



# **BUSINESS PAPER**

## **LOCAL PLANNING PANEL MEETING**

**Wednesday 25 May 2022  
at 4:00pm**



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6-10 GRANTHAM CRESCENT, DANGAR ISLAND

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**EXECUTIVE SUMMARY**

**DA No:** DA/1117/2021 (Lodged on 22 October 2021)

**Description:** Telecommunications Facility

**Property:** Lot 3 DP 597242, Dangar Island Bowling Club - No. 6-10 Grantham Crescent, Dangar Island

**Applicant:** Telstra Corporation Limited

**Owner:** Hornsby Shire Council

**Estimated Value:** \$303,000

**Ward:** A Ward

- The application involves construction of a 25m tall (26.4m including antennas) monopole with 6 (six) antennas, 1 (one) GPS antenna and ancillary works including ground-based cabinetry.
- The site is owned by Council. In accordance with Council's adopted Policy '*Proposed Council Developments*' an independent assessment of the development application has been undertaken by Octagon Planning.
- The proposal generally complies with the Hornsby Local Environmental Plan 2013, State Environmental Planning Policy (Infrastructure) 2007, *Telecommunications Act 1997*, NSW Telecommunications Facilities Guideline 2010 and the Hornsby Development Control Plan 2013.
- A total of 38 (thirty-eight) submissions have been received in respect of the application.
- The application is required to be determined by the Hornsby Council Local Planning Panel as the proposal is on land owned by Hornsby Shire Council and 10 or more unique submissions were received by way of objection. An independent assessment of the development application has been carried out by Octagon Planning.

**RECOMMENDATION Consent**

THAT Development Application No. DA/1117/2021 for a telecommunications facility at Numbers 4 and 6-10 Grantham Crescent, Dangar Island (Lot 73 DP10902 and Lot 3 DP597242) be approved subject to the conditions of consent detailed in Schedule 1 of LPP Report No. LPP13/22.

## ASSESSMENT

In accordance with the referral criteria and procedural requirements for Local Planning Panels, the assessment of the development application has been referred to an independent town planning consultant as Hornsby Shire Council has a financial interest in the proposed development. The report by *Octagon Planning* is held at Attachment 1 of this report.

## CONCLUSION

The application proposes construction of a 25m tall (26.4m including antennas) monopole with 6 (six) antennas, 1 (one) GPS antenna and ancillary works.

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.

The reasons for this decision are:

- The proposal generally complies with the *Hornsby Local Environmental Plan 2013*, *State Environmental Planning Policy (Infrastructure 2007)*, *Telecommunications Act 1997*, *NSW Telecommunications Facilities Guideline 2010* and the *Hornsby Development Control Plan 2013*.
- The proposal would provide a positive impact on the local community and visitors by improving the mobile network coverage in the locality which will in turn have positive social and economic benefits and improve public safety and emergency response times.
- The design, height and location of the telecommunications facility is appropriate with respect to eliminating identified mobile black spots on the island, lack of suitable colocation facilities in the locality and surrounding topography.

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


## RESPONSIBLE OFFICER

The officer responsible for the preparation of this report is Nicola Neil from *Octagon Planning*.

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

ROD PICKLES  
Manager - Development Assessments  
Planning and Compliance Division

**Attachments:**

1.  Locality Plan
2.  Consultant Report
3.  Architectural Plans

File Reference: DA/1117/2021

Document Number: D08348251

**ITEM 1**

## Schedule 1

**GENERAL CONDITIONS**

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

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

ITEM 1

**1. Approved Plans and Supporting Documentation**

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

*Approved Plans*

<b>Plan No.</b>	<b>Plan Title</b>	<b>Drawn by</b>	<b>Dated</b>	<b>Council Reference</b>
N111158 S1	Site Access/Locality Plan	Visionstream	30/07/2020	
N111158 S1-1	Site Layout Plan	Visionstream	30/07/2020	
N111158 S1-2	Antenna Layout	Visionstream	30/07/2020	
N111158 S1-3	Tree Details	Visionstream	30/07/2020	
N111158 S3	South Elevation	Visionstream	30/07/2020	
N111158 S3-1	Antenna Configuration Table	Visionstream	30/07/2020	

*Supporting Documentation*

<b>Document Title</b>	<b>Prepared by</b>	<b>Dated</b>	<b>Council Reference</b>
Environmental EME Report	Visionstream	17/12/2021	D08325981
Statement of Heritage Impact	RPS Group	06/10/2021	D08277001
Geotechnical Report 1211052-1	Civil Test	23/08/2021	D08276990
Waste Management Plan	Ventia	20/08/2021	D08276974

## 2. Section 7.12 Development Contributions

- a) In accordance with Section 4.17(1) of the *Environmental Planning and Assessment Act 1979* and the *Hornsby Shire Council Section 7.12 Development Contributions Plan 2019 - 2029*, **\$3,030** must be paid towards the provision, extension or augmentation of public amenities or public services, based on development costs of **\$303,000**.
- b) The value of this contribution is current as of 9 May 2022. If the contributions are not paid within the financial quarter that this consent is granted, the contributions payable will be adjusted in accordance with the provisions of the Hornsby Shire Council Section 7.12 Development Contributions Plan and the amount payable will be calculated at the time of payment in the following manner:

$$\text{\$C}_{PY} = \frac{\text{\$C}_{DC} \times \text{CPI}_{PY}}{\text{CPI}_{DC}}$$

Where:

**\\$C<sub>PY</sub>** is the amount of the contribution at the date of Payment

**\\$C<sub>DC</sub>** is the amount of the contribution as set out in this Development Consent

**CPI<sub>PY</sub>** is the latest release of the Consumer Price Index (Sydney – All Groups) at the date of Payment as published by the ABS.

**CPI<sub>DC</sub>** is the Consumer Price Index (Sydney – All Groups) for the financial quarter at the date of this Development Consent.

- c) The monetary contributions shall be paid to Council:
- (i) Prior to the issue of the Subdivision Certificate where the development is for subdivision.
  - (ii) Prior to the issue of the first Construction Certificate where the development is for building work.
  - (iii) Prior to issue of the Subdivision Certificate or first Construction Certificate, whichever occurs first, where the development involves both subdivision and building work.
  - (iv) 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 Certifying Authority to ensure that the monetary contributions have been paid to Council in accordance with the above timeframes.*

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

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

**3. Construction Certificate**

- a) A Construction Certificate is required to be approved by Council or a Private Certifying Authority prior to the commencement of any construction works under this consent.
- b) The Construction Certificate plans must be consistent with the Development Consent plans.

**4. Removal of Trees**

- a) This development consent permits the removal of tree(s) numbered T2 and T3 as identified on the Tree Details Plan, prepared by Visionstream, dated 30/07/2021.

*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.*

**5. Appointment of a Project Arborist**

- a) To ensure the trees that must be retained are protected, a project arborist with AQF Level 5 qualifications must be appointed to assist in ensuring compliance with the conditions of consent and provide monitoring reports as specified by the conditions of consent.
- b) Details of the appointed project arborist must be submitted to Council and the PCA with the application for the construction certificate/subdivision works certificate.

**REQUIREMENTS PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE****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*.

**7. Construction Management Plan (CMP)**

To assist in the protection of the public, the environment and Council's assets, a separate Construction Management Plan must be prepared by a suitably qualified environmental consultant in consultation with a qualified traffic engineer and AQF 5 arborist and submitted to Council's Compliance Team via Council's Online Services Portal for review and written approval.

The CMP must include the following details:

- a) A Construction Traffic Management Plan (CTMP) including the following:
  - i) The order of construction works and arrangement of all construction machines and vehicles being used during all stages.
  - ii) The CTMP plans shall be in accordance with all other plans submitted to Council as part of this development proposal.



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

- xvi) The Plan must state that the applicant and all employees of contractors on the site must obey any direction or notice from the Prescribed Certifying Authority or Hornsby Shire Council in order to ensure the above.
- xvii) If there is a requirement to obtain a Work Zone, Out of Hours permit, partial Road Closure or Crane Permit, the Plan must detail these requirements and include a statement that an application to Hornsby Shire Council will be made to obtain such a permit.
- b) A Construction Waste Management Plan detailing the following:
  - i) Details of the importation or excavation of soil and fill, the classification of the fill, disposal methods and authorised disposal depots that will be used for the fill.
  - ii) Asbestos management requirement and procedures for removal and disposal from the site in accordance with AS 2601–2001 – *‘The Demolition of Structures’*, and the *Protection of the Environment Operations (Waste) Regulation 2005*.
  - iii) General construction waste details including construction waste skip bin locations and litter management for workers.
- c) A Tree Protection Plan (TPP) prepared by an AQF 5 Arborist in accordance with any approved Arboricultural Impact Assessment and tree location plans, detailing the following:
  - i) A site plan showing tree protection zones (TPZ) and structural root zones (SRZ) of trees to be retained and specific details of tree protection measures inclusive of distances (in metres) measured from tree trunks.
  - ii) Construction methodology to avoid damage to trees proposed to be retained during construction works.
  - iii) Specifications on tree protection materials used and methods within the TPZ or SRZ.
  - iii) Location of dedicated material storage space on site outside of TPZ's and SRZ's for retained trees.
- d) A Construction Noise and Vibration Management Plan (CNMP) which includes:
  - i) Existing noise and vibration levels within the proximity of the proposed development site.
  - ii) Details of the extent of rock breaking or rock sawing works forming part of the proposed development works.
  - iii) The maximum level of noise and vibration predicted to be emitted during each stage of construction.
  - iv) The duration of each stage of works where the maximum level of noise and vibration are predicted to be emitted for.
  - v) Details of mitigation measures, inclusive of respite periods, that will meet acoustic standards and guidelines at each stage of works.

- vi) Details of a complaints handling process for the surrounding neighbourhood for each stage of works.
- e) Identification of approved sediment and erosion control measures.
- f) The CMP must detail the contact information for developers, builder, private certifier and any emergency details during and outside work hours.

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

## REQUIREMENTS PRIOR TO THE COMMENCEMENT OF ANY WORKS

### 8. Installation of Tree Protection Measures

- a) Trees to be retained must have tree protection measures for the ground, trunk and canopy installed to the satisfaction of the project arborist prior to the commencement of any works on site.
- b) Tree protection fencing for the trees to be retained numbered T1 and T4 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 at setbacks to be defined by the project arborist.
- c) The installation of all required tree protection fencing must include shade cloth attached to the fencing to reduce transport of dust, particulates and liquids from entering the tree protection zone.
- d) The circumference of the trunk(s) of T1 and T4 must be wrapped in hessian material to provide cushioning for the installation of timber planks.
- e) Timber planks (50 x100mm) must be spaced at 100mm intervals and must be attached using adjustable ratchet straps.

### 9. Relocation of Memorial Items within Building Footprint

Prior to commencement of any works, any memorial items located within the building footprint must be relocated within the park area, as per the requirements of Council.

*Note: prior to the commencement of works, please contact council via [devmail@hornsby.nsw.gov.au](mailto:devmail@hornsby.nsw.gov.au) to arrange for the relocation of memorial items.*

### 10. Erection of Construction Sign

A sign must be erected in a prominent position on any site on which any approved work is being carried out:

- a) Showing the name, address and telephone number of the principal certifying authority for the work.
- b) Showing the name of the principal contractor (if any) for any demolition or building work and a telephone number on which that person may be contacted outside working hours.

- c) Stating that unauthorised entry to the work site is prohibited.

The sign is to be maintained while the approved work is being carried out and must be removed when the work has been completed.

#### 11. Protection of Adjoining Areas

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

- a) Could cause a danger, obstruction or inconvenience to pedestrian or vehicular traffic.
- b) Could cause damage to adjoining lands by falling objects.
- c) Involve the enclosure of a public place or part of a public place.
- d) 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.

#### 12. Toilet Facilities

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

#### 13. Garbage Receptacle

- a) A garbage receptacle must be provided at the work site before works begin and must be maintained until all works are completed.
- b) The garbage receptacle must have a tight fitting lid and be suitable for the reception of food scraps and papers.
- c) The receptacle lid must be kept closed at all times, other than when garbage is being deposited.
- d) Food scraps must be placed in the garbage receptacle and not in demolition and construction waste bins.

#### 14. Prohibited Actions within the Fenced Tree Protection Zone

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

- a) Soil cutting or filling, including excavation and trenching.

- b) Soil cultivation, disturbance or compaction.
- c) Stockpiling storage or mixing of materials
- d) The parking, storing, washing and repairing of tools, equipment and machinery.
- e) The disposal of liquids and refuelling.
- f) The disposal of building materials.
- g) The siting of offices or sheds.
- h) Any action leading to the impact on tree health or structure.

**15. 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 retained trees.

**16. Maintaining Tree Protection Measures**

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

**17. Approved Works within Tree Protection Zone Incursions**

- a) Where tree root pruning is required for the installation of piers, driveway or underground services, the pruning must be overseen by the AQF 5 project arborist and must be undertaken as follows:
  - i) Using sharp secateurs, pruners, handsaws or chainsaws with the final cut being clean.
  - ii) The maximum diameter of roots permitted to be cut is 50mm.
- b) Approved excavations within the Tree Protection Zone of trees to be retained numbered not associated with installation of services must be undertaken as follows:
  - i) Excavations within the Tree Protection Zone of trees to be retained must be overseen by the AQF 5 project arborist for the first 1m undertaken manually to locate roots and allow for pruning in accordance with this consent.
- c) To minimise impacts within the Tree Protection Zone (TPZ) of trees on the approved plans, the installation of services must be undertaken as follows:
  - ii) The AQF 5 project arborist must be present to oversee the installation of any underground services which enter or transect the tree protection zones.
  - iii) The installation of any underground services which either enter or transect the designated TPZ must utilise directional drilling only  
OR
  - iv) The installation of any underground services which either enter or transect the designated TPZ must be undertaken manually.
  - v) 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.

- d) Where scaffolding is required, ground protection must be installed beneath the scaffolding in the following order:
  - vi) Installation of a 100mm deep layer of woodchip.
  - vii) Installation of geotextile fabric ground covering.
  - viii) Installation of scaffold boarding above the woodchip and geotextile fabric.

<b>REQUIREMENTS DURING DEMOLITION AND CONSTRUCTION</b>
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**18. Construction Work Hours**

All works on site, including demolition and earth works, must only occur between 7am and 5pm Monday to Saturday.

No work is to be undertaken on Sundays or public holidays.

**19. Environmental Management**

To prevent sediment run-off, excessive dust, noise or odour emanating from the site during the construction, the site must be managed in accordance with the publication *'Managing Urban Stormwater – Landcom (March 2004)* and the *Protection of the Environment Operations Act 1997*.

**20. Council Property**

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

*Note: This consent does not give right of access to the site via Council's park or reserve. Should such access be required, separate written approval is to be obtained from Council.*

**21. 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.

**22. Acid Sulfate Soils**

- a) Should acid sulfate soils be encountered during construction works, Council is to be notified immediately.
- b) An Acid Sulfate Soil Management Plan, written in accordance with the NSW Acid Sulfate Soil Manual 1998, is to be submitted to Council for approval and implementation.

**23. Landfill Not Permitted**

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

**24. Compliance with Construction Management Plan**

The Council approved Construction Management Plan must be complied with for the duration of works, unless otherwise approved by Council.

