

BUSINESS PAPER

LOCAL PLANNING PANEL MEETING

Wednesday 26 March 2025 at 4:00 PM



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1 DA/1021/2024 - TORRENS TITLE SUBDIVISION OF 1 LOT INTO 3 AND CONSTRUCTION OF DWELLINGS ON EACH LOT - 59 HEWITT AVENUE, WAHROONGA

DA No: DA/1021/2024 (PAN-468061 - Lodged on 11 September 2024)

Description: Demolition of existing structures, Torrens title subdivision of one lot into

three and construction of dwelling houses and swimming pools on each lot

as deferred commencement

Property: Lot 5 DP 37299, No. 59 Hewitt Avenue, Wahroonga

Applicant: Shenz Group Pty Ltd

Owner: MSV Dynasty Pty Ltd

Estimated Value: \$2,860,000

Ward: B Ward

Submissions: 21

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

Author: Charley Wells, A/Senior Town Planner

COI Declaration: No Council staff involved in the assessment of this application have declared

a Conflict of Interest.

RECOMMENDATION

THAT the Hornsby Local Planning Panel, exercising the functions of Council as the consent authority, approve Development Application No. DA/1021/2024 for demolition of existing structures, Torrens title subdivision of one lot into three and construction of dwelling houses and swimming pools on each lot as staged development at Lot 5 DP 37299, No. 59 Hewitt Avenue, Wahroonga as a deferred commencement pursuant to Section 4.16(3) of the *Environmental Planning and Assessment Act 1979* subject to the conditions of consent in Schedule 1 of LPP Report No. LPP1/25.

Executive Summary

- The application involves demolition of existing structures, Torrens title subdivision of one lot into three and construction of dwelling houses and swimming pools on each lot as staged construction.
- A total of 24 submissions have been received in respect of the application.
- The application is required to be determined by the Hornsby Council Local Planning Panel as 10 or more unique submissions were received by way of objection.
- It is recommended that the application be approved.

BACKGROUND

On 12 November 2024, Council requested additional information regarding owners' consent, drainage, driveway, scale, privacy, sunlight access, gas and erosion and sediment control.

On 1 December 2024, the applicant submitted amended plans, BASIX certificates and civil drawings to address Councils concerns.

On 22 January 2024, Council requested additional information regarding the bulk and scale of the dwelling on proposed Lot 3.

On 30 January 2024, the applicant submitted amended plans indicating deletion of the first-floor parapets and balustrades on the dwelling on proposed Lot 3 to address Council's concerns.

SITE

The 1911.20m² site is located on the eastern side of Hewitt Avenue and comprises a dwelling house, swimming pool and outbuildings.

The site experiences 8 metres of fall towards the rear boundary.

The site is not bushfire prone and is not flood prone.

A watercourse (Coups Creek) is located adjacent to the rear of the site.

The site does not contain any easements or restrictions.

The site is mapped on the terrestrial biodiversity or environmentally sensitive lands map.

PROPOSAL

The application proposes demolition of the existing structures, Torrens title subdivision of one allotment into three allotments and the construction of three dwellings and swimming pools on the new lots. It is proposed to stage the construction of the development as follows:

Stage 1 - Demolition, earthworks, tree removal and subdivision

- Demolition of existing structures including dwelling house, outbuildings and swimming pool.
- Removal of nine trees.
- Bulk earthworks across the site and construction of retaining walls.
- Torrens title subdivision of one lot into three as follows:

- Lot 1 would have an area of 564.8m² with a lot width of 17.375m. Vehicle access is proposed to Hewitt Avenue via the existing vehicle crossing.
- Lot 2 would have an area of 535.4m² with a lot width of 17.375m. Vehicle access is proposed via the right of way.
- Lot 3 would have an area of 554.7m² with a lot width of 15.335m. Vehicle access is proposed via the battle-axe driveway.

Stage 2 - Construction of dwelling houses and swimming pools on each lot

- The dwelling house on Lot 1 would comprise the following:
 - The ground floor would comprise porch, garage, living room, guest room with ensuite, laundry, powder room, pantry, kitchen, dining, family, alfresco and swimming pool.
 - Four bedrooms, two ensuites, a bathroom, rumpus and balcony would be located on the first floor.
 - Construction of retaining walls and fencing.
- The dwelling house on Lot 2 would comprise the following:
 - The ground floor would comprise a porch, living, garage, guest room with ensuite, powder room, laundry, pantry, kitchen, dining, family, alfresco and swimming pool.
 - Four bedrooms, two ensuites, a bathroom and rumpus would be located on the first floor.
 - Construction of retaining walls and fencing.
- The dwelling house on Lot 3 would comprise the following:
 - The ground floor would comprise a portico, porch, living room, laundry, guest room with ensuite, powder room, garage, family room, dining, kitchen, pantry, alfresco and swimming pool.
 - Four bedrooms, two ensuites, a bathroom, and rumpus would be located on the first floor.
 - Construction of retaining walls and fencing.

ASSESSMENT

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

1. STRATEGIC CONTEXT

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

The Greater Sydney Region Plan - A Metropolis of Three Cities has been prepared by the NSW State Government to guide land use planning decisions over the next 40 years (to 2056). The Plan sets a strategy and actions for accommodating Sydney's future population growth and identifies dwelling

targets to ensure supply meets demand. The Plan also identifies that the most suitable areas for new housing are in locations close to jobs, public transport, community facilities and services.

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

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

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

2. STATUTORY CONTROLS

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

2.1 Hornsby Local Environmental Plan 2013

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

2.1.1 Zoning of Land and Permissibility

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

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

The proposed development is defined as 'subdivision' and 'dwelling house'. The proposed use is permissible in the zone with Council's consent and would meet the objectives of the zone by providing for the housing needs of the community within a low-density residential environment.

2.1.2 Minimum Lot Size

Clause 4.1 (Minimum subdivision lot size) of the HLEP requires a minimum lot size of 500m². Proposed Lot 1 would have an area of 564.80m², proposed Lot 2 would have an area of 535.40m² and proposed Lot 3 would have an area of 554.70m². All lots would comply with the minimum lot size development standard and are considered acceptable.

2.1.3 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 8.5. each of the proposed dwelling houses would comply with the maximum height as outlined in Section 2.5 of this report.

2.1.4 Heritage Conservation

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

2.1.5 Earthworks

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

The application proposes 258.95m³ of excavation and 301.85m³ of fill to level the site for the proposed dwellings and associated development. The development would require 42.90m³ of fill to be imported to account for the deficit between cut and fill. Which would require approximately 3-8 truck deliveries to the site.

As the proposal would involve minimal volume of fill importation and the site has direct vehicular access off Hewitt Avenue a Construction Traffic Management Plan is not required in this case.

Numerous retaining walls ranging from 0.10m-1.8m in height are required as result of cut/fill work.

No objections are raised to the level of earthworks proposed as they would not result in any amenity impacts or loss of landscaping and does not disrupt drainage patterns to adjoining properties.

Subject to recommended conditions, the proposal is considered satisfactory in respect to Clause 6.2 of the HLEP.

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 1B.6.1 of the HDCP prescribes works that can be undertaken with or without consent to trees and objectives for tree preservation.

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

2.2.2 Chapter 6 Water Catchments

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

The plan addresses matters related to biodiversity, ecology and environment protection; public access to, and use of, foreshores and waterways; maintenance of a working harbour; interrelationship of

waterway and foreshore uses; foreshore and waterways scenic quality; maintenance, protection and enhancement of views and boat storage facilities.

Subject to the implementation of sediment and erosion control measures and stormwater management to protect water quality, the proposal would have minimal potential to impact on the Sydney Harbour Catchment and would comply with the requirements of chapter 6 of the Biodiversity and Conservation SEPP.

State Environmental Planning Policy (Sustainable Buildings) 2022

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

Chapter 2 sets out the Standards for residential development. The proposal includes a BASIX certificate for each of the proposed dwellings 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 certificates submitted achieve the minimum scores for energy and water use, and thermal performance.

The proposal is acceptable in this regard.

2.3 State Environmental Planning Policy (Resilience and Hazards) 2021

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

2.3.1 Chapter 4 Remediation of Land

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

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

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

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

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

The principal purpose of a development control plan is to provide guidance on the aims of any environmental planning instrument that applies to the development; facilitate development that is permissible under any such instrument; and achieve the objectives of land zones. The provisions contained in a DCP are not statutory requirements and are for guidance purposes only. Consent

authorities have flexibility to consider innovative solutions when assessing development proposals, to assist achieve good planning outcomes.

2.5 Hornsby Development Control Plan 2024

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

HDCP - Part 6 Subdivision					
Control Proposal Requirement Complie					
Site Area	1911.2m²	N/A	N/A		
Lot Area					
- Lot 1	564.8m ²	500m²	Yes		
- Lot 2	535.4m²	500m²	Yes		
- Lot 3	554.7m ²	500m²	Yes		
Lot Width					
- Lot 1	17.375m	12m	Yes		
- Lot 2	17.375m	12m	Yes		
- Lot 3	15.335m	12m	Yes		
	HDCP - Part 3.1 Dwellin	g Houses			
Control	Proposal	Requirement	Complies		
Lot 1	1				
Site Area	564.80m²	N/A	N/A		
Building Height	8.45m	8.5m	Yes		
No. storeys	2	max. 2 + attic	Yes		
Site Coverage	32%	max. 50%	Yes		
Floor Area	329m²	max. 330m²	Yes		
Setbacks					
- Front	9.2m	7.6m	Yes		
- Side (South)					
Ground floor	1.5m	0.9m	Yes		

First floor	1.5m	1.5m	Yes
Retaining Walls	0m	0.9m	No
- Side (North)			
Ground floor	2m	0.9m	Yes
First floor	2m	1.5m	Yes
Retaining Walls	0m	0.9m	No
- Rear			
Ground floor	3.2m	3m	Yes
First floor	8.2m	8m	Yes
Retaining Walls	0m	0.9m	No
Landscaped Area (% of lot size)	41%	Min 20%	Yes
Private Open Space			5
- minimum area	>24m²	16 or 24m ²	Yes
- minimum dimension	>3m	3m	Yes
Car Parking	2 spaces	2 spaces	Yes
Lot 2			
Site Area	535.40m²	N/A	N/A
Building Height	8.35m	8.5m	Yes
No. storeys	2	max. 2 + attic	Yes
Site Coverage	39%	max. 50%	Yes
Floor Area	329m²	max. 330m ²	Yes
Setbacks			
- Side (West)			
Ground floor	1.5m	0.9m	Yes
First floor	7.5m	1.5m	Yes
- Side (South)			
Ground floor	1.5m	0.9m	Yes
First floor	1.5m	1.5m	Yes
Retaining Walls	0m	0.9m	No
- Side (North)			

Ground floor	2m	0.9m	Yes
First floor	3.2m	1.5m	Yes
Retaining Walls	0m	0.9m	No
- Rear			
Ground floor	3.3m	3m	Yes
First floor	11.3m	8m	Yes
Retaining Walls	0m	3m	No
Landscaped Area (% of lot size)	41%	Min 20%	Yes
Private Open Space			5
- minimum area	>24m²	16 or 24m ²	Yes
- minimum dimension	>3m²	3m	Yes
Car Parking	2 spaces	2 spaces	Yes
Lot 3			
Site Area	554.70m²	N/A	N/A
Building Height	8.2m	8.5m	Yes
No. storeys	2	max. 2 + attic	Yes
Site Coverage	34%	max. 50%	Yes
Floor Area	329m²	max. 330m ²	Yes
Setbacks			
- Side (West)			
Ground floor	1m	0.9m	Yes
First floor	5m	1.5m	Yes
- Side (North)			
Ground floor	1.5m	0.9m	Yes
First floor	7.5m	1.5m	Yes
Retaining Walls	0m	0.9m	No
- Side (South)			
Ground floor	1.5m	0.9m	Yes
First floor	1.5m	1.5m	Yes
Retaining Walls	0m	0.9m	No

- Rear			
Ground floor	5.3m	3m	Yes
First floor	8.3m	8m	Yes
Landscaped Area (% of lot size)	30%	Min 20%	Yes
Private Open Space			
- minimum area	>34m²	16 or 24m ²	Yes
- minimum dimension	>3m²	3m	Yes
Car Parking	2 spaces	2 spaces	Yes

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

2.5.1 Setbacks

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

This is supported by the prescriptive measure set out in Table 3.1.2(a): Minimum Boundary Setbacks which prescribes a side boundary setback of 0.9m and a rear boundary setback of 3m for single storey elements.

The application proposes nil northern and southern side boundary setbacks and a nil rear boundary setback for the proposed retaining walls.

In support of these encroachments, it is noted that the retaining walls would range in height from 0.1m to 1.8m and create a levelled building platform for the dwelling houses. It is generally considered that the proposed retaining walls would have negligible amenity impacts to the adjoining properties.

Conditions are recommended in Schedule 1 of this report requiring the structural details of these retaining walls be submitted with the application for the Construction Certificate and these retaining walls be constructed prior to the issue of an Occupation Certificate.

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

2.5.2 Sunlight Access

The desired outcome of Part 3.1.5 Sunlight Access of the HDCP is to encourage "development designed to provide reasonable sunlight to adjacent properties".

The desired outcome is supported by the prescriptive measure "on 22 June, 50 percent of the required principal private open space on any adjoining property should receive 3 hours of unobstructed sunlight access between 9am and 3pm".

It is noted that the minimum area for private open space as prescribed in Part 3.1.4 Open Space of the HDCP is 24m².

An assessment of the amended shadow diagrams provided by the applicant illustrate that the subject site and the southern adjacent neighbours, including No. 59A & 61 Hewitt Avenue and No. 31 Exeter Road would receive at least 3 hours of unobstructed sunlight access to 50 per cent of their private open space between 9am and 3pm on the day of the winter solstice.

The existing private open space of the adjoining property No. 59A Cardinal Avenue is located immediately adjacent to the common boundary would be overshadowed. However, there is adequate area for the required private open space (24m²) in the rear of the site that would receive 3 hours of unobstructed sunlight access between 9am and 3pm.

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

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

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

2.5.3 Privacy

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

This is supported by the prescriptive measures that state that:

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

Lot 1

The first floor would comprise a rumpus room and a balcony which would not comply with the prescriptive measures.

In support of these non-compliances, it noted that the window within the rumpus (W9) would have translucent glass, and a highlight window located 1.5metres above the finished floor level, which is considered acceptable. Windows (W1) within the rumpus would be orientated towards the street and are not considered to have any privacy impacts on the adjoining properties.

The balcony would also be orientated towards the street and is not considered to have any privacy impacts on the adjoining properties. Further a 1.7m high privacy screen would be located on the southern elevation of the balcony reducing privacy impacts on the adjoining dwelling.

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

Lot 2

The first floor would comprise a rumpus room which would not comply with the prescriptive measures.

In support of these non-compliances, it noted that the windows within the rumpus room (W1) and W15 would be located more than 3m from the side boundaries which complies with the prescriptive measures. Further, an access handle would be located along the northern boundary providing further separation between the dwelling and adjoining property.

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

Lot 3

The first floor would comprise a rumpus room which would not comply with the prescriptive measures.

In support of these non-compliances, it noted that window (W9) within the rumpus room would be a highlight window located 1.5 metres above the finished floor level, which is considered acceptable. Windows (W1) within the rumpus would be located more than 3 meters from the western side boundary which complies with the prescriptive measure.

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

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

2.5.4 Biodiversity

The desired outcome of Part 1.3.1 Biodiversity of the HDCP is to encourage "development that provides for the conservation of biodiversity including threatened species and populations, endangered ecological communities, remnant indigenous trees, regionally and locally significant terrestrial and aquatic vegetation" and "development that maintains habitat for native wildlife and wildlife corridors to provide for the movement of fauna species".

This is supported by the prescriptive measures that state that:

- a. "Development should seek to:
 - avoid potential adverse impact on biodiversity,
 - if that impact cannot be avoided, minimise that impact, or
 - if the impact cannot be minimised, to mitigate the impact.
- b. A flora and fauna assessment is required for development that may impact on:
 - land mapped as Biodiversity on the HLEP Terrestrial Biodiversity Map, or
 - native vegetation which is habitat for species listed in Schedule 1 and 2 of the Biodiversity Conservation Act 2016".

It is noted that the site of adjoining land is not mapped on the HLEP Terrestrial Biodiversity Map.

The rear of the site is mapped on the Biodiversity Values Map. However, no native vegetation would be removed or impacted by the proposal. Therefore, the Biodiversity Offsets Scheme (BOS) is not triggered and a flora and fauna report is not required to be submitted.

Prescriptive measure e. that states the following:

e. "Development should incorporate and maintain a buffer zone to significant flora and fauna. Development should not include buildings, structures and earthworks within the required buffer zone prescribed in Table 1.3.1-a".

Table 1.3.1-a prescribes a 20m buffer zone from "Endangered ecological communities and regionally significant bushland (as mapped in the HLEP Terrestrial Biodiversity Map".

It is noted that the dwelling house located on Lot 3 would be setback between 7-11m from trees No. 28-31 a group of remnant indigenous trees. In support of this non-compliance, it is noted that the AIA indicates that these trees would have nil to minor tree protection zone encroachments (3%-9%). It is considered that these trees would have minimal impacts and can successfully be retained.

Council's assessment concluded as the proposal does not require the removal of significant vegetation or habitat it is generally consistent with the Biodiversity element of the HDCP 2024 and would not have a significant impact on the matters listed under the NSW *Biodiversity Conservation Act 2016 (NSW BC Act 2016)*.

The proposal meets the desired outcome of Part 1.3.1 Biodiversity of the HDCP and is considered acceptable.

2.6 Section 7.11Contributions Plans

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

2.7 Housing and Productivity Contribution

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

3. ENVIRONMENTAL IMPACTS

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

3.1 Natural Environment

3.1.1 Tree and Vegetation Preservation

An Arboricultural Impact Assessment Report (AIA) & Tree Protection Plan (TPP) Report Version 1 prepared by Tree Survey dated 30 August 2024. The AIA provides an assessment of 31 trees. A total of nine trees would require removal numbered T6, T7, T13, T14, T16, T18, T19, T25, T26 due to major tree protection encroachments. These trees are of low-medium retention value. No concerns

are raised with the removal of these trees, subject to replacement planting. A total of 22 trees would be retained and protected.

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

3.1.2 Stormwater Management

The desired outcomes of Part1C.1.2 Stormwater Management of the HDCP are to encourage development that "protects waterways from erosion, pollution and sedimentation, and maintains or improves water quality and aquatic habitats" and that "minimises the effects of flooding and maintains natural environmental flows."

This is supported by the prescriptive measure that states "Stormwater should be gravity drained to Council's drainage system, which may require inter-allotment drainage..."

The application proposes to discharge stormwater generated to an existing drainage easement located on Lot 11 DP 30101 (29 Exeter Road, Wahroonga) via an inter-allotment drainage system through the adjoining property Lot 3 DP 1072181 (57B Hewitt Avenue, Wahroonga).

A 1m wide drainage easement is proposed along the rear boundary of Lot 3 DP 1072181 (57B Hewitt Avenue, Wahroonga). Owners' consent was obtained from Lot 3 DP 1072181 (57B Hewitt Avenue, Wahroonga. It is considered that the construction of this drainage easement would not have any environmental impacts as directional drilling is proposed for the stormwater pipes within the tree protection zones of trees.

However, Owners' consent has not been submitted from Lot 11 DP 30101 (29 Exeter Road, Wahroonga) to connect to the existing easement. Therefore, a deferred commencement condition of consent has been recommending requiring the registration of the easement and hydrological and hydraulic calculations of the existing and proposed inter-allotment drainage system to determine if the existing inter-allotment drainage system within Lot 11 DP 30101 (29 Exeter Road, Wahroonga) is required to be upgraded.

The application was referred to Council's development engineer who raised no objections subject to conditions. This being the registration of the drainage easement as a deferred commencement, and the creation of a positive covenant requiring any future development to provide an on-site detention system.

The proposal meets the desired outcomes of Part 1C.1.2 Stormwater Management and is considered acceptable.

3.2 Built Environment

3.2.1 Built Form

The built form would not be highly visible from the street and would be screened by existing landscaping/ trees. The proposal would be consistent with residential development within the locality.

3.2.2 Traffic

Council's engineering assessment of the traffic impacts of the development concludes that the proposal would not result in unreasonable traffic generation anticipated within a low-density residential environment.

3.3 Social Impacts

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

3.4 Economic Impacts

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

4. SITE SUITABILITY

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

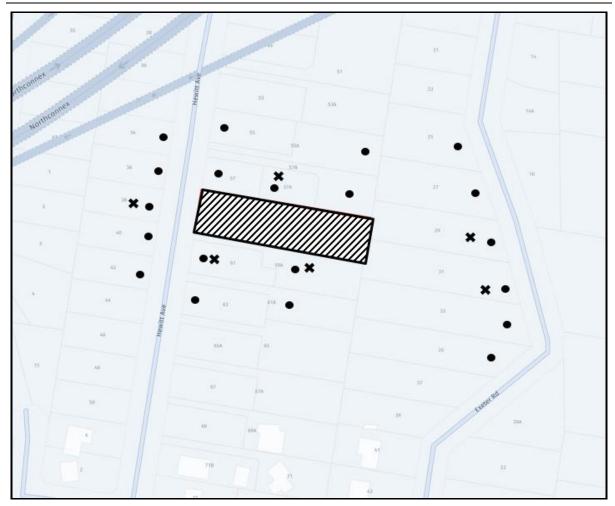
The subject site has not been identified as bushfire prone or flood prone land. The site is considered to be capable of accommodating the proposed development. The scale of the proposed development is consistent with the capability of the site and is considered acceptable.

