



BUSINESS PAPER

LOCAL PLANNING PANEL MEETING

**Thursday 31 August 2023
at 4:00pm**



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GENERAL BUSINESS

Local Planning Panel

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1 DA/531/2023 - CONSTRUCTION OF A SWIMMING POOL AND COVERED DECK - 92A MALTON ROAD, BEECROFT

DA No:	DA/531/2023 (Lodged on 26 June 2023)
Description:	Construction of a swimming pool and covered deck
Property:	Lot 3 DP 532292, No. 92A Malton Road, Beecroft
Applicant:	Mrs Clare Conroy
Owner:	Roger Pablo Tello Conroy
Estimated Value:	\$50,000
Ward:	C Ward
Submissions:	12
LPP Criteria:	10 or more unique submissions were received by way of objection
Author:	Charley Wells, 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/531/2023 for construction of a swimming pool and covered deck at Lot 3 DP 532292, No.92A Malton Road, Beecroft be approved subject to the conditions of consent detailed in Schedule 1 of LPP Report No. LPP31/23.

EXECUTIVE SUMMARY

- The application involves construction of a swimming pool and covered deck.
- The proposal generally complies with the Hornsby Local Environmental Plan 2013 and the Hornsby Development Control Plan 2013.
- A total of 12 submissions have been received in respect of the application.
- The application is required to be determined by the Hornsby Council Local Planning Panel as 10 or more unique submissions were received by way of objection.
- It is recommended that the application be approved.

BACKGROUND

On 18 February 2023, Building Information Certificate No. BC/9/2023 (BC) was lodged for the regularisation of a retaining wall in the rear yard and associated landform modification. At the time of writing this report the BC has not yet been determined.

On 3 August 2023, Council requested additional information requesting the retention of trees numbered T1 and T3, deletion of the concrete pad underneath the deck, the recently planted Sweet viburnum trees growing adjacent to the rear boundary to be plotted on the plans and details of planting to screen the underside of the swimming pool.

On 9 August 2023, the applicant submitted amended plans as requested and an amended arborist report which provides recommendations that retain trees T1 and T3.

SITE

The 1127m² battle-axe site is located on the south-western side of Malton Road, Beecroft and contains a single storey dwelling house, detached carport, detached deck and a swimming pool under construction.

The site experiences >20% gradient.

The site is bushfire prone and is not flood prone.

The site does not contain any easements or restrictions.

Whilst the site is not heritage listed, it is located within the Beecroft/Cheltenham Heritage Conservation Area. The site is in the immediate vicinity of Local Heritage Item No. 114 '*street trees and bushland*' within the road reserve of Malton Road which are listed as items of local significance within Schedule 5 of the Hornsby Local Environmental Plan, 2013.

PROPOSAL

The application proposes alterations and additions to a dwelling house as follows:

- The construction of an above ground swimming pool/ spa.
- The construction of a deck adjoining the swimming pool and pergola.
- Replacement of the existing door and window on the north-western side with bifold doors of the same size.
- Replacement of the kitchen window.
- Construction of a 2.2m high boundary fence for the length of the swimming pool.

Two trees would also 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 proposed development would be consistent with the Greater Sydney Region Plan - A Metropolis of Three Cities and the North District Plan.

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 objectives of the R2 zone are:

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

The proposed development is defined as a 'dwelling house' and is permissible in the zone with Council's consent. It is considered that the proposed development would provide for the housing needs of the community and meets the objectives of the R2 Low density residential zone.

2.1.2 Height of Buildings

Clause 4.3 of the HLEP provides that the height of a building on any land should not exceed the maximum height shown for the land on the Height of Buildings Map. The maximum permissible height for the subject site is 8.5m. The proposed dwelling house would have a maximum height of 6.2m and complies with this provision.

2.1.3 Heritage Conservation

Clause 5.10 of the HLEP sets out heritage conservation provisions for Hornsby Shire. Whilst the site is not heritage listed, it is located within the Beecroft/Cheltenham Heritage Conservation Area. The site is in the immediate vicinity of Local Heritage Item No. 114 'street trees and bushland' within the road reserve of Malton Road which are listed as items of local significance within Schedule 5 of the HLEP

The proposed works are located to the rear of the property which slopes away from the road. The works would not be visible from the streetscape. The proposal provides a negligible contribution to the streetscape and the proposal would have no impact on the heritage conservation area.