**25. Building Materials and Site Waste**

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

**26. Unexpected Finds**

Should the presence of asbestos or soil contamination, not recognised during the application process be identified during any stage of works, the applicant must immediately notify the PCA and Council.

<b>REQUIREMENTS PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE</b>
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**27. Compliance with Acid Sulfate Soil Management Plan**

Should an Acid Sulfate Soil Management Plan be required for the site, a report is to be submitted to the PCA by a suitably qualified Environmental Consultant in consultation with a chartered Structural Engineer prior to the issue of an Occupation Certificate, confirming compliance with all recommendations as outlined in the Acid Sulfate Soil Management Plan.

**28. Asbestos Clearance Certificate**

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

**29. Damage to Council Assets**

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

**30. Submission of Excavated Material Tipping Dockets to Principal Certifying Authority**

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

**31. Finishes and Fixtures**

- a) Prior to the provision of an occupation certificate for the subject site:
  - i) The tower and any affixed antenna or communication devices must be painted mist green to match the prevailing colour of the surrounding vegetation and reduce the visual impact of the monopole.

**32. Replacement Tree Requirements**

- a) The trees approved for removal under this consent must be offset through replacement planting of a minimum of 6 trees.
- b) All replacement plantings must be species native to Dangar Island and selected from the '*Trees Indigenous to Hornsby Shire (as of 1 September 2011)*' document available for viewing on the Hornsby Council's website <http://www.hornsby.nsw.gov.au/environment/flora-and-fauna/tree-management/indigenous-trees>
- c) The location and size of tree replacement planting must comply with the following:
  - i) All replacement trees must be located at locations pre-approved by Council and planted 4 metres or greater from the foundations of the approved development.
  - ii) The pot size of the replacement trees must be a minimum 45 litres.
  - iii) All replacement trees must be a minimum of 3 metres in height.
  - iv) All replacement trees must have the potential to reach a mature height greater than 15 metres.

#### OPERATIONAL CONDITIONS

#### 33. EME report

A report is to be submitted to Council with measurement of EME levels in the vicinity of the site. The EME levels are to comply with the standard specified in the Australian Radiation Protection and Nuclear Safety Agency 2002 '*Radiation Protection Standard: Maximum exposure levels to Radiofrequency Fields – 3 kHz to 300 GHz*', Radiation Protection Series No 3. Mitigation measures are to be proposed to Council for implementation if levels are found to not comply with the standard. The report is to be submitted to Council within 30 days of commissioning the facility and be prepared by a suitably qualified person with relevant experience in EME measurement using the methodology developed by the Australian Radiation Protection and Nuclear Safety Agency.

*Note: The report is to be sent electronically and marked to the attention of Council's Environmental Compliance Manager at [devmail@hornsby.nsw.gov.au](mailto:devmail@hornsby.nsw.gov.au).*

#### 34. Telecommunications Facility

- a) The telecommunications facility on the site must be operated in compliance with, but not limited to the following:
  - i) Australian Radiation Protection and Nuclear Safety Agency's (ARPANSA) '*Radiation Protection Standard for Maximum Exposure Levels to Radiofrequency Fields – 3kHz to 300 GHz*', (2002).
  - ii) The Australian Communication Industry Forum Code (ACIF), Industry Code C564:2004, Deployment of Mobile Phone Network Infrastructure, (2002).
  - iii) The Australian Communications Authority (ACA), Radiocommunications (Electromagnetic Radiation - Human Exposure) Standard, (2003).



- b) Attachment of any additional antenna and replacement of any antenna, related infrastructure (excluding lightning rods) or portion of the tower must be pale eucalypt in colour.

### 35. Noise

All noise generated by the proposed development must be attenuated to prevent levels of noise being emitted to adjacent premises which possess tonal, beating and similar characteristics or which exceeds background noise levels by more than 5dB(A).

### 36. Maintenance, Replacement or Future Installation

To ensure an adequate level of visual reduction is maintained over the life of the telecommunications site:

- a) The telecommunications tower must be maintained in the approved mist green colour. Any significant discolouration from any deterioration of the telecommunications tower or any attached device must be rectified via the repainting or repair of the site to the approved green mist colouration.
- b) Any replacement parts affixed to the tower must be mist green in colour.
- c) Any additional communication devices attached to the telecommunications tower (including any colocation by third parties) must be mist green in colour.

**- END OF CONDITIONS -**

#### ADVISORY NOTES

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

#### Environmental Planning and Assessment Act 1979 Requirements

The *Environmental Planning and Assessment Act 1979* requires:

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

#### Long Service Levy

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

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

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

### **Dial Before You Dig**

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

### **Telecommunications Act 1997 (Commonwealth)**

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

### **Asbestos Warning**

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

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

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

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

Alternatively, telephone the *SafeWork NSW* Asbestos and Demolition Team on 8260 5885.

### **Future Works – Electrical Cabling / Fibre Optic Cabling**

Council notes that future cabling works would be required to be undertaken to connect the site to the telecommunications network. The indicative route of the cabling indicates that it will pass through several heritage items and that it will be located in close proximity to several heritage items including archaeological items of heritage significance. There may be some potential to disturb Aboriginal objects as defined by the *National Parks and Wildlife Act 1974*. Council recommends that any future works involving cabling be informed by the completion of a Heritage Impact Assessment **prior** to any determination being made regarding the appropriate approval pathway. Council recommends completion of the following:

- a) A heritage impact assessment of any land within the route of, or likely to be impacted by, disturbance, trenching or other construction impacts of, or associated with, linked cabling/service works. The disturbance zone for the impact assessment should extend 1m either side of the likely pit/trench /cabling works curtilage. The assessment should include:
  - i) An assessment of impacts on all local heritage items to be directly impacted or which are adjacent to or in the vicinity of the proposed works
  - ii) An historical archaeological impact assessment undertaken according to applicable NSW Heritage NSW guidelines and requirements
  - iii) An Aboriginal cultural heritage Due Diligence Assessment undertaken according to applicable Heritage NSW guidelines and requirements for the cabling/service works at locations outside properties 4-10 Grantham Avenue

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- iv) Advice with regards to any statutory consequences and approval requirements under the *Telecommunications Act 1997*, the *Heritage Act 1977*, the *National Parks and Wildlife Act 1974* or State Environmental Planning Policy (Transport and Infrastructure) 2021 that may apply.

**2 DA/1017/2021 - CONSTRUCTION OF A CHILDCARE CENTRE FOR 52 CHILDREN WITH BASEMENT CARPARKING - 94 DAVID ROAD, CASTLE HILL**

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**EXECUTIVE SUMMARY**

**DA No:** DA/1017/2021 (30 September 2021)

**Description:** Demolition of existing structures and construction of a childcare centre for 52 children with basement carparking

**Property:** Lot 6 DP 800015, No. 94 David Road, Castle Hill

**Applicant:** Mr Dareen Laybutt – GAT & Associates

**Owner:** Mr and Mrs Arora

**Estimated Value:** \$1,606,000

**Ward:** C

- The proposal generally complies with the Hornsby Local Environmental Plan 2013, the Hornsby Development Control Plan 2013, State Environmental Planning Policy (Educational Establishments and Childcare Facilities) 2017 and the Child Care Planning Guideline with respect to landscaping, privacy, noise, traffic and safety, scale, site suitability, contamination, setbacks, tree preservation and sunlight access.
- A total of 110 submissions have been received in respect to the application. 80 were received during the first notification period and an additional 30 during the second notification period.
- 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.

**RECOMMENDATION**

THAT Development Application No. DA/1017/2021 for demolition of existing structures and construction of a childcare centre for 52 children with basement carparking at Lot 6 DP 800015, No. 94 David Road, Castle Hill be approved, subject to the conditions of consent detailed in Schedule 1 of LPP Report No. LPP29/22.

## BACKGROUND

### Application History

On 30 September 2021, the subject development application was lodged for a childcare centre with 55 children and basement carparking.

On 1 October 2021, the application was notified. During the notification period, ending 26 October 2021, 80 submissions were received.

On 21 December 2021, following a thorough assessment of the application, Council requested additional information including a Site Contamination Assessment, updated/addendum Noise Impact Assessment, updated Plan of Management, Preliminary Construction Management Plan (PCMP), further acoustic fence and landscape amendments, and amendments to the basement carparking layout to avoid pedestrian/ vehicle conflict.

On 11 February 2022, the requested additional information was submitted for further consideration by Council.

On 21 March 2022, upon further review of the proposal, further amendments were requested regarding the design of the development with respect to the front facade/ setback. Council suggested the removal of the front outdoor children's play area, provision of additional landscaping and for consideration to be given to reducing the impact of the support structure required for the first-floor level above the driveway such as bringing forward the ground floor level. To address these measures, a reduction in the number of children was also recommended. Amendments to the PCMP were also required.

On 6 April 2022, amended plans and supporting documentation were submitted to reflect the following changes for Council's consideration:

- *An increased setback of the front outdoor play area from 2m from the street boundary to 7m.*
- *The front outdoor play area is reduced in capacity from 8 children to 4.*
- *An overall reduction of children from 55 to 52 places.*
  - *This occurs by a reduction of 0-2 year children from 8 to 4 and an increase in 2-3 year children from 14 to 15.*
- *Minor modifications to the rear building to accommodate the extra 2-3 year child, with no change to side or rear setbacks.*
- *Enclosed portions of the area above the driveway to reduce the overhang of the first floor (now only over part of the outdoor play area). The enclosed space is a series of carpeted steps within the 0-2 years play room. The steps are required to ensure vehicle clearance into the basement. Windows are included to the street for additional natural light.*
  - *The setback of the enclosed space is 9.4m, generally matching the front setback of 92 David Road*
- *The garage door to the basement is pulled forward to the alignment of the enclosed floor area to reduce the impression of void space.*

On 7 April 2022, the application was re-notified. During the notification period, ending 28 April 2022, 30 additional submissions were received.

**SITE**

The 900.5m<sup>2</sup> site is located on the south-western side of David Road, Castle Hill and contains a single storey dwelling house, swimming pool and shed.

The site experiences a 2.3 metre (5%) crossfall to the northern, front corner.

The immediate streetscape comprises of low-density residential development including a mixture of single and two storey dwelling houses. The site is within 300m from Oakhill Shopping Village, Oakhill Public School and Oakhill College.

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

**PROPOSAL**

The application proposes the construction of a childcare centre for 52 children. Specifics of the proposed development are as follows:

- Demolition of the existing structures on the site.
- The construction of a two-storey centre-based childcare centre and basement car park with 14 car parking spaces, including one accessible space and one small space.
  - 7 car spaces are allocated to staff and 7 allocated to pick-up/drop-off.
  - 3 bicycle spaces are also proposed.
- Associated landscape works.
- The centre is proposed to operate from 7am to 6pm Monday to Friday.
- The 52 place centre would comprise the following age groups:
  - 0-2 years (4 children & 1 educator).
  - 2-3 years (15 children & 3 educators).
  - 3-5 years (33 children & 4 educators).

The Centre would be run with a maximum of 9 staff members. Parents must not arrive prior to 7am. This is followed by a staggered drop-off of children and staggered hours of staff. Parents and staff must vacate the centre and depart by 6pm, except in the case of an emergency.

The ground floor of the Centre would comprise 3 indoor play areas including 0-2 years for 4 children, 2-3 years for 15 children and 3-5 years for 15 children; and 2 outdoor play areas including 2-5 years for 30 children and 0-2 years for 4 children. The ground floor would also comprise toilet facilities, nappy changing areas, kitchen facilities, laundry, front foyer/entry, directors office, cot rooms and an additional carpeted step area.

The first floor of the Centre would comprise 1 indoor and outdoor play area for 18 children within the 3-5 years age group, toilet facilities, storage areas, staff room and a programming area.

The outdoor play areas would incorporate a combination of soft fall areas, sandpits, adequate covered spaces and store rooms.

Lift and stair access would be provided for basement, ground and first floor levels.

A 1.8m high side and rear boundary fence would be retained with the addition of 1.8m-2m high solid acoustic fencing surrounding all outdoor play areas (both ground and first floor level).

Screen planting is proposed around the perimeter of the site between the proposed building/ acoustic fencing and the existing boundary fencing comprising Lilly Pilly and Orange Jessamine reaching mature heights of between 2.5m and 6m. A total of 171 trees and shrubs would be planted across the site with 33 of these trees having the potential to reach a mature height of 6-12m to reduce amenity impacts and soften the development from within the streetscape and to adjoining neighbours.

Twenty-one trees would be removed or impacted by the development, 16 of which would be removed.

No signage is proposed as part of this application.

## 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 for the next 40 years (to 2056). The Plan sets a strategy and actions for accommodating Sydney's future population growth and identifies dwelling targets to ensure supply meets demand. The Plan also identifies that the most suitable areas for new housing are in locations close to jobs, public transport, community facilities and services.

Part 3 of the strategy relates to "Infrastructure and Collaboration" and a key objective is to provide services and infrastructure to meet communities' changing needs. Further, the strategy cites changing demographics will affect the types and distribution of services required in neighbourhoods.

Over the 20 years to 2036, projections show an expected increase of 6,150 children aged four years and under. The identified challenge for Hornsby Shire would be to provide additional infrastructure for students and young people.

The proposed child care centre would be consistent with the objectives of the strategy by providing 52 additional child care places to support a growing population.

### 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*".

#### Consolidated State Environmental Planning Policies

On 1 March 2022, the following State Environmental Planning Policies (SEPPS) were gazetted.

- State Environmental Planning Policy (Primary Production) 2021
- State Environmental Planning Policy (Resources and Energy) 2021
- State Environmental Planning Policy (Resilience and Hazards) 2021
- State Environmental Planning Policy (Industry and Employment) 2021
- State Environmental Planning Policy (Transport and Infrastructure) 2021

- State Environmental Planning Policy (Biodiversity and Conservation) 2021
- State Environmental Planning Policy (Planning Systems) 2021
- State Environmental Planning Policy (Precincts - Eastern Harbour City) 2021

These SEPPs now form matters for consideration under Section 4.15 of the *Environmental Planning and Assessment Act 1979*. However, general savings provisions apply to development applications that have been made but not yet determined, on or before the commencement date.

As this development application was lodged on 30 September 2021, this development application is considered to have been made prior to the commencement date of the SEPPs. SEPP (Resilience and Hazards), SEPP (Biodiversity and Conservation), SEPP (Transport and Infrastructure) have been considered as matters for consideration under S4.15 of the *Act*. However, the existing legislation in force at time of lodgement of the development application, prevails to be extent of any inconsistency.

Notwithstanding, the approval of the development application would not adversely affect the objectives of the newly adopted SEPPs and are considered to be consistent with these policies.

The relevant EPI's, CCPG and Development Control Plan are discussed below.

## **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 '*centre-based child care facility*' and is permissible in the R2 zone with Council's consent. The proposed development would provide facilities and services to meet the day to day needs of residents and would contribute to meeting the increasing demand for childcare the Hornsby Shire.

### **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 proposed building would have a maximum height of 8.4m and complies with this provision.

### **2.1.3 Heritage Conservation**

Clause 5.10 of the HLEP sets out heritage conservation provisions for Hornsby Shire. The site does not include a heritage item, is not located in a heritage conservation area and is not within the immediate vicinity of any heritage items. 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 application has been supported by a Geotechnical Assessment prepared by Martens Consulting Engineers dated 17 September 2021.

