

- 4      22 HENRY ST, RYDE. Lot 2 DP 602362. Development Application for subdivision of the site (Cudal Reserve) into two lots. Lot 21 is proposed to be dedicated to Council for use as open space. Lot 22 will be used for 'residential purposes'. LDA2010/0078.**

---

**Report prepared by:** Senior Town Planner

**Report approved by:** Manager Assessment; Group Manager Environment & Planning

**Report dated:** 2/08/2010

**File Number:** GRP/10/4/001/3 - BP10/443

---

## **1. Report Summary**

**Applicant:** Sydney Water Corporation.

**Owner:** Sydney Water Corporation.

**Date lodged:** 26 February 2010.

This report considers a proposal to subdivide Cudal Reserve into 2 allotments of land, Lot 21 measuring 3,742m<sup>2</sup> and Lot 22 being 4,173m<sup>2</sup>. Lot 21 is to be dedicated to Council for open space purposes, while Lot 22 is to be used for future residential purposes. In amended plans submitted to Council on 21 June 2010, a right-of-way has also been provided over Lot 22 to permit continued access to Lot 21 from Arnold Street.

Cudal Reserve is currently an area of open space owned by Sydney Water and used as a drainage reserve.

The development application has been lodged by Sydney Water Corporation who is a Crown Authority. In accordance with the provisions of Part 4, Division 4 of the Environmental Planning and Assessment Act, 1979, and in particular s.89, Council as the consent authority can not refuse its consent to a development application lodged by the Crown, nor can conditions of consent be imposed except with the approval of the Minister.

The development application has been lodged with a Site Compatibility Certificate issued by the Director-General of the Department of Planning, which permits the use of Lot 22 for 'residential purposes'. In this case the residential purposes that are ordinarily consistent with the existing surrounding zoning provisions apply, which in this case is R2 Low Density Residential.

Also submitted with the development application is an "Indicative Development Outcome" plan that shows a road leading from Arnold Street and the further potential subdivision of Lot 22 into 5 single residential allotments each improved with a two-storey dwelling house. This is, however, only an indicative plan for the site and it does not form part of the development proposal currently submitted for Council's consideration.

There is an existing Sacred Fig tree at the northern end of the site, located at the proposed vehicular entrance to Lot 22 (at the end of Arnold Street). The application is recommended for approval subject to a deferred commencement consent requiring

**ITEM 4 (continued)**

the amendment to the subdivision plan in order to protect the Sacred Fig.

**Reason for Referral to Committee of the Whole:** Due to the nature of development and because it has been called up by Councillors Pickering, Maggio & O'Donnell.

Public Submissions: 65 submissions were received objecting to the development.  
1 submission was received in favour of the development.

SEPP1 Objection: Not required.

Value of works: Nil (Subdivision of land).

**RECOMMENDATION**

- (a) That the deferred commencement consent and draft conditions of consent **ATTACHMENT 1** for LDA No. 2010/78 at 22 Henry Street, Ryde (and known as Cudal Reserve) be forwarded to the applicant for concurrence with Sydney Water Corporation in accordance with Part 4, Division 4 of the Environmental Planning and Assessment Act 1979.
- (b) That upon receipt of the applicant's agreement to the conditions in (A) above, a formal development consent be issued in respect of Local Development Application No. 2010/78.
- (c) In the event that a condition is in dispute, the Group Manager Environment & Planning be delegated to negotiate an outcome.
- (d) That persons who made a submission be advised of Council's decision.

**ATTACHMENTS**

- 1 Proposed Conditions
- 2 Map
- 3 Plan

Report Prepared By:

**George Lloyd**  
**Senior Town Planner**

Report Approved By:

**Liz Coad**  
**Manager Assessment**

**Dominic Johnson**  
**Group Manager Environment & Planning**

**ITEM 4 (continued)****2. Site**

**Address:** 22 Henry Street, Ryde

**Site Area:** 7,915m<sup>2</sup>  
Frontage – 67m to Arnold St and 68m to Henry St  
Depth – 128m (northern boundary) and 138m (southern boundary)

**Topography and Vegetation:** The site has a 6m fall and slopes steeply from its northern corner adjacent to Arnold St (RL17.70) to the southern corner near Henry St (RL11.25). Then land is used as an open reserve for overland flow with a number of trees located within and along its boundaries.

