HORNSBY
SHIRE COUNCIL

BUSINESS PAPER

LOCAL PLANNING PANEL MEETING

Wednesday 29 July 2026

at 4:00 PM

TABLE OF CONTENTS

Item 1 LPP19/26 DA/1104/2025 - CONSTRUCTION OF A DWELLING HOUSE AND SWIMMING POOL - 21 JOHN RADLEY AVENUE, DURAL

RECOMMENDATION REFUSAL

THAT the Hornsby Local Planning Panel, exercising the functions of Council as the consent authority, refuse Development Application No. DA/1104/2025 for the construction of a dwelling house and swimming pool and the remediation of the site at Lot 40, DP 1007285, No. 21 John Radley Avenue, Dural for the reasons detailed in Schedule 1 of LPP Report No. LPP19/26.

1 DA/1104/2025 - CONSTRUCTION OF A DWELLING HOUSE AND SWIMMING POOL - 21 JOHN RADLEY AVENUE, DURAL

DA No:	DA/1104/2025 (PAN-577827 - Lodged on 10 October 2025)
Description:	Construction of a dwelling house and swimming pool
Property:	Lot 40, DP 1007285, No. 21 John Radley Avenue, Dural
Applicant:	Mrs Sindhura Vemareddy
Owner:	Mrs Sindhura Vemareddy and Mr Vinod Kumar Reddy Vemareddy
Estimated Value:	$1,078,000
Ward:	C Ward
Submissions:	Thirteen
LPP Criteria:	10 or more unique submissions were received by way of objection
Author:	Tim Buwalda, Senior Town Planner
COI Declaration:	No Council staff involved in the assessment of this application have declared a Conflict of Interest.

RECOMMENDATION REFUSAL

THAT the Hornsby Local Planning Panel, exercising the functions of Council as the consent authority, refuse Development Application No. DA/1104/2025 for the construction of a dwelling house and swimming pool and the remediation of the site at Lot 40, DP 1007285, No. 21 John Radley Avenue, Dural for the reasons detailed in Schedule 1 of LPP Report No. LPP19/26.

EXECUTIVE SUMMARY

- The application involves the construction of a dwelling house and swimming pool and the remediation of the site.
- The proposal complies with the development standards of the Hornsby Local Environmental Plan 2013.
- Council is not satisfied for the purposes of Clause 4.6(1) of State Environmental Planning Policy (Resilience and Hazards) 2021 based on the proposed development and remediation strategy.
- A total of thirteen 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 refused.

BACKGROUND

Between 1975 and 1979, the subject site formed part of a larger parcel of land used for landfill activities.

On 31 January 2020, DA/65/2020 was lodged for the construction of a two-storey dwelling house.

On 13 January 2021, DA/65/2020 was withdrawn by the applicant.

On 19 July 2024, the NSW Environment Protection Authority (EPA) approved a Voluntary Management Proposal (VMP) under the NSW *Contaminated Land Management Act 1997* (CLM Act) to mitigate off-site migration of hazardous ground gases. Works under the VMP included the construction of a landfill gas interception trench along the northern site boundary, adjacent to neighbouring residential properties.

On 6 March 2024, DA/228/2024 was lodged for the construction of a two-storey dwelling house and swimming pool.

Between August and September 2024, approximately 293m³ to 300m³ of unauthorised fill material was deposited at the site, including over the embankment at the eastern boundary.

On 17 June 2025, a Restore Works Order was issued under the *Environmental Planning and Assessment Act 1979* in relation to the unauthorised fill material.

On 11 July 2025, a Class 1 Appeal against the Restore Works Order was lodged with the Land and Environment Court.

On 5 August 2025, the EPA lifted the declaration of significantly contaminated land. The site is now subject to an Ongoing Maintenance Order under the CLM Act, which includes requirements for maintaining the landfill gas interception trench along the western boundary.

On 30 September 2024, DA/228/2024 was withdrawn by the applicant.

On 27 October 2025, Council commenced prosecution proceedings in the Local Court for the unauthorised fill material. Due to Local Court Proceedings, a conditional stay to the Class 1 Appeal was agreed upon provided temporary make safe slope stabilisation measures were implemented. As a result of the Local Court proceedings, the parties agreed to a conditional stay of the Class 1 Appeal, subject to the implementation of temporary slope stabilisation measures.

On 10 October 2025, the subject application was lodged.

On 10 December 2025, Council requested additional information to address contamination, earthworks, waste classification, geotechnical works, construction management plan, building height, bulk and scale and vehicle access.

On 24 February 2026, Council provided an extension to provide the requested additional information by 29 April 2026.

On 29 April 2026, Council received the requested information which is the subject of this application.

SITE

The 1,641m^2 irregular site is currently vacant.

The western side of the site contains a flat area and then falls steeply to the rear over an eastern embankment approximately 10m high and then falls gradually to the rear.

The site is benefitted by a Right of Carriageway that provides vehicle access to John Radley Avenue. The site is burdened by a drainage easement along the northern boundary.

The site is bushfire prone but not flood prone.

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

The site is mapped as containing Terrestrial Biodiversity identified as Blue Gum Shale Forest within the rear portion of the site.

Adjoining the rear of the site is Pyes Creek.

PROPOSAL

The application proposes the construction of a dwelling house, elevated swimming pool and remediation of the land.