In assessing the impact of the proposal on the heritage listed street trees, it is noted that the proposal seeks to alter the built form within the subject site only and the trees to be removed are located on the subject site. Therefore, the proposal would have negligible impact on Item No. 114 and would not adversely impact the continued heritage value of this item.

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.

Minimal earthworks are proposed as part of this application.

Conditions have been recommended requiring that any fill imported to the site consists of Virgin Excavated Natural Material (VENM) as defined in Schedule 1 of the *Protection of the Environment Operations Act 1997*.

Subject to compliance with the recommended conditions, the proposal is considered acceptable in this regard.

2.2 State Environmental Planning Policy (Biodiversity and Conservation) 2021

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

2.2.1 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.

2.2.2 Chapter 6 Waterways

The site is located within the Byles Creek catchment which forms part of 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 6 of the Biodiversity and Conservation SEPP.

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

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

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

2.5 Hornsby Development Control Plan 2013

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

HDCP - Part 3.1 Dwelling Houses			
Control	Proposal	Requirement	Complies
Site Area	1127m ²	N/A	N/A
Building Height	6.2m	8.5m	Yes
No. storeys	Unchanged	max. 2 + attic	Yes
Site Coverage	Unchanged	40%	Yes
Floor Area	Unchanged	430m ²	Yes
Setbacks			
- Side (North-east)	Unchanged	900mm	Yes
- Side (North-west)	0m	900mm	No
- Side (South-east)	Unchanged	900mm	Yes
- Rear (South-west)	10m	8m	Yes
Landscaped Area (% of lot size)	42%	40%	Yes
Private Open Space			
- minimum area	>24m ²	24m ²	Yes
- minimum dimension	>3m ²	3m	Yes
Car Parking	Unchanged	2 spaces	Yes

As detailed in the above table, the proposal does not comply with the side boundary setback control. This is discussed below along with a brief discussion on compliance with relevant performance requirements.

2.5.1 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 measures which prescribes a minimum side boundary setback of 0.9 metres.

The application proposes a side boundary setback of 0 metres for the proposed swimming pool deck which does not comply with the prescriptive measure.

In support of the encroachment, it is noted that the deck would be located adjacent to the driveway of the neighbouring property which is elevated above the proposed deck and swimming pool. Therefore, no amenity or privacy impacts are anticipated. Furthermore, a 2.2-metre-high fence is proposed along the extent of the deck creating privacy screening to minimise the impact of the raised driveway and large retaining walls constructed on the adjoining property.

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

2.5.2 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. *“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.*
- b. *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 proposed deck would be located more than 2.7 metres above existing ground level which would not comply with the 600mm prescriptive measure. In support of the non-compliance, the deck does not face a window of another habitable room, balcony or private open space of another dwelling located within 9 metres of the proposed deck and would overlook the roof of the rear adjoining property.

Additionally, the applicant has provided justification for the location of the deck and is summarised as follows:

- *The deck would be located more than 10 metres from the adjoining property at the rear No. 94 Malton Road.*
- *Trees (*Viburnum odoratissimum*) have been planted along the rear boundary to grow to maturity and create further privacy screening.*
- *Further screening planting is proposed in front of the above ground swimming pool; and*
- *The topography of the site does not allow for a deck to be within 600mm of existing ground whilst maintaining a connection to the ground level of the house, which is necessary as a person that uses wheelchair lives at the property.*

It is considered that the proposed deck height is acceptable as it would not result in significant overlooking opportunities to the private open space and habitable rooms of adjoining properties.

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

2.5.3 Landscaping

The desired outcome of Part 3.1.3 Landscaping of the HDCP is to encourage “*landscaping that integrates the built form with soft landscaping and retains and enhances the tree canopy*” and “*development that retains existing landscape features*”.

This is supported by the prescriptive measure that state: *“side and rear boundary fences should be a maximum of 1.8 metres high, sited behind the front building line”*.

