Council will not issue a subdivision certificate until all conditions of the development consent have been completed.*

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

### **Fees and Charges – Subdivision**

All fees payable to Council as part of any construction, compliance or subdivision certificate or inspection associated with the development (including the registration of privately issued certificates) are required to be paid in full prior to the issue of the subdivision certificate. Any additional Council inspections beyond the scope of any compliance certificate required to verify compliance with the

terms of this consent will be charged at the individual inspection rate nominated in Council's Fees and Charges Schedule.

**Dial Before You Dig**

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

**Telecommunications Act 1997 (Commonwealth)**

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

**Asbestos Warning**

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

[www.environment.nsw.gov.au](http://www.environment.nsw.gov.au)

[www.adfa.org.au](http://www.adfa.org.au)

[www.safework.nsw.gov.au](http://www.safework.nsw.gov.au)

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

**3 DA/742/2021 - CONSTRUCTION OF A DWELLING HOUSE ON PROPOSED LOT 2 - 15 POMONA STREET, PENNANT HILLS**

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**EXECUTIVE SUMMARY**

**DA No:** DA/742/2021 (Lodged on 26 July 2021)

**Description:** Construction of a dwelling house on proposed Lot 2

**Property:** Lot 75 DP 660810, No. 15 Pomona Street, Pennant Hills

**Applicant:** Mr Mohit Sahni

**Owner:** Mr Mohit Sahni

**Estimated Value:** \$688,525

**Ward:** B Ward

- The application involves the construction of a dwelling house.
- The application complies with the relevant development standards of the *Hornsby Local Environmental Plan 2013* but does not satisfy the prescriptive measures of the Hornsby Development Control Plan 2013 with respect to scale, privacy, earthworks and slope, stormwater management and tree preservation.
- A total of 12 submissions have been received in respect of the application.
- The application is required to be determined by the Hornsby Council Local Planning Panel as 10 or more unique submissions were received by way of objection.
- It is recommended that the application be refused.

**RECOMMENDATION**

THAT Development Application No. DA/742/2021 for the construction of a dwelling house at Lot 75 DP 660810, No. 15 Pomona Street, Pennant Hills be refused for the reasons detailed in Schedule 1 of LPP Report No. LPP7/22.

**BACKGROUND**

On 21 November 2018, Council approved DA/677/2018 for the Torrens title subdivision of one allotment into two lots and the demolition of a garage, subject to a deferred commencement condition. The consent would not be operative until the applicant registered and created an Easement to Drain Water over the downstream property at SP 40249 (No. 18-22 Paling Street, Thornleigh. The subject site, No. 15A Pomona Street, was created through this subdivision.

On 2 May 2019, the applicant informed Council that the required Easement to Drain Water was registered as per the deferred commencement condition for DA/677/2018.

On 3 May 2019, Council informed the applicant that the consent for DA/677/2018 was operative and could be acted upon.

On 13 November 2019, Council approved Subdivision Construction Certificate No. SCC/32/2019 for subdivision works associated with DA/677/2018.

On 13 May 2020, Council issued pre-lodgement written advice under PL/28/2020 for the construction of a two-storey dwelling on the subject site.

On 26 July 2021, the subject application was lodged.

On 30 August 2021, Council requested amended architectural plans, an amended stormwater plan and an amended landscape plan to address concerns regarding building scale, stormwater management and replacement planting.

On 7 October 2021, the applicant submitted amended stormwater and landscape plans. An amended Statement of Environmental Effects was submitted providing justification for a departure from prescribed floor area measures.

On 19 October 2021, the application was presented to the Development Advisory Panel (DAP) comprising senior Council officers. Concerns were raised by the DAP with respect to the bulk and scale of the proposed dwelling, its response to the constraints of the site, privacy impacts and tree impacts.

On 1 November 2021, Council made a further request for the applicant to redesign the proposed dwelling house to address concerns regarding building scale, privacy and tree preservation.

On 12 January 2022, the applicant submitted amended architectural plans illustrating a change to the ground floor level. Correspondence from the applicant suggests that the change would allow for the retention of a Jacaranda tree within the backyard. However, supporting arboricultural documentation regarding this matter has not been received. Amended landscape and stormwater plans were also anticipated but have not been received.

The subject site was created through the subdivision approved by Council under DA/677/2018. However, at the time of this assessment, the subdivision has yet to be registered with NSW Land Registry Services.

**SITE**

The 597.4m<sup>2</sup> (592.6m<sup>2</sup> excluding access) battle-axe site is located on the north-eastern side of Pomona Street, Pennant Hills and is currently vacant. The site falls 8.8m from the south-west (front) to the north-east (rear).

The Pomona Street streetscape is characterised by primarily single storey dwelling houses in a landscaped setting reflective of a low-density residential area.

The site is not bushfire prone. The site is subject to overland flows at the rear.

The site is to be burdened by a variable width Right of Access and Easement for Services, a 1m wide Easement to Drain Water and a Positive Covenant.

The site is listed as heritage item no. 656 - House under Schedule 5 of the *Hornsby Local Environmental Plan 2013* and described as a good example of a small brick Federation cottage in good condition and virtually unaltered.

The site is also in the vicinity of the following local heritage items:

- Item No. 655 - House at No. 12-14 Pomona Street.
- Item No. 657 - House at No. 17 Pomona Street.
- Item No. 658 - House at No. 22 Pomona Street.
- Item No. 659 - House at No. 23 Pomona Street.

The site is not located in a heritage conservation area.

## PROPOSAL

The application proposes the construction of a two-storey dwelling house and an attached carport.

The ground floor would comprise a porch, two bedrooms, ensuite, walk-in wardrobe, study, family room, powder room, open kitchen, living and dining area, a combined pantry and laundry, storeroom and a balcony.

The lower ground floor would comprise two bedrooms, two walk-in wardrobes, bathroom, laundry, study, rumpus room and an alfresco area.

The application also proposes the construction of retaining walls within the backyard along the north-west, north and north-east boundaries.

Nine trees would be removed by the development.

Amended architectural plans submitted on 12 January 2022 illustrate the following changes to the proposal:

- Deletion of retaining walls within the backyard.
- Reduction of trees marked for removal from nine to eight.

## ASSESSMENT

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

### 1. STRATEGIC CONTEXT

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

*The Greater Sydney Region Plan - A Metropolis of Three Cities* has been prepared by the NSW State Government to guide land use planning decisions for the next 40 years (to 2056). The Plan sets a strategy and actions for accommodating Sydney's future population growth and identifies dwelling

targets to ensure supply meets demand. The Plan also identifies that the most suitable areas for new housing are in locations close to jobs, public transport, community facilities and services.

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

The proposed development would be consistent with the *Greater Sydney Region Plan - A Metropolis of Three Cities* and the *North District Plan*, by contributing to achieving the dwelling targets for the region.

## **2. STATUTORY CONTROLS**

Section 4.15(1)(a) requires Council to consider “*any relevant environmental planning instruments, draft environmental planning instruments, development control plans, planning agreements and regulations*”.

### **2.1 Hornsby Local Environmental Plan 2013**

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

#### **2.1.1 Zoning of Land and Permissibility**

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

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

The proposed development is defined as a ‘*dwelling house*’ and is permissible in the zone with Council’s consent.

#### **2.1.2 Height of Buildings**

Clause 4.3 of the *HLEP* provides that the height of a building on any land should not exceed the maximum height show for the land on the Height of Buildings Map. The maximum permissible height for the subject site is 8.5m. The proposal complies with this provision with a maximum building height of 8.4m.

#### **2.1.3 Heritage Conservation**

Clause 5.10 of the *HLEP* sets out the heritage conservation provisions for Hornsby Shire. The proposal has been considered with regard to the heritage requirements of the *HLEP*, the HDCP and the documentation submitted with the application.

#### *New Dwelling House*

Part 9.2.1 of the *HDCP* prescribes that works to heritage items retain the significance of the item and minimise impacts on the setting of the item.

The proposed dwelling house has a sympathetic pitched roof form and would be approximately 13m from rear of the Federation cottage and downslope of the heritage item. The front of the dwelling house and garage is single storey and has an overall ridge height of RL152.742, which is below that of the Federation dwelling.

The location of the dwelling house on the lower slopes of the site enables it to be largely screened from the street and maintain the setting of the listed Federation cottage at the street frontage. Whilst the dwelling is contemporary with a metal roof, the proposal would have minimal impact on the setting of the heritage item at No. 15 Pomona Street.

#### Landscaping/Trees

Part 9.2.3 of the *HDCP* prescribes that trees, gardens and landscapes listed or contribute to an item's significance be conserved.

The site does not contain any significant gardens, vegetation or trees that contribute to the item's individual significance. The site contains some mature remnant native and exotic trees at the rear of the site retained under the subdivision approval. The proposed dwelling requires the majority of trees on the site to be removed and Council's assessment regarding tree removal is discussed in detail in Part 6.6.4 of this report.

#### Development in the Vicinity of Heritage

Part 9.4.1 of the *HDCP* includes measures to maintain and respect the setting and significance of heritage items in the vicinity of the site. A number of measures prescribed include the design and siting of new work being sympathetic to the primary characteristics and heritage values.

The proposal would have minimal impact on the setting and significance of the heritage items in the vicinity due to the location of the proposed dwelling house down slope below and at the rear of the existing heritage item. Public domain views of the item would not be affected.

In summary, the proposed dwelling house, whilst contemporary in design, is well separated and located away from the existing heritage item at No. 15 Pomona Street that enables the significance and setting of the item and items in the vicinity to be maintained.

The proposal satisfies the heritage conservation requirements of the *HLEP* and the *HDCP* and no objections are raised on heritage grounds.

#### **2.1.4 Earthworks**

The objective of Clause 6.2 Earthworks of the *HLEP* is to ensure that earthworks for which development consent is required would not have detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.

An assessment is provided below in accordance with Clause 6.2 of the *HLEP*.

- (a) *The likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development.*

Comment: The proposed earthworks and retaining walls are unlikely to have a detrimental effect on the drainage patterns given that stormwater from the property would still flow towards the north-eastern downstream properties.

A 1m-wide Easement to Drain Water burdens the rear adjoining property, at No. 18-22 Paling Street, Thornleigh to the benefit of the subject site.

A Landslip Risk Assessment Report prepared by BMB Engineers dated October 2020 states that the subject site possesses a 'very low' to 'low' risk level for landslides. The Report concludes that an increase of risk to the stability of the site is unlikely during the construction of the proposed dwelling house subject to the implementation of the geotechnical recommendations for earthworks and retaining walls. Should the application be approved, these recommendations would be included in the conditions of consent.

(b) *The effect of the development on the likely future use or redevelopment of the land.*

Comment: The earthworks would not likely restrict future use or redevelopment of the land.

(c) *The quality of the fill or the soil to be excavated, or both,*

Comment: Whilst it is not anticipated that fill would be imported to facilitate the proposed works. Should the application be supported a condition would be recommended that any and all imported fill must be classified by a suitably qualified person as consisting wholly of virgin excavated natural material (VENM).

Should the application be approved, a condition would be recommended that any and all excavated material removed from the site must be classified by a suitably qualified person and disposed of at an approved waste management facility.

(d) *The effect of the development on the existing and likely amenity of adjoining properties.*

Comment: Should the application be approved; conditions would be recommended to limit amenity impacts during the construction period.

(e) *The source of any fill material and the destination of any excavated material.*

Comment: Should the application be approved; a condition would be recommended that any and all imported fill must be classified by a suitably qualified person as consisting wholly of virgin excavated natural material (VENM).

Likewise, a condition would be recommended that any and all excavated material removed from the site must be classified by a suitably qualified person and disposed of at an approved waste management facility.

(f) *The likelihood of disturbing relics.*

Comment: Council records do not show the property as being host to any relics.

(g) *The proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area.*

Comment: The proposed works would not be located in proximity to any environmentally sensitive area. Subject to appropriate erosion and sediment conditions, it is considered that any adverse impacts can be mitigated.

(h) *Any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

Comment: Conditions would be recommended that erosion and sediment controls be in place prior to the commencement of any works.

In summary, the proposal is acceptable with respect to Clause 6.2 of the *HLEP*.

## **2.2 State Environmental Planning Policy (Exempt and Complying Development Codes) 2008**

*State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (NSW Housing Code)* provides exempt and complying development codes that have State-wide application.

The Policy also identifies types of development that are of minimal environmental impact that may be carried out without the need for development consent and types of complying development (including dwelling houses) that may be carried out in accordance with a complying development certificate.

The proposal in this application may not be approved as complying development because the site is identified as a heritage item and the development would require the removal of trees.

## **2.3 State Environmental Planning Policy No. 55 Remediation of Land**

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

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

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

## **2.4 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 (Cert. No. 1196401S) which meets the requirements of the SEPP.

## **2.5 State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017**

The application has been assessed against the requirements of *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 (Vegetation SEPP)*. This Policy seeks to protect the biodiversity values of trees and other vegetation in non-rural areas of the State, and to preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation.

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

Section 2.8.5 Tree Preservation of this report provides an assessment in accordance with Part 1B.6.1 of the *HDCCP*.

## **2.6 State Regional Environmental Policy (Sydney Harbour Catchment) 2005**

The site is located within the catchment of Sydney Harbour. Part 2 of this Plan aims to ensure that the catchment, foreshores, waterways and islands of Sydney Harbour are recognised, protected,

enhanced and maintained. These aims require Council to consider the impacts of development on biodiversity, ecology and environment protection.

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

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

Section 3.42 of the *Environmental Planning and Assessment Act 1979* states that a DCP provision will have no effect if it prevents or unreasonably restricts development that is otherwise permitted and complies with the development standards in relevant Local Environmental Plans and State Environmental Planning Policies.

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

## 2.8 Hornsby Development Control Plan 2013

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

<b>HDCP – Part 3.1 Dwelling Houses</b>			
<b>Control</b>	<b>Proposal</b>	<b>Requirement</b>	<b>Complies</b>
Site Area (excluding access)	592.6m <sup>2</sup>	N/A	N/A
Building Height	8.4m	8.5m	Yes
No. storeys	2	max. 2 + attic	Yes
Site Coverage	41.3%	50%	Yes
Floor Area	360.3m <sup>2</sup>	330m <sup>2</sup>	No
Setbacks			
- Side (south-west) Ground floor	1.5m	0.9m	Yes
- Side (north-west) Lower Ground floor	1.7m	0.9m	Yes
Ground floor	1.7m	1.5m	Yes
- Side (south-east)			

Lower Ground floor	1.5m	0.9m	Yes
Ground floor	1.5m	1.5m	Yes
- Rear			
Lower Ground floor	9m	3m	Yes
Ground floor	9m	8m	Yes
Landscaped Area (% of lot size)	34%	20%	Yes
Private Open Space			
- minimum area	>24m <sup>2</sup>	24m <sup>2</sup>	Yes
- minimum dimension	>3m	3m	Yes
Car Parking	2 spaces	2 spaces	Yes

As detailed in the above table, the proposed development does not comply with the prescriptive floor area requirement within the *HDCP*. The matters of non-compliance are detailed below, as well as a discussion on compliance with relevant desired outcomes.

### 2.8.1 Scale (Floor Area)

The desired outcome of Part 3.1.1 Scale of the *HDCP* is to encourage “*development with a height, bulk and scale that is compatible with a low-density residential environment*”.

The prescriptive measures set out in Table 3.1.1(c) Maximum Floor Area for a dwelling house and ancillary outbuildings, prescribes a maximum floor area of 330m<sup>2</sup> for lots between 450m<sup>2</sup> and 599m<sup>2</sup>.

At lodgement, the application proposed a dwelling house which would have a have a floor area of 363m<sup>2</sup> (33m<sup>2</sup>, a 10% variation) which does not comply with the abovementioned prescriptive measure.

On 12 January 2022, the applicant submitted an amended design which reduced the floor area to 360.3m<sup>2</sup>. Notwithstanding, the floor area non-compliance persists.

The submitted Statement of Environmental Effects (SEE) includes the following comments in support of the non-compliance:

- The areas of the ground floor level balcony (32m<sup>2</sup>) and the lower ground floor level alfresco (18m<sup>2</sup>) must be included as part of floor area as they are bound by 1.8m high privacy screens along their eastern and western elevations. Were these spaces not to be considered as part of the floor area calculation, the floor area of the dwelling house would be compliant with the prescriptive measures.
- A portion of the ground floor level balcony (9m<sup>2</sup>) is a passage to connect the laundry door to the main balcony area.
- The dwelling is compliant with Council’s prescribed building height, site coverage and setback measures.
- The balcony and alfresco would have privacy screens installed and be located at least 9 metres from the rear boundary, in accordance with *HDCP* privacy measures.

- Landscaping incorporates hedges to address privacy concerns with adjoining properties to the north, east and west; and
- The property has a site area of 597m<sup>2</sup> which is just 3m<sup>2</sup> short of 600m<sup>2</sup> which would enable a dwelling house to have a floor area of 360m<sup>2</sup>.

Council comments:

- Council concurs that enclosed balconies are required to be included as floor area.
- If the privacy screens were not provided, significant privacy concerns would arise as the use of the balcony and alfresco would allow for overlooking into the private open space of adjoining properties due to their size and elevation.
- Were the areas of the balcony and alfresco to be reduced substantially in size or deleted, the floor area of the dwelling house could maintain compliance with the prescriptive floor area measures whilst also addressing privacy concerns.

In consideration of the circumstances, Council cannot support the proposal in its current form as it does not meet the desired outcomes of Part 3.1.1 of the HDCP and is considered unacceptable.

During the notification period, submissions were received raising the following concerns regarding the proposal:

- The height and bulk of the dwelling does not respond to the slope of the land which is inconsistent with management of residential amenity by way of overshadowing and visual/acoustic privacy.
- The height of the proposed dwelling would be three storeys above the townhouses at No. 18-22 Paling Street with a proposed deck just above the window line. This height would obstruct natural light and remove all privacy.
- The building height of less than 8.5m at the rear of the building is in contrast to the actual ridge height of 12.742m when viewed from the foot of the dividing fence or in the dwellings at Nos. 18-22 Paling Street.

To address the above concerns, the following comments are made:

- The building height of a dwelling house is the vertical distance calculated between the highest point of the building to the existing ground level immediately below it. As identified in the compliance table, the proposed dwelling house would have a building height which complies with the development standard set out under Clause 4.3 of the *HLEP*.
- The shadowing impacts of the proposal is discussed in detail in Section 2.8.5 of this report. In brief, the submitted Shadow Diagrams illustrate that the proposed dwelling house would not unreasonably shadow adjoining properties on the day of the winter solstice.
- Privacy impacts are discussed further in Section 2.8.3 of this report.

### **2.8.2 Earthworks and Slope**

The desired outcomes of Part 1C.1.4 Earthworks and Slope of the HDCP are to encourage “*development that is designed to respect the natural landform characteristics and protects the stability of land*” and “*development that limits landform modification to maintain the amenity of adjoining properties and streetscape character*”.

These outcomes are supported by prescriptive measure 1C.1.4(a) which states that “*development should be sited on the area of land presenting the least topographic constraints and away from ridge lines*”.

The architectural plans submitted with the application illustrate that the proposed dwelling house would have a ground floor level elevated up to 4.3m and a lower ground floor level elevated up to 1.3m above existing ground level due to the significant slope of the land towards the rear of the site.

These elevated floor levels substantiate the concerns received from submissions stating that the proposal does not respond to the slope of the land and is inconsistent with the management of residential amenity by way of its bulk and privacy impacts.

On 1 November 2021, Council requested the applicant consider redesigning the dwelling house to greater use the existing cleared and level southern area of the battle-axe allotment. The ‘Potential Site Usage Plan’ submitted with DA/677/2018 demonstrated that a 200m<sup>2</sup> indicative building envelope could be accommodated in this area. Additionally, it was requested that the applicant employ a stepped design to respond to the slope of the land. A stepped design would lessen the perceived bulk of the dwelling when viewed from adjoining properties and would reduce the elevation of any living and entertaining areas located to the rear of the building.

The amended architectural plans received on 12 January 2022 do not illustrate a dwelling house which implements Council’s recommendations. Consequently, concerns relating to perceived bulk and privacy remain.

In its current form, the proposal does not demonstrate a design which respects the natural landform characteristics of the land and does not maintain the amenity of adjoining properties. As such, the proposal does not satisfy the desired outcomes of part 1C.1.4 Earthworks and Slope of the HDCP and cannot be supported.

### **2.8.3 Privacy**

During the public notification period, submissions were received raising the following privacy concerns:

- The proposal would impinge upon privacy of neighbouring properties.
- Windows within the eastern elevation would overlook living areas and bedrooms of No. 17A Pomona Street and windows numbered W7, 8, 9, 20, 21 and 22 should be obscured up to 2.1 metres above finished floor level.
- The upper floor balcony would result in privacy and noise impacts. Being 32m<sup>2</sup> in area, it is larger than the internal living space and is undesirable and unsympathetic to existing character and amenity.
- The proposal would allow for overlooking into adjoining properties and the dwelling should be set back further from the rear with trees retained.
- The height of the proposed dwelling would be 3 storeys above the townhouses at No. 18-22 Paling Street with a proposed deck just above the window line. This height would obstruct natural light and remove all privacy.
- The deck areas are elevated 4.29m and 7.35m above existing ground level measured at the rear dividing fence with a retaining wall raised ground level by 1 metre adjacent to the rear fence.

- The landscaping plan does not show specific trees or shrubs planted to maintain privacy.

To address the concern regarding lack of detail with respect to landscaping, a landscape plan was submitted on 12 January 2022 illustrating the location of retained trees T3 and T5, the location and species of plantings including two Hickory Wattle, two Parramatta Green Wattle and two Viburnum hedges and the removal of retaining walls from the backyard.

With respect to the concern regarding windows within the eastern elevation, conditions would be recommended for privacy screening to required windows should the application be approved.

The application proposes ground floor level balconies elevated up to 4.85m and a lower ground floor level alfresco elevated up to 1.79m above existing ground level, neither of which comply with prescriptive measure 3.1.6(c).

To address the matter of overlooking into the south-eastern (No. 17A Pomona Street) and north-western (No. 7 Cavendish Street) adjoining properties, the architectural plans illustrate 1.8m high privacy screens along the south-eastern and north-western sides of both the balconies and the alfresco. Whilst in accordance with prescriptive measure 3.1.6(d), the screens contribute to the perceived bulk of the dwelling house as discussed in Section 2.8.1 and 2.8.2 of this report.

Irrespective of the screening, the balconies and alfresco would still allow for overlooking into the private open spaces and habitable rooms of the northern adjoining residential townhouse development at No. 18-22 Paling Street, Thornleigh. Although the architectural plans illustrate that the balconies and alfresco areas would be set back 9m from the rear boundary, the separation would not alleviate the privacy impacts as these areas are elevated several metres higher than that of the townhouse development.

The application seeks to ameliorate this issue by introducing 4 trees and a viburnum hedge as illustrated in the Landscape Plan. Whilst it is acknowledged that the planting would provide a degree of natural screening, they would take several years to reach maturity. Furthermore, the mature height of the hedge is noted at 4m which may only provide effective screening from the lower ground floor level alfresco. Given the elevation of the proposed ground floor level balconies, these areas would still be afforded an uninterrupted view towards the townhouse development.

On 1 November 2021, Council requested the applicant redesign the proposal to address scale, privacy and tree retention.

On 12 January 2022, amended architectural plans (Rev. L) were received illustrating a minor change to the dwelling house design, shortening the length of the ground floor level store room. The lost area would instead be occupied by another balcony measuring 1.5m x 1.6m. Correspondence from the applicant suggests that this change will allow for the retention of tree numbered T5 (Jacaranda) within the rear yard. However, an amended AIA supporting this claim has not been provided and the introduction of another balcony on the ground floor level fails to resolve any of the privacy concerns raised.

Consequently, Council cannot support the proposal in its current form as the application has failed to adequately address the privacy concerns raised by submissions or by Council and does not satisfy the desired outcomes of Part 3.1.6 Privacy of the HDCP.

#### **2.8.4 Sunlight Access**

During the notification period, submissions were received raising the following concerns regarding sunlight access:

- Shadow diagrams do not illustrate the position of the dwelling house at No. 17A Pomona Street and do not model the overshadowing impacts to this property.
- The height and bulk of the dwelling does not respond to the slope of the land which is inconsistent with management of residential amenity by way of overshadowing.
- The height of the proposed dwelling would be 3 storeys above the townhouses at Nos. 18-22 Paling Street with a proposed deck just above the window line. This height would obstruct natural light.

Amended shadow diagrams were submitted by the applicant on 7 October 2021 illustrating the location of the dwelling house at No. 17A Pomona Street.

An assessment of the shadow diagrams demonstrates that the subject site and adjoining properties, No. 7 Cavendish Street and Nos. 15 and 17A Pomona Street would receive a compliant amount of unobstructed sunlight access in accordance with prescriptive measures 3.1.5(a) and (b).

The dwellings located at No. 18-22 Paling Street would be unaffected by shadowing as they are located north of the subject site.

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

### 2.8.5 Tree Preservation

During the notification period, submissions were received raising the following concerns regarding tree removal:

- Object to the removal of trees numbered T4, T6 and T7 as these are mature trees and may be home to native species, such as the Tawny Frogmouth.
- The removal of trees numbered T4-T10 are contrary to Condition 6(b) of DA/677/2018.
- The removal of the trees would have adverse environmental and visual impacts. It would result in a loss of the almost continuous canopy which links Cavendish Street and Scout Creek to the east.
- These trees are valuable, and their removal would adversely impact fauna in the locality through loss of tree canopy.
- The trees complement the amenity and privacy of adjoining properties and contribute to the landscape amenity of the locality.
- There are proposed works within the vicinity of trees numbered T11 and T12 that may result in significant destabilisation and pose a risk to life and property at No. 7 Cavendish Street.

To address the tree impacts arising from the proposed works, the application includes an Arboricultural Impact Assessment (AIA) prepared by Michael Shaw dated 25 March 2021.

The report identifies 18 trees within proximity to the proposal and recommends for the removal of 9 trees to facilitate the proposal.

Trees numbered T6 (Deodar Cedar), T7 (Cypress), T8 (Trident Maple), T9 (Crepe Myrtle) and T10 (Trident Maple) would be removed as they are located within the footprint of the dwelling house and trees numbered T1 (Box Elder), T2 (Avocado), T4 (Cypress) and T5 (Jacaranda) would be removed as they would be subject to unsustainable encroachments into their tree protection zones (TPZ).

In reviewing the submitted AIA and submissions received, the following observations are made:

- Electing to remove 9 trees to facilitate the proposal represents the removal of almost all trees on the property, with only one tree, numbered T3 (Brush Box) to be retained.
- A dwelling design minimising tree loss may be accommodated through greater use of an existing cleared and level area towards the south side of the battle-axe allotment.
- The existing vegetation in the rear yard enhances the landscaped setting of the locality and allows for the maintenance of a high level of natural screening between the subject site and adjoining properties. Privacy impacts could be alleviated through the retention of a number of the existing trees.

On 1 November 2021, Council requested the applicant redesign the dwelling house to allow for a greater retention of existing trees.

On 12 January 2022, the applicant submitted amended architectural plans. Correspondence from the applicant suggests that the modifications made would allow for the retention of tree T5 (Jacaranda). However, as at the time of this assessment, an amended AIA supporting this statement has not been provided.

Consequently, Council is unable to conduct a full and proper assessment of the amended proposal in relation to its anticipated impacts to trees and the proposal cannot be supported in its current form due to insufficient information.

#### **2.8.6 Bushfire**

The application includes a Bushfire Assessment Statement prepared by Building Code & Bushfire Hazard Solutions dated 7 November 2020.

The Statement concludes that the subject site benefits from an available asset protection zone (APZ) of more than 100m to the east which separates it from the identified hazard vegetation associated with Scout Creek and is considered to have a bushfire attack level rating of BAL-LOW. Consequently, there is insufficient risk to warrant specific construction requirements.

Council raises no objections to the conclusions of the report.

#### **2.8.7 Stormwater Management**

During the notification period, the following concerns were raised regarding stormwater management:

- The application does not include a Flood Study Report. Stormwater from this development will overflow to the water system at Nos. 18-22 Paling Street which connects to Scout Creek. The Statement of Environmental Effects expects that stormwater overflow would be to the drainage system serving Nos. 18-22 Paling Street however no such investigation has taken place and permission has not and would not be granted.
- Stormwater infrastructure and pipes should be moved to the opposite side of the site to minimise impacts to trees numbered T11 and T12 located at No. 11 Pomona Street.

To address the above concerns raised, the following comments are made:

- The subject site is identified as being subject to overland flows along the rear boundary. However, Council's engineering assessment has determined that the proposed dwelling house would be unaffected by flooding as the finished lower ground floor level (RL144.29 AHD) is 4m above existing ground levels at the rear boundary (RL 140 AHD).

