



# **BUSINESS PAPER**

## **LOCAL PLANNING PANEL MEETING**

**Wednesday 29 June 2022  
at 4:00pm**



## TABLE OF CONTENTS

### GENERAL BUSINESS

#### Local Planning Panel

Item 1	LPP34/22 DA/1354/2021 - Alterations and Additions to a Dwelling House and Construction of a Driveway - 67 Malton Road, Beecroft .....	1
Item 2	LPP35/22 DA/1379/2021 - Construction of a Dwelling House - 99A Copeland Road, Beecroft .....	22
Item 3	LPP38/22 DA/164/2022 - Construction of a Dwelling House and Cabana - 19 Boyd Avenue, West Pennant Hills.....	50

**1 DA/1354/2021 - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE AND CONSTRUCTION OF A DRIVEWAY - 67 MALTON ROAD, BEECROFT**

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**EXECUTIVE SUMMARY**

**DA No:** DA/1354/2021 (Lodged on 17 December 2021)

**Description:** Alterations and additions to a dwelling house and construction of a driveway and vehicular turning area

**Property:** Lot 1 DP 25800, No. 67 Malton Road, Beecroft

**Applicant:** Delve Design

**Owner:** Mr Kent Ross and Mrs Katharina Ross

**Estimated Value:** \$242,753

**Ward:** C Ward

- The application involves alterations and additions to a dwelling house and construction of a new driveway and vehicular turning area at the rear of the site.
- The proposal does not comply with the requirements of the relevant environmental planning instruments and the Hornsby Development Control Plan 2013 particularly with regard to heritage, tree preservation, stormwater management and driveway setbacks.
- A total of 31 submissions of objection have been received with respect to the application over two separate notification periods.
- The application is required to be determined by the Hornsby Council Local Planning Panel as 10 or more unique submissions were received by way of objection.
- It is recommended that the application be refused.

**RECOMMENDATION**

THAT Development Application No. 1354/2021 for alterations and additions to a dwelling house and construction of a driveway and vehicular turning area at Lot 1 DP 25800, No. 67 Malton Road, Beecroft be refused for the reasons detailed in Schedule 1 of LPP Report No.LPP34/22.

## BACKGROUND

### Site History:

On 5 April 2019, Council provided advice for a pre-lodgement application PL/18/2019 regarding subdivision of two lots into three with construction of a driveway servicing No. 65D Malton Road.

On 6 April 2020, Council rejected development application DA/215/2020 for the Torrens title subdivision of one lot into three. This application proposed to include two lots at Nos. 67 and 65C Malton Road for Torrens title subdivision into three lots also utilising No. 65D Malton Road for driveway works, easement to drain water and APZ works. This application was rejected in accordance with Clause 51 of the Environmental Planning and Assessment Regulations 2000 on grounds that owner's consent and acknowledgement of use of No. 65D Malton Road was not provided with the application.

On 29 May 2020, Council rejected DA/361/2020 for Torrens title subdivision of two lots into three and associated works. The applicant provided legal advice which disputed Council's rejection of the first rejected application DA/215/2020. The application was again rejected on grounds that owners consent was not provided for works associated with the affected property at No. 65D Malton Road, Beecroft.

### Application History:

On 4 January 2022, Council requested additional information and amended plans regarding the retention of trees numbered 32, 35 and 36.

On 24 January 2022, Council requested further information regarding heritage impacts and re-design to remove the second driveway and retention of heritage item No.114 and retention of tree 1, 3, 7 and 8. The letter also requested a landscape plan and retention of neighbours trees 32, 35 and 36.

On 21 February 2022, Council requested further information with regards to the structural details of the driveway and requested a long section to show hydraulic grades and calculations given the 20 per cent gradient.

On 21 February 2022, the applicant provided a landscape plan, an addendum Arboricultural Impact (AIA) letter, architectural plans and updated engineering plans with driveway turning circle.

On 1 April 2022, Council requested an Integrated Bushfire Management Plan be provided to address the impacts of the Asset Protection Zone (APZ) within the site that is mapped Blackbutt Gully Forest.

On 1 April 2022, the applicant provided structural driveway plans.

On 11 April 2022, Council requested via email a number changes to discrepancies found on the architectural plans and the AIA, and a request to delete the existing driveway and crossover.

On 14 April 2022, the applicant provided a revised landscape plan.

On 19 April 2022, the applicant provided revised architectural plans showing the removal of the existing driveway and crossover and additional windows within the multipurpose room oriented to the street.

On 27 April 2022, the applicant provided an updated AIA which removed a number of discrepancies in trees to be removed on neighbouring properties.

On 3 May 2022, Council sent a letter to the applicant raising concerns with the proposed development and the extensive driveway as the driveway would be inconsistent with other residential driveways in the area in terms of scale, would require the removal of 8 trees within the heritage conservation area

including a heritage listed tree and the driveway, turning area and retaining wall would not comply with Council's setback requirements to the side boundary.

In addition, consideration has not been given to alternate parking options on the site which would result in significantly less tree removal whilst allowing the occupants at the site to park vehicles to the east, in line with the existing building. In accordance with Council's HDCP car parking should be *"simple, safe and direct"* whereas this design does not meet that desired outcome.

On 23 May 2022 and 10 June 2022, the applicant provided a written response disputing Council's letter dated 3 May 2022.

## SITE

The 1,165m<sup>2</sup> is located on the northern side of Malton Road, Beecroft and contains a three-storey split level dwelling house with an attached single car garage.

The site experiences a fall of 18 metres to the rear, northern boundary.

The rear northern portion of the site contains dense bushland identified as the Blackbutt Gully Forest vegetation community.

The site is not burdened or benefited by any easements or restrictions.

The property is located within the Gullies Precinct of the Beecroft-Cheltenham Heritage Conservation Area (HCA) listed under Schedule 5 of the Hornsby Local Environmental Plan 2013 (HLEP).

The site is also located within the immediate vicinity of heritage Item No.114 (Street trees and bushland) along Malton Road.

The site is bushfire prone.

## PROPOSAL

The application proposes alterations and additions to the existing three-storey split level dwelling, including construction of a new double car garage and a new elevated driveway.

Level 1 would include a new bathroom adjoining the master bedroom and the construction of a large deck accessed from the master bedroom and 2nd bedroom.

Level 2 would comprise an extension to the existing elevated deck accessed from the main living area and an external staircase included to access a deck below.

Level 3 would include changing the existing single car garage into a multi-purpose room and an extension to the loft area which sits above this level. The works would also include removal of the existing vehicular crossing and driveway to replace this area with turf.

A mezzanine level would be located above the new double car garage.

The garage would be located at lower ground level, under the main dwelling and oriented to the rear of the site. The double garage would be accessed via a new, double width driveway from Malton Road along the eastern side of the dwelling to the rear.

The driveway structure would feature retaining walls along either side and at the end of the driveway where a turning area is proposed. The driveway would be elevated 2.4m above natural ground level at the highest point at the rear of the site.

A total of 8 trees would be removed to accommodate the new, double width driveway and extension at the rear. Of these trees one tree, Tree No.1 (Blackbutt), forms part of heritage item No.114 under the HLEP.

## 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.

Should this application be approved, 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.

Planning Priority N18 - Better managing rural areas. In giving effect to A Metropolis of Three Cities, this Planning Priority delivers on the following objective and the corresponding strategies:

- Objective 27 - Biodiversity is protected, urban bushland and remnant vegetation is enhanced

The proposed alterations and additions would be inconsistent with Objective 27 as the development has not attempted to avoid, minimise and offset impacts on biodiversity through the planning and development assessment process and would require the removal of eight trees with no replacement planting.

### 2. STATUTORY CONTROLS

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

#### 2.1 Hornsby Local Environmental Plan 2013

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

### 2.1.1 Zoning of Land and Permissibility

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

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

The proposed development is defined as a 'dwelling house' and is permissible in the zone with Council's consent. The proposed development would be inconsistent with the objectives of the R2 zone and incompatible with the desired future character of the locality.

### 2.1.2 Height of Buildings

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

Submissions raised concerns over the height of the addition being over the 8.5m height requirement. Plan No. DA18 Height Blanket Plan Rev J, dated 26 April 2022 was submitted by the applicant which demonstrated the varying ground level of the site with consideration of the additions and excavation proposed at the rear. The maximum height of the dwelling would be 8.4m which complies with the 8.5m height requirement.

### 2.1.3 Heritage Conservation

Clause 5.10 of the HLEP sets out heritage conservation provisions for Hornsby Shire. The site is located within the Gullies Precinct of the Beecroft-Cheltenham Heritage Conservation Area (HCA) and is within the vicinity of a heritage item, namely the street trees and bushland located within the road reserve of Malton Road, which are listed as Heritage Item 114 in Schedule 5 of the HLEP.

Malton Road is heritage listed for the extent of old growth Blackbutt trees lined along the road reserve. Two Blackbutts are located in front of No. 67 Malton Road, flanking the proposed new double width, driveway crossing. Tree No.1 which is identified as a blackbutt tree and is a heritage listed item and tree No. 3, identified as a Jacaranda tree are both located on the road reserve and would be removed as a result of the double vehicle crossover.

While Tree 1 has been identified to be of poor condition, this does not change the heritage status of this tree. Removal of this tree would have an adverse effect on the integrity and grouping of the road reserve trees as well as the distinctive aesthetic landscaped character of the streetscape.

Council raised concerns over the loss of trees along the road reserve to accommodate the double width crossing and driveway. Council determined that Trees 1 and 3 could be retained subject to reducing the width of the driveway to comply with a residential, single-width driveway. A letter was sent to the applicant recommending that other design options for the provision of car parking for two vehicles be explored given concerns raised over the removal of these street trees.

On 23 May 2022 and 10 June 2022, the applicant provided a written response which did not address any of Council's concerns regarding the need for a double width, wrap around driveway and crossing in this location and further amended plans were not submitted to Council.

Insufficient justification has been provided on heritage grounds to support the development on the proposed double width driveway and how its design would have the least visual and ecological impact on the environmental setting and streetscape of Malton Road.

The proposal does not adequately conserve the environmental heritage of Hornsby Shire or the heritage significance of the Beecroft-Cheltenham HCA, including the associated fabric, settings and views.

The proposal does not meet the objectives of Clause 5.10 Heritage Conservation of the HLEP and is considered unacceptable.

#### **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.

A Geotechnical Assessment (Report No. 21/3586) prepared by STS Geotechnics Pty Ltd dated December 2021 was submitted with the application.

The application proposes an excavation depth of up to 5m below existing ground level to accommodate the rear garage and a small amount of fill would be used to provide a level building platform for the rear garage. Works surrounding the construction of the elevated driveway would also require minor excavation.

The submitted Geotechnical Assessment indicates groundwater would be encountered during the excavation of bedrock and recommends that:

- *Monitoring of seepage be implemented during the excavation works to confirm the capacity of the drainage system.*
- *A sump-and-pump or gravity system be used both during construction and for permanent groundwater control below the basement floor slab.*
- *In the long term, drainage should be provided behind all basement retaining walls, around the perimeter of the basement and below the basement slab.*
- *Drainage should be connected to the sump-and-pump or gravity drainage system and discharging into the stormwater system.*

The submitted drainage plans have not addressed the above recommendations of the Geotechnical Assessment and furthermore, insufficient information has been provided with respect to the proposed elevated driveway and changes to the drainage patterns of the site.

Council's assessment of the proposed works and excavation has determined that the application fails to adequately address Clause 6.2 of the HLEP and contains insufficient detail to enable a full and proper assessment of the proposal's compliance with the objective of this clause.

The proposal fails to satisfy the requirements of Clause 6.2 of the HLEP.

#### **2.1.5 Terrestrial Biodiversity**

The subject site is not identified as 'Biodiversity' on the HLEP Terrestrial Biodiversity Map. As a consequence, further consideration of Clause 6.4 of the HLEP is not required.

#### **2.2 Adopted 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 21 December 2021, this development application is considered to have been made prior to the commencement date of the SEPPs. 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 is considered to be consistent with this policy.

