



BUSINESS PAPER

LOCAL PLANNING PANEL MEETING

**Wednesday 28 August 2024
at 4:00pm**



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AGENDA AND SUMMARY OF RECOMMENDATIONS

GENERAL BUSINESS

Local Planning Panel

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SUPPLEMENTARY AGENDA

1 DA/1022/2021 - STAGED TORRENS TITLE AND COMMUNITY TITLE SUBDIVISION OF 1 LOT INTO 64 - 36-56 DAVID ROAD, CASTLE HILL

DA No: DA/1022/2021 (Lodged on 1 October 2021)

Description: Staged Torrens and Community Title subdivision comprising:
Stage 1 - Torrens Title subdivision of 1 Lot into 2 Lots to create Lot 100 (Marymount Forest Conservation Reserve) and Lot 101 (Balance Land)
Stage 2 - Community Title subdivision of Lot 101 to create 63 residential lots and 2 open space lots (Lot 1 Mercy Park and Lot 65 Tahlee Park)

Property: Lot 2 DP 565458, No. 36-56 David Road, Castle Hill

Applicant: Ms Nitsan Taylor

Owner: The Trustees Of Sisters Of Mercy

Estimated Value: \$4,967,765

Ward: C Ward

Clause 4.6 Request: Not required

Submissions: 108

LPP Criteria: 10 or more unique submissions were received by way of objection; Council owned land; Planning agreement

Author: Independent Report prepared by Henry Burnett, DFP Planning

COI Declaration: No Council staff involved in the assessment of this application have declared a Conflict of Interest.

RECOMMENDATION

THAT the Hornsby Local Planning Panel, exercising the functions of Council as the consent authority, approve Development Application No. DA/1022/2021 for the staged Torrens and Community Title subdivision at Lot 2 DP 565458 - No. 36-56 David Road CASTLE HILL NSW 2154, subject to the conditions of consent in Attachment 1 of LPP Report No. LPP

EXECUTIVE SUMMARY

- The application involves a staged Torrens title and community title subdivision.
 - Stage 1 would be the Torrens title subdivision of 1 lot into 2 lots to create Lot 100 (Marymount Forest Conservation Reserve) and Lot 101 (Balance Land).
 - Stage 2 would be the community title subdivision of Lot 101 to create 63 residential lots and 2 open space lots (Lot 1 Mercy Park and Lot 65 Tahlee Park).
- The application involves land owned by Hornsby Shire Council and is required to be determined by the Hornsby Council Local Planning Panel. In accordance with Council's adopted policy an independent assessment of the development application has been undertaken by DFP Planning.
- A total of 108 submissions have been received during the assessment of the application. The initial notification period from 14 October 2021 to 11 November 2021 resulting in 89 of these submissions. Following the provision of amended plans, a second notification period from 8 March 2023 to 29 March 2023 resulted in 19 submissions.
- The application is required to be determined by the Hornsby Council Local Planning Panel as 10 or more unique submissions were received by way of objection and the development includes land owned by Hornsby Shire Council.
- The assessment report by DFP 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 includes Council owned land. The report by DFP Planning is held at Attachment 1 of this report.

CONCLUSION

The application proposes a staged Torrens title and community title subdivision.

- Stage 1 would be the Torrens title subdivision of 1 lot into 2 lots to create Lot 100 (Marymount Forest Conservation Reserve) and Lot 101 (Balance Land).
- Stage 2 would be the community title subdivision of Lot 101 to create 63 residential lots and 2 open space lots (Lot 1 Mercy Park and Lot 65 Tahlee Park).

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 108 submissions (19 during the final notification period) during the public notification periods.

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 Planning 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.

ITEM 1

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

ROD PICKLES
Manager - Development Assessments
Planning and Compliance Division

Attachments:

1.  Consultant's Assessment Report
2.  Draft Conditions of Consent
3.  Subdivision Plans
4.  Engineering Plans
5.  Landscape Plans
6.  Planning Agreement
7.  Minutes - Planning Agreement endorsement

File Reference: DA/1022/2021

Document Number: D08940095

2 DA/1251/2023 - TORRENS TITLE SUBDIVISION OF 1 LOT INTO 2, CONSTRUCTION OF A NEW DRIVEWAY AND ASSOCIATED EARTHWORKS - 6 CLOVELLY ROAD HORNSBY

DA No: DA/1251/2023 (Lodged on 24 November 2023)

Description: Torrens title subdivision of 1 lot into 2 including re-construction of a new access driveway and associated earthworks - PAN-388081

Property: Lot 30A DP 5262, No. 6 Clovelly Road, Hornsby

Applicant: Mr Xinghan Chen

Owner: Mr Xinghan Chen & Mrs Xueyan Liang

Estimated Value: \$200,000

Ward: B Ward

Clause 4.6 Request: N/A

Submissions: 12

LPP Criteria: 10 or more unique submissions were received by way of objection

Author: Tim Buwalda, Senior Town Planner

COI Declaration: No Council staff involved in the assessment of this application have declared a Conflict of Interest.

RECOMMENDATION

THAT Development Application No. DA/1251/2023 for Torrens title subdivision of one lot into two and reconstruction and extension of driveway at Lot 30A DP 5262, No. 6 Clovelly Road, Hornsby be approved, subject to the conditions of consent detailed in Attachment 1 of LPP Report No. LPP12/24.

Executive summary

- The application involves Torrens title subdivision of one lot into two lots and the reconstruction and extension of a driveway.
- A total of 12 submissions have been received in respect of the application.
- The application is required to be determined by the Hornsby Council Local Planning Panel as 10 or more unique submissions were received by way of objection.
- It is recommended that the application be approved.

BACKGROUND

On 2 September 1998, Council refused Development Application No. 234/1998 for the subdivision of one allotment into three. The grounds of refusal were as follows:

1. *The development application is not satisfactory having regard for Section 90(1)(a)(e)(f) of the Environmental Planning and Assessment Act 1979 because it has failed to demonstrate that the area of each proposed Lot complies with the requirements of the Hornsby Shire Local Environmental Plan, 1994 and the Residential Subdivision Development Control Plan.*
2. *The development application is not satisfactory having regard for Section 90(1)(a)(e)(g)(i) of the Environmental Planning and Assessment Act 1979 because it has failed to demonstrate that the proposed right of carriageway will be adequate.*
3. *The development application is not satisfactory having regard for Section 90(1)(a)(e)(h)(o)(r) of the Environmental Planning and Assessment Act 1979 because it has failed to demonstrate that the pre and post stormwater drainage discharges from the subdivision will be maintained.*
4. *The development application is not satisfactory having regard for Section 90(1)(b)(c2)-(c5)(m)(r) of the Environmental Planning and Assessment Act 1979 because it has failed to provide information to address the protection of the environment, mitigation of impacts, impacts on bushland, threatened and protected species, populations, ecological communities and their habitats, the preservation of indigenous native vegetation, the management of flora and fauna communities and the control of weeds.*
5. *The development application is not satisfactory having regard for Section 90(1)(a)(r) of the Environmental Planning and Assessment Act 1979 because it has failed to address the relevant provisions of Sydney Regional Environmental Plan No. 20 – Hawkesbury-Nepean River relating to the conservation and enhancement of flora and fauna communities, the diversity of species and their genetics.*
6. *The development application is not satisfactory having regard for Section 90(1)(b)(c)(e)(f)(m)(o)(r) of the Environmental Planning and Assessment Act 1979 because it has failed to demonstrate that the indicative building envelopes will not have an adverse impact on trees which are significant or worthy of retention.*
7. *The development application is not satisfactory having regard for Section 90(1)(b)(m1)(o)(r) of the Environmental Planning and Assessment Act 1979 because it has failed to provide a soil and water management plan.*
8. *The development application has not been made in the form and manner required by Clause 47 of the Environmental Planning and Assessment Act 1979 due to the applicants failure to provide information essential to the assessment of the development application.”*

On 9 November 2005, Council approved Development Application No. DA/1421/2005 for alterations and additions to the existing dwelling-house, involving a new rumpus room, bathroom, kitchen, dining room and veranda to the lower ground floor.