**Existing Buildings:** Nil

**Planning Controls:**

**Zoning:** SP2 - Infrastructure (WS & DB)

**Other controls:** Ryde Local Environment Plan 2010  
Ryde Planning Scheme Ordinance

**ITEM 4 (continued)**

SEPP (Infrastructure) 2007  
City of Ryde Subdivision Code

**3. Councillor Representations:**

Name of Councillor: Councillor Pickering.

Nature of the representation: Call up to Planning and Environment Committee.

Date: 22 February 2010.

Form of the representation: Via email to Group Manager.

On behalf of objectors.

Any other persons (e.g. consultants) involved in or part of the representation: Putney Progress Association.

Name of Councillor: Councillor Maggio.

Nature of the representation: Call up to Planning and Environment Committee.

Date: 23 March 2010.

Form of the representation: Via email to Group Manager.

On behalf of applicant or objectors? Unknown.

Any other persons (e.g. consultants) involved in or part of the representation: Unknown.

Name of Councillor: Councillor O'Donnell.

Nature of the representation: Call up to Planning and Environment Committee.

Date: 25 March 2010.

Form of the representation: Via email to Group Manager.

On behalf of applicant or objectors? Unknown.

Any other persons (e.g. consultants) involved in or part of the representation: Unknown.

**4. Political Donations or Gifts**

Nil.