5. PUBLIC PARTICIPATION

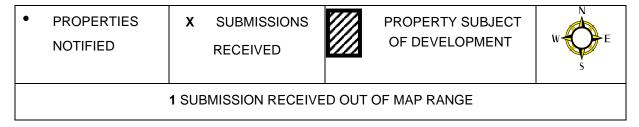
Section 4.15(1)(d) of the Act requires Council to consider "any submissions made in accordance with this Act".

5.1 Community Consultation

The proposed development was placed on public exhibition and was notified to adjoining and nearby landowners between 11 September 2024 and 2 October 2024, between 17 October 2024 and 7 November 2024 and between 3 February 2025 and 10 March 2025 in accordance with the Hornsby Community Engagement Plan. During this period, Council received 24 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



All submissions objected to the development and are disused below.

5.1.1 Privacy

Several submissions were received regarding privacy concerns impacting adjoining properties Nos. 57A & 59A Hewitt Avenue and 29 & 31 Exeter Road. Noting that the location of the dwelling house at the rear of the site (No. 31 Exeter Road) has not been indicated on the documentation.

<u>Comment:</u> In response to these concerns, the privacy impacts have been considered in Part 3.5.3 of this report and it is noted that all dwelling houses would comply with the privacy requirements of the HDCP. Further, the first-floor balconies for the dwellings located on Lot 2 and Lot 3 have been deleted from the plans. In addition, existing mature trees would provide screening of the dwelling located on Lot 3.

5.1.2 Stormwater

Submissions were received regarding stormwater and flooding impacts on adjoining properties to the rear No. 29 and 31 Exeter Road, Wahroonga.

<u>Comment:</u> In response to these submissions, a stormwater plan has been submitted with the proposal prepared by a suitably qualified stormwater consultant. The proposed stormwater would be drained via an existing inter-allotment drainage system. The stormwater plan includes several grated surface inlet pits and an on-site detention system which would assist in capturing overland flows across the site.

Council's engineering assessment raises no objections to the proposed stormwater disposal system, subject to the imposition of conditions of development consent requiring on site detention to ensure capacity is available in the downstream stormwater network. Further, the site is not identified as flood prone and therefore flood mitigation measures are not required.

5.1.3 Owners Consent

Submissions were received regarding not obtaining consent from No. 29 Exeter Road for the stormwater easement.

<u>Comment:</u> In response to these submissions, it is noted that a deferred commencement condition of consent has been recommended requiring an easement to drain water to be registered with the NSW Land Registry Services. The owner's consent for the connection into the existing easement is a civil matter for the parties to resolve. The proposal cannot be carried out until this process has been undertaken and the deferred commencement condition of consent has been satisfied.

5.1.4 Notification

Concerns were received regarding no notification of Kur-ring-gai Council properties at the rear.

<u>Comment:</u> The properties located within Kur-ring-gai Council area at the rear as indicated in the notification plan above were notified between 17 October 2024 and 7 November 2024. The application was re-notified between 3 February 2025 and 10 March 2025.

5.1.5 Sunlight Access

Several submissions were received raising concerns regarding overshadowing impacts on No. 59A & 61 and Hewitt Avenue and No. 31 Exeter Road. Further concerns were raised regarding the sunlight diagrams being inaccurate and incorrectly modelled.

<u>Comment:</u> These concerns has been addressed in Part 2.5.2 of this report. Amended shadow diagrams dated 28 November 2024 have been submitted indicating accurate modelling.

5.1.6 Bulk and Scale

Several concerns were raised regarding non-compliant floor area and the bulk and scale of the dwelling houses. Noting that the parapet roof adds bulk, and the dwellings are uncharacteristic of the streetscape/area.

<u>Comment:</u> In response to this concern, amended plans have been submitted with compliant building heights, site coverages and floor areas as outlined in Part 7.4 of this report. Further, the dwellings comply with the design details outlined in HDCP.

5.1.7 Setbacks

Concerns that the rainwater tanks encroach on the minimum side boundary setback.

<u>Comment:</u> In response to this concern, rainwater tanks can be installed without consent from Council under *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*. The exempt development controls permit rainwater tanks to be 450mm from the boundary. The stormwater plans submitted indicate that the rainwater tanks would be located 450mm from the side boundary and therefore the proposed location is deemed appropriate. Further, the boundary fence would screen the tanks.

5.1.8 Views

Concerns regarding dwellings impacting views to significant views and natural bushland.

<u>Comment:</u> The prescriptive measures of Part 3.1.5 Design Details of HDCP state that "development should allow for the reasonable sharing of significant views, including water views and iconic views". The proposed development would result in two-storey dwelling houses, which are characteristic of the locality and no significant views would be inhibited by the proposal.

5.1.9 Sydney Water Infrastructure

Concerns are raised regarding the development causing low water supply/pressure. Further concerns were raised regarding Sydney Water easement along the southern boundary not shown on survey and potential impacts.

<u>Comment:</u> A condition of consent has been recommended requiring Sydney Water approval prior to demolition, excavation or construction works commencing. Allowing Sydney Water to determine if sewer, water or stormwater mains or easements impacted by the development.

5.1.10 Demolition

Concerns that existing dwelling to be demolished has asbestos and a hazardous materials report was not submitted.

<u>Comment:</u> A condition of consent has been recommended requiring a hazardous material survey to be completed before demolition. Further, conditions have been recommended regarding handling of asbestos.

5.1.11 Tree removal

Concerns were raised regarding tree removal and impacts on significant trees such as direction boring for the drainage pipeline impacting the root system of the trees. Further, concerns were raised regarding previous illegal tree removal.

<u>Comment:</u> An Arboricultural Impact Assessment was submitted with the proposal outlining that the trees to be retained can be successfully retained and protected by tree protection and sensitive construction methods. Several conditions of consent have been recommended in relation to tree protection requirements and works within tree protection zones (TPZ). Including any underground services within the TPZ, must be installed using tree-sensitive excavation methods under the supervision of the project arborist.

Illegal tree removal is not a matter for consideration under this application. However, a service request can be lodged with Council and the compliance team can investigate the matter accordingly.

5.1.12 Biodiversity

Concerns regarding impacts on fauna including birds, wombats, and the Water Dragons and critically endangered ecological community (Sydney Turpentine Ironbark Forest). Further, concerns were raised regarding no flora and fauna report and encroachment into biodiversity values map/buffer zone.

<u>Comment:</u> The subject site is not mapped as Biodiversity on the HLEP Terrestrial Biodiversity Map. The rear of the site is identified on the Biodiversity Values Map. However, the proposal does not propose removal of any native trees. Two trees Nos. T25 and 36 Box Elder 'Acer negundo' would require removal at the rear of the site. As these trees are exotic species and the proposal would not result in the clearance of native vegetation a flora and fauna report or biodiversity development assessment report is not required. Council's Natural Resources team have reviewed the proposal and are satisfied that the proposal is generally consistent with the biodiversity part of the HDCP and would not have a significant impact on matters listed under the *NSW BC Act 2016*. A further discussion regarding biodiversity impacts is provided in Part 2.5.4 of this report.

5.1.13 Sediment Control and Odour

Concerns regarding how Coups Creek will be protected from erosion, pollution, sedimentation, and maintain the water quality and aquatic habitat. Further, concerns regarding increased water flow into an existing foul drainage inspection chamber creating foul odours.

<u>Comment:</u> An erosion and sediment control plan has been submitted with the application and is considered satisfactory. In addition, conditions of consent have been recommended requiring the installation and maintenance of adequate sediment and erosion control measures for the duration of all works in accordance with 'The Blue Book'. The conditions state that works are not to result in the discharge of sediment and or run-off onto the adjoining properties or public land.

The Protection of the Environment Operations Act (POEO Act) 1997 deals with odours and if there is an issue Council can investigate accordingly.

5.1.14 Property Values

Concerns regarding the proposal decreasing property value of adjoining houses.

<u>Comment:</u> In response to these concerns, it is noted that this is not a matter listed for consideration under Section 4.15 of the *Environmental Planning and Assessment Act, 1979.*

5.1.15 Construction Noise

Concerns regarding the proposal impacting sleep of shift worker during construction.

<u>Comment:</u> In response to this concern, a condition of consent has been recommended requiring construction works to occur between 7am and 5pm Monday to Saturday which is Council's adopted policy for construction hours and in line with NSW Construction Noise Guidelines. No work is to be undertaken on Sundays or public holidays.

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

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

5.1.16 Sustainable Development

Concerns regarding sustainable development suggesting retention of existing structures is more sustainable.

<u>Comment:</u> The proposal includes a BASIX certificate for each dwelling, including the list of commitments to be complied with at the construction stage and during the use of the premises. The BASIX certificates submitted achieves the minimum scores for energy and water use, and thermal performance. The proposal is acceptable in this regard.

5.1.17 Vehicle Access

Concerns that a common turning area has not been provided and vehicles would have to reverse down driveway. Inclusion of the common turning area would result in non-complaint lot sizes. Concerns that vehicles will not be able to enter and exit the site in a forward direction for lot 3.

<u>Comment:</u> Councils engineer has reviewed the vehicle swept paths submitted and is satisfied that that vehicles can enter and exit in a forward direction.

The merits of the matters raised in community submissions have been addressed above and in the body of the report.

5.1.18 Subdivision Pattern

Concerns that the subdivision pattern is inconsistent with nearby two lot subdivisions resulting in streetscape impacts.

<u>Comment:</u> In response to this concern, the subdivision pattern including lot size and width complies with the subdivision requirements of the HDCP as outlined in Part 2.5 of this report.

5.2 Public Agencies

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

5.2.1 Department of Planning and Environment - Water

Clause 4.46 of the Environmental Planning and Assessment Act 1979 identifies development as integrated development.

In accordance with s91 of the Water Management Act 2000 (WM Act) the application was referred to the Department of Planning and Environment-Water (DPIE Water) for general terms of approval.

DPIE Water raised no objections, subject to obtaining a Controlled Activity approval under the WM Act. General terms of approval were granted for the application.

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 staged demolition of existing structures, Torrens title subdivision of one lot into three and construction of dwelling houses and swimming pools on each lot as deferred commencement.

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

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

The reasons for this decision are:

- The proposed development complies with the requirements of the relevant environmental planning instruments and the Hornsby Development Control Plan 2024.
- 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. Subdivision Plan

2. Architectural Plans

3. Stormwater Drainage Plan

4. Landscape Plan

ITEM 1

File Reference: DA/1021/2024
Document Number: D09033553

SCHEDULE 1

A. Deferred Commencement

Pursuant to Section 4.16(3) of the *Environmental Planning and Assessment Act 1979*, this consent does not operate until:

- An Easement to Drain Water over Lot 3 DP 1072181 (No. 57B Hewitt Avenue, Wahroonga) and Lot 11 DP 30101 (29 Exeter Road, Wahroonga) has been registered with the NSW Land Registry Services (NSW LRS) in favour of the development site.
- Hydrological and hydraulic calculations of the existing and proposed inter-allotment drainage system that includes the following information to determine if the existing inter-allotment drainage system within Lot 11 DP 30101 (No. 29 Exeter Road, Wahroonga) is required to be upgraded.
 - a. Catchment areas of all upstream lots draining through the inter-allotment drainage system.
 - b. The flow rate assumption of 30 l/s from Lots 1, 2 and 3 in DP 1072181 (57, 57A and 57b Hewitt Avenue is not supported and shall be verified by documentary evidence of the constructed on-site detention system. Bypass flows not draining through the on-site detention system shall be included in the calculations.
 - c. Works as executed drawings of the existing inter-allotment drainage pipe within Lot 11 DP 30101 (29 Exeter Road, Wahroonga) or survey information shall be provided to verify the pit and pipe details of the existing system to calculate the capacity.

Such information must be submitted within 36 months of the date of this notice.

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

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

GENERAL CONDITIONS

CONDITIONS APPLICABLE TO ALL STAGES

Condition

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 1	Proposed Subdivision Plan	East West	2/09/2024	
of 1		Surveyors Pty Ltd		
A101	Site Analysis & Demolition	OPSS Design &	12/08/2024	
	Plan	Building Workshop		
A103	Site Plan	OPSS Design &	30/01/2025	
		Building Workshop		
A105	Ground Floor Plan - unit	OPSS Design &	30/01/2025	
	01/Lot 01	Building Workshop		
A106	First Floor Plan - Unit	OPSS Design &	30/01/2025	
	01/Lot 01	Building Workshop		
A107	Section A-A and Materials	OPSS Design &	12/08/2024	
	and Finishes	Building Workshop		
A108	Elevation - E1 - West and	OPSS Design &	12/08/2024	
	Elevation -E2 - North	Building Workshop		
A109	Elevation - E3 - East and	OPSS Design &	12/08/2024	
	Elevation - E4 - South	Building Workshop		
A110	Schedule of Door and	OPSS Design &	12/08/2024	
	Windows - Unit 01	Building Workshop		
A111	Roof Plan	OPSS Design &	30/01/2025	
		Building Workshop		
A112	Basix Commitments	OPSS Design &	12/08/2024	
		Building Workshop		
A113	Ground Floor Plan - Unit	OPSS Design &	28/11/2024	
	02/Lot 02	Building Workshop		
A1114	First Floor Plan - Unit	OPSS Design &	28/11/2024	
	02/Lot 02	Building Workshop		
A115	Section A-A and Materials	OPSS Design &	12/08/2024	
	and Finishes	Building Workshop		
A116	Elevation - E1 - North and	OPSS Design &	28/11/2024	
	Elevation -E2 - East	Building Workshop		
A117	Elevation - E3 - South and	OPSS Design &	12/08/2024	
	Elevation - E4 - West	Building Workshop		
A118	Schedule of Door and	OPSS Design &	28/11/2024	
	Windows - Unit 02	Building Workshop		
A119	Roof Plan	OPSS Design &	28/11/2024	
		Building Workshop		
A120	Basix Commitments	OPSS Design &	12/08/2024	
		Building Workshop		
A121	Ground Floor Plan - Unit	OPSS Design &	28/11/2024	
	03/Lot 03	Building Workshop		
A122	First Floor Plan - Unit	OPSS Design &	30/01/2025	
	03/Lot 03	Building Workshop		
A123	Section A-A and Materials	OPSS Design &	30/01/2025	
	and Finishes	Building Workshop		
<u> </u>	1	<u> </u>	1	1

Plan No.	Plan Title	Drawn by	Dated	Council
				Reference
A124	Elevation - E1 - West and	OPSS Design &	30/01/2025	
	Elevation -E2 - North	Building Workshop		
A125	Elevation - E3 - East and	OPSS Design &	30/01/2025	
	Elevation - E4 - South	Building Workshop		
A126	Schedule of Door and	OPSS Design &	28/11/2024	
	Windows - Unit 03	Building Workshop		
A127	Roof Plan	OPSS Design &	30/01/2025	
		Building Workshop		
A128	Basix Commitments	OPSS Design &	12/08/2024	
		Building Workshop		
A129	Waste Management Plan	OPSS Design &	12/08/2024	
		Building Workshop		
Ld01	Landscape Plan	Earth Matters	Aug 2024	
		Consulting		

Supporting Documentation

Document Title	Prepared by	Dated	Council
			Reference
General Terms of Approval Letter	Department of	24/10/2024	D08998035
Ref: IDAS-2024-10728	Planning and		
	Environment - Water		
Civil Drawings, Dwg No. C01, C10-	Central Cost Civil	29/11/2024	D09023624
C11, C20, C30, C40-C41, C50-C53,	Designs		
C60-63, Rev B			
BASIX Certificate No. 1762925S_02	Paul & David	22/11/2024	D09023620
	Consulting Pty Ltd		
BASIX Certificate No. 1762920S_02	Paul & David	30/11/2024	D09023621
	Consulting Pty Ltd		
BASIX Certificate No. 1762914S_02	Paul & David	30/11/2024	D09023622
	Consulting Pty Ltd		
Waste Management Plan	OPSS Design &	30/08/2024	D08965736
	Building Workshop		
Arboricultural Impact Assessment &	Tree Survey	30/08/2024	D08965712
Tree Protection Plan Version 1			

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

2. 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. A Subdivision Works Certificate is required to be approved by Council or a Principal Certifier prior to the commencement of any subdivision works under this consent.
- 3. A separate approval must be obtained from Council for all works within the public road reserve under S138 of the Roads Act 1993.

4. The Construction Certificate / Subdivision Works Certificate plans must be consistent with the Development Consent plans.

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

3. No Clearing of Vegetation

Unless otherwise exempt, no vegetation is to be cleared prior to issue of a Construction Certificate.

Details demonstrating compliance are to be submitted to the Certifier prior to issue of Construction Certificate.

Reason: To protect vegetation on the site.

4. Section 7.11 Development Contributions

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	\$2,913.20
Open Space and Recreation	\$22,827.90
Community Facilities	\$14,059.90
Plan Preparation and Administration	\$199.00
TOTAL	\$40,000

being for two additional lots.

2. The value of this contribution is current as at 10 February 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:

$$CPI_{DC}$$
 CPI_{DC}

Where:

\$CPY 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:
 - a. Prior to the issue of the Subdivision Certificate where the development is for subdivision; or
 - b. 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
 - d. 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 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. Housing and Productivity Contribution

Before **the issue of a subdivision certificate** the housing and productivity contribution **(HPC)** set out in the table below is required to be made.

Housing and productivity contribution	Amount
Total housing and productivity contribution	\$25,496.72

The HPC must be paid using the NSW planning portal.

At the time of payment, the amount of the HPC is to be adjusted in accordance with the Environmental Planning and Assessment (Housing and Productivity Contributions) Order 2024 (HPC Order).

The HPC may be made wholly or partly as a non-monetary contribution (apart from any transport project component) if the Minister administering the *Environmental Planning and Assessment Act 1979* agrees.

The HPC is not required to be made to the extent that a planning agreement excludes the application of Subdivision 4 of Division 7.1 of the *Environmental Planning and Assessment Act 1979* to the development, or the HPC Order exempts the development from the contribution.

The amount of the contribution may be reduced under the HPC Order, including if payment is made before 1 July 2025.

Reason: To require contributions towards the provision of regional infrastructure.

6. Appointment of a Project Arborist

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

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

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

7. Retaining Walls

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

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

8. Compliance with Other Department, Authority or Service Requirements

The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

Other Depar Authority or Ser	rtment, rvice	Document Title/ Ref	Dated	Council Reference
Department	of	General Terms of Approval for	24/10/2024	D08998035
Planning	and	proposed development requiring		
Environment - W	ater at	approval under s89, 90 or 91 of the		
		Water Management Act 2000		
		Letter Ref: IDAS-2024-10728		

(NOTE: For a copy of the above referenced document/s, please see Application Enquiry System on Council's website www.hornsby.nsw.gov.au)

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of other departments, authorities or bodies.

BEFORE WORK COMMENCES

Condition

9. Site Sign

- 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.
- 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).

10. 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.

11. Toilet Facilities

- 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.

12. 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:

The publication Managing Urban Stormwater: Soils and Construction 2004 (4th edition) - 'The Blue Book'.

- 1. Protection of the Environment Operations Act 1997; and
- 2. 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.

13. 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.

14. 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.

15. Installation of Tree Protection Measures

- 1. Trees to be retained and numbered T1, T2, T3, T4, T5, T8, T9, T12, T15, T17, T20, T21, T22, T23, T24, T27, T28, T29, T30 and T31 as identified on the Tree Location Plan (pages 18-20) contained within the Arboricultural Impact Assessment & Tree Protection Plan Version 1, prepared by Tree Survey, dated 30 August 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 Plans referenced in the Arboricultural Impact Assessment & Tree Protection Plan Version 1, prepared by Tree Survey, dated 30 August 2024.
 - For the duration of construction works, in accordance with Tree Protection Plans referenced in the Arboricultural Impact Assessment & Tree Protection Plan Version 1, prepared by Tree Survey, dated 30 August 2024.

- Tree protection fencing for the trees to be retained numbered T1, T2, T3, T4, T5, T8, T9, T12, T15, T17, T20, T21, T22, T23, T24, T27, T28, T29, T30 and T31 must be installed by the engaged AQF 5 project arborist and consist of 1.8m high temporary fencing panels installed in accordance with Australian Standard AS4687-2007 Temporary fencing and hoardings.
- 3. The installation of all required tree protection fencing must include shade cloth attached to the fencing to reduce transport of dust, particulates, and liquids from entering the tree protection zone.
- 4. The installation of all required tree protection fencing must be in accordance with the Tree Protection Plan within the AIA.
- 5. The circumference of the trunk(s) must be wrapped in hessian material to provide cushioning for the installation of timber planks.
- 6. Timber planks (50 x100mm) must be spaced at 100mm intervals and must be attached using adjustable ratchet straps.

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

DURING WORK

Condition

16. 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.

17. 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.