The ground floor level of the dwelling house would comprise a double garage, office, entryway, formal living room, powder room, mudroom, two bedrooms, a bathroom, family living room, theatre room, open plan kitchen, dining room, pantry, laundry, courtyard, spa, pool and alfresco area.

The first-floor level of the dwelling house would comprise of three bedrooms, three walk in wardrobes and ensuites, a prayer room, rumpus room, balcony and two terraces.

Retaining walls are proposed along the eastern embankment.

Nine trees would be removed by the development.

ASSESSMENT

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

1. STRATEGIC CONTEXT

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

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

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

The identified challenge for Hornsby Shire will be to provide 5,500 new completed homes by 2029 with further strategic supply targets to be identified to deliver 97,000 additional dwellings in the North District by 2036.

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

2. STATUTORY CONTROLS

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

2.1 Hornsby Local Environmental Plan 2013

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

2.1.1 Zoning of Land and Permissibility

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

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

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

2.1.2 Height of Buildings

Clause 4.3 of the HLEP provides that the height of a building on any land should not exceed the maximum height shown for the land on the Height of Buildings Map. The maximum permissible height for the subject site is 8.5m.

The architectural plans originally submitted with the application proposed a height of 9.325m.

The application has subsequently been amended, and the amended architectural plans have a maximum building height of 8.5m which 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 Terrestrial Biodiversity

The rear portion of the site has been identified as an area of terrestrial biodiversity containing Blue Gum Shale Forest. Consequently, assessment of the application against Clause 6.4 Terrestrial Biodiversity of the HLEP is required.

The objective of this clause is to maintain terrestrial biodiversity by:

a) protecting native fauna and flora, and

b) protecting the ecological processes necessary for their continued existence, and

c) encouraging the conservation and recovery of native fauna and flora and their habitats.

Before determining a development application, Council must consider:

a) Whether the development is likely to have:

- *i. any adverse impact on the condition, ecological value and significance of the fauna and flora of the land; and*
- *ii. any adverse impact on the importance of the vegetation on the land to the habitat and survival of native fauna, and*
- *iii. any potential to fragment, disturb or diminish the biodiversity structure, function and composition of the land, and*
- *iv. any adverse impact on the habitat elements providing connectivity on the land, and*

b) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.

Development consent must not be granted unless Council is satisfied that:

a) the development is designed, sited and will be managed to avoid any significant adverse environmental impact, or

b) if that impact cannot be reasonably avoided by adopting feasible alternatives - the development is designed, site and will be managed to minimise that impact, or

c) if that impact cannot be minimised - the development will be managed to mitigate the impact.

The application includes an Arboricultural (Tree) Report, prepared by McArdle Arboricultural Consultancy dated 8 November 2024, an Integrated Bushfire & Vegetation Management Plan (IBVMP) prepared by Enviro Ecology dated revision C, 2 July 2025 and an Ecology letter prepared by Enviro Ecology dated 3 March 2022 which supports the application.

The proposed development requires the removal of nine trees within the south-western corner of the site numbered 6, 7, 8, 9, 10, 11, 12a, 12b and 13. These trees are located outside the mapped Terrestrial Biodiversity mapping and do not form part of the Blue Gum Shale Forest.

The proposal has been carefully designed to avoid and minimise impacts on native vegetation and biodiversity values to the greatest extent practicable. The development footprint has been located and designed in consideration of the topographical constraints of the site and the presence of existing modified or cleared areas. Where possible, areas of higher ecological value have been retained and protected.

The areas of mapped Terrestrial Biodiversity are to be retained and protected in accordance with the IBVMP. The proposal is acceptable with respect to Clause 6.4 of the HLEP.

2.1.5 Earthworks

Submissions have been received raising concern to the structural suitability of the site, given its history and impacts to adjoining properties.

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 site has been subject to unauthorised landform modification involving approximately 293m³ to 300m³ of unauthorised fill material being deposited at the site, including over the embankment at the eastern boundary. In response to a Prevention Notice issued by Hornsby Council's Compliance Team, a Fill Characterisation Letter was submitted by Metech Consulting Pty Ltd, dated 10 October 2024. The unauthorised fill materials were assessed to contain low levels of potential contaminants, all below the adopted site assessment criteria for low-density residential land use.

As part of the remediation, the application proposes additional earthworks to the extent of 0.5m to 1m of fill across the building platform and surrounding areas as identified in the Data Gap Investigation, prepared by Metech Consulting, dated 2 April 2026.

Insufficient information has been provided to determine the full extent of the earthworks required for remediation as an updated earthworks plan has not been provided.

Therefore, the application has not adequately addressed Clause 6.2 of the HLEP and is not considered acceptable.

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

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

2.2.2 Chapter 6 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.

2.3 State Environmental Planning Policy (Sustainable Buildings) 2022

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

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

The proposal is acceptable in this regard.

2.4 State Environmental Planning Policy (Resilience and Hazards) 2021

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

2.4.1 Chapter 4 Remediation of Land

Submissions have been received raising concern to the history of the contaminated site and the concern for future residents and surrounding properties on building on contaminated 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.

2.4.1.1 Site Context and Identified Contamination

The site is located on land that formed part of a larger parcel of land used for landfill activities between 1975 and 1979.