A 2.2 metre high fence is proposed along the extent of the swimming pool which does not comply with the prescriptive measure.

The applicant has provided the justification in support of the 0.4 metre non-compliance:

- *“The finished ground level at No. 88b Malton Road as shown on approved DA plans is 0.65m higher than the level of proposed pool deck at the subject site (RL 91.35 vs RL 90.70).*
- *The approved plans for No. 88b Malton Road show a 1600mm high privacy screen on top of a planter. The top of this privacy screen will be at RL 93.30 and the top of the proposed fence would be at RL 92.90, that is 0.4m below the approved neighbouring privacy screen”.*

The applicant’s justification is considered well founded as the adjoining property is significantly raised when compared to the subject site which has been further exacerbated by the recent construction of a dwelling and the fence would attempt to reduce these impacts and improve the amenity and privacy for the subject site.

The proposal meets the desired outcome of Part 3.1.3 Landscaping of the HDCP and is considered acceptable.

2.5.4 Bushfire

The desired outcomes of Part 1C.3.1 Bushfires of the HDCP encourage *“development that is located and designed to minimise the risk to life and property from bushfires”*.

As outlined in the Bushfire Attack Level Certificate prepared by Hornsby Shire Council dated 29 June 2023, the property is located in an area with a Bushfire Attack Level (BAL) rating of BAL-29.

Council raises no objections to the development, subject to the conditions recommended in Schedule 1 of this report requiring construction standards and asset protection zone requirements in accordance with Planning for Bushfire Protection 2019.

The proposal meets the desired outcomes of Part 1C.3.1 Bushfire of the HDCP and is considered acceptable, subject to conditions.

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

An Arboricultural Impact Assessment (AIA) has been provided by Blues Bros Arboriculture dated 21/06/2023 (version 1) with the application. Four trees were proposed for removal numbered T1 (Grey Gum), T3 (Coastal Banksia), T4 (Sweet Pittosporum) and T6 (Mulberry).

Submissions were received raising concerns with regard to the removal of trees.

The original proposal included the removal of trees T1 and T3. Council considers that trees T1 and T3 could be retained, accordingly amended plans and an amended AIA (version 2 dated 28/6/2023) were submitted indicating the retention and protection of these trees.

Councils raises no concerns with the removal of trees T4 and T6 as they are dead. 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.

In addition, there was a concern raised that a Fiddlewood was not included in the AIA. In response to this concern, it is noted that all trees within proximity of the proposed deck and swimming pool were included in the AIA and have been considered in the assessment of this application.

The proposal meets the prescriptive measures of Part 1B.6.1 Tree Preservation of the HDCP and is considered acceptable, subject to conditions.

3.1.2 Stormwater Management

The application proposes to drain the stormwater to the existing stormwater system. Council's stormwater management assessment raises no concerns to the proposed method of stormwater disposal, subject to the recommended conditions in Schedule 1.

3.2 Built Environment

3.2.1 Built Form

The proposed built form is consistent with the dwellings on adjoining properties in terms of height, design and materials.

3.2.2 Traffic

The proposal is for alterations and additions to an existing dwelling, and it is considered that it would not intensify traffic generation.

3.3 Social Impacts

The residential development would improve housing choice in the locality by providing a range of house hold types. This is consistent with Council's Housing Strategy which identifies the need to provide a mix of housing options to meet future demographic needs in Hornsby Shire.

3.4 Economic Impacts

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

4. SITE SUITABILITY

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

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.

4.1 Bushfire Risk

The land is identified as being subject to bushfire risk a discussion has been provided in Part 2.5.4 of this report.


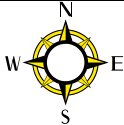
5. PUBLIC PARTICIPATION

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

5.1 Community Consultation

The proposed development was placed on public exhibition and was notified to adjoining and nearby landowners between 28 June 2023 and 19 July 2023 in accordance with the Hornsby Community Engagement Plan. During this period, Council received 12 submissions. The map below illustrates the location of those nearby landowners who made a submission that are in close proximity to the development site.