It is anticipated that the proposed development would require excavation works for the building footings, basement carpark and general levelling of the site. Council's assessment has determined that the proposed development would require the removal of 1,720m<sup>3</sup> of excavated material and the utilisation of minimal fill within the front setback. The submitted Geotechnical Report raises no concerns with the proposed development with regard to earthworks and ground conditions, subject to the implementation of the geotechnical recommendations under Section 4 of the report and the provision of a dilapidation report detailing the structural condition of the directly adjoining properties before the commencement of works. Council concurs with the recommendations of the Geotechnical Assessment.

Council's assessment concludes that the proposal would be satisfactory in regard to earthworks, subject to appropriate conditions regarding the preparation of dilapidation reports assessing impacts of excavation on adjoining properties and earthwork management measures.

The proposal complies with Clause 6.2 of the HLEP and is considered acceptable in this regard.

#### 2.2 State Environmental Planning Policy (Educational Establishments and Childcare Facilities) 2017

State Environmental Planning Policy (Educational Establishments and Childcare Facilities) 2017 (Childcare SEPP) commenced on 1 September 2017.

The SEPP was recently amended on 17 December 2021 and includes a reference to the Child Care Planning Guideline published in the Gazette on 1 October 2021. Schedule 5 of the amended SEPP includes a Savings Provision for development applications lodged prior to this amendment. The Savings Provision states that the amendments to the SEPP do not apply to development applications made but not finally determined before the publishing of the amendments on 17 December 2021.

Accordingly, as the development application was lodged before the commencement of the amendment to the SEPP and Child Care Guideline, the Education SEPP and Child Care Planning Guideline 2017 in force at the time of lodgement apply to this proposal.

Clause 23 of the Childcare SEPP requires Council to consider the relevant provisions of the Child Care Planning Guideline 2017 (CCPG). The CCPG will generally take precedence over the HDCP with the exception of building height, side and rear setbacks and car parking rates.

An assessment of the application against Part 1.3 *Planning objectives*, Part 2 *Design quality principles*, Part 3 *Matters for consideration* and Part 4 *Applying the National Regulations to development proposals* is provided below.

##### 2.2.1 Part 1.3 - What Are the Planning Objectives?

The planning objectives contained within Part 1.3 of the CCPG include requirements that child care facilities are compatible with the existing streetscape, context and neighbouring land uses and that

they seek to minimise adverse impacts of development on adjoining properties and the neighbourhood.

As per the discussion provided in response to Part 3 of the CCPG, the proposal is considered consistent with these objectives.

## **2.2.2 Part 2 - Design Quality Principles**

As per the discussion provided in response to Part 3 of the CCPG, the proposal is considered consistent with the design quality principles of Part 2 in relation to built form, landscaping, safety and amenity, privacy, solar access and noise.

## **2.2.3 Part 3 - Matters for Consideration**

### 3.1 Site selection and location

Child care centres are a permissible land use within the subject R2 residential zone. The site is located 120m from the Oakhill Village shopping centre, 250m from Oakhill Drive Public School, 900m from Oakhill College, 500m from Marymount Mercy Centre, and 500m from Westminster Park and Erlestoke Park. The site, in view of the above, is close to compatible social uses, employment areas, community facilities, open space. The site is mid-way between bus stops along David Road (85m). It is well located to appropriate services and facilities.

The site is not identified as flood or bushfire prone and has a 2m crossfall which responds to the topography of the street.

The following concern raised in submissions and Council response are provided with respect to the site selection and location:

Concern: David Road is busy and a thoroughfare to local shops and schools.

Response: Council's Traffic Branch assessment identified that traffic generation is not considered an issue for this development. An analysis was submitted to Council which demonstrates that vehicles can safely enter and leave the site and the additional traffic generated by the proposed development would not change the level of service to the nearby intersection. This matter is further discussed under Part 3.8 of the CCPG discussion below.

In summary, Council raises no objection to the site location with respect to Section 3.1 of the CCPG.

### 3.2 Local, character, streetscape and the public domain interface

The site is within an established residential area. The prevailing character is for green front gardens, predominantly face brick with tile roof dwellings of a mixture of single and two storeys. The applicant identifies the following:

*The proposed child care centre maintains a high degree of front setback landscaping, as demonstrated on the landscape plan prepared by A Total Concept. The architecture of the child care takes cues from the prevailing form of the low density area, including pitched roofs, front balconies, entry features (porticos or overhangs) and generous windows at ground and first floor fronting the street. Each of these forms the architectural language of the centre. A mixture of materials is proposed, including a solid, medium toned face brick base characteristic of the area with painted fibre-cement weatherboard cladding to the first floor, which while less common remains present in the street (114 David Road, for example). A metal roof is also adopted. While this does deviate from the prevailing tiled roof character, the Guideline seeks integration not direct mimicry. The basalt colouring aligns with the area.*

*The centre presents as two storeys to the street, which is compatible with the streetscape.*

*The basement is not a prevalent element of the area, though there are examples (DA/8/2021 - 19 Westminster Drive, Castle Hill - a two storey dwelling with basement). However, the proposed basement has been integrated into the built form and landscaping is proposed around it to soften its visual impact. Basement car parking has been encouraged by Council's DCP. The removal of at-grade car parking is a positive landscape outcome.*

*It is considered the design has responded to the existing and future character of the area and will be a positive contribution to the streetscape.*

The following concern raised in submissions and Council's response is provided with respect to local, character, streetscape and the public domain interface:

Concern: The support beam to support the first-floor level above the driveway ramp is uncharacteristic of the residential area. The front outdoor play area is out of character with the area.

Response: These concerns have been addressed with amended plans. The front setback is now 7m, with a smaller front play area for the 4 x 0-2 year old, resulting in additional and effective landscaping within the front setback. The basement garage door and overhang of the first floor has been reduced and is more sympathetic to the surrounding residential developments. The overall design of the childcare centre has been improved significantly to address Council's previous concerns with respect to impact on the streetscape character.

Council considers that the proposal is compatible in terms of character, streetscape and the public domain interface given the existing building would be retained. Additionally, the proposal would provide a clearly defined pedestrian entrance and street trees would be retained.

### 3.3 Building orientation, envelope and design

The proposed development orientates its windows and outlooks primarily to the street and rear. Outlook to neighbouring private open space, living rooms and windows have been restricted by balustrading and translucent glazing for the first floor outdoor play area. Windows have been restricted on side elevations. A setback to the outdoor play areas has been adopted to assist in mitigating acoustic impacts, in tandem with acoustic consultant guided fencing and acoustic measures.

The design of the building with the ground floor outdoor play areas between two separate parts of the building and the first-floor play area set back 16m from the rear boundary is considered a good design outcome in terms of reducing associated amenity impacts to adjoining neighbours.

Solar access is available to internal play areas, in balance with ensuring cross-ventilation and shading for warmer days.

Excavation works are required to construct the basement carpark; however, as discussed in Section 2.1.4, appropriate conditions are recommended in Schedule 1 of this report regarding the preparation of dilapidation reports, assessing impacts of excavation on adjoining properties and earthwork management measures. Additionally the amended design of the basement garage entry has reduced the visual impact of the basement from within the streetscape and is considered sympathetic to the surrounding residential developments.

Appropriate setbacks have been adopted per the DCP to integrate the form within the streetscape. The height of the development is also compatible with the area. The front façade suitably defines and addresses the street.

A single secure entry is proposed for pedestrians off the street and is directly visible with a straight pathway. Casual surveillance to this pathway is possible from the reception area/director's office and is easily monitored. Access is not required through an outdoor play area.

The centre would provide all the required services detailed in Part 4 of the CCPG. Accordingly, no objections are raised in regard to building design.

### 3.4 Landscaping

The objectives of Part 3.4 CCPG include providing landscaping that contributes to the streetscape and neighbourhood amenity.

The proposed landscaping would include a range of plantings across the site including 1x Coastal Banksia tree with a growth height of 12m, 1x Willow Bottlebrush with a growth height of 5m, 6x Blueberry Ash trees with a growth height of 8m, 5x Water Gums with a growth height of 8m and 22x Lilly Pilly trees with a growth height of 6m. These larger trees would be intermixed with a number of shrubs and grass type plants.

Landscaping would be provided within selected portions of the site along the boundaries of the site surrounding the play areas and screening/ softening along boundaries to reduce visual and amenity impacts to adjoining neighbours. Council considers the proposed landscaping suitable for the proposed use as a child care centre.

The proposal is considered to meet the objectives of Part 3.4 of the CCPG.

### 3.5 Visual and Acoustic Privacy and 3.6 Noise and Air pollution

Regarding visual privacy, a 7m front setback, substantial landscaping and fencing integrate to mask the front outdoor play area. The other indoor and outdoor areas are located behind the front building line and are not visible from public areas.

The creation of the detached rear portion of the centre with internal orientation and limited windows to the rear boundary helps reduce overlooking potential between the site and No. 15 De La Salle Place. The first floor outdoor play area is substantially setback from the rear boundary, and the side views are limited by the toilet and external storage locations and translucent acrylic glazing above the 1.2m high masonry segment to 1.8m in height. Limited to no overlooking potential exists.

Regarding acoustic privacy, the application is supported by a Noise Impact Assessment, prepared by Rodney Stevens Acoustics, dated 7 February 2022. Due to a reduction in numbers of children from 55 to 52 and a minor redesign of the proposal, a revised Noise Impact Assessment was submitted on 2 May 2022 confirming that the proposal would remain compliant with established noise criteria. Council's assessment is outlined as follows:

- *The sound power levels of children playing has now been adjusted to accommodate all children in Section 5.3.1 of the Updated Noise Impact Assessment. The age distribution of children is consistent with the proposal.*
- *An assessment of mechanical plant has now been included in Section 5.4 of the Updated Noise Impact Assessment. This includes a cumulative noise impact assessment at all receivers.*
- *The open/close window configuration has now been included in Appendix E of the Updated Noise Impact Assessment.*
- *All assumptions used in the assessment of noise from the proposed development have been included in the Updated Noise Impact Assessment.*

- *Confirmation that the noise impacts have been calculated on the respective level of noise sources (i.e. upper/lower level) and noise receivers (i.e. first floor of 2 storey dwelling) has been provided in the Updated Noise Impact Assessment.*
- *An assessment of the noise impacts associated with after-hours activities such as staff arrival and departures, parent/teacher interview, cleaning and maintenance etc has not been provided in the Updated Noise Impact Assessment. The Plan of Management explicitly states the following:*
  - *Staff must not arrive prior to 7am.*
  - *Staff must depart the centre and carpark by 6pm unless otherwise prescribed by legislative requirements for the supervision of children due to unforeseen circumstances.*
  - *Parents must not arrive prior to 7am.*
  - *Parents/caregivers must vacate the centre and carpark by 6pm, except in the case of an emergency.*
  - *Access to the basement carpark is controlled through a garage door. First staff member arriving at the centre opens the basement car park gate at 7am and last staff member departing the centre closes it at 6pm.*
  - *No deliveries will take place outside of the approved operating hours.*
  - *Waste collection occurs between the times of 10am and 3pm.*
  - *All cleaning and maintenance activities will take place within the approved operating hours.*
- *The Plan of Management provides sufficient detail to determine an assessment of the night and evening periods is not required.*

Based on the above, the proposal meets the objectives of Parts 3.5 and 3.6 of the CCPG and is considered acceptable, subject to conditions.

### 3.7 Hours of operation

No objections are raised to the proposed hours of operation as they are consistent with Objective C29 of the CCPG which limits hours of operation between 7am to 7pm on weekdays.

### 3.8 Traffic, parking and pedestrian circulation

The application proposes 14 car parking spaces comprising 7 staff spaces, and 7 visitor spaces (including 1 disabled space).

A Traffic and Parking Impact Assessment (TPIA) was submitted prepared by McClaren Traffic Engineering. The assessment concludes that the proposed parking arrangement is in accordance with Australian Standard AS2890.1 and would allow for vehicles to enter and exit in a forward direction.

The RMS Guide to Traffic Generating Developments has rates of 0.8 vehicle trips/ child during the 7-9am peak period and 0.7 vehicle trips/ child during the 4-6pm peak period for long-day care. The TPIA estimates that *'during the 7-9am period the traffic generated by the site equates to 44 vehicles trips (22 IN; 22 OUT) based upon a rate of 0.8 vehicle trips per child. For the 4-6pm period, the site generated traffic equates to 39 vehicle trips (20 IN; 19 OUT) based upon a rate of 0.7 vehicle trips per*

*child as per the RTA Guide.* The number of trips generated by the proposed development will not change the Level of Service of close intersections. Traffic generation is not considered an issue of this development.

A number of submissions raised concerns that the traffic data was taken during Covid restrictions. It should be noted that the traffic data was collected on 18 March 2020. This was not during the lockdown period and schools were operating at the time.

From Council's traffic observations the traffic volumes during this period would have been around 85% of normal traffic conditions. The proposal itself would generate 44 trips and 39 trips for two hours period for each peak. This gives around 20 car movements for each peak hour AM and PM. This equates to approximately a car trip every 2 minutes or less. The analysis for adjacent intersections would have similar results if the volumes of background traffic were increased by another 15%.

Council's Traffic Branch support the application on traffic and pedestrian safety grounds, subject to the following conditions:

- All parking areas and driveways are to be sealed to an all-weather standard, line marked and signposted.
- Vehicles awaiting loading, unloading or servicing shall be parked on site and not on adjacent or nearby public roads.
- All vehicular entry on to the site and egress from the site shall be made in a forward direction.
- All parking for people with disabilities is to comply with AS/NZS 2890.6:2009 Off-street parking for people with disabilities.
- Any proposed landscaping and/or fencing must not restrict sight distance to pedestrians and cyclists travelling along the footpath.

The proposal meets the objectives of Parts 3.8 of the CCPG and is considered acceptable, subject to conditions.

In summary, the proposal is considered acceptable with regard to Part 3 of the CCPG.

#### 2.2.4 Part 4 - Applying the National Regulations to Development Proposals

The following table sets out the proposal's compliance with the measures of Part 4 of the CCPG:

Child Care Planning Guideline 2017 - Part 4			
Control	Proposal	Requirement	Compliance
Unencumbered indoor space	3.49m <sup>2</sup> per child	3.25m <sup>2</sup> per child	Yes
Unencumbered outdoor space	7.1m <sup>2</sup> per child	7m <sup>2</sup> per child	Yes
Storage			
- External	>0.3m <sup>3</sup> per child	0.3m <sup>3</sup> per child	Yes
- Internal	>0.2m <sup>3</sup> per child	0.2m <sup>3</sup> per child	Yes
On site laundry	Provided on site	Provided on site	Yes

Child toilet facilities	Provided on site	Provided on site	Yes
Administration space	Provided on site	Provided on site	Yes
Nappy change facilities	Provided on site	Provided on site	Yes
Solar Access for outdoor play	>30-60% solar access	30-60% solar access	Yes

As detailed in the above table, the proposed development complies with Part 4 of the CCPG.

Clause 25 of the Childcare SEPP contains non-discretionary development standards. This prevents the consent authority from imposing more onerous standards or refusing an application on the basis that they have not been complied with. An assessment of the application against Clause 25 of the SEPP has been carried out below:

### **Centre-based child care—non-discretionary development standards**

- (a) *Location - the development may be located at any distance from an existing or proposed early childhood education and care facility.*

Comment: The child care centre can be located at any distance from existing or proposed childhood education and care facility in accordance with Clause 25(a) of the Childcare SEPP.