18. Removal of Trees

- This development consent permits the removal of trees numbered T6, T7, T13, T14, T16, T18, T19, T25, T26 as identified on pages 2 to 4 contained in the Arboricultural Impact Assessment & Tree Protection Plan Version 1 Report prepared by Tree Survey dated 30 August 2024.
- 2. No consent is granted for the removal of trees numbered T1, T2, T3, T4, T5, T8, T9, T12, T15, T17, T20, T21, T22, T23, T24, T27, T28, T29, T30, T31 as these trees contribute to the established landscape amenity of the area/streetscape.

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

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

19. Tree Pruning

- 1. Works can be undertaken in the form of canopy modification as follows:
 - a. All specified pruning works must be less than 10 percent as supervised by the appointed and supervised by the project arborist.
 - 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 1B.6 Tree and Vegetation Preservation of the Hornsby Development Control Plan 2013.

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

20. 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.

21. 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 to be retained on the approved plans.

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

22. Maintaining Tree Protection Measures

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

Reason: To protect trees during construction.

23. 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 40 mm.
- 2. The replacement driveway must be constructed using the following process:
 - c. Demolition must be done manually using small plant machinery only, no larger than a jackhammer.
- 3. The new driveway must be constructed using the following process:
 - a. To minimise soil compaction the proposed driveway must be built on or above grade using sensitive construction techniques to retain T12.
 - b. To minimise soil compaction all imported material in the vicinity of the replacement driveway must be distributed by hand.
- 4. No changes of grade within the Tree Protection Zone of trees to be retained on the approved plans, are permitted.
- 5. To minimise impacts within the Tree Protection Zone (TPZ) of trees numbered T27 and T31 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 utilise directional drilling only.
 - c. For manually excavated trenches the AQF 5 project arborist must designate roots to be retained. Manual excavation may include the use of pneumatic and hydraulic tools.

Reason: To protect trees during construction.

24. 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.

25. 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
- Land stabilisation works are carried out progressively on site to minimise exposed surfaces.

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

26. Street Sweeping

- During works (including remediation, demolition, earthworks and construction) and until exposed ground surfaces across the site have been stabilised, street sweeping must be undertaken following sediment tracking from the site.
- 2. The street cleaning service must utilise a 'scrub and dry' method and be undertaken for the full extent of any sediment tracking.

Note: The above Item does not permit for sediment and/or any other materials/substances to exit the site in a way that constitutes water pollution as defined in the Protection of the Environment Operations Act 1997 or in a manner that contravenes other conditions in this consent. The directions under this condition, however, serve to prevent further water pollution from occurring.

Reason: To minimise impacts to the natural environment.

27. 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.

28. 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.

29. De-watering of Excavated Sites

Water that accumulates within an excavation must be removed and disposed of in a manner that does not result in the pollution of waters, nuisance to neighbouring properties, or damage to neighbouring land and/or property.

Reason: To document the safe removal of water during work to protect the public and the surrounding environment.

30. Soil and Water Management (Stockpiles)

 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. 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.

31. Storage and Removal of Waste

- 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.
- All garbage and recyclable materials generated during work must be stored in a
 waste receptable 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.

ADDITIONAL CONDITIONS APPLICABLE TO STAGE 1 - DEMOLITION AND SUBDIVISION OF ONE LOT INTO THREE

DEMOLITION WORK

BEFORE DEMOLITION WORK COMMENCES

Condition

32. Asbestos Removal Signage

Before demolition or remediation work commences involving the removal of asbestos, a standard commercially manufactured sign containing the words 'DANGER: Asbestos removal in progress' (measuring not less than 400mm x 300mm) must be erected in a prominent position at the entry point/s of the site and maintained for the entire duration of the removal of the asbestos.

Reason: To alert the public to any danger arising from the removal of asbestos.

33. 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

The contact telephone number of SafeWork NSW (4921 2900).

Note: The written notice to Council can be sent to devmail@hornsby.nsw.gov.au.

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

DURING DEMOLITION WORK

Condition

34. 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:

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

- 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
- 2. 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.

35. Handling of Asbestos

While demolition or remediation work is being carried out, any work involving the removal of asbestos must comply with the following requirements:

- Only an asbestos removal contractor who holds the required class of Asbestos Licence issued by SafeWork NSW must carry out the removal, handling, and disposal of any asbestos material.
- Asbestos waste in any form must be disposed of at a waste facility licensed by the NSW Environment Protection Authority to accept asbestos waste; and
- Any asbestos waste load over 100kg (including asbestos contaminated soil) or 10m²
 or more of asbestos sheeting must be registered with the EPA on-line reporting tool
 Waste Locate.

Reason: To ensure that the removal of asbestos is undertaken safely and professionally.

ON COMPLETION OF DEMOLITION WORK

Condition

36. Asbestos Clearance Certificate

Should any asbestos be encountered during demolition or construction works, a licenced asbestos assessor is required to provide a Clearance Certificate to the Principal Certifier prior to the issue of an Occupation Certificate, certifying that the asbestos has been removed and appropriately disposed of, and the site is now suitable for its approved use.

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

SUBDIVISION WORK

BEFORE ISSUE OF A SUBDIVISION CERTIFICATE

Condition

37. 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.

38. Identification of Survey Marks

A registered surveyor must identify all survey marks in the vicinity of the proposed development. Any survey marks required to be removed or displaced as a result of the proposed development shall be undertaken by a registered surveyor in accordance with Section 24 (1) of the *Surveying and Spatial Information Act 2002* and following the Surveyor General's Directions No.11 Preservation of Survey Infrastructure.

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

39. Stormwater Drainage

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

- 1. Connected to the natural watercourse located within Lot 11 DP 30101 (29 Exeter Road, Wahroonga) via an approved inter-allotment drainage system.
- 2. An inter-allotment stormwater drainage system to service the proposed subdivision with pits being cast in situ or pre cast concrete pits being used.

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

40. On-Site Stormwater Detention

An on-site stormwater detention system must be designed by a chartered civil engineer in accordance with the following requirements:

- 1. Have a capacity of not less than that required to restrict the maximum total discharge from the development site during the 5% AEP storm to the pre-development discharge rate for the 20% AEP storm.
- 2. Have a surcharge/inspection grate located directly above the outlet.
- 3. Discharge from the detention system must be controlled via 1 metre length of pipe, not less than 50 millimetres diameter or via a stainless plate with sharply drilled orifice bolted over the face of the outlet discharging into a larger diameter pipe capable of carrying the design flow to an approved Council system.
- 4. Where above ground and the average depth is greater than 0.3 metres, a 'pool type' safety fence and warning signs must be installed; and
- 5. Not be constructed in a location that would impact upon the visual or recreational amenity of residents.

Reason: To manage stormwater flows to minimise potential flooding.

41. 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. Design levels at the front boundary shall be obtained by lodging an "Application for Boundary Levels" to Council to be incorporated in the driveway longitudinal sections.
- 2. The driveway be a rigid pavement.
- 3. The driveway pavement be a minimum 3 metres wide, 0.15 metres thick reinforced concrete with F72 steel reinforcing fabric and a 0.15 metre sub-base.
- 4. The pavement has a kerb to one side and a one-way cross fall with a minimum gradient of 2 percent and a lintel and pit provided at the low point.
- 5. Retaining walls required to support the carriageway and the compaction of all fill batters to be in accordance with the requirements of a chartered structural engineer.
- 6. The provision of safety rails where there is a level difference more than 0.3 metres and a 1:4 batter cannot be achieved.
- 7. Planting of landscaping strips 0.5 metres wide along both sides of the length of the driveway.
- 8. Conduit for utility services including electricity, water, gas, and telephone be provided. All existing overhead assets including electricity and telecommunications cabling shall be relocated underground at no cost to Council. A certificate from an appropriately licensed contractor shall be submitted to the Principal Certifier certifying that the service conduits have been installed in accordance with the relevant utility provider and Australian Standards.
- 9. A passing bay to service the proposed subdivision in accordance with Australian Standards AS 2890.1 to ensure vehicles can enter and leave the site in a forward direction. A right of access shall be created to ensure access is maintained at all times.

10. 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.

DURING SUBDIVISION WORK

Condition

42. Traffic Control Plan

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

- 1. Arrangements for public notification of the works.
- 2. Temporary construction signage.
- 3. Permanent post-construction signage.
- 4. Vehicle movement plans.
- Traffic management plans; and
- 6. Pedestrian and cyclist access/safety.

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

43. Vehicular Crossing

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

- 1. Design levels at the front boundary must be obtained from Council for the design of the internal driveway.
- 2. Any redundant crossings must be replaced with integral kerb and gutter.
- 3. The footway area must be restored by turfing.
- 4. Approval must be obtained from all relevant utility providers that all necessary conduits be provided and protected under the crossing.

Note: An application for a vehicular crossing can only be made to one of Council's Authorised Vehicular Crossing Contractors. You are advised to contact Council on 02 9847 6940 to obtain a list of contractors.

Reason: To provide safe vehicle and pedestrian access.

44. Road Opening Permit

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

Reason: To ensure public infrastructure and property is maintained.

BEFORE THE ISSUE OF A SUBDIVISION CERTIFICATE

Condition

45. Sydney Water - Section 73 Compliance Certificate

- A compliance certificate must be obtained from Sydney Water, under Section 73 of the Sydney Water Act 1994. The Sydney Water assessment will determine the availability of water and wastewater services, which may require extensions, adjustments, or connections to their mains. Sydney Water recommends that an early application for the certificate be made, as there may be assets to be built and this can take some time.
- A Section 73 Compliance Certificate must be obtained from Sydney Water and submitted to the Principal Certifier before an Occupation Certificate or Subdivision Certificate will be issued.
- 3. Applications can be made either directly to Sydney Water or through a Sydney Water accredited Water Servicing Coordinator.

Note: Go to the <u>Sydney Water website</u> or call 1300 082 746 to learn more about applying through an authorised WSC or Sydney Water.

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

46. House Numbering

The house numbering for this subdivision shall be:

Lot	Street Number	Street Name	Street Type	Locality
Lot 1	59	Hewitt	Avenue	Wahroonga
Lot 2	57C	Hewitt	Avenue	Wahroonga
Lot 3	57D	Hewitt	Avenue	Wahroonga

Reason: To maintain property numbering in accordance with Australian Standards.

47. Works as Executed Plan

A works-as-executed plan(s) must be prepared by a registered surveyor and submitted to Council for completed road pavement, kerb & gutter, public drainage systems, driveways, and on-site detention system. The plan(s) must be accompanied by a certificate from a registered surveyor certifying that all pipelines and associated structures lie wholly within any relevant easements.

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

48. Preservation of Survey Marks

A certificate by a Registered Surveyor must be submitted to the Principal Certifier, certifying that there has been no removal, damage, destruction, displacement or defacing of the existing survey marks in the vicinity of the proposed development or otherwise the reestablishment of damaged, removed, or displaced survey marks has been undertaken in accordance with the Surveyor General's Direction No.11 Preservation of Survey Infrastructure.

Reason: To protect the State's survey infrastructure.

49. Construction of Engineering Works

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

Reason: To ensure engineering works are completed.

50. Creation of Easements

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

- 1. A right of access and easement for services over the access corridor.
- 2. An inter-allotment drainage easement(s) over each of the burdened lots.
- 3. The creation of an appropriate "Positive Covenant" and "Restriction as to User" over the constructed on-site detention/retention systems and outlet works, within the lots in favour of Council in accordance with Council's prescribed wording. The position of the on-site detention system is to be clearly indicated on the title.
- 4. To register the OSD easement, the restriction on the use of land "works-as-executed" details of the on-site-detention system must be submitted verifying that the required storage and discharge rates have been constructed in accordance with the design requirements. The details must show the invert levels of the on site system together with pipe sizes and grades. Any variations to the approved plans must be shown in red on the "works-as-executed" plan and supported by calculations.
- 5. The creation of a positive covenant over Lots 2 and 3 requiring the provision of a turning area in accordance with the Australian Standards AS 2890.1 B85 turning template to ensure vehicles can enter and leave the site in a forward direction.
- 6. An easement for letterboxes shall be created over Lot 2 benefiting Lot 3. The 88b instrument shall be worded to reflect the obligations and responsibilities of the benefiting and burdening parties.

Note: Council must be nominated as the authority to release, vary or modify any easement, restriction, or covenant.

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

ADDITIONAL CONDITIONS APPLICABLE TO STAGE 2 - CONSTRUCTION OF THREE DWELLING HOUSES

BUILDING WORK

BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

Condition

51. Subdivision - Lodgement of Plans

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

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

52. 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).

53. 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).

54. Notification of Home Building Act 1989 Requirements

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

- 1. In the case of work for which a principal contractor is required to be appointed:
 - a. The name and licence number of the principal contractor; and
 - b. The name of the insurer by which the work is insured under Part 6 of that Act.
- 2. In the case of work to be done by an owner-builder:
 - a. The name of the owner-builder; 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 certifying authority for the development to which the work relates (not being Council) has given Council written notification of the updated information.

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

55. 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 <a href="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.

56. 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 an existing inter-allotment drainage system.
- 2. Roof water must be connected to a rainwater tank in accordance with the approved BASIX Certificate requirements.
- 3. The overflow from the rainwater tank and collected surface water must be disposed of in accordance with AUS-SPEC Specifications (www.hornsby.nsw.gov.au/property/build/aus-spec-terms-and-conditions) and the following requirements:
- 4. Discharged to the existing on-site detention system.
- 5. The stormwater drainage system must be designed by a qualified hydraulic engineer.

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

57. 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:

- Design levels at the front boundary for the dwelling house on proposed Lot 1 shall be obtained by lodging an "Application for Boundary Levels" to Council to be incorporated in the driveway longitudinal sections.
- 2. The driveway be a rigid pavement.
- Provision of a turning area designed in accordance with the Australian Standards AS 2890.1 - B85 turning template to ensure vehicles can enter and leave the site in a forward direction
- 4. 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.

DURING BUILDING WORK

Condition

58. 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:

- 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).
- 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.
- 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
 - 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.
- 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.

59. Survey Report

A report(s) must be prepared by a registered surveyor and submitted to the principal certifying authority:

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.

60. Road Opening Permit

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

Reason: To ensure public infrastructure and property is maintained.

61. Vehicular Crossing (for dwelling house on Proposed Lot 1 only)

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

- 1. Design levels at the front boundary must be obtained from Council for the design of the internal driveway.
- Any redundant crossings must be replaced with integral kerb and gutter.
- 3. The footway area must be restored by turfing.
- 4. Approval must be obtained from all relevant utility providers that all necessary conduits be provided and protected under the crossing.

Note: An application for a vehicular crossing can only be made to one of Council's Authorised Vehicular Crossing Contractors. You are advised to contact Council on 02 9847 6940 to obtain a list of contractors.

Reason: To provide safe vehicle and pedestrian access.

BEFORE ISSUE OF AN OCCUPATION CERTIFICATE

Condition

62. Completion of Landscaping

A certificate must be submitted to the PCA by a practicing landscape architect, horticulturalist or person with similar qualifications and experience certifying that all required landscaping works have been satisfactorily completed in accordance with the approved landscape plans.

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

Reason: To ensure compliance with landscaping commitments.

63. 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.

64. Submission of Excavated Material Tipping Dockets to Principal Certifier

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

Reason: To confirm appropriate disposal of excavated material.

65. 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. 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.

66. Boundary Fencing

- The exact location, design and costing for the erection of boundary fencing are to be the subject of negotiation and agreement in accordance with the relevant requirements of the *Dividing Fences Act 1991*.
- 2. Fencing must be erected along all property boundaries behind the front building alignment to a height of 1.8 metres.

Note: Alternative fencing may be erected subject to the written consent of the adjoining property owner(s).

Reason: To provide amenity to the site and adjoining development.

67. Construction of Engineering Works

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

Reason: To ensure engineering works are completed.

68. 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.

69. Replacement Tree Requirements

- The trees approved for removal under this consent, being trees numbered T6, T7, T13, T14, T16, T18, T19, T25, T26 must be offset through replacement planting of a minimum of nine trees.
- 2. All replacement plantings must be species selected from the 'Trees Indigenous to Hornsby Shire (as of 1 September 2011)' document available for viewing on the

Council's website at: 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:
 - 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.

70. Final Certification

The AQF 5 Project arborist must submit to the Principal Certifying Authority 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.

71. 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.

OCCUPATION AND ONGOING USE

Condition

72. 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.
- 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

- 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 soundproofed enclosure.
- 3. The noise levels associated with the use of swimming pool and spa pumps (excluding heat pump water heaters) shall not exceed more than 5dB(A) above the background noise (LA90, 15 min) level during the following times:
 - a. Between 8 am and 8 pm on any Saturday, Sunday or public holiday, or
 - b. Between 7 am and 8 pm on any other day
- 4. The noise levels associated with the use of spa and swimming heat pump water heaters shall not exceed more than 5dB(A) above the background noise (LA90, 15 min) level during the following times:
 - a. Between 8 am and 10 pm on any Saturday, Sunday or public holiday, or
 - b. Between 7 am and 10 pm on any other day
- 5. The applicant must participate in the 'Static Water Supply Project' initiative of the NSW Fire Brigade, to make available the water in the swimming pool for use as a static water supply for fire fighting purposes by the NSW Fire Brigade or the NSW Rural Fire Service.
- 6. A certificate shall be provided to the certifying authority upon installation of any swimming pool reticulation system verifying design and installation in accordance with Australian Standard AS1926.3 Water recirculation systems.

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

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

LPP Report No. LPP4/25 Local Planning Panel Date of Meeting: 26/03/2025

2 DA/812/2024 - TORRENS TITLE SUBDIVISION OF 1 LOT INTO 2 AND PARTIAL DEMOLITON OF THE RETAINED DWELLING ON PROPOSED LOT 1 - 53 MALTON ROAD, BEECROFT

DA No: DA/812/2024 (PAN-449308 - Lodged on 24 July 2024)

Description: Torrens title subdivision of one lot into two, with partial demolition of the

existing dwelling to be retained on proposed Lot 1

Property: Lot 1 DP 789069, No 53 Malton Road, Beecroft

Applicant: Chapman Planning Pty Ltd

Owner: Jieya Liu

Estimated Value: \$550,000

Ward: C Ward

Clause 4.6 Request: NA

Submissions: 22

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

Author: George Papworth, Senior Town Planner

COI Declaration: No Council staff involved in the assessment of this application have declared

a Conflict of Interest.

RECOMMENDATION

THAT the Hornsby Local Planning Panel, exercising the functions of Council as the consent authority, approve Development Application No. DA/812/2024 for Torrens title subdivision of 1 lot into 2 and part demolition of the existing dwelling to be retained on proposed Lot 1 at Lot 1 DP 789069, No. 53 Malton Road, Beecroft as a deferred commencement pursuant to Section 4.16(3) of the *Environmental Planning and Assessment Act 1979* subject to the conditions of consent in Schedule 1 of LPP Report No. LPP4/25.

EXECUTIVE SUMMARY

- The application proposes the Torrens title subdivision of one lot into two, with partial demolition of the existing dwelling to be retained on proposed Lot 1 (53 Malton Road).
- The proposal complies with the minimum subdivision lot size as per Clause 4.1 of the Hornsby Local Environment Plan 2013.
 - Proposed Lot 1 would have an area of 1548m² (1373.1m² excluding the 174.9m² Right of Carriageway) and would be accessed via a shared accessway off Malton Road. Part of the existing driveway, the existing swimming pool, a metal shed and a rear balcony on the existing dwelling would be demolished. The dwelling would be retained on proposed Lot 1.
 - Proposed Lot 2 would have an area of 1115m² and would be accessed via the proposed Right of Carriageway over Lot 1.
- A total of 22 submissions have been received in respect of the application.
- The application is required to be determined by the Hornsby Council Local Planning Panel as 10 or more unique submissions were received by way of objection.
- It is recommended that the application be approved subject to a deferred commencement condition.

SITE

The 2,662m² site is located on north side of Malton Road, Beecroft and contains a part one and part two storey dwelling, a carport, a metal shed and a swimming pool. The site has a frontage of 30.48m to Malton Road.

The site experiences a fall of 15 metres from the front to rear boundary.

The site is bushfire prone land. The site is not flood prone land.

The site is not burdened by any easement or restrictions.

The property, No.53 Malton Road, Beecroft is not heritage listed and is located within the Gullies Precinct of the Beecroft-Cheltenham Heritage Conservation Area (HCA) listed under Schedule 5 of the *Hornsby Local Environmental Plan 2013* (HLEP).

Heritage items in the vicinity include:

- Item No.114 (Landscape) Street trees, road reserve Malton Road, Beecroft.
- Item No. 125 (Built) No.49 Malton Road, Beecroft.

The site and adjoining land contain tree species protected by the Tree Preservation Measures contained in Part 1.2.6 of the Hornsby Development Control Plan 2024 (HDCP), including mapped Biodiversity - Blackbutt Gully Forest.

PROPOSAL

The application proposes the Torrens title subdivision of one lot into two, with partial demolition of the existing dwelling to be retained on proposed Lot 1.

 Proposed Lot 1 would have an area of 1548m² (1373.1m² excluding the 174.9m² Right of Carriageway) and would be accessed via shared Right of Carriageway off Malton Road. Part of the existing driveway, the existing swimming pool, a metal shed and a rear balcony on the existing dwelling would be demolished. The dwelling would be retained on proposed Lot 1.

 Proposed Lot 2 would have an area of 1115m² and would be access via a proposed Right of Carriageway over Lot 1 off Malton Road.

