



# **DETERMINATION BUSINESS PAPER**

## **LOCAL PLANNING PANEL MEETING**

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



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**2 DA/1146/2020 - DEMOLITION OF STRUCTURES AND THE TORRENS TITLE SUBDIVISION OF ONE LOT INTO TEN INCLUDING A PLANNING AGREEMENT FOR ROAD ACQUISITION - 90-92 FRANKLIN ROAD, CHERRYBROOK**

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<b>DA No:</b>	DA/1146/2020 (Lodged on 22 December 2020)
<b>Description:</b>	Demolition of structures and Torrens title subdivision of one lot into ten including a planning agreement for road acquisition
<b>Property:</b>	Lot 18 DP 16975, No. 90-92 Franklin Road, Cherrybrook
<b>Applicant:</b>	PS Graham & Associates
<b>Owner:</b>	Goldmap Two Pty Ltd
<b>Estimated Value:</b>	\$500,000
<b>Ward:</b>	C Ward
<b>Clause 4.6 Request:</b>	N/A
<b>Submissions:</b>	7
<b>LPP Criteria:</b>	Planning agreement
<b>Author:</b>	Independent report prepared by DFP
<b>COI Declaration:</b>	No Council staff involved in the assessment of this application have declared a Conflict of Interest.

**RECOMMENDATION Consent**

THAT Development Application No. DA/1146/2020 for demolition of structures, tree removal, civil works, and Torrens title subdivision of one lot into ten lots including one lot for road acquisition at Lot 18 DP 16975, No. 90-92 Franklin Road, Cherrybrook be approved subject to the conditions of consent detailed in Schedule 1 of LPP Report No. LPP15/23.

## EXECUTIVE SUMMARY

- The application involves demolition of structures and the Torrens title subdivision of one lot into ten including a voluntary planning agreement for road acquisition.
- The application involves land to be acquired by Hornsby Shire Council and is required to be determined by the Hornsby Local Planning Panel. An independent assessment of the development application has been undertaken by DFP.
- A total of 7 submissions have been received in respect of the application.
- The application is required to be determined by the Hornsby Council Local Planning Panel as the application includes a planning agreement and land to be acquired by Council.
- The assessment report by DFP is attached to this report for the Hornsby Planning Panel's consideration. The independent consultant's report recommends that the application be approved.

## ASSESSMENT

In accordance with the referral criteria and procedural requirements for Local Planning Panels, the assessment of the development application has been referred to an independent town planning consultant as a Planning Agreement (PA) has been lodged with the development application to which Council is a party. The report by DFP is held at Attachment 1 of this report.

## CONCLUSION

The application proposes demolition of structures, tree removal, civil works, and Torrens title subdivision of one lot into ten lots including one lot for road acquisition.

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 7 submissions during the public notification period. The matters raised have been addressed in the independent report.

Council has referred the application to an independent town planner to carry out an assessment of the application. The assessment concludes that the application should be approved.

It is recommended that the Hornsby Local Planning Panel approve the application in accordance with the recommendations in the report prepared by DFP and the conditions of consent in Attachment 2 of this report.

*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

ROD PICKLES  
Manager - Development Assessments















Assessments  
Planning and Compliance Division

Planning and Compliance Division

ITEM 2

**Attachments:**

1.   Independent Assessment Report
2.   Draft Conditions
3.   Locality Plan
4.   Subdivision Plan
5.   Planning Agreement
6.   Minutes - Planning Agreement endorsement

File Reference: DA/1146/2020

Document Number: D08621023



planning consultants

## Development Assessment Report

Council Ref: DAVI 146/2020

Demolition of structures, tree removal, civil works, Torrens Title subdivision of one lot into ten lots including one lot for road widening to be acquired by Council under a planning agreement

90-92 Franklin Road, Cherrybrook

Prepared for: Hornsby Shire Council  
May 2023

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**ATTACHMENT 1 - ITEM 2**

Printed: 26 May 2023  
File Name: 21376A 90-92 Franklin Road, Cherrybrook/4 Reports/21376A.DAR.V2  
Project Manager: K. Mackay  
Client: Hornsby Shire Council  
Project Number: 21376A

# ATTACHMENT 1 - ITEM 2

## Document Control

Version	Prepared By	Reviewed By	Issued To	Date
Rev_1, Draft	T. West	K. Mackay	Council	5 April 2023
Rev_2, Final	T. West	K. Mackay	Council	26 May 2023

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### Abbreviations

AS	Australian Standard
BC Act	<i>Biodiversity Conservation Act 2016</i>
Council	Hornsby Shire Council
DA	development application
DCP	development control plan
DFP	DFP Planning Pty Limited
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EP&A Regulation	<i>Environmental Planning and Assessment Regulation 2021</i>
EPI	environmental planning instrument
LEP	local environmental plan
LGA	local government area
LPP	Local Planning Panel
PA	planning agreement
SEE	Statement of Environmental Effects
SEPP	state environmental planning policy

## 1 Executive Summary & Recommendation

### 1.1 Application Description

Application Number	DA/1146/2020
Local Government Area	Hornsby Shire Council
Proposed Development	Demolition of structures, tree removal, civil works, Torrens Title subdivision of one lot into ten lots including one lot for road widening to be purchased by Council under a planning agreement
Street Address	90-92 Franklin Road, Cherrybrook
Lot and DP	Lot 18 in DP 16975
Applicant	P S Graham & Associates
Owner	Goldmap Two Pty Ltd
Number of Submissions	Seven (7) Unique Public Submissions
List of all relevant s4.15(1)(a) matters	<i>Environmental Planning and Assessment Act 1979</i> <i>Environmental Planning and Assessment Regulation 2021</i> <i>Biodiversity and Conservation Act 2016</i> <i>State Environmental Planning Policy (Resilience and Hazards) 2021</i> <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i> <i>State Environmental Planning Policy (Biodiversity and Conservation) 2021</i> <i>Hornsby Local Environmental Plan 2013</i> Hornsby Development Control Plan 2013 Hornsby Development Contributions Plan Draft Planning Agreement
List of all documents submitted with this report	1. Conditions of Consent 2. Survey Plan 3. Proposed Plan of Subdivision & Engineering Works Plan 4. Draft Planning Agreement 5. Public Submissions
Recommendation	Approval subject to conditions

### 1.2 Summary

- On 9 December 2019, a Pre-Lodgement Meeting was held between Council and the applicant to discuss a ten (1) lot Torrens title subdivision at the Site.
- On 22 December 2020, the subject DA (DA/1146/2020) was lodged seeking development consent for demolition of structures, civil works and the Torrens title subdivision of one lot into ten lots including a planning agreement for road acquisition.
- In accordance with Section 2.19 of the EP&A Act, the DA must be determined by the Hornsby Shire Council Local Planning Panel (LPP), as a Planning Agreement (PA) has been lodged with the DA to which Council is a party. The PA proposes:

## 1 Executive Summary & Recommendation

- Sale of Lot 1 to Hornsby Shire Council for the value of \$1,915,000 as determined by Valuation dated 29 September 2022;
  - Construction of the civil road and drainage works in John Road and Franklin Road by the Developer to be completed within 12 months of obtaining Subdivision Consent; and
  - Waiving of Section 7.11 & 7.12 contributions from Hornsby Council as compensation for the delivery of road and drainage works as designed and constructed at no cost to Council providing a public benefit to the community.
4. The proposed development is permissible with consent in the R2 Low Density Residential (R2 Zone) pursuant to *Hornsby Local Environmental Plan 2013* (the LEP), is consistent with the relevant objective of the R2 Zone, complies with the minimum lot size and height of buildings development standards and is consistent with other relevant provisions of the LEP.
  5. The proposed development has been assessed as being consistent with the relevant provisions of *State Environmental Planning Policy (Resilience and Hazards) 2021* (SEPP RH), *State Environmental Planning Policy (Transport and Infrastructure) 2021* (SEPP TI) and *State Environmental Planning Policy (Biodiversity and Conservation) 2021* (SEPP BC).
  6. The proposed development is also consistent with the relevant provisions of the Hornsby Development Control Plan 2013 (the DCP), as in force at the date of lodgement of the DA.
  7. Seven (7) unique public submission was received in respect of the DA. A response to the matters raised in the public submissions is provided in Section 5.5 of this report.  
  
The objections were relating to the height of retaining walls, traffic and parking, privacy impacts, solar access, tree loss and stormwater drainage. The assessment of the proposal concludes that these impacts are either misconstrued or that the impacts are minor and where necessary, can be mitigated or minimised to an acceptable level.
  8. It is recommended that the DA be approved subject to conditions of consent.

### 1.3 Recommendation

*THAT, the Hornsby Shire Council Local Planning Panel grant Consent to Development Application No. DA/1146/2020 for demolition of structures, tree removal, civil works, and Torrens Title subdivision of one (1) lot into ten (10) lots including one (1) lot for road acquisition at 90-92 Franklin Road, Cherrybrook, being Lot 18 in DP 16975, pursuant to Section 4.16(1)(a) of the Environmental Planning and Assessment Act, 1979 subject to the conditions of consent at **Attachment 1**.*



## 2 Background

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On 9 December 2019, a Pre-DA Meeting was held with Council Officers for the Torrens title subdivision of one allotment into eleven allotments.

On 22 December 2020, the subject DA (DA/1146/2020) was lodged seeking development consent for demolition of structures, civil works and the Torrens title subdivision of one lot into ten lots including a planning agreement for road acquisition.

On 11 January 2021, the subject DA was placed on public notification for a period of 14 days.

On 21 January 2021, a Development Advisory Panel Meeting was held to discuss the subject DA.

On 9 April 2021, a request for additional information letter was issued to the applicant, requesting the Planning Agreement and explanatory note to be amended.

On 18 November 2021, an request for additional information was issued to the applicant, requesting details of the pavement design and a review of the existing downstream drainage for capacity in carrying the additional water from the site.

On 25 November 2021, the applicant provided a response to the letter issued on 18 November 2021.

On 17 May 2022, an request for additional information letter was issued to the applicant, requesting an amended VPA.

On 5 August 2022, an request for additional information letter was issued to the applicant, requesting an amended subdivision plan and a detailed review of conceptual road design options.

On 20 October 2022, the applicant provided a response to the letter issued on 5 August 2022.

In November 2022, the amended material was placed on public notification for a period of 14 days.

### 3 Site Context

#### 3.1 Location

The Site is located approximately 550m to the north-east of Cherrybrook Station (**Figure 1**), within the Hornsby Local Government Area (LGA).



Figure 1 Site Location

#### 3.2 Site Description

The Site is legally described as Lot 18 in DP 16975 and otherwise known as 90-92 Franklin Road, Cherrybrook. **Figure 2** is an aerial photograph of the Site and immediate surrounds.



Figure 2 Aerial photograph. Source: Nearmap

The Site is trapezoidal in shape with a northern frontage to John Road of 176.185m, an eastern frontage to Franklin Road of 61.865m and a total area of 9,228m<sup>2</sup>. There is a fall of approximately 24m from the south eastern corner to the north western corner.

A single storey brick dwelling with metal roof is located at the eastern end of the site (**Figure 3**) and east of this is a detached building which appears to have been a garage, now converted to habitable space. There are no other built structures of note.

### 3 Site Context



Figure 3 Photograph of the existing dwelling house located on the site.

Vehicular access is available via a driveway from Franklin Road, close to the intersection with John Road and Chapel Close. Parking is only available in the driveway with the garage having been converted to habitable space.

The western end of the site is affected by an easement for overhead electricity transmission lines 30.48m wide (**Figure 4**). A sewer line traverses the eastern end of the site within this easement.



Figure 4 Photograph of the rear of the western end of the site viewed from John Road.

Considerable portions of the Site are heavily vegetated with mature trees, mainly west of the transmission line and east of the dwelling and along the north, eastern and southern boundaries (**Figures 4 and 5**). This vegetation has been assessed as containing:

- 0.15ha of Blue Gum High Forest (PCT 1237);
- 0.09ha of Coastal enriched sandstone forest (PCT 1776);
- 0.05ha of exotic vegetation; and
- 0.11ha of exotic dominated grassland.

There are approximately 118 trees located on or directly adjoining the Site.



### 3 Site Context



Figure 5 Photograph of the site looking west, viewed from the intersection of John and Franklin Roads.

The subject allotment was created by a subdivision registered in 1930, at which time the site was used for rural residential purposes. The site has not been subdivided since and is one of the largest remaining lots in the wider Cherrybrook area.

Figure 6 below is a historical photograph of the Site, which shows two (2) buildings located towards the Franklin Road frontage.



Figure 6 Historical Photograph of the Site. Source: Sixmaps

#### 3.3 Surrounding Development

The immediate surrounding area comprises mostly low-density housing comprising detached dwellings on lots typically 600-800m<sup>2</sup> although there are also several townhouse style developments nearby with lots as small as 350m<sup>2</sup>.

### 3 Site Context

To the east is Franklin Road and on the opposite side of this road are detached dwellings (Figure 7).



Figure 7 Photograph of Franklin Road, looking south

A bus stop is located immediately adjacent to the site on Franklin Road which is serviced by Hills Bus routes 626 and 635 (Figure 8).



Figure 8 Photograph of Franklin Road, looking north

Adjoining to the south are numerous residential properties accessed from Franklin Road, Fernleigh Close and Claridge Close known as:

- 94 Franklin Road;
- 18 and 20 Fernleigh Close; and
- 16, 18 and 20 Claridge Close.

To the north is John Road and on the opposite side of this road are a variety of single dwellings on large and small lots (Figures 9 and 10).



### 3 Site Context



Figure 9 Photograph of John Road, looking west



Figure 10 Photograph of John Road, looking west, with residential to the right of picture.

To the west is 23 John Road which contains a two storey brick dwelling house with a tiled roof.



Figure 11 Photograph to the west of the site

## 4 Proposed Development

### 4.1 Summary Statistics

**Table 1** provides a summary of the key development statistics of the proposal:

Table 1: Development Statistics – Proposed Allotments		
Proposed Lot Number	Proposed Lot Area	Proposed Vehicular Access Point
Lot 1 (road widening)	1,546m <sup>2</sup>	-
Lot 2	3,516m <sup>2</sup>	John Road
Lot 3	504m <sup>2</sup>	John Road
Lot 4	503m <sup>2</sup>	John Road
Lot 5	504m <sup>2</sup>	John Road
Lot 6	505m <sup>2</sup>	John Road
Lot 7	550m <sup>2</sup>	John Road
Lot 8	541m <sup>2</sup>	John Road
Lot 9	514m <sup>2</sup>	Franklin Road
Lot 10	544m <sup>2</sup>	Franklin Road

### 4.2 Proposed Works

Development consent is sought for the following:

- Demolition of all existing structures;
- Removal of 29 trees and retention of existing vegetation in an area to be revegetated;
- Civil works for stormwater drainage (and associated easements) and construction of road widening works within John Road and Franklin Road;
- Subdivision to create ten (10) Torrens Title lots including one lot for acquisition for public road (Proposed Lot 1); and
- Planning Agreement (PA) with Council for the purpose of road acquisition.

**Figure 12** is an extract of the proposed Subdivision Plan, prepared by P.S Graham and Associates.

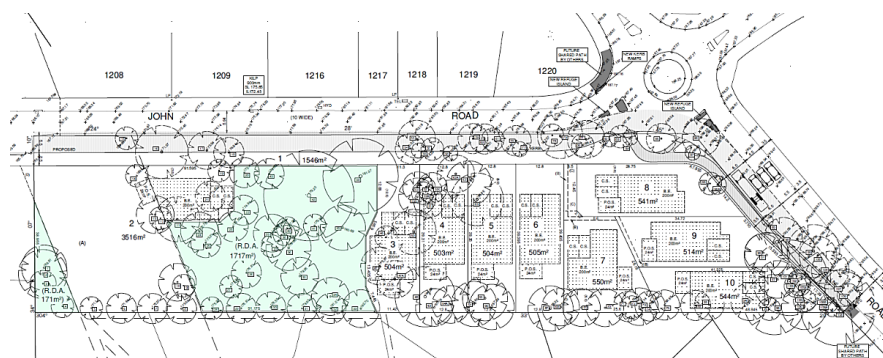


Figure 12 Proposed Subdivision Plan



## 5 Environmental Planning Assessment

### 5.1 Introduction

This section provides an environmental assessment of the proposed development in respect of the relevant matters for consideration under section 4.15(1) of the *Environmental Planning and Assessment Act, 1979* (EP&A Act) the *Environmental Planning and Assessment Regulation 2021* (EP&A Regulation) and other relevant legislation.

### 5.2 Environmental Planning and Assessment Regulation 2021

#### Section 25 - Concurrences and/or Approvals

In accordance with Section 25 of the Regulation the proposed development does not require any concurrences and does not require any approvals under s4.46(1) of the EP&A Act.

#### Section 28 – Biodiversity Conservation Act

In accordance with Section 28(2) of the Regulation, the BDAR which accompanies the DA has been prepared under the BC Act and contains the necessary biodiversity credits information.

#### Section 61 - Australian Standard AS2601 – Demolition of Structures

In accordance with Section 4.15(i)(a)(iv) and Section 61 of the Regulation, the proposal must be assessed against the provisions of AS2601 as it involves demolition of buildings. The existing structures are relatively modern and single storey and the Construction Management Plan outlines the methodology for demolishing works and the recommended conditions of consent requiring all work to be undertaken with prevailing standards and statutory requirements.

#### 5.2.1 State Environmental Planning Policy (Resilience and Hazards) 2021 (SEPP RH)

SEPP RH relates to remediation of contaminated land and requires, amongst other things, consideration be given to whether the subject land is likely to be contaminated and if so, what remediation work is required.

The site has a long history of residential occupation and the proposal does not seek to change the use of the land. The Applicant was advised by Council Officers in Pre-DA discussions that the site is not recorded as being contaminated land and accordingly, a contamination assessment was not required for the DA.

#### 5.2.2 State Environmental Planning Policy (Transport and Infrastructure) 2021 (SEPP TI)

##### Section 2.48 - Development likely to affect an electricity transmission or distribution network

Section 2.48 of SEPP TI requires that, before determining the subject DA, the consent authority must give written notice to the electricity supply authority for the area in which a development involving any of the following is to be carried out and take into consideration any response that is received within 21 days after the notice is given:

- (a) the penetration of ground within 2m of an underground electricity power line or an electricity distribution pole or within 10m of any part of an electricity tower,
- (b) development carried out:
  - (i) within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists), or
  - (ii) immediately adjacent to an electricity substation, or
  - (iii) within 5m of an exposed overhead electricity power line,
- (c) installation of a swimming pool any part of which is:
  - (i) within 30m of a structure supporting an overhead electricity transmission line, measured horizontally from the top of the pool to the bottom of the structure at ground level, or
  - (ii) within 5m of an overhead electricity power line, measured vertically upwards from the top of the pool,

## 5 Environmental Planning Assessment

- (d) *development involving or requiring the placement of power lines underground, unless an agreement with respect to the placement underground of power lines is in force between the electricity supply authority and the council for the land concerned.*

The proposal is located on a site that contains overhead electricity power lines and accordingly, these works trigger the requirement for a referral under SEPP T1.

The application was subsequently referred to Ausgrid, whereby no objection was raised to the proposed development.

### 5.2.3 State Environmental Planning Policy (Biodiversity and Conservation) 2021

*State Environmental Planning Policy (Biodiversity and Conservation) 2021* (SEPP BC) applies to the Site as it is located within the Hornsby Shire Council Local Government Area and the proposal includes the clearing of native vegetation.

A BDAR has been submitted with the DA which assesses the potential impacts arising from the removal of vegetation on flora and fauna which exists or may exist on the site and has determined that the proposal is acceptable subject to the retirement of biodiversity offset credits which is required as a recommended condition of consent. This is discussed further in **Section 5.3.1**.