- (b) *Indoor or outdoor space*

- (i) *For development to which clause 107 (indoor unencumbered space requirements) or 108 (outdoor unencumbered space requirements) of the Education and Care Services National Regulations applies—the unencumbered area of indoor space and the unencumbered area of outdoor space for the development complies with the requirements of those clauses, or*
- (ii) *For development to which clause 28 (unencumbered indoor space and useable outdoor play space) of the Children (Education and Care Services) Supplementary Provisions Regulation 2012 applies—the development complies with the indoor space requirements or the useable outdoor play space requirements in that clause;*

Comment: The regulations require a minimum of 3.25m<sup>2</sup> of unencumbered indoor play area and a minimum of 7m<sup>2</sup> of unencumbered outdoor play area per child. The submitted plans indicate compliance with these requirements.

- (c) *Site area, site coverage and site dimensions—the development may be located on a site of any size, cover any part of the site and have any length of street frontage or any allotment depth.*

Comment: The site has an area of 900.5m<sup>2</sup> and is considered acceptable.

- (d) *Colour of building materials or shade structures—the development may be of any colour or colour scheme unless it is a heritage item or in a heritage conservation area.*

Comment: The site does not contain a heritage listed item and is not located in a heritage conservation area. No objections are raised in this regard.

In summary, the proposed centre-based child care centre would comply with key Childcare SEPP provisions and is assessed as satisfactory in this regard.

## **2.3 State Environmental Planning Policy No. 55 Remediation of Land**

The application has been assessed against the requirements of State Environmental Planning Policy No. 55 Remediation of Land (SEPP 55) under which 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.

The application was accompanied by a Preliminary Site Investigation (PSI) report to identify whether potential contaminants were present on the site. The PSI identified potentially contaminating activities on the proposed site including fill material of unknown origin affecting the whole site, and hazardous materials in the building structures.

Given the PSI identified potential for contaminants, a Detailed Site Investigation (DSI) Report prepared by GeoEnviro Consultancy to further investigate the areas of concern and provide potential remediation actions if necessary. As part of the investigation, a review of the site history indicated that the site may have been used for agricultural activities in the 1970s/1980s. The DSI was conducted with on-site borehole contamination of surface and subsurface soil sampling.

The Detailed Site Investigation is summarised as follows:

- *The Updated Detailed Site Investigation concluded that 'subject to appropriate site validation works, we would consider the site to be suitable for the proposed childcare centre development'. The site validation works include site inspection post demolition works (i.e. asbestos clearance) and validation sampling at a minimum of 5 locations in accordance with the NSW EPA minimum sampling protocol and comparison of those samples against Health Investigation Levels (HIL-A).*
- *It is noted contamination was not identified during the contamination investigation and contamination concerns relate to the demolition of structures potentially containing Hazardous Building Materials.*

Although borehole investigation did not encounter contamination, it is still possible for localised contamination to occur in areas not investigated. As such, further contamination assessment at this stage is not warranted and Council's requirements under SEPP 55 are considered satisfied. Notwithstanding, conditions requiring Unexpected Finds, Waste Classification of excavated soils and Site Validation Works are recommended under Schedule 1 of this report. Validation Works must be undertaken prior to the issue of the Construction Certificate.

## **2.4 State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017**

*State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 (Vegetation SEPP)* aims to protect the biodiversity and amenity values of trees within non-rural areas of the state.

Part 3 of the *Vegetation SEPP* 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 Hornsby Development Control Plan 2013 (HDCP) prescribes works that can be undertaken with or without consent to trees. The application proposes the removal of 16 trees from the site, which is considered acceptable as these trees are either exempt species under Table 1B.6(s) of the HDCP, of low retention value or unsuitable for retention on the site.



Section 3.1.1 of this report addresses proposed tree removal and replacement planting across the site.

## 2.5 Sydney Regional Environmental Plan No. 20 Hawkesbury-Nepean River

The site is located within the catchment of the Hawkesbury Nepean River. Part 2 of this Plan contains general planning considerations and strategies requiring Council to consider the impacts of development on water quality, aquaculture, recreation and tourism.

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

## 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 2013

The proposed development has been assessed having regard to the relevant desired outcomes and prescriptive requirements within the Hornsby Development Control Plan 2013 (HDCP). As noted in Section 6.5 of this report, the Childcare Planning Guideline generally overrules the HDCP with the exception of setbacks and car parking. The following table sets out the proposal's compliance with the prescriptive requirements of the Plan:

Hornsby Development Control Plan 2013 – Part 7 Community Uses			
Control	Proposal	Requirement	Compliance
Site Area	900.5m <sup>2</sup>	N/A	N/A
Floor Area	386m <sup>2</sup> (amended)	430m <sup>2</sup>	Yes
Site Coverage	32%	max. 40%	Yes
Height	8.4m	8.5m	Yes
Number of Children	52 (amended)	40	No
Recreation Space			
- Indoor	3.49m <sup>2</sup> per child	3.25m <sup>2</sup> per child	Yes

- Outdoor	7.1m <sup>2</sup> per child	15m <sup>2</sup> per child	No
Landscaping	36% (amended)	Min. 40%	No
Car Parking (@ 1/ 4 children)	14 spaces	14 spaces	Yes
Setbacks			
- Front	7m	6m	Yes
- East Side	2m	2m	Yes
- West Side	2m	2m	Yes
- Rear (ground floor)	3m	3m	Yes
- Rear (first floor)	16m	8m	Yes

## ITEM 2

As detailed in the above table, the proposed development generally complies with the prescriptive measures within the HDGP with the exception of number of children, outdoor recreation space and landscaping. A brief discussion on compliance with relevant performance requirements and Part 1C General Controls is provided below.

### 2.7.1 Scale

The HDGP limits the capacity of a child care centre in a residential zone to 40 places for a purpose built centre, or 60 places if at least 33% of all places are provided for 0-2 year old children if certain other requirements are met. Additionally, the HDGP requires 15m<sup>2</sup> of outdoor recreation space per child.

Notwithstanding the above, Clause 26 of Child Care SEPP states that:

- “(1) A provision of a development control plan that specifies a requirement, standard or control in relation to any of the following matters (including by reference to ages, age ratios, groupings, numbers or the like, of children) does not apply to development for the purposes of a centre-based child care facility —”; and
- (2) This clause applies regardless of when the development control plan was made.”

Accordingly, the Child Care SEPP removes the limit on 40 places and 15m<sup>2</sup> outdoor recreation space per child as they are controls under a development control plan control. These limitations do not apply.

In line with the Child Care SEPP, the centre provides sufficient size per child to meet the indoor and outdoor area requirements, and there the capacity of the centre can be supported.

### 2.7.2 Landscaping

As discussed at Section 2.2.6 of this report, the proposed development would include a range of plantings across the site including 1 x Coastal Banksia tree with a growth height of 12m, 1 x Willow Bottlebrush with a growth height of 5m, 6 x Blueberry Ash trees with a growth height of 8m, 5 x Waste Gums with a growth height of 8m and 22 x Lilly Pilly trees with a growth height of 6m. These larger trees would be intermixed with a number of shrubs and grass type plants.

### Fencing

Submissions were received regarding fencing treatments within the front setbacks.

Under Part 3.1.3 Landscaping of the HDCP:

- Within front setbacks, fences should not be higher than 1.2m.
- Front fencing should be constructed from predominately lightweight materials with a design allowing at least 50% openings.

In response to these submission/ HDCP requirements, it should be noted that the proposal was amended to ensure no front fencing was proposed within the front setback of the development. A small portion of fencing would be required for the 0.2 year old outdoor play area; however, this would be setback 7m from the front boundary in line with the building and screened by substantial/effective landscaping within the front setback.

A low lying masonry retaining wall (max. 1.05m high) would also be constructed along the front boundary. This appropriately defines the pedestrian entrance to the Centre, would be softened with landscaping and it not considered out of character with the streetscape.

### Landscape variation

In support of the 4% landscape variation detailed in the Table above, it should be noted that the proposal was amended to improve landscaping within the front setback and improve the overall visual impact of the development from within the streetscape.

The main reason for this minor variation is due to the outdoor play areas not meeting the definition of landscape areas due to the use of a ground surface soft fall material rather than turf.

Whilst some of these soft fall areas could be turfed, in this instance it would be impractical for this to occur due to foreseen ongoing maintenance issues.

In line with the above, the proposal is acceptable with regards to Part 7.1.4 Landscaping of the HDCP and meets the objectives of Part 3.4 of the CCPG.

## **2.7.3 Waste Management**

The child care centre would generate a demand for 20L/child/week for garbage and 10L/child/week for recycling. The minimum required bins are 1 of 660L garbage bin serviced twice weekly, plus 1 of 660L recycling bin serviced weekly as proposed in the Waste Management Plan.

The bin storage area would be located along the side fence and is well screened by landscaping in the front setback. It has sufficient space for the required number of bins.

The bin carting route is an accessible path of travel and about 2m wide. The gate would need to be wide enough to allow the 660L bins through (minimum width 960mm) which is conditioned in Schedule 1 of this report.

In addition, since the proposed child care centre is located within a residential area, waste collection times will be restricted to 6AM to 8PM weekdays and 8AM to 8PM weekends and public holidays.

Subject to conditions, the proposal is acceptable with regards to Part 1C.2.3 Waste Management of the HDCP.

## **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. Given the proposed estimated cost of works is \$1,606,000, an appropriate condition of consent is recommended requiring the payment of a contribution in accordance with the Plan.

### **3. ENVIRONMENTAL IMPACTS**

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

#### **3.1 Natural Environment**

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

21 trees would be removed or impacted by the development, 16 of which would be removed and 5 protected

The application was supported by an Arboricultural Impact Assessment prepared by Bellevue Tree Consultants, dated 17 September 2021.

Council's tree assessment of the proposed raised no objection to the removal of these trees as they were considered either exempt species under Table 1B.6(s) of the HDCP, of low retention value or unsuitable for retention on the site. Whilst tree loss is not ideal, there is sufficient space on the site to provide compensatory plantings of locally occurring species to maintain the local amenity as conditioned in Schedule 1 and detailed in the approved Landscape Plan.

The Landscape plan proposes the planting of 1 x Coastal Banksia tree with a growth height of 12m, 1 x Willow Bottlebrush with a growth height of 5m, 6 x Blueberry Ash trees with a growth height of 8m, 5 x Waste Gums with a growth height of 8m and 22 x Lilly Pilly trees with a growth height of 6m. These larger trees would be intermixed with a number of shrubs and grass type plants.

In addition, to ensure the protection of trees and bushland on the site, a project arborist with AQF Level 5 qualifications must be appointed to assist in compliance with the conditions of consent and to implement and monitor environmental protection measures during the construction of the approved development, as conditioned in Schedule 1.

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

The application proposes the installation of an on-site detention system located underneath the proposed driveway which would drain to Council's street drainage system.

Council's stormwater assessment raises no objections with the proposed method of stormwater disposal, subject to conditions.

#### **3.2 Built Environment**

##### **3.2.1 Access and Mobility**

The application is supported by an Access Report prepared by Access-i. Further, to ensure pedestrian and road safety, Council required the proposed drop off/parking spaces for the childcare centre within the basement were re-arranged so that there is no pedestrian/vehicle conflict within the car parking aisle.

To address the pedestrian/safety concern, the application amended the basement floor plan as follows:

*The location of the pedestrian pathway within the basement has been relocated to be adjacent to the basement wall, removing the majority of the risk for conflict with vehicles manoeuvring into and out of car spaces. The car spaces adjacent to the path will have wheel stops installed to prevent vehicles unintentionally blocking the path.*

*The path itself interface with the fire exit section of the basement. The doorways are sufficiently wide to permit prams to entry/exit. The doorways can be left open but triggered electronically to shut in case of fire. The two visitor spaces (including the accessible space) closest to the lift will be still have parents walking behind them. However, the conflict potential of only two spaces (including one accessible space, the lowest use space) is considered to be very low.*

In addition, the supporting Access Report identifies the compliance status of the application's architectural design with the following:

- a) *Relevant accessibility related 'deemed-to-satisfy' (DTS) requirements of the Building Code of Australia (BCA) 2019, Amendment 1, Volume 1. These provisions are generally contained within Part D3 and Clause(s) E3.6, F2.4 & F2.9 of the code.*
- b) *Disability (Access to Premises – Building) Standards 2010 (Premises Standards).*
- c) *Disability (Access to Premises – Buildings) Amendment Standards 2020.*

In summary, the proposed development complies with the relevant accessibility provisions and pedestrian and vehicle safety requirements.

### **3.2.2 Traffic**

The assessment of Traffic impacts is discussed in the report above in Section 2.2.9 which concluded that the proposal would not have an unacceptable impact on traffic and safety grounds on the surrounding road network.

### **3.3 Social Impacts**

The proposed Child Care Centre would make a positive social contribution to the local community by providing services for the needs of local residents. This is consistent with the State Government's A Metropolis of Three Cities which identifies the need to provide an additional 85,000 child care places by 2036.

### **3.4 Economic Impacts**

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

## **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


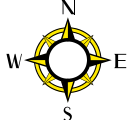
Section 4.15(1)(d) of the Act requires Council to consider “any submissions made in accordance with this Act”.

### 5.1 Community Consultation

The proposed development was placed on public exhibition and was notified to adjoining and nearby landowners between 1 October 2021 and 26 October 2021 in accordance with the Hornsby Community Engagement Plan. During this period, 80 submissions were received. Amended plans and documentation were submitted and the application was re-notified to objectors and adjoining and nearby landowners between 7 April 2022 and 28 April 2022. During this period, Council received an additional 30 submissions. The map below illustrates the location of those nearby landowners who made a submission that are in close proximity to the development site.



**NOTIFICATION PLAN**

• PROPERTIES NOTIFIED	X SUBMISSIONS RECEIVED		PROPERTY SUBJECT OF DEVELOPMENT	
60 SUBMISSIONS RECEIVED OUT OF MAP RANGE				

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

- Increased traffic and safety problems, particularly in the morning and afternoon during local school drop off/pick-up periods with long queues along David Road.

- Concern also regarding pedestrian safety.
- Concerns regarding Traffic Study data being undertaken during a lockdown period.
- Limited road parking availability in the area.
  - Local bus stops attract people to park all day along David Road.
- The number of child care centres that already exist within the surrounding area.
  - Lack of demand for child care due to ageing population in the area.
- Increased noise impacts to the neighbouring properties.
  - Specifically noted by one neighbour that they work from home and this development will have significant amenity impact in this regard.
- Concerns regarding the proposed location/operations of the child care centre surrounded by residential properties.
  - Concerns regarding the number of children proposed.
  - Concerns that a precedent will be set, and similar commercial/business developments will pop up all over the area.
  - Concerns regarding de-valuing of properties as a result of this type of development.
- Lack of parking - concerns the 14 basement car parking spaces will be used by the staff, and parents will be required to park on the street.
  - Concerns regarding the car park design and lack of turning area.
- Plan of Management
  - Objection to children being silenced in outdoor play and learning to reduce noise impacts.
  - Concerns regarding staff centre supervision non-compliances if staff have to supervise vehicles/persons using the carpark.
  - Lack of clarification regarding waste bin management/operation and truck deliveries.
  - Too many outdoor playtime hours for neighbours to endure.
  - The rooftop play area is contrary to the character of the area.
- Overall concerns regarding insufficient landscaping on the site.
- Objections to the underground/basement car park - not in keeping with surrounding residential area.
- Lack of compliance with ages of children, quantity of children, outdoor space available in centre as per Table 7.1.2(b) of the HDGP - SEPP overrides this requirement.
  - Also, concern regarding outdoor play area in the front setback - non-compliant with HDGP.
- Concern regarding construction timeframes.
- Privacy impacts to adjoining properties due to the two storey structure.

