



BUSINESS PAPER

LOCAL PLANNING PANEL MEETING

**Wednesday 27 April 2022
at 4:00pm**



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GENERAL BUSINESS

Local Planning Panel

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1 DA/34/2022 - DEMOLITION OF EXISTING DWELLING AND TORRENS TITLE SUBDIVISION OF ONE LOT INTO TWO - 3 WINDSOR COURT, CASTLE HILL

EXECUTIVE SUMMARY

DA No: DA/34/2022 (17 January 2022)

Description: Demolition of existing dwelling and Torrens title subdivision of one lot into two

Property: Lot 92 DP 786466, No. 3 Windsor Court, Castle Hill

Applicant: Environmental Planning Approvals

Owner: Mr R Firoz and Mr S Firoz

Estimated Value: \$20,000

Ward: C

- The application involves the Torrens title subdivision of one lot into two. The existing dwelling house and shed on the site would also be demolished.
- A total of 10 unique 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/34/2022 for demolition of existing dwelling and Torrens title subdivision of one lot into two at Lot 92 DP 86466, No. 3 Windsor Court, Castle Hill be approved, subject to the conditions of consent detailed in Schedule 1 of LPP Report No. LPP22/22.

SITE

The 1000m² site is located on the eastern side of Windsor Court, Castle Hill and contains a dwelling house and shed. The site is surrounded by similar sized allotments with predominately two storey large family homes.

The site experiences a gradual 3 metre fall to the eastern, rear boundary.

The site is not flood or bushfire prone.

The site contains a 1.2 metre wide easement to drain water along the eastern, rear boundary.

PROPOSAL

The application proposes the Torrens title subdivision of one lot into two.

The lots created would be known as:

- Lot 1 at No. 3 Windsor Close with an area of 500m².
- Lot 2 at No. 3A Windsor Close with an area of 500m².

Both lots would front the street and future access would be via separate driveways off Windsor Close.

No significant trees would be removed or 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.

- Planning Priority N5 - Providing housing supply, choice and affordability, with access to jobs, services and public transport.

In giving effect to A Metropolis of Three Cities, these Planning Priority deliver on the following objective and the corresponding strategies:

- Objective 11 - Housing is more diverse and affordable.

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 and providing more diverse housing choice nearby services and public transport.

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 ‘subdivision’, is permissible in the zone with Council’s consent and would meet the objectives of the zone by providing for the housing needs of the community within a low density residential environment.

2.1.2 Minimum Subdivision Lot Size

Clause 4.1 of the HLEP prescribes that the minimum subdivision lot size of 500m² as identified within the minimum lot size mapping.

Both lots would comply with the lot size requirement and would meet the Clause 4.1 objectives. Further discussion with regards to subdivision patterns and guidelines within the locality are discussed under Section 2.7.1 of this report.

2.1.3 Height of Buildings

Clause 4.3 of the HLEP provides that the height of a building on any land should not exceed the maximum height show for the land on the Height of Buildings Map. The maximum permissible height for the subject site is 8.5 metres.

The application does not propose the construction of any structures. Future dwelling houses within the proposed lots would be required to comply with this height requirement.

2.1.4 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 required.

2.1.5 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.

With the exception of the minor excavation works for the installation of stormwater infrastructure/ junction pits to connect both lots to the existing inter-allotment drainage system, minimal earthworks are required.

Accordingly, these works would have negligible impacts on adjoining properties, drainage patterns and/ or soil stability of the locality. As such, the proposal is considered to meet the objectives of Clause 6.2.

2.2 Adopted State Environmental Planning Policies - Transitional and Savings Provisions

On 1 March 2022, the following State Environmental Planning Policies (SEPPS) were gazetted that apply to the proposed development:

- State Environmental Planning Policy (Resilience and Hazards) 2021
- State Environmental Planning Policy (Biodiversity and Conservation) 2021

These SEPPS now form matters for consideration under Section 4.15 of the *Environmental Planning and Assessment Act 1979*. However general savings provisions apply to development applications that have been made but not yet determined, on or before the commencement date.

As this development application was lodged on 3 December 2021 this development application is considered to have been made prior to the commencement date of the SEPPs. The adopted policies have been considered as a matter for consideration under S4.15 of the *Act*. However, the existing legislation in force at time of lodgement of the development application, prevails to be extent of any inconsistency.

