



BUSINESS PAPER

LOCAL PLANNING PANEL MEETING

**Wednesday 26 April 2023
at 3:00pm**



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Local Planning Panel

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1 DA/1244/2021 - FURTHER REPORT - SENIORS LIVING DEVELOPMENT COMPRISING 30 SELF-CONTAINED DWELLINGS - 15B, 17, 19, 19A & 21 PENRHYN AVENUE, BEECROFT AND 579 PENNANT HILLS ROAD, WEST PENNANT HILLS

DA No:	DA/1244/2021 (Lodged on 18 November 2021)
Description:	Demolition of existing structures, construction of a Seniors living development comprising 30 self-contained dwellings, associated civil/ site works, landscape works and lot consolidation
Property:	Lots 146, 148, 149, DP 1212765, Lot 1, 2, DP 1261337 & Lot 51, DP 1212724, Nos. 15B, 17, 19, 19A & 21 Penrhyn Avenue, Beecroft and No. 579 Pennant Hills Road, West Pennant Hills
Applicant:	Mr Peter William Brooks
Owner:	Mr Kenneth Bruce McLennan, Mrs Janet Madge McLennan, Mr Maheswaran Viswanathan, P Sandhu Pty Ltd, Mr Rajan Nagendra Boora, Miss Nirmala Fernandes & Mr Seung Taeg Baeg
Estimated Value:	\$14,695,651
Ward:	C Ward
Zoning:	R2 Low density residential
Clause 4.6 Request:	Clause 40(4)(b) of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004
Submissions:	80
LPP Criteria:	10 or more unique submissions were received by way of objection
Author:	Madeleine Bayman, Senior Town Planner
COI Declaration:	No Council staff involved in the assessment of this application have declared a Conflict of Interest.

RECOMMENDATION

THAT Development Application No. DA/1244/2021 for demolition of existing structures, construction of a Seniors living development comprising 30 self-contained dwellings, associated civil/ site works, landscape works and lot consolidation at Nos. 15B, 17, 19, 19A & 21 Penrhyn Avenue, Beecroft and 579 Pennant Hills Road, West Pennant Hills be approved, subject to the conditions of consent detailed in Schedule 1 of LPP Report No. LPP6/23.

EXECUTIVE SUMMARY

- On 3 November 2022, DA/1244/2021 was reported to the Hornsby Local Planning Panel (the Panel) for demolition of 5 existing dwellings and the construction of 30 self-care Seniors living dwellings. At that meeting, the Panel resolved to defer the determination of the application to enable:
 1. *The applicant to address the following matters:*
 - a) *Demonstrate emergency vehicles can access all dwellings within the site including vehicle access/ throughway and height requirements beneath the townhouse building.*
 - b) *Design issues with the north-western component of the site and the relationship with the townhouse building, noting that the ramp should be setback from the boundary to retain existing camellias/ screen planting and the bin area should also be re-located.*
 - c) *Provide further detail regarding the 3-storey element within the townhouse building adjoining the northern boundary.*
 - d) *Address State Environmental Planning Policy No. 65 Design Quality of Residential Apartment Development with respect to the 3 storey element of the central apartment building (Units 15-22).*
 - e) *Demonstrate and/or provide further clarification with respect to the 2-storey element for Dwellings 26 and 29 within the rear 25% of the site.*
 - f) *Provide further detail regarding accessibility for the pathway/ walkway to Pennant Hills Road including longitudinal section and details of lighting/ gate/ platform lift. Furthermore, the pathway/ walkway should be centralised to allow for landscaping on both sides.*
 - g) *Retention of tree no. 139 to be explored as part of the pathway landscaping works in point f) above.*
 - h) *Provide a detailed Construction Management Plan, with particular regard to traffic management during all stages of demolition and construction works.*
 2. *Council's Traffic and Road Safety Branch to investigate options for the Penrhyn Avenue/ Hannah Street intersection (including traffic calming devices on Hannah Street).*
- The panel requested that the information be provided to Council by 3 February 2023 to enable a report to be prepared for the March Local Planning Panel meeting.
- On 23 March 2023, the applicant submitted the required additional information to address the above matters.
- On 15 March 2023, an onsite meeting was held with residents, Council's Senior Traffic Engineer and Manager Development Assessment to discuss traffic safety issues raised with regard to the intersection of Penryhn Ave and Hannah Street Beecroft.
- On 18 February 2023, Council requested submission of traffic volume and speed data for vehicles using Hannah Street.
- The traffic survey data was submitted to Council on 23 March 2023 for consideration.

- The application proposes demolition of existing structures, construction of a Seniors living development comprising 30 self-contained dwellings, associated civil/site works, landscape works and lot consolidation.
- The proposal generally complies with the Hornsby Local Environmental Plan 2013, the Hornsby Development Control Plan 2013 and State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 with respect to landscaping, privacy, noise, traffic and safety, scale, site suitability, contamination, setbacks, tree preservation, sunlight access, stormwater and waste management.
- A total of 80 submissions over two notification periods were received in respect of the application. The amended information as requested by the LPP was not re-notified; however, the adjoining neighbour to the west at No. 573 Pennant Hills Road was individually notified and provided with 14 days to review given the direct relationship between the amendments and this particular property owner's concerns.
- 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.

PROPOSAL

The proposed development comprises the demolition of 5 existing dwellings and the construction of 30 self-contained Seniors living dwellings. The application also proposes the consolidation of the 6 lots, associated civil/ site works and landscape works.

The complex would consist of a wide range of housing styles, including:

- 11 x 1 and 2-storey detached and attached dwellings.
- 9 x 2-storey townhouse-style dwellings.
- 10 x apartments.

All dwellings would have 3 bedrooms.

The reduction in apartment numbers from 33 (as originally proposed) to 30 aims to create a larger village green space in the centre of the site, increase the separation distances between the proposed dwellings and reduce the bulk and scale of the development.

The existing overland flow path on the site has been utilised for the provision of communal open space and to provide a buffer between residential developments to the east of the site. Additional communal open space is proposed within the centre of the site to improve overall amenity and provide suitable landscaping.

Sixty-two off-street car parking spaces are proposed, including 7 visitors spaces, all with vehicular access via Penrhyn Ave.

The accessway to Pennant Hills Road is to be used to provide convenient and safe pedestrian access to the complex only and provides access to bus stops for services which link Pennant Hills to Parramatta and intervening centres, with easy access to local services and amenities.

A total of 147 trees/ groups of trees would be impacted by the development, 98 of which would be removed.

A brief discussion of how each of the deferred requirements has been addressed is outlined as follows:

- 1 a) *Demonstrate emergency vehicles can access all dwellings within the site including vehicle access/ throughway and height requirements beneath the townhouse building.*

Comment: Amended plans were submitted to increase the clearance for driveway No. 2 to 3m to ensure a standard Mercedes printer ambulance with a height of 2.8m can access all areas of the site. Emergency access paths are noted on drawings via lifts and pathways. Finished floor levels of the basement level of townhouse building have been slightly modified to accommodate the additional height.

- 1 b) *Design issues with the north-western component of the site and the relationship with the townhouse building, noting that the ramp should be setback from the boundary to retain existing camellias/ screen planting and the bin area should also be re-located.*

Comment: Amended plans were submitted increasing the excavation/retaining wall setback to 1.5m off the western side boundary adjacent to the site of No. 573 Pennant Hills Road to establish a deep soil planting area. The *Camellia sasanquas* on the subject site would be removed and replaced with screen planting and the hedge would be retained and protected within the neighbouring property. The accessibility ramp has been set back and the bin room relocated to an acceptable location to address these concerns.

- 1 c) *Provide further detail regarding the 3-storey element within the townhouse building adjoining the northern boundary.*

Comment: The site experiences a crossfall which results in part of the car park projecting more than 1m above ground level along the southern elevation of the townhouse building. This would result in a 3 storey element along the building's southern elevation.

A written request under Clause 4.6 of the HLEP has been submitted to vary the 2 storey height control under Clause 40(4)(b) of the SEPP HSPD. Detailed discussion is provided under section 1.1.3 of this report.

- 1 d) *Address State Environmental Planning Policy No. 65 Design Quality of Residential Apartment Development with respect to the 3 storey element of the central apartment building (Units 15-22).*

Comment: the applicant has addressed SEPP 65 and this matter is discussed further in Section 1.3 of this report.

- 1 e) *Demonstrate and/or provide further clarification with respect to the 2-storey element for Dwellings 26 and 29 within the rear 25% of the site.*

Comment: Discussion provided by Applicant, refer to further discussion under Section 1.2 of this report.

- 1 f) *Provide further detail regarding accessibility for the pathway/ walkway to Pennant Hills Road including longitudinal section and details of lighting/ gate/ platform lift. Furthermore, the pathway/ walkway should be centralised to allow for landscaping on both sides.*

Comment: The plans were amended to centralise the pathway and include further details with regards to lighting, gates, platform lift and landscaping.

- 1 g) *Retention of tree no. 139 to be explored as part of the pathway landscaping works in point f) above.*

Comment: Tree No. 139 is now proposed for retention with protection measures required.

- 1 h) *Provide a detailed Construction Management Plan, with particular regard to traffic management during all stages of demolition and construction works.*

Comment: A CMP was submitted addressing a number of traffic management requirements; however, in order to satisfy Council's standard condition relating to the preparation of a Construction Traffic Management Plan (CTMP), the detailed CTMP condition remains and must be prepared by a suitably qualified environmental consultant incorporating all the relevant information to satisfy Council. Further discussion with respect to traffic is provided in Section 1.4.1 of this report.

2. *Council's Traffic and Road Safety Branch to investigate options for the Penrhyn Avenue/ Hannah Street intersection (including traffic calming devices on Hannah Street).*

Comment: Further traffic survey data of the Penrhyn Avenue/ Hannah Street intersection was provided and is discussed in detail under Section 1.4.1 of this report.

ASSESSMENT

1. 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"*.

1.1 Hornsby Local Environmental Plan 2013

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

1.1.1 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 *'seniors housing'* and is prohibited within the R2 zone under the HLEP. Notwithstanding, State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP HSPD) is the overriding planning instrument that applies to the proposed development for housing of aged and disabled people in NSW and provides for hostels, residential care facilities (nursing homes) self-contained dwellings and multi-storey buildings.

The application proposes 30 self-contained seniors living developments and would provide for the housing needs of the community within a low-density residential environmental, enabling land uses that provide facilities or services to meet the day to day needs of residents.

1.1.2 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 maximum height of 9.5m and does not comply with this provision.

Notwithstanding, the proposal has been assessed against the overriding height requirements of clause 40(4)(a) SEPP HSPD, whereby, the non-discretionary height standard of 8m to the ceiling with which the proposal complies, prevails over any inconsistency with the 8.5m height development standard contained in HLEP.

Clause 40(4)(b) of the SEPP HSPD provides that the height of a building is not to exceed 2 storeys adjacent to a boundary of the site in residential zones where residential flat buildings are not permitted.

The proposed 2 storey townhouse building complies with the standard where it is adjacent to the northern boundary of the site.

However, due to the topography of the site, parts of the car park under the townhouses in the southern section will project more than 1m above ground level (refer to area marked in red in Figure 1 below)

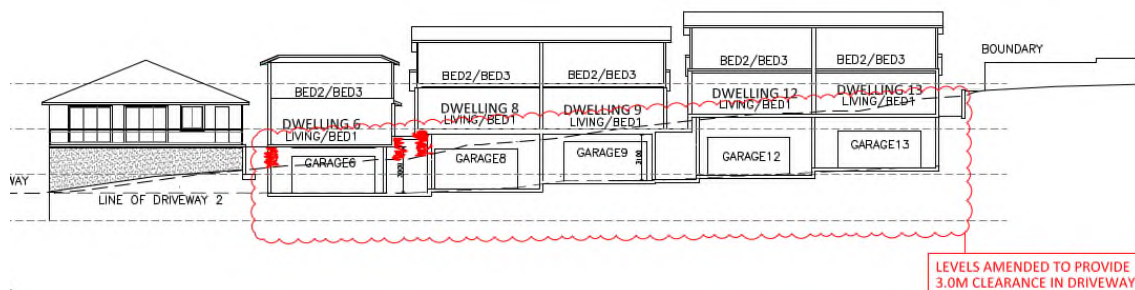


Figure 1: Section, prepared by Peter Brooks, 03/03/23

Under the terms of the SEPP, where these projections occur greater than 1m above ground, the building is regarded to contain 3 storeys.

Variation to clause 40(4)(b) of the SEPP HSPD for the 3 storey elements has been considered under Clause 4.6 of the HLEP as outlined in Section 1.1.3 below.

1.1.3 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 proposal exceeds the height of building development standard, i.e. number of storeys, in Clause 40(4)(b) of the SEPP HSPD.

The applicant has made a submission in support of the contravention to the development standard 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.

1.1.3.1 Unreasonable or Unnecessary Clause 4.6(3)(a)

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:

- *The objectives of the development standard are achieved notwithstanding non-compliance with the standard.*
- *The underlying objective or purpose is not relevant to the development.*
- *That the objective would be defeated or thwarted if compliance was required.*
- *That the development standard has been virtually abandoned or destroyed by the Council's own actions in departing from the standard.*
- *The zoning of the land is unreasonable or inappropriate.*

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 written request prepared by Ludvik & Associates, dated December 2022 provides a detailed assessment of the proposal with respect to the development standard sought to be contravened. The request argues that:

"In this instance, there are no objectives stated in the SEPP for this standard.

However, the note in the SEPP relating to the standard states that the purpose of this standard is to avoid an abrupt change in the scale of development in the streetscape.

When viewed in the streetscape, the building adjacent to the northern boundary will be viewed as a 2-storey building setback a significant distance from the street with extensive landscaping in the setback area.

The 3-storey elements of the townhouses will only be evident on their internal southern elevation within the site.

They will not be visible adjacent to, or from, the northern boundary.

The height of the townhouses, measured to the ceiling of their topmost floors, is to vary between 4.4m and 7.5m and will generally be significantly below the non-discretionary height standard of 8m.

Consequently, the proposal is one which could not be refused under the terms of the SEPP on the basis of its height.

In addition, the northern boundary of the site represents its common boundary with the public pathway linking Penrhyn Avenue to Pennant Hills Road.

The pathway is 4.5m wide and, together with a minimum 2.55m setback of the town houses and 1m setback of the 2-storey house on 20 Penrhyn Avenue, will provide a minimum distance of separation of some 8m between these buildings.

With reference to the reasoning provided by the applicant above, Council does not object to the conclusion and the following points are noted:

- That the proposal would be of a bulk and scale consistent with the Penrhyn Avenue streetscape.
- The proposed townhouse building would appear as a 2 storey building from the street, demonstrated below (Refer to Figure 2 below - highlighted areas in yellow do not extend more than 1 m about ground level)



Figure 2: Elevation, prepared by Peter Brooks, 03/03/23

- The proposed development would not overly dominate the natural environment or surrounding built elements and is consistent with the aims and objectives of SEPP HSPD.
- The proposed height variation is appropriate considering the constraints of the site and would not create any adverse amenity impacts in terms of privacy, overshadowing, view loss or visual impact.
- The proposal will comply with the objectives of the R2 zone under the HLEP by providing for the housing needs of the community in accordance with the requirements of SEPP HSPD and the non-discretionary scale and density standards.
- The application provides for the orderly and economic development of land, addresses compliance issues with the existing building to ensure its ongoing functionality to the benefit of parishioners and the local communities and demonstrates adequate consideration and protection of the environmental and public interest.

For the reasons outlined above, it is considered that the written request to contravene the height of building development standard of Clause 40(4)(b) of the SEPP HSPD is acceptable, notwithstanding non-compliance with the standard.

1.1.3.2 Environmental Planning Grounds - Clause 4.6(3)(b)

In addition to demonstrating that compliance is unreasonable or unnecessary, Clause 4.6(3)(b) 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]).

The applicant provided the following planning grounds for the contravention of the development standard:

“The aim of the SEPP is to encourage the provision of housing that will:

- (a) Increase the supply and diversity of residences that meet the needs of seniors or people with a disability;*
- (b) Make efficient use of existing infrastructure and services; and*
- (c) Be of good design.*

The proposal provides an appropriate design response to the opportunities and constraints offered by the site and its setting to achieve the aims of the SEPP by:

- Satisfying a community need for appropriately designed seniors housing in this locality.*
- Leading to a better use of the existing physical and social infrastructure serving this area.*
- Increasing housing supply and improving housing choice to suit different needs and lifestyles.*
- Leading to positive social and economic outcomes by providing additional housing opportunities without any adverse environmental effects; and*
- Being compatible and consistent with the established and desired future character of development and streetscape in this locality.*

The proposal promotes the orderly and economic use and development of the land in accordance with Section 1.3(c) of the Environmental Planning and Assessment Act 1979 (EP&A Act).

The height of the townhouses, measured to the ceiling of their topmost floors, is to vary between 4.4m and 7.5m and will generally be significantly below the non-discretionary height standard of 8m .

The townhouses will not result in any adverse effects on the amenity enjoyed by residents of surrounding properties in terms of privacy, overshadowing, view loss or visual impact.

Consequently, there are sufficient environmental planning grounds to justify the variation from the standard as proposed.

Council considers that the environmental planning grounds stated within the written request 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. It is therefore considered that the written request adequately demonstrates compliance with the clause and is acceptable in this regard.

In demonstrating the unreasonable and unnecessary test, the applicant further established satisfactory environmental planning grounds with respect to the site and the surrounding constraints.

Council is therefore satisfied that Clause 4.6(3)(b) of the HLEP is adequately addressed.

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

With regard to part (a)(ii), the proposed development is considered to be in the public interest because it is consistent with the requirements 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), on 21 February 2018, the Secretary of the Department of Planning and Environment issued a Notice under cl. 64 of the Environmental Planning and Assessment Regulation 2000. The Secretary's concurrence may not be assumed by a delegate of council if:

- The development contravenes a numerical standard by greater than 10%.
- The variation is to a non-numerical standard.

Neither of the above apply in this instance, therefore the Planning Secretary's concurrence is assumed.

1.2 State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004

Despite the recent commencement of State Environmental Planning Policy (Housing) 2021 on 26 November 2021 (which repeals State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP HSPD), SEPP HSPD will apply to this application as it was lodged prior to the commencement of the new SEPP.

SEPP HSPD is the overriding planning instrument for the development of housing for aged and disabled people in NSW and provides for hostels, residential care facilities (nursing homes) self-contained dwellings and multi-storey buildings. SEPP HSPD is comprehensive in scope including land use planning provisions, design principles, development standards and standards specifically to meet the housing needs of aged and disabled people. SEPP HSPD also includes design guidelines for infill development. Assessment of the proposal in accordance with the relevant requirements of SEPP HSPD is provided as follows:

1.2.1 Clause 40 - Development Standards

Clause 40(4) specifies height requirements in zones where residential flat buildings are not permitted. A residential flat building is defined as a building containing two or more self-contained dwellings. Residential flat buildings are prohibited in the R2 Low density residential zone; however, the proposal complies in terms of the requirements of SEPP HSPD detailed as follows:

40 Development standards—minimum sizes and building height

- (1) **General** A consent authority must not consent to a development application made pursuant to this Chapter unless the proposed development complies with the standards specified in this clause.
- (2) **Site size** The size of the site must be at least 1,000 square metres
- (3) **Site frontage** The site frontage must be at least 20 metres wide measured at the building line.
- (4) **Height in zones where residential flat buildings are not permitted** If the development is proposed in a residential zone where residential flat buildings are not permitted—
- (a) the height of all buildings in the proposed development must be 8 metres or less, and
- Note—
- Development consent for development for the purposes of seniors housing cannot be refused on the ground of the height of the housing if all of the proposed buildings are 8 metres or less in height. See clauses 48 (a), 49 (a) and 50 (a).*
- (b) a building that is adjacent to a boundary of the site (being the site, not only of that particular development, but also of any other associated development to which this Policy applies) must be not more than 2 storeys in height, and
- Note—
- The purpose of this paragraph is to avoid an abrupt change in the scale of development in the streetscape.*
- (c) a building located in the rear 25% area of the site must not exceed 1 storey in height.

With respect to Clause 40(2) and (3), the proposal satisfies the requirements with a site area of 7,907.6m² and a site frontage of approximately 40m to Penrhyn Avenue.

With respect to Clause 40(4)(a), the proposal complies with the height requirements of SEPP HSPD, whereby, the non-discretionary height standard of 8m to the ceiling with which the proposal complies, prevails over any inconsistency with the 8.5m height standard contained in HLEP. This was confirmed in judgements in the Court of Appeal in *Hastings Point Progress Association Inc v Tweed Shire Council* and the Land and Environment Court of NSW in *Eastern Suburbs Leagues Club Ltd v Waverley Council*. This is further reinforced by:

- Section 3.28(1)(a) of the Act which identified that in the event of an inconsistency between environmental planning instruments and unless otherwise provided, there is a general presumption that a SEPP prevails over a local environmental plan made before or after the policy; and
- Clause 5(3) of SEPP HSPD which details the following: “If this Policy is inconsistent with any other environmental planning instrument, made before or after this Policy, this Policy prevails to the extent of the inconsistency.”

With respect to Clause 40(4)(b), all buildings adjacent to a boundary would be no more than 2 storeys in height. As outlined under Clause 3(2) of SEPP HSPD “*in calculating the number of storeys in a development for the purposes of this Policy, a car park that does not extend above ground level by more than 1 metre is not to be counted as a storey.*”

As a consequence, the southern elevation of the townhouse building, and central apartment building are considered to have a 3 storey element due to the basement level being more than 1m above ground level. These matters are addressed in detail below and in Section 1.1.3 of this report.

With respect to Clause 40(4)(c), all buildings within the rear 25% of the site (Units 25, 26, 29 and 30, highlighted in yellow in Figure 3 below) do not exceed 1 storey in height.

Further clarification with regards to Clause 40(4)(c) of SEPP HSPD was requested by the Panel. The Applicants justification is outlined as follows:

“A ‘storey’ is defined in the Standards Instrument (Local Environmental Plans) Order 2006 and in the HLEP as a space within a building that is situated between one floor level and the floor level next above, or if there is no floor above, the ceiling or roof above.

While Dwellings 26 and 19 are elevated due to the sites irregular topography, they only contain 1 storey and comply with the standard in Clause 40(4)(c) of the SEPP.

The area between the dwellings and the southern boundary represents part of the developments general landscape setting and the design of Dwelling 26 for these areas has been amended to redirect the stairs providing access to this area to the site of the building opposite the boundary and providing an 1800mm high screen to the deck to minimise overlooking. Extra screen planting has been provided to Dwelling 29 to complement the existing privacy screen proposed for the deck to this dwelling”.

Council concurs with the Applicant’s assessment of Clause 40(4)(c) of SEPP HSPD and considers the proposal acceptable in this regard.