### **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.

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 SEPP 55 is not required.

### **2.4 SEPP (Building Sustainability Index: BASIX) 2004**

The application has been assessed against the requirements of State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004. The proposal includes a BASIX Certificate for the proposed dwelling house, which is considered to be satisfactory. Should the application be approved a condition would be recommended in Schedule 1 of this report requiring the recommendations of the BASIX certificate be complied with.

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

The application has been assessed against the requirements of State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 (Vegetation SEPP). 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 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 has been assessed against the requirements of the Vegetation SEPP and it has been determined that the proposal would not meet the objectives of the Vegetation SEPP. This matter is addressed further in Section 3.1.1 of this report.

## **2.6 Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005**

The application has been assessed against the requirements of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005. This Policy provides general planning considerations and strategies to ensure that the catchment, foreshores, waterways and islands of Sydney Harbour are recognised, protected, enhanced and maintained.

Subject to the installation and maintenance 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. However, as outlined in Section 3.1.3 and 3.1.4 of this report, the proposed stormwater disposal system could contribute to erosion and siltation of Byles Creek, a tributary of Sydney Harbour. Whilst it is noted that the effects of any erosion and sedimentation are likely to be localised, further information is required to demonstrate that the proposed stormwater disposal method adequately ensures that the catchment of Sydney Harbour is protected and maintained.

## **2.7 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.

## **2.8 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:

<b>HDCP - Part 3.1 Dwelling Houses</b>
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## ITEM 1

Control	Proposal	Requirement	Complies
Site Area	1, 165.5m <sup>2</sup>	N/A	N/A
Building height	8.4m	8.5m	Yes
No. storeys	3 storeys	max. 2 + attic	Yes
Site Coverage	20%	40%	Yes
Floor Area	270m <sup>2</sup>	430m <sup>2</sup>	Yes
Setbacks			
- <i>Front (south-west)</i>	0.52m	6m	No
- <i>Side (north-west)</i>			
<i>Level 3</i>	0m	0.9m	No
<i>Level 2</i>	1.5m	1.5m	Yes
<i>Level 1</i>	0.5m	0.9m	No
Lower Ground Garage	1m	0.9m	Yes
<i>Driveway/ Turning area</i>	0m	0.5m	No
- <i>Side (south-east)</i>			
<i>Level 3</i>	13m	0.9m	Yes
<i>Level 2</i>	6m	1.5m	Yes
<i>Level 1</i>	6m	0.9m	Yes
Lower Ground Garage	10m	0.9m	Yes
<i>Driveway</i>	0.5m	0.5m	Yes
- <i>Rear (North Eastern)</i>			
<i>Level 3</i>	>50m	0.9m	Yes
<i>Level 2</i>	>50m	1.5m	Yes
<i>Level 1</i>	>50m	0.9m	No
Lower Ground Garage	>50m	0.9m	Yes
Landscaped Area (% of lot size)	60%	40%	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
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As detailed in the above table, the proposed development does not comply with a number of prescriptive requirements within the HDCP. The matters of non-compliance are detailed below, as well as a brief discussion on compliance with relevant desired outcomes.

### 2.8.1 Scale

Existing development on the site comprises a three-storey split level dwelling house with an attached single car garage.

Submissions raised concerns over the overall height of the additions and to the excessive bulk and scale of the proposed development.

Council's assessment confirms that the overall height of the development does not exceed the 8.5m maximum building height development standard and the HDCP control for building height.

The design of the addition is such that it follows the natural contours of the land, featuring a stepped down design. As a result, the dwelling appears as four storeys from the rear view however from the side would appear as a predominately 3 storey appearance with the garage/ mezzanine built underneath. In this instance the bulk and scale of the additional storeys are not visible from Malton Road where the dwelling continues to appear as a single storey dwelling. As such the height and overall stepped design is considered acceptable.

### 2.8.2 Setbacks

Submissions raised concerns over non-compliant setbacks as a result of the rear addition and driveway.

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

As noted in the table above, the proposed alterations to front of the site include converting the existing garage to a multi-purpose room. As such there is no further setback encroachment into the front setback as this is an existing structure with an existing non-compliant setback. Given the uneven and steep topography, the existing garage has been constructed at the very front of the site where the land is flattest to provide car parking. The conversion the existing garage to a habitable room is not supported as it is not consistent with existing built form within the locality

Whilst the non-compliant front setback of the existing garage is considered acceptable in its existing state as it provides an accessible car parking area on a constrained site, Council does not support converting this space to a habitable area as it is not consistent with the existing built form in the locality whereby Council would require an increased setback from the front boundary

The prescriptive measure set out in Table 3.1.2(a): Minimum Boundary Setbacks which prescribes a minimum side boundary setback of 900mm for single storey elements and 1.5m for storeys above 4.5m.

As noted in the table, above the north-west side elevation at Level 3 and Level 1 would not comply with the prescriptive measures. This is acceptable as the non-compliances again results from the existing dwelling experiencing setback non-compliances along this side boundary. The new additions

including the loft extension, Level 1 and Level 2 deck and would generally comply with the side setback requirements of 900mm and 1.5 and are considered acceptable.

The turning bay and north-western end of the driveway would not comply with the prescriptive measure which states that driveways should provide a 500m setback from side boundaries. While this area is the end of the driveway, it is considered a structure with retaining walls required which would be elevated at a 0m setback from the side boundary. As such the setback of the turning area and end of the driveway does not meet the desired outcomes of Part 3.1.2 Setbacks of the HDCP and is not supported. Further discussion on the elevated driveway is provided in Section 2.8.4 below.

### 2.8.3 Privacy

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

This is supported by the prescriptive measures that states:

- a) *A deck, balcony, terrace or the like should be located within 600mm of existing ground level where possible to minimise potential visual and acoustic privacy conflicts.*
- b) *Decks and the like that need to be located more than 600mm above existing ground should not face a window of another habitable room, balcony or private open space of another dwelling located within 9 metres of the proposed deck unless appropriately screened.”*

Submissions raised concerns over the setbacks and elevation of the new proposed decks at Levels 1 and 2. In this instance while both decks are naturally above ground level as they line up with the existing floor level of the house, they would be located approximately 1m to 1.9m from the north-western side boundary.

This side boundary adjoins the driveway of No. 65C Malton Road and does not have direct line of site into the private open space of this property. The decks would only be capable of overlooking into the front yard and driveway of these battle-axe properties to the rear.

Notwithstanding, a 1.7m high privacy screen is proposed by the applicant. Should the application be approved, a condition would be recommended to ensure that the privacy screen is erected along the entirety of the north western elevation of the decks on both Levels 1 and 2.

Concerns were also raised that the window to the new, Level 1 bedroom orientated to the north west would have privacy impacts as a result. In this instance the window serves a bedroom which does not require privacy measures such as a privacy screen or sill height 1.5m or greater under the HDCP.

Should consent be granted, appropriate condition could be imposed to ensure privacy to adjoining properties would meet the desired outcome of Part 3.1.6 Privacy of the HDCP.

### 2.8.4 Vehicle Access and Parking

Submissions raised concerns that the driveway design is excessive and out of character.

The desired outcomes of Part 3.1.7 Vehicle Access and Parking of the HDCP are to encourage *“Development that provides sufficient and convenient parking for residents with vehicular access that is simple, safe and direct.”*

The proposed double width, wrap around driveway and garage proposes to replace an existing single driveway and single car garage directly accessed from Malton Road. Council considers that the justification provided in the applicants email (dated 23 May 2022) to be not well founded with regards to providing reasoning for needing a wraparound driveway with parking at the rear.

Council considers that the current design is not “*simple, safe or direct*” when considering there are other, viable options for parking vehicles on the site, immediately to the east of the dwelling. The applicant’s written justification does not adequately address how this driveway with a large turning area at the end is considered simple or direct. While the garage is behind the building line, it is located at the bottom of the slope and requires travel distance of approximately 30m to exit the site.

Furthermore, a standard, single width driveway is 3.5m under the HDCP in accordance with Australian Standards requirements. The driveway proposed is between 4m and 5m wide with a crossover greater than requirements for a single dwelling house.

As noted in the discussion above the end of the driveway and turning bay does not comply with Part 3.1.7(c) stating that a “*setback of 0.5 metres from side boundary*” is required for landscaping. With consideration of the intent of the desired outcomes and prescriptive measures the proposed driveway is not supported and there are alternative, safer and more direct areas to park cars on the site that do not require an extensive over-engineered driveway design.

In addition, it is unclear whether the proposed driveway grades comply with Australian Standard AS2890 as insufficient information has been provided.

Viable parking alternatives have not been explored which have greater compliance with Part 2.7.2 Vehicle Access and Parking under the HDCP. As such the proposal does not comply with desired outcomes and prescriptive measures of Part 2.7.2 of the HDCP.

### **2.8.5 Earthworks and Slope**

Submissions raised concerns that the proposed development would impact on the stability of the slope of the subject site and adjoining residential allotments.

The applicable desired outcomes of Part 1C.1.4 Earthworks and Slope of the *HDCP* is for “*Development that is designed to respect the natural landform characteristics and protects the stability of land*” and for “*Development that limits landform modification to maintain the amenity of adjoining properties and streetscape character*”.

These outcomes are supported by prescriptive measures which states that “*earthworks involving filling should not exceed 1 metre in height from the existing ground level*” and that “*sloping sites with a gradient in excess of 20% require certification from a geotechnical engineer as to the stability of the slope in regard to the proposed design*”.

The development site, including the driveway access, is located on land with a slope in excess of 20% and the application proposes an excavation depth of up to 5m and a small amount of fill on the garage footprint.

As discussed in Section 2.1.4 of the report, a Geotechnical Assessment (Report No. 21/3586) prepared by STS Geotechnics Pty Ltd dated December 2021 was submitted with the application and included recommendation regarding the drainage of groundwater encountered with the proposed excavation.

The submitted drainage plans have not addressed the above recommendations of the Geotechnical Assessment and furthermore, insufficient information has been provided with respect to the proposed elevated driveway and changes to the drainage patterns of the site.

Council’s assessment of the proposed works and excavation has determined that the application fails to adequately address requirements of Part 1C.1.4 Earthworks and Slope and contains insufficient

detail to enable a full and proper assessment of the proposal's compliance with the objective of this clause.

In addition, as stated in the report above, there are alternative car parking areas for the site that have not been adequately explored by the applicant that would have less environmental/earthwork impacts than proposed.

The proposal fails to meet the desired outcomes of Part 1C.1.4 Earthworks and Slope of the HDCP and cannot be supported in its current form.

#### **2.8.6 Heritage**

As noted at Section 2.1.3 the development, particularly the driveway would not comply with the objectives of Clause 5.10 Heritage Conservation of the HLEP. Furthermore, the removal of the heritage trees would not satisfy Part 3.3.3(e) of the HDCP.

#### **2.9 Contributions Plans**

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

### **3. ENVIRONMENTAL IMPACTS**

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

#### **3.1 Natural Environment**

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

The proposed development would result in the removal of 8 trees as identified within Arboricultural Impact Assessment (AIA) report prepared by Earth Scape Horticultural Services dated April 2022.

Submissions were received which raised concerns to the removal of trees, incorrect labelling of trees to be removed and concerns over the removal of heritage listed trees.

It was noted that the original AIA included trees to be removed on the neighbours property which was not correct. As such this has been rectified within the current AIA.

Council's tree assessment notes that the significant trees on the site are identified as T1 (Blackbutt) and T7 (Sydney Red Gum) both of which would require removal to facilitate the addition and the double width driveway.

Whilst it is also noted that tree T1 has been lopped to avoid contact with powerlines, the tree remains a structurally sound, significant species with heritage status.

It is noted that trees within the centre of the site being T6, T7 and T8 are high value trees however due to their location it would be impractical to retain them. As such, Council requested that alternate parking options be explored on the site to reduce impact on the trees within the driveway footprint, particularly T1. A reduction in the width of the crossover and the driveway to a standard single width would allow for the retention of T1 and possibly T3.