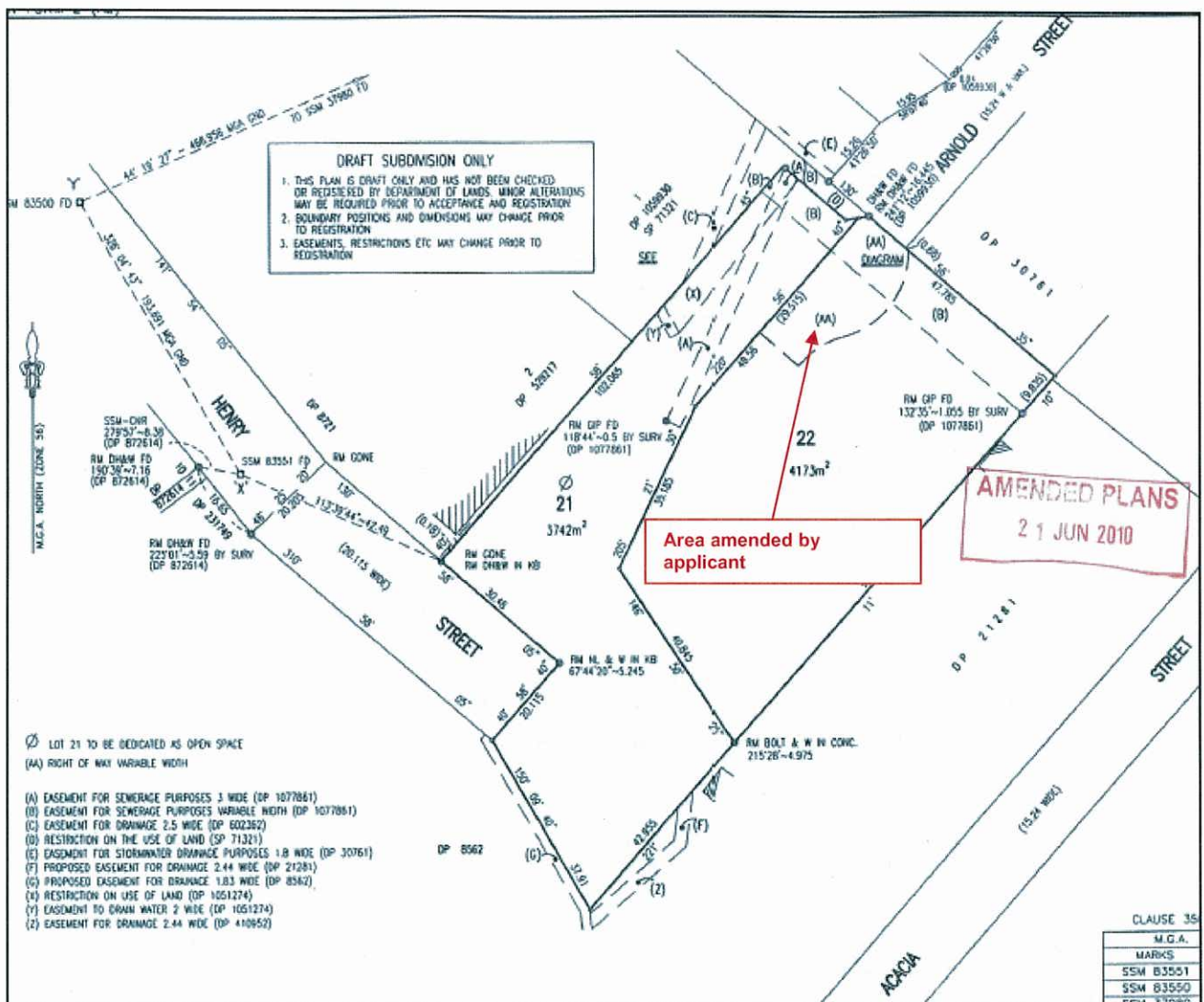


**ITEM 4 (continued)****5. Proposal**

The development application proposes to subdivide the site (Cudal Reserve) into two allotments of land.

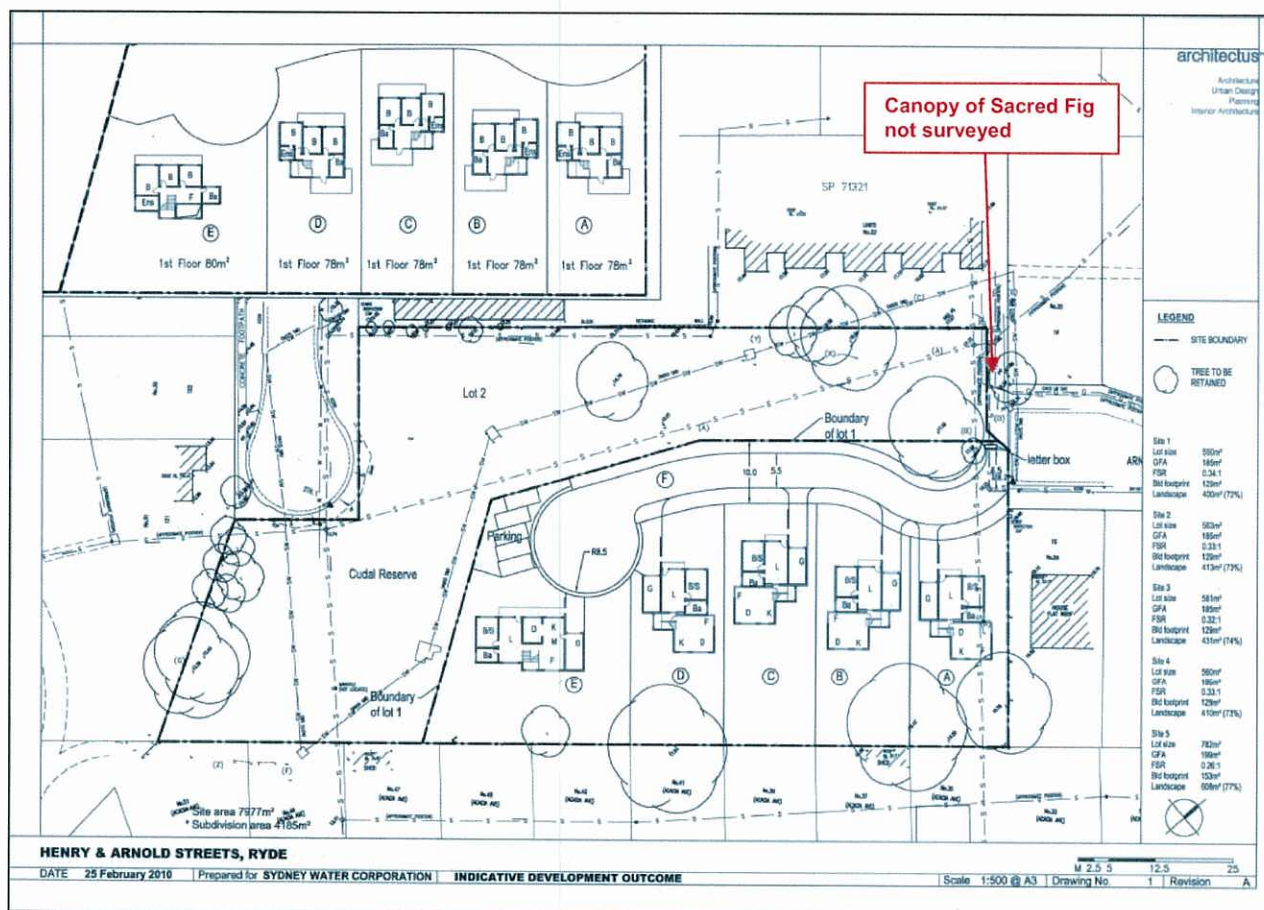
Lot 21 will have an area of 3,742m<sup>2</sup> and is proposed to be dedicated to Council for use as open space.