Figure 3: Site + Roof Plan, prepared by Peter Brooks, 03/03/23

Townhouse Building - 3 Storey Element

Clause 40(4)(b) of the SEPP HSPD provides that the height of a building is not to exceed 2 storeys adjacent to a boundary of the site in residential zones where residential flat buildings are not permitted.

The proposed 2-storey townhouse building is to comply with the standard where it is adjacent to the northern boundary of the site.

However, due to the topography of the site, parts of the car park under the townhouses in the southern section will project more than 1m above ground level.

Under the terms of the SEPP HSPD, where these projections occur, the building would be regarded to contain 3 storeys.

These 3 storey elements will not be visible adjacent to, or visible from, the northern boundary or in the Penrhyn Avenue streetscape and have been considered under Clause 4.6 of the HLEP and discussed in detail under Section 1.1.3 of this report.

Central Apartment Building - 3 Storey Element

Clause 50 of SEPP HSPD includes non-discretionary development standards whereby compliance cannot be used to refuse development consent. Section 2.2.14 of LPP Report No. LPP61/22 outlines that the proposal generally complies with these standards. The following minor variation is discussed below:

50 Standards that cannot be used to refuse development consent for self-contained dwellings

A consent authority must not refuse consent to a development application made pursuant to this Chapter for the carrying out of development for the purpose of a self-contained dwelling (including in-fill self-care housing and serviced self-care housing) on any of the following grounds—

- (a) *building height: if all proposed buildings are 8 metres or less in height (and regardless of any other standard specified by another environmental planning instrument limiting development to 2 storeys),*

The basement of the central apartment block (refer to the red circled building in Figure 3) along its access driveway would be at RL 135.00 and this wall is on the existing RL 133.00 contour (this contour is shown in grey on all plans and the level noted at the boundary of the site). The basement is therefore 2m above natural ground and is counted as a storey (refer to area marked in red in Figure 4 below). The ceiling of the top units along this wall is at RL 140.70 and is 7.7m above existing ground thus complying with Clause 40(4)(a) of the SEPP.

In line with the above, a portion of central apartment block would be 3 storeys in height. In support of this non-compliance, the proposal remains compliant with the height requirements of SEPP HSPD and the 3 storey element would be limited to the centre of the site, having minimal amenity impacts to adjoining neighbours and is considered acceptable in this regard.

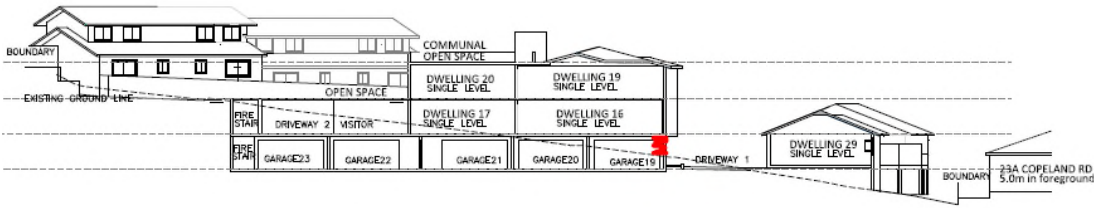


Figure 4: Section, prepared by Peter Brooks, 03/11/22

Given the central apartment is considered to have a 3-storey element, the Local Planning Panel requested an assessment of SEPP 65 be made by the Applicant. This assessment was submitted and is and discussed in Section 1.3 below.

1.3 State Environmental Planning Policy No 65 Design Quality of Residential Apartment Development

As outlined above, the proposal requires consideration of State Environmental Planning Policy No. 65 Design Quality of Residential Flat Development (SEPP 65) provides for design principles to improve the design quality of residential flat development and for consistency in planning controls across the State.

SEPP 65 adopts the Apartment Design Guide which prevails in the event of any inconsistency with a Development Control Plan. The Policy includes objectives to meet housing and population targets, affordable housing and to facilitate timely and efficient assessment of development applications.

SEPP 65 makes further provision for design review panels; includes additional provisions for the determination of development application and for standards for car parking, visual privacy, solar and daylight access, common circulation and spaces, apartment size and layout, ceiling heights, private open space and balconies, natural ventilation and storage, which cannot be used as grounds for refusal of development consent.

The applicant has submitted a “Design Verification Statement” prepared by a qualified Architect stating how the proposed development achieves the design principles of SEPP 65. An assessment of the proposal against the design quality principles contained within Schedule 1 of SEPP 65 and the submitted design verification statement are addressed in the following table:

SEPP 65 - Schedule 1 Assessment	
Principle	Compliance
1. CONTEXT AND NEIGHBOURHOOD CHARACTER	Yes
Comment: The site meets the locational criteria of the SEPP HSPD and residential flat buildings are permissible. The site is a large, aggregated site with a streetscape frontage to Penrhyn Ave and a battle axe driveway access to Pennant Hills Road. The site has a significant crossfall from the north-west to the south-east. The central apartment building has been located in the centre of the site and is separated from adjoining buildings by buildings that are of typical size to those on adjacent sites and uses the crossfall of the site to maintain a substantial two storey elevation with all parking below ground. The development is considered suitable with respect to the site context and neighbourhood	

character.	
2. BUILT FORM AND SCALE	Yes
<p>Comment: The design complies with the height and density controls of the SEPP HSPD. The design addresses the setting of the site by maintaining the building form on surrounding sites in key areas fronting Penrhyn Ave and at boundary interfaces with adjoining houses. The bulk and scale of the central apartment building is minimised by articulation of building elements and changes in level. The location of the central apartment building in the middle of the site will have minimal effect on existing views, vistas and streetscape.</p> <p>The development achieves a scale consistent with the desired outcome for well-articulated buildings that are set back to incorporate landscaping, open space and separation between buildings.</p> <p>The proposed building achieves an appropriate built form for the site and its purpose, in terms of building alignments, proportions, and the manipulation of building elements. The materials and finishes would add to the visual interest of the development.</p>	
3. DENSITY	Yes
<p>Comment: The site proposes a FSR of 0.45:1 which is less than the maximum 0.5:1 permissible in SEPP HSPD and typical of the adjoining dwellings.</p> <p>The modified proposal is sustainable as it responds to the regional context, availability of infrastructure, public transport, community facilities and environmental quality and is acceptable in terms of density.</p>	
4. SUSTAINABILITY	Yes
<p>Comment: The applicant has submitted a BASIX Certificate for the proposed development. In achieving the required BASIX targets for sustainable water use, thermal comfort and energy efficiency, the proposed development would achieve efficient use of natural resources, energy and water throughout its full life cycle, including demolition and construction.</p>	
5. LANDSCAPE	Yes
<p>Comment: The proposal has been designed to facilitate the retention of significant trees on the site.</p> <p>The application complies with the applicable controls for this site and provides integration of public and private open space areas. The design of the building facilitates environmental sustainability and residential amenity.</p> <p>The building footprint and provision of car parking under the buildings allows for increased landscaping and large common open spaces. The proposed landscape scheme incorporates the existing trees and provides extensive landscaping and screening.</p>	
6. AMENITY	Yes
<p>Comment: The dwellings have been designed with appropriate room dimensions and layout to maximise amenity for future residents. The proposal incorporates good design in terms of achieving natural ventilation, solar access and acoustic privacy. All buildings incorporate accessible design, access to balconies is provided from living areas and privacy has been achieved through appropriate</p>	

design and orientation of balconies and living areas.

The proposal would provide convenient and safe access via a centralised lifts connecting the basement and all other levels.

7. SAFETY AND SECURITY

Yes

Comment: The residential building entries are located in areas that are open and subject to casual surveillance both from within the proposed RFB and also from the other residential dwellings proposed as part of this development. All residential entries will be security controlled by means of intercoms and electronic locks.

Communal open space is overlooked by units to provide ample opportunity for casual surveillance. The pedestrian and vehicular entry points are secured and visibly prominent. Condition No. 76 has been recommended for safety and security measures to be installed in each of the units/dwelling.

8. HOUSING DIVERSITY AND SOCIAL INTERACTION

Yes

Comment: The development responds to the social context in terms of providing Seniors Living Dwellings in this with 3 bedrooms to accommodate the demographic 'downsizing' and being visited by family and friends, with good access to social facilities and services. There are 8 units proposed with the central apartment building of the development, with 5 different layouts to provide variety.

The development comprises a range of facilities and communal areas to provide opportunities for social interaction among residents.

9. AESTHETICS

Yes

Comment: The articulation of the buildings, varying roof form, composition of building elements/types, textures, materials and colours would achieve a built form generally consistent with the design principles contained within the Apartment Design Guide.

1.4 Apartment Design Guide

Amendment No. 3 of SEPP 65 also requires consideration of the Apartment Design Guide (ADG), NSW Department of Planning and Environment 2015. The ADG includes development controls and best practice benchmarks for achieving the design principles of SEPP 65. The following table sets out the proposal's compliance with the ADG:

Apartment Design Guide			
Control	Proposal	Requirement	Compliance
Communal Open Space (3D-1)	>25%	25% of site area	Yes
Solar Access (Communal open space areas) (3D-1)	>50%	50% direct sunlight access for 2 hours	Yes
Deep Soil Zone (3E-1)	30.4%	15% of site area	Yes
Building Separation (3F-1)			

ITEM 1

- <i>Ground - Level 3</i>	Varies throughout site	12m between habitable windows and balconies. 6m to non-habitable	No
Car Parking (3J-1)	67 spaces	45 spaces	Yes
Solar Access (4A-1)			
- <i>Living rooms</i>	75% - 6/8	2 hours for 70%	Yes
- <i>Private open space</i>	75% - 6/8	2 hours for 70%	Yes
No Solar Access allowable for units (4A-1)	0%	15% of units (max)	Yes
Natural Cross Ventilation (4B-3)	100% - 8/8	60%	Yes
Ceiling Height (4C-1)	2.7m 2.4m	2.7m for habitable rooms 2.4 for non-habitable rooms	Yes
Minimum Dwelling Size (4D-1)			
- <i>3 bed units</i>	>90m ²	90m ²	Yes
Minimum Window Size (4D-1)	>10%	10% of floor area of room	Yes
Habitable Room Depth (4D-2)	Complies	8m from a window (max for open plan) or 2.5 x ceiling height	Yes
Apartment Layouts - Minimum Bedroom Size (4D-3)			
- <i>Master bedroom</i>	>10m ²	min 10m ²	Yes
- <i>Other bedrooms</i>	>9m ²	min 9m ²	Yes
Apartment Layouts - Combined Living / Dining Rooms Minimum Width (4D-3)			
- <i>2/3 bed units</i>	4m	4m	Yes
Apartment Layouts - Cross Through Apartments (4D-3)	>4m	min 4m width	Yes
Minimum Balcony Size (4E-1)			
- <i>3+ bed units</i>	>10.2m ² / >2.4m	12m ² / 2.4m depth	No

Maximum Number of Units on a Single Level (4F-1)	max. 4	8 units off a circulation core	Yes
Storage (4G-1)			
- 3+ bed units	>10m ³	10m ³	Yes
- % located within unit	50%	50%	Yes

ITEM 1

As demonstrated above, the central apartment component of the development generally complies with the ADG requirements. The minor variations are discussed below.

In support of the building separation variations, it is noted as follows:

- The building separation between the central apartment building to the townhouse building is consistent with the ADG requirements.
- Whilst there are some variations between the central apartment building and duplex buildings to the south, the windows and private open spaces have been designed to ensure adequate separation between relative levels.
- Windows and private open spaces have been designed to prevent overlooking.
- All units offer an open layout with natural ventilation and accordingly, the minor non-compliance is acceptable with respect to residential amenity.

In support of the balcony size variation, it is noted as follows:

- All balconies within the central apartment building comply with the minimum depth requirements.
- The units include large living and entertaining areas and are in close proximity to a number of communal open space areas within the complex to compensate for this minor shortfall.

1.5 Hornsby Development Control Plan 2013

The Hornsby Development Control Plan 2013 (HDCP) applies to all land within Hornsby Shire. Parts 1 and 7.2 apply to the proposed development. Below is a discussion on the relevant parts of the HDCP that apply to the proposed development, addressing the matters raised by the panel when the application was deferred.

1.5.1 Traffic

Council's Traffic and Road Safety Team's initial assessment of the proposal determined that the development would have minimal impacts to the existing local road network and considered it to be acceptable under Part 1C.2.1 Transport and Parking of the HDCP.

notwithstanding, one of the reasons the application was deferred by the Hornsby Local Planning Panel was because the panel requested a further review by Council's Traffic and Road Safety Team to investigate options for the Penrhyn Avenue/ Hannah Street intersection (including traffic calming devices on Hannah Street) given the neighbours' concerns with this aspect of the development. In response to these concerns, Council staff undertook site monitoring, intersection analysis and requested tube count survey data from the Applicant for this intersection. The data and monitoring were undertaken during the month of March 2023.

Council's Traffic and Road Safety Team's further investigation and assessment of the additional information regarding the Penrhyn Avenue/ Hannah Street intersection is outlined as follows:

1.5.1.1 Traffic Speed and Volume at Hannah Street Near Penrhyn Avenue

Varga Traffic Planning has conducted a tube count survey for traffic speed data at Hannah Street near Penrhyn Avenue. The data was collected between Wednesday 8th March 2023 and Wednesday 15th March 2023.

Traffic Section has reviewed the data provided. Traffic data shows that although some speeding behaviour can be observed during early morning (1am to 6am), vehicle travel speed does not exceed speed limit for the majority of the day, including AM and PM peak hours. A review of the crash data for the subject intersection shows there are no reported crashes for the last five years. The intersection performs safely.

The nett traffic generation of the proposed senior living development is expected to be 8 vehicle trips in the weekday AM and PM peak hours. Adding these numbers to the existing traffic, Hannah Street near Penrhyn Avenue will have around 53 vehicle trips during peak hours on average. This number is well below environmental capacity goal of a local street, which is 200 vehicles per hour during peak hours. In general terms the traffic volumes at the intersection of Hannah Street and Penrhyn Avenue are significantly lower than most other local road in the shire. This is due to Hannah Street being partially closed at the intersection with Pennant Hills Road.

Response to suggestions from residents:

- *Upgrading intersection of Hannah with Penrhyn Avenue to roundabout*

Traffic Response: Roundabouts are generally installed to address poor level of service, or crash history at an intersection. Traffic volumes at the intersection are very low and a roundabout is not required to address traffic delays of the intersection. Upgrading an existing priority-controlled intersection to a roundabout requires significant resource spending, including geometric survey, roundabout design, construction capital cost and maintenance cost. The proposed development is expected to increase 8 vehicle trips during peak hours, which has minor impact to the intersection.

Council's Traffic Team requires the proponent to formalise this intersection as a stop controlled intersection, with 20 metres no stopping and stop-line markings at the Penrhyn Avenue approach. The stop control is to enhance safety of the subject intersection. Traffic Section considered a roundabout at this intersection is not warranted. Detailed intersection analysis is provided below.

- *Adding Traffic Calming devices near intersection of Hannah with Penrhyn Avenue*

Traffic Response: The traffic survey for the intersection shows that although some speeding behaviour can be observed during early morning (1am to 6am), average vehicle travel speed does not exceed speed limit for the majority of the day, including AM and PM peak hours. A review of the crash data for the subject intersection shows there are no reported crashes for the last five years. The intersection performs safely. Thus, traffic calming devices near intersection of Hannah with Penrhyn Avenue is not warranted.

1.5.1.2 SIDRA Analysis

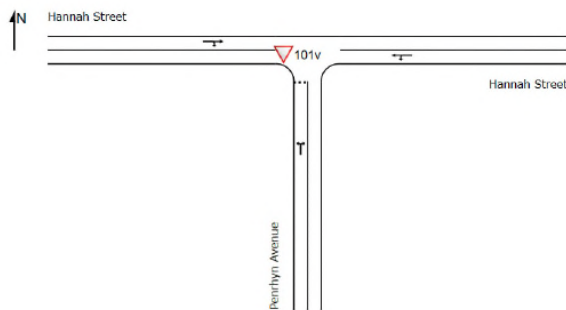
Council's Traffic Section conducted a SIDRA analysis for the proposal to show traffic impact on the intersection of Hannah Street with Penrhyn Avenue before and after the proposed development.

SITE LAYOUT

▽ Site: 101v [Hannah Street with Penrhyn Avenue - Before Development - Conversion (Site Folder: General)]

New Site
Site Category: Proposed Design 1
Give-Way (Two-Way)

Layout pictures are schematic functional drawings reflecting input data. They are not design drawings.

**SITE LAYOUT**

● Site: 101 [Hannah Street with Penrhyn Avenue - After Development (Site Folder: General)]

New Site
Site Category: Proposed Design 1
Stop (Two-Way)

Layout pictures are schematic functional drawings reflecting input data. They are not design drawings.

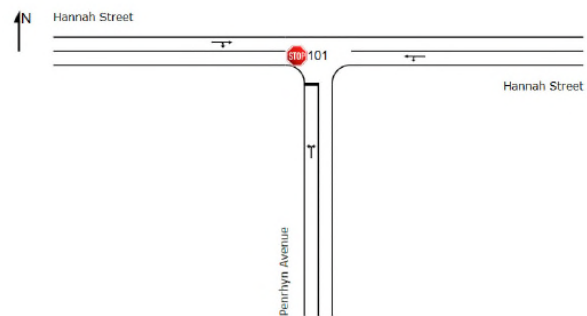


Figure 5: Site layouts before and after the proposed development

MOVEMENT SUMMARY

▽ Site: 101v [Hannah Street with Penrhyn Avenue - Before Development - Conversion (Site Folder: General)]

Output produced by SIDRA INTERSECTION Version: 9.1.1.200

New Site
Site Category: Proposed Design 1
Give-Way (Two-Way)

Vehicle Movement Performance															
Mov ID	Turn	Mov Class	Demand Flows [Total HV]		Arrival Flows [HV]		Deg Satn	Aver Delay	Level of Service	95% Back Of Queue Dist [Vch. m		Prop. Que	Eff. Stop Rate	Aver No. of Cycles	Aver Speed
			veh/h	%	veh/h	%	v/c	sec		veh	m				km/h
South: Penrhyn Avenue															
1	L2	All MCs	8	0.0	8	0.0	0.012	4.7	LOS A	0.0	0.3	0.14	0.51	0.14	45.7
3	R2	All MCs	7	0.0	7	0.0	0.012	4.6	LOS A	0.0	0.3	0.14	0.51	0.14	45.5
Approach			16	0.0	16	0.0	0.012	4.6	LOS A	0.0	0.3	0.14	0.51	0.14	45.6
East: Hannah Street															
4	L2	All MCs	18	0.0	18	0.0	0.037	4.6	LOS A	0.0	0.0	0.00	0.14	0.00	48.0
5	T1	All MCs	54	0.0	54	0.0	0.037	0.0	LOS A	0.0	0.0	0.00	0.14	0.00	49.2
Approach			72	0.0	72	0.0	0.037	1.1	NA	0.0	0.0	0.00	0.14	0.00	48.9
West: Hannah Street															
11	T1	All MCs	19	0.0	19	0.0	0.010	0.0	LOS A	0.0	0.0	0.02	0.03	0.02	49.8
12	R2	All MCs	1	0.0	1	0.0	0.010	4.7	LOS A	0.0	0.0	0.02	0.03	0.02	48.3
Approach			20	0.0	20	0.0	0.010	0.2	NA	0.0	0.0	0.02	0.03	0.02	49.7
All Vehicles			107	0.0	107	0.0	0.037	1.5	NA	0.0	0.3	0.02	0.17	0.02	48.5

MOVEMENT SUMMARY

● Site: 101 [Hannah Street with Penrhyn Avenue - After Development (Site Folder: General)]

Output produced by SIDRA INTERSECTION Version: 9.1.1.200

New Site
Site Category: Proposed Design 1
Stop (Two-Way)

Vehicle Movement Performance															
Mov ID	Turn	Mov Class	Demand Flows [Total HV]		Arrival Flows [Total HV]		Deg. Satn	Aver. Delay	Level of Service	95% Back Of Queue Dist.]		Prop. Que	Eff. Stop Rate	Aver. No. of Cycles	Aver. Speed
			veh/h	%	veh/h	%	v/c	sec		veh	m				km/h
South: Penrhyn Avenue															
1	L2	All MCs	12	0.0	12	0.0	0.016	7.5	LOS A	0.1	0.4	0.15	0.90	0.15	44.5
3	R2	All MCs	8	0.0	8	0.0	0.016	7.3	LOS A	0.1	0.4	0.15	0.90	0.15	44.3
Approach			20	0.0	20	0.0	0.016	7.5	LOS A	0.1	0.4	0.15	0.90	0.15	44.4
East: Hannah Street															
4	L2	All MCs	22	0.0	22	0.0	0.039	4.6	LOS A	0.0	0.0	0.00	0.16	0.00	47.9
5	T1	All MCs	54	0.0	54	0.0	0.039	0.0	LOS A	0.0	0.0	0.00	0.16	0.00	49.1
Approach			76	0.0	76	0.0	0.039	1.3	NA	0.0	0.0	0.00	0.16	0.00	48.7
West: Hannah Street															
11	T1	All MCs	19	0.0	19	0.0	0.010	0.0	LOS A	0.0	0.0	0.02	0.03	0.02	49.8
12	R2	All MCs	1	0.0	1	0.0	0.010	4.7	LOS A	0.0	0.0	0.02	0.03	0.02	48.3
Approach			20	0.0	20	0.0	0.010	0.2	NA	0.0	0.0	0.02	0.03	0.02	49.7
All Vehicles			116	0.0	116	0.0	0.039	2.2	NA	0.1	0.4	0.03	0.26	0.03	48.1

Figure 6: Level of Service (LoS) and delay time before and after the proposed development

From the comparison, it can be seen that the proposed development will not change the level of service (LoS) for the intersection of Hannah Street with Penrhyn Avenue and that it will continue to operate at LoS A. Average delay time for all vehicles changed from 1.5 seconds to 2.2 seconds,

which sees only 0.7 seconds increase. The minor increase in delay comes from the change of the setup of intersection from priority controlled 'Give Way' to 'Stop' controlled, as suggested by Council's Traffic Section in earlier assessment. The small increase of the delay time is considered acceptable.

The analysis also demonstrated that a roundabout treatment for the subject intersection is not warranted.

