

5 August 2022

P S Graham & Associates  
PO Box 263  
BEECROFT NSW 2119

Dear Sir / Madam,

Request for additional information - Development Application No. DA/1146/2020 – Demolition of structures and the Torrens title subdivision of one lot into ten including a voluntary planning agreement for road acquisition - Lot 18 DP 16975, No. 90-92 Franklin Road, CHERRYBROOK NSW 2126

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Council is writing to inform you of the progress of your development application.

As discussed in the meeting at Council's administration building on 5 August 2022, Council's officers have undertaken a detailed assessment of your application and would be further assisted by you providing the following additional information:

**1. Amended Subdivision Plan**

Council's environmental review of the subdivision plan identifies that the proposed development would have an unacceptable impact on vegetation, particularly vegetation that has been identified as being Cumberland Plain Woodland in the centre-portion of the site.

Council considers that insufficient regard has been taken in regards to preservation of vegetation on site and as such, it is recommended that an amended subdivision plan is prepared that minimises impacts to vegetation on the site.

In this regard it is recommended that the applicant's ecologists meet with Council officers to discuss the proposal, and potential options for the reduction of impacts on significant on-site vegetation. To facilitate this discussion, Council's initial assessment is attached (**Attachment 1**) to this correspondence for preliminary review prior to a future meeting taking place.

Following the meeting described above, it is requested that amended subdivision plans and documentation be prepared. A full list of documentation that will require amendment will be provided following the conclusion of the aforementioned meeting.

**2. Road Design**

As discussed in the meeting with Council officers on 5 August 2022, Council has undertaken a full design review of potential road widening options for John and Franklin Roads. This review has identified two preferred design options, which are identified as Option 1 and 2.

Options 1 and 2 would involve widening John Road reserve (from 10m to 18m) and Franklin Road reserve (from 15m to 15.5m or 18.5m) to meet current road design standards. The primary difference between the two concepts is option 1 would include a bus bay outside No.90-92 Franklin Road (i.e. wider 18.5 m road reserve) that would allow northbound motorists to pass a stopped bus.

Option 1 has superior road safety impacts and would improve traffic flows, however it would require acquisition of additional land beyond the currently identified portion for road widening. The additional land required to facilitate the construction of Option 1 is minimal, with the exact area to be identified upon detailed survey / design work being undertaken.

Conceptual plans are provided for both Option 1 and 2 are attached to this document (**Attachment 2**).

Council would appreciate full consideration of design Options 1 and 2, with the identification from the applicant as to the preferred option to progress, including detailed reasoning as to why this option has been chosen. Further Council feedback can be provided upon request.

### **3. Initial Feedback**

Council would appreciate initial feedback from the applicant as to whether they would be willing to undertake additional work on the amended subdivision plan and road design as described above, so that this initial feedback can be reported to the elected Councillors for consideration at a future Councillor workshop meeting. It is requested that this feedback be provided **within 7 days** of the date of this written correspondence, so that this process can run concurrently to the preparation of amended documentation.

If you would like to discuss any aspect of this matter please do not hesitate to contact me on 9847 6799.

Yours faithfully,

Benjamin Jones  
Assessment Officer  
Planning and Compliance Division

## **Attachment 1 – Initial Environmental Review**

### **Background**

The site contains remnant vegetation mapped by ELA (2017) as described by Smith & Smith (2008) as Cumberland Plain Woodland (CPW), a Critically Endangered Ecological Community (CEEC) listed under the *Commonwealth Environmental Protection and Biodiversity Conservation Act 1999* and the *NSW Biodiversity Conservation Act 2016*. The vegetation to the west of the property is dominated by remnant canopy trees, with a mixed native/exotic grass understory. The eastern boundary contains an existing dwelling and landscaping. A Pre-lodgement application was lodged under PL/87/2019 which identified that Natural Resources was unlikely to support the proposal as the property contains the largest patch of remnant Cumberland Plain Woodland in Hornsby Shire LGA. The property is not mapped as bushfire prone land.

The proposal involves the subdivision of one lot into ten, one of which is proposed to be acquired by Hornsby Council for the widening of John Road. The design involves full tree and vegetation removal within the proposed road reserve and some vegetation removal throughout the remaining nine lots to facilitate future dwellings.

### **Biodiversity Offsets Scheme**

The NSW *Biodiversity Conservation Regulation 2017* sets out thresholds for when the Biodiversity Offsets Scheme (BOS) would be triggered. The application has submitted information that addresses the following triggers for the BOS:

Biodiversity Values Map	Not triggered
Area threshold	Not triggered
Likely to significantly affect threatened species	Triggered

A Biodiversity Development Assessment Report has been provided, including the determination that the removal of 0.16ha of Blue Gum High Forest, as a Serious and Irreversible Impact Entity, will generate 3 ecosystem credits under the Biodiversity Offset Scheme. The removal of 0.07ha of Blackbutt Gully Forest will generate 1 ecosystem credit.

### **Impacts of the proposal**

The application includes a Plan of Subdivision, Biodiversity Development Assessment Report (BDAR), Arborist Report, Sediment and Erosion Plan and Drainage Plan.

The Biodiversity Development Assessment Report provided by Cumberland Ecology (dated 10/12/20, D08075117) has identified that 0.16ha of Blue Gum High Forest (PCT 1237) vegetation and 0.07ha of Blackbutt Gully Forest (PCT 1776) is to be removed to facilitate the development. The report argues that Blue Gum High Forest is the most suitable PCT due to the higher elevation and rainfall experienced in the Hornsby LGA, compared to the lower elevation and rainfall typically associated with CPW. Both BGHF and CPW are listed as Critically Endangered Ecological Communities and both

are derived from shale soils. No threatened species or habitat features were identified within the property in the report.