### 5.2.4 Hornsby Local Environmental Plan 2013

**Table 1** provides a summary assessment of the proposed development against the relevant provisions of the LEP.

Table 1 Assessment against Relevant Provisions of the LEP		
Section	Assessment	Consistency / Compliance
<b>2.2: Zoning and Objectives</b>  R2 Low Density Residential  Objectives: <i>To provide for the housing needs of the community within a low density residential environment.</i>  <i>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</i>	The proposal involves a one into ten lot Torrens title subdivision which is assessed as being consistent with the relevant objective of the zone because it will provide for additional residential lots which comply with the minimum lot size provision, each of which will be capable of accommodating a dwelling house which is consistent with the surrounding low density residential environment.  The second objective is not relevant to the proposal.	Consistent
<b>2.6: Subdivision – Consent Requirements</b>  <i>(1) Land to which this Plan applies may be subdivided, but only with development consent.</i>	The DA seeks development consent for subdivision.	Consistent
<b>2.7: Demolition Requires Development Consent</b>  <i>The demolition of a building or work may be carried out only with development consent.</i>	The DA seeks development consent for the demolition of structures.	Consistent
<b>4.1: Minimum Subdivision Lot Size</b>  Minimum 500m <sup>2</sup>  Objectives: <i>(a) to provide for the subdivision of land at a density that is appropriate for the site constraints, development potential and infrastructure capacity of the land,</i>  <i>(b) to ensure that lots are of a sufficient size to accommodate development.</i>	The proposed residential lots range between 503m <sup>2</sup> and 3,516m <sup>2</sup> and lot for road acquisition is 1,546m <sup>2</sup> – all of which comply with the minimum lot size development standard.  The proposed lots comply with the minimum lot size, are generally consistent with the nature of surrounding development and have all been demonstrated as capable of accommodating a future dwelling that is	Complies  Consistent

## 5 Environmental Planning Assessment

Table 1 Assessment against Relevant Provisions of the LEP

Section	Assessment	Consistency / Compliance
	predominantly consistent with the relevant DCP controls.	
<b>4.3 Height of Buildings</b>  8.5m maximum	No civil works proposed under this DA will exceed 8.5m with all civil works generally being at or below existing ground level.	Complies
<b>5.1: Relevant Acquisition Authority</b>  Zone R2 Low Density Residential and marked "Local road" – Council  (3) Development on land acquired by an authority of the State under the owner-initiated acquisition provisions may, before it is used for the purpose for which it is reserved, be carried out, with development consent, for any purpose.	A portion of the site along the northern boundary and eastern boundary are designated for land acquisition on the LEP map.  Council is the relevant Authority of the State.  A Draft Planning Agreement has been prepared in this regard. This has been discussed in <b>Section 5.2.8</b> of this report.	Consistent
<b>5.1A Development on land intended to be acquired for public purposes</b>  (1) The objective of this clause is to limit development on certain land intended to be acquired for a public purpose.  (2) This clause applies to land shown on the Land Reservation Acquisition Map and specified in Column 1 of the Table to this clause and that has not been acquired by the relevant authority of the State specified for the land in clause 5.1.  (3) Development consent must not be granted to any development on land to which this clause applies other than development for a purpose specified opposite that land in Column 2 of that Table.  Column 1 Land ... Zone R2 Low Density Residential and marked "Local road"	The proposal seeks to set aside the land mapped for acquisition as road for use as road and hence, consent may be granted.  Column 2 Development ... Roads	Consistent
<b>5.10 Heritage conservation</b>	The Site is not identified as a heritage item and is not within a heritage conservation area.	N/A
<b>6.2: Earthworks</b>	The proposed development involves earthworks to facilitate the construction of the road widening along John Road and Franklin. Having regard to the matters for consideration under Clause 6.2(3) it has been assessed that: <ul style="list-style-type: none"> <li>- the design of the works is unlikely to disrupt or detrimentally effect drainage patterns and soil stability in the locality;</li> <li>- the works will facilitate the redevelopment of the land;</li> <li>- no fill is to be used and soil to be excavated is unlikely to be contaminated but will require testing and validation prior to disposal off-site;</li> </ul>	Consistent

## 5 Environmental Planning Assessment

**Table 1 Assessment against Relevant Provisions of the LEP**

Section	Assessment	Consistency / Compliance
	<ul style="list-style-type: none"> <li>- there is unlikely to be significant adverse impacts on the amenity of adjoining properties;</li> <li>- excavated material is required by statute to be disposed of at an approved site or validated for re-use elsewhere;</li> <li>- given the heavily disturbed nature of the locality there is low likelihood of disturbing relics;</li> <li>- the site is not proximate to any waterway, drinking water catchment or environmentally sensitive area;</li> <li>- standard conditions of consent and compliance with the erosion and sedimentation control plan are appropriate measures to avoid, minimise or mitigate the impacts of the development.</li> </ul>	

### 5.2.5 Hornsby Development Control Plan 2013

**Table 2** provides a summary assessment of the proposed development against the relevant provisions of the DCP.

**Table 2 Assessment against Relevant Provisions of the DCP**

Provision	Assessment	Consistency / Compliance
<b>Part 1 General – 1C General Controls</b>		
1B.6 Tree and Vegetation Preservation	The Proposal seeks consent for the removal of vegetation for which development consent is required and this is assessed in the BDAR and discussed at <b>Section 5.3.1</b> of this report where it is concluded that the impact is acceptable subject to conditions of consent.	Consistent
1C.1.1 Biodiversity		Consistent
1C.1.2 Stormwater Management	The proposed Site Works and Drainage Plan provides for a drainage system comprising inter-allotment drainage for several lots with all stormwater discharging to a new pipe in John Road to be constructed as part of the road widening works. This design has been assessed by Council's engineers and conditions of consent are recommended to ensure all final designs meet Council's detailed engineering specifications. In addition, conditions are recommended for a positive covenant to ensure on-site detention is provided for all residential lots as part of any future erection of dwellings.	Consistent
1C.1.4 Earthworks and slope	With the exception of the earthworks required for the road widening, the proposal does not entail any significant cut or fill to accommodate the drainage works or to provide for suitable areas for future building envelopes.	Consistent
1C.2.1 Transport and Parking	The design of the proposed lots provides for access arrangements that have been assessed by Council's engineers as being acceptable and all proposed lots have been assessed as capable of accommodating dwellings and garages with car parking in accordance Council's requirements.	Consistent
1C2.3 Waste Management	The proposal is for residential allotments to accommodate future single dwellings and the building envelopes have been assessed as being capable of accommodating waste and recycling bins in accordance with council's requirements.	Consistent

## 5 Environmental Planning Assessment

Table 2 Assessment against Relevant Provisions of the DCP																								
Provision	Assessment	Consistency / Compliance																						
Part 6 Subdivision – 6.2 Urban Subdivision																								
6.1.1 General Provisions	All proposed allotments comply with the minimum lot size for the site and the assessment of the controls within Part 6 of the DCP hereunder demonstrates that the proposed lots are capable of accommodating future dwellings that can comply with the provisions of the DCP.	Consistent																						
6.2.1 Residential Lands Subdivision																								
Lot size = 500m <sup>2</sup>	Each lot is greater than 500m <sup>2</sup> .	Complies																						
Lot width = 12m minimum	The lot width for each lot (measured at the building line) has been detailed in the table below: <table><tr><th>Lot Number</th><th>Lot Width</th></tr><tr><td>Lot 1</td><td>N/A</td></tr><tr><td>Lot 2</td><td>91.6m</td></tr><tr><td>Lot 3</td><td>11.3-14.25m</td></tr><tr><td>Lot 4</td><td>12.8m</td></tr><tr><td>Lot 5</td><td>12.8m</td></tr><tr><td>Lot 6</td><td>12.8m</td></tr><tr><td>Lot 7</td><td>15.1m</td></tr><tr><td>Lot 8</td><td>14.2m</td></tr><tr><td>Lot 9</td><td>15.4m</td></tr><tr><td>Lot 10</td><td>17.4m</td></tr></table>	Lot Number	Lot Width	Lot 1	N/A	Lot 2	91.6m	Lot 3	11.3-14.25m	Lot 4	12.8m	Lot 5	12.8m	Lot 6	12.8m	Lot 7	15.1m	Lot 8	14.2m	Lot 9	15.4m	Lot 10	17.4m	Predominantly complies
Lot Number	Lot Width																							
Lot 1	N/A																							
Lot 2	91.6m																							
Lot 3	11.3-14.25m																							
Lot 4	12.8m																							
Lot 5	12.8m																							
Lot 6	12.8m																							
Lot 7	15.1m																							
Lot 8	14.2m																							
Lot 9	15.4m																							
Lot 10	17.4m																							
	Whilst Lot 3 is less than the required lot width at the front of the building envelope area, it widens immediately and is generally 14.25m wide across the main envelope which is considered to be acceptable.																							
Developable area = 200m <sup>2</sup> (min. dim 10m)	Each lot comprises a building envelope of 200m <sup>2</sup> .	Complies																						
Principal POS	A principal private open space area has been nominated on each lot that is 24m <sup>2</sup> in area.	Complies																						
2 car spaces	Two car parking spaces are capable of being provided on each lot in line with or behind the building line.	Complies																						
9m front setback 0.9m side setback 5m rear setback	All lots provide for building envelopes which comply with the side and rear setback requirements and Lots 3 and 7 comply with the front setback requirement.	Complies																						
	Lot 2 does not comply with the front setback but is considered acceptable as the building envelope is sited to avoid impact on trees and will be on a large lot with no proximate dwellings.	Does not Comply but acceptable																						
	Lots 4, 5 and 6 do not comply with the front setback requirement providing for 8m although future dwellings would be capable of achieving 9m.	Does not Comply but capable of complying																						
	Lots 8, 9 and 10 require a stepped front setback which complies on an averaging basis.	Complies																						
Minimum Landscaped Area	Lots 3-10 provide for a minimum of 20% landscaped area with 50% of the landscaped area located behind the building line.	Complies																						
20% for lots up to 599m <sup>2</sup> 45% for lots greater than 1500m <sup>2</sup>	Lot 2 provides for a minimum of 45% landscaped area with 50% of the landscaped area located behind the building line.																							
25% of front yard if lot width 18m or less 50% if lot width greater than 18m																								

## 5 Environmental Planning Assessment

**Table 2 Assessment against Relevant Provisions of the DCP**

Provision	Assessment	Consistency / Compliance
6.5 Road Design	The DA was referred to Council's Traffic Engineering and Road Safety team, who recommended the DA for approval, subject to conditions. Subject to compliance with these conditions, the design of the widening of John Road is deemed to comply with Council's Civil Design and Construction Specification.	Complies
6.6 Subdivision Masterplan	The proposal is considered to be consistent with the masterplan for Cherrybrook which envisaged subdivisional roads being provided in the manner proposed.	Consistent

### 5.2.6 Hornsby Shire Council Section 7.11 Development Contributions Plan 2020-2030

In accordance with Hornsby Shire Council Section 7.11 Development Contributions Plan 2020-2030, the proposed development would create eight (8) additional residential lots which attract a development contribution of \$20,000 per lot.

However, the terms of the PA waiving the application of Section 7.11 or Section 7.12 contributions in this instance, as compensation for the delivery of road and drainage works as by the Applicant.

A condition of consent is recommended that requires the Applicant enter into the PA prior to the issue of a subdivision works certificate and accordingly, no condition of consent is to be imposed for s7.11 contributions.

### 5.2.7 Planning Agreements

The Applicant has offered to enter into a PA with Council which proposes:

- Sale of Lot 1 to Council for \$1,915,000 as determined by Valuation dated 29 September 2022;
- Construction of the civil road and drainage works in John Road and Franklin Road by the Developer to be completed within 12 months of obtaining Subdivision Consent; and
- Waiving of Section 7.11 & 7.12 contributions from Hornsby Council as compensation for the delivery of road and drainage works as designed and constructed at no cost to Council providing a public benefit to the community.

Accordingly, a condition of consent is recommended that requires the Applicant enter into the PA prior to the issue of a subdivision works certificate.

### 5.3 Likely Impacts of the Development

The following subsections assess the likely impacts of the development in accordance with section 4.15(1)(b) of the EP&A Act.

#### 5.3.1 Biodiversity

There are approximately 118 trees located on or directly adjoining the Site and vegetation within the site has been assessed in the BDAR as containing:

- 0.15ha of Blue Gum High Forest (PCT 1237);
- 0.09ha of Coastal enriched sandstone forest (PCT 1776);
- 0.05ha of exotic vegetation; and
- 0.11ha of exotic dominated grassland.

This vegetation is shown in the **Figure 13**.



## 5 Environmental Planning Assessment



Figure 13 Plant community types within the subject land. Source: Cumberland Ecology

The proposal includes removal of 29 trees as described in the Arboricultural Impact Assessment Report by Tree Wise Men, dated 4 November 2022, including:

- 10x Forest Red Gum;
- 5x Lemon-scented Gum;
- 2x Sydney Blue Gum;
- 2x Evergreen Ash;
- 2x Broad-leaved Paperbark;
- 2x Turpentine;
- 1x Claret Ash;
- 1x Cook Pine;
- 1x Prickly-leaved Paperbark;
- 1x Jacaranda;
- 1x Fiddlewood; and
- 1x non-identified species (dead).

All other trees are to be protected and retained and the Arboricultural Impact Assessment Report by Tree Wise Men includes recommended tree sensitive construction measures and tree protection measures which are to be required as conditions of consent.

The BDAR prepared by Cumberland Ecology (dated 14 December 2022) has applied the Biodiversity Assessment Method (BAM) to assess the vegetation and habitat values affected by the proposed development.

The BDAR outlines that one Serious and Irreversible Impact (SII) entity - Blue Gum High Forest - will be impacted by the proposal. The condition of this vegetation is degraded although the design has been modified on several occasions to avoid and minimise impacts and retains some of this ecological community on-site. The BDAR concludes that the proposal is unlikely to adversely impact on this ecological community by way of the small area of loss, isolation or fragmentation.



## 5 Environmental Planning Assessment

Notwithstanding, the outcomes of the BAM are that five (5) Ecosystem Credits are required to offset the proposed vegetation removal as follows:

- Sydney Blue Gum (PCT 1237): 3 ecosystem credits; and
- Smooth-barked Apple (PCT 1776): 2 ecosystem credits.

The DA was referred to Council's Natural Resources team who support the proposed development on the basis that the development is consistent with the biodiversity controls of the DCP and will not have a significant impact on matters listed under the BC Act. Notwithstanding, conditions of consent are recommended relating to the Ecosystem Credits, tree removal, tree preservation and the like.

In addition, a condition of consent is to be included that requires the creation of a "restriction as to user" and positive covenant over a 1,888m<sup>2</sup> Restricted Development Area (RDA) within proposed Lot 2. This will prohibit the construction of buildings other than class 10b structures within this area and require vegetation management in accordance with the VMP.

### 5.3.2 Stormwater Management

The proposal provides for inter-allotment drainage for 7, 8, 9 and 10 with discharge to the new kerb alignment in John Road from Lot 7. Easements for drainage are proposed as follows:

- Easement to drain water (1m wide) burdening Lot 7 benefitting Lot 9 and Lot 10;
- Easement to drain water (1m wide) burdening Lot 9 benefitting Lot 10;
- Easement to drain water (3.5m wide) burdening Lot 7 benefitting Lots 8, 9 and 10.

All other lots are proposed to discharge directly to John Road and these arrangements are acceptable to Council's engineers.

Notwithstanding, a condition of consent is recommended that requires a positive covenant over all residential lots requiring future development on each lot to provide on-site detention system with a storage capacity of 5m<sup>3</sup> and a maximum discharge of 8L per second into Council's drainage system.

A Positive Covenant over Lots 2-10 is also recommended requiring provision of a rainwater tank for each lot with a minimum storage capacity of 5,000L.

### 5.3.3 Traffic and Parking

The proposal is for nine (9) residential lots which will result in a net increase of eight (8) lots with all lots capable of accommodating a single dwelling with two off-street car parking spaces in accordance with Council's requirements.

The addition of eight (8) low density residential lots will not result in a significant increase in traffic in the local road network and is considered acceptable with regard to traffic and parking.

The design of the road widening has been reached after careful consideration by the applicant and Council engineers of potential options with the resultant design providing for the most appropriate road geometry and safety outcome for all road users, including pedestrians and cyclists.

### 5.4 Suitability of the Site for Development

The following subsections assess the suitability of the site in accordance with section 4.15(1)(c) of the EP&A Act.

### 5.5 Submissions

Seven (7) unique public submission were received in respect of the DA.. The objections relate to the height of retaining walls, privacy impacts, solar access, biodiversity impacts, traffic / parking and climate impacts. A response to these submissions is provided below:

## 5 Environmental Planning Assessment

- **Retaining Walls:** The proposal does not include any retaining structures and retains existing ground levels for the proposed lots such that it has been assessed that the proposal will of itself, not result in adverse privacy impacts;
- **View Impacts:** The proposal involves the removal of 29 trees within the subject property. This will have view impacts for properties located along the northern side of John Road, notably 4, 6, 10, 24 and 26 John Road.  
  
Notwithstanding, the Vegetation Management Plan (VMP) prepared by Cumberland Ecology has included details for revegetation to offset the tree removal. There will also be replacement tree requirements to be adhered with as part of the conditions of consent to be met prior to the issue of a Subdivision Certificate.  
  
Minor visual impacts caused by the removal 29 trees will be partially offset by the replacement tree planting and the restricted development area (RDA) that will retain 1,888m<sup>2</sup> worth of native vegetation within proposed Lot 2.
- **Solar Access:** Any future DA for development of a two-storey dwelling house will need to be accompanied by shadow diagrams, to determine the amount of overshadowing cast onto the site and neighbouring properties noting the proposed plans demonstrate that all lots are capable of accommodating building footprints that would comply with the DCP requirements for setbacks and open space;
- **Biodiversity Impacts:** The impacts of the proposed development on biodiversity has been discussed in **Section 5.3.1** of this report.
- **Traffic / Parking:** The impacts of the proposed development on traffic and parking has been discussed in **Section 5.3.3** of this report.
- **Stormwater Management:** As part of the widening of John Road, new kerb and gutter is proposed to be constructed adjacent to the northern boundary, which will service the proposed lots. Stormwater will be drained to an existing kerb inlet pit that is located to the west of the site at the bottom of John Road.  
  
The application was referred to Council's Engineers who reviewed the proposed drainage plan and raised no objections, subject to compliance with the conditions of consent.

### 5.6 Public Interest

In accordance with section 4.15(1)(e) of the EP&A Act, the proposed development is considered to be in the public interest because:

- The proposal is for subdivision which is permissible with development consent;
- The proposal seeks to create nine (9) residential lots and one (1) lot for road acquisition and all lots comply with the minimum lot size development standard under the LEP;
- Each proposed lot has been demonstrated to be capable of accommodating a single dwelling house and dwelling houses are permissible with consent in the R2 Zone;
- The design of the proposed lots predominantly satisfies the provisions of the DCP;
- The proposal provides for road widening as envisaged by the DCP;
- Biodiversity impacts have been assessed as acceptable subject to conditions requiring the retirement of biodiversity offsets credits and retention and revegetation of a large area within the site;
- The proposed stormwater design meets Council's requirements and future dwellings will be required to provide for OSD;
- There are unlikely to be any significant adverse built environmental impacts arising from the proposal.

## 6 Conclusion

DFP Planning has been commissioned to undertake an independent assessment of the development application for demolition of structures, tree removal, civil works, and Torrens Title subdivision at 90-92 Franklin Road, Cherrybrook.

The proposed development is permissible with development consent in the R2 Low Density Residential Zone and is consistent with the relevant objective of that Zone.

The proposed lots comply with the minimum lot size development standard under the LEP and the proposed civil works comply with the height of buildings development standard under the LEP.

The proposal includes a proposed lot that contains all land within the site that is designated on the Land Reservation Acquisition Map and the draft planning agreement that accompanies the application proposes that that land be acquired by the Council for the purpose of a road, thereby satisfying the LEP requirements in this regard.

The proposal has been assessed as being consistent with all other relevant provisions of the LEP and the DCP.

Whilst the proposal will require the removal of vegetation from within the site, including vegetation conforming to a critically endangered ecological community, the biodiversity assessment undertaken concludes that the proposal is unlikely to result in a significant and irreversibly impact on that community. In accordance with the BAM, a condition of consent must be imposed requiring the applicant to retire ecosystem credits to offset the loss of vegetation and a significant area of existing vegetation is to be retained and protected through restrictions as to user and positive covenant requiring ongoing vegetation management.

In addition, the removal of trees to facilitate the formation of a full width carriageway on Franklin Road and John Street are considered to be acceptable as it will result in the completion of full width roads as originally envisaged for subdivision in this part of Cherrybrook and will provide for broader community benefits.

Seven (7) public submissions were received in response to the notification raising issues relating to the height of retaining walls, traffic and parking, privacy impacts, solar access, tree loss and stormwater drainage. The assessment of the proposal concludes that these impacts are either misconstrued or that the impacts are minor and where necessary, can be mitigated or minimised to an acceptable level.

The development application must be determined by the LPP as the applicant has offered to enter into a planning agreement to which Council is a party.