Contaminants identified at the site include:

- Hazardous ground gases: methane, carbon dioxide, carbon monoxide, and hydrogen sulphide
- Polycyclic Aromatic Hydrocarbons (PAHs)
- Asbestos
- Poly-fluoroalkyl substances (PFAS)
- Polychlorinated Biphenyls (PCBs)

On 5 August 2025, the NSW EPA lifted the declaration of significantly contaminated land. The site is now subject to an Ongoing Maintenance Order under the CLM Act, which includes requirements for maintaining the landfill gas interception trench along the western boundary.

The site has been classified as CS3 (moderate risk) for hazardous ground gases under the NSW EPA (2020) Contaminated Land Guidelines. For low-density residential development in a CS3 area, a minimum of 4 points of ground gas protection measures is required.

2.4.1.2 Proposed Mitigation Measures for Hazardous Ground Gases

The Gas Migration System - Design & Construction Quality Assurance Plan, prepared by PAGeoConsulting, dated 26 February 2026 located in Appendix B of the Construction Quality Assurance Plan Remediation Strategy prepared by Metech Consulting dated 10 April 2026 advises that the proposed design includes 6 points of measures, exceeding the required 4 points. The proposed measures are:

- A suspended raft slab on strip footing, with minimal penetrations and joints sealed using water bars: 1.5 points.
- Passive crawl space ventilation to "very good" performance: 2.5 points.
- A proprietary gas-resistant membrane tested to have a methane transmission rate of <40ml/m2/day/atm, installed by a specialist and verified in Line with section 5.2: - 2.0 points.

However, 3.5 of the above points rely on the integrity of the membrane and sealed penetrations and joints, which presents the following concerns:

- Following construction and the issue of the Occupation Certificate, typical residential activities may compromise the membrane, including:
  - Installation of plumbing or electrical services that penetrate the slab
  - Any future renovation or fit out works (e.g. flooring replacement)

Section A6.2.4 within Appendix 6 of NSW EPA (2020) Contaminated Land Guidelines: Assessment and Management of Hazardous Ground Gases states the following regarding membrane integrity:

> *Resistance to damage during and after installation is always a major consideration because small punctures or tears in a membrane will result in a drastic increase in the overall gas transmissivity of the installation.*

Validation of the gas mitigation system for AEC 1 is proposed to comprise post-installation monitoring of hazardous ground gas concentrations for a period of up to 18 months. Monitoring will be undertaken across the ground surface of the installed membrane and beneath paved areas.

Accordingly, both validation of the remediation works, and the occupation of the dwelling are contingent upon the gas mitigation system demonstrating satisfactory performance.

2.4.1.3 Long Term Environmental Management Plan (EMP)

A draft long term environmental management plan (EMP) has been provided for the management of the residual contamination.

Under the draft long term EMP the following aspects form part of a passive management; however, will require specific management practices/controls:

- Landfill Gas Interception Trench
- Gas Membrane across the pavement slab of the dwelling

- Pressure Relief System consisting of the passively vented crawl space beneath the suspended concrete slab to the dwelling.
- Vertical Barrier Wall installed to the north of the dwelling
- Capping layers over the former landfill.

Restrictions for the Gas Membrane include:

- No penetrations into the pavement slab without prior approval of the CQA Consultant with the following works classified as controlled works:
  - Cutting or drilling into slab or screed
  - New plumbing or service penetrations through the pavement slab.
  - Structural alterations

Restrictions for the passive crawl space include:

- Airflow vents are to be kept free of vegetation and obstructions
- The southern ventilation crawl space is covered by a deck to the boundary. A boundary fence may be erected by the neighbour at No. 46 Caber Close effectively enclosing the crawl space.
- Access to the crawl space areas is to be restricted through the maintenance of the installed permanent barriers

Restrictions for the capping layer include:

- Digging and/or any excavation to depth greater than 1m below the finished ground level across any areas of the site.

Under section 4.6(1) of the Resilience and Hazards SEPP, Council must not consent to the carrying out of any development on land unless

a) it has considered whether the land is contaminated, and

b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and

c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.

Accordingly, as contamination will remain on site, Council must be satisfied that the contamination can be effectively managed in a low-density residential setting for the life of development. Based on table 6.1 of the RAP, where a complete exposure pathway exists with regards to the hazardous ground gases there is a risk of inhalation (asphyxiation or acute poisoning) and explosion. Additional exposure pathways also exist for other contaminants associated with the former landfill, including dermal contact and/or ingestion.

The Response to RFI Letter, prepared by Metech Consulting Pty Ltd, dated 29 April 2026, reference: ep270_lt04 (Response to RFI Letter), advises that '*any slab or membrane penetration creates a preferential gas pathway if not gas-tight sealed and cutting or drilling into the screed/slab could inadvertently expose or puncture the membrane.'*

Further, in response to details on risks associated with membrane failure and/or inadvertent damage and contingency plans in the event of membrane failure/damage, the Response to RFI Letter, states:

- Risk of Membrane Failure/Damage:
  - Loss of gas tightness as penetrations, seams or damaged areas.
  - Damage from construction activities (cutting, drilling, heavy loads) prior to or during screed installation.
  - Inadvertent damage during future Controlled Works (renovation, new penetrations) if proper procedures are not followed).
  - Long-term chemical attack.