The proposed development would result in the removal of 22 trees.

ASSESSMENT

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

1. STRATEGIC CONTEXT

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

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

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

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

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

2. STATUTORY CONTROLS

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

2.1 Hornsby Local Environmental Plan 2013

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

2.1.1 Zoning of Land and Permissibility

The subject land is zoned 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 houses and is permissible in the R2 zone with Council's consent.

2.1.2 Minimum Subdivision Lot Size

Clause 4.1 of the HLEP prescribes that the minimum area per lot within the R2 Low Density Residential zone is 600m². Proposed Lot 1 would have an area of 1548m² (1373.1m² excluding the 174.9m² and proposed Lot 2 would have an area of 1115m².

The proposal therefore complies with Clause 4.1 of the HLEP.

2.1.3 Heritage Conservation

The property, No.53 Malton Road, Beecroft is not heritage listed and is located within the Gullies Precinct of the Beecroft-Cheltenham Heritage Conservation Area (HCA) listed under Schedule 5 of the HLEP.

Heritage items in the vicinity include item No.114 (Landscape) - Street trees, road reserve Malton Road, Beecroft and item No. 125 (Built) - No.49 Malton Road, Beecroft.

The site contains a circa 1957 part single and two storey (at rear) dwelling built for the original owner, decorated war WWII veteran, Jack Napier. The dwelling has identified heritage significance as a good representative example of a Post-war dwelling. The brick and tile dwelling presents as single storey to the street, has a large unfenced front garden, with remnant native forest trees on the front boundary and rear of the site.

The dwelling and property are contributory to the Gullies precinct (particularly the rear sloping and vegetated section of the property) and the front yard and dwelling positively contribute to the characteristics of the Beecroft Cheltenham Precinct and HCA as a whole.

The amended plans detail a new proposed internal allotment boundary setback 8 metres from the rear of the existing Post-war dwelling. The building footprint is amended to be 900mm from the proposed internal boundary and set further to the rear. The increased rear yard area and setback to the proposed future dwelling improves the spatial arrangement and can be supported on heritage grounds.

The previous request to provide a wheel strip driveway for the extended driveway section remains as a heritage concern, as this would reduce visual impact of the new driveway in the landscape setting. Due to the slope of the driveway, from an engineering perspective, a wheel strip driveway is not considered appropriate. In support of a concrete driveway, it is noted that the site steeply slopes away from the road and the accessway to the rear lot would have limited views from the street.

2.1.4 Earthworks

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

The proposed earthworks are limited to the infill of an existing swimming pool and pond. A stone retaining wall would be demolished that traverses the proposed lot boundary. The indictive building footprint has been shown to the southern side of proposed Lot 2 to utilise an existing level area. The

indicative building envelope has a fall of 3.6m, which would result in a split-level dwelling being required to achieve a high-quality built form within the prescribed 1 metre of cut and fill for the building platform.

Matter for Consideration	Comment
(a) the likely disruption of, or any	The proposed development is limited to subdivision works,
detrimental effect on, drainage	with infill limited to the existing swimming pool and pond and
patterns and soil stability in	the demolition of the stone retaining wall which would not
the locality of the development	result in detrimental impacts on drainage patterns and soil
	stability.
(b) the effect of the development	The proposed development is limited to the subdivision works
on the likely future use or	only, as described above. A future dwelling on the site would
redevelopment of the land	be subject to a separate application. The proposed subdivision
	works would not affect the likely future use or redevelopment
	of the land.
(c) the quality of the fill or the soil	A condition of consent would ensure that only Virgin
to be excavated, or both	Excavated Natural Material (VENM) would be imported to infill
	the swimming pool and pond.
(d) the effect of the development	The proposed subdivision works would have no effect on the
on the existing and likely	amenity of adjoining properties.
amenity of adjoining properties	
(e) the source of any fill material	A condition of consent would ensure that only Virgin
and the destination of any	Excavated Natural Material (VENM) would be imported to infill
excavated material	the swimming pool.
(f) the likelihood of disturbing	Council has no record of any historical items or events of note
relics	on the subject site, of either Aboriginal or European Heritage.
	It is therefore considered that the proposed works are unlikely
	to disturb any relics.
(g) the proximity to, and potential	There is no drinking water catchment within close proximity to
for adverse impacts on, any	the site.
waterway, drinking water	
catchment or environmentally	
sensitive area	
(h) any appropriate measures	Appropriate measures have been included as conditions of
proposed to avoid, minimise or	development consent to avoid, minimise and mitigate the
mitigate the impacts of the	impacts of the development.
development	

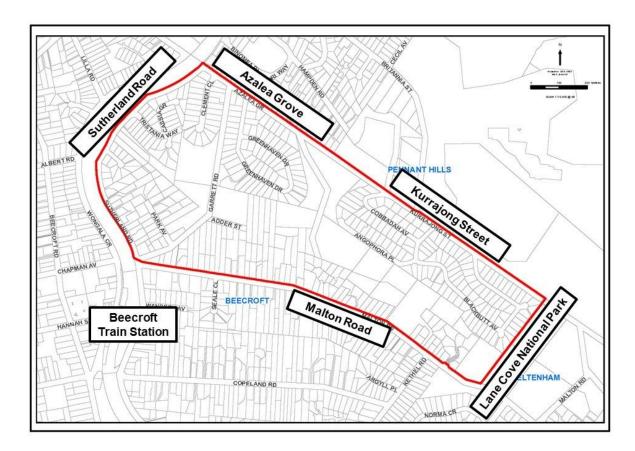
2.2 Byles Creek Planning Proposal

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

- Rezone all land within the Byles Creek Study Area currently zoned R2 Low Density Residential to C4 Environmental Living.
- Increase the minimum subdivision lot size for land proposed to be zoned C4 Environmental Living to 40ha.

- Amend the objectives of Clause 4.1 'Minimum subdivision lot size' to protect and enhance existing bushland and significant native vegetation.
- Insert a 'Riparian Land' clause under Part 6 'Additional local provisions' and provide supporting riparian corridor mapping.

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



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

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

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

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

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

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

 To provide for low impact residential development in areas with special ecological, scientific or aesthetic values.

- To ensure that residential development does not have an adverse effect on those values.
- To permit development that is compatible with the character, infrastructure capacity and access limitations of the area.

The proposed residential subdivision would align with the objectives of the C4 Environmental Living Zone as the lots would provide low impact residential development in areas with special ecological and aesthetic values. The subdivision would not have an adverse effect on those values and the development would be compatible with the character, infrastructure capacity and access limitations of the area.

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

<u>Comment</u>: The application proposes the subdivision of land that would not comply with the increased minimum subdivision lot size for rezoned land within the Study area.

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

<u>Comment</u>: The application proposes the subdivision of land. The proposed subdivision would meet the objectives to protect bushland and significant native vegetation, with the vegetation removal limited to non-native trees.

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

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

2.2.1 Weight to be given to Byles Creek Planning Proposal

Judgments of the NSW Land and Environment Court (LEC) and Court of Appeal provide a stream of case law regarding the weight that should be given to a proposed environmental Planning Instrument (EPI) when assessing a development application.

Case law tends to emphasise that the weight that should be given to a proposed EPI will depend on the likely or unlikely certainty and imminence of the relevant provisions of a proposed EPI coming into force.

Certainty relates to how confident the consent authority is that the provisions of the proposed EPI that relate to the development site are settled, while imminence relates to how soon the proposed EPI is likely to be made. This is considered in connection with the facts and circumstances of the case.

As the facts and circumstances can vary considerably from case to case, there is no definitive list of considerations or factors that can establish the certainty and imminence of a proposed EPI and the weight to be given to the proposed EPI in determining a DA.

The Courts have found that significant weight should be given to a proposed EPI where:

- it has been exhibited (particularly more than once),
- there is a clear and proximate date for the likely gazettal of the proposed EPI,
- any changes to the proposed LEP as a result of submissions or amendments required by the Minister are likely to be more of detail than substance, and/or

it is a provision inserted into a draft LEP following public submissions.

It is noted that the Byles Creek Planning Proposal has not been exhibited more than once. The Planning Proposal was returned to the Department for assessment and drafting of the LEP on 13 November 2023.

The Byles Creek Planning Proposal has only been exhibited once, there is no clear or proximate date for the likely gazettal and it is not clear if any changes to the proposed LEP amendments required by the Minister are likely to be more of detail than substance. It is therefore considered that the Byles Creek Planning Proposal does not carry significant weight due to the unlikely certainty and imminence of the proposal coming into force and would not warrant the refusal of the proposed development.

2.3 State Environmental Planning Policy (Biodiversity and Conservation) 2021

The application has been assessed against the requirements of Chapters 2 and 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 2.6.3 and 2.6.4 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 within the catchment of Sydney Harbour. The aim of this chapter is to ensure that the catchment, foreshores, waterways and islands of Sydney Harbour are recognised, protected, enhanced and maintained. This chapter provides general planning considerations and strategies to ensure that the catchment, foreshores, waterways and islands of Sydney Harbour are recognised, protected, enhanced and maintained.

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

Subject to the implementation of sediment and erosion control measures and stormwater management to protect water quality, the proposal would have minimal potential to impact on the Sydney Harbour Catchment and would comply with the requirements of chapter 6 of the Biodiversity and Conservation SEPP.

2.4 State Environmental Planning Policy (Resilience and Hazards) 2021

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

2.4.1 Chapter 4 Remediation of Land

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

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

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

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

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

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

2.6 Hornsby Development Control Plan 2024

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

HDCP - Part 3.1 Dwelling Houses & Part 6 Subdivision			
Control	Proposal	Requirement	Complies
Site Area	2,662.5m²	N/A	N/A
Lot Area			
- Lot 1	1548m² (excl. 1373.1m² accessway)	600m²	Yes
- Lot 2	1115m²	600m²	Yes
Minimum Lot Width			
- Lot 1	30.48m	12m	Yes

- Lot 2	42.33m	12m	Yes
Ex. Dwelling Floor Area (Lot 1)	178m²	330m²	Yes
Building Envelope (Lot 2)	195.5m²	200m²	No
Existing Setbacks on Lot 1			
- Front (south)	16.4m	6m	Yes
- Side (west)	9.374m	900mm	Yes
- Side (east)	1.674m	900mm	Yes
- Rear (north)	8m	8m	Yes
Indicative Setbacks on Lot 2			
- Side (south)	900mm	900mm	Yes
- Side (west)	11m	900mm	Yes
- Side (east)	10.5m	900mm	Yes
- Rear (north)	13m	3m	Yes
Landscaping			
- Lot 1	64.8%	min. 40%	Yes
- Lot 2	70.8%	min. 40%	Yes
Open Space			
- Lot 1	>24m²	min 24m²	Yes
- Lot 2	>24m²	min 24m²	Yes
Car Parking			
- Lot 1	2 spaces (existing)	2 spaces	Yes
- Lot 2	1 space shown on the indicative building envelope	2 spaces	No

As detailed in the above table, the proposed development generally complies with the prescriptive measures within the HDCP, with the exception of the minor non-compliance with the indicative

building envelope. A brief discussion on compliance with relevant performance requirements is provided below and Part 1.3 General Controls are discussed in Section 3 of the report.

2.6.1 Building Envelope

The desired outcomes of Part 6.2.1 Residential Lands Subdivision of the HDCP state that 'subdivision design should maintain appropriately shaped lots to accommodate a dwelling and associated development that is compatible with a low density residential environment' and 'subdivision design should provide setbacks to developable areas that will: complement streetscape, provide for landscaping, protect landscape features, and provide separation between existing and future dwellings.'

The prescriptive measure (f) states 'lot design should identify a potential developable area. The area is to accommodate the following: a building envelope of 200m² with a minimum dimension of 10 metres; a principal private open space area; area for parking 2 cars behind the building line; and comply with the general provisions of Section 6.1.'

While the indicative building envelope submitted in support of the proposed development has a minor non-compliance (4.5m²) with the 200m² prescriptive measure, it is noted that proposed Lot 2 would be capable of supporting a 200m² building envelope that would comply with the setback requirements, minimum dimensions, provision of carparking and turning areas, and principle private open space.

It is noted that the indicative building envelope includes a single 4 metre wide car parking space. In support of this non-compliance, it is noted that the building envelope has sufficient space to provide a 5.7 metre wide garage to provide two car parking spaces.

The proposal meets the desired outcomes of Part 6.2.1 Residential Lands Subdivision and is considered acceptable.

2.6.2 Privacy

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

This is supported by the prescriptive measures that state that:

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

The proposal includes reducing the size of the rear balcony of the existing dwelling, which is located greater than 600mm above existing ground level and does not comply with prescriptive measure (c).

In support of this non-compliance, the proposed retention of part of the rear balcony would not face a window of another habitable room, balcony or private open space of another dwelling located within 9 metres of the proposed balcony, and would therefore not require additional privacy screens, in compliance with prescriptive measure (d).

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

2.7 Section 7.11

Hornsby Shire Council Section 7.11 Contributions Plan 2020-2030 applies to the development as it would result in an additional 2 residential lots in lieu of the 1 existing lot. Accordingly, the requirement for a monetary Section 7.11 contribution is recommended as a condition of consent.

2.8 Housing and Productivity Contribution

The Housing and Productivity Contribution applies to the development as it would result in an additional 2 lots in lieu of the 1 existing lot. Accordingly, the requirement for a monetary Housing and Productivity contribution is recommended as a condition of consent.

3. ENVIRONMENTAL IMPACTS

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

3.1 Natural Environment

3.1.1 Tree and Vegetation Preservation

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

- a) "the prescribed trees that are protected by the Vegetation SEPP and/or Clause 5.10 of the HLEP and this section of the DCP include:
 - all trees except exempt tree species in Hornsby Shire as listed in Table 1B.6 (a) or subject to a Biodiversity Offset Scheme,
 - all trees on land within a heritage conservation area described within the HLEP, and
 - all trees on land comprising heritage items listed within the HLEP.
- b) To damage or remove any tree protected under the HDCP is prohibited without the written consent of Council, except in accordance with the exemptions prescribed in this part (under the heading 'Exempt Tree Work')."

There are 57 trees located within or immediately adjacent to the site. The applicant has submitted an Arboricultural Impact Assessment (AIA) prepared by New Leaf Arboriculture dated 21 November 2024.

The proposal would result in the removal of 22 trees as follows: four trees (numbered 7, 8, 15 and 16) that would be within the proposed driveway area, and 18 trees (numbered 9, 17, 22, 24, 34, 35, 36, 42, 44, 46, 47, 48, 49, 53, 54, 55, 56 and 57) for bushfire asset protection purposes.

The proposal includes the retention of 10 trees (numbered 3, 6, 10, 11, 13, 14, 29, 30, 31 and 37) which have major encroachments resulting from the proposed development. The trees can be

retained with appropriate tree sensitive design and construction measures and tree protection throughout the works.

It is demonstrated that the APZ can be established through the select removal of mostly non-locally native species (i.e. exotic or planted ornamental). The species selection for APZ establishment has been guided by an Integrated Bushfire and Vegetation Management Plan (IBVMP).

Council's tree management assessment raised no objections to the removal of these trees as there is sufficient space on the site to provide compensatory plantings of locally occurring species to maintain the local amenity. Accordingly, conditions of consent have been recommended in Schedule 1 of this report to ensure appropriate replacement plantings and tree protection measures to the retained tree.

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

3.1.2 Biodiversity

The desired outcomes of Part 1C.1.1 Biodiversity of the HDCP is to encourage "development that provides for the conservation of biodiversity including threatened species and populations, endangered ecological communities, remnant indigenous trees, regionally and locally significant terrestrial and aquatic vegetation" and to encourage "development that maintains habitat for native wildlife and wildlife corridors to provide for the movement of fauna species."

This is supported by the prescriptive measure that states that "development should seek to:

- avoid potential adverse impact on biodiversity,
- if that impact cannot be avoided, minimise that impact, or
- if the impact cannot be minimised, to mitigate the impact."

An Arboricultural Impact Assessment (AIA) was submitted prepared by New Leaf Arboriculture, dated 21 November 2024, an Integrated Bushfire and Vegetation Management Plan (IBVMP) prepared by East Coast Ecology, dated 22 November 2024 and a Flora and Fauna Assessment v2.0 prepared by East Coast Ecology, dated 20 November 2024.

The Flora and Fauna Assessment determined that the site contains Sydney Enriched Sandstone Moist Forest and a mix of non-native vegetation. It is noted that Blue Gum High Forest (BGHF) a Critically Endangered Ecological Communities (CEEC) is mapped as occurring within 400m of the site.

East Coast Ecology concluded that 'while the establishment of an APZ over native vegetation may be considered clearing under the *Local Land Services Act 2013 (NSW)*, due to the high abundance of non-native and ornamental species planted throughout the subject land, it is demonstrated that the APZ can be established through the select removal of mostly non-locally native species (i.e. exotic or planted ornamental)'.

Councils Natural Resources team reviewed the Flora and Fauna Assessment and the IBVMP prepared by East Coast Ecology and agreed that the proposed development would not have a significant impact upon biodiversity values listed under the NSW Biodiversity Conservation Act 2016.

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

3.1.3 Stormwater Management

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

A number of submissions received by Council raised concerns regarding the proposed easement to drain water through the existing private stormwater drain system in Timbertop Way, with the necessary owner's consent not granted.

In response to these concerns, it is noted that the application includes a stormwater concept plan prepared by Amity Engineers, dated 19 February 2025 which demonstrates that the proposed subdivision can be gravity drained subject to the registration and creation of an easement to drain water burdening 1 to 15 Timbertop Way.

Accordingly, a deferred commencement condition has been recommended pursuant to Section 4.16(3) of the *Environmental Planning and Assessment Act 1979*, so that the consent does not operate until a registered Easement to Drain Water from the NSW Land Registry Services (NSW LRS) has been submitted to Council.

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

3.1.4 Bushfire

The desired outcomes of Part 1.3.3.1 Bushfire of the HDCP are to encourage "development that is located and designed to minimise the risk to life and property from bushfires" and to encourage "development that balances the conservation of native vegetation and bushfire protection."

The submissions raised concerns regarding the creation of Asset Protection Zones (APZs) outside of the property boundaries, access for emergency vehicles, particularly the need for a turning head.

In response to these concerns, it is noted that the application was referred to the NSW RFS for assessment and General Terms of Approval (GTAs)

To ensure consistency with the IBVMP prepared by East Coast Ecology, Condition 1 of the GTAs was amended to reference the IBVMP.

The RFS amended Condition 5 of the GTAs to clarify that a turning head is not required as they are only required on dead ends that are longer than 200m. As the accessway is less than 200m, this would not apply, and a turning head would not be required.

The NSW RFS considered the information submitted and provided GTAs under Division 4.8 of the *Environmental Planning and Assessment Act 1979* and a Bush Fire Safety Authority under Section 100B of the *Rural Fires Act 1997*.

The GTAs include conditions on the creation and maintenance of APZs in accordance with the Integrated Bushfire and Vegetation Management Plan, construction standards, access, water and utility services. A relevant condition of consent is recommended to ensure compliance with the GTAs.

The proposal meets the desired outcomes of Part 1.3.3.1 Bushfire of the HDCP and is considered acceptable, subject to conditions.

3.2 Built Environment

3.2.1 Built Form

The proposed development is limited to the subdivision of a residential lot. Minor works include the demolition of a swimming pool, pond, stone retaining walls and decreasing the size of a rear balcony on the existing dwelling on proposed Lot 1.

3.3 Social Impacts

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

3.4 Economic Impacts

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

4. SITE SUITABILITY

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

The subject site has been identified as bushfire 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.

4.1 Bushfire Risk

The application was referred to the NSW RFS for assessment. The NSW RFS considered the information submitted and provided General Terms of Approval under Division 4.8 of the *Environmental Planning and Assessment Act 1979* and a Bush Fire Safety Authority under Section 100B of the *Rural Fires Act 1997*.

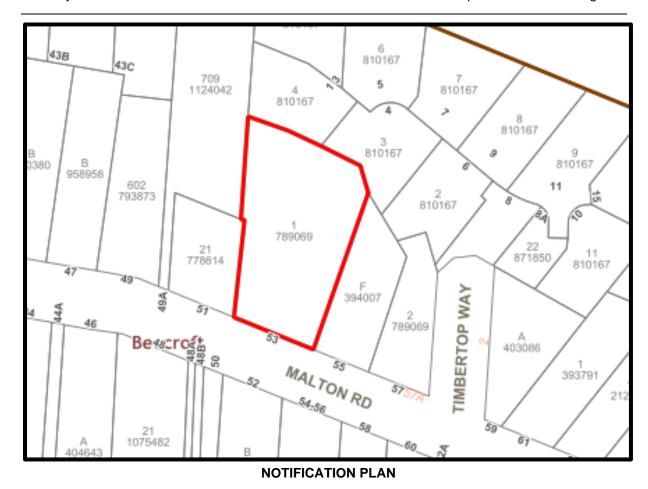
The GTAs include conditions on the creation and maintenance of APZs in accordance with the Integrated Bushfire and Vegetation Management Plan, construction standards, access, water and utility services. A relevant condition of consent is recommended to ensure compliance with the GTAs.

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 29 July 2024 and 19 August 2024 and re-notified between 25 November 2024 and 16 December 2024 in accordance with the Hornsby Community Engagement Plan. During these periods, Council received 22 submissions. The map below illustrates the location of those nearby landowners who made a submission that are in close proximity to the development site.



