



# **DETERMINATION BUSINESS PAPER**

## **LOCAL PLANNING PANEL MEETING**

**Thursday 27 February 2025  
at 2:00 PM**



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**1 DA/389/2023/A - SECTION 4.55(2) MODIFICATION TO APPROVED ALTERATIONS AND ADDITIONS TO JACK AND JILL KINDERGARTEN - 1 HALL ROAD, HORNSBY**

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**DA No:** DA/389/2023/A - PAN-481885 (Lodged on 31 October 2024)

**Description:** Section 4.55(2) modifications to the approved alterations and additions to an existing child care centre known as Jack & Jill Kindergarten.

**Property:** Lot 2 DP 565080 - Jack and Jill Kindergarten, No. 1 Hall Road, Hornsby

**Applicant:** Boss Design Pty Ltd

**Owner:** Hornsby Shire Council

**Estimated Value:** \$231,600 (unchanged)

**Ward:** B Ward

**Clause 4.6 Request:** N/A

**Submissions:** 1

**LPP Criteria:** Council Land

**Author:** Charley Wells, Senior Town Planner

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

**RECOMMENDATION**

THAT pursuant to Section 4.55(2) of the *Environmental Planning and Assessment Act 1979*, Development Application No. DA/389/2023/A for modification to approved alterations and additions to an existing child care centre at Lot 2 DP 565080, No. 1 Hall Road, Hornsby be amended as detailed in Attachment 2 of LPP Report No. LPP6/25.

## EXECUTIVE SUMMARY

- The application involves modifications to the approved alterations and additions to an existing child care centre known as Jack & Jill Kindergarten.
- The modification application involves land owned by Hornsby Shire Council and is required to be determined by the Hornsby Local Planning Panel. An independent assessment of the development application has been undertaken by Landmark Planning.
- A total of one submission has been received in respect of the application.
- The assessment report by Landmark Planning is attached to this report for the Hornsby Planning Panel's consideration. The independent consultant's report recommends that the application be approved.

## ASSESSMENT

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

## CONCLUSION

The application proposes alterations and additions to an existing childcare centre.

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 one submission during the public notification period. The matters raised have been addressed in the independent assessment report.

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

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

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

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

ROD PICKLES  
Manager - Development Assessments  
Planning and Compliance Division

**Attachments:**

1.  Consultant's Report
2.  Draft Conditions of Consent
3.  Architectural Plans
4.  Approved Plans

File Reference: DA/389/2023/A/PUBLICACCESS

Document Number: D09051918

**2 DA/853/2024 - DEMOLITION AND CONSTRUCTION OF DWELLING HOUSE AND SECONDARY DWELLING - 62 CHAPMAN AVENUE, BEECROFT**

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**DA No:** DA/853/2024 - PAN-457135 (Lodged on 5 August 2024)

**Description:** Demolition and construction of a dwelling house and secondary dwelling

**Property:** Lot 2 DP 538562, No. 62 Chapman Avenue, Beecroft

**Applicant:** Allcastle Homes Pty Ltd

**Owner:** Mr Jian Wang & Jie Shi

**Estimated Value:** \$1,279,300

**Ward:** C Ward

**Clause 4.6 Request:** Vary Clause 4.3 'Height of buildings' of the Hornsby Local Environmental Plan 2013

**Submissions:** 2

**LPP Criteria:** Proposal contravenes a development standard by more than 10%

**Author:** Rachel Hughes, Town Planner

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

**RECOMMENDATION**

- A. THAT the Hornsby Local Planning Panel, exercising the functions of Council as the consent authority, vary Clause 4.3 'Height of buildings' Development Standard pursuant to Clause 4.6 of the Hornsby Local Environmental Plan 2013 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. THAT the Hornsby Local Planning Panel, exercising the functions of Council as the consent authority, approve Development Application No. DA/853/2024 for demolition of existing structures and construction of dwelling house and attached secondary dwelling at Lot 2 DP 538562, 62 Chapman Avenue, Beecroft subject to the conditions of consent in Schedule 1 of LPP Report No. LPP7/25.

## EXECUTIVE SUMMARY

- The application involves demolition of existing structures and construction of a two-storey dwelling house and attached secondary dwelling.
- The proposal does not comply with the 8.5m maximum height of buildings control. The applicant has made a submission in accordance with Clause 4.6 'Exceptions to development standards' of the Hornsby Local Environmental Plan 2013 to contravene Clause 4.3 'Height of buildings' of development standard. The submission is considered well founded and is supported.
- A total of two submissions have been received in respect of the application.
- It is recommended that the application be approved.

## SITE

The 1,271m<sup>2</sup> battleaxe site (1,172m<sup>2</sup> excluding access handle) is located on the northern side of Chapman Avenue. It contains a single storey dwelling house with attached carport and an inground swimming pool. It also contains a small metal shed and one tree.

The site experiences approximately 8m fall towards the rear (north) boundary. The body of the site (excluding the access handle) experiences approximately 4m fall. The site is not identified as steep (slope >20%) land.

The site is not identified as bushfire prone land nor flood prone land.

The site is burdened by five restrictions as to user.

A Sydney Water Sewer Line is located along the rear (north) and east side boundary, crossing under the driveway to connect to the front battleaxe lot.

The site is located in the Beecroft/Cheltenham Heritage Conservation Area. Local landscape heritage item no 71 (identified as "Street trees" in Schedule 5 of the HLEP) is located along Chapman Avenue. Local heritage item no 73 (identified as "House" in Schedule 5 of the HLEP) is located on the opposite side of Chapman Avenue, at 41 Chapman Avenue.

Council's mapping does not identify any ecologically significant vegetation communities on or adjoining the site.

The site is serviced by existing water supply, power supply, telecommunications, wastewater, stormwater, and access infrastructure.

## PROPOSAL

The application proposes construction of a two-storey dwelling house with an attached single storey secondary dwelling.

The ground floor (primary dwelling) would comprise a porch and entry hallway; study, two bathrooms, media room with WIR, open plan living/dining/kitchen with butler's pantry, laundry, covered alfresco, and an attached double garage.

The first floor would comprise an open plan living area with WIR; bathroom; one bedroom with BIR; one bedroom with WIR; and two bedrooms with WIR and ensuite.

The secondary dwelling would comprise an entry porch; open plan living/dining/kitchen; combined bathroom and laundry, and two bedrooms with BIR.

No internal access connecting the primary and secondary dwellings is proposed. The shared wall and roof area is to be fire rated.

All existing structures on the site, including the in-ground swimming pool, are proposed to be demolished.

Proposed landscaping works include cut of up to 1m depth, fill of up to 3.1m in height, and construction of two retaining walls. One tree is proposed for removal.

## 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.

New 5-year housing targets have been set for 43 Local Government Areas in the Greater Sydney, Central Coast, Hunter and Greater Newcastle and Illawarra-Shoalhaven regions and one target for regional NSW.

These replace outdated targets in Greater Sydney previously set by the Greater Sydney Commission for 2021-22 to 2025-26.

The identified challenge for Hornsby Shire will be to provide 5,500 new completed homes by 2029 and set the trajectory for NSW to meet its commitment of delivering 377,000 new homes, aligning the targets to the commitment of local, state and federal governments to the National Housing Accord.

The proposed development would be consistent with the National Housing Accord, 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; and*
- *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 ‘secondary dwelling’. The ‘dwelling house’ is permissible in the R2 zone with Council’s consent. The proposed “secondary dwelling” is not permissible under the HLEP. Notwithstanding, a ‘secondary dwelling’ is permissible in the zone pursuant to State Environmental Planning Policy (Housing) 2021 and overrides the requirements of the HLEP.

The proposed development achieves the zone objectives by providing for the housing needs of the community and the small size and scale of the secondary dwelling retains the low-density residential environment.

### 2.1.2 Height of Buildings

Clause 4.3 of the HLEP provides that the height of a building on any land should not exceed the maximum height shown for the land on the Height of Buildings Map. The maximum permissible height for the subject site is 8.5m. The proposal has a maximum height of 9.675m which does not comply with this provision.

### 2.1.3 Exceptions to Development Standards

The application has been assessed against the requirements of Clause 4.6 of the HLEP. This clause provides flexibility in the application of the development standards in circumstances where strict compliance with those standards would, in any particular case, be unreasonable or unnecessary or tender to hinder the attainment of the objectives of the zone.

The proposal exceeds the 8.5m maximum height of buildings control, of Clause 4.3 of the HLEP.

The objective of Clause 4.3 ‘Height of buildings’ is “*to permit a height of buildings that is appropriate for the site constraints, development potential and infrastructure capacity of the locality*”.

The applicant has made a submission in support of the contravention to the development standard in accordance with Clause 4.6 of the HLEP. Clause 4.6 provides that development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

- (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) That there are sufficient environmental planning grounds to justify contravening the development standard.*

Council must be satisfied that the written request provided by the applicant under Clause 4.6 addresses both the unreasonable and unnecessary test and demonstrates sufficient environmental planning grounds to justify contravening the development standard. These matters are discussed below.

### 2.1.3.1 Unreasonable or Unnecessary Clause 4.6(3)(a)

There are five common methods by which an applicant can demonstrate that compliance with a development standard is unreasonable or unnecessary in the circumstances of the development. Initially proposed for objections under clause 6 of SEPP 1 in the decision of *Wehbe v Pittwater Council [2007]* NSWLEC 827 Pearson C summarised and applied these methods to written requests made under Clause 4.6 in *Four2Five Pty Ltd v Ashfield Council [2015]* NSWLEC 1009 [61-62]. These five methods are generally as follows:

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

It is not required to demonstrate that a development meets multiple methods as listed above, and the satisfaction of one can be adequate to demonstrate that the development standard is unreasonable or unnecessary.

The written request prepared by Planning Outcomes P/L, dated January 2025 provides a detailed assessment of the proposal with respect to the development standard sought to be contravened. The request argues that:

*“The justification for the non-compliance is that the ground level below the swimming pool is approximately 2m below natural ground level. It is not a reflection of the natural contours of the site and the actual building height complies with the development standard of 8.5m above the natural topography and natural ground levels of the site.*

*Therefore, the proposed building height is consistent with the building height of surrounding development and is not excessive with regard to the natural topography of the subject site.”*

Council notes that the objective of Clause 4.3 of the HLEP is “to permit a height of buildings that is appropriate for the site constraints, development potential and infrastructure capacity of the locality.”

With reference to the reasoning provided by the applicant above, Council does not object to the conclusion that the proposed dwelling meets the objectives of Clause 4.3. In reaching this conclusion the following points are noted:

- The height non-compliance is caused by the in-ground swimming pool (to be demolished) located below the proposed ridgeline and is not a reflection of the topography of the site.
- The swimming pool is proposed for demolition and the proposed dwelling will not exceed the permitted number of storeys or floor area.

- The non-compliance is a technicality arising from the definition of existing ground level underlying Clause 4.3 and the proposed dwelling is consistent with the intent of the control.

For the reasons outlined above, it is considered that the written request to contravene the height of building standard adequately demonstrates that the objectives of the 8.5m maximum height of building development standard contained within Clause 4.3 of the HLEP are achieved, notwithstanding non-compliance with the standard.

### 2.1.3.2 Environmental Planning Grounds - Clause 4.6(3)(b)

In addition to demonstrating that compliance is unreasonable or unnecessary, Clause 4.6(3)(b) requires that there are sufficient environmental planning grounds to justify contravening the development standard. In demonstrating that sufficient environmental planning grounds exist it must be demonstrated that the planning grounds are particular to the circumstances of the development on the subject site (summarised from *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 [60]).

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

- *“The proposal meets the objectives of the R2 zone.*
- *The proposal meets the objectives of the height standard.*
- *The non-compliance with the height of building standard is due to an anomaly and the proposal complies with the maximum height limit of 8.5m when measured from natural ground levels.*
- *The dwelling’s scale is similar to the scale of other dwellings in the locality, and the built form attracts visual interest and meets the desired character for the locality.*
- *Because the proposed height of the two storey building does not exceed 8.5m from natural ground level, the proposal will not have any unreasonable amenity impacts to neighbouring properties.*
- *The proposal is 2 storeys, complies with the maximum floor area and site coverage controls, and exceeds landscaping and setbacks controls.*
- *The proposal represents an appropriate planning outcome without adverse impacts. Due to lack of amenity impacts on neighbours, removing the non-compliance would not result in a better planning outcome.”*

Council considers that the environmental planning grounds stated within the written request are sufficient with respect to Clause 4.6(3)(b) and that the stated grounds are specific to the proposed development and the circumstances of the development site. It is therefore considered that the written request adequately demonstrates compliance with the clause and is acceptable in this regard.

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

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

Local Planning Panels constituted under the *Environmental Planning and Assessment Act 1979* exercise consent authority functions on behalf of a Council and are not delegates of Council. Therefore, Local Planning Panels may determine a development application notwithstanding, a numerical non-compliance in excess of 10%.

Accordingly, it is considered that the written request satisfactorily responds to the relevant matters required to be addressed under Clause 4.6(3) and that the Panel, as the consent authority, may rely upon the written request and grant development consent to the development application.

#### 2.1.4 Heritage Conservation

Clause 5.10 of the HLEP sets out heritage conservation provisions for Hornsby Shire. The site does not include a heritage item; however, the site is located in the Beecroft/Cheltenham Heritage Conservation Area.

Local landscape heritage item no 71 (identified as “Street trees” in Schedule 5 of the HLEP) is located along Chapman Avenue. Local heritage item no 73 (identified as “House” in Schedule 5 of the HLEP) is located on the opposite side of Chapman Avenue, at No. 41 Chapman Avenue.

Council’s heritage assessment concluded that the proposed works would have minimal impact on the significance and character of the conservation area, precinct, and streetscape.

Subject to the recommended conditions of consent, the proposed development would comply with Clause 5.10 Heritage conservation of the HLEP, and no heritage concerns are raised.

#### 2.1.5 Earthworks

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

The proposed development includes fill up to 3.1m in height. Approximately 1.9m of fill is associated with demolition of the existing in-ground swimming pool, and that the remaining fill is contained within the building footprint.

Council’s assessment of the proposed works and excavation concludes that the proposed earthworks are minor in scale, will be generally contained within the building footprint, and are unlikely to have a significant impact on adjoining properties, drainage patterns and soil stability. Council’s assessment of the proposed earthworks against the requirements of the HDCP is provided at Section 3.1.3 of this report below.