- During the assessment of DA/677/2018 it was acknowledged that the subdivision would drain by gravity via a proposed on-site detention (OSD) system to an easement to drain water located at Nos. 18-22 Paling Street, Thornleigh. Given that written consent for the creation of the drainage easement was not produced at the time of assessment, a deferred commencement condition was recommended requiring the registration and creation of an easement to drain water from the subject site over the downstream property prior to the consent becoming operative.
- Evidence was provided on 2 May 2019 for the registration and creation of an easement to drain water burdening Nos. 18-22 Paling Street and benefitting No. 15 Pomona Street with notification of an operative consent provided to the applicant on 3 May 2019.
- Conditions were recommended in the approval of DA/677/2018 for the implementation of sensitive construction techniques during the installation of the stormwater drainage system in proximity to trees numbered T11 and T12. Should the application be approved, similar conditions would be recommended to ensure that these trees may be retained with minimal impact to their health and condition.

On 30 August 2021 Council requested a concept drainage plan to be submitted illustrating the proposed stormwater system connecting to the inter-allotment drainage easement created from SCC/32/2019 and incorporating an OSD system. Whilst the applicant submitted an amended stormwater plan on 7 October 2021, it was deemed unacceptable because it did not include any engineering details to demonstrate that the proposed system would function appropriately.

No further concept drainage plan prepared by a suitably qualified engineer has been received from the applicant. Consequently, Council cannot support the proposal in its current form due to insufficient information with respect to stormwater management.

## **2.9 Section 7.12 Contributions Plan**

The Hornsby Shire Council Section 7.12 Contributions Plan 2019–2029 does not apply to the development as the land on which the development is to be carried out is subject to monetary contributions applied under DA/677/2018.

## **3. ENVIRONMENTAL IMPACTS**

Section 4.15(1)(b) of the Act requires Council to consider *“the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality”*.

### **3.1 Natural Environment**

#### **3.1.1 Tree and Vegetation Preservation**

A discussion with respect to tree and vegetation preservation has been provided under Section 2.8.5 of this report.

#### **3.1.2 Stormwater Management**

Roof water collected from the proposed dwelling house is to be connected to an underground rainwater tank having a capacity of 3,000 litres in accordance with BASIX requirements. Overflow from the rainwater tank would be connected to an OSD system then onwards to an inter-allotment drainage easement.

Although concept drainage plans have been submitted with the application, none have included sufficient engineering details to demonstrate that the proposed system would function appropriately.

### **3.2 Built Environment**

#### **3.2.1 Built Form**

The proposed dwelling house does not comply with the prescriptive floor area measures of the HDCP. Furthermore, the applicant has not provided an appropriate response to concerns raised by Council and submissions with respect to the perceived bulk and scale of the development on the sloping site.

#### **3.2.2 Traffic**

The proposed dwelling house accommodates two car parking spaces which complies with Council's off-street parking requirements for residential developments. Swept path diagrams within the architectural plans demonstrate that vehicles can enter and exit the property in a forward direction.

### **3.3 Social Impacts**

The proposed dwelling house would make a positive social contribution by providing for the housing needs of the community within a low-density residential environment. However, as evidenced by the number of objections received and Council's unresolved concerns regarding building scale, privacy and tree preservation, the proposal in its current form would be detrimental to the residential amenity of immediate properties.

### **3.4 Economic Impacts**

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

## **4. SITE SUITABILITY**

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

### **4.1 Flooding**

Council's records indicate that a portion of the subject property, along the rear boundary, is subject to an overland flow path running north-west to south-east towards Scout Creek.

The amended plans submitted on 12 January 2022 removes the proposed retaining walls within the backyard therefore, existing ground levels towards the rear of the property would remain unaltered.

Council's engineering assessment has determined that it would be highly unlikely that the overland flow path would affect the proposed dwelling house as the finished lower ground floor level (RL144.29 AHD) is 4m above existing ground levels at the rear boundary (RL 140 AHD).

## **5. PUBLIC PARTICIPATION**

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

### **5.1 Community Consultation**

The proposed development was placed on public exhibition and was notified to adjoining and nearby landowners between 28 July 2021 and 19 August 2021 in accordance with the Hornsby Community Engagement Plan. During this period, Council received 6 submissions. An additional 6 submissions were received outside of the notification period. 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**

<ul style="list-style-type: none"> <li>• PROPERTIES NOTIFIED</li> </ul>	<ul style="list-style-type: none"> <li>X SUBMISSIONS RECEIVED</li> </ul>	 PROPERTY SUBJECT OF DEVELOPMENT	
-------------------------------------------------------------------------	--------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------

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

- A dwelling house that does not response to the slope of the land and which is inconsistent with management of residential amenity by way of overshadowing and privacy.
- A dwelling house that would be highly visible from adjoining properties with no vegetation to help soften the bulk.
- The removal of several trees from the site.

- Loss of landscape amenity in the locality through the removal of tree canopy.
- A dwelling house that is inconsistent with the indicative building footprint submitted with DA/677/2018.

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 Fencing**

A submission was received raising concern that the dividing fence between the subject site and No. 7 Cavendish Street should not be damaged in any way. The foundations of the fence should not be destabilised in the course of constructing the development.

Should the application be approved, a condition would be recommended to ensure that, if the boundary fence were to be damaged during construction, that rectification works are undertaken by the applicant.

#### **5.1.2 Sewer Line**

A submission was received raising concern that the sewer line along the northern boundary is not illustrated on plans and may be impacted by proposed retaining walls.

An amended Landscape Plan received on 12 January 2022 illustrates that retaining walls within the rear yard are no longer proposed.

Should the application be approved, a condition would be recommended for the proposal to obtain separate approval from Sydney Water.

#### **5.2 Public Agencies**

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

### **6. THE PUBLIC INTEREST**

Section 4.15(1)(e) of the Act requires Council to consider “*the public interest*”.

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

The application is 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 refusal of the proposed development would be in the public interest.

### **CONCLUSION**

The application proposes the construction of a dwelling house.

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

Council received 12 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.

The reasons for this recommendation are:

- The proposal is not consistent with the aims of *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017* as it does not seek to appropriately preserve amenity through the preservation of trees and other vegetation.
- The proposal does not meet the desired outcomes of Part 3.1.1 Scale of the Hornsby Development Control Plan 2013 as the development does not comply with the prescriptive measures for floor area.
- The proposal does not meet the desired outcomes of Part 1C.1.4 Earthworks and Slope of the Hornsby Development Control Plan 2013 as it has not been designed to respect the natural landform characteristics of the land nor to maintain the amenity of adjoining properties.
- The proposal does not meet the desired outcomes of Part 3.1.6 Privacy of the Hornsby Development Control Plan 2013 as it has not been designed to provide reasonable privacy to adjoining properties.

*Note: At the time of the completion of this planning report, no persons have made a Political Donations Disclosure Statement pursuant to Section 10.4 of the Environmental Planning and Assessment Act 1979 in respect of the subject planning application.*

#### **RESPONSIBLE OFFICER**

The officer responsible for the preparation of this report is Lawrence Huang.

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

ROD PICKLES  
Manager - Development Assessments  
Planning and Compliance Division

#### **Attachments:**

1.  Locality Plan
2.  Architectural Plans

File Reference: DA/742/2021

Document Number: D08329161

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**SCHEDULE 1**

1. The proposal is unsatisfactory in respect to Section 4.15(a)(i) of the *Environmental Planning and Assessment Act 1979* as the development is not consistent with the aims of *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017* and does not seek to appropriately protect the biodiversity and amenity values of trees.
2. The proposal is unsatisfactory in respect to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, as the proposal does not comply with the desired outcome and the prescriptive measures of *Hornsby Development Control Plan 2013* (HDCP) as follows:
  - a) The proposal does not comply with the prescriptive measures within Part 3.1.1 Scale of the HDCP with regard to maximum floor area of a dwelling house.
  - b) The proposal does not comply with the prescriptive measures within Part 1C.1.4 Earthworks and Slope of the HDCP referring to the siting of development on areas of land presenting the least topographic constraints.
  - c) The proposal does not satisfy the desired outcomes of Part 3.1.6 Privacy of the HDCP referring to the provision of reasonable privacy to adjacent properties.
3. The proposal is unsatisfactory in respect to Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*, as the proposal would have detrimental environmental impacts on the natural environment in the locality.
4. The proposal is unsatisfactory in respect to Section 4.15(1)(a)(d) and (e) of the *Environmental Planning and Assessment Act 1979*, as the proposal would not be in the public interest.

- END OF REASONS FOR REFUSAL -

**ITEM 3**

**4 DA/137/2021 - FURTHER REPORT - CONSTRUCTION OF A DWELLING HOUSE - 38A MALTON ROAD, BEECROFT**

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**EXECUTIVE SUMMARY**

**DA No:** DA/137/2021 (Lodged on 11 February 2021)

**Description:** Construction of a dwelling house

**Property:** Lot 3 DP 1226564, No. 38A Malton Road, Beecroft

**Applicant:** Peter Henderson

**Owner:** Mrs Janet Gwendoline Henderson

**Estimated Value:** \$1,000,000

**Ward:** C

- The application involves the construction of a dwelling house.
- The proposal complies with the requirements of the *Hornsby Local Environmental Plan 2013* and the Hornsby Development Control Plan 2013.
- A total of 21 submissions have been received in respect of the application.
- On 29 September 2021, the Hornsby Council Local Planning Panel considered the proposed development and resolved to defer the application to address the concerns raised by speakers at the meeting regarding issues including, positive covenant, impacts on native vegetation, extent of the APZ, retention of significant trees and replacement planting, tiering of the rear yard and treatment of the watercourse and on-site water management.
- It is recommended that the application be approved.

**RECOMMENDATION CONSENT**

THAT Development Application No. DA/137/2021 for the construction of a dwelling house at Lot 3 DP 1226564, No. 38A Malton Road, Beecroft be approved subject to the conditions of consent detailed in Schedule 1 of LPP Report No. LPP10/22.

## BACKGROUND

DA/390/2016 was approved for on 6 October 2016 for the demolition of structures and Torrens Title subdivision of two lots into three. DA/137/2021 seeks approval to construct a dwelling house on Lot 3.

On 22 March 2021, Council requested amended plans to address the turning circles provided, an amended landscape plan and an Integrated Bushfire and Vegetation Management Plan (IBVMP).

On 6 May 2021, Council received the amended plans and IBVMP.

On 26 July 2021, Council requested a survey for the threatened Powerful Owl (*Ninox strenua*) and an impact assessment of significance ('five-part test') in accordance with Section 7.3 of the *NSW Biodiversity Conservation Act 2016* prepared by fauna ecologist with survey experience and assessment specifically for this species.

On 11 August 2021, Council received the Threatened Powerful Owl survey and an amended IBVMP.

On 25 August 2021, Council requested amended plans to reduce the amount of fill proposed within the rear yard and increase the setbacks of the proposed retaining walls.

On 2 September 2021, Council received the amended landscape plans.

On 29 September 2021, the Hornsby Council Local Planning Panel considered the application and resolved:

*'The Panel is particularly concerned with the potential inconsistency of the submitted plans with the requirements of the positive covenant in respect to the location of the restricted development area (RDA) and the asset protection zone (APZ).'*

*The Panel resolved to defer the determination of the application and require the applicant to address issues raised by the speakers in the meeting including:*

- *The provisions of the positive covenant and conservation of native vegetation.*
- *The extent of the APZ with respect to potential building encroachment.*
- *The potential to retain significant trees on the site.*
- *Proposed treatment of the watercourse and on-site water management.*
- *The necessity for rear yard tiering and retaining walls.*
- *Replacement tree planting.*

On 8 October 2021, Council requested amended plans to address the reasons for the panel.

On 9 December 2021, Council received the amended plans which are subject to this assessment. The amendments included reducing the tiered landscaping within the rear yard, reducing cut and fill and increasing the number of trees to be retained.

## SITE

The 2,412m<sup>2</sup> vacant battle-axe property is located on the southern side of Malton Road Beecroft and experiences a fall of 30m to the rear southern boundary.

The site is burdened and benefitted by a right of access and easement for services of variable width and easement to drain water of variable width. The southern, rear portion of the site contains dense bushland identified as Blackbutt Gully Forest vegetation community.

The site is located within the Beecroft/Cheltenham Heritage Conservation Area listed under Schedule 5 of the *Hornsby Local Environmental Plan, 2013*.

The property is also located within close proximity to the following heritage listed items:

- No. 37 Malton Road, Beecroft.
- No.177E Copeland Road, Beecroft.
- Street trees growing along the road reserve of Malton Road.

The site is identified as bushfire prone land.

## PROPOSAL

The application proposes the construction of a two-storey dwelling house.

The ground floor would include a living and dining room, family alfresco space, double car space and guest room. The first floor of the dwelling would include four bedrooms, sitting room and associated bathrooms.

Retaining walls are proposed to the rear of the dwelling house to create a tiered landscaped area.

Seven trees would be removed by the proposed development.

## ASSESSMENT

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

### 1. STRATEGIC CONTEXT

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

*The Greater Sydney Region Plan - A Metropolis of Three Cities* has been prepared by the NSW State Government to guide land use planning decisions for the next 40 years (to 2056). The Plan sets a strategy and actions for accommodating Sydney's future population growth and identifies dwelling targets to ensure supply meets demand. The Plan also identifies that the most suitable areas for new housing are in locations close to jobs, public transport, community facilities and services.

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

The proposed development would be consistent with the *Greater Sydney Region Plan - A Metropolis of Three Cities* and the *North District Plan*, by contributing to achieving the dwelling targets for the region.

### 2. STATUTORY CONTROLS

Section 4.15(1)(a) requires Council to consider “any relevant environmental planning instruments, draft environmental planning instruments, development control plans, planning agreements and regulations”.

## 2.1 Hornsby Local Environmental Plan 2013

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

### 2.1.1 Zoning of Land and Permissibility

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

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

The proposed development is defined as a ‘dwelling house’ and is permissible with Council’s consent. The proposed development meets the objectives of the R2 zone.

### 2.1.2 Height of Buildings

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

### 2.1.3 Heritage Conservation

Clause 5.10 of the *HLEP* sets out heritage conservation provisions for Hornsby Shire. The site does not include a heritage item; however, the site is located within the Beecroft/Cheltenham Heritage Conservation Area listed under Schedule 5 of the *HLEP*. The property is also located within close proximity to the following heritage listed items:

- No.37 Malton Road, Beecroft (No. 124).
- No.177E Copeland Road, Beecroft; (No. 94).
- Street trees growing along Malton Road (No. 114).

The proposed dwelling house would not be visible from Malton Road as it is located behind the two-storey dwelling house located at No. 38 Malton Road. It is considered that the proposal would have negligible heritage impacts to the Beecroft/Cheltenham HCA or the nearby heritage listed item along Malton Road.

In assessing the heritage impacts to the rear adjoining heritage listed item at No. 177E Copeland Road, it is noted that the rear of the site contains existing vegetation that would screen the proposed dwelling house from the adjacent heritage listed item and would have a rear boundary setback of greater than 70m.

The proposed dwelling house would be of similar design and scale to adjacent properties within the HCA and the proposed development meets the objectives of Clause 5.10 of the *HLEP* and is considered acceptable.

#### 2.1.4 Earthworks

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

The Hornsby Shire Council Local Planning Panel at its meeting on 29 September 2021, deferred consideration of the development application raising issues regarding the necessity for rear yard tiering and retaining walls. Submissions were received raising concern to the proposed extent of earthworks within the rear yard to create the tiered landscaping. To address the reasons for deferral, the applicant submitted amended plans to reduce the depth of the retaining walls to the rear yard which has reduced the amount of cut and fill required. The application proposes a maximum cut of 0.7m for the proposed dwelling house and a maximum fill of 0.5m for the proposed retaining walls which are considered acceptable.

In support of the proposed fill within the rear yard, it is noted that the application proposes retaining walls to retain the fill which would be setback 3.5m from the western side boundary setback to mitigate any amenity or environmental impacts to the adjoining property No. 36A Malton Road.

In assessing the impacts to the eastern side boundary, it is noted that the earthworks and retaining walls have been designed to have the same levels as proposed within No. 38B Malton Road under DA/161/2021.

A condition is recommended in Schedule 1 of this report ensuring that any fill material being brought onto the site be classified as Virgin Excavated Natural Material (VENM). A similar condition is recommended for any excavated material that may be removed from the site.

Council's assessment of the proposed works and excavation concludes that the proposed earthworks would have minimal and acceptable environmental, and amenity impacts to adjoining properties.

#### 2.1.5 Covenant

In granting consent to DA/390/2016 condition 38 was imposed which stated the following:

#### 38. Restriction as to User – Protection of Land from Future Development

- a) *To inform current and future owners that the areas of rock outcrops, native vegetation and habitat on the site is to be protected from future development, a Restriction as to User must be created under Section 88B of the Conveyancing Act 1919 identifying that the bushland areas outside the building envelopes identified in 'plan of proposed subdivision', ref No. S.14712C, dated 8-12-15 prepared by P.S Graham & Associates is restricted from future development or disturbance of any kind.*
- b) *The proposed Restriction as to User area Plan and final wording is to be provided to Council's Natural Resources Unit for review prior to approval.*

*Note: The wording of the Restriction as to User must be to Council's satisfaction and Council must be nominated as the authority to release, vary or modify the Restriction.*

The final wording within the Section 88B instrument that relates to the proposed development, states the following:

*Terms of Restriction as to User fourthly referred to in the above-mentioned plan (D)*

*No future development is permitted in the Restricted Development Area (D) on lots 2 and 3 to ensure protection of native vegetation and habitat.*

**Council Comment:** No development is proposed within the area denoted D on the survey plan.

Terms of restriction fifthly referred to in the above-mentioned plan (E)

The following specified areas are to be managed as inner protection areas (IPA) as outlined within Section 4.1.3 and appendix 5 of 'Planning for Bushfire Protection 2006' and the NSW Rural Fire Service document 'Standard for Asset Protection Zones'

- c) *All of proposed lot 1.*
- d) *The northern section of lots 2 & 3 shown as (E) APZ on the plan.*

**Council comment:** The proposed dwelling house does not encroach within the area denoted (E) on the survey plan. A bushfire report has been submitted with the application which outlines how the required APZ is achieved and to be maintained and conditions are recommended in Schedule 1 of this report. It is noted that the application proposes retaining walls within the area denoted (E) on the survey plan. It is noted that *Planning for Bushfire Protection 2021* does not prohibit these minor structures from being located within the APZ and they are considered acceptable.

*Terms of Positive Covenant eighthly referred to in the above-mentioned plan*

*To ensure the protection and ongoing management of the Restricted Development Area denoted (D) on the plan*

- e) *All Landscaping, weed, fire and native vegetation management shall be in accordance with the approved integrated Bushfire and Vegetation Management Plan.*
- f) *Development within the Restricted Development Area (D), is prohibited as is any removal of sandstone outcrops, any clearing of indigenous vegetation, on-site effluent disposal and the riding of BMX bikes, or any stock or agricultural activities.*
- g) *High use open space areas shall be limited to land outside the Restricted Development Area (D).*

**Council comment:** It is noted that the application does not propose any structures within the Restricted Development Area (D) and all high use open spaces are located outside the Restricted Development Area (D).

Therefore, the application complies with the requirements of the Section 88B instrument.

## **2.2 State Environmental Planning Policy (Exempt and Complying Development Codes) 2008**

The application has been considered against the requirements of *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (NSW Housing Code)*. The Policy provides exempt and complying development codes that have State-wide application. The Policy also identifies types of development that are of minimal environmental impact that may be carried out without the need for development consent and types of Complying Development (including dwelling houses) that may be carried out in accordance with a Complying Development Certificate.

The development requires the removal of trees which precludes the development from being approved as Complying Development. The proposed dwelling house additions would otherwise comply with the numerical standards for complying development contained within the *NSW Housing Code*.

### **2.3 State Environmental Planning Policy No. 55 Remediation of Land**

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

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

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

### **2.4 SEPP (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 dwelling house, which is considered to be satisfactory. A condition is recommended in Schedule 1 of this report requiring the recommendations of the BASIX certificate be complied with.

### **2.5 State Environmental Planning Policy (Vegetation in non-rural areas) 2017**

The application has been assessed against the requirements of *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 (Vegetation SEPP)*. This Policy seeks to protect the biodiversity values of trees and other vegetation in non-rural areas of the State, and to preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation.

Part 3 of the *Vegetation SEPP* states that a development control plan may make a declaration in any manner relating to species, size, location and presence of vegetation. Accordingly, Part 1B.6.1 of the Hornsby Development Control Plan 2013 (HDCP) prescribes works that can be undertaken with or without consent to trees.

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

### **2.6 Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005**

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

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

### **2.7 Section 3.42 Environmental Planning and Assessment Act 1979 - Purpose and Status of Development Control Plans**

Section 3.42 of the *Environmental Planning and Assessment Act 1979* states that a DCP provision will have no effect if it prevents or unreasonably restricts development that is otherwise permitted and complies with the development standards in relevant Local Environmental Plans and State Environmental Planning Policies.

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

## 2.8 Hornsby Development Control Plan 2013

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

<b>HDCP – Part 3.1 Dwelling Houses</b>			
<b>Control</b>	<b>Proposal</b>	<b>Requirement</b>	<b>Complies</b>
Site Area	2,412m <sup>2</sup>	N/A	N/A
Building Height	8.5m	8.5m	Yes
No. storeys	2 + attic	max. 2 + attic	Yes
Site Coverage	9.1%	30%	Yes
Floor Area	393.5m <sup>2</sup>	430m <sup>2</sup>	Yes
Setbacks			
- Side (north)	9.3m	0.9m	Yes
- Side (west)			
Ground floor	1.5m	0.9m	Yes
Retaining walls	3.49m	0.9m	Yes
First floor	1.5m	1.5m	Yes
- Side (east)			
Ground floor	2.1m	0.9m	Yes
Retaining walls	0m	0.9m	No
First floor	3.3m	1.5m	Yes
- Rear (south)			
Ground floor	>70m	3m	Yes

<i>First floor</i>	>70m	8m	Yes
Landscaped Area (% of lot size)	64%	45%	Yes
Private Open Space			
- <i>minimum area</i>	32m <sup>2</sup>	24m <sup>2</sup>	Yes
- <i>minimum dimension</i>	4m	3m	Yes
Car Parking	2 spaces	2 spaces	Yes

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As detailed in the above table, the proposed development does not comply with the prescriptive measures for setbacks within the *HDCP*. The matters of this non-compliance is detailed below, as well as a discussion on compliance with relevant desired outcomes.

### 2.8.1 Setbacks

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

This is supported by the prescriptive measure set out in Table 3.1.2(a): Minimum Boundary Setbacks which prescribes a minimum side boundary setback of 0.9m for single storey elements and structures.

The application proposes a side boundary setback of 0m for the retaining walls within the rear yard which does not comply with the 0.9m prescriptive measure.

In support of the 0.9m encroachment, it is noted that the level of the proposed retaining walls would be the same as the neighbouring property No. 38B Malton Road as shown in the proposed plans for DA/161/2021. As the application proposes the same levels as the adjoining property, no objections are raised to the proposed eastern side setback encroachment. It is noted that the retaining walls originally proposed extended 20m to the rear of the alfresco area. To address the reasons for deferral by the Local Planning Panel, the applicant has provided amended plans in which the retaining walls extend 8.5m from the rear of the alfresco area which reduces the setback encroachments along the side boundaries.

Conditions are recommended in Schedule 1 of this report requiring the structural details of these retaining walls to be submitted with the application for the construction certificate and that the approved retaining walls be constructed prior to the issue of an occupation certificate.

Due to the proximity of the proposed retaining wall to the boundary of adjoining property No. 38B Malton Road Beecroft, a condition is recommended in Schedule 1 of this report, requiring the retaining wall to be built entirely within the subject property.

The proposal meets the desired outcomes of Part 3.1.2 Setbacks of the *HDCP* and is considered acceptable, subject to conditions.

### 2.8.2 Sunlight Access

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

This is supported by the prescriptive measure 3.1.5(a) requiring “50 per cent of the principal private open space of the subject site to receive at least 3 hours of unobstructed sunlight access between 9am and 3pm” during the day of the winter solstice and prescriptive measure 3.1.5(b) requiring “50 per cent of the principal private open space on any adjoining property to receive at least 3 hours of unobstructed sunlight access between 9am and 3pm.”

Submissions were received raising concern to the overshadowing of adjacent properties from the proposed development.

An assessment of the shadow diagrams provided by the applicant illustrate that the subject site and the adjoining properties No. 36A and 38B Malton Road, would receive at least 3 hours of unobstructed sunlight access to 50 per cent of their private open space between 9am and 3pm on the day of the winter solstice.

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

### 2.8.3 Privacy

The desired outcome of Part 3.1.6 Privacy of the HDCP is to encourage “development that is designed to provide reasonable privacy to adjacent properties.”

This is supported by the prescriptive measures that states:

- a) *“Living and entertaining areas of dwelling houses should be located on the ground floor and oriented towards the private open space of the dwelling house and not side boundaries.*
- b) *A proposed window in a dwelling house should have a privacy screen if:*
  - *It is a window to a habitable room, other than a bedroom, that has a floor level of more than 1 metre above existing ground level.*
  - *The window is setback less than 3 metres from a side or rear boundary.*
  - *The window has a sill height of less than 1.5 metres.*
- c) *A deck, balcony, terrace or the like should be located within 600mm of existing ground level where possible to minimise potential visual and acoustic privacy conflicts.*
- d) *Decks and the like that need to be located more than 600mm above existing ground should not face a window of another habitable room, balcony or private open space of another dwelling located within 9 metres of the proposed deck unless appropriately screened.”*

The application proposes a first-floor level retreat and sitting room which do not comply with the above-mentioned prescriptive measures.

In support of this non-compliance, it is noted that the first-floor level sitting room and retreat would contain one window each within the northern elevation. These windows would allow overlooking onto the garage roof of the adjoining property No. 38 Malton and to a lesser extent the driveway of the adjoining property No. 36A Malton Road.

As garages and driveways are not considered the private open space of a property, no objections are raised on privacy grounds.

A submission was received raising concerns to the privacy impacts of No. 40A Malton Road Beecroft, noting that this site is not directly adjoining the subject site and 20m away from the subject site. The

proposed development meets the desired outcome of Part 3.1.6 Privacy of the HDCP and would have negligible amenity impacts on that property.

#### **2.8.4 Vehicular Access and Parking**

The application proposes a double garage within the ground floor of the dwelling house and an internal driveway which would align with the existing turning area provided through the approved subdivision creating the lot (DA/390/2016). Submissions were received which raised concerns to the insufficient turning area of the proposed development.

Council's engineer assessment raises no objection to the proposal and the design of the turning area and location of the garage would meet the requirements of the HDCP subject to appropriate conditions relating to the turning area and internal driveway.

#### **2.9 Section 7.12 Contributions Plans**

Hornsby Shire Council Section 7.12 Contributions Plan 2019-2029 applies to the development as the estimated costs of work is greater than \$100,000. It is noted that the requirement for a contribution does not apply to this development as it is a newly subdivided lot and a contribution has been levied against DA/390/2016 under Section 7.11 of the Act previously.

### **3. ENVIRONMENTAL IMPACTS**

Section 4.15(1)(b) of the Act requires Council to consider *"the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality"*.

#### **3.1 Natural Environment**

##### **3.1.1 Tree and Vegetation Preservation**

The proposed development would be within the vicinity of 30 trees numbered T1 to T30 inclusive as identified within Arboricultural Impact Assessment (AIA) report prepared by McArdle Arboricultural Consultancy dated 2 December 2020.

The application proposes the removal of 7 trees numbered T8, T9, T10, T20, T22, T25 and T26.

Submissions were received which raised concerns to the removal of trees, incorrect labelling of trees being exempt and impact on neighbouring trees.

It is noted that the AIA report prepared by McArdle Arboricultural Consultancy dated 2 December 2020, identified some trees to be removed as 'exempt' species. Council's assessment has determined that this is incorrect as any tree in a heritage conservation area cannot be considered 'exempt'. Council has assessed the application and findings within the AIA report accordingly.

Trees numbered T8 (*Pittosporum undulatum* - Sweet Pittosporum), T9 (*Acer negundo* - Box Elder) and T10 (stag - dead tree) have been assessed as having a low to very low retention value and are located within the north western corner of the site. No objections are raised on environmental grounds to the removal of these trees.

Tree T20 (*Syncarpia glomulifera* - Turpentine) has been assessed as having a moderate to high retention value and would be located to the rear of the dwelling house. Amended plans were submitted after the Local Planning Panel deferred the application and the retaining walls have been reduced to allow for the retention of tree T20. Appropriate conditions are recommended in Schedule 1 of this report.

Trees T22 (Stag x 2 - dead tree) and T25 (Stag - dead tree) has a very low retention value. It is noted that no hollows are present within these dead trees and no objections are raised on environmental grounds to the removal of these trees.

Tree T26 (*Eriobotrya japonica* - Loquat) has been assessed as having a very low retention value and located within the rear of the site. No objections are raised to the removal of this tree.

Council's Arboricultural assessment concurs with these findings of the AIA. Council raises no objections to the removal of 7 trees numbered T8, T9, T10, T20, T22, T25 and T26. Council also considers that the proposed works would result in minimal impacts to 23 remaining trees numbered T1, T2, T3, T4, T5, T6, T7, T11, T12, T13, T14, T15, T16, T17, T18, T19, T21, T23, T24, T27, T28, T29 and T30 and appropriate conditions are recommended for the protection and retention of these trees.