Accordingly, it is recommended:

*THAT, the Hornsby Shire Council Local Planning Panel grant Consent to Development Application No. DA/1146/2020 for demolition of structures, tree removal, civil works, and Torrens Title subdivision of one (1) lot into ten (10) lots including one (1) lot for road acquisition at 90-92 Franklin Road, Cherrybrook, being Lot 18 in DP 16975, pursuant to Section 4.16(1)(a) of the Environmental Planning and Assessment Act, 1979 subject to the conditions of consent at **Attachment 1**.*

## SCHEDULE 1

**GENERAL CONDITIONS**

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

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

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

**1. Approved Plans and Supporting Documentation**

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

*Approved Plans*

<b>Plan No.</b>	<b>Plan Title</b>	<b>Drawn by</b>	<b>Dated</b>	<b>Council Reference</b>
S.15696B	Revised Plan of Proposed Subdivision Rev B	PS Graham & Assoc.	17/10/2022	

*Supporting Documentation*

<b>Document Title</b>	<b>Prepared by</b>	<b>Dated</b>	<b>Council Reference</b>
Subdivision Construction Management Plan	PS Graham & Assoc.	undated	D08113562
Subdivision and Engineering Works Plan No. S.15696 Rev B Sheets 1-15	PS Graham & Assoc.	17/10/2022	D08516791
Revised Arboricultural Impact Assessment ref: 2650AIARev	Tree Wise Men	04/11/2022	D08528472
Biodiversity Development Assessment Report No. 20006RP1 Final_v3	Cumberland Ecology	14/12/2022	D08555808
Vegetation Management Plan Report No. 20006RP2 Version 1	Cumberland Ecology	18/10/2022	D08516794
Geotechnical Assessment Job No. 31906	Geotest Services Pty Ltd	20/07/2020	D08075123
Waste Management Plan	PS Graham & Assoc.	28/10/2020	D08075107
Survey Plan ref: S.15696	PS Graham & Assoc.	undated	D08075103

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

**2. Removal of Trees**

- a) This development consent permits the removal of tree(s) numbered T11, T12, T13, T19, T21, T56, T47, T47A, T50, T51, T52, T62, T62a, T63, T92, T93, T94, T95, T96, T97, T101, T102, T103, T103a and T105 within proposed Lots 2-10 and T15, T16, T17, T18, T55, T56, T67,

T58, T59, T60, T61, T76, T77, T78, T79, T80, T81, T82, T83, T84, T85, T86, T87, T89, T98, T99, T100, T104, T107 and T109 for the road widening in proposed Lot 1 as identified in the Revised Arboricultural Impact Assessment ref: 2650AIAREv, prepared by Tree Wise Men dated 4 November 2022.

- b) No consent is granted for the removal of 59 tree(s) numbered T1-T10, T14, T20, T22-T45, T48, T49, T64, T64a, T65-T75, T88, T88a, T90, T91, T106, T108, T108a and T108b 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.*

### 3. Tree Pruning

All pruning work must be undertaken by an arborist with minimum AQF3 qualifications.

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

### 4. Construction / Subdivision Works 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 approval must be obtained from Council for all works within the public road reserve under Section 138 of the *Roads Act 1993*.
- d) 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.*

### REQUIREMENTS PRIOR TO THE ISSUE OF A SUBDIVISION WORKS CERTIFICATE

### 5. Voluntary Planning Agreement

Pursuant to section 7.4 of the *Environmental Planning and Assessment Act 1979*, the Voluntary Planning Agreement (VPA) with Hornsby Shire Council for the widening of and dedication of land for John Road must be entered into.

*Reason: To ensure the Voluntary Planning Agreement is enacted prior to works commencing.*

### 6. 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.*

**7. 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.*

**8. Stormwater Drainage**

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

- a) Connected directly to Council piped drainage system with the following requirements:
- b) An inter-allotment stormwater drainage system to service the proposed subdivision with pits being cast in situ or pre cast concrete pits being used.

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

**9. 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.
- c) The driveway pavement 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 pavement have 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) Any retaining walls / structures required to support the carriageway and the compaction of all fill batters to be in accordance with the requirements of a chartered structural engineer.
- f) Planting of landscaping strips 0.5 metres wide along both sides of the length of the driveway.
- g) Conduit for utility services 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.
- 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 Australian Standard AS2890.1. 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.

*Reason: To provide safe vehicle and pedestrian access*

**10. Footpath**

- a) A concrete footpath must be designed across the full frontage of the subject site in accordance with AUS-SPEC Specifications ([www.hornsby.nsw.gov.au/property/build/aus-spec-terms-and-conditions](http://www.hornsby.nsw.gov.au/property/build/aus-spec-terms-and-conditions)) and the following requirements:
  - i) The existing footpath being removed.
  - ii) Pouring of the concrete footpath to the full frontage of the subject site.
  - iii) The land adjoining the footpath to be fully turfed.
  - iv) Any public utility adjustments to be carried out at the cost of the applicant and to the requirements of the relevant public authority.
- b) A separate approval must be obtained from Council for all works within the public road reserve under Section 138 of the *Roads Act 1993*.

*Reason: To provide safe pedestrian movement.*

**11. Public Road and Drainage Works**

- a) All public road and drainage works approved under this consent must be designed in accordance with AUS-SPEC Specifications ([www.hornsby.nsw.gov.au/property/build/aus-spec-terms-and-conditions](http://www.hornsby.nsw.gov.au/property/build/aus-spec-terms-and-conditions)) and the following requirements:
  - i) Approval from the Hornsby Local Traffic Committee shall be obtained prior to the lodgement of a Section 138 Roads Act Application.
  - ii) Detailed Design Engineering Drawings shall be submitted to Council for the road widening, shared footpath, kerb and gutter, public drainage works and reconstruction of the roundabout in John Road and Franklin Road.
  - iii) A kerb and gutter and pavement in line with the adjoining subdivision, together with footpath formation, necessary drainage and sealing of road pavement between the existing pavement and lip of the gutter.
  - iv) A road pavement design shall be provided that is compatible with the existing road pavement on the northern side of John Road and eastern side of Franklin Road. Investigations including pavement testing of the existing road shall be undertaken and provided to Council.
  - v) The submission of a compaction certificate from a geotechnical engineer for any fill within road reserves, and all road sub-grade and road pavement materials.
  - vi) The extension of the existing Council public drainage system in John Road shall be designed for the 5% AEP storm event. Hydrological and hydraulic details of the existing and proposed piped drainage system shall be provided to demonstrate that the system has sufficient capacity.
  - vii) A minimum 1.8 metre opening grated gully pit shall be provided at intervals no greater than 50 metres.
  - viii) Pipe longitudinal section shall be provided detailing the existing and proposed surface levels, pipe cover, pipe invert levels, pipe grade, velocity and capacity.
- b) A separate approval must be obtained from Council for all road works within the public road reserve under Section 138 of the *Roads Act 1993*.

*Reason: To provide safe vehicle and pedestrian access.*



**12. 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 subdivision works certificate.

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

**13. Appointment of a Project Ecologist**

- a) To ensure the implementation and monitoring of environmental protection measures during the construction of the approved development, a suitably qualified and experienced project ecologist must be appointed to assist in ensuring compliance with the conditions of consent and provide monitoring reports to Council at various stages of the Project as identified in the Vegetation Management Plan Report No. 20006RP2 Version 1, prepared by Cumberland Ecology, dated 14/12/2022 and as specified by the conditions of consent.
- b) Details of the appointed project ecologist must be submitted to Council and the PCA with the application for the subdivision works certificate.

*Reason: To ensure appropriate monitoring of the flora and fauna community on the site or local area.*

**REQUIREMENTS PRIOR TO THE COMMENCEMENT OF ANY WORKS****14. Biodiversity Offset Scheme**

Prior to commencement of works the class and number of ecosystem credits in Table 1 must be retired to offset the residual biodiversity impacts of the development.

- a) The requirement to retire credits in the above condition may be satisfied by payment to the Biodiversity Conservation Fund of an amount equivalent to the class and number of ecosystem credits, as calculated by the Biodiversity Offsets Payment Calculator.
- b) Evidence of the retirement of credits or payment to the Biodiversity Conservation Fund in satisfaction of Table 1 must be provided to the consent authority prior to commencement of works.

Impacted PCT	No. of ecosystem credits	IBRA sub-region	PCTs that can be used for offsetting
1237 Blue Gum High Forest in the Sydney Basin Bioregion	3	Pittwater	1237
1776 Coastal Enriched Sandstone Dry Forest	2	Pittwater	1138, 1253, 1625, 1636, 1638, 1776, 1778, 1782, 1786

*Table 1: Ecosystem credits - like for like*

*Reason: To ensure compliance with the biodiversity offset scheme.*

**15. Construction Demolition Management Plan (CDMP)**

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 CDMP must include the following details:

- a) A Construction Demolition Traffic Management Plan (CDTMP) including the following:
  - i) The order of construction/ demolition works and arrangement of all construction machines and vehicles being used during all stages.
  - ii) The CDTMP plans shall be in accordance with all other plans submitted to Council as part of this development proposal.
  - iii) A statement confirming that no building materials, work sheds, vehicles, machines or the like shall be allowed to remain in the road reserve area without the written consent of Hornsby Shire Council.
  - iv) The Plan shall be in compliance with the requirements of the Roads and Maritime Services *Traffic control at work sites Manual 2018* and detail:
    - a. Public notification of proposed works
    - b. Long term signage requirements
    - c. Short term (during actual works) signage
    - d. Vehicle Movement Plans, where applicable
    - e. Traffic Management Plans
    - f. Pedestrian and Cyclist access and safety.
  - v) Traffic controls including those used during non-working hours. Pedestrian access and two-way traffic in the public road must be able to be facilitated at all times.
  - vi) Details of parking arrangements for all employees and contractors, including layover areas for large trucks during all stages of works. The parking or stopping of truck and dog vehicles associated with the development will not be permitted other than on the site and the plan must demonstrate this will be achieved.
  - vii) Confirmation that a street 'scrub and dry' service will be in operation during all stages of works.
  - viii) Proposed truck routes to and from the site including details of the frequency of truck movements for all stages of the development.
  - ix) Swept path analysis for ingress and egress of the site for all stages of works.
  - x) Site plans for all stages of works including the location of site sheds, concrete pump and crane locations, unloading and loading areas, waste and storage areas, existing survey marks, vehicle entry, surrounding pedestrian footpaths and hoarding (fencing) locations.
  - xi) The total quantity and size of trucks for all importation and exportation of fill on site throughout all stages of works, and a breakdown of total quantities of trucks for each stage of works.
  - xii) The number of weeks trucks will be accessing and leaving the site with excavated or imported fill material.
  - xiii) The maximum number of trucks travelling to and from the site on any given day for each stage of works.
  - xiv) The maximum number of truck movements on any given day during peak commuting periods for all stages of works.
  - xv) The source site location of any proposed fill to be imported to the site, for all stages of works.

- xvi) The Plan must state that the applicant and all employees of contractors on the site must obey any direction or notice from the Prescribed Certifying Authority or Hornsby Shire Council in order to ensure the above.
  - xvii) If there is a requirement to obtain a Work Zone, Out of Hours permit, partial Road Closure or Crane Permit, the Plan must detail these requirements and include a statement that an application to Hornsby Shire Council will be made to obtain such a permit.
- b) A Construction Demolition 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 Australian Standard AS2601-2001 Demolition of Structures, and the Protection of the Environment Operations (Waste) Regulation 2005.
  - iii) General construction/ demolition waste details including construction and demolition waste skip bin locations and litter management for workers.
- c) A Tree Protection Plan (TPP) prepared by an AQF 5 Arborist in accordance with any approved Arboricultural Impact Assessment and tree location plans, detailing the following:
  - i) A site plan showing tree protection zones (TPZ) and structural root zones (SRZ) of trees to be retained and specific details of tree protection measures inclusive of distances (in metres) measured from tree trunks.
  - ii) Construction methodology to avoid damage to trees proposed to be retained during construction works.
  - iii) Specifications on tree protection materials used and methods within the TPZ or SRZ.
  - iii) Location of dedicated material storage space on site outside of TPZ's and SRZ's for retained trees.
- d) A Construction Demolition Noise and Vibration Management Plan (CDNMP) 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/ demolition.
  - iv) The duration of each stage of works where the maximum level of noise and vibration are predicted to be emitted for.
  - v) Details of mitigation measures, inclusive of respite periods, that will meet acoustic standards and guidelines at each stage of works.
  - vi) Details of a complaints handling process for the surrounding neighbourhood for each stage of works.
- e) Identification of approved sediment and erosion control measures.
- f) The CDMP must detail the contact information for developers, builder, private certifier and any emergency details during and outside work hours.

*Note: The CDMP 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.*

#### **16. 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; and
  - 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).*

#### **17. 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; and/or
- b) Could cause damage to adjoining lands by falling objects; and/or
- c) Involve the enclosure of a public place or part of a public place; and/or
- d) Have been identified as requiring a temporary hoarding, fence or awning within the Council approved Construction Demolition Management Plan (CDMP).

*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.*

#### **18. 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; or
  - ii) be a temporary chemical closet approved under the *Local Government Act 1993*; or
  - iii) have an on-site effluent disposal system approved under the *Local Government Act 1993*.

*Reason: To ensure adequate toilet facilities are provided.*

**19. 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.*

**20. Installation of Tree Protection Measures**

- a) Trees to be retained and numbered T1-T10, T14, T20, T22-T45, T48, T49, T64, T64a, T65-T75, T88, T88a, T90, T91, T106, T108, T108a and T108b as identified in the Revised Arboricultural Impact Assessment ref: 2650AIARev, prepared by Tree Wise Men dated 4 November 2022 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 in the Revised Arboricultural Impact Assessment ref: 2650AIARev, prepared by Tree Wise Men dated 4 November 2022.
  - ii) For the duration of construction works, in accordance with Tree Protection Plan in the Revised Arboricultural Impact Assessment ref: 2650AIARev, prepared by Tree Wise Men dated 4 November 2022.
- b) Tree protection fencing for the trees to be retained must be installed by the engaged AQF 5 project arborist and consist of 1.8m high temporary fencing panels installed in accordance with Australian Standard AS4687-2007 Temporary fencing and hoardings.
- c) The installation of all required tree protection fencing must include shade cloth attached to the fencing to reduce transport of dust, particulates and liquids from entering the tree protection zone.
- d) 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 protect trees during construction.*

**21. Delineation of Restricted Development Area**

A permanent fence must be installed to delineate the area identified as 'Restricted Development Area (RDA)' on Plan No. S.15696B Revised Plan of Proposed Subdivision Rev B, prepared by PS Graham & Assoc., dated 17 October 2022. This fence must have an entry gate installed adjoining the electricity easement to ensure contractors are able to enter the site to maintain it.

*Reason: To protect the bushland during construction.*

**22. Fauna Management Prior to Clearing**

Prior to the removal of any vegetation on the site:

- a) The appointed project ecologist must undertake pre-clearance surveys of vegetation and habitat features on the site for the purposes of locating any resident native fauna. Consideration of habitat features must include, but are not limited to, natural features such as

hollow bearing trees, tree fissures, rock escarpments/outcrops/caves and built structures such as stormwater pipes and culverts.

- i) If resident native fauna is observed on the site then a Fauna Management Plan must be prepared describing methods to avoid, minimise and mitigate impacts on that native fauna. The Fauna Management Plan must be submitted to Council for written approval ([naturalresourcesplanning@hornsby.nsw.gov.au](mailto:naturalresourcesplanning@hornsby.nsw.gov.au)) prior to the removal of any vegetation on the site.
- b) The appointed project ecologist shall be on site to supervise all vegetation and habitat clearance and disturbance works.
- c) A suitably qualified and experienced wildlife handler shall be in attendance during all vegetation and habitat clearance and disturbance works on this site to rescue any injured wildlife.
- d) Hollow bearing trees are to be felled in sections, with all hollow bearing sections gently lowered to the ground to maintain the integrity of the hollow and for the protection of any fauna that may be resident in the hollow.
- e) If found native animals shall be removed and relocated to the retained portion of the subject land, in accordance with best practice methods for that species. If appropriate, they may be relocated offsite to suitable habitat if none is available within the subject property.

*Reason: To ensure the protection of fauna on the site.*

#### **23. 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.*

#### **24. 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**

#### **25. 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.*

**26. 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.*

**27. 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.*

**28. 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.*

**29. Compliance with Erosion and Sediment Control Plan**

The Council approved Erosion and Sediment Control Plan must be complied with for the duration of works, unless otherwise approved by Council.

*Reason: To ensure the required erosion and sediment control measures are implemented and maintained during demolition and construction.*

**30. Road Opening Permit**

A road opening permit shall be obtained from the Council to permit a person to dig into Council assets, such as roads, footpaths and nature strips. The applicable fees for the restoration of any public asset by Council shall be at the applicant's full expense.

*Reason: To protect public land.*

**31. 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.*

**32. 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.*

**33. 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.*

**34. 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.*

**35. Compliance with Construction Demolition Management Plan**

The Council approved Construction Demolition 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.*

**36. 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.*

**37. Restricted Development Area Access**

During construction works, the area identified as 'Restricted Development Area (RDA)' on Plan No. S.15696B Revised Plan of Proposed Subdivision Rev B, prepared by PS Graham & Assoc., dated 17 October 2022 must not be accessed except by contractors carrying out works in accordance with the



VMP Vegetation Management Plan. Report No. 20006RP2 version 1 prepared by Cumberland Ecology dated 18 October 2022.

*Reason: To protect Blue Gum High Forest vegetation from construction impacts*

### **38. Maintaining the Health of Trees Approved for Retention**

The appointed project arborist must monitor and record any and all necessary actions required to maintain tree health and condition for trees numbered T1-T10, T14, T20, T22-T45, T48, T49, T64, T64a, T65-T75, T88, T88a, T90, T91, T106, T108, T108a and T108b on the approved plans.

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

### **39. Maintaining Tree Protection Measures**

Tree Protection Measures must be maintained by the project arborist in accordance with Condition No. 19 of this consent for the duration of works.

*Reason: To protect trees during construction.*

### **40. 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) Where the building footprint enters or transects the Tree Protection Zones of trees to be retained, sensitive construction techniques in the form of screw pilings or piers, cantilevered or suspended slab design must be employed to create a 100mm clearance above existing soil grade.
- c) Approved excavations within the Tree Protection Zone of trees to be retained not associated with installation of services must be undertaken as follows:
  - i) Excavations for the construction and/or installation of the driveway/piers in the Tree Protection Zone of trees to be retained on the approved plans must be supervised by the appointed project arborist for the first 1 metre undertaken manually to locate roots and allow for pruning by an arborist with minimum AQF3 qualifications.
- d) 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 appointed 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.
- e) 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; and
  - ii) Installation of geotextile fabric ground covering; and
  - iii) Installation of scaffold boarding above the woodchip and geotextile fabric.

*Reason: To protect trees during construction.*

#### 41. Building Materials and Site Waste

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

*Reason: To protect trees during construction.*

#### 42. 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 A SUBDIVISION CERTIFICATE

#### 43. 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.sydneypwater.com.au](http://www.sydneypwater.com.au) or telephone 13 20 92 for assistance.*

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

#### 44. Replacement Tree Requirements

- a) The trees approved for removal under this consent, being trees numbered T11, T12, T13, T19, T21, T56, T47, T47A, T50, T51, T52, T62, T62a, T63, T92, T93, T94, T95, T96, T97, T101, T102, T103, T103a and T105 within proposed Lots 2-10 and T15, T16, T17, T18, T55, T56, T67, T58, T59, T60, T61, T76, T77, T78, T79, T80, T81, T82, T83, T84, T85, T86, T87, T89, T98, T99, T100, T104, T107 and T109 for the road widening in proposed Lot 1 must be offset in accordance with the Vegetation Management Plan Report No. 20006RP2 Version 1, prepared by Cumberland Ecology, dated 14/12/2022.
- 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> and be characteristic of Blue Gum High Forest in accordance with the Vegetation Management Plan Report No. 20006RP2 Version 1, prepared by Cumberland Ecology, dated 18 October 2022.
- c) The location and size of tree replacement planting must comply with the following:
  - i) All replacement trees must be located in either the 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.

*Reason: To ensure replacement planting to maintain tree canopy.*

**45. 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; and
- b) All completed works relating to tree protection and maintenance have been carried out in compliance with the conditions of consent and approved plans; and
- c) Dates, times and reasons for all site attendance; and
- d) All works undertaken to maintain the health of retained trees; and
- e) Details of tree protection zone maintenance for the duration of works.
- f) A statement to confirm that tree replacement planting meets NATSPEC guidelines and the approved landscape plan.

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

*Reason: To ensure compliance with tree protection commitments.*

**46. Vegetation Management Plan Implementation**

The appointed project ecologist must provide to the PCA and Council certification that the vegetation management work has commenced in accordance with Vegetation Management Plan Report No. 20006RP2 version 1, prepared by Cumberland Ecology dated 18 October 2022.

*Reason: To ensure implementation and compliance with the Vegetation Management Plan.*

**47. 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.*

**48. Damage to Council Assets**

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

*Reason: To ensure public infrastructure and property is maintained.*

**49. 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 Lots 2-10 inclusive 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.

- d) The creation of a "*Positive Covenant*" over the proposed Lots 2-10 inclusive requiring that any future development is to provide a rainwater tank with a minimum storage capacity of 5,000 litres or as required by the BASIX Certificate (whichever is the greater). The rainwater tank shall be connected for laundry use, toilet flushing and garden irrigation purposes.
- e) The creation of a "*Restriction as to user*" over proposed Lot 2 for the area identified as 'Restricted Development Area (RDA)' on Plan No. S.15696B Revised Plan of Proposed Subdivision Rev B, prepared by PS Graham & Assoc., dated 17 October 2022. The restriction on the use of the land shall prohibit the construction of buildings other than class 10b structures on the area affected.