2.4.1.4 Limitations of an EMP in Residential Developments

Section 2.4.1 of Preparing environmental management plans for contaminated land (NSW EPA Practice Note, 2022) states the following regarding passive management systems for residential dwellings:

> *EMPs requiring passive management systems should also be avoided in residential developments, particularly if intrusive works at the site may create an unacceptable risk from the residual contamination. EMPs on residential developments often result in complex management systems and/or onerous requirements for home owners in relation to the remaining contamination.*

It is Council's opinion, that the above-mentioned controls identified in the draft long term EMP are overly onerous for a residential dwelling and are unlikely to be reliably maintained over the life of the development. Any failure of these controls has the potential to result in an unacceptable risk to human health. By way of example:

- In a residential context, it is reasonable to expect that items may be stored against the external walls of a dwelling, or that vegetation may be established in garden beds or pot plants adjacent to the building, potentially obstructing ventilation systems.
- The ventilation system along the southern boundary is covered by a raised deck that extends to the boundary. It is reasonable for the adjoining property No. 46 Caber Close to erect a 1.8m boundary fence which would effectively enclose the ventilation system on more than 2 sides. This may adversely affect ventilation performance and increase the potential for gases to accumulate.
- Excavation works exceeding 1m in depth may reasonably occur for the installation or maintenance of services such as drainage.
- Installation or modification of services (including electrical and plumbing) that require penetrations through the building slab is a foreseeable activity.
- Replacement of flooring, while identified in the EMP as an unrestricted activity, presents an inherent risk of damage to any underlying vapour barrier or membrane.
- Many of the above works are permissible as exempt development under relevant State Environmental Planning Policies (SEPPs), including internal renovations (e.g. kitchens and bathrooms), thereby limiting Council's ability to regulate or enforce compliance with the EMP.

- Furthermore, based on Council's experience, minor internal and external works that technically require development consent are frequently undertaken without approval, whether due to a lack of awareness or a deliberate decision to avoid the development application process. This reflects a broader limitation in relying on ongoing management controls, particularly where the consequences of non-compliance are significant.

Therefore, Council cannot rely solely on a positive covenant and conditions of consent to be satisfied that the EMP is complied with.

An EMP relies on individuals undertaking activities that may affect contamination being aware of the EMP requirements, and either actively implementing the necessary controls or being subject to an effective compliance mechanism that ensures awareness, accountability, and consequences for non-compliance.

Accordingly, Council must be satisfied that the EMP can be complied with in an absolute sense and for the life of the development, as any failure to comply may result in the re-establishment of exposure pathways and associated risks, including serious harm or death.

Responsibility for implementing and maintaining an EMP rests with the occupiers and persons in control of the premises. However, low-density residential settings do not provide the same level of occupant awareness, management oversight, or institutional control as industrial sites or higher-density, strata-managed developments, where lines of responsibility typically exist.

Low-density residential land use is generally in perpetuity and may involve multiple changes of ownership over time, which can further dimmish awareness of, and compliance with, EMP requirements.

As a result, there are significant limitations to the effectiveness of EMPs for managing residual contamination in standard residential settings, particularly where any failure of controls could result in serious consequences.

Additionally, Council has limited scope to enforce the requirements of an EMP, with its compliance function largely reactive and lacking the capacity or mandate to proactively monitor or enforce EMP obligations. In most instances, Council would only become aware of non-compliance following a complaint regarding unauthorised works, by which time the controls specified in the EMP may have already been compromised, potentially resulting in the establishment of a complete exposure pathway and associated risks.

Accordingly, Council is not satisfied that the requirements of the EMP can be complied with in the absolute sense and on an ongoing basis for the life of the development.

Contamination Conclusion

Council must be satisfied that the proposed remediation is suitable for the life of the development and will not result in an unacceptable risk to human health. In this regard, Council must also be satisfied that any EMP can be consistently complied with in practice and in perpetuity, as any failure may result in the re-establishment of exposure pathways and associated risks, including serious harm or death.

Council is not satisfied that:

- The EMP can be reliably implemented, enforced, or maintained over the life of the development.
- The reliance on passive controls provides an acceptable level of protection for a residential setting due to their onerous and prone to failure nature; and

- The site can be made suitable for residential use through remediation measures that depend on ongoing management.

Notwithstanding the above, the dwelling itself forms a critical component of the remediation strategy for hazardous ground gases (including passive crawl space and gas membrane systems). In the event of unforeseen circumstances or failure of these controls, exposure pathways may be re-established, potentially resulting in significant risks to human health, including serious harm or fatality. Such outcomes represent an unacceptable level of risk.

Accordingly, Council is not satisfied for the purposes of Clause 4.6(1) of the Resilience and Hazards SEPP based on the proposed development and remediation strategy.

Furthermore, for the purposes of Clause 4.10 of the Resilience and Hazards SEPP, Council considers that the proposed remediation strategy relying on dwelling design and EMP controls, introduces a greater risk of harm to human health than would occur in the absence of the development.

Therefore, Council is not satisfied that the land will be suitably remediated before the land is used for that purpose and is therefore not acceptable.

2.5 Draft Environmental Planning Instrument

There are no current draft environmental planning instruments.