In summary, the above analysis provided further clarity to Council's initial assessment of the application confirming that the proposal would have minimal impacts to the existing local road network and considered it to be acceptable under Part 1C.2.1 Transport and Parking of the HDCP, subject to the following conditional requirements:

- 'No Parking' signs are to be installed in the cul-de-sac subject to the approval of Hornsby Local Traffic Committee before the issue of a Construction Certificate; and
- The intersection of Penrhyn Avenue with Hannah Street is to be formalised as a stop controlled intersection within 20m 'No stopping' and stop-line markings at the Penrhyn Avenue approach subject to the approval of Hornsby Local Traffic Committee before the issue of a Construction Certificate
- To provide a pedestrian footpath link to Hannah Street, a concrete footpath must be designed along the full length of the southern side of Penrhyn Avenue in accordance with AUS-SPEC Specifications.
- A Construction Traffic Management Plan and Pedestrian Access Management Plan detailing construction vehicle routes, number of trucks, hours of operation, access arrangements and traffic control should be submitted to Council prior to the issue of a construction certificate. Council will review the CTMP, agree any modifications with the proponent and enforce the CTMP during construction.
- All car parking must be operated in accordance with Australian Standard AS/NZS2890.1:2004 Off-street car parking and Australian Standard AS2890.2:2002 Off-street commercial vehicle facilities and the following requirements:
 - All parking areas and driveways are to be sealed to an all-weather standard, line marked and signposted.
 - Car parking, loading and manoeuvring areas to be used solely for nominated purposes.
 - Vehicles awaiting loading, unloading or servicing shall be parked on site and not on adjacent or nearby public roads.
 - All vehicular entry on to the site and egress from the site shall be made in a forward direction.
 - All signage related to the driveways and parking on site must be implemented and maintained in perpetuity.
 - All parking spaces for people with disabilities must be constructed and operated in accordance with Australian Standard AS/NZS2890.6:2009 Off-street parking for people with disabilities.
 - Any proposed landscaping and/or fencing must not restrict sight distance to pedestrians and cyclists travelling along the footpath.

The conditions outlined above are recommended in Schedule 1 accordingly. The condition requiring provision of a pedestrian footpath has been amended to require the footpath to be located on the southern side of Penrhyn Ave instead of northern side to reflect community concerns and the location of a tree on the corner of Penrhyn Avenue.

1.5.1.3 Sight Lines at Penryn Avenue/Hannah Street Intersection

Council's investigations found that while the road geometry at the intersection complies with the Austroads Guidelines, there are a number of obstructions near the intersection that impact on sight lines, such as trees, power pole and shrubs.

To address this, Council's Parks Team have been requested to investigate pruning of vegetation on the nature strip of No. 107 Hannah Street to improve the sight lines. A 'Stop' sign and delineation has also been recommended to address the sight line deficiencies that Council may not be able to remove such as the trees/ vegetation and power pole.

In summary, it is considered that the issues raised in the deferral of the application have been adequately investigated in this regard and appropriate conditions recommended.

1.5.2 Earthworks and Slope

Part 1C.1.4 Earthworks and Slope under the HDCP has been addressed in Section 2.1.4 of this report and is considered acceptable.

1.5.3 Accessible Design

The Hornsby Local Planning Panel deferred its determination of the application to enable the Applicant to demonstrate that emergency vehicles could access all dwellings within the site including vehicle access/ throughway and height requirements beneath the townhouse building.

In response to this request, amended plans were submitted to increase the clearance height for driveway No. 2 to 3m to ensure a standard Mercedes Sprinter ambulance with a height of 2.8m could access all areas of the site. Emergency access paths are noted on drawings via lifts and pathways. Finished floor levels of the basement level of the townhouse building have been modified to accommodate the additional height.

In response to concerns raised by a neighbour, the structure accommodating the lift platform was relocated to the west of the common boundary between No. 573 and 575 Pennant Hills where it would reduce any associated amenity impacts whilst maintaining accessibility requirements.

To ensure the proposal achieves Seniors Housing Accessibility Design requirements, prior to the issue of a Construction Certificate, a Certificate from an appropriate qualified access consultant is to be submitted to the Principal Certifying Authority (PCA) certifying that the Construction Certificate plans demonstrate compliance with the specifications within the Access Review Report - Final v5 prepared by Morris Goding Access Consulting, dated 31 July 2022.

Prior to the issue of an Occupation Certificate, accessibility requirements of SEPP HSPD, AS1428 series, Building Code of Australia (BCA), and DDA Access to Premises Standards (including DDA Access Code) including the pedestrian footpath to the bus stops in Pennant Hills Road must be met and confirmed by an appropriately qualified access consultant

Subject to conditions, the proposal meets the desired outcomes and prescriptive measures of Part 1C.2.2 Accessible Design under the HDCP and is considered acceptable.

1.5.4 Landscaping and Tree Preservation

The proposed development incorporates landscaping that integrates the built form with the locality and reinforces the desired future character of the low density residential area.

To address a number of matters raised in the deferral of the application, the following amendments have been made in terms of landscaping:

- Amended plans submitted increasing the excavation/ retaining wall setback to 1.5m off the western side boundary adjacent to the site of No. 573 Pennant Hills Road to establish and deep soil planting area. The *Camellia sasanquas* on the subject site would be removed and replaced with screen planting and the hedge identified as G1 would be retained and protected within the neighbouring property. The accessibility ramp has been setback and the bin room relocated to an acceptable location to address these concerns.
- The plans amended to centralise the pathway and includes further details with regards to lighting, gates, platform lift and landscaping along with sides of the pathway to protect/improve the amenity of the adjoining neighbours.
- Tree No. 139 is now proposed for retention with protection measures required to incorporate surrounding landscape works and pathways.

In addition to the above, a condition is recommended in Schedule 1 requiring the screen plants along the western elevation of the site, adjoining the rear boundary of No. 573 Pennant Hills Road to be a minimum of 25 litres when planted to ensure screening establishes at a faster rate. Council's Tree Management Team reviewed the amended proposal and agreed that the *Camellia Sasanqua's* could not be retained, and the proposed replacement screen plantings were acceptable in this regard.

Further, conditions have been amended to reflect the retention and protection of tree number 139 and the centralised location of the pathway connecting to Pennant Hills Road is considered acceptable, with improved amenity to adjoining neighbours.

In response to a concern raised by a neighbour regarding tree species, it is noted that the chosen species types for replacement plantings are clearly outlined in the approved landscape plans and are considered acceptable in this regard.

The landscaping softens the visual impact of the buildings and improves the aesthetic quality of the development, meeting the desired outcomes and prescriptive measures of Part 1C.2.9 Landscaping under the HDCP.

2. PUBLIC PARTICIPATION



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

2.1 Community Consultation

The proposed development was placed on public exhibition and was notified to adjoining and nearby landowners from 24 November 2021 to 16 December 2021 and from 2 August 2022 to 25 August 2022 in accordance with the Hornsby Community Engagement Plan. During these notification periods, Council received a total of 80 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	
11 SUBMISSIONS RECEIVED OUT OF MAP RANGE OR UNKNOWN				

The issues/merits of the matters raised in community submissions have been addressed in the body of the original assessment report.

The amended plans/ documentation submitted in response to the deferral of the application by the LPP were not required to be notified given the minor physical changes to the proposal. Notwithstanding, the direct neighbour to the west at No. 573 Pennant Hills Road was individually notified and provided with 14 days to review given the direct relationship between the amendments and this particular property owner’s concerns. All additional information was made publicly available to view on Council’s website.

Council received submissions from the owner of No. 573 Pennant Hills Road, the owner of No. 10 Penryhn Avenue and both owners of No. 5A Penrhyn Avenue. The concerns raised in these submissions are outlined as follows:

- Ongoing concerns regarding the intersection of Hannah Street and Penrhyn Avenue, requesting further traffic data analysis be undertaken
- Type of traffic calming devices
- Results of traffic data analysis of intersection

- Overdevelopment of the site
- Waste management and bin collection
- Parking and Pedestrian Safety
- Increased traffic movement in street from additional occupancy and during construction
- Inadequacies of demolition, excavation and construction noise and management
- Emergency vehicle accessibility
- Building heights
- Concern regarding location of new footpath on northern side of Penrhyn Avenue
- Accessibility
- Pennant Hills Road pedestrian access
- Access through the townhouse building
- Challenging internal path network and connectivity
- Removal of trees numbered 18-25
- Species types of replacement plantings

In response to these concerns, these matters have been discussed in detail throughout the body of this report and within the original assessment report (Attachment 2 of this report).

3. 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 5 existing dwellings and the construction of 30 self-contained Seniors living dwellings. The application also proposes the consolidation of the 6 lots into 1, associated civil/site works and landscape works.

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 a total of 80 submissions during the public notification periods. The matters raised have been addressed in the body of the report.

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

The reasons for this decision are:

- The proposed development complies with the requirements of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004, State Environmental Planning Policy No 65 Design Quality of Residential Apartment Development, relevant environmental planning instruments, the Hornsby Local Environmental Plan 2013 and the Hornsby Development Control Plan 2013.
- The proposed development does not create unreasonable environmental impacts to adjoining development with regard to visual bulk, 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.

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. Original LPP Report Nov 2022
3. Amended Architectural Plans
4. Amended Landscape Plans
5. Applicant Response to Deferred Requirements
6. Applicant Response to Deferred Requirements
7. Clause 4.6 Request

File Reference: DA/1244/2021
Document Number: D08588760

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

Plan No.	Plan Title	Drawn by	Dated	Council Reference
BPA2202, Sk1l, Issue L	Site and Roof Plan	Brooks Projects Architects	03/03/23	
BPA2202, Sk2p, Issue R	Floor Plan - RL 132.00	Brooks Projects Architects	03/03/23	
BPA2202, Sk3q, Issue Q	Floor Plan - RL 135.00	Brooks Projects Architects	03/03/23	
BPA2202, Sk4p, Issue P	Floor Plan - RL 138.00	Brooks Projects Architects	03/03/23	
BPA2202, Sk5l, Issue M	Floor Plan - RL 141.00	Brooks Projects Architects	03/03/23	
BPA2202, Sk10e, Issue E	Sections	Brooks Projects Architects	03/03/23	
BPA2202, Sk20a, Issue A	Elevations - Apartment Dwellings 15-22	Brooks Projects Architects	03/03/23	
BPA2202, Sk21a, Issue A	Elevations - Apartment Dwellings 15-22	Brooks Projects Architects	03/03/23	
BPA2202, Sk22a, Issue A	Elevations - Townhouse Dwellings 4-14	Brooks Projects Architects	03/03/23	
BPA2202, Sk23a, Issue A	Elevations - Townhouse Dwellings 4-14	Brooks Projects Architects	03/03/23	
BPA2202, Sk24a, Issue A	Elevations - Duplex Dwellings 1-3	Brooks Projects Architects	03/03/23	

ITEM 1

Plan No.	Plan Title	Drawn by	Dated	Council Reference
BPA2202, Sk25a, Issue A	Elevations - Duplex Dwellings 23-25	Brooks Projects Architects	03/03/23	
BPA2202, Sk26a, Issue A	Elevations - Duplex Dwellings 26-28	Brooks Projects Architects	03/03/23	
BPA2202, Sk27a, Issue A	Elevations - Duplex Dwellings 29-30	Brooks Projects Architects	03/03/23	
BPA2202, Sk13b, Issue B	Demolition Plan	Brooks Projects Architects	26/04/22	
BPA2202, Sk11d, Issue C	Bus Stop Access Plan	Brooks Projects Architects	01/11/21	
187.22(21)/407'F', 1/6	Landscape Plan	iScape Landscape Architecture	08/03/23	
187.22(21)/408'F', 2/6	Detailed Landscape Plan 1	iScape Landscape Architecture	08/03/23	
187.22(21)/409'F', 3/6	Detailed Landscape Plan 3	iScape Landscape Architecture	08/03/23	
187.22(21)/410'F', 4/6	Detailed Landscape Plan 3	iScape Landscape Architecture	08/03/23	
187.22(21)/411'E', 5/6	Detailed Landscape Plan 4	iScape Landscape Architecture	08/03/23	
187.22(21)/412'E', 6/6	Materials Palette	iScape Landscape Architecture	08/03/23	
02542_100	Cover Sheet, Drawing Index, General Note	C & M Consulting Engineers	28/04/22	
02542_201	Stormwater Drainage Plan - Ground Floor	C & M Consulting Engineers	28/04/22	
02542_202	Stormwater Drainage Plan - First Floor	C & M Consulting Engineers	28/04/22	
02542_203	Stormwater Drainage Plan - Second Floor	C & M Consulting Engineers	28/04/22	
02542_401	Driveway Plan	C & M Consulting Engineers	28/04/22	
02542_402	Longitudinal Sections Driveway 1	C & M Consulting Engineers	28/04/22	
02542_403	Longitudinal Sections Driveway 2	C & M Consulting Engineers	28/04/22	
02542_404	Longitudinal Sections Driveway 3	C & M Consulting Engineers	28/04/22	
02542_621	On-Site Detention Tank - Plan & Details	C & M Consulting Engineers	28/04/22	
02542_631	Stormwater Longitudinal Section	C & M Consulting Engineers	28/04/22	
02542_701	Sediment & Erosion Control Plan & Details	C & M Consulting Engineers	28/04/22	

Supporting Documentation

Document Title	Prepared by	Dated	Council Reference
BASIX Certificate No. 1250894M_03	Sustainability-Z Pty Ltd	17/11/22	D08536961
Arboricultural Impact Assessment Rev. 1	Urban Arbor	03/02/23	D08586980
Access Review - Final v5	Morris Goding Access Consulting	31/07/22	D08507903
Overland Flow Assessment, Rev B	C & M Consulting Engineers	02/05/22	D08401374
Stormwater Management Plan, Rev B	C & M Consulting Engineers	28/04/22	D08401376
Detailed Site Investigation	Neo Consulting	28/09/21	D08299444
Waste Management Plan	Brooks Projects Architects	27/10/21	D08299485

Reason: To ensure all parties are aware of the approved plans and supporting documentation that apply to the development.

2. Amendment of Plans

To comply with Council's requirement in terms of waste management and privacy, the approved plans are to be amended as follows:

- a) To maintain the privacy of a number of residences within the complex and neighbouring properties, any balcony servicing a dwelling/unit within the complex greater than 600mm above natural ground level must include translucent glazed balustrades to maintain visual amenity.
- b) Further details are to be provided regarding the waste management of the development. These details are to form an addendum to Waste Management Plan prepared by Brooks Projects Architects, dated 27/10/21 and must be submitted in accordance with the provisions of Council's Development Control Plan and prior to the issue of the Construction Certificate. These details are to include:
 - i) Plans clearly showing the walking path and walking distance from each dwelling to their allocated bin storage room.
 - ii) A list of the bin storage rooms, and the dwellings allocated to use them.
- c) To establish planting screening at a faster rate, the screens plants along the western elevation of the site, adjoining the rear boundary of No. 573 Pennant Hills Road to be a minimum of 25 litres when planted.
- d) These amended plans must be submitted with the application for the Construction Certificate.

Reason: To require minor amendments to the approved plans and supporting documentation following assessment of the development.

3. Removal of Trees

ITEM 1

- a) This development consent permits the removal of trees numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 44, 45, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 80, 81, 94, 95, 97, 98, 99, 100, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 140, 141, 142, 143, 144, 145 and 146 as identified in the Arboricultural Impact Assessment (Rev.1) prepared by Urban Arbor, dated 3 February 2023.
- b) No consent is granted for the removal of trees numbered 35, 36, 37, 38, 39, 40, 41, 42, 43, 46, 47, 48, 49, 78, 79, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 96, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 139 and G1 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 (HDCP).

Reason: To identify only those trees permitted to be removed.

4. 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.

Reason: To ensure appropriate monitoring of tree(s) to be retained.

5. 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 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.
- c) A separate Subdivision Works Certificate must be obtained from Council for all works within the public road reserve under S138 of the *Roads Act 1993*.
- d) A separate Subdivision Works Certificate must be obtained from Council for all works within drainage easements vested in Council.
- e) The Construction Certificate / Subdivision Works Certificate plans must be consistent with the Development Consent plans.

Reason: To ensure that detailed construction certificate plans are consistent with the approved plans and supporting documentation.

6. 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	\$22,597.25
Open Space and Recreation	\$256,547.70
Community Facilities	\$158,010.30
Plan Preparation and Administration	\$2,185.80
TOTAL	\$439,341.05

being for 30 seniors living dwellings and 6 dwelling house/lot credits.

- b) The value of this contribution is current as of 14 April 2023. 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:

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

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:
- Prior to the issue of the Subdivision Certificate where the development is for subdivision.
 - Prior to the issue of the first Construction Certificate where the development is for building work.
 - Prior to issue of the Subdivision Certificate or first Construction Certificate, whichever occurs first, where the development involves both subdivision and building work.
 - 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.

Reason: To ensure development contributions are paid to address the increased demand for community infrastructure resulting from the approved development.

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.

Reason: Prescribed condition - EP&A Regulation section 69(1)

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.

Reason: To ensure adequate provision is made for fire safety to protect future occupants.

9. 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.

Reason: Prescribed condition EP&A Regulation section 69(2)

10. 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.

Reason: Prescribed condition EP&A Regulation section 71(2) and (3)

11. 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".

Reason: To identify and protect the State's survey infrastructure.

12. 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.

Reason: To ensure the development is provided with the relevant utility services.

13. Sydney Water - Approval

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

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

Reason: To ensure the development is provided with the relevant utility services.

14. Dilapidation Report

- a) Prior to the commencement of any works on site, the applicant must submit for approval by the Principal Certifying Authority (with a copy forwarded to Council) a 'Dilapidation Report' detailing the structural condition of the adjoining properties:
 - i) Lot 105, DP 1212765, No. 573 Pennant Hills Road, West Pennant Hills.
 - ii) Lot 165 DP 1212847, No. 20 Penrhyn Avenue, Beecroft.
- b) The report must include a photographic survey of the adjoining properties detailing their physical condition, both internally and externally, including such items as walls, ceilings, roof, structural members and other similar items. The report must be

completed by a chartered structural/geotechnical engineer. A copy of the dilapidation report must be submitted to Council.

- c) In the event access to adjoining allotments for the completion of a dilapidation survey is denied, the applicant must demonstrate in writing that all reasonable steps have been taken to advise the adjoining allotment owners of the benefit of this survey and details of failure to gain consent for access to the satisfaction of the Principal Certifying Authority.

Note: This documentation is for record keeping purposes only and can be made available to an applicant or affected property owner should it be requested to resolve any dispute over damage to adjoining properties arising from works. It is in the applicant's and adjoining owner's interest for it to be as detailed as possible.

Reason: To record the condition of adjoining properties and public land to resolve any dispute over damage from works.

15. Stormwater Drainage

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

- a) Connected to an existing Council piped drainage system 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 Councils 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) Where public assets and utilities are impacted by proposed works, the Applicant shall relocate or reconstruct the asset or utility in accordance with the relevant standard at the Applicant's cost;
 - 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.

Reason: To ensure appropriate provision for management and disposal of stormwater.

16. 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 124.7 cubic metres, and a maximum discharge (when full) of 183 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.

Reason: To manage stormwater flows to minimise potential flooding.

17. WSUD Facilities

- a) The proposed WSUD facilities include Ocean Guards (2x 200um), and Storm Filter Cartridges (12x 690mm) are to be constructed and meet the water quality targets as specified in the Hornsby Development Control Plan 2013.
- b) Design details prepared by a chartered civil engineer are to be provided prior to issue of a construction certificate.

Reason: To manage the quantity and quality of stormwater to better protect the local environment and waterways.

18. The Habitable Floor Levels

- a) The finished floor level of any habitable room to be not less than 500mm and the garage 300mm above the 100 year average recurrence interval storm level. The levels must be related to *Australian Height Datum* (AHD):
 - i) Dwelling 1 - 134.50m.
 - ii) Dwelling 2 - RL 134.18m.
 - iii) Dwelling 3 - RL 133.25m.
- b) The minimum finished floor level for the area designated to waste material is RL134.00.

Reason: To minimise potential flooding.

19. Building Materials and Construction Methods for Dwellings 1, 2 and 3

- a) Building materials below the minimum finished floor level shall be built from flood compatible materials and designed to withstand impact from debris carried in flood waters.
- b) Pier and beam method construction is to be undertaken for works adjacent to easements to the depth of the invert of the proposed and existing pipes.

Reason: To manage stormwater flows to minimise potential flooding.

20. Overland Flow Path Construction

- a) The existing depression/watercourse be constructed to contain the 1 in 100 year Average Recurrence Interval storm event across the subject site; generally in

accordance with the Flood Modelling Pre-Development Flood Extents, prepared by C & M Consulting Engineers, dated 02/05/2022.

- b) Council's piped drainage system to contain the 20 year Average Recurrence Interval (ARI) storm event with an overland flow of 100 years ARI provided above it.
- c) All fences crossing the overland flow path extents shall have a minimum 500mm of pool fencing at the base of the fence to allow overland flow to pass through the area unimpeded;

Note: A certificate from a chartered civil engineer together with a works as executed design plan must be submitted to the principal certifying authority to demonstrate the satisfaction of this condition.

- d) A separate Subdivision Works Certificate must be obtained from Council for all works within drainage easements vested in Council, prior to the commencement of physical works.

Reason: To manage stormwater flows to minimise potential flooding.

21. 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 pavement be a minimum 3 metres wide, 0.15 metres thick reinforced concrete with SL72 steel reinforcing fabric and a 0.15 metre sub-base.
- d) Retaining walls required to support the carriageway and the compaction of all fill batters to be in accordance with the requirements of a chartered structural engineer.
- e) The provision of safety rails where there is a level difference more than 0.3 metres and a 1:4 batter cannot be achieved.
- f) A common turning area to service the proposed development in accordance with Australian Standards AS 2890.1 to ensure vehicles can enter and leave the site in a forward direction. A right of access shall be created over the turning area to ensure access is maintained at all times.
- g) Construction of pedestrian access designed to help prevent slip and fall shall be designed and constructed with the future access driveway. Pedestrian grades steeper than 12.5% shall be provided with surface texturing, brushing or cleats to satisfy Class V: R11 ramps in accordance with Australian Standards AS 4586-2004 Clause 5.2.
- h) 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.

- i) A sag in the driveway is to be implemented within chainage 70.00 and chainage 65.00 in order to redirect overland flow back to the existing easement and overland flow path.

Reason: To provide safe vehicle and pedestrian access.

22. Redundant Driveway Crossing at 579 Pennant Hills Road

- a) Any redundant crossings must be replaced with integral kerb and gutter at No. 579 Pennant Hills Road to the satisfaction of Transport for NSW.
- b) A separate Subdivision Works Certificate or Subdivision Roads Application must be obtained from Council and Transport for NSW for all works within the public road reserve under S138 of the *Roads Act 1993*, prior to commencement of works.

Reason: To provide safe pedestrian movement.