To offset the removal of 7 trees, a condition is recommended in Schedule 1 of this report requiring the replacement planting of 5 trees with the potential to reach a mature height of greater than 10m and 5 mid-storey trees with the potential to reach a mature height of greater than 5m.

Submissions were received with concerns to the lack of space on the site for replacement planting. Given the size of the lot (2,412m<sup>2</sup>), it is generally considered that these trees can be planted in an appropriate location whilst satisfying the requirements for an APZ as discussed in Section 4.2 Bushfire of this report.

Subject to conditions, the proposed development meets the desired outcomes of Part 1B6.1 Tree Preservation of the HDCP and the proposed development would result in acceptable environmental impacts.

### 3.1.2 Biodiversity

The proposal is located amongst vegetation characteristic of the Blackbutt Gully Forest vegetation community. A submission also identified that a powerful owl was recently sighted on the subject site and multiple submissions were received which raised concerns to the impact of the Powerful Owl species. The powerful owl is listed as vulnerable under the *Biodiversity Conservation Act 2016*.

Council's ecologists have assessed the Integrated Bushfire and Vegetation Management Plan prepared by Hunter Ecology, dated 10 August and the Powerful Owl (*Ninox strenua*) surveys and assessment prepared by Hunter Ecology, dated 10 August and determined the following:

- Powerful Owl were recorded roosting in the locality.
- No breeding habitat is present on site.
- A medium sized hollow was identified within No. 38A, approximately 25m from the southern boundary. Although the hollow is too small to be suitable for a powerful owl, it could potentially be made suitable for the Gang-gang Cockatoo (*Callocephalon fimbriatum*) as the site falls within the recognised extent of the local endangered population area. Suitability of the hollow would be dependent on the internal chamber characteristics and would require cleaning out using a chainsaw to allow entry.
- Some practical measures can be implemented in site to enhance habitat for this species (hollow improvement and nest box installation).
- The proposed development is unlikely to have a significant impact upon the local population of this species.

Therefore, it is generally considered that the proposed development would have minimal impacts on the Powerful Owl species. Notwithstanding, conditions are recommended in Schedule 1 of this report to minimise any disturbance to the species, including the appointment of a project ecologist, a Project Bush Regenerator and Ecologist that will be involved with the implementation and monitoring of environmental protection measures during the construction of the approved development. A condition is also recommended requiring 4 nest boxes be installed by an experienced fauna ecologist.

Subject to conditions, the proposed development meets the desired outcomes of Part 1C.1.1 Biodiversity of the HDCP and the proposed development would result in acceptable environmental impacts.

### **3.1.3 Stormwater Management**

The residential development would have a minor positive impact on the natural environment with the stormwater system conditioned to be directed from the above ground rainwater tank and the overflow from the rainwater tank connected to the existing inter-allotment drainage system. All stormwater collected by the proposed retaining walls would be connected to the existing inter-allotment drainage system. As the inter-allotment drainage system was approved through the subdivision of DA/390/2016, no objections are raised to connect to this inter-allotment system.

Appropriate conditions are also recommended to ensure appropriate sediment and erosion control measures are in place during construction to protection the bushland to the rear of the site.

## **3.2 Built Environment**

### **3.2.1 Built Form**

The proposal would generally be consistent with the built form of the surrounding low-density residential area which consists of dwelling houses ranging from single storey, split level, two storey and three storeys with excavated garages.

## **3.3 Social Impacts**

The residential development would improve housing choice in the locality by providing a range of house hold types. This is consistent with Council's Housing Strategy which identifies the need to provide a mix of housing options to meet future demographic needs in Hornsby Shire.

## **3.4 Economic Impacts**

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

## **4. SITE SUITABILITY**

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

### **4.1 Flooding**

The site is not identified as flood prone.

### **4.2 Bushfire Risk**

The desired outcomes of Part 1C.3.1 Bushfire of the HDCP are to encourage “*development that is located and designed to minimise the risk to life and property from bushfires*”.

The site is bushfire prone and the application was accompanied by a Bushfire Assessment Report, Ref: 20.10.316, prepared by Bushfire Planning & Design dated 15 October 2020, which assigned the site a Bushfire Attack Level (BAL) of 29. Consequently, the application was not required to be referred to the NSW Rural Fire Service (RFS) in accordance with Section 4.14 of the *Environmental Planning and Assessment Act 1979*.

Submissions were received raising concerns to the inadequacy of the bushfire requirements.

Council’s assessment of the bushfire report required the establishment of an Asset Protection Zone (APZ) of 37m from the rear of the dwelling house towards the southern boundary which is consistent with the requirements of the subdivision approved under DA/390/2016.

The proposal meets the desired outcomes of Part 1C.3.1 Bushfire of the HDCP and is considered acceptable, subject to conditions that require the construction of the dwelling to comply with *Australian Standards AS3959-2009 Construction in bushfire prone areas*. Conditions are also recommended requiring the development to comply with the Integrated Bushfire and Vegetation Management Plan (IBVMP) prepared by Hunter Ecology dated 27th April 2021.

Council has raised no objections to the development, subject to the conditions listed in Schedule 1 of this report.

## **5. PUBLIC PARTICIPATION**

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

### **5.1 Community Consultation**

The proposed development was placed on public exhibition and was notified to adjoining and nearby landowners between 16 February 2021 and 9 March 2021 and 2 June 2021 and 21 June 2021 in accordance with the Hornsby Community Engagement Plan. During this period, Council received 21 submissions. Amended Plans were received to address the Local Planning Panel’s deferment on 29 September 2021. These amended plans were considered minor modifications and in accordance with the Hornsby Community Engagement Plan, renotification of the application was not required. 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**

<ul style="list-style-type: none"> <li>• PROPERTIES NOTIFIED</li> </ul>	<ul style="list-style-type: none"> <li>X SUBMISSIONS RECEIVED</li> </ul>	 PROPERTY SUBJECT OF DEVELOPMENT	
18 SUBMISSIONS RECEIVED OUT OF MAP RANGE			

Twenty-one submissions objected to the development, generally on the grounds that the development would result in:

- Impact to trees on neighbouring properties.
- Lack of space on site for replacement planting.
- Bushfire impacts not sufficiently addressed.
- Privacy concerns.
- Watercourse at the rear of the site.
- Earthworks.
- Unacceptable scale of development.
- Unacceptable environmental impacts through tree loss.

- Unacceptable impacts to powerful owl habitat.
- Unacceptable overshadowing of adjoining properties.
- Unacceptable privacy impacts.
- The removal of a significant trees.
- Development that is excessive in bulk and scale.

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

#### **5.1.1 Development that is excessive in bulk and scale**

Submissions were received raising concern to the excessive bulk and scale of the proposed development. In response to these submissions, it is noted that as outlined in the compliance table in Section 2.8 of this report, the application complies with the height, floor area and site coverage requirements of the Hornsby DCP.

#### **5.1.2 Watercourse at the rear of the site**

Submissions were received raising concerns to the watercourse at the rear of the site known as Byles Creek and the impact the proposed development would have on this watercourse.

The subject site slopes to a 1<sup>st</sup> order stream that connects to Byles Creek. To address issues of water quality to Byles Creek and the Sydney Harbour Catchment, conditions are recommended in Schedule 1 of this report requiring appropriate sediment and erosion control measures to protect the downstream creek.

#### **5.2 Public Agencies**

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

### **6. THE PUBLIC INTEREST**

Section 4.15(1)(e) of the Act requires Council to consider "*the public interest*".

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

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

### **CONCLUSION**

The application proposes the construction of a dwelling house. The application was deferred by the HLPP on 29 September 2021. The applicant submitted amended plans and documentation to address the grounds of deferral by reducing the amount of tiered landscaping to the rear, reducing the required cut and fill and increasing the number of trees to be retained.

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

Council received 21 submissions during the public notification period. The matters raised have been addressed in the body of the report.

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

The reasons for this decision are:

- The proposed development generally complies with the requirements of the relevant environmental planning instruments and the Hornsby Development Control Plan 2013.
- The proposed development does not create unreasonable environmental impacts to adjoining development with regard to visual bulk, overshadowing, solar access, amenity or privacy.

*Note: At the time of the completion of this planning report, no persons have made a Political Donations Disclosure Statement pursuant to Section 10.4 of the Environmental Planning and Assessment Act 1979 in respect of the subject planning application.*

#### **RESPONSIBLE OFFICER**

The officer responsible for the preparation of this report is Tim Buwalda.

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

ROD PICKLES  
Manager - Development Assessments  
Planning and Compliance Division

#### **Attachments:**

1.  Locality Map
2.  Architectural Plans
3.  Landscape Plan

File Reference: DA/137/2021

Document Number: D08338571

## SCHEDULE 1

### GENERAL CONDITIONS

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

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

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

### 1. Approved Plans and Supporting Documentation

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

#### *Approved Plans*

<b>Plan No.</b>	<b>Plan Title</b>	<b>Drawn by</b>	<b>Dated</b>	<b>Council Reference</b>
1725 1 of 2	Site Plan	Distinct Innovations	December 2020	
1725 2 of 2	Elevations, Floor Plans and Sections	Distinct Innovations	December 2020	
DA-01 rev. E	Landscape Plan	Grindstone Landscapes	14 August 2021	
DA-02 rev. E	Driveway	Grindstone Landscapes	14 August 2021	
DA-05 rev. E	38A Landscape Plan	Grindstone Landscapes	14 August 2021	
DA-06 rev. E	38A Elevation	Grindstone Landscapes	14 August 2021	

#### *Supporting Documentation*

<b>Document Title</b>	<b>Drawn by</b>	<b>Dated</b>	<b>Council Reference</b>
BASIX Certificate No. 1132384S	Frys Energywise	10 December 2021	D08106298
Integrated Bushfire and Vegetation Management Plan	Hunter Ecology	27 April 2021	D08225545
Arboricultural Impact	McArdle Arboricultural	29 November 2021	D08311755

<b>Document Title</b>	<b>Drawn by</b>	<b>Dated</b>	<b>Council Reference</b>
Assessment Version 12	Consultancy		
Waste Management Plan	Peter Henderson	27 December 2020	D08106281
Powerful Owl Assessment Ref. Beecroft 01	Hunter Ecology	10 August 2021	D08225546
Nathers Certificate	Frys Energywise	10 December 2020	D08106311
Bushfire Assessment Report Ref: 20.10.316	Bushfire Planning & Design	15 October 2020	D08106304
Schedule of Finishes	Distinct Innovation Pty Ltd	24 December 2020	D08106270

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## 2. Construction Certificate

- a) A Construction Certificate is required to be approved by Council or a Private Certifying Authority prior to the commencement of any construction works under this consent.
- b) The Construction Certificate plans must include all requirements imposed by condition No. 10 of this consent.
- c) The Construction Certificate plans must be consistent with the Development Consent plans.

## 3. Removal of Trees

- a) This development consent permits the removal of 7 trees numbered T8, T9, T10, T22, T25 and T26 as identified in the Arboricultural Impact Assessment prepared by McArdle Arboricultural Consultancy dated 29 November 2021 (D08311755).
- b) No consent is granted for the removal of 24 numbered T1, T2, T3, T4, T5, T6, T7, T11, T12, T13, T14, T15, T16, T17, T18, T19, T20, T21, T23, T24, T27, T28, T29 and T30 as this/these tree(s) contribute(s) to the established landscape amenity of the area/streetscape.

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

## 4. Tree Pruning

This development consent does not permit the pruning of any tree.

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

## 5. Retaining Walls

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

### REQUIREMENTS PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

## 6. Building Code of Australia

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

## 7. Contract of Insurance (Residential Building Work)

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

## 8. Notification of Home Building Act 1989 Requirements

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

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

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

## 9. Sydney Water – Approval

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

*Note: Building plan approvals can be obtained online via Sydney Water Tap in™ through [www.sydneywater.com.au](http://www.sydneywater.com.au) under the Building and Development tab.*

## 10. Design and Construction - Bushfire Attack Category

- a) That the proposed dwellings roof and eaves section, and the western, southern and eastern elevations shall be constructed to section 3 Construction General and section 7 BAL 29 of *Australian Standard AS3959-2018 Construction of buildings in bushfire prone areas* with the exception that the construction requirements shall be varied to comply with section 7.5.2 Additional Construction Requirements of *Planning for Bush Fire Protection 2019*.

- b) That the proposed dwellings northern elevation shall be constructed to section 3 Construction General and section 6 BAL 19 of *Australian Standard AS3959-2018 Construction of buildings in bushfire prone areas* with the exception that the construction requirements shall be varied to comply with section 7.5.2 Additional Construction Requirements of *Planning for Bush Fire Protection 2019*.
- c) That the dwelling shall maintain a reserve Static Water Supply (SWS) for use during a bushfire event of not less than 10,000 litres stored in a non-combustible tank within the area of recommended asset protection zone.
- d) The reserve Static Water Supply shall be permanently plumbed to a petrol or diesel firefighting water pump with a minimum of 5hp. The pump shall be regularly maintained as per the manufacturer specifications. The pump must be located in such a position to be shielded from the direct mechanisms of bushfire attack.
- e) That a water delivery line of not less than 50mm diameter be plumbed from the firefighting water pump plumbed to the reserve Static Water Supply tank, to an outlet point located directly adjacent to the driveway as indicated within figure 7 of the Bushfire Assessment Report (Ref: 20.10.316) prepared by Bushfire Planning & Assessment dated 15 October 2020 on the subject allotment to enable firefighting tankers to refill. The outlet of this line shall be fitted with a ball or gate valve and a 65 to 38mm reducer Storz fitting.
- f) That the development must provide and have readily available kink resistant hose or hoses with a diameter of not less than 19mm and a fire fighting nozzle, capable of reaching all elevations of the dwelling, and fittings suitable for connection to the firefighting water pump.
- g) Fire hose reels are constructed in accordance with *Australian Standard AS/NZS 1221:1997 Fire hose reels* and installed in accordance with the relevant clauses of *Australian Standard AS2441:2005 Installation of fire hose reels*.
- h) That all plumbing associated with the reserve water supply above the ground or for a depth of not less than 300mm below the ground shall be metal.
- i) That approved NSW Rural Fire Service; Static Water Supply signage is installed at approved locations for the proposed development.
- j) That if the supply of gas to the subject dwelling is undertaken it shall be installed and maintained in accordance with *Australian Standard AS1596-2002 The storage and handling of LP Gas* and requirements of relevant authorities.

Note: Further information concerning planning for bush fire protection can be found at: [www.rfs.nsw.gov.au](http://www.rfs.nsw.gov.au).

## 11. Stormwater Drainage

The stormwater drainage system for the development must be designed for an average recurrence interval (ARI) of 20 years and be gravity drained in accordance with the following requirements:

- a) Roof water must be connected to a rainwater tank having a minimum capacity in accordance with the BASIX requirements.

- b) The overflow from the rainwater tank and collected surface water must be connected to an existing inter-allotment drainage system.

## 12. Internal Driveway/Vehicular Areas

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

- a) The driveway be a rigid pavement.
- b) The driveway grade must not exceed 25 percent and changes in grade must not exceed 8 percent per plan metre.
- c) A turning area within the subject site to service the proposed dwelling must be designed and constructed in accordance with *Australian Standards AS2890.1* to ensure vehicles can enter and leave the site in a forward direction.
- d) Reconstruction of the existing concrete driveway within the existing right of access is necessary if the driveway is damaged during the construction of the new dwelling.

## 13. Appointment of a Project Bush Regenerator and Ecologist

- a) The applicant shall notify Council of the details of the engaged Project Bush Regenerator and Ecologist that will be involved with the implementation and monitoring of environmental protection measures during the construction of the approved development. These environmental experts will assist in ensuring compliance with the conditions of consent and provide monitoring reports to Council at various stages of the Project as identified in the approved *Integrated Bushfire and Vegetation Management Plan* prepared by Hunter Ecology dated 27 April 2021. The ecologist will also be responsible for implementing the tree hollow improvement works as recommended in the *Powerful Owl (Ninox strenua)* surveys and assessment prepared by Hunter Ecology dated 10 August 2021.
- b) An inspection schedule to assess vegetation health and provide certification for the various stages of development such as site establishment (includes demolition and installation of tree protection measures), weed removal, construction work, hard and soft landscaping practical completion and occupancy certification is to be included with the application for the construction certificate.

## 14. Appointment of a Project Arborist

- a) To ensure the trees that must be retained are protected, a project arborist with AQF Level 5 qualifications must be appointed to assist in ensuring compliance with the conditions of consent and provide monitoring reports as specified by the conditions of consent.
- b) Details of the appointed project arborist must be submitted to Council and the PCA with the application for the construction certificate.

### REQUIREMENTS PRIOR TO THE COMMENCEMENT OF ANY WORKS

## 15. Erection of Construction Sign

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

#### 16. Installation of Tree Protection Measures

- a) Trees to be retained and numbered T1, T2, T3, T4, T5, T6, T7, T11, T12, T13, T14, T15, T16, T17, T18, T19, T20, T21, T23, T24, T27, T28, T29 as identified on the Tree Location Plan prepared by Arboricultural Impact Assessment prepared by McArdle Arboricultural Consultancy dated 29 November 2021 TRIM D08311755 must have tree protection measures for the ground, trunk and canopy installed by the project arborist as follows:
  - i) For the duration of construction works, in accordance with Tree Protection Plan prepared by Arboricultural Impact Assessment prepared by McArdle Arboricultural Consultancy dated 29 November 2021 (D08311755).
- b) Tree protection fencing for the trees to be retained must be installed by the engaged AQF 5 project arborist and consist of 1.8m high temporary fencing panels installed in accordance with *Australian Standard AS4687-2007 Temporary fencing and hoardings*.
  - i) The exception being those protected by the existing boundary fencing.
- c) The installation of all required tree protection fencing must include shade cloth attached to the fencing to reduce transport of dust, particulates and liquids from entering the tree protection zone.
- d) Where wood-chip mulch is permitted by Council instead of tree protection fencing within the tree protection zones, the wood-chip must be covered with a layer of geotextile fabric and rumble boards.

#### 17. Protection of vegetation, habitat and environmental features during construction

To ensure the protection of vegetation, habitat and environmental features during construction, the applicant must:

- a) Install 1.2m high chain wire fencing (or similar) along the southern boundary of the site as shown in the approved plans.
- b) Clean machinery of soil and debris before entering the site to prevent the spread of weeds and fungal pathogens.

*Note: The site contains potential habitat for threatened species listed under the NSW Biodiversity Conservation Act 2016. The Act prohibits the disturbance to threatened species,*

*endangered populations and threatened ecological communities, or their habitat, without appropriate consent or licence.*

#### **18. Integrated Bushfire and Vegetation Management Plan (IBVMP)**

- a) All on-ground works shall comply with the approved Integrated Bushfire and Vegetation Management Plan (IBVMP) prepared by Hunter Ecology dated 27 April 2021 and Powerful Owl (*Ninox strenua*) surveys and assessment prepared by Hunter Ecology dated 10 August 2021. This includes compliance with development milestones listed in the Schedule of Works within Section 3, 6 & 7 of the approved IBVMP.
- b) The IBVMP shall be implemented from the date of issue of the Notice of Determination.
- c) Monitoring should occur every 3 months for the first year of this IBVMP, then biannually until the expiration of this IVBMP to ensure that weed control is well managed and plantings have established and nestboxes have been installed. At the end of the 3-year IBVMP period a final monitoring report shall be provided to Council ([naturalresourcesplanning@hornsby.nsw.gov.au](mailto:naturalresourcesplanning@hornsby.nsw.gov.au)). If the performance criteria have not been met the life to the IBVMP will be extended accordingly at the discretion of Council's Natural Resources Unit.
- d) Monitoring of the site after the initial 3/5 years should occur annually. Reporting on the implementation of the IBVMP should occur annually with the annual reports provided to Council ([naturalresourcesplanning@hornsby.nsw.gov.au](mailto:naturalresourcesplanning@hornsby.nsw.gov.au)).

*Reason: The development of a consolidated IBVMP will provide the developer and current and future landowners with a single document describing the required vegetation management actions across the site.*

#### **19. APZ – marking of boundary**

The boundary of the asset protection zone must be surveyed and permanently marked before the works begin and must be kept in place in perpetuity as follows:

- a) Sufficient markers (a minimum of 2) must be placed along the boundary of the APZ to clearly delineate the extent of the asset protection zone.
- b) The markers must be a tubular metal post (or the like) standing a minimum of 400mm above ground.
- c) The markers must include a notation stating: End of Asset Protection Zone. The notation may be in the form of an attached sign or sticker with lettering of a contrasting colour to the post colour.
- d) A survey and photographic evidence must be submitted to the Principal Certifying Authority confirming compliance with this condition.

*Reason: To provide certainty for the developer, current and future landowners, Council and contractors, during and after construction, as to the boundaries of the asset protection zone and those areas associated with different management requirements.*

#### **20. Protection of Adjoining Areas**

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

- a) Could cause a danger, obstruction, or inconvenience to pedestrian or vehicular traffic.
- b) Could cause damage to adjoining lands by falling objects.
- c) Involve the enclosure of a public place or part of a public place.
- d) Have been identified as requiring a temporary hoarding, fence or awning within the Council approved Construction Management Plan (CMP).

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

#### **21. Toilet Facilities**

- a) To provide a safe and hygienic workplace, toilet facilities must be available or be installed at the works site before works begin and must be maintained until the works are completed at a ratio of one toilet for every 20 persons employed at the site.
- b) Each toilet must:
  - i) Be a standard flushing toilet connected to a public sewer.
  - ii) Be a temporary chemical closet approved under the *Local Government Act 1993*.

#### **22. Erosion and Sediment Control**

To protect the water quality of the downstream environment, erosion and sediment control measures must be provided and maintained throughout the construction period in accordance with the manual '*Soils and Construction 2004 (Bluebook)*', the approved plans, Council specifications and to the satisfaction of the principal certifying authority. The erosion and sediment control devices must remain in place until the site has been stabilised and revegetated.

*Note: On the spot penalties may be issued for any non-compliance with this requirement without any further notification or warning.*

#### **23. Bushfire Management – Protection Zones**

At the commencement of building works the Assets Protection Zone as outlined within Appendix 4 of *Planning for Bush Fire Protection 2019* and the NSW Rural Fire Service's document *Standards for asset protection zones* must be in accordance with the following:

- a) From the southern elevation of the dwelling house to the south for 37m.
- b) From the western, eastern and northern elevations of the dwelling house to the lot boundaries.

*Note: Further information concerning planning for bush fire protection can be found at: [www.rfs.nsw.gov.au](http://www.rfs.nsw.gov.au).*

### **REQUIREMENTS DURING CONSTRUCTION**

**24. Construction Work Hours**

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

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

**25. Prohibited Actions within the fenced tree protection zone**

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

- a) Soil cutting or filling, including excavation and trenching.
- b) Soil cultivation, disturbance or compaction.
- c) Stockpiling storage or mixing of materials.
- d) The parking, storing, washing and repairing of tools, equipment and machinery.
- e) The disposal of liquids and refuelling.
- f) The disposal of building materials.
- g) The siting of offices or sheds.
- h) Any action leading to the impact on tree health or structure.

**26. Maintaining the health of trees approved for retention**

The appointed project arborist must monitor and record any and all necessary actions required to maintain tree health and condition for trees numbered T1, T2, T3, T4, T5, T6, T7, T11, T12, T13, T14, T15, T16, T17, T18, T19, T20, T21, T23, T24, T27, T28, T29 on the approved plans.

**27. Maintaining Tree Protection Measures**

Tree Protection Measures must be maintained by the project arborist in accordance with Condition No. 16 of this consent for the duration of works.

**28. Approved Works within Tree Protection Zone incursions**

- a) Where tree root pruning is required for the installation of piers, driveway or underground services, the pruning must be overseen by the AQF 5 project arborist and must be undertaken as follows:
  - i) Using sharp secateurs, pruners, handsaws or chainsaws with the final cut being clean.
  - ii) The maximum diameter of roots permitted to be cut is 40mm.
- b) Approved excavations within the Tree Protection Zone of trees to be retained not associated with installation of services must be undertaken as follows:
  - i) Excavations for the construction and/or installation of the house/deck/driveway/piers in the Tree Protection Zone of trees to be retained numbered on the approved plans must be supervised by the project arborist for the first 1.000 meter undertaken manually to locate roots and allow for pruning in accordance with condition No. 28a).

- c) To minimise impacts within the Tree Protection Zone (TPZ) of trees to be retained on the approved plans, the installation of services must be undertaken as follows:
  - i) The AQF 5 project arborist must be present to oversee the installation of any underground services which enter or transect the tree protection.
  - ii) The installation of any underground services which either enter or transect the designated TPZ must be undertaken manually.
  - iii) For manually excavated trenches the AQF 5 project arborist must designate roots to be retained. Manual excavation may include the use of pneumatic and hydraulic tools.
- d) Where scaffolding is required, ground protection must be installed beneath the scaffolding in the following order:
  - i) Installation of a 100mm deep layer of woodchip.
  - ii) Installation of geotextile fabric ground covering.
  - iii) Installation of scaffold boarding above the woodchip and geotextile fabric.

#### **29. Works near trees**

- a) To maintain tree health and condition for trees to be retained on the approved plans, the appointed project arborist must monitor and record all necessary remedial actions required.
- b) The maintenance and monitoring of all tree protection techniques must be recorded by the appointed project arborist during the period of construction for submission with the application for the occupation certificate.

#### **30. Building Materials and Site Waste**

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

#### **31. Environmental Management**

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

#### **32. Council Property**

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

#### **33. 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.

**34. Landfill**

- a) Prior to fill material being imported to the site, a Waste Classification Certificate shall be obtained from a suitably qualified environmental consultant confirming the fill wholly consists of Virgin Excavated Natural Material (VENM) as defined in Schedule 1 of the *Protection of the Environment Operations Act 1997* or a material approved under the NSW Environment Protection Authority's Resource Recovery Orders and Exemptions.
- b) The required Waste Classification Certificate must be obtained by the Principal Contractor prior to fill being imported to the site and made available to Council at its request.

**35. Excavated Material**

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

**36. Survey Report**

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

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

**REQUIREMENTS PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE****37. Fulfilment of BASIX Commitments**

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

**38. Damage to Council Assets**

To protect public property and infrastructure, any damage caused to Council's assets as a result of the construction or demolition of the development must be rectified by the applicant in accordance with AUS-SPEC Specifications ([www.hornsby.nsw.gov.au/property/build/aus-spec-terms-and-conditions](http://www.hornsby.nsw.gov.au/property/build/aus-spec-terms-and-conditions)). Rectification works must be undertaken prior to the issue of an Occupation Certificate, or sooner, as directed by Council.

**39. Replacement Tree Requirements**

- a) The trees approved for removal under this consent, being 6 trees numbered T8, T9, T10, T22, T25 and T26 must be offset through replacement planting of a minimum of 10 trees in accordance with the following:
  - i) 5 trees must have the potential to reach a mature height of greater than 10m.
  - ii) 5 mid-story trees with the potential to reach a mature height of greater than 5m.
  - iii) This planting should be consistent with the approved Integrated Bushfire and Vegetation Management Plan.
- b) All replacement plantings must be species selected from the 'Trees Indigenous to Hornsby Shire (as of 1 September 2011)' document available for viewing on the Hornsby Council's website <http://www.hornsby.nsw.gov.au/environment/flora-and-fauna/tree-management/indigenous-trees> .
- c) The location and size of tree replacement planting must comply with the following:
  - i) All replacement trees must be located in either front or rear setbacks and planted 4m or greater from the foundation walls of the approved development.
  - ii) The pot size of the replacement trees must be a minimum 45 litres.
  - iii) All replacement trees must be a minimum of 3m in height when planting.

#### 40. Final Certification

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

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

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

#### 41. Damage to Council Assets

To protect public property and infrastructure, any damage caused to Council's assets as a result of the construction or demolition of the development must be rectified by the applicant in accordance with AUS-SPEC Specifications ([www.hornsby.nsw.gov.au/property/build/aus-spec-terms-and-conditions](http://www.hornsby.nsw.gov.au/property/build/aus-spec-terms-and-conditions)). Rectification works must be undertaken prior to the issue of an Occupation Certificate, or sooner, as directed by Council.

#### 42. Supplementary Planting, Weeding and Nest Box Installation

Any supplementary planting, weeding and nest box installation outside the immediate landscaping area depicted in the approved Landscape Plan No. DA.05 rev. D, prepared by Grindstone Landscapes dated 14 August 2021 shall be in accordance with Section 4.3 of the approved Integrated Bushfire and Vegetation Management Plan (IBVMP) prepared by Hunter Ecology dated 27 April 2021 and stock used for planting shall be sourced from a native nursery utilising Sydney basin stock. The hollow improvement works and 4 nest boxes shall only be installed and certified by an experienced fauna ecologist (Section 3.8 of the IBVMP and the Powerful Owl (*Ninox strenua*) surveys and assessment prepared by Hunter Ecology dated 10th August).