Conditions of consent are recommended to ensure all retaining structures are designed by suitably qualified engineers.

## 2.2 State Environmental Planning Policy (Housing) 2021

The proposed secondary dwelling has been assessed against the requirements of State Environmental Planning Policy (Housing) 2021. The Housing SEPP commenced on 26 November 2021. This Policy provides State-wide planning controls for the provision of affordable housing.

The Standard Instrument defines a Secondary Dwelling as:

*“secondary dwelling means a self-contained dwelling that—*

- (a) is established in conjunction with another dwelling (the principal dwelling), and*
- (b) is on the same lot of land as the principal dwelling, and*
- (c) is located within, or is attached to, or is separate from, the principal dwelling.”*

Clause 50 of the Policy outlines that secondary dwellings are permissible “on land in a residential zone if development for the purposes of a dwelling house is permissible on the land under another

*environmental planning instrument*". The site is located within the R2 Low Density Residential zone, where dwellings are permissible. Therefore, the proposal is permissible in the zone.

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

<b>State Environmental Planning Policy (Housing) 2021</b>			
<b>Control</b>	<b>Proposal</b>	<b>Requirement</b>	<b>Complies</b>
No dwellings, other than principal dwelling and secondary dwelling, will be located on the land	Principal dwelling & secondary dwelling only	Principal dwelling & secondary dwelling only	Yes
Site Area	1,172m <sup>2</sup>	≥450m <sup>2</sup>	Yes
No. of dwellings	2	2	Yes
Floor Area			
- <i>Principal Dwelling</i>	394.2m <sup>2</sup>	max. 530m <sup>2</sup>	Yes
- <i>Secondary Dwelling</i>	59.6m <sup>2</sup>	max. 60m <sup>2</sup>	Yes
- <i>Total</i>	453.8m <sup>2</sup>	max. 530m <sup>2</sup>	Yes
Car Parking			
- <i>Principal Dwelling</i>	2 spaces	2 spaces	Yes
- <i>Secondary Dwelling</i>	0 spaces	0 spaces	Yes

As detailed above, the proposal complies with the development standards prescribed for Secondary Dwellings under State Environmental Planning Policy (Housing) 2021.

### **2.3 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.

#### **2.3.1 Chapter 2 Vegetation in Non-Rural Areas**

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

Part 2.3 of the policy states that a development control plan may make a declaration in any manner relating to species, size, location and presence of vegetation. Accordingly, Part 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.

#### **2.3.2 Chapter 6 Water Catchments**

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

Subject to the implementation of sediment and erosion control measures and stormwater management to protect water quality, the proposal would meet the aims of the Policy.

## **2.4 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 State Environmental Planning Policy (Sustainable Buildings) 2022**

The application has been assessed against the requirements of the State Environmental Planning Policy (Sustainable Buildings) 2022 which seeks to encourage sustainable residential development. The proposal includes a BASIX Certificate (Certificate No. 1751652M) in accordance with the requirements of the SEPP including the list of commitments to be complied with at the construction stage and during the use of the premises. The BASIX certificate achieves the minimum scores for thermal comfort, water and energy. The proposal is acceptable in this regard.

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

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

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

## 2.7 Hornsby Development Control Plan 2024

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

<b>HDCCP - Part 3.1 Dwelling Houses</b>			
<b>Control</b>	<b>Proposal</b>	<b>Requirement</b>	<b>Complies</b>
Site Area	1,172m <sup>2</sup> (exc. access handle)	N/A	N/A
Building Height	9.675m	≤8.5m	No
No. storeys	2	max. 2 + attic	Yes
Site Coverage	281.2m <sup>2</sup> (24%)	≤40%	Yes
Floor Area	394.2m <sup>2</sup>	≤530m <sup>2</sup>	Yes
Setbacks			
- Side (south)			
Ground floor	6.5m	≥0.9m	Yes
First floor	10.2m	≥1.5m	Yes
- Side (east)			
Ground floor	2.7m	≥0.9m	Yes
First floor	4.9m	≥1.5m	Yes
- Side (west)			
Ground floor	2.2m	≥0.9m	Yes
First floor	11.3m	≥1.5m	Yes
- Rear (north)			
Ground floor	11.2m	≥3m	Yes
First floor	15m	≥8m	Yes
Landscaped Area (% of lot size)	645m <sup>2</sup> (55%)	≥40%	Yes
Private Open Space			
- minimum area	>24m <sup>2</sup>	24m <sup>2</sup>	Yes
- minimum dimension	>3m	3m	Yes
Car Parking	2 spaces	2 spaces	Yes

As detailed in the above table, there is a non-compliance with the HDCP building height controls. The height non-compliance is discussed under sections 2.1.2 and 2.1.3 of this report above. The development complies with all other relevant requirements of the HDCP. A discussion on performance requirements is provided below and Part 1.3 General Controls are discussed in Section 3 of the report.

### 2.7.1 Sunlight Access

The desired outcomes of Part 3.1.5 Sunlight Access of the HDCP are to provide reasonable sunlight access to open space areas on development sites and neighbouring sites.

This is supported by prescriptive measures which require residential development to allow a minimum of 3 hours unobstructed sunlight to reach at least 50% of the private open space on the development site and adjoining sites, between 9am and 3pm on 22 June.

The development application includes sunlight access diagrams which show that the prescribed sunlight access minimums would be achieved by the proposed design.

The proposed development complies with Part 3.1.5 Sunlight Access of the HDCP, and no sunlight access concerns are raised.

### 2.7.2 Privacy

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

This is supported by prescriptive measures, including 3.1.6(a) which requires living and entertaining areas to be located on the ground floor and oriented towards the front and rear boundaries, and 3.1.6(b) which states:

*“A proposed window in a dwelling house should have a privacy screen if:*

- It is a window to a habitable room, other than a bedroom, that has a floor level of more than 1 metre above existing ground level,*
- The window is setback less than 3 metres from a side or rear boundary, and*
- The window has a sill height of less than 1.5 metres.”*

The proposed development includes a living room on the first floor. This does not comply with prescriptive measure 3.1.6(a).

The applicant has provided the following justification for the non-compliance:

*“The upper living area windows are narrow and located 4.969m from eastern boundary.”*

It is noted that no privacy screen is required due to the large setback, in accordance with prescriptive measure 3.1.6(b).

Prescriptive measure 1.3.6(c) requires decks and the like to be located within 0.6m of existing ground level, and 3.1.6(d) states:

*“Decks and the like that need to be located more than 600mm above existing ground level should not face a window of another habitable room, balcony or private open space of another dwelling located within 9 metres of the proposed deck unless appropriately screened.”*



The proposed development includes an alfresco located 2m above existing ground level. This does not comply with 1.3.6(c).

In support of this non-compliance, it is noted that this non-compliance is a technicality arising from the location of the alfresco over the existing in ground swimming pool to be demolished, as discussed in Sections 2.1.2 and 2.1.3 of this report above. It is also noted that the alfresco would be set back 4.9m from the east side boundary.

The proposed development would achieve the desired outcome of Part 3.1.6 Privacy of the HDCP and no further privacy concerns are raised.

### **2.7.3 Heritage**

Part 9 of the HDCP sets out heritage conservation provisions for Hornsby Shire. The site does not include a heritage item; however, the site is located in the Beecroft/Cheltenham Heritage Conservation Area.

Local landscape heritage item no 71 (identified as "Street trees" in Schedule 5 of the HLEP) is located along Chapman Avenue. Local heritage item no 73 (identified as "House" in Schedule 5 of the HLEP) is located on the opposite side of Chapman Avenue, at No. 41 Chapman Avenue.

Council's heritage assessment concluded that the proposed works would have minimal impact on the significance and character of the conservation area, precinct, and streetscape.

Subject to the recommended conditions of consent, the proposed development would comply with Part 9 Heritage of the HDCP, and no heritage concerns are raised.

### **2.8 Section 7.11 Contributions Plans**

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

### **2.9 Housing and Productivity Contribution**

The Housing and Productivity Contribution does not apply to the development as it constitutes a knock-down-rebuild and construction of a secondary dwelling without subdivision of the lot. These types of development are exempt from the Housing and Productivity Contribution. Accordingly, the requirement for a monetary Housing and Productivity contribution is not 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"*.

### **3.1.1 Tree and Vegetation Preservation**

The proposed development would necessitate the removal of one tree (T3) from the site.

The application has been supported by an Arboricultural Impact Assessment (AIA) prepared by Urban Arbor, dated 23 July 2024. The report concludes that the T3 would be highly impacted by the proposed development and should be removed, however the remaining four trees on the site can be retained in a viable condition, subject to recommended conditions of consent.

It is considered that the removal of the tree is acceptable in the circumstances of the case due to the location of T3 in the middle of the site and in close proximity to the proposed dwelling.

Subject to recommended conditions of consent, including the recommendations of the AIA and a requirement for replacement planting of one tree, the impacts of the proposed development on trees and vegetation are considered acceptable.

### 3.1.2 Stormwater Management

The desired outcomes of Part 1.3.1.2 Stormwater Management of the HDCP are *“development that protects 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”*.

The development application includes a stormwater concept plan prepared by EZE Drainage Designs (Council ref: D09005881) dated 29 October 2024. The plan shows roof water from the proposed dwelling connected to two rainwater tanks, with overflow to an infiltration trench in the back yard. An additional driveway drainage grate drains to the infiltration trench via multiple pits.

Council's engineering assessment raised no objections subject to conditions.

Accordingly, subject to the recommended conditions in Schedule 1, the proposed development would achieve the desired outcomes of Part 1.3.1.2 Stormwater Management of the HDCP and no stormwater concerns are raised.

### 3.1.3 Earthworks and Slope

The desired outcomes of Part 1.3.1.4 Earthworks and Slope of the HDCP include *“development that is designed to respect the natural landform characteristics and protects the stability of land”* and *“development that limits landform modification to maintain the amenity of adjoining properties and streetscape character”*.

This is supported by prescriptive measures, including 1.3.1.4(b) which requires fill to not exceed 1m above existing ground level, and 1.3.1.4(c) which requires cut outside of the building platform to not exceed 1m except under specific circumstances.

The proposed development includes fill up to 3.1m in height. This does not comply with prescriptive measure 1.3.1.4(b).

The applicant has provided the following justification for the non-compliance:

*“While excavation is limited to depth of 1 metre from existing ground level, fill exceeds 1 metre in height from existing ground level, however there is no external fill. Fill is contained within drop edge beam. The fill above the required numerical controls do not extend outside of the building platform.*

*The general landform on the site is maintained, with cut and fill only on the footprint of the dwelling. The proposal does not affect the streetscape character.*

*The alteration of natural ground levels is proposed in a manner that will not compromise the structural stability, integrity and amenity of adjacent developments.”*

It is noted that approximately 1.9m of fill is associated with demolition of the existing in-ground swimming pool, and that the remaining fill is contained within the building footprint. This fill is unlikely to have an adverse impact on the stability of the land, nor on the streetscape.

The proposed development would achieve the desired outcomes of Part 1.3.1.4 Earthworks and Slope of the HDCP and is acceptable in this regard.

### **3.2 Built Environment**

#### **3.2.1 Transport and Parking**

The desired outcomes of Part 1.3.2.1 Transport and Parking of the HDCP include “*car parking and bicycle facilities that meet the requirements of future occupants and their visitors*”, “*development with simple, safe and direct vehicular access*” and “*to encourage and support the use of electric vehicles*”.

This is supported by prescriptive measures, including 1.3.2.1(o) which requires a minimum of 2 parking spaces be provided for dwellings with 3 or more bedrooms. The proposed development includes a suitably proportioned double garage which meets this requirement.

Prescriptive measure 1.3.2.1(kk) requires garages in low density residential development to provide a private EV connection. A condition of consent is recommended requiring the plans to be amended to show a suitable EV connection prior to issue of a construction certificate.

Subject to the recommended conditions of consent, the proposed development would comply with Part 1.3.2.1 Transport and Parking of the HDCP no transport or parking concerns are raised.

### **3.3 Social Impacts**

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

The location of the development is in close proximity to Beecroft Railway Station and the Beecroft Village commercial centre, providing recreational, health and education facilities for future residents.

### **3.4 Economic Impacts**

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

## **4. SITE SUITABILITY**

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

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

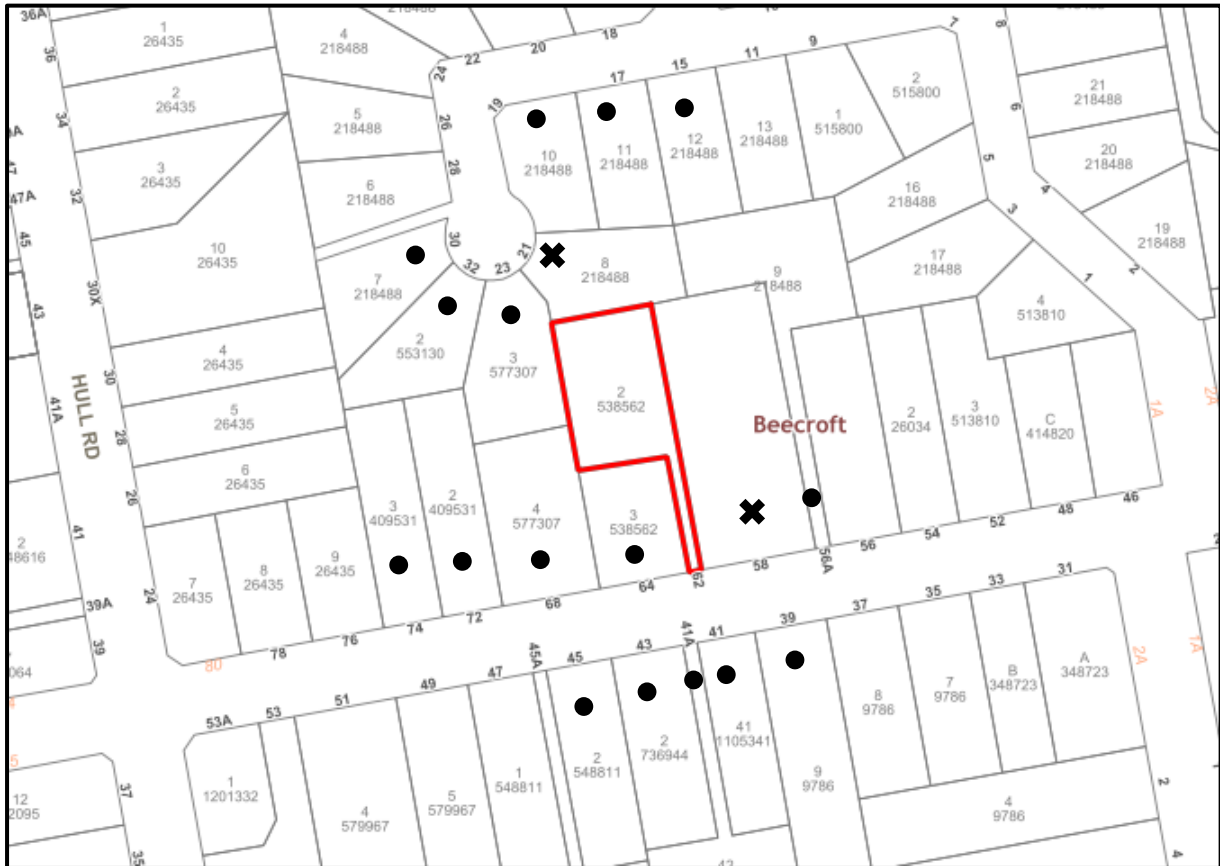
## **5. PUBLIC PARTICIPATION**

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



### **5.1 Community Consultation**

The proposed development was placed on public exhibition and was notified to adjoining and nearby landowners between 8 August 2024 and 29 August 2024 in accordance with the Hornsby Community Engagement Plan. During this period, Council received two 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"> <li>• PROPERTIES NOTIFIED</li> </ul>	<ul style="list-style-type: none"> <li>X SUBMISSIONS RECEIVED</li> </ul>	 PROPERTY SUBJECT OF DEVELOPMENT	
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Two submissions objected to the development, generally on the grounds that the development would result in:

- Unacceptable privacy loss to adjoining properties,
- Unacceptable amenity impacts during works, and
- Potential damage to boundary treatments and an opportunity to upgrade boundary fencing.