*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.*

#### **50. Creation of Positive Covenant for implementation of the Vegetation Management Plan**

The following matter(s) must be nominated on the plan of subdivision under s88E of the *Conveyancing Act 1919*:

- a) The creation of a "*Positive Covenant*" over the area identified as 'Restricted Development Area (RDA)' on Plan No. S.15696B Revised Plan of Proposed Subdivision Rev B, prepared by PS Graham & Assoc., dated 17 October 2022 to be managed in accordance with the Vegetation Management Plan Report No. 20006RP2 version 1, prepared by Cumberland Ecology dated 18 October 2022.

*Note: The wording of the Positive Covenant must be to Council's satisfaction and Council must be nominated as the authority to release, vary or modify the Restriction.*

*Reason: To inform current and future landowners of the ongoing management requirements of the Vegetation Management Plan and conservation of the Blue Gum High Forest vegetation community.*

#### **51. 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.*

#### **52. 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.*

#### **53. 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.

**54. Traffic Control Plan**

A Traffic Control Plan (TCP) must be prepared by a qualified traffic controller in accordance with the Roads & Traffic Authority's Traffic Control at Worksites Manual 1998 and Australian Standard 1742.3 for all work on a public road. The Traffic Management Plan shall be submitted and approved by Council's Manager Traffic and Road Safety prior to the issue of a construction certificate. The TCP must detail the following:

- a) Arrangements for public notification of the works;
- b) Temporary construction signage;
- c) Permanent post-construction signage;
- d) Vehicle movement plans;
- e) Traffic management plans; and
- f) Pedestrian and cyclist access/safety.

*Reason: To ensure engineering works are completed.*

**OPERATIONAL CONDITIONS****55. Ongoing Protection of Remnant Trees**

All trees on site not approved for removal under this consent are required to be retained for conservation purposes. These trees have a legal obligation for their preservation and are excluded from the clearing provisions of the 10/50 Vegetation Clearing Code of Practice for New South Wales in accordance with Clause 7.8 of the Code.

*Reason: To ensure the ongoing protection of and conservation of the Blue Gum High Forest vegetation community.*

**- 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](http://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/subdivision works 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). (HDGP 1B.6.1.c).*

**Covenants**

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

**Subdivision Certificate Requirements**

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

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

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

**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.

**Before You Dig**

Prior to commencing any works, the applicant is encouraged to contact Before You Dig Australia (BYDA) at [www.byda.com.au](http://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](http://www.environment.nsw.gov.au)

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

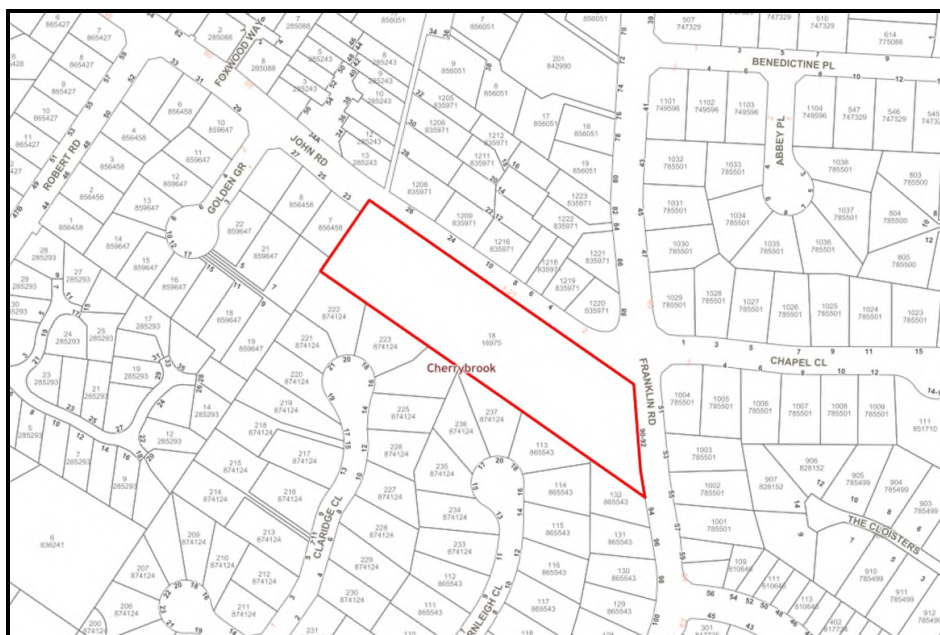
[www.safework.nsw.gov.au](http://www.safework.nsw.gov.au)

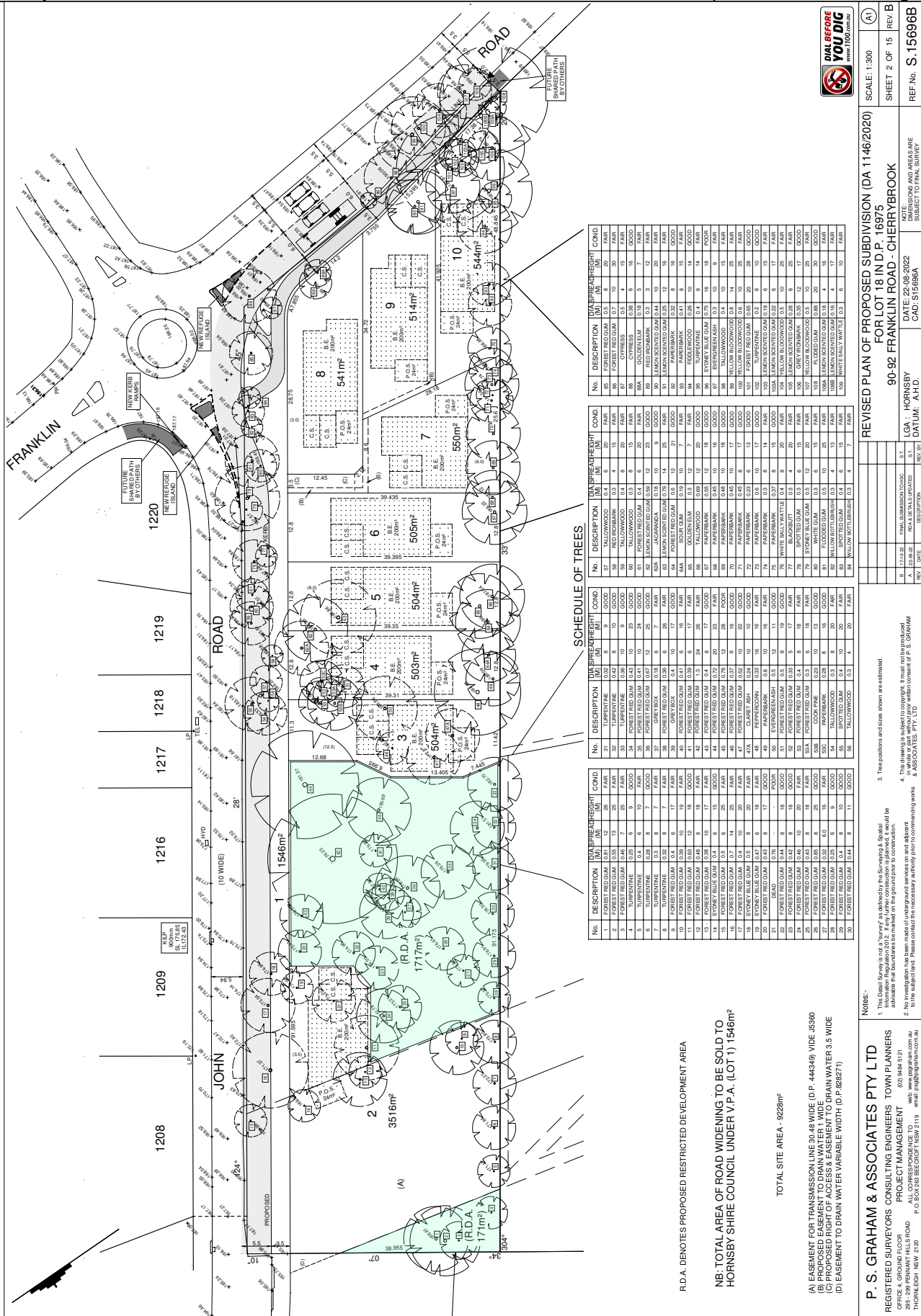
Alternatively, telephone the *SafeWork NSW* on 13 10 50.

**House Numbering**

The house numbering for this subdivision shall be:

<b>Lot</b>	<b>Street Number</b>	<b>Street Name</b>	<b>Street Type</b>	<b>Locality</b>
<i>Lot 1</i>	<i>Public Road</i>			
<i>Lot 2</i>	<i>13</i>	<i>John</i>	<i>Road</i>	<i>Cherrybrook</i>
<i>Lot 3</i>	<i>11</i>	<i>John</i>	<i>Road</i>	<i>Cherrybrook</i>
<i>Lot 4</i>	<i>9</i>	<i>John</i>	<i>Road</i>	<i>Cherrybrook</i>
<i>Lot 5</i>	<i>7</i>	<i>John</i>	<i>Road</i>	<i>Cherrybrook</i>
<i>Lot 6</i>	<i>5</i>	<i>John</i>	<i>Road</i>	<i>Cherrybrook</i>
<i>Lot 7</i>	<i>3</i>	<i>John</i>	<i>Road</i>	<i>Cherrybrook</i>
<i>Lot 8</i>	<i>1</i>	<i>John</i>	<i>Road</i>	<i>Cherrybrook</i>
<i>Lot 9</i>	<i>90</i>	<i>Franklin</i>	<i>Road</i>	<i>Cherrybrook</i>
<i>Lot 10</i>	<i>92</i>	<i>Franklin</i>	<i>Road</i>	<i>Cherrybrook</i>

**LOCALITY PLAN****DA/1146/2020****No 90-92 Franklin Road CHERRYBROOK NSW 2126****ATTACHMENT 3 - ITEM 2**



# ATTACHMENT 4 - ITEM 2

**P. S. GRAHAM & ASSOCIATES PTY LTD**  
 REGISTERED SURVEYORS CONSULTING ENGINEERS TOWN PLANNERS  
 OFFICE 4, GROUND FLOOR  
 80-100 PRINCE STREET, SYDNEY NSW 2150  
 ALL CORRESPONDENCE TO  
 P.O. BOX 200, BELMONT NSW 2171  
 web: www.psgraham.com.au  
 email: p.s.graham@psgraham.com.au

**REVISED PLAN OF PROPOSED SUBDIVISION (DA 1146/2020)**  
 FOR LOT 18 IN D.P. 16975  
 90-92 FRANKLIN ROAD - CHERRYBROOK  
 LCA - HORNSBY  
 DATUM: AHD.

**SCALE: 1:300**  
**SHEET 2 OF 15**  
**REV. B**  
**REF. NO. S. 15696B**

**DATE: 25.08.2022**  
**CAD: S15696A**

**NOTE:**  
 DIMENSIONS AND AREAS ARE  
 SUBJECT TO FINAL SURVEY

**Notes:-**  
 1. This Detail Survey is not a survey as defined by the Surveying & Spatial Information Regulation 2012. Any further subdivision is planned. It would be a survey as defined by the Surveying & Spatial Information Regulation 2012.  
 2. No investigation has been made of the title and no advice is given as to the validity of the title.  
 3. Tree positions and sizes shown are estimated.  
 4. This drawing is subject to copyright. It must not be reproduced or used in any way without the written consent of P. S. GRAHAM & ASSOCIATES PTY LTD.

**Planning Agreement**  
**90-92 Franklin Road, Cherrybrook**

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Hornsby Shire Council (ABN 20 706 996 972) (**Council**)

Goldmap Two Pty Limited (ABN 45 621 535 653) (**Developer**)

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# ATTACHMENT 5 - ITEM 2

## Planning Agreement

### 90-92 Franklin Road, Cherrybrook

#### Parties

<b>Council</b>	<b>Name</b>	Hornsby Shire Council
	<b>Address</b>	296 Peats Ferry Road Hornsby NSW 2077
	<b>ABN</b>	20 706 996 972
	<b>Phone</b>	(02) 9847 6666
	<b>Email</b>	hsc@hornsby.gov.au
<b>Developer</b>	<b>Name</b>	Goldmap Two Pty Limited
	<b>Address</b>	26 Brunette Drive Castle Hill NSW 2154
	<b>ABN</b>	45 621 535 653
	<b>Phone</b>	0431 992 258
	<b>Email</b>	mw.sydney.au@gmail.com

#### Background

- A** The Developer owns the Land.
- B** The Developer wishes to carry out the Development.
- C** The Developer has applied for the Development Consent.
- D** The Developer has agreed to make the Contributions in connection with the Development on and subject to the terms of this document.

#### Operative Provisions

##### 1 Agreement

The agreement of the parties is set out in the Operative Provisions of this document, in consideration of, among other things, the mutual promises contained in this document.

##### 2 Definitions

###### 2.1 Defined Terms

In this document, words beginning with a capital letter that are defined in Part 1 of **Schedule 2** have the meaning ascribed to them in that schedule.

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**2.2 Interpretation**

The interpretational rules contained in Part 2 of **Schedule 2** apply in the interpretation of this document.

---

**3 Application and operation of document**

---

**3.1 Planning Agreement**

This document is a planning agreement:

- (1) within the meaning set out in s7.4 of the Act; and
- (2) governed by Subdivision 2 of Part 7 of the Act.

**3.2 Application**

This document is made in respect of the Development and applies to both the Land and the Development.

**3.3 Operation**

This document operates:

- (1) as a deed from the date that it is executed by both parties; and
- (2) as a planning agreement for the purpose of the Act from the date that the Development Consent becomes operative.

---

**4 Application of s7.11 & s7.12**

---

**4.1 Application**

This document excludes the application of section 7.11 or section 7.12 of the Act to the Development.

**4.2 Section 7.24**

This document does not exclude the application of s7.24 to the Development.

---

**5 Provision of Contributions**

---

**5.1 Indexation of Amounts payable by Developer**

Each Contribution Works Value will be increased (with the calculation to be made as from the date the relevant Contribution is required to be provided to Council under this document) in accordance with the following formula:

$$A = B \times \frac{C}{D}$$

D

where:

**A** = the indexed amount;

**B** = the relevant amount as set out in this document;

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**C** = the Index most recently published before the date that the relevant payment or the calculation with respect to the relevant amount is to be made; and

**D** = the Index most recently published before the commencement date of this document.

If **A** is less than **B**, then the relevant Contribution Works Value will not change.

## 5.2 Conduct of Works

If a Development Consent is granted, the Developer, at its cost, must:

- (1) obtain development consent, and any other form of consent required by a relevant Authority, for the construction and use of the Works;
- (2) carry out and Complete the Works to the reasonable satisfaction of the Council in accordance with **Schedule 3**; and
- (3) carry out and Complete the Works:
  - (a) in accordance with the specifications (if any) referred to in **Schedule 3** for the relevant item of Work or the design and specifications agreed or determined to apply to an item of Work under clause 5.3;
  - (b) in accordance with any relevant Development Consent;
  - (c) in accordance with the requirements of, or consents issued by, any Authority;
  - (d) ensuring that (except to the extent permitted by any Development Consent):
    - (i) all necessary measures are taken to protect people, property, and the Environment;
    - (ii) unnecessary interference with the passage of people and vehicles is avoided;
    - (iii) nuisances and unreasonable noise and disturbances are prevented; and
    - (iv) all relevant laws and regulations with respect to water, air, noise and land pollution (including 'pollution incidents') as defined under the *Protection of the Environment Operations Act 1997* (NSW);
  - (e) in accordance with any Australian Standards applicable to works of the same nature as each aspect of the Works; and
  - (f) in a proper and workmanlike manner complying with current industry practice and standards relating to each aspect of the Works.

## 5.3 Design and specification of Works

- (1) The Developer must:
  - (a) consult with Council with respect to the development of the detailed design and specification with respect to each item of Works; and
  - (b) ensure that the relevant design is consistent with, and has regard to, any relevant policies of Council as identified in the Development Consent.

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- (2) Before commencing construction of an item of Works, the Developer must submit to Council:
  - (a) for its approval, the detailed design and specification for that item of Works; and
  - (b) a report from a suitable qualified and experienced Quantity Surveyor which estimates the cost to complete the relevant item of Work in accordance with the detailed design.
- (3) The design and specification for the item of Works must be prepared by the Developer having specific regard to:
  - (a) the specification (if any) for that item of Works set out in **Schedule 3**; and
  - (b) the Contribution Works Value of the relevant item of Works.
- (4) Within thirty (30) days of the date of the first submission referred to in paragraph (2), Council must do either of the following:
  - (a) Notify the Developer in writing of its approval of the design and specification. The Developer is then to carry out and complete the item of Works in accordance with that design and specification.
  - (b) Notify the Developer in writing that it does not approve of the design and specification and provide the Developer with reasons for this.
- (5) If Council notifies the Developer in writing that it does not approve of the design and specification, the parties shall consult in good faith to finalise an approved design and specification for the Work and, if those consultations are unsuccessful, the Developer may:
  - (a) elect to amend the design and specification and submit to Council the amended design and specification in which case the approval process set out in this clause 5.3 applies to that amendment; or
  - (b) if the Developer does not agree with the modifications requested by Council, then, it may refer the relevant matter for dispute resolution in accordance with this document.

#### **5.4 No credit or reimbursement**

- (1) If the Developer's actual cost of carrying out the Works are greater than the Contribution Works Value for those Works, then the Developer is not entitled to claim credit or reimbursement, as the case may be, for the difference.
- (2) If the Developer's actual cost of carrying out the Works are less than the Contribution Works Value for those Works, then Council is not entitled to make any claim (including a claim for contributions under the Act) for the difference.

#### **5.5 Access to Council Land**

- (1) If the Developer or its authorised employees, agents, contractors, sub-contractors and consultants requires access to any land owned by Council for the purposes of constructing an item of Works, the Developer must make an application to Council for access within a reasonable period of time prior to the required access.
- (2) The Developer acknowledges and agrees that:
  - (a) any such application will be considered by Council at the relevant time; and

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- (b) Council must comply with any relevant law with respect to any such application and licence.
- (3) Council must respond to an application under paragraph (1) within five (5) Business Days of the making of the application.
- (4) Council may grant access to the Developer (and its authorised employees, agents, contractors, sub-contractors and consultants) to enter, occupy and use that land on conditions including, but not limited to, the following:
  - (a) That access be solely for the purposes of the Developer performing its obligations under this document.
  - (b) That the access be subject to, and in accordance with all relevant Laws, rules regulations and statutory approvals, including but not limited to work, health and safety Laws, rules and regulations.
  - (c) Any other reasonable directions and conditions imposed by Council in relation to that access.

#### **5.6 Access to the Land and location of Works**

- (1) The Developer must permit the Council, its officers, employees, agents and contractors to enter the Land at any time, upon giving reasonable prior notice, in order to inspect, examine or test any of the Works.
- (2) The Developer must enable Council, its officers, employees, agents and contractors access to the location of the Works where this is not the Land, Council land or a public road.

### **6 Completion of Works**

#### **6.1 Completion**

For the purpose of this document an item of Works is Completed when:

- (1) the Works are:
  - (a) substantially completed in accordance with the conditions of the applicable Development Consent such that a Subdivision Certificate may be issued in respect of the Works; or
  - (b) deemed to have been Completed in accordance with this clause 6; and
- (2) any other obligation with respect to the relevant item of Works which must be discharged prior to the Completion of that item of Works in accordance with this document has been discharged.

#### **6.2 Issue of Completion Notice**

If the Developer considers that any particular item of the Works is complete it must serve a notice on Council which:

- (1) is in writing;
- (2) identifies the particular item of the Works to which it relates; and
- (3) specifies the date on which the Developer believes the relevant item of the Works was completed,

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(Completion Notice).

### 6.3 Inspection by Council

- (1) Council must inspect the Works set out in a Completion Notice within five (5) business days of the receipt of that notice.
- (2) If Council fails to carry out an inspection required under paragraph (1) the Works referred to in the relevant Completion Notice will be deemed to be Complete.

### 6.4 Rectification Notice

- (1) Within five (5) business days of inspecting the Works set out in a Completion Notice Council must provide notice in writing (**Rectification Notice**) to the Developer that the Works set out in the Completion Notice:
  - (a) have been Completed; or
  - (b) have not been Completed, in which case the notice must also detail:
    - (i) those aspects of the Works which have not been Completed; and
    - (ii) the work Council requires the Developer to carry out in order to rectify the deficiencies in those Works.
- (2) If Council does not provide the Developer with a Rectification Notice in accordance with paragraph (1), the Works set out in the Completion Notice will be deemed to have been Completed.
- (3) Where Council serves a Rectification Notice on the Developer, the Developer must:
  - (a) rectify the Works in accordance with that notice; or
  - (b) serve a notice on the Council that it disputes the matters set out in the notice.
- (4) Where the Developer:
  - (a) serves notice on Council in accordance with paragraph (3)(b), the dispute resolution provisions of this document apply; or
  - (b) rectifies the Works in accordance with paragraph (3)(a), it must serve upon the Council a new Completion Notice for the Works it has rectified.