**43. Certificate of Bushfire Requirements**

- a) A Certificate prepared by a BPAD accredited Bushfire Consultant is to be provided to the Principal Certifying Authority (PCA) certifying the completion of all works required by the Bushfire Assessment Report Ref: 20.10.316 prepared by Bushfire Planning & Design dated 15 October 2020, and condition Nos. 10 and 23 of this consent prior to the issue of the Occupation Certificate.
- b) A suitably qualified and experienced bush fire consultant must provide to the PCA and Council certification of the implementation of the of the approved asset protection zone.

**44. Final Certification – Ecology/Bush regeneration**

The project ecologist/bush regenerator must provide to the PCA and/or Council certification of the implementation of the of the approved Integrated Bushfire and Vegetation Management Plan (IBVMP) prepared by Hunter Ecology dated 10 August 2021.

**45. Retaining Walls**

All retaining walls must be constructed as part of the development and prior to the issue of an Occupation Certificate.

**46. Construction of engineering works.**

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

<b>OPERATIONAL CONDITIONS</b>
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**47. Ongoing Protection of Remnant Trees**

All trees on site not approved for removal under this consent are required to be retained for conservation purposes. These trees have a legal obligation for their preservation and are excluded from the clearing provisions of the *10/50 Vegetation Clearing Code of Practice for New South Wales* in accordance with Clause 7.8 of the Code.

**48. Ongoing Bushfire Management**

Any requirements relating to bushfire protection must be maintained in perpetuity and landscaping works must be consistent with the Asset Protection Zone requirements as described in *Planning for Bush Fire Protection 2019*.

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**- END OF CONDITIONS -****ADVISORY NOTES**

The following information is provided for your assistance to ensure compliance with the *Environmental Planning and Assessment Act, 1979*, *Environmental Planning and Assessment Regulation 2000*, other relevant legislation and Council's policies and specifications. This information does not form part of the conditions of development consent pursuant to Section 4.17 of the Act.

**Environmental Planning and Assessment Act 1979 Requirements**

The *Environmental Planning and Assessment Act 1979* requires:

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

**Long Service Levy**

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

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

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

**Tree and Vegetation Preservation**

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

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

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

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

**Covenants**

The land upon which the subject building is to be constructed may be affected by restrictive covenants. Council issues this approval without enquiry as to whether any restrictive covenant

affecting the land would be breached by the construction of the building, the subject of this consent. Applicants must rely on their own enquiries as to whether or not the building breaches any such covenant.

### **Dial Before You Dig**

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

### **Telecommunications Act 1997 (Commonwealth)**

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

### **Asbestos Warning**

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

[www.environment.nsw.gov.au](http://www.environment.nsw.gov.au)

[www.adfa.org.au](http://www.adfa.org.au)

[www.safework.nsw.gov.au](http://www.safework.nsw.gov.au)

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

### **Rain Water Tank**

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

**5 DA/161/2021 - FURTHER REPORT - CONSTRUCTION OF A DWELLING HOUSE - 38B MALTON ROAD, BEECROFT**

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**EXECUTIVE SUMMARY**

**DA No:** DA/161/2021 (Lodged on 18 February 2021)

**Description:** Construction of a dwelling house

**Property:** Lot 2 DP 1226564, No. 38B Malton Road, Beecroft

**Applicant:** Peter Henderson

**Owner:** Mrs Janet Gwendoline Henderson

**Estimated Value:** \$1,000,000.

**Ward:** C

- The application involves the construction of a dwelling house.
- The proposal complies with the requirements of the *Hornsby Local Environmental Plan 2013* and the Hornsby Development Control Plan 2013.
- A total of 16 submissions have been received in respect of the application.
- On 29 September 2021, the Hornsby Council Local Planning Panel considered the proposed development and resolved to defer the application to address the concerns raised by speakers at the meeting regarding issues including, positive covenant, impacts on native vegetation, extent of the APZ, retention of significant trees and replacement planting, tiering of the rear yard and treatment of the watercourse and on-site water management and privacy measures to ameliorate impacts to No. 40A.
- It is recommended that the application be approved.

**RECOMMENDATION CONSENT**

THAT Development Application No. DA/161/2021 for construction of a dwelling house at Lot 2 DP 1226564, No. 38B Malton Road, Beecroft be approved, subject to the conditions of consent detailed in Schedule 1 of LPP Report No. LPP11/22.

## BACKGROUND

DA/390/2016 was approved for on 6 October 2016 for the demolition of structures and Torrens Title subdivision of two lots into three. DA/161/2021 seeks approval to construct a dwelling house on Lot 2.

On 22 March 2021, Council requested amended plans to address the turning circles provided, an amended landscape plan, an Integrated Bushfire and Vegetation Management Plan (IBVMP) and an Arboricultural impact assessment report.

On 6 May 2021, Council received the amended plans and IBVMP.

On 28 May 2021, Council received the request Arboricultural Impact Assessment Report.

On 26 July 2021, Council requested a survey for threatened Powerful Owl (*Ninox strenua*) and an impact assessment of significance ('five-part test') in accordance with Section 7.3 of the *NSW Biodiversity Conservation Act 2016* prepared by fauna ecologist with survey experience and assessment specifically for this species.

On 11 August 2021, Council received the Threatened Powerful Owl survey and an amended IBVMP.

On 25 August 2021, Council requested amended plans to reduce the amount of fill proposed within the rear yard and increase the setbacks of the proposed retaining walls.

On 29 September 2021, the Hornsby Council Local Planning Panel considered the application and resolved:

*'The Panel is particularly concerned with the potential inconsistency of the submitted plans with the requirements of the positive covenant in respect to the location of the restricted development area (RDA) and the asset protection zone (APZ).*

*The Panel resolved to defer the determination of the application and require the applicant to address issues raised by the speakers in the meeting including:*

- *The provisions of the positive covenant and conservation of native vegetation.*
- *The extent of the APZ with respect to potential building encroachment.*
- *The potential to retain significant trees on the site.*
- *Proposed treatment of the watercourse and on-site water management.*
- *The necessity for rear yard tiering and retaining walls.*
- *Measures to ameliorate privacy impacts from the windows on No. 40A.*
- *Replacement tree planting.*

On 8 October 2021, Council requested amended plans to address the reasons for deferral from the LPP meeting.

On 9 December 2021, Council received the amended plans which are subject to this assessment. The amendments included reducing the tiered landscaping within the rear, reducing the required cut and fill, increasing the number of trees to be retained and providing glazed windows to ameliorate privacy impacts to the adjoining property No. 40A Malton Road.

## SITE

The 2,386m<sup>2</sup> vacant battle-axe property is located on the southern side of Malton Road Beecroft and experiences a fall of 30m to the rear southern boundary. The site is burdened and benefitted by a

right of access and easement for services of variable width and easement to drain water of variable width.

The southern, rear portion of the site contains dense bushland identified as Blackbutt Gully Forest vegetation community.

The site is located within the Beecroft/Cheltenham Heritage Conservation Area listed under Schedule 5 of the *Hornsby Local Environmental Plan 2013*.

The property is also located within close proximity to the following heritage listed items:

- No.37 Malton Road, Beecroft
- No.177E Copeland Road, Beecroft
- Street trees growing along the road reserve of Malton Road

The site is identified as bushfire prone land.

## PROPOSAL

The application proposes the construction of a one and two storey dwelling house.

The ground floor would include a family/dining room, a double-spaced garage, lounge room, bathroom, walk in wardrobe, ensuite, kitchen with attached pantry and an outdoor alfresco area.

On the lower ground floor, the dwelling would include a bedroom, rumpus room, ensuite, walk in wardrobe and study.

Retaining walls are proposed to the rear of the dwelling house to create a tiered landscaped area.

Seven trees would be removed by the proposed development.

## ASSESSMENT

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

### 1. STRATEGIC CONTEXT

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

*The Greater Sydney Region Plan - A Metropolis of Three Cities* has been prepared by the NSW State Government to guide land use planning decisions for the next 40 years (to 2056). The Plan sets a strategy and actions for accommodating Sydney's future population growth and identifies dwelling targets to ensure supply meets demand. The Plan also identifies that the most suitable areas for new housing are in locations close to jobs, public transport, community facilities and services.

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

The proposed development would be consistent with the *Greater Sydney Region Plan - A Metropolis of Three Cities* and the *North District Plan*, by contributing to achieving the dwelling targets for the region.

## 2. STATUTORY CONTROLS

Section 4.15(1)(a) requires Council to consider “*any relevant environmental planning instruments, draft environmental planning instruments, development control plans, planning agreements and regulations*”.

### 2.1 Hornsby Local Environmental Plan 2013

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

#### 2.1.1 Zoning of Land and Permissibility

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

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

The proposed development is defined as a ‘*dwelling house*’ and is permissible with Council’s consent. The proposed development meets the objectives of the R2 zone.

#### 2.1.2 Height of Buildings

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

#### 2.1.3 Heritage Conservation

Clause 5.10 of the *HLEP* sets out heritage conservation provisions for Hornsby Shire. The site does not include a heritage item; however, the site is located within the Beecroft/Cheltenham Heritage Conservation Area listed under Schedule 5 of the *HLEP*. The property is also located within close proximity to the following heritage listed items:

- No. 37 Malton Road, Beecroft (No. 124)
- No.177E Copeland Road, Beecroft; (No. 94)
- Street trees growing along Malton Road (No. 114)

The proposed dwelling house would be one storey when viewed from the front elevation and there would be minimal visual impacts to the streetscape of Malton Road due to the dwelling house being setback approximately 50m from the streetscape. The proposal would have negligible heritage impacts to the Beecroft/Cheltenham HCA or the nearby heritage listed items along Malton Road.

In assessing the heritage impacts to the heritage listed item at No. 177E Copeland Road to the rear of the site, it is noted that the rear of the site contains existing vegetation that would screen the

proposed dwelling house from the adjacent heritage listed item and would have a rear boundary setback of greater than 70m.

Therefore, the proposed development meets the objectives of Clause 5.10 of the *HLEP* and is considered acceptable.

#### **2.1.4 Earthworks**

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

The Hornsby Shire Council Local Planning Panel at its meeting on 29 September 2021, deferred consideration of the development application raising issues regarding the necessity for rear yard tiering and retaining walls. Submissions also received raised concerns to the proposed extent of earthworks within the rear yard to create the tiered landscaping. To address the reasons for deferral, the applicant submitted amended plans to reduce the depth of the retaining walls to the rear yard which has reduced the amount of cut and fill required.

The application proposes a cut of 2m for the proposed dwelling house and a maximum fill of 0.8m for the proposed rear landscaping.

In support of the proposed landform modification within the rear yard, it is noted that the application proposes retaining walls to retain the fill which would be setback 1.495m from the western side boundary to mitigate any amenity or environmental impacts to the adjoining property No. 40A Malton Road.

In assessing the proposed 2m cut for the proposed basement level of the dwelling house, it is noted that the application is supported by a Geotechnical Report prepared by Ideal Geotech dated September 2020. This report supports the application subject to recommendations relating to the provision of a dilapidation report, requirements for excavation, footing and retaining walls. Council's assessment of the application notes that the excavation of the basement level would reduce the bulk and scale of the proposed development when viewed from adjacent properties and the application responds appropriately to the topography of the land. No objections are raised on planning grounds to the proposed excavation as it is generally considered that the application would have minimal environmental and amenity impacts.

In assessing the impacts to the eastern side boundary, it is noted that the earthworks and retaining walls have been designed to have the same levels as proposed within No. 38B Malton Road under DA/137/2021.

A condition is recommended in Schedule 1 of this report ensuring that any fill material being brought onto the site be classified as Virgin Excavated Natural Material (VENM). A similar condition is recommended for any excavated material that may be removed from the site.

Council's assessment of the proposed works and excavation concludes that the proposed earthworks would have minimal and acceptable environmental, and amenity impacts to adjoining properties.

#### **2.1.5 Covenant**

In granting consent to DA/390/2016 condition 38 was imposed which stated the following:

#### **38. Restriction as to User – Protection of Land from Future Development**

- a) *To inform current and future owners that the areas of rock outcrops, native vegetation and habitat on the site is to be protected from future development, a Restriction as to User must be created under Section 88B of the Conveyancing Act 1919 identifying that the bushland areas outside the building envelopes identified in 'plan of proposed subdivision', ref No. S.14712C, dated 8-12-15 prepared by P.S Graham & Associates is restricted from future development or disturbance of any kind.*
- b) *The proposed Restriction as to User area Plan and final wording is to be provided to Council's Natural Resources Unit for review prior to approval.*

*Note: The wording of the Restriction as to User must be to Council's satisfaction and Council must be nominated as the authority to release, vary or modify the Restriction.*

The final wording within the Section 88B instrument that relates to the proposed development, states the following:

*Terms of Restriction as to User fourthly referred to in the above-mentioned plan (D).*

*No future development is permitted in the Restricted Development Area (D0 on lots 2 and 3 to ensure protection of native vegetation and habitat.*

**Council Comment:** No development is proposed within the area denoted D on the survey plan.

*Terms of restriction fifthly referred to in the above-mentioned plan (E)*

*The following specified areas are to be managed as inner protection areas (IPA) as outlined within Section 4.1.3 and appendix 5 of 'Planning for Bushfire Protection 2006' and the NSW Rural Fire Service document 'Standard for Asset Protection Zones'*

- c) *All of proposed lot 1*
- d) *The northern section of lots 2 & 3 shown as (E) APZ on the plan.*

**Council comment:** The proposed dwelling house does not encroach within the area denoted (E) on the survey plan. A bushfire report has been submitted with the application which outlines how the required APZ is achieved and to be maintained and conditions are recommended in Schedule 1 of this report. It is noted that the application proposes retaining walls within the area denoted (E) on the survey plan. It is noted that Planning for Bushfire Protection 2021 does not prohibit these minor structures from being located within the APZ and they are considered acceptable.

*Terms of Positive Covenant eighthly referred to in the above-mentioned plan*

*To ensure the protection and ongoing management of the Restricted Development Area denoted (D) on the plan*

- e) *All Landscaping, weed, fire and native vegetation management shall be in accordance with the approved integrated Bushfire and Vegetation Management Plan.*
- f) *Development within the Restricted Development Area (D), is prohibited as is any removal of sandstone outcrops, any clearing of indigenous vegetation, on-site effluent disposal and the riding of BMX bikes, or any stock or agricultural activities.*
- g) *High use open space areas shall be limited to land outside the Restricted Development Area (D).*

**Council comment:** It is noted that the application does not propose any structures within the Restricted Development Area (D) and all high use open spaces are located outside the Restricted Development Area (D).

Therefore, the application complies with the requirements of the Section 88B instrument.

## **2.2 State Environmental Planning Policy (Exempt and Complying Development Codes) 2008**

The application has been considered against the requirements of *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (NSW Housing Code)*. The Policy provides exempt and complying development codes that have State-wide application. The Policy also identifies types of development that are of minimal environmental impact that may be carried out without the need for development consent and types of Complying Development (including dwelling houses) that may be carried out in accordance with a Complying Development Certificate.

The development requires the removal of trees which precludes the development from being approved as Complying Development. The proposed dwelling house additions would otherwise comply with the numerical standards for Complying Development contained within the *NSW Housing Code*.

## **2.3 State Environmental Planning Policy No. 55 Remediation of Land**

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

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

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

## **2.4 SEPP (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 dwelling house, which is considered to be satisfactory. A condition is recommended in Schedule 1 of this report requiring the recommendations of the BASIX certificate be complied with.

## **2.5 State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017**

The application has been assessed against the requirements of *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 (Vegetation SEPP)*. This Policy seeks to protect the biodiversity values of trees and other vegetation in non-rural areas of the State, and to preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation.

Part 3 of the *Vegetation SEPP* states that a development control plan may make a declaration in any manner relating to species, size, location and presence of vegetation. Accordingly, Part 1B.6.1 of the Hornsby Development Control Plan 2013 (HDCP) prescribes works that can be undertaken with or without consent to trees.

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

## 2.6 Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

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

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

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

Section 3.42 of the *Environmental Planning and Assessment Act 1979* states that a DCP provision will have no effect if it prevents or unreasonably restricts development that is otherwise permitted and complies with the development standards in relevant Local Environmental Plans and State Environmental Planning Policies.

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

## 2.8 Hornsby Development Control Plan 2013

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

<b>HDCCP – Part 3.1 Dwelling Houses</b>			
<b>Control</b>	<b>Proposal</b>	<b>Requirement</b>	<b>Complies</b>
Site Area	2,386m <sup>2</sup>	N/A	N/A
Building Height	8.5m	8.5m	Yes
No. storeys	2 + attic	max. 2 + attic	Yes
Site Coverage	11%	30%	Yes
Floor Area	342m <sup>2</sup>	430m <sup>2</sup>	Yes
Setbacks			
- Side (north)	8.8m	0.9m	Yes

- Side (west)			
Ground floor	1.05m	0.9m	Yes
Retaining walls	0m	0.9m	No
First floor	2.3m	1.5m	Yes
- Side (east)			
Ground floor	3.6m	0.9m	Yes
Retaining walls	1.495m	0.9m	Yes
First floor	2.3m	1.5m	Yes
- Rear (south)			
Ground floor	>70m	3m	Yes
First floor	>70m	8m	Yes
Landscaped Area (% of lot size)	67%	45%	Yes
Private Open Space			
- minimum area	32m <sup>2</sup>	24m <sup>2</sup>	Yes
- minimum dimension	4m	3m	Yes
Car Parking	2 spaces	2 spaces	Yes

**ITEM 5**

As detailed in the above table, the proposed development does not comply with the prescriptive measures for setbacks within the *HD*CP. This matter of non-compliance is detailed below, as well as a discussion on compliance with relevant desired outcomes.

### 2.8.1 Setbacks

The desired outcomes of Part 3.1.2 Setbacks of the *HD*CP are to encourage “*setbacks that are compatible with adjacent development and complement the streetscape*” and “*setbacks that allow for canopy trees to be retained and planted along the front and rear property boundaries.*”

This is supported by the prescriptive measure set out in Table 3.1.2(a): Minimum Boundary Setbacks which prescribes a minimum side boundary setback of 0.9m for single storey elements and structures.

The application proposes a nil setback to the western side boundary for the retaining walls within the rear yard which does not comply with the 0.9m prescriptive measure.

In support of the 0.9m encroachment, it is noted that the levels of the proposed retaining walls would be the same as the neighbouring property No. 38A Malton Road as shown in the proposed plans for DA/137/2021. As the application proposes the same levels as the adjoining property, no objections are raised to the proposed western side boundary encroachment. It is noted that the retaining walls originally proposed extended 17m to the rear of the alfresco area. To address the reasons for deferral by the Local Planning Panel, the applicant has provided amended plans in which the retaining walls extend 7.5m from the rear of the alfresco area which reduces the setback encroachments along the side boundaries.

Conditions are recommended in Schedule 1 of this report requiring the structural details of these retaining walls be submitted with the application for the construction certificate and these retaining walls be constructed prior to the issue of an occupation certificate.

Due to the proximity of the proposed retaining wall to the boundary of the adjoining property at No. 38A Malton Road Beecroft, a condition is recommended in Schedule 1 of this report, requiring the retaining wall to be built entirely within the subject property.

The proposal meets the desired outcomes of Part 3.1.2 Setbacks of the HDCP and is considered acceptable, subject to conditions.

### 2.8.2 Sunlight Access

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

This is supported by the prescriptive measure 3.1.5(a) requiring “*50 per cent of the principal private open space of the subject site to receive at least 3 hours of unobstructed sunlight access between 9am and 3pm*” during the day of the winter solstice and prescriptive measure 3.1.5(b) requiring “*50 per cent of the principal private open space on any adjoining property to receive at least 3 hours of unobstructed sunlight access between 9am and 3pm.*”

Submissions were received raising concern to the overshadowing of adjacent properties from the proposed development.

An assessment of the shadow diagrams provided by the applicant illustrate that the subject site and the adjoining properties No. 38A and 40A Malton Road, would receive at least 3 hours of unobstructed sunlight access to 50 per cent of their private open space between 9am and 3pm on the day of the winter solstice.

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

### 2.8.3 Privacy

The desired outcome of Part 3.1.6 Privacy of the HDCP is to encourage “*development that is designed to provide reasonable privacy to adjacent properties.*”

This is supported by the prescriptive measures that states:

- a) “*Living and entertaining areas of dwelling houses should be located on the ground floor and oriented towards the private open space of the dwelling house and not side boundaries.*”
- b) *A proposed window in a dwelling house should have a privacy screen if:*
  - *It is a window to a habitable room, other than a bedroom, that has a floor level of more than 1 metre above existing ground level.*
  - *The window is setback less than 3 metres from a side or rear boundary.*
  - *The window has a sill height of less than 1.5 metres.*
- c) *A deck, balcony, terrace or the like should be located within 600mm of existing ground level where possible to minimise potential visual and acoustic privacy conflicts.*

- d) *Decks and the like that need to be located more than 600mm above existing ground should not face a window of another habitable room, balcony or private open space of another dwelling located within 9 metres of the proposed deck unless appropriately screened.”*

Submissions received raised concern regarding overlooking from the alfresco area. The application proposes a raised ground level outdoor alfresco area which would be elevated 3.2m above the existing ground level. In assessing the amenity impacts of the proposed raised alfresco area, it is noted that the alfresco area would be within 9m of the private open space (POS) of the adjoining property No. 40A Malton Road separated by a right of carriageway.

To reduce the opportunity to overlook the POS of No. 40A Malton Road, a condition is recommended in Schedule 1 of this report requiring a 1.7m high privacy screen be erected along the eastern side of the proposed alfresco area to comply with Council’s prescriptive measures.

To address the reasons for deferral by the local planning panel, the applicant has provided amended plans which provide translucent glazing to the two windows within the western elevation of the raised ground level family/ dining room which may allow some overlooking to adjoining properties. The use of translucent glazing is considered to be satisfactory to mitigate any privacy impacts.

All other first floor level windows would provide natural light and ventilation to ‘non-habitable’ use rooms (bathroom and bedrooms) in compliance with Council’s planning guidelines.

The proposal meets the desired outcome of Part 3.1.6 Privacy of the HDCP and is considered acceptable.

#### **2.8.4 Vehicle Access and Parking**

The application proposes a double garage within the ground floor of the dwelling house and an internal driveway which would align with the existing turning area provided through the approved subdivision creating the lot (DA/390/2016). Submissions were received which raised concerns to the insufficient turning area of the proposed development.

Council’s engineer assessment raises no objection to the proposal and the design of the turning area and location of the garage would meet the requirements of the HDCP subject to appropriate conditions relating to the turning area and internal driveway.

#### **2.9 Section 7.12 Contributions Plans**

Hornsby Shire Council Section 7.12 Contributions Plan 2019-2029 applies to the development as the estimated costs of work is greater than \$100,000. It is noted that the requirement for a contribution does not apply to this development as it is a newly subdivided lot and a contribution has been levied against DA/390/2016 under Section 7.11 of the Act previously.

### **3. ENVIRONMENTAL IMPACTS**

Section 4.15(1)(b) of the Act requires Council to consider *“the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality”*.

#### **3.1 Natural Environment**

##### **3.1.1 Tree and Vegetation Preservation**

The proposed development would be within the vicinity of 18 trees numbered T1 to T7 and T27 to T37 inclusive as identified within Arboricultural Impact Assessment (AIA) report prepared by McArdle Arboricultural Consultancy dated 28 May 2021.

Submissions were received which raised concerns to the removal of trees, incorrect labelling of trees being exempt and impact on neighbouring trees.

It is noted that the AIA report prepared by McArdle Arboricultural Consultancy dated 2 December 2020, identified some trees to be removed as 'exempt' species. Council's assessment has determined that this is incorrect as any tree in a heritage conservation area cannot be considered 'exempt'. Council has assessed the application and findings within the AIA report accordingly.

It is noted that trees numbered T1 to T7 are located adjacent to the existing driveway, trees T27 to T30 inclusive are located on the adjacent property No. 38 Malton Road and trees numbered T31 to T37 inclusive are located within the subject site.

The remaining trees are the west of the subject site on or adjacent to No. 38A Malton Road and would not be impacted by the proposed development.

The application proposes the removal of 5 trees numbered T31, T32, T33, T36 and T37.

Trees numbered 31, 32 and 37 are identified as *Acer negundo* (box elder), *Eriobotrya japonica* (loquat) and a deciduous species and have a very low to low retention value.

Trees numbered T33 is identified as a *Pittosporum undulatum* (Sweet Pittosporum) tree with a moderate retention value and would be located within the building footprint.

Tree T36 is identified as *Syncarpia glomulifera* (Turpentine) tree with a high retention value and would be located within close proximity of the building footprint and is proposed for removal.

These trees would be located within the building footprint of the proposed development and within the required APZ area. While tree loss is not ideal, it is noted that there is sufficient space elsewhere on the site for appropriate replacement planting.

It is noted that to address the reasons for deferral, the application provided amended plans which retained trees numbered T34 and T35 which are identified as *Syncarpia glomulifera* (Turpentine) trees of high retention value. Appropriate conditions are recommended in Schedule 1 of this report for the retention and protection of these trees.

To offset the removal of 5 trees, a condition is recommended in Schedule 1 of this report requiring the replacement planting of 5 trees with the potential to reach a mature height of greater than 10m and 5 mid-storey trees with the potential to reach a mature height of greater than 5m.

Submissions were received with concerns to the lack of space on the site for replacement planting.

Due to the size of the 2,386m<sup>2</sup> lot, it is considered that these trees can be planted in an appropriate location whilst satisfying the requirements for an APZ as discussed in Section 4.2 Bushfire of this report.

Subject to conditions, the proposed development meets the desired outcomes of Part 1B6.1 Tree Preservation of the HDCP and the proposed development would result in acceptable environmental impacts.

### 3.1.2 Biodiversity

The proposal is located amongst vegetation characteristic of the Blackbutt Gully Forest vegetation community. A submission also identified that a powerful owl was recently sighted on the subject site

and multiple submissions were received which raised concerns to the impact of the Powerful Owl species. The powerful owl is listed as vulnerable under the *Biodiversity Conservation Act 2016*.

Council's ecologists have assessed the Integrated Bushfire and Vegetation Management Plan prepared by Hunter Ecology dated 10 August and the Powerful Owl (*Ninox strenua*) surveys and assessment prepared by Hunter Ecology dated 10th August and determined the following:

- Powerful Owl were recorded roosting in the locality
- No breeding habitat is present on site
- Some practical measures can be implemented in site to enhance habitat for this species (hollow improvement and nest box installation)
- The proposed development is unlikely to have a significant impact upon the local population of this species

Conditions are recommended in Schedule 1 of this report to minimise any disturbance to the species, a project ecologist must be appointed a Project Bush Regenerator and Ecologist that will be involved with the implementation and monitoring of environmental protection measures during the construction of the proposed development. A condition is also recommended requiring 4 nest boxes be installed by an experienced fauna ecologist prior to works commencing on the site.

Subject to conditions, the proposed development meets the desired outcomes of Part 1C.1.1 Biodiversity of the HDCP and the proposed development would result in acceptable environmental impacts.

### **3.1.3 Stormwater Management**

The residential development would have a minor impact on the natural environment with the stormwater system conditioned to be directed from the above ground rainwater tank and the overflow from the rainwater tank connected to the existing inter-allotment drainage system. All stormwater collected by the proposed retaining walls would be connected to the existing inter-allotment drainage system. As the inter-allotment drainage system was approved through the subdivision of DA/390/2016, no objections are raised to connect to this inter-allotment system.

Appropriate conditions are also recommended to ensure appropriate sediment and erosion control measures are in place during construction to protect the bushland to the rear of the site.

## **3.2 Built Environment**

### **3.2.1 Built Form**

The residential development would improve housing choice in the locality by providing a range of house hold types. This is consistent with Council's Housing Strategy which identifies the need to provide a mix of housing options to meet future demographic needs in Hornsby Shire.

## **3.3 Social Impacts**

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

## **3.4 Economic Impacts**

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

#### **4. SITE SUITABILITY**

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

##### **4.1 Flooding**

The site is not identified as flood prone.

##### **4.2 Bushfire Risk**

The desired outcomes of Part 1C.3.1 Bushfire of the HDCP are to encourage “development that is located and designed to minimise the risk to life and property from bushfires”.

The site is bushfire prone and the application was accompanied by a Bushfire Assessment Report prepared by Bushfire Planning & Design dated 15 October 2020, which assigned the site a Bushfire Attack Level (BAL) of 29. Consequently, the application was not required to be referred to the NSW Rural Fire Service (RFS) for comment in accordance with Section 4.14 of the *Environmental Planning and Assessment Act 1979*.

Submissions were received raising concerns to the inadequacy of the bushfire requirements.

Council’s assessment of the bushfire report requires the establishment of an Asset Protection Zone (APZ) of 36m from the rear of the dwelling house towards the southern boundary which is consistent with the requirements of the subdivision approved under DA/390/2016.