Notwithstanding, the approval of the development application would not adversely affect the objectives of the newly adopted State Environment Planning Policies and is considered to be consistent with this 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 (Vegetation in Non-Rural Areas) 2017

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

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

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

2.5 State Regional Environmental Policy 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 meet the aims 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:

HDCP - Part 6 Subdivision			
Control	Proposal	Requirement	Complies
Site Area	1,000m ²	N/A	N/A
Lot Area			
- Lot 1	500m ²	500m ²	Yes
- Lot 2	500m ²	500m ²	Yes

Lot Width			
- Lot 1	15.375m	12m	Yes
- Lot 2	11.84m	12m	No
Building Envelope			
- Lot 1	200m ²	200m ²	Yes
- Lot 2	200m ²	200m ²	Yes
Building Envelope Setbacks Lot 1			
- Front (north-west)	7.6m	6m	Yes
- Side (north-east)	1.5m	0.9m	Yes
- Side (south-west)	1.5m	0.9m	Yes
- Rear (south-east)	4.4m	3m*	Yes
Building Envelope Setbacks Lot 2			
- Front (north-west)	7.6m	6m	Yes
- Side (north-east)	1.5m	0.9m	Yes
- Side (south-west)	1.5m	0.9m	Yes
- Rear (south-east)	4.9m	3m*	Yes
Landscape Area (% of lot size)			
- Lot 1	>30%	30%	Yes
- Lot 2	>30%	30%	Yes
Private Open Space			
- Lot 1	>24m ²	24m ²	Yes
- Lot 2	>24m ²	24m ²	Yes
Car Parking			
- Lot 1	2 spaces	2 spaces	Yes
- Lot 2	2 spaces	2 spaces	Yes

* Whilst Table 6.2(c) of the HDCP identifies that a building envelope should have a rear setback of 5 metres, Figure 6.2(c) of the HDCP identifies that a building envelope should have a rear setback of 3 metres. In line with the 3-metre ground floor setback control for a future dwelling house under Part 3.1.2 of the HDCP, the 3 metre rear building envelope figure has been applied.

As detailed in the above table, the proposed development complies with the prescriptive requirements within the HDCP, with the exception the minimum lot width for proposed Lot 2. The matters of non-compliance are detailed below, as well as a brief discussion on compliance with relevant desired outcomes.

ITEM 1

2.7.1 Subdivision

As demonstrated within the Table above, with the exception of a minor lot width non-compliance, the proposal meets the relevant subdivision prescriptive measures of the HDCP.

In support of the 11.84 metre lot width non-compliance within proposed Lot 2, it is noted as follows:

- The 0.16 metre lot width non-compliance would occur at the rear boundary for a small portion of the site only.
- The front of the lot would have a width of greater than 15 metres.
- The lot width in which the proposed building envelope is located would be greater than 12 metres, demonstrating that a dwelling house could be adequately built within the constraints of the site.

Further, a number of submissions raised concern around the proposed lot sizes being out of character with existing development within the locality. There were concerns regarding an unwanted precedent being set for the subdivision pattern within the area and reduced property values to surrounding neighbours.

In response to these concerns, the following planning principles/comments should be noted:

- *Project Venture Developments v Pittwater Council [2005] NSWLEC 191* (Planning principle: compatibility in the urban environment)

This Planning Principle notes that to test whether a proposal is compatible with its context, consideration should be given to the proposal's physical impacts on surrounding development and whether the proposal's appearance is in harmony with the buildings around it and the character of the street. The principle also notes that reference to architectural style and materials is relevant to special areas such as conservation areas.

Therefore, in the case of the subject DA, the focus should be on the important contributors to the streetscape which include height, setbacks and landscaping. Furthermore, the Principle acknowledges that "*compatibility is thus different from sameness*".

It is acknowledged that the 500m² lot sizes would be smaller than other allotments in Windsor Circuit. However, both lots would be a regular rectangular shaped allotments and would not be burdened by topographical or environmental constraints. In this regard, a future dwelling-house could be designed and positioned on the newly created allotment that is consistent with the established built form in terms of height, setbacks, landscaping and private open space while retaining amenity to adjoining properties in respect to privacy and solar access.