PROPERTIES NOTIFIED

 RECEIVED

 PROPERTY SUBJECT OF DEVELOPMENT

14 SUBMISSIONS RECEIVED OUT OF MAP RANGE

A total of 22 submissions objected to the development, generally on the grounds that the development would result in:

- Non-compliance with the Byles Creek Planning Proposal
- Lack of owners consent to connect to the private stormwater pit in Timbertop Way
- Unacceptable impact on biodiversity
- Setback non-compliances
- Unacceptable risk in regard to bushfire

The merits of the matters raised in community submissions have been addressed in the body of the report with a summary provided below:

5.1.1 Byles Creek Planning Proposal

Part 2.2 of this report provides a detailed discussion on the weight given to the Byles Creek Planning Proposal. In summary, the Byles Creek Planning Proposal does not carry significant weight to warrant refusal of the application.

5.1.2 Stormwater and Owners' Consent

A number of submissions received by Council raised concerns in regard to the proposed easement to drain water through the existing private stormwater drain system in Timbertop Way, with the necessary owner's consent not granted.

A deferred commencement condition has been recommended pursuant to Section 4.16(3) of the *Environmental Planning and Assessment Act 1979*, so that the consent does not operate until a registered Easement to Drain Water from the NSW Land Registry Services (NSW LRS) has been submitted to Council.

5.1.3 Unacceptable impact on biodiversity

It is noted that the proposed development originally proposed the removal of 3 trees which only considered the trees required to be removed to enable the creation of the driveway access.

Following a request for additional information the applicant provided an Arboricultural Impact Assessment (AIA) prepared by New Leaf Arboriculture dated 21 November 2024, an Integrated Bushfire and Vegetation Management Plan (IBVMP) prepared by East Coast Ecology dated 22 November 2024 and a Flora and Fauna Assessment v2.0 prepared by East Coast Ecology dated 20 November 2024 which concluded that 22 predominately non-native trees would be removed to accommodate the creation of the APZs.

The site does not contain Blue Gum High Forest, and the proposed development would not impact on CEEC.

Councils Natural Resources Team reviewed the Flora and Fauna Assessment and the IBVMP prepared by East Coast Ecology and agreed that the proposed development would not have a significant impact upon biodiversity values listed under the NSW *Biodiversity Conservation Act 2016*.

5.1.4 Unacceptable risk in regard to bushfire

The submissions raised concerns regarding the creation of Asset Protection Zones (APZs) outside of the property boundaries, access for emergency vehicles, particularly the need for a turning head.

In response to these concerns, it is noted that the application was referred to the NSW RFS for assessment. The NSW RFS considered the information submitted and provided GTAs under Division 4.8 of the *Environmental Planning and Assessment Act 1979* and a Bush Fire Safety Authority under Section 100B of the *Rural Fires Act 1997*.

To ensure consistency with the IBVMP prepared by East Coast Ecology, Condition 1 of the GTAs was amended to reference the IBVMP.

The RFS amended Condition 5 to clarify that a turning head is not required as they are only required on dead ends that are longer than 200m. As the access is less than 200m, this would not apply, and a turning head would not be required.

The GTAs include conditions on the creation and maintenance of APZs in accordance with the Integrated Bushfire and Vegetation Management Plan, construction standards, access, water and utility services. A relevant condition of consent is recommended to ensure compliance with the GTAs.

5.1.5 Indicative footprint only

Submissions raised concerns that no dwelling plans were submitted for proposed Lot 2. In response to these concerns, it is noted that the proposed development is for subdivision works only. A new dwelling on proposed Lot 2 would be subject to a separate development application.

5.1.6 Setbacks

Submissions raised concerns that the proposed rear setback from the existing dwelling to the proposed Lot 2 was non-compliant. Amended plans were provided with an amended lot boundary and the partial demolition of a rear deck to comply with the 8 metre rear boundary setback prescriptive measure.

5.1.7 Draining swimming pool

A submission raised concerns regarding the disposal of pool water. In response to these concerns, it is noted that the swimming pool would need to be drained to a Sydney Water sewer and not the stormwater system.

6. THE PUBLIC INTEREST

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

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

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

CONCLUSION

The application proposes the Torrens title subdivision of one lot into two, with partial demolition of the existing dwelling to be retained on proposed Lot 1.

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

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

The reasons for this decision are:

- The proposed development complies with the requirements of the relevant environmental planning instruments and the Hornsby Development Control Plan 2024.
- The proposed development does not create unreasonable environmental impacts to adjoining development.
- Consideration has been given to the Byles Creek Planning Proposal in the assessment of the development application.

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. Architectural and Subdivision Plans

2. Flora and Fauna Assessment

3. Integrated Bushfire Vegetation Management Plan

4. Stormwater Management Plans

File Reference: DA/812/2024 Document Number: D09046083

SCHEDULE 1

A. Deferred Commencement

- 1. Pursuant to Section 4.16(3) of the *Environmental Planning and Assessment Act* 1979, this consent does not operate until the following information is submitted to Council satisfaction.
 - a. The registration and creation of an easement to drain water to benefit Lot 1 in DP 789069 known as 53 Malton Road, Beecroft over Lots 3-10 in DP 810167 known as 4, 1, 3, 5, 7, 9, 11, 15 Timbertop Way, Beecroft respectively.
 - Hydrological and hydraulic calculations of the existing inter-allotment drainage system to demonstrate that there is sufficient capacity to cater for the proposed development in accordance with Hornsby Council's AUS SPEC Design Specification.
- 2. Such information must be submitted within 36 months of the date of this notice.

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

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

GENERAL CONDITIONS

1. Condition

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
TA1002 Issue C	Subdivision Plan	TROS Architects	27/02/2025	
TA2001 Issue B	Demolition Plan	TROS Architects	18/11/2024	
TA2200 Issue A	GA Plan	TROS Architects	27/02/2025	
TA3201 Issue A	General Elevations	TROS Architects	27/02/2025	

Supporting Documentation

Document Title	Prepared by	Dated	Council
			Reference
Public Domain Works Job No. 240024	Amity Engineers	31/01/2025	D09078777
Dwg C00, C10, C20, C40, C41 Rev A			
Statement of Heritage Impact	Three+one Heritage	17/06/2024	D08929508
Flora and Fauna Assessment v2.0	East Coast Ecology	20/11/2024	D09018104
Integrated Bushfire and Vegetation	East Coast Ecology	November	D09018102

Document Title	Prepared by	Dated	Council
			Reference
Management Plan		2024	
Arboricultural Impact Assessment	New Leaf	21/11/2024	D09018101
Issue 4 Ref: AIA_53_Malton_211124	Arboriculture		
Tree Protection Plan - Sheets 1-5	New Leaf	21/11/2024	D09018100
Rev E	Arboriculture		
Bushfire Risk Assessment	Bushfire Planning	20/02/2024	D08929493
	Services		
Integrated Bushfire and Vegetation	Bushfire Planning	22/11/2024	D09018097
Management Plan	Services		

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 Subdivision Works Certificate.
- 2. Details demonstrating compliance are to be submitted to the Certifier prior to issue of Subdivision Works 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.
- A Subdivision Works Certificate is required to be approved by Council or a Subdivision Certifier registered with NSW Fair Trading, prior to the commencement of any subdivision works under this consent.
- 3. A separate approval must be obtained from Council for all works within the public road reserve under *S138 of the Roads Act 1993*.
- 4. The Construction Certificate plans and Subdivision Works Certificate plans must be consistent with the Development Consent plans.

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

4. Section 7.11 Development Contributions

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	\$1,456.60

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

being for 2 additional lots in lieu of the 1 existing lot.

2. The value of this contribution is current as at 7 March 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:

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

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:
 - a. Prior to the issue of the Subdivision Certificate where the development is for subdivision; or
 - b. 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
 - d. 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 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. Housing and Productivity Contribution

Before Subdivision Certificate, the housing and productivity contribution (**HPC**) set out in the table below is required to be made.

Housing and productivity contribution	Amount
Housing and productivity contribution (base component)	\$12,748.36
Total housing and productivity contribution	\$12,748.36

The HPC must be paid using the NSW planning portal.

At the time of payment, the amount of the HPC is to be adjusted in accordance with the Environmental Planning and Assessment (Housing and Productivity Contributions) Order 2024 (HPC Order).

The HPC may be made wholly or partly as a non-monetary contribution (apart from any transport project component) if the Minister administering the *Environmental Planning and Assessment Act 1979* agrees.

The HPC is not required to be made to the extent that a planning agreement excludes the application of Subdivision 4 of Division 7.1 of the *Environmental Planning and Assessment Act 1979* to the development, or the HPC Order exempts the development from the contribution.

The amount of the contribution may be reduced under the HPC Order, including if payment is made before 1 July 2025.

Reason: To require contributions towards the provision of regional infrastructure.

6. Compliance with Other Department, Authority or Service Requirements

The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

Other Department, Authority or Service	Document Title/ Ref	Dated	Council Reference
NSW Rural Fire Service	DA20240729003087-S38-2	06/03/2025	D09083045

(NOTE: For a copy of the above referenced document/s, please see Application Enquiry System on Council's website www.hornsby.nsw.gov.au)

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of other departments, authorities or bodies.

7. Retaining Walls

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

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

BUILDING WORK

BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

2. Condition

8. Building Code of Australia

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

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

9. Contract of Insurance (Residential Building Work)

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

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

10. Notification of Home Building Act 1989 Requirements

Residential building work within the meaning of the *Home Building Act 1989* must not be carried out unless the Principal 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).

11. 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.
- 2. 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

3. Condition

12. Site Sign

- 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.
 - 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.
 - d. 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).

13. 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.

14. 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.

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.

15. 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.

16. Installation of Tree Protection Measures

- 1. Trees to be retained as identified on the Tree Location Plan prepared by New Leaf Arboriculture dated 22/11/2024 (D09018101) 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 Sheets 1-5 Rev E prepared by New Leaf Arboriculture dated 22
 November.
 - For the duration of construction works, in accordance with Tree Protection
 Plan Sheets 1-5 Rev E prepared by New Leaf Arboriculture dated 22
 November 2024.

- 2. Tree protection fencing for the trees to be retained must be installed by the engaged AQF 5 project arborist and consist of 1.8m high temporary fencing panels installed in accordance with Australian Standard AS4687-2007 Temporary fencing and hoardings.
- 3. The installation of all required tree protection fencing must include shade cloth attached to the fencing to reduce transport of dust, particulates, and liquids from entering the tree protection zone.
- 4. All tree protection zones must have a layer of wood-chip mulch at a depth of between 150mm and 300mm.

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

17. 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

4. Condition

18. 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.

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. 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.

21. 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.

22. Approved Works within Tree Protection Zone incursions

- 1. Where tree root pruning is required for the installation of piers, driveway or underground services, the pruning must be overseen by the AQF 5 project arborist and must be undertaken as follows:
 - a. Using sharp secateurs, pruners, handsaws, or chainsaws with the final cut being clean.
 - b. The maximum diameter of roots permitted to be cut is 40mm.
- 2. The new driveway must be constructed using the following process:
 - To minimise soil compaction the proposed driveway must be built on or above grade using sensitive construction techniques in the form of piers or screw pilings.
 - b. To minimise soil compaction all imported material in the vicinity of the replacement driveway must be distributed by hand.
- 3. Approved excavations within the Tree Protection Zone of trees to be retained not associated with installation of services must be undertaken as follows:
 - a. Excavations for the construction and/or installation of the house/deck/driveway/piers in the Tree Protection Zone of trees to be retained on the approved plans must be supervised by the project arborist for the first 500mm undertaken manually to locate roots and allow for pruning in accordance with condition 7.1(a)(b).
- 4. No changes of grade within the Tree Protection Zone of trees to be retained on the approved plans, are permitted.
- 5. To minimise impacts within the Tree Protection Zone (TPZ), 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.
- 6. 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.

23. 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.

24. Removal of Trees

This development consent permits the removal of trees numbered 7, 8, 9, 15, 16, 17, 22, 24, 34, 35, 36, 42, 44, 46, 47, 48, 49, 53, 54, 55, 56 and 57 as identified on page 16 in the Arboricultural Impact Assessment Issue 4 Ref: AIA_53_Malton_211124 prepared by New Leaf Arboriculture dated 22 November 2024.

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.

BEFORE ISSUE OF AN OCCUPATION CERTIFICATE

Condition

25. Damage to Council Assets

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

Reason: To ensure public infrastructure and property is maintained.

DEMOLITION WORK

BEFORE DEMOLITION WORK COMMENCES

6. Condition

26. Site Sign

- 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.
 - d. 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).

27. 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.

28. 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.

29. 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

30. 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 <u>Sydney Water Tap in</u>® 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.

31. Installation of Tree Protection Measures

- 1. Trees to be retained as identified on the Tree Location Plan prepared by New Leaf Arboriculture dated 22/11/2024 (D09018101) 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 Sheets 1-5 Rev E prepared by New Leaf Arboriculture dated 22
 November 2024.
 - For the duration of construction works, in accordance with Tree Protection
 Plan Sheets 1-5 Rev E prepared by New Leaf Arboriculture dated 22
 November 2024.
- Tree protection fencing for the trees to be retained must be installed by the engaged AQF 5 project arborist and consist of 1.8m high temporary fencing panels installed in accordance with Australian Standard AS4687-2007 Temporary fencing and hoardings.

- 3. The installation of all required tree protection fencing must include shade cloth attached to the fencing to reduce transport of dust, particulates, and liquids from entering the tree protection zone.
- 4. All tree protection zones must have a layer of wood-chip mulch at a depth of between 150mm and 300mm.

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

DURING DEMOLITION WORK

7. Condition

32. 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.

33. 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
- 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.

34. 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.

35. 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.

36. 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.

37. 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:

- 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).
- 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.
- 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
 - 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.

38. 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.

39. 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.

40. 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 40 mm.
- 2. The new driveway must be constructed using the following process:
 - To minimise soil compaction the proposed driveway must be built on or above grade using sensitive construction techniques in the form of piers or screw pilings.
 - b. To minimise soil compaction all imported material in the vicinity of the replacement driveway must be distributed by hand.
- 3. Approved excavations within the Tree Protection Zone of trees to be retained not associated with installation of services must be undertaken as follows:

- a. Excavations for the construction and/or installation of the house/deck/driveway/piers in the Tree Protection Zone of trees to be retained on the approved plans must be supervised by the project arborist for the first 500mm undertaken manually to locate roots and allow for pruning in accordance with condition 7.1(a)(b).
- 4. No changes of grade within the Tree Protection Zone of trees to be retained on the approved plans, are permitted.
- 5. To minimise impacts within the Tree Protection Zone (TPZ), 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.
- 6. 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.

41. 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.

ON COMPLETION OF DEMOLITION WORK

8. Condition

42. Submission of Excavated Material Tipping Dockets to Principal Certifier

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

Reason: To confirm appropriate disposal of excavated material.

43. Demolition of Structures

Any structure that traverses the proposed allotment boundary shall be demolished prior to the release of the subdivision certificate.

Reason: To ensure structures are located within the property boundary.

SUBDIVISION WORK

BEFORE ISSUE OF A SUBDIVISION WORKS CERTIFICATE

9. Condition

44. Utility Services

The applicant must submit written evidence of the following service provider requirements:

- 1. Ausgrid (formerly Energy Australia) a letter of consent demonstrating that satisfactory arrangements have been made to service the proposed development.
- 2. NBN a letter of consent demonstrating that satisfactory arrangements have been made to service the proposed development.

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

45. 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.

46. Traffic Control Plan

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

- 1. Arrangements for public notification of the works.
- 2. Temporary construction signage.
- 3. Permanent post-construction signage.
- 4. Vehicle movement plans.
- 5. Traffic management plans; and
- 6. Pedestrian and cyclist access/safety.

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

47. Car Parking and Deliveries

All car parking must be constructed and operated in accordance with Australian Standard AS 2890.1-2004 Off street car parking and Australian Standard AS2890.2-2002 Off street commercial and the following requirement:

- 1. All parking areas and driveways must be sealed to an all-weather standard, line marked and signposted.
- 2. Car parking, loading and manoeuvring areas must be used solely for nominated purposes.
- 3. Vehicles awaiting loading, unloading, or servicing must be parked on site and not on adjacent or nearby public roads; and
- 4. All vehicular entry on to the site and egress from the site must be made in a forward direction.

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

48. Identification of Survey Marks

A registered surveyor must identify all survey marks in the vicinity of the proposed development. Any survey marks required to be removed or displaced as a result of the proposed development shall be undertaken by a registered surveyor in accordance with Section 24 (1) of the *Surveying and Spatial Information Act 2002* and following the Surveyor General's Directions No.11 Preservation of Survey Infrastructure.

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

49. 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:

- Connected directly to the inter-allotment drainage pit located within Lot 3 DP 810167 known as 4 Timbertop Way, Beecroft.
- 2. An inter-allotment stormwater drainage system to service the proposed subdivision with pits being cast in situ or pre cast concrete pits being used.
- 3. The stormwater from access handle driveway shall be designed to be collected with a kerb inlet pit at the lowest point in the access handle.
- 4. The roof and stormwater drainage system from the existing dwelling to be connected to the proposed inter-allotment drainage system.

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

50. On-Site Stormwater Detention

An on-site stormwater detention system for both lots must be designed by a chartered civil engineer in accordance with the following requirements:

1. Generally, in accordance with the Job No. 240024 Revision A dated 19.02.2025 by Amity Engineers.

- 2. Have a capacity of not less than 20.05 cubic metres, and a maximum discharge (when full) of 29 litres per second for the existing dwelling on the front lot and 11.65 cubic metres, and a maximum discharge (when full) of 8 litres per second for the vacant rear lot.
- 3. Have a surcharge/inspection grate located directly above the outlet.
- 4. Discharge from the detention system must be controlled via 1 metre length of pipe, not less than 50 millimetres diameter or via a stainless plate with sharply drilled orifice bolted over the face of the outlet discharging into a larger diameter pipe capable of carrying the design flow to an approved Council system.
- 5. Where above ground and the average depth is greater than 0.3 metres, a 'pool type' safety fence and warning signs must be installed; and
- 6. Not be constructed in a location that would impact upon the visual or recreational amenity of residents.

Reason: To manage stormwater flows to minimise potential flooding.

51. 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:

- Design levels at the front boundary shall be obtained by lodging an "<u>Application for Boundary Levels</u>" to Council to be incorporated in the driveway longitudinal sections.
- 2. The driveway be a rigid pavement.
- 3. The driveway pavement be a minimum 3 metres wide, 0.15 metres thick reinforced concrete with F72 steel reinforcing fabric and a 0.15 metre sub-base.
- 4. The pavement has a kerb to one side and a one-way cross fall with a minimum gradient of 2 percent and a lintel and pit provided at the low point.
- 5. Retaining walls required to support the carriageway and the compaction of all fill batters to be in accordance with the requirements of a chartered structural engineer.
- 6. The provision of safety rails where there is a level difference more than 0.3 metres and a 1:4 batter cannot be achieved.
- 7. Planting of landscaping strips 0.5 metres wide along both sides of the length of the driveway.
- 8. Any structure including eaves gutters encroaching over the access driveway shall be removed.
- 9. Conduit for utility services including electricity, water, gas, and telephone be provided. All existing overhead assets including electricity and telecommunications cabling shall be relocated underground at no cost to Council. A certificate from an appropriately licensed contractor shall be submitted to the Principal Certifier certifying that the service conduits have been installed in accordance with the relevant utility provider and Australian Standards.

- 10. A turning area to service the existing dwelling shall be designed in accordance with Australian Standards AS 2890.1 to ensure vehicles can enter and leave the site in a forward direction.
- 11. 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.

52. Road Works

Prior to the issue of a Subdivision Works Certificate a separate approval pursuant to Section 138 of the *Roads Act 1993* must be obtained from Council for road works in public road reserve. All road works approved under this consent must be designed in accordance with AUS-SPEC Specifications (www.hornsby.nsw.gov.au/property/build/aus-spec-terms-and-conditions) and the following requirements:

- A kerb and gutter and pavement in line with the adjoining subdivision, together with footpath formation, necessary drainage and sealing of road pavement between the existing pavement and lip of the gutter.
- The design of a new vehicular crossings and the removal of the redundant crossing. The vehicular crossing must be constructed in accordance with AUS-SPEC Specifications and the following requirements:
 - a. Design levels at the front boundary shall be obtained by lodging an "Application for Boundary Levels" to Council.
 - b. Any redundant crossings must be replaced with integral kerb and gutter.
 - c. The footway area must be restored by turfing.
 - d. Approval must be obtained from all relevant utility providers that all necessary conduits be provided and protected under the crossing.
- 3. The existing road pavement to be saw cut a minimum of 600mm from the existing edge of the bitumen and reconstructed.

Reason: To ensure infrastructure works are designed and constructed to appropriate standards and requirements of the Roads Act 1993.

53. 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.
- 2. 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.