On 5 April 2006, Development Application No. DA/2020/2005 for subdivision of one allotment into three was refused on the following grounds:

1. *The proposal fails to satisfy Section 79C (1)(a)(i) of the Environmental Planning and Assessment Act 1979, as the proposal does not comply the objective (c) for Residential A (Low Density) Zones under Clause 7 of the Hornsby Shire Local Environmental Plan, 1994.*
2. *The proposal fails to satisfy Section 79C (1)(a)(iii) of the Environmental Planning and Assessment Act 1979, as the proposal does not comply with Council's Residential Subdivision and Sustainable Waters Development Control Plans.*
3. *The proposed development is not within the environmental capacity of the site and fails to comply the objective (c) for Residential A (Low Density) Zones under Clause 7 of the Hornsby Shire Local Environmental Plan, 1994.*
4. *The proposal fails to comply with the element objectives for 'Allotment Layout' and 'Allotment Design' of the Residential Subdivision Development Control Plan, as the proposed subdivision will not mitigate environmental impacts.*
5. *The development is not considered to respect the environment constraints of the site and would result in clearing of vegetation and unsatisfactory landform modifications.*
6. *The proposal does not satisfy the element objective for 'Private Open Space' of the Residential Subdivision Development Control Plan, as the allotments do not provide an adequate usable area to support residential outdoor activities.*
7. *The proposal does not satisfy the element objective for 'Landscaping' of the Residential Subdivision Development Control Plan, as the proposed driveway and building envelopes does not provide a minimum setback of four (4) metres from trees or group trees assessed as significant.*
8. *Insufficient information has been provided regarding the existing flora and fauna, bushfire hazard, drainage control and the overland flow path to enable a comprehensive assessment of the application.*
9. *The proposed development will adversely impact upon the bushland character of the locality and will have an unreasonable impact on the visual amenity of the properties located along Clovelly Road and Milner Avenue.*
10. *The proposed right of carriageway does not comply with element objective for 'Access way Design' as the design is 3.7 metres above the natural ground level which exceeds the maximum allowable of 1 metre for cut and fill.*
11. *The proposed lots do not promote the principles of ecologically sustainable development and/or flexible housing design.*
12. *The proposal is not considered to be in the interest of the public environment and is inconsistent with the provisions of Section 79C of the Environmental Planning and Assessment Act, 1979.*

On 24 April 2007, Council refused DA/153/2007 for the subdivision of one allotment into two for the following reasons:

1. *The proposed development fails to comply with objective (c) of the Residential A zone, as the proposal is not compatible and with the environmental capacity of the low density residential environment.*
2. *The proposed development is inconsistent with the objective of Clause 14 (Density) of Hornsby Shire Local Environmental Plan 1994. The proposed density is not in accordance with land's environmental capacity and zone objective.*
3. *The development is inconsistent with the objectives of the Sustainable Water Development Control Plan, as the construction of a dwelling-house on the vacant allotment and the driveway would require significant landform modification.*
4. *The proposed development fails to comply with the 'Density' element of the Residential Subdivision Development Control Plan, sufficient lot sizes have been provided to satisfy user requirements and to minimise the potential overlooking of both future and adjoining residents.*
5. *The proposal fails to comply with the element objectives for 'Allotment Layout' and 'Allotment Design' of the Residential Subdivision Development Control Plan, as the proposed subdivision will not mitigate environmental impacts, satisfy user requirements nor maximise energy efficiency.*
6. *The proposal fails to comply with the 'Setback' requirements of the Residential Subdivision Development Control Plan, as the proposed subdivision fails to ensure the privacy of future and existing dwellings and provide for sufficient setback or private open space.*
7. *The proposed development fails to comply with the 'Solar Access' requirement of the Residential Subdivision Development Control Plan, as the future dwelling and private open space area on proposed Lot 2 will not receive adequate solar access.*
8. *The proposed development fails to comply with the 'Private Open Space' requirements of the Residential Subdivision Development Control Plan and the Dwelling House Development Control Plan, as the proposal fails to demonstrate that adequate private open space can be provided for the existing dwelling on Lot 1 and future dwelling on Lot 2.*
9. *The proposed development does not comply with the 'Landscaping' requirement of the Residential Subdivision Development Control Plan, as the proposal fails to ensure the protection of natural features and trees worthy of preservation on the site.*
10. *The proposed development fails to comply with the objective, performance criteria and the prescriptive measures of the 'Accessway Design' element of the Residential Subdivision Development Control Plan.*
11. *The applicant has not addressed the safety issues with respect to the proposed elevated driveway structure.*
12. *The proposed development fails to comply with the privacy requirements of the Residential Subdivision Development Control Plan and the Dwelling House Development Control Plan, as the proposal does not ensure the privacy of dwelling houses and private open space of both future and adjoining residents.*
13. *The installation of the driveway will require the removal of, or severely impact upon, at least 12 trees including locally indigenous *Angophora costata*, Turpentine and native *Araucaria* sp. The proposed dwelling will require the removal of these trees which are deemed worthy of retention both singularly and as a group.*

14. *The site is unsuitable for the proposed development, due to existing landform, it is not possible to replace the lost tree canopy by carrying out replanting.*
15. *The proposed development fails to comply with the Car Parking Development Control Plan, as sufficient car parking has not been provided for the existing dwelling on Lot 1.*
16. *Information has not been provided in relation to the level of earthworks and retaining that will be required for the private open space areas to allow a proper assessment of the application.*
17. *A geotechnical report and a sediment and erosion control plan has not been provided to allow a proper assessment of the application.*
18. *The proposal is an overdevelopment of the site.*

On 1 December 2023, Council approved DA/967/2011 for alterations and additions to a dwelling house, subject to conditions. As part of this application, the current vehicle crossing was established.

On 17 September 2023, Council approved DA/967/2011/A to reconfigure the internal rooms, subject to conditions.

On 14 April 2014, Council approved DA/967/2011/B to re-configure the shape of the roof, delete the room below the driveway and alter the entry porch, subject to conditions.

On 3 March 2021, DA/918/2021 for the Torrens title subdivision of one lot into two was withdrawn by the applicant.

On 24 November 2023, the subject application DA/1251/2023 for the Torrens title subdivision of one lot was lodged with Council.

On 8 February 2024, Council requested amended plans to address minimum lot size, car parking, on site detention, vegetation management plan (VMP), restriction as to user, retaining walls, geotechnical and bushfire requirements.

On 22 February 2024, Council's officers attended a site meeting at the subject site and the adjoining property No. 37 Milner Avenue Hornsby.

On 13 March 2024, Council requested further information in regard to driveway safety and sight lines.

On 26 March, Council's officers conducted a meeting with the applicant to discuss the outstanding issues with the driveway safety.

On 17 April 2024, Council received amended plans.

On 3 June 2024, Council requested amended plans to relocate the OSD outside the tree protection zone of trees to be retained and an amended VMP.

On 13 July 2024, Council requested an amended subdivision plan.

On 25 June 2024, Council received the amended stormwater plan and subdivision plan.

On 2 July 2024, Council received the amended VMP.

On 3 July 2024, Council requested an amended stormwater plan.

On 17 July 2024, Council received the requested stormwater plan which is subject to this assessment.

SITE

The 2,023m² is located on the southern side of Clovelly Road and contains a two-storey dwelling house and ancillary structures. The site has a width of 20.115m, a depth of 100m and experiences a slope of 24m to the rear.

The site is bushfire and flood prone. The area of flood prone land is limited to the rear of the site.

The site is burdened by an easement to drain water along the rear southern boundary and an easement for sewerage purposes transecting the middle of the site.

The rear of the site is mapped as containing Blackbutt Gully Forest.

PROPOSAL

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

Proposed Lot 1 would be located at the rear and would have an area of 1,362.4m² (1,141m² excluding Right of Carriageway). The site would have vehicle access to Clovelly Road through a Right of Carriageway (ROC) that burdens proposed Lot 2.

Proposed Lot 2 would have an area of 661.7m² (589.4m² excluding ROC) and would retain the existing two storey dwelling house. The existing car parking at the rear of the dwelling would be maintained and vehicle access would utilize the shared ROC.

The application proposes the reconstruction and extension of the driveway.

Twenty (20) trees are proposed to be removed by the development.

ASSESSMENT

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

1. STRATEGIC CONTEXT

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

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

The NSW Government will use the subregional planning process to define objectives and set goals for job creation, housing supply and choice in each subregion. Hornsby Shire has been grouped with Hunters Hill, Ku-ring-gai, Lane Cove, Mosman, North Sydney, Ryde, Northern Beaches and Willoughby to form the North District. The Greater Sydney Commission has released the North District Plan which includes priorities and actions for Northern District over the next 20 years.

The identified challenge for Hornsby Shire will be to provide an additional 4,350 dwellings by 2021 with further strategic supply targets to be identified to deliver 97,000 additional dwellings in the North District by 2036.

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

2. STATUTORY CONTROLS

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

2.1 Hornsby Local Environmental Plan 2013

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

2.1.1 Zoning of Land and Permissibility

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

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

The proposed development is defined as subdivision and is permissible in the R2 zone with Council's consent.

2.1.2 Minimum Lot Size

Clause 4.1 of the HLEP prescribes that the minimum subdivision lot size is not to be less than shown for the land on the minimum Lot Size Map, which is 500m².

The proposed subdivision would result in proposed Lot 1 having an area of 1,362.4m² (1,141m² excluding ROC) and proposed Lot 2 would have an area of 661.7m² (589.4m² excluding ROC). Both lots would comply with the minimum lot size development standard and are considered acceptable.

2.1.3 Heritage Conservation

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

2.1.4 Earthworks

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

The application proposes excavation associated with the reconstruction and extension of the driveway.

The application proposes a maximum fill of 1.5 metres and a maximum excavation of 1 metre to provide a driveway that complies with a maximum gradient of 25%. The application proposes a total estimated cut of 24m³ and a total estimated fill of 149m³ and therefore 125m³ of fill is required to be imported to the site. The application includes a Geotechnical Investigation Report Ref: G2462-1 prepared by Geotechnical Consultants Australia dated 20 March 2024, conditions are recommended

in Attachment 1 that the development be completed in accordance with the recommendations of the geotechnical report and a project Geotechnical engineer be appointed.