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

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

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

2.7 Hornsby Development Control Plan 2024

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

HDCP - Part 3.1 Dwelling Houses			
Control	**Proposal**	**Requirement**	**Complies**
Site Area	1,641m^2	N/A	N/A
Building Height	8.5m	8.5m	Yes
No. storeys	2	max. 2 + attic	Yes
Site Coverage	18%	30%	Yes

Floor Area	461.5m^2	430m^2	No
Setbacks			
- *Side (north-west)*	1.5m	1.5m	Yes
- *Side (south-west)*			
Ground floor (dwelling)	1.5m	0.9m	Yes
Ground Floor (deck)	0m	0.9m	No
First floor	1.5m	1.5m	Yes
- *Side (north-east)*			
Ground floor	8.4m	0.9m	Yes
First floor	8.4m	1.5m	Yes
- *Rear (south-east)*			
Ground floor	25m	3m	Yes
First floor	25m	8m	Yes
Landscaped Area (% of lot size)	56%	45%	Yes
Private Open Space			
- *minimum area*	93m^2	24m^2	Yes
- *minimum dimension*	8m	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 with the exception of floor area. A brief discussion on compliance with relevant performance requirements is provided below and Part 1.3 General Controls are addressed in Section 3 of the report.

2.7.1 Scale - Floor Area

Submissions have been received raising concern to the bulk and scale of the development.

The dwelling house has a floor area of 461m^2 which is a 31m^2 (7%) variation to the maximum floor area of 430m^2 under HDCP.

In assessing the 7% variation, it is noted that the HDCP limits the floor area of a dwelling house to 430m^2 for sites that have an area 900m^2 or larger. The site has an area of 1,641m^2 which is well above the 900m^2 minimum lot size that permits a floor area of 430m^2.

It is generally considered that on merit the proposed floor area of 461m² on a 1,641m² site is considered acceptable as the proposed dwelling house generally complies with building height, landscaping and site coverage.

It is noted that the application has been amended to comply with the 8.5m building height development standard. When originally lodged, the application proposed a building height of 9.325m which contributed to the bulk and scale, however the development now has a compliant building height.

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

2.7.2 Sunlight Access

Submissions have been received raising concern to the shadows cast by the development.

The desired outcomes of Part 3.1.5 Sunlight Access of the HDCP are to encourage "*dwelling houses designed to provide solar access to open space areas*" and "*development designed to provide reasonable sunlight to adjacent properties*".

This is supported by the prescriptive measure 3.1.5(a) requiring "*50 per cent of the principal private open space of the subject site to receive at least 3 hours of unobstructed sunlight access between 9am and 3pm"* during the day of the winter solstice and prescriptive measure 3.1.5(b) requiring "*50 per cent of the principal private open space on any adjoining property to receive at least 3 hours of unobstructed sunlight access between 9am and 3pm."*

An assessment of the shadow diagrams provided by the applicant illustrate that the subject site and the southern adjacent neighbour, No. 46 Caber Close, Dural, would still receive at least 3 hours of unobstructed sunlight access to 50 per cent of their private open space between 9am and 3pm on the day of the winter solstice.

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

2.7.3 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 minimum side boundary setback of 0.9m for single storey elements.

The application proposes a side boundary setback of 0m for the raised ground level deck which does not comply with the 0.9m prescriptive measure.

In assessing the non-compliance, it is noted that the deck includes a 1.6m high privacy screen above the finished floor level of the deck. The elevated deck on the boundary along with the privacy screen would have a total height of between 2.15m and 2.95m along the southern boundary.

The 2.15-2.95m structure on the boundary is considered excessive compared to a standard 1.8m boundary fence and is not supported on planning grounds as it would impact the amenity of the adjoining property No. 46 Caber Close.

The proposal does not meet the desired outcomes of Part 3.1.2 Setbacks of the HDCP and is not considered acceptable.

2.7.4 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 ground floor level deck includes a privacy screen 1.6m high along the southern boundary. While this privacy screen would address the privacy impacts, it is not supported on setback grounds as discussed in Section 2.6.3 of this report.

The application proposes a first-floor level balcony, rumpus room and terrace which do not comply with the above-mentioned prescriptive measures.

In assessing the first-floor level balcony, it is noted that the application proposes 3 x full height privacy screens which have a 500mm gap between the privacy screens. These gaps would allow overlooking to the adjoining property No. 23 John Radley Avenue and are not considered acceptable. Therefore, the full height privacy screens are not considered appropriate due to their configuration and ability to still allow overlooking to adjoining properties.

If Council were to grant consent, an appropriate condition would be imposed requiring a minimum 1.6m high privacy screens along the full width of the first-floor level balcony.

The first-floor level terraces would be appropriately screened to mitigate the opportunity for overlooking to adjoining properties as they have appropriate privacy screens.

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

The proposal would meet the desired outcome of Part 3.1.6 Privacy of the HDCP, subject to conditions and can be considered acceptable.

2.7.5 Construction Management

Submissions have been received raising concern to the construction traffic management of the development if approved, including concerns of noise, dust, traffic and parking of construction vehicles.

It is noted that the application included a Site Management Plan prepared by Archer Consultants Pty Ltd dated April 2026, however the following concerns are raised to the document:

- It does not address the required 0.5m-1m of caping layer required to address remediation.
- Updated cut and fill is required.
- The details of the remediation strategy at each stage of the remediation works must be included:
    - Refer to the controls of the Construction Quality Assurance Plan Remediation Strategy, prepared by Metech Consulting Pty Ltd, dated 10 April 2026.
- Confirm from a suitably qualified geotechnical consultant that the proposed swept paths in appendix H won't impact on the stability of the slope and underlying landfill.