23. Footpath Link from Penrhyn Avenue to Hannah Street

To provide a pedestrian footpath link to Hannah Street, a concrete footpath must be designed along the full length of the southern side of Penrhyn Avenue in accordance with AUS-SPEC Specifications (www.hornsby.nsw.gov.au/property/build/aus-spec-terms-and-conditions) and the following requirements:

- a) Pouring of the 1.2m wide concrete footpath to the whole length of Penrhyn Street.
- b) The land adjoining the footpath to be fully turfed.
- c) Any public utility adjustments to be carried out at the cost of the applicant and to the requirements of the relevant public authority.

Note: A separate Subdivision Works Certificate or Subdivision Roads Application must be obtained from Council for all works within the public road reserve under S138 of the Roads Act, prior to commencement of works.

Reason: To provide safe pedestrian movement.

24. Parking and Road Upgrades

- a) 'No Parking' signs are to be installed in the Cul-de-sac subject to the approval of Hornsby Local Traffic Committee before the issuing of a Construction Certificate; and
- b) The intersection of Penrhyn Avenue with Hannah Street is to be formalised as a stop controlled intersection within 20 metres 'No stopping' and stop-line markings at the Penrhyn Avenue approach subject to the approval of Hornsby Local Traffic Committee before the issuing of a Construction Certificate.

Note: Approval of Hornsby's Local Traffic Committee should be sought by emailing TrafficEngineering&RoadSafety@hornsby.nsw.gov.au

Reason: To ensure the management of traffic to maintain road and pedestrian safety.

25. Waste Management Details

The following waste management requirements must be complied with:

- a) Should there be any conflict or confusion between approved plans and/or consent conditions related to the waste management system or the waste collection vehicle travel path on site, then written clarification must be obtained from Council.
- b) The approved on-going waste management system must not be amended without the written consent of Council.
- c) There must be no steps along any bin carting route. Ramps and service lifts are acceptable.

Note: bin carting routes include, but are not limited to, from the bin storage rooms to the main bin storage/holding room.

- d) For all bin carting routes, the path must be smooth hard surface. (Concrete pavement for example is acceptable, but pebbles, stepping stones, grass etc is not acceptable).
- e) A design certificate and detailed plans are to accompany any Construction Certificate application, which demonstrate that the bin carting route from the main bin storage room / temporary bin holding room to the waste collection vehicle parked on the driveway has been designed to be constructed in accordance with the Waste Minimisation and Management Guidelines and including the following requirements:
 - i) Must be smooth hard surface.
 - ii) Must be no less than 2m wide (including through any gates or doors).
 - iii) Must be devoid of steps.
 - iv) Must have a gradient no steeper than 1:14 for 240L bins and 1:30 for 660L or 1100L bins.
 - v) The first 6m of the driveway must have a gradient no steeper than 1:20 and must be designed to carry the load of a heavy rigid waste collection vehicle.
- f) A design certificate and detailed plans are to accompany any Construction Certificate application, which demonstrate that for every dwelling, the walking path residents take from their dwelling to their assigned bin storage room has been designed to be constructed in accordance with the Waste Minimisation and Management Guidelines and including the following requirements:
 - i) The route is direct, does not cross into a private lot, and is wholly within property boundaries (does not include the public footpath or road).
 - ii) The route is as short as possible and does not exceed 30m walking distance.
 - iii) The route is an accessible path of travel for persons with a disability in accordance with AS1428 Design and Access for Mobility.
- g) A dedicated bulky waste storage area of at least 8 square metres internal area must be provided on site.
- h) A suitably sized lockable storage space must be provided for the motorised bin carting equipment (bin tug and trolley).
- i) A design certificate and detailed plans are to accompany any Construction Certificate application, which demonstrate that all waste storage rooms have been designed to be constructed in accordance with the Waste Minimisation and Management Guidelines and including the following requirements:

- i) The floor is to be constructed of concrete at least 75mm thick and adequately graded to drain to a Sydney Water approved drainage fitting.
- ii) The floor must be finished so that it is non-slip, sealed and impervious, and has a smooth and even surface coved at all intersections.
- iii) The 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 forced 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 width of no less than 920mm. The doors must be able to be opened from inside the room without a key. The door swing must not block access to bins.
- j) Every bin storage room must:
 - i) Be accessible by persons with a disability (in accordance with AS1428 Design and Access for Mobility) after the garbage bins and recycling bins are installed.
 - ii) Comfortably house the required number of bins for the dwellings allocated to use the bin room with every bin being accessible (no stacking of bins 2 or more deep).
 - iii) Have door(s) wide enough and positioned so that the largest bin (240L) can fit through.
 - iv) Be located no more than 30m walking distance from each dwelling allocated to use it. The walking path from each dwelling to the bin storage room must not include the public footpath, that must be wholly within the site. The walking path from each accessible/adaptable dwelling to the bin storage room must be an accessible path of travel.

Note: 240L bins are 600mm wide by 750mm deep; allow for ease around the bin - 75mm is recommended. Minimum aisle width for accessibility is 1.55m.
- k) The access way (including ramp, vehicle turning area, loading dock/service bay and site entry/exit) to be used by waste collection vehicles, must be designed in compliance with Australian Standard AS2890.2-2002 Parking Facilities Part 2: Off-street commercial vehicle facilities for heavy rigid vehicles.

Note: AS2890.2-2002 includes a maximum gradient of 1:6.5 for forward travel and 1:8 for reverse travel, a minimum vertical clearance of 4.5 m.
- l) A design certificate from a qualified traffic engineer and detailed plans are to accompany the Construction Certificate application that confirms that the waste can be directly collected from the main bin storage room at the ground level near the site entry. The design certificate is to specifically confirm that the:

- i) Waste collection vehicle is able to enter the site in a reverse direction, adequately manoeuvre into position near the bins, load bins and exit the site in a forward direction.
- ii) Vertical clearance of 4.5m is provided along the entire route of travel of the waste collection vehicle on site.
- iii) The installation of overhead lights, signs etc will not reduce the vertical clearance of the waste collection vehicle travel path on site to less than 4.5m.
- iv) The grades along the entire travel path of the waste collection vehicle on site must not exceed the maximum grades of AS2890.2 for a heavy rigid vehicle.
- v) The vehicle ground clearance is sufficient to prevent scraping.
- vi) The pavement width is no less than 6.0m wide and is designed to allow cars to pass the parked HRV waste collection vehicle.
- vii) All pavement has been designed to carry the load of the heavy rigid vehicle.
- m) 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.

Reason: To ensure the management of waste to protect the environment and local amenity.

26. Certification of Traffic Engineer

Prior to the issue of a Construction Certificate, a Certificate from an appropriate qualified Traffic Engineer is to be submitted to the Principal Certifying Authority (PCA) certifying that the parking modules, loading areas and garbage collection areas comply with Australian Standards AS2890.1, AS2890.2 and the approved Development Consent plans and conditions.

Reason: To ensure parking facilities and vehicle manoeuvring areas are designed in accordance with Australian Standards.

27. Accessibility

Prior to the issue of a Construction Certificate, a Certificate from an appropriate qualified Access consultant is to be submitted to the Principal Certifying Authority (PCA) certifying that the Construction Certificate plans demonstrate compliance with the specifications within the

Access Review Report - Final v5 prepared by Morris Goding Access Consulting, dated 31 July 2022.

Reason: To ensure buildings are designed and constructed to for accessibility.

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28. 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) The CMP must detail the contact information for developers, builder, private certifier and any emergency details during and outside work hours.
- b) 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 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.
 - xvi) 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.
- c) A Construction Waste Management Plan detailing the following:
- i) Details of the importation or excavation of soil and fill, the classification of the fill, disposal methods and authorised disposal depots that will be used for the fill.
 - ii) Asbestos management requirement and procedures for removal and disposal from the site in accordance with *AS 2601-2001 - 'The Demolition of Structures'*, and the *Protection of the Environment Operations (Waste) Regulation 2005*.
 - iii) General construction waste details including construction waste skip bin locations and litter management for workers.
- d) A Tree Protection Plan (TPP) prepared by an AQF 5 Arborist in accordance with any approved Arboricultural Impact Assessment and tree location plans, detailing the following:
- iv) 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.
 - v) Construction methodology to avoid damage to trees proposed to be retained during construction works.

- vi) Specifications on tree protection materials used and methods within the TPZ or SRZ.
- vii) Location of dedicated material storage space on site outside of TPZ's and SRZ's for retained trees.
- e) A Construction Noise and Vibration Management Plan (CNMP) which includes:
 - i) Existing noise and vibration levels within the proximity of the proposed development site.
 - ii) Details of the extent of rock breaking or rock sawing works forming part of the proposed development works.
 - iii) The maximum level of noise and vibration predicted to be emitted during each stage of construction.
 - iv) The duration of each stage of works where the maximum level of noise and vibration are predicted to be emitted for.
 - v) Details of mitigation measures, inclusive of respite periods, that will meet acoustic standards and guidelines at each stage of works.
 - vi) Details of a complaints handling process for the surrounding neighbourhood for each stage of works.
- f) Identification of approved sediment and erosion control measures.

Note: The CMP must be lodged via Council's Online Services Portal at: <https://hornsbyprd-pwy-epw.cloud.infor.com/ePathway/Production/Web/Default.aspx> and by selecting the following menu options: Applications > New Applications > Under 'Application Types': Management Plans.

Reason: To document construction measures to protect the public and the surrounding environment.

29. Mechanical Equipment

A detailed mechanical plant noise assessment for all proposed mechanical equipment and site specific equipment must be undertaken by a suitably qualified Acoustic Consultant and a report certifying that the operation of all proposed equipment will not exceed 38dB(A) at any boundary upon installation must be submitted to the PCA prior to the issue of the Construction Certificate.

Reason: To ensure mechanical plant is designed and constructed with acoustic measures implemented protect the amenity of the local area.

REQUIREMENTS PRIOR TO THE COMMENCEMENT OF ANY WORKS

30. 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.

Reason: Prescribed condition EP&A Regulation, section 70(2) and (3).

31. 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.

Reason: To ensure public safety and protection of adjoining land.

32. 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*.

Reason: To ensure adequate toilet facilities are provided.

33. 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.

Reason: To minimise impacts on the water quality of the downstream environment.

34. 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.

Reason: To ensure domestic waste bins are not used for demolition and construction waste.

35. 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.

Reason: To maintain the site in a clean condition and protect local amenity.

36. Installation of Tree Protection Measures

- a) Trees to be retained and numbered 35, 36, 37, 38, 39, 40, 41, 42, 43, 46, 47, 48, 49, 78, 79, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 96, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 139 and G1 as identified on the Tree Location Plan contained within the Arboricultural Impact Assessment (Rev.1) prepared by Urban Arbor, dated 3 February 2023 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 contained within the Arboricultural Impact Assessment (Rev.1) prepared by Urban Arbor, dated 3 February 2023.
 - ii) For the duration of construction works, in accordance with Tree Protection Plan contained within the Arboricultural Impact Assessment (Rev.1) prepared by Urban Arbor, dated 3 February 2023.
- 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) 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.

Reason: To minimise impacts on the water quality of the downstream environment.

REQUIREMENTS DURING DEMOLITION AND CONSTRUCTION

ITEM 1

37. 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.

Reason: To protect the amenity of neighbouring properties.

38. 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) A Hazardous Materials Survey must be conducted by a qualified occupational hygienist and/or environmental consultant prior to the commencement of demolition works in accordance with the recommendations of the Detailed Site Investigation, prepared by NEO Consulting, dated 30/9/21, reference N517.
- b) 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.
- c) 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.
- d) 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.

Reason: To ensure the appropriate removal and disposal of demolition materials.

39. Environmental Management

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

Reason: To minimise impacts to the natural environment and public health.

40. Street Sweeping

- a) To protect the surrounding environment, Street sweeping must be undertaken following sediment tracking from the site along Penrhyn Avenue and surrounding roads during works and until the site is established.

- b) The street cleaning service must utilise a 'scrub and dry' method and be undertaken for the full extent of any sediment tracking.

Reason: To minimise impacts to the natural environment.

41. Disturbance of Existing Site

During construction works, the existing ground levels of open space areas and natural landscape features, (including natural rock-outcrops, vegetation, soil and watercourses) must not be altered unless otherwise nominated on the approved plans.

Reason: To protect the natural features of the site.

42. 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.

Reason: To protect public land.

43. Works Zone

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

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

Note: A Works Zone Permit can be obtained via Council's Online Services Portal at: [Work Zone Permit | Hornsby Shire Council \(nsw.gov.au\)](https://www.hornsbyshire.nsw.gov.au/works-zone-permit).

Reason: To ensure the management of construction traffic and parking to maintain road and pedestrian safety.

44. Prohibited Actions Within the Tree Protection Zone

In accordance with the Australian Standards AS4970-2009, the following be prohibited within the fenced area of TPZ:

- a) Soil cut or fill 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.

Reason: To protect trees during construction.

45. 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 retained on the approved plans.

Reason: To ensure appropriate monitoring of tree(s) to be retained.

46. Maintaining Tree Protection Measures

Tree protection measures must be maintained by the project arborist in accordance with Condition No. 36 and 44 of this consent for the duration of works.

Reason: To protect trees during construction.

47. 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 on the approved plans must be supervised by the project arborist for the first 1 metre undertaken manually to locate roots and allow for pruning in accordance with condition 47a.
- c) Construction Design/Specification Requirements for Trees 43, 49, 111 and 139:
 - i) The proposed construction will encroach into the TPZ and SRZ of trees 43, 49, 111 and 139. To ensure the trees are not adversely impacted by the construction, it must be demonstrated the following design and construction specifications can be implemented within the TPZ of the trees. If the construction cannot be completed in accordance with these specifications, the trees may not be viable for retention:
 - a) To retain the trees in a viable condition, the hard surfacing must be constructed in a tree sensitive method. The hard surfacing should be constructed above existing grades in the TPZ of the trees. Compaction of lowest sub base materials must be minimised, as this can cause soil compaction and impact the health of trees.

- b) If excavations are essential, they must not exceed 100mm below the existing grades. The excavations should be supervised by a project Arborist with a minimum AQF level 5 qualification. All excavations for the hard surfacing should be carried out manually to avoid impacting retained tree roots. All tree roots greater than 40mm in diameter should be retained unless the project arborist has assessed and advised that the pruning/severing of the root will not impact the condition or stability of the tree. Manual excavation may include the use of pneumatic and hydraulic tools, high-pressure air or a combination of high-pressure water and a vacuum device.
 - c) Where tree roots greater than 40mm are encountered that must be retained, the hard surfacing should be elevated over the individual tree root to allow for its retention.
- e) To minimise impacts within the Tree Protection Zone (TPZ) of trees 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 utilise directional drilling only.
- 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.

Reason: To protect trees during construction.

48. Landfill not Permitted

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

Reason: To minimise environmental impacts from landform modification.

49. Excavated Material

In accordance with the recommendations of the Detailed Site Investigation, prepared by NEO Consulting, dated 30/9/21, reference N517, any soils requiring excavation, onsite reuse and/or offsite removal 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.

Reason: To ensure the appropriate disposal of excavated material.

50. 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.

Reason: To maintain safe pedestrian movement.

51. 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.

Reason: To ensure implementation of construction measures to protect the public and the surrounding environment.

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.

Reason: To ensure the appropriate removal and disposal of contaminated materials.

53. 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.

Reason: To ensure buildings are positioned in the approved location and at the correct height.

54. Waste Management Details

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

- a) The disposal of any demolition and construction waste must be undertaken in accordance with the requirements of the *Protection of Environment Operations Act 1997*.
- b) All waste on site is to be stored, handled and disposed of in such a manner as to not create air pollution, offensive noise or pollution of land and water as defined by the *Protection of Environment Operations Act 1997*.
- c) Generation, storage, treatment and disposal of hazardous waste is conducted in accordance with the relevant waste legislation administered by the EPA and relevant Occupational Health and Safety legislation administered by WorkCover NSW.
- d) All waste generated (including excavated materials) which cannot be reused or recycled must be transported to a facility which can lawfully accept it.

- e) All materials and resources that are to be stored on site during construction works are contained on the site. The provisions of the *Protection of Environment Operations Act 1997* must be complied with when placing/stock piling loose material, disposal of concrete waste or activities which have potential to pollute drains and water courses.
- f) The storage of waste and recycling containers must be within the boundaries of the development site at all times. Public footways and roads must not be used for the storage of any waste and must be kept clear of obstructions during all construction works.
- g) Additionally, written records of the following items must be maintained during the removal of any waste from the 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.

- h) From the commencement of works on site, until such time as the final occupation certificate is issued, the applicant is required to monitor the construction area and the immediate vicinity regularly for litter and illegal dumping. The applicant is to arrange removal of said material where required to avoid contamination of waterways and bushland as well as mitigating any further instances or compounding of illegal dumping.
- i) The on-going collection of waste from occupied buildings must not be impeded by construction works.

Reason: To ensure the management of waste to protect the environment and local amenity during construction.

REQUIREMENTS PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE

55. Fulfilment of BASIX Commitments

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

Reason: Prescribed condition under section 75) EP&A Regulation)

56. 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.

Reason: To ensure compliance with the requirements of Sydney Water.

57. Certification of WSUD Facilities

Prior to the issue of an Occupation Certificate a certificate from a Civil Engineer is to be obtained stating that the WSUD facilities have been constructed and will meet the water quality targets as specified in the Hornsby Development Control Plan 2013.

Reason: To ensure compliance with WSUD commitments.

58. 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.

Reason: To ensure the appropriate removal and disposal of contaminated materials and the site is suitable for its approved use.

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

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

Reason: To confirm appropriate disposal of excavated material.

60. Damage to Council Assets

To protect public property and infrastructure, any damage caused to Council's assets as a result of the construction or demolition of the development must be rectified by the applicant in accordance with AUS-SPEC Specifications

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

Reason: To ensure public infrastructure and property is maintained.

61. Creation of Easements

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

- a) A drainage easement 3 metres wide over the existing drainage pipeline over the burdened lots in favour of Council and in accordance with the terms set out in *Memorandum B5341305V* filed with the *NSW Department of Lands*;
- b) A restriction over the pipeline and the flow path for a 100 year average recurrence interval storm. The "*Restriction on the Use of Land*" over the affected lots is to

prohibit the alteration of the final floodway shape and the erection of any structures, including fencing, in the floodway without the written permission of Council. The terms of this restriction must be obtained from Council;

- c) A *"Restriction on the Use of Land"* for any lot adjacent to the floodway, requiring the finished floor level of any habitable room to be not less than 500mm and the garage 300mm above the 100 year average recurrence interval storm level. The levels must be related to *Australian Height Datum*;
- d) The creation of an appropriate *"Positive Covenant"* and *"Restriction as to User"* over the constructed on-site detention/WSUD 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/wsud system is to be clearly indicated on the title;
- e) 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.

Reason: To create legal entitlements to facilitate the proper use and management of land.

62. Works as Executed Plan

A works-as-executed plan(s) must be prepared by a registered surveyor and submitted to Council for completed public drainage systems, driveways and footpath. 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.

Reason: To ensure infrastructure is constructed and positioned in the approved location.

63. Vehicular Crossing

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

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

Reason: To provide safe vehicle and pedestrian access.

64. Consolidation of Allotments

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

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

Reason: To ensure the orderly development of the site.

65. 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".

Reason: To protect the State's survey infrastructure.

66. 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.

Reason: To ensure the stability of the site and adjoining land.

67. Compliance with Accessibility Requirements

A Compliance Certificate must be prepared by a suitable qualified Access Consultant confirming that the constructed development complies with the accessibility requirements of SEPP Seniors Living Policy, AS1428 series, Building Code of Australia (BCA), and DDA Access to Premises Standards (including DDA Access Code) including the pedestrian footpath to the bus stops in Pennant Hills Road.

Reason: To ensure compliance with the requirements for the design and construction of the development with the accessibility requirements of the relevant legislation.

68. Garbage Collection Easement

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

Note: The easement must be in a form prescribed by Council and must include covenants to the effect that parties will not be liable for any damage caused to the subject land or any part thereof or to any property located therein or thereon by reason of the operation thereon of any vehicle or other equipment used in connection with the collection of garbage and to the effect that the owner for the time being of the subject land shall indemnify the Council, its servants,

agents and persons authorised by it to collect garbage against liability in respect of any such claims made by any person whomsoever.

Reason: To ensure appropriate access for waste collection.

69. Waste Management Details

The following waste management requirements must be complied with:

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

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

- b) A report must be prepared by an appropriately qualified person, certifying the following:

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

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

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

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

- iii) All demolition and construction waste were taken to site(s) that were lawfully permitted to accept that waste.

- c) The bin carting routes must be devoid of any steps and must be wholly within the site.

Note: Ramps between different levels are acceptable. The use of the public footpath is not acceptable.

- d) Each dwelling/unit must be provided with two separate 15-20 litre containers (one each for general waste and recyclable materials) installed in a cupboard in the kitchen.

- e) Space must be provided for either individual compost containers for each unit or a communal compost container.

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

- f) All lockable doors and gates, both pedestrian and vehicular, that are required to be opened by Council's waste collection contractor in the provision of waste collection services, must be able to be opened using a pin code. That is, locks requiring keys, remote controls, key fobs etc are not acceptable.
- g) The bin storage rooms 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 (but able to be opened from inside the room without a key).
- h) The bin storage rooms must be accessible by persons with a disability while comfortably housing all of the bins required to be stored there.
- i) The accessway/driveway to be used by waste collection vehicles, must be designed and constructed in compliance with Australian Standard AS2890.2-2002 Parking Facilities Part 2: Off-street Commercial Vehicle Facilities for heavy rigid vehicles.

Note: AS2890.2-2002 includes a maximum gradient 1:8 for reverse travel and a minimum vertical clearance of 4.5 m.

- j) The 4.5 metre clearance height within the waste collection vehicle travel path must not be reduced by overhead lights, signs, tree branches or anything else.
- k) A motorised bin cart, trolley or similar equipment must be provided to enable the site caretaker to safely cart the bins around the site. This equipment must be suitable for the ramp grades along the bin carting route and the approved bin sizes.
- l) Lockable storage space must be provided for all equipment required for the operation of the waste management system, including but not limited to the motorised bin carting equipment.

Reason: To ensure the correct disposal of waste to protect the environment.

70. Replacement Tree Requirements

- a) The trees approved for removal under this consent, being trees numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 44, 45, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 80, 81, 94, 95, 97, 98, 99, 100, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 140, 141, 142, 143, 144, 145 and 146 must be offset through replacement planting of a minimum of 15 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 4 metres or greater from the foundation walls of the approved development.
 - ii) The pot size of the replacement trees must be a minimum 45 litres.

- iii) All replacement trees must be a minimum of 3 metres in height when planted.
- iv) All replacement trees must have the potential to reach a mature height greater than 10 metres.

Reason: To ensure replacement planting to maintain tree canopy.

71. Final Certification

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

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

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

Reason: To ensure compliance with tree protection commitments.

72. 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: 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.

Reason: To ensure compliance with landscaping commitments.