### 6.5 Works-as-executed-plan

As soon as practicable, and by no later than sixty (60) days after an item of Work is Completed in accordance with this document, the Developer must submit to Council:

- (1) a full works-as-executed-plan for the relevant item of Work; and
- (2) the technical or operation manual, specifications and warranties (if any) for any product that forms part of the relevant item of Work.

## 7 Defects Liability

### 7.1 Defects Notice

- (1) Where any part of the Works has been Completed but those Works contain a Material Defect which:

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- (a) adversely affects the ordinary use and/or enjoyment of the relevant Works; or
- (b) will require maintenance or rectification works to be performed on them at some time in the future as a result of the existence of the defect;

(Defect) Council may issue a defects notice (**Defects Notice**) concerning those Works but only within the Defects Liability Period (time being of the essence).

- (2) A Defects Notice must contain the following information:

- (a) the nature and extent of the Defect;
- (b) the work Council requires the Developer to carry out in order to rectify the Defect; and
- (c) the time within which the Defect must be rectified (which must be a reasonable time and not less than fifteen (15) business days).

## 7.2 Developer to Rectify Defects

- (1) The Developer must rectify the Defects contained within a Defects Notice as soon as practicable after receipt of the Defects Notice.
- (2) The Developer must follow the procedure set out in clause 6 in respect of the satisfaction of the Defects Notice.

## 7.3 Right of Council to Step-In

Council, at its absolute discretion, may enter upon the Land for the purpose of satisfying the Defects Notice where the Developer has failed to comply with a Defects Notice within a reasonable time having regard to the nature of the Defects but only after giving the Developer five (5) business days written notice of its intention to do so.

## 7.4 Consequence of Step-In

If Council elects to exercise the step-in rights granted to it under clause 7.3 then:

- (1) Council may:
  - (a) enter upon any part of the Land that it requires access to in order to satisfy the obligations of the Developer in accordance with the Defects Notice; and
  - (b) rectify the relevant Defects in accordance with the Defects Notice; and
- (2) the Developer must not impede or interfere with Council in undertaking that work.

## 7.5 Costs of Council

Where Council exercises its step-in rights, it may call upon the Defects Security provided by the Developer and recover as a debt due in a court of competent jurisdiction any difference between the amount of the Defects Security and the costs incurred by the Council in rectifying the Defects.

## 7.6 Passing of risk

Subject to clause 7.2, and unless Council has already issued a Defects Notice in respect of the relevant Defect within the Defects Liability Period, the risk in relation to that Defect in respect of Works will pass to Council upon the expiry of the Defects Liability Period.

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## 8 Variation of scope or timing for provision of Works

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### 8.1 Variation to the scope of an item of Work

- (1) The Developer may request that Council approve in writing a variation to the scope any item of Work.
- (2) The scope of an item of Work is not to be varied unless Council and the Developer agree in writing to the variation.
- (3) Council may withhold its consent to a variation of an item of Work at its absolute discretion.

### 8.2 Deferral of the timing of Completion of an item of the Works

- (1) Notwithstanding any other provision of this document, if the Developer forms the view at any time, that:
  - (a) it is unable to Complete any item of the Works by the time specified in **Schedule 3**; or
  - (b) it believes that there is a risk of damage to any item of the Works if they are delivered by the time required in **Schedule 3**,

(**Deferred Works**), then the Developer may seek Council's approval to defer the Completion of the relevant item of the Works by providing written notice to the Council:

  - (c) identifying the relevant item of Work that the Developer proposes to defer;
  - (d) specifying the reason for the request to defer the Completion of that item of the Works; and
  - (e) identifying the anticipated time for Completion of the relevant item of Work.
- (2) The Council, acting reasonably, must give the Developer a written notice within thirty (30) business days of the date upon which the Developer serves written notice upon Council in accordance with paragraph (1) stating:
  - (a) whether or not it consents to the deferral of the Deferred Works;
  - (b) the revised date for Completion required by Council; and
  - (c) any reasonable conditions Council requires with respect to the deferral (including any requirement for additional Security on account of that deferral, but only to the extent necessary to ensure that Council holds adequate security based on the then estimated cost to complete the relevant item of the Works).
- (3) If the Council consents to the deferral of the Deferred Works, then the following applies:
  - (a) The Developer must comply with any conditions required by Council under paragraph (2)(c) above.
  - (b) Provided the Developer satisfies those conditions, the Developer will not be considered to be in breach of this document as a result of a failure to achieve Completion of the relevant Deferred Works by the time for Completion specified in this document.
  - (c) The time for completion of the Deferred Works under this document is the revised date for Completion approved by Council.

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## 9 Developer Warranties and Indemnities

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### 9.1 Warranties

The Developer warrants to Council that:

- (1) it is legally and beneficially entitled to the Land;
- (2) it is able to fully comply with its obligations under this document;
- (3) it has full capacity to enter into this document; and
- (4) there is no legal impediment to it entering into this document, or performing the obligations imposed under it.

### 9.2 Indemnity by Developer

The Developer indemnifies Council in respect of any Claim that may arise as a result of the conduct of the Works up to Completion and any breach of the Developer's obligations under this agreement but only to the extent that any such Claim does not arise as a result of the negligent acts or omissions of Council.

---

## 10 Security

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### 10.1 Provision of Security

- (1) Subject to paragraph (2), the Developer must deliver to Council one (1) or more Bank Guarantees to the satisfaction of Council:
  - (a) prior to the Completion of an item of Works, for an amount equivalent to ten (10%) of the Contribution Works Value of that item of Works (**Defects Security**),
 (collectively referred to as the **Security**).
- (2) The Developer may satisfy its obligations under paragraph (1) (either in whole or in part), by directing Council to retain any Security held by Council which is required to be released by Council under this document.

### 10.2 Replacement of Security

- (1) The Developer may replace any Security provided by it at any time, provided that the amount of that replacement is not less than that which is required to be provided under this document.
- (2) On receipt of a replacement Security, Council must immediately release the Security being replaced and return it to the Developer.

### 10.3 Council may call on Security

- (1) If the Developer commits an Event of Default Council, without limiting any other remedies available to it, may call on any Security provided by the Developer.
- (2) If Council calls on any Security, it may use the amount so paid to it in satisfaction of any costs incurred by it in remedying the relevant Event of Default.

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**10.4 Top up of Security**

If Council calls on the Security, Council, by notice in writing to the Developer, may require the Developer to provide a further or replacement Security in an amount that, when added to any unused portion of any Security then held by Council, does not exceed the amount of the Security Council is entitled to hold at that time under this document.

**10.5 [not used]****10.6 Release of Defects Security**

Unless:

- (1) there are unremedied Defects of which the Developer was notified by the Council during the Defects Liability Period and/or Council has made or intends to make a demand against the Defects Security in relation to unremedied Defects; or
- (2) the relevant Defects Liability Period has not expired;

Council, upon a written request being made by the Developer, must return the Defects Security within ten (10) business days of such a request being made.

**10.7 Council may withhold Subdivision Certificate**

- (1) The Developer may only make, or cause, suffer or permit the making of, an application for a Subdivision Certificate in respect of the Development if, at the date of the application, the Developer is not in breach of its obligation to make any Contribution under this document.
- (2) Council may withhold the issue of a Subdivision Certificate if, at the relevant time, the Developer is in breach of any obligation to make any Contribution under this document until such time as the breach is rectified.

**10.8 Council may withhold Occupation Certificate**

- (1) The Developer may only make, or cause, suffer or permit the making of, an application for an Occupation Certificate in respect of the Development if, at the date of the application, the Developer is not in breach of its obligation to make any Contribution under this document.
- (2) Council may withhold the issue of an Occupation Certificate if, at the relevant time, the Developer is in breach of any obligation to make any Contribution under this document until such time as the breach is rectified.

**11 Registration of this document****11.1 Registration of this document**

The Developer acknowledges and agrees that:

- (1) this document must be registered on the title to the Land pursuant to section 7.6 of the Act; and
- (2) subject to clause 11.2:
  - (a) Council will undertake the registration in paragraph (1); and
  - (b) the Developer will pay or reimburse Council for all its reasonable legal and registration costs associated with that registration.

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**11.2 Obligations of Developer**

- (1) The Developer, at its own expense must, promptly after this document comes into operation, and before the issue of any Construction Certificate or Subdivision Certificate for the Development, take all necessary and practical steps, and otherwise do anything that the Council reasonably requires, to procure:
  - (a) the consent of each person who:
    - (i) has an estate or interest in the Land; or
    - (ii) is seized or possessed of an estate or interest in the Land;
  - (b) the execution of any documents; and
  - (c) the production of the relevant title documentation,
 to enable the registration of this document in accordance with clause 11.1.
- (2) The Developer, at its own expense, will take all necessary and practical steps, and otherwise do anything that the Council reasonably requires:
  - (a) to allow the lodgement of this document with the Registrar-General as soon as reasonably practicable after this document comes into operation but in any event, no later than thirty (30) business days after that date; and
  - (b) to allow the registration of this document by the Registrar-General in the relevant folios of the Register for the Land as soon as reasonably practicable after this document is lodged for registration.

**11.3 Discharge from the Register**

The Council will provide its consent to the release and discharge of this document so that it may be removed from the folios of the Register for the Land (or any part of it) within 14 days of either of the following events:

- (1) the Works have been Completed in accordance with this document; or
- (2) if this document is terminated or otherwise comes to an end for any other reason.

**12 Assignment****12.1 Restriction on Assignment**

Other than in accordance with this clause 12.1 the Developer may not:

- (1) Assign any part of the Land; and/or
- (2) Assign their rights or obligations under this document.

**12.2 Procedure for Assignment**

- (1) If the Developer:
  - (a) wishes to Assign any part of the Land; and/or

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- (b) wishes to Assign its rights or obligations under this document,

then the Developer must:

- (c) provide a written request to Council for the consent of Council to the relevant Assignment;
  - (d) provide Council with any evidence required by Council, acting reasonably, to satisfy Council that the third party in whose favour the Assignment is to be made (**Assignee**) is reasonably capable of performing the obligations under this document that are to be Assigned to it;
  - (e) obtain written consent of Council to the relevant Assignment (such consent which must not be unreasonably withheld subject to the Developer complying with this clause 12.2); and
  - (f) at no cost to Council, procure:
    - (i) the execution by the Assignee of an appropriate deed where the Assignee agrees to be bound by the terms of this document; and
    - (ii) the provision of all Securities to Council by the Assignee that the Developer is required to provide under this document (and any additional securities if required by Council acting reasonably) at the same time as, or prior to, entering into that deed.
- (2) Council is under no obligation to consider granting its consent to any request made by the Developer under paragraph (1)(c) if, at the time the request is made, the Developer is in breach of this document.

### 13 Dispute Resolution

#### 13.1 Notice of dispute

- (1) If a dispute or lack of certainty between the parties arises in connection with this document or its subject matter (**Dispute**), then either party (**First Party**) must give to the other (**Second Party**) a notice which:
  - (a) is in writing;
  - (b) adequately identifies and provides details of the Dispute;
  - (c) stipulates what the First Party believes will resolve the Dispute; and
  - (d) designates its representative (**Representative**) to negotiate the Dispute.
- (2) The Second Party must, within five (5) Business Days of service of the notice of dispute, provide a notice to the First Party designating as its representative a person to negotiate the Dispute (the representatives designated by the parties being together, the **Representatives**).

#### 13.2 Conduct pending resolution

The parties must continue to perform their respective obligations under this document if there is a Dispute but will not be required to complete the matter the subject of the Dispute, unless the appropriate party indemnifies the other parties against costs, damages and all losses suffered

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in completing the disputed matter if the Dispute is not resolved in favour of the indemnifying party.

### **13.3 Further steps required before proceedings**

Subject to clauses 13.14 and 13.15 and except as otherwise expressly provided in this document, any Dispute must, as a condition precedent to the commencement of litigation, mediation under clause 13.5 or determination by an expert under clause 13.6, first be referred to the Representatives. The Representatives must endeavour to resolve the dispute within five (5) Business Days of the date a notice under clause 13.1(2) is served.

### **13.4 Disputes for mediation or expert determination**

If the Representatives have not been able to resolve the Dispute, then the parties must agree within five (5) Business Days to either refer the matter to mediation under clause 13.5 or expert resolution under clause 13.6.

### **13.5 Disputes for mediation**

- (1) If the parties agree in accordance with clause 13.4 to refer the Dispute to mediation, the mediation must be conducted by a mediator agreed by the parties and, if the parties cannot agree within five (5) Business Days, then by a mediator appointed by the President of the Law Society of New South Wales for the time being.
- (2) If the mediation referred to in paragraph (1) has not resulted in settlement of the Dispute and has been terminated, the parties may agree to have the matter determined by expert determination under clause 13.6.

### **13.6 Choice of expert**

- (1) If the Dispute is to be determined by expert determination, this clause 13.6 applies.
- (2) The Dispute must be determined by an independent expert in the relevant field:
  - (a) agreed between and appointed jointly by the parties; or
  - (b) in the absence of agreement within five (5) Business Days after the date that the matter is required to be determined by expert determination, appointed by the President of the Law Society of New South Wales for the time being.
- (3) If the parties fail to agree as to the relevant field within five (5) Business Days after the date that the matter is required to be determined by expert determination, either party may refer the matter to the President of the Law Society of New South Wales for the time being whose decision as to the relevant field is final and binding on the parties.
- (4) The expert appointed to determine a Dispute:
  - (a) must have a technical understanding of the issues in dispute;
  - (b) must not have a significantly greater understanding of one party's business, functions or operations which might allow the other side to construe this greater understanding as a bias; and
  - (c) must inform the parties before being appointed of the extent of the expert's understanding of each party's business or operations and, if that information indicates a possible bias, then that expert must not be appointed except with the written approval of the parties.

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- (5) The parties must promptly enter into an agreement with the expert appointed under this clause 13.6 setting out the terms of the expert's determination and the fees payable to the expert.

### **13.7 Directions to expert**

- (1) In reaching a determination in respect of a dispute under clause 13.6, the independent expert must give effect to the intent of the parties entering into this document and the purposes of this document.
- (2) The expert must:
- (a) act as an expert and not as an arbitrator;
  - (b) proceed in any manner as the expert thinks fit without being bound to observe the rules of natural justice or the rules of evidence;
  - (c) not accept verbal submissions unless both parties are present;
  - (d) on receipt of a written submission from one party, ensure that a copy of that submission is given promptly to the other party;
  - (e) take into consideration all documents, information and other material which the parties give the expert which the expert in its absolute discretion considers relevant to the determination of the Dispute;
  - (f) not be expected or required to obtain or refer to any other documents, information or material (but may do so if the expert so wishes);
  - (g) issue a draft certificate stating the expert's intended determination (together with written reasons), giving each party ten (10) Business Days to make further submissions;
  - (h) issue a final certificate stating the expert's determination (together with written reasons); and
  - (i) act with expedition with a view to issuing the final certificate as soon as practicable.
- (3) The parties must comply with all directions given by the expert in relation to the resolution of the Dispute and must within the time period specified by the expert, give the expert:
- (a) a short statement of facts;
  - (b) a description of the Dispute; and
  - (c) any other documents, records or information which the expert requests.

### **13.8 Expert may commission reports**

- (1) Subject to paragraph (2):
- (a) the expert may commission the expert's own advisers or consultants (including lawyers, accountants, bankers, engineers, surveyors or other technical consultants) to provide information to assist the expert in making a determination; and

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- (b) the parties must indemnify the expert for the cost of those advisers or consultants in accordance with clause 13.6(5) of this deed.

- (2) The parties must approve the costs of those advisers or consultants in writing prior to the expert engaging those advisers or consultants.

### **13.9 Expert may convene meetings**

- (1) The expert must hold a meeting with all of the parties present to discuss the Dispute. The meeting must be conducted in a manner which the expert considers appropriate. The meeting may be adjourned to, and resumed at, a later time in the expert's discretion.
- (2) The parties agree that a meeting under paragraph (1) is not a hearing and is not an arbitration.

### **13.10 Other courses of action**

If:

- (1) the parties cannot agree in accordance with clause 13.4 to refer the matter to mediation or determination by an expert; or
- (2) the mediation referred to in clause 13.5 has not resulted in settlement of the dispute, the mediation has been terminated and the parties have not agreed to refer the matter to expert determination within five (5) Business Days after termination of the mediation,

then either party may take whatever course of action it deems appropriate for the purpose of resolving the Dispute.

### **13.11 Confidentiality of information provided in dispute resolution process**

- (1) The parties agree, and must procure that the mediator and the expert agree as a condition of his or her appointment:
  - (a) subject to paragraph (2), to keep confidential all documents, information and other material disclosed to them during or in relation to the mediation or expert determination;
  - (b) not to disclose any confidential documents, information and other material except:
    - (i) to a party or adviser or consultant who has signed a confidentiality undertaking; or
    - (ii) if required by Law or any Authority to do so; and
  - (c) not to use confidential documents, information or other material disclosed to them during or in relation to the mediation or expert determination for a purpose other than the mediation or expert determination.
- (2) The parties must keep confidential and must not disclose or rely upon or make the subject of a subpoena to give evidence or produce documents in any arbitral, judicial or other proceedings:
  - (a) views expressed or proposals or suggestions made by a party or the mediator or the expert during the expert determination or mediation relating to a possible settlement of the Dispute;

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- (b) admissions or concessions made by a party during the mediation or expert determination in relation to the Dispute; and
- (c) information, documents or other material concerning the dispute which are disclosed by a party during the mediation or expert determination unless such information, documents or facts would be discoverable in judicial or arbitral proceedings.

#### 13.12 Final determination of expert

The parties agree that the final determination by an expert will be final and binding upon them except in the case of fraud or misfeasance by the expert.

#### 13.13 Costs

If any independent expert does not award costs, each party must contribute equally to the expert's costs in making the determination.

#### 13.14 Remedies available under the Act

This clause 13 does not operate to limit the availability of any remedies available to Council under the Act.

#### 13.15 Urgent relief

This clause 13 does not prevent a party from seeking urgent injunctive or declaratory relief concerning any matter arising out of this document.

### 14 Breach of this document

#### 14.1 Breach Notice

If the Developer breaches this document, Council may serve a notice on the Developer (**Breach Notice**) specifying:

- (1) the nature and extent of the alleged breach;
- (2) if:
  - (a) the breach is capable of being rectified other than by the payment of compensation, what Council requires the Developer to do in order to rectify the breach; or
  - (b) the breach is not capable of being rectified other than by payment of compensation, the amount of compensation Council requires the Developer to pay in order to rectify the breach, and
- (3) the time within which Council requires the breach to be rectified, which must be a reasonable time of not less than forty (40) business days.

#### 14.2 Events of Default

The Developer commits an **Event of Default** if it:

- (1) Fails to comply with a Breach Notice; or
- (2) becomes subject to an Insolvency Event.

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**14.3 Consequences of Events of default**

Where the Developer commits an Event of Default, Council may, in addition to any rights it has at Law:

- (1) exercise the Step in Rights so as to carry out any work specified in the relevant Breach Notice; or
- (2) call on the Security to the extent of any compensation claimed in a Breach Notice and not paid by the Developer.

**15 Termination, Rescission or Determination****15.1 Termination**

This document terminates in the following events:

- (1) The parties agree in writing to terminate the operation of this document at any time.
- (2) Council serves notice on the Developer terminating this Planning Agreement where the Developer has failed to comply with a notice issued in accordance with clause 14.1.
- (3) The Development Consent lapses.

**15.2 Consequence of termination**

Upon termination of this Planning Agreement:

- (1) all future rights and obligations of the parties are discharged; and
- (2) all pre-existing rights and obligations of the parties continue to subsist.

**15.3 Determination**

This document will determine upon the Developer satisfying all of the obligations imposed on it in full.

**16 Position of Council****16.1 Consent authority**

The parties acknowledge that Council is a consent authority with statutory rights and obligations pursuant to the terms of the Planning Legislation.

**16.2 Document does not fetter discretion**

This document is not intended to operate to fetter, in any unlawful manner:

- (1) the power of Council to make any Law; or
- (2) the exercise by Council of any statutory power or discretion,  
(Discretion).

**16.3 Severance of provisions**

- (1) No provision of this document is intended to, or does, constitute any unlawful fetter on any Discretion. If, contrary to the operation of this clause, any provision of this document

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is held by a court of competent jurisdiction to constitute an unlawful fetter on any Discretion, the parties agree:

- (a) they will take all practical steps, including the execution of any further documents, to ensure the objective of this clause 16 is substantially satisfied; and
  - (b) in the event that paragraph (1)(a) cannot be achieved without giving rise to an unlawful fetter on a Discretion, the relevant provision is to be severed and the remainder of this document has full force and effect; and
  - (c) to endeavour to satisfy the common objectives of the parties on relation to the provision of this document which is held to be an unlawful fetter to the extent that it is possible having regard to the relevant court judgment.
- (2) Where the Law permits Council to contract out of a provision of that Law or gives Council power to exercise a Discretion, then if Council has in this document contracted out of a provision or exercised a Discretion under this document, then to the extent of this document is not to be taken to be inconsistent with the Law.