**5.1.1 Privacy and Vegetation**

One submission raised concern that the proposed dwelling would be located closer to the rear (northern) boundary than the existing dwelling, resulting in loss of privacy to the near neighbour. The submission requested the landscaping along the northern boundary be maintained as a privacy screen.

In response to the matters raised, it is noted that the ground floor of the proposed dwelling is setback 11.2m from the rear (northern) boundary and the first floor is setback 15.2m. The rooms which face the rear boundary comprise a dining room and an outdoor alfresco on the ground floor, and a

bedroom and an ensuite with highlight window on the first floor. The design complies with the privacy requirements of the HDCP and is unlikely to have significant adverse privacy impacts on the adjoining property.

It is also noted that there is scope along both sides of the northern property boundary for either or both property owners to plant additional screen planting in future if desired.

### 5.1.2 Amenity Impacts During Works

One submission raised concern that the proposed works would result in amenity impacts during the construction phase, especially in the form of dust, noise, and damage to the adjoining (east boundary) property. In summary, the submission requested that:

- all work be limited to 7am-4pm Monday to Friday, with no noisy work before 7:30am,
- no work or storage be allowed on or in front of the adjoining property,
- screens and/or hosing be used to minimise dust impacts to adjoining property,
- vibration impacts to adjoining property be minimised,
- sediment fencing and/or settlement pits be used to prevent surface runoff and mud impacts to adjoining property,
- work vehicles are to be parked where they won't prevent rubbish collection from adjoining properties, and
- suitable measures be taken so landscaping works on the neighbour's side of the property boundary are not damaged during works.

In response to the matters raised, it is noted that the recommended conditions of consent include conditions to restrict hours of work and limit impacts to vegetation and adjoining properties. A condition of consent is also recommended which requires a dilapidation report be prepared to assist in the management of any unexpected post-development repairs.

### 5.1.3 Boundary Fence

One submission expressed a want to replace the shared boundary fence as part of the proposed works and split the cost with the owner. The submission requested that the existing fence, including brick pillars at the front, not be damaged during works.

In response to the fence replacement matters raised, it is noted that dividing boundary fences are subject to the *Dividing Fences Act 1991* and constitute a civil matter beyond the scope of the development assessment process.

In response to the damage matters raised, it is noted that the recommended conditions of consent include conditions to limit impacts to adjoining properties. A condition of consent is also recommended which requires a dilapidation report be prepared for the adjoining property.

## 5.2 Public Agencies

The development application was not referred to any Public Agencies for comment.

## 6. THE PUBLIC INTEREST

Section 4.15(1)(e) of the Act requires Council to consider "*the public interest*".

The public interest is an overarching requirement, which includes the consideration of the matters discussed in this report. Implicit to the public interest is the achievement of future built outcomes adequately responding to and respecting the future desired outcomes expressed in environmental planning instruments and development control plans.

The application is considered to have satisfactorily addressed Council's and relevant agencies' criteria and would provide a development outcome that, on balance, would result in a positive impact for the community. Accordingly, it is considered that the approval of the proposed development would be in the public interest.

## CONCLUSION

The application proposes demolition of existing structures and construction of a two-storey dwelling and attached secondary dwelling.

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 two 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 request under Clause 4.6 of Hornsby Local Environmental Plan 2013 to contravene the 'Height of buildings' development standard is well founded. Strict compliance with the development standard is considered unreasonable and unnecessary in the circumstances of the case and sufficient environmental planning grounds have been submitted to justify the contravention to the development standard.
- 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

**Attachments:**

1.  Clause 4.6 Request
2.  Architectural Plans
3.  Survey Plan

File Reference: DA/853/2024/PUBLICACCESS

Document Number: D09060611

## SCHEDULE 1

# GENERAL CONDITIONS

**ITEM 2**

Condition
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### 1. Approved Plans and Supporting Documentation

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

#### Approved Plans

Plan No.	Plan Title	Drawn by	Dated	Council Reference
Sheet 01	Site Plan	Allcastle Homes	29 April 2024	
Sheet 02	Ground Floor Plan - Overall	Allcastle Homes	29 April 2024	
Sheet 03	First Floor Plan	Allcastle Homes	29 April 2024	
Sheet 04	Eastern, Western, Southern Elevations	Allcastle Homes	29 April 2024	
Sheet 05	Northern Elevation, Section AA	Allcastle Homes	29 April 2024	
Sheet 1 of 2	Landscape Concept	DA Landscape Plans	29 July 2024	
N/A	External Colours	Allcastle Homes	3 May 2024	
Sheet 1 of 1	Demolition Plan	unnamed	undated	

#### Supporting Documentation

Document Title	Prepared by	Dated	Council Reference
Arboricultural Impact Assessment	Urban Arbor	23 July 2024	D08937177
BASIX Certificate No. 1751652M	Green Future Group Pty Ltd	14 June 2024	D08937182
Erosion and sediment control plan	Allcastle Homes	29 April 2024	D08937191
Stormwater Concept Plan (Issue B)	EZE Drainage Designs	29 October 2024	D09005881

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

### 2. No Clearing of Vegetation

1. Unless otherwise exempt, no vegetation is to be cleared prior to issue of a Construction Certificate.
2. Details demonstrating compliance are to be submitted to the Certifier prior to issue of Construction Certificate.



*Reason: To protect vegetation on the site.*

### 3. Construction Certificate

1. A Construction Certificate is required to be approved by Council or a Principal Certifier prior to the commencement of any construction works under this consent.
2. The Construction Certificate plans must be consistent with the Development Consent plans.

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

### 4. Section 7.11 Development Contributions

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

Description	Contribution (4)
Roads	\$1,104.30
Open Space and Recreation	\$9,163.25
Community Facilities	\$5,643.70
Plan Preparation and Administration	\$79.55
<b>TOTAL</b>	<b>\$15,990.80</b>

being for <INSERT HOW MANY DWELLINGS, UNITS/BEDROOMS/FLOOR SPACE AND ANY CREDITS>

2. The value of this contribution is current as at **31 January 2025**. If the contribution is not paid within the financial quarter that this condition was generated, the contribution payable will be adjusted in accordance with the provisions of the Hornsby Shire Council Section 7.11 Development Contributions Plan and the amount payable will be calculated at the time of payment in the following manner:

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

Where:

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

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

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

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

3. The monetary contribution must be paid to Council:
- Prior to the issue of the Subdivision Certificate where the development is for subdivision; or
  - Prior to the issue of the first Construction Certificate where the development is for building work; or
  - Prior to issue of the Subdivision Certificate or first Construction Certificate, whichever occurs first, where the development involves both subdivision and building work; or
  - Prior to the works commencing where the development does not require a Construction Certificate or Subdivision Certificate.

*Note: It is the professional responsibility of the Principal Certifier to ensure that the monetary contributions have been paid to Council in accordance with the above timeframes*

*Note: In accordance with Ministerial Directions, the payment of contribution fees for development with a cost of works of over \$10 million can be deferred to prior to Occupation Certificate.*

*Note: Council's Development Contributions Plan may be viewed at [www.hornsby.nsw.gov.au](http://www.hornsby.nsw.gov.au) or a copy may be inspected at Council's Administration Centre during normal business hours.*

*Note: To arrange a Payment Advice for the monetary contributions, please contact Council's Customer Service Team on 9847 6666.*

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

## 5. Retaining Walls

To ensure the stability of the site, structural details of all required retaining walls must be submitted with the application of the Construction Certificate.

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

# BUILDING WORK

## BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

Condition
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## 6. Building Code of Australia

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

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

## 7. Contract of Insurance (Residential Building Work)

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

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

## 8. Notification of Home Building Act 1989 Requirements

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

1. In the case of work for which a principal contractor is required to be appointed:
  - a. The name and licence number of the principal contractor; and
  - b. The name of the insurer by which the work is insured under Part 6 of that Act.
2. In the case of work to be done by an owner-builder:
  - a. The name of the owner-builder; and
  - b. If the owner-builder is required to hold an owner-builder's permit under that Act, the number of the owner-builder's permit.

*Note: If arrangements for doing the residential building work are changed while the work is in progress so that the information notified becomes out of date, further work must not be carried out unless the Principal Certifier for the development to which the work relates (not being Council) has given Council written notification of the updated information.*

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

## 9. Sydney Water Building Plan Approval

The plans must be approved by Sydney Water prior to demolition, excavation or construction works commencing. This allows Sydney Water to determine if sewer, water or stormwater mains or easements will be affected by any part of your development. Any amendments to plans will require re-approval. Please go to [Sydney Water Tap in®](#) to apply.

*Note: Sydney Water recommends developers apply for a Building Plan Approval early as to reduce unnecessary delays to further referrals or development timescales.*

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

## 10. Dilapidation Report

1. Prior to the commencement of any works on site, the applicant must submit for approval by the Principal Certifier (with a copy forwarded to Council) a 'Dilapidation Report' detailing the structural condition of the adjoining properties:
  - a. No. 58 Chapman Avenue, Beecroft (Lot 1 DP 538562)
2. The report must include a photographic survey of the adjoining properties detailing their physical condition, both internally and externally, including such items as walls, ceilings, roof, structural members, and other similar items. The report must be completed by a

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

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

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

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

## 11. Stormwater Drainage

The stormwater drainage system for the development must be designed for an average recurrence interval (ARI) of 20 years and be gravity drained in accordance with the following requirements:

1. Roof water must be connected to a rainwater tank having a minimum capacity in compliance with BASIX requirements.
2. The overflow from the rainwater tank and collected surface water must be disposed of in accordance with AUS-SPEC Specifications ([www.hornsby.nsw.gov.au/property/build/aus-spec-terms-and-conditions](http://www.hornsby.nsw.gov.au/property/build/aus-spec-terms-and-conditions)) and the following requirements:
  - a. The trench must be located a minimum of 5 metres from any downstream properties and 1 metre from the side boundaries.
  - b. The trench or trenches must be laid on contour.
  - c. The trench must be a minimum of 0.6 metres wide, 0.6 metres deep and 1 metre long for every 25 square metres of impervious area; and
  - d. Overland flow from the trench must be spread evenly over the site so as not to discharge water in a concentrated manner onto adjoining land.
3. The stormwater drainage system must be designed by a qualified hydraulic engineer.

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

## 12. Internal Driveway/Vehicular Areas

The driveway and parking areas on site must be designed, and a Construction Certificate issued in accordance with Australian Standards AS2890.1, AS2890.2, AS3727 and the following requirements:

1. The driveway be a rigid pavement.
2. The driveway grade must not exceed 25 percent and changes in grade must not exceed 8 percent.

3. Longitudinal sections along both sides of the access driveway shall be submitted to the Principal Certifier in accordance with the relevant sections of AS 2890.1. The maximum grade shall not exceed 1 in 4 (25%) with the maximum changes of grade of 1 in 8 (12.5%) for summit grades and 1 in 6.7 (15%) for sag grades. Any transition grades shall have a minimum length of 2 metres. The longitudinal sections shall incorporate the design levels obtained by Council.

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

**13. Appointment of a Project Arborist**

To ensure the trees that must be retained are protected, a project arborist with AQF Level 5 qualifications must be appointed to assist in ensuring compliance with the conditions of consent and provide monitoring reports as specified by the conditions of consent.

Details of the appointed project arborist must be submitted to Council and the PCA with the application for the construction certificate/subdivision works certificate.

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

**14. Electric Vehicle (EV) Ready Connections**

Prior to the issue of the relevant Construction Certificate, the following must be demonstrated to the satisfaction of the Principal Certifier:

1. The garage must be provided with a private Electric Vehicle (EV) connection.
2. All EV charging infrastructure is to comply with the applicable Electric Vehicle safety and energy consumption data collection requirements of the National Construction Code.

*Note: Private EV connection is the provision of a minimum 15A circuit and power point to enable easy future EV connection in the garage connected to the main switch board.*

*Reason: To encourage and support the use of electric vehicles.*

**BEFORE BUILDING WORK COMMENCES**

Condition
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**15. Site Sign**

1. A sign must be erected in a prominent position on any site on which any approved work involving excavation, erection or demolition of a building is being carried out detailing:
  - a. The name, address, and telephone number of the Principal Certifier.
  - b. the name of the principal contractor (if any) for any demolition or building work and a telephone number on which that person may be contacted outside working hours; and
  - c. Unauthorised entry to the work site is prohibited.
2. The sign must be maintained during excavation, demolition and building work is being carried out and must be removed when the work has been completed.