73. Restriction on Occupation - Housing for Seniors or People with a Disability

A restriction as to user must be created under s88E of the *Conveyancing Act 1919* and registered, requiring the dwellings approved under this consent to be solely used for the accommodation of:

- a) Seniors (55+ age) or people with a disability.
- b) People who live within the same household as seniors or people with a disability.
- a) Staff employed to assist the administration and provision of services to housing occupied by seniors or people with a disability provided under SEPP (Housing for Seniors or People with a Disability) 2004.

Note: The restriction must nominate Council as the authority to release, vary or modify the restriction.

Reason: To ensure the development is occupied by seniors or people with a disability.

74. Retaining Walls

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

Reason: To ensure the stability of the site and adjoining land.

75. External Lighting

- a) To protect the amenity of adjacent premises, all external lighting must be designed and installed in accordance with Australian Standard AS4282 Control of the obtrusive effects of outdoor lighting.
- b) Certification of compliance with this Standard must be obtained from a suitably qualified person and submitted to the PCA with the application for the Certificate.

Reason: To ensure external lighting does not interfere with the amenity of adjoining development.

76. Safety and Security

- a) Ground floor windows must be fitted with window locks that can be locked with a key.
- b) Security deadlocks are to be provided to each unit door.
- c) Lighting is to be provided to pathways, building foyer entries, driveways and common external spaces.
- d) Sign posting and way finding to be colour coded with the respective unit blocks in clear legible signage so that emergency services are able to clearly identify location of a on the site.

Reason: To ensure the safety and security of the development.

77. Parking/Road/Footpath Upgrades

All street parking, road and footpath upgrades must be completed prior to the issue of an Occupation Certificate.

Reason: To ensure infrastructure works are constructed in accordance with the approved development.

78. Fire Safety Statement - Final

In accordance with the Environmental Planning & 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.

Reason: To ensure all fire safety measures are implemented to protect life and property.

OPERATIONAL CONDITIONS

79. Noise and Vibration

The ongoing use of the premises including any plant or equipment installed on the premises must not cause:

- a) The emission of noise that exceeds the background noise level by more than 5dBA when measured at, or computed for, the most affected point, on or within the boundary of the most affected receiver. Modifying factor corrections must be applied

for tonal, impulsive, low frequency or intermittent noise in accordance with the Noise Policy for Industry 2017.

- b) An internal noise level in any adjoining occupancy that exceeds the recommended design sound levels specified in Australian/New Zealand Standard AS/NZS 2107:2000 Acoustics - Recommended design sound levels and reverberation times for building interiors.

Reason: To protect the acoustic amenity of the local area.

80. Car Parking

All car parking must be operated in accordance with Australian Standard AS/NZS2890.1:2004 Off-street car parking and Australian Standard AS2890.2:2002 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.

Reason: To ensure parking facilities and vehicle manoeuvring areas are designed in accordance with Australian Standards.

81. Parking and Driveway Requirements

- a) All signage related to the driveways and parking on site must be implemented and maintained in perpetuity.
- b) Residential parking spaces are to be secure spaces with access controlled by card or numeric pad. Visitors must be able to access the visitor parking spaces in the basement car park at all times.
- c) All parking spaces for people with disabilities must be constructed and operated in accordance with Australian Standard AS/NZS2890.6:2009 Off-street parking for people with disabilities.

Reason: To ensure parking facilities and vehicle manoeuvring areas are designed in accordance with Australian Standards.

82. Sight Lines

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

Reason: To maintain safe road and pedestrian safety.

83. 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.

Reason: To ensure landscaping is established and maintained to enhance the environmental and visual qualities of the development.

84. Ongoing Waste Management

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

Note: Bins are to be placed in the main bin storage room/collection point the day before the collection day, then returned to each bin storage room promptly after servicing.

- f) The nominated on-site collection point is to be utilised to facilitate the collection of waste and recycling bins for the development. The on-site collection point is to be kept clear of obstructions at all times so not to restrict the collection of waste and recycling bins.
- g) Adequate signage is to be provided and maintained on how to use the waste management system and what materials are acceptable for recycling within all waste storage areas of the development. Signage is also to be provided and maintained which clearly identifies which bins (and containers) are to be used for general waste

and recycling and what materials can be placed in each bin. Signage is also to be provided in locally appropriate culturally and linguistically diverse (CALD) community languages.

Note: Council may be able to assist with signage.

- h) Where the development incorporates strata title subdivision, the by-laws are to clearly set out the management responsibilities for the developments waste management system.
- i) All equipment required in the operation of the approved waste management system must be regularly checked and maintained in effective and efficient working order in accordance with the manufacturer's instructions by trained service technicians.
- j) All surfaces trafficable by the waste collection vehicle must be kept in good and substantial repair.
- k) Vegetation adjacent to the driveway/accessway/roadway must be regularly pruned to maintain a 4.5m vertical clearance over the driveway/accessway/roadway and to ensure the vegetation does not encroach on the vehicular travel path.

Reason: To ensure the ongoing management of waste to protect the environment and local amenity.

85. 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.

Reason: To ensure fire safety measures are maintained to protect life and property.

- 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 2021*, 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 (LSC) at www.longservice.nsw.gov.au.

Note: The rate of the Long Service Levy is 0.25% of the total cost of the work (including GST).

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 (Biodiversity and Conservation) 2021* and the *Environmental Planning and Assessment Act 1979*.

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

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

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

Disability Discrimination Act

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

the requirements of the *Disability Discrimination Act 1992*. This is the sole responsibility of the applicant.

Covenants

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

Dial Before You Dig

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

Telecommunications Act 1997 (Commonwealth)

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

Asbestos Warning

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

www.environment.nsw.gov.au

www.adfa.org.au

www.safework.nsw.gov.au

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

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.

Unit Numbering (Strata Units)

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

2 DA/984/2022 - TORRENS TITLE SUBDIVISION OF 1 LOT INTO 2, RETENTION OF THE EXISTING DWELLING AND CONSTRUCTION OF A DWELLING ON THE NEW LOT - 11A AUSTRAL AVENUE, BEECROFT

DA No:	DA/984/2022 (Lodged on 14 September 2022)
Description:	Torrens title subdivision of 1 lot into 2, retention of the existing dwelling and construction of a detached dwelling on the new lot as staged development
Property:	Lot 172 DP 857137, No. 11A Austral Avenue, Beecroft
Applicant:	Archangel Enterprises Pty Ltd
Owner:	Mr Hanqing Xu & Ms Lan Wang
Estimated Value:	\$902,800
Ward:	C Ward
Clause 4.6 Request:	N/A
Submissions:	30
LPP Criteria:	10 or more unique submissions were received by way of objection
Author:	Tim Buwalda, Town Planner
COI Declaration:	No Council staff involved in the assessment of this application have declared a Conflict of Interest.

RECOMMENDATION

THAT Development Application No. DA/984/2022 for Torrens title subdivision of one allotment into 2, retention of the existing dwelling and construction of a detached dwelling on the new lot as staged development at Lot 172 DP 857137, No. 11A Austral Avenue, Beecroft be approved subject to the conditions of consent detailed in Schedule 1 of LPP Report No. LPP4/23.

EXECUTIVE SUMMARY

- The application involves the Torrens title subdivision of one allotment into 2, retention of the existing dwelling and construction of a detached dwelling on the new lot as staged development.
- The proposal complies with the minimum lot size development standard.
- A total of 30 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.

BACKGROUND

On 21 December 2022, Council requested amended plans to address the proposed internal lot boundaries, a stormwater plan, swept paths, amendment to the proposed colour and materials schedule, a Landscape Plan, and an amended Arboricultural Impact Assessment.

On 7 February 2023 Council received the requested information and the application was formally re-notified to adjoining properties.

On 21 March 2023, Council requested an amended subdivision plan to correctly identify the boundaries of existing lots, provision of a passing bay within proposed Lot 2 and swept paths for vehicles exiting the existing garage on proposed Lot 2 to ensure they can exit and enter in a forward direction.

On 27 March 2023, Council received the additional information which is subject to this assessment.

On 31 March 2023, Council requested the applicant provide certification from a chartered structural engineer certifying that the existing driveway within the Right of Carriageway is capable of remaining stable under an 8-tonne traffic loading.

On 6 April 2023, the applicant provided this certification.

SITE

The 2,008m² site is located on the northern side of Austral Avenue, Beecroft and contains a one and two storey dwelling house and swimming pool.

The site is accessed by a 3.5m and variable width right of carriageway and easement for services from Austral Avenue which burdens No. 15 Austral Avenue.

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

The site is bushfire prone but not flood prone.

PROPOSAL

The application proposes Torrens title subdivision of one allotment into 2 allotments, retention of the existing dwelling and construction of a detached dwelling on the new lot as staged development.

Stage 1: Torrens Title subdivision of one lot into two

- Proposed Lot 1 (as identified as lot A on the Architectural Plans) would have an area of 1140.3m² and would retain the existing dwelling house.

- Proposed Lot 2 (as identified as lot B on the architectural plans) would have an area of 868.4m² (732.2m² excluding right of carriageway) and a new dwelling house is proposed within this lot.

Both proposed lots would be accessed by an existing right of carriageway burdening No. 15 Austral Avenue.

Stage 2: Construction of a dwelling house on Lot 2

The ground floor of the proposed dwelling house would comprise of a double garage, lounge room, internal stairwell, laundry, pantry, kitchen, lobby, bathroom, study, bedroom, ensuite, dining room, living room, and covered outdoor alfresco area.

The first-floor level of the proposed dwelling house would comprise of two balconies, four bedrooms, four ensuites. Two walk-in-wardrobes, an internal stairwell, and a family room.

One tree is proposed to be removed 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 over 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 over 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 'subdivision' and 'dwelling house', and both are permissible in the R2 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 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 maximum height of 8.3m and complies with this provision.

2.1.3 Heritage Conservation

The subject property is in the Beecroft-Cheltenham (The Gullies Precinct) Heritage Conservation Area (HCA) listed under Schedule 5 of the HLEP. The site is not near or in the visual catchment of properties included as Heritage Items in the HLEP.

The application proposes the subdivision of one lot into two and the construction of a dwelling house on proposed Lot 2. The application has been assessed against the relevant requirement of the HLEP and Part 9 of the HDCP.

The proposed subdivision of the existing 'battle-axe' shaped allotment creates a northeast allotment, resulting in a dwelling that will also be orientated east west and not towards the street. The existing dwelling is oriented to the street (north south) as are the dwellings fronting Austral Avenue.

The subdivision itself would not create an unacceptable heritage impact on the streetscape or The Gullies precinct overall character.

The impact of the resulting new dwelling would result from an uncharacteristic orientation to the street. Due to height, location, and bulk of the southern elevation proposed, the new dwelling would be visible from the street via the access handle and above No.15 Austral Ave. This uncharacteristic orientation is considered acceptable as, at Council's request the internal boundary of the proposed lots was modified to allow for a 3m setback of the proposed dwelling house to the southern boundary to allow for screen planting. The application proposes 4x *Eleocarpus reticulatus* (Blue Berry Ash) trees along the southern boundary which would have a mature height of 6m to screen the proposed dwelling from Austral Avenue. A condition is also recommended in Schedule 1 of this report requiring an additional tree to be located above the existing access handle in front of the proposed porch to screen the development when viewed from the access handle.

The original plans submitted with this application proposed light (white) coloured walls and concerns were raised by Council to this colour schedule. Amended plans were submitted by the applicant

proposing Dulux Beige Royal or Similar (PN -PN1) to the exterior walls which is a darker exterior colour which is considered acceptable. The application proposes materials and finishes which are compatible with the HCA.

In conclusion, the application has provided amended plans to address Council's concerns which includes an amended colour schedule, screen planting and an increased setback to the southern boundary. It is generally considered that the proposed development meets the desired outcomes and prescriptive measures of Part 9.3 of the HDCP and is considered acceptable, subject to conditions.

2.1.4 Minimum Lot Size

Clause 4.1 (Minimum lot size) of the HLEP requires a minimum lot size of 600m².

Proposed lot 1 would 1140.3m² and proposed lot 2 would have an area of 868.4m² (732.2m² excluding right of carriageway), both lots would comply with the 600m² minimum lot size and complies with Clause 4.1 of the HLEP.

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.

Council's assessment of the proposed works and excavation concludes that minimal cut and fill is proposed as part of this application.

Appropriate conditions are 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.

The proposal meets the objectives of Clause 6.2 of the HLEP and is considered acceptable.

2.1 State Environmental Planning Policy (Biodiversity and Conservation) 2021

The application has been assessed against the requirements of chapters 2 and 6 of State Environmental Planning Policy (Biodiversity and Conservation) 2021.

2.1.1 Chapter 2 Vegetation in Non-Rural Areas

Chapter 2 of this policy aims to protect the biodiversity and amenity values of trees within non-rural areas of the state.

Part 2.3 of the policy 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 HDCP prescribes works that can be undertaken with or without consent to trees and objectives for tree preservation.

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

2.1.2 Chapter 6 Water Catchments

The site is located within the catchment of the Sydney Harbour Catchment. Chapter 6 contains general planning considerations and strategies requiring Council to consider the impacts of development on water quality and quantity, aquatic ecology, flooding, recreation and public access and total catchment management.

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.

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

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

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

The proposal is acceptable in this regard.

2.3 State Environmental Planning Policy (Resilience and Hazards) 2021

The application has been assessed against the requirements of chapter 4 of State Environmental Planning Policy (Resilience and Hazards) 2021.

2.3.1 Chapter 4 Remediation of Land

Section 4.6 of the Resilience and Hazard SEPP states that 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 chapter 4 of the Resilience and Hazards SEPP is not required.

2.4 Rural Fires Act 1997

The site is bushfire prone and accordingly, the proposed development constitutes '*integrated development*' subject to approval of the NSW Rural Fire Service for the issue of General Terms of Approval under Division 4.8 of the *Environmental Planning and Assessment Act 1979* and a Bush Fire Safety Authority pursuant to Section 100B of the *Rural Fires Act 1997*.

A Bushfire Assessment prepared by Australian Bushfire Protection Planners Pty Ltd dated 14 July 2022 accompanied the application.

The subject application was subsequently referred to the NSW Rural Fire Service (RFS) for comment regarding bushfire protection.

The RFS provided General Terms of Approval with no specific conditions imposed.

2.5 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.

2.6 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
Lot Size			
- Lot 1	1140.3m ²	600m ²	Yes
- Lot 2	868.4m ² (732.2m ² ex ROC)	600m ²	Yes
Minimum Lot Width			
- Lot 1	27.7m	12m	Yes
- Lot 2	18m	12m	Yes

HDCP - Part 3.1 Dwelling Houses (New dwelling on proposed Lot 2, identified as Lot B on the Architectural Plans)			
Control	Proposal	Requirement	Complies
Site Area	868.4m ² (732.2m ² ex ROC)	N/A	N/A
Building Height	8.3m	8.5m	Yes
No. storeys	2 + attic	max. 2 + attic	Yes
Site Coverage	34%	50%	Yes
Floor Area	378m ²	380m ²	Yes
Setbacks			
- Side (west)	14.5m	0.9m	Yes
- Side (south)			

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<i>Ground floor</i>	1.5m	0.9m	Yes
<i>First floor</i>	3.419m	1.5m	Yes
- <i>Side (north)</i>			
<i>Ground floor</i>	1.5m	0.9m	Yes
<i>First floor</i>	2.1m	1.5m	Yes
- <i>Rear (east)</i>			
<i>Ground floor</i>	3.4m	3m	Yes
<i>First floor</i>	7.5m	8m	No
Landscaped Area (% of lot size)	45%	30%	Yes
Private Open Space			
- <i>minimum area</i>	>24m ²	24m ²	Yes
- <i>minimum dimension</i>	>3m	3m	Yes
Car Parking	2 spaces	2 spaces	Yes

HDCP - Part 3.1 Dwelling Houses (Existing Dwelling on proposed Lot 1, identified as Lot A on the Architectural Plans)			
Control	Proposal	Requirement	Complies
Site Area	1140.3m ²	N/A	N/A
Building Height	existing	8.5m	N/A
No. storeys	2	max. 2 + attic	Yes
Site Coverage	20%	40%	Yes
Floor Area	373m ²	430m ²	Yes
Setbacks			
- <i>Side (west)</i>	10m	1.5m	Yes
- <i>Side (south)</i>	5.8m	1.5m	Yes
- <i>Side (east)</i>	5.8m	1.5m	Yes
- <i>Rear (north)</i>			
<i>Ground floor</i>	3m	3m	Yes
<i>First floor</i>	8.4m	8m	Yes

Landscaped Area (% of lot size)	61%	40%	Yes
Private Open Space			
- <i>minimum area</i>	>24m ²	24m ²	Yes
- <i>minimum dimension</i>	>3m	3m	Yes
Car Parking	2 spaces	2 spaces	Yes

As detailed in the above tables, the proposed development generally complies with the prescriptive measures within the HDCP with the exception of the rear setback of the proposed new dwelling which is discussed below including a brief discussion on compliance with relevant performance requirements and Part 1C General Controls.

2.6.1 Scale

Submissions have been received which raise concern to the scale of the proposed dwelling house.

In response to these submissions, as outlined in the above tables, the application complies with respect to building height, site coverage, floor area and landscaping.

It is generally considered that the proposed dwelling house on 868.4m² (732.2m² ex ROC) site is acceptable on its merits.

The application meets the desired outcomes of Part 3.1.1 Scale of the HDCP and is considered acceptable.

2.6.2 Setbacks

The desired outcome 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 rear boundary setback of 8m for two storey elements.

The application proposes a rear boundary setback of 7.5m for the first-floor level which does not comply with the 8m prescriptive measure.

In support of the 0.5m encroachment, it is noted that this only relates to the proposed first floor level balcony which partially encroaches into the 8m setback.

The level of encroachment refers to approximately 1.5m² of the 6.1m² rear balcony which is considered minor. As discussed in Section 2.6.4 of this report, it is considered that the proposed balcony would not have any adverse privacy impacts to adjoining properties and the minor encroachment is considered acceptable.

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

2.6.3 Sunlight Access

Submissions raised concerns regarding the overshadowing of adjoining development.

The applicant provided shadow diagrams for 9am, 12pm and 3pm on 21 June for assessment.

Part 3.1.5 Sunlight Access of the HDCP prescribes that *“On 22 June, 50 percent of the required principal private open space on any adjoining property should receive 3 hours of unobstructed sunlight access between 9am and 3pm.”*

An assessment of the shadow diagrams provided by the applicant illustrate that the subject site and the southern adjacent neighbours, No. 11, 15 and 17 Austral Avenue, would still 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. While there would be some overshadowing to adjoining properties, the application meets the prescriptive measures.

As such, the sunlight access is considered to be acceptable and consistent with the prescriptive measures of Part 3.1.5 Sunlight Access of the *HDCP*.

2.6.4 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 state that:

- 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 two first floor level balconies and a first-floor level family room which do not comply with the above-mentioned prescriptive measures.

In assessing the proposed first floor level balconies, it is noted that one balcony would be accessed via the proposed family room, and another would be accessed from the master bedroom. Due to the size and configuration of these balconies it is generally considered that these spaces will not be used for entertainment purposes. However, to ensure these balconies do not allow overlooking to the southern adjacent properties, a condition is recommended in Schedule 1 of this report that a 1.5m privacy screen is erected on the southern elevation of both balconies.

It is generally considered there is sufficient separation between the proposed balcony to the rear of the dwelling house and the eastern adjoining property No 23 Austral Avenue to mitigate any potential privacy impacts. Furthermore, the size of the proposed balcony accessed from the master bedroom does not imply that it would be used for entertainment purposes.

It is generally considered that adjoining properties to the west of the front first floor level balcony would not be adversely impacted by the balcony as this balcony is setback approximately 14m from the western boundary to mitigate any privacy impacts.

To ensure the required privacy screens meet Council's requirements, an appropriate condition is recommended in Schedule 1 of this report.

It is noted that submissions were received raising concern to the windows within the southern elevation of the proposed dwelling and the amenity impact of those windows to adjoining properties.

In response to these submissions, it is noted that these windows service bedrooms and bathrooms and in accordance with Council's prescriptive measures comply with the privacy requirements as no screening is required for bedroom and bathroom windows as they are not considered living or entertainment rooms.

Subject to these conditions, it is considered that a reasonable level of privacy would be established and maintained between the subject site and surrounding development.

The proposal meets the desired outcome of Part 3.1.6 Privacy of the HDCP and is considered acceptable, subject to conditions.

2.6.5 Vehicular Access and Parking

The desired outcome of Part 6.4.1 Residential and Rural Lands Accessway Design of the HDCP encourages development *"to ensure access along private accessways to all new lots is simple, safe and direct."*

It is noted that multiple submissions were received raising concerns to the safety impacts from pedestrians along the existing driveway and the lack of a passing bay and non-compliant driveway width.

The desired outcome is supported by prescriptive measure (i) which states that *"a passing bay with a minimum width of 5.5 metres should be provided every 40 metres where a long common driveway is proposed."*

The existing access driveway servicing the subject site is 50m long and therefore a passing bay would be required.

At Council's request the applicant provided an amended subdivision and site plan which proposed a passing bay within proposed Lot 2.

It is generally considered that due to the location of the existing driveway, a passing bay cannot be provided within the existing driveway. However, there is sufficient justification on planning grounds to justify this non-compliance for the following reasons:

- Austral Avenue is a quiet local street.
- The existing driveway is a straight line, with sufficient sight lines.
- The existing driveway is not steep.
- A passing bay within proposed Lot 2 has been provided to allow vehicles to safely wait in the passing bay if vehicles are already within the existing driveway.

The existing driveway does not comply with Table 4.6(a) of the HDCP which requires accessway width to be 3.5m as the existing driveway has a minimum width of 2.75 metres due to the existing chimney of the dwelling house at No. 15 Austral Avenue.

In support of this non-compliance, it is noted that 0.5m of the required 3.5m is for landscaping. As this driveway is existing and no landscaping is present adjacent to the driveway, this is not required and therefore the minimum carriageway width for vehicles is 3m.

The non-compliant 2.75m wide driveway is only for a small section of the driveway, 1.5m long. The remainder of the 50m long driveway would comply with the 3m driveway width requirement. Council's engineering assessment raises no safety issues for use of the driveway.

The applicant has provided vehicle swept paths for both the existing garage on proposed Lot 1 and the proposed garage on proposed Lot 2 to ensure vehicles can enter and exit the site in a forward direction. The application proposes an extension of the hardstand area in front of the existing garage on proposed Lot 1 to ensure there is sufficient turning space which is considered acceptable.

A dilapidation report is recommended in Schedule 1 of this report to be prepared prior to the issue of a Construction Certificate or Subdivision Works Certificate for the structures located at No. 15 Austral Avenue.