Lot 22 will have an area of 4,173m<sup>2</sup> and is to be used for future residential purposes. On 21 June 2010, this plan was amended to also show a right-of-way of variable width (AA) to permit access to Lot 21 from Arnold Street.



**ITEM 4 (continued)**

Below is the plan of the "Indicative Development Outcome".



The 'Indicative Development Outcome' plan above proposes a 5 lot subdivision with lot sizes ranging from 550m<sup>2</sup> to 780m<sup>2</sup>. Access to the allotments would be via an access handle from Arnold Street. A two-storey dwelling is proposed to be erected on each allotment. A detailed assessment of the possible residential subdivision is provided later in this report (under Section 9).

It should be noted that this is an indicative plan only and the applicant is not seeking development consent for this plan. It would be possible to submit numerous indicative plans of future development of this lot.

Having regard to the Site Compatibility Certificate accompanying the development application, Lot 22 could potentially be used for purposes of urban housing or any other use that is permissible in the R2 Low Density Residential Zone. This, however, would be subject to a future development application for urban housing or any other permitted use or development.



**ITEM 4 (continued)****6. Background****Offer of sale**

On 3 August 2005, Council's previous Manager - Property Services, had a meeting with Mr Geoff Fitzsimmons (the current applicant and then Sydney Water representative) with respect to the potential disposal of Cudal Reserve.

In a letter dated 4 August 2005, Mr Fitzsimmons wrote to Council identifying Cudal Reserve as land which was surplus to the needs of Sydney Water and asked if Council was interested in entering into negotiations for the purchase of the reserve.

On 9 August 2005, Council officers responded stating that *"Any decision to purchase the site would be subject to a formal Council resolution..."* and, *"In order to progress this matter, it would be appreciated if you would provide a copy of the valuation report for Council's perusal when available."*

In correspondence dated 14 December 2005, Sydney Water provided an estimate of sale price for the subject land on the basis of a residential zoning to be \$1.85 million (plus GST).

On 25 January 2006, Council's Manager - Parks, provided a memo stating that *"Investigation by Parks reveals this parcel is not of any strategic recreational value to the City of Ryde. The area is insufficient for use as a playing field, for which the community is most in need. Section 94 funds would be better spent in the acquisition of lands adjacent to the existing playing fields to augment facilities there."*

On 8 February 2006, Council's Manager - Property Services advised Sydney Water that: *"Council will not be progressing its interest in the purchase of this property. In respect of the continued use of this area, as a passive recreational space, it would be appreciated if you would further advise Council of the site's future, so that appropriate arrangements may be made for the termination of the licence agreement and the transfer of ground maintenance responsibilities back to Sydney Water."*

**Site Compatibility Certificate**

In accordance with the provisions of State Environmental Planning Policy (Infrastructure) 2007, the Director-General of the Department of Planning can issue a site compatibility certificate, which can permit additional uses of State owned land.

In accordance with the Infrastructure SEPP, a site compatibility certificate can only be issued provided the Director-General is of the opinion that the development concerned is *"compatible with the surrounding land uses"* and *"is of the opinion that the development concerned is not likely to have an adverse effect on the environment and does not cause any unacceptable environmental risk to the land"*.