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

**16. Protection of Adjoining Areas**

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

1. Could cause a danger, obstruction, or inconvenience to pedestrian or vehicular traffic.
2. Could cause damage to adjoining lands by falling objects; and/or
3. Involve the enclosure of a public place or part of a public place; and/or
4. Have been identified as requiring a temporary hoarding, fence, or awning within the Council approved Construction Management Plan (CMP).

*Note: Notwithstanding the above, Council's separate written approval is required prior to the erection of any structure or other obstruction on public land.*

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

**17. Toilet Facilities**

1. To provide a safe and hygienic workplace, toilet facilities must be available or be installed at the works site before works begin and must be maintained until the works are completed at a ratio of one toilet for every 20 persons employed at the site.
2. Each toilet must:
  - a. Be a standard flushing toilet connected to a public sewer; or
  - b. Be a temporary chemical closet approved under the *Local Government Act 1993*.

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

**18. Erosion and Sediment Control Measures**

Install and maintain adequate sediment and erosion control measures for the duration of all works, until such a time that sediment, sediment laden water or any other material/substance can no longer migrate from the premises. The measures are to be installed and maintained in such a manner as to prevent sediment, sediment-laden water, or any other materials and substances migrating from the site onto neighbouring land, the roadway, waters and/or into the stormwater system, and in accordance with:

1. The publication *Managing Urban Stormwater: Soils and Construction 2004* (4th edition) - 'The Blue Book'.
2. *Protection of the Environment Operations Act 1997*; and
3. The approved plans.

Controls are to be monitored and adjusted where required throughout the works to ensure compliance with the above

*Note: On the spot penalties may be issued for any non-compliance with this requirement without any further notification or warning. If you are unsure in how to achieve compliance with this condition during works, you may need to engage the services of a suitably qualified environmental, soil or geotechnical consultant to assist.*

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

**19. Installation of Tree Protection Measures**

1. Trees to be retained and numbered T1, T2, T4, and T5 as identified on the Tree Location Plan prepared by Urban Arbor, dated 23 July 2024 must have tree protection measures for the ground, trunk and canopy installed by the project arborist as follows:
  - a. For the duration of demolition works, in accordance with the Tree Protection Plan.
  - b. For the duration of construction works, in accordance with Tree Protection Plan.
2. Tree protection fencing for the trees to be retained must be installed by the engaged AQF 5 project arborist and consist of 1.8m high temporary fencing panels installed in accordance with Australian Standard AS4687-2007 Temporary fencing and hoardings.
3. The installation of all required tree protection fencing must include shade cloth attached to the fencing to reduce transport of dust, particulates, and liquids from entering the tree protection zone.

*Reason: To protect trees during construction.*

**20. Waste Management Details**

Prior to the commencement of any works, the on-going waste collection service must be cancelled, and the bins retrieved by the waste collection service provider.

*Note: For residential properties, Council is the waste collection service provider.*

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

**21. Garbage Receptacle**

A garbage receptacle must be provided at the work site before works begin and must be maintained until all works are completed.

1. The garbage receptacle must have a tight fitting lid and be suitable for the reception of food scraps and papers.
2. The receptacle lid must be kept closed at all times, other than when garbage is being deposited.
3. Food scraps must be placed in the garbage receptacle and not in demolition and construction waste bins.

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

**DURING BUILDING WORK**

Condition
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**22. Hours of Work**

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

*Reason: To protect the amenity of neighbouring properties.*

**23. Environmental Management (Air Pollution)**

The Applicant must take all reasonable steps to minimise dust generated during all works (including remediation, demolition, earthworks and construction) authorised by this consent. During works, the Applicant must ensure that:

1. Exposed surfaces and stockpiles are suppressed by regular watering.
2. All trucks entering or leaving the site with loads have their loads covered.
3. Trucks associated with the development do not track dirt onto the public road network.
4. Public roads used by these trucks are kept clean; and
5. Land stabilisation works are carried out progressively on site to minimise exposed surfaces.

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

**24. Council Property**

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

*Reason: To protect public land.*

**25. Soil Management (Excavation and Fill)**

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

1. All excavated material removed from the site must be classified in accordance with the EPA's Waste Classification Guidelines before it is disposed of at an approved waste management facility and the classification, and the volume of material removed must be reported to the Principal Certifier or Council (where a principal certifier is not required).
2. Tipping docket for the total volume of excavated material that are received from the licensed waste management facility must be provided to the Principal Certifier prior to the issue of an Occupation Certificate.
3. Prior to fill material being imported to the site, a Waste Classification Certificate shall be obtained from a suitably qualified environmental consultant confirming all fill material imported to the site must be:
  - a. Virgin Excavated Natural Material as defined in Schedule 1 of the Protection of the Environment Operations Act 1997, or
  - b. A material identified as being subject to a resource recovery exemption by the NSW EPA, or
  - c. A combination of Virgin Excavated Natural Material as defined in Schedule 1 of the Protection of the Environment Operations Act 1997 and a material identified as being subject to a resource recovery exemption by the NSW EPA.



4. The required Waste Classification Certificate must be provided to the Principal Contractor prior to fill being imported to the site and made available to Council at its request.

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

## **26. Removal of Trees**

1. This development consent permits the removal of tree numbered T3 as identified in the Arboricultural Impact Assessment prepared by Urban Arbor dated 23 July 2024.
2. No consent is granted for the removal of trees numbered T1, T2, T4, and T5 as these trees contribute to the established landscape amenity of the area/streetscape.

*Note: The removal of any other trees from the site requires separate approval by Council in accordance with Part 1B.6 Tree and Vegetation Preservation of the Hornsby Development Control Plan, 2024.*

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

## **27. Survey Report**

A report(s) must be prepared by a registered surveyor and submitted to the Principal Certifier:

1. Prior to the pouring of concrete at each level of the building certifying that:
  - a. The building, retaining walls and the like have been correctly positioned on the site; and
  - b. The finished floor level(s) are in accordance with the approved plans.

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

## **28. Waste Management**

All work must be carried out in accordance with the approved waste management plan.

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

## **29. Prohibited Actions within the Fenced Tree Protection Zone**

The following activities are prohibited within the approved fenced tree protection zones unless otherwise approved by Council:

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

*Reason: To protect trees during construction.*

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

The appointed project arborist must monitor and record any and all necessary actions required to maintain tree health and condition for trees to be retained on the approved plans.

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

### **31. Maintaining Tree Protection Measures**

Tree Protection Measures must be maintained by the project arborist in accordance with the conditions of this consent for the duration of works.

*Reason: To protect trees during construction.*

### **32. Approved Works within Tree Protection Zone Incursions**

1. Where tree root pruning is required for the installation of piers, driveway or underground services, the pruning must be overseen by the AQF 5 project arborist and must be undertaken as follows:
  - a. Using sharp secateurs, pruners, handsaws, or chainsaws with the final cut being clean.
  - b. The maximum diameter of roots permitted to be cut is 30mm.
2. No changes of grade within the Tree Protection Zone of trees to be retained on the approved plans, are permitted.
3. To minimise impacts within the Tree Protection Zone (TPZ) of trees to be retained on the approved plans, the installation of services must be undertaken as follows:
  - a. The AQF 5 project arborist must be present to oversee the installation of any underground services which enter or transect the tree protection.
  - b. The installation of any underground services which either enter or transect the designated TPZ must be undertaken manually.
  - c. For manually excavated trenches the AQF 5 project arborist must designate roots to be retained. Manual excavation may include the use of pneumatic and hydraulic tools.
4. Where scaffolding is required, ground protection must be installed beneath the scaffolding in the following order:
  - a. Installation of a 100mm deep layer of woodchip.

*Reason: To protect trees during construction.*

### **33. Building Materials and Site Waste**

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

*Reason: To protect trees during construction.*

### **34. Unexpected Finds**

Should the presence of asbestos or soil contamination, not recognised during the application process be identified during any stage of works, the applicant must immediately notify the Principal Certifier and Council (compliance@hornsby.nsw.gov.au).

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

### **35. Erosion and Sediment Control**

1. Works are not to result in the discharge of sediment and or run-off onto the adjoining properties or public land.
2. The person having the benefit of this consent must ensure that sediment and other materials are not tracked onto the roadway by vehicles leaving the site.

*Note: On the spot penalties may be issued for any non-compliance with this requirement without any further notification or warning.*

*Reason: To minimise impacts on neighbouring properties and public land.*

### **36. Soil and Water Management (Stockpiles)**

1. Stockpiles of topsoil, sand, aggregate, soil or other material shall be protected with adequate sediment controls and must not be located on any drainage line or easement, natural watercourse, footpath or roadway.
2. The storage of stockpiled topsoil, sand, aggregate, soil or other materials must not result in the discharge of sediment or run-off onto the adjoining properties or public land.

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

### **37. Storage and Removal of Waste**

1. All demolition and/or construction waste must be stored in a waste receptacle and be removed from the site at frequent intervals. Materials are to be wholly contained within the waste receptacle and not overflowing.
2. All garbage and recyclable materials generated during work must be stored in a waste receptacle and be removed from the site at frequent intervals. Materials are to be wholly contained within the waste receptacle and not overflowing.

*Reason: To ensure the site is maintained to an appropriate standard cleanliness and prevent any nuisance or danger to health, safety or the environment.*

## **BEFORE ISSUE OF AN OCCUPATION CERTIFICATE**

Condition
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### **38. Fulfilment of BASIX Commitments**

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

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

### **39. Replacement Tree Requirements**

1. The trees approved for removal under this consent, being trees numbered T3 must be offset through replacement planting of a minimum of 1 tree.
2. All replacement plantings must be species selected from the 'Trees Indigenous to Hornsby Shire (as of 1 September 2011)' document available for viewing on the Hornsby Council's website <http://www.hornsby.nsw.gov.au/environment/flora-and-fauna/tree-management/indigenous-trees>
3. The location and size of tree replacement planting must comply with the following:
  - a. All replacement trees must be located in either the front or rear setbacks and planted 4 metres or greater from the foundation walls of the approved development.
  - b. The pot size of the replacement trees must be a minimum 45 litres.
  - c. All replacement trees must be a minimum of 3 metres in height.
  - d. All replacement trees must have the potential to reach a mature height greater than 10 metres.

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

#### **40. Final Certification by Project Arborist**

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

1. All tree protection requirements complied with the as approved tree protection plan for the duration of demolition and/or construction works; and
2. All completed works relating to tree protection and maintenance have been carried out in compliance with the conditions of consent and approved plans; and
3. Dates, times, and reasons for all site attendance; and
4. All works undertaken to maintain the health of retained trees; and
5. Details of tree protection zone maintenance for the duration of works.

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

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

#### **41. Damage to Council Assets**

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

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

#### **42. Retaining Walls**

All retaining walls must be constructed as part of the development and prior to the issue of an Occupation Certificate.

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

#### **43. Construction of Engineering Works.**

All engineering works identified in this consent are to be completed and a Compliance Certificate issued prior to the release of the Occupation Certificate or Subdivision Certificate.

*Reason: To ensure engineering works are completed.*

## **DEMOLITION WORK BEFORE DEMOLITION WORK COMMENCES**

Condition
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#### **44. Site Sign**

1. A sign must be erected in a prominent position on any site on which any approved work involving excavation, erection or demolition of a building is being carried out detailing:
  - a. The name, address, and telephone number of the Principal Certifier.
  - b. The name of the principal contractor (if any) for any demolition or building work and a telephone number on which that person may be contacted outside working hours; and
  - c. Unauthorised entry to the work site is prohibited.
2. The sign must be maintained during excavation, demolition and building work is being carried out and must be removed when the work has been completed.

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

#### **45. Protection of Adjoining Areas**

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

1. Could cause a danger, obstruction, or inconvenience to pedestrian or vehicular traffic.
2. Could cause damage to adjoining lands by falling objects; and/or
3. Involve the enclosure of a public place or part of a public place; and/or
4. Have been identified as requiring a temporary hoarding, fence, or awning within the Council approved Construction Management Plan (CMP).

*Note: Notwithstanding the above, Council's separate written approval is required prior to the erection of any structure or other obstruction on public land.*

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

#### **46. Notice of Commencement for Demolition**

At least one week before demolition work commences, written notice must be provided to council and the occupiers of neighbouring premises of the work commencing. The notice must include:

1. Name
2. Address,
3. Contact telephone number,
4. Licence type and license number of any demolition waste removal contractor and, if applicable, asbestos removal contractor,
5. The contact telephone number of council and
6. The contact telephone number of SafeWork NSW (4921 2900).

*Note: The written notice to Council can be sent to [devmail@hornsby.nsw.gov.au](mailto:devmail@hornsby.nsw.gov.au).*

*Reason: To advise neighbours about the commencement of demolition work and provide contact details for enquiries.*

#### **47. Toilet Facilities**

1. To provide a safe and hygienic workplace, toilet facilities must be available or be installed at the works site before works begin and must be maintained until the works are completed at a ratio of one toilet for every 20 persons employed at the site.
2. Each toilet must:
  - a. Be a standard flushing toilet connected to a public sewer; or
  - b. Be a temporary chemical closet approved under the *Local Government Act 1993*.

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

#### **48. Erosion and Sediment Control Measures**

Install and maintain adequate sediment and erosion control measures for the duration of all works, until such a time that sediment, sediment laden water or any other material/substance can no longer migrate from the premises. The measures are to be installed and maintained in such a manner as to prevent sediment, sediment-laden water, or any other materials and substances migrating from the site onto neighbouring land, the roadway, waters and/or into the stormwater system, and in accordance with:

1. The publication *Managing Urban Stormwater: Soils and Construction 2004* (4th edition) - 'The Blue Book'.
2. *Protection of the Environment Operations Act 1997*; and
3. The approved plans

Controls are to be monitored and adjusted where required throughout the works to ensure compliance with the above

*Note: On the spot penalties may be issued for any non-compliance with this requirement without any further notification or warning. If you are unsure in how to achieve compliance with this condition during works, you may need to engage the services of a suitably qualified environmental, soil or geotechnical consultant to assist.*

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

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

1. Trees to be retained and numbered T1, T2, T4, and T5 as identified on the Tree Location Plan prepared by Urban Arbor, dated 23 July 2024 must have tree protection measures for the ground, trunk and canopy installed by the project arborist as follows:
  - a. For the duration of demolition works, in accordance with the Tree Protection Plan.
  - b. For the duration of construction works, in accordance with Tree Protection Plan.
2. Tree protection fencing for the trees to be retained must be installed by the engaged AQF 5 project arborist and consist of 1.8m high temporary fencing panels installed in accordance with Australian Standard AS4687-2007 Temporary fencing and hoardings.
3. The installation of all required tree protection fencing must include shade cloth attached to the fencing to reduce transport of dust, particulates, and liquids from entering the tree protection zone.