The applicants response to Councils concerns was not well founded in that the design does not demonstrate the principles of “avoid, minimise and mitigate” set out within the HDCP.

The proposed development does not meet the desired outcomes of Part 1B6.1 Tree Preservation of the HDCP and the proposed development would result in unacceptable environmental impacts.

### 3.1.2 Biodiversity

The proposal is located amongst vegetation characteristic of the Blackbutt Gully Forest vegetation community and forms part of the Byles Creek catchment. A submission also identified that a powerful owl was recently sighted on the subject site and multiple submissions were received which raised concerns to the impact on the Powerful Owl species. The Powerful Owl along with the threatened plant species and Gang-Gang cockatoo is listed as vulnerable under the *Biodiversity Conservation Act 2016*.

Whilst a Flora and Fauna report was not provided with the application, an Integrated Bushfire and Vegetation Management Plan (IBVMP), prepared by Black Ash Consulting, dated 12 May 2022 was submitted. The IBVMP acknowledged that the entire site would be managed as an Inner Protection Area (IPA) and that no additional trees would require removal to comply with the IPA requirements.

The report itself does not acknowledge if any fauna species are present on the site or if the removal of 8 trees would result in habitat loss.

Given the lack of assessment on fauna species in the locality, the development does not meet the desired outcomes of Part 1C.1.1 Biodiversity of the HDCP and has failed to demonstrate that the proposed development would not result in detrimental environmental impacts.

### 3.1.3 Stormwater Management

The desired outcome of Part 1C.1.2 Stormwater Management is for “*Development that protects waterways from erosion, pollution and sedimentation, and maintains or improves water quality and aquatic habitats.*”

The proposed method of stormwater disposal on site is gravity drained to the rear via a piped system to an absorption trench in the rear yard. It is noted that a section of the proposed stormwater line would experience a 20% grade.

Council requested a long section of the stormwater drainage line to demonstrate the hydraulic grade line (HGL) of the proposed system does not exceed natural surface flows, noting that the submitted drainage plans show a 7m drop between the stormwater junction pit on the driveway and the junction pit. No additional information was received to ascertain water velocity, potential for surging at the pits and ensure the system is designed for pre-development and post-development flows that remain unchanged. Consequently, in peak flow times, water being disposed of via the system could cause scouring and erosion at the disposal point.

In addition, a natural drainage line flows adjacent to the subject site in the adjoining bushland reserve which would drain the overland flow from the site and water leaving the stormwater system. As no detention system is proposed to limit the discharge flow rate, erosion and sedimentation impacts could detrimentally impact this waterway.

Accordingly, the proposal fails to meet the desired outcome of Part 1C.1.2 Stormwater Management of the *HDCP* and is unacceptable.

### 3.1.4 Watercourses



Submissions raised concerns that the proposed development would impact on the watercourse located on the vacant allotment to the north of the site, known as Byles Creek.

The desired outcomes of Part 1C.1.3 Watercourses of the *HDCP* is for “*watercourses such as creeks and rivers are retained and enhanced to promote the improvement, and protection of the environment.*” And that “*Native riparian vegetation areas are retained and enhanced, and degraded riparian areas are rehabilitated.*”

The proposed development would be clear any of native vegetation within the riparian zone of the adjacent natural drainage line as all proposed clearing to facilitate the additions to the dwelling house and APZ would be confined to the subject site.

Notwithstanding, as outlined in Section 3.1.2 of this report, the stormwater drainage system in its current form may contribute to erosion and sedimentation of the subject site which has the potential to impact on the adjacent watercourse.

The proposal does not adequately demonstrate how the adjacent Byles Creek would be enhanced and protected by the proposed development.

The proposal fails to meet the desired outcomes of Part 1C.1.3 Watercourses of the *HDCP* and is considered unacceptable.

### **3.2 Built Environment**

#### **3.2.1 Built Form**

As discussed in the report above, the proposed built form is inconsistent with adjoining dwellings and the proposed design would be out of character for the locality.

#### **3.2.2 Traffic**

The proposal is for alterations and additions to an existing dwelling and does not intensify the existing traffic generation for the site.

### **3.3 Social Impacts**

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

### **3.4 Economic Impacts**

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

## **4. SITE SUITABILITY**

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

### **4.1 Flooding**

The site is not identified as flood prone.

### **4.2 Bushfire Risk**

The site is bushfire prone, with a Bushfire attack level of BAL FZ (Flames Zone) applicable to the entirety of the site. Submissions have raised concerns regarding the risk of bushfire on the subject site.

The application was accompanied by a Bushfire Hazard Assessment, prepared by Blackash Bushfire Consulting dated 21 June 2021. The report included a statement: *“... it is proposed to step the Bushfire Attack levels down through the house as a performance based outcome and the following construction levels would apply to the new alterations and additions:*

- *Proposed deck - Level 1      BAL Flame Zone*
- *Proposed deck - Level 2      BAL 40*
- *Proposed Level 1 addition      BAL 40*
- *Existing dwelling to be upgraded to provide basic ember protection to openable windows.”*

The application was referred to the NSW Rural Fire Service (RFS) for comment.

NSW RFS provided concurrence including the following conditions and notes:

- The entire property must be managed as an inner protection area (IPA) in accordance with the requirements of Appendix 4 of Planning for Bush Fire Protection 2019 from the start of building works and in perpetuity.
- Proposed Level 1, 2 & 3 construction, must comply with Section 3 (excluding section 3.5) and Section 9 (BAL FZ) of Australian Standard AS3959-2018 Construction of buildings in bushfire-prone areas or the relevant BAL-FZ requirements of the NASH Standard - Steel Framed Construction in Bushfire Areas (incorporating amendment A - 2015) and the construction requirements in Section 7.5 of Planning for Bush Fire Protection 2019.
- An alternate solution, would need to be proposed by the Bushfire Consultant, using Method 2 AS3959-2018 and employing modelling, to clearly illustrate, that the radiant heat levels at various parts of the structure were lower, hence supporting their downgrade, which was not provided with the application, as well the north western, north eastern and south eastern elevations and roofing which all have direct sight lines to the unmanaged bushfire hazard vegetation.
- It was also noted that the existing dwelling and proposed additions, only have 1.2m separation distance to the north and have both unmanaged bushfire hazard vegetation and a continuous tree canopy cover, to larger areas of vegetation, hence a BAL FZ determination on the north western and north eastern elevations.

If Council were minded to support the proposed development, appropriate conditions of consent could be imposed to satisfy the desired outcomes of Part 1C.3.1 Bushfire of the HDCP.

## 5. PUBLIC PARTICIPATION

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


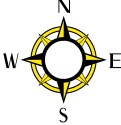
### 5.1 Community Consultation

The proposed development was placed on public exhibition and was notified to adjoining and nearby landowners between 21 December 2021 to 24 January 2022 and 1 April 2022 to 20 April 2022 in accordance with the Hornsby Community Engagement Plan. During this period, Council received 31

submissions from 17 residents/ groups. 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	
24 SUBMISSIONS RECEIVED OUT OF MAP RANGE				

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

- Unacceptable environmental impacts through tree loss
- Unacceptable impacts to powerful owl habitat
- Unacceptable overshadowing of adjoining properties
- Unacceptable privacy impacts
- The removal of a significant trees
- Development that is excessive in bulk and scale
- Impact to trees on neighbouring properties
- Bushfire impacts not sufficiently addressed
- Privacy concerns

- Watercourse at the rear of the site

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 referred to the following Public Agency for comment.

### 5.2.1 Rural Fire Service

The site is bushfire prone, with a bushfire attack level (BAL) of Flame Zone (FZ). The application was referred to the NSW Rural Fire Service (RFS) for concurrence.

The RFS raised no objections to the proposal subject to conditions.

## 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 fails to satisfactorily address Council’s and relevant agencies’ criteria and would provide a development outcome that, on balance, would result in a negative impact for the community. Accordingly, it is considered that the refusal of the proposed development would be in the public interest.

## CONCLUSION

The proposed development is for alterations and addition to a dwelling house and construction of a driveway and vehicular turning area.

31 submissions were received objecting to the proposal. The main concerns raised in the submissions were with respect to the detrimental environmental impacts of the proposal and the bulk and scale of the development.

The proposed development fails to demonstrate adequate compliance with the requirements of the Hornsby Local Environmental Plan 2013 and the Hornsby Development Control Plan 2013.

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

The reasons for this decision are:

- The proposal fails to comply with the provisions of the Hornsby Local Environmental Plan 2013 (HLEP) and the Hornsby Development Control Plan 2013 (HDCP) with regard to setbacks, biodiversity, earthworks, stormwater management, vehicular access, bushfire and heritage.

*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 Matthew Miles.

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

ROD PICKLES  
Manager - Development Assessments  
Planning and Compliance Division

**Attachments:**

1.  Locality Map
2.  Architectural Plans
3.  Landscape Plan

File Reference: DA/1354/2021  
Document Number: D08408669

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**SCHEDULE 1**

1. The proposal is unsatisfactory in respect to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as the development does not comply with Clause 5.10 Heritage Conservation of the Hornsby Local Environmental Plan 2013 which aims to conserve the environmental heritage of Hornsby and is not consistent with the development objectives and provisions of Clause 6.2 Earthworks of the Hornsby Local Environmental Plan 2013.
2. The proposal is unsatisfactory in respect to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as the development would result in the loss of significant and high value trees and would not meet the objectives of State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017.
3. The proposal is unsatisfactory in respect to the provisions of Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, as the proposal does not comply with the desired outcome and prescriptive measures of the Hornsby Development Control Plan 2013 as follows:
  - 3.1 The proposed development is inconsistent with the character statement contained within Part 9.3.6 Beecroft/Cheltenham Heritage Conservation Area Gullies Precinct as the proposed crossover and driveway would unacceptably impact the environmental heritage of Malton Road.
  - 3.2 The proposed development does not comply with the desired outcomes and prescriptive measures of Part 3.1.2 Setbacks as the proposed turning bay and north-western end of the driveway does not provide a minimum 500m setback from the side boundary and the conversion of the garage to a habitable area does not comply with the 6m front setback provision.
  - 3.3 The proposed development does not comply with Part 3.1.7 Vehicle Access and Parking as the driveway design does not provide vehicular access that is simple, safe, and direct and the submitted plans do not demonstrate that the driveway grades comply with Australian Standard AS2890.
  - 3.4 The proposed development does not meet the desired outcomes of Part 1B6.1 Tree Preservation of the HDCP as the proposed development would result in unacceptable environmental impacts.
  - 3.5 The proposed development does not comply with Part 1C.1.1 Biodiversity as insufficient information has been submitted to demonstrate that the proposed development would protect and improve the water quality, native flora and fauna and other environmental values of the site.
  - 3.6 The application fails to demonstrate that the development will not result in a significant effect on threatened species, populations or ecological communities or their habitats pursuant to Section 5A of the *Environmental Planning and Assessment Act 1979*.
  - 3.7 The proposed development does not meet the desired outcomes of Part 1C.1.2 Stormwater Management, as the proposed stormwater disposal system would result in the disturbance of natural flow paths and contribute to erosion and sedimentation of the Byles Creek catchment.

- 3.8 The proposed development does not meet the desired outcomes of Part 1C.1.3 Watercourses, as the proposed stormwater disposal system would not adequately protect or enhance the Byles Creek catchment.
- 3.9 The proposed development does not comply with Part 3.1.2 Setbacks of the HDCP as the front building setback is not compatible with adjacent development and does not complement the streetscape.
- 3.10 The proposed development does not meet the desired outcomes of Part 1C.1.4 Earthworks and Slope, as the application fails to demonstrate:
  - a) That the proposed development would not have adverse impacts on sensitive environments such as watercourse riparian land, bushland and significant vegetation.
  - b) That the proposed development respects the natural landform characteristics and limits landform modification to maintain the amenity of adjoining properties.
- 4. The proposal is unsatisfactory in respect to Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*, as the proposal would have detrimental environmental impacts on both the natural and built environment in the locality.
- 5. The proposal is unsatisfactory in respect to Section 4.15(1)(a)(d) and (e) of the *Environmental Planning and Assessment Act 1979*, it is considered that the proposed development would not be in the public interest.