The Arborist Report provided by Tree Wise Men (dated 22/09/20, D08075116) identified 15 trees for removal and another 31 located within the proposed road reserve (lot 1). Of the 15 trees proposed for removal, 8 are identified to be *Eucalyptus tereticornis*, a diagnostic species of the Cumberland Plain Woodland vegetation community. Within the lot identified for road-widening, a total of 19 canopy trees proposed for removal are locally indigenous to the Hornsby LGA. This includes 6 *Eucalyptus tereticornis*, and 2 *Eucalyptus saligna*. The Tree Protection Plan provided on pages 39 and 40 identify the building envelopes for future dwellings, indicating the encroachments which will be experienced by trees to be retained. Many of the trees will experience major encroachment for road-widening, footpaths, building envelopes, driveways and services construction.

The Sediment and Erosion Plan provided by P.S. Graham (dated 22/05/20, D08075122) identifies the location of kerb inlet geotextile logs however the location of sediment fences and earthen mounds are not clearly identified. The Subdivision Works and Drainage Plan provided by P.S. Graham (dated 22/05/20, D08075097) identifies the location of stormwater pits for each lot within the tree protection zones of trees to be retained. Additional drainage infrastructure is proposed to the rear of lots 8, 9 and 10 however this area is currently cleared of vegetation. The location of pits along John Road relies on the acquisition and clearing of vegetation within lot 1.

### Discussion of impacts

Due to the presence of shale soils and known populations of BGHF in the surrounding area, it is not unreasonable of the ecologist to determine that the vegetation could comprise BGHF. It is considered however that the dominance of CPW species, particularly *Eucalyptus tereticornis*, justifies the presence of CPW on the site. Both communities are shale derived, but an assessment of the species identified in the BDAR floristic survey plots identifies that only four species within the two plots are diagnostic species of BGHF (*Dianella caerulea*, *Elaeocarpus reticulatus*, *Eucalyptus saligna*, *Oplismenus aemulus*). The remaining native species are characteristic of CPW, which aligns with the strong presence of *Eucalyptus tereticornis*. While the BDAR lists PCT 1237 (BGHF), the development has not been designed to retain all BGHF species. Two *Eucalyptus saligna* are proposed for removal to facilitate the works within lot 1 for road widening. Taking into consideration that the PCT is incorrect, the removal of 14 *Eucalyptus tereticornis* will have a significant impact on the integrity of the CPW vegetation community.

In accordance with Section 1C.1.1 Biodiversity of the HDCP 2013 and the *Biodiversity Conservation Act 2016*, development must demonstrate avoidance and minimisation of impacts to biodiversity. While the proposal has been placed to reduce vegetation loss, 13 trees of 'A' retention value experience encroachments, 9 of which are *Eucalyptus tereticornis*. Of 62 trees of 'B' retention value, 31 will experience encroachments. The significant number of trees experiencing encroachment raises the concern that additional impacts will be experienced during future dwelling construction. Of particular concern are the trees located in proposed lots 2, 3, 4, 5 and 6. It is considered that while strict building envelopes have been provided, these will

not be followed in the future leading to additional tree loss within a CEEC as a result. While an effort to minimise impacts to existing vegetation is noted, the density of subdivision is determined to be too high for the significance of vegetation within the site.

The HDCP 2013 also identifies in table 1C.1.1(a) that development should incorporate a 20-metre buffer to endangered ecological communities and a 10-metre buffer to groups of remnant indigenous trees. This buffer is proposed to minimise the impact of development on existing communities of vegetation to ensure their longevity and protection. The placement of dwellings amongst a CEEC does not demonstrate consideration of this principle.

Pre-lodgement advice recommended that a Vegetation Management Plan (VMP) be prepared for the property to ensure that CPW vegetation is conserved. As the subdivision layout proposes residential lots within the mapped area of CPW, a VMP is less likely to be successful in maintaining the biodiversity values of the community. While a BDAR has been provided in accordance with the requirements of the Biodiversity Offset Scheme, the Hornsby Council Green Offsets Code requires that vegetation removal is offset locally to ensure that Hornsby LGA maintains vegetation cover on private land. There is some opportunity for future applications to replace lost vegetation in the shrub and ground layers however the constrained lots 2, 3, 4, 5 and 6 will not be capable of facilitating replacement canopy planting. As the proposal does not provide an offset for the loss of 15 trees within private land and 31 trees within the proposed road reserve, the development will result in a net loss of biodiversity for the site.

Council has assessed this Application and considers that it cannot be supported due to non-compliance with the Hornsby Development Control Plan 2013

### **Recommendation:**

Council have assessed the application and does not support the proposal for the following reasons

- The property contains one of the two remnant patches of Cumberland Plain Woodland in the Hornsby LGA
- The proposal will result in the loss of 0.16ha of Cumberland Plain Woodland, a Critically Endangered Ecological Community under NSW and Commonwealth legislation. The community is also listed as a Serious and Irreversible Impact entity under the Biodiversity Offset Scheme.
- The proposal has not demonstrated consideration of Section 1C.1.1 Biodiversity of the HDCP 2013
  - 1B.6.1 Tree Preservation – the development will result in the removal of 46 canopy trees with major encroachments into the TPZ of trees to be retained
  - 1C.1.1 Biodiversity – the development has not demonstrated avoidance of impacts or provided a 10-20 metre buffer to a Critically Endangered Ecological Community
- The development will result in cumulative impacts on vegetation to be retained, resulting in a net loss of biodiversity.

- The proposal has not proposed adequate measures to protect the Cumberland Plain Woodland vegetation to be retained within the lots

## **Attachment 2 - Concept Options 1 and 2**