Submissions have been received raising concern to construction vehicles parking on John Radley Avenue impacting local traffic.

In response to these concerns, it is noted that if Council were to approve the development, a Construction Traffic Management Plan would be required to be submitted to Council for approval prior to a construction certificate being issued. The CTMP would address the traffic routes of construction vehicles, on-site construction car parking and turning areas.

It is noted that construction vehicles can park within John Radley Avenue provided they comply with local traffic and parking regulations.

Therefore, insufficient information has been provided to date about the construction management of the development, however these may be able to be addressed through additional documentation.

2.8 Section 7.12 Contributions Plans

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

2.9 Planning Agreements

Section 4.15 (1) (a)(ii) of the Act requires Council to consider the provisions of any planning agreement. The development does not include a Planning Agreement.

2.10 Environmental Planning and Assessment Regulation 2021

Section 61 of the Environmental Planning and Assessment Regulation 2021 (the Regs) contains matters that must be taken into consideration by a consent authority in determining a development application, with the following matters being relevant to the proposal:

- Section 62 (consideration of fire safety) and Section 64 (consent authority may require upgrade of buildings) of the Regs are not relevant to the proposal.

- Section 63 (considerations for erection of temporary structures) of the Regs are not relevant to the proposal.

These provisions of the Regs have been considered.

3. ENVIRONMENTAL IMPACTS

Section 4.15(1)(b) of the Act requires Council to consider *"the significant 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

Submissions have been received raising concern to previous tree removal on the site.

It is noted that Tree Application TA/375/2024 was approved for the removal of five trees numbered T1 to T5 inclusively in order to construct the gas migration trench that was required by the EPA along the western boundary adjoining No. 23 John Radley Avenue.

The proposed development would necessitate the removal of nine trees from the site. The application has been supported by an Arboricultural (Tree) Report, prepared by McArdle Arboricultural Consultancy dated 8 November 2024.

The trees proposed to be removed are identified as tree 6 (*Eucalyptus acmenoides* - White Mahogany), tree 7 (*Ekebergia capensis* - Cape Ash), trees 8 & 13 (*Brachychiton acerifolius* - Illawarra Flame Tree), tree 9 (*Photinia spp.* - Photinia), tree 10 (*Cupaniopsis anacardioides* - Tuckeroo), tree 11 (*Eucalyptus pilularis* - Blackbutt) and trees 12a & 12b (*Castanospermum australe* - Black Bean).

These trees are located within the building footprint and are unable to be retained.

It is noted that the trees are identified as having a retention value between moderate to low retention values. No high retention value trees are proposed to be removed.

It is considered that the removal of the trees is acceptable in the circumstances of the case due to the topography of the site and location of trees on site. If Council were of the mind to approve the development, appropriate conditions would be recommended to ensure the trees to be retained are protected and appropriate replacement planting of the nine trees to be removed.

3.1.2 Stormwater Management

The site is burdened by a Council owned stormwater easement along the northern boundary that contains a 150mm stormwater pipe and headwall that services the stormwater drainage infrastructure of John Radley Avenue.

The plans provided do not show the location of the existing pipe or provide any survey of the existing pipe. It is noted that retaining walls and minor structures are proposed within the drainage easement.

Further information such as a survey of the pipe and plans indicating that the footings of any structures would be deep enough to ensure the zone of influence for the pipe would not be impacted would be required to ensure that Council's stormwater infrastructure would not be impacted by the proposed works.

The proposed stormwater drainage plan indicates that all stormwater will be directed to a rainwater tank and the overflow directed directly to Council's pipe within the drainage easement.

In principle, no objections are raised to the proposed stormwater system, however further information would be needed to ensure the development does not impact the existing Council's drainage pipe.

3.1.3 Earthworks

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

This is supported by the prescriptive measures that states that:

b. "Earthworks involving filling should not exceed 1 metre in height from the existing ground level.

c. excavation that extends outside of the building platform should be limited to a depth of 1 metre from the existing ground level, unless the excavation is required to:

- *achieve a high quality built form, or*
- *provide for safe vehicular access to the site, and*
- *it maintains the amenity of adjoining properties and the desired streetscape character."*

The application proposes the construction of a two-storey dwelling house and elevated pool on a site that was a previous landfill and been subject to unauthorised fill, approximately 293m³ to 300m³.

The stability of this unauthorised fill has been subject to on-going court orders to ensure that the embankment along the eastern boundary remains stable.

This application includes a geotechnical report prepared by Geotechnical Report prepared by Fortify Geotech dated 11 August 2025. This report also relies on the findings of a previous geotechnical report prepared by Martens Consulting Engineers dated August 2022 which was submitted with the previous application DA/228/2024.

Both reports identify that the development is required to have foundations down to the bedrock which is identified to be approximately 15m below the existing ground level in some sections. The application proposes that the foundations will comprise of screw piles into the bedrock (15m deep) and slope stability measures including retaining walls and soil nails to stabilise the embankment.

It is noted that the Geotechnical Report does not address the required 0.5m to 1m of capping layer and is therefore considered to not accurately address the existing site conditions.