The proposal meets the desired outcomes of Part 1C.3.1 Bushfire of the HDCP and is considered acceptable, subject to conditions that require the construction of the dwelling to comply with *Australian Standard AS3959-2009 Construction in bushfire prone areas*. Conditions are also recommended requiring the development to comply with the Integrated Bushfire and Vegetation Management Plan (IBVMP) prepared by Hunter Ecology dated 10 August 2021.

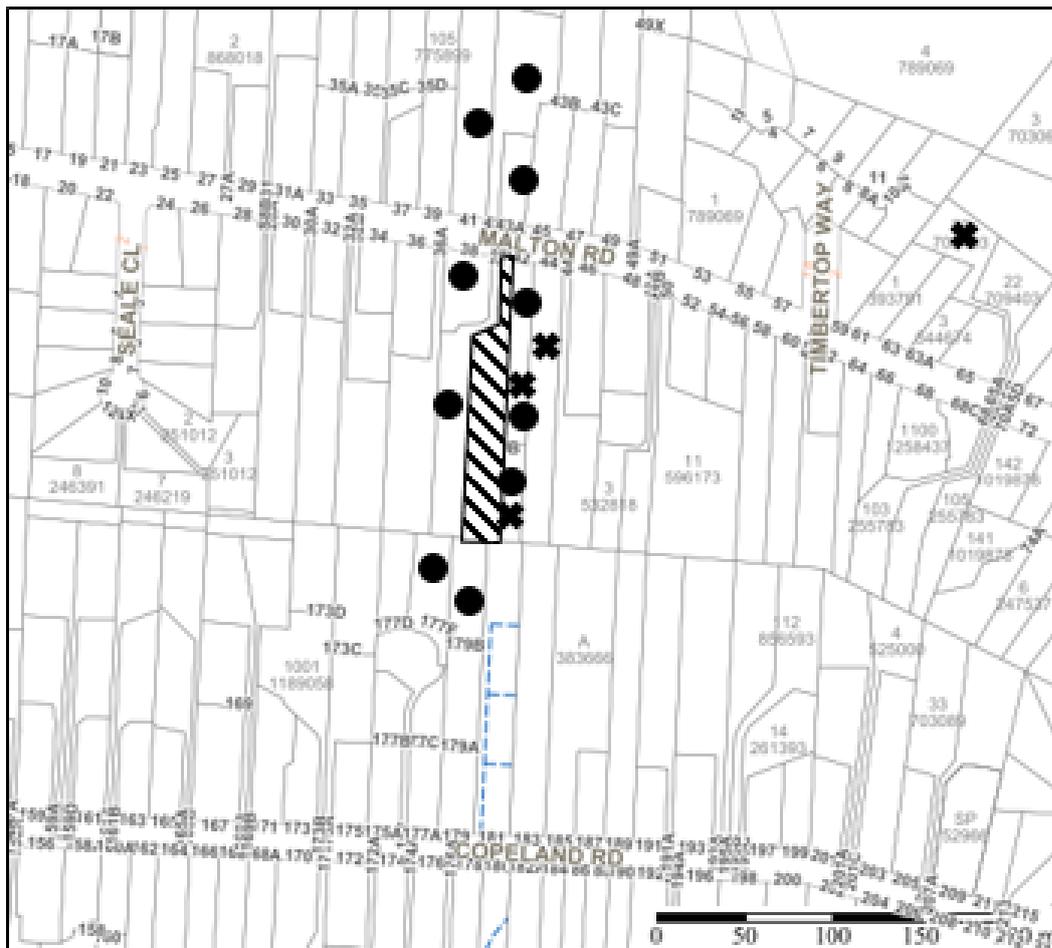
Council has raised no objections to the development, subject to the conditions listed in Schedule 1 of this report.

#### **5. PUBLIC PARTICIPATION**

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

##### **5.1 Community Consultation**

The proposed development was placed on public exhibition and was notified to adjoining and nearby landowners between 19 February 2021 and 16 March 2021 and 2 June 2021 and 21 June 2021 in accordance with the Hornsby Community Engagement Plan. During this period, Council received a combined total of 16 submissions. Amended Plans were received to address the Local Planning Panel’s deferment on 29 September 2021. These amended plans were considered minor modifications and in accordance with the Hornsby Community Engagement Plan, renotification of the application was not required. 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**

<ul style="list-style-type: none"> <li>• PROPERTIES NOTIFIED</li> </ul>	<ul style="list-style-type: none"> <li>X SUBMISSIONS RECEIVED</li> </ul>	 <ul style="list-style-type: none"> <li>PROPERTY SUBJECT OF DEVELOPMENT</li> </ul>	
<p>10 SUBMISSIONS RECEIVED OUT OF MAP RANGE</p>			

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

- Impact to trees on neighbouring properties
- Lack of space on site for replacement planting
- Bushfire impacts not sufficiently addressed
- Privacy concerns
- Watercourse at the rear of the site
- Earthworks
- Unacceptable environmental impacts through tree loss
- Unacceptable impacts to powerful owl habitat

- Unacceptable overshadowing of adjoining properties
- Unacceptable privacy impacts
- The removal of a significant trees
- Development that is excessive in bulk and scale

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

#### **5.1.1 Development that is excessive in bulk and scale**

Submissions were received raising concern to the excessive bulk and scale of the proposed development.

In response to these submissions, it is noted that as outlined in the compliance table in Section 2.8 of this report, the application complies with height, floor area, site coverage and landscaping requirements.

#### **5.1.2 Watercourse at the rear of the site**

Submissions were received raising concerns to the watercourse at the rear of the site known as Byles Creek and the impact the proposed development would have on this watercourse.

The subject site slopes to a 1<sup>st</sup> order stream that connects to Byles Creek. To address issues of water quality to Byles Creek and the Sydney Harbour Catchment, conditions are recommended in Schedule 1 of this report requiring appropriate sediment and erosion control measures to protect the downstream creek.

#### **5.2 Public Agencies**

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

### **6. THE PUBLIC INTEREST**

Section 4.15(1)(e) of the Act requires Council to consider "*the public interest*".

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

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

### **CONCLUSION**

The application proposes the construction of a dwelling house. The application was deferred by the HLPP on 29 September 2021. The applicant submitted amended plans and documentation to address the grounds of deferral by reducing the amount of tiered landscaping to the rear, reducing the required cut and fill, increasing the number of trees to be retained and provided glazed windows to ameliorate the privacy impacts to adjoining property No. 40A Malton Road.

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

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

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

The reasons for this decision are:

- The proposed development generally complies with the requirements of the relevant environmental planning instruments and the Hornsby Development Control Plan 2013.
- The proposed development does not create unreasonable environmental impacts to adjoining development with regard to visual bulk, overshadowing, solar access, amenity or privacy.

*Note: At the time of the completion of this planning report, no persons have made a Political Donations Disclosure Statement pursuant to Section 10.4 of the Environmental Planning and Assessment Act 1979 in respect of the subject planning application.*

#### **RESPONSIBLE OFFICER**

The officer responsible for the preparation of this report is Tim Buwalda.

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

ROD PICKLES  
Manager - Development Assessments  
Planning and Compliance Division

#### **Attachments:**

1.  Locality Map
2.  Architectural Plans
3.  Landscape Plan

File Reference: DA/161/2021

Document Number: D08338581

## SCHEDULE 1

### GENERAL CONDITIONS

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

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

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

### 1. Approved Plans and Supporting Documentation

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

#### Approved Plans

<b>Plan No.</b>	<b>Plan Title</b>	<b>Drawn by</b>	<b>Dated</b>	<b>Council Reference</b>
1724 1 of 2	Site Plan	Distinct Innovations	1 December 2021	
1724 2 of 2	Elevations, Floor Plans and Sections	Distinct Innovations	1 December 2021	
DA-01 rev. E	Landscape Plan	Grindstone Landscapes	14 August 2021	
DA-02 rev. E	Driveway	Grindstone Landscapes	14 August 2021	
DA-03 rev. E	38B Landscape Plan	Grindstone Landscapes	14 August 2021	
DA-04 rev. E	38B Elevation	Grindstone Landscapes	14 August 2021	

#### Supporting Documentation

<b>Document Title</b>	<b>Drawn by</b>	<b>Dated</b>	<b>Council Reference</b>
BASIX Certificate No. 1132496S	Frys Energywise	14 December 2021	D08108875
Integrated Bushfire and Vegetation Management Plan	Hunter Ecology	10 August 2021	D08225542
Arboricultural Impact	McArdle Arboricultural	29 November 2021	D08309820

<b>Document Title</b>	<b>Drawn by</b>	<b>Dated</b>	<b>Council Reference</b>
Assessment version 12	Consultancy		
Geotechnical Assessment ref. 46785-IDF	Idea Geotech	September 2020	D08108864
Waste Management Plan	Peter Henderson	27 December 2020	D08242464
Powerful Owl Assessment Beecroft 01	Hunter Ecology	10 August 2021	D08225544
Nathers Certificate	Frys Energywise	1 September 2020	D08108839
Bushfire Assessment Report Ref: 20.10.316	Bushfire Planning & Design	15 October 2020	D08108876
Schedule of Finishes	Distinct Innovation Pty Ltd	24 December 2020	D08108842

**ITEM 5**

## 2. Amendment of Plans

- a) To comply with Councils requirement in terms of privacy, the approved plans are to be amended as follows:
- i) A 1.7m high privacy screen must be erected along the eastern elevation of the raised ground floor level alfresco area to minimise the opportunity to overlook into the private open space of adjoining property No. 40A Malton Road (Lot 321 DP 861797).
  - ii) The screen must have no individual openings more than 30mm wide and have a total of all openings less than 30% of the surface area of the screen.
- b) These amended plans must be submitted with the application for the Construction Certificate.

## 3. Construction Certificate

- a) A Construction Certificate is required to be approved by Council or a Private Certifying Authority prior to the commencement of any construction works under this consent.
- b) The Construction Certificate plans must include all requirements imposed by condition No. 12 of this consent.
- c) The Construction Certificate plans must be consistent with the Development Consent plans.

## 4. Removal of Trees

- a) This development consent permits the removal of 5 trees numbered T31, T32, T33, T36 and T37 as identified in the Arboricultural Impact Assessment prepared by McArdle Arboricultural Consultancy dated 29 November 2021 (D08309820).
- b) No consent is granted for the removal if any other trees on property 38B or 38A as these trees contribute to the established landscape amenity of the area/streetscape.

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

**5. Tree Pruning**

- a) This development consent only permits the pruning of tree(s) numbered T30 as identified in the Arboricultural Impact Assessment prepared by McArdle Arboricultural Consultancy dated 28/5/2021 TRIM D08177121.
- i) This can only be permitted with Tree owners written consent.
- b) Works can be undertaken in the form of canopy modification as follows:

Tree number	Work prescribed
T30	Prune for vehicle access

- i) All specified pruning works must be less than 10 percent.
- ii) All pruning work must be undertaken by an arborist with minimum AQF3 qualifications.

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

**6. Retaining Walls**

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

**REQUIREMENTS PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE****7. Building Code of Australia**

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

**8. Contract of Insurance (Residential Building Work)**

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

**9. Notification of Home Building Act 1989 Requirements**

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

- a) In the case of work for which a principal contractor is required to be appointed:
- i) The name and licence number of the principal contractor.
- ii) The name of the insurer by which the work is insured under Part 6 of that Act.

- b) In the case of work to be done by an owner-builder:
  - i) The name of the owner-builder.
  - ii) If the owner-builder is required to hold an owner-builder's permit under that Act, the number of the owner-builder's permit.

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

#### 10. Sydney Water – Approval

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

*Note: Building plan approvals can be obtained online via Sydney Water Tap in™ through [www.sydneywater.com.au](http://www.sydneywater.com.au) under the Building and Development tab.*

#### 11. Dilapidation Report

A 'Dilapidation Report' is to be prepared by a 'chartered structural engineer' detailing the structural condition of the adjoining properties Nos. 40A (Lot 321 DP 861797) and 42 (Lot 31 DP 834203) Malton Road before the commencement of works and a copy submitted to Council and the PCA with the Construction Certificate.

#### 12. Design and Construction - Bushfire Attack Category

- a) That the proposed dwellings roof and eaves section, and the western, southern and eastern elevations shall be constructed to section 3 Construction General and section 7 BAL 29 of *AS3959-2018 Construction of buildings in bushfire prone areas* with the exception that the construction requirements shall be varied to comply with section 7.5.2 Additional Construction Requirements of *Planning for Bush Fire Protection 2019*.
- b) That the proposed dwellings northern elevation shall be constructed to section 3 Construction General and section 6 BAL 19 of *AS3959-2018 Construction of buildings in bushfire prone areas* with the exception that the construction requirements shall be varied to comply with section 7.5.2 Additional Construction Requirements of *Planning for Bush Fire Protection 2019*.
- c) That the dwelling shall maintain a reserve Static Water Supply (SWS) for use during a bushfire event of not less than 10,000 litres stored in a non-combustible tank within the area of recommended asset protection zone.
- d) The reserve Static Water Supply shall be permanently plumbed to a petrol or diesel firefighting water pump with a minimum of 5hp. The pump shall be regularly maintained as per the manufacturer specifications. The pump must be located in such a position to be shielded from the direct mechanisms of bushfire attack.
- e) That a water delivery line of not less than 50mm diameter be plumbed from the firefighting water pump plumbed to the reserve Static Water Supply tank, to an outlet point located directly adjacent to the driveway as indicated within figure 7 of the

Bushfire Assessment Report prepared by Bushfire Planning & Assessment dated 15 October 2020 on the subject allotment to enable firefighting tankers to refill. The outlet of this line shall be fitted with a ball or gate valve and a 65 to 38mm reducer Storz fitting.

- f) That the development must provide and have readily available kink resistant hose or hoses with a diameter of not less than 19mm and a firefighting nozzle, capable of reaching all elevations of the dwelling, and fittings suitable for connection to the firefighting water pump.
- g) Fire hose reels are constructed in accordance with *AS/NZS 1221:1997* and installed in accordance with the relevant clauses of *AS 2441:2005*.
- h) That all plumbing associated with the reserve water supply above the ground or for a depth of not less than 300mm below the ground shall be metal.
- i) That approved NSW Rural Fire Service; Static Water Supply signage is installed at approved locations for the proposed development.
- j) That if the supply of gas to the subject dwelling is undertaken it shall be installed and maintained in accordance with *AS1596-2002* and requirements of relevant authorities.

*Note: Further information concerning planning for bush fire protection can be found at: [www.rfs.nsw.gov.au](http://www.rfs.nsw.gov.au).*

### 13. Stormwater Drainage

The stormwater drainage system for the development must be designed for an average recurrence interval (ARI) of 20 years and be gravity drained in accordance with the following requirements:

- a) Roof water must be connected to a rainwater tank having a minimum capacity of 3,500 litres (in addition to any BASIX requirements).
- b) The overflow from the rainwater tank must be connected to an existing internal drainage system.

### 14. Internal Driveway/Vehicular Areas

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

- a) The driveway be a rigid pavement.
- b) The driveway grade must not exceed 25 percent and changes in grade must not exceed 8 percent.
- c) A turning area to service the proposed dwelling must be designed and constructed in accordance with *Australian Standards AS2890.1* to ensure all vehicles can enter and leave the site in a forward direction.
- d) Reconstruction of the existing concrete driveway is necessary if the driveway is damaged during the construction of the new dwelling.

### 15. Appointment of Project Bush Regenerator and Ecologist

- a) The applicant shall notify Council of the details of the engaged Project Bush Regenerator and Ecologist that will be involved with the implementation and monitoring of environmental protection measures during the construction of the approved development. These environmental experts will assist in ensuring compliance with the conditions of consent and provide monitoring reports to Council at various stages of the Project as identified in the approved Integrated Bushfire and Vegetation Management Plan prepared by Hunter Ecology dated 10 August 2021 .The ecologist will also be responsible for implementing the tree hollow improvement works as recommended in the Powerful Owl (*Ninox strenua*) surveys and assessment prepared by Hunter Ecology dated 10 August 2021.
- b) An inspection schedule to assess vegetation health and provide certification for the various stages of development such as site establishment (includes demolition and installation of tree protection measures), weed removal, construction work, hard and soft landscaping practical completion and occupancy certification is to be included with the application for the construction certificate.

#### 16. Appointment of a Project Arborist

- a) To ensure the trees that must be retained are protected, a project arborist with AQF Level 5 qualifications must be appointed to assist in ensuring compliance with the conditions of consent and provide monitoring reports as specified by the conditions of consent.
- b) Details of the appointed project arborist must be submitted to Council and the PCA with the application for the construction certificate/subdivision works certificate.

### REQUIREMENTS PRIOR TO THE COMMENCEMENT OF ANY WORKS

#### 17. Erection of Construction Sign

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

#### 18. Installation of Tree Protection measures

- a) Trees to be retained as identified on the Retention Value Map with TPZ and Tree Management Plan prepared McArdle Arboricultural Consultancy dated 29 November 2021 (D08309820) must have tree protection measures for the ground, trunk and canopy installed by the project arborist as follows:

- i) For the duration of construction works, in accordance with Tree Protection Plan prepared by McArdle Arboricultural Consultancy dated 29 November 2021 (D08309820).
- b) Tree protection fencing for the trees to be retained must be installed by the engaged AQF 5 project arborist and consist of 1.8m high temporary fencing panels installed in accordance with *Australian Standard AS4687-2007 Temporary fencing and hoardings*.
- c) The installation of all required tree protection fencing must include shade cloth attached to the fencing to reduce transport of dust, particulates and liquids from entering the tree protection zone.
- d) Tree crown protection measures are required and must be installed by the AQF 5 project arborist.
- e) The circumference of the trunk(s) must be wrapped in hessian material to provide cushioning for the installation of timber planks.
- f) Timber planks (50 x100mm) must be spaced at 100mm intervals and must be attached using adjustable ratchet straps.
- g) All tree protection zones must have a layer of wood-chip mulch at a depth of between 150mm and 300mm.
- h) Where wood-chip mulch is permitted by Council instead of tree protection fencing within the tree protection zones, the wood-chip must be covered with a layer of geotextile fabric and rumble boards.

**19. Protection of vegetation, habitat and environmental features during construction**

To ensure the protection of vegetation, habitat and environmental features during construction, the applicant must:

- a) Install 1.2-m-high chain wire fencing (or similar) along the southern boundary of the site as shown in the approved plans.
- b) Clean machinery of soil and debris before entering the site to prevent the spread of weeds and fungal pathogens.

*Note: The site contains potential habitat for threatened species listed under the NSW Biodiversity Conservation Act 2016. The Act prohibits the disturbance to threatened species, endangered populations and threatened ecological communities, or their habitat, without appropriate consent or licence.*

**20. Integrated Bushfire and Vegetation Management Plan (IBVMP)**

- a) All on-ground works shall comply with the approved Integrated Bushfire and Vegetation Management Plan (IBVMP) prepared by Hunter Ecology dated 27 April 2021 and Powerful Owl (*Ninox strenua*) surveys and assessment prepared by Hunter Ecology dated 10th August 2021. This includes compliance with development milestones listed in the Schedule of Works within Section 3, 6 & 7 of the approved IBVMP.
- b) The IBVMP shall be implemented from the date of issue of the Notice of Determination

- c) Monitoring should occur every 3 months for the first year of this IBVMP, then biannually until the expiration of this IVBMP to ensure that weed control is well managed and plantings have established and nestboxes have been installed. At the end of the 3-year IBVMP period a final monitoring report shall be provided to Council ([naturalresourcesplanning@hornsby.nsw.gov.au](mailto:naturalresourcesplanning@hornsby.nsw.gov.au)). If the performance criteria have not been met the life to the IBVMP will be extended accordingly at the discretion of Council's Natural Resources Unit.
- d) Monitoring of the site after the initial 3/5 years should occur annually. Reporting on the implementation of the IBVMP should occur annually with the annual reports provided to Council ([naturalresourcesplanning@hornsby.nsw.gov.au](mailto:naturalresourcesplanning@hornsby.nsw.gov.au)).

*Reason: The development of a consolidated IBVMP will provide the developer and current and future landowners with a single document describing the required vegetation management actions across the site.*

## 21. APZ – marking of boundary

The boundary of the asset protection zone must be surveyed and permanently marked before the works begin and must be kept in place in perpetuity as follows:

- a) Sufficient markers (a minimum of two) must be placed along the boundary of the APZ to clearly delineate the extent of the asset protection zone.
- b) The markers must be a tubular metal post (or the like) standing a minimum of 400mm above ground.
- c) The markers must include a notation stating: End of Asset Protection Zone. The notation may be in the form of an attached sign or sticker with lettering of a contrasting colour to the post colour.
- d) A survey and photographic evidence must be submitted to the Principal Certifying Authority confirming compliance with this condition.

*Reason: To provide certainty for the developer, current and future landowners, Council and contractors, during and after construction, as to the boundaries of the asset protection zone and those areas associated with different management requirements.*

## 22. Protection of Adjoining Areas

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

- a) Could cause a danger, obstruction or inconvenience to pedestrian or vehicular traffic.
- b) Could cause damage to adjoining lands by falling objects.
- c) Involve the enclosure of a public place or part of a public place.
- d) Have been identified as requiring a temporary hoarding, fence or awning within the Council approved Construction Management Plan (CMP).

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

## 23. Toilet Facilities

- a) To provide a safe and hygienic workplace, toilet facilities must be available or be installed at the works site before works begin and must be maintained until the works are completed at a ratio of one toilet for every 20 persons employed at the site.
- b) Each toilet must:
  - i) Be a standard flushing toilet connected to a public sewer.
  - ii) Be a temporary chemical closet approved under the *Local Government Act 1993*.

#### 24. Erosion and Sediment Control

To protect the water quality of the downstream environment, erosion and sediment control measures must be provided and maintained throughout the construction period in accordance with the manual *'Soils and Construction 2004 (Bluebook)'*, the approved plans, Council specifications and to the satisfaction of the principal certifying authority. The erosion and sediment control devices must remain in place until the site has been stabilised and revegetated.

*Note: On the spot penalties may be issued for any non-compliance with this requirement without any further notification or warning.*

#### 25. Bushfire Management – Protection Zones

At the commencement of building works the Assets Protection Zone as outlined within Appendix 4 of *Planning for Bush Fire Protection 2019* and the NSW Rural Fire Service's document *Standards for asset protection zones* must be in accordance with the following:

- a) From the southern elevation of the dwelling house to the south for 36m.
- b) From the western, eastern and northern elevations of the dwelling house to the lot boundaries.

Note: Further information concerning planning for bush fire protection can be found at: [www.rfs.nsw.gov.au](http://www.rfs.nsw.gov.au).

### REQUIREMENTS DURING CONSTRUCTION

#### 26. Construction Work Hours

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

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

#### 27. Prohibited actions within the fenced tree protection zone

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

- a) Soil cutting or filling, including excavation and trenching.
- b) Soil cultivation, disturbance or compaction.
- c) Stockpiling storage or mixing of materials.
- d) The parking, storing, washing and repairing of tools, equipment and machinery.

- e) The disposal of liquids and refuelling.
- f) The disposal of building materials.
- g) The siting of offices or sheds.
- h) Any action leading to the impact on tree health or structure.

**28. Works near trees**

- a) To maintain tree health and condition for trees to be retained on the approved plans, the appointed project arborist must monitor and record all necessary remedial actions required.
- b) The maintenance and monitoring of all tree protection techniques must be recorded by the appointed project arborist during the period of construction for submission with the application for the occupation certificate.

**29. Maintaining Tree Protection Measures**

Tree Protection Measures must be maintained by the project arborist in accordance with Condition No. 18 of this consent for the duration of works.

**30. Maintaining Tree Protection Zones**

The Tree Protection Zone must be maintained by the project arborist in accordance with section 4.6 requirements of Australian Standard AS 4970-2009 - "*Protection of Trees on Development Sites*".

**31. Approved Works within Tree Protection Zone incursions**

- a) Where tree root pruning is required for the installation of piers, driveway or underground services, the pruning must be overseen by the AQF 5 project arborist and must be undertaken as follows:
  - i) Using sharp secateurs, pruners, handsaws or chainsaws with the final cut being clean.
  - ii) The maximum diameter of roots permitted to be cut is 40mm.
- b) The new driveway must be constructed using the following process:
  - i) To minimise soil compaction the proposed driveway must be built above grade using sensitive construction techniques in the form of piers or screw pilings.
  - ii) To minimise soil compaction all imported material in the vicinity of the replacement driveway must be distributed by hand.
- c) Where the building footprint enters or transects the Tree Protection Zones of trees to be retained sensitive construction techniques in the form of screw pilings or piers, cantilevered or suspended slab design must be employed to create a 100mm clearance above existing soil grade.
- d) Approved excavations within the Tree Protection Zone of trees to be retained not associated with installation of services must be undertaken as follows:

- i) Excavations for the construction and/or installation of the house/deck/driveway/piers in the Tree Protection Zone of trees to be retained on the approved plans must be supervised by the project arborist for the first 1.000 meter undertaken manually to locate roots and allow for pruning in accordance with condition 30a.
- e) To minimise impacts within the Tree Protection Zone (TPZ) of trees to be retained on the approved plans, the installation of services must be undertaken as follows:
  - i) The AQF 5 project arborist must be present to oversee the installation of any underground services which enter or transect the tree protection.
  - ii) The installation of any underground services which either enter or transect the designated TPZ must be undertaken manually.
  - iii) For manually excavated trenches the AQF 5 project arborist must designate roots to be retained. Manual excavation may include the use of pneumatic and hydraulic tools.
- f) Where scaffolding is required, ground protection must be installed beneath the scaffolding in the following order:
  - i) Installation of a 100mm deep layer of woodchip.
  - ii) Installation of geotextile fabric ground covering.
  - iii) Installation of scaffold boarding above the woodchip and geotextile fabric.

### **32. Works near Trees Certification**

- a) The project arborist must submit to the principal certifying authority a certificate that all works have been carried out in compliance with the approved plans and conditions or specifications for tree protection.
- b) Certification should include a statement of site attendance, the condition of retained trees, details of any deviations from the approved tree protection measures and their impacts on trees.

*Note: Copies of monitoring documentation may be required by the PCA and/or Council.*

### **33. Building materials and Site Waste**

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

### **34. Environmental Management**

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

### **35. Council Property**

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

**36. Disturbance of Existing Site**

During construction works, the existing ground levels of open space areas and natural landscape features, including natural rock-outcrops, vegetation, soil and watercourses must not be altered unless otherwise nominated on the approved plans.

**37. Landfill**

- a) Prior to fill material being imported to the site, a Waste Classification Certificate shall be obtained from a suitably qualified environmental consultant confirming the fill wholly consists of Virgin Excavated Natural Material (VENM) as defined in Schedule 1 of the *Protection of the Environment Operations Act 1997* or a material approved under the NSW Environment Protection Authority's Resource Recovery Orders and Exemptions.
- b) The required Waste Classification Certificate must be obtained by the Principal Contractor prior to fill being imported to the site and made available to Council at its request.

**38. Excavated Material**

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

**39. Survey Report**

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

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

**REQUIREMENTS PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE**

**40. Fulfilment of BASIX Commitments**

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

**41. Replacement Tree Requirements**

- a) The trees approved for removal under this consent, being 5 trees numbered T31, T32, T33, T36 and T37 must be offset through replacement planting of a minimum of 10 trees.
  - i) 5 trees must have the potential to reach a mature height of greater than 10m.
  - ii) 5 mid-story trees with the potential to reach a mature height of greater than 5m.
  - iii) This planting should be consistent with a Vegetation management plan.
- b) All replacement plantings must be species selected from the 'Trees Indigenous to Hornsby Shire (as of 1 September 2011)' document available for viewing on the Hornsby Council's website <http://www.hornsby.nsw.gov.au/environment/flora-and-fauna/tree-management/indigenous-trees>
- c) The location and size of tree replacement planting must comply with the following:
  - i) All replacement trees must be located in either front or rear setbacks and planted 4m or greater from the foundation walls of the approved development.
  - ii) The pot size of the replacement trees must be a minimum 45 litres.
  - iii) All replacement trees must be a minimum of 3m in height.
  - iv) All replacement trees must have the potential to reach a mature height greater than 10m.

#### 42. Final Certification

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

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

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

#### 43. Damage to Council Assets

To protect public property and infrastructure, any damage caused to Council's assets as a result of the construction or demolition of the development must be rectified by the applicant in accordance with AUS-SPEC Specifications ([www.hornsby.nsw.gov.au/property/build/aus-spec-terms-and-conditions](http://www.hornsby.nsw.gov.au/property/build/aus-spec-terms-and-conditions)). Rectification works must be undertaken prior to the issue of an Occupation Certificate, or sooner, as directed by Council.

**44. Supplementary Planting, Weeding and Nest Box Installation**

Any supplementary planting, weeding and nest box installation outside the immediate landscaping area depicted in the approved landscape Plan prepared by Grindstone Landscapes dated 14 August 2021 shall be in accordance with Section 4.3 of the approved *Integrated Bushfire and Vegetation Management Plan (IBVMP)* prepared by Hunter Ecology dated 27th April 2021 and stock used for planting shall be sourced from a native nursery utilising Sydney basin stock. The hollow improvement works and four (4) nestboxes shall only be installed and certified by an experienced fauna ecologist (Section 3.8 of the IBVMP and the Powerful Owl (*Ninox strenua*) surveys and assessment prepared by Hunter Ecology dated 10th August).