#### **16.4 No Obligations**

Nothing in this document will be deemed to impose any obligation on Council to exercise any of its functions under the Act in relation to the Development Consent, the Land or the Development in a certain manner.

### **17 Confidentiality**

#### **17.1 Document not Confidential**

The terms of this document are not confidential and this document may be treated as a public document and exhibited or reported without restriction by any party.

#### **17.2 Other Confidential Information**

- (1) The parties acknowledge that:
- (a) Confidential Information may have been supplied to some or all of the parties in the negotiations leading up to the making of this document; and
  - (b) The parties may disclose to each other further Confidential Information in connection with the subject matter of this document.
  - (c) Subject to paragraphs (2) and (3), each party agrees:
    - (i) not to disclose any Confidential document received before or after the making of this document to any person without the prior written consent of the party who supplied the Confidential Information; or
    - (ii) to take all reasonable steps to ensure all Confidential Information received before or after the making of this document is kept confidential and protected against unauthorised use and access.
- (2) A party may disclose Confidential Information in the following circumstances:
- (a) in order to comply with the Law, or the requirements of any Authority; or
  - (b) to any of their employees, consultants, advisers, financiers or contractors to whom it is considered necessary to disclose the information, if the employees,

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consultants, advisers, financiers or contractors undertake to keep the information confidential.

- (3) The obligations of confidentiality under this clause do not extend to information which is public knowledge other than as a result of a breach of this clause.

## **18 GST**

### **18.1 Defined GST Terms**

Defined terms used in this clause 18 have the meaning ascribed to them in the GST Law.

### **18.2 GST to be Added to Amounts Payable**

- (1) If GST is payable on a Taxable Supply made under, by reference to or in connection with this document, the party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- (2) This clause does not apply to the extent that the Consideration for the Taxable Supply is expressly agreed to be GST inclusive.
- (3) Unless otherwise expressly stated, prices or other sums payable or Consideration to be provided under or in accordance with this document are exclusive of GST.

### **18.3 GST Obligations to Survive Termination**

This clause 18 will continue to apply after expiration of termination of this document.

## **19 Miscellaneous**

### **19.1 Obligation to act in good faith**

The parties must at all times:

- (1) cooperate and use their best endeavours to profitably and professionally give effect to their rights and obligations set out in this document;
- (2) not unreasonably delay any action, approval, direction, determination or decision which is required of them;
- (3) make approvals or decisions that are required of them in good faith and in a manner consistent with the completion of the transactions set out in this document; and
- (4) be just and faithful in their activities and dealings with the other parties.

### **19.2 Legal costs**

The Developer agrees to:

- (1) pay or reimburse the reasonable legal costs and disbursements of Council of the negotiation, preparation, execution, and stamping of this document;
- (2) pay or reimburse the reasonable legal costs and disbursements of Council in relation to:
  - (a) the registration or removal of this document on the title to the Land in accordance with clause 11; and
  - (b) any breach or default by the Developer of its obligations under this document,

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within ten (10) business days of receipt of a tax invoice from Council.

## **20 Administrative Provisions**

### **20.1 Notices**

- (1) Any notice, consent or other communication under this document must be in writing and signed by or on behalf of the person giving it, addressed to the person to whom it is to be given and:
  - (a) delivered to that person's address;
  - (b) sent by pre-paid mail to that person's address; or
  - (c) transmitted by facsimile or email to that person's address.
- (2) A notice given to a person in accordance with this clause is treated as having been given and received:
  - (a) if delivered to a person's address, on the day of delivery if a business day, otherwise on the next business day;
  - (b) if sent by pre-paid mail, on the third business day after posting;
  - (c) if transmitted by facsimile to a person's address and a correct and complete transmission report is received, on the day of transmission if a business day, otherwise on the next business day; and
  - (d) if sent by email and the sender does not receive a delivery failure message from the sender, within a period of twenty four (24) hours of the email being sent.
- (3) For the purpose of this clause the address of a person is the address set out in this document or another address of which that person may from time to time give notice to each other person.

### **20.2 Entire Document**

This document is the entire agreement of the parties on the subject matter. All representations, communications and prior agreements in relation to the subject matter are merged in and superseded by this document.

### **20.3 Waiver**

The non-exercise of or delay in exercising any power or right of a party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other or further exercise of it or the exercise of any other power or right. A power or right may only be waived in writing, signed by the parties to be bound by the waiver.

### **20.4 Cooperation**

Each party must sign, execute and deliver all agreements, documents, instruments and act reasonably and effectively to carry out and give full effect to this document and the rights and obligations of the parties under it.

### **20.5 Counterparts**

This document may be executed in any number of counterparts and all of those counterparts taken together constitute one and the same instrument. A party who has executed a counterpart of this document may exchange it with another party by emailing a pdf (portable document

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format) copy of, the executed counterpart to that other party, and if requested by that other party, will promptly deliver the original by hand or post. Failure to make that delivery will not affect the validity and enforceability of this document.

**20.6 Amendment**

This document may only be amended or supplemented in writing signed by the parties.

**20.7 Unenforceability**

Any provision of this document which is invalid or unenforceable in any jurisdiction is to be read down for the purposes of that jurisdiction, if possible, so as to be valid or enforceable, and is otherwise capable of being severed to the extent of the invalidity or enforceability, without affecting the remaining provisions of this document or affecting the validity or enforceability of that provision in any other jurisdiction.

**20.8 Power of Attorney**

Each attorney who executes this document on behalf of a party declares that the attorney has no notice of:

- (1) the revocation or suspension of the power of attorney by the grantor; or
- (2) the death of the grantor.

**20.9 Governing law**

The law in force in the State of New South Wales governs this document. The parties:

- (1) submit to the exclusive jurisdiction of the courts of New South Wales and any courts that may hear appeal from those courts in respect of any proceedings in connection with this document; and
  - (2) may not seek to have any proceedings removed from the jurisdiction of New South Wales on the grounds of *forum non conveniens*.
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**Schedule 1– Requirements under s7.4**

REQUIREMENT UNDER THE ACT	THIS PLANNING AGREEMENT
<b>Planning instrument and/or development application – (Section 7.4(1))</b> The Developer has: (c) sought a change to an environmental planning instrument. (d) made, or proposes to make, a Development Application. (e) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.	(a) No (b) Yes (c) Not applicable
<b>Description of land to which this agreement applies – (Section 7.4(3)(a))</b>	Lot 18 in Deposited Plan 16975 known as 90-92 Franklin Road, Cherrybrook NSW 2126.
<b>Description of change to the environmental planning instrument to which this agreement applies – (Section 7.4(3)(b))</b>	Not applicable
<b>Application of section 7.11 of the Act – (Section 7.4(3)(d))</b>	Excluded
<b>Applicability of section 7.12 of the Act – (Section 7.4(3)(d))</b>	Excluded
<b>Consideration of benefits under this agreement if section 7.11 applies – (Section 7.4(3)(e))</b>	Not applicable
<b>Mechanism for Dispute resolution – (Section 7.4(3)(f))</b>	See clause 13.
<b>Enforcement of this agreement (Section 7.4(3)(g))</b>	See clause 10.
<b>No obligation to grant consent or exercise functions – (Section 7.4(3)(9))</b>	See clause 15.

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## Schedule 2 – Defined Terms and Interpretation

### Part 1 – Definitions

<b>Act</b>	means the <i>Environmental Planning and Assessment Act 1979</i> (NSW).
<b>Assign</b>	as the context requires refers to any assignment, sale, transfer, disposition, declaration of trust over or other assignment of a legal and/or beneficial interest.
<b>Authority</b>	means (as appropriate) any: <ol style="list-style-type: none"> <li>(1) federal, state or local government;</li> <li>(2) department of any federal, state or local government;</li> <li>(3) any court or administrative tribunal; or</li> <li>(4) statutory corporation or regulatory body.</li> </ol>
<b>Bank Guarantee</b>	means an irrevocable and unconditional undertaking without any expiry or end date by one of the following trading banks: <ol style="list-style-type: none"> <li>(1) Australia and New Zealand Banking Group Limited.</li> <li>(2) Commonwealth Bank of Australia.</li> <li>(3) Macquarie Bank.</li> <li>(4) National Australia Bank Limited.</li> <li>(5) St George Bank Limited.</li> <li>(6) Westpac Banking Corporation.</li> <li>(7) Any other financial institution approved by the Council, in its absolute discretion, in response to a request from the Developer.</li> </ol>
<b>Claim</b>	means against any person any allegation, action, demand, cause of action, suit, proceeding, judgement, debt, damage, loss, cost, expense or liability howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise.
<b>Completed</b>	means completed in accordance with the requirements of this document.
<b>Completion Notice</b>	has the meaning ascribed in clause 6.1.
<b>Confidential Information</b>	means any information and all other knowledge at any time disclosed (whether in writing and orally) by the parties to each other, or acquired by the parties in relation to the other's activities or services which is not already in the public domain and which: <ol style="list-style-type: none"> <li>(1) is by its nature confidential;</li> <li>(2) is designated, or marked, or stipulated by either party as confidential (whether in writing or otherwise);</li> </ol>

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	(3) any party knows or ought to know is confidential;
	(4) is information which may be reasonably considered to be of a confidential nature.
<b>Contributions</b>	means the Works.
<b>Contribution Works Value</b>	means the amount specified in <b>Schedules 3</b> in the column headed "contribution works value" for each item of the Contributions.
<b>Material Defect</b>	means a defect in the Works arising from faulty materials or workmanship which adversely affects the ordinary use and/or enjoyment of the relevant Works or will require maintenance or rectification works to be performed on them at some time in the future as a result of the existence of the defect but excluding any defects or faults relating to normal use, maintenance or fair wear and tear.
<b>Defects Notice</b>	has the meaning ascribed to it in clause 7.1.
<b>Defects Liability Period</b>	means with respect to an item of Work, a period of twelve (12) months commencing on the date of Completion of the relevant item of Work.
<b>Development</b>	means the demolition of structures and subdivision of the Land into nine (9) residential lots and Lot 1.
<b>Development Application</b>	means DA/1146/2020 in connection with the Development.
<b>Development Consent</b>	means development consent issued under the Act in respect of the Development Application.
<b>Dispute</b>	has the meaning ascribed to it in clause 13.1.
<b>Event of Default</b>	has the meaning ascribed to it in clause 14.2.
<b>GST Law</b>	means <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth) and any other Act or regulation relating to the imposition or administration of the GST.
<b>Index</b>	means the Consumer Price Index (All Groups - Sydney) as provided by the Australian Bureau of Statistics.
<b>Insolvency Event</b>	means the happening of any of the following events: <ol style="list-style-type: none"> <li>(1) Application which is not withdrawn or dismissed within fourteen (14) days is made to a court for an order or an order is made that a body corporate be wound up.</li> <li>(2) An application which is not withdrawn or dismissed within fourteen (14) days is made to a court for an order appointing a liquidator or provisional liquidator in respect of a body corporate or one of them is appointed, whether or not under an order.</li> <li>(3) Except to reconstruct or amalgamate while solvent, a body corporate enters into, or resolves to enter into, a scheme of arrangement, agreement of company arrangement or composition with, or assignment for the benefit of, all or any</li> </ol>

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class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them.

- (4) A body corporate resolves to wind itself up, or otherwise dissolve itself, or gives notice of intention to do so, except to reconstruct or amalgamate while solvent or is otherwise wound up or dissolved.
- (5) A body corporate is or states that it is insolvent.
- (6) As a result of the operation of section 459F(1) of the *Corporations Act 2001* (Cth) (**Corporations Act**), a body corporate is taken to have failed to comply with a statutory demand;
- (7) A body corporate is or makes a statement from which it may be reasonably deduced that the body corporate is, the subject of an event described in section 459C(2)(b) or section 585 of the *Corporations Act*.
- (8) A body corporate takes any step to obtain protection or is granted protection from its creditors, under any applicable legislation or an administrator is appointed to a body corporate.
- (9) A person becomes an insolvent under administration as defined in section 9 of the *Corporations Act* or action is taken which could result in that event.
- (10) A receiver, manager or receiver and manager is appointed to the Company.
- (11) A claim is filed in a court against a person that is not defended, released or otherwise settled within twenty eight (28) days of the date of its filing at the court.
- (12) Anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.

**Land**

means the "Land" set out in **Schedule 1**.

**Law**

means all legislation, regulations, by-laws, common law and other binding order made by any Authority.

**Lot 1**

means that part of the Land currently zoned R2 Residential (Low Density) identified as future road reserve under the *Hornsby Local Environmental Plan 2013*, comprising of Lot 1 in a plan of subdivision that has, or will, be acquired by Council under a separate contract of sale between Council and the Developer.

**Occupation Certificate**

has the same meaning as in section 6.4(c) of the Act.

**Planning Legislation**

means the Act, the *Local Government Act 1993* (NSW) and the *Roads Act 1993* (NSW).

**Quantity Surveyor**

means a person who:

- (1) is a member of their respective professional organisation and has been for at least five (5) years;
- (2) practises as a quantity surveyor for works of the same nature as the relevant Works;

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	(3)	is active as a quantity surveyor at the time of his appointment;
	(4)	has at least three (3) years experience in valuing works of the same nature as the relevant Works; and
	(5)	undertakes to act fairly and promptly in accordance with the requirements of this document.
<b>Rectification Notice</b>		has the meaning ascribed to it in clause 6.4.
<b>Security</b>		has the meaning ascribed to it in clause 10.
<b>Subdivision Certificate</b>		has the same meaning as in section 6.4(d) of the Act.
<b>Subdivision Certificate</b>	<b>Works</b>	has the same meaning as in section 6.4(b) of the Act.
<b>Works</b>		means the works specified or described in <b>Schedule 3</b> .

#### Part 2 - Interpretational Rules

<b>clauses, annexures and schedules</b>	a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this document.
<b>reference to statutes</b>	a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them.
<b>singular includes plural</b>	the singular includes the plural and vice versa.
<b>person</b>	the word "person" includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association or any government agency.
<b>executors, administrators, successors</b>	a particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns.
<b>dollars</b>	Australian dollars, dollars, \$ or A\$ is a reference to the lawful currency of Australia.
<b>calculation of time</b>	if a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day.
<b>reference to a day</b>	a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later.
<b>accounting terms</b>	an accounting term is a reference to that term as it is used in accounting standards under the Corporations Act or, if not inconsistent with those standards, in accounting principles and practices generally accepted in Australia.
<b>reference to a group of persons</b>	a group of persons or things is a reference to any two or more of them jointly and to each of them individually.
<b>meaning not limited</b>	the words "include", "including", "for example" or "such as" are not used as, nor are they to be interpreted as, words of limitation, and, when introducing an example, do not limit the meaning of the words

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	to which the example relates to that example or examples of a similar kind.
<b>next day</b>	if an act under this document to be done by a party on or by a given day is done after 4.30pm on that day, it is taken to be done on the next day.
<b>next Business Day</b>	if an event must occur on a stipulated day which is not a Business Day then the stipulated day will be taken to be the next Business Day.
<b>time of day</b>	time is a reference to Sydney time.
<b>headings</b>	headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this document.
<b>agreement</b>	a reference to any agreement, document or instrument includes the same as varied, supplemented, novated or replaced from time to time.
<b>Gender</b>	a reference to one gender extends and applies to the other and neuter gender.

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# ATTACHMENT 5 - ITEM 2

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Schedule 3 - Works

Item of Works	Time for Completion	Contribution Works Value
Construction of civil road and drainage works on the part of the Land reserved for road widening at John Road and Franklin Road, Cherrybrook	Prior to the first to occur of the following: (1) that date that is twelve (12) months after the date of the grant of a Subdivision Works Certificate in respect of the Works. (2) the issue of a Subdivision Certificate with respect to the Development.	\$500,000

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ATTACHMENT 5 - ITEM 2

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**Execution page**

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**Executed as a deed.**

Dated:

**Signed, sealed and delivered** by **Hornsby Shire Council** by its General Manager pursuant to delegation from Council:

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General Manager (Signature)

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Name of General Manager (Print Name)**Signed, sealed and delivered** by **Goldmap Two Pty Limited** in accordance with section 127(1) of the Corporations Act by authority of its sole director and secretary.

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*Xinyong Wang* (Signature)

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## INFORMATION ONLY

Meeting: **GENERAL MEETING**

**9/08/2023**

**TO:** Manager - Development Assessments (Pickles, Rod)

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**Subject:** Voluntary Planning Agreement - 90-92 Franklin Road, Cherrybrook

**Target Date:**

**Notes:**

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Mr Peter Graham, of P. S. Graham and Associates Pty Ltd addressed Council regarding this Item.

RESOLVED ON THE MOTION OF COUNCILLOR TILBURY, seconded by COUNCILLOR PILLAMARRI,  
THAT the Voluntary Planning Agreement attached to Director's Report No. PC16/23 be endorsed to facilitate delivery of public road widening, footpath and drainage works at John Road and Franklin Road, Cherrybrook.

**FOR:** COUNCILLORS GREENWOOD, MCINTOSH, PILLAMARRI, RUDDOCK, TILBURY AND WADDELL

**AGAINST:** COUNCILLORS BALL, HEYDE AND SALITRA

[Open Item in Minutes](#)

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**3 DA/393/2023 - RE-CONSTRUCTION OF AN EXISTING RETAINING WALL ON ROAD RESERVE - NORTH EPPING BOWLING CLUB, 132A BOUNDARY ROAD, NORTH EPPING**

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<b>DA No:</b>	DA/393/2023 (Lodged on 12 May 2023)
<b>Description:</b>	Re-construction of an existing retaining wall on road reserve
<b>Property:</b>	Lot 1034 DP 752053 - North Epping Bowling Club, No. 132A Boundary Road, North Epping
<b>Applicant:</b>	North Epping Bowling and Community Club Ltd
<b>Owner:</b>	The State of New South Wales
<b>Estimated Value:</b>	\$32,201
<b>Ward:</b>	C Ward
<b>Clause 4.6 Request:</b>	N/A
<b>Submissions:</b>	Nil
<b>LPP Criteria:</b>	Crown land in the care and control of Council
<b>Author:</b>	Independent report prepared by Landmark Planning
<b>COI Declaration:</b>	No Council staff involved in the assessment of this application have declared a Conflict of Interest.

**RECOMMENDATION**

THAT Development Application No. DA/393/2023 for reconstruction of an existing retaining wall on road reserve and associated earthworks on the embankment on the south-western portion of North Epping Bowling Club at Lot 1034 DP 752053, No. 132A Boundary Road, North Epping be approved subject to the conditions of consent detailed in Attachment 1 of LPP Report No. LPP30/23.

## EXECUTIVE SUMMARY

- The application involves reconstruction of an existing retaining wall on the road reserve at the front of North Epping Bowling Club and associated earthworks on the embankment on the south-western portion of the site.
- The application involves land in the care and control of Hornsby Shire Council and is required to be determined by the Hornsby Local Planning Panel. An independent assessment of the development application has been undertaken by Landmark Planning.
- No submissions have been received in respect of the application.
- The application is required to be determined by the Hornsby Council Local Planning Panel as the development is on Crown land in the care and control of Council.
- The assessment report by Landmark Planning is attached to this report for the Hornsby Planning Panel's consideration. The independent consultant's report recommends that the application be approved.

## ASSESSMENT

In accordance with the referral criteria and procedural requirements for Local Planning Panels, the assessment of the development application has been referred to an independent town planning consultant as the development is located on Crown land in the care and control of Council. The report by Landmark Planning is held at Attachment 1 of this report.

## CONCLUSION

The application proposes re-construction of an existing retaining wall on road reserve. 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*.

In accordance with Council's Conflict of Interest Policy for Council-related development the assessment of an application must be undertaken by an Independent Town Planning Consultant. Council has referred the application to an independent town planner to carry out an assessment of the application. The assessment concludes that the application should be approved.

It is recommended that the Hornsby Local Planning Panel approve the application in accordance with the recommendations in the report prepared by Landmark Planning and the conditions of consent in Attachment 1 of this report.