54. Appointment of a Project Ecologist

- To ensure the implementation and monitoring of environmental protection measures during the construction of the approved development, a suitably qualified and experienced project ecologist must be appointed to assist in ensuring compliance with the conditions of consent and provide monitoring reports to Council at various stages of the Project as identified in the Integrated Bushfire Vegetation Management Plan prepared by East Coast Ecology dated 22 November 2024and as specified by the conditions of consent.
- Monitoring reports prepared by the Project Ecologist must be provided to Council (naturalresourcesplanning@hornsby.nsw.gov.au) in accordance with the Integrated Bushfire and Vegetation Management Plan. The timing schedule specified in Section 6 commences from the release of the Subdivision Works Certificate for a minimum of 5 years.
- Details of the appointed project ecologist must be submitted to Council (naturalresourcesplanning@hornsby.nsw.gov.au) and the Principal Certifier with the application for the Subdivision Works Certificate.

Reason: To ensure appropriate monitoring of environmental protection measures during work.

BEFORE SUBDIVISION WORK COMMENCES

10. Condition

55. Site Sign

- 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).

56. 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.

57. Toilet Facilities

- 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.

58. 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.

59. Installation of Tree Protection Measures

- 1. Trees to be retained as identified on the Tree Location Plan prepared by New Leaf Arboriculture dated 22/11/2024 (D09018101) 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 Sheets 1-5 Rev E prepared by New Leaf Arboriculture dated 22
 November 2024.
 - For the duration of construction works, in accordance with Tree Protection
 Plan Sheets 1-5 Rev E prepared by New Leaf Arboriculture dated 22
 November 2024.
- Tree protection fencing for the trees to be retained must be installed by the engaged AQF 5 project arborist and consist of 1.8m high temporary fencing panels installed in accordance with Australian Standard AS4687-2007 Temporary fencing and hoardings.
- 3. The installation of all required tree protection fencing must include shade cloth attached to the fencing to reduce transport of dust, particulates, and liquids from entering the tree protection zone.
- 4. All tree protection zones must have a layer of wood-chip mulch at a depth of between 150mm and 300mm.

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

DURING SUBDIVISION WORK

11. Condition

60. 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.

61. 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.

62. 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.

63. Vegetation Removal in Asset Protection Zones

While site work is being carried out, clearing or modifying vegetation to establish the Asset Protection Zone (APZ) must be confined within the marked APZ boundary in accordance with the approved Integrated Bushfire and Vegetation Management Plan prepared by East Coast Ecology dated 22 November 2024, to the satisfaction of Council. The APZ establishment works must be undertaken under the guidance and certification of the Project Ecologist.

Reason: To ensure vegetation clearance or modification during construction is confined within the APZ

64. 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.

65. 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.

66. 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 40 mm.
- 2. The new driveway must be constructed using the following process:
 - To minimise soil compaction the proposed driveway must be built on or above grade using sensitive construction techniques in the form of piers or screw pilings.
 - b. To minimise soil compaction all imported material in the vicinity of the replacement driveway must be distributed by hand.

- 3. Approved excavations within the Tree Protection Zone of trees to be retained not associated with installation of services must be undertaken as follows:
 - a. Excavations for the construction and/or installation of the house/deck/driveway/piers in the Tree Protection Zone of trees to be retained on the approved plans must be supervised by the project arborist for the first 500mm undertaken manually to locate roots and allow for pruning in accordance with condition 7.1(a)(b).
- 4. No changes of grade within the Tree Protection Zone of trees to be retained on the approved plans, are permitted.
- 5. To minimise impacts within the Tree Protection Zone (TPZ), 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.
- 6. 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.

67. 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.

68. Road Opening Permit

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

Note: The Road Opening Permit must be applied for via Council's Online Services Portal at: https://www.hornsby.nsw.gov.au/property/build/apply-for-a-permit/road-openings

Reason: To ensure public infrastructure and property is maintained.

69. Compliance with integrated Bushfire and Vegetation Management Plan

The Council approved Integrated Bushfire and Vegetation Management Plan (IBVMP) must be complied with for the duration of works, unless otherwise approved by Council.

Reason: To ensure the protection of resident fauna during and post works on the site.

BEFORE ISSUE OF A SUBDIVISION CERTIFICATE

12. Condition

70. Sydney Water - Section 73 Compliance Certificate

- A compliance certificate must be obtained from Sydney Water, under Section 73 of the Sydney Water Act 1994. The Sydney Water assessment will determine the availability of water and wastewater services, which may require extensions, adjustments, or connections to their mains. Sydney Water recommends that an early application for the certificate be made, as there may be assets to be built and this can take some time.
- A Section 73 Compliance Certificate must be obtained from Sydney Water and submitted to the Principal Certifier before an Occupation Certificate or Subdivision Certificate will be issued.
- 3. Applications can be made either directly to Sydney Water or through a Sydney Water accredited Water Servicing Coordinator.

Note: Go to the <u>Sydney Water website</u> or call 1300 082 746 to learn more about applying through an authorised WSC or Sydney Water.

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

71. Replacement Tree Requirements

- 1. The trees approved for removal under this consent, being trees numbered 7, 8, 9, 15, 16, 17, 22, 24, 34, 35, 36, 42, 44, 46, 47, 48, 49, 53, 54, 55, 56 and 57 must be offset through replacement planting of a minimum of 10 trees and 10 understorey plants.
- 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:
 - 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.

72. 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.

73. Final Certification - Asset Protection Zone

A suitably qualified and experienced bushfire consultant and Project Ecologist is to provide Council with a certificate stating that the APZ has been established in accordance with the approved Bushfire Risk Assessment prepared by Bushfire Planning Services, dated 20 February 2024, Integrated Bushfire and Vegetation Management Plan prepared by East Coast Ecology dated 22 November 2024, Planning for Bushfire Protection 2019 and the NSW Rural Fire Service's Standards for Asset Protection Zones.

Reason: To ensure the APZ has been established in accordance with the approved plans.

74. Damage to Council Assets

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

Reason: To ensure public infrastructure and property is maintained.

75. Creation of Easements

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

- 1. A Right of Access and Easement for Services over the access corridor.
- 2. An inter-allotment drainage easement(s) over each of the burdened lots.
- 3. The creation of an appropriate "Positive Covenant" and "Restriction as to User" over the constructed on-site detention/retention systems and outlet works, within the lots in favour of Council in accordance with Council's prescribed wording. The position of the on-site detention system is to be clearly indicated on the title.
- 4. To register the OSD easement, the restriction on the use of land "works-as-executed" details of the on-site-detention system must be submitted verifying that the required

storage and discharge rates have been constructed in accordance with the design requirements. The details must show the invert levels of the on site system together with pipe sizes and grades. Any variations to the approved plans must be shown in red on *the "works-as-executed" plan* and supported by calculations.

- 5. The creation of a positive covenant over the rear lot shall be created that requires the provision of turning area designed in accordance with the B85 swept path in the Australian Standards AS 2890.1 with any future development.
- 6. An easement for letterboxes shall be created over front lot benefiting the rear lot. The 88b instrument shall be worded to reflect the obligations and responsibilities of the benefiting and burdening parties.

Note: Council must be nominated as the authority to release, vary or modify any easement, restriction, or covenant.

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

76. House Numbering

The house numbering for this subdivision shall be:

Lot	Street Number	Street Name	Street Type	Locality
Lot 1	53 (front)	Malton	Road	Beecroft
Lot 2	53A (rear)	Malton	Road	Beecroft

Reason: To maintain property numbering in accordance with Australian Standards.

77. Works as Executed Plan

A works-as-executed plan(s) must be prepared by a registered surveyor and submitted to Council for completed road pavement, kerb & gutter, public drainage systems, driveways, and on-site detention system. The plan(s) must be accompanied by a certificate from a registered surveyor certifying that all pipelines and associated structures lie wholly within any relevant easements.

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

78. Demolition of Structures

Any structure that traverses the proposed allotment boundary shall be demolished prior to the release of the subdivision certificate.

Reason: To ensure structures are located within the property boundary.

79. Preservation of Survey Marks

A certificate by a Registered Surveyor must be submitted to the Principal Certifier, certifying that there has been no removal, damage, destruction, displacement or defacing of the existing survey marks in the vicinity of the proposed development or otherwise the reestablishment of damaged, removed, or displaced survey marks has been undertaken in accordance with the Surveyor General's Direction No.11 Preservation of Survey Infrastructure.

Reason: To protect the State's survey infrastructure.

80. 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.

81. Certification of RFS Requirements

A Certificate prepared by a BPAD accredited Bushfire Consultant is to be provided to the Principal Certifier (PC) certifying the completion of all works required by the NSW RFS General Terms of Approval (GTAs) prior to the issue of the Subdivision Certificate.

Reason: To ensure all bushfire protection measures are implemented to protect life and property.

END OF CONDITIONS

LPP Report No. LPP5/25 Local Planning Panel Date of Meeting: 26/03/2025

3 DA/983/2024 - TEMPORARY USE OF THE SITE AS A FUNCTION CENTRE - 10 BLACKS ROAD, ARCADIA

DA No: DA/983/2024 (PAN-466032 (Lodged on 5 September 2024)

Description: Temporary use of the site as a function centre

Property: Lot 1 DP 29156 No. 10 Blacks Road, Arcadia

Applicant: Minto Planning Services Pty Ltd

Owner: Mrs Jenny Louise Guest and Mr Peter John Guest

Estimated Value: \$17,600

Ward: A Ward

Clause 4.6 Request: N/A

Submissions: 38

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

Author: George Papworth, Senior Town Planner

COI Declaration: No Council staff involved in the assessment of this application have declared

a Conflict of Interest.

RECOMMENDATION

THAT the Hornsby Local Planning Panel, exercising the functions of Council as the consent authority, approve Development Application No. DA/983/2024 for the temporary use of the site as a Function Centre at Lot 1 DP 29156, No. 10 Blacks Road, Arcadia subject to the conditions of consent in Schedule 1 of LPP Report No. LPP5/25.

EXECUTIVE SUMMARY

- The application proposes the temporary use of the site as a function centre in accordance with the provisions of Clause 2.8 of the Hornsby Local Environmental Plan 2013.
- The proposal generally complies with the requirements of the Hornsby Local Environmental Plan 2013 and the Hornsby Development Control Plan 2024.
- A total of 38 submissions have been received in respect of the application.
- The application is required to be determined by the Hornsby Council Local Planning Panel as 10 or more unique submissions were received by way of objection.
- It is recommended that the application be approved subject to the imposition of a condition limiting the consent to a period of 24 months to allow monitoring and assessment of the use to confirm it is operating satisfactorily.

BACKGROUND

On 20 June 2016, Council approved Development Application No. DA/360/2016 to extend the dwelling house and construct a detached secondary dwelling and 3 car garage/shed.

On 11 August 2017, Council granted approval to install a wastewater management system (LA/400/2017).

On 26 August 2020, Council approved DA/360/2016/A for internal and external modifications to approved dwelling house, secondary dwelling and garage/shed.

On 8 June 2021, Council approved Development Application No. DA/246/2021 for an outbuilding (cabana).

On 10 May 2024, Council issued a Stop Use Order pursuant to Item No.1 in Part 1 of Schedule 5 of the *Environmental Planning and Assessment Act 1979* to cease using the premises as a function centre.

SITE

The two-hectare site is located on the southern side of Blacks Road Arcadia, and contains a single storey dwelling house, secondary dwelling, two sheds, an outbuilding, a cabana, a swimming pool and a dam.

The dwelling house and secondary dwelling have been designed to resemble an "Italian inspired medieval style village" and provide hosted Short Term Rental Accommodation (STRA) which is permitted as exempt development under the provisions of State Environmental Planning Policy (Housing) 2021 (the 'Housing SEPP'). The dwelling is registered with the NSW Government STRA Register. The STRA comprises 4 bedrooms which can accommodate a maximum 10 persons at any one time.

The site experiences a fall of 16 metres towards the eastern side boundary.

The site is not located in a bushfire or flood prone area.

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

The site is not burdened by any easements or restrictions.

The site is not served by the sewers of Sydney Water.

PROPOSAL

The application proposes the temporary use of the site for a function centre in accordance with the provisions of Clause 2.8 of the Hornsby Local Environmental Plan 2013 (HLEP). Functions would be limited to a maximum period of 28 days (whether or not consecutive days) in any period of 12 months, excluding time required for set up and pack down.

The portions of the existing site to be used for the functions are described below:

- Existing cabana located towards the northwest portion of the site. The cabana is to be used for catering and dining purposes.
- An outdoor area comprising of a gravel driveway located immediately adjacent to the existing cabana. This area is to be used for outdoor dining.
- An existing lawn area located between the existing dam and swimming pool. This area will be used for small gatherings comprising of micro weddings or elopements.
- Various existing paved or gravel driveway areas which will be utilised for onsite car parking.
- Nominated locations for the temporary storage of waste containers and temporary/portable toilets.

Occupancy and operational hours of the spaces associated with the temporary function centre are:

- Lawn Area
 - Maximum 30 people
 - Monday to Sunday 8am 6pm
- Cabana and External Dining Area
 - o Maximum 30 people
 - o Sunday to Thursday 8am 6pm
 - Friday and Saturday 7am 10pm

The temporary use would require the installation of acoustic measures. These measures would not preclude the operation of the existing dwelling and short-term rental accommodation when the temporary use ceases to be used on site.

All functions will utilise mobile food vans for food/ drink service and waste management. The food van(s) would be parked in the allocated parking bays close to the cabana and external dining area.

All other structures associated with the temporary use would be either existing or temporary structures erected or brought onto the site for the various functions held.

Wastewater and sewerage will be serviced by the existing cabana kitchen and dwelling bathrooms and toilets and be utilised for all functions up to the maximum load capacity scenarios. Portable toilets would be temporarily placed on site for the duration of the functions only when there are 10 guests staying and between 27 and 30 non staying function guests.

No trees would be removed by the proposed development.

ASSESSMENT

The development application has been assessed having regard to the Greater Sydney Region Plan - A Metropolis of Three Cities, the North District Plan and the matters for consideration prescribed

under Section 4.15 of the *Environmental Planning and Assessment Act 1979* (the Act). The following issues have been identified for further consideration.

1. STRATEGIC CONTEXT

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

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

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

The site is identified within the North District Plan as being part of the Metropolitan Rural Area under Planning Priority N18 'Better managing rural areas.'

Part 5 of the Metropolis of Three Cities relates to 'Productivity' and a key objective is that industrial and urban services land is planned, retained and managed as there is a need to grow and diversify local employment opportunities. The site is located in the Metropolitan Rural Area and the Strategy notes that the retention of local jobs for local communities of Metropolitan Rural Areas is an important outcome.

Part 6 of the Metropolis of Three Cities relates to 'Sustainability' and a key objective is that environmental, social and economic values in rural areas are protected and enhanced.

The proposed development is considered consistent with A Metropolis of Three Cities and the Northern District Plan, by retaining local jobs for local communities to protect and enhance economic values.

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 and Clause 2.8 Temporary Use of Land

The subject land is zoned RU4 Primary Production Small Lots under the HLEP. The objectives of the RU4 zone are:

• To enable sustainable primary industry and other compatible land uses.

- To encourage and promote diversity and employment opportunities in relation to primary industry enterprises, particularly those that require smaller lots or that are more intensive in nature.
- To minimise conflict between land uses within this zone and land uses within adjoining zones.
- To encourage land uses that support primary industry and align with the rural character of the area, including agritourism and tourist and visitor accommodation.
- To ensure that development does not unreasonably increase the demand for public infrastructure, services or facilities.

The proposal is consistent with the RU4 zone objectives for the following reasons:

- The proposed land use would be small scale and complement the rural character and primary production activities of the locality.
- The small land holding of the subject site would not sustain primary production as a sole entity. The proposal does not promote a use that is in competition for primary production lands.
- The use of the site complements horticultural production in the locality, by promoting the rural character of this location.
- The proposed land use would not compromise the sustainability of these lands for use as primary production given the scale and temporary nature of the proposed use should the land tenure change in the future.
- The use of the site has been developed so as not to impact on the visual character or the
 amenity of the locality. This has been addressed in the acoustic assessment of the proposal
 and the mitigation measures employed both within the PoM and the acoustic assessment
 such as the provision of screening and separation to these land uses.
- The proposed use of the site is of an intensity that complements the established rural character of Arcadia, and ultimately not compete with the surrounding primary production lands.
- The use of the site would not increase demand for local infrastructure due to the largely transient nature of facilities and services offered in the operation of the premises.

The proposed development is defined as a 'function centre' which is a prohibited land use within the zone.

Notwithstanding, Clause 2.8 of the HLEP permits a function centre as a temporary use on land if it can be demonstrated that "the use does not compromise future development of the land, or have detrimental economic, social, amenity or environmental effects on the land" and the following:

- "(2) Despite any other provision of this Plan, development consent may be granted for development on land in any zone for a temporary use for a maximum period of 28 days (whether or not consecutive days) in any period of 12 months.
- (3) Development consent must not be granted unless the consent authority is satisfied that—
 - (a) The temporary use will not prejudice the subsequent carrying out of development on the land in accordance with this Plan and any other applicable environmental planning instrument, and

- (b) The temporary use will not adversely impact on any adjoining land or the amenity of the neighbourhood, and
- (c) The temporary use and location of any structures related to the use will not adversely impact on environmental attributes or features of the land, or increase the risk of natural hazards that may affect the land, and
- (d) At the end of the temporary use period the land will, as far as is practicable, be restored to the condition in which it was before the commencement of the use."

With respect to (a) it is noted that minimal building works are proposed to facilitate the establishment of the temporary use of the site for functions. This includes minor alterations to the existing cabana and the erection of acoustic barriers that would be removed when the temporary use ceases to operate. The use of the site for a temporary use does not prejudice the carrying out of development in accordance with the provisions of the zone, and the HLEP more broadly.

With respect to (b), as established by Marshall Rural Pty Ltd v Hawkesbury City Council and Ors [2015] NSWLEC 197 case law, the test posed for consideration of the elements of Clause 2.8 differs from that which would conventionally apply to development applications for uses which, according to the Land Use Table, are not prohibited development. Therefore, in the case of the current application, the requirements of Clause 2.8(3)(b) establish a much higher test standard than would typically be imposed on an application for a 'function centre' on land where the relevant zoning permits this use.

On this basis, development consent must not be granted unless Council is satisfied that the application would satisfy the 'no adverse impact' test under cl. 2.8(3)(b).

The proposed development satisfies the 'no adverse impact' test for the following reasons:

- The applicant submitted a Temporary Use of Land Noise Impact Assessment, prepared by Pulse White Noise, dated 6 November 2024 which concludes that the proposed temporary use as a function centre would satisfy the HLEP's meaning of 'not adversely impact' the neighbouring receivers, subject to compliance with the project criteria.
- The proposal has demonstrated that no adverse impact was measured at background noise level +0 and this test is consistent with the requirement for being a more stringent assessment required by Clause 2.8, as established by case law. This is in keeping with the decision of *Marshall Rural Pty Limited v Hawkesbury City Council* [2015] NSWLEC 197 in adopting a precautionary approach to the acoustic measurement commensurate with the nature of the temporary application that seeks consent for an otherwise prohibited use. Given the difficulties in defining 'no adverse impact' that exist, a definition for consideration of this application that meets both the test of Clause 2.8 of the HLEP of 'no adverse impact' along with adopting a more stringent approach as required by the case law has been applied. The amended acoustic report is therefore considered to be an appropriate means for resolving the difficulty in this regard.
- The lawn area would have 1.8m high temporary acoustic barriers to mitigate noise from the event to achieve the no adverse impact criteria, with the use of the lawn area ceasing at 6pm, limited to 30 patrons and restrictions on the use of amplified sound or live music. It is considered that an assessment of staff and sub-contractors is not necessary as the personnel operating on site during the applicable trading hours would not generate an acoustic level beyond that which is anticipated by the function of the event. The event is measured at the greatest potential impact being maximum 30 people.

- It is noted that the setup and pack down relate to small furniture items, including tables and
 chairs within the operating hours as identified. The on-site delivery of the porta-loo or mobile
 food vans is the equivalent of vehicles arriving on site and therefore does not require further
 mitigation. It is for these reasons that an assessment of the noise generated by staff and subcontractors is unnecessary.
- The existing cabana would be enclosed on the southern and western elevations to achieve a
 minimum of Rw 25 to mitigate noise from the event to achieve the no adverse impact criteria.
 The use of the cabana and outdoor dining area would cease at 10pm, is limited to 30 patrons
 and restrictions on the use of amplified sound or live music.
- The acoustic report addresses noise attributed to car parking and vehicular movements and determined that this would not result in any adverse impact. The equipment used is in small time periods for delivery on site and not in a prolonged and on-going basis. Similarly, these vehicles are unlikely to generate noise greater than those experienced by farming and production equipment (lawn mowers, harvesting tractors etc) used in the surrounding primary production lands.
- The noise control measures are embedded within the Plan of Management (PoM) to give Council and the proponents suitable recourse where a breach is demonstrated. The language of the PoM was written to ensure that future function holders are aware of their obligations to the proponents and to create a contractual obligation of same. The applicants of the subject application are the proponents of the function centre. The onus and accountability would be on the proponents for the on-going operation of a temporary function centre to ensure the compliance with the PoM and respective acoustic mitigation measures.
- The formal aspects of functions held on site would be contained within the existing cabana and outdoor dining area. This includes eating, drinking, dancing, speeches etc, with the exception of ceremonies held in the lawn area. The use of speakers is identified in the supporting documentation submitted and includes 1 speaker in the cabana and noise limited sound system for ceremonies in the lawn area. These speakers are to be fitted with noise control measures as identified in the acoustic report.
- Question 3 of the Land and Environment Court of NSW 'Plan of Management' planning principal, requires consideration of 'whether the source of any breaches of the Management Plan can be readily identified to allow for any enforcement action?'
 - For clarity, the proponents of the temporary function centre are the applicants/ owners of the site and are aware of the compliance issues raised by Council and adjoining property owners. The proponents/ owners are responsible for the noise mitigation measures identified in the PoM. Council would therefore have compliance functions to ensure that the on-going use of the temporary function centre is operated in accordance with the terms of the PoM and the Acoustic Assessment, as would be the case for a typical function venue.
- It is acknowledged that the terms of the PoM would be the subject of the hire agreement between the Function Holder and the Proponent.