**45. Certification of Bushfire Requirements**

- a) A Certificate prepared by a BPAD accredited Bushfire Consultant is to be provided to the Principal Certifying Authority (PCA) certifying the completion of all works required by the Bushfire Assessment Report Ref: 20.10.316, prepared by Bushfire Planning and Design dated 15 October 2020 and condition Nos. 12 and 25 of this consent prior to the issue of the Occupation Certificate.
- b) A suitably qualified and experienced bush fire consultant must provide to the PCA and/or Council certification of the implementation of the approved asset protection zone.

**46. Final Certification – Ecology/Bush regeneration**

The project ecologist/bush regenerator must provide to the PCA and/or Council certification of the implementation of the of the approved Integrated Bushfire and Vegetation Management Plan (IBVMP) prepared by Hunter Ecology dated 10 August 2021 (D08225542).

**47. Retaining Walls**

All retaining walls must be constructed as part of the development and prior to the issue of an Occupation Certificate.

**48. Construction of engineering works.**

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

**OPERATIONAL CONDITIONS****49. Ongoing Protection of Remnant Trees**

All trees on site not approved for removal under this consent are required to be retained for conservation purposes. These trees have a legal obligation for their preservation and are excluded from the clearing provisions of the *10/50 Vegetation Clearing Code of Practice for New South Wales* in accordance with Clause 7.8 of the Code.

**50. Ongoing Bushfire Management**

Any requirements relating to bushfire protection must be maintained in perpetuity and landscaping works must be consistent with the Asset Protection Zone requirements as described in *Planning for Bush Fire Protection*.

**- END OF CONDITIONS -**

#### **ADVISORY NOTES**

The following information is provided for your assistance to ensure compliance with the *Environmental Planning and Assessment Act, 1979*, *Environmental Planning and Assessment Regulation 2000*, other relevant legislation and Council's policies and specifications. This information does not form part of the conditions of development consent pursuant to Section 4.17 of the Act.

#### **Environmental Planning and Assessment Act 1979 Requirements**

The *Environmental Planning and Assessment Act 1979* requires:

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

#### **Long Service Levy**

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

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

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

#### **Tree and Vegetation Preservation**

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

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

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

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

#### **Covenants**

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

**Dial Before You Dig**

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

**Telecommunications Act 1997 (Commonwealth)**

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

**Asbestos Warning**

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

[www.environment.nsw.gov.au](http://www.environment.nsw.gov.au)

[www.adfa.org.au](http://www.adfa.org.au)

[www.safework.nsw.gov.au](http://www.safework.nsw.gov.au)

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

**Rain Water Tank**

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

**6 DA/838/2021 - CHILD CARE CENTRE - 43 EDWARD BENNETT DRIVE, CHERRYBROOK**

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**EXECUTIVE SUMMARY**

**DA No:** DA/838/2021 (Lodged on 23 August 2021)

**Description:** Demolition of an existing dwelling and the erection of a purpose-built childcare centre for 60 children including basement parking and landscaping

**Property:** Lot 704 DP 260293, No. 43 Edward Bennett Drive, Cherrybrook

**Applicant:** Mr Dheeraj Gautam

**Owner:** Ms Samita Shishupal Hegde, Mr Neeraj Kumar, Mrs Meenakshi Gautam, Mr Dheeraj Gautam

**Estimated Value:** \$1,760,000

**Ward:** C Ward

- The application involves demolition of existing dwelling and the erection of a purpose-built childcare centre for 60 children including basement parking and landscaping.
- The proposal generally complies with the *Hornsby Local Environmental Plan 2013*, the *Hornsby Development Control Plan 2013*, *State Environmental Planning Policy (Educational Establishments and Childcare Facilities) 2017* and the *Child Care Planning Guideline* with respect to landscaping, privacy, noise, traffic and safety, scale, site suitability, contamination, setbacks, tree preservation and sunlight access.
- A total of 36 submissions have been received in respect of the application.
- The application is required to be determined by the Hornsby Council Local Planning Panel as 10 or more unique submissions were received by way of objection.
- It is recommended that the application be approved.

**RECOMMENDATION**

THAT Development Application No. DA/838/2021 for demolition of an existing dwelling and erection of a purpose-built child care centre for 60 children including basement parking and landscaping at Lot 704 DP 260293, No.43 Edward Bennett Drive, Cherrybrook be approved subject to the conditions of consent detailed in Schedule 1 of LPP Report No. LPP5/22.

## BACKGROUND

### Site History

On 24 November 2020, DA/125/2020 for construction of a 64-place childcare centre was withdrawn due to a number of issues regarding the design and acoustic impacts of the centre.

On 25 May 2021, Council held a pre-lodgement meeting (PL/33/2021) with the applicant to discuss the merits of a 64-place single storey childcare centre with basement carpark.

### Application History

On 30 September 2021, Council requested amended plans to reduce the floor area of the childcare centre (CCC), increase the landscaped area, increase the front and secondary front setback and relocate the lift shaft within the building. A reduction to the front 1.8m-high aluminium palisade fence was also encouraged.

Council also requested further information pertaining to a discrepancy within the traffic report and further information surrounding the project trigger noise level, background noise level, clarification on the height of each noise source at each receiver and operation of the AC unit.

Council also requested a Plan of Management (POM) and a Construction Management Plan (CMP).

On 1 November 2021, Council received an amended set of architectural plans increasing the setback to both street frontages and in turn reducing the number of child care spaces from 64 to 60 children, a Construction Traffic Management Plan (CTMP) and an amended Noise Assessment Report.

## SITE

The 946.3m<sup>2</sup> site is located on the corner of Edward Bennet Drive and Neale Avenue, Cherrybrook and contains a single storey dwelling house. The site experiences an average fall of 9% (3.5m) to the front, eastern corner. The site is largely vegetated and contains a variety of small to large scale shrubs and trees along its perimeter.

The site is opposite to Edward Bennet Oval Playground which includes playground features, a bike track, BBQ facilities and an oval. The immediate streetscape comprises of low-density residential development including a mixture of single and two storey dwelling houses. The site is screened by mature London Plane Street trees growing along the corner of Edward Bennet Drive and Neale Avenue.

The site is not bushfire and is not burdened by any easements or restrictions. The front south-east corner of the site is marginally affected by an overland flow path.

There are bus stops servicing the *Transport for NSW* '632' and '642X' bus routes located within 100m walking distance of the site connecting the site to locations including Rouse Hill, Castle Hill and Dural.

## PROPOSAL

The application seeks demolition of existing dwelling and construction of a purpose-built, two-storey child care centre with basement carpark and landscaping.

The centre would cater for a maximum of 60 children within the following age groups:

- 0-2 years            15 Children
- 2-3 years            15 Children
- 3-5 years            30 Children

The ground floor would comprise a lift, entry, kitchen, laundry, storeroom, an indoor play area (2-3 years), nappy change and children's toilet.

An outdoor play area would be provided at the rear of the site for the 3-5 years old with a covered outdoor 'transition' play area. There would be an outdoor play area at the front for the 3-5 years old and 2-3 years old along the south-eastern side of the building which would comprise a combination of soft fall synthetic and natural grass.

The first floor would comprise a staff room with kitchenette, office, lift, storeroom, bathroom for staff, an indoor area for 0-2 years old with a training toilet and nappy change room, cot room, and a simulated outdoor area located on the balcony.

The basement comprises 15 car parking spaces (including 1 disabled space), a lift and a bin storage room.

A pedestrian entry path is provided along the eastern, Neale Avenue side of the site.

The proposal would result in the removal of 34 trees to facilitate the development. Screen planting is proposed around the perimeter of the site comprising of a row of Lilly Pillies (*Syzygium australe* 'Resillience') reaching a mature height of 4.5 metres. A total of 163 trees and shrubs would be planted across the site, including three trees (*Old Man Banksia* and *Red Bloodwood*) with mature heights between 6 to 15m would be planted across the site.

There is an existing 1.8m high solid boundary fence along the south-west and north-west elevation that would be retained. A 1.8m to 3.4m high acoustic fence is proposed to be set in 1.2m from the site's boundaries, surrounding the 2-3 years outdoor play area that is orientated to Edward Bennett Drive.

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

The centre would be staffed by a maximum of 10 educators. Child care staff would commence work at 7:15am. Parents would arrive between the hours of 7:30am to 9:00am and pick-up would occur on a staggered basis from 4:00pm until 6:00pm.

No signage is proposed as part of this application.

## ASSESSMENT

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

### 1. STRATEGIC CONTEXT

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

*The Greater Sydney Region Plan - A Metropolis of Three Cities* has been prepared by the NSW State Government to guide land use planning decisions for the next 40 years (to 2056). The Plan sets a strategy and actions for accommodating Sydney's future population growth and identifies dwelling targets to ensure supply meets demand. The Plan also identifies that the most suitable areas for new housing are in locations close to jobs, public transport, community facilities and services.

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

Over the 20 years to 2036, projections show an expected increase of 6,150 children aged four years and under. The identified challenge for Hornsby Shire would be to provide additional infrastructure for students and young people.

The proposed child care centre would be consistent with the objectives of the strategy by providing 60 additional child care places to support a growing population.

## 2. STATUTORY CONTROLS

Section 4.15(1)(a) requires Council to consider “*any relevant environmental planning instruments, draft environmental planning instruments, development control plans, planning agreements and regulations*”.

### 2.1 Hornsby Local Environmental Plan 2013

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

#### 2.1.1 Zoning of Land and Permissibility

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

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

The proposed development is defined as a ‘*centre-based child care facility*’ and is permissible in the R2 zone with Council’s consent. The proposed development would provide facilities and services to meet the day to day needs of residents and would contribute to meeting the increasing demand for child care in the Hornsby Shire.

#### 2.1.2 Height of Buildings

Clause 4.3 of the *HLEP* provides that the height of a building on any land should not exceed the maximum height show for the land on the Height of Buildings Map. The maximum permissible height for the subject site is 8.5m. The proposed building would have a maximum height of 7.9m and complies with this provision.

#### 2.1.3 Heritage Conservation

Clause 5.10 of the *HLEP* sets out heritage conservation provisions for Hornsby Shire. The site does not include a heritage item, is not located in a heritage conservation area and is not within the immediate vicinity of any heritage items. Accordingly, no further assessment regarding heritage 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.

The application has been supported by a Preliminary Geotechnical Assessment prepared by Martens Consulting Engineers dated February 2020.

It is anticipated that the proposed development would require excavation works for the building footings, basement carpark and general levelling of the site. Council's assessment has determined that the proposed development would require the removal of 1,678m<sup>3</sup> of excavated material and the utilisation of minimal fill along the front boundary. The submitted Geotechnical Report raises no concerns with the proposed development with regard to earthworks and ground conditions, subject to the implementation of the geotechnical recommendations under Section 4 of the report and the provision of a dilapidation report detailing the structural condition of the adjoining properties before the commencement of works. Council concurs with the recommendations of the Geotechnical Assessment.

Council's assessment concludes that the proposal would be satisfactory in regard to earthworks subject to appropriate conditions regarding the preparation of dilapidation reports assessing impacts of excavation on adjoining properties and earthwork management measures.

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

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

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

The SEPP was recently amended on 17 December 2021 and includes a reference to the Child Care Planning Guideline published in the Gazette on 1 October 2021. Schedule 5 of the amended SEPP includes a Savings Provision for development applications lodged prior to this amendment. The Savings Provision states that the amendments to the SEPP do not apply to development applications made but not finally determined before the publishing of the amendments on 17 December 2021.

Accordingly, as the development application was lodged before the commencement of the amendment to the SEPP and Child Care Guideline, the Education SEPP and Child Care Planning Guideline 2017 in force at the time of lodgement apply to this proposal.

Clause 23 of the *Childcare SEPP* requires Council to consider the relevant provisions of the Child Care Planning Guideline 2017 (CCPG). The CCPG will generally take precedence over the HDCP with the exception of building height, side and rear setbacks and car parking rates.

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

### **2.2.1 Part 1.3 - What Are the Planning Objectives?**

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

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

### **2.2.2 Part 2 - Design Quality Principles**

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

### **2.2.3 Part 3.1 - Site Selection and Location**

The objectives of Part 3.1 of the *CCPG* include that the siting of child care centres should be clear of potential environmental contaminants and incompatible social activities or uses and should not be located on flood or bushfire prone sites. In addition, Part 3.1 encourages that the land characteristics and slope be suitable for the scale of the development and that the type of adjoining road is appropriate for the proposed use.

Centre-based child care facilities are a permissible land use within the R2 low density residential zone. The site is located approximately 100m walking distance from a bus stop along Neale Avenue and Edward Bennett Drive.

The site is not identified as bushfire prone and is an appropriate site in this regard. The site is marginally affected by flooding along the southern front corner of the site where an overland flow path exists. However, the remainder of the site is generally unaffected.

The site experiences an average slope of 9% to the rear boundary and is considered to be a reasonably level site as is encouraged by the *CCPG* for child care centre developments. The site is located directly opposite the Edward Bennet Oval and is not within proximity to any land uses that generate potential environmental contaminants.

Further discussion regarding site contamination and the appropriateness of the width of the street and traffic conditions is provided under Sections 2.3 and 2.8.2 of this report, respectively.

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

### **2.2.4 Part 3.2 - Local Character, Streetscape and the Public Domain Interface**

Submissions have been received raising concerns that the existing and future desired character of the area would be detrimentally impacted by the proposal and that the front fencing would be inconsistent with other properties in the immediate vicinity.

The objectives of Part 3.2 of the *CCPG* include that child care centre developments should contribute to and recognise existing streetscape qualities including form and scale and integrate car parking into the building design. In addition, child care centre developments should ensure that front fences respond to and complement the character of the area and do not dominate the public domain. Further, the proposal should not impact upon local heritage and the windows of the development should include street facing windows to provide passive surveillance to the street as a safety measure.

Edward Bennet Drive and Neale Avenue are both low-density residential streets with a streetscape comprising a mixture of single and two storey dwelling houses. The childcare centre would present as a two-storey dwelling and generally complements the setbacks and scale of built form on both Edward Bennett Drive and Neale Avenue. The proposal includes basement carparking and is consistent with the *CCPG* requirement to integrate carparking into the building design.

The primary frontage of the site being Neale Avenue features an open style aluminium front fence of 1.2m high on top of a timber sleeper retaining wall, required to retain the soil. The secondary, Edward Bennett frontage features a 1.8m high timber fence which is generally consistent with other corner lots

in the vicinity. Properties such as No.30, No.32 Edward Bennet Drive, No.2 Radley Place and No.1 Durant Place, Cherrybrook are all corner allotments which feature either timber picket or brick masonry fencing, with dense landscaping behind.

The proposal would not be located within close proximity to a heritage item or heritage conservation area and would not pose a detrimental heritage impact consistent with the requirements of the *CCPG*. Further, the proposal includes street facing windows and play areas and provides opportunity for passive surveillance as a safety measure.

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

### **2.2.5 Part 3.3 - Building Orientation, Envelope and Design**

The objectives of Part 3.3 of the *CCPG* stipulate that child care centres should be orientated to minimise visual privacy and minimise noise impacts to adjacent properties. In addition, the objectives encourage built form, setbacks and scale of development that relates to its context and allows for accessibility and sunlight access.

#### *Building Orientation and Design*

The site is located within a low-density residential street, comprising single and two-storey dwellings, with numerous exhibiting face-brick, Colourbond and cladding materials and finishes. It is considered that the proposed use of a combination of face-brick, rendered masonry, and painted weatherboard cladding positively contributes to the visual interest of the building and compliments the character of the local area.

In addition, it is considered that the proposed boundary setbacks and building orientation would be in keeping with the expectation for development of this nature, within a low-density residential context, with outdoor play areas orientated to the street front and away from adjoining residences.

#### *Sunlight Access*

Submissions were received raising concerns over overshadowing of adjoining properties.

The shadow diagrams indicate that there would be shadow cast at 9am, over only the neighbours access handle at No. 41 Edward Bennett Drive and a small portion of the side of neighbouring house at No. 39 Edward Bennett drive. Therefore, all adjacent properties would receive a minimum of 3 hours of unobstructed solar access between 9am and 3pm in June. The proposal is acceptable with regard to sunlight access impacts to adjacent properties.

As addressed under Section 2.2.10 of this report, solar access for outdoor play meets the requirements of Part 4 of the *CCPG*.

#### *Accessibility*

The application has been accompanied by a Building Accessibility Assessment report prepared by Into Architecture dated 30 July 2021.

The *CCPG* indicates that child care facilities need to allow equitable access by all members of the community, including those with disabilities. The submitted architectural plans indicate the provision of a disabled car parking space with access to a lift, an access ramp to the front of the building, a disabled toilet and accessible internal and external areas.

Council's accessibility assessment concurs with the conclusions of the Building Accessibility Assessment, subject to the imposition of a condition under Schedule 1 requiring that the building meets the requirements of the *Disability (Access to Premises Buildings) Standards 2010*.

### 2.2.6 Part 3.4 - Landscaping

The objectives of Part 3.4 of the CCPG include providing landscape design that contributes to the streetscape and amenity and along the boundary integrated with fencing. In addition, Part 3.4 encourages the use of existing landscaped areas where feasible.

Landscaping is proposed around the perimeter of the site with Lilly-Pilly hedging which would provide vegetation screening to the adjacent properties to the north and west. The vegetation along the western side of the 3-5 year old outdoor play area as indicated on the Architectural plans is excluded from the outdoor play calculation. As such the total outdoor plan area equates to 453m<sup>2</sup>, resulting in 7.5m<sup>2</sup> of unencumbered outdoor space per child, which complies with Part 4 of the CCPG.

The proposal meets the objectives of Part 3.4 of the CCPG and the proposal is supported in this regard.

### 2.2.7 Part 3.5 - Visual and Acoustic Privacy

The objectives of Part 3.5 of the CCPG encourage the protection of the privacy and security of children attending the facility and to minimise impacts on privacy of adjoining properties. In addition, Part 3.5 seeks to minimise the impact of child care facilities on the acoustic amenity of neighbouring residential developments.

#### Privacy

Submissions have been received raising concerns that the proposal would result in privacy impacts and overlooking into adjacent properties.

The rear, south-western elevation of the ground floor level of the CCC would have a setback of 2 metres which does not comply with the 3-metre requirement. This elevation would be served by windows however these windows would be screened by the 1.8 metre timber boundary fence and Lilly-Pilly hedging within this setback. Furthermore, this elevation shares a boundary with the access handle, driveway of No.41 Edward Bennet Drive with the nearest residential neighbour located 10m from the indoor play area. Similarly, the north-west elevation would also feature a compliant setback and include dense vegetation to assist in privacy screening from the neighbour. To achieve a level building platform and basement car park, the ground floor plate (RL 158.170 AHD) would sit lower than the natural ground level (between NGL 159 and NGL 158.60 AHD) along these two elevations where landscaping is proposed.

The first-floor level, south-western elevation has a minimum setback of 6.3m which would not comply with the 8m rear setback control. This is considered acceptable in that the only windows which serve this elevation are 3 small, square highlight windows which serve the cot room and another highlight window which serves the 0-2 indoor play area. Both these areas will be used sporadically through the day and used by the 0–2-year age group and their educators. The north-western elevation is not served by any windows and achieves a compliant side boundary setback.

The proposal meets the objectives of Part 3.5 of the CCPG with respect to privacy and the proposal is supported in this regard.

#### Acoustic Amenity

Submissions have been received with regard to acoustic amenity, summarised as follows:

- The proposed child care centre would generate an unacceptable level of operational noise to adjacent residential properties and would result in a loss of amenity.

- The surrounding neighbouring properties are located higher which would result in greater noise disturbances.

The application has been supported by a Noise Impact Assessment prepared by Acoustic Dynamics dated 1 November 2021.

For child care centre developments, Council strictly requires that background levels (L90) are not exceeded by 5dB(A) when measured at all sensitive residential receiver locations. Council's assessment of the original Noise Impact Assessment report (dated 5 July 2021) identified that insufficient detail had been provided within the report and raised the following concerns:

- The acoustic report did not include a project noise trigger level for the morning shoulder period.
- The rating background level (RBL) for morning shoulder period should be set at 38dB and not 40dB.
- Further information regarding the noise source and height at each receiver specifically at No.40 Edward Bennett Drive.
- The Plan of Management (POM) is not clear on how peak staff levels will not overlap with peak drop off/pick given the POM states that peak staff levels occur between 9:30am to 3:30pm and peak parent drop off occurs between 7am and 9am.
- The POM did not include the frequency, duration, days and times of cleaning and maintenance as stated in the acoustic report.
- The POM did not indicate how many after-hours events (e.g. parent/teacher information meetings) are proposed and the frequency of those events.

In addressing these concerns, the applicant submitted a Noise Impact report (1 November 2021). This report details the proposed acoustic attenuation measures and operational measures which include:

- The erection of a 3.4m high acoustic barrier comprising a 600mm cantilever section of transparent acrylic along the western side of the outdoor play area for 2–3-year-olds.
- The erection of a 1.8m acoustic barrier on the southern and south-eastern side of the 2-3-year-olds outdoor plan area.
- The underside of the roof above outdoor plan area for 2-3 and 3-5-year-olds is required to have acoustic insulation to a minimum of 50% of the area.
- The first-floor balcony, outdoor play area for 0–2-year-old would include a 1.8m acoustic barrier. The southern section of the barrier to be constructed to a height of 2.2m using polycarbonate, fibre cement sheet or equivalent.
- Air conditioning unit would not exceed 65dB(a) sound power level and would be switched off between 6:00pm and 7:15 am weekdays.
- Windows will remain closed during designated play times.
- The outdoor play areas will be managed to ensure the noise level objective of LA90 (background) + 5 dB(A) is met.

Upon review of the acoustic report, Council is satisfied that sufficient detail has now been provided to undertake a comprehensive acoustic assessment of the proposal. To ensure that background levels

(L90) are not exceeded by 5dB(A) when measured at all adjacent properties the report recommends a number of management measures and restricts the number children in the outdoor play area at any one time to the following:

- The first floor 0-2 years outdoor play area will be limited to 15 children simultaneous use.
- The ground floor 2-3 years outdoor play area will be limited to 15 children, simultaneous use.
- The ground floor 3-5 years outdoor play area will be limited to 30 children, simultaneous use.

Councils' assessment concludes that the predicted noise levels from the development comply with the noise criteria level of 45dB and the correct noise emission criteria has been applied to the assessment of noise impacts associated with the outdoor play area. The predicted noise levels associated with indoor play, use of the carpark and mechanical equipment comply with the established noise criteria.

Subject to conditions, Council is satisfied that the proposed childcare centre would achieve acoustic compliance. In accordance with the acoustic recommendations, Council has recommended the imposition of ongoing operational and management conditions in Schedule 1 including the maintenance of acoustic barriers as prescribed in the recommendation of this report.

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

#### **2.2.8 Part 3.6 - Noise and Air Pollution**

The objectives of Part 3.6 of the *CCPG* include ensuring that outside noise levels of the facility are minimised to acceptable levels and to ensure air quality is acceptable where child care facilities are proposed. The *CCPG* stipulates that the location of child care facilities should be selected to avoid or minimise external sources of significant noise on the facility.

The site is located on a low-density residential street and is sited approximately 450m from a major road in the form of New Line Road to the east and directly opposite a park. In addition, the site is not located in the vicinity of any major commercial or industrial land uses. The site would not be subjected to external sources of significant noise and air pollution and is considered acceptable with regard to the requirements of Part 3.6 of the *CCPG*. Section 2.2.7 of this report addresses the findings of the submitted Noise Impact report.

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

#### **2.2.9 Part 3.7 Hours of operation**

The proposed operating hours of the Child Care Centre would be 7:30am to 6:00pm, Monday to Friday with staff commencing work at 7:15am. Parents would arrive between the hours of 7:30am to 9:00am and pick-up would occur on a staggered basis from 4:00pm until 6:00pm.

No objections are raised to the proposed hours of operation as they are consistent with Objective C29 of the *CCPG* which limits hours of operation between 7am to 6pm on weekdays.

#### **2.2.10 Part 3.8 Traffic, parking and pedestrian circulation**

Submissions have been received with regard to traffic and parking summarised as follows:

- The proposed development would increase traffic congestion within the local streets.
- There is insufficient on-site car parking.
- No street parking to due visitors visiting the local park across the road.

- The corner development would result in unacceptable pedestrian safety issues with school children and buses using the street.

A Traffic and Parking Impact Assessment (TPIA) was submitted in support of the proposal, prepared by Motion Traffic Engineers (July 2021).

The HDCP has a parking requirement of 1 space per 4 children, giving a parking requirement of 16 parking spaces for a child care centre of 60 children. The proposed development provides 16 parking spaces including 1 accessible parking space in compliance with the HDCP. Thus, car parking demand generated by parents and staff can be fully accommodated within the site.

The RMS Guide to Traffic Generating Developments (GTGD) has rates of 0.8 vehicle trips/child during the 7:00-9:00am peak period and 0.7 vehicle trips/child during the 4:00-6:00pm peak period for Long-day care. TPIA estimates that the site is to generate 36 ingress and egress movements during the morning peak hour and 32 ingress and egress movements during the evening peak hour.

The increased traffic generation is likely to have an impact on the pedestrian amenity (crossing of Neale Avenue near the intersection with Edward Bennett Drive) and as such it is recommended that a pedestrian refuge be constructed in Neale Avenue to allow pedestrians to cross the road in two stages with more ease.

Council's Traffic Branch support the recommendations within the TPIA in that the refuge would assist pedestrians to safely access the child care centre. The pedestrian refuge is to be designed in accordance with RTA Technical Direction TDT 2011/01a, with all signage associated with the refuge. The design is to be approved by Hornsby Local Traffic Committee before the issuing of construction certificate. The construction of the pedestrian refuge is to be finalised before the issuing of an occupation certificate.

#### Construction Traffic Management

A Construction Traffic Management Plan (CTMP) was submitted with the application prepared by Site Security Traffic Control dated 10 June 2021.

Council requested further clarification with regards to the Traffic Control Plan, lane closure and trucks reversing into the site. Council's review of the revised CTMP prepared by The Traffic Planner dated 28 October 2021 provided further details on truck manoeuvring and pedestrian safety.

Council's Traffic Branch reviewed the CTMP and requested an additional condition that a Pedestrian Access Management Plan (PAMP) be provided prior to issue of a Construction Certificate.

Council has determined the revised CTMP to be satisfactory for the purposes of development assessment and provides Council with a level of certainty that the amenity of nearby residential properties will be maintained during demolition and construction works. A condition has been recommended under Schedule 1 requiring that the CTMP be enforced for the duration of works unless otherwise approved by Council.

Furthermore, Council's Traffic Branch raise no objection to the development on traffic and pedestrian safety grounds subject to conditions which will ensure pedestrian safety during construction and ongoing management of the site. The proposal meets the objectives of Parts 3.8 of the CCPG and is considered acceptable, subject to conditions.

In summary, the proposal is considered acceptable with regard to Part 3 of the CCPG.

#### **2.2.11 Part 4 Child Care Planning Guideline 2017**

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

<b>Child Care Planning Guideline 2017 - Part 4</b>			
<b>Control</b>	<b>Proposal</b>	<b>Requirement</b>	<b>Compliance</b>
Unencumbered indoor space	3.25m <sup>2</sup>	3.25m <sup>2</sup> per child	Yes
Unencumbered outdoor space	7.5m <sup>2</sup>	7m <sup>2</sup> per child	Yes
Storage			
- <i>External</i>	0.4m <sup>3</sup>	0.3m <sup>3</sup> per child	Yes
- <i>Internal</i>	0.6m <sup>3</sup>	0.2m <sup>3</sup> per child	Yes
On site laundry	Provided	Provided on site	Yes
Child toilet facilities	Provided	Provided on site	Yes
Administration space	Provided	Provided on site	Yes
Nappy change facilities	Provided	Provided on site	Yes
Solar Access for outdoor play	35%	30-60% solar access	Yes

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

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

#### **Centre-based child care - non-discretionary development standards**

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

Submissions have been received raising concerns that the proposed development would be located within close proximity to other child care centres in the locality and that there is an undesirable saturation in the area.

Whilst there are other child care centres located in the vicinity approximately 700m from the site, including other early education establishments, the child care centre can be located at any distance from an existing or proposed childhood education and care facility in accordance with Clause 25(a) of the *Childcare SEPP*.

- (b) *Indoor or outdoor space*

- (i) *For development to which clause 107 (indoor unencumbered space requirements) or 108 (outdoor unencumbered space requirements) of the Education and Care Services National Regulations applies - the unencumbered area of indoor space and the unencumbered area of outdoor space for the development complies with the requirements of those clauses, or*

- (ii) *For development to which clause 28 (unencumbered indoor space and useable outdoor play space) of the Children (Education and Care Services) Supplementary Provisions Regulation 2012 applies - the development complies with the indoor space requirements or the useable outdoor play space requirements in that clause;*

Comment: The regulations require a minimum of 3.25m<sup>2</sup> of unencumbered indoor play area and a minimum of 7m<sup>2</sup> of unencumbered outdoor play area per child. The proposal complies with this requirement.