The applicant has provided certification from a chartered structural engineer certifying that the existing access handle within the right of carriageway is capable of withstanding an 8-tonne traffic loading which meets Council's requirements.

Therefore, the application meets the desired outcome of Part 6.4.1 of the HDCP and is considered acceptable.

2.7 Contributions Plans

Hornsby Shire Council Section 7.11 Contributions Plan 2020-2030 applies to the development as it would result in an additional allotment. 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

The application includes an Arboricultural Impact Assessment (AIA) provided by Naturally Trees dated 30 January 2023 which identifies 15 trees within the vicinity of the proposed development numbered 1 to 15 inclusively.

The application proposes the removal of one tree numbered T5 which is identified as a Jacaranda tree within the south-eastern corner of the site.

To offset the removal of tree T5, a condition is recommended in Schedule 1 of this report that this tree be replaced with one replacement tree within the subject site that is locally indigenous to the Hornsby Shire and can reach a mature height of greater than 10m.

Council also requires the screen planting of 4x *Eleocarpus reticulatus* (Blue Berry Ash) trees along the southern boundary to screen the proposed dwelling house.

It is noted that trees T1 and T2 (*Brachyiton acerifolius* - Illawarra Flame Tree) and T6 (*Jacaranda*) would incur a tree protection zone (TPZ) encroachment of 34%, 15% and >10% respectively.

It is noted tree T1 and T2 would be impacted by the replacement of the existing driveway on proposed Lot 2. As this driveway is to be replaced in the same location, it is generally considered that there would be minimal impacts to these trees and appropriate tree protection measures are recommended in Schedule 1 of this report to ensure these trees are protected and retained.

Tree T6 would be impacted by the construction of the dwelling house on proposed Lot 2, however this encroachment is less than 10% of the tree's TPZ which is considered minor and acceptable. Appropriate conditions are also recommended in Schedule 1 of this report for the protection and retention of this tree.

Submissions received raised concern to the arborist report as it did not identify all trees within the south-eastern corner of the site. It is noted that the arborist report may not have identified all trees within the south-eastern corner of the site, notwithstanding Council's tree assessment identified tree T6 as the closest and largest tree within that section of the site and therefore the tree protection measures which includes tree protection fencing would be sufficient to protect any other trees within the immediate vicinity.

The application has been assessed against the prescriptive measures of Part 1B.1.6 Tree Preservation of the HDCP and is considered acceptable, subject to conditions.

3.1.2 Stormwater Management

The application proposes an easement to drain water to benefit proposed Lot 1 and burden proposed Lot 2 to ensure the existing dwelling house can continue to drain water to Council's Street drainage system along Austral Avenue.

A condition is recommended in Schedule 1 of this report requiring an on-site stormwater detention system to manage stormwater runoff from the site.

Both lots would be connected to Council's Street drainage system along Austral Avenue via the existing Easement to Drain Water than burdens No. 15 Austral Avenue.

Submissions were received raising concern to the connection of the new lot to the existing drainage easement that burdens No. 15 Austral Avenue. In response to this submission, it is noted that there are connection points available within proposed Lot 2 to allow works to be completed within the subject site. Furthermore, as discussed above, proposed Lot 2 is required to have an on-site stormwater detention system to manage stormwater runoff from the site.

The application meets the desired outcomes of Part 1C.1.2 Stormwater Management of the HDCP and is considered acceptable, subject to conditions.

3.2 Built Environment

3.2.1 Built Form

The residential development would improve housing choice in the locality by providing a range of household 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.

3.2.2 Traffic

The application proposes the subdivision of one lot into two.

Multiple submissions were received which raised concerns to the increased traffic as a result of the proposed development.

It is noted that the subdivision of one lot into two does not require a traffic report. The proposed development would create one additional allotment which would have a very minor impact on the traffic on local roads.

3.3 Social Impacts

The residential development would improve housing choice in the locality by providing a range of household 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.

The location of the development is in close proximity to the Beecroft Railway Station and education facilities for future residents.

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 Bushfire Risk

The site is bushfire prone and accordingly, the proposed development constitutes 'integrated development' subject to approval of the NSW Rural Fire Service for the issue of General Terms of Approval (GTAs) under Division 4.8 of the *Environmental Planning and Assessment Act 1979* and a Bush Fire Safety Authority pursuant to Section 100B of the *Rural Fires Act 1997*.

Submissions have been received which raised concerns that the proposed development would increase the bushfire risk and not comply with Planning for Bushfire Protection 2019 requirements.

The RFS supported the application and issued GTAS in accordance with Division 4.8 of the *Environmental Planning and Assessment Act 1979* without any specific conditions.

It is noted that submissions were received raising concern that the proposed development did not comply with the requirements of the bushfire report as the existing vehicle access did not provide the required 4m wide access to the proposed lot.

In response to this, the application was referred to the RFS for concurrence and no specific conditions of consent were recommended.

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 20 September 2022 to 11 October 2022 and 9 February 2023 to 4 March 2023 in accordance with the Hornsby Community Engagement Plan. During these periods, Council

received 30 submissions. The map below illustrates the location of those nearby landowners who made a submission that are in close proximity to the development site.

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NOTIFICATION PLAN

• PROPERTIES NOTIFIED	X SUBMISSIONS RECEIVED		PROPERTY SUBJECT OF DEVELOPMENT	
Five submissions were received outside the map				

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

- Unacceptable traffic on local streets.

- Unacceptable overshadowing of adjoining properties.
- Insufficient driveway width.
- Lack of passing bay.
- The removal of a significant tree.
- Devaluation of adjoining properties.
- Orientation of the proposed dwelling.
- Insufficient stormwater management.
- Unacceptable privacy impacts.
- Unacceptable impacts to the heritage conservation area.
- Non-complaint bushfire risk.
- Overdevelopment of the area.
- Unacceptable setbacks.
- Height of the proposed dwelling.
- Development that is excessive in bulk and scale.

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

5.1.1 Location of Airconditioning unit and hot water system

A submission was received that raised concern to the plans not showing the location of the hot water system and air conditioning unit.

The hot water system and air conditioning unit are not shown on the architectural plans and therefore would need to be installed and comply with the exempt provisions specified within the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.

5.1.2 Noise from construction traffic

Submissions have been received which raised concerns as to how noise from construction vehicles would be managed.

In addressing this, it is noted that a condition of consent is recommended in Schedule 1 of this report restricting the hours of work including demolition, construction and earthworks must only occur between 7am to 5pm Monday to Saturday and no work is permitted on Sundays and public holidays.

5.1.3 Existing power pole

A submission was received which raised concern to the existing power pole within the existing Right of Carriageway at the front of No. 15 Austral Avenue which provides electricity to the subject site.

The submission raised concern that the existing power pole and subsequent wires were not high enough to allow for trucks to enter the site. The submission identified that these wires must be a minimum 4.5m high to meet the requirements.

In response to this submission, it is noted that Council's HDCP and AUS-SPEC Specifications do not require wires to be 4.5m or greater above an access driveway.

It is also noted that the private power pole is existing, and it not proposed to be altered or relocated. It would be a civil matter between the two property owners if the private power pole is to be modified or changed along with any Ausgrid consent.

Therefore, it is not a matter for consideration under this application.

5.1.4 Refusal of DA/1349/2017

Submissions were received which raised concerns regarding Council previously refusing DA/1349/2017, noting that the reasons for refusal included the non-compliant driveway width.

It is noted that the driveway proposed under DA/1349/2017 was to service a one lot into three lot subdivision and the existing dwelling house at the front of the site reduced the access driveway width to 2.96m.

The proposed driveway for DA/1347/2017 was not considered suitable or adequate for a number of reasons, as the site sloped down from the street, there were reduced sight lines and visibility. The length of the non-compliance was also approximately 9m in length.

It is also noted that there were a number of other outstanding issues such as irregular lot shape, setbacks, landscaping, stormwater and lack of information which resulted in the refusal of the application.

As discussed in Section 2.6.5 of this report, the non-compliant driveway width is only reduced to 1.5m in length compared to a length of 9m that was proposed in DA/1347/2017. Furthermore, the existing driveway contains sufficient sight lines and visibility to allow safe movement of vehicles within the driveway.

Therefore, as discussed in Section 2.6.5 of this report, the existing driveway within the Right of Carriageway is considered acceptable on its merits.

5.2 Public Agencies

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

5.2.1 Rural Fire Service

The site is bushfire prone and accordingly, the proposed development constitutes *'integrated development'* subject to approval of the NSW Rural Fire Service for the issue of GTAs under Division 4.8 of the *Environmental Planning and Assessment Act 1979* and a Bush Fire Safety Authority pursuant to Section 100B of the *Rural Fires Act 1997*.

The RFS supported the application and GTAs were issued without any specific conditions.

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 Torren's title subdivision of one lot into two and construction of a dwelling house on the new lot as staged development.

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 30 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; and
- The proposed development does not create unreasonable environmental impacts to adjoining development with regard to visual bulk, 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.

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. Subdivision Plan
3. Architectural Plans
4. Landscape Plan

File Reference: DA/984/2022
Document Number: D08615250

SCHEDULE 1

CONDITIONS APPLICABLE TO BOTH STAGES

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

Plan No.	Plan Title	Drawn by	Dated	Council Reference
500364-2	Plan of Subdivision	Mingyang Jiang	31/03/2022	
DA-020 rev. C	Site Plan	WEN Architects	24/03/2023	
DA-030 rev. B	Proposed Subdivision Plan	WEN Architects	13/01/2023	
DA-040 rev. C	Demolition Plan	WEN Architects	24/03/2023	
DA-110 rev. C	Ground Floor Plan	WEN Architects	24/03/2023	
DA-120 rev. B	First Floor Plan	WEN Architects	13/01/2023	
DA-130 rev. C	Roof Plan	WEN Architects	24/03/2023	
DA-210 rev. B	West Elevation	WEN Architects	13/01/2023	
DA-220 rev. B	East Elevation	WEN Architects	13/01/2023	
DA-230 rev. B	North Elevation	WEN Architects	13/01/2023	

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Plan No.	Plan Title	Drawn by	Dated	Council Reference
500364-2	Plan of Subdivision	Mingyang Jiang	31/03/2022	
DA-240 rev. B	South Elevation	WEN Architects	13/01/2023	
DA-310 rev. B	Section A	WEN Architects	13/01/2023	
DA-320 rev. B	Section B	WEN Architects	13/01/2023	
DA-410 rev. B	Window Schedule	WEN Architects	13/01/2023	
DA-540 rev. B	Sediment Control plan	WEN Architects	13/01/2023	
DA-610 rev. B	External Finish Schedule	WEN Architects	13/01/2023	

Supporting Documentation

Document Title	Prepared by	Dated	Council Reference
Arboricultural Impact Appraisal and Method Statement rev. A	Naturally Trees	30/01/2023	D08583361
Bushfire Report Ref: B223892	Australian Bushfire Protection Planners Pty Ltd	14/07/2022	D08496938
BASIX Certificate: 1317149S	LC Consulting Engineers	23/08/2022	D08496935
Waste Management Plan	WEN Architects	unknown	D08497004
Nathers Certificate: 0007983224	LC Consulting Engineers	23/08/2022	D08496969
Statement of Heritage Impact	Three+One heritage	July 2022	D08496952

Reason: To ensure all parties are aware of the approved plans and supporting documentation that apply to the development.

2. 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.

Reason: To ensure appropriate monitoring of tree(s) to be retained.

3. Tree Pruning

This development consent does not permit the pruning of any trees.

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).

Reason: To minimise the impact on trees to be retained.

4. Removal of Trees

- a) This development consent permits the removal of tree numbered 5 as identified in the Tree Management Plan in the Arboricultural Impact Appraisal and Method Statement rev. A prepared by Naturally Trees dated 30 January 2023.
- b) No consent is granted for the removal of trees numbered 1-4 inclusive and 6-14 inclusive 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.

Reason: To identify only those trees permitted to be removed.

5. Installation of Tree Protection Measures

- a) Trees to be retained and numbered 1-4 inclusive and 6-14 inclusive as identified on the Tree Management Plan in the Arboricultural Impact Appraisal and Method Statement rev. A prepared by Naturally Trees dated 29 March 2022 (D08583361) 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 Management Plan in the Arboricultural Impact Appraisal and Method Statement rev. A prepared by Naturally Trees dated 30 January 2023.
 - ii) For the duration of construction works, in accordance with Tree Management Plan in the Arboricultural Impact Appraisal and Method Statement rev. A prepared by Naturally Trees dated 30 January 2023.
- b) Tree protection fencing for the trees to be retained numbered 1, 2, 3, 6, 8, 9 and 10 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 x 100mm) 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 woodchip must be covered with a layer of geotextile fabric and rumble boards.

Reason: To minimise impacts on the water quality of the downstream environment.

6. Tree Protection Certification

To ensure that all tree protection measures are correctly installed, a certificate from the appointed project arborist must be submitted to the Principal Certifying Authority confirming compliance with the tree protection requirements of this consent.

Reason: To ensure compliance with tree protection commitments.

7. 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	\$1,145.60
Open Space and Recreation	\$11,413.95
Community Facilities	\$7,029.95
Plan Preparation and Administration	\$99.50
TOTAL	\$20,000.00

being for an additional allotment.

- b) The value of this contribution is current as at 11 April 2023. 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:

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

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.

Reason: To ensure development contributions are paid to address the increased demand for community infrastructure resulting from the approved development.

8. Dilapidation Report

- a) Prior to the commencement of any works on site, the applicant must submit for approval by the Principal Certifying Authority (with a copy forwarded to Council) a 'Dilapidation Report' detailing the structural condition of the adjoining properties:
 - i) Lot 21, DP 22902, No. 15 Austral Avenue Beecroft.
- b) The report must include a photographic survey of the adjoining properties detailing their physical condition, both internally and externally, including such items as walls, ceilings, roof, structural members, and other similar items. The report must be completed by a chartered structural/geotechnical. A copy of the dilapidation report must be submitted to Council.
- c) In the event access to adjoining allotments for the completion of a dilapidation survey is denied, the applicant must demonstrate in writing that all reasonable steps have been taken to advise the adjoining allotment owners of the benefit of this survey and details of failure to gain consent for access to the satisfaction of the Principle Certifying Authority.

Note: This documentation is for record keeping purposes only and can be made available to an applicant or affected property owner should it be requested to resolve any dispute over damage to adjoining properties arising from works. It is in the applicant's and adjoining owner's interest for it to be as detailed as possible.

Reason: To record the condition of adjoining properties and public land to resolve any dispute over damage from works.

ADDITIONAL CONDITIONS APPLICABLE TO STAGE 1 - SUBDIVISION OF ONE LOT INTO TWO**ITEM 2****9. Subdivision Works 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.

Reason: To ensure that detailed subdivision works certificate plans are consistent with the approved plans and supporting documentation.

10. 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/NBN* - a letter of consent demonstrating that satisfactory arrangements have been made to service the proposed development.

Reason: To ensure the development is provided with the relevant utility services.

11. Stormwater Drainage

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

- a) Connected to existing drainage system that discharge to Austral Ave.
- b) Inter-allotment drainage must be minimum 1m wide.

Reason: To ensure appropriate provision for management and disposal of stormwater.

12. Internal Driveway/Vehicular Areas

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

- a) All driveways be a rigid pavement.
- b) All driveway grades must not exceed 25 percent and changes in grade must not exceed 12 percent.
- c) The driveway pavement over Lot 2 be a minimum 3 metres wide, 0.15 metres thick reinforced concrete with F72 steel reinforcing fabric and a 0.15 metre sub-base.
- d) The driveway pavement over Lot 2 has a kerb to one side and a one-way cross fall with a minimum gradient of 2 percent and a lintel and pit provided at the low point.
- e) Conduit for utility services over Lot 2 including electricity, water, gas, and telephone be provided. All existing overhead assets including electricity and telecommunications cabling shall be relocated underground at no cost to Council. A certificate from an appropriately licensed contractor shall be submitted to the principal certifying

authority certifying that the service conduits have been installed in accordance with the relevant utility provider and Australian Standards.

- f) Longitudinal sections along the access driveway over Lot 2 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.
- g) The Passing Bay on Lot 2 must have minimum width of 5.5m and allow one B85 vehicle to bypass another stationary B85 vehicle.

Reason: To provide safe vehicle and pedestrian access.

REQUIREMENTS PRIOR TO THE COMMENCEMENT OF ANY WORKS
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13. 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.

Reason: Prescribed condition EP&A Regulation, section 70(2) and (3).

14. Protection of Adjoining Areas

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

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

Reason: To ensure public safety and protection of adjoining land.

15. 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*.

Reason: To ensure adequate toilet facilities are provided.

16. 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 *'Urban Stormwater: Soils and Construction "The Blue Book" 2004 (4th edition)*, 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.

Reason: To minimise impacts on the water quality of the downstream environment.

REQUIREMENTS DURING CONSTRUCTION AND DEMOLITION

17. Construction Works 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.

Reason: To protect the amenity of neighbouring properties.

18. 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.
- 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*.

- 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.

Reason: To ensure the appropriate removal and disposal of demolition materials.

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.

Reason: To protect public land.

20. 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.

Reason: To ensure the appropriate disposal of excavated material.

21. 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.

Reason: To protect trees during construction.

22. 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 1-4 inclusive and 6-14 inclusive on the approved plans.

Reason: To ensure appropriate monitoring of tree(s) to be retained.

23. Maintaining Tree Protection Measures

Tree Protection Measures must be maintained by the project arborist in accordance with Condition No. 5 of this consent for the duration of works.

Reason: To ensure appropriate monitoring of tree(s) to be retained.

24. 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 40 mm.
- b) The replacement driveway must be constructed using the following process:
 - i) Demolition must be done manually using small plant machinery only, no larger than a jackhammer.
 - ii) The sub-grade must be raised by 50mm using gap-graded material in accordance with *Australian Standards AS4419-2003 Soils for landscaping and garden use*.
 - iii) A layer of geotextile or rubber underlay must be installed between the sub-grade and concrete.
- c) Approved excavations within the Tree Protection Zone of trees to be retained numbered 6 not associated with installation of services must be undertaken as follows:
 - i) Excavations associated with the basement and building footprint and within the Tree Protection Zone of trees numbered 6 must be overseen by the AQF 5 project arborist to locate roots and allow for pruning in accordance with condition No. 24a.
- d) Grade changes in the form of filling, are permissible outside the Structural Root Zone in conjunction with piers.
- e) To minimise impacts within the Tree Protection Zone (TPZ) of trees numbered 1, 2, 3, 6, 8, 9 and 10 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.

Reason: To protect trees during construction.

REQUIREMENTS PRIOR TO THE ISSUE OF A SUBDIVISION CERTIFICATE

25. 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.

Reason: To ensure compliance with the requirements of Sydney Water.

26. Damage to Council Assets

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

Reason: To ensure public infrastructure and property is maintained.

27. 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.

Reason: To ensure engineering works are completed.

28. 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.

Reason: To protect the State's survey infrastructure.

29. Creation of Easements

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

- a) A right of access and easement for services over the access corridor.
- b) An inter-allotment drainage easement(s) over each of the burdened lots.
- c) The creation of a "Positive Covenant" over the proposed Lot 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.

Reason: To create legal entitlements to facilitate the proper use and management of land.

30. Final Certification

- a) The Project supervisor must submit to the principal certifying authority all relevant certificates with the application for the subdivision certificate stating compliance with all the conditions of this consent.
- b) The Project arborist must submit to the principal certifying authority a certificate that all the completed works have been carried out in compliance with the approved plans and specifications for tree protection.
- c) Certification must include a statement of overall site attendance, the condition of the 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

31. Construction of Internal Driveway/Vehicular Areas

The driveway and parking areas on site must be constructed in accordance with Australian Standards AS2890.1, AS3727 and the requirements of condition No. 12 of this consent prior to issue of the Subdivision Certificate.

Reason: To ensure engineering works are completed.

32. 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.

Reason: To ensure infrastructure is constructed and positioned in the approved location.

ADDITIONAL CONDITIONS APPLICABLE TO STAGE 2 - CONSTRUCTION OF A DWELLING HOUSE

REQUIREMENTS PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

33. Subdivision - Lodgement of Plan

Evidence that a plan of subdivision creating the proposed lots has been lodged with the *NSW Department of Lands* must be submitted to Council or the Principal Certifying Authority.

Reason: To ensure the allotment is legally created prior to development.

34. Amendment of Plans

- a) To comply with Council's requirement in terms of heritage and privacy, the approved plans are to be amended as follows:
 - i) The approved landscape plan is to be amended to include another ER-*Eleocarpus reticulatus* be planted in front of the ground floor level porch and lounge room to further screen the development.
 - ii) A 1.7-metre-privacy screen must be erected along the southern elevation of the first-floor level rear balcony to minimise a direct line of sight to the adjoining properties No. 15, 17 and 19 Austral Avenue.
 - iii) A 1.7-metre-high privacy screen must be erected along the southern elevation of the first-floor level front balcony to minimise a direct line of sight to the adjacent properties No. 11 and 15 Austral Avenue.
 - iv) 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.

Reason: To require minor amendments to the approved plans and supporting documentation following assessment of the development.

35. 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.

Reason: To ensure that detailed construction certificate plans are consistent with the approved plans and supporting documentation.

36. 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*.

Reason: Prescribed condition - EP&A Regulation section 69(1)

37. 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.

Reason: Prescribed condition EP&A Regulation section 69(2)

38. 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.

Reason: Prescribed condition EP&A Regulation section 71(2) and (3)

39. Sydney Water - Approval

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

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

Reason: To ensure the development is provided with the relevant utility services.

40. 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 existing inter-allotment drainage system that discharges to Austral Ave.

Reason: To ensure appropriate provision for management and disposal of stormwater.

41. 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 5 cubic metres, and a maximum discharge (when full) of 8 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.

Reason: To manage stormwater flows to minimise potential flooding.

42. Internal Driveway/Vehicular Areas

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

Reason: To provide safe vehicle and pedestrian access

REQUIREMENTS PRIOR TO THE COMMENCEMENT OF ANY WORKS

43. 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.

Reason: Prescribed condition EP&A Regulation, section 70(2) and (3).

44. 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.

Reason: To ensure public safety and protection of adjoining land.

45. 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*.

Reason: To ensure adequate toilet facilities are provided.

46. 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.

Reason: To minimise impacts on the water quality of the downstream environment.

REQUIREMENTS DURING DEMOLITION AND CONSTRUCTION

47. 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.

Reason: To protect the amenity of neighbouring properties.

48. 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*.

Reason: To minimise impacts to the natural environment and public health.

49. 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.

Reason: To protect public land.

50. 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.

Reason: To ensure buildings are positioned in the approved location and at the correct height.

51. 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 as its request.

Reason: To ensure soil imported to the site is not contaminated.

52. 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.