*Reason: To protect trees during construction.*

#### **50. Waste Management Details**

Prior to the commencement of any works, the on-going waste collection service must be cancelled, and the bins retrieved by the waste collection service provider.

*Note: For residential properties, Council is the waste collection service provider.*

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

#### **51. Garbage Receptacle**

A garbage receptacle must be provided at the work site before works begin and must be maintained until all works are completed.

1. The garbage receptacle must have a tight fitting lid and be suitable for the reception of food scraps and papers.
2. The receptacle lid must be kept closed at all times, other than when garbage is being deposited.
3. Food scraps must be placed in the garbage receptacle and not in demolition and construction waste bins.

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

### **DURING DEMOLITION WORK**

Condition
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#### **52. Hours of Work**

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

*Reason: To protect the amenity of neighbouring properties.*

#### **53. Demolition**

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

1. Demolition material must be disposed of to an authorised recycling and/or waste disposal site and/or in accordance with an approved waste management plan; and
2. Demolition works, where asbestos material is being removed, must be undertaken by a contractor that holds an appropriate licence issued by SafeWork NSW in accordance with the Work Health and Safety Regulation 2017 and be appropriately transported and disposed of in accordance with the Protection of the Environment Operations (Waste) Regulation 2014; and
3. On construction sites where any building contains asbestos material, a standard commercially manufactured sign containing the words 'DANGER ASBESTOS REMOVAL IN PROGRESS' and measuring not less than 400mm x 300mm must be displayed in a prominent position visible from the street.

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

#### **54. Environmental Management (Air Pollution)**

The Applicant must take all reasonable steps to minimise dust generated during all works (including remediation, demolition, earthworks and construction) authorised by this consent. During works, the Applicant must ensure that:

1. Exposed surfaces and stockpiles are suppressed by regular watering.
2. All trucks entering or leaving the site with loads have their loads covered.
3. Trucks associated with the development do not track dirt onto the public road network.
4. Public roads used by these trucks are kept clean; and
5. Land stabilisation works are carried out progressively on site to minimise exposed surfaces.

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

#### **55. Council Property**

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

*Reason: To protect public land.*

#### **56. Disturbance of Existing Site**

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

*Reason: To protect the natural features of the site.*

#### **57. Soil Management (Fill)**



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

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

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

#### **58. Removal of Trees**

1. This development consent permits the removal of tree numbered T3 as identified in the Arboricultural Impact Assessment prepared by Urban Arbor dated 23 July 2024.
2. No consent is granted for the removal of trees numbered T1, T2, T4, and T5 as these trees contribute to the established landscape amenity of the area/streetscape.

*Note: The removal of any other trees from the site requires separate approval by Council in accordance with Part 1B.6 Tree and Vegetation Preservation of the Hornsby Development Control Plan, 2024.*

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

#### **59. Waste Management**

All work must be carried out in accordance with the approved waste management plan.

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

#### **60. Prohibited Actions within the Fenced Tree Protection Zone**

The following activities are prohibited within the approved fenced tree protection zones unless otherwise approved by Council:

1. Soil cutting or filling, including excavation and trenching.
2. Soil cultivation, disturbance, or compaction.
3. Stockpiling storage or mixing of materials.
4. The parking, storing, washing, and repairing of tools, equipment, and machinery.

5. The disposal of liquids and refuelling.
6. The disposal of building materials.
7. The siting of offices or sheds.
8. Any action leading to the impact on tree health or structure.

*Reason: To protect trees during demolition.*

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

The appointed project arborist must monitor and record any and all necessary actions required to maintain tree health and condition for trees to be retained on the approved plans.

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

#### **62. Maintaining Tree Protection Measures**

Tree Protection Measures must be maintained by the project arborist in accordance with the conditions of this consent for the duration of works.

*Reason: To protect trees during demolition.*

#### **63. Approved Works within Tree Protection Zone Incursions**

1. Where tree root pruning is required for the installation of piers, driveway or underground services, the pruning must be overseen by the AQF 5 project arborist and must be undertaken as follows:
  - a. Using sharp secateurs, pruners, handsaws, or chainsaws with the final cut being clean.
  - b. The maximum diameter of roots permitted to be cut is 30mm.
2. No changes of grade within the Tree Protection Zone of trees to be retained on the approved plans, are permitted.
3. To minimise impacts within the Tree Protection Zone (TPZ) of trees to be retained on the approved plans, the installation of services must be undertaken as follows:
  - a. The AQF 5 project arborist must be present to oversee the installation of any underground services which enter or transect the tree protection.
  - b. The installation of any underground services which either enter or transect the designated TPZ must be undertaken manually.
  - c. For manually excavated trenches the AQF 5 project arborist must designate roots to be retained. Manual excavation may include the use of pneumatic and hydraulic tools.
4. Where scaffolding is required, ground protection must be installed beneath the scaffolding in the following order:
  - a. Installation of a 100mm deep layer of woodchip.

*Reason: To protect trees during demolition.*

#### **64. Building Materials and Site Waste**

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

*Reason: To protect trees during demolition.*

#### **65. Unexpected Finds**

Should the presence of asbestos or soil contamination, not recognised during the application process be identified during any stage of works, the applicant must immediately notify the Principal Certifier and Council (compliance@hornsby.nsw.gov.au).

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

#### **66. Erosion and Sediment Control**

1. Works are not to result in the discharge of sediment and or run-off onto the adjoining properties or public land.
2. The person having the benefit of this consent must ensure that sediment and other materials are not tracked onto the roadway by vehicles leaving the site.

*Note: On the spot penalties may be issued for any non-compliance with this requirement without any further notification or warning.*

*Reason: To minimise impacts on neighbouring properties and public land.*

#### **67. Soil and Water Management (Stockpiles)**

1. Stockpiles of topsoil, sand, aggregate, soil or other material shall be protected with adequate sediment controls and must not be located on any drainage line or easement, natural watercourse, footpath or roadway.
2. The storage of stockpiled topsoil, sand, aggregate, soil or other materials must not result in the discharge of sediment or run-off onto the adjoining properties or public land.

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

#### **68. Storage and Removal of Waste**

1. All demolition and/or construction waste must be stored in a waste receptacle and be removed from the site at frequent intervals. Materials are to be wholly contained within the waste receptacle and not overflowing.
2. All garbage and recyclable materials generated during work must be stored in a waste receptacle and be removed from the site at frequent intervals. Materials are to be wholly contained within the waste receptacle and not overflowing.

*Reason: To ensure the site is maintained to an appropriate standard cleanliness and prevent any nuisance or danger to health, safety or the environment.*

### **ON COMPLETION OF DEMOLITION WORK**

Condition
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**69. Damage to Council Assets**

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

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

**ITEM 2**

**3 DA/1332/2024 - ALTERATIONS & ADDITIONS TO EXISTING DWELLING AND CONSTRUCTION OF A SWIMMING POOL - 110 HANNAH STREET, BEECROFT**

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**DA No:** DA/1332/2024 - PAN-490733 (Lodged on 26 November 2024)

**Description:** Alterations & additions to the existing dwelling and construction of a swimming pool

**Property:** Lot 159 DP 1212847, No. 110 Hannah Street, Beecroft

**Applicant:** Mr Thomas David Drewitt Smith

**Owner:** Mrs Jillian Kathryn Drewitt Smith & Mr Thomas David Drewitt Smith

**Estimated Value:** \$349,800

**Ward:** C Ward

**Clause 4.6 Request:** Clause 4.3 Building height of the HLEP

**Submissions:** Nil

**LPP Criteria:** Proposal contravenes a development standard by more than 10%

**Author:** Rachel Hughes, Town Planner

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

**RECOMMENDATION**

- A. THAT the Hornsby Local Planning Panel, exercising the functions of Council as the consent authority, vary Clause 4.3 'Height of buildings' Development Standard pursuant to Clause 4.6 of the Hornsby Local Environmental Plan 2013 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. THAT the Hornsby Local Planning Panel, exercising the functions of Council as the consent authority, approve Development Application No. DA/1332/2024 for alterations and additions to the existing dwelling and construction of a swimming pool at Lot 159 DP 1212847, No. 110 Hannah Street, Beecroft subject to the conditions of consent in Schedule 1 of LPP Report No. LPP2/25.

## EXECUTIVE SUMMARY

- The application involves alterations and additions to the existing dwelling and construction of a swimming pool.
- The proposal does not comply with Clause 4.3 'Height of buildings' Development Standard of the Hornsby Local Environmental Plan 2013. The applicant has made a submission in accordance with Clause 4.6 'Exceptions to development standards' of the Hornsby Local Environmental Plan 2013 to contravene the maximum 8.5 metre height of buildings development standard. The submission is considered well founded and is supported.
- Nil submissions have been received in respect of the application.
- The application is required to be determined by the Hornsby Council Local Planning Panel as the proposal contravenes a development standard by more than 10%.
- It is recommended that the application be approved.

## SITE

The 787.5m<sup>2</sup> site is located on the northern side of Hannah Street. It contains a single storey dwelling house with basement garage and storage, an inground swimming pool, and landscaping structures including retaining walls and paths. It also contains seven trees.

The site is located within the NorthConnex corridor.

The site experiences approximately 2m fall towards the east side boundary. It is not identified as steep (slope >20%) land.

The site is not identified as bushfire prone nor flood prone land.

The site is not burdened by any easements or restrictions on use. A Sydney Water Sewer Line terminates at the rear (northern) corner.

The site does not contain a heritage listed item and is not located within a heritage conservation area. It directly adjoins local heritage landscape item number 98 (identified as "street trees" in Schedule 5 of the HLEP) which is located along Hannah Street.

Council's mapping does not identify any significant or protected ecological communities on or adjoining the site.

The site is serviced by existing water supply, power supply, telecommunications, wastewater, stormwater, and access infrastructure.

## PROPOSAL

The application proposes alterations and additions to an existing dwelling house and construction of a swimming pool.

The lower-ground floor would comprise an expanded storage room with new external access stairs, and an unchanged single garage.

The reconfigured and expanded ground floor would comprise:

- Entry porch and hallway,
- Open plan kitchen / dining / kitchen,
- Laundry,

- Study,
- Bedroom with BIR,
- Bathroom,
- Living, and
- Deck with barbecue area.

The proposed new first floor would comprise:

- Master bedroom with BIR and ensuite,
- Two bedrooms with BIR, and
- Bathroom.

1. Partial demolition of the existing dwelling is required to accommodate the proposed alterations and additions.
2. No trees are proposed for removal.

## 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 not be inconsistent with the Greater Sydney Region Plan - A Metropolis of Three Cities and the North District Plan.

### 2. STATUTORY CONTROLS

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

## 2.1 Hornsby Local Environmental Plan 2013

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

### 2.1.1 Zoning of Land and Permissibility

The 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 '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 10.05m and does not comply with this provision.

### 2.1.3 Exceptions to Development Standards

The application has been assessed against the requirements of Clause 4.6 of the HLEP. This clause provides flexibility in the application of the development standards in circumstances where strict compliance with those standards would, in any particular case, be unreasonable or unnecessary or tender to hinder the attainment of the objectives of the zone.

The proposal exceeds the 8.5m development standard in Clause 4.3 'Height of buildings' of the Hornsby Local Environmental Plan 2013.

The objective of Clause 4.3 'Height of buildings' is *"to permit a height of buildings that is appropriate for the site constraints, development potential and infrastructure capacity of the locality"*.

The applicant has made a submission in support of the contravention to the development standard in accordance with Clause 4.6 of the HLEP. Clause 4.6 provides that development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

- That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- That there are sufficient environmental planning grounds to justify contravening the development standard.*

Council must be satisfied that the written request provided by the applicant under Clause 4.6 addresses both the unreasonable and unnecessary test and demonstrates sufficient environmental planning grounds to justify contravening the development standard. These matters are discussed below.



### 2.1.3.1 Unreasonable or Unnecessary Clause 4.6(3)(a)

There are five common methods by which an applicant can demonstrate that compliance with a development standard is unreasonable or unnecessary in the circumstances of the development. Initially proposed for objections under clause 6 of SEPP 1 in the decision of *Wehbe v Pittwater Council [2007]* NSWLEC 827 Pearson C summarised and applied these methods to written requests made under Clause 4.6 in *Four2Five Pty Ltd v Ashfield Council [2015]* NSWLEC 1009 [61-62]. These five methods are generally as follows:

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

It is not required to demonstrate that a development meets multiple methods as listed above, and the satisfaction of one can be adequate to demonstrate that the development standard is unreasonable or unnecessary.

The written request prepared by BBF Town Planners, dated November 2024, provides a detailed assessment of the proposal with respect to the development standard sought to be contravened. The request argues that:

*"The proposal provides for a new first floor level and will continue to present as a 2 storey dwelling with a basement level garage. The breach relates to the existing excavated garage level forming existing ground level. The proposed works are not antisympathetic to the natural landform.*

*Notwithstanding the building height breaching elements, the proposal is consistent with [the] objective."*

Council notes that the objective of Clause 4.3 'Height of buildings' is *"to permit a height of buildings that is appropriate for the site constraints, development potential and infrastructure capacity of the locality"*.

With reference to the reasoning provided by the applicant above, Council does not object to the conclusion that the proposed additions meet the objectives of Clause 4.3. In reaching this conclusion the following points are noted:

- The height of a building is defined under HLEP as *"the vertical distance from ground level (existing) to the highest point of the building."* The site has been subject to previous earthworks to construct the existing dwelling house with under-storey garage, storage, and subfloor areas.
- The site is constrained by the existing floor to ceiling heights of the dwelling house and the proposed non-compliance would be limited to a small portion of the roof form due to the existing garage and storage area.
- Furthermore, the application generally complies with the requirements for setbacks, site coverage, landscaping, privacy and sunlight access. The application proposes a 2.5m floor to

ceiling height for the proposed first floor level and a roof pitch which matches the existing dwelling. These minimise the overall height of the proposed development.