*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







ROD PICKLES  
Manager - Development Assessments

Assessments  
Planning and Compliance Division

Planning and Compliance Division

ITEM 3

**Attachments:**

1.   Independent Assessment Report and Draft Conditions
2.   Locality Plan
3.   Architectural Plans

File Reference: DA/393/2023

Document Number: D08702297

## CONSULTANT ASSESSMENT REPORT

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<b>DA No:</b>	DA/393/2023 (Lodged on 12 May 2023)
<b>Description:</b>	Reconstruction of an existing retaining wall and associated earthworks
<b>Property:</b>	Road Reserve and North Epping Bowling Club, Lot 1034 DP 752053, 132A Boundary Road, North Epping
<b>Applicant:</b>	North Epping Bowling and Community Club Ltd
<b>Owner:</b>	Hornsby Shire Council and Crown Lands (NSW State Government)
<b>Estimated Value:</b>	\$39,201

- The application involves reconstruction of an existing retaining wall on road reserve at the front of North Epping Bowling Club and associated earthworks on the embankment on the south-western portion of the site.
- The proposal complies with the requirements of the relevant environmental planning instruments and the Hornsby Development Control Plan 2013.
- No submissions have been received.
- In accordance with *Conflict of Interest Policy for Proposed Council Development*, the application is required to be determined by the Hornsby Council Local Planning Panel as Hornsby Shire Council is the landowner.
- The development involves land managed by Council and an independent assessment of the development application has been undertaken by Landmark Planning Pty Ltd.
- It is recommended that the application be approved.

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### BACKGROUND

The site contains North Epping Bowling Club, which has operated since 1965.

In 1978, Council agreed to retaining walling on the road reserve adjoining Boundary Road to support the bowling green on the subject site.

On 3 December 2008, Council granted consent for extension of existing verandah at the Club under DA/1310/2008.

On 9 December 2015, Council granted consent to multi-purpose court facility adjoining the Club and carpark upgrade under DA/1566/2014. This consent has been modified on two occasions.

On 15 June 2022, an Emergency Order pursuant to Section 124 of the Local Government Act, 1993 was issued by Council in response to a land slip and necessary rectification works. A copy is an attachment to this report. This Emergency Order was given for the reason(s) that:

1. A land slip occurred along the south-west lot boundary line of No. 132A Boundary Road, North Epping as identified in Figure 1 outlined in red.



2. The land slip is encroaching onto Council's footpath and is a potential safety risk to persons intending to use the footpath as identified in Photos 1-3 outlined in red.
3. Rectification works require development consent; a review of Council's records indicates that development consent has not yet been sought for rectification works.
  - a. Development consent may take several weeks to obtain once submitted.
4. Council cannot be satisfied that a further land slip will not occur.

On 12 May 2023, the subject DA/393/2023 was lodged.

On 15 June 2023, Council requested additional information regarding stormwater management, land stability and cost of works.

On 6 August 2023, the applicant submitted additional information including a Geotechnical Report and amended plans.

## **SITE**

North Epping Bowling Club is located on the north-eastern side of Boundary Road, North Epping and comprises a number of lots. The works subject of this application relates to the south-western portion of the site which comprises an embankment and slopes down to the road reserve outside of Lot 1034 DP 752053, 132A Boundary Road, North Epping, adjacent to a vehicular entry to the multi-purpose courts.

North Epping Bowling Club contains a Club building, two bowling greens and multi-purpose courts, as well as a men's shed under construction. A guide hall and scout hall also exist within the boundaries of the Club precinct. The main vehicular access to the site is via a driveway directly from the road to a carpark located on the south-eastern side of the Club building. A secondary vehicular entry exists to the multi-purpose courts, opposite the intersection with Braidwood Avenue.

The overall site is generally flat due to benching for the bowling greens, however, is elevated above street level. The batter where the land slip occurred is vegetated and includes rock walls and extends down from the bowling green to the street.

A concrete footpath exists along the frontage of the site at the lower slopes of the batter, as well as overhead electricity lines.

The site is bushfire prone land. The site is not flood prone and is not burdened by any easements or restrictions.

The site is surrounded by a mix of single and two storey dwellings to the south-east and south-west. To the north-east and north-west is bushland as part of Lane Cove National Park.

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

## **PROPOSAL**

The application proposes works on the south-western portion of the site which comprises an embankment and reconstruction of an existing retaining wall on road reserve outside of North Epping Bowling Club, adjacent to the secondary vehicular entry exists to the multi-purpose courts, opposite the intersection with Braidwood Avenue. The works include:

- Site establishment.
- Clear the site of all vegetation and undergrowth. Removal of Trees T5 and T6.

- Remove the existing soil and rocks at the wall site and store on site for later re-use.
- Excavate along the line of the new wall to establish a firm and approved base for the bottom of the new retaining wall. Excess material to be stored on site nearby where directed. Base of wall to be founded on approved rock or layer of imported granular road base material equal to DGB20. Contractor to allow to supply and place and compact 30 tonnes of road base.
- Construction of the wall using sandstone blocks, geofabric, agricultural drains and drainage gravel for directly behind the wall. It is proposed to support the toe of the slope by Rocla Mass Blocks which will extend about 4m above footpath level. A double thickness wall is proposed for a portion at the bottom as shown on the plans.
- Progressively construct base courses of the new wall to line and levels shown on the drawings. As the wall progresses, course by course, the drainage layer, geofabric and agricultural drains and backfill are to be placed and consolidated. The Rocla Mass Blocks are a permeable wall system and will also have free draining gravel at the rear. Granular fill will be placed at the rear of the wall system to achieve the surface levels.
- The top courses of the wall are to be constructed using rock boulders from the site.
- Spread any excess material on the site where directed.

The application indicates that in early 2022 due to heavy and persistent rain part of the rock retaining wall between the bowling green and Boundary Road suffered a partial collapse spilling rocks and rubble down the embankment and onto the adjacent footpath.

The wall construction will be supervised by an engineer and the design has been based on an inspection and recommendations of a geotechnical engineer.

## 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.

Part 4 of the strategy relates to 'Liveability' and a key objective is to provide communities that are healthy, resilient and socially connected. A Metropolis of Three Cities will give people better access to housing, transport and employment as well as social, recreational, cultural and creative opportunities. Easier connections with family, friends and the broader community will assist people to fulfil their potential. The proposed works to an existing bowling club to ensure the footpath is usable for residents in the area as well as visitors to the club would be consistent with the objectives of the strategy by providing safe and convenient connections.

### 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 Hornsby Local Environmental Plan 2013 (*HLEP*) applies to all land within Hornsby Shire. An assessment of the development against the relevant sections of the *HLEP* is provided below.

### 2.1.1 Zoning of Land and Permissibility

The subject land that contains North Epping Bowling Club is zoned RE1 Public Recreation under the *HLEP*. The works are located both within the south-western edge of the site on and within the vicinity of the batter subject of the landslip, which is zoned RE1, and the road reserve out the front of the Club below the batter, which is zoned R2 Low Density Residential.

The objectives of the RE1 zone are:

- To enable land to be used for public open space or recreational purposes.
- To provide a range of recreational settings and activities and compatible land uses.
- To protect and enhance the natural environment for recreational purposes.
- To protect and maintain areas of bushland that have ecological value.

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 development on the site is most appropriately defined as *environmental protection works* and is defined as:

***environmental protection works*** means works associated with the rehabilitation of land towards its natural state or any work to protect land from environmental degradation, and includes bush regeneration works, wetland protection works, erosion protection works, dune restoration works and the like, but does not include coastal protection works.

Given this application proposes to rehabilitate a damaged rock wall within a vegetated bank, *environmental protection works* is considered to be the appropriate land use definition and is permissible within the RE1 and R2 zones.

The proposal meets the zone objectives and protects and enhances the natural environment for recreational purposes and provides facilities or services to meet the day to day needs of residents.

### 2.1.2 Demolition

Clause 2.7 of the *HLEP* requires development consent for demolition. This application does not include demolition, with all existing rocks to be removed and stored on site for later re-use.

### 2.1.3 Preservation of Trees

Clause 5.10 of the *HLEP* requires preservation of trees and other vegetation.

An Arboricultural Impact Assessment (AIA) has been provided with the proposal., which indicates the removal of trees numbered 5 and 6 as detailed within the AIA. No consent is granted for the removal of trees numbered 1, 2, 3, 4, 7, 8.

Council's Tree Management Officer reviewed the proposal and raised no objections, subject to conditions of consent regarding installation of tree protection measures, supervision by a Project Arborist and replacement tree planting.

#### 2.1.4 Heritage Conservation

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

#### 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.

The objectives of this clause are to ensure that required earthworks will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land. Earthworks are required for the proposed development to rectify the damage caused from the land slip; and it is considered that the proposed excavation would not adversely impact on environmental functions and processes, subject to standard conditions of consent being applied regarding sediment control and drainage.

The application was accompanied by geotechnical investigation and advice on the most appropriate stabilisation which informed the proposed design and the location of the proposed retaining all close to the edge of the existing footpath within the road reserve. A Geotechnical Report was later submitted which provided additional commentary for the design, drainage and stability and states:

*"The surface conditions and geometry of the model have been taken from Drawing Numbers C-01B, C-02B and C-03B, dated July 2023, produced by Sherrard and Associates Pty Ltd. Based on these drawings we understand that it is proposed to support the toe of the slope by Rocla Mass Blocks which will extend about 4m above footpath level. Beyond the crest of the Mass Blocks the ground will slope up to the bowling green at no steeper than about 1 Vertical in 2.6 horizontal. The Rocla Mass Blocks are a permeable wall system and will also have free draining gravel at the rear. Granular fill will be placed at the rear of the wall system to achieve the surface levels."*

A stability analysis has been carried out by the geotechnical engineer and a Factor of Safety (FOS) determined. The Geotechnical Report states:

*"The computed FOS values are approximately 1.5, and in our opinion such FOS values would be considered acceptable. In order to maintain an acceptable FOS the following recommendations should also be followed;*

- 1. Where the Rocla Mass Blocks are not founded on rock, then the lowest block must be embedded at least 1m below surface levels and be founded on a suitable founding stratum. The founding stratum must be inspected by the geotechnical engineers and confirmed to be suitable. The structural drawings should nominate the required bearing pressure.*
- 2. The slope above the new retaining wall should be protected from erosion by revegetation.*
- 3. All pipe work toward the crest of the slope should be checked for leaks and integrity. If any leaks exist these should be repaired as part of the works.*

4. Stormwater should not be able to flow in an uncontrolled manner down the slope. Stormwater from the bowling green should be collected and dispersed in a controlled manner to the toe of the slope.

5. Any new granular fill to be placed to form the final levels beyond the crest of the new retaining wall should properly compacted in thin layers.”

Council's Engineer reviewed the geotechnical information and amended plans and raised no objection in terms of earthworks and the associated impacts including stability, and appropriate conditions of consent are recommended.

With respect to the earthworks occurring within the road reserve, a deferred commencement condition is recommended which requires the applicant to obtain a s138 Roads Act 1993 approval to permit the works within the Council road reserve.

## **2.2 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*.

### **2.2.1 Chapter 4 Remediation of Land**

Section 4.6 of *State Environmental Planning Policy (Resilience and Hazards) 2021* 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.

The site was deemed satisfactory for recreation purposes at the time of the original and subsequent consents and no change of use is proposed and no evidence was found of contaminating land activities having occurred on the land. The current and previous planning controls do not allow for potentially contaminating uses. As such, no further investigation is required.

Based on the above assessment, the provisions of Chapter 4 of *State Environmental Planning Policy (Resilience and Hazards) 2021* have been considered along with the contaminated land planning guidelines and the site is considered suitable for the proposed development.

## **2.3 State Environmental Planning Policy (Biodiversity and Conservation) 2021**

The application has been assessed against the 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.

The proposal requires the removal of two trees and replacement planting, which has been deemed satisfactory by Council's Tree Management Officer and further consideration of this policy is not required.

### **2.3.2 Chapter 6 Waterways**

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 6 of the Biodiversity and Conservation SEPP.

#### **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 proposed development 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.

##### **2.5.1 Community Uses**

Part 7 of HDCP provides controls for Community Uses. As there is no change to the current use or proposed increase in size or intensification by the proposal, the existing site remains suitable with respect to the controls of this Part. The existing car parking remains unaltered and no amenity impacts are envisaged as a result of the reconstruction works.

The location of the rock wall within a landscaped batter and road reserve means that the proposed reconstruction of an existing retaining wall will provide opportunity for the damaged landscaping to also be rectified and replacement tree planting to compensate for the two trees (T5 and T6) being removed will enhance the streetscape.

##### **2.5.2 Stormwater**

The proposal includes drainage measures within the retaining wall design and meets the requirements of Part 1C 1.2 Stormwater Management under the HDCP. Council's Engineer raised no objection to the proposed drainage and appropriate conditions of consent are recommended with respect to drainage.

### 2.5.3 Tree Protection

Council's Tree Management Officer reviewed the proposal and raised no objections to the removal of trees numbered 5 and 6 as detailed within the AIA. Subject to conditions, the proposal meets the requirements of Part 1B.6.1 Tree Preservation under the HDCP and is considered acceptable.

### 2.5.4 Transport, Parking and Traffic

The reconstruction works do not generate any traffic or additional parking requirements for the Club.

The works will allow for safe vehicular access along the public road and driveway in the vicinity of the damaged rock wall. The proposal will result in a safer environment for pedestrians utilising the existing footpath along the road below the damaged rock wall.

The proposal would not result in an unacceptable impact in terms of traffic and safety on the surrounding road network.

### 2.5.5 Waste Management

This proposal does not propose to alter operational details of the Club and existing waste management will remain. Minimal waste is generated by the proposal due to reuse of materials in the reconstruction of the wall.

### 2.5.6 Landscaping

The desired outcome of Part 1C 2.9 Landscaping of the HDCP are:

- a. Landscaping that integrates the built form with the locality and enhances the tree canopy.*
- b. Landscaping that improves the environmental performance of the development.*

The proposal includes removal of two trees and damaged vegetation on the embankment. Appropriate conditions of consent are recommended with respect to replacement trees and new landscaping of the embankment to achieve the desired outcomes. The proposal meets the requirements of Part 1C 2.9 Landscaping under the HDCP and is considered acceptable.

### 2.5.7 Noise and Vibration

This proposal does not propose to alter operational details of the Club and as such no new noise impacts are envisaged. There will be limited noise generated during construction works, which are managed by way of conditions of consent including restrictions on times of works.

### 2.5.8 Bushfire

The reconstruction works do not create additional bushfire risk and the existing measures in place to minimise bushfire attack, including asset protection zones remain unaltered by this application. The previous DA/1566/2014 for multi-purpose court facility adjoining the Club and carpark upgrade included the driveway/road adjoining the works and included conditions of consent relating to RFS bushfire requirements.

## 2.9 Section 7.12 Contributions Plans

Hornsby Shire Council Section 7.12 Contributions Plan 2020-2030 does not apply to the development as the estimated costs of work is less than \$100,000.

### 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 Stormwater Management

The proposal seeks to maintain the approved stormwater management design and configuration for the Club and no concerns are raised by Council in this respect.

The plans and sections accompanying this application detail the proposed drainage for the proposed retaining wall. Council's Engineer raised no objection to the proposed drainage and appropriate conditions of consent are recommended with respect to drainage.

##### 3.1.1 Tree and Vegetation Preservation

Two trees would be removed by the development and appropriate conditions of consent are recommended with respect to replacement trees and new landscaping of the embankment.

#### 3.2 Built Environment

##### 3.2.1 Access and Mobility

The site is currently well served for pedestrians and vehicles with no conflict; however, the landslip is providing an unsafe environment for pedestrians wanting to use the footpath.

No changes are proposed in regard to the current pedestrian and vehicular arrangements for the Club.

The reconstruction works will ensure a safe environment is provided for pedestrians.

##### 3.2.2 Traffic

The proposal does not generate traffic as there is no change or intensification to the approved use.

#### 3.2 Social Impacts

The proposed proposal would make a positive social contribution to the local community by rectifying an unsafe environment for pedestrians and providing safe access to recreation services and facilities for the needs of local residents.

#### 3.3 Economic Impacts

The proposal would have a minor positive impact on the local economy by generating an increase in employment opportunities during the works.

### 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 flood prone land. The site is considered to be capable of accommodating the proposed development. The scale of the land use remains unchanged and 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 or the regulations”.

### 5.1 Community Consultation

The proposed development was placed on public exhibition and was notified to adjoining and nearby landowners between 22 May 2023 – 19 June 2023 in accordance with the Notification and Exhibition requirements of the Community Participation Plan. During this period, Council received no submissions. The map below illustrates the location of the properties notified.



NOTIFICATION PLAN

● PROPERTIES NOTIFIED	X SUBMISSIONS RECEIVED	 PROPERTY SUBJECT OF DEVELOPMENT	
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### 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 reconstruction of an existing retaining wall and associated earthworks.

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 no submissions during the public notification period.

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

The reasons for this decision are:

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

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

## RESPONSIBLE OFFICER

The officer responsible for the preparation of this report is Donna Clarke from Landmark Planning Pty Ltd.

## RECOMMENDATION

THAT Development Application No. DA/393/2023 for reconstruction of an existing retaining wall on road reserve at the front of North Epping Bowling Club and associated earthworks on the embankment on the south-western portion of North Epping Bowling Club, Lot 1034 DP 752053, 132A Boundary Road, North Epping be approved subject to the conditions of consent detailed in Schedule 1 of this report.

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

**1. Approved Plans and Supporting Documentation**

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

*Approved Plans*

<b>Plan No.</b>	<b>Plan Title</b>	<b>Drawn by</b>	<b>Dated</b>	<b>Council Reference</b>
C-01 B	Retaining Wall Details – Proposed Retaining Wall Plan	Sherrard & Associates	26/7/23	
C-02 B	Retaining Wall Details – South Elevation on Wall	Sherrard & Associates	26/7/23	
C-03 B	Retaining Wall Details – Section A-A, Section B-B, Detail C	Sherrard & Associates	26/7/23	

*Supporting Documentation*

<b>Document Title</b>	<b>Prepared by</b>	<b>Dated</b>	<b>Council Reference</b>
Arboricultural Impact Assessment	Urban Arbor	13/4/23	D08649922
Geotechnical Inspection Letter Ref: 35843L Let	JK Geotechnics	16/2/23	D08649917
Geotechnical Stability Analysis Ref: 35843L Let 2	JK Geotechnics	5/8/23	D08704358
Retaining Wall Details – Environmental & Sediment Control Plan (C-04)	Sherrard & Associates	March 2023	D08649899
Retaining Wall Details - Retaining Wall - Stormwater Management Plan (C-06)	Sherrard & Associates	June 2023	D08682161

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

**2. Construction Certificate**

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

- b) A separate Roads Act Certificate must be obtained from Council for all works within the public road reserve under *S138 of the Roads Act*.
- c) 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

- a) This development consent permits the removal of trees numbered 5 and 6 as identified on page 23 of Appendix 1B contained in the Arboricultural Impact Assessment prepared by Urban Arbor dated 15/5/2023 TRIM: D08649922.
- b) No consent is granted for the removal of trees numbered 1,2,3,4,7,8 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.*

### 4. 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.*

## REQUIREMENTS PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

### 5. 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)*

### 6. Appointment of a Project Arborist

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.

Details of the appointed project arborist must be submitted to Council and the Principal Certifier with the application for the construction certificate.

*Reason: To ensure appropriate monitoring of trees to be retained.*

**7. 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.*

**8. Sydney Water – Approval**

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

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

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

**9. Land Stability**

All recommendations contained in the Geotechnical Inspection letter, Ref: 35843L Let, dated 16 February 2023, Geotechnical Stability Analysis – Proposed Retaining Wall Letter, Ref: 35843L Let 2, dated 5 August 2023 by JK Geotechnics and Revised Retaining Wall plans prepared by SHERRARD & Associates Pty. Ltd. Consulting Structural Engineers shall be implemented prior to the issue of the construction certificate.

*Reason: To protect the land from slippage.*

**10. Stormwater Drainage**

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

- a) Connected directly to Council's street drainage system.
- b) Connected to an existing Council piped drainage system with the following requirements:
  - i) Connection to Council's drainage system shall include design and construction of the Council's standard kerb outlet in accordance with AUS-SPEC Specifications ([www.hornsby.nsw.gov.au/property/build/aus-spec-terms-and-conditions](http://www.hornsby.nsw.gov.au/property/build/aus-spec-terms-and-conditions)).
  - ii) Prior to the issue of an Occupation Certificate a Compliance Certificate must be obtained from Council for the connection to Council's drainage system.

*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.*

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

**11. Footpath**

A concrete footpath must be designed across the full work-affected frontage of the subject site in accordance with AUS-SPEC Specifications ([www.hornsby.nsw.gov.au/property/build/aus-spec-terms-and-conditions](http://www.hornsby.nsw.gov.au/property/build/aus-spec-terms-and-conditions)) and the following requirements:

- a) The existing footpath being removed.
- b) Pouring of the concrete footpath to the full frontage of the subject site.
- c) The land adjoining the footpath to be fully turfed.
- d) Segmental block paving to be constructed along the full width of the footway over the full frontage to the site, including the planting of street trees in suitable grates or bays in the footway area.
- e) Any public utility adjustments to be carried out at the cost of the applicant and to the requirements of the relevant public authority.