**ITEM 4 (continued)**

A Site Compatibility Certificate was issued on 28 November 2008 to Sydney Water Corporation and applies to Cudal Reserve (being Lot 2, DP 602362), known as 22 Henry Street, Ryde. The project description permits *"Use of a portion of the allotment (4,185m<sup>2</sup>) for residential purposes."*

Consequently, despite the current zoning of the land, the Site Compatibility Certificate permits the future use of the proposed subdivided allotment (Lot 22) to be used for "residential purposes" which would be subject to the lodgement of a subsequent development application to Council.

**Pre-lodgement meetings**

Prior to the lodgement of the current application, the matter was formally discussed at two separate pre-lodgement meetings which took place on 19<sup>th</sup> February and 20<sup>th</sup> August 2009. At these pre-lodgement meetings the following matters were discussed:

- Legislative framework and background to the project.
- Council controls (including lot configuration and access).
- Site constraints (including flooding, services, easements, vegetation).
- Matters for consideration (including waste management services).
- Submission requirements (including reports etc.).
- Community consultation.

It was recommended that community consultation with local residents should take place prior to the submission of a formal application to Council.

**Pre-DA Consultation**

In a letter dated 19 February 2010, Sydney Water wrote to surrounding property owner/s informing them of their intention to lodge a development application for the subdivision of Cudal Reserve.

In their letter Sydney Water have stated (in part):

*"The subdivision will create two lots on the site. The lot located on the north eastern portion of the site will accommodate detached residential housing. Sydney Water will not develop this lot. If Ryde Council approve the subdivision DA, the lot will be sold for private development. The construction of any buildings will be subject to a further DA. The remaining lot on the south and west area of the site will be dedicated to the City of Ryde as Open Space."*

*The NSW Department of Planning certified in 2008 that the site at 22 Henry Street is suitable for residential development. The residential lots are designed to reflect neighbourhood character. While the DA will not seek approval for buildings, it will provide for the land to accommodate five detached houses with generous front and rear gardens and a maximum height of two storeys."*



**ITEM 4 (continued)**

*The dedication of part of the site to Council will allow Council to formalise part of the land as public space between Henry Street and Arnold Street. This will ensure that access to open space is maintained from Henry and Arnold Streets."*

The letter did not include a plan of the subdivision. It did, however, state that when the DA is submitted it will be advertised and displayed by Council and that submissions about the proposal should be directed to Council.

**Recent Council resolution concerning land owned by Sydney Water**

At its meeting held on 27 April 2010, Council resolved the following Notice of Motion:

*"That Council require Sydney Water to undertake an appropriate community consultation prior to the sale of any of its open space for the development and prior to the Council considering or making a decision on Sydney Water development applications."*

On 3 May 2010, the applicant representing Sydney Water in this development proposal was notified of the above resolution and requested to respond. On 5 May 2010, Sydney Water was advised of Council's resolution under separate cover by correspondence signed off by Council's Group Manager – Environment and Planning.

**Response by Sydney Water:**

In a letter dated 10 June 2010, Sydney Water responded to the General Manager in the following terms:

*"I refer to your letter of 5 May 2010 requesting Sydney Water's response to Council's community consultation resolution for our Crown Development Applications (DAs) at 22 Henry Street, Ryde and 20 Goulding Street, Ryde.*

*At pre-DA lodgement meetings held with Council, Sydney Water confirmed its intention to provide details of the DAs to the community. We hand delivered letters to residents in the vicinity of the Henry Street and Goulding Road sites one week prior to lodgement of the DAs. Similar letters were also sent to Council and the Local Member at that time.*

*Council notified the community of the DAs by advertisement and letters. Residents and other interested parties were invited to make submissions to Council for a period of between four to eight weeks. These periods are well in excess of the 14 days required for subdivision applications under the Ryde Development Control Plan, 2006.*

**ITEM 4 (continued)**

*Sydney Water is consulting with 2RRR regarding their tenancy at Goulding Road. I understand that the Sacred Fig tree at the Henry Street site has been placed on Council's Significant Tree Register. We have also agreed a right of way over the surplus lot to the lot to be dedicated to Council for open space. This will ensure pedestrian and vehicle access from Arnold Street. We will update the local community about these changes.*