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

Submissions have been received raising concerns that the site is not of adequate size to accommodate a child care centre.

Comment: The site has an area of 946.3m<sup>2</sup> and a frontage width of 20 metre and 26 metres and complies with Clause 25(c) of the *Childcare SEPP*.

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

Comment: The centre would not be located within a heritage conservation area and the site is not a heritage listed item.

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

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

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

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

The application was accompanied by a Preliminary Site Investigation (PSI) prepared by Martens dated February 2020 to identify whether potential contaminants were present on the site. As part of the investigation, a review of the site history indicated that the site may have been used for orchards prior to 1951 and the existing dwelling was constructed between 1975 and 1986.

The PSI identified the potential for contamination in all areas of concern. The conclusion of the PSI is provided below:

- *The dwelling and garage construction and maintenance have the potential to have introduced contaminants in the form of asbestos (fibrous cement sheets as a construction material), pesticides (pest control) and heavy metals (paints, pest control, use of galvanised materials).*
- *Former orchard use may have introduced heavy metals or OCP (Organochloride pesticides) /OPP (Organophosphorus pesticides) into the soil.*

- *Observed fill material from unknown sources may have introduced heavy metals or OCP/OPP into the soil.*

Given the PSI identified the potential for contaminants, the applicant provided a Detailed Site Investigation (DSI) prepared by Martens Consulting Engineers dated January 2021 to further investigate the areas of concern and provide potential remediation actions if necessary. The DSI was conducted with on-site borehole contamination of surface and subsurface soil sampling.

The DSI concluded site is considered to have a very low risk of contamination in external areas assessed as part of the DSI. However, the data gap presented by the existing dwelling footprint will need to be investigated through further testing following site demolition works and prior to commencement of the proposed development. The scope and methodology of additional soil assessment would be required to be undertaken in this location.

In support of the findings within the DSI, Schedule 1 recommends conditions requiring that on completion of the demolition works and prior to a construction certificate being issued, a Stage 2 DSI be undertaken in accordance with the recommendations within the DSI. Should the Stage 2 DSI identify any contaminants not previously identified then Council and the PCA is to be notified and development consent sought for any required remediation works.

Council's environmental protection assessment raises no further concerns to the proposal, subject to conditions recommended under Schedule 1 requiring that the removal of asbestos material to be undertaken by a contractor that holds an appropriate licence issued by *SafeWork NSW* and that a Clearance certificate is issued after the asbestos is disposed.

In addition, a condition has been recommended requiring that a Validation Report be prepared by a certified specialist to verify that the site is suitable for the approved child care centre prior to the issue of a Construction Certificate.

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

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

Part 3 of the *Vegetation SEPP* states that a development control plan may make a declaration in any manner relating to species, size, location and presence of vegetation. Accordingly, Part 1B.6.1 of the Hornsby Development Control Plan 2013 (HDCP) prescribes works that can be undertaken with or without consent to trees. The application proposes the removal of 33 trees from the site, which is considered acceptable as these trees, aside from T53 (London Plane Tree), are considered to have low retention value. The trees identified for removal consist of species which are identified under Table 1B.6(s) of the HDCP as being exempt species, a dead Turpentine (T5), small Australian natives, palms and exotic species with low retention value (T26, T28 and T43).

Section 3.1.1 of this report addresses proposed tree removal and replacement planting across the site.

#### **2.5 Sydney Regional Environmental Plan No. 20 Hawkesbury-Nepean River**

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

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

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

Section 3.42 of the *Environmental Planning and Assessment Act 1979* states that a DCP provision will have no effect if it prevents or unreasonably restricts development that is otherwise permitted and complies with the development standards in relevant Local Environmental Plans and State Environmental Planning Policies.

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

## 2.7 Hornsby Development Control Plan 2013

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

<b>Hornsby Development Control Plan 2013 - Part 7 Community Uses</b>			
<b>Control</b>	<b>Proposal</b>	<b>Requirement</b>	<b>Compliance</b>
Site Area	946.3m <sup>2</sup>	N/A	N/A
Floor Area	411m <sup>2</sup>	430m <sup>2</sup>	Yes
Site Coverage	38%	40%	Yes
Height	7.9m	8.5m	Yes
No. of storeys	2 storeys	2 storeys	Yes
Number of Children	60 children	max. 40 Children	No
Recreation Space			
- Indoor	3.25m <sup>2</sup> per child	3.25m <sup>2</sup> per child	Yes
- Outdoor	7.5m <sup>2</sup> per child	7m <sup>2</sup> per child	Yes
Landscaping	43%	min. 40%	Yes
Car Parking (@ 1/ 4 children)	15 spaces	15 spaces	Yes
Setbacks (To Buildings)			

- <i>Front (Neale Avenue)</i>	7.5m to 17.1m (Building) 6.3m (Lift Shaft)	9m	No
- <i>Secondary (Edward Bennet)</i>	6m to 7m	3m	Yes
- <i>Side (North-West)</i>			
- <i>Ground Floor</i>	2m to 7.2m	2m	Yes
- <i>First Floor</i>	4.8m to 7.4m	2m	Yes
- <i>Rear (South-West)</i>			
- <i>Ground Floor</i>	2m	3m	No
- <i>First Floor</i>	6.3m to 9m	8m	No

As detailed in the above table, the proposed development does not comply with the setback prescriptive requirements within the *HDCCP*. The matters of non-compliance are detailed below, as well as a brief discussion on compliance with relevant desired outcomes.

### 2.7.1 Setbacks

It is noted that the CCPG would take precedence over the HDCCP with the exception of building height, side and rear setbacks and car parking rates.

The CCPG does not include a front setback provision, however reference is made to street setbacks defining the proportion and scale of the street which contribute to the character of the public domain.

In this regard, Councils DCP requires a 9m front setback for primary road frontages within Cherrybrook. In this instance, Neale Avenue is considered the primary setback as it is the primary street access to the CCC for both pedestrians and vehicles. The proposed CCC would be consistent with the orientation of the existing dwelling on the site and existing driveway. As such, the CCC maintains this orientation and presents to the Neale Avenue in the same manner as the existing dwelling. While the HDCCP states that the shorter boundary is considered the primary, for the purpose of this assessment Neale Avenue is treated as the primary and Edward Bennet Drive as the secondary. Notwithstanding, Edward Bennet Drive still maintains an adequate setback of 6-7 metres which is generally consistent with the streetscape and greater than the required 3m under the HDCCP.

The front setback of the Child Care Centre to Neale Avenue comprises a varied front setback of 7.5m to 17.1m with the lift shaft projecting to 6.3m for an area of 3m or 10% of the 30m street frontage. The Applicant states that the reason for this non-compliance is due to the following:

- *The part of the building which is forward of the 9m setback, and which has been suggested by Council to move is the lift shaft. This lift shaft will be finished in a neutral colour as requested by Council to fit in with the low density residential setting.*
- *The setbacks along Neale Avenue vary due to the curvature of the street*
- *The lift shaft which identifies the building as a non-residential use and is located close to the corner which serves to define the corner. The remainder of the façade then steps back in line with its nearest neighbour however this won't be perceived from outside the site due to heavy tree cover and vegetation, much of which is on public land.*

In support of this non-compliance, the applicant has provided the following justification:

- *There are setbacks within Neale Avenue that are significantly below the 9m requirement. Notably, No.11 appears to be less than 6m and this setback is on the bend in the road, in a mid-block location and is far more prominent than that proposed as it comprises a double carport at the front of the dwelling. We are also aware of a significant concession which has been given recently to a new dwelling at 35 Neale Avenue because of its corner location. Variation was sought for both front and rear setbacks. The front setbacks in that case varied between 3.765m – 5.68m.*
- *The proposal is within the same street and is also located on a corner. In addition, it is located on a much larger block where minor non compliances are not as perceivable to the eye.*
- *The proposal seeks a much lesser non-compliance and will provide on average a 10.52m front setback and 6m to the secondary side boundary which is superior to that provided at 35 Neale Avenue. Further, the plans have reduced the overall capacity of the centre to 60 places while setting back the front setback by 1.2m after this issue was raised by Council (as well as other improvements).*
- *The proposal is opposite parkland/oval from which it derives a greater spatial advantage than the proposal at 35 Neale.*
- *The area of non-compliance essentially related to walls 3 and 4. Wall 3 is located over 8m from the front building line of No 3 Neale Avenue which is established by the front of the garage of No.3. Walls 1,2 and 5 are in line or are set behind the front setback of No. 3 and represent most of the front façade of the proposed childcare centre. Therefore, the small area of non-compliance will not necessarily be perceived because most of the façade complies.*
- *The setbacks along Neale Avenue vary due to the curvature of the street. Nos 7, 9 and 11 appear to be closer to the street than 9m and the carport structure forward of the garage at No. 11 is closer to the street than the surrounding dwellings. Refer to image below. As detailed above, Council acknowledges that other setbacks in the close vicinity of the site do not comply and recent variations have been approved.*
- *The front of the subject site and its closest neighbour at No. 3 are not evident from the street due to the tree cover.*

Council has considered the above justification and concurs that the non-compliances to the 9m setback would be compatible with adjoining development and are consistent with the existing character of established setbacks in Neale Avenue. The proposed building provides a stepped setback transition to the adjoining property at No.3 Neale Avenue with the building located a substantial distance of 17m at this point and includes an average setback of 10.52m along the frontage.

Accordingly, no objections are raised to the proposed front setback along Neale Avenue.

As discussed as Section 2.2.7 of this report, the rear of the first floor would have a varied setback of 6.3 to 9 metres. Part of the rear of the building would not comply with the 8 metre prescriptive measure however no objections are raised to this minor non-compliance as the first floor is served by smaller highlight windows. Furthermore, the rear boundary adjoins a battle-axe driveway, with the nearest dwelling at No.39 Edward Bennet Dr set over 12 metres from the first floor level and over 13 metres from the first floor, outdoor play area which would have privacy attenuation as discussed below.

As such, no further objections are raised with regards to setbacks.

### 2.7.2 Privacy

As discussed at Section 2.2.7 of this report, the proposed development is considered acceptable with regards to Part 3.5 of the CCPG. The first-floor balcony would be located over 13 metres from the nearest adjoining residence. The application proposes an acoustically rated balustrade with either frosted laminated glass or translucent sheeting. To provide a level of amenity for the nearest neighbours on this side and for the children of the CCC, a condition is recommended that the south-west elevation use translucent laminated glass.

Subject to conditions the proposal is considered acceptable with regards Privacy.

### 2.7.3 Landscaping

As discussed at Section 2.2.6 of this report, the proposed development would include a range of plantings across the site, comprising mostly Lilly Pillies (*Syzygium australe* 'Resilience') surrounding the perimeter and bordering the western side of the 3-5 outdoor play area. A total of 163 trees and shrubs would be planted across the site, including three trees (*Old Man Banksia* and *Red Bloodwood*).

#### Fencing

Submissions were received that front fencing is not permitted in Cherrybrook and that the fencing and inconsistent with the character of the area.

As discussed at 2.2.4, the fencing proposed the Neale avenue frontage (primary) would include an open style aluminium front fence of 1.2 metres high on top of a 600mm timber sleeper retaining wall, while the secondary frontage features a 1.8-metre-high acoustic fence which would be set back 1.1m from the boundary. The Edward Bennet drive frontage would include a row of planting within the 1.1 metre setback which would also assist in softening the appearance of the fence, which naturally sits higher than the footpath below. As there is an existing embankment along the frontage of the site with the footpath beneath it, retaining walls are required to provide stability to the soil and provide a foundation for the fencing above.

While the overall height of the front 1.2 fence would be higher due to the retaining wall beneath it the opening style fencing would allow the row of planting to be visible through the fencing softening its appearance in the streetscape.

As discussed properties at No.30, No.32 Edward Bennet Drive, No.2 Radley Place and No.1 Durant Place, Cherrybrook are all corner allotments which feature either timber picket or brick masonry fencing, with dense landscaping behind.

The proposal is acceptable with regards to Part 7.1.4 Landscaping of the HDCP and meets the objectives of Part 3.4 of the CCPG.

### 2.7.4 Waste Management

The child care centre would generate a demand for 3 x 240L recycling bins and 6 x 240L garbage bins or 2 of 660L bins. The application proposes to have 2 x 660L bin with additional area within the storage room for recycling bins.

A bin storage room has been proposed within the basement and provides sufficient space for bin storage and for access and manoeuvrability. Given the bins cannot be serviced directly from the bin storage room as it is located too far for waste collection vehicles, staff are proposed cart bins to a

temporary bin holding area in the front setback for servicing and to return them after. The bin carting route would utilise the lift and accessible paths which are considered acceptable.

Subject to conditions, the proposal is acceptable with regards to Part 1C.2.3 Waste Management of the *HDCP*.

## **2.8 Section 7.12 Contributions Plans**

Hornsby Shire Council Section 7.12 Contributions Plan 2019-2029 applies to the development as the estimated costs of works is greater than \$100,000. Should the application be approved, an appropriate condition of consent is recommended requiring the payment of a contribution in accordance with the Plan.

## **3. ENVIRONMENTAL IMPACTS**

Section 4.15(1)(b) of the Act requires Council to consider *“the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality”*.

### **3.1 Natural Environment**

#### **3.1.1 Tree and Vegetation Preservation**

The proposed development would necessitate the removal of 33 trees from the site and one street tree and the protection of 20 trees.

The application was supported by an arborist report provided by Bellevue Tree Consultants as amended 20 August 2021.

Council's tree assessment of the proposal raised no objections to the removal of the trees as all trees with the exception of tree T53 (London Plane Tree located on the nature strip) are not considered worthy of retention. Tree T53 is located within the proposed driveway and is the only tree of note proposed for removal. Alternative locations to enter the proposed development were explored, however they would result in the loss of a high retention value trees. As a consequence, the current proposed access is considered the most appropriate and Council's tree assessment accepts the loss of T53 subject to conditions regarding installation of tree protection fencing, utilisation of tree sensitive construction techniques, compliance with the landscape plan and appointment of an arborist to oversee the construction and demolition stages.

The Landscape plan proposes the planting of 2 x Old Man Banksia trees which a growth height of 6m, 1 x Red Bloodwood tree with a growth height of 15m and 80 x Lilly pilly trees with a growth height of 4.5m intermixed with shrubs and grasses.

#### **3.1.2 Stormwater Management**

The application proposes the installation of an on-site detention system located underneath a soft-fall play area and a rainwater re-use tank underneath a deck which would drain to Councils street drainage system.

Council's stormwater assessment raises no objections with the proposed method of stormwater disposal subject to conditions.

In addition, it is noted that the front south-east corner of the site is partly affected by an overland flow path which runs along the street drainage system to Edward Bennet Park. Council's stormwater assessment did not raise concerns with the extent of the flow path as it is considered extremely minor

and would not result in flooding impacts to the subject site or to play areas for the proposed development which are elevated above the street level.

### **3.2 Built Environment**

#### **3.2.1 Access and Mobility**

The application is supported by a Building Accessibility assessment prepared by Into Architecture and a car park accessibility assessment prepared by Accessible building solutions.

Both reports conclude that the proposed development complies with the relevant accessibility provisions of *Disability (Access to Premises - Building) Standards 2010*.

#### **3.2.2 Traffic**

The assessment of Traffic impacts is discussed in the report above in Section 2.2.9 which concluded that the proposal would not have an unacceptable impact on traffic and safety grounds on the surrounding road network.

### **3.3 Social Impacts**

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

### **3.4 Economic Impacts**

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

## **4. SITE SUITABILITY**

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

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

## **5. PUBLIC PARTICIPATION**

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

### **5.1 Community Consultation**

The proposed development was placed on public exhibition and was notified to adjoining and nearby landowners between 24 August 2021 and 14 September 2021 in accordance with the Hornsby Community Participation Plan. During these periods, Council received 36 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**

<ul style="list-style-type: none"> <li>• PROPERTIES NOTIFIED</li> </ul>	<ul style="list-style-type: none"> <li>✕ SUBMISSIONS RECEIVED</li> </ul>	 PROPERTY SUBJECT OF DEVELOPMENT	
15 SUBMISSIONS RECEIVED OUT OF MAP RANGE			

36 submissions objected to the development, generally on the following grounds:

- The proposed child care centre is an inappropriate form of development in the R2 Low Density Residential zone.
- The existing road infrastructure is inadequate to accommodate the child care centre and additional traffic.
- The existing and future desired character of the area would be detrimentally impacted by the proposal.
- The proposal would result in privacy impacts and overlooking into adjacent properties.
- The proposed child care centre would generate an unacceptable level of operational noise to adjacent residential properties and would result in a loss of amenity.
- The fencing proposed is out of character with the area as there are no other front fences in the vicinity.
- The proposed development would be located within close proximity to other child care centres in the locality and that there is an undesirable saturation in the area.
- The proposal would generate vehicle / pedestrian safety impacts along the street and there are poor sight lines as buses turn the corner.

- There would be a lack of parking within the basement and parents would instead utilise on-street parking.
- There is no availability of on-street parking due to use of streets by visitors of the Edward Bennet Oval.
- The proposed centre would be of an excessively large scale.
- The design of the proposal is inconsistent with other properties in the area.
- The removal of vegetation from the site is unacceptable.

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 Demolition and Construction Noise**

A submission has been received raising concerns that the demolition and construction works would result in noise and amenity impacts to adjacent properties.

To ensure noise generation during works is kept within acceptable limits, a standard condition has been recommended under Schedule 1 requiring that the site be managed in accordance with the publication *'Managing Urban Stormwater – Landcom (March 2004)* and the *Protection of the Environment Operations Act 1997*.

#### **5.1.2 Staff Ratios**

A submission has been received raising concerns that the child care centre would be understaffed and would be contrary to the staff / child ratio requirements.

In addressing this submission, the *Education and Care Services National Regulations* provides that the 0-2 year group is to be staffed at a ratio of 1:4, 2-3 year age group is to be staffed at a ratio of 1:5 and the 3-5 year age group is to be staffed at a ratio of 1:10. Consequently, the 60 place centre generates a demand for a minimum of 11 educators on-site at any one time.

The application proposes to employ 11 educators and complies with the *Education and Care Services National Regulations*.

#### **5.2 Public Agencies**

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

### **6. THE PUBLIC INTEREST**

Section 4.15(1)(e) of the Act requires Council to consider "*the public interest*".

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

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

### **CONCLUSION**

The application proposes the demolition of existing structures and construction of a two-storey, 60 place child care centre with a basement carpark.

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

Council received 36 submissions during the public notification period. The matters raised have been addressed in the body of the report.

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

The reasons for this decision are:

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

*Note: At the time of the completion of this planning report, no persons have made a Political Donations Disclosure Statement pursuant to Section 10.4 of the Environmental Planning and Assessment Act 1979 in respect of the subject planning application.*

#### **RESPONSIBLE OFFICER**

The officer responsible for the preparation of this report is Jasmin Blazevic.

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

ROD PICKLES  
Manager - Development Assessments  
Planning and Compliance Division

#### **Attachments:**

1.  Architectural Plans
2.  Landscape Plan
3.  Locality Plan
4.  Plan of Management
5.  Traffic & Parking Report

File Reference: DA/838/2021

Document Number: D08320273

# ITEM 6

**SCHEDULE 1****GENERAL CONDITIONS**

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

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

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

**ITEM 6****1. Approved Plans and Supporting Documentation**

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

*Approved Plans*

<b>Plan No.</b>	<b>Plan Title</b>	<b>Drawn by</b>	<b>Dated</b>	<b>Council Reference</b>
DA00A, Rev A	Survey & Demolition Plan	Into Architecture	14/07/2021	
DA01I, Rev I	Site Plan	Into Architecture	25/10/2021	
DA02E, Rev E	Basement Level Plan	Into Architecture	25/10/2021	
DA03M, Rev M	Ground Floor Plan	Into Architecture	25/10/2021	
DA04G, Rev G	First Floor Plan	Into Architecture	25/10/2021	
DA05C, Rev C	Section A	Into Architecture	25/10/2021	
DA06D, Rev D	Section B	Into Architecture	25/10/2021	
DA07C, Rev D	Section D	Into Architecture	25/10/2021	
DA08F, Rev F	Elevation North & South	Into Architecture	25/10/2021	
DA09E,	Elevation East & West	Into Architecture	25/10/2021	

Rev E				
DA11D, Rev D	Colours and Materials	Into Architecture	25/10/2021	
DA19E, Rev E	Roof Plan	Into Architecture	25/10/2021	
DA20D, Rev D	Kitchen Layout & Bin Room	Into Architecture	25/10/2021	
DA22D, Rev D	Fence Details 1	Into Architecture	14/07/2021	
L00 Issue D		atc landscape architects	15/6/21	
L01 Issue D		atc landscape architects	15/6/21	

## Supporting Documentation

Document Title	Prepared by	Dated	Council Reference
Plan of Management, ref: V2.1	Unknown	Oct 2021	D08284339
Noise Impact Assessment, Ref: 5109R001.LB.211029	Acoustic Dynamics	1/11/21	D08284341
Construction Traffic Management Plan, Version 1.1	The Traffic Planner	28/10/21	D08284343
Detailed Site Investigation, ref: P2007603JR03V03	Martens Consulting Engineers	27/1/21	D08231926
Traffic and Parking Impact Assessment	Motion Traffic	July 2021	D08231914
Arboricultural Impact Assessment	Bellevue Tree Consultants	20/8/2021	D08231909
Shadow Diagrams DA14C , DA15C, DA16C	Into Architecture	25/10/2021	D8284344
Emergency Evacuation Plan	Into Architecture	25/10/2021	D8284344
Pedestrian Refuge	Into Architecture	25/10/2021	D8284344
Site Plan Stormwater Services, Rev D	ADCAR Consulting	6.07.2021	D08231923
Site Plan Stormwater Services, Rev D	ADCAR Consulting	6.07.2021	D08231923
Basement Plan Stormwater Services, Rev E	ADCAR Consulting	6.07.2021	D08231923
Ground Floor Plan Stormwater Services, Rev D	ADCAR Consulting	6.07.2021	D08231923
First Floor plan Stormwater Services,	ADCAR Consulting	6.07.2021	D08231923

Rev C			
Roof Plan Stormwater Services, Rev C	ADCAR Consulting	6.07.2021	D08231923
Sediment and Erosion Control Plan	ADCAR Consulting	6.07.2021	D08231923

## 2. Amendment of Plans

- a) To comply with Councils requirement in terms of privacy, the approved plans are to be amended as follows:
  - i) The south-western elevation of the first-floor level, outdoor play area must include translucent laminated glass as the balustrade with the appropriate acoustic treatment as recommended within the approved plans and Acoustic Report.
- b) These amended plans must be submitted with the application for the Construction Certificate.

## 3. Construction Certificate

- a) A Construction Certificate is required to be approved by Council or a Private Certifying Authority prior to the commencement of any construction works under this consent.
- b) A separate Road Works Approval must be obtained from Council for all works within the public road reserve under S138 of the *Roads Act 1993*.
- c) The Construction Certificate/ Road Works Approval plans must be consistent with the Development Consent plans.

## 4. Road Opening Permit

A road opening permit shall be obtained from the Council to permit a person to dig into Council assets, such as roads, footpaths and nature strips. The applicable fees for the restoration of any public asset by Council shall be at the applicant's full expense.

## 5. Section 7.12 Development Contributions

- a) In accordance with Section 4.17(1) of the *Environmental Planning and Assessment Act 1979* and the *Hornsby Shire Council Section 7.12 Development Contributions Plan 2019 - 2029*, **\$17,600** must be paid towards the provision, extension or augmentation of public amenities or public services, based on development costs of **\$1,760,000**.
- b) The value of this contribution is current as of 20 January 2022. If the contributions are not paid within the financial quarter that this consent is granted, the contributions payable will be adjusted in accordance with the provisions of the Hornsby Shire Council Section 7.12 Development Contributions Plan and the amount payable will be calculated at the time of payment in the following manner:

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

Where:

**\$C<sub>PY</sub>** is the amount of the contribution at the date of Payment.

**\$C<sub>DC</sub>** is the amount of the contribution as set out in this Development Consent.

**CPI<sub>PY</sub>** is the latest release of the Consumer Price Index (Sydney – All Groups) at the date of Payment as published by the ABS.

**CPI<sub>DC</sub>** is the Consumer Price Index (Sydney – All Groups) for the financial quarter at the date of this Development Consent.

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

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

*Note: In accordance with Ministerial Directions, the payment of contribution fees for development with a cost of works of over \$10 million can be deferred to prior to Occupation Certificate.*

*Note: The Hornsby Shire Council Section 7.12 Development Contributions Plan may be viewed at [www.hornsby.nsw.gov.au](http://www.hornsby.nsw.gov.au) or a copy may be inspected at Council's Administration Centre during normal business hours.*

## 6. Removal of Trees

- a) This development consent permits the removal of trees numbered T1, T2, T5, T6, T7, T8, T9, T10, T11, T12, T13, T14, T15, T16, T18, T19, T20, T21, T22, T23, T25, T26, T27, T28, T29, T32, T33, T34, T35, T42, T43, T44, T44 and T53 as identified in the Arboricultural Impact Assessment prepared by Bellevue Tree Consultants amended 20/8/2021 TRIM D08231909.
- b) No consent is granted for the removal of trees numbered T3, T4, T17, T24, T30, T31, T36, T37, T38, T39, T40, T41, T46, T47, T48, T49, T50, T51, T52 and T54 as these trees contribute to the established landscape amenity of the area/streetscape.

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

## REQUIREMENTS PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

### 7. Building Code of Australia

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

### 8. Fire Safety Schedule

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

### 9. Disabled Access

The building is required to meet the requirements of the *Disability (Access to Premises Buildings) Standards 2010*.

### 10. Sydney Water – Approval

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

*Note: Building plan approvals can be obtained online via Sydney Water Tap in™ through [www.sydneywater.com.au](http://www.sydneywater.com.au) under the Building and Development tab.*

### 11. Dilapidation Report

A 'Dilapidation Report' is to be prepared by a 'chartered structural engineer' detailing the structural condition of the adjoining properties at Lot 703 DP 260293 No.3 Neale Avenue Cherrybrook and the adjoining access handle at Lot 701 DP 260293 No.41 Edward Bennet Drive Cherrybrook before the commencement of works.

### 12. Identification of Survey Marks

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

### 13. Detailed Site Investigation

- a) On completion of demolition works and prior to the issue of a Construction Certificate, a Detailed Environmental Site Investigation (Stage 2) must be prepared for the subject site by a certified consultant as recognised under the Certified Environmental

Practitioners Scheme – Site Contamination (CEnvP (SC)) and the Certified Professional Soil Scientist Contaminated Site Assessment and Management (CPSS CSAM) certification and submitted to Council for consideration and approval.

- b) The investigation must be undertaken in accordance with NSW Environment Protection Authority's *Contaminated Sites Guidelines and the National Environment Protection (Assessment of Site Contamination) Measure 1999* (NEPM) and address the "data gap" presented by the existing dwelling footprint in accordance with the conclusions and recommendations of the Detailed Site Investigation, ref: P2007603JR03V03, prepared by Martens Consulting Engineers, dated 27/1/21,
- c) Should the Detailed Site Investigation identify any contamination not previously identified within the application stage, Council and the PCA is to be notified immediately and development consent is to be sought from Council prior to the commencement of any required remediation works.

#### 14. Site Validation Report

A Validation Report must be prepared by a certified consultant as recognised under the Certified Environmental Practitioners Scheme - Site Contamination (CEnvP (SC)) and the Certified Professional Soil Scientist Contaminated Site Assessment and Management (CPSS CSAM) certification, verifying that the entire site is suitable for its approved use.

The Validation Report must be submitted to the Principal Certifying Authority and a copy provided to Council prior to the issue of a Construction Certificate.

#### 15. Construction Management Plan (CMP)

To assist in the protection of the public, the environment and Council's assets, a separate Construction Management Plan must be prepared by a suitably qualified environmental consultant in consultation with a qualified traffic engineer and AQF 5 arborist, and submitted to Council's Compliance Team via Council's Online Services Portal for review and written approval.

The CMP must include the following details:

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

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

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

*Note: The CMP must be lodged via Council’s Online Services Portal at: <https://hornsbyprdpwy-epw.cloud.infor.com/ePathway/Production/Web/Default.aspx> and by selecting the following menu options: Applications > New Applications > Under ‘Application Types’: Management Plans.*

## 16. Pedestrian Access Management Plan

A Pedestrian Access Management Plan (PAMP) detailing how pedestrian movements will be changed and managed during various stages of development, particularly during any partial or total closure of footpaths. Council will review the PAMP, agree any modifications with the proponent and enforce the PAMP during construction.

## 17. Stormwater Drainage

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

- a) Connected to an existing Council pit in Neale Avenue with the following requirements:
  - i) A separate Application must be made to Council for 'Approval to Connect Stormwater Drainage Outlet to Council's System' with all fees paid, prior to connecting to Council's drainage system.
  - ii) The connection to Council's drainage pit or pipeline in accordance with Council's Design Standard Drawing No. 6 must be inspected by a Council Engineer from Council's Planning Division.