- The proposed development/materials and finishes are not in keeping with the surrounding residential developments.
- Concern regarding geotechnical assessment and stability of the site. Concerns relating to damage to adjoining properties as a result of significant excavation.
- Lack of evacuation plan for the CCC.
- Overdevelopment/excessive use of a residential site.
- Concerns that people in the surrounding area will be more exposed to viruses as a result of more children in the area.
- Concerns regarding fencing treatments within the front setbacks.

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 Traffic Study Undertaken During Lockdown**

As outlined in the supporting Traffic and Parking Study, the proponent collected traffic data on 18 March 2020. This was not during a lockdown period and schools were operating at the time. From Council's traffic observations and supporting data, the traffic volumes during this period would have been around 85% of normal traffic conditions and the Traffic and Parking Study is considered acceptable in this regard.

#### **5.1.2 Car Parking**

As outlined under Part 1C.2.1 Transport and Parking of the HDCP, Childcare Centres require 1 car parking space per 4 children. Therefore, given the application proposes 52 children, 13 car parking spaces would be required.

The application proposed 14 car parking spaces which meets this requirement. No further concerns are raised in this regard.

#### **5.1.3 Construction Timeframes**

Some submissions raised concerns with how long the construction work would take and whether this could be controlled.

In response to these submissions, it should be noted that the only time constraints Council can impose on an applicant with regards to construction is that the works must be physically commenced within 5 years of the date of consent and all work on site (including demolition and earth works) must only occur between 7am and 5pm Monday to Saturday (unless otherwise approved in writing by Council due to extenuating circumstances). No work is to be undertaken on Sundays or public holidays.

#### **5.1.4 Health Concerns**

Concerns were raised in submissions that people in the surrounding area would be more exposed to more viruses as a result of more children in the area.

In response, it is noted that this is not a matter for consideration under Section 4.15 of the *Environmental Planning and Assessment Act 1979* and not further concerns are raised in this regard.

#### **5.1.5 Lack of Details in Evacuation Plan**



Concerns were raised that the evacuation plan was inadequate.

To address this concern, a condition is recommended in Schedule 1 of this report that Emergency and evacuation procedures/ plans must be in accordance with the clauses 97 and 168 of the Education and Care Services National Regulations and maintained in perpetuity.

## 5.2 Public Agencies

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

## 6. THE PUBLIC INTEREST

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

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

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

## CONCLUSION

The application proposes the demolition of existing structures and construction of a Childcare centre for 52 children with basement carparking.

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 101 submissions during the two 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, the Child Care Planning Guideline, and the Hornsby Development Control Plan 2013.
- The proposed development does not create unreasonable environmental impacts to adjoining development with regard to visual bulk, overshadowing, solar access, amenity, privacy, noise, vegetation preservation, parking and traffic.

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





## RESPONSIBLE OFFICER

The officer responsible for the preparation of this report is Madeleine Brown.

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

ROD PICKLES  
Manager - Development Assessments  
Planning and Compliance Division

**Attachments:**

1.  Locality Plan
2.  Architectural Plans
3.  Landscape Plans
4.  Plan of Management

File Reference: DA/1017/2021  
Document Number: D08396529

## Schedule 1

## ITEM 2

**GENERAL CONDITIONS**

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

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

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

**1. Approved Plans and Supporting Documentation**

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

*Approved Plans:*

Plan No.	Plan Title	Drawn by	Dated	Council Ref. No.
Dwg No. DA01	Demolition Plan	INTO Architecture	05/04/22	
Dwg No. DA02A	Site Plan	INTO Architecture	05/04/22	
Dwg No. DA04B	Basement Floor Plan	INTO Architecture	05/04/22	
Dwg No. DA05C	Ground Floor Plan	INTO Architecture	05/04/22	
Dwg No. DA06A	First Floor Plan	INTO Architecture	05/04/22	
Dwg No. DA07A	Roof Plan	INTO Architecture	05/04/22	
Dwg No. DA08A	Section A	INTO Architecture	05/04/22	
Dwg No. DA09C	Section B	INTO Architecture	05/04/22	
Dwg No. DA10A	Section C	INTO Architecture	05/04/22	
Dwg No. DA11B	Elevation North	INTO Architecture	05/04/22	
Dwg No. DA12	Elevation South	INTO Architecture	05/04/22	
Dwg No. DA13B	Elevation East and West	INTO Architecture	05/04/22	
Dwg No. DA14B	External Colours and Materials	INTO Architecture	05/04/22	
Not indicated	Tree Protection Plan	INTO Architecture – edited by HSC	18/10/21	
Dwg No. L/01 'A'	Ground Floor Landscape	A Total Concept	05/04/22	

	Plan			
Dwg No. L/02	Level 1 Landscape Plan	A Total Concept	20/09/21	
Dwg No. L/03	Landscape Details	A Total Concept	17/09/21	
Dwg No. L/04	Landscape Specifications	A Total Concept	17/09/21	
Dwg No. SW-000, Rev. B	Cover Sheet and Legend Stormwater Services	ADCAR Consulting	15/09/21	
Dwg No. SW-100, Rev. B	Site Plan Stormwater Services	ADCAR Consulting	15/09/21	
Dwg No. SW-0101, Rev. A	Basement Floor Plan Stormwater Services	ADCAR Consulting	14/09/21	
Dwg No. SW-102, Rev. B	Ground Floor Plan Stormwater Services	ADCAR Consulting	15/09/21	
Dwg No. SW-103, Rev. A	Level 1 Floor Plan Stormwater Services	ADCAR Consulting	14/09/21	
Dwg No. SW-104, Rev. A	Roof Plan Stormwater Services	ADCAR Consulting	14/09/21	
Dwg No. SW-104, Rev. A	Sediment and Erosion Control Plan Stormwater Services	ADCAR Consulting	14/09/21	

Supporting Documentation:

Document Title	Prepared by	Dated	Council Ref No.
Management Plan - Version 2.10	Not indicated	05/04/22	D08385443
Detailed Site Investigation	GeoEnviro Consultancy	15/03/22	D08372575
Acoustic Report Rev. 5	Rodney Stevens Acoustics	02/05/22	D08400749
Geotechnical Assessment	Martens Consulting Engineers	17/09/21	D08257702
Arboricultural Impact Assessment	Bellevue Tree Consultants	17/09/21	D08257685
Waste Management Plan	Darren Laybutt	20/09/21	D08257679
Traffic and Parking Assessment	McLaren Traffic Engineering	17/09/21	D08257676
Construction Vehicle and Pedestrian Plan of Management Rev. 1.1	The Traffic Planner	02/05/22	D08400750

## 2. Appointment of a Project Arborist

- a) To ensure the trees that must be retained are protected, a project arborist with AQF Level 5 qualifications must be appointed to assist in ensuring compliance with the

conditions of consent and provide monitoring reports as specified by the conditions of consent.

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

### 3. Removal of Trees

- a) This development consent permits the removal of tree(s) numbered 1, 3 to 14 (inclusive), 17, 18 and 21 as identified on the Tree Location and Protection Plan of the Arboricultural Impact Assessment (AIA) prepared by Bellevue Tree Consultants, dated 17 September 2021.
- b) No consent is granted for the removal of tree(s) numbered 2, 15, 16, 19 and 20 as these trees contribute to the established landscape amenity of the area/street/scape.

Note: The removal or 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 (HDCP).

### 4. Construction Certificate

- a) A Construction Certificate is required to be approved by Council or a Private Certifying Authority prior to the commencement of any construction works under this consent.
- b) A separate Road Works Approval must be obtained from Council for all works within the public road reserve under S138 of the *Roads Act 1993*.
- c) The Construction Certificate/ Road Works Approval plans must be consistent with the Development Consent plans.

### 5. Section 7.12 Development Contributions

- a) In accordance with Section 4.17(1) of the *Environmental Planning and Assessment Act 1979* and the *Hornsby Shire Council Section 7.12 Development Contributions Plan 2019 - 2029*, **\$16,060** must be paid towards the provision, extension or augmentation of public amenities or public services, based on development costs of **\$1,606,000**.
- b) The value of this contribution is current as of 28 April 2022. If the contributions are not paid within the financial quarter that this consent is granted, the contributions payable will be adjusted in accordance with the provisions of the Hornsby Shire Council Section 7.12 Development Contributions Plan and the amount payable will be calculated at the time of payment in the following manner:

$$\begin{aligned} \$C_{PY} &= \frac{\$C_{DC} \times CPI_{PY}}{CPI_{DC}} \\ \$C_{PY} &= \frac{\$C_{DC} \times CPI_{PY}}{CPI_{DC}} \end{aligned}$$

Where:

**\$C<sub>PY</sub>** is the amount of the contribution at the date of Payment.

**\$C<sub>DC</sub>** is the amount of the contribution as set out in this Development Consent.

**CPI<sub>PY</sub>** is the latest release of the Consumer Price Index (Sydney – All Groups) at the date of Payment as published by the ABS.

**CPI<sub>DC</sub>** is the Consumer Price Index (Sydney – All Groups) for the financial quarter at the date of this Development Consent.

- c) The monetary contributions shall be paid to Council:
- (i) Prior to the issue of the Subdivision Certificate where the development is for subdivision.
  - (ii) Prior to the issue of the first Construction Certificate where the development is for building work.
  - (iii) Prior to issue of the Subdivision Certificate or first Construction Certificate, whichever occurs first, where the development involves both subdivision and building work.
  - (iv) 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 Certifying Authority to ensure that the monetary contributions have been paid to Council in accordance with the above timeframes.*

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

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

## REQUIREMENTS PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

### 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*.

**7. 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.

**8. Disabled Access**

The building is required to meet the requirements of the Disability (Access to Premises Buildings) Standards 2010.

**9. Sydney Water – Approval**

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

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

**10. Dilapidation Report**

- a) Prior to the commencement of any works on site, the applicant must submit for approval by the Principal Certifying Authority (with a copy forwarded to Council) a 'Dilapidation Report' detailing the structural condition of the adjoining properties:
  - i) Lot 7 DP 800015, No. 92 David Road, Castle Hill
  - ii) Lot 5 DP 800015, No. 96 David Road, Castle Hill
- b) The report must include a photographic survey of the adjoining properties detailing their physical condition, both internally and externally, including such items as walls, ceilings, roof, structural members and other similar items. The report must be completed by a chartered structural/geotechnical engineer. A copy of the dilapidation report must be submitted to Council.
- c) In the event access to adjoining allotments for the completion of a dilapidation survey is denied, the applicant must demonstrate in writing that all reasonable steps have been taken to advise the adjoining allotment owners of the benefit of this survey and details of failure to gain consent for access to the satisfaction of the Principle Certifying Authority.

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

**11. 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 must 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.

## 12. Construction Management Plan (CMP)

To assist in the protection of the public, the environment and Council's assets, a separate Construction Management Plan must be prepared by a suitably qualified environmental consultant in consultation with a qualified traffic engineer and AQF 5 arborist and submitted to Council's Compliance Team via Council's Online Services Portal for review and written approval.

The CMP must include the following details:

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



- xi) The total quantity and size of trucks for all importation and exportation of fill on site throughout all stages of works, and a breakdown of total quantities of trucks for each stage of works.
  - xii) The number of weeks trucks will be accessing and leaving the site with excavated or imported fill material.
  - xiii) The maximum number of trucks travelling to and from the site on any given day for each stage of works.
  - xiv) The maximum number of truck movements on any given day during peak commuting periods for all stages of works.
  - xv) The source site location of any proposed fill to be imported to the site, for all stages of works.
  - xvi) The Plan must state that the applicant and all employees of contractors on the site must obey any direction or notice from the Prescribed Certifying Authority or Hornsby Shire Council in order to ensure the above.
  - xvii) If there is a requirement to obtain a Work Zone, Out of Hours permit, partial Road Closure or Crane Permit, the Plan must detail these requirements and include a statement that an application to Hornsby Shire Council will be made to obtain such a permit.
- b) A Construction Waste Management Plan detailing the following:
- i) Details of the importation or excavation of soil and fill, the classification of the fill, disposal methods and authorised disposal depots that will be used for the fill.
  - ii) Asbestos management requirement and procedures for removal and disposal from the site in accordance with *AS2601-2001 Demolition of structures*, and the *Protection of the Environment Operations (Waste) Regulation 2005*.
  - iii) General construction waste details including construction waste skip bin locations and litter management for workers.
- c) A Tree Protection Plan (TPP) prepared by an AQF 5 Arborist in accordance with any approved Arboricultural Impact Assessment and tree location plans, detailing the following:
- i) A site plan showing tree protection zones (TPZ) and structural root zones (SRZ) of trees to be retained and specific details of tree protection measures inclusive of distances (in metres) measured from tree trunks.
  - ii) Construction methodology to avoid damage to trees proposed to be retained during construction works.
  - iii) Specifications on tree protection materials used and methods within the TPZ or SRZ.
  - iii) Location of dedicated material storage space on site outside of TPZ's and SRZ's for retained trees.
- d) A Construction Noise and Vibration Management Plan (CNMP) which includes:

- i) Existing noise and vibration levels within the proximity of the proposed development site.
  - ii) Details of the extent of rock breaking or rock sawing works forming part of the proposed development works.
  - iii) The maximum level of noise and vibration predicted to be emitted during each stage of construction.
  - iv) The duration of each stage of works where the maximum level of noise and vibration are predicted to be emitted for.
  - v) Details of mitigation measures, inclusive of respite periods, that will meet acoustic standards and guidelines at each stage of works.
  - vi) Details of a complaints handling process for the surrounding neighbourhood for each stage of works.
- e) Identification of approved sediment and erosion control measures.
  - f) The CMP must detail the contact information for developers, builder, private certifier and any emergency details during and outside work hours.

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

### 13. Pedestrian Refuge Approvals

- a) A pedestrian refuge is to be designed on David Road in the vicinity of the proposed development site in accordance with TfNSW Technical Direction TDT 2011/01a, including all signage associated with the refuge.

*Note: The design is to be submitted to Council at [TrafficBranch@hornsby.nsw.gov.au](mailto:TrafficBranch@hornsby.nsw.gov.au) for consideration by the Hornsby Local Traffic Committee prior to issuing of the construction certificate.*

- b) A separate Section 138 Roads Act 1993 Approval must be obtained from Council for the approval to construct a pedestrian refuge in David Road. The pedestrian refuge must be designed in accordance with AUS-SPEC Specifications ([www.hornsby.nsw.gov.au/property/build/aus-spec-terms-and-conditions](http://www.hornsby.nsw.gov.au/property/build/aus-spec-terms-and-conditions)) and the following requirements:

- i) The design of a pedestrian refuge must be approved by the Hornsby Local Traffic Committee; and
- ii) Submission of civil engineering drawings with construction details.