- Alternative extensions to the ground floor may result in a reduction and possible non-compliance with prescribed setbacks and landscaping measures. Further, internal accessibility would be diminished resulting in adverse impacts to residential amenity.
- The non-compliance would not result in any adverse amenity impacts to adjoining properties.
- The objectives of the standard are achieved notwithstanding non-compliance with the standard.

For the reasons outlined above, it is considered that the written request to contravene the height of building standard adequately demonstrates that the objectives of the 8.5m development standard contained within Clause 4.3 'Height of buildings' of the HLEP are achieved, notwithstanding non-compliance with the standard.

### 2.1.3.2 Environmental Planning Grounds - Clause 4.6(3)(b)

In addition to demonstrating that compliance is unreasonable or unnecessary, Clause 4.6(3)(b) requires that there are sufficient environmental planning grounds to justify contravening the development standard. In demonstrating that sufficient environmental planning grounds exist it must be demonstrated that the planning grounds are particular to the circumstances of the development on the subject site (summarised from *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 [60]).

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

- *"The breaching elements are associated with existing disturbed levels of the site relating to the existing lower level garage. The first floor addition above the garage therefore extends above the 8.5m height standard.*
- Given the majority of the dwelling achieves compliance it is clear that the breach relates previously excavated ground levels in the basement.
- *The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:*
  - *The proposal promotes the orderly and economic use and development of land (1.3(c)).*
  - *The development represents good design (1.3(g))."*

Council considers that the environmental planning grounds stated within the written request are sufficient with respect to Clause 4.6(3)(b) and that the stated grounds are specific to the proposed development and the circumstances of the development site. It is therefore considered that the written request adequately demonstrates compliance with the clause and is acceptable in this regard.

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

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

Local Planning Panels constituted under the *Environmental Planning and Assessment Act 1979* exercise consent authority functions on behalf of a Council and are not delegates of Council. Therefore, Local Planning Panels may determine a development application notwithstanding, a numerical non-compliance in excess of 10%.

Accordingly, it is considered that the written request satisfactorily responds to the relevant matters required to be addressed under Clause 4.6(3) and that the Panel, as the consent authority, may rely upon the written request and grant development consent to the development application.

#### **2.1.4 Heritage Conservation**

Clause 5.10 of the HLEP sets out heritage conservation provisions for Hornsby Shire. The site does not include a heritage item and is not located in a heritage conservation area. It directly adjoins local heritage landscape item number 98 (identified as “street trees” in Schedule 5 of the HLEP) which is located along Hannah Street.

The proposed development does not alter the building footprint forward of the building line and is unlikely to have any effect on the viability or heritage significance of the street trees on Hannah Street. The proposal is therefore consistent with Clause 5.10 ‘Heritage conservation’ of the HLEP and is acceptable in this regard.

#### **2.1.5 Earthworks**

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

Council’s assessment of the proposed works notes that excavation of up to 2m depth is proposed to construct the inground swimming pool. Council’s assessment of these proposed works concludes that the earthworks are reasonable in scale and will not result in unacceptable impacts to adjoining properties, drainage patterns, or soil stability.

### **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 Hornsby Development Control Plan 2013 (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 includes an assessment of vegetation impacts, in accordance with Part 1.2.6.1 Tree Preservation of the HDCP.

#### **2.2.2 Chapter 6 Water Catchments**

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

Subject to the implementation of sediment and erosion control measures and stormwater management to protect water quality, the proposal would meet the aims of the Policy.

## **2.3 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 State Environmental Planning Policy (Sustainable Buildings) 2022**

The application has been assessed against the requirements of the State Environmental Planning Policy (Sustainable Buildings) 2022 which seeks to encourage sustainable residential development. The proposal includes a BASIX Certificate (Certificate No. A1767715) in accordance with the requirements of the SEPP including the list of commitments to be complied with at the construction stage and during the use of the premises. The BASIX certificate achieves the minimum scores for thermal comfort, water and energy. The proposal is acceptable in this regard.

## **2.5 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:

<b>HDCP - Part 3.1 Dwelling Houses</b>
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Control	Proposal	Requirement	Complies
Site Area	787.5m <sup>2</sup>	N/A	N/A
Building Height	10.05m	max. 8.5m	No
No. storeys	2 + basement carparking	max. 2 + attic	Yes
Site Coverage	148m <sup>2</sup> (18.8%)	max. 50%	Yes
Floor Area	226.9m <sup>2</sup>	380m <sup>2</sup>	Yes
Setbacks			
- <i>Front (south)</i>	7.5m	Maintain streetscape character	Yes
- <i>Side (east)</i>			
1. <i>Ground floor</i>	1.2m	0.9m	Yes
2. <i>First floor</i>	2.1m	1.5m	Yes
- <i>Side (west)</i>			
3. <i>Ground floor</i>	1.9m	0.9m	Yes
4. <i>First floor</i>	2.7m	1.5m	Yes
5. <i>Swimming pool</i>	2.8m	0.9m	Yes
- <i>Rear (north)</i>			
6. <i>Ground floor</i>	17.3m	3m	Yes
7. <i>First floor</i>	17.3m	8m	Yes
<i>Swimming pool</i>	10.1m	1m	Yes
Landscaped Area (% of lot size)	48.9% (385m <sup>2</sup> )	min. 30%	Yes
Private Open Space			
- <i>minimum area</i>	>24m <sup>2</sup>	24m <sup>2</sup>	Yes
- <i>minimum dimension</i>	>3m	3m	Yes
Car Parking	No change	2 spaces	N/A

As detailed in the above table, there is a non-compliance with the HDCP building height controls. The height non-compliance is discussed under Sections 2.1.2 and 2.1.3 of this report above. The development complies with all other relevant requirements of the HDCP. A discussion on performance requirements is provided below and Part 1.3 General Controls are discussed in Section 3 of the report.

### 2.6.1 Sunlight Access

The desired outcomes of Part 3.1.5 Sunlight Access of the HDCP are to provide reasonable sunlight access to open space areas on development sites and neighbouring sites.

This is supported by prescriptive measures which require residential development to allow a minimum of 3 hours unobstructed sunlight to reach at least 50% of the private open space on the development site and adjoining sites, between 9am and 3pm on 22 June.

The development application includes sunlight access diagrams which show that the private open space (behind the building line) of both the adjoining properties will be unaffected by the proposed development.

The proposed development is consistent with Part 3.1.5 Sunlight Access of the HDCP and is acceptable in this regard.

### **2.6.2 Privacy**

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

This is supported by prescriptive measures, including 3.1.6(d) which states: *“decks and the like that need to be located more than 600mm above existing ground should not face a window of another habitable room, balcony or private open space of another dwelling located within 9 metres of the proposed deck unless appropriately screened.”*

The proposed rear deck is located 1.02m above existing ground level at its eastern side. This side of the deck is enclosed by the dwelling house. The west side of the deck is located 0.11m above existing ground level. The northern side of the deck faces the site’s own private open space. For the purposes of 3.1.6(d), the deck is not considered elevated more than 600mm above existing ground level and privacy screening on the western elevation is not required.

The proposed development is consistent with Part 3.1.6 Privacy of the HDCP and is acceptable in this regard.

### **2.6.3 Heritage**

The subject site does not contain a heritage listed item and is not located within a heritage conservation area. It directly adjoins local heritage landscape item number 98 (identified as “street trees” in Schedule 5 of the HLEP) which is located along Hannah Street.

The proposed development does not alter the building footprint forward of the building line and is unlikely to have any effect on the viability or heritage significance of the street trees on Hannah Street. The proposal is therefore consistent with Part 9 Heritage of the HDCP and is acceptable in this regard.

## **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.

## **2.8 Housing and Productivity Contribution**

The Housing and Productivity Contribution does not apply to the development as it would not result in any additional lots nor any additional floor area for industrial/commercial/retail development.

Accordingly, the requirement for a monetary Housing and Productivity contribution is not 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**

Part 1.2.6.1 Tree Preservation of the HDCP sets out the requirements for tree protection, including which trees require Council approval prior to removal.

The proposed works include pruning of T5 and no tree removal.

The application was referred to Council's Tree Management Team for comment. No objections were raised subject to conditions.

Subject to the recommended conditions of consent in Schedule 1, the proposed development is consistent with Part 1.2.6.1 Tree Preservation of the HDCP.

##### **3.1.2 Stormwater Management**

The desired outcomes of Part 1.3.1.2 Stormwater Management of the HDCP are *“development that protects 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”*.

The development application is accompanied by a stormwater concept plan prepared by Nitma Consulting Pty Ltd, dated 2 October 2024, which shows all stormwater from the proposed development connected to the existing stormwater infrastructure, which drains to the street.

Subject to conditions, the proposed development is consistent with Part 1.3.1.2 Stormwater Management of the HDCP and is acceptable in this regard.

#### **3.2 Built Environment**

##### **3.2.1 Built Form**

The proposal would be consistent with residential development within the locality.

##### **3.2.2 Traffic**

The proposal would not intensify traffic generation.

#### **3.3 Social Impacts**

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

The location of the development is in close proximity to Beecroft Railway Station, Beecroft Village commercial centre and Pennant Hills Golf Club, providing recreational, health and education facilities for future residents.

**3.4 Economic Impacts**

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

**4. SITE SUITABILITY**

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

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

**5. PUBLIC PARTICIPATION**

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

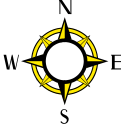
**5.1 Community Consultation**

The proposed development was placed on public exhibition and was notified to adjoining and nearby landowners between 27 November 2024 and 18 December 2024 in accordance with the Hornsby Community Engagement Plan. During this period, Council received nil submissions. The map below illustrates the location of those nearby landowners who were notified of the development site.



**NOTIFICATION PLAN**



<ul style="list-style-type: none"> <li>• PROPERTIES NOTIFIED</li> </ul>	<ul style="list-style-type: none"> <li>✕ SUBMISSIONS RECEIVED</li> </ul>	<div style="border: 2px solid red; width: 40px; height: 40px; display: inline-block;"></div>	PROPERTY SUBJECT OF DEVELOPMENT 
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## 5.2 Public Agencies

The development application was not referred to any public agencies for comment.

## 6. THE PUBLIC INTEREST

Section 4.15(1)(e) of the Act requires Council to consider “*the public interest*”.

The public interest is an overarching requirement, which includes the consideration of the matters discussed in this report. Implicit to the public interest is the achievement of future built outcomes adequately responding to and respecting the future desired outcomes expressed in environmental planning instruments and development control plans.

The application is considered to have satisfactorily addressed Council’s and relevant agencies’ criteria and would provide a development outcome that, on balance, would result in a positive impact for the community. Accordingly, it is considered that the approval of the proposed development would be in the public interest.

## CONCLUSION

The application proposes alterations and additions to a dwelling house, comprising a first-floor addition, ground floor expansion, and construction of an in-ground 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*.

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

The reasons for this decision are:

- The request under Clause 4.6 of Hornsby Local Environmental Plan 2013 to contravene the ‘Height of buildings’ development standard is well founded. Strict compliance with the development standard is considered unreasonable and unnecessary in the circumstances of the case and sufficient environmental planning grounds have been submitted to justify the contravention to the development standard.
- 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.  Clause 4.6 Request
2.  Achitectural Plans
3.  Pool Details

File Reference: DA/1332/2024/PUBLICACCESS

Document Number: D09036859

## SCHEDULE 1

# GENERAL CONDITIONS

**ITEM 3**

Condition
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### 1. Approved Plans and Supporting Documentation

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

#### Approved Plans

Plan No.	Plan Title	Drawn by	Dated	Council Reference
DA09	Proposed Site & Roof Plan	Andy Lehman Design	October 2024	
DA10	Proposed Garage Plan	Andy Lehman Design	October 2024	
DA11	Proposed Ground Floor & Landscape Plan	Andy Lehman Design	October 2024	
DA12	Proposed Upper Floor Plan	Andy Lehman Design	October 2024	
DA13	Proposed South Elevation	Andy Lehman Design	October 2024	
DA14	Proposed North Elevation	Andy Lehman Design	October 2024	
DA15	Proposed East Elevation	Andy Lehman Design	October 2024	
DA16	Proposed West Elevation	Andy Lehman Design	October 2024	
DA17	Proposed Section AA	Andy Lehman Design	October 2024	
DA18	Proposed Section BB	Andy Lehman Design	October 2024	
DA24	Proposed Section CC	Andy Lehman Design	October 2024	
DA25	Proposed Section DD	Andy Lehman Design	October 2024	
P03 Rev A	Pool Plan	Crystal Pools	12 December 2024	
P04 Rev A	Pool Sections	Crystal Pools	12 December 2024	

#### Supporting Documentation

Document Title	Prepared by	Dated	Council Reference
Arboricultural Impact Assessment	Treeism Arboricultural Services	October 2024	D09017548
Tree Protection Plan	Treeism Arboricultural Services	October 2024	D09017547
BASIX Certificate No. A1767715	Anthony Lehman	8 October 2024	D09017550
Stormwater Concept Plan & Erosion and Sediment Control Plan (Sheets 1-8)	NiTmA Consulting	2 October 2024	D09017583
Waste Management Plan	Thomas Drewitt Smith	26 September 2024	D09017585

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

## 2. No Clearing of Vegetation

1. Unless otherwise exempt, no vegetation is to be cleared prior to issue of a Construction Certificate.
2. Details demonstrating compliance are to be submitted to the Certifier prior to issue of Construction Certificate.

*Reason: To protect vegetation on the site.*

## 3. Construction Certificate

1. A Construction Certificate is required to be approved by Council or a Principal Certifier prior to the commencement of any construction works under this consent.
2. The Construction Certificate plans must be consistent with the Development Consent plans.

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

## 4. Section 7.12 Development Contributions

1. In accordance with Section 4.17(1) of the *Environmental Planning and Assessment Act 1979* and the Hornsby Shire Council Section 7.12 Development Contributions Plan 2019-2029, **\$3,018.00** must be paid towards the provision, extension or augmentation of public amenities or public services, based on development costs of **\$302,105.00**.
2. The value of this contribution is current as of **29 January 2025**. If the contributions are not paid within the financial quarter that this consent is granted, the contributions payable will be adjusted in accordance with the provisions of the Hornsby Shire Council Section 7.12 Development Contributions Plan and the amount payable will be calculated at the time of payment in the following manner:

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

Where:

- \$C<sub>PY</sub>** is the amount of the contribution at the date of Payment
- \$C<sub>DC</sub>** is the amount of the contribution as set out in this Development Consent
- CPI<sub>PY</sub>** is the latest release of the Consumer Price Index (Sydney - All Groups) at the date of Payment as published by the ABS.
- CPI<sub>DC</sub>** is the Consumer Price Index (Sydney - All Groups) for the financial quarter at the date of this Development Consent.