The matters for consideration under Clause 6.2 of the HLEP are discussed below:

| Matter for Consideration | Comment |
|---|--|
| (a) the likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development | <p>The proposed excavation and fill are unlikely to have a detrimental effect on the drainage patterns given that all stormwater collected from the proposed driveway would be directed to the on-site detention system which would control the flow of water into the existing drainage easement. The controlled flow would be an improvement than the current situation which allow uncontrolled overland flow to enter the drainage easement.</p> <p>With respect to soil stability, appropriate conditions of consent have been recommended during the construction phase of the development. Upon completion of the development, it is anticipated that there will be no ongoing soil stability issues as retaining walls are proposed.</p> |
| (b) the effect of the development on the likely future use or redevelopment of the land | The earthworks are required to facilitate the proposal which would allow the full development potential of the site to be realised and provide sufficient vehicle access to the proposed rear lot. |
| (c) the quality of the fill or the soil to be excavated, or both | A condition is recommended to ensure that all fill material imported to, and all excavated material exported from the site must be classified by a suitably qualified person and disposed of at an approved waste management facility. |
| (d) the effect of the development on the existing and likely amenity of adjoining properties | Appropriate conditions have been recommended to limit amenity impacts during the construction period including the submission of dilapidation report assessing the impact of the excavation on the adjoining property No. 4 Clovelly Road. |
| (e) the source of any fill material and the destination of any excavated material | A condition has been recommended that all excavated material removed from the site must be classified by a suitably qualified person and disposed of at an approved waste management facility. |
| (f) the likelihood of disturbing relics | Council has no record of any historical items or events of note on the subject site, of either Aboriginal or European Heritage. It is therefore considered that the proposed works are unlikely to disturb any relics. |
| (g) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally | The proposed works would not be in proximity to any environmentally sensitive area. Subject to appropriate erosion and sediment conditions, it is considered that any |

| | |
|--|---|
| sensitive area | adverse impacts can be mitigated. |
| (h) any appropriate measures proposed to avoid, minimise, or mitigate the impacts of the development | Appropriate measures have been included as conditions of development consent to avoid, minimise, and mitigate the impacts of the development. |

2.2 State Environmental Planning Policy (Biodiversity and Conservation) 2021

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

2.2.1 Chapter 2 Vegetation in Non-Rural Areas

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

Part 2.3 of the policy states that a development control plan may make a declaration in any manner relating to species, size, location and presence of vegetation. Accordingly, Part 1.2.6.1 of the HDCP prescribes works that can be undertaken with or without consent to trees and objectives for tree preservation.

Section 3.1.1 of this report provides an assessment in accordance with Part 1.2.6.1 of the HDCP.

2.2.2 Chapter 6 Waterways

The site is located within the catchment of the Hawkesbury-Nepean River. The aim of this chapter is to protect the environment of the Hawkesbury-Nepean River system by ensuring that the impacts of development are considered in the regional context. This chapter contains general planning considerations and strategies requiring Council to consider the impacts of development on water quality, aquaculture, significant vegetation habitats, extraction, environmental heritage and scenic quality, recreation and tourism, and agriculture.

The plan addresses matters related to biodiversity, ecology and environment protection; public access to, and use of, foreshores and waterways; 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 not impact on the water quality of the catchment and would comply with the requirements of chapter 6 of the Biodiversity and Conservation SEPP.

2.3 State Environmental Planning Policy (Resilience and Hazards) 2021

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

2.3.1 Chapter 4 Remediation of Land

Section 4.6 of the Resilience and Hazard SEPP states that consent must not be granted to the carrying out of any development on land unless the consent authority has considered whether the land is contaminated or requires remediation for the proposed use.

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

An examination of Council's records and aerial photography has determined that the site has been historically used for residential purposes. It is not likely that the site has experienced any significant contamination, and further assessment under chapter 4 of the Resilience and Hazards SEPP is not required.

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

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

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

2.5 Hornsby Development Control Plan 2024

The proposed development has been assessed having regard to the relevant desired outcomes and prescriptive requirements within the Hornsby Development Control Plan 2024 (HDCP). The following table sets out the proposal's compliance with the prescriptive requirements of the Plan:

| HDCP - Part 6 Subdivision | | | |
|---------------------------|---|-------------------|----------|
| Control | Proposal | Requirement | Complies |
| Lot Size | | | |
| - Lot 1 | 1,362.4m ² (1,141m ² excluding ROC) | 500m ² | Yes |
| - Lot 2 | 661.7m ² (589.4m ² excluding ROC) | 500m ² | Yes |
| Minimum Lot Width | | | |
| - Lot 1 | 20.1m | 12m | Yes |
| - Lot 2 | 16.1m | 12m | Yes |
| Indicative Setbacks Lot 1 | | | |
| - Side (north) | 5.2m | 0.9m | Yes |
| - Side (west) | 8m | 0.9m | Yes |
| - Side (east) | 1.5m | 0.9m | Yes |
| - Rear (south) | 29.5m | 5m | Yes |

| | | | |
|----------------------------|-------------------|-------------------|-----|
| Potential Landscaped | 74% | >40% | Yes |
| Private Open Space | | | |
| - <i>minimum area</i> | 24m ² | 24m ² | Yes |
| - <i>minimum dimension</i> | 3m ² | 3m | Yes |
| Building Envelope | 275m ² | 200m ² | Yes |

ITEM 2

| HDCP - Part 3.1 Dwelling Houses for existing dwelling house on proposed Lot 2 | | | |
|--|---|--------------------|-----------------|
| Control | Proposal | Requirement | Complies |
| Site Area | 661.7m ² (589.4m ² excluding ROC) | 500m ² | N/A |
| Site Coverage | 21% | 50% | Yes |
| Floor Area | 242.3m ² | 330m ² | Yes |
| Setbacks | | | |
| - <i>Front (South)</i> | 4.3m | 6m | No |
| - <i>Side (West)</i> | 0.25m | 0.9m | No |
| - <i>Side (East)</i> | 1.6m | 1.5m | Yes |
| - <i>Rear (north)</i> | 24m | 8m | Yes |
| Landscaped Area | 28% | 20% | Yes |
| Private Open Space | | | |
| - <i>minimum area</i> | 44m ² | 24m ² | Yes |
| - <i>minimum dimension</i> | 7m ² | 3m | Yes |
| Car Parking | 2 spaces | 2 spaces | Yes |

As detailed in the above table, the proposed development complies with the prescriptive measures within the HDCP. A brief discussion on compliance with relevant performance requirements is provided below.

2.5.1 Setbacks

The desired outcome of Part 3.1.2 Setbacks of the HDCP are to encourage “*setbacks that are compatible with adjacent development and complement the streetscape*” and “*setbacks that allow for canopy trees to be retained and planted along the front and rear property boundaries.*”

This is supported by the prescriptive measure set out in Table 3.1.2a: Minimum Boundary Setbacks which prescribes a minimum side boundary setback of 0.9 metres for single storey elements.

The application proposes a side boundary setback of 0.25m for the storage structure within proposed Lot 2 which does not comply with the 0.9m prescriptive measure.

In support of the 0.65m encroachment, it is noted that the storage structure is an existing structure and is proposed to be retained. The existing storage structure is a non-habitable structure and is adjacent to the proposed Right of Carriageway. It is generally considered that the non-compliant setback would have negligible amenity impacts.

The existing dwelling house on proposed Lot 2 has a front boundary setback of 4.3m which does not comply with the 6m prescriptive measure. However, as this is an existing structure, no concerns are raised to this non-compliance.

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

2.5.2 Vehicular Access and Parking

Part 6.4.1 of the HDCP Residential and Rural Lands Accessway Design includes the following desired outcomes:

- a. *To ensure access along private accessways to all new lots is simple, safe and direct.*
- b. *Driveways should not be visually intrusive to the existing streetscape.*
- c. *To limit the number of driveway crossings and additional dwellings with direct access to main roads to limit the cumulative impacts on traffic flows and safety.*

During the assessment of the application, Council raised concern to the safety of the proposed reconstructed and extended driveway, particularly due to the gradient being a maximum 25% in some sections and the lack of sight lines.

As a consequence, Council requested the applicant address this issue and suggested that the storage structure be demolished to increase the sight lines within the driveway.

The applicant has provided an Assessment of Internal Circulation Arrangement report prepared by Stanbury Traffic Planning dated 4 April 2024 which proposes an internal traffic light system to ensure vehicle safety within the proposed driveway.

Traffic lights are proposed at the front of the driveway, rear of the driveway and adjacent to the existing carport servicing the dwelling house within proposed Lot 2.

Council's engineers have assessed the proposed design and consider it acceptable in this instance. Appropriate conditions are recommended in Attachment 1 to ensure the traffic light system is installed and maintained.

It is noted that the driveway contains a passing bay within the front north-western corner of the site to allow vehicles to pass within the subject site which is considered acceptable.

The application meets the desired outcomes of Part 6.4.1 Residential and Rural Lands Accessway Design of the HDCP and is considered acceptable, subject to conditions.

2.6 Section 7.11 Contributions Plans

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

2.7 Housing and Productivity Contribution

The Housing and Productivity Contribution applies to the development as it would result in an additional lot in lieu of the existing lot. Accordingly, the requirement for a monetary Housing and Productivity contribution is recommended as a condition of consent.

3. ENVIRONMENTAL IMPACTS

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

3.1 Natural Environment

3.1.1 Tree and Vegetation Preservation

The application is supported by an Arboricultural impact Assessment (AIA) report prepared by Seasoned Tree Consulting dated 6 September 2024 which identifies 40 trees within the vicinity of the development.