• PROPERTIES NOTIFIED		X SUBMISSIONS RECEIVED		PROPERTY SUBJECT OF DEVELOPMENT	
7 SUBMISSIONS RECEIVED OUT OF MAP RANGE					

12 submissions objected to the development, summarised as follows:

- Concerns regarding the removal of the Spotted Gum tree (T1) and Banksia tree (T3).
- Concerns regarding unauthorised fill and retaining wall damaging trees and potential contamination of fill.
- Concerns that the pool has already been constructed without consent.

- Concerns regarding the above ground pool resulting in privacy and sunlight access impacts.
- Concerns regarding stormwater runoff from the driveway of 88A Malton Road into the proposed swimming pool and stormwater impacts on No. 94 Malton Road.
- Non-compliance with side boundary (North-West) setback controls.
- Concerns regarding the elevated deck and pool and impact on the noise, privacy and stormwater runoff on No. 94 Malton Road.
- Concerns regarding the impact on Turpentine Ironbark Forest, a Critically Endangered Ecological Community.
- Concerns that a Fiddlewood is not included in the AIA.
- Concerns regarding the height of the deck stating that the deck is 2.7m and does not comply with the 600mm prescriptive measure.
- Concerns that no expert independent Bushfire Report has been commissioned and there is no mention of APZs.
- Concerns regarding a 2.2-metre-high boundary fence.
- Concerns regarding parking on the driveway of No. 94 Malton Road.
- Concerns that the proposal would have a detrimental impact on the significance of the Beecroft/Cheltenham Heritage Conservation Area and does not meet the requirements of Clause 5.10 Heritage Conservation of the HLEP.

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 Retaining Wall

Concerns were raised regarding the construction of retaining wall and the associated damage of trees and potential contaminated fill.

It is noted that this retaining wall and associated fill is subject to a Building Certificate currently with Councils Building Certifications team and does not form part of this application.

5.1.2 Swimming Pool Built

Concerns were raised that the swimming pool has already been constructed without consent.

Council Officers have inspected the site on numerous occasions throughout the assessment of the development application and BC application and notes that the scaffolding for the swimming pool has been constructed, however the concrete footings have not been installed. Therefore, it is considered that a Building Certificate would not be required for this work.

5.1.3 Biodiversity

Concerns were raised regarding the impact on the Turpentine Ironbark Forest.

Councils' Natural Resources Team reviewed the application and concludes that the proposal does not require the removal or modification of a significant area of vegetation or habitat. It is considered that the proposal is generally consistent with the Biodiversity element of HDCEP 2013 and will not have a significant impact on matters listed under the *NSW Biodiversity Conservation Act 2016*.

5.1.4 Sunlight Access

Concerns were raised regarding overshadowing of the adjoining neighbours.

In response to this submission, it is noted that the prescriptive measures of Part 3.1.5 Sunlight access of HDCP state 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 western and southern adjacent neighbours, No. 88b Malton Road and 94 Malton Road, 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.

It is further noted that the shadow diagrams depict sunlight access during the winter season where the sun is lowest in the sky and a higher degree of overshadowing would result.

During the other seasonal cycles of the year, a higher degree of sunlight access would be achieved in comparison to what is depicted on the approved shadow diagrams.

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

5.1.5 Noise Impacts

Concerns were raised regarding noise impacts on the adjoining neighbours.

In response to this concern, the development is not considered a ‘Noise Generating Development’ with respect to Part 1C.2.5 Noise and Vibration of the HDCP. Therefore, noise mitigation measures are not applicable. The proposed meets the desired outcomes of Part 1C.2.5 Noise and Vibration of the HDCP and is considered acceptable.

The *Protection of the Environment Operations Act 1997* (POEO) deals with noise and if there is an issue once in operation, contrary to the noise restrictions and maximum levels, then Council can investigate accordingly.

5.1.6 Parking

Concerns were raised regarding previous construction vehicles parking on the adjoining property No. 94 Malton Road Driveway.

Ongoing disputes between neighbours may be resolved through mediation at the New South Wales Community Justice Centre.

5.1.7 Stormwater

A submission has been received raising concerns with respect to stormwater runoff and flooding impacting the adjoining allotments.