With respect to (c) it is noted that the site is not constrained by any significant environmental features that would be impacted by the temporary use of the site for functions. The site is not bushfire or flood prone, does not contain NSW or local biodiversity values and the topography is relatively flat.

With respect to (d) it is noted that no significant building works are proposed to support the temporary use of the site for functions. The only building works required for this application are the temporary acoustic barriers and the enclosing of the existing cabana.

In summary, as demonstrated above, the function centre incorporates noise control devices including acoustic barriers, glazing, controlling devices on the speakers and behaviour management through the mechanism of the design of the function spaces, as well as the provisions of the PoM.

Furthermore, a condition has been recommended in Schedule 1 of this report requiring that an acoustic assessment is to be undertaken by a suitably qualified Acoustic Engineer/Consultant within 6 months of commencement to verify that operational noise limits predicted in the Temporary Use of Land Noise Impact Assessment Ref: 240216 rev. R6, prepared by Pulse White Noise, dated 6 November 2024 have been satisfied.

As outlined above, the documents provided adequately demonstrate that the proposed 'temporary use will not adversely impact on any adjoining land or the amenity of the neighbourhood' as required by Clause 2.8(3)(b) of the HLEP.

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 show for the land on the Height of Buildings Map. The maximum permissible height for the subject site is 10.5 metres. The development includes alterations and additions to the elevations of the existing cabana and temporary acoustic fencing at 1.8 metres in height. The proposal complies with this provision.

2.1.3 Heritage Conservation

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

2.1.4 Earthworks

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

The proposed development is for a change of use with minor alterations to the existing cabana which would not impact on the soil stability or drainage patterns of the locality.

2.2 State Environmental Planning Policy (Resilience and Hazards) 2021

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

2.2.1 Chapter 4 Remediation of Land

Section 4.6 of 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.

A review of Council's records and aerial photography has determined that the site has been historically used for rural 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.

2.3 State Environmental Planning Policy (Biodiversity and Conservation) 2021

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

2.3.1 Chapter 6 Water Catchments

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

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

Subject to the implementation of sediment and erosion control measures and stormwater management to protect water quality, the proposal would not impact on the water quality of the catchment and would comply with the requirements of chapter 6 of the Biodiversity and Conservation SEPP.

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

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

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

2.5 Hornsby Development Control Plan 2024

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

HDCP - Part 2.1 Rural						
Control	Proposal	Requirement	Complies			
Site Area	2.02ha	N/A	N/A			
Site Coverage	All permanent structures are existing. Only temporary structures to be erected under this application.	On Merit	Yes			
Setback	All temporary structures would comply with these setback requirements.	10 metre - side 15 metre - rear	Yes			
Landscaping/Fencing	1.8m Acoustic fence set 20m into property	1.8m	Yes			
Private Open Space	>24m²	24m²	Yes			
Car Parking	24 spaces	Parking Study identified min. 15 spaces for max. 30 guests	Yes			

As detailed in the above table, the proposed development complies with the prescriptive measures within the HDCP. A brief discussion on compliance with relevant performance requirements and Part 1.3 General Controls is provided below.

2.5.1 Scale

The desired outcome of Part 2.1 Scale of the HDCP is to encourage "development with a height, bulk and scale that is compatible with the rural area."

The proposed development includes works to enclose the southern and western elevations of the existing 64m² cabana. No alterations are proposed to the roof of the cabana which would remain a single storey structure with the roof below the dominant tree canopy.

On sites larger than 4,000m², the maximum site coverage is on merit, based on the site constraints. The proposed development seeks consent for the use of the existing cabana. No additional outbuildings are proposed, with the proposed works limited to the alterations to the elevations of the cabana and a temporary 1.8m high acoustic barrier to the lawn area during use as a function centre.

In support of the proposed development, it is noted that site coverage would remain as existing which is considered acceptable on merit, based on the site constraints.

The proposal meets the desired outcome of Part 2.1 Scale of the HDCP and is considered acceptable.

2.5.2 Vehicular Access and Parking

The desired outcome of Part 2.1.5 Vehicle Access and Parking of the HDCP is to ensure "development that provides sufficient and convenient parking with vehicular access that is simple, safe and direct".

The proposal is supported by a Traffic Impact Assessment (TIA) prepared by Sydney Traffic Engineers dated 5 March 2025.

2.5.2.1 Traffic Generation

In regard to traffic generation the TIA concludes that the proposed temporary function centre would have a minimal impact on the existing road network, particularly during peak times. The surrounding road infrastructure, including Blacks Road and Arcadia Road, is sufficient to accommodate the anticipated traffic volumes without significant disruption.

The TIA assessed that the current operating Level of Service (LOS) for the adjacent road network would remain unchanged. This conclusion is supported by Table 4.4 of the RTA's Guide to Traffic Generating Developments (2002, Version 2.2), which outlines peak hour flows for urban roads. The assessment indicates that traffic flows during events will not adversely affect the efficiency of the existing infrastructure, ensuring that residents and road users experience minimal inconvenience.

It is noted that the TIA was initially assessed with a maximum of 50 guests and since the revision of the TIA the proposal has been amended to reduce the maximum number of guests to 30 which would further reduce the impact on the surrounding road infrastructure.

Council's Traffic and Road Safety Team have reviewed the TIA prepared by Sydney Traffic Engineers and concur with the assessment regarding traffic generation.

2.5.2.2 Car Parking

The TIA concludes that the parking requirement analysis shows that the provision of 24 on-site parking spaces is adequate to meet the needs of guests, staff, and service vehicles.

Council's assessment of the proposed development has concluded that the temporary use is to be limited to a maximum of 30 guests with the provision for 6-8 staff. The provision of 24 parking spaces is considered adequate for the proposed number of guests and staff. A condition of consent has been recommended to ensure that on the days that the temporary use of the land as a function centre is operating, the STRA must only be occupied by guests attending the function to ensure adequate car parking is available on site.

It is noted that a number of submissions were received which raised concerns that during previously held events cars have parked along Blacks Road causing various safety concerns. In response to these concerns, it is noted that a condition of consent has been recommended to ensure that all vehicles associated with the function centre use are parked within the subject site.

The TIA includes a swept path analysis that shows guest vehicles (B85 vehicles) can enter the site in a forward gear, turn on site, and exit the site in a forward gear.

All delivery vehicles (limited to MRV size) would be capable of entering and exiting the site in a forward gear. The PoM has been updated to include that an appointed traffic controller is on site to ensure appropriate signage and to manage the timing of deliveries/food trucks entering and exiting to not impede any guests entering or leaving the parking area during or before the closure of the event.

The proposal meets the desired outcomes of Part 2.1.5 of the HDCP and is considered acceptable.

2.5.3 Accessible Design

The desired outcome of Part 1.3.2.2 Accessible Design of the HDCP is to ensure that the proposal provides "Publicly accessible buildings that provide a safe and continuous path of travel for people with impaired mobility."

Council's Building Certifications team have assessed the proposed development and recommended conditions of consent to ensure that the accessible paths of travel detailed in Figure 8: Toilet locations and accessibility in the Plan of the Plan of Management dated 5 March 2025 must comply with Part D4 of the National Construction Code - Building Code of Australia.

The proposal meets the desired outcomes of Part 1.3.2.2 of the HDCP and is considered acceptable.

2.5.4 Waste Management

The desired outcome of Part 1.3.2.3 Waste Management of the HDCP is to ensure "Development that maximises re-use and recycling of building materials." And "Waste storage and collection facilities that are designed to encourage recycling, located and designed to be compatible with the streetscape, accessible, clean and safe for users and collectors".

The use of existing waste facilities and designated area is proposed with display signs that clearly identify garbage and recycling bins using colour coding according to AS4123.7-2006 Mobile Waste Containers

Food waste, excess garbage and excess recyclable waste is to be removed off site by subcontractors and vendors at the end of a function with storage during the function at the designated areas or vendors vehicles.

The proposal meets the desired outcomes of Part 1.3.2.3 of the HDCP and is considered acceptable.

2.5.5 Effluent Disposal

The desired outcome of Part 1.3.2.4 Effluent Disposal of the HDCP is to ensure that "sewage is disposed of in a manner that minimises impacts on the natural and built environment and public health".

The application was referred to Council's Environmental Protection team who noted the Plan of Management has been amended to update the wastewater information, including that portable toilets which would be temporarily placed on site for the duration of the functions when there are up to 10 staying guests and more than 26 non staying function guests.

It is noted that a condition of consent has been recommended to ensure that on the days that the temporary use of the land as a function centre is operating, the STRA must only be occupied by guests attending the function to ensure that the total number of guests on site at any time does not exceed 30.

The applicant will therefore not require portable toilets and would be relying on the NSW Health Accreditation which outlines the capacity for the existing wastewater system is 1541L, while the calculated daily volume at full capacity would be 1540L or less.

It is noted that should any failure occur to the wastewater system due to overuse, the proponent would be responsible for any work required.

Accordingly, appropriate conditions are recommended should consent be granted for the use of the site as a temporary function centre to meet the desired outcomes of Part 1.3.2.4 Effluent Disposal of the HDCP.

2.5.6 Noise and Vibration

The desired outcomes of Part 1.3.2.5 Noise and Vibration of the HDCP are to encourage 'development designed and managed to minimise noise and vibration impacts on the occupants of residential dwellings and other noise sensitive land uses.'

This is supported by prescriptive measure (f) that 'noise generating developments should be accompanied by an acoustic report that demonstrates the development is sited and designed to: minimise the effect of noise and vibration on surrounding sensitive land uses and comply with relevant State Government and Council guidelines.'

A number of submissions raised concerns in regard to the acoustic impacts on neighbouring properties. In response to these concerns, it is noted that Council's Environmental Protection Team carried out a detailed assessment of the acoustic impacts which resulted in an Amended Temporary Use of Land Noise Impact Assessment (NIA), prepared by Pulse White Noise, dated 6 November 2024 being submitted for review.

The NIA concludes that the proposed temporary use as a function centre would satisfy the HLEP's meaning of 'not adversely impact' the neighbouring receivers, subject to compliance with the project criteria.

Council's review of the NIA has determined that the proposed development satisfies the 'no adverse impact' test for the following reasons:

- The proposal has demonstrated that no adverse impact was measured at background noise level +0 and this test is consistent with the requirement for being a more stringent assessment required by Clause 2.8, as established by case law. This is in keeping with the decision of *Marshall Rural Pty Limited v Hawkesbury City Council* [2015] NSWLEC 197 in adopting a precautionary approach to the acoustic measurement commensurate with the nature of the temporary application that seeks consent for an otherwise prohibited use. Given the difficulties in defining 'no adverse impact' that exist, a definition for consideration of this application that meets both the test of Clause 2.8 of the HLEP of 'no adverse impact' along with adopting a more stringent approach as required by the case law has been applied. The amended acoustic report is therefore considered to be an appropriate means for resolving the difficulty in this regard.
- The lawn area would have 1.8m high temporary acoustic barriers to mitigate noise from the event to achieve the no adverse impact criteria, with the use of the lawn area ceasing at 6pm, limited to 30 patrons and restrictions on the use of amplified sound or live music. It is considered that an assessment of staff and sub-contractors is not necessary as the personnel operating on site during the applicable trading hours would not generate an acoustic level beyond that which is anticipated by the function of the event. The event is measured at the greatest potential impact being maximum 30 people
- A condition of consent has been recommended to ensure that on the days that the temporary use of the land as a function centre is operating, the STRA must only be occupied by guests attending the function to ensure that the total number of guests on site at any time does not exceed 30 as the Acoustic Assessment did not consider any cumulative impact from the STRA operating at the same time as the proposed temporary function centre use.

It is noted that the setup and pack down relate to small furniture items, including tables and chairs within the operating hours as identified. The on-site delivery of the porta-loo or catering

trucks is the equivalent of vehicles arriving on site and therefore does not require further mitigation. It is for these reasons that an assessment of the noise generated by staff and subcontractors is unnecessary.

- The existing cabana would be enclosed on the southern and western elevations to achieve a
 minimum of Rw 25 to mitigate noise from the event to achieve the no adverse impact criteria.
 The use of the cabana and outdoor dining area would cease at 9:30pm, limited to 30 patrons
 and restrictions on the use of amplified sound or live music.
- The acoustic report addresses noise attributed to car parking and vehicular movements and determined that this would not result in any adverse impact. The equipment used is in small time periods for delivery on site and not in a prolonged and on-going basis. Similarly, these vehicles are unlikely to generate noise greater than those experienced by farming and production equipment (lawn mowers, harvesting tractors etc) used in the surrounding primary production lands.

Appropriate conditions of consent have been recommended requiring a suitably qualified acoustic engineer to verify that operational noise limits predicted in the NIA have been satisfied. If the verification assessment finds that operational noise does not meet the required criteria, noise reduction recommendations and acoustic controls or treatments shall be provided that ensure compliance.

The proposal meets the desired outcomes of Part 1.3.2.5 Noise and Vibration of the HDCP and is considered acceptable, subject to conditions.

2.6 Section 7.12 Contributions Plan

The proposed development as a temporary function centre would be considered 'all other development that does not involve the creation of additional dwellings or, in the case of commercial premises – additional GFA'. The proposed temporary use is as a function centre which is not considered a commercial premises or business premises under the HLEP definitions and therefore fall under the 'all other development' definition for the purposes of applying Section 7.12 contributions.

Therefore, the Hornsby Shire Council Section 7.12 Contributions Plan 2019-2029 applies to the development and as the estimated costs of works is less than \$100,000 then no contributions are payable.

2.7 Housing and Productivity Contribution

Under the Housing and Productivity Contribution, a function centre is considered a commercial premises. The Housing and Productivity Contribution does not apply to the proposed development as the gross floor area of a commercial building does not include the gross floor area of a part of the building that may be used for development other than commercial development, in this case the cabana may also be used ancillary to the dwelling house.

3. ENVIRONMENTAL IMPACTS

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

3.1 Natural Environment

3.1.1 Tree and Vegetation Preservation

The proposed use would not necessitate the removal of any trees from the site.

3.1.2 Stormwater Management

The proposed development is for the use as a function centre. No changes are proposed to the existing stormwater management system.

3.2 Built Environment

3.2.1 Built Form

The proposed use of the existing cabana with alterations and additions would retain the single storey structure with the roof below the dominant tree canopy which would be consistent with rural development within the locality.

The enclosing of the southern and western facades of the existing cabana and the temporary 1.8m high acoustic barriers would not result in any additional overshadowing or overlooking impacts to neighbouring properties. Appropriate conditions of consent have been recommended to minimise nuisance lighting.

3.2.2 Traffic

Vehicular access would be retained via Blacks Road, and the proposed parking demand associated with the use would be well within the service level of the road as identified in the supporting Traffic Impact Assessment (TIA) prepared by Sydney Traffic Engineers dated 5 March 2025. Parking on site (24 vehicles, as marked) would be in excess of the demand required for the proposed use. Accessible parking could be provided on site as required and the proposed use was not identified as a Traffic Generating Development pursuant to SEPP (Transport and Infrastructure). Council's Traffic and Safety Assessment concurs with the submitted Traffic Impact Assessment.

3.3 Social and Economic Impacts

The proposal would have a positive impact on the local economy in conjunction with other rural development in the locality, with the potential to generate an increase in demand for local services. Economic and employment opportunities would be generated during operation of the site, as well as provide secondary opportunities for business stimulation of local function service providers (caters etc) and also local cafes, restaurants and accommodation venues.

4. SITE SUITABILITY

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

Possible examples

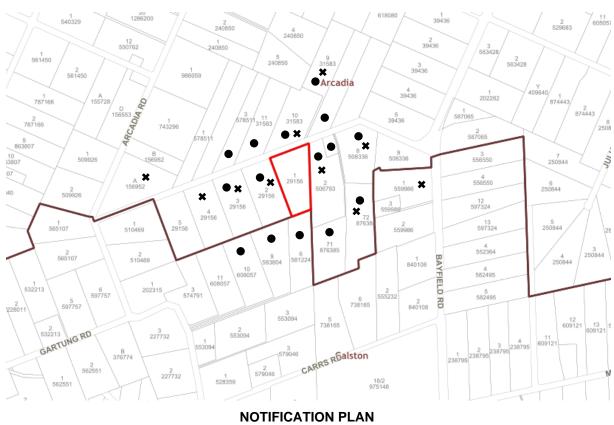
The subject site has not been identified as bushfire prone or flood prone land. The site is considered to be capable of accommodating the proposed development. The scale of the proposed development is consistent with the capability of the site and is considered acceptable.

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 9 September 2024 and 30 September 2024 in accordance with the Hornsby Community Engagement Plan. During this period, Council received 18 submissions, with a further 20 submissions received outside of the notification period. The map below illustrates the location of those nearby landowners who made a submission that are in close proximity to the development site.



PROPERTIES NOTIFIED	X	SUBMISSIONS RECEIVED	PROPERTY SUBJECT OF DEVELOPMENT	W E
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A total of 38 submissions received objected to the development and raised the following concerns:

- Noise
- Traffic
- Wastewater
- Waste Management
- Lighting
- Alcohol consumption/ anti-social behaviour
- RU4 zone objectives and prohibited land use
- Satisfying the requirements of Temporary use provisions
- Existing unauthorised use

- Inconsistent plans for cabana
- Lack of notification beyond nearest neighbours
- The proposed development meets the definition of Designated Development

These matters have been addressed in the body of the report and/or discussed below.

5.1.1 Acoustic Impacts

Submissions received by way of objection from adjoining property owners include amenity impacts to the rural area and quality of life as a result of the proposed functions, mainly associated with noise and traffic. Many submissions raised concerns that they have previously experienced the level of noise and poor management associated with various functions that have been previously held on the subject site. Council is unable to substantiate the number of guests that previously attended functions on the site as this was an unauthorised use. Council's assessment is based upon the proposed use which is to be limited to a maximum number of 30 guests and acoustic measures implemented.

Many submitters were not confident in the proposed acoustic barriers and mitigation measures, concerned that sounds travel far in the semi-rural area and that the mitigation measures would not be adequate. These concerns have been addressed in Part 2.5.6 of this report. In addition, Council will require acoustic monitoring of the use to be undertaken and submitted to Council within the first 6 months of operation and have proposed a time limited consent to ensure monitoring and assessment of the use to confirm it is operating satisfactorily.

A concern was received regarding the accuracy of the Noise Impact Assessment and the application of the appropriate criteria. In response to these concerns, it is noted that an amended Noise Impact Assessment was requested and received with the criteria that no adverse impact was taken to mean "zero impact" and the applicable criteria consisted of measured background noise level (RBL) + 0dBA.

5.1.2 Acoustic Peer Review

Council received a submission from a town planner acting on behalf of a nearby resident located at No.6 Blacks Road that included a Peer Review of the Pulse Report prepared by Rodney Stevens Acoustic. It is noted that the resident is located over 150m in distance from the cabana and lawn area.

The peer review states that the methodology and recommendations in the Noise Impact Assessment (prepared by Pulse) were reviewed, and the outcome was that the scenarios used, and the recommendations are insufficient and do not provide the sufficient information to ascertain compliance with the noise criteria. A discussion of relevant points is provided below:

- a) Section 2 presents the site and its boundaries and correctly identifies 3 residential receivers to the east, west and south. However, there are 2 receivers to the north which have not been identified, and the assessment does not include the noise impact to these residents.
- 1. <u>Council Response</u>: The receivers not included are of similar distance to receiver 2. There is no reason to request an additional assessment to include additional receivers.
- 2. It is noted that No. 6 Blacks Road is included as a receiver, despite the distance beyond the most sensitive receivers at No. 8 & 12 Blacks Road.
- b) Section 4.1.2 presents the ambient octave band spectra, the description provided refers to LA90 noise levels, however the numbers on Table 2 are presented as L90. This must be clarified as the noise criteria has to be derived from these numbers and depending on which

weighting has been used. Having incorrect weighting applied to the octave data can lead to incorrect noise criteria for the function centre.

<u>Council Response</u>: The report in Section 4.1 outlines the data is presented in LA1, LA10, LAeq and LA90 noise levels for the corresponding 15-minute periods. This outlines the description is Aweighted.

The omission of the "A" in the table appears to be a minor error by Pulse.

c) Section 5.1.1 presents the noise criteria as required by Hornsby Shire Council. At this stage it is difficult to ascertain the correct noise criteria for the site. Typically, noise emissions from the use of a licensed venue falls under the Liquor and Gaming policies (requiring a LA10 noise criteria to be applied) and noise from mechanical noise and carparking falls under the EPA Noise Policy for Industry.