3. The monetary contributions shall be paid to Council:
- Prior to the issue of the Subdivision Certificate where the development is for subdivision; or
  - Prior to the issue of the first Construction Certificate where the development is for building work; or
  - Prior to issue of the Subdivision Certificate or first Construction Certificate, whichever occurs first, where the development involves both subdivision and building work; or
  - Prior to the works commencing where the development does not require a Construction Certificate or Subdivision Certificate.

*Note: Should the cost of works increase at Construction Certificate stage, a revised contribution amount will be calculated in accordance with the Hornsby Shire Council Section 7.12 Development Contributions Plan.*

*Note: It is the professional responsibility of the Principal Certifier to ensure that the monetary contributions have been paid to Council in accordance with the above timeframes.*

*Note: In accordance with Ministerial Directions, the payment of contribution fees for development with a cost of works of over \$10 million can be deferred to prior to Occupation Certificate.*

*Note: The Hornsby Shire Council Section 7.12 Development Contributions Plan may be viewed at [www.hornsby.nsw.gov.au](http://www.hornsby.nsw.gov.au) or a copy may be inspected at Council's Administration Centre during normal business hours.*

*Note: To arrange a Payment Advice for the monetary contributions, please contact Council's Customer Service Team on 9847 6666.*

*Reason: To address the increased demand for community infrastructure resulting from the approved development.*

## 5. Tree Pruning

- This development consent only permits the pruning of tree numbered T5 as identified in the Tree Location Plan and Arboricultural Impact Report prepared by Treeism Arboricultural Services dated October 2024.
- Works can be undertaken in the form of canopy modification as follows:

Tree number	Work prescribed
T5	As per AIA

- a. All specified pruning works must be less than 10 percent.
- b. All pruning work must be undertaken by an arborist with minimum AQF3 qualifications.

*Note: The pruning of any other trees from the site requires separate approval by Council in accordance with Part 1.2.6 Tree and Vegetation Preservation of the Hornsby Development Control Plan 2024.*

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

## BUILDING WORK BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

Condition
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### 6. Building Code of Australia

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

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

### 7. Contract of Insurance (Residential Building Work)

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

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

### 8. Notification of Home Building Act 1989 Requirements

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

1. In the case of work for which a principal contractor is required to be appointed:
  - a. The name and licence number of the principal contractor; and
  - b. The name of the insurer by which the work is insured under Part 6 of that Act.
2. In the case of work to be done by an owner-builder:
  - a. The name of the owner-builder; and

- b. If the owner-builder is required to hold an owner-builder's permit under that Act, the number of the owner-builder's permit.

*Note: If arrangements for doing the residential building work are changed while the work is in progress so that the information notified becomes out of date, further work must not be carried out unless the Principal Certifier for the development to which the work relates (not being Council) has given Council written notification of the updated information.*

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

#### **9. Stormwater Drainage - Dwellings**

The stormwater drainage system for the development must be designed for an average recurrence interval (ARI) of 20 years and be gravity drained in accordance with the following requirements:

1. Connected to the existing internal drainage system.

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

#### **10. Appointment of a Project Arborist**

To ensure the trees that must be retained are protected, a project arborist with AQF Level 5 qualifications must be appointed to assist in ensuring compliance with the conditions of consent and provide monitoring reports as specified by the conditions of consent.

Details of the appointed project arborist must be submitted to Council and the PCA with the application for the construction certificate/subdivision works certificate.

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

### **BEFORE BUILDING WORK COMMENCES**

Condition
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#### **11. Site Sign**

1. A sign must be erected in a prominent position on any site on which any approved work involving excavation, erection or demolition of a building is being carried out detailing:
  - a. The name, address, and telephone number of the Principal Certifier.
  - b. The name of the principal contractor (if any) for any demolition or building work and a telephone number on which that person may be contacted outside working hours; and
  - c. Unauthorised entry to the work site is prohibited.
2. The sign must be maintained during excavation, demolition and building work is being carried out and must be removed when the work has been completed.

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

#### **12. Protection of Adjoining Areas**

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

1. Could cause a danger, obstruction, or inconvenience to pedestrian or vehicular traffic.
2. Could cause damage to adjoining lands by falling objects; and/or
3. Involve the enclosure of a public place or part of a public place; and/or
4. Have been identified as requiring a temporary hoarding, fence, or awning within the Council approved Construction Management Plan (CMP).

Note: Notwithstanding the above, Council's separate written approval is required prior to the erection of any structure or other obstruction on public land.

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

### 13. Toilet Facilities

1. To provide a safe and hygienic workplace, toilet facilities must be available or be installed at the works site before works begin and must be maintained until the works are completed at a ratio of one toilet for every 20 persons employed at the site.
2. Each toilet must:
  - a. Be a standard flushing toilet connected to a public sewer; or
  - b. Be a temporary chemical closet approved under the *Local Government Act 1993*; or
  - c. Have an on-site effluent disposal system approved under the *Local Government Act 1993*.

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

### 14. Erosion and Sediment Control Measures

Install and maintain adequate sediment and erosion control measures for the duration of all works, until such a time that sediment, sediment laden water or any other material/substance can no longer migrate from the premises. The measures are to be installed and maintained in such a manner as to prevent sediment, sediment-laden water, or any other materials and substances migrating from the site onto neighbouring land, the roadway, waters and/or into the stormwater system, and in accordance with:

1. The publication *Managing Urban Stormwater: Soils and Construction 2004* (4th edition) - 'The Blue Book'.
2. *Protection of the Environment Operations Act 1997*; and
3. The approved plans

Controls are to be monitored and adjusted where required throughout the works to ensure compliance with the above

*Note: On the spot penalties may be issued for any non-compliance with this requirement without any further notification or warning. If you are unsure in how to achieve compliance with this condition during works, you may need to engage the services of a suitably qualified environmental, soil or geotechnical consultant to assist.*



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

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

1. Trees to be retained as identified on the Tree Location Plan prepared by Treeism Arboricultural Services, dated October 2024 must have tree protection measures for the ground, trunk and canopy installed by the project arborist as follows:
  - a. For the duration of demolition works, and
  - b. For the duration of construction works.
2. Tree protection fencing for the trees to be retained must be installed by the engaged AQF 5 project arborist and consist of 1.8m high temporary fencing panels installed in accordance with Australian Standard AS4687-2007 Temporary fencing and hoardings.
3. The installation of all required tree protection fencing must include shade cloth attached to the fencing to reduce transport of dust, particulates, and liquids from entering the tree protection zone.

*Reason: To protect trees during construction.*

#### **16. Garbage Receptacle**

A garbage receptacle must be provided at the work site before works begin and must be maintained until all works are completed.

1. The garbage receptacle must have a tight fitting lid and be suitable for the reception of food scraps and papers.
2. The receptacle lid must be kept closed at all times, other than when garbage is being deposited.
3. Food scraps must be placed in the garbage receptacle and not in demolition and construction waste bins.

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

### **DURING BUILDING WORK**

1. Condition
--------------

#### **17. Hours of Work**

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

*Reason: To protect the amenity of neighbouring properties.*

#### **18. Environmental Management (Air Pollution)**

The Applicant must take all reasonable steps to minimise dust generated during all works (including remediation, demolition, earthworks and construction) authorised by this consent. During works, the Applicant must ensure that:

1. Exposed surfaces and stockpiles are suppressed by regular watering.
2. All trucks entering or leaving the site with loads have their loads covered.
3. Trucks associated with the development do not track dirt onto the public road network.
4. Public roads used by these trucks are kept clean; and
5. Land stabilisation works are carried out progressively on site to minimise exposed surfaces.

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

#### **19. Council Property**

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

*Reason: To protect public land.*

#### **20. Disturbance of Existing Site**

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

*Reason: To protect the natural features of the site.*

#### **21. Soil Management (Excavation)**

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

1. All excavated material removed from the site must be classified in accordance with the EPA's Waste Classification Guidelines before it is disposed of at an approved waste management facility and the classification, and the volume of material removed must be reported to the Principal Certifier or Council (where a principal certifier is not required).
2. Tipping dockets for the total volume of excavated material that are received from the licensed waste management facility must be provided to the Principal Certifier prior to the issue of an Occupation Certificate.

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

#### **22. Landfill Not Permitted**

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

*Reason: To minimise environmental impacts from landform modification.*

#### **23. Removal of Trees**

No consent is granted for the removal of trees numbered T1, T2, T3, T4, T5, T6, T7, T8, T9, T10, T11, T12, T13 as these trees contribute to the established landscape amenity of the area/streetscape.

*Note: The removal of any other trees from the site requires separate approval by Council in accordance with Part 1.2.6 Tree and Vegetation Preservation of the Hornsby Development Control Plan, 2024.*

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

#### **24. Survey Report**

A report(s) must be prepared by a registered surveyor and submitted to the Principal Certifier:

1. Prior to the pouring of concrete at each level of the building certifying that:
  - a. The building, retaining walls and the like have been correctly positioned on the site; and
  - b. The finished floor level(s) are in accordance with the approved plans.

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

#### **25. Waste Management**

All work must be carried out in accordance with the approved waste management plan.

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

#### **26. Prohibited Actions within the Fenced Tree Protection Zone**

The following activities are prohibited within the approved fenced tree protection zones unless otherwise approved by Council:

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

*Reason: To protect trees during construction.*

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

The appointed project arborist must monitor and record any and all necessary actions required to maintain tree health and condition for trees to be retained on the approved plans.

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

#### **28. Maintaining Tree Protection Measures**

Tree Protection Measures must be maintained by the project arborist in accordance with the conditions of this consent for the duration of works.

*Reason: To protect trees during construction.*

### **29. Approved Works within Tree Protection Zone Incursions**

1. Where tree root pruning is required for the installation of piers, driveway or underground services, the pruning must be overseen by the AQF 5 project arborist and must be undertaken as follows:
  - a. Using sharp secateurs, pruners, handsaws, or chainsaws with the final cut being clean.
  - b. The maximum diameter of roots permitted to be cut is 30mm.
2. No changes of grade within the Tree Protection Zone of trees to be retained on the approved plans, are permitted.
3. To minimise impacts within the Tree Protection Zone (TPZ) of trees to be retained on the approved plans, the installation of services must be undertaken as follows:
  - a. The AQF 5 project arborist must be present to oversee the installation of any underground services which enter or transect the tree protection.
  - b. The installation of any underground services which either enter or transect the designated TPZ must be undertaken manually.
  - c. For manually excavated trenches the AQF 5 project arborist must designate roots to be retained. Manual excavation may include the use of pneumatic and hydraulic tools.
4. Where scaffolding is required, ground protection must be installed beneath the scaffolding in the following order:
  - a. Installation of a 100mm deep layer of woodchip.

*Reason: To protect trees during construction.*

### **30. Building Materials and Site Waste**

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

*Reason: To protect trees during construction.*

### **31. Unexpected Finds**

Should the presence of asbestos or soil contamination, not recognised during the application process be identified during any stage of works, the applicant must immediately notify the Principal Certifier and Council ([compliance@hornsby.nsw.gov.au](mailto:compliance@hornsby.nsw.gov.au)).

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

### **32. Erosion and Sediment Control**

1. Works are not to result in the discharge of sediment and or run-off onto the adjoining properties or public land.
2. The person having the benefit of this consent must ensure that sediment and other materials are not tracked onto the roadway by vehicles leaving the site.

*Note: On the spot penalties may be issued for any non-compliance with this requirement without any further notification or warning.*

*Reason: To minimise impacts on neighbouring properties and public land.*

**33. Soil and Water Management (Stockpiles)**

1. Stockpiles of topsoil, sand, aggregate, soil or other material shall be protected with adequate sediment controls and must not be located on any drainage line or easement, natural watercourse, footpath or roadway.
2. The storage of stockpiled topsoil, sand, aggregate, soil or other materials must not result in the discharge of sediment or run-off onto the adjoining properties or public land.

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

**34. Storage and Removal of Waste**

1. All demolition and/or construction waste must be stored in a waste receptacle and be removed from the site at frequent intervals. Materials are to be wholly contained within the waste receptacle and not overflowing.
2. All garbage and recyclable materials generated during work must be stored in a waste receptacle and be removed from the site at frequent intervals. Materials are to be wholly contained within the waste receptacle and not overflowing.

*Reason: To ensure the site is maintained to an appropriate standard cleanliness and prevent any nuisance or danger to health, safety or the environment.*

**BEFORE ISSUE OF AN OCCUPATION CERTIFICATE**

Condition
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**35. Fulfilment of BASIX Commitments**

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

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

**36. Final Certification by Project Arborist**

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

1. All tree protection requirements complied with the as approved tree protection plan for the duration of demolition and/or construction works; and
2. All completed works relating to tree protection and maintenance have been carried out in compliance with the conditions of consent and approved plans; and

3. Dates, times, and reasons for all site attendance; and
4. All works undertaken to maintain the health of retained trees; and
5. Details of tree protection zone maintenance for the duration of works.

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

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

### **37. Damage to Council Assets**

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

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

## **OCCUPATION AND ONGOING USE**

Condition
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### **38. Swimming Pool Requirements**

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

1. All wastewater from the pool's filtration system must be disposed of as follows:
  - a. Sand Filter requirements:
    - i. Where a Sydney Water sewer is available - wastewater shall be drained or pumped to the sewer; or
    - ii. Where a Sydney Water sewer is not available (such as rural areas) - wastewater shall be disposed of as follows:
      - a) Discharging to a rubble pit measured 600mm wide x 600mm deep x 3m long, located not less than 3m from any structure or property boundary, OR
      - b) Discharging to a tail out drain to disperse the water over a large, grassed area or paddock, provided that the land fall does not direct water to buildings on the subject or adjoining properties, or create a nuisance to an adjoining property owner, and subject to subclauses iii) and iv) below:
      - c) Wastewater shall not be discharged to a septic tank or an on-site sewage management installation or disposal area; and
      - d) Wastewater shall not be discharged into a reserve, watercourse, easement, or storm-water drainage system or otherwise adversely impact upon an adjoining property.

- b. Cartridge Filter requirements:
  - i. Cartridge filters do not need to be connected to Sydney Water sewer or in rural properties to a rubble pit or tail out drain.
 