**- END OF REASONS FOR REFUSAL -**

**2 DA/1379/2021 - CONSTRUCTION OF A DWELLING HOUSE - 99A COPELAND ROAD, BEECROFT**

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**EXECUTIVE SUMMARY**

**DA No:** DA/1379/2021 (Lodged on 21 December 2021)

**Description:** The construction of a two-storey dwelling house on Lot 121 approved under Development Application No. DA/985/2020 (two into four lot subdivision)

**Property:** Lot 2 DP 444486, No. 99A Copeland Road, Beecroft

**Applicant:** Doug Sneddon Planning

**Owner:** Frobat Pty Limited

**Estimated Value:** \$931,700

**Ward:** C

- The application involves the construction of a two-storey dwelling house on Lot 121 approved under Development Consent No. DA/985/2020 for Torrens title subdivision of 2 lots into 4 lots.
- The proposal generally complies with the Hornsby Local Environmental Plan 2013 and the Hornsby Development Control Plan 2013.
- A total of 11 submissions have been received in respect of the application.
- The application is required to be determined by the Hornsby Council Local Planning Panel as 10 or more unique submissions were received by way of objection.
- It is recommended that the application be approved as a deferred commencement consent.

**RECOMMENDATION**

THAT Development Application No. DA/1379/2021 for the construction of a two-storey dwelling house at Lot 2 DP 444486, No. 99A Copeland Road, Beecroft be approved as a deferred commencement pursuant to Section 4.16(3) of the *Environmental Planning and Assessment Act 1979* subject to the conditions of consent detailed in Schedule 1 of LPP Report No. LPP35/22.



## BACKGROUND

### Site History

On 28 April 2021, Development Application No. DA/985/2020 was approved by the Hornsby Local Planning Panel for the demolition of structures, Torrens title subdivision of two allotments into four lots and construction of a dwelling house at Lots 1 and 2 at Nos. 99 and 99A Copeland Road Beecroft.

On 28 June 2021, Council approved a Section 4.55(1A) application seeking modifications to the approved subdivision involving the rearrangement of the staging of the consent as follows:

- Stage 1 - The removal of 25 trees, the demolition of the dwelling house, in-ground swimming pool and carport, boundary adjustment between existing Lots 1 and 2 DP 444486, the construction of a Right of Carriageway over proposed Lot 11.
- Stage 2 - Torrens title subdivision of proposed Lot 12 into 3 lots and the construction of a Right of Carriageway over proposed Lots 121, 122 and 123.
- Stage 3 - Construction of a two-storey dwelling house on proposed Lot 11.

At the time of writing, a Subdivision Certificate has not been issued for the approved subdivision and the subdivision is not registered with the NSW Land Registry Services.

### Application History

On 20 January 2022, Council requested amendments to the Stormwater Plan and the submission of Swept Path Diagram demonstrating that vehicles can enter and exit the proposed garage in a forward direction.

On 20 January 2022, Council's Tree Management Team requested a re-design of the development/ additional information to reduce impacts to tree Nos. T39 and T41. On 3 February 2022, Council received additional information in the form of an addendum letter from the engaged arborist clarifying the impacts to tree Nos. 39 and 41.

On 7 February 2022, Council's Heritage Planner requested amended plans/ additional information to address concerns with the excessive bulk and scale of the proposed dwelling.

To ensure the undertaking of a comprehensive assessment of the building height, Council requested the provision of a Roof Plan with roof RL's overlayed with the Survey Plan contours.

Between 14 February and 22 February 2022, the requested plans were received by Council. The bundle included a letter prepared by Doug Sneddon Planning Pty Ltd justifying a number of the requested amendments, including building height.

On 8 March 2022, Council's heritage assessment of the amended plans determined that the proposal as amended was acceptable on heritage grounds, subject to the submission of an amended landscape plan indicating additional evergreen screen planting on the southwestern corner and additional materials and finishes detail of the proposed retaining walls and fencing.

Between 12 March and 16 March 2022, Council received the requested plans/documentation.

## SITE

The existing site is currently described as Lot 2 DP 444486 (No. 99A Copeland Road). The legal description of the site will be revised upon registration of the subdivision with NSW Land Registry Services.

The subject site (approved Lot 121) has an area of 1038.8m<sup>2</sup> (903.2m<sup>2</sup> ex. ROW) and is located on the northern side of Copeland Road Beecroft. The site is currently vacant of improvements with the exception of a recently constructed carriageway to the eastern side.

The site experiences a fall of 5 metres to the south-eastern corner, representing an average gradient of 11%.

The adjoining sites to the east at Nos. 101 and 101A Copeland Road contain 1 and 2 storey dwelling houses. It is noted that No. 101 Copeland Road also contains a swimming pool within the rear setback. The adjoining site to the west at Nos. 95-97 Copeland Road contains a Seniors Living development in the form of 2 x two-storey independent living unit buildings with basement car parking and a row of single and two storey villas including 2 detached dwellings and 4 semi-detached dwellings.

Copeland Road is a local street with a low-density streetscape largely comprising a mixture of single and two storey residential buildings. Within close proximity to the subject site along Copeland Road includes a childcare centre, the Beecroft Bowling and Recreation Club to the east and Pennant Hills Golf Course to the west.

The site is located approximately 800m west of Beecroft Station and 600m to Beecroft Public School.

The site is not bushfire or flood prone.

The site is not burdened by any easements or restrictions. Notwithstanding, a 4m wide and variable width Right of Carriageway has been approved to the eastern side of the site under DA/985/2020 (not yet registered with NSW Land Registry Services).

The site does not contain a heritage listed item; however the site is located within the C2 Beecroft – Cheltenham Heritage Conservation Area.

## PROPOSAL

The application proposes the construction of a two-storey dwelling house on Lot 121 approved under DA/985/2020 (two into four lot subdivision).

At the time of writing, the subdivision is not registered with the NSW Land Registry Services.

The ground floor level of the dwelling house would include a media room, laundry, powder room, scullery, kitchen, dining room, living room, study, entry, lounge, guest bedroom with ensuite, storage room, alfresco and a semi-detached two car garage outbuilding.

The first-floor level would contain three bedrooms with one ensuite, master bedroom with ensuite, sitting room and bathroom.

A Landscape Plan has been submitted indicating the planting of 4 large canopy trees and a variety of small trees/ shrubs to the perimeter of the site.

The application would necessitate the removal of 1 tree to facilitate the construction of the dwelling house.

## 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

The site is zoned R2 Low density residential pursuant to the Land Use Table of the HLEP. The objectives of the R2 zone are:

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

The proposed development is defined as a 'dwelling house' and is permissible in the zone with Council's consent. It is considered that the proposed development would provide for the growing housing needs of the community and meets the objectives of the R2 Low density residential zone.

#### 2.1.2 Height of Buildings

A submission has been received raising concerns that insufficient detail has been provided to determine the height of the dwelling.

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 dwelling house would have a maximum height of 8.21m and complies with this provision.

In addressing the submission, to ensure the undertaking of a comprehensive assessment of the building height, Council's assessment requested the provision of a Roof Plan with roof RL's overlayed with the Survey Plan contours. The proponent subsequently submitted an amended Site Plan (Issue 7) addressing Council's request.

### **2.1.3 Heritage Conservation**

A submission has been received raising concerns that the excessive bulk and scale of the proposed dwelling house would be unsympathetic to the HCA.

Clause 5.10 of the HLEP sets out heritage conservation provisions for Hornsby Shire. The site does not contain a heritage listed item; however, the site is located within the C2 Beecroft-Cheltenham Heritage Conservation Area (HCA) under Schedule 5 of the HLEP.

Council's heritage assessment requested amended plans to address concerns with the bulk and scale of the proposed dwelling in comparison to the approved dwelling on the front lot. With the information available to Council as part of the original suite of plans / documents, it was also considered that views of the site and proposed dwelling would be visible in the street from the western side of the site, due to the adjoining driveway, vegetation removal, and side boundary setbacks. To address Council's heritage concerns, amendments were requested to address the concerns as follows:

- Reduction in the height and scale of the dwelling so that it is not easily visible in the streetscape. It was suggested that this could be achieved by the avoidance of excessive fill and incorporating a split-level design to enable the dwelling to better relate to the slope of the site. Greater articulation and stepping of the second storey further to the rear to reduce the bulk/height of the southern elevation was also requested.
- Additional evergreen screen planting was requested to be provided on the southern and western boundaries of the property.
- The elevated clothesline was requested to be relocated or evergreen screen planting provided on the southwestern corner of the site.
- Details of the appearance of any proposed retaining walls and fencing on the southern and western boundaries were requested.
- In the instance that the amendments did not sufficiently reduce the visibility of the dwelling from the streetscape and surrounding areas, the materials and finishes were requested to be amended to clean faced brick in accordance with HDCP Part 9.3.1 and Table 9.3.6 (a) requirements.

In response, a letter prepared by Doug Sneddon Planning Pty Ltd sought to justify the heritage impacts of the dwelling, in addition to an amended Landscape Plan (Revision A).

Council's heritage assessment accepts the justification provided in the addendum letter and the amended Landscape Plan for the following reasons:

- Most of the dwelling would be screened from the streetscape by existing retained vegetation (western boundary), the proposed additional screen planting on the southwestern corner of the site, and the approved two storey dwelling on the street front allotment.
- The proposed addition of 4 additional *Pittosporum tenuifolium* evergreen screen plants on the southern and western boundaries would address the sightline concerns raised.
- The adjoining approved Seniors housing development to the west, comprises a substantial amount of render and as the proposed dwelling is setback, from the streetscape the render proposed on review is accepted in this circumstance.

Council's heritage assessment raises no concerns to the application as amended.

#### 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 site experiences a fall of 5 metres to the south-eastern corner, representing an average gradient of 11%.

The development would require excavation of a maximum depth of 1m beneath the north-western corner of the proposed dwelling house and a maximum fill of 1.3m at the south-western corner of the dwelling. The proposed earthworks are a consequence of the natural contours of the land to provide for a level building platform and open space suitable for residential development.

It is considered that the adjacent properties would be unaffected by the proposal with regard to stormwater flows and soil stability.

Conditions have been recommended requiring that prior to fill material being imported to the site, a Waste Classification Certificate shall be obtained from a suitably qualified environmental consultant confirming the fill wholly consists of Virgin Excavated Natural Material (VENM) as defined in Schedule 1 of the *Protection of the Environment Operations Act 1997*.

Subject to compliance with the recommended conditions, the proposal is considered acceptable in this regard.

## 2.2 Adopted 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 21 December 2021, this development application is considered to have been made prior to the commencement date of the SEPPs. The existing legislation in force at time of lodgement of the development application, prevails to the extent of any inconsistency.

Notwithstanding, the approval of the development application would not adversely affect the objectives of the newly adopted SEPPs and is considered to be consistent with this policy.

### **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.

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 SEPP 55 is not required.

### **2.4 State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004**

The application has been assessed against the requirements of State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004. The proposal includes a BASIX Certificate for the proposed development and is considered to be satisfactory.

### **2.5 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, Clause 9(2) 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 and objectives for tree preservation.

The application has been assessed against the requirements of the Vegetation SEPP and it has been determined that the proposal would meet the objectives of the Vegetation SEPP. This matter is addressed further in Section 3.1.1 of this report.

### **2.6 Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005**

The application has been assessed against the requirements of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005. This Policy provides general planning considerations and strategies to ensure that the catchment, foreshores, waterways and islands of Sydney Harbour are recognised, protected, enhanced and maintained.

Subject to the implementation of installation 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.