*Note: The applicant is to lodge a S138 Road Act Application via the NSW Planning Portal. The LTC approval shall be obtained prior to lodging the S138 Roads Act 1993 application.*

### 14. Validation Report

- a) A Validation Report must be prepared by a certified consultant as recognised under the Certified Environmental Practitioners Scheme - Site Contamination (CEnvP (SC))

and the Certified Professional Soil Scientist Contaminated Site Assessment and Management (CPSS CSAM) certification, verifying that the soils under site features A, B, D and E meet the Health Investigation Levels (HIL-A) detailed in the National Environment Protection (Assessment of Site Contamination) Measure 2013 and is suitable for its approved use in accordance with the recommendations of the Detailed Site Investigation, prepared by GeoEnviro Consultancy, dated 15/3/22, reference JE22735A Revision r1.

- b) The Validation Report must be submitted to the Principal Certifying Authority and a copy provided to Council prior to the issue of a Construction Certificate.

#### 15. Mechanical Equipment

A mechanical plant noise assessment for all proposed mechanical equipment and site specific equipment must be undertaken by a suitably qualified Acoustic Consultant and a report certifying that the operation of all proposed equipment will not exceed 45dB(A) at any boundary upon installation, be submitted to the PCA.

#### 16. Acoustic Treatment and Certification

- a) Acoustic fencing must be installed in accordance with the Noise Impact Assessment, prepared by Rodney Stevens Acoustics, dated 2/5/22, reference R210741R1 Revision 5.
- b) Acoustic treatment must be installed for the proposed development in accordance with the recommendations contained within the Noise Impact Assessment, prepared by Rodney Stevens Acoustics, Noise Impact Assessment, prepared by Rodney Stevens Acoustics, dated 2/5/22, reference R210741R1 Revision 5.
- c) On completion of all works and prior to the issue of an Occupation Certificate, the certifier is to be provided with a certificate from a qualified acoustic consultant certifying that all acoustic works have been completed in accordance with the recommendations contained within the Noise Impact Assessment, prepared by Rodney Stevens Acoustics, dated 2/5/22, reference R210741R1 Revision 5 and this consent.

#### 17. Stormwater Drainage

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

- a) Connected directly to Council's street stormwater pipe in David Road through construction of a pit. In accordance with AUS-SPEC Specifications ([www.hornsby.nsw.gov.au/property/build/aus-spec-terms-and-conditions](http://www.hornsby.nsw.gov.au/property/build/aus-spec-terms-and-conditions)) and the following:
  - i) The connection to Council's drainage pit or pipeline must be inspected by a Council Engineer in the Planning Division. Prior to the connection, an 'Application for approval to connect stormwater drainage outlet to Council's system' must be made to Council and all fees paid.

*Note: An inspection booking can be made by calling Council on 9847 6787.*

- ii) Prior to the issue of an Occupation Certificate a Compliance Certificate must be obtained from Council for the connection to Council's drainage system.

#### 18. On Site Detention

- a) The on-site detention system is to be designed to limit discharge to 5 years ARI predevelopment rate and storage volume provided for up to 20 years ARI storm events.
- b) The calculation must include all impervious areas from the fully developed site.
- c) The structure of the on-site detention system under the driveway must be designed by a suitably qualified Structural Engineer.

#### 19. Internal Driveway/Vehicular Areas

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

- a) A separate application under the *Local Government Act 1993* and the *Roads Act 1993* being an 'Application for Boundary Levels' must be submitted to Council to obtain design levels at the front boundary for the design of the internal driveway, prior to the issue of a construction certificate.
- b) The driveway be a rigid pavement.
- c) The driveway grade must comply with AS2890.1
- d) Longitudinal sections along both sides of the access driveway shall be submitted to the principal certifying authority in accordance with the relevant sections of AS 2890.1.

*Note: A construction certificate shall be obtained prior to the commencement of these works and are to be completed prior to the issue of an occupation certificate*

#### REQUIREMENTS PRIOR TO THE COMMENCEMENT OF ANY WORKS

#### 20. Erection of Construction Sign

- a) A sign must be erected in a prominent position on any site on which any approved work is being carried out:
  - i) Showing the name, address and telephone number of the principal certifying authority for the work.
  - ii) Showing the name of the principal contractor (if any) for any demolition or building work and a telephone number on which that person may be contacted outside working hours.
  - iii) Stating that unauthorised entry to the work site is prohibited.
- b) The sign is to be maintained while the approved work is being carried out and must be removed when the work has been completed.

#### 21. Protection of Adjoining Areas

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

- a) Could cause a danger, obstruction or inconvenience to pedestrian or vehicular traffic.
- b) Could cause damage to adjoining lands by falling objects.
- c) Involve the enclosure of a public place or part of a public place.
- d) 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.*

## 22. Toilet Facilities

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

## 23. Erosion and Sediment Control

To protect the water quality of the downstream environment, erosion and sediment control measures must be provided and maintained throughout the construction period in accordance with the manual '*Soils and Construction 2004 (Bluebook)*', the approved plans, Council specifications and to the satisfaction of the principal certifying authority. The erosion and sediment control devices must remain in place until the site has been stabilised and revegetated.

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

## 24. Installation of Tree Protection Measures

- a) Trees to be retained and numbered 2, 15, 16, 19 and 20 as identified on the Tree Location and Protection Plan of the Arboricultural Impact Assessment (AIA) prepared by Bellevue Tree Consultants, dated 17 September 2021 must have tree protection measures for the ground, trunk and canopy installed by the project arborist for the duration of demolition and construction works, in accordance with the approved Tree Protection Plan prepared by the Tree Management Team dated 18/10/2021.
- b) Tree protection fencing for the trees to be retained numbered 15, 16, 19 and 20 must be installed by the engaged AQF 5 project arborist and consist of 1.8m high

temporary fencing panels installed in accordance with Australian Standard AS4687-2007 Temporary fencing and hoardings.

- c) The installation of all required tree protection fencing must include shade cloth attached to the fencing to reduce transport of dust, particulates and liquids from entering the tree protection zone.
- d) The installation of all required tree protection fencing must have a TPZ radius as listed in the Table below:

Tree number	TPZ radius from centre of tree
15, 16, 19 and 20	1.5m from the existing boundary fence

## 25. 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.*

## 26. Garbage receptacle

- a) A garbage receptacle must be provided at the work site before works begin and must be maintained until all works are completed.
- b) The garbage receptacle must have a tight fitting lid and be suitable for the reception of food scraps and papers.
- c) The receptacle lid must be kept closed at all times, other than when garbage is being deposited.
- d) Food scraps must be placed in the garbage receptacle and not in demolition and construction waste bins.

## REQUIREMENTS DURING DEMOLITION AND CONSTRUCTION

## 27. Construction Work Hours

All work on site (including demolition and earth works) must only occur between 7am and 5pm Monday to Saturday (unless otherwise approved in writing by Council due to extenuating circumstances).

No work is to be undertaken on Sundays or public holidays.

## 28. Work Zone

- a) All construction vehicles associated with the proposed development are to be contained on site or in a Local Traffic Committee (LTC) approved "Works Zone".
- b) The site supervisor to be advised that the Works Zone will be deemed to be in effect, and fees will apply, between the dates nominated by the supervisor, or when parking spaces are managed for the sole use of construction vehicles associated with the site.

- c) The Works Zone signs shall be in effect only for the times approved by Council, and the time is to be noted on the sign. E.g. 'Works Zone Mon-Sat, 7am-5pm'.
- d) The applicant is required to supply a sign posting installation plan for referral to the Local Traffic Committee, noting on it the duration of the Works Zone.
- e) The Works Zone is only to be used for the loading and unloading of vehicles. Parking of workers' vehicles, or storage of materials, is not permitted.

## 29. Demolition

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

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

## 30. Environmental Management

To prevent sediment run-off, excessive dust, noise or odour emanating from the site during the construction, the site must be managed in accordance with the publication 'Managing Urban Stormwater', Landcom (March 2004) and the *Protection of the Environment Operations Act 1997*.

## 31. Street Sweeping

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

## 32. Council Property

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

## 33. 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.

**34. Road Opening Permit**

For any excavation in nature strip in relation to utility services a road opening permit is to be obtained from Council.

**35. Landfill not Permitted**

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

**36. Excavated Material**

All excavated material removed from the site must be classified by a suitably qualified environmental consultant in accordance with the NSW Environment Protection Authority's *Waste Classification* Guidelines and *Protection of the Environment Operations (Waste) Regulation 2014* prior to disposal to a licensed waste management facility. Tipping dockets for the total volume of excavated material that are received from the licensed waste management facility must be provided to the principal certifying authority prior to the issue of an Occupation Certificate.

**37. Survey Report**

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

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

**38. Waste Management**

Requirements of the approved Waste Management Plan shall be complied with during all site preparation works, demolition and throughout all construction works. When implementing the Waste Management Plan, the developer is to ensure:

- a) The disposal of any demolition and construction waste must be undertaken in accordance with the requirements of the *Protection of Environment Operations Act 1997*.
- b) All waste on site is to be stored, handled and disposed of in such a manner as to not create air pollution, offensive noise or pollution of land and water as defined by the *Protection of Environment Operations Act 1997*.
- c) Generation, storage, treatment and disposal of hazardous waste is conducted in accordance with the relevant waste legislation administered by the EPA and relevant Occupational Health and Safety legislation administered by WorkCover NSW.
- d) All waste generated (including excavated materials) which cannot be reused or recycled must be transported to a facility which can lawfully accept it.
- e) All materials and resources that are to be stored on site during construction works are contained on the site. The provisions of the *Protection of Environment Operations Act*



1997 must be complied with when placing/stock piling loose material, disposal of concrete waste or activities which have potential to pollute drains and water courses.

- f) The storage of waste and recycling containers must be within the boundaries of the development site at all times. Public footways and roads must not be used for the storage of any waste and must be kept clear of obstructions during all construction works.
- g) Additionally, written records of the following items must be maintained during the removal of any waste from the site and such information submitted to the Principal Certifying Authority within fourteen days of the date of completion of the works:
  - i) The identity of the person removing the waste.
  - ii) The waste carrier vehicle registration.
  - iii) Date and time of waste collection.
  - iv) A description of the waste (type of waste and estimated quantity).
  - v) Details of the site to which the waste is to be taken.
  - vi) The corresponding weighbridge tip docket/receipt from the site to which the waste is transferred (noting date and time of delivery, description (type and quantity) of waste).
  - vii) Whether the waste is expected to be reused, recycled or go to landfill.

*Note: In accordance with the Protection of the Environment Operations Act 1997, the definition of waste includes any unwanted substance, regardless of whether it is reused, recycled or disposed to landfill.*

### **39. Maintenance of Public Footpaths**

- a) Public footpaths must be maintained for the duration of works to ensure they are free of trip hazards, displacements, breaks or debris to enable pedestrians to travel along the footpath safely.
- b) Any damaged/worn out footpaths must be replaced. The applicable fees for the restoration of any public asset of Council must be at the applicant's full expense.

### **40. Compliance with Construction Management Plan**

The Council approved Construction Management Plan must be complied with for the duration of works, unless otherwise approved by Council.

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

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

- a) Soil cutting or filling, including excavation and trenching
- b) Soil cultivation, disturbance or compaction
- c) Stockpiling storage or mixing of materials
- d) The parking, storing, washing and repairing of tools, equipment and machinery

- e) The disposal of liquids and refuelling
- f) The disposal of building materials
- g) The siting of offices or sheds
- h) Any action leading to the impact on tree health or structure

**42. Maintaining the Health of Trees Approved for Retention**

The appointed project arborist must monitor and record any and all necessary actions required to maintain tree health and condition for trees numbered 2, 15, 16, 19 and 20 on the approved plans.

**43. Maintaining Tree Protection Measures**

Tree Protection Measures must be maintained by the project arborist in accordance with Condition No. 24 of this consent for the duration of works.

**44. Approved Works within Tree Protection Zone Incursions**

- a) Where tree root pruning is required for the installation of piers, driveway or underground services, the pruning must be overseen by the AQF 5 project arborist and must be undertaken as follows:
  - i) Using sharp secateurs, pruners, handsaws or chainsaws with the final cut being clean.
  - ii) The maximum diameter of roots permitted to be cut is 30mm.
- b) No changes of grade within the Tree Protection Zone of trees to be retained numbered 2, 15, 16, 19 and 20 on the approved plans are permitted.

**45. Unexpected Finds**

Should the presence of asbestos or soil contamination, not recognised during the application process be identified during any stage of works, the applicant must immediately notify the PCA and Council.

<b>REQUIREMENTS PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE</b>
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**46. Sydney Water – s73 Certificate**

A s73 Certificate must be obtained from Sydney Water and submitted to the PCA.

*Note: Sydney Water requires that s73 applications are to be made through an authorised Sydney Water Servicing Coordinator. Refer to [www.sydneywater.com.au](http://www.sydneywater.com.au) or telephone 13 20 92 for assistance.*

**47. Asbestos Clearance Certificate**

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

**48. Damage to Council Assets**

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

#### 49. Creation of Easements

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

- a) 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.
- b) 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.

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

#### 50. 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.

#### 51. 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](http://www.hornsby.nsw.gov.au/property/build/aus-spec-terms-and-conditions)) and the following requirements:

- a) The vehicular crossing is to be constructed to the design levels obtained from 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.

*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.*

**52. 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.

**53. Preservation of Survey Marks**

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

**54. Retaining Walls**

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

**55. Submission of Excavated Material Tipping Dockets to Principal Certifying Authority**

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

**56. External Lighting**

- a) To protect the amenity of adjacent premises, all external lighting must be designed and installed in accordance with Australian Standard AS 4282 Control of the obtrusive effects of outdoor lighting.
- b) Certification of compliance with this Standard must be obtained from a suitably qualified person and submitted to the PCA with the application for the Occupation Certificate.

**57. Replacement Tree Requirements**

- a) The trees approved for removal under this consent, being trees numbered 1, 3 to 14 (inclusive), 17, 18 and 21 must be offset through replacement planting of a minimum of 8 trees.
- b) All replacement plantings must be species selected from the '*Trees Indigenous to Hornsby Shire (as of 1 September 2011)*' document available for viewing on the Hornsby Council's website <http://www.hornsby.nsw.gov.au/environment/flora-and-fauna/tree-management/indigenous-trees>
- c) The location and size of tree replacement planting must comply with the following:
  - i) 7 replacement trees must be located in either front or rear setbacks and planted 4 metres or greater from the foundation walls of the approved development.
  - ii) 1 replacement tree must be located on the nature strip.
  - iii) The pot size of the replacement trees must be a minimum 45 litres.

- iv) All replacement trees must be a minimum of 3 metres in height.
- v) All replacement trees must have the potential to reach a mature height greater than 10 metres.

#### 58. Final Certification

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

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

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

#### 59. 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: Applicants are advised to pre-order plant material required in pot sizes 45 litre or larger to ensure nurseries have stock available at the time of install.*

#### 60. Waste Management Details

The following waste management requirements must be complied with:

- a) Prior to an Occupation Certificate being issued or the use commencing, whichever is earlier, the Principal Certifying Authority must ensure arrangements are in place for delivery of bins for the on-going use of the site and for regular scheduled commercial waste collection services to commence within 7 days of occupation.
- b) A report must be prepared by an appropriately qualified person, certifying the following:

- i) A comparison of the estimated quantities of each demolition and construction waste type against the actual quantities of each waste type.