*The DAs currently before Council are for subdivision alone and do not seek to further develop the sites or commence any construction. The community will have an opportunity to comment on development of the sites when the new owners of the land lodge DAs in the future. At that time, Council itself will own almost 50 per cent of the Henry Street site for the purposes of community use.*

*Sydney Water respectfully requests that Council complete their assessment and determination of the Crown DAs in accordance with the provisions of the Environmental Planning & Assessment Act (1979)."*

**Request to amend plans**

On 5 May 2010, a written request was made to the applicant to amend the proposed plan of subdivision so that the dedication of Lot 21 to Council is confirmed on the proposed plan of subdivision and that a right-of-way be created to maintain existing pedestrian access from Arnold Street over Lot 22 to Lot 21 and then to Henry Street.

The purpose of asking it for it to be shown on the current development plan was to give the applicant the opportunity to address the issue of access to Lot 21 in a manner that may not unduly prejudice the future development potential of Lot 22.

On 21 June 2010, Council received amended plans showing the dedication of Lot 21 to Council and a right-of-way of variable width extending around the Sacred Fig and which permits access from Arnold Street over Lot 22 on to Lot 21 (see previous plan of subdivision in section 5 of this report).

**7. Submissions**

The proposal was advertised and notified in accordance with DCP 2010, Part 2.1 - Notification of Development Applications. The application was originally advertised on 17 March 2010, while notification of the proposal commenced from 3 March till 1 April 2010. However, because the subject property was identified as "22 Henry Street, Ryde", the proposal was re-advertised from 14 April until 29 April 2010, and re-notified from 29 March until 29 April 2010, during which time the site was identified as "22 Henry Street, Ryde (Cudal Reserve)".

**ITEM 4 (continued)**

A total of 66 submissions were received, 65 of which objected to the development proposal. Two of the submissions included a petition signed by 28 and 32 residents respectively. The issues identified in the submissions and a response to them is provided below:

**(1) Lack of notification regarding rezoning of land for residential****Officer's Comment:**

The land to be used for future residential purposes has not been rezoned. In accordance with the provisions of the Infrastructure SEPP 2007, a 'Certificate of Site Compatibility' has been submitted as part of the development proposal to subdivide the land and which approves "*Use of a portion of the allotment (4,185m<sup>2</sup>) for residential purposes.*"

The Site Compatibility Certificate dated 28 November 2008 remains valid for 5 years and no rezoning of Lot 22 needs to take place to facilitate its future use for residential purposes.

**(2) Access via Arnold Street will create excess traffic and residential parking problems****Officer's Comment:**

A traffic management plan has been submitted with the development proposal based on the 'indicative development outcome' of Lot 22 being subdivided into 5 residential allotments. This has been reviewed by Council's Traffic Engineer who has raised no objections to the development.

The subject development application proposes only to create 2 allotments of land. Based on revised comments received from Council's Traffic Engineer, the 2 lot subdivision would not raise any additional requirements except that access to the dedicated open space be maintained from both existing streets.

This issue was raised with the applicant who subsequently submitted amended plans to show a proper right-of-way extending from Arnold Street on to Lot 21.

The issue of excess traffic and residential parking problems would need to be considered as part of any future development application.

**(3) Pruning of tree for access and loss of open space is regrettable****Officer's Comment:**

An arborist's report has identified 18 trees within and surrounding the site.

6 trees were determined to be undesirable (weed) species and should be removed from the site. All other trees are located on the Council dedicated parcel of land.