## 2.7 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.

## 2.8 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			
Control	Proposal	Requirement	Complies
Site Area	1,038.8m <sup>2</sup> (903.2m <sup>2</sup> ex. ROW)	N/A	N/A
Dwelling House height	8.21m	8.5m	Yes
No. storeys	2 storeys	max. 2 + attic	Yes
Site Coverage	33.6%	40%	Yes
Floor Area	430m <sup>2</sup>	430m <sup>2</sup>	Yes
Outbuilding Area (Garage)	48.5m <sup>2</sup>	100m <sup>2</sup>	Yes
Setbacks			
- Front - Dwelling (south)	2.5m	900mm	Yes
- Front – Garage (south)	1.1m	900mm	Yes
- Side (west)			
Ground Floor	3m	900mm	Yes
First Floor	3m	1.5m	Yes

- Side (east)			
Ground Floor	11.76m	900mm	Yes
First Floor	19.75m	1.5m	Yes
- Rear (north)			
Ground Floor	4.8m	3m	Yes
First Floor	9.3m	8m	Yes
Landscaped Area (% of lot size)	47%	40%	Yes
Private Open Space			
- minimum area	>24m <sup>2</sup>	24m <sup>2</sup>	Yes
- minimum dimension	>3m	3m	Yes
Car Parking	2 spaces	2 spaces	Yes

As detailed in the above table, the proposed development complies with the prescriptive requirements within Section 3.1 of the HDCP. A discussion on compliance with relevant desired outcomes and Sections 1 and 9 of the HDCP is provided below.

### 2.8.1 Transport and Parking

The subject site would benefit from recent improvements to the site servicing the approved subdivision, comprising the common vehicle turning area to the rear of the subject allotment and a passing bay provided adjacent to the Copeland Road frontage. Council's engineering assessment is satisfied that vehicles egressing the garage of the proposed dwelling house would be able to manoeuvre and egress from the site in a forward direction in accordance with Australian Standard AS2890.

The application proposes the provision of two car parking spaces within a semi-detached garage to the eastern side of the proposed dwelling house and complies with the HDCP with regard to on-site parking.

The proposal complies with the transport and parking provisions of the HDCP and is deemed acceptable in this regard.

### 2.8.2 Landscaping

The submitted Landscape Plan (Revision A) indicates the planting of planting of 4 large canopy trees including:

- 1x Rough Barked Apple trees with a mature height of 15m.
- 2x Coastal Banksia trees with a mature height of 12m.
- 1x Water Gum with a mature height of 7m.

A total of 105 groundcovers, trees and shrubs around the perimeter of the site.

The proposal meets the desired outcomes of the landscaping section of the HDCP.



### 2.8.3 Sunlight Access

The HDCP stipulates that on 22 June, 50 percent of the required principal private open space on any adjoining property should receive a minimum of 3 hours of unobstructed sunlight access between 9am and 3pm.

The submitted Shadow Diagrams prepared by Brooks Projects Architects demonstrates that the overshadowing resulting from the proposed dwelling house would predominantly fall within:

- The frontage of the adjoining property to the west at No. 95-97 Copeland Road.
- The accessway and landscaped area within the eastern portion of the subject site.
- The principal private open space area (terrace) of the approved dwelling house on the front (Lot 11).

It is calculated by Council that the principal private space area of the approved dwelling house on the front lot (Lot 11) would receive 3 hours of unobstructed sunlight access between 9AM to 12PM on 22 June.

The application has demonstrated that on 22 June all adjoining properties would receive a minimum of 3 hours of unobstructed sunlight access between 9AM and 3PM.

The proposal complies with the prescriptive requirements of the HDCP with regard to sunlight access.

### 2.8.4 Privacy

A submission has been received raising concerns that the windows to the western side of the proposed dwelling house would facilitate overlooking into the adjacent property at Nos. 95-97 Copeland Road. It is suggested that highlight windows be used on the western elevation of the proposed dwelling.

In addressing the submission, it is acknowledged that the first-floor level of the proposed dwelling house would be setback between 3m to 4.5m to the western side boundary. The proposed first floor level bedrooms to the western elevation would be serviced by full sized windows with sill heights less than 1.5m above finished floor level. The HDCP states that windows servicing elevated bedrooms would not require the implementation of privacy measures/ screens and accordingly no privacy concerns are raised to the proposed first floor bedrooms.

Notwithstanding, the west-facing window servicing the first-floor level sitting room (W27) would have a sill height of 1.3m above finished floor level and would facilitate overlooking into bedrooms and living room areas within the residential development at the adjoining property at Nos. 95-97 Copeland Road. In general, it is considered that living spaces such as sitting rooms experience greater intensity of use compared to bedrooms and therefore require additional consideration with regard to privacy impacts. To ensure that privacy to the adjoining property is maintained, a condition has been recommended in Schedule 1 requiring the provision of amended plans prior to the issue of the Construction Certificate demonstrating an increase in the sill height of the first-floor level sitting room window at the western elevation to be a minimum of 1.5m.

The proposal complies with the privacy requirements of the HDCP, subject to the imposition of the abovementioned conditions.

### 2.9 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.

Section 2.8 of the Contributions Plan provides exemptions to development contributions required by this Plan, including for subdivision development that has been the subject of a condition requiring monetary contributions under a previous development consent. It is noted that the subject site is an allotment arising from a land subdivision approved under DA/985/2020. A condition of consent under DA/985/2020 required monetary payment of a Section 7.11 Contribution and accordingly the subject development is exempt from the development contributions ordinarily required under the Section 7.12 Contributions Plan 2019-2029.

### 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

Submissions have been received raising tree and vegetation impact concerns, summarised as follows:

- The design of the development should be amended to allow for the retention of tree Nos. 39, 40 and 41.
- Tree No. 40 is listed as an unknown species in the Arborist Report.
- Loss of habitat for fauna.

The application has been supported by an Arboricultural Impact Assessment (AIA) prepared by Advanced Treescape Consulting dated 8 December 2021. Addendum letters have also been received by Advanced Treescape Consulting providing an identification of the species of tree No. 40 (dated 11 March 2022) and clarifying impacts to tree Nos. 39 and 41 (dated 27 January 2022).

The application proposes the removal of 1 tree to facilitate the construction of the dwelling house, identified as tree No. 40 (*Parrotiopsis jacquemontiana*).

Tree No. 40 achieves a height of 12m with a Tree Protection Zone (TPZ) of 12m. The submitted AIA has assessed the tree as having a 'low' significance rating and a short, safe and useful life expectancy (SULE) rating. Given that tree No. 40 is located to the westernmost portion of the site, Council's tree assessment has taken into consideration whether the tree could be retained through the relocation of the building footprint in an eastward direction. As the tree has a TPZ of 12m, it is estimated that the dwelling in its current form would be required to be shifted approximately 10.5m to the east to facilitate the retention of tree No. 40 and would not be a feasible solution. Given that the proposal complies with the setback and floor area requirements of the HDCP, on balance it is determined that the retention of the proposed positioning of the dwelling is acceptable, and the removal of the 'low' value tree is deemed appropriate in this instance.

As discussed under Section 2.8.2 of this report, to compensate for tree removal, the submitted Landscape Plan (Revision A) indicates the planting of 4 large canopy trees and a variety of small trees/ shrubs to the perimeter of the site.

The application proposes the retention of all other trees on the subject site and adjoining sites, including tree Nos. 39 and 41, identified as follows:

- Tree No. 39 is identified within the Arboricultural Impact Assessment as a Jacaranda tree with a height of 14m, a TPZ of 3.6m and a 'medium' significance rating.
- Tree No. 41 is identified within the Arboricultural Impact Assessment as a Camphor Laurel tree with a height of 25m, a TPZ of 9.6m and a 'low' significance rating.

Council's original tree assessment requested a re-design of the development to reduce impacts to tree Nos. 39 and 41. In response, Council received additional information in the form of an addendum letter from Advanced Treescape Consulting dated 27 January 2022 clarifying the impacts to tree Nos. 39 and 41 (dated 27 January 2022). It is noted that the applicant has not provided amended plans to address Council's re-design request. The addendum letter is summarised as follows:

- The addendum letter clarifies that the entire TPZ of tree No. 39 is not impacted by the proposed development.
- The addendum letter clarifies that half of the TPZ of tree No. 40 would be located to the south of the proposed dwelling. If this section of residence is constructed on piers and beam with a suspended slab, there would be an acceptable impact on this tree and will reduce the intrusion in TPZ to around 12% from 25% as originally calculated in the Arborist Report.

Council's tree assessment agrees with the addendum letter and concurs that only tree No. 40 would be removed to facilitate the proposed development.

In addressing the submission, application proposes to replace one tree 12m tall tree with 4 trees capable of achieving mature heights between 7m to 15m. It is acknowledged that a total of 105 groundcovers, trees and shrubs are proposed to be planted in accordance with the submitted Landscape Plan. It is considered that the proposal would be of a positive outcome with regard to landscaping and fauna habitat on the site.

The proposal is deemed acceptable with regard to the tree and vegetation preservation measures of the HDCP.

### **3.1.2 Stormwater Management**

The application proposes to drain the stormwater collected by the proposed development to the approved inter-allotment stormwater drainage system beneath the recently constructed accessway to Council's drainage system along Copeland Road.

Council's stormwater management assessment raises no concerns to the proposed method of stormwater disposal, subject to recommended conditions in Schedule 1.

## **3.2 Built Environment**

### **3.2.1 Built Form**

The proposed built form is consistent with the dwellings on adjoining properties in terms of height design and materials

### **3.2.2 Traffic**

At the time of subdivision, the traffic generation from this additional lot was considered and deemed acceptable and within the capacity of the road network. The proposal is for a single dwelling only and does not intensify the traffic generation from that previously assessed under DA/985/2020.

### 3.3 Social Impacts

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

### 3.4 Economic Impacts

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

### 3.5 Deferred Commencement

Given that the allotment subject to this application is yet to be registered with NSW Land Registry Services (LRS), a deferred commencement condition has been recommended in Schedule 1 indicating that the consent does not operate until evidence that a registered plan of subdivision from the LRS creating the proposed lot is submitted to Council.

## 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 is not identified as bushfire prone or flood prone land and is not burdened by any easements or restrictions. The proposal has demonstrated the ability to avoid the removal significant vegetation and provides a dwelling design that is appropriate for the locality and heritage conservation area. The 11% gradient of the site is suitable for residential development and provides ample amenity to adjacent properties.

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 23 December 2021 and 24 January 2022 in accordance with the Hornsby Community Engagement Plan. During this period, Council received 11 submissions. The map below illustrates the location of those nearby landowners who made a submission that are in close proximity to the development site.

**NOTIFICATION PLAN**

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

Eleven submissions have been received objecting to the development, generally on the following grounds:

- The design of the development should be amended to allow for the retention of tree Nos. 39, 40 and 41.
- Tree No. 40 is listed as an unknown species in the Arborist Report.
- Glare from proposed solar panels would disturb residents at Nos. 95-97 Copeland Road. It is suggested that non-reflective solar panels be installed.
- The excessive bulk and scale of the proposed dwelling house is unsympathetic to the HCA.
- The adjacent property at Nos. 95-97 Copeland Road would be able to overlook the western side of the proposed dwelling house. It is suggested that highlight windows be used on the western elevation of the proposed dwelling.
- Insufficient detail has been provided to determine the height of the dwelling and the positioning of A/C units and exhaust outlets.
- Loss of fauna habitat.

- The proximity of the dwelling house to the western side boundary.
- The recent dumping of wood chips has increased the natural ground level and may increase the eventual height of the building.

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 Glare From Solar Panels**

A submission has been received raising concerns that glare from proposed solar panels would disturb residents at Nos. 95-97 Copeland Road. It is suggested that non-reflective solar panels be installed.

In addressing the submission, it is noted that solar panels are indicated on the western (side) and northern (rear) portions of the roof. Section 2.41(4) of State Environmental Planning Policy (Transport and Infrastructure) 2021 provides that roof mounted solar panels constitute exempt development in heritage conservation areas when not visible from the adjoining road. As discussed under Section 2.1.3 of this report, the development would not be visible from Copeland Road and the solar panels would be capable of meeting the exempt provisions of the SEPP.

Given that the solar panels are exempt development, the inclusion of the solar panels on the submitted plans are indicative only and are not subject to this application.