- *Salanitro-Chafei v Ashfield Council [2005] NSWLEC 366* (Planning principle: relationship of density and residential character)

The subject appeal was for a dwelling-house that significantly exceeded the scale of other dwellings in the single storey streetscape.

However, in relation to the subject DA, under the HLEP or Housing Code, any future dwelling would likely be of a similar or slightly smaller scale than existing dwellings. In this regard, it would be difficult to argue that the proposal would not be consistent with a "suburban character".

Furthermore, in the case of *Project Venture Developments v Pittwater Council [2005] NSWLEC 191* (above) the Commissioner notes that "*there are situations where the planning controls envisage a*

change of character, in which case compatibility with the future character is more appropriate than with the existing."

In this regard, the Housing Code has subsequently been gazetted setting the State Government's standards for the intensity of development that is consistent with a 'suburban' environment. The Code aims to simplify the planning system in a way that the amenity and quality of housing is maintained. The requirements in the Code for setbacks and site coverage are aimed at respecting neighbours and maintaining the character of neighbourhoods. It should also be noted that a future application may also opt to develop under a DA in accordance with the dwelling house controls outlined under Part 3.1 of the HDCP.

In summary, based on the above planning principles, whilst the concerns raised by neighbours are acknowledged, it would be difficult to refuse an application on an 'out of character' basis and the proposal is considered acceptable for the locality in this regard.

2.8 Section 7.11 Contributions Plans

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

3. ENVIRONMENTAL IMPACTS

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

3.1 Natural Environment

3.1.1 Tree and Vegetation Preservation

With the exception of the installation of stormwater infrastructure, no other works are proposed as part of this application. The stormwater infrastructure would have negligible impact on trees and vegetation and the rear of the site. Accordingly, the application would not require the removal of any trees or vegetation from the site.

3.1.2 Stormwater Management

The proposal would connect to the existing inter-allotments drainage system located at the rear of the site in accordance with AUS-SPEC Specifications, designed by a qualified civil/hydraulic engineer.

In addition to the above, a condition is recommended in Schedule 1 of this report that prior to the issue of a Subdivision Certificate, that a *"Positive Covenant"* be created over the proposed Lots 1 and 2 requiring that any future development within these lots provides an on-site detention system.

The on-site detention systems would reduce the pressure on the existing inter-allotment stormwater infrastructure.

The proposal meets the prescriptive measures of Part 1C.1.2 Stormwater Management under the HDCP and is considered acceptable.

3.2 Built Environment

3.2.1 Built Form

With the exception of stormwater infrastructure, physical works have not been proposed as part of this application. The construction of dwelling houses on the proposed lots would be subject to future development approval.

3.2.2 Traffic

The proposed one into two lot subdivision would result in negligible additional traffic generation impacts to the area and is considered acceptable in this regard.

3.3 Social Impacts

The subdivision would improve housing mix in the locality by enabling future lots/ dwellings to be separately owner occupied or rented. This is consistent with Council's Housing Strategy which identifies the need to provide a mix of housing options to meet future demographic needs in Hornsby Shire.

3.4 Economic Impacts

The proposal would meet the objectives of the zone as the proposal would allow for a new dwelling house to be constructed on the additional lot created, thereby adding economic value and versatility to existing housing stock. Accordingly, the proposal would have a minor positive impact on the local economy in conjunction with other new low density residential development in the locality.

4. SITE SUITABILITY

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

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

5. PUBLIC PARTICIPATION


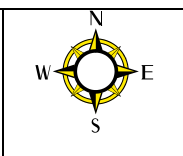
Section 4.15(1)(d) of the Act requires Council to consider "*any submissions made in accordance with this Act*".

5.1 Community Consultation

The proposed development was placed on public exhibition and was notified to adjoining and nearby landowners between 18 January 2022 and 10 February 2022 in accordance with the Hornsby Community Engagement Plan. During this period, Council received 10 unique 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"> • PROPERTIES NOTIFIED 	<ul style="list-style-type: none"> X SUBMISSIONS RECEIVED 	 PROPERTY SUBJECT OF DEVELOPMENT	
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Ten submissions objected to the development, generally on the grounds that the development would result in:

- Lot sizes that are out of character with existing development within the locality - concerns regarding an unwanted precedent for the area and reduced property values.
- Increased stormwater runoff to adjoining properties.
- Sewerage overflow issues.
- Future dwelling overshadowing of neighbouring properties.
- Future dwelling privacy impacts.
- Increased traffic within the street.
- Future earthworks requirements - Lack of detail surrounding the new dwelling houses.
- Building envelope side setbacks having negative amenity impacts on adjoining properties.
- Lack of consideration of the public interest.
- Concerns surrounding boundary fencing locations and existing fence damage.