A stormwater plan has been submitted with the proposal by a suitably qualified stormwater consultant. The plans demonstrate that stormwater from the proposed covered deck will be directed to absorption trenches and overflow water from the swimming pool would be directed to the sewer main. The additional roofed area over the deck would not exacerbate stormwater runoff from the site.

The adjoining premises No. 94 Malton Road is located downslope from the subject site and as a consequence, would experience some ground/surface flows of water runoff during significant rain

events, irrespective of what development, if any, may exist on the subject land. Council considers the proposed stormwater method acceptable.

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 swimming pool and covered deck.

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

Having regard to the circumstances of the case, 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.  Arborist Report v2

File Reference: DA/531/2023

Document Number: D08702691

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

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

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

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

1. Approved Plans and Supporting Documentation

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

Approved Plans

Plan No.	Plan Title	Drawn by	Dated	Council Reference
A101 Issue B	New Site and Roof Plan	Design Projector	8/08/2023	
A103 Issue B	New Ground Floor Plan	Design Projector	8/08/2023	
A104 Issue B	Under deck Plan	Design Projector	8/08/2023	
A200 Issue B	South-East Elevation	Design Projector	8/08/2023	
A201 Issue B	South-West Elevation	Design Projector	8/08/2023	
A202 Issue B	North-West Elevation	Design Projector	8/08/2023	
A203 Issue B	North-East Elevation	Design Projector	8/08/2023	
A300 Issue B	Section 1	Design Projector	8/08/2023	
A500 Issue A	Sediment and Erosion Control Plan	Design Projector	22/06/2023	

Supporting Documentation

Document Title	Prepared by	Dated	Council Reference
Waste Management Plan	N/A	No Date	D08677378
Bushfire Attack Level certificate	Hornsby Shire Council	20/06/2023	D08677357
Arboricultural Impact Assessment version 2	Blues Bros Arboriculture	09/08/2023	D08707112

2. Construction Certificate

1. 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.
2. 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.

3. Removal of Trees

1. This development consent permits the removal of trees numbered T4 and T6 as identified on the Tree Protection Plan within the Arboricultural Impact Assessment version 2 prepared by Blues Bros Arboriculture dated 09/08/2023.
2. No consent is granted for the removal of trees numbered T1, T2, T3, T5, T7, T8, T9, T10, T11, T12 and T13 as these trees contribute to the established landscape amenity of the area/streetscape.

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

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

REQUIREMENTS PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

4. Building Code of Australia

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

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

5. Contract of Insurance (Residential Building Work)

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

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

6. Notification of Home Building Act 1989 Requirements

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

1. In the case of work for which a principal contractor is required to be appointed:
 - a. The name and licence number of the principal contractor; and

- b. The name of the insurer by which the work is insured under Part 6 of that Act.
 2. In the case of work to be done by an owner-builder:
 - a. The name of the owner-builder.
 - b. 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).

7. 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.

8. Design and Construction - Bushfire Attack Category

New construction must comply with the current Australian Standard AS3959 Construction of buildings in bush fire-prone areas Section 3 and 6 (BAL 19) and Planning for Bushfire Protection 2019.

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

Reason: To ensure buildings are designed and constructed to withstand the potential impacts of bushfire attack.

9. Stormwater Drainage – Dwellings

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:

The overflow from the rainwater tank and collected surface water must be disposed of in accordance with AUS-SPEC Specifications (www.hornsby.nsw.gov.au/property/build/aus-spec-terms-and-conditions) and the following requirements:

1. The trench must be located a minimum of 5 metres from any downstream properties and 1 metre from the side boundaries.
2. The trench or trenches must be laid on contour.
3. The trench must be a minimum of 0.6 metres wide, 0.6 metres deep and 1 metre long for every 25 square metres of impervious area.

4. Overland flow from the trench must be spread evenly over the site so as not to discharge water in a concentrated manner onto adjoining land.

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

10. Appointment of a Project Arborist

1. A project arborist with AQF Level 5 qualifications must be appointed.
2. Details of the appointed project arborist must be submitted to Council and the PCA for registration with the application for the construction certificate.