The application proposes the removal of 20 trees numbered T4, T8, T9, T10, T11, T12, T13, T14, T15, T16, T17, T18, T19, T20, T21, T22, T23, T24, T27 and T28. Of these 20 trees to be removed, 12 trees are identified as low retention value trees and eight trees (T4, T8, T9, T12, T13, T17, T20 and T22) are identified as high value retention trees. These high retention value trees are identified as *Liquidambar styraciflua* (Liquidambar), *Camellia sasanqua* (Camellia), Cypress and *Syncarpia glomulifera* (Turpentine) species.

While tree loss is not ideal, it is noted that the removal of these 20 trees is required to provide an adequate building envelope and provide the required Asset Protection Zone (APZ) to meet bushfire requirements. A condition is recommended to ensure that any future dwelling house be constructed within the ‘proposed building envelope’ to reduce the impact to trees to be retained. Further assessment of the trees to be retained would be assessed as part of any future development application.

It is noted that the site is bushfire prone. Replacement planting is not considered to be appropriate in this instance as it would increase the bushfire hazard. It is noted that the Vegetation Management Plan Ref: XICH1 version 3.0, prepared by Narla Environmental dated June 2024 (VMP) proposes a works schedule for up to 4 years after the development occurs. This works schedule includes primary and secondary weed control measures and native regeneration from native soil seed bank.

Bush regeneration methods promoting regeneration from the native soil seed bank is considered a desirable ecological outcome in comparison to the mass installation of tube stock plantings.

Council considered this to be a more beneficial measure to manage the vegetation on site by managing the weeds within the site and encourage native revegetation from seeds. The VMP is required to provide yearly reports to Council where this can be monitored, and it is noted that the VMP acknowledges that if the native revegetation fails to be effective, replacement planting can be implemented.

Council would monitor the progress and effectiveness of the VMP implementation through the required yearly monitoring reports.

Appropriate conditions are recommended to ensure the protection and retention of the remaining trees.

The proposal meets the prescriptive measures of Part 1.2.6.1 Tree Preservation and Part 1.3.1.1 Biodiversity of the HDCP and is considered acceptable, subject to conditions.

3.1.2 Stormwater Management

The desired outcomes of Part 1.3.1.2 Stormwater Management of the HDCP are to encourage “*development that protects waterways from erosion, pollution and sedimentation, and maintains or improves water quality and aquatic habitats*” and encourage “*water management systems that minimise the effects of flooding and maintains natural environmental flows.*”

The application proposes on-site detention systems for proposed Lots 1 and 2.

It is noted that a standard subdivision of one lot into two would only require the created lot to include an OSD system with a capacity of 5m³. However, given that the application proposes to disperse the collected stormwater into a flood control area, Council requires the development to improve the dispersal of collected stormwater compared to the existing situation.

The proposed OSD system for Lot 1 would have a capacity of 24.56m³ (approximately 5 times the standard capacity for standard subdivision) and would capture the stormwater collected by the future dwelling house and turning bay.

The proposed OSD system for Lot 2 would have a capacity of capacity of 34.48m³ (approximately 7 times the standard capacity for standard subdivision) and capture the rainwater collected by the reconstructed and extended driveway (ROC) and existing dwelling house.

The application includes pre and post development flow calculations which outline that the pre-development 1 in 5 year flood event discharges 41 litres per second and 104 litres per second during the 1 in 100 year flood event.

With the inclusion of the OSD systems within the proposed development the post development 1 in 5-year flood event would discharge 19 litres per second and 41 litres per second during the 1 in 100-year flood event. This represents a reduction in the predevelopment flows of 22 litres per second during the 1 in 5-year flood event and 63 litres per second during the 1 in 100 year flood event.

Therefore, it is generally considered that the post development would be an improvement to downstream properties compared to the existing predevelopment flows.

It is noted that the submitted subdivision plan prepared by Total Surveying Solutions includes notation (N) Restriction of the Use of Land and (P) Positive Covenant for On-site Detention (OSD). However, the location of these OSD is not consistent with the proposed stormwater plan. A condition is recommended in Attachment 1 to amend the Proposed Subdivision Plan to be consistent with the stormwater plan.

The proposal meets the prescriptive measures of Part 1.3.1.2 Stormwater Management of the HDCP and is considered acceptable, subject to conditions.

3.2 Built Environment

3.2.1 Built Form

The application only proposes the reconstruction and extension of the driveway.

The built form of a dwelling house on proposed Lot 1 would be subject to a future application.

3.3 Social Impacts

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

3.4 Economic Impacts

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

4. SITE SUITABILITY

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

4.1 Flooding

The rear section of the land is identified as being below the 1 in 100 year flood level.

While no proposed development is proposed within the flood prone area of the site, the development does propose to drain collected stormwater to an existing drainage easement that forms part of the flood prone land.

As discussed in Section 3.1.2 of this report, the application proposes OSD to reduce the flow rate to downstream properties during the 1% AEP storm. The application does not propose to construct any structures within the overland flow path and proposes infrastructure within the site (OSD) to improve the flow of surface water to downstream properties.

Council's engineering assessment is of the view that the proposed development would not adversely impact on the current drainage and flooding issues experienced to the downstream properties and would improve the situation with the constriction of stormwater flows via an on-site detention system to reduce site discharge rates.

4.2 Bushfire Risk

The site is bushfire prone. The application includes a Bushfire Hazard Assessment version V1.0, prepared by Blackash Bushfire Consulting, dated 6 November 2023.

This application was referred to the RFS for S100B Bushfire Safety Authority/ General Terms of Approval. The RFS has issued General Terms of Approval (GTAs) which are discussed further in Section 5.2.1 of this report.

5. PUBLIC PARTICIPATION


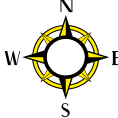
Section 4.15(1)(d) of the Act requires Council to consider "*any submissions made in accordance with this Act*".

5.1 Community Consultation

The proposed development was placed on public exhibition and was notified to adjoining and nearby landowners between 27 November 2024 to 18 December 2024 and 18 April 2024 to 10 May 2024 in accordance with the Hornsby Community Engagement Plan. During this period, Council received 12 submissions. The map below illustrates the location of those nearby landowners who made a submission that are in close proximity to the development site.



NOTIFICATION PLAN

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

A total of 12 submissions objected to the development, generally on the following grounds:

- Unacceptable flooding impacts to downstream properties
- Unacceptable tree loss
- Sediment and erosion impacts
- Biodiversity impacts from loss of trees
- Proposed OSD system insufficient
- Minimum lot size insufficient
- Excessive earthworks
- Development on land identified as flood prone

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

5.1.1 Amenity Impacts from a future dwelling house on Lot 1

Submissions were received which raised concerns to the future impacts of a two-storey dwelling house on the proposed Lot 1.

In response to this, it is noted that this application is only for the demolition of structures and Torrens Title subdivision of one lot into two.

The impacts of any future development on the subject site will be assessed when an application is lodged for the dwelling house.

5.2 Public Agencies

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

5.2.1 Rural Fire Service

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

The RFS provided GTAs as summarised below:

- The existing dwelling on proposed Lot 2 be upgraded to improve ember protection.
- A Restriction as to User be imposed to ensure any future dwelling on proposed Lot 1 be constructed within the proposed building envelope and be 8m from the western boundary.
- An Asset Protection Zone (APZ) be established and maintained for proposed Lot 1 as follows:
 - South for a distance of 8m.
 - West for a distance of 8m; and
 - To the property boundary in all other directions.
- A minimum 1.8m high radiant heat shield be constructed along the western boundary.

These GTAs have been included in the draft conditions at Attachment 1.

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 Torrens title subdivision of one lot into two and the reconstruction and extension of a driveway.

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

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

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

The reasons for this decision are:




- The proposed development complies with the requirements of the relevant environmental planning instruments and the Hornsby Development Control Plan 2024; and
- The proposed development does not create unreasonable environmental impacts to adjoining development with regard to visual bulk, flooding, earthworks, solar access, amenity or privacy.

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

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

ROD PICKLES
Manager - Development Assessments
Planning and Compliance Division

Attachments:

1.  Draft Conditions of Consent
2.  Stormwater Plan
3.  Subdivision Plan

File Reference: DA/1251/2023
Document Number: D08896609

3 DA/1003/2023 - FURTHER REPORT - CONSTRUCTION OF A DWELLING HOUSE AND SWIMMING POOL - 11A MALTON ROAD, BEECROFT

DA No: DA/1003/2023 (Lodged on 12 October 2023)

Description: Demolition of existing structures and construction of a dwelling house and swimming pool - PAN-366979

Property: Lot 5 DP 4551, No. 11A Malton Road, Beecroft

Applicant: Stefano Adamo Di Lorenzo

Owner: Miss Chantelle Noorizadeh

Estimated Value: \$964,000

Ward: C Ward

Clause 4.6 Request: N/A

Submissions: Eleven

LPP Criteria: 10 or more unique submissions were received by way of objection

Author: Amelia Xu, Town Planner

COI Declaration: No Council staff involved in the assessment of this application have declared a Conflict of Interest.

RECOMMENDATION

THAT the Hornsby Local Planning Panel, exercising the functions of Council as the consent authority, approve Development Application No. DA/1003/2023 for demolition of existing structures and construction of a dwelling house and swimming pool at Lot 5 DP 4551, No. 11A Malton Road, Beecroft subject to the conditions of consent in Attachment 1 of LPP Report No. LPP14/24.