*Note: An inspection booking can be made by calling Council on 9847 6760 quoting the Application reference number commencing SD*
  - iii) Connection to Council's drainage system shall include design and construction of Council's standard kerb inlet / raised / flush / grated / concrete filled pit top in accordance with AUS-SPEC Specifications ([www.hornsby.nsw.gov.au/property/build/aus-spec-terms-and-conditions](http://www.hornsby.nsw.gov.au/property/build/aus-spec-terms-and-conditions)). The Applicant's Engineer must prepare the design of system including location of proposed work in the plan. Three (3) copies of the plan shall be submitted with lodgement and payment of the Application.
  - iv) Prior to the issue of an Occupation Certificate a Compliance Certificate must be obtained from Council for the connection to Council's drainage system.

## 18. On Site Stormwater Detention

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

- a) Have a capacity of not less than 17.7 cubic metres, and a maximum discharge (when full) of 29.0 litres per second.
- b) Have a surcharge/inspection grate located directly above the outlet.
- c) Discharge from the detention system must be controlled via 1 metre length of pipe, not less than 50 millimetres diameter or via a stainless plate with sharply drilled orifice bolted over the face of the outlet discharging into a larger diameter pipe capable of carrying the design flow to an approved Council system.
- d) Where above ground and the average depth is greater than 0.3 metres, a 'pool type' safety fence and warning signs must be installed.

- e) Not be constructed in a location that would impact upon the visual or recreational amenity of residents.

#### 19. Boundary Levels/ Vehicular Crossing

A separate application under the *Local Government Act, 1993* and the *Roads Act 1993* being an '*Application for Boundary Levels*' must be submitted to Council to obtain design levels at the front boundary for the design of the internal driveway, prior to the issue of a Construction Certificate.

*Note: A separate application to construct the vehicular crossing being an 'Application to Construct Vehicular Crossing from Roadway to Property' is required to be submitted to Council for approval.*

*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.*

#### 20. Internal Driveway/Vehicular Areas

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

- a) Design levels at the front boundary be obtained from Council.
- b) The driveway be a rigid pavement.
- c) The driveway grade for the first 6 metres measured from property boundary must not exceed 1 in 20 (5%).
- d) Longitudinal sections along both sides of the access driveway shall be submitted to the principal certifying authority in accordance with the relevant sections of AS 2890.1. The maximum grade shall not exceed 1 in 4 (25%) with the maximum changes of grade of 1 in 8 (12.5%) for summit grades and 1 in 6.7 (15%) for sag grades. Any transition grades shall have a minimum length of 2 metres. The longitudinal sections shall incorporate the design levels obtained by Council.

*Note: A construction certificate shall be obtained prior to the commencement of these works and are to be completed prior to the issue of an occupation certificate*

#### 21. Footpath

- a) A separate Road Works Approval must be obtained from Council for the approval of a design to construct a concrete footpath in the public road reserve under S138 of the *Roads Act 1993*.
- b) A concrete footpath must be designed across the full frontage of the subject site in accordance with AUS-SPEC Specifications ([www.hornsby.nsw.gov.au/property/build/aus-spec-terms-and-conditions](http://www.hornsby.nsw.gov.au/property/build/aus-spec-terms-and-conditions)) and the following requirements:
  - i) The existing footpath in Neale Avenue and Edward Bennett Drive being removed.
  - ii) Pouring of the concrete footpath to the full frontage of the subject site.

- iii) The land adjoining the footpath to be fully turfed.
- iv) Any public utility adjustments to be carried out at the cost of the applicant and to the requirements of the relevant public authority.

*Note: The applicant is to lodge a S138 Roads Act Application via the NSW Planning Portal.*

## 22. Pedestrian Refuge Approvals

- a) A pedestrian refuge in Neale Avenue near the intersection with Edward Bennett Drive is to be designed in accordance with TfNSW Technical Direction TDT 2011/01a, including all signage associated with the refuge. The design is to be submitted to Council at [TrafficBranch@hornsby.nsw.gov.au](mailto:TrafficBranch@hornsby.nsw.gov.au) for consideration by the Hornsby Local Traffic Committee prior to issuing of the construction certificate.
- b) A separate Section 138 Roads Act Approval must be obtained from Council for the approval to construct a pedestrian refuge in Neale Street. The pedestrian refuge must be designed in accordance with AUS-SPEC Specifications ([www.hornsby.nsw.gov.au/property/build/aus-spec-terms-and-conditions](http://www.hornsby.nsw.gov.au/property/build/aus-spec-terms-and-conditions)) and the following requirements:
  - i) The design of a pedestrian refuge must be approved by the Hornsby Local Traffic Committee.
  - ii) Submission of civil engineering drawings with construction details.

*Note: The applicant is to lodge a S138 Road Act Application via the NSW Planning Portal. The LTC approval shall be obtained prior to lodging the S138 Roads Act Application.*

## 23. Waste Management Details

The following waste management requirements must be complied with prior to issue of a construction certificate:

- a) There must be no steps along any bin carting route. Ramps and service lifts are acceptable.
- b) A design certificate and detailed plans are to accompany any Construction Certificate application, which demonstrate that all waste storage room(s) have been designed to be constructed in accordance with the Waste Minimisation and Management Guidelines and include the following requirements:
  - i) The floor is to be constructed of concrete at least 75mm thick and adequately graded to drain to a Sydney Water approved drainage fitting.
  - ii) The floor must be finished so that it is non-slip, sealed and impervious, and has a smooth and even surface coved at all intersections.
  - iii) The ceilings and walls must be finished with smooth faced non-absorbent material capable of being cleaned.
  - iv) The room is to be provided with artificial light controllable within the room and adequate ventilation.
  - v) The room is to be provided with an adequate supply of hot and cold water mixed through a centralised mixing valve with hose cock.

- vi) The doors are to be robust and lockable, with a door opening of no less than 1.6m width. The doors must be able to be opened from inside the room without a key.
- vii) The bin storage room must have sufficient space to comfortably house the required number of bins (6 of 240 L bins) and aisle space to access and manoeuvre these bins with every bin being accessible (no stacking of bins 2 or more deep).

*Note: that 240L bins are 600mm wide, 750mm deep, 1100mm high; 660L bins are 1370mm wide, 850mm deep, 1250mm high; 1100L bins are 1370mm wide, 1245mm deep, 1470mm high; allow 75 mm between bins for ease of manoeuvring and to avoid damage to walls and doors from bins scraping against them.*

- c) The service lift must be designed to permit the transport of no less than one 660L bin and one person between the basement and ground levels. Design considerations include, but are not limited to, internal area, door opening width, maximum load limit.
- d) A Waste Management Plan Section One – Demolition Stage and Section Three – Construction Stage, covering the scope of this project and including the following details, is required to be submitted to Council:
  - i) An estimate of the types and volumes of waste and recyclables to be generated.
  - ii) A site plan showing sorting and storage areas for demolition and construction waste and the vehicle access to these areas.
  - iii) How excavation, demolition and construction waste materials will be reused or recycled and where residual wastes will be disposed.
  - iv) The total percentage (by weight) of demolition and construction waste that will be reused or recycled.

*Note: the site(s) to which the waste materials are taken must be legally able to accept those wastes.*

- e) Should there be any conflict or confusion between approved plans and/or consent conditions related to the waste management system, then written clarification must be obtained from Council.

#### **24. Appointment of a Project Arborist**

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

### **REQUIREMENTS PRIOR TO THE COMMENCEMENT OF ANY WORKS**

#### **25. Erection of Construction Sign**

- a) A sign must be erected in a prominent position on any site on which any approved work is being carried out:

- i) Showing the name, address and telephone number of the principal certifying authority for the work.
  - ii) Showing the name of the principal contractor (if any) for any demolition or building work and a telephone number on which that person may be contacted outside working hours.
  - iii) Stating that unauthorised entry to the work site is prohibited.
- b) The sign is to be maintained while the approved work is being carried out and must be removed when the work has been completed.

## 26. Protection of Adjoining Areas

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

- a) Could cause a danger, obstruction or inconvenience to pedestrian or vehicular traffic.
- b) Could cause damage to adjoining lands by falling objects.
- c) Involve the enclosure of a public place or part of a public place.
- d) Have been identified as requiring a temporary hoarding, fence or awning within the Council approved Construction Management Plan (CMP).

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

## 27. Toilet Facilities

- a) To provide a safe and hygienic workplace, toilet facilities must be available or be installed at the works site before works begin and must be maintained until the works are completed at a ratio of one toilet for every 20 persons employed at the site.
- b) Each toilet must:
  - i) Be a standard flushing toilet connected to a public sewer.
  - ii) Be a temporary chemical closet approved under the *Local Government Act 1993*.
  - iii) Have an on-site effluent disposal system approved under the *Local Government Act 1993*.

## 28. Erosion and Sediment Control

To protect the water quality of the downstream environment, erosion and sediment control measures must be provided and maintained throughout the construction period in accordance with the manual *'Soils and Construction 2004 (Bluebook)'*, the approved plans, Council specifications and to the satisfaction of the principal certifying authority. The erosion and sediment control devices must remain in place until the site has been stabilised and revegetated.

*Note: On the spot penalties may be issued for any non-compliance with this requirement without any further notification or warning.*

**29. Installation of Tree Protection Measures**

- a) Trees to be retained and numbered T3, T4, T17, T24, T30, T31, T36, T37, T38, T39, T40, T41, T46, T47, T48, T49, T50, T51, T52 and T54 as identified on the Tree Location Plan prepared by Bellevue Tree Consultants amended 20/8/2021 TRIM D08231909 must have tree protection measures for the ground, trunk and canopy installed by the project arborist as follows:
  - i) For the duration of demolition works, in accordance with the Tree Protection Plan for prepared by Arboricultural Impact Assessment prepared by Bellevue Tree Consultants amended 20/8/2021 TRIM D08231909.
  - ii) For the duration of construction works, in accordance with Tree Protection Plan prepared by Arboricultural Impact Assessment prepared by Bellevue Tree Consultants amended 20/8/2021.
- b) Tree protection fencing for the trees to be retained numbered T3, T4, T17, T24, T30, T31, T36, T37, T38, T39, T40, T41, T46, T47, T48, T49, T50, T51, T52 and T54 must be installed by the engaged AQF 5 project arborist and consist of 1.8m high temporary fencing panels installed in accordance with *Australian Standard AS4687-2007 Temporary fencing and hoardings*.
- c) The installation of all required tree protection fencing must include shade cloth attached to the fencing to reduce transport of dust, particulates and liquids from entering the tree protection zone.
- d) All tree protection zones must have a layer of wood-chip mulch at a depth of between 150mm and 300mm.
- e) Where wood-chip mulch is permitted by Council instead of tree protection fencing within the tree protection zones, the wood-chip must be covered with a layer of geotextile fabric and rumble boards.

**30. Existing Waste Collection Service**

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

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

**31. Garbage receptacle**

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

**REQUIREMENTS DURING DEMOLITION AND CONSTRUCTION**

**32. Construction Work Hours**

All work on site (including demolition and earth works) must only occur between 7am and 5pm Monday to Saturday (unless otherwise approved in writing by Council due to extenuating circumstances).

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

**33. Work Zone**

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

**34. Demolition**

To protect the surrounding environment, all demolition work must be carried out in accordance with *Australian Standard AS2601-2001 Demolition of structures* and the following requirements:

- a) Demolition material must be disposed of to an authorised recycling and/or waste disposal site and/or in accordance with an approved waste management plan; and
- b) Demolition works, where asbestos material is being removed, must be undertaken by a contractor that holds an appropriate licence issued by *SafeWork NSW* in accordance with the *Work Health and Safety Regulation 2017* and be appropriately transported and disposed of in accordance with the *Protection of the Environment Operations (Waste) Regulation 2014*; and
- c) On construction sites where any building contain asbestos material, a standard commercially manufactured sign containing the words 'DANGER ASBESTOS REMOVAL IN PROGRESS' and measuring not less than 400mm x 300mm must be displayed in a prominent position visible from the street.

**35. Environmental Management**

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

**36. Street Sweeping**

- a) During works and until exposed ground surfaces across the site have been stabilised, street sweeping must be undertaken following sediment tracking from the site.
- b) The street cleaning service must utilise a 'scrub and dry' method and be undertaken for the full extent of any sediment tracking.

**37. Council Property**

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

**38. 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.

**39. Landfill**

- a) Prior to fill material being imported to the site, a Waste Classification Certificate shall be obtained from a suitably qualified environmental consultant confirming the fill wholly consists of Virgin Excavated Natural Material (VENM) as defined in Schedule 1 of the *Protection of the Environment Operations Act 1997* or a material approved under the NSW Environment Protection Authority's Resource Recovery Orders and Exemptions.
- b) The required Waste Classification Certificate must be obtained by the Principal Contractor prior to fill being imported to the site and made available to Council at its request.

**40. Excavated Material**

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

**41. Landfill**

- a) Prior to fill material being imported to the site, a Waste Classification Certificate shall be obtained from a suitably qualified environmental consultant confirming the fill wholly consists of Virgin Excavated Natural Material (VENM) as defined in Schedule 1 of the *Protection of the Environment Operations Act 1997* or a material approved under the NSW Environment Protection Authority's Resource Recovery Orders and Exemptions.
- b) The required Waste Classification Certificate must be obtained by the Principal Contractor prior to fill being imported to the site and made available to Council at its request.

**42. Survey Report**

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

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

**43. Waste Management**

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

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

- vi) The corresponding weighbridge tip docket/receipt from the site to which the waste is transferred (noting date and time of delivery, description (type and quantity) of waste).
- vii) Whether the waste is expected to be reused, recycled or go to landfill.

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

**44. Maintenance of public footpaths**

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

**45. Compliance with Pedestrian Access Management Plan**

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

**46. Compliance with Construction Management Plan**

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

**47. Prohibited actions within the fenced tree protection zone**

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

- a) Soil cutting or filling, including excavation and trenching.
- b) Soil cultivation, disturbance or compaction.
- c) Stockpiling storage or mixing of materials.
- d) The parking, storing, washing and repairing of tools, equipment and machinery.
- e) The disposal of liquids and refuelling.
- f) The disposal of building materials.
- g) The siting of offices or sheds.
- h) Any action leading to the impact on tree health or structure.

**48. Maintaining the health of trees approved for retention**

- a) The appointed project arborist must monitor and record any and all necessary actions required to maintain tree health and condition for trees numbered T3, T4, T17, T24, T30, T31, T36, T37, T38, T39, T40, T41, T46, T47, T48, T49, T50, T51, T52 and T54 on the approved plans.

**49. Maintaining Tree Protection Measures**

Tree Protection Measures must be maintained by the project arborist for the duration of works.

**50. Approved Works within Tree Protection Zone incursions**

- a) Where tree root pruning is required for the installation of piers, driveway or underground services, the pruning must be overseen by the AQF 5 project arborist and must be undertaken as follows:
  - i) Using sharp secateurs, pruners, handsaws or chainsaws with the final cut being clean.
  - ii) The maximum diameter of roots permitted to be cut is 40mm.
- b) Approved excavations within the Tree Protection Zone of trees to be retained not associated with installation of services must be undertaken as follows:
  - i) Excavations for the construction and/or installation of the driveway and building in the Tree Protection Zone of trees to be retained numbered on the approved plans must be supervised by the project arborist for the first 1.000 meter undertaken manually to locate roots and allow for pruning in accordance with condition 8a..
- c) To minimise impacts within the Tree Protection Zone (TPZ) of trees to be retained on the approved plans, the installation of services must be undertaken as follows:
  - i) The AQF 5 project arborist must be present to oversee the installation of any underground services which enter or transect the tree protection.
  - ii) The installation of any underground services which either enter or transect the designated TPZ must be undertaken manually.
  - iii) For manually excavated trenches the AQF 5 project arborist must designate roots to be retained. Manual excavation may include the use of pneumatic and hydraulic tools.
- d) Where scaffolding is required, ground protection must be installed beneath the scaffolding in the following order:
  - i) Installation of a 100mm deep layer of woodchip.
  - ii) Installation of geotextile fabric ground covering.
  - iii) Installation of scaffold boarding above the woodchip and geotextile fabric.

**51. Building Materials and Site Waste**

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

**52. Unexpected Finds**

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

**53. Vehicular Crossing**

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

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

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

#### REQUIREMENTS PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE

##### 54. Sydney Water – s73 Certificate

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

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

##### 55. Asbestos Clearance Certificate

Should any asbestos be encountered during demolition or construction works, a licenced asbestos assessor is required to provide a Clearance Certificate to the Certifier prior to the issue of an Occupation Certificate, certifying that the asbestos has been removed and appropriately disposed of, and the site is now suitable for its approved use.

##### 56. Damage to Council Assets

To protect public property and infrastructure, any damage caused to Council's assets as a result of the construction or demolition of the development must be rectified by the applicant in accordance with AUS-SPEC Specifications ([www.hornsby.nsw.gov.au/property/build/aus-spec-terms-and-conditions](http://www.hornsby.nsw.gov.au/property/build/aus-spec-terms-and-conditions)). Rectification works must be undertaken prior to the issue of an Occupation Certificate, or sooner, as directed by Council.

##### 57. 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.*

**58. 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. The plan(s) must be accompanied by a certificate from a registered surveyor certifying that all pipelines and associated structures lie wholly within any relevant easements.

**59. Construction of engineering works.**

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

**60. Preservation of Survey Marks**

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

**61. Retaining Walls**

All retaining walls must be constructed as part of the development and prior to the issue of an Occupation Certificate.

**62. Submission of Excavated Material Tipping Dockets to Principal Certifying Authority**

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

**63. External Lighting**

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

**64. Acoustic Verification**

Prior to the issue of an Occupation Certificate, an Acoustic Verification Certificate is to be prepared by a suitably qualified Acoustic Consultant and submitted to the Principal Certifying Authority and the Council. The Acoustic Compliance Certificate is to certify the following:

- a) The development has been constructed in accordance with the recommendations within Section 4 of the Noise Impact Assessment, ref: 5109R001.LB.211029, prepared by Acoustic Dynamics, dated 1/11/21.
- b) Air conditioning units do not exceed a maximum sound power level ( $L_w$ ) of 65dB(A) per unit and are programmed to switch off between 6pm and 7:15am weekdays and on weekends and public holidays.
- c) The car park exhaust fan does not exceed a sound pressure level ( $L_p$ ) of 70dB(A) at the entrance of the basement.
- d) Soft closure hinges have been installed to all self-closing gates.
- e) A timer has been installed on the carpark roller door to ensure the door remains locked between 6:00pm and 7:15am.

Should the Acoustic Compliance Certificate identify any non-compliance issues, the Certificate is to provide suitable recommendations for mitigation of those issues.

#### **65. Replacement Tree Requirements**

The trees approved for removal under this consent, being trees numbered T1, T2, T5, T6, T7, T8, T9, T10, T11, T12, T13, T14, T15, T16, T18, T19, T20, T21, T22, T23, T25, T26, T27, T28, T29, T32, T33, T34, T35, T42, T43, T44, T44 and T53 must be replaced as provided in the approved landscape plan

#### **66. Final Certification**

- a) The AQF 5 Project arborist must submit to the Principal Certifying Authority a certificate that includes the following:
- b) All tree protection requirements complied with the as approved tree protection plan for the duration of demolition and/or construction works.
- c) All completed works relating to tree protection and maintenance have been carried out in compliance with the conditions of consent and approved plans.
- d) Dates, times, and reasons for all site attendance.
- e) All works undertaken to maintain the health of retained trees.
- f) Details of tree protection zone maintenance for the duration of works.
- g) A statement to confirm that tree replacement planting meets NATSPEC guidelines and the approved landscape plan.

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

#### **67. Completion of Landscaping**

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

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

## **68. Waste Management Details**

The following waste management requirements must be complied with:

- a) Prior to an Occupation Certificate being issued or the use commencing, whichever is earlier, the Principal Certifying Authority must ensure arrangements are in place for delivery of bins for the on-going use of the site and for regular scheduled commercial waste collection services to commence within 7 days of occupation.

- b) A report must be prepared by an appropriately qualified person, certifying the following:

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

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

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

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

- iii) All demolition and construction waste was taken to site(s) that were lawfully permitted to accept that waste.

- c) The bin carting routes must be devoid of any steps.

*Note: Ramps between different levels are acceptable.*

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

## **69. Fire Safety Statement – Final**

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

## **70. Food Premises Compliance**

- a) The fit out and operation of that part of the building to be used for the manufacture, preparation or storage of food for sale, must be in accordance with *Australian Standard AS4674-2004 Design and fit out of food premises*, the *Food Act 2003*, and the *Food Regulation 2015* and the *Food Standards Code* developed by Food

*Standards Australia New Zealand. Food Standards 3.2.2 and 3.2.3 are mandatory for all food businesses.*

*Note: Walls are to be of solid construction.*

- b) Prior to the commencement of the business, the operator is required to contact Council's Public Health Team to arrange for a Health Officer to carry out an inspection of the premises to ensure compliance with the *Australian Standard AS4674-2004 Design and fit out of food premises*, the *Food Act 2003*, *Food Regulation 2015* and the Australia New Zealand Food Standards Codes.
- c) A letter of compliance provided by Hornsby Shire Council's Health Officer must be submitted to the Principal Certifier prior to an occupation certificate being issued.

*Note: Council's Public Health team can be contacted on 02 9847 6014*

#### **71. Grease Trap & Dry Basket Arrestor Installation**

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

#### **72. Kitchen Exhaust Installation**

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

#### **73. Pedestrian Refuge and Footpath Construction**

- a) The pedestrian refuge in Neale Avenue near the intersection with Edward Bennett Drive must be constructed in accordance with the conditions of consent prior to the issue of an occupation certificate.
- b) A pedestrian footpath must be constructed along the entire frontage of the site in accordance with the conditions of consent prior to issue of an Occupation Certificate.

### **OPERATIONAL CONDITIONS**

#### **74. Use of Premises**

- a) The development approved under this consent shall be used for '*centre-based child care facility*' and not for any other purpose without Council's separate written consent.
- b) The child care centre shall accommodate a maximum of 60 children.

#### **75. Hours of Operation**

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

Monday to Friday	7.30am to 6pm
Saturday, Sunday & Public Holidays	No work
- b) Staff must not arrive prior to 7.15am.
- c) All deliveries, service vehicles (inclusive of waste collection), cleaning and maintenance must be carried out within the approved hours of operation.

**76. Fire Safety Statement - Annual**

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

**77. Car Parking and Deliveries**

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

- a) All parking areas and driveways are to be sealed to an all-weather standard, line marked and signposted.
- b) 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.

**78. Sight Lines**

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

**79. Noise Management – Ongoing**

To ensure a reasonable level of acoustic amenity is provided to nearby residential premises the operation of the development must be carried out in accordance with the approved Noise Impact Assessment, ref: 5109R001.LB.211029, prepared by Acoustic Dynamics, dated 1/11/21 and the following additional requirements:

- a) Noise levels from children playing in the outdoor play areas must not exceed 45dB(A) when measured as a Leq 15-minute 1 metre from the boundary at all receivers, and on the balcony of all two storey receivers as identified in Table 3.3 of the above Noise Impact Assessment.
- b) Combined noise levels from children playing in the indoor playrooms, the use of the driveway and carpark and all mechanical plant inclusive of heating, cooling, ventilation, air conditioning and lifts must not exceed 41dB(A) when measured as a Leq 15 minute at one metre from the boundary fence of all receivers, and on the balcony of all two storey receivers, as identified in Table 3.3 of the above Noise Impact Assessment.
- c) The operation of the Child Care Centre must be carried out in accordance with the approved Plan of Management, ref: V2.1, prepared by the Applicant, dated October 2021 (TRIM reference D08284339).
- d) The maximum number of children permitted within the outdoor play area are as follows:

- |      |                                      |              |
|------|--------------------------------------|--------------|
| i)   | First Floor 0-2 years outdoor areas  | 15 children. |
| ii)  | Ground floor 2-3 years outdoor area  | 15 children. |
| iii) | Ground floor 3-5 years outdoor areas | 30 children. |
- e) Doors and windows must remain closed during periods of high internal noise and when children are sleeping, except to allow for ingress and egress.

#### 80. Acoustic Verification - Operational

Within a period of either six (6) months of commencement of operation OR establishment of an enrolment of a minimum 85% of the total permitted capacity of 60 children, whichever comes first, an acoustic assessment is to be undertaken by a suitably qualified environmental consultant in accordance with the Environment Protection Authority's *Noise Policy for Industry (2017)* and *Council's Policy and Guidelines for Noise and Vibration Generating Development (Acoustic Guidelines V.5, 2000)* and an Acoustic Verification Report submitted to Hornsby Shire Council confirming compliance with the following criteria:

- a) Noise levels from the outdoor play areas of the child care centre during peak operation comply with the Noise Emission Criteria detailed in Table 3.3 of the Noise Impact Assessment prepared by Acoustic Dynamics, dated 1/11/21, reference 5109R001.LB.211029 (TRIM: D08284341); when measured as a Leq 15 minute at one metre from the boundary fence at all receivers, and on the balcony of all two storey receivers, as identified in Table 3.3 of the above Noise Impact Assessment.
- b) Combined noise levels from the indoor playrooms during peak operation, the use of the driveway and carpark and all mechanical plant inclusive of heating, cooling, ventilation, air conditioning and lifts must not exceed 41dB(A) when measured as a Leq 15 minute at one metre from the boundary fence of all receivers, and on the balcony of all two storey receivers, as identified in Table 3.3 of the Noise Impact Assessment, ref: 5109R001.LB.211029, prepared by Acoustic Dynamics, dated 1/11/21.
- c) Should the assessment find that any non-compliances with the above specified noise criteria, the Acoustic Verification Report must detail appropriate mitigation measures which shall be implemented upon written approval by Hornsby Shire Council.
- d) The consent of the neighbouring properties from which measurements are to be taken must be obtained by the acoustic engineer carrying out the analysis. A right of access for acoustic monitoring purposes is not implied by these conditions. If access is denied from a neighbouring site, the monitoring is required to be carried out at a suitable alternate location as agreed to by Council.

#### 81. Maintenance of Acoustic Barriers

All Acoustic barriers, including boundary fencing, must be maintained for the duration of the development. Responsibility for the maintenance of all acoustic barriers, including acoustic fences, is the sole responsibility of the owner of the development, and shall continue into perpetuity should the premises be sold in the future, unless otherwise approved by Council.

#### 82. 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.

### 83. Ongoing Waste Management of the Site

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

- a) The approved Waste Management Plan is to be implemented throughout the ongoing use of the development.
- b) All commercial tenant(s) must keep written evidence on site of a valid and current contract with a licensed waste contractor(s) for the regular collection and disposal of the waste and recyclables that are generated on site.
- c) Waste collection services must not take place between 8pm and 6am weekdays or 8pm and 8am on weekends and public holidays.

*Note: Time-of-day service restrictions apply to commercial developments located near residential areas.*

- d) A Work, Health & Safety (WHS) risk assessment is to be carried out by a suitably qualified person with qualifications in Work, Health & Safety Legislation with specific regard to waste management. The recommendations of the WHS Risk Assessment are to be implemented as required.
- e) Bins must not be permanently stored in the ground level temporary bin holding area. All mobile garbage bins that are placed in the ground level temporary bin holding area for collection must be taken back to their bin storage room on the same day of service.

*Note: bins are to be placed in the holding area the day before the collection day, then returned to the basement bin storage rooms promptly after servicing.*

- f) All commercial tenant(s) must have a sufficient number of bins to contain the volume of waste and recycling expected to be generated between collection services.

**- END OF CONDITIONS -**

#### ADVISORY NOTES

The following information is provided for your assistance to ensure compliance with the *Environmental Planning and Assessment Act, 1979, Environmental Planning and Assessment Regulation 2000*, other relevant legislation and Council's policies and specifications. This information does not form part of the conditions of development consent pursuant to Section 4.17 of the Act.

#### Environmental Planning and Assessment Act 1979 Requirements

The *Environmental Planning and Assessment Act 1979* requires:

- The issue of a construction certificate prior to the commencement of any works. Enquiries can be made to Council's Customer Services Branch on 9847 6760.
- A principal certifying authority to be nominated and Council notified of that appointment prior to the commencement of any works.

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

### **Long Service Levy**

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

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

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

### **Tree and Vegetation Preservation**

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

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

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

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

### **Disability Discrimination Act**

The applicant's attention is drawn to the existence of the *Disability Discrimination Act 1992*. A construction certificate is required to be obtained for the proposed building/s, which will provide consideration under the *Building Code of Australia*, however, the development may not comply with the requirements of the *Disability Discrimination Act 1992*. This is the sole responsibility of the applicant.

### **Covenants**

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

### **Dial Before You Dig**

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

### **Telecommunications Act 1997 (Commonwealth)**

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

**Asbestos Warning**

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

[www.environment.nsw.gov.au](http://www.environment.nsw.gov.au)

[www.adfa.org.au](http://www.adfa.org.au)

[www.safework.nsw.gov.au](http://www.safework.nsw.gov.au)

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