*Note: Explanations of any deviations to the approved Waste Management Plan is required to be included in this report.*

- ii) That at least 60% of the waste generated during the demolition and construction phase of the development was reused or recycled.

*Note: If the 60% diversion from landfill cannot be achieved in the Construction Stage, the Report is to include the reasons why this occurred*

*and certify that appropriate work practices were employed to implement the approved Waste Management Plan. The Report must be based on documentary evidence such as tipping dockets/receipts from recycling depots, transfer stations and landfills, audits of procedures etc. which are to be attached to the report.*

- iii) All demolition and construction waste was taken to site(s) that were lawfully permitted to accept that waste.

- c) The bin carting routes must be devoid of any steps.

*Note: Ramps between different levels are acceptable.*

- e) The bin storage bay must be accessible by persons with a disability while comfortably housing all of the bins required to be stored there. The floor of the bin storage bay must have a smooth and even surface that is finished so it is non-slip, sealed and impervious. The walls must be finished with smooth faced non-absorbent material capable of being cleaned. The bin storage bay must include adequate lighting and ventilation. The bin storage bay must include water or a hose for cleaning, and graded floors draining to garden or lawn (not stormwater. It can only drain to sewer if roofed). The doors must be wide enough to fit the 660L bins through and must be lockable.

*Note that 660L bins are 1370mm wide, 850mm deep, 1250mm high; allow 75 mm between bins for ease of manoeuvring and to avoid damage to walls and doors from bins scraping against them.*

#### **61. Fire Safety Statement - Final**

In accordance with the *Environmental Planning and Assessment Regulation 2000*, upon completion of the building, the owner must provide Council with a certificate in relation to each fire safety measure implemented in the building.

#### **62. Food Premises Compliance**

- a) The fit out and operation of the part of the building to be used for the manufacture, preparation or storage of food for sale, must be in accordance with Australian Standard AS4674-2004 Design and fit out of food premises, the *Food Act 2003*, and the *Food Regulation 2015* and the Food Standards Code developed by Food Standards Australia New Zealand. Food Standards 3.2.2 and 3.2.3 are mandatory for all food businesses.

*Note: Walls are to be of solid construction.*

- b) Prior to the commencement of the business, the operator is required to contact Council's Public Health Team to arrange for a Health Officer to carry out an inspection of the premises to ensure compliance with the Australian Standard AS4674-2004 Design and fit out of food premises, the *Food Act 2003*, *Food Regulation 2015* and the Australia New Zealand Food Standards Codes.
- c) A letter of compliance provided by Hornsby Shire Council's Health Officer must be submitted to the Principal Certifier prior to an occupation certificate being issued.

*Note: Council's Public Health team can be contacted on (02) 9847 6014.*

**63. Grease Trap & Dry Basket Arrestor Installation**

An application must be submitted to *Sydney Water* for the installation of a grease trap and dry basket arrestor (floor and sink) in accordance with the Guidelines for the On-Site Pre-Treatment of Trade Wastewater Discharges – Sydney Water (May 2004).

**64. Kitchen Exhaust Installation**

A kitchen exhaust system must be designed and installed to effectively prevent air pollution in accordance with the *Protection of the Environment Operations Act 1997*.

**OPERATIONAL CONDITIONS****65. Use of Premises**

- a) The development approved under this consent shall be used for '*centre-based child care facility*' and not for any other purpose without Council's separate written consent.
- b) The child care centre shall accommodate a maximum of 52 children.

**66. Hours of Operation**

- a) The hours of operation of the premise are restricted to those times listed below:
 

Monday to Friday	7am to 6pm
Saturday, Sunday & Public Holidays	No work
- b) Staff and guardians/parents must not arrive or depart the centre outside of the approved hours of operation, unless as legislatively required for the supervision of children due to unforeseen circumstances (i.e. parent is late).
- c) All deliveries, service vehicles (inclusive of waste collection), cleaning and maintenance must be carried out within the approved hours of operation.

**67. 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' certifying each essential service installed in the building.

**68. Car Parking and Deliveries**

All car parking must be constructed and operated in accordance with Australian Standard AS/NZS 2890.1:2004 Off-street car parking and Australian Standard AS 2890.2:2002 Off-street commercial vehicle facilities and the following requirements:

- a) All parking areas and driveways are to be sealed to an all-weather standard, line marked and signposted.
- b) Car parking, loading and manoeuvring areas to be used solely for nominated purposes.
- c) Vehicles awaiting loading, unloading or servicing shall be parked on site and not on adjacent or nearby public roads.

- d) All vehicular entry on to the site and egress from the site shall be made in a forward direction.

**69. Sight Lines**

Landscaping and/or fencing must not restrict sight distance to pedestrians and cyclists travelling along the footpath.

**70. Compliance with Plan of Management**

- a) The development must be operated in accordance with the approved Plan of Management title 'Management Plan (Version 2.10)', dated 5 April 2022 at all times, unless otherwise approved in writing by Council.
- b) Emergency and evacuation procedures/ plans must be in accordance with clauses 97 and 168 of the Education and Care Services National Regulations and maintained in perpetuity.

**71. Noise**

All noise generated by the development, inclusive of mechanical plant, must be attenuated to prevent levels of noise being emitted to adjacent premises which possess tonal, beating and similar characteristics or which exceeds background noise levels by more than 5dB(A).

**72. Landscape Establishment**

The landscape works must be maintained into the future to ensure the establishment and successful growth of plant material to meet the intent of the landscape design. This must include but not be limited to watering, weeding, replacement of failed plant material and promoting the growth of plants through standard industry practices.

**73. Ongoing Waste Management**

The waste management on site must be in accordance with the following requirements:

- a) The approved Waste Management Plan is to be implemented throughout the ongoing use of the development.
- b) All commercial tenant(s) must keep written evidence on site of a valid and current contract with a licensed waste contractor(s) for the regular collection and disposal of the waste and recyclables that are generated on site.
- c) Waste collection services must not take place between 8pm and 6am weekdays or 8pm and 8am on weekends and public holidays.

*Note: Time-of-day service restrictions apply to commercial developments located near residential areas.*

- d) A Work, Health & Safety (WHS) risk assessment is to be carried out by a suitably qualified person with qualifications in Work, Health & Safety Legislation with specific regard to waste management. The recommendations of the WHS Risk Assessment are to be implemented as required.
- e) All bins that are placed at the collection point for collection services must be taken back to their bin storage area on the same day of service.



- f) All commercial tenant(s) must have a sufficient number of bins to contain the volume of waste and recycling expected to be generated between collection services with lids closed.

**- END OF CONDITIONS -**

**ADVISORY NOTES**

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

**Environmental Planning and Assessment Act 1979 Requirements**

The *Environmental Planning and Assessment Act 1979* requires:

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

**Long Service Levy**

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

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

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

**Tree and Vegetation Preservation**

Hornsby Development Control Plan 2013 Tree and Vegetation Preservation provisions have been developed under Council's authorities contained in State Environmental Planning Policy (Biodiversity and Conservation 2021 and the *Environmental Planning and Assessment Act 1979*.

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

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

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

**Disability Discrimination Act 1992**

The applicant's attention is drawn to the existence of the *Disability Discrimination Act 1992*. A construction certificate is required to be obtained for the proposed building/s, which will provide consideration under the *Building Code of Australia*, however, the development may not comply with the requirements of the *Disability Discrimination Act 1992*. This is the sole responsibility of the applicant.

### **Covenants**

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

### **Dial Before You Dig**

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

### **Telecommunications Act 1997 (Commonwealth)**

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

### **Asbestos Warning**

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

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

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

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

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

**3 DA/242/2022 - TORRENS TITLE SUBDIVISION OF ONE ALLOTMENT INTO TWO - 155 NORFOLK ROAD, NORTH EPPING**

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**EXECUTIVE SUMMARY**

**DA No:** DA/242/2022 (Lodged on 14 March 2022)

**Description:** Torrens title subdivision of one allotment into two

**Property:** Lot 31 DP 1245732, No. 155 Norfolk Road, North Epping

**Applicant:** Mrs Annelize Kaalsen

**Owner:** JK Project 2 PTY LTD

**Estimated Value:** N/A

**Ward:** C Ward

- The application involves the Torrens title subdivision of one lot into two.
- The proposal complies with the minimum lot size development standard within the Hornsby Local Environmental Plan 2013 and complies with the desired outcomes and prescriptive measures of the Hornsby Development Control Plan 2013.
- A total of 71 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.

**RECOMMENDATION**

THAT Development Application No. DA/242/2022 for the Torrens title subdivision of one lot into two at Lot 31 DP 1245732, No. 155 Norfolk Road, North Epping be approved subject to the conditions of consent detailed in Schedule 1 of LPP Report No. LPP25/22.

**BACKGROUND**

On 10 February 2022, Council provided pre-lodgement advice under PL/4/2022 for the Torrens title subdivision of one lot into two on the subject site.

On 14 March 2022, the subject application was lodged.

On 26 March 2022, Complying Development Certificate No. 220007/01 (Council Ref: CDP/297/2022) was privately issued for the demolition of existing structures on the subject site.

On 4 April 2022, Council requested an amended Stormwater Plan to address concerns regarding stormwater disposal for both proposed lots.

On 8 April 2022, Council requested a Landscape Plan to demonstrate that the proposed lots can accommodate replacement trees to compensate for tree removal.

On 13 April 2022, an amended Site Plan illustrating replacement planting was submitted.

On 19 April 2022, the applicant notified Council that the dwelling house on the subject site had been demolished as approved under the CDC.

On 26 April 2022, correspondence from the applicant clarified that only six trees numbered 2, 4, 10, 11, 12 and 15, are nominated for removal as part of the subject application. All other trees located on or adjoining the subject site are to be retained or have already been removed as 'exempt tree works' prior to the demolition of the existing dwelling house.

On 4 May 2022, the applicant submitted further amended Stormwater Plans to address Council's concerns regarding stormwater drainage to Council's infrastructure.

**SITE**

The 1,358m<sup>2</sup> site is located at the intersection of Norfolk Road and Malton Road, North Epping and contains a single storey dwelling house and a detached garage.

In the vicinity of the subject site, the Norfolk Road and Malton Road streetscape is characterised by one and two storey dwelling houses in a landscaped setting reflective of a low-density residential area.

The site falls 1.3 metres from the south to the north.

The site is not bushfire or flood prone.

The site is not burdened by any easements or restrictions.

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

**PROPOSAL**

The application proposes the Torrens title subdivision of one lot into two as outlined below:

- Proposed Lot 1 would have an area of 600.2m<sup>2</sup>. Vehicle access to this lot would be from Norfolk Road.
- Proposed Lot 2 would have an area of 758.1m<sup>2</sup>. Vehicle access to this lot would be from Malton Road.

The Statement of Environmental Effects states that the application does not propose any construction or demolition works.

Demolition of existing structures has been undertaken separately of this application.

Construction of a vehicular crossing to serve proposed Lot 2 would be undertaken separately of this application

The application proposes the removal of 6 trees to facilitate the subdivision.

## **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 for 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 for the next 20 years. The identified challenge for Hornsby Shire will be to provide an additional 4,350 dwellings by 2021 with further strategic supply targets to be identified to deliver 97,000 additional dwellings in the North District by 2036.

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

### **2. STATUTORY CONTROLS**

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

#### **2.1 Hornsby Local Environmental Plan 2013**

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

##### **2.1.1 Zoning of Land and Permissibility**

Clause 2.6 of the HLEP permits the subdivision of land to which the instrument applies, but only with development consent. The proposed subdivision of the subject land is permissible with Council's consent.

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 subdivision would facilitate the provision of housing to meet the needs of the community. It is considered that the proposal satisfies the zone objectives.

#### **2.1.2 Section 4.1 Minimum Subdivision Lot Size**

Clause 4.1 of the HLEP provides that the minimum size of any lot resulting from the subdivision of the subject site is 500m<sup>2</sup>.

Proposed Lot 1 would have an area of 600.2m<sup>2</sup> while Lot 2 would have an area of 758.1m<sup>2</sup> both of which comply with the minimum lot size requirement.

#### **2.1.3 Heritage Conservation**

Clause 5.10 of the HLEP sets out heritage conservation provisions for Hornsby Shire.

During the public notification period, 73 submissions were received raising objections to the demolition of the existing dwelling house due to its perceived heritage significance to the North Epping locality.

Council's assessment has determined that the site is not a heritage item, is not in the vicinity of a heritage item and is not located in a heritage conservation area.

Notwithstanding, it must be noted that demolition of existing structures on the site has been approved under separate Complying Development Certificate No. 220007/01. Council cannot revoke an approval which has been issued under State legislation.

On 19 April 2022, Council was notified by the applicant that the dwelling house on the subject site was demolished in accordance with the issued CDC. Consequently, no further assessment regarding heritage can be undertaken.

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

The application has been assessed against the requirements of chapter 2 and 10 of State Environmental Planning Policy (Biodiversity and Conservation) 2021.

#### **2.2.1 Chapter 2 Vegetation in non-rural areas**

Chapter 2 of this Policy seeks to protect the biodiversity values of trees and other vegetation in non-rural areas of the State, and to preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation.

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 Hornsby Development Control Plan 2013 (HDCP) prescribes works that can be undertaken with or without consent to trees.

Section 2.5.2 of this report provides an assessment in accordance with Part 1B.6.1 of the HDCP.

## **2.2.2 Chapter 10 Sydney Harbour Catchment**

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 policy 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 10 of the Biodiversity and Conservation SEPP.

## **2.3 State Environmental Planning Policy (Resilience and Hazards) 2021**

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

### **2.3.1 Chapter 4 Remediation of land**

Clause 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 2013

The proposed development has been assessed having regard to the relevant desired outcomes and prescriptive requirements within the *Hornsby Development Control Plan 2013 (HDCP)*. The following table sets out the proposal's compliance with the prescriptive requirements of the Plan:

HDCP – Part 3.1 Dwelling Houses and Part 6 Subdivision			
Control	Proposal	Requirement	Complies
Site Area	1,358m <sup>2</sup>	N/A	N/A
Lot Sizes			
- Lot 1	600.2m <sup>2</sup>	500m <sup>2</sup>	Yes
- Lot 2	758.1m <sup>2</sup>	500m <sup>2</sup>	Yes
Lot Widths			
- Lot 1	20.8m	12m	Yes
- Lot 2	29m	12m	Yes
<b>Lot 1</b>			
Building Envelope	200m <sup>2</sup>	200m <sup>2</sup>	Yes
Setbacks			
- Front (Norfolk Road)	6m	6m	Yes
- Side (north-east)	2m	0.9m	Yes
- Side (south-west)	4.2m	0.9m	Yes
- Rear	7.3m	5m	Yes
Landscaped Area (% of lot size)	58%	30%	Yes
Private Open Space			
- minimum area	24m <sup>2</sup>	24m <sup>2</sup>	Yes
- minimum dimension	3m	3m	Yes
Car Parking	2 spaces	2 spaces	Yes
<b>Lot 2</b>			
Building Envelope	200m <sup>2</sup>	200m <sup>2</sup>	Yes



Setbacks			
- <i>Primary frontage (Norfolk Road)</i>	6m	6m	Yes
- <i>Secondary frontage (Malton Road)</i>	5.5m	3m	Yes
- <i>Side (north-east)</i>	2.2m	0.9m	Yes
- <i>Rear</i>	5m	5m	Yes
Landscaped Area (% of lot size)	66%	30%	Yes
Private Open Space			
- <i>minimum area</i>	24m <sup>2</sup>	24m <sup>2</sup>	Yes
- <i>minimum dimension</i>	3m	3m	Yes
Car Parking	2 spaces	2 spaces	Yes

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

### 2.5.1 Site Requirements

The proposed subdivision would result in the proposed lots having a lot size and width which exceeds the minimum subdivision lot size and width requirements of the HDCP.