#### **5.1.2 Western Setback**

A submission has been received raising concerns that the proximity of the dwelling house to the western side boundary is insufficient.

In addressing this submission, it is noted that the HDCP provides that the minimum side boundary setback is to be 900mm. The proposed dwelling house would be setback between 3m to 4m from the western side boundary and complies with the HDCP in this regard. The proposed dwelling house would be screened by existing and proposed vegetation along the western boundary and it is considered that the proposed development adequately setback from the adjoining residential development.

#### **5.1.3 Recent Earthworks Resulting in Increase in Building Height**

A submission has been received raising concerns that the wood chips have recently been placed onto the site and have increased the natural ground level. Concerns are raised that this may increase the eventual height of the building.

In addressing this submission, Council's Lidar contour maps have confirmed that the site contours have not been altered between 2010 to 2019. Council's assessment of the height of the proposed dwelling house has been formulated using the existing site contours based on a Survey Plan prepared by Stephen Thorne & Associates dated 11 April 2014. Accordingly, the recent earthworks on the site would not result in any increase in the eventual height of the building.

#### **5.1.4 Positioning of A/C Units & Exhaust Outlets**

A submission has been received raising concerns that insufficient detail has been provided on the plans to determine the location of air conditioning units and exhaust outlets.

In addressing this submission, the positioning of air conditioning units and exhaust outlets are not matters for consideration in Council's assessment of the application under Section 4.15 of the *Environmental Planning and Assessment Act 1979*. Notwithstanding, to ensure that noise and

emissions emanating from any air conditioning units and exhaust outlets are in keeping with expectations for residential areas, conditions have been recommended in Schedule 1 in this regard. The conditions include that the level of total continuous noise emanating from operation of air conditioning units (measured for at least 15 minutes) must not exceed the background level by more than 5dB(A) when measured at all property boundaries and that any kitchen exhaust system be designed and installed to effectively prevent air pollution in accordance with the *Protection of the Environment Operations Act 1997*.

## 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 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 construction of a two-storey dwelling house on Lot 121 approved under DA/985/2020 (Torrens title subdivision of two lots into four).

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

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

Having regard to the circumstances of the case, approval 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 with regard to visual bulk, vegetation, overshadowing, heritage, solar access, amenity or privacy.

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

## RESPONSIBLE OFFICER

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The officer responsible for the preparation of this report is Thomas Dales.

# ITEM 2

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 Plan
4.  Survey Plan
5.  Tree Location Plan

File Reference: DA/1379/2021

Document Number: D08410975



**SCHEDULE 1****1. Deferred Commencement**

- a) Pursuant to Section 4.16(3) of the *Environmental Planning and Assessment Act 1979*, this consent does not operate until a registered plan of subdivision from the NSW Land Registry Services (NSW LRS) creating the proposed lot is submitted to Council.
- b) Such information must be submitted within **36 months** of the date of this notice.

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

**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.*

**2. Approved Plans and Supporting Documentation**

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

*Approved Plans*

<b>Plan No.</b>	<b>Plan Title</b>	<b>Drawn by</b>	<b>Dated</b>	<b>Council Reference</b>
03, Rev 07	Site Plan	Fyffe Design	10.3.22	
04, Rev 07	Ground Floor Plan	Fyffe Design	10.3.22	
06, Rev 07	First Floor Plan	Fyffe Design	10.3.22	
08, Rev 07	Roof Plan	Fyffe Design	10.3.22	
09, Rev 07	East, West & North Elevations	Fyffe Design	10.3.22	
10, Rev 07	South Elevation & Sections	Fyffe Design	10.3.22	
12, Rev 07	External Finishes	Fyffe Design	10.3.22	
A3, Rev A	Landscape Plan	Aspect Designs	15.3.22	

*Supporting Documents*

<b>Document Title</b>	<b>Prepared by</b>	<b>Dated</b>	<b>Council Reference</b>
Arboricultural Impact Assessment	Advanced Treescape	8.12.21	D08320953

<b>Document Title</b>	<b>Prepared by</b>	<b>Dated</b>	<b>Council Reference</b>
	Consulting		
BASIX Certificate No. 1251913S	Building & Energy Consultants Australia	25.10.21	D08320949
Waste Management Plan	Doug Sneddon Planning P/L	1.1.21	D08320939

### 3. Removal of Existing Trees

- a) This development consent permits the removal of one tree numbered T40 as identified in the Arboricultural Impact Assessment prepared by Advanced Treescape Consulting dated 8/12/2021 TRIM D08320953.
- b) No consent is granted for the removal of the trees numbered T39 and T41 as these trees contribute to the established landscape amenity of the area/streetscape.

### 4. Amendment of Plans

- a) To comply with Councils requirement in terms of privacy, the approved plans are to be amended as follows:
  - i) The sill height of the window to the first-floor level sitting room on the western elevation is to be increased to a minimum height of 1.5 metres above the finished floor level.
- b) These amended plans must be submitted with the application for the Construction Certificate.

### 5. 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 not be inconsistent with the Development Consent plans.

### REQUIREMENTS PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

### 6. Appointment of a Project Arborist

- a) A project arborist with AQF Level 5 qualifications must be appointed.
- b) Details of the appointed project arborist must be submitted to Council and the PCA for registration with the application for the construction certificate.

### 7. 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.

**8. Contract of Insurance (Residential Building Work)**

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

**9. Notification of Home Building Act 1989 Requirements**

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

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

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

**10. 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™ through [www.sydneywater.com.au](http://www.sydneywater.com.au) under the Building and Development tab.*

**11. Stormwater Drainage**

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

- a) Connected to an existing inter-allotment drainage system.

**12. On Site Stormwater Detention**

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

- a) Have a capacity of not less than 5 cubic metres, and a maximum discharge (when full) of 8 litres per second.
- b) Have a surcharge/inspection grate located directly above the outlet.

- c) Discharge from the detention system must be controlled via 1 metre length of pipe, not less than 50 millimetres diameter or via a stainless plate with sharply drilled orifice bolted over the face of the outlet discharging into a larger diameter pipe capable of carrying the design flow to an approved Council system.
- d) Be in accordance with the stormwater design plans prepared by C & M Consulting Engineers dated Jan 2022.
- e) Not be constructed in a location that would impact upon the visual or recreational amenity of residents.

### 13. Internal Driveway/Vehicular Areas

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

- a) The driveway be a rigid pavement.
- b) The driveway grade must not exceed 25 percent and changes in grade must not exceed 8 percent.

<b>REQUIREMENTS PRIOR TO THE COMMENCEMENT OF ANY WORKS</b>
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### 14. 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.

### 15. 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.*

**16. 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*.

**17. 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.

**18. 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.
- a) The garbage receptacle must have a tight fitting lid and be suitable for the reception of food scraps and papers.
- b) The receptacle lid must be kept closed at all times, other than when garbage is being deposited.
- c) Food scraps must be placed in the garbage receptacle and not in demolition and construction waste bins.

**19. Installation of Tree Protection Measures**

- a) Trees to be retained and numbered T39 and T41 as identified on the Tree Location Plan prepared by must have tree protection measures for the ground, trunk and canopy installed by the project arborist as follows:
  - i) For the duration of demolition works, in accordance with the Tree Protection Plan in the Arboricultural Impact Assessment, prepared by Advanced Treescape Consulting dated 8/12/2021.
  - ii) For the duration of construction works, in accordance with Tree Protection Plan in the Arboricultural Impact Assessment, prepared by Advanced Treescape Consulting dated 8/12/2021.

- b) Tree protection fencing for the trees to be retained must be installed by the engaged AQF 5 project arborist and consist of 1.8m high temporary fencing panels installed in accordance with Australian Standard AS4687-2007 Temporary fencing and hoardings.
- 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) 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.
- f) All tree protection zones must have a layer of wood-chip mulch at a depth of between 150mm and 300mm.
- g) Where wood-chip mulch is permitted by Council instead of tree protection fencing within the tree protection zones, the wood-chip must be covered with a layer of geotextile fabric and rumble boards.

## REQUIREMENTS DURING CONSTRUCTION

### 20. 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.

### 21. 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*.

### 22. 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.

### 23. 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.

### 24. Landfill

- a) Prior to fill material being imported to the site, a Waste Classification Certificate shall be obtained from a suitably qualified environmental consultant confirming the fill wholly consists of Virgin Excavated Natural Material (VENM) as defined in Schedule

1 of the *Protection of the Environment Operations Act 1997* or a material approved under the NSW Environment Protection Authority's Resource Recovery Orders and Exemptions.

- b) The required Waste Classification Certificate must be obtained by the Principal Contractor prior to fill being imported to the site and made available to Council at its request.

**25. Maintenance of Public Footpaths**

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.

**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.

**27. 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.

**28. Waste Management**

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

**29. Prohibited Actions Within the Fenced Tree Protection Zone**

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

- 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

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

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

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

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

### **32. 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) Where the building footprint enters or transects the Tree Protection Zones of trees to be retained sensitive construction techniques in the form of screw pilings or piers, cantilevered or suspended slab design must be employed to create a 100mm clearance above existing soil grade.
- c) Approved excavations within the Tree Protection Zone of trees to be retained not associated with installation of services must be undertaken as follows:
  - i) Excavations for the construction and/or installation of the house/deck/driveway/piers in the Tree Protection Zone of trees to be retained on the approved plans must be supervised by the project arborist for the first 1.000 meter undertaken manually to locate roots and allow for pruning.
- d) To minimise impacts within the Tree Protection Zone (TPZ) of trees retained on the approved plans, the installation of services must be undertaken as follows:
  - i) The AQF 5 project arborist must be present to oversee the installation of any underground services which enter or transect the tree protection.
  - ii) The installation of any underground services which either enter or transect the designated TPZ must be undertaken manually.
  - iii) 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.
- e) Where scaffolding is required, ground protection must be installed beneath the scaffolding in the following order:
  - i) Installation of a 100mm deep layer of woodchip.
  - ii) Installation of geotextile fabric ground covering.
  - iii) Installation of scaffold boarding above the woodchip and geotextile fabric.

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



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

#### REQUIREMENTS PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE

##### 34. Fulfilment of BASIX Commitments

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

##### 35. 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.

##### 36. Retaining Walls

All required retaining walls must be constructed as part of the development.

##### 37. Final Tree Certification

- a) The AQF 5 Project arborist must submit to the Principal Certifying Authority a certificate that includes the following:
- b) All tree protection requirements complied with the as approved tree protection plan for the duration of demolition and/or construction works.
- c) All completed works relating to tree protection and maintenance have been carried out in compliance with the conditions of consent and approved plans.
- d) Dates, times and reasons for all site attendance.
- e) All works undertaken to maintain the health of retained trees.
- f) Details of tree protection zone maintenance for the duration of works.

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

##### 38. Completion of Landscaping

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

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

##### 39. Creation of Easements

The following easements are to be created on the title of the property in accordance with 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.*

#### **40. Works as Executed Plan**

A works-as-executed plan(s) must be prepared by a registered surveyor and submitted to Council for the completed on-site detention system.

#### **41. 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.

**- 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). (HDGP 1B.6.1.c).*

### **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.

### **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)

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

**3 DA/164/2022 - CONSTRUCTION OF A DWELLING HOUSE AND CABANA - 19 BOYD AVENUE, WEST PENNANT HILLS**

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**EXECUTIVE SUMMARY**

**DA No:** DA/164/2022 (Lodged on 18 February 2022)

**Description:** Construction of a dwelling house and cabana

**Property:** Lot 6 DP 582886, No. 19 Boyd Avenue, West Pennant Hills

**Applicant:** Clarendon Homes Pty Ltd

**Owner:** Mr Thuan Buu Quach and Ms Thi Thanh Thao Le

**Estimated Value:** \$906,852

**Ward:** C Ward

- The application involves the construction of a dwelling house and cabana.
- The proposal generally complies with the Hornsby Local Environmental Plan 2013 and the Hornsby Development Control Plan 2013.
- A total of 13 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/164/2022 for the construction of a dwelling house and cabana at Lot 6, DP 582886, No. 19 Boyd Avenue, West Pennant Hills be approved subject to the conditions of consent detailed in Schedule 1 of LPP Report No. LPP38/22.