<u>Council Response</u>: Council has determined that the noise criterion from patrons, music and mechanical plant has been established as background + 0dBA measured using the LA10 15-minute noise descriptor to ensure the 'no adverse impacts' requirement of Clause 2.8 of the *HLEP*.

Noise from mechanical plant is not likely to present as an adverse impact, particularly due to the proposed low intensity use of maximum 30 people which will result in a food van being engaged and the proposed location where the van will be situated is sufficiently distanced from neighbouring receivers to the east and west.

Vehicle noise has been assessed using the lower of the amenity or intrusiveness criteria. Sleep disturbance was not assessed in the revised report however, it is noted that the predicted noise level presented does not exceed the triggers as described in Section 2.5 of the Noise Policy for Industry, and therefore requiring a detailed maximum noise level event assessment.

Council has recommended a condition that the use of the cabana cease by 9.30pm and all people attending a function, not staying at the premises overnight, are to have left the property by 10pm as a measure to further address any concerns of vehicle noise.

d) Section 5.1.2.3 present the area classification and identifies the area a being rural, however the amenity noise levels presented in Table 4 are incorrect as they refer to an urban area classification. Table 5 presents the project specific noise criteria for the site. These criteria are based on based on the agreed background plus 5 dB(A) criteria from council.

<u>Council Response</u>: The use of the classification as "Urban" appears to be in error, however the noise levels presented in the table are correct for a "Rural" classification according to the Noise Policy for Industry.

e) Section 6.1.1 presents the assumed noise levels that will be used for the assessment, it is stated that 1 of 10 people will be speaking in the lawn area and 1 of 3 will speak in the cabana. These assumption does not represent the activities carried out at a wedding ceremony, it assumes that there will always be 3 groups of people gathered listening to a single speaker, while in reality multiple conversations can take place within a group of 30 people before and after the ceremony takes place. A more conservative (realistic) scenario would consist of 1 person speaking and 1 person listening, a 1 of 3 speaking scenario is acceptable in both areas. We note that the sound power levels assumed for the different vocal efforts fall in line with what is expected in such activities.

<u>Council Response</u>: Use of the lawn area for pre-wedding gatherings would generally be quieter gatherings prior to the ceremony taking place and while it is noted that there is likely to be some

increased noise level on completion of the ceremony, this will be a for a short time period and due to the low number of people gathering (i.e. maximum 30), occurring during the normal day time period. Additionally, conditions will be imposed restricting the use of any loud musical instruments such as live bands or drums.

Therefore, it is our view that this proposed use of the lawn area for ceremonies does not present as an adverse noise impact and does not require reassessment.

f) Section 6.1.3.1 presents recommendations for the use of the lawn area, it is recommended that a noise limiter is included in the sound system, however, there is no mention of acoustic performances or amplified. It will be difficult to limit the noise levels emitted by such performances in particular when the noise limit is as low as 75 dB(A) at 1 meter. It is recommended that acoustic barriers be implemented to the east and west of the lawn area, figure 2 shows the location of these barriers. The extend of the barriers is likely to be insufficient as it is an open area and noise can easily travel around the barriers, in particular if the speakers, patrons or live acts are located away from the barrier coverage. The location and extent of the barriers must be revised.

<u>Council Response</u>: It is understood the proponent's intention is to use the lawn area for ceremonies and the hours of use are during the day. This use is not considered to present an adverse impact to receivers and conditions can be recommended restricting any live music such as bands and the use of drums.

g) Section 6.1.3.2 presents recommendations for the use of the cabana, the forth bullet point refers to the implementation of a noise limiter. It refers to the use of a Sonos Bluetooth speaker, it is unclear how an outboard noise limiter can be incorporated to a Bluetooth speaker. The Sonos One can be connected to portable devices and laptops via Bluetooth and it does not have Auxiliary inputs for microphones and musical instruments. Additional, patrons as well staff have free access to the volume controls.

<u>Council Response</u>: Council has recommended appropriate conditions that address the installation of a noise limiter and certification by an acoustic engineer. It is further noted that the Plan of Management states that the sound system can only be adjusted by the proponents.

h) Section 6.2 presents the noise emissions from the use of the carpark, the assessment assumes 4 vehicles entering or leaving the carpark, this includes the associated engine starts and door closures within a 15 minute period. The assumption of 4 vehicles generating noise within the carpark in a 15 minute period is not sufficient, it is likely that most patrons will leave the venue once the celebration has ended, assuming 2 people per vehicle it is likely that at least 10 vehicles or more will leave the site within a 15 minute period, the assessment must be revised and a realistic scenario should be used. However, if the noise criteria is only achieved through the rate of vehicle leaving at 4 per 15minutes, then a detailed Plan of Management is required on the traffic/carpark management.

<u>Council Response</u>: It is not agreed that all vehicles will leave at the same time and the assessment was carried out at a reasonable rate of 4 vehicles per 15 minute period. Council has restricted the operating hours for functions to end at 9:30pm at the latest to ensure that all guests have left the premises by 10pm. Council has recommended appropriate conditions in regard to acoustic verification to assess the LAeq(15minute) noise emitted from vehicular noise at the car park against the background noise level (L90), when measured at the boundary of any affected residence.

The noise from service vehicles (including refuse and portable toilet collection and delivery), deliveries and food vendors has not been assessed, it is proposed to have 3 caterer vendor vehicles, it is unclear whether they operate from their vehicles (food preparation) or they only deliver the consumables. Clarification on the use of the vendor vehicles must be provided, where the vendors prepare food inside their vehicles, a noise impact assessment of the use of each vehicle must be included.

<u>Council Response</u>: Noise from refuse and portable toilet collect and delivery falls outside of the function use and would not be considered as offensive noise due to being short-term.

Mechanical plant from the proposed supply of food by mobile food caterers is not assessed in the report. There have been multiple changes made by the proponent relating to food supply from mobile food vending vehicles to onsite caterers using the kitchen in the cabana and reverting back to mobile food vending vehicles.

It is Councils view that noise impacts would be non-existent should a caterer be employed that serves food pre-prepared offsite however, it is the proponents desire to offer mobile food vending vehicles as the alternative to any kitchen upgrades required to satisfy the Food Act requirements.

In summary, Council is satisfied with the amended report and acoustic considerations. The proposed use is clearly low intensity with a maximum of a 30 people attending functions, during hours prior to the Noise Policy for Industry night-time noise period and prior to the NSW Liquor and Gaming midnight noise level and noise levels presented achieve the requirements of the HLEP to not adversely impact the amenity of the area.

5.1.3 Traffic Impacts

Concerns were raised regarding the potential traffic and amenity impacts from the proposed development, noting that they have experienced poor management associated with various functions that have been previously held on the subject site.

Appropriate conditions of consent have been recommended to ensure that all vehicles associated with the temporary function centre are parked within the subject site. See 2.5.2 of this report for discussion.

5.1.4 Adverse impact

Concerns were received that the proposed development does not demonstrate that it would "not adversely impact" upon adjoining land and the neighbourhood as outlined under the temporary use clause of the HLEP.

This concern has been addressed in Part 2.1.1 of this report.

5.1.5 Unacceptable impact from wastewater

Concerns were received regarding the capacity of the existing wastewater management system. In response to these concerns, it is noted that the applicant is relying on the NSW Health Accreditation of the existing system which outlines the capacity for the existing wastewater system is 1541L, while the calculated daily volume at full capacity would be less than 1540L.

It is noted that a condition of consent has been recommended to ensure that on the days that the temporary use of the land as a function centre is operating, the STRA must only be occupied by guests attending the function to ensure that the total number of guests on site at any time does not exceed 30.

The applicant will therefore not require portable toilets and would be relying on the NSW Health Accreditation which outlines the capacity for the existing wastewater system is 1541L, while the calculated daily volume at full capacity would be 1540L or less.

5.1.6 Unacceptable impact from waste management

Concerns were received regarding the waste management from the temporary use. In response to these concerns, it is noted that the use of existing waste facilities and designated area is proposed with display signs that clearly identify garbage and recycling bins using colour coding according to AS4123.7-2006 Mobile Waste Containers

Food waste, excess garbage and excess recyclable waste is to be removed off site by subcontractors and vendors at the end of a function with storage during the function at the designated areas or vendors vehicles.

5.1.7 Unacceptable impact from lighting

Concerns were received regarding nuisance lighting from the temporary use in a rural area.

In response to these concerns, appropriate conditions of consent have been recommended to minimise nuisance lighting. A condition of consent is recommended to amend the PoM to include that all external lighting be on an automatic timer and turned off at 10.15pm.

5.1.8 Concerns regarding anti-social behaviour associated with alcohol consumption.

In response to this submission, a condition of consent has been recommended in Schedule 1 requiring Compliance with Plan of Management which details guest safety and site rules.

5.1.9 Concerns that this type of development does not meet the RU4 zone objectives and 'functions centres' are prohibited in this zone under the HLEP.

Concerns were raised that this type of development does not meet the RU4 zone objectives and 'functions centres' are prohibited in this zone under the HLEP. It is noted that these concerns have been addressed in Part 2.1.1 of this report which concluded that the proposed development has adequately demonstrated that the proposed 'temporary use will not adversely impact on any adjoining land or the amenity of the neighbourhood' as required by Clause 2.8(3)(b) of the HLEP.

5.1.10 Concerns regarding on-going compliance with any conditions due to history of noncompliance

Ongoing and historic compliance matters are beyond the scope of the development assessment process and are subject to separate investigation by Council's Environmental Compliance team.

5.1.11 Temporary Use

Concerns that the use is not a temporary use. The proposed limitation of 28 function centre use occurrences per calendar year meets the definition of temporary use.

5.1.12 Unauthorised uses

Concerns regarding the alleged unauthorised short-term holiday accommodation and car-detailing business.

Ongoing and historic compliance matters are beyond the scope of the development assessment process and would be subject to investigation by Council's Environmental Compliance team.

5.1.13 Inconsistent plans for cabana

Concerns were raised there the plans for the cabana were inconsistent. In response to these concerns, it is noted that amended plans were provided the addressed the inconsistent section labelling. The elevations provided accurately depict the proposed works.

5.1.14 Lack of notification beyond nearest neighbours

Concerns were raised that only the nearest neighbours were notified. In response to these concerns, it is noted that the application was notified in accordance with Council's Community Engagement Plan with letters sent to adjoining properties that share a common boundary with the subject site.

Council may extend the area of notification if in Council's opinion that the development may potentially impact on the wider locality. In this regard Council is satisfied that the proposed temporary use of the land would not have an adverse impact on the wider community.

5.1.15 The proposed development meets the definition of Designated Development

Concerns were raised that the proposed development meets the definition of Designated Development. In response to these concerns, it is noted that the development is not for the purposes of a sewerage system with the proposed use relying on an existing on-site wastewater management system with a capacity of 1.5 kilolitres. Council have assessed the capacity of the existing system and deemed it to be sufficient for the proposed temporary use of the land. In the circumstances where 10 guests and 27-30 non-staying guests are present on site, temporary toilets would be required.

5.1.16 Bushfire

A concern was received that the proposed development had not considered bushfire risk. In response to these concerns, it is noted that the site is not mapped as Bushfire Prone Land and therefore no further assessment is required.

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 not have an adverse impact for the community. Accordingly, the application is recommended for approval.

CONCLUSION

The application proposes the temporary use of the site as a Function 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 38 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 for approval.

The reasons for this decision are:

- The proposed development complies with the requirements of the relevant environmental planning instruments and the Hornsby Development Control Plan 2024.
- The proposed development does not create unreasonable environmental impacts to adjoining development with regard to traffic, parking, 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. Architectural Plans

2. Plan of Management

3. Acoustic Report

4. Traffic Impact Assessment

File Reference: DA/983/2024 Document Number: D09046088

SCHEDULE 1

GENERAL CONDITIONS

1. Condition

1. Consent Limited to a Period of 24 Months

- 1. This consent is limited to a trial period of 24 months commencing from the issue of an Occupation Certificate.
- 2. After 12 months the applicant may submit a separate application to Council to remove the time limit. A decision to make the use permanent may include (but not limited to) factors such as:
 - i) Evidence to be furnished by the applicant as to whether the trial has actually occurred.
 - ii) Any justified complaints received and investigated by the Council including any responses to complaints and to Council's investigations from the applicant.
 - iii) The performance of the function centre during the trial period with respect to compliance with the conditions of consent including recommendations set out in the Temporary Use of Land Noise Impact Assessment Ref: 240216 rev. R6, prepared by Pulse White Noise, dated 6 November 2024.

Reason: To ensure monitoring and assessment of the use to confirm it is operating satisfactorily.

2. Approved Plans and Supporting Documentation

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

Approved Plans

Plan No.	Plan Title	Drawn by	Dated	Council
				Reference
DA03 Rev D	Site Plan	Fyffe Design	20/02/2025	
DA04 Rev D	Proposed Parking Bays	Fyffe Design	20/02/2025	
DA07 Rev D	Ground Floor Plan	Fyffe Design	20/02/2025	
DA08 Rev D	Section and Elevation Plan	Fyffe Design	20/02/2025	

Supporting Documentation

Document Title	Prepared by	Dated	Council
			Reference
Plan of Management	Minto Planning Services P/L	05/03/2025	D09083154
Temporary Use of Land Noise	Pulse White Noise	6/11/2024	D09008939
Impact Assessment Ref:			
240216 rev. R6			
Traffic Impact Assessment	Sydney Traffic Engineers	05/03/2025	D09082938

Document Title	Prepared by	Dated	Council Reference
Report Rev. 2			
Effluent Report Ref: 240802	Blue Mountains Geological	23/08/2024	D08959663
	& Environmental Services		
Waste Management Plan	Peter & Jenny Guest	10/07/2024	D08959660

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

3. Acoustic Verification

- An acoustic assessment is to be undertaken by a suitably qualified Acoustic Engineer/Consultant within 6 months of commencement to verify that operational noise limits predicted in the Temporary Use of Land Noise Impact Assessment Ref: 240216 rev. R6, prepared by Pulse White Noise, dated 6 November 2024 have been satisfied.
- 2. The assessment shall be undertaken in accordance with the following criteria:
 - a. Assess the project-related noise emissions at the maximum capacity usage and noise mitigation measures in place.
 - i. Lawn area with 30 patrons and amplified music at 75dBA.
 - ii. Cabana area with 30 people and amplified music at 80dBA.
 - b. Assess the LA10(15minute) noise emitted from function noise (crowd, music and mechanical plant) against the background noise level (L90) in any octave band frequency (31.5Hz to 8 kHz inclusive), when measured at the boundary of any affected residence.
 - c. Assess the LAeq(15minute) noise emitted from vehicular noise at the carpark against the background noise level (L90), when measured at the boundary of any affected residence.
 - d. Where the assessment finds that operational noise does not meet the above criteria, noise reduction recommendations and acoustic controls or treatments shall be provided that ensures the use is capable of complying with the criteria.
- 3. The report must be submitted to Council's Compliance Team via Council's Online Services Portal for review.

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

Reason: To ensure the use is operating in accordance with the acoustic criteria.

4. No Clearing of Vegetation

1. Unless otherwise exempt, no vegetation is to be cleared prior to issue of a Construction Certificate.

 Details demonstrating compliance are to be submitted to the Certifier prior to issue of Construction Certificate.

Reason: To protect vegetation on the site.

5. 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.

BUILDING WORK

BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

2. Condition

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. Accessibility

The accessible paths of travel detailed in Figure 8: Toilet locations and accessibility Plan of the Plan of Management dated 5 March 2025 must comply with Part D4 of the National Construction Code - Building Code of Australia.

Reason: To ensure the safe path of travel.

10. Fire Safety Schedule

A schedule of all proposed essential fire safety measures to be installed in the building (e.g. hydrants, hose reels, emergency warning systems etc.) shall be submitted with the construction certificate application. The schedule shall distinguish between existing and proposed fire safety measures.

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

BEFORE BUILDING WORK COMMENCES

3. Condition

11. Site Sign

- 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.

- 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. 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

4. Condition

16. 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.

17. 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.

18. 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.

BEFORE ISSUE OF AN OCCUPATION CERTIFICATE

5. Condition

19. Damage to Council Assets

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

Reason: To ensure public infrastructure and property is maintained.

20. Fire Safety Statement - Final

In accordance with the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021, upon completion of the building, the owner must provide Council with a certificate in relation to each fire safety measure implemented in the building.

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

21. Compliance with Acoustical Consultant's Report

- All works and acoustic measures nominated in the Temporary Use of Land Noise Impact Assessment, prepared by Pulse White Noise, dated 6 November 2024, Revision 6 must be implemented.
- 2. Prior to the issue of an Occupation Certificate, a qualified acoustic engineer must assess and certify the installation of the noise limiter and acoustic controls in accordance with the Temporary Use of Land Noise Impact Assessment, prepared by Pulse White Noise, dated 6 November 2024, Revision 6.

Reason: To ensure implementation of acoustic measures to protect the amenity of the local area

22. Amended Plan of Management

Prior to issue of the Occupation Certification, submit to Council an amended Plan of Management that includes:

- 1. Emergency contact details of the proponent
- 2. All deliveries are restricted to Monday to Sunday, 9am to 6pm.
- 3. All external lighting be on an automatic timer and turned off at 10.15pm.
- 4. Amplified music is to be only from the approved noise limited system at all times.

Reason: To ensure the operational measures implemented protect the amenity of the local area.

OCCUPATION AND ONGOING USE

6. Condition

23. Hours of Operation

The hours of operation of the premise are restricted to the following:

- 1. The lawn area is permitted for use Monday to Sunday, 8am to 6pm.
- 2. The cabana and external dining area is permitted for use:
 - a. Sunday to Thursday, 8am to 6pm.
 - b. Friday and Saturday, 7am to 9:30pm.
- All persons attending functions including patrons and contractors must have left the premises, other than guests staying at the Short Term Rental Accommodation (STRA), by:
 - a. Sunday to Thursday, 6.30pm.
 - b. Friday and Saturday, 10.00pm.
- 4. No amplified music is permitted from the site after 9:30pm on the days the temporary use operates.

Reason: To protect the amenity of the local area.

24. Use of Premises

- 1. The development approved under this consent shall be used for a temporary function centre and not for any other purpose without Council's separate written consent.
- 2. The premises is permitted to be used for a maximum of 28 event days per calendar year.

Reason: To ensure the use is undertaken with the terms of this consent.

25. Number of Patrons

- 1. The premises is restricted to a maximum number of 30 guests attending a function at any time.
- 2. On the days the site is being used as a temporary function centre the Short-Term Rental Accommodation (STRA) on site must only be occupied by guests attending a function.

Reason: To ensure the operational measures implemented protect the amenity of the local area.

26. Compliance with Plan of Management

- 1. All control measures and procedures nominated in the Plan of Management, dated 5 March 2025 and as amended by condition No. 20 of this consent must be implemented.
- 2. Any amendments to the Plan of Management must be submitted to Council's Compliance Team via Council's Online Services Portal for review and written approval.

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

Reason: To ensure the operational measures implemented protect the amenity of the local area.

27. Operational noise

- The LA10(15minute) noise emitted from function noise (music and mechanical plant) shall not exceed the background noise level (LA90) in any octave band frequency (31.5Hz to 8 kHz inclusive), when measured at the boundary of any affected residence.
- 2. During functions, music must only be played through the certified speakers, with the attached noise limiter to control noise levels.

Reason: To maintain appropriate amenity to nearby occupants.

28. Function Information

The proponent will maintain the following information and details for each function, to be made available to Council upon request:

- 1. A list of all functions held including date, time and number of guests.
- 2. Details of guests staying in the Short-Term Rental Accommodation (STRA) accommodation.
- 3. Details of all sub-contractors and caterers attending each function including name and phone number of the relevant contact people.

4. Details of any liquor license and Responsible Service of Alcohol certification held by subcontractors and caterers.

Reason: To ensure appropriate records are maintained.

29. Car Parking and Deliveries

All car parking must be provided and operated in accordance with Australian Standard AS 2890.1-2004 Off street car parking and Australian Standard AS2890.2-2002 Off street commercial and the following requirement:

- Any placement of traffic signs or traffic management on a public road shall be subject to a 'temporary full and partial road closures' permit issued by Council. Application can be made via Council's Website for a 'temporary full and partial road closures' permit.
- 2. All parking areas associated with the function centre must be provided wholly located within the property boundaries.
- 3. Car parking, loading and manoeuvring areas must be used solely for nominated purposes.
- 4. All vehicular entry on to the site and egress from the site must be made in a forward direction
- 5. Vehicles awaiting loading, unloading, or servicing must be parked on site and not on adjacent or nearby public roads; and
- 6. Any proposed landscaping and/or fencing must not restrict sight distance to pedestrians and cyclists travelling along the road.
- 7. The largest vehicle that can be used for the delivery to the site for the temporary function centre use shall be MRVs (8.8m).

Reason: To protect and maintain appropriate amenity to nearby occupants and to ensure parking facilities and vehicle manoeuvring areas are designed in accordance with Australian Standards.

30. Fire Safety Statement - Annual

On at least one occasion in every 12 month period following the date of the first 'Fire Safety Certificate' issued for the property, the owner must provide Council with an annual 'Fire Safety Certificate' to each essential service installed in the building.

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

31. Mobile food vendors and caterers

During functions, all mobile food vendors and caterers that cook onsite must not cook by charcoal method.

Reason: To protect and maintain appropriate amenity to nearby occupants

- END OF CONDITIONS -