In addition, it was noted in a number of submissions that the stormwater plans incorrectly note 'The Hills Shire Council' instead of 'Hornsby Shire Council'. Amended plans were submitted correcting the typographical error.

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 Future Works/ Dwellings on Proposed Lots

The construction of the future works and dwelling houses is not a matter for consideration under this application. Future consent for the construction of a dwelling on each lot would be sought under either a future Complying Development Certificate application or a Development Application. Amenity impacts would be considered as part of the future application.

5.1.2 Sewer

With regards to the concerns regarding sewerage overflows issues, it is noted that a condition is recommended in Schedule 1 of this report requiring a Section 73 application be lodged with Sydney Water to obtain a certificate confirming that the subdivision adequately satisfies Sydney Water infrastructure requirements in terms of waste, wastewater and stormwater services.

Additionally, a Sydney Water approval is required prior to the issue of a Construction Certificate to determine whether any works would affect *Sydney Water* infrastructure, and whether further requirements are to be met.

5.1.3 Boundary Fence

The condition and location of boundary fencing is not a matter for consideration under this application and should be resolved with respective property owners under the *Dividing Fences Act 1991*.

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 an existing dwelling house and the Torrens title subdivision of one lot into two.

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

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

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

The reasons for this decision are:

- The proposed 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 and would not be inconsistent with the character of the area.

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 Madeleine Brown.

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.  Proposed Subdivision Plan
3.  Stormwater Plans
4.  Statement of Environmental Effects

File Reference: DA/34/2022
Document Number: D08372554

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:

Plan No.	Plan Title	Drawn by	Dated	Council Reference
Dwg No. 2154-1	Subdivision Plan	Taylor Surveying	17/05/21	
Project No. 21130, Dwg. 000. Rev. B	Cover Sheet, Notes & Drawing Index	MBR Consulting Engineers	28/03/22	
Project No. 21130, Dwg. 101. Rev. B	Stormwater Concept Plan	MBR Consulting Engineers	28/03/22	
Project No. 21130, Dwg. 102. Rev. B	Sediment and Erosion Control Plan	MBR Consulting Engineers	28/03/22	
Project No. 21130, Dwg. 103. Rev. B	On-site Detention Details and Calculation	MBR Consulting Engineers	28/03/22	
Project No. 21130, Dwg. 104. Rev. B	On-site Detention Details and Calculation	MBR Consulting Engineers	28/03/22	
Project No. 21130, Dwg. 105. Rev. B	On-site Detention Details and Calculation	MBR Consulting Engineers	28/03/22	

Document Title	Prepared by	Dated	Council Reference

Document Title	Prepared by	Dated	Council Reference
Waste Management Plan	Environmental Planning Approvals	17/01/22	D08331471

2. Construction Certificate

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

3. Section 7.11 Development Contributions

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

Description	Contribution (4)
Roads	\$1,456.60
Open Space and Recreation	\$11,413.95
Community Facilities	\$7,029.95
Plan Preparation and Administration	\$99.50
TOTAL	\$20,000

being for the creation of a new lot.

- b) The value of this contribution is current as of 30 March 2022. If the contribution is not paid within the financial quarter that this condition was generated, the contribution payable will be adjusted in accordance with the provisions of the Hornsby Shire Council Section 7.11 Development Contributions Plan and the amount payable will be calculated at the time of payment in the following manner:

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

Where:

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

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

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

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

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

- i) Prior to the issue of the Subdivision Certificate where the development is for subdivision.
- 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: Council's Development Contributions Plan may be viewed at www.hornsby.nsw.gov.au or a copy may be inspected at Council's Administration Centre during normal business hours.

REQUIREMENTS PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

4. Building Code of Australia

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

5. 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.

6. 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.