It is also unclear if the proposed vehicle swept paths for construction vehicles would impact the stability of the existing eastern embankment as discussed in Section 2.6.5 of this report.

Insufficient information in the form of an amended or final Geotechnical Report has not been provided to assess this additional caping layer and if it would impact the recommendations of the Geotechnical engineer, noting that constraints of the site, contaminations and a steep, previously unstable embankment.

The proposal does not meet the desired outcomes of Part 1.3.1.4 Earthworks and Slope of the HDCP and is not considered acceptable.

3.2 Built Environment

3.2.1 Built Form

With a building height of 8.5m and two storey-built form, the development would be consistent with the built form of the locality. It is noted that the application has been amended to comply with the 8.5m building height development standard.

3.2.2 Traffic

At Council's request further information was provided to ensure that vehicle entering and exiting the garage would be able to do so in a forward direction due to the length of the access handle.

The application was also amended to delete retaining walls/planter boxes that would restrict the vehicles' ability to enter and exit in a forward direction.

3.3 Social Impacts

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

The location of the development is in close proximity to the Dural commercial centre and Cherrybrook shopping centre which would provide recreational, health and education facilities for future residents.

3.4 Economic Impacts

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

4. SITE SUITABILITY

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

The subject site has not been identified as flood prone land; however, it is identified as bushfire prone land.

As detailed in the body of this report, the site is also subject to historical contamination. A discussion on the suitability of the site for the proposed residential development is discussed below:

4.1 Bushfire Risk

The site is bushfire prone. As discussed in Section 5.2.2 of this report, the RFS support the application, subject to conditions for bushfire protection.

4.2 Contamination

The site is located on land that formed part of a larger parcel of land used for landfill activities between 1975 and 1979.

The site has been classified as CS3 (moderate risk) for hazardous ground gases under the NSW EPA (2020) Contaminated Land Guidelines.

As detailed in Section 2.3.1 of this report, Council is not satisfied that the site can be made suitable for the residential proposed use.

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 14 October 2025 to 3 November 2025 and 5 May 2026 and 22 May 2026 in accordance with the Hornsby Community Engagement Plan. During this period, Council received 13 submissions. The map below illustrates the location of those nearby landowners who were notified.

NOTIFICATION PLAN

• PROPERTIES NOTIFIED	PROPERTY SUBJECT OF DEVELOPMENT	N W E S

Thirteen submissions objected to the development, generally on the grounds that the development would result in:

- Risk of contamination
- Visual impact
- Excessive height
- Drainage risks
- No public benefit for clause 4.6 request
- Still listed as a significantly contaminated site by EPA
- Previous trespassing on private land for unauthorised landfill
- Previous unauthorised works - owner has no regard for rules or neighbours

- Erosion concerns
- Risk to creek at the rear
- Excessive scale
- Illegal tree clearing and impact to remaining trees
- No construction vehicles should be parked on John Radley Avenue
- Noise pollution and construction impacts

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

5.1.1 Previous unauthorised works

Submissions have been received raising concern to previous unauthorised works including approximately 293m³ to 300m³ of unauthorised fill material deposited at the site, including over the embankment at the eastern boundary.

Council's compliance team is currently investigating this matter, and it is subject to on-going Land and Environment Court and Local Court proceedings.

These matters are separate to the development application process.

5.1.2 Owner does not comply with Council's regulations

Submissions have been received raising concern to the previous unauthorised activates on the site and the owners disregard for Council's regulations.

In response to these concerns, these matters are subject to an on-going compliance investigation.

5.1.3 Illegal tree clearing

Submissions have been received raising concern to previous illegal tree clearing.

In response to these concerns, it is noted Tree Application TA/375/2024 was approved by Council for the removal of five trees to facilitate the construction of a landfill gas interception trench along the northern site boundary, adjacent to neighbouring residential properties.

5.1.4 Erosion concerns

Submissions have been received raising concerns to the erosion impacts from the unauthorised fill and proposed earthworks along the embankment to the surrounding environment including Pyes creek to the rear.

If Council were of the mind to support the development, appropriate sediment and erosion controls would be required through conditions.

5.1.5 Previous trespassing on private land for unauthorised landfill

Submissions have been received raising concerns to the previous unauthorised works which involved trespassing on the adjoining land to gain access to the site. Concerns are also raised about the impacts to the existing Right of Carriageway from construction vehicles.

In response to these submissions, it is noted that this is a separate compliance matter.

Furthermore, if Council were of the mind to grant consent, a CTMP would be conditioned, and all access would be required via the existing Right of Carriageway that the site is benefited by. However, conditions would be imposed to ensure the other properties who benefit from the Right of

Carriageway would not be adversely impacted and include a Dilapidation condition to certify the structural integrity of the existing Right of Carriageway prior to any works occurring.

5.1.6 Noise pollution and construction impacts

Submissions have been received raising concern to noise and construction impacts from the construction of the proposed dwelling house and elevated swimming pool.

In response to these concerns, as detailed above, if Council were of the mind to approve the development, a Construction Management Plan condition would be imposed which would include requirements to limit construction noise and impacts to adjoining properties.

It is noted that if the development was approved, there would be conditions imposed restricting the hours of construction works.