## BACKGROUND

On 15 March 2022, Council's Tree Management Team requested a re-design of the development/ additional information to reduce impacts to tree Nos. T1 and T4.

On 7 April 2022, the application was presented to the Development Advisory Panel as there were more than five submissions.

On 16 May 2022, the applicant submitted amended plans addressing the tree concerns.

On 16 May 2022, the amended plans were notified until the 7 June 2022.

## SITE

The 886m<sup>2</sup> site is located on the north-western side of Boyd Ave, West Pennant Hills and contains a dwelling house, shed, carport and swimming pool.

The site experiences 2 metres of fall towards the rear western corner.

The site is not bushfire prone and is not flood prone. The site is burdened by an easement for support 2.4 wide and variable width.

The adjoining sites to the south-west at No. 17 Boyd Avenue and to the north-west No. 1 Bishop Avenue contain single storey dwelling houses. Boyd Avenue is a local street with a low-density streetscape largely comprising a mixture of single and two storey residential dwellings. Within close proximity to the subject site is West Pennant Hills Public School and Shopping Village.

The site is located approximately 2.5km to Pennant Hills Station.

## PROPOSAL

The application proposes the construction of a dwelling house and cabana.

The ground floor would comprise a two-car garage, porch, entry, study/guest room, home theatre, family, meals, kitchen, walk in pantry, laundry and alfresco.

Four bedrooms, an ensuite, three walk in robes, bathroom, balcony and leisure room.

A complying development certificate, CDP/115/2022 has been approved for the demolition of the dwelling house, shed and swimming pool.

Eight trees would be removed by the development.

## ASSESSMENT

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

### 1. STRATEGIC CONTEXT

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

The Greater Sydney Region Plan - A Metropolis of Three Cities has been prepared by the NSW State Government to guide land use planning decisions 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**

The site is zoned R2 Low density residential pursuant to the Land Use Table of the HLEP. The objectives of the R2 zone are:

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

The proposed development is defined as a ‘*dwelling house*’ and is permissible in the zone with Council’s consent. It is considered that the proposed development would provide for the growing housing needs of the community and meets the objectives of the R2 Low density residential zone.

#### **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 dwelling house would have a maximum height of 8.493m 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 in the vicinity of a heritage listed item and is not located in a heritage conservation area. Accordingly, no further assessment regarding heritage is necessary.

#### **2.1.4 Earthworks**

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

The development would require excavation of a maximum depth of 850mm beneath the south-eastern corner of the proposed dwelling house and a maximum fill of 1.3m at the north-western corner of the dwelling. The proposed earthworks are a consequence of the natural contours of the land to provide for a level building platform and open space suitable for residential development.

Conditions have been recommended requiring that prior to fill material being imported to the site, a Waste Classification Certificate shall be obtained from a suitably qualified environmental consultant confirming the fill wholly consists of Virgin Excavated Natural Material (VENM) as defined in Schedule 1 of the *Protection of the Environment Operations Act 1997*.

Subject to compliance with the recommended conditions, the proposal is considered acceptable in this regard.

## 2.2 Adopted 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 18 February 2022, this development application is considered to have been made prior to the commencement date of the SEPPs. The existing legislation in force at time of lodgement of the development application, prevails to the extent of any inconsistency.

Notwithstanding, the approval of the development application would not adversely affect the objectives of the newly adopted SEPPs and is considered to be consistent with this policy.

## 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.

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 SEPP 55 is not required.

#### **2.4 State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004**

The application has been assessed against the requirements of State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004. The proposal includes a BASIX Certificate for the proposed dwelling house, which is considered to be satisfactory. A condition is recommended requiring the recommendations of the BASIX certificate be complied with.

#### **2.5 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, Clause 9(2) 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 and objectives for tree preservation.

The application has been assessed against the requirements of the Vegetation SEPP and it has been determined that the proposal would meet the objectives of the Vegetation SEPP. This matter is addressed in Section 3.3.1 of this report.

#### **2.6 State Regional Environmental Policy 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 requirement of the Policy.

#### **2.7 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.



## 2.8 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			
Control	Proposal	Requirement	Complies
Site Area	886m <sup>2</sup>	N/A	N/A
Building Height	8.493m	8.5m	Yes
No. storeys	2	max. 2 + attic	Yes
Site Coverage	28%	50%	Yes
Floor Area			
- <i>Dwelling house</i>	376m <sup>2</sup>	380m <sup>2</sup>	Yes
- <i>Outbuilding</i>	25m <sup>2</sup>	60m <sup>2</sup>	Yes
Setbacks			
- <i>Front</i>	8.5m	6m	Yes
- <i>Secondary frontage</i>			
<i>Ground floor</i>	3m	900mm	Yes
<i>First floor</i>	3m	1.5m	Yes
- <i>Side</i>			
<i>Ground floor (Cabana)</i>	2m	900mm	Yes
<i>First floor</i>	4m	1.5m	Yes
- <i>Rear</i>			
<i>Ground floor (Cabana)</i>	1m	900mm	Yes
<i>First floor</i>	15m	8m	Yes
Landscaped Area (% of lot size)	57%	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 requirements within Section 3.1 of the HDCP. A discussion on compliance with relevant desired outcomes and Sections 1 and 9 of the HDCP is provided below.

#### **2.8.1 Scale**

Submissions has been received raising concerns with the bulk and scale of the dwelling house and raising concerns with regard to the size of the proposed cabana. In response to these submissions, it is noted that the dwelling house complies with floor area and site coverage controls within Part 3.1.1 Scale of the HDCP and that the cabana would comply with the 60m<sup>2</sup> floor area prescriptive measure outlined in the HDCP.

#### **2.8.2 Height**

A submission has been received raising concerns with regard to the height and two storey design of the development. In response to this submission, it is noted that the dwelling house would be less than 8.5 metres in height and would comply with the height controls of the HDCP. Furthermore, two storey dwelling houses are permissible in the R2 zone.

#### **2.8.3 Landscaping**

A submission was received raising concerns with regard to lack of landscaping. It is noted that the proposal would comply with the requirements of Part 3.1.3 Landscaping in the HDCP.

#### **2.8.4 Sunlight Access**

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

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

An assessment of the shadow diagrams provided by the applicant illustrate that the subject site and the south-western adjacent neighbour, No. 17 Boyd Avenue would still receive at least 3 hours of unobstructed sunlight access to 50 per cent of their private open space between 9am and 3pm on the day of the winter solstice.

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

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

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

#### **2.8.5 Traffic and Parking**

A submission has been received raising concerns with regard to additional on street parking and potential of a second driveway on Bishop Avenue. It is noted that the dwelling house garage would

provide 2 car parking spaces and the proposal would comply with Part 3.1.7 Vehicle Access and Parking. Furthermore, the proposed development does not include a second vehicular access/driveway on Bishop Avenue.

### **2.8.6 Stormwater Management**

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

A submission has been received raising concerns with respect to stormwater runoff and flooding impacting the adjoining allotments. The proposal includes a sediment control fence which will minimise runoff. It is noted that a stormwater plan has been submitted with the proposal by a suitably qualified stormwater consultant and is considered acceptable.

The plans demonstrate that the stormwater from the roofed and driveway will be directed to Bishop Avenue utilising a combination of gravity and charged stormwater pipelines. The plans have been prepared in accordance with AUS-SPEC Specification and in accordance with the Plumbing Code. Furthermore, the proposed discharge point in Bishop Avenue is an acceptable discharge point. In this regard, it should be noted that Councils flood mapping indicates overland flow issues to the rear of properties in Bishop Avenue and this proposal will alleviate (but not eliminate) those overland flows. It should also be noted that this application will increase the impermeable area of the site by approximately 60m<sup>2</sup> which will have a negligible increase in stormwater flows within Bishop Avenue.

The application proposes minimal cut and/or fill works and the dwelling house has been designed with respect to the existing landform characteristics of the site. It is not expected that the proposal would significantly alter any existing ground or surface water flows.

The proposal meets the desired outcomes of Part1C.1.2 Stormwater Management and is considered acceptable.

### **2.9 Section 7.12 Contributions Plan**

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

## **3. ENVIRONMENTAL IMPACTS**

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

### **3.1 Natural Environment**

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

The application has been supported by an Arboricultural Impact Assessment (AIA) prepared by Malcolm Bruce dated 13 February 2022. Council's Tree Management Team have reviewed the submitted AIA and marked up a Tree Protection Map dated 24/5/2022 to address the trees to be retained.

The application proposes the removal of 8 trees numbered T2 (*Citrus spp*), T3 (*Citrus spp*), T5 (*Melaleuca Citrina*), T6 (*Washingtonia robusta*), T7 (*Washingtonia robusta*), T8 (*Macrozamia moorei*), T9 (*Citrus spp*) and T10 (*Camellia japonica*) to facilitate the construction of the dwelling house.

Trees numbered T2, T3 and T9 are Citrus spp and are considered to be exempt trees. T5 is considered to have medium retention value. T6 and T7 are considered to have high retention value. T8 and T10 are considered to have low retention value. 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.

Council's assessment of the proposal included a detailed examination of the existing trees on site and ascertained that the trees numbered T1 (*Macadamia teraphylla*) and T4 (*Barchychiton rupestris*) are worthy of retention.

To offset the loss of trees as a result of the dwelling construction, a condition of consent is recommended requiring the replacement planting of 4 canopy trees within the site.

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

### **3.1.2 Stormwater Management**

The application proposes to drain the stormwater collected by the proposed development will be directed to Bishop Avenue utilising a combination of gravity and charged stormwater pipelines.

Council's stormwater management assessment raises no concerns to the proposed method of stormwater disposal, subject to the recommended conditions in Schedule 1.

## **3.2 Built Environment**

### **3.2.1 Built Form**

The proposed built form is consistent with the dwellings on adjoining properties in terms of height, design and materials.

### **3.2.2 Traffic**

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

## **3.3 Social Impacts**

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

## **3.4 Economic Impacts**

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

## **4. SITE SUITABILITY**

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

The subject site has not been identified as bushfire prone or flood prone land and is not burdened by any easements or restrictions. The proposal provides a dwelling design that is appropriate for the locality.

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


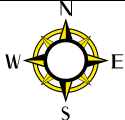
Section 4.15(1)(d) of the Act requires Council to consider “any submissions made in accordance with this Act”.

### 5.1 Community Consultation

The proposed development was placed on public exhibition and was notified twice to adjoining and nearby landowners between 23 February and 17 March 2022 and 16 May and 7 June 2022 in accordance with requirements of the Hornsby Community Engagement Plan. During this period, Council received 13 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	
1 SUBMISSIONS RECEIVED OUT OF MAP RANGE				

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

- Unacceptable traffic and parking on local streets
- Unacceptable overshadowing of adjoining properties
- The removal of a significant trees and lack of landscaping
- Development that is excessive in bulk and scale and not in keeping with the existing character of the area
- No notification letters
- Stormwater issues
- The cabana would be used as a second dwelling and is excessive in size
- Pool Pump noise
- Inaccuracies in AIA and shadow diagrams
- Inaccurate ground levels at the rear
- Heat sinks created
- Air conditioning noise
- Use of 1A Bishop Avenue as an alternative address

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 Notification Process**

A submission has been received raising concerns with the notification process. It is noted that notification letters were sent to all adjoining properties including No. 17 Boyd Avenue on 23 February 2022. The yellow notification sign was erected at the property from the 2 March 2022 for a period of 14 days in accordance with the requirements of the Hornsby Community Engagement Plan.

#### **5.1.2 House Numbering**

A submission has been received raising concerns with regard to the applicant using the alternative street address of 1A Bishop Avenue. All corner properties have alternative addresses as detailed in Council's mapping system. To use an alternative mapping system an owner is required to apply to Council for a change of address. In this regard the applicant has not applied for a change of address. Furthermore, the proposed plans show vehicular and pedestrian access from Boyd Avenue. In this regard the Council policy requires that the address is from Boyd Avenue.