Reason: To ensure the appropriate disposal of excavated material.

53. 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.

Reason: To protect trees during construction.

54. 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 1-4 inclusive and 6-14 inclusive on the approved plans.

Reason: To ensure appropriate monitoring of tree(s) to be retained.

55. Maintaining Tree Protection Measures

Tree Protection Measures must be maintained by the project arborist in accordance with Condition No. 5 of this consent for the duration of works.

Reason: To protect trees during construction.

56. 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 40 mm.
- b) The replacement driveway must be constructed using the following process:
 - i) Demolition must be done manually using small plant machinery only, no larger than a jackhammer.
 - ii) The sub-grade must be raised by 50mm using gap-graded material in accordance with *Australian Standards AS4419-2003 Soils for landscaping and garden use*.
 - iii) A layer of geotextile or rubber underlay must be installed between the sub-grade and concrete.
- c) Approved excavations within the Tree Protection Zone of trees to be retained numbered 6 not associated with installation of services must be undertaken as follows:
 - i) Excavations associated with the basement and building footprint and within the Tree Protection Zone of trees numbered 6 must be overseen by the AQF 5 project arborist to locate roots and allow for pruning in accordance with condition No. 56a.

- d) Grade changes in the form of filling, are permissible outside the Structural Root Zone in conjunction with piers.
- e) To minimise impacts within the Tree Protection Zone (TPZ) of trees numbered 1, 2, 3, 6, 8, 9 and 10 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.

Reason: To protect trees during construction.

REQUIREMENTS PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE

57. Fulfilment of BASIX Commitments

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

Reason: Prescribed condition under section 75) EP&A Regulation.

58. Replacement Tree Requirements

- a) The trees approved for removal under this consent, being tree numbered T5 must be offset through replacement planting of a minimum of 1 tree.
- 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 4 metres or greater from the foundation walls of the approved development.
 - ii) The pot size of the replacement trees must be a minimum 45 litres.
 - iii) All replacement trees must be a minimum of 3 metres in height.
 - iv) All replacement trees must have the potential to reach a mature height greater than 10 metres.

Reason: To ensure replacement planting to maintain tree canopy.

59. Final Certification

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

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

Note: Copies of monitoring documentation may be requested throughout the development works.

Reason: To ensure compliance with tree protection commitments.

60. 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 Lot 2 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.

Reason: To create legal entitlements to facilitate the proper use and management of land.

61. 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.

Reason: To ensure engineering works are completed.

62. Damage to Council Assets

To protect public property and infrastructure, any damage caused to Council's assets as a result of the construction or demolition of the development must be rectified by the applicant in accordance with AUS-SPEC Specifications (www.hornsby.nsw.gov.au/property/build/aus-

[spec-terms-and-conditions](#). Rectification works must be undertaken prior to the issue of an Occupation Certificate, or sooner, as directed by Council.

Reason: To ensure public infrastructure and property is maintained.

- 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 2021*, 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 (LSC) at www.longservice.nsw.gov.au.

Note: The rate of the Long Service Levy is 0.25% of the total cost of the work (including GST).

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.

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.

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.

House Numbering

The house numbering for this subdivision shall be:

Lot	Street Number	Street Name	Street Type	Locality
Lot 1	11A	Austral	Avenue	Beecroft
Lot 2	11B	Austral	Avenue	Beecroft

**3 DA/1031/2022 - CONSTRUCTION OF A DWELLING HOUSE AND SECONDARY DWELLING
- 90 THE CRESCENT, CHELTENHAM**

DA No:	DA/1031/2022 (Lodged on 4 October 2022)
Description:	Construction of a two storey dwelling house and single storey secondary dwelling on proposed Lot 31
Property:	Lot 3 DP 9207, No. 90 The Crescent, Cheltenham 2119
Applicant:	Shin Young Joung
Owner:	Mr Y S Kwag and Mrs J H Kwag
Estimated Value:	\$770,000
Ward:	C
Clause 4.6 Request:	N/A
Submissions:	14 unique submissions
LPP Criteria:	10 or more unique submissions were received by way of objection
Author:	Madeleine Bayman, Senior Town Planner
COI Declaration:	No Council staff involved in the assessment of this application have declared a Conflict of Interest.

RECOMMENDATION

THAT Development Application No. DA/1031/2022 for the construction of a dwelling house and secondary dwelling at Lot 3 DP 9207, No. 90 The Crescent, Cheltenham be approved as deferred commencement, subject to the conditions of consent detailed in Schedule 1 of LPP Report No. LPP11/23.

EXECUTIVE SUMMARY

- The application involves construction of a two storey dwelling house and single storey secondary dwelling on approved Lot 31 (lots yet to be created/registered with NSW Land Registry Services).
- The proposal generally complies with the Hornsby Local Environmental Plan 2013 and 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 as a deferred commencement consent.

BACKGROUND

On 13 December 2016, Council approved DA/937/2016 for the subdivision of one lot into two on the subject site. The subdivision included the demolition of a portion of the existing dwelling house along the north-western boundary and demolition of an inground swimming pool.

The existing tennis court would also be removed upon future construction of a dwelling house within the rear yard.

The subdivision works are yet to be completed and a Subdivision Works Certificate (SWC) has not been issued at this stage. A Construction Certificate (CC) has been issued by a private certifier for demolition works associated within the existing dwelling house and swimming pool in conjunction with the DA/937/2016 consent.

The approved lots to be created are outlined as follows:

- *Lot 31 (subject of this consent)*

Lot 31 would have an area of 650.7m² and an indicative building envelope has been displayed on the subdivision plan. The site would have vehicular access via an access handle from The Crescent and would benefit from a Right of Access, an Easement for Services and an Easement to Drain Water.
- *Lot 32*

Lot 32 would have an area of 796.4m² (635.7m² excluding the access handle). The site would retain the majority of the existing dwelling house. The site would be burdened by a Right of Access, an Easement for Services and an Easement to Drain Water.

The consent for the subdivision (DA/937/2016) was granted on 13 December 2016 and would have lapsed after 5 years on 13 December 2021. However, amendments to the Environmental Planning and Assessment Regulation during Covid-19, extended periods of consent for an additional 2 years. The lapsing date of the consent is now 13 December 2023, unless physical commencement has been undertaken.

Works associated with the subdivision consent have commenced with a CC issued by a private certifier (CC/14/2023) and demolition of a portion of the existing dwelling house and swimming pool as approved under DA/937/2016. Therefore, the subdivision consent (DA/937/2016) is operative.

Given the lots are yet to be registered with NSW Land Registry Services, the proposal would need to be considered as a deferred commencement until the lots are formally registered.

On 4 October 2022, the subject development application was lodged.

On 17 November 2022, Council requested additional information/ amended plans with regards to non-compliant floor area and landscaping; and impact on trees.

On 18 January 2023, the additional information was submitted for consideration.

On 2 February 2023, the application was re-notified.

SITE

The 1447m² irregular shaped site is located on south-western side of The Crescent, Cheltenham and contains a two storey dwelling house, a swimming pool, a tennis court, a shed and a pergola.

The site experiences a fall of 5m to the northern, front boundary.

The front portion of the site is bushfire prone.

The site is not burdened by any easements or restrictions.

The site is located within the Beecroft-Cheltenham Heritage Conservation Area and is located in the vicinity of a heritage item No. 297, namely a house ('Ashby') at No. 94 The Crescent Cheltenham listed under Schedule 5 of the Hornsby Local Environmental Plan 2013. The site does not contain a heritage listed item.

The Crescent, Cheltenham is developed on its western side only, with its eastern road verge forming a nature strip adjacent to the fenced boundary of the main northern train line. The urban form of the western side is characterised by single and two storey dwellings of various styles and construction dates on large lots with generous front setbacks and gardens. The streetscape is visually defined by mature trees on Council's verge and in private gardens.

PROPOSAL

The application proposes the construction of a two storey dwelling house and single storey secondary dwelling on approved Lot 31 (lots yet to be registered with NSW Land Registry Services).

The ground floor of the dwelling house would comprise a double garage, media room, kitchen, pantry, laundry dining room, family room, lounge room, bathroom, guest room, front porch, entry and rear covered deck area.

The first floor of the dwelling house would comprise four bedrooms, a bathroom, a retreat, a walk-in-robe, an ensuite and a balcony.

The secondary dwelling would comprise a bedroom, ensuite, kitchen, dining/ living are, rear deck area and front porch.

The existing pergola along the north-western, side boundary would be retained.

The metal shed, tennis court and tennis court fencing would be removed.

Three trees would be impacted by the development, one of which would be removed

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 over 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 over 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 site is zoned R2 Low Density Residential pursuant to the Land Use Table of the HLEP. The proposed development is defined as a *'dwelling house'* and *'secondary dwelling'*.

The objectives of the R2 zone are:

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

Whilst the *'dwelling house'* is permissible in the zone under the HLEP, the proposed *'secondary dwelling'* is not permitted. Notwithstanding, a *'secondary dwelling'* is permissible in the zone pursuant to State Environmental Planning Policy (Housing) 2021 and overrides the requirements of the HLEP.

The proposed development achieves the zone objectives by providing for the housing needs of the community within the low density residential environment.

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 maximum 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 is located in the Beecroft/Cheltenham Precinct of the Beecroft-Cheltenham Heritage Conservation Area (HCA) as identified in Schedule 5 of the HLEP. The Statement of Significance for the HCA in Part 9.3.6 of the Hornsby Development Control Plan 2013 (HDCP) identifies that the Precinct “contains a fine collection of buildings from the Victorian, Federation, Arts and Crafts, Inter-war and Post-war eras”

The property is in the vicinity Heritage Item No. 297 - ‘Ashby’ at 94 The Crescent, Cheltenham. The Hornsby Heritage Register notes that Ashby was built c1950 and is a good mid-twentieth example of a Tudor Revival dwelling that is neatly detailed and intact.

The application has been assessed with regards to the plans and supporting studies submitted with the application including a Heritage Impact Statement (HIS) by Damian O’Toole Town Planning and Heritage Services, and the requirements of the HLEP and HDCP.

Council’s heritage assessment of the proposal is outlined as follows:

New Dwelling

Part 9.3.1 of the HDCP provides design controls for new development in HCAs. It requires that development should respect the significant characteristics of the Heritage Conservation Area and be designed to complement the existing streetscape in terms scale, height, bulk, massing, roof form, orientation, façade treatments, setbacks and spaces. Materials, colours and textures should match or complement. The HDCP also requires that new buildings, alterations, and additions should be single storey within streetscapes that are predominately single storey.

While the proposed new dwelling is two-storeys, review of the submitted plans and the HIS, and a visual assessment of the streetscape, indicates that the general form and design of the new dwelling would be unlikely to adversely impact the heritage character of the HCA. The streetscape includes one and two storey dwellings. A two storey dwelling would not be out of character and the deep setback of the new dwelling, well behind the existing two storey building, indicates that only a small portion of it would be visible from the public domain. Its hipped roof form and face brick exterior are sympathetic with the roof forms, materials and palette of the broader character of the HCA.

Consequently, no specific heritage concerns are raised with regards to the design detail, height, form or materiality of the proposed new dwelling.

Trees

Part 9.3.3 of the HDCP provides controls for gardens fences and gates in HCAs and requires that development should not impact upon trees/landscaping that contribute to the significance of the heritage conservation area. The controls, however, provide for circumstances where tree removal cannot be avoided and require that mature trees/landscaping that are removed be replaced with trees/landscaping in a similar or more appropriate location that will mature to a similar size and canopy.

Construction of the new dwelling would require the removal of Tree No. 1, a mature Liquidambar which is visible from The Crescent above the roof of the existing dwelling and from certain locations along Beecroft Road. The Arboricultural report that accompanied the application identifies that Tree No. 1 is of medium significance and unsuitable for retention. Over 1/3 of its root zone would be impacted by the proposed new dwelling, which is identified as an unsustainable major encroachment.

The Liquidambar forms part of a semi-continuous canopy that runs along the rear yards of properties that front both The Crescent and Beecroft Road. Part 9.3.6 of the HDCP notes with regards to the Beecroft/Cheltenham Precinct of the HCA that mature trees, including remnant forest trees, combine to create a landscaped character.

While not of specific cultural heritage value in its own right, the loss of the Liquidambar has potential to adversely impact a canopy which contributes to the overall heritage character of the HCA. Consequently, design amendment of the rear of proposed dwelling so that the tree can be retained is recommended, or should that not be possible, its replacement in a similar or more appropriate location by a tree that will mature to similar size and canopy, as required by the HDCP, is recommended.

Council's tree assessment of the proposal raised no objection to the Liquidambar tree given the tree is considered of medium retention value and unsuitable for retention on the site. Additionally, it is considered that any amended/ viable dwelling design for the site would result in a significant TPZ encroachment of this tree. Whilst tree loss is not ideal, there is sufficient space on the site to provide compensatory plantings of locally occurring species that will mature to a similar size and canopy to maintain the local amenity, as conditioned in Schedule 1 of this report.

The proposal would meet the objectives of Clause 5.10 of the HLEP and desired outcomes of Part 9.3 and 9.4 of the HDCP 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 proposed development would require minor cut/ fill earthworks (max 600mm) within the front of the site to establish the driveway and turning areas on site to connect with the approved driveway to be constructed under the subdivision consent.

Given the subdivision driveway is yet to be constructed, Council requested details of the proposed driveway to be constructed as per the DA/937/2016 consent. In response to the submission of this information, Council requested that the driveway/ hardstand area within the subject site be amended to reflect the subdivision plans, providing a landscape strip between the driveway and the north-western side boundary fence.

To ensure the hardstand area does not directly abut the side boundary fence, a condition is recommended in Schedule 1 ensuring that no fill occurs in the landscape strip/garden bed area adjoining the north-western side boundary and that the driveway/ hardstand vehicular area is supported by a drop edge beam.

Subject to conditions, it is considered that the proposal would adequately protect and maintain the amenity of the adjoining properties, drainage patterns and soil stability of the locality and that the proposal meets the objective of Clause 6.2.

2.1 State Environmental Planning Policy (Housing) (2021)

The application has been assessed against the requirements of chapter 3 of State Environmental Planning Policy (Housing) 2021.

2.1.1 Part 1 Secondary dwellings

Chapter 3 provides State-wide planning controls for the provision of diverse housing types. Division 2 of chapter 3 outlines the standards for Secondary Dwellings. The standard instrument defines a 'secondary dwelling' to be a self-contained dwelling that:

- a) *is established in conjunction with another dwelling (the principal dwelling), and*
- b) *is on the same lot of land (not being an individual lot in a strata plan or community title scheme) as the principal dwelling, and*
- c) *is located within, or is attached to, or is separate from, the principal dwelling.*

The proposed secondary dwelling would be established in conjunction with a principal dwelling on the site and satisfies the above definition.

Section 49 of the Policy outlines the zones in which secondary dwellings are permissible. The site is located within the R2 Low density residential zone, which is listed in the policy as a zone where secondary dwellings are permissible.

Section 52 and 53 outline the development standards for secondary dwellings. The following table sets out the proposal's compliance with these standards.

Housing SEPP - Secondary Dwellings			
Control	Proposal	Requirement	Complies
Site Area	650.70m ²	min. 450m ²	N/A
No. of dwellings	2	2	Yes
Floor Area			
- Principle Dwelling	308m ²	N/A	N/A
- Secondary Dwelling	46m ²	60m ²	Yes
- Total	354m ²	380m ²	Yes
Parking			
- Principle Dwelling	2	2	Yes
- Secondary Dwelling	0	Not required	Yes

As detailed in the above table, the proposed development complies with the relevant development standards for secondary dwellings within the Housing SEPP.

2.2 State Environmental Planning Policy (Building Sustainability Index - BASIX) 2004

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

The proposal includes two separate BASIX Certificates (Cert. No. 1335465S_02 and 1337112S_02, dated 19 September 2022) for the dwelling house and secondary dwelling in accordance with the requirements of the SEPP. The certificates include the list of commitments to be complied with at the construction stage and during the use of the premises. The BASIX certificate achieves the minimum scores for thermal comfort, water and energy.

A condition is recommended in Schedule 1 of this report requiring the recommendations of the BASIX certificates be complied with. The proposal is acceptable in this regard.

2.3 State Environmental Planning Policy (Biodiversity and Conservation) 2021

The application has been assessed against the relevant requirements of chapters 2 and 10 of State Environmental Planning Policy (Biodiversity and Conservation) 2021.

2.3.1 Chapter 2 Vegetation in Non-Rural Areas

Chapter 2 of this policy aims to protect the biodiversity and amenity values of trees within non-rural areas of the state.

Part 2.3 of the policy 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 HDCP prescribes works that can be undertaken with or without consent to trees and objectives for tree preservation.

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

2.3.2 Chapter 10 Sydney Harbour Catchment

The site is located within the catchment of Sydney Harbour. The aim of this chapter is to ensure that the catchment, foreshores, waterways and islands of Sydney Harbour are recognised, protected, enhanced and maintained. This chapter provides general planning considerations and strategies to ensure that the catchment, foreshores, waterways and islands of Sydney Harbour are recognised, protected, enhanced and maintained.

The plan addresses matters related to biodiversity, ecology and environment protection; public access to, and use of, foreshores and waterways; maintenance of a working harbour; interrelationship of waterway and foreshore uses; foreshore and waterways scenic quality; maintenance, protection and enhancement of views and boat storage facilities.

Subject to the implementation of sediment and erosion control measures and stormwater management to protect water quality, the proposal would have minimal potential to impact on the Sydney Harbour Catchment and would comply with the requirements of chapter 10 of the Biodiversity and Conservation SEPP.

2.4 State Environmental Planning Policy (Resilience and Hazards) 2021

The application has been assessed against the requirements of chapter 4 of State Environmental Planning Policy (Resilience and Hazards) 2021.

2.4.1 Chapter 4 Remediation of Land

Section 4.6 of the Resilience and Hazard SEPP states that 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 chapter 4 of the Resilience and Hazards SEPP is not required.

2.5 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.

2.6 Hornsby Development Control Plan 2013

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

HDCP - Part 3.1 Dwelling Houses - Future Lot 31			
Control	Proposal	Requirement	Complies
Site Area	650.70m ²	N/A	N/A
Building Height	8.5m	8.5m	Yes
No. storeys	2	max. 2 + attic	Yes
Site Coverage	37%	max. 50%	Yes
Floor Area (principal and secondary dwelling)	354m ²	max. 380m ²	Yes
Setbacks			
- Side (north-west)			
• Ground floor	1.5m	0.9m	Yes

• <i>First floor</i>	1.5m	1.5m	Yes
- <i>Side (north-east)</i>			
• <i>Ground floor</i>	4.2m	0.9m	Yes
• <i>First floor</i>	4.2m	1.5m	Yes
- <i>Side (south-east)</i>			
• <i>Ground floor</i>	0.9m	0.9m	Yes
• <i>First floor</i>	2.6m	1.5m	Yes
- <i>Rear</i>			
• <i>Ground floor</i>	3.7m	3m	Yes
<i>First floor</i>	12.5m	8m	Yes
Landscaped Area (% of lot size)	30%	min. 30%	Yes
Private Open Space			
- <i>minimum area</i>	>24m ²	24m ²	Yes
- <i>minimum dimension</i>	>3m	3m	Yes
Car Parking	2 spaces	2 spaces	Yes

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

2.6.1 Sunlight Access

The desired outcome of Part 3.1.5 Sunlight Access under HDCP is:

- *Dwelling houses designed to provide solar access to open space areas.*
- *Development designed to provide reasonable sunlight to adjacent properties.*

On 22 June, 50 percent of the required principal private open space on any adjoining property should receive 3 hours of unobstructed sunlight access between 9am and 3pm.

The application was accompanied by shadow diagrams which indicate the overshadowing impacts. Whilst it is acknowledged that there will be some additional overshadowing to the adjoining property at No. 92 The Crescent, the shadow diagrams demonstrate that the proposal is compliant with the prescriptive measures of the HDCP in terms of sunlight access to private open spaces of the subject site and adjoining properties.

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

2.6.2 Privacy

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

This is supported by the prescriptive measures which state that *“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”, “living and entertaining areas of a dwelling house should be located on the ground floor and orientated towards the private open space of the dwelling house and not side boundaries” and “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, and*
- *the window has a sill height of less than 1.5 metres”.*

The application proposes a first floor retreat with a window facing the rear and a balcony, primarily overlooking the private open space of the existing dwelling (approved Lot 32) within the subject site.

In support of these variations, it is noted as follows:

- The first floor retreat proposes one window overlooking the rear yard, more than 10m from the rear boundary, resulting in negligible privacy impacts to adjoining neighbours.
- Council raised initial concerns with the privacy implications of the first floor level balcony and requested that the applicant consider deleting or modifying this component of the development. The applicant amended the proposal by deleting the balcony area in front of the void and eastern bedroom, replacing the bedroom door with a window and converting the balcony area to a terracotta tiled roofing, covering the porch at ground level.
 - In addition, the balcony to the master bedroom was reduced in size and a 1.5 metre high frosted glass privacy screen proposed along the north-western elevation to minimise overlooking to the adjoining neighbours to the north.
 - Further, it is considered that the balcony adjoining the master bedroom would have minimal amenity impacts to adjoining neighbours given it does not adjoin living or entertaining areas (active use areas) and the balcony would primarily overlook the driveway/vehicular areas of the site/ property at the front of the site.
 - It should also be noted that the applicant/ owner wished to maintain the style/ design of the dwelling resulting in balustrading remaining along the entire north-eastern elevation of the first floor. With the exception of the master bedroom balcony, all other balustrading would be for aesthetics only.
- All other first floor windows serve bathrooms and bedrooms which are not considered living or entertaining areas and do not require privacy measures. Notwithstanding, all south-east and north-west elevations would have a sill height or translucent glazing to a minimum 1.5 metres above the finished floor level to maintain privacy and address neighbours' concerns in this regard.

The proposal meets the desired outcome of Part 3.1.6 Privacy of the HDCP and is considered acceptable.

2.6.3 Landscaping

The application identifies 30% of the site landscaped area. The definition of landscaped area is:

Landscaped area means a part of a site used for growing plants, grasses and trees, but does not include any building, structure or hard paved area. (Note: Swimming pools are not included in the minimum landscaped area calculation).

The landscaped plan was not updated to reflect the amended design; however, given the minor nature of the changes in terms of landscape area, an amended landscape plan was not requested.

Notwithstanding, to ensure adequate landscaping on the site, a condition is recommended in Schedule 1 requiring all area identified as green on the approved Site Plan to be turfed or planted garden beds. There must be no gravel or hard paved areas within the areas identified as green. The approved landscape plan is to be amended to reflect these changes prior to issue of the construction certificate.

In addition to the above, it is required that the 3x *Camellia sasanqua* proposed along the south-eastern boundary, adjacent to the dwelling of No. 92 The Crescent (marked on approved plans) must be a minimum pot size of 45 litres when planted, to protect the amenity of the adjoining neighbour.