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

REQUIREMENTS PRIOR TO THE COMMENCEMENT OF ANY WORKS

11. Erection of Construction Sign

1. A sign must be erected in a prominent position on any site on which any approved work is being carried out:
 - a. Showing the name, address, and telephone number of the principal certifying authority for the work.
 - b. Showing the name of the principal contractor (if any) for any demolition or building work and a telephone number on which that person may be contacted outside working hours.
 - c. Stating that unauthorised entry to the work site is prohibited.
2. 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).

12. Protection of Adjoining Areas

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

1. Could cause a danger, obstruction, or inconvenience to pedestrian or vehicular traffic.
2. Could cause damage to adjoining lands by falling objects.
3. Involve the enclosure of a public place or part of a public place.
4. 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.

13. Toilet Facilities

1. 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.
2. Each toilet must:
 - a. Be a standard flushing toilet connected to a public sewer.
 - b. Be a temporary chemical closet approved under the *Local Government Act 1993*.
 - c. Have an on-site effluent disposal system approved under the *Local Government Act 1993*.

Reason: To ensure adequate toilet facilities are provided.

14. 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.

15. Bushfire Management – Protection Zones

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

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

Reason: To minimise the risk of bushfire attack and provide for emergency services personnel, residents and others assisting firefighting activities.

16. Installation of Tree Protection Measures

1. Trees to be retained as identified on the Tree Protection Plan within the Arboricultural Impact Assessment version 2 prepared by Blues Bros Arboriculture dated 09/08/2023 must have tree protection measures for the ground, trunk and canopy installed by the project arborist as follows:
 - a. For the duration of demolition works, in accordance with the Tree Protection Plan within the Arboricultural Impact Assessment version 2 prepared by Blues Bros Arboriculture dated 09/08/2023.
 - b. For the duration of construction works, in accordance with Tree Protection Plan within the Arboricultural Impact Assessment version 2 prepared by Blues Bros Arboriculture dated 09/08/2023.

2. 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.
3. 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.
4. All tree protection zones must have a layer of wood-chip mulch at a depth of between 150mm and 300mm.

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

REQUIREMENTS DURING CONSTRUCTION

17. Construction Work Hours

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

Reason: To protect the amenity of neighbouring properties.

18. Environmental Management

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

19. Council Property

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

Reason: To protect public land.

20. Disturbance of Existing Site

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

Reason: To protect the natural features of the site.

21. Soil Management (Excavation and Fill)

While site work is being carried out, the Principal Certifier or Council (where a principal certifier is not required) must be satisfied all soil removed from or imported to the site is managed in accordance with the following requirements:

1. Prior to fill material being imported to the site, a Waste Classification Certificate shall be obtained from a suitably qualified environmental consultant confirming all fill material imported to the site must be:
 - a. Virgin Excavated Natural Material as defined in Schedule 1 of the Protection of the Environment Operations Act 1997, or
 - b. A material identified as being subject to a resource recovery exemption by the NSW EPA, or
 - c. A combination of Virgin Excavated Natural Material as defined in Schedule 1 of the Protection of the Environment Operations Act 1997 and a material identified as being subject to a resource recovery exemption by the NSW EPA.

Reason: To ensure soil removed from the site is appropriately disposed of and soil imported to the site is not contaminated and is safe for future occupants.

22. 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.

23. 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:

1. Soil cutting or filling, including excavation and trenching.
2. Soil cultivation, disturbance or compaction.
3. Stockpiling storage or mixing of materials.
4. The parking, storing, washing and repairing of tools, equipment and machinery.
5. The disposal of liquids and refuelling.
6. The disposal of building materials.
7. The siting of offices or sheds.
8. Any action leading to the impact on tree health or structure.

Reason: To protect trees during construction.

24. 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 to be retained on the approved plans.

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

25. Maintaining Tree Protection Measures

Tree Protection Measures must be maintained by the project arborist for the duration of works.

Reason: To protect trees during construction.

26. Approved Works within Tree Protection Zone incursions

1. 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:
 - a. Using sharp secateurs, pruners, handsaws or chainsaws with the final cut being clean.
 - b. The maximum diameter of roots permitted to be cut is 40mm.
2. No changes of grade within the Tree Protection Zone of trees to be retained on the approved plans, are permitted.
3. To minimise impacts within the Tree Protection Zone (TPZ) of trees to be retained on the approved plans, the installation of services must be undertaken as follows:
 - a. The AQF 5 project arborist must be present to oversee the installation of any underground services which enter or transect the tree protection.
 - b. The installation of any underground services which either enter or transect the designated TPZ must be undertaken manually.
 - c. 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.