**ITEM 4 (continued)**

The only tree identified to be pruned is Tree '5' which is a Sacred Fig. Although located on the land to be dedicated to Council, it will require pruning. The arborist's report concludes the following:

*"The proposed driveway has been modified to accommodate Tree 5... the driveway will follow the edge of the 9m TPZ and will therefore have minimal impact on the root zone. **Slight canopy (tip) pruning will be required to accommodate vehicle access.***

*The proposed driveway should be constructed on existing grade to help minimize the requirement for surface excavation and/or compaction at the edge of the TPZ. I strongly recommend that all tree management procedures are implemented throughout site activity..."*

Council's Consulting Landscape Architect has reviewed the arborist's report and has determined that in order to ensure its survival, no excavation or compaction is to be undertaken upon the root system of this tree. To ensure the survival of the tree, it is suggested that the line of subdivision should be amended to ensure the canopy of the Sacred Fig tree is entirely located within the lot to be dedicated to Council. Adequate space exists at the access point to permit this amendment to the subdivision and still provide vehicular access to Lot 22. A deferred commencement condition (No. 1(a)) has been imposed requiring an amendment to the line of subdivision so that the canopy of the Sacred Fig falls within Lot 21. This would result in no pruning being required to this tree.



Despite its informal use as an area of open space by surrounding residents, the current reserve is a drainage reserve and the proposed subdivision will result in the dedication of an area of land (3,742m<sup>2</sup>) to Council for purposes of passive open space. This is an area of land which is currently not in the ownership of Council.

**(4) Overcrowding of residential development****Officer's Comment:**

That future development may result in a sense of overcrowding upon the existing residential amenity can not be accurately determined until such time as a future development proposal for that land has been submitted to Council. Any future development proposal will be required to comply with Council's density requirements.

**(5) Disappointment in Council supporting this DA and to save this valuable community land****Officer's Comment:**

The submission of the DA itself does not necessarily mean Council is in support of the development proposal. The subject land is Crown land owned and operated by Sydney Water. In accordance with existing State legislation, a development application may be lawfully lodged in the manner currently proposed.



**ITEM 4 (continued)****(6) Noise impact from building works upon the amenity of adjoining properties****Officer's Comment:**

Construction activities and associated noise generation is a matter to be considered once a formal development proposal for Lot 22 has been lodged with Council. Council's current conditions of development consent requires demolition and construction work to be restricted to between the hours of 7.00am and 7.00pm Monday to Friday (other than public holidays) and between 8.00am and 4.00pm on Saturday, with no work being carried out on Sunday or public holidays.

**(7) Council changing rules without community consultation****Officer's Comment:**

This is not a Council initiated development proposal. The development application has been lodged on behalf of the Crown (Sydney Water Corporation) and notwithstanding the zoning of the land, has been supported with a Site Compatibility Certificate issued by the Director-General of the Department of Planning which would permit the use of Lot 22 for 'residential purposes'.

With respect to the extent of community consultation, Council notified and advertised the development proposal on two separate occasions previously described in this report.

**(8) The remaining area of land to be dedicated to Council provides insufficient useable open space****Officer's Comment:**

It is generally agreed that the subdivision of the site will substantially reduce the current usability of the existing drainage reserve for general recreation purposes. It should, however, be mentioned that the entire site is a designated drainage reserve owned by Sydney Water. The area to be dedicated to Council would constitute open space not currently owned by Council.

**(9) Possible loss of fig tree****Officer's Comment:**

The arborist's report submitted with the development application recommends the implementation of tree management procedures within a 9m tree protection zone around the fig tree. Council's Consulting Landscape Architect has provided advice that such measures "do not satisfactorily demonstrate how the tree will survive construction impacts. There are no details of the driveway construction, other than an arborist's note that the driveway should be laid at grade to... minimize the requirement for surface excavation and/or compaction." In Council's Consulting Landscape Architect's opinion, "An outstanding specimen such as this should have no excavation or compaction as a starting point to its preservation...."

**ITEM 4 (continued)**

As mentioned previously in this report, a deferred commencement condition has been recommended that will permit a minor amendment to the line of subdivision in which the canopy of the Sacred Fig tree would be located within the lot to be dedicated to Council and still maintain adequate vehicular access to Lot 22. This would also limit the extent of roots that would be affected by any future driveway on Lot 22.

Any future development proposal of Lot 22 would need to provide an arborist's report to demonstrate that the redevelopment would not adversely impact on the Sacred Fig.