*Note: When the cartridge needs cleaning, it is to be hosed out in a location that does not adversely impact upon any effluent disposal area and adjoining properties, and must not cause water to enter a waterway, the stormwater system or roadway*
- 2. The motor, filter, pump, and all sound-producing equipment associated with, or forming part of, the swimming pool filtration system is to be located in a sound-proofed enclosure.
- 3. The noise levels associated with the use of swimming pool and spa pumps (excluding heat pump water heaters) shall not exceed more than 5dB(A) above the background noise (LA90, 15 min) level during the following times:
  - a. Between 8 am and 8 pm on any Saturday, Sunday or public holiday, or
  - b. Between 7 am and 8 pm on any other day
- 4. The noise levels associated with the use of spa and swimming heat pump water heaters shall not exceed more than 5dB(A) above the background noise (LA90, 15 min) level during the following times:
  - a. Between 8 am and 10 pm on any Saturday, Sunday or public holiday, or
  - b. Between 7 am and 10 pm on any other day
- 5. <DELETE IF SITE IS CONNECTED TO SYDNEY WATER SEWER> The swimming pool must be located a minimum of 6 metres from any existing wastewater disposal area as outlined in the 'Environment & Health Protection Guidelines - Onsite Sewage Management for Single Households (1998)'.
- 6. The applicant must participate in the 'Static Water Supply Project' initiative of the NSW Fire Brigade, to make available the water in the swimming pool for use as a static water supply for fire fighting purposes by the NSW Fire Brigade or the NSW Rural Fire Service.
- 7. A certificate shall be provided to the certifying authority upon installation of any swimming pool reticulation system verifying design and installation in accordance with Australian Standard AS1926.3 Water recirculation systems.

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

*Reason: To ensure swimming pool safety and protect the environment and amenity of the local area.*

## **DEMOLITION WORK**

### **BEFORE DEMOLITION WORK COMMENCES**

Condition
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**39. Site Sign**

1. A sign must be erected in a prominent position on any site on which any approved work involving excavation, erection or demolition of a building is being carried out detailing:
  - a. The name, address, and telephone number of the Principal Certifier.
  - b. The name of the principal contractor (if any) for any demolition or building work and a telephone number on which that person may be contacted outside working hours; and
  - c. Unauthorised entry to the work site is prohibited.
2. The sign must be maintained during excavation, demolition and building work is being carried out and must be removed when the work has been completed.

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

**40. Protection of Adjoining Areas**

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

1. Could cause a danger, obstruction, or inconvenience to pedestrian or vehicular traffic.
2. Could cause damage to adjoining lands by falling objects; and/or
3. Involve the enclosure of a public place or part of a public place; and/or
4. Have been identified as requiring a temporary hoarding, fence, or awning within the Council approved Construction Management Plan (CMP).

*Note: Notwithstanding the above, Council's separate written approval is required prior to the erection of any structure or other obstruction on public land.*

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

**41. Toilet Facilities**

1. To provide a safe and hygienic workplace, toilet facilities must be available or be installed at the works site before works begin and must be maintained until the works are completed at a ratio of one toilet for every 20 persons employed at the site.
2. Each toilet must:
  - a. Be a standard flushing toilet connected to a public sewer; or
  - b. Be a temporary chemical closet approved under the *Local Government Act 1993*; or
  - c. Have an on-site effluent disposal system approved under the *Local Government Act 1993*.

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

**42. Erosion and Sediment Control Measures**



Install and maintain adequate sediment and erosion control measures for the duration of all works, until such a time that sediment, sediment laden water or any other material/substance can no longer migrate from the premises. The measures are to be installed and maintained in such a manner as to prevent sediment, sediment-laden water, or any other materials and substances migrating from the site onto neighbouring land, the roadway, waters and/or into the stormwater system, and in accordance with:

1. The publication *Managing Urban Stormwater: Soils and Construction 2004* (4th edition) - 'The Blue Book'.
2. Protection of the *Environment Operations Act 1997*; and
3. The approved plans

Controls are to be monitored and adjusted where required throughout the works to ensure compliance with the above

*Note: On the spot penalties may be issued for any non-compliance with this requirement without any further notification or warning. If you are unsure in how to achieve compliance with this condition during works, you may need to engage the services of a suitably qualified environmental, soil or geotechnical consultant to assist.*

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

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

1. Trees to be retained as identified on the Tree Location Plan prepared by Treeism Arboricultural Services, dated October 2024 must have tree protection measures for the ground, trunk and canopy installed by the project arborist as follows:
  - a. For the duration of demolition works, and
  - b. For the duration of construction works.
2. Tree protection fencing for the trees to be retained must be installed by the engaged AQF 5 project arborist and consist of 1.8m high temporary fencing panels installed in accordance with Australian Standard AS4687-2007 Temporary fencing and hoardings.
3. The installation of all required tree protection fencing must include shade cloth attached to the fencing to reduce transport of dust, particulates, and liquids from entering the tree protection zone.

*Reason: To protect trees during construction.*

#### **44. Garbage Receptacle**

A garbage receptacle must be provided at the work site before works begin and must be maintained until all works are completed.

1. The garbage receptacle must have a tight fitting lid and be suitable for the reception of food scraps and papers.
2. The receptacle lid must be kept closed at all times, other than when garbage is being deposited.

3. Food scraps must be placed in the garbage receptacle and not in demolition and construction waste bins.

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

## **DURING DEMOLITION WORK**

Condition
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### **45. Hours of Work**

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

*Reason: To protect the amenity of neighbouring properties.*

### **46. Demolition**

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

1. Demolition material must be disposed of to an authorised recycling and/or waste disposal site and/or in accordance with an approved waste management plan; and
2. Demolition works, where asbestos material is being removed, must be undertaken by a contractor that holds an appropriate licence issued by SafeWork NSW in accordance with the Work Health and Safety Regulation 2017 and be appropriately transported and disposed of in accordance with the Protection of the Environment Operations (Waste) Regulation 2014; and
3. On construction sites where any building contains asbestos material, a standard commercially manufactured sign containing the words 'DANGER ASBESTOS REMOVAL IN PROGRESS' and measuring not less than 400mm x 300mm must be displayed in a prominent position visible from the street.

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

### **47. Environmental Management (Air Pollution)**

The Applicant must take all reasonable steps to minimise dust generated during all works (including remediation, demolition, earthworks and construction) authorised by this consent. During works, the Applicant must ensure that:

1. Exposed surfaces and stockpiles are suppressed by regular watering.
2. All trucks entering or leaving the site with loads have their loads covered.
3. Trucks associated with the development do not track dirt onto the public road network.
4. Public roads used by these trucks are kept clean; and
5. Land stabilisation works are carried out progressively on site to minimise exposed surfaces.

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

#### **48. Council Property**

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

*Reason: To protect public land.*

#### **49. Disturbance of Existing Site**

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

*Reason: To protect the natural features of the site.*

#### **50. Soil Management (Excavation)**

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

1. All excavated material removed from the site must be classified in accordance with the EPA's Waste Classification Guidelines before it is disposed of at an approved waste management facility and the classification, and the volume of material removed must be reported to the Principal Certifier or Council (where a principal certifier is not required).
2. Tipping dockets for the total volume of excavated material that are received from the licensed waste management facility must be provided to the Principal Certifier prior to the issue of an Occupation Certificate.

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

#### **51. Landfill Not Permitted**

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

*Reason: To minimise environmental impacts from landform modification.*

#### **52. Removal of Trees**

No consent is granted for the removal of trees numbered T1, T2, T3, T4, T5, T6, T7, T8, T9, T10, T11, T12, T13 as these trees contribute to the established landscape amenity of the area/streetscape.

*Note: The removal of any other trees from the site requires separate approval by Council in accordance with Part 1.2.6 Tree and Vegetation Preservation of the Hornsby Development Control Plan, 2024.*

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

#### **53. Waste Management**

All work must be carried out in accordance with the approved waste management plan.

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

#### **54. Prohibited Actions within the Fenced Tree Protection Zone**

The following activities are prohibited within the approved fenced tree protection zones unless otherwise approved by Council:

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

*Reason: To protect trees during construction.*

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

The appointed project arborist must monitor and record any and all necessary actions required to maintain tree health and condition for trees to be retained on the approved plans.

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

#### **56. Maintaining Tree Protection Measures**

Tree Protection Measures must be maintained by the project arborist in accordance with the conditions of this consent for the duration of works.

*Reason: To protect trees during construction.*

#### **57. Approved Works within Tree Protection Zone Incursions**

1. Where tree root pruning is required for the installation of piers, driveway or underground services, the pruning must be overseen by the AQF 5 project arborist and must be undertaken as follows:
  - a. Using sharp secateurs, pruners, handsaws, or chainsaws with the final cut being clean.
  - b. The maximum diameter of roots permitted to be cut is 30mm.
2. No changes of grade within the Tree Protection Zone of trees to be retained on the approved plans, are permitted.
3. To minimise impacts within the Tree Protection Zone (TPZ) of trees to be retained on the approved plans, the installation of services must be undertaken as follows:
  - a. The AQF 5 project arborist must be present to oversee the installation of any underground services which enter or transect the tree protection.

- b. The installation of any underground services which either enter or transect the designated TPZ must be undertaken manually.
  - c. For manually excavated trenches the AQF 5 project arborist must designate roots to be retained. Manual excavation may include the use of pneumatic and hydraulic tools.
4. Where scaffolding is required, ground protection must be installed beneath the scaffolding in the following order:
    - a. Installation of a 100mm deep layer of woodchip.

*Reason: To protect trees during construction.*

#### **58. Building Materials and Site Waste**

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

*Reason: To protect trees during construction.*

#### **59. Unexpected Finds**

Should the presence of asbestos or soil contamination, not recognised during the application process be identified during any stage of works, the applicant must immediately notify the Principal Certifier and Council ([compliance@hornsby.nsw.gov.au](mailto:compliance@hornsby.nsw.gov.au)).

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

#### **60. Erosion and Sediment Control**

1. Works are not to result in the discharge of sediment and or run-off onto the adjoining properties or public land.
2. The person having the benefit of this consent must ensure that sediment and other materials are not tracked onto the roadway by vehicles leaving the site.

*Note: On the spot penalties may be issued for any non-compliance with this requirement without any further notification or warning.*

*Reason: To minimise impacts on neighbouring properties and public land.*

#### **61. Soil and Water Management (Stockpiles)**

1. Stockpiles of topsoil, sand, aggregate, soil or other material shall be protected with adequate sediment controls and must not be located on any drainage line or easement, natural watercourse, footpath or roadway.
2. The storage of stockpiled topsoil, sand, aggregate, soil or other materials must not result in the discharge of sediment or run-off onto the adjoining properties or public land.

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

#### **62. Storage and Removal of Waste**

1. All demolition and/or construction waste must be stored in a waste receptacle and be removed from the site at frequent intervals. Materials are to be wholly contained within the waste receptacle and not overflowing.
2. All garbage and recyclable materials generated during work must be stored in a waste receptacle and be removed from the site at frequent intervals. Materials are to be wholly contained within the waste receptacle and not overflowing.

*Reason: To ensure the site is maintained to an appropriate standard cleanliness and prevent any nuisance or danger to health, safety or the environment.*

### **ON COMPLETION OF DEMOLITION WORK**

Condition
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**63. Damage to Council Assets**

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

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

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

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**EXECUTIVE SUMMARY**

- In accordance with the Local Planning Panels Directions - Operational Procedures, Council is required to monitor development applications to be determined by the Panel that may be experiencing unreasonable delays of over 180 days from lodgement.
- A list of out outstanding development applications in excess of 180 calendar days from lodgement is attached for the Hornsby Local Planning Panel's advice.

**RECOMMENDATION**

THAT the contents of LPP Report No. LPP8/25 be received and noted.

## PURPOSE

The purpose of this report is to advise the Hornsby Local Planning Panel of development applications required to be determined by the Panel that are over 180 calendar days from lodgement.

## DISCUSSION

In 2019 the NSW Productivity Commission conducted a review of the Independent Planning Commission (IPC). The review recommended several actions to streamline processes to optimise efficiency, output and performance.

The planning panel changes were implemented on 1 August 2020 to incorporate a number of the NSW Productivity Commission 's recommendations to the way Local Planning Panels work to make them more efficient and to improve the assessment and determination times of development applications and maintain panel oversight of sensitive and contentious applications.

These changes were made as part of the Planning Acceleration Program to support the State's immediate and long-term economic recovery from the COVID-19 crisis.

The changes will speed up panel determinations by:

1. Reducing the need to conduct public panel meetings for non-contentious matters by applying a '10-or-more' objection trigger for public meetings.
2. Reducing the amount of modifications going to panels.
3. Obliging panel chairs to more actively manage development applications (DAs) coming to the panels to reduce panel deferrals and assessment timeframes.
4. Allowing chairs to bring forward determination on DAs that are experiencing unreasonable delays of over 180 days from lodgement.
5. Introducing panel performance measures.

The Local Planning Panels Directions - Operational Procedures has been amended to:

- Require panels to make determinations within two weeks of being provided an assessment report.
- Require panels to hold a public meeting only where the Development Application has attracted 10 or more unique submissions by way of objection.
- Allow, at the Chair's discretion, applicants to attend a briefing, along with council staff, to explain complex matters or present confidential or commercially sensitive material.
- Oblige panel chairs to work with council to ensure key issues are addressed during assessment in order to minimise deferrals by the panels at determination stage.
- Require the panels to provide reasons for deferring a decision and set timeframes in which any additional information must be provided in order to finalise the determination.
- Give panel chairs the ability to require council to report a DA to the panel within four weeks for determination if the application has experienced unreasonable delays in excess of 180 calendar days from lodgement.

In accordance with Point 6 of the Local Planning Panels Directions - Operational Procedures, attached is a list of development applications required to be determined by the Panel that are over 180 calendar days from lodgement.



**CONCLUSION**

Council is required to monitor development applications to be determined by the Panel that are over 180 calendar days from lodgement. This report provides advice to the Local Planning Panel on DAs that are experiencing unreasonable delays of over 180 days from lodgement.

**RESPONSIBLE OFFICER**

The officer responsible for the preparation of this report is the Major Development Manager, Cassandra Williams.

JAMES FARRINGTON

Director - Planning and Compliance

Planning and Compliance Division

**Attachments:**

1. DAs over 180 days - February 2025



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