Reason: To protect trees during construction.

27. Building materials and Site Waste

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

Reason: To protect trees during construction.

REQUIREMENTS PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE

28. 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.

29. 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.

30. Replacement Tree Requirements

1. The trees approved for removal under this consent, being trees numbered T4 and T6 must be offset through replacement planting of a minimum of 2 trees.
2. 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>
3. The location and size of tree replacement planting must comply with the following:
 - a. 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.
 - b. The pot size of the replacement trees must be a minimum 45 litres.
 - c. All replacement trees must be a minimum of 2 metres in height.
 - d. All replacement trees must have the potential to reach a mature height greater than 8 metres.

Reason: To ensure replacement planting to maintain tree canopy.

31. Final Certification

1. The AQF 5 Project arborist must submit to the Principal Certifying Authority a certificate that includes the following:
2. All tree protection requirements complied with the as approved tree protection plan for the duration of demolition and/or construction works.
3. All completed works relating to tree protection and maintenance have been carried out in compliance with the conditions of consent and approved plans.
4. Dates, times and reasons for all site attendance.
5. All works undertaken to maintain the health of retained trees.
6. Details of tree protection zone maintenance for the duration of works.
7. A statement to confirm that tree replacement planting meets NATSPEC guidelines and the approved landscape plan.

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

Reason: To ensure compliance with tree protection commitments.

OPERATIONAL CONDITIONS**32. Swimming Pool Requirements**

The construction and operation of the swimming pool must comply with the provisions of the *Swimming Pool Act 1992*, the *Swimming Pool Regulation 2018*, Australian Standard AS1926.1-3 Swimming pool safety and the following requirements:

1. All wastewater from the pool's filtration system must be disposed of as follows:
 - a. Sand Filter requirements:

- i. Wastewater shall be drained or pumped to the sewer.
- or
- b. Cartridge Filter requirements:
 - i. Cartridge filters do not need to be connected to Sydney Water sewer.

Note: When the cartridge needs cleaning it is to be hosed out in a location that does not adversely impact upon any effluent disposal area and adjoining properties, and must not cause water to enter a waterway, the stormwater system or roadway.
- 2. The motor, filter, pump, and all sound-producing equipment associated with, or forming part of, the swimming pool filtration system is to be located in a sound-proofed enclosure.
- 3. The noise levels associated with the use of swimming pool and spa pumps (excluding heat pump water heaters) shall not exceed more than 5dB(A) above the background noise (LA90, 15 min) level during the following times:
 - a. Between 8 am and 8 pm on any Saturday, Sunday or public holiday, or
 - b. Between 7 am and 8 pm on any other day
- 4. The noise levels associated with the use of spa and swimming heat pump water heaters shall not exceed more than 5dB(A) above the background noise (LA90, 15 min) level during the following times:
 - a. Between 8 am and 10 pm on any Saturday, Sunday or public holiday, or
 - b. Between 7 am and 10 pm on any other day
- 5. The applicant must participate in the 'Static Water Supply Project' initiative of the NSW Fire Brigade, to make available the water in the swimming pool for use as a static water supply for fire fighting purposes by the NSW Fire Brigade or the NSW Rural Fire Service.
- 6. A certificate shall be provided to the certifying authority upon installation of any swimming pool reticulation system verifying design and installation in accordance with Australian Standard AS1926.3 Water recirculation systems.

Note: On completion of the swimming pool, the applicant is to contact the local NSW Fire Brigade Station or NSW Rural Fire Service Station to arrange the installation of a static water supply identification plate.

Reason: To ensure swimming pool safety and protect the environment and 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 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 Preservation in Hornsby Shire

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

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

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

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

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

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

Covenants

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

Before You Dig

Prior to commencing any works, the applicant is encouraged to contact Before You Dig Australia (BYDA) at www.byda.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.