EXECUTIVE SUMMARY

- On 31 July 2024, DA/1003/2023 was reported to the Hornsby Local Planning Panel (the Panel) for demolition of existing structures and construction of new dwelling house and swimming pool. At that meeting, the Panel resolved that the matter be deferred to the next available Hornsby Local Planning Panel to address the draft Byles Creek Planning Proposal.
- The proposal generally complies with the requirements of the Hornsby Local Environmental Plan 2013, and the Hornsby Development Control Plan 2024.
- A total of 11 submissions have been received in respect of the application.
- The application is required to be determined by the Hornsby Council Local Planning Panel as 10 or more unique submissions were received by way of objection.
- It is recommended that the application be approved.

SITE

The 2512m² site is located on the northern side of Malton Road and contains a dwelling house, garage and shed. The site experiences a fall of 21 metres to the rear of the site. The site is bushfire prone land and flood prone land.

The site is burdened by open space zoning at the rear of the site. The rear of the site is of high biodiversity value and comprises Black Gully Forest.

The subject property is located within the Beecroft - Cheltenham Plateau of the Beecroft-Cheltenham Heritage Conservation Area (HCA) listed under Schedule 5 of the Hornsby Local Environmental Plan 2013, however the site does not contain a heritage listed item.

The property is also located adjacent and within the immediate vicinity of numerous heritage items located along Malton Road.

The site is located within the draft Byles Creek Planning Proposal study area.

PROPOSAL

- The application proposes demolition of existing structures and construction of new dwelling house and swimming pool.

The lower ground floor would comprise a four-car garage, two storage room, a bathroom, and an inground pool.

The ground floor would comprise an entry, five bedrooms, two bathrooms, two ensuites, a walk-in-robe, laundry, pantry, living, dining, kitchen and outdoor terrace.

- The existing dwelling house and garage are proposed to be demolished.
- The development would result in the removal of 13 trees.

ASSESSMENT

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

1. STRATEGIC CONTEXT

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

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

The NSW Government will use the subregional planning process to define objectives and set goals for job creation, housing supply and choice in each subregion. Hornsby Shire has been grouped with Hunters Hill, Ku-ring-gai, Lane Cove, Mosman, North Sydney, Ryde, Northern Beaches and Willoughby to form the North District. The Greater Sydney Commission has released the North District Plan which includes priorities and actions for Northern District over the next 20 years.

The identified challenge for Hornsby Shire will be to deliver 97,000 additional dwellings in the North District by 2036.

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

2. STATUTORY CONTROLS

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

2.1 Hornsby Local Environmental Plan 2013

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

2.1.1 Zoning of Land and Permissibility

The subject land is zoned RE1 Public recreation and R2 Low density residential under the HLEP. The proposed dwelling house is located wholly within the R2 zone. The objectives of the R2 zone are:

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

The proposed development is defined as 'dwelling house' and is permissible in the R2 zone with Council's consent.

2.1.2 Height of Buildings

Clause 4.3 of the HLEP provides that the height of a building on any land should not exceed the maximum height shown for the land on the Height of Buildings Map. The maximum permissible height for the subject site is 8.5m. The proposal has a maximum height of 7.49m and complies with this provision.

2.1.3 Heritage Conservation

Clause 5.10 of the HLEP sets out heritage conservation provisions for Hornsby Shire. The site does not include a heritage item. The subject property is located within the Beecroft - Cheltenham Plateau of the Beecroft-Cheltenham Heritage Conservation Area (HCA) listed under Schedule 5 of the HLEP.

The property is also located adjacent and within the immediate vicinity of numerous heritage items located along Malton Road.

The proposal has been considered regarding the documentation submitted with the application and the heritage requirements of the HLEP and the Hornsby Development Control Plan 2024 (HDCCP).

The proposal seeks to demolish the existing dwelling, detached shed, garage and front fence on the site.

The existing dwelling and associated structures are attributed to the housing stock of the Post War Period. While it is a typical example of infill development from the mid-20th century, it has a low contribution and low retention value to the characteristic values and significant historical phases of development within the HCA. Demolition would not erode the architectural or built form or character that are contributory to the streetscape.

The proposal seeks to construct a new part single storey and part two storey dwelling with the two pavilions connected via a narrow link.

Malton Road contains a mixture of single and two storey buildings dating from a range of early residential periods. The proposed design draws on simple detailing from the built forms that make up the late 19th century and early 20th century character of the HCA. It is a contemporary interpretation of a colonial period cottage, with a bulk, height and scale that would successfully retain the neutral presence of the subject property adjacent the heritage items in Malton Road, as well as complement the traditional built character of the streetscape. It also successfully utilises the sloping landform to incorporate a two-storey element in a pavilion style form.

The proposed external materials are notably contemporary but would generally complement the traditional building materials extent within the HCA. No objections are raised to the bagged brick exterior or metal detailing in the joinery and veranda columns, and tile in a terracotta colour on planes visible from the street. Colourbond is retained for the flat roof proportions of the roof which cannot be achieved in tile or slate.

Trees numbered 2, 3 and 4 located at the front of the dwelling are proposed to be retained. The front building setback has been amended to be in line with the footprint of the existing dwelling to ensure significant views to the heritage item are retained and to decrease the dominance of the new development within streetscape.

The proposal seeks to remove 13 trees, install a swimming pool, new landscaping along the front, side and rear boundaries; and a new metal front fence.

Most of the trees to be removed are small shrubs/ trees and some noxious weeds located in the rear which are of low heritage and ecological value and removal would be adequately compensated by replacement planting within the site.

Tree 31 has minimal presence in the streetscape; thus, removal would have a lesser heritage impact. No heritage concerns are raised to the removal of Tree 31.

Tree 17 (a Himalayan Cypress or similar) is partly visible above the ridgeline of the existing dwelling and forms part of the treed canopy backdrop to the site. While removal would not impact the bushland setting of the property, it would remove a mature cultural planting which contributes to the domestic garden landscaped character of the site and HCA.

Tree 17 is considered by Council to have a moderate retention value from a heritage perspective. However, it is understood removal may be necessary to enable the proposed dwelling form to be constructed, which successfully utilises the sloping landform of the site to deliver a new infill development that is compatible to the elements that are significant to the build character of the area.

Council's heritage assessment noted that removal of Tree 17 would have a heritage impact on the significant landscape elements of the site and that modification of the rear of the house is preferred to retain Tree 17. However, the site is identified as bushfire prone land with a BAL rating of flame zone. It is noted that Tree 17 would still be required to be removed even if the rear pavilion was deleted, to address asset protection zone requirements. Furthermore, the siting of the dwelling has an increased front setback to retain the significant street trees and the development has addressed heritage design in the HCA with a single storey design at the front of the site and a pavilion that steps down the site.

As such, removal would be acceptable as a compromise to enable the sympathetic new building form and retain the significant native trees at the front. An unsympathetic built form would have a greater impact than removal of Tree 17. In addition, the submitted Landscape Plan demonstrates that compensatory planting for removal of tree 17 has been proposed at the rear of the dwelling and the proposal has been amended to include a planting schedule with period-appropriate species.

The proposed planting schedule is now horticulturally sympathetic to the landscape character of the Beecroft-Cheltenham HCA with a mixture of native species complementary to the traditional garden layouts within the precinct.

The proposal has been amended to incorporate a low-height palisade style fence with iron rods and masonry soldier piers framing the pedestrian and driveway gate entry to complement the period, style and materials used in traditional fencing located in Malton Road as requested.

The proposed wheel strip driveway is compliant with principal controls for new driveways in an HCA provided under Section 9.3.3 of the Hornsby DCP.

In summary, no heritage concerns are raised to demolition of the existing dwelling or to the concept to construct a new part single and part two storey dwelling in a pavilion form.

2.1.4 Earthworks

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

The plans indicate that construction will step down following the natural contours of the land which slopes steeply to the rear, more than 3m. The earthworks would be generally located with the building footprint, with additional fill for the rear terrace and pool deck which is generally located within 1.5m of the existing ground level. The proposal would not pose a detrimental privacy, environmental or outlook impact to adjoining properties and no concerns are raised in this regard.

A cut and fill plan prepared by Adonis Building & Maintenance has been submitted. The plan details a total of 325.5m³ of cut and 287.4m³ of fill, leaving an excess of 38m³ to be exported from the site requiring a total of 6 trucks loads. Conditions are recommended in Attachment 1 that all excavated material removed from the site must be classified by a suitably qualified person and disposed of at an approved waste management facility and that a construction management plan be provided prior to the issue of a construction certificate.

The proposal has been reviewed by Council's Environmental Protection Team has reviewed the proposal and recommended that due to site constraints and the significant earthworks to occur on the

site, a condition should be imposed requiring that a detailed Construction Management Plan be prepared by a suitably qualified person to document construction measures to protect the public and the surrounding environment. This has been included in Attachment 1.