Subject to conditions, the proposal meets the desired outcome of Part 3.1.3 Landscaping of the HDGP and is considered acceptable.

2.7 Section 7.11 Contributions Plan

Hornsby Shire Council Section 7.11 Contributions Plan 2020-2030 applies to the development as it would result in a secondary dwelling on the site. 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

Three trees would be impacted by the development, one of which would be removed.

The application was supported by an Arboricultural Impact Assessment prepared by Arboreport Consultants, dated 17 January 2023.

Council’s tree assessment of the proposed development raised no objection to the removal of the Liquidambar tree given that the tree is considered of medium retention value and unsuitable for retention on the site. Additionally, it is considered that any alternative dwelling design for the site would also result in a significant TPZ encroachment of this tree. Whilst tree loss is not ideal, there is sufficient space on the site to provide compensatory plantings of locally occurring species to maintain the local amenity as conditioned in Schedule 1 of this report.

In addition, to ensure the protection of trees and bushland on the site, a condition in Schedule 1 is included to require a project arborist with AQF Level 5 qualifications to be appointed to assist in compliance with the conditions of consent and to implement and monitor environmental and tree protection measures during the construction of the development.

3.1.2 Stormwater Management

The proposed stormwater drainage system is designed to minimise impacts on downstream waterways and would be connected, designed and gravity drained to the street in accordance with the following:

- Connected to an existing inter-allotment drainage system via an on-site detention system in accordance with the Stormwater Plan prepared by Simon Fan & Associates.
- Discharge to the existing internal drainage system from OSD must be gravity drained.
- The stormwater drainage system must be designed by a qualified civil/ hydraulic engineer.

Conditions are recommended for the system to be designed and constructed in accordance with Council's AUS-SPEC Specifications. Accordingly, the proposed development satisfies the desired outcomes and prescriptive measures of Part 1C.1.2 Stormwater Management under the HDCP.

3.2 Built Environment

3.2.1 Built Form

The proposed built form is consistent with low density residential area in terms of height, design and materials and is considered compatible with the area and surrounding uses.

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.

The location of the development is in close proximity to Cheltenham Railway Station, Beecroft Shopping Village and a number of recreational, health and education facilities for future residents.

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 7 October 2022 to 29 October 2022 and 2 February 2023 to 23 February 2023 in accordance with the Hornsby Community Engagement Plan. During the two notification periods,

Council received a total of 14 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.

ITEM 3



NOTIFICATION PLAN

● PROPERTIES NOTIFIED	X SUBMISSIONS RECEIVED	 PROPERTY SUBJECT OF DEVELOPMENT	
FOUR SUBMISSIONS RECEIVED OUT OF MAP RANGE			

Over the two submissions periods, 14 unique submissions were received objecting to the development as follows:

- That the subdivision consent has expired.
- Bulk and scale of dwelling:
 - Not meeting objectives of R2 zone
 - Inconsistent with surrounding properties
 - Amenity impacts associated with neighbours and obstructing views of blues skies and trees in the area
- Overshadowing impacts
- Lack of landscaping/ type of landscaping
- Impacts associated with trees on and adjoining the site

- Impact on Liquidambar tree and wildlife that lives within this tree - TPZ encroachment should be reduced
- As amended, development should be re-designed to retain and protect the Liquidambar tree - neighbours do not support the removal of this tree
- Replacement trees not considered to have the same amenity benefits
- Privacy impacts - windows and balconies - overlooking aspect
- Council should not allow for 2 storey dwellings within battle-axe lots
- Impacts the dwelling will have on climate change
- Increase in noise to area from large family home and secondary dwelling
- The proposal would not comply with the internal driveway/ vehicular area requirements of the subdivision DA
- The proposal would not comply with the bushfire access property requirements of the subdivision DA
- The proposal does not comply with Planning for Bushfire Protection 2019
 - New GTA's from RFS should be applied to this development
- Potential structural stability issues with building on top of previously filled tennis court area
- Concerns regarding demolition works commencing on site
- Impacts from lights of cars within turning circle area to property at No. 92 The Crescent
- Roof of existing pergola to be retained intruding on neighbours property at No. 88A The Crescent
- Concerns regarding driveway construction associated with approved subdivision and the height of the driveway relative to No. 88A The Crescent and boundary fence

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 Subdivision Consent Expired/Lapsed

The consent for the subdivision (DA/937/2016) was granted on 13 December 2016 and would have lapsed after 5 years on 13 December 2021. However, amendments to the Environmental Planning and Assessment Regulation during Covid-19, extended periods of consent for an additional 2 years. The lapsing date of the consent is now 13 December 2023, unless physical commencement has been undertaken.

Works associated with the subdivision consent have commenced with a Construction Certificate issued by a private certifier (CC/14/2023) and demolition of a portion of the existing dwelling house and swimming pool as approved under DA/937/2016. Therefore, the subdivision consent (DA/937/2016) is operative.

5.1.2 Bulk and Scale

Whilst the original development did not comply with the floor area and landscaping requirements of HDCP, amended plans were submitted and re-notified complying with the relevant controls as

detailed under Section 2.7 of this report. The following summarises the amendments that have been made to reduce the bulk, scale and amenity impacts of the proposal:

- Reduction in floor area of the principal dwelling to comply with the HDCP
- Increase in landscaping elements of the proposal to the comply with the HDCP
- Reduction in size of the first floor level balcony to protect amenity of adjoining neighbours; and
- Additional privacy frosted glazing to first floor bedroom along north-western, side elevation.

It is considered that adequate measures have been made to protect the amenity of surrounding properties as required under Part 3.1 of the HDCP and it is considered that the proposed development achieves the zone objectives by providing for the housing needs of the community within the low density residential environment. Additionally, no specific heritage concerns are raised with regards to the design detail, height, form or materiality of the proposed new dwelling.

5.1.3 Two Storey Dwellings on Battle-axe Lot

In line with the height controls of the HLEP and prescriptive measures of the HDCP, two storey dwellings are permitted on battle-axe allotments and the proposal is acceptable in this regard.

5.1.4 Impact Dwelling will have on Climate Change

It is considered that the proposal would integrate appropriate sustainability measures to reduce the dwelling impacts on climate change as required under the BASIX SEPP. Refer to section 2.3 of this report for further discussion in this regard.

The proposal includes adequate landscaping and has been appropriately designed to address the relevant planning and environmental legislation. No further concerns are raised in this regard.

5.1.5 Additional Noise Associated with the Proposed Dwellings

As outlined throughout this report, the site permits a two storey dwelling house and secondary dwelling. The proposal complies with the relevant legislative requirements and is considered acceptable in this regard.

It is considered that the noise associated with this development is not a noise generating development under the *Protection of the Environment Operations Act 1997* and any noise generated would be consistent with what is expected of a principal dwelling and secondary dwelling within a low density residential area of this nature.

In addition, conditions have been applied to manage noise associated with the construction of the development and any ongoing unconventional noise that possess tonal, beating and similar characteristics or exceed background noise levels by more than 5dB(A).

5.1.6 Internal Driveway/ Vehicular Area

As noted under Section 2.1.4 of this report, Council requested details of the proposed driveway to be constructed in accordance with the DA/937/2016 consent. In response to the submission of this information, Council requested that the driveway/ hardstand area within the subject site be amended to reflect the subdivision plans, providing a landscape strip between the driveway and the north-western side boundary fence.

Conditions are recommended in Schedule 1 to ensure the driveway/ vehicular area on site are constructed in accordance with the relevant Australian Standards and to protect to amenity of adjoining neighbours. No further concerns are raised.

5.1.7 Subdivision Bushfire Requirements

The approved subdivision DA would be required to address the bushfire access property requirements under Planning for Bushfire Protection 2006, as conditioned under the DA/937/2016 consent.

Only a small portion of the front of the existing site is identified bushfire prone, with the entirety of proposed Lot 31 (the subject site) clear of the bushfire prone classification. No further bushfire assessment of the proposed dwelling or secondary dwelling is required.

5.1.8 Demolition Works Commenced on Site

Work associated with the subdivision consent has commenced with a Construction Certificate issued by a private certifier (CC/14/2023) and demolition of a portion of the existing dwelling house and swimming pool as approved under DA/937/2016.

All demolition works that have currently been undertaken on the site should be in accordance with the subdivision DA/937/2016 consent. No further concerns are raised in this regard.

5.1.9 Impacts of Lights of Cars to No. 92 The Crescent

To address this concern, existing boundary fencing, and provision of mature landscaping would reduce any impacts associated with car lights and no further concerns are raised in this regard.

5.1.10 Existing Pergola Protruding on Neighbours Property

The registered survey identifies this pergola wholly within the subject site. No further concerns are raised in this regard.

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 and secondary dwelling within proposed Lot 31.

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

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

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. Landscape Plan
4. Shadow Diagrams

File Reference: DA/1031/2022
Document Number: D08615550

SCHEDULE 1**1. Deferred Commencement**

- a) Pursuant to Section 4.16(3) of the *Environmental Planning and Assessment Act 1979*, this consent does not operate until a registered plan of subdivision from the NSW Land Registry Services creating the proposed lot must be submitted to Council.
- b) Such information must be submitted within 24 months of the date of this notice.

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

Reason: To ensure the allotments of land are created prior to the operation of the consent.

GENERAL CONDITIONS

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

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

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

2. Approved Plans and Supporting Documentation

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

Approved Plans

Plan No.	Plan Title	Drawn by	Dated	Council Reference
21143A-1 Rev. C	Site Plan	Space Plus Design	03/04/23	
21143A-2 Rev. C	Proposed Ground Floor Plan (includes secondary dwelling floor plan)	Space Plus Design	03/04/23	
21143A-3 Rev. C	Proposed First Floor Plan	Space Plus Design	03/04/23	
21143A-4 Rev. C	Proposed Roof Plan	Space Plus Design	03/04/23	
21143A-5 Rev. C	North-east and North-west Elevation Plans	Space Plus Design	03/04/23	
21143A-6 Rev. C	South-west and South-east Elevation Plans	Space Plus Design	03/04/23	

Plan No.	Plan Title	Drawn by	Dated	Council Reference
21143A-7 Rev. C	Section A-A	Space Plus Design	03/04/23	
21143A-8 Rev. C	Site Plan B-B	Space Plus Design	03/04/23	
21143A-9 Rev. C	Secondary Dwelling Elevation Plans	Space Plus Design	03/04/23	
21143A-10 Rev. C	Secondary Dwelling Section C-C	Space Plus Design	03/04/23	
L01/A - K26414	Landscape Plan	Michael Siu Landscape Architects	01/09/22	

Supporting Documents

Document Title	Prepared by	Dated	Council Reference
Arboricultural Impact Assessment	Arboreport Consultants	17/01/23	D08571662
Tree Protection Plan Rev. B, Sheets TPP 01-04 (inclusive)	Arboreport Consultants	17/01/23	D08571663
Stormwater Concept Plan Rev. A	Simon Fan & Associates	06/12/22	D08551611
BASIX Certificate No. 1335465S_04 (principal dwelling)	Space Plus	08/12/22	D08551612
BASIX Certificate No. 1337112S_03	Space Plus	08/12/22	D08551607
Schedule of External Finishes Rev. A	Space Plus Design	01/12/22	D08551608
Waste Management Plan	Space Plus	23/08/22	D08507343

Reason: To ensure all parties are aware of the approved plans and supporting documentation that apply to the development.

3. Amendment of Plans

- a) To comply with Council's requirement in terms of landscaping and earthworks, the approved architectural and landscape plans are to be amended as follows:
 - i) All area identified as green on the approved Site Plan must be turfed or planted garden beds to ensure there is adequate landscaped area on site.
 - a. There must be no gravel or hard paved/ concrete path areas within the areas identified as green.
 - ii) The 3x *Camellia sasanqua* proposed along the south-eastern boundary, adjacent to the dwelling of No. 92 The Crescent (marked on approved plans) must be a minimum pot size of 45 litres when planted to protect the amenity of the adjoining neighbour.
 - iii) No fill is to occur within the garden bed/ landscape strip adjoining the north-western side boundary as identified on the approved Site Plan and all fill under the driveway/hardstand vehicular turning area must be contained by drop edge beams.

- b) These amended plans must be submitted with the application for the Construction Certificate.

Reason: To require minor amendments to the approved plans and supporting documentation following assessment of the development.

4. 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.

Reason: To ensure protection of trees.

5. Removal of Trees

- a) This development consent permits the removal of tree number 1 as identified in the Tree Protection Plan prepared by Arboreport, dated 17 January 2023.
- b) No consent is granted for the removal of trees numbered 2 and 3 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 (HDGP).

Reason: To identify only those trees permitted to be removed.

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.

Reason: To ensure the stability of the site and adjoining properties.

7. 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	\$1,044.55
Open Space and Recreation	\$8,667.50
Community Facilities	\$5,338.40
Plan Preparation and Administration	\$75.25

TOTAL	\$15,125.70
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being for a secondary dwelling.

- b) The value of this contribution is current as of 11 April 2023. 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:

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

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.

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.

Reason: To ensure development contributions are paid to address the increased demand for community infrastructure resulting from the approved development.

REQUIREMENTS PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

8. 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*.

Reason: Prescribed condition - EP&A Regulation section 69(1)

9. 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.

Reason: Prescribed condition EP&A Regulation section 69(2)

10. 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.

Reason: Prescribed condition EP&A Regulation section 71(2) and (3)

11. Sydney Water - Approval

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

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

Reason: To ensure the development is provided with the relevant utility services.

12. 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 via an on-site detention system in accordance with the Stormwater Plan prepared by Simon Fan & Associates dated 06/12/22.
- b) Discharge to the existing internal drainage system from OSD must be gravity drained.
- c) The stormwater drainage system must be designed by a qualified civil/hydraulic engineer.

Reason: To ensure appropriate provision for management and disposal of stormwater.

13. 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 5 cubic metres, and a maximum discharge (when full) of 8 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.

Reason: To manage stormwater flows to minimise potential flooding.

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, AS2890.2, 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.

Reason: To provide safe vehicle and pedestrian access

REQUIREMENTS PRIOR TO THE COMMENCEMENT OF ANY WORKS
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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.

Reason: Prescribed condition EP&A Regulation, section 70(2) and (3).

16. Protection of Adjoining Areas

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

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

Reason: To ensure public safety and protection of adjoining land.

17. 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*.

Reason: To ensure adequate toilet facilities are provided.

18. 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 'Urban Stormwater: Soils and Construction "The Blue Book" 2004 (4th edition)', 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.

Reason: To minimise impacts on the water quality of the downstream environment.

19. Installation of Tree Protection Measures

- a) Trees to be retained and numbered 2 and 3 as identified on the Tree Protection Plan provided by Arboreport dated 17 January 2023 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 provided by Arboreport, dated 17 January 2023.
 - ii) For the duration of construction works, in accordance with Tree Protection Plan provided by Arboreport, dated 17 January 2023.
 - iii) Additionally the existing tree protection measures already in place (at the entry to the property from the road) must also be maintained for the duration of the demolition and construction.
- b) All tree protection zones must have a layer of wood-chip mulch at a depth of between 150mm and 300mm.
- c) Where wood-chip mulch is permitted by Council instead of tree protection fencing within the tree protection zones, the woodchip must be covered with a layer of geotextile fabric and rumble boards.

Reason: To minimise impacts on the water quality of the downstream environment.

20. Garbage receptacle

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.

Reason: To maintain the site in a clean condition and protect local amenity.

REQUIREMENTS DURING DEMOLITION AND CONSTRUCTION

21. 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.

Reason: To protect the amenity of neighbouring properties.

22. 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.

Reason: To ensure the appropriate removal and disposal of demolition materials.

23. 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*.

Reason: To minimise impacts to the natural environment and public health.

24. Street Sweeping

During works and until exposed ground surfaces across the site have been stabilised, street sweeping must be undertaken following sediment tracking from the site.

The street cleaning service must utilise a 'scrub and dry' method and be undertaken for the full extent of any sediment tracking.

Reason: To minimise impacts to the natural environment.

25. 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.

Reason: To protect public land.

26. Disturbance of Existing Site

During construction works, the existing ground levels of open space areas and natural landscape features, including natural rock-outcrops, vegetation, soil and watercourses must not be altered unless otherwise nominated on the approved plans.

Reason: To protect the natural features of the site.

27. Landfill

- a) Prior to any 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 as its request.

Reason: To ensure soil imported to the site is not contaminated.

28. 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.

Reason: To ensure the appropriate disposal of excavated material.

29. 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.

Reason: To ensure buildings are positioned in the approved location and at the correct height.

30. Waste Management

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

Reason: To ensure the management of waste to protect the environment and local amenity during construction.

31. 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

Reason: To protect trees during construction.

32. 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 2 and 3 on the approved plans.

Reason: To ensure appropriate monitoring of tree(s) to be retained.

33. Maintaining Tree Protection Measures

Tree Protection Measures must be maintained by the project arborist in accordance with Condition Nos. 19 and 31 of this consent for the duration of works.

Reason: To protect trees during construction

34. 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 40 mm.
- b) Where the building footprint enters or transects the Tree Protection Zones of trees to be retained numbered 3, 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.
- c) Approved excavations within the Tree Protection Zone of tree numbered 3 to be retained, not associated with installation of services must be undertaken as follows:
 - i) Excavations associated with the basement and building footprint and within the Tree Protection Zone of trees numbered 3 must be overseen by the AQF 5 project arborist for the first 1m undertaken manually to a depth of 300mm to locate roots and allow for pruning in accordance with condition No. 34a).
- d) Grade changes in the form of filling, are permissible outside the Structural Root Zone in conjunction with piers.

- e) Grade changes in the form of cutting are permissible outside the Structural Root Zone to a depth of 250 millimetres.
- f) To minimise impacts within the Tree Protection Zone (TPZ) of trees numbered 3 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.
- g) 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.

Reason: To protect trees during construction

35. 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.

Reason: To ensure the appropriate removal and disposal of contaminated materials.

- REQUIREMENTS PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE

36. Fulfilment of BASIX Commitments

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

Reason: Prescribed condition under section 75) EP&A Regulation)

37. Damage to Council Assets

To protect public property and infrastructure, any damage caused to Council's assets as a result of the construction or demolition of the development must be rectified by the applicant in accordance with AUS-SPEC Specifications

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

Reason: To ensure public infrastructure and property is maintained.

38. Retaining Walls

All retaining walls must be constructed as part of the development and prior to the issue of an Occupation Certificate.

Reason: To ensure the stability of the site and adjoining land.

39. Creation of Easements

- 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.

Reason: To create legal entitlements to facilitate the proper use and management of land.

40. 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.

Reason: To ensure engineering works are completed.

41. Replacement Tree Requirements

- a) The trees approved for removal under this consent, being tree numbered 1 must be offset through replacement planting of a minimum of 1 tree.
- 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 4 metres or greater from the foundation walls of the approved development.
 - ii) The pot size of the replacement trees must be a minimum 45 litres.
 - iii) All replacement trees must be a minimum of 3 metres in height.
 - iv) All replacement trees must have the potential to reach a mature height greater than 10 metres.

Reason: To ensure replacement planting to maintain tree canopy.

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.

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

Reason: To ensure compliance with tree protection commitments.

OPERATIONAL CONDITIONS

43. 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).

Reason: To protect the acoustic amenity of the local area.

- 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 2021, 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 (LSC) at www.longservice.nsw.gov.au.

Note: The rate of the Long Service Levy is 0.25% of the total cost of the work (including GST).

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.

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.

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.

ITEM 3

4 REPORTING DEVELOPMENT APPLICATIONS FOR DETERMINATION BY THE HORNSBY LOCAL PLANNING PANEL OVER 180 DAYS

EXECUTIVE SUMMARY

- In accordance with the Local Planning Panels Directions - Operational Procedures, Council is required to monitor development applications to be determined by the Panel that may be experiencing unreasonable delays of over 180 days from lodgement.
- A list of out outstanding development applications in excess of 180 calendar days from lodgement is attached for the Hornsby Local Planning Panel's advice.

RECOMMENDATION

THAT the contents of LPP Report No. LPP16/23 be received and noted.

PURPOSE

The purpose of this report is to advise the Hornsby Local Planning Panel of development applications required to be determined by the Panel that are over 180 calendar days from lodgement.

DISCUSSION

In 2019 the NSW Productivity Commission conducted a review of the Independent Planning Commission (IPC). The review recommended several actions to streamline processes to optimise efficiency, output and performance.

The planning panel changes were implemented on 1 August 2020 to incorporate a number of the NSW Productivity Commission 's recommendations to the way Local Planning Panels work to make them more efficient and to improve the assessment and determination times of development applications and maintain panel oversight of sensitive and contentious applications.

These changes were made as part of the Planning Acceleration Program to support the State's immediate and long-term economic recovery from the COVID-19 crisis.

The changes will speed up panel determinations by:

1. Reducing the need to conduct public panel meetings for non-contentious matters by applying a '10-or-more' objection trigger for public meetings.
2. Reducing the amount of modifications going to panels.
3. Obliging panel chairs to more actively manage development applications (DAs) coming to the panels to reduce panel deferrals and assessment timeframes.
4. Allowing chairs to bring forward determination on DAs that are experiencing unreasonable delays of over 180 days from lodgement.
5. Introducing panel performance measures.

The Local Planning Panels Directions - Operational Procedures has been amended to:

- Require panels to make determinations within two weeks of being provided an assessment report.
- Require panels to hold a public meeting only where the Development Application has attracted 10 or more unique submissions by way of objection.
- Allow, at the Chair's discretion, applicants to attend a briefing, along with council staff, to explain complex matters or present confidential or commercially sensitive material.
- Oblige panel chairs to work with council to ensure key issues are addressed during assessment in order to minimise deferrals by the panels at determination stage.
- Require the panels to provide reasons for deferring a decision and set timeframes in which any additional information must be provided in order to finalise the determination.
- Give panel chairs the ability to require council to report a DA to the panel within four weeks for determination if the application has experienced unreasonable delays in excess of 180 calendar days from lodgement.

In accordance with Point 6 of the Local Planning Panels Directions - Operational Procedures, attached is a list of development applications required to be determined by the Panel that are over 180 calendar days from lodgement.

CONCLUSION

Council is required to monitor development applications to be determined by the Panel that are over 180 calendar days from lodgement. This report provides advice to the Local Planning Panel on DAs that are experiencing unreasonable delays of over 180 days from lodgement.

RESPONSIBLE OFFICER

The officer responsible for the preparation of this report is the Major Development Manager, Cassandra Williams.

JAMES FARRINGTON

Director - Planning and Compliance

Planning and Compliance Division

Attachments:

1. DAs over 180 days

File Reference: F2013/00295-004

Document Number: D08621029