7. Sydney Water

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

Note: Building plan approvals can be obtained online via Sydney Water Tap in™ through www.sydneywater.com.au under the Building and Development tab.

8. Utility Services

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

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

9. 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**".

10. Stormwater Drainage

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

- a) Connected directly to the existing inter-allotment drainage system located at the rear of the site.
- b) A 600 x 600 concrete junction pit shall be designed over the existing inter-allotment drainage pipe at the north-eastern corner of proposed Lots 1 and 2 to service the proposed subdivision with pits being cast in situ or pre cast concrete pits being used. The design shall be prepared by a qualified civil engineer in accordance with Council's AUS-SPEC Specifications.

REQUIREMENTS PRIOR TO THE COMMENCEMENT OF ANY WORKS

11. 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.

12. 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.

13. 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*.

14. Erosion and Sediment Control

- a) 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.
- b) 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.

15. Installation of Tree Protection Measures

- a) Trees to be retained and numbered 11 and 12 as identified on the Tree Protection Map prepared by Council's Tree Management Team, dated 7 February 2022 must have tree protection measures for the ground, trunk and canopy installed by the project arborist for the duration of demolition and construction works in accordance with the approved Tree Protection Map.
- b) Tree protection fencing for the trees to be retained numbered 2 to 12 (inclusive) 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) The installation of all required tree protection fencing must be to the extent of the calculated TPZ over soft surfaces and to the extent of the paved area and new driveway as indicated on the approved Tree Protection Map.
- e) Tree crown protection measures are required and must be installed by the AQF 5 project arborist for tree numbered 12.
- f) The circumference of the trunk(s) must be wrapped in hessian material to provide cushioning for the installation of timber planks.
- g) Timber planks (50 x100mm) must be spaced at 100mm intervals and must be attached using adjustable ratchet straps.

REQUIREMENTS DURING DEMOLITION AND CONSTRUCTION

16. Construction Work Hours

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

17. Demolition

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

- a) Demolition material must be disposed of to an authorised recycling and/or waste disposal site and/or in accordance with an approved waste management plan;
- b) Demolition works, where asbestos material is being removed, must be undertaken by a contractor that holds an appropriate licence issued by *SafeWork NSW* in accordance with the *Work Health and Safety Regulation 2017* and be appropriately

transported and disposed of in accordance with the *Protection of the Environment Operations (Waste) Regulation 2014*; and

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

18. 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*.

19. 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.

20. 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.

21. Road Opening Permit

A road opening permit must 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.

REQUIREMENTS PRIOR TO THE ISSUE OF A SUBDIVISION CERTIFICATE

22. Sydney Water – s73 Certificate

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

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

23. Damage to Council Assets

- a) 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).

- b) Rectification works must be undertaken prior to the issue of an Occupation Certificate, or sooner, as directed by Council.

24. Creation of Easements

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

- a) The creation of a “*Positive Covenant*” over the proposed Lots 1 and 2 requiring that any future development is to provide an on-site detention system. The on-site detention system is to have a storage capacity of 5 cubic metres and a maximum discharge of 8 litres per second into Council’s drainage system in accordance with Council’s prescribed wording;

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

25. Works as Executed Plan

A works-as-executed plan(s) must be prepared by a registered surveyor and submitted to Council for completed inter-allotment drainage 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. The location of all necessary service conduits provided to facilitate the proposed subdivision shall be clearly indicated on the works as executed plan.

26. Demolition of Structures

Any structure that traverse the proposed allotment boundaries must be demolished prior to the release of the subdivision certificate.

27. 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’.

28. 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 Subdivision Certificate.

- 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). (HDGP 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.

Subdivision Certificate Requirements

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

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

- A surveyor's certificate certifying finished ground levels are in accordance with the approved plans.

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

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

Fees and Charges – Subdivision

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

Dial Before You Dig

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

Telecommunications Act 1997 (Commonwealth)

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

Asbestos Warning

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

www.environment.nsw.gov.au

www.adfa.org.au

www.safework.nsw.gov.au

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

House Numbering

The house numbering for this subdivision shall be:

Lot	Street Number	Street Name	Street Type	Locality
Lot 1	3	Windsor	Court	Castle Hill
Lot 2	3A	Windsor	Court	Castle Hill