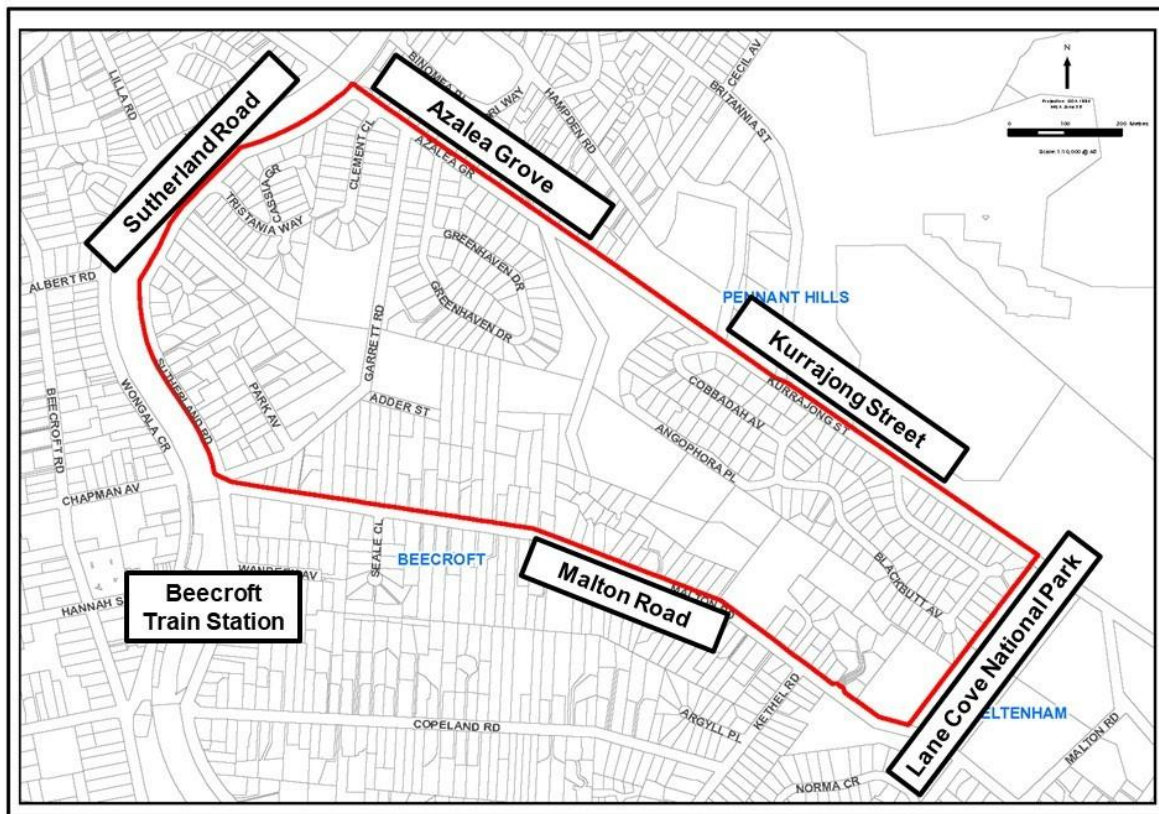
The proposal is considered acceptable with respect to the desired outcomes of Earthworks and Slope of the HDCP.

2.1.5 Byles Creek Planning Proposal

The subject site is located within the applicable land area of the Byles Creek Planning Proposal which proposes the following changes to planning controls:

- *Rezone all land within the Byles Creek Study Area currently zoned R2 Low Density Residential to C4 Environmental Living.*
- *Increase the minimum subdivision lot size for land proposed to be zoned C4 Environmental Living to 40ha.*
- *Amend the objectives of Clause 4.1 'Minimum subdivision lot size' to protect and enhance existing bushland and significant native vegetation.*
- *Insert a 'Riparian Land' clause under Part 6 'Additional local provisions' and provide supporting riparian corridor mapping.*

The Planning Proposal affects the Byles Creek Study Area (the Study Area), which is in the suburbs of Pennant Hills and Beecroft. The study area is shown in red on the map below.



The public exhibition was held between 18 August 2023 and 15 September 2023, in accordance with the Hornsby Community Engagement Plan.

On 13 November 2023, the Planning Proposal returned to the Department to finalise the proposed HLEP amendments. A notice will be placed on the NSW Legislation website to advise when the Plan has been made and comes into effect.

As the subject site is within the Byles Creek Study Area, Clause 4.15(1)(a)(ii) of the *Environmental Planning and Assessment Act 1979* requires consideration of any proposed instrument that is the subject of public consultation. The following matters included in the Planning Proposal with respect to the development application are as follows:

1. *Rezoning all R2 low-density residential land within the Study Area to C4 environmental living.*

Comment: As the subject site is zoned R2 Low Density Residential, the subject site is proposed to be re-zoned to C4 Environmental Living.

The objectives of the C4 Environmental Living Zone are as follows:

- *To provide for low impact residential development in areas with special ecological, scientific or aesthetic values.*
- *To ensure that residential development does not have an adverse effect on those values.*
- *To permit development that is compatible with the character, infrastructure capacity and access limitations of the area.*

The proposed demolition of existing structures and construction of a dwelling house and swimming pool would align with the abovementioned objectives of the C4 Environmental Living, providing low-impact residential development that would remain compatible with the character of the area.

2. *Increasing the minimum subdivision lot size for rezoned land within the Study Area from 600sqm to 40ha.*

Comment: The application does not propose subdivision. Accordingly, the increase in site area of the minimum subdivision lot size is not applicable in this instance.

3. *Amending subdivision objectives to protect bushland and significant native vegetation.*

Comment: The application does not propose subdivision. Accordingly, the amendment of subdivision objectives to protect bushland and significant native vegetation is not applicable in this instance. Notwithstanding, the assessment of the proposal and recommended conditions of consent in Attachment 1 align with the objective to protect bushland and significant native vegetation.

4. *Mapping the riparian corridor within the Study Area and inserting a new additional local provision that must be considered when developing on riparian land.*

Comment: The subject site is not within the proposed riparian corridor mapping of the HLEP, including the variable width buffers for vegetated riparian zones. Accordingly, the addition of the proposed riparian corridor mapping is not applicable in this instance.

2.2 State Environmental Planning Policy (Biodiversity and Conservation) 2021

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

2.2.1 Chapter 2 Vegetation in Non-Rural Areas

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

Part 2.3 of the policy states that a development control plan may make a declaration in any manner relating to species, size, location and presence of vegetation. Accordingly, Part 1.2.6.1 of the HDCP prescribes works that can be undertaken with or without consent to trees and objectives for tree preservation.

Section 3.1.1 of this report provides an assessment in accordance with Part 1.2.6.1 of the HDCP.

2.2.2 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.

2.3 State Environmental Planning Policy (Sustainable Buildings) 2022

The application has been assessed against the requirements of chapter 2 of State Environmental Planning Policy (Sustainable Buildings) 2022 which seeks to encourage the design and delivery of more sustainable buildings.

Chapter 2 sets out the Standards for residential development. The proposal includes a BASIX certificate in accordance with the requirements of the SEPP including the list of commitments to be complied with at the construction stage and during the use of the premises. The BASIX certificate achieves the minimum scores for energy and water use, and thermal performance.

The proposal is acceptable in this regard.

2.4 State Environmental Planning Policy (Resilience and Hazards) 2021

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

2.4.1 Chapter 4 Remediation of Land

Section 4.6 of the Resilience and Hazard SEPP states that consent must not be granted to the carrying out of any development on land unless the consent authority has considered whether the land is contaminated or requires remediation for the proposed use.

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

An examination of Council's records and aerial photography has determined that the site has been historically used for residential purposes. It is not likely that the site has experienced any significant contamination, and further assessment under chapter 4 of the Resilience and Hazards SEPP is not required.

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

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

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

2.6 Hornsby Development Control Plan 2024

The proposed development has been assessed having regard to the relevant desired outcomes and prescriptive requirements within the Hornsby Development Control Plan 2024 (HDCP). The following table sets out the proposal's compliance with the prescriptive requirements of the Plan:

| HDCP - Part 3.1 Dwelling Houses | | | |
|---------------------------------|----------------------|-------------------|----------|
| Control | Proposal | Requirement | Complies |
| Site Area | 2,512m ² | N/A | N/A |
| Building Height | 7.49m | 8.5m | Yes |
| No. storeys | 2 | max. 2 + attic | Yes |
| Site Coverage | 14.05% | max. 30% | Yes |
| Floor Area | 541.75m ² | 430m ² | No |
| Setbacks | | | |
| - <i>Front</i> | 10.5m | 6m | Yes |
| - <i>Side(east)</i> | | | |
| <i>Ground floor</i> | 1.055m | 900mm | Yes |
| <i>First floor</i> | 1.055m | 1.5m | No |
| - <i>Side(west)</i> | | | |
| <i>Ground floor</i> | 4.36m | 900mm | Yes |

| | | | |
|----------------------------|------------------|-----------------------|-----|
| <i>First floor</i> | 4.36m | 1.5m | Yes |
| - <i>Rear</i> | | | |
| <i>Ground floor</i> | >3m | 3m | Yes |
| <i>First floor</i> | >8m | 8m | Yes |
| Landscaped Area | >40% | min. 40% | Yes |
| Private Open Space | | | |
| - <i>minimum area</i> | 24m ² | min. 24m ² | Yes |
| - <i>minimum dimension</i> | 3m | min. 3m | Yes |
| Car Parking | 4 spaces | 2 spaces | Yes |

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

2.6.1 Scale

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

This is supported by the prescriptive measure Part 3.1.1 Scale of the HDCP states sites with a lot size of 900m² or larger should comply with the maximum floor area coverage in Table 3.1.1(c) Maximum Floor area of a Dwelling House being a maximum floor area of 430m².