*Reason: To provide safe pedestrian movement.*

## **12. 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:

1. Description of the works
  - a. A description of the scope of works for all stages of development.
  - b. 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.
  - c. The CTMP plans shall be in accordance with all other plans submitted to Council as part of this development proposal.
  - d. 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.
  - e. 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.
  - f. 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.
  - g. The CMP must detail all responsible parties ensuring compliance with the document and include the contact information for developers, builder, private certifier, and any emergency details during and outside work hours.
2. A Construction Traffic Management Plan (CTMP) including the following:
  - a. The order of construction works and arrangement of all construction machines and vehicles being used during all stages.

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- b. The CTMP plans shall be in accordance with all other plans submitted to Council as part of this development proposal.
  - c. The Plan shall be in compliance with the requirements of the Roads and Maritime Services *Traffic control at work sites Manual 2018* and detail:
    - i. Public notification of proposed works;
    - ii. Long term signage requirements;
    - iii. Short term (during actual works) signage;
    - iv. Vehicle Movement Plans, where applicable;
    - v. Traffic Management Plans;
    - vi. Pedestrian and Cyclist access and safety.
  - d. 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.
  - e. 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.
  - f. Proposed truck routes to and from the site including details of the frequency of truck movements for all stages of the development.
  - g. Swept path analysis for ingress and egress of the site for all stages of works.
  - h. 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.
  - i. The number of weeks trucks will be accessing and leaving the site with excavated or imported fill material.
  - j. The maximum number of trucks travelling to and from the site on any given day for each stage of works.
  - k. The maximum number of truck movements on any given day during peak commuting periods for all stages of works.
  - l. 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.
3. A Construction Waste Management Plan detailing the following:
- a. A table of information detailing cut and in-situ fill calculations for all stages for works. The table must include specified dimensions (WxLxD) and total cubic metres.
  - b. 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.
  - c. A scaled site plan including levels of the extent of cut and fill on the site, forming part of the proposed development.

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- d. Asbestos management requirement and procedures for removal and disposal from the site in accordance with AS 2601–2001 Demolition of Structures, and the Protection of the Environment Operations (Waste) Regulation 2005.
    - e. General construction waste details including construction waste skip bin locations and litter management for workers.
  4. 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:
    - a. 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.
    - b. Construction methodology to avoid damage to trees proposed to be retained during construction works.
    - c. Specifications on tree protection materials used and methods within the TPZ or SRZ.
    - d. Location of dedicated material storage space on site outside of TPZ's and SRZ's for retained trees.
  5. A Construction Noise and Vibration Management Plan (CNMP) which includes:
    - a. Existing noise and vibration levels within the proximity of the proposed development site.
    - b. Details of the extent of rock breaking or rock sawing works forming part of the proposed development works.
    - c. The maximum level of noise and vibration predicted to be emitted during each stage of construction.
    - d. The duration of each stage of works where the maximum level of noise and vibration are predicted to be emitted for.
    - e. Details of mitigation measures, inclusive of respite periods, that will meet acoustic standards and guidelines at each stage of works.
    - f. Details of a complaints handling process for the surrounding neighbourhood for each stage of works.
  6. An Erosion and Sediment Control Plan (ESCP) that describes all erosion and sediment controls to be implemented in accordance with the publication Managing Urban Stormwater: Soils & Construction (4<sup>th</sup> Edition), which includes:
    - a. A site survey which identifies contours and approximate grades and the direction(s) of fall.
    - b. Locality of site and allotment boundaries.
    - c. Location of adjoining road(s) and all impervious surfaces.
    - d. Location of site access and stabilisation of site access.
    - e. Provision for the diversion of run off around disturbed areas.
    - f. Location of material stockpiles.
    - g. Proposed site rehabilitation and landscaping; staging of construction works.
    - h. Maintenance program for erosion and sediment control measures.



- i. Provide a plan of how all construction works will be managed in a wet-weather events (i.e. storage of equipment, stabilisation of the Site)
- 7. A de-watering plan that describes all controls to be implemented for the disposal of water that accumulates within any site excavation areas.
- 8. The CMP must detail all responsible parties ensuring compliance with the document and include the contact information for developers, builder, private certifier, and any emergency details during and outside work hours.

*Note: The CMP must be lodged via Council's Online Services Portal at: <https://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.*

<b>REQUIREMENTS PRIOR TO THE COMMENCEMENT OF ANY WORKS</b>
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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; and
  - 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. 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; or
  - ii) be a temporary chemical closet approved under the *Local Government Act 1993*.

*Reason: To ensure adequate toilet facilities are provided.*

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

- a) Trees to be retained as identified on the Tree Location Plan prepared by Urban Arbor dated 15/5/2023 TRIM: D08649922 must have tree protection measures for the ground, trunk and canopy installed by the project arborist as follows:
  - i) For the duration of demolition works, in accordance with the Tree Protection Plan for prepared by Urban Arbor dated 15/5/2023 TRIM: D08649922.
  - ii) For the duration of construction works, in accordance with Tree Protection Plan prepared by Urban Arbor dated 15/5/2023 TRIM: D08649922.
- b) Tree protection fencing for the trees to be retained numbered 1,2,3,4 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.

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

#### **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**

#### **17. 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.*

#### **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*.

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

#### **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. 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**

- a) The appointed project arborist must monitor and record any and all necessary actions required to maintain tree health and condition for retained trees 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 for the duration of works.

*Reason: To protect trees during construction.*

**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 40mm.

*Reason: To protect trees during construction.*

**25. Building materials and Site Waste**

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

*Reason: To protect trees during construction.*

**REQUIREMENTS PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE**
**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](http://www.hornsby.nsw.gov.au/property/build/aus-spec-terms-and-conditions)). Rectification works must be undertaken prior to the issue of an Occupation Certificate, or sooner, as directed by Council.

*Reason: To ensure public infrastructure and property is maintained.*

**27. Land stability**

Prior to occupation a Chartered Professional Engineer competent in geotechnics shall certify that the construction works have been constructed in accordance with a geotechnical report and include an evaluation of the completed works. A copy of the certificate shall be supplied to the Principal Certifying Authority. A copy shall be provided to Council if Council is not the Principal Certifying Authority.

*Reason: To maintain land stability.*

**28. Creation of Easements**

The following matters must be nominated under s88E of the *Conveyancing Act 1919*:

- a) The creation of a positive covenant over the construction and maintenance of a retaining wall along the front boundary for stabilising site slop by the owner in favour of the Council; and
- b) To register the retaining wall easement, the restriction on the use of land "works-as-executed" details of the retaining wall system must be submitted verifying that the wall has been constructed in accordance with the design requirements. The details must show the retaining wall. Any variations to the approved plans must be

shown in red on the “works-as-executed” plan and supported by calculations and certified by a qualified chartered structural engineer.

*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.*

## 29. Replacement Tree Requirements

- a) The trees approved for removal under this consent, being trees numbered 5 and 6 must be offset through replacement planting of a minimum of two (2) 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.
  - iv) All replacement trees must have the potential to reach a mature height greater than 10 metres.

*Reason: To enhance the environmental and visual qualities of the development.*

## 30. Final Certification

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

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

*Reason: To ensure compliance with tree protection commitments.*

**31. 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.*

**32. Landscaping of Area of Works**

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

*Note: Advice on suitable species for landscaping can be obtained from Council's planting guide 'Indigenous Plants for the Bushland Shire', available at [www.hornsby.nsw.gov.au](http://www.hornsby.nsw.gov.au).*

*Reason: To enhance the environmental and visual qualities of the development.*

**- END OF CONDITIONS -**

**ADVISORY NOTES**

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

**Environmental Planning and Assessment Act 1979 Requirements**

The *Environmental Planning and Assessment Act 1979* requires:

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

**Long Service Levy**

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

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

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

**Tree and Vegetation Preservation**

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

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

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

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

**Covenants**

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

**Dial Before You Dig**

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

**Telecommunications Act 1997 (Commonwealth)**

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

**Asbestos Warning**

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

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

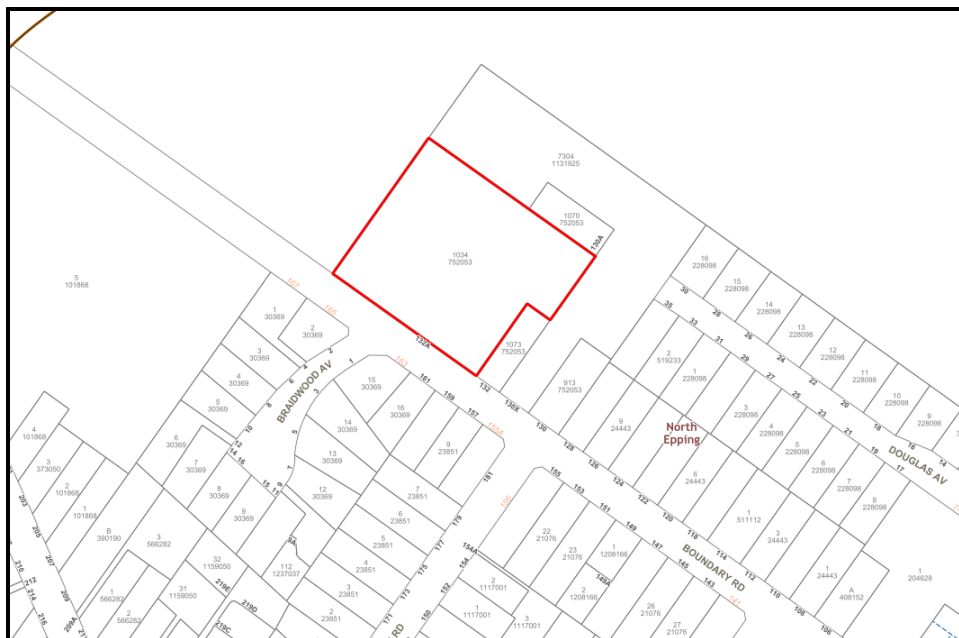
[www.adfa.org.au](http://www.adfa.org.au)

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

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

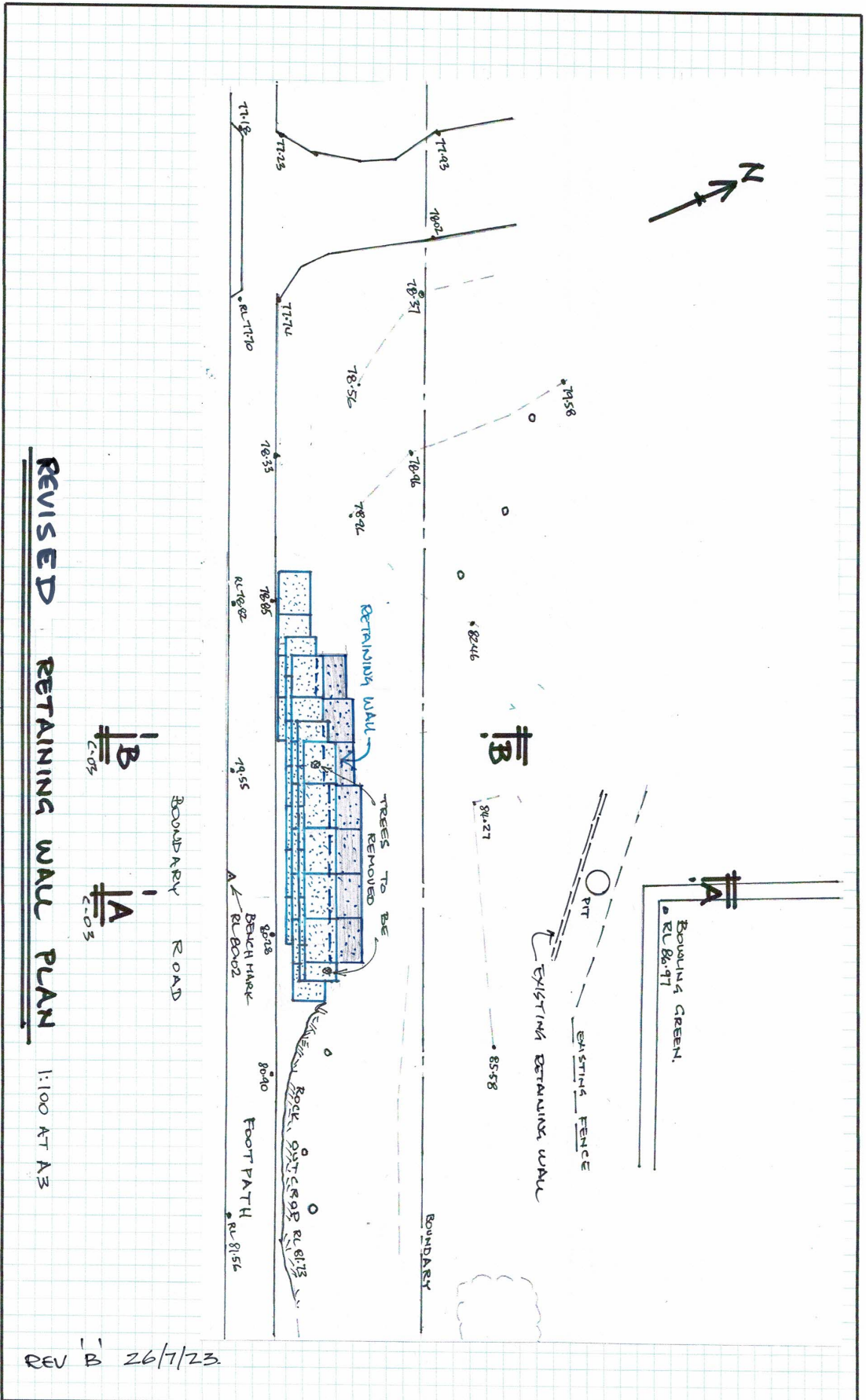
**Rain Water Tank**

It is recommended that water collected within any rainwater tank as part of the development be limited to non-potable uses. *NSW Health* recommends that the use of rainwater tanks for drinking purposes not occur where a reticulated potable water supply is available.

**LOCALITY PLAN****DA/393/2023****No. 132A Boundary Road, North Epping – North Epping Bowling Club****ATTACHMENT 2 - ITEM 3**



# ATTACHMENT 3 - ITEM 3



REV B 26/7/23



**SHERRARD**  
Consulting Structural Engineers  
6 Haywood Street  
EPPING NSW 2121  
Mobile: 0408 293 324  
Email: osherrard@bigpond.com

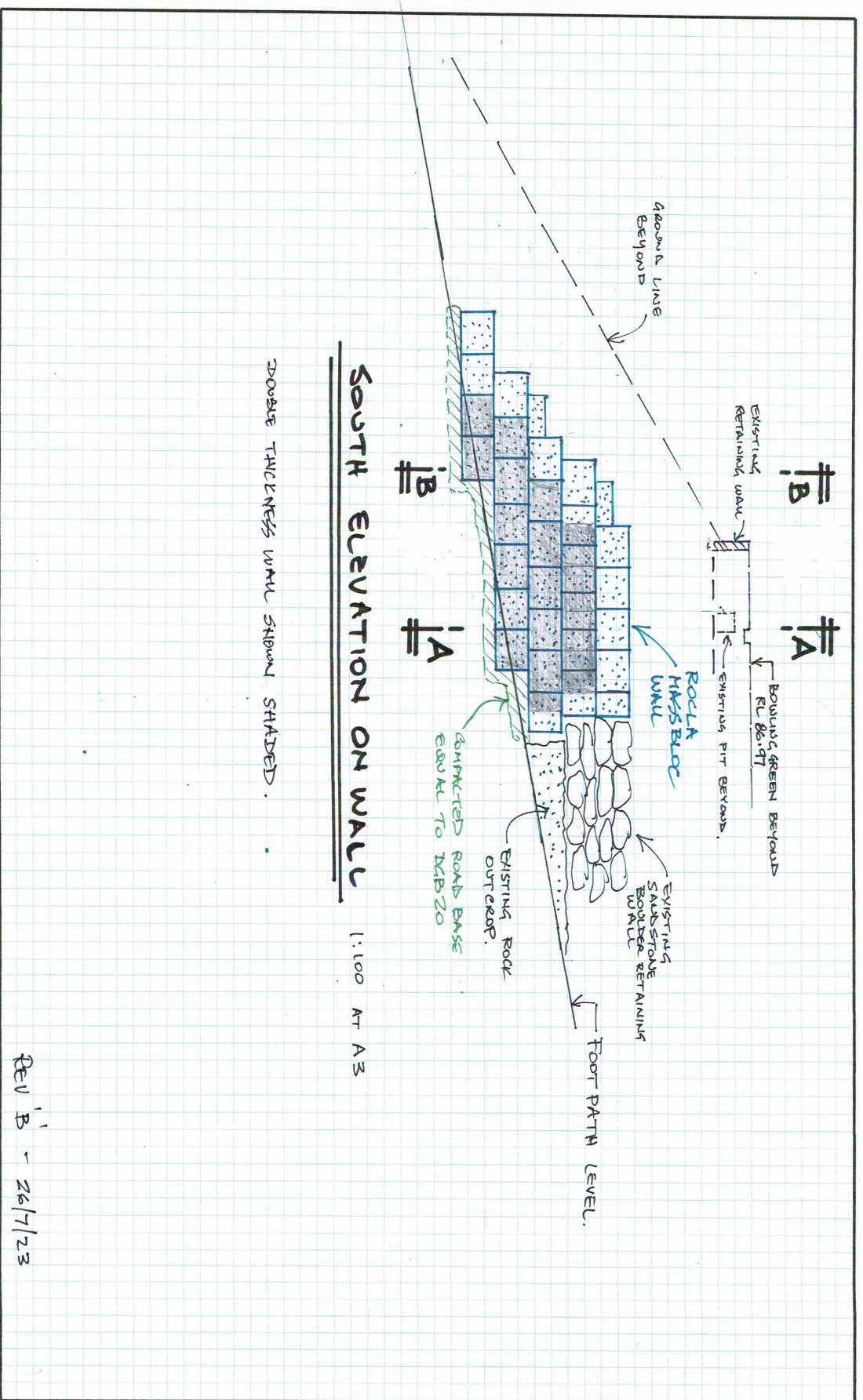
**& ASSOCIATES PTY. LTD.**  
ABN 73 002 880 428  
This drawing and the information shown hereon is the property of Sherard & Associates Pty Ltd and may not be used for any other purpose without the written consent of Sherard & Associates Pty Ltd.

Project: RETAINING WALL RE-CONSTRUCTION  
NORTH EPPING BOWLING CLUB  
BOUNDARY ROAD, NORTH EPPING, NSW, 2121.  
Client: NORTH EPPING BOWLING & COMMUNITY CLUB.

Drawing Title: RETAINING WALL DETAILS.  
Date: JULY 2023  
Job No: W 2226  
Drawing No: C-01 B



# ATTACHMENT 3 - ITEM 3



**SHERARD & ASSOCIATES PTY. LTD.**  
 Consulting Structural Engineers  
 6 Haywood Street  
 EPPING NSW 2121  
 Mobile 0408 283 324  
 Email: cs@sherrard.com

ABN 73 002 880 428  
 This drawing and the information shown herein is the property of Sherrard & Associates Pty Ltd and may not be used for any other purpose without the written consent of Sherrard & Associates Pty Ltd.

Project: RETAINING WALL RE-CONSTRUCTION  
 NORTH EPPING BOWLING CLUB,  
 BOUNDARY ROAD, NORTH EPPING, NSW, 2121.  
 Client: NORTH EPPING BOWLING & COMMUNITY CLUB.

Drawing Title: RETAINING WALL DETAILS.  
 Date: JULY 2023  
 Job No: W 2226  
 Drawing No: C-02 B







**4 REPORTING DEVELOPMENT APPLICATIONS FOR DETERMINATION BY THE HORNSBY  
LOCAL PLANNING PANEL OVER 180 DAYS**

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**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. LPP28/23 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: D08701192

**List of development applications required to be determined by the LPP that are over 180 calendar days from lodgement**

<b>DA No.</b>	<b>Proposal</b>	<b>Address</b>	<b>Ward</b>	<b>Reason</b>	<b>Est. Date to LPP</b>	<b>Advice to Chair</b>	<b>No. Days at 30/8</b>
<b>DA/1022/2021</b>	Torrens title subdivision of 1 lot into 60	36-56 David Road Castle Hill	C	VPA >10 submissions	Feb	Response to RFI due 31 August in conjunction with draft VPA wording for Council review prior to exhibition.	699
<b>DA/121/2022</b>	Demolition and construction of 5 storey RFB - 60 units	23-27 Balmoral Street Waitara	B	SEPP 65 >10 submissions	Sept	Supplementary information and plans received to address matters raised by Council including revised Clause 4.6 request. Report to be prepared for the September LPP meeting.	569
<b>DA/75/2023</b>	Demolition and construction 5 storey RFB - 15 units	10 Bouvardia Street, Asquith	A	SEPP 65	Sept	Amended plans to be submitted by 23 August and referred to internal branches for comment. Report to be prepared for the September LPP meeting.	219

# ATTACHMENT 1 - ITEM 4