The proposed subdivision design provides for regular shaped lots and demonstrates compliance with the relevant HDCP controls including site coverage, landscaping, open space and car parking.

The site is currently served by a driveway and vehicle crossing fronting Norfolk Road. This crossing would be preserved for use by proposed Lot 1. Vehicular access to proposed Lot 2 would be achieved via Malton Road. No objections are raised to the proposed vehicle access arrangements.

### 2.5.2 Tree Preservation

To address the anticipated impacts to trees arising from the proposed subdivision, the application includes an Arboricultural Impact Assessment (AIA) prepared by Tree Survey dated 22 February 2022. The AIA identifies 18 trees located within the subject site and adjoining properties that are in proximity to the proposal.

Of the trees identified, the subject application seeks approval for the removal of 6 trees numbered 2 (Orange Jasmine, *Murraya paniculata*), 4 (Red Leaf Photinia, *Photinia robusta*), 10 (Nerium, *Nerium Oleander*), 11 (Lagerstroemia indica), 12 (Red Leaf Photinia, *Photinia robusta*) and 15 (Alexandra Palm, *Archontophoenix alexandrae*) to facilitate the subdivision.

Seven trees numbered 1 (Mango, *Mangifera indica*), 5 (NSW Christmas Bush, *Ceratopetalum gummiferum*), 6 (Tree Fern, *Alsophila australis*), 7 (Camellia, *Camellia japonica*), 8 (Tree Fern,

*Sphaeropteris cooperi*), 9 (Kentia Palm, *Howea forsteriana*) and 13 (*Prunus sp.*) are located within 3 metres of the existing dwelling house or are of a species listed under Table 1B.6(a) Exempt Species in Hornsby Shire of the HDCP. As such, the AIA suggests that these trees may be removed as 'exempt tree work' without prior approval from Council.

The remaining trees numbered 3 (Cypress, *Cupressus sp.*), 14 (Brush Box, *Lophostemon confertus*), 16 (Camellia, *Camellia sasanqua*), 17 (Flame Bottletree, *Brachychiton acerifolius*) and 18 (Loquat, *Eriobotrya japonica*) would not be impacted by the proposal and would be retained.

A site inspection conducted by Council's officers on 2 May 2022 confirms that the trees numbered 1, 5, 6, 7, 8, 9 and 13 have been removed, likely prior to the demolition of the existing dwelling house.

It is noted that of the trees nominated for removal, those numbered 2, 4, 10 would not be subject to any encroachment from the indicative building envelopes or driveways. Consequently, the removal of these 3 trees as part of this application is not supported. No objections are raised to the removal of trees numbered 11, 12 and 15 to facilitate the proposal subject to appropriate compensatory planting, comprising 1 tree on proposed Lot 1 and 2 trees on proposed Lot 2 as recommended in Schedule 1 of this report.

During the notification period, submissions were received raising concern that the application does not provide any details for replacement planting to offset the loss of trees. In response, an amended Landscape Plan prepared by Adam Perry dated 12 April 2022 illustrates the ability for the proposed lots to each accommodate 4 replacement plantings.

### 2.5.3 Stormwater Management

During the notification period, submissions were received raising concerns that the application does not adequately address stormwater and overland flow issues, specifically the flow of rainwater towards the northern adjoining property, No. 157 Norfolk Road due to the fall of the land.

Further concern was raised with respect to sediment control during the demolition and construction periods for the existing and future dwellings, and what controls would be implemented to stop the movement of sediment towards No. 157 Norfolk Road.

To address these concerns, the following observations are made:

- The application includes concept stormwater plans prepared by Law & Dawson Consulting Engineers illustrating potential drainage solutions for future dwellings located on proposed Lots 1 and 2.
- The drawings illustrate that the collected roof and driveway stormwater from a future dwelling on Lot 1 can be drained to the kerb within Norfolk Road. The collected roof and driveway stormwater from a future dwelling on Lot 2 can be drained to the kerb within Malton Road via an on-site detention (OSD) system. The purpose of an OSD system is to temporarily detain collected stormwater and control its release into Council's existing stormwater infrastructure.
- With potential minor regrading on Lots 1 and 2 as part of future dwelling applications, the stormwater plans demonstrate that at least 80% of the total area of the lots can be drained towards existing kerb and gutter.
- The HDCP prescribes that residential development on lots between 600m<sup>2</sup> and 899m<sup>2</sup> must provide a minimum of 30% landscaped areas. The Preliminary Envelope Plan submitted with the application indicates that future development on the proposed lots can achieve the

minimum landscaping requirement. Landscaped areas are pervious and allow for the natural absorption of rainwater into the ground.

- The demolition of the existing dwelling has been undertaken separately of this application, approved as complying development under a privately issued Complying Development Certificate (No. 220007/01). All complying demolition development is subject to standard conditions, including for sediment control, prescribed under Schedule 9 of the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.
- The application does not propose the construction of dwelling houses on proposed Lots 1 and 2. Consequently, the implementation of sediment control measures for the construction of future dwellings is not within the scope of the subject assessment. Should future development applications be lodged with Council for the construction of dwelling houses on the proposed lots, sediment control measures would be required as part of conditions of consent.
- Notwithstanding, given that demolition of the existing dwelling house has already been undertaken, a condition is recommended in Schedule 1 of this report requiring the maintenance of sediment control measures on site until 70% of the site has been revegetated to prevent soil erosion, water pollution or the discharge of loose sediment on surrounding land.

## 2.6 Section 7.11 Contributions Plans

Hornsby Shire Council Section 7.11 Contributions Plan 2020-2030 applies to the subdivision as it would result in two lots in lieu of the one existing lot. Accordingly, the requirement for a monetary Section 7.11 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

Council's assessment regarding the impacts to trees arising from the proposal is provided in Section 2.5.2 of this report.

#### 3.1.2 Stormwater Management

Council's assessment regarding stormwater management arising from the proposal is provided in Section 2.5.3 of this report.

### 3.2 Built Environment

#### 3.2.1 Built Form

The indicative building envelopes illustrated on the submitted Site Plan demonstrates that future dwellings on proposed Lots 1 and 2 can comply with the relevant HDCP controls for built form.

#### 3.2.2 Traffic

As established in Table 2.5 of this report, the proposal complies with the HDCP requirement for the provision of two car parking spaces behind the building line.

The existing vehicle crossing along Norfolk Road would be retained to serve proposed Lot 1 while a new vehicle crossing would be proposed along Malton Road to serve proposed Lot 2.

The proposal meets the provisions of the HDCP with respect to transport and parking.

### **3.3 Social Impacts**

The subdivision would facilitate the improvement of housing choice in the locality by providing an opportunity for residential redevelopment. 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**

There would be no adverse economic impacts arising from the proposed subdivision.

The proposal would have a minor positive impact on the local economy by introducing future residential development to the locality and 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 14 March 2022 and 5 April 2022 in accordance with the Hornsby Community Engagement Plan. During this period, Council received 73 submissions. The map below illustrates the location of those nearby landowners who made a submission that are in close proximity to the development site.



NOTIFICATION PLAN

• PROPERTIES NOTIFIED	X SUBMISSIONS RECEIVED		PROPERTY SUBJECT OF DEVELOPMENT	
71 SUBMISSIONS RECEIVED OUT OF MAP RANGE				

73 submissions objected to the development, generally on the grounds that:

- The development would result in a loss of an existing dwelling with perceived heritage value.
- The application does not specify any replacement planting for trees nominated for removal.
- The application does not include sufficient details regarding the disposal of stormwater.

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

## 5.2 Public Agencies

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

## 6. THE PUBLIC INTEREST

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

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

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

## CONCLUSION

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

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 73 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 2013.
- The proposed development does not create unreasonable environmental impacts to adjoining development.

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





## RESPONSIBLE OFFICER

The officer responsible for the preparation of this report is Lawrence Huang.

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

ROD PICKLES  
Manager - Development Assessments  
Planning and Compliance Division

## Attachments:

1.  Locality Plan
2.  Plan of Subdivision
3.  Site Plan
4.  Stormwater Plan

File Reference: DA/242/2022

Document Number: D08387714

**ITEM 3**

## Schedule 1

## ITEM 3

**GENERAL CONDITIONS**

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

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

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

**1. Approved Plans and Supporting Documentation**

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

*Approved Plan*

<b>Plan No.</b>	<b>Plan Title</b>	<b>Drawn by</b>	<b>Dated</b>	<b>Council Reference</b>
CP136-DA, Sheet 1 of 1 Rev. A	Plan of Proposed Subdivision	Complete Precision Surveys	23.02.2022	

*Supporting Documentation*

<b>Document Title</b>	<b>Prepared by</b>	<b>Dated</b>	<b>Council Reference</b>
Preliminary Envelope Plan Issue A	Adam Perry	12.04.2022	D08389379
Stormwater Concept Plans	Law & Dawson Consulting Engineers	Undated	D08401404
Arboricultural Impact Assessment & Tree Protection Plan	Tree Survey	22.02.2022	D08368036

**2. Removal of Trees**

- a) This development consent permits the removal of 3 trees numbered 11, 12 and 15 as identified in the Arboricultural Impact Assessment prepared by Tree Survey dated 22 February 2022.
- b) No consent is granted for the removal of trees numbered 2, 3, 4, 10, 14, 16, 17 and 18 as these trees contribute to the established landscape amenity of the area.

*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.*

**3. No Tree Pruning**



No tree pruning is permitted under this consent.

*Note: The pruning of any 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 (HDGP).*

#### 4. Construction Certificate

- a) A Subdivision Works Certificate is required to be approved by Council or a Private Certifying Authority prior to the commencement of any subdivision works under this consent.
- b) A separate Subdivision Works Certificate must be obtained from Council for all works within the public road reserve under S138 of the *Roads Act*.
- c) A separate Subdivision Works Certificate must be obtained from Council for all works within drainage easements vested in Council.
- d) The Subdivision Works Certificate plans must be consistent with the Development Consent plans.

#### 5. Section 7.11 Development Contributions

- a) 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

being for the Torrens title subdivision of one lot into two.

- b) The value of this contribution is current as at 2 May 2022. If the contribution is not paid within the financial quarter that this condition was generated, the contribution payable will be adjusted in accordance with the provisions of the Hornsby Shire Council Section 7.11 Development Contributions Plan and the amount payable will be calculated at the time of payment in the following manner:

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

Where:

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

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

CPI<sub>PY</sub> is the latest release of the Consumer Price Index (Sydney – All Groups) at the date of Payment as published by the ABS.

CPI<sub>DC</sub> is the Consumer Price Index (Sydney – All Groups) for the financial quarter at the date applicable in this Development Consent Condition.

- c) The monetary contribution must be paid to Council:
- i) Prior to the issue of the Subdivision Certificate where the development is for subdivision.
  - ii) Prior to the issue of the first Construction Certificate where the development is for building work.
  - iii) Prior to issue of the Subdivision Certificate or first Construction Certificate, whichever occurs first, where the development involves both subdivision and building work.
  - iv) 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 Certifying Authority to ensure that the monetary contributions have been paid to Council in accordance with the above timeframes.*

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

## 6. Erosion and Sediment Control

To protect the water quality of the downstream environment, erosion and sediment control measures must be provided and maintained in accordance with the manual 'Soils and Construction 2004 (Bluebook)', Council specifications and to the satisfaction of the principal certifying authority. The erosion and sediment control devices must remain in place until 70% of the site has been revegetated.

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

## REQUIREMENTS PRIOR TO THE ISSUE OF A SUBDIVISION CERTIFICATE

## 7. Utility Services

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

- a) *Ausgrid (formerly Energy Australia)* – a letter of consent demonstrating that satisfactory arrangements have been made to service the proposed development.
- b) *Telstra* - a letter of consent demonstrating that satisfactory arrangements have been made to service the proposed development.

## 8. Sydney Water – s73 Certificate

A s73 Certificate must be obtained from Sydney Water and submitted to the PCA.

*Note: Sydney Water requires that s73 applications are to be made through an authorised Sydney Water Servicing Coordinator. Refer to [www.sydneywater.com.au](http://www.sydneywater.com.au) or telephone 13 20 92 for assistance.*

#### 9. Damage to Council Assets

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

#### 10. Creation of Easements

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

- a) The creation of a "Positive Covenant" over proposed Lot 2 requiring that any future development be to provide an on-site detention system. The on-site detention system is to have a storage capacity of 5 cubic metres and a maximum discharge of 8 litres per second into Council's drainage system in accordance with Council's prescribed wording.

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

#### 11. Preservation of Survey Marks

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

#### 12. Replacement Tree Requirements

- a) The 3 trees approved for removal under this consent, being trees numbered 11, 12 and 15 must be offset through replacement planting of a minimum of 3 trees as follows:
  - i) One replacement tree must be planted on proposed Lot 1.
  - ii) Two replacement trees must be planted on proposed Lot 2.
- b) All replacement plantings must be species selected from the 'Trees Indigenous to Hornsby Shire (as of 1 September 2011)' document available for viewing on the Hornsby Council's website <http://www.hornsby.nsw.gov.au/environment/flora-and-fauna/tree-management/indigenous-trees>
- c) The location and size of tree replacement planting must comply with the following:
  - i) All replacement trees must be located in either the front or rear setbacks and planted 4 metres or greater from the foundation walls of the approved development.

- ii) The pot size of the replacement trees must be a minimum 45 litres
- iii) All replacement trees must be a minimum of 3 metres in height.
- iv) All replacement trees must have the potential to reach a mature height greater than 10 metres.

**- END OF CONDITIONS -**

**ADVISORY NOTES**

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

**Environmental Planning and Assessment Act 1979 Requirements**

The *Environmental Planning and Assessment Act 1979* requires:

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

**Tree and Vegetation Preservation**

Hornsby Development Control Plan 2013 Tree and Vegetation Preservation provisions have been developed under Council's authorities contained in State Environmental Planning Policy (Biodiversity and Conservation) 2021 and the *Environmental Planning and Assessment Act 1979*.

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

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

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

**Subdivision Certificate Requirements**

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

- A surveyor's certificate certifying that all structures within the subject land comply with the development consent in regard to the setbacks from the new boundaries.

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

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

*Note: At the present time Hornsby Shire Council is the only authority that can be appointed as a PCA for subdivision works within the Shire.*

### **Fees and Charges – Subdivision**

All fees payable to Council as part of any construction, compliance or subdivision certificate or inspection associated with the development (including the registration of privately issued certificates) are required to be paid in full prior to the issue of the subdivision certificate. Any additional Council inspections beyond the scope of any compliance certificate required to verify compliance with the terms of this consent will be charged at the individual inspection rate nominated in Council's Fees and Charges Schedule.

### **Dial Before You Dig**

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

### **Telecommunications Act 1997 (Commonwealth)**

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

### **House Numbering**

The house numbering for this subdivision shall be:

Lot	Street Number	Street Name	Street Type	Locality
Lot 1	155	Norfolk	Road	North Epping
Lot 2	225	Malton	Road	North Epping