The application proposes a total floor area of 541.75m² which exceeds the 430m² maximum floor area prescriptive measure of Part 3.1.1 Scale for a 2512m² lot size.

In support of this non-compliance, the following is noted:

- The 2,512m² lot size is significantly greater than the 900m² range, the minimum lot size for the subject site is 600m² which means the subject site can potentially be subdivided into three lots, (based on the current HLEP lot size) which allows a floor area of 440m² (380m² dwelling house + 60m² ancillary outbuilding) on each lot, resulting in the site having the potential for a total floor area of 1320m². The proposed development does not include any ancillary outbuildings. Furthermore, as a result of the proposed swimming pool and existing trees at the rear, there is no scope for any additional outbuildings. As such, the proposed floor area of 541.75m² is considered acceptable.
- The proposed design would maintain a compliant site coverage of 14.05%.
- The bulk is not larger than the existing dwelling on site and the adjacent dwellings at No. 11 and 15 Malton Road. The dwelling presents as single storey to the streetscape which maintains the existing street characters in the surrounding area.
- The proposal complies with Council’s prescriptive measures with respect to height, site coverage, sunlight access and open space requirements.

- The proposal would result in a dwelling with a height, bulk and scale that is compatible with the low density residential environment, with negligible environmental and amenity impacts.

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

2.6.2 Setbacks

The desired outcomes of Part 3.1.2 Setbacks of the HDCP are to encourage “*setbacks that are compatible with adjacent development and complement the streetscape*” and “*setbacks that allow for canopy trees to be retained and planted along the front and rear property boundaries.*”

The design of the dwelling is single storey at the front and two storey at the rear to satisfy the HDCP requirement for a one storey element at the front. The prescriptive measure set out in Table 3.1.2(a) of HDCP 2024 prescribe a minimum side boundary setback of 0.9m for single storey and 1.5m for second storey elements.

The application proposes a western side setback of 1.055m which does not comply with the prescriptive measure. In support of the 0.445m non-compliance, it is noted that the extent of non-compliance relates to the rear portion of the proposed dwelling and does not extend across the full extent of the façade. The rear, two storey section of the dwelling is located adjacent to the garage and swimming pool of No.11 Malton Road. No window openings are proposed to the living room, two windows proposed for the stair and bathroom would provide natural light and ventilation to ‘non-active’ use rooms in compliance with Council’s planning guidelines. The elevated rear terrace includes a 1m wide planter box and landscape screen planting to prevent overlooking from persons standing on the terrace. The proposed non-compliance will not give rise to any adverse amenity impacts to neighbouring properties with regard to solar access or visual privacy.

The applicant proposes a retaining wall up to approx.1.3m in height which would have a 0.5m setback to the eastern side boundary which does not comply with the 0.9m setback prescriptive measure contained in the HDCP.

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

- The retaining wall would be required to retain excavations made to accommodate the driveway access of the dwelling house. These walls would be necessary to prevent soil shift and erosion within the eastern side of the property.
- As the walls would be located below existing ground level, it would have negligible visual presence when viewed from adjoining properties.
- Shrubs and trees are proposed along the eastern side boundary between the retaining wall and side fence, the proposed retaining walls are unlikely to create any adverse visual impacts to the adjoining property.

Whilst the proposed retaining wall would not comply with the prescriptive setback measure, it is considered that these structures would have acceptable visual and environmental impacts to adjoining properties whilst maintaining and enhancing the residential amenity of the subject site.

In this regard, the proposal meets the desired outcomes of Part 3.1.2 Setbacks under the HDCP and is considered acceptable.

2.6.3 Sunlight Access

The desired outcome of Part 3.1.5 Sunlight Access under the *HDCA* is for dwelling houses to “provide solar access to open spaces.” In addition, dwellings are to be “designed to provide reasonable sunlight to adjacent properties.”

Within this context, Part 3.1.5 outlines the following prescriptive measures:

- (a) *On 22 June, 50% of the required principle private open space should receive 3 hours of unobstructed sunlight access between 9am and 3pm.*
- (b) *On 22 June, 50% of the required principle private open space on any adjoining property should receive 3 hours of unobstructed sunlight access between 9am and 3pm.*

The proposal is supported by shadow diagrams from 9am to 3pm midwinter. The diagrams demonstrate that the private open space to the rear of the subject site will maintain a minimum of 50% sunlight access between 9am and 3pm.

The proposal will result in minor additional overshadowing to the rear yard and eastern building façade of the property adjoining the site to the west (No. 11 Malton Road) and will result in minor additional overshadowing to the rear yard and western building façade of the property adjoining the site to the east (No. 15 Malton Road). Notwithstanding, over 50% of the private open space of these properties will receive at least 3 hours of unobstructed sunlight access.

Accordingly, the proposal satisfies Part 3.1.5 of the *HDCA* and is considered acceptable.

2.6.4 Privacy

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

This is supported by the prescriptive measures that state that:

- a) *“Living and entertaining areas of dwelling houses should be located on the ground floor and oriented towards the private open space of the dwelling house and not side boundaries.*
- b) *A proposed window in a dwelling house should have a privacy screen if:*
 - *it is a window to a habitable room, other than a bedroom, that has a floor level of more than 1 metre above existing ground level,*
 - *the window is setback less than 3 metres from a side or rear boundary, and*
 - *the window has a sill height of less than 1.5 metres.*
- c) *A deck, balcony, terrace or the like should be located within 600mm of existing ground level where possible to minimise potential visual and acoustic privacy conflicts.*
- d) *Decks and the like that need to be located more than 600mm above existing ground should not face a window of another habitable room, balcony or private open space of another dwelling located within 9 metres of the proposed deck unless appropriately screened.”*

It is noted that an entry deck, upper floor living room, and outdoor terraces are proposed. The entry deck would be located more than 600mm above existing ground level, but it is located over 9m from a window of another habitable room, balcony or private open space of the adjoining property and is considered acceptable. The upper floor living room window has a setback of over 3m from the site boundary and is considered acceptable. The rear outdoor terraces are located more than 600mm

above existing ground level, to minimise potential overlooking to neighbouring property to the east and west (Nos. 11 and 15 Malton Road), the application has been amended to provide privacy planter boxes on both sides of the terraces and a condition has been recommended to ensure the shrubs in the privacy planter must have a minimum height of 1.5m at time of planting.

All other first floor level windows would provide natural light and ventilation to 'non-active' use rooms (bathroom and bedrooms) in compliance with Council's planning guidelines.

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

2.6.5 Vehicular Access and Parking

The desired outcome of Part 3.1.7 Vehicle Access and Parking of the HDCP is for "*Development that provides sufficient and convenient parking for residents with vehicular access that is simple, safe and direct*" with the prescriptive measure that car parking for dwelling houses should be provided behind the front building line.

In this instance, the proposed dwelling includes a large garage within the lower ground floor level, with a new driveway in the same position as the current driveway. The HDCP requires 2 spaces for the dwelling house, a four-car garage would be located in the basement that comply with the prescriptive requirements.

The proposal meets the desired outcome of Part 3.1.7 Vehicle Access and Parking of the HDCP and is considered acceptable.

2.7 Section 7.12 Contributions Plans

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

3. ENVIRONMENTAL IMPACTS

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

3.1 Natural Environment

3.1.1 Tree and Vegetation Preservation

The prescriptive measures of Part 1.2.6.1 Tree Preservation of the HDCP state that:

- a) "*the prescribed trees that are protected by the Vegetation SEPP and/or Clause 5.10 of the HLEP and this section of the DCP include:*
- *all trees except exempt tree species in Hornsby Shire as listed in Table 1.2.6 or subject to a Biodiversity Offset Scheme,*
 - *all trees on land within a heritage conservation area described within the HLEP, and*
 - *all trees on land comprising heritage items listed within the HLEP.*

- b) *To damage or remove any tree protected under the HDCP is prohibited without the written consent of Council, except in accordance with the exemptions prescribed in this part (under the heading 'Exempt Tree Work')."*

To address the proposal's impact on trees, an Arboricultural Impact Assessment (AIA) prepared by NSW Trees dated 14 December 2023 was submitted with the application.

The AIA identifies 37 trees in proximity to the proposed works of which 13 trees, numbered 6, 11, 12, 14-18, 21, 22, 30, 31 and 37 are nominated for removal as they would be subject to unsustainable encroachments into the tree protection zones (TPZ). No objections are raised to the removal of these 13 trees subject to compensatory planting of 12 replacement trees to offset their loss.

A submission has been received raising concerns regarding the removal of large tree numbered 17 (Himalayan Cedar) at the rear of the dwelling.

The retention of T17 has been considered in the AIA noting that:

'the Himalayan Cedar is a tree with good amenity, the tree has no heritage value as stated in the Heritage Report provided by Edwards Heritage Consultants, dated 4 December 2023. Furthermore, it is not a species reflective of the Blackbutt Gully Forest, and its amenity or contribution to the HCA also is questionable from Malton Ave, given that it is only the head of the tree that is seen from the street, and whether the building footprint is reduced or not, the new proposal will be a multi-level home and that amenity will be voided given changes in building height of the new dwelling.'