#### **5.1.3 Out of character with the current neighbourhood**

A submission has been received raising concerns with regard to the dwelling house being out of character with the current neighbourhood. It is noted that the proposed dwelling house complies with the two storey height limit and design details outlined in HDCP.

#### **5.1.4 Use of Cabana for secondary dwelling**

A submission has been received raising concerns with regard to the potential use of the cabana as a second dwelling. An operational condition is recommended in Schedule 1 of this report that the consent only permits only permits a principal dwelling on this site.

#### **5.1.5 Pool Pump Noise**

A submission has been received with regard to the location of the pool pump house. To address this submission a condition has been added stating that the pool pump must be housed in a soundproofed structure and sound from the equipment must not exceed 5(dBA) above ambient noise levels at any residential property boundary.

#### **5.1.6 Radiation from Pool Pump**

A submission has been received with regard to the radiation from the pool pump. In response to this concern, it is noted that this is not a matter listed for consideration under Section 4.15 of the *Environmental Planning and Assessment Act, 1979* and that Council does not have controls relating to the radiation from a pool pump under any circumstances.

#### **5.1.7 Inaccuracies in Plans**

A submission has been received raising concerns with regard to inaccuracies in the Arboricultural Impact Assessment and Shadow Diagrams. It is noted that Council's Tree Management Team has carried out a site inspection and all trees located on site have been considered in the submitted Arboricultural Impact Assessment. The submitted shadow diagram has been submitted in accordance with Council's DA submission guideline and is considered to be acceptable.

#### **5.1.8 Ground levels**

A submission has been received raising concerns with the ground level at the rear of the property state that the *"area has been filled with rubbish, concrete and the true ground level is at the base of the perimeter fences"*. It is noted that a survey plan has been submitted by a suitably qualified surveyor indicating the existing ground level.

#### **5.1.9 Heat sink**

A submission has been received raising concerns with the extent of hard surfaces and creating heat sinks. It is noted that a BASIX Certificate outlining the building sustainability of the dwelling house and meets the requirements of the State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004.

#### **5.1.10 Air conditioning noise**

A submission has been received raising concern with the location of the air conditioning unit. It is noted that the air conditioning unit can be installed without the consent of Council under State Environmental Planning Policy (Exempt and Complying Development Codes) 2008, where the controls include requiring the location of the unit to be in a similar location to that shown on the plans, being behind the building line, 450mm from the boundary and no greater than 1.8m in height. The proposed location is deemed appropriate, and a boundary fence will screen the unit and assist with noise mitigation. The *Protection of the Environment Operations Act 1997 (POEO Act)* deals with noise and if there is an issue once in operation, contrary to the noise restrictions and maximum levels, then Council can investigate the matter accordingly.

#### **5.1.11 Car Safety Issues**

A submission has been received raising concerns with the location of the dwelling house on a corner block and visibility issues when driving around the corner resulting in accidents. It is noted that the dwelling house would comply with the Part 3.1.2 Setbacks of HDCP.

#### **5.1.12 Children's Health**

A submission has been received raising concerns with regard to the lack of landscaping and the impact it will have on children's health. It is noted that this is not a matter listed for consideration under Section 4.15 of the *Environmental Planning and Assessment Act 1979*.

#### **5.1.13 Two Development Applications**

A submission has been received raising concerns with regard to the submission of a separate development application for the proposed pool. Stating that "*It would seem the DA's have been staged to allow the combined effects of the entire development to be manipulated by splitting the consideration of the effects*". It is noted that both applications will be assessed against the relevant planning legislation.

### **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 construction of a dwelling house.

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

Conditions are recommended to minimise disruption to residential amenity.

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 with regard to visual bulk, overshadowing, solar access, amenity or privacy.

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





#### RESPONSIBLE OFFICER

The officer responsible for the preparation of this report is Charley Wells.

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.  Stormwater Plans
4.  Tree Protection Map

File Reference: DA/164/2022  
Document Number: D08426124

**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, 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.*

**ITEM 3****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>
Sheet 2	Site Plan	Clarendon Homes	18/08/2021	
Sheet 3	Ground Floor Plan	Clarendon Homes	18/08/2021	
Sheet 4	First Floor Plan	Clarendon Homes	18/08/2021	
Sheet 5	South East and North East Elevation	Clarendon Homes	18/08/2021	
Sheet 6	North West and South West	Clarendon Homes	18/08/2021	
Sheet 7	Section A-Am Stair Elevation, Home Theatre Detail and Driveway Gradient Profile	Clarendon Homes	18/08/2021	
Sheet 8	Cabana Floor Plan, Elevations and Section A-A	Clarendon Homes	18/08/2021	

*Supporting Documentation*

<b>Document Title</b>	<b>Prepared by</b>	<b>Dated</b>	<b>Council Reference</b>
BAISX Certificate No. 1242480S_03	Frys Energywise	19/01/2022	D08354363
Waste Management Plan	Clarendon Homes	24/01/2022	D08354368
Stormwater Plans Sheet 1 and 2	Ibrahim Stormwater Consultants	13/01/2022	D08354372
Soil and Water Management Plan, Erosion and Sediment Control Plan	Clarendon Homes	18/08/2021	D08407473
Tree Protection Map	HSC Tree Management Team	24/05/2022	D08413562

**2. Amendment of Plans**

- a) The approved plans are to be amended as follows:
  - i) The stormwater plans prepared by Ibrahim Stormwater Consultants must be amended to indicate the cabana in the same size and location as indicated on the approved site plan.
- b) These amended plans must be submitted with the application for the Construction Certificate.

**3. Removal of Trees**

- a) This development consent permits the removal of trees numbered 2, 3, 5, 6, 7, 8, 9 and 10 as identified in the Tree Protection Map prepared by HSC Tree Management Team, dated 24/5/2022.
- b) No consent is granted for the removal of trees numbered 1, 4 and 11 as these trees contribute to the established landscape amenity of the area/streetscape.

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

**4. Tree Pruning**

This development consent does not permit the pruning of any trees.

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

**5. 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.

**6. 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*, **\$9,068.50** must be paid towards the provision, extension or augmentation of public amenities or public services, based on development costs of **\$906,852**.
- b) The value of this contribution is current as of 7 June 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: 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

### 7. 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*.

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

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

**9. Notification of Home Building Act 1989 Requirements**

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

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

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

**10. Sydney Water**

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.*

**11. Stormwater Drainage**

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

- a) Connected directly to kerb line in Bishop Avenue generally in accordance with the stormwater management plans prepared by Ibrahim Consulting Engineers.
- b) A Road Opening Permit is to be obtained from Hornsby Shire Council for all works within Bishop Avenue.

**12. Internal Driveway/Vehicular Areas**

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

- a) The driveway be a rigid pavement.
- b) The driveway grade must not exceed 25 percent and changes in grade must not exceed 8 percent.

**13. Appointment of a Project Arborist**

- a) A project arborist with AQF Level 5 qualifications must be appointed.
- b) Details of the appointed project arborist must be submitted to Council and the PCA for registration with the application for the construction certificate.

<b>REQUIREMENTS PRIOR TO THE COMMENCEMENT OF ANY WORKS</b>
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**14. 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.

**15. 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.*

**16. 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*.

**17. Erosion and Sediment Control**

- a) 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.
- b) 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.*

#### 18. Installation of Tree Protection Measures

- a) Trees to be retained and numbered 1, 4 and 11 as identified on the Tree Protection Map dated 24/5/2022 prepared by HSC Tree Management Team must have tree protection measures for the ground, trunk and canopy installed by the project arborist as follows:
  - i) For the duration of demolition works, in accordance with the Tree Protection Map prepared by HSC Tree Management Team, dated 24/5/2022.
  - ii) For the duration of construction works, in accordance with Tree Protection Map prepared by HSC Tree Management Team, dated 24/5/2022.
- b) Tree protection fencing for the trees to be retained numbered 1, 4 and 11 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
4	5.2m and 2.6 m as indicated on the Tree Protection Map prepared by HSC Tree Management Team, dated 24/5/2022
11	From the edge of the public path and to the extent of the canopy as indicated on the Tree Protection Map prepared by HSC Tree Management Team, dated 24/5/2022

- e) Tree crown protection measures are required and must be installed by the AQF 5 project arborist.
- f) The circumference of the trunk of tree numbered 11 must be wrapped in hessian material to provide cushioning for the installation of timber planks.
- g) Timber planks (50 x100mm) must be spaced at 100mm intervals and must be attached using adjustable ratchet straps.
- h) All tree protection zones must have a layer of wood-chip mulch at a depth of between 150mm and 300mm.

- i) Where wood-chip mulch is permitted by Council instead of tree protection fencing within the tree protection zones, the wood-chip must be covered with a layer of geotextile fabric and rumble boards.

#### **19. 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.*

#### **20. 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.
- a) The garbage receptacle must have a tight-fitting lid and be suitable for the reception of food scraps and papers.
- b) The receptacle lid must be kept closed at all times, other than when garbage is being deposited.
- c) Food scraps must be placed in the garbage receptacle and not in demolition and construction waste bins.

### **REQUIREMENTS DURING CONSTRUCTION**

#### **21. Construction Work Hours**

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

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

#### **22. 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*.

#### **23. 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.

#### **24. 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.

#### **25. 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 and the like have been correctly positioned on the site.
  - ii) The finished floor level(s) are in accordance with the approved plans.

**26. Waste Management**

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

**27. Landfill**

- a) Prior to fill material being imported to the site, a Waste Classification Certificate shall be obtained from a suitably qualified environmental consultant confirming the fill wholly consists of Virgin Excavated Natural Material (VENM) as defined in Schedule 1 of the *Protection of the Environment Operations Act 1997* or a material approved under the NSW Environment Protection Authority's Resource Recovery Orders and Exemptions.
- b) The required Waste Classification Certificate must be obtained by the Principal Contractor prior to fill being imported to the site and made available to Council at its request.

**28. Excavated Material**

- a) 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.
- b) 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.

**29. Prohibited actions within the fenced tree protection zone**

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

- 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.

**30. Maintaining Tree Protection Measures**

Tree Protection Measures must be maintained by the project arborist in accordance with Condition No. 18 of this consent for the duration of works.

**31. Approved Works within Tree Protection Zone incursions**

- a) Where tree root pruning is required for the installation of 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 30 mm.
- b) No changes of grade within the Tree Protection Zone of trees to be retained numbered 1, 4 and 11 on the approved plans, are permitted.
  - i) The installation of any underground services which either enter or transect the designated TPZ must be undertaken manually.
  - ii) 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.
- c) Where scaffolding is required, ground protection must be installed beneath the scaffolding in the following order:
  - i) Installation of a 100mm deep layer of woodchip.
  - ii) Installation of geotextile fabric ground covering.
  - iii) Installation of scaffold boarding above the woodchip and geotextile fabric.

**32. 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.

**33. 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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**34. Fulfilment of BASIX Commitments**

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

**35. 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.

### 36. Replacement Tree Requirements

- a) The trees approved for removal under this consent, being trees numbered 2, 3, 5, 6, 7, 8, 9 and 10 must be offset through replacement planting of a minimum of 4 trees.

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>

- b) 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.

### 37. Final Certification

- a) The AQF 5 Project arborist must submit to the Principal Certifying Authority a certificate that includes the following:
- b) All tree protection requirements complied with as detailed on the approved Tree Protection Map prepared by HSC Tree Management Team, dated 24/5/2022 for the duration of demolition and/or construction works.
- c) All completed works relating to tree protection and maintenance have been carried out in compliance with the conditions of consent and approved plans.
- d) Dates, times and reasons for all site attendance.
- e) All works undertaken to maintain the health of retained trees.
- f) Details of tree protection zone maintenance for the duration of works.

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

**- 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 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 Preservation in Hornsby Shire**

Hornsby Development Control Plan 2013 Tree and Vegetation Preservation provisions have been developed under Council's authorities contained in *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017* 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).*

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).*

**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.

**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.

**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 1800 810 443.