5.2 Public Agencies

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

5.2.1 Environmental Protection Authority

The site is burdened by the following Positive Covenants which states the following:

> *Terms of Restriction sixthly referred to in the above-mentioned plan:*
>
> *No excavation or disturbance of the surface of the vertical batter bank of any kind is permitted without the express written permission of the Environmental Protection Authority and the Council of the Shire or Hornsby.*
>
> *Terms of Restriction eighthly referred to in the above-mentioned plan:*
>
> *The erection of any building is prohibited unless approval is obtained from the Environmental Protection Authority and the Council of the Shire or Hornsby.*

When the application was lodged, the application was referred to the Environmental Protection Authority (EPA) for comment due to Positive Covenants on title.

The EPA responded with an initial request for additional information to address the following: Long Term Environmental Management plan (LTEMP); site audit statement; gas migration trench; a date gap investigation; exhumation of waste and geotechnical requirements. This request for additional information was incorporated into Council request for additional information on 10 December 2025.

When the applicant provided the additional information, the application was re-referred to the EPA for comment.

The EPA provided further comments dated 18 June 2026, outlining how the consent authority must be satisfied that the land can be made suitable for the proposed residential use.

The EPA also provided an additional letter dated 3 July 2026 which stated the following:

> *The auditor stated in the letter that the draft EMP is "suitable to support the proposed works", but the auditor also stated "The Auditor will incorporate the review of the final LTEMP as part of the Section A2 Auditor package and will confirm [then] that the LTEMP is appropriate and complied with the relevant NSW EPA guidance". This is understood to mean that the auditor will review the draft EMP in detail if he is required to do a further audit if development consent is granted, but the auditor hasn't done a detailed review at this stage.*

The EPA also stated that:

The draft EMP says its requirements are to be enforced through updating the Ongoing Maintenance Order issued by the EPA under the CLM Act or via a restrictive covenant on the land by the landowner under s88B of the Conveyancing Act 1919.

It should be noted the EPA has previously advised that the enforceability of the draft EMP would need to be administered by Council. i.e. the draft EMP for the proposed development would not be enforced under the CLM Act.

As detailed in Section 2.3.1 of this report, Council has raised significant concerns regarding the enforceability in an absolute sense and for the life of the development, as any failure to comply may result in the re-establishment of exposure pathways and associated risks, including serious harm or death.

The EPA did not provide approval for the construction of a dwelling house as required by the Positive Covenant.

5.2.2 Rural Fire Service

Section 4.14 of the EP&A Act 1979 applies to the proposal as the site is mapped as bushfire prone land.

The Applicant submitted a Bushfire Report prepared by a qualified consultant in bush fire risk assessment. The report states that the proposal conforms to the relevant bushfire specifications and requirements.

Council is satisfied the development meets the provisions of Clause 4.14 of the Act. Further assessment against bushfire controls within the HDCP is discussed in greater detail in the report below.

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 not satisfactorily addressed Council's and relevant agencies' criteria and would provide a development outcome that, on balance, would result in a negative impact for the community. Accordingly, it is considered that the refusal of the proposed development.

CONCLUSION

The application proposes the remediation of land, construction of a dwelling house and swimming pool.

The development does not meet the desired outcomes of Council's planning controls and is not satisfactory having regard to the matters for consideration under Section 4.15 of the *Environmental Planning and Assessment Act 1979.*

Council received 13 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, refusal of the application is recommended.

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.

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Attachments:

1. Architectural Plans

File Reference: DA/1104/2025
Document Number: D09386248

SCHEDULE 1

REASONS FOR REFUSAL

1. The proposed development is unsatisfactory in respect to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* with regard to State Environmental Planning Policy (Resilience and Hazards) 2021 as follows:

   1.1 The application has not adequately demonstrated that the land will be suitable for the proposed residential use after remediation and for the life of the development and is therefore not satisfactory in regard to clause 4.6(1) of State Environmental Planning Policy (Resilience and Hazards) 2021.

   1.2 The consent authority considers that the proposed remediation strategy relying on dwelling design and the Long Term Environmental Management Plan controls, introduces a greater risk of harm to human health than would occur in the absence of the development.

2. The proposed development is unsatisfactory in respect to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* with regard to the Hornsby Local Environmental Plan 2013 as follows:

   2.1 Insufficient information has been provided to determine if the required earthworks comply with Clause 6.2 of the Hornsby Local Environmental Plan 2013.

3. In accordance with Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, the proposal does not comply with the desired outcome and the prescriptive measures of the Hornsby Development Control Plan 2024 as follows:

   3.1 The proposal does not comply with the ‘Setback’ prescriptive measure within Part 3.1.2 Setbacks of the Hornsby Development Control Plan 2024 as the proposed elevated deck and privacy screen on the boundary would adversely impact the adjoining property.

   3.2 Insufficient information has been submitted to determine the extent of earthworks in accordance with Part 1.3.1.4 Earthworks and Slope of the Hornsby Development Control Plan 2024.

4. As per the terms of the Section 88b Instrument, the Environmental Protection Authority has not granted consent to the construction of a dwelling house on this land.

5. In accordance with Section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*, the site is not suitable for the proposed development given its unacceptable contamination and amenity impacts.

6. In accordance with Section 4.15(1)(b) and (e) of the *Environmental Planning and Assessment Act 1979*, it is considered that the proposed development would not be in the public interest.