The removal of tree 17 is supported noting that the siting of the dwelling has an increased front setback to retain the significant street trees and the development has addressed heritage design in the HCA with a single storey design at the front of the site and a pavilion that steps down the site. Furthermore, the site is located in the bushfire flame zone, it is noted that Tree 17 would still be required to be removed even if the rear pavilion was deleted, to address Asset Protection Zone requirements. The submitted Landscape Plan indicates that compensatory planting for removal of tree 17 has been proposed at the rear of the dwelling.

All other trees are marked for retention and recommendations have been made for the implementation of appropriate tree protection measures during the demolition and construction phases of the development.

Council's tree assessment raises no objections to the anticipated impacts to trees subject to arboricultural conditions as recommended in Notice of Determination.

The proposal meets the requirements of Part 1.2.6.1 Tree Preservation under the HDCP and is considered acceptable.

3.1.2 Biodiversity

The desired outcomes of Part 1.3.1.1 Biodiversity of the HDCP are to encourage "development that provides for the conservation of biodiversity including threatened species and populations, endangered ecological communities, remnant indigenous trees, regionally and locally significant terrestrial and aquatic vegetation" and "development that maintains habitat for native wildlife and wildlife corridors to provide for the movement of fauna species".

An Arboricultural Impact Assessment (AIA) was submitted prepared by NSW Trees dated 14 December 2023, and an Integrated Bushfire and Vegetation Management Plan (IBVMP) prepared by

SIA Ecological and Environmental Planning, dated 24 May 2024 has been submitted and reviewed by Council's Natural Resources Team.

At the front of the property are three large, mature Blackbutts trees (numbered 2, 3 and 4), which are proposed for retention and a scattering of native groundcover species. The groundcover species occur beneath the canopies of the three trees and comprise Scurvy Weed (*Commelina cyanea*), Northern Cranesbill (*Geranium homeanum*), Basket Grass (*Oplismenus aemulus*), Love Creeper (*Glycine tabacina*) and Kidney Weed (*Dichondra repens*).

The rear of the APZ, at the edge of the forest, is heavily infested with a wide variety of common weeds. Native species present within this IBVMP Area include Native Daphne (*Pittosporum undulatum*), Giant Maidenhair, Slender Grape Vine (*Cayratia clematidea*) and Indian Hemp (*Sigesbeckia orientalis*). Weeds include, for example, Fishbone Fern (*Nephrolepis cordifolia*), Madeira Vine (*Anredera cordifolia*), Balloon Vine (*Cardiospermum halicacabum*), Morning Glory (*Ipomoea indica*), Black Eyed Susan (*Thunbergia alata*), Green Cestrum (*Cestrum parqui*), to name but a few.

Beyond the APZ, inside the forest at the rear of the property there is a high proportion of weeds close to the dwelling, but these appear to diminish and disappear towards the rear of the property within the forest proper. Appendix C of the IBVMP contains the complete list of flora observed within the IBVMP Area.

Essentially planted exotic and environmental weed trees are proposed for removal. Weed management requirements and criteria have been recommended for all areas.

The proposal is unlikely to have significant impact upon species, populations and communities listed under the NSW *Biodiversity Conservation Act 2016* (BC Act).

In summary, the proposal does not require the removal or modification of a significant area of vegetation or habitat, is consistent with the Biodiversity element of HDCP and will not have a significant impact on matters listed under the NSW BC Act.

3.1.3 Stormwater Management

The desired outcomes of Part 1.3.1.2 Stormwater Management of the HDCP is to encourage development “that protect waterways from erosion, pollution and sedimentation and maintains or improves water quality and aquatic habitats” and “water management systems that minimise the effects of flooding and maintains natural environmental flows.”

A stormwater management plan prepared by Inline Hydraulic Services dated 19 September 2023 has been submitted to Council. The application proposes that all stormwater arising from the development would be directed to the stormwater outlet at the rear of the site. No engineering objections are raised to the proposed system subject to conditions recommended in Attachment 1.

Subject to conditions, the proposal meets the desired outcomes of Part 1.3.1.2 Stormwater Management of the HDCP and is considered acceptable.

3.2 Built Environment

3.2.1 Built Form

The built form would not be highly visible from the street, it appears as a single storey building and would be screened by existing and proposed landscaping/ trees. The proposal would be consistent with residential development within the locality and HCA.

3.2.2 Traffic

The proposal is for a single dwelling, and it would not intensify traffic generation.

3.3 Social Impacts

The construction of a dwelling house result in a positive social contribution by providing for the housing needs of the community within a low-density residential environment.

3.4 Economic Impacts

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

4. SITE SUITABILITY

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

The site is considered to be capable of accommodating the proposed development. The scale of the proposed development is consistent with the capability of the site and is considered acceptable.

4.1 Flooding

The rear of the land the subject of the development is identified as being below the 1 in 100 year flood level. The proposed dwelling house would be located outside the flood area and would be over 50m away from the flood extent. As such, the proposed development is considered acceptable.

4.2 Bushfire Risk

The desired outcomes of Part 1.3.1.1 Bushfire of the HDCP is to encourage *“development that is located and designed to minimise the risk to life and property from bushfires”* and *“development that balances the conservation of native vegetation and bushfire protection”*.

The site is mapped as bushfire prone land. The application includes a Bush Fire Assessment Report prepared by Australian Bushfire Consulting Services dated 20 September 2023 indicating that the proposed development would be subject to BAL-FZ. An Integrated Bushfire and Vegetation Management Plan (IBVMP) prepared by SIA Ecological and Environmental Planning dated 24 May 2024 has been submitted to conserve the native ecological communities that occur within the IBVMP Area while at the same time achieving compliance with the bushfire management requirements for the dwelling. The application has been referred to the NSW Rural Fire Service (RFS) for review. The RFS raised no objections subject to conditions as recommended in Attachment 1.

Subject to conditions as recommended within the report, the proposal would meet the desired outcomes of Part 1.3.1.1 Bushfires under the HDCP and is considered acceptable.

5. PUBLIC PARTICIPATION


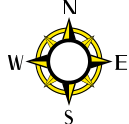
Section 4.15(1)(d) of the Act requires Council to consider *“any submissions made in accordance with this Act”*.

5.1 Community Consultation

The proposed development was placed on public exhibition and was notified to adjoining and nearby landowners between 16 October 2023 to 6 November 2023, and 3 May 2024 to 24 May 2024 with the Hornsby Community Engagement Plan. During this period, Council received 11 submissions. The map below illustrates the location of those nearby landowners who made a submission that are in close proximity to the development site.



NOTIFICATION PLAN

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

A total of 11 submissions objected to the development, generally on the grounds that the development would result in:

- Development that is excessive in bulk and scale
- Unacceptable overlooking of adjoining properties
- Setback non-compliance
- Concerns regarding Colorbond / metal roofing and wall type
- The front soft landscape area does not appear to be adequate
- Concerns regarding the grade of the decking to be non-compliant

- Lower ground garage and storage area potentially be used as habitable area
- The removal of a significant tree
- Impact to Critically Endangered Ecological Community
- Concerns regarding weed management
- Concerns regarding APZ
- Opposed to building works taking place 6 days a week from 7am to 5pm
- Concerns regarding the front of the dwelling has no front entry as is expected in a Heritage Conservation Area
- Concerns regarding the IBVMP did not address multiple species of threatened fauna and flora.
- The garage does not comply with the DCP controls

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

5.1.1 Landscaping

A submission has been received raising concerns regarding the front soft landscape area does not appear to be adequate. To address this concern, it is noted that over 50% of the front yard has been maintained as landscaped area which complies with the prescriptive measures under the HDCP.

5.1.2 Use of dwelling

A submission has been received raising concerns regarding the lower ground garage and storage space potentially being used as habitable area. It is noted that the area has been proposed to be used as garage and storage and the assessment has been based on the submitted plans.

5.1.3 Construction Time

A submission has been received opposed to building works taking place 6 days a week from 7am to 5pm and advised that the construction time should be limited within Monday to Friday. To address this concern, it is noted that all work on site (including remediation, demolition, construction, earth works and removal of vegetation), must only occur between 7am and 5pm Monday to Saturday in compliance with Council's planning guidelines, and consistent with permissible work hours under complying development.

5.1.4 Deck

A submission has been received raising concerns regarding the grade of the decking to be non-compliant. To address this concern, it is noted a condition has been recommended to ensure all building work must be carried out in accordance with the requirements of the National Construction Code - Building Code of Australia.

5.2 Public Agencies

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

5.2.1 NSW Rural Fire Service

The application has been referred to NSW Rural Fire Service seeking advice regarding bush fire protection in accordance with Section 4.14 of the *Environmental Planning and Assessment Act 1979*. The New South Wales Rural Fire Service (NSW RFS) has considered the information submitted and raised no objections subject to the conditions in Attachment 1 to minimise the risk of bush fire attack and provide protection for emergency services personnel, residents and others assisting firefighting activities.

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 demolition of existing structures and construction of new dwelling house and swimming pool.

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

Having regard to the circumstances of the case, approval/refusal 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 2024.
- The proposed development does not create unreasonable environmental impacts to adjoining development with regard to visual bulk, solar access, amenity or privacy.




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

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

ROD PICKLES
Manager - Development Assessments
Planning and Compliance Division

ITEM 3

Attachments:

1.  Draft Conditions of Consent
2.  Architectural Plans
3.  Landscape Plan

File Reference: DA/1003/2023
Document Number: D08940096