**(10) Imposition of caveat so that land cannot be purchased as a whole parcel, or a covenant to maintain low density development**

*The indicative plan of subdivision proposes 5 residential allotments of land, each of which could be developed for a 2-storey dwelling. Also, Sydney Water's own pre-notification letter indicated that the area would be developed for 5 detached houses to 'reflect neighbourhood character'.*

**Officer's Comment:**

It is suggested that in order to ensure that the subdivided site is developed as individual single residential allotments, a caveat or covenant should be placed on its title preventing its sale as a whole (larger) parcel and ensure that the Lot 22 is developed for purposes consistent with the low scale density of surrounding land.

Clause 79 of the Ryde Planning Scheme Ordinance effectively suspends the extent to which a covenant, an agreement or instruments are inconsistent with any of the provisions of the Ordinance or with any consent given thereunder.

Similar provisions have been carried over into Ryde LEP 2010 and the benefit of any such caveat or covenant may not be achieved.

**(11) Council to be sued if villa development takes place**

*Future villa development will devalue the value of neighbouring free-standing homes and which will result in Council being sued for compensation.*

**Officer's Comment:**

Provided to Council for information purposes only.

**(12) Flooding of properties**

**Officer's Comment:**

The application has been submitted with a flood study and the proposed subdivision has been assessed by Council's Development Engineer who has raised no objection subject to 6 conditions of consent which have been imposed to ensure the satisfactory flow of water between the two allotments of land.



**ITEM 4 (continued)**

One of these conditions (No. 6) includes the establishment of inter-allotment drainage system to facilitate the legal disposal of stormwater and to ensure that it will have the capacity to convey a 1 in 100 year flow generation rate.

**(13) Inadequate public consultation**

*Confusion existed when Council originally notified/advertised the development proposal as "22 Henry Street" and didn't identify it as "Cudal Reserve".*

*Council's own Draft LEP 2008, Attachment 6, identifies Cudal Reserve lands as 'community land' and Plans of Management for Community Land 2001, Appendix A, states that the local government category of Cudal Reserve is that of "parks".*

*Nowhere on the site is there any notification of an impending DA.*

*We would like Council to consider zoning Lot 22 R2 to ensure overdevelopment does not occur.*

**Officer's Comment:**

The re-notification of the development proposal was undertaken to avoid any confusion which originally may have taken place as to the description of the development site.

LEP 2010 now zones the land 'SP2 – Infrastructure (WS&DB)'.

Any future development of the site would require a further development application to be submitted to Council.

Current controls under the R2 Low Density Residential zoning would still permit multi-dwelling housing, which consists of 3 or more dwellings.

**(14) Loss of accessible open space for recreation**

*Council should explore acquisition of Lot 22.*

*Redevelopment of the Ryde Rehab site will result in a greater demand upon open space.*

*Council's own "Parks on Track 2025" identifies the increasing need and demand upon recreation and leisure areas within the City of Ryde.*

**Officer's Comment:**

Acquisition of Cudal Reserve was explored in late 2005 and not pursued. The subject site is, and has always been, identified as a drainage reserve and not as an area of open space owned by Council.

Cudal Reserve is not the only area of open space in this area. Identified areas of open space and recreation include: Ryde Park, Burrows Park, Parry Park, Tyagarah Park and the Ryde Aquatic and Leisure Centre.

**ITEM 4 (continued)****(15) Protection of sacred fig by relocation to Lot 21 and registration on Significant Tree Register**

*Protection of the sacred fig could be better ensured if it was relocated to Lot 21 without the need of building a road in its vicinity.*

**Officer's Comment:**

On 1<sup>st</sup> June 2010, Council's Works and Community Committee approved the listing of the Sacred Fig on Council's Significant Tree Register.

A deferred commencement condition has been recommended that will permit a minor amendment to the line of subdivision in which the canopy of the Sacred Fig tree would be located within the Council dedicated lot while still providing adequate vehicular access to Lot 22.

**(16) Subdivision proposal is misleading****Officer's Comment:**

The indicative development proposal submitted with the application shows that the site can be developed for 5 residential allotments of land. This is only one future potential use of the site. The purpose of the indicative plan is to demonstrate to Council how the site may be used in the future.

**(17) Poor urban design principle**

*Minimum block sizes for single dwellings has not been met.*

*The access road is smaller than Council standards. Widening of the road would require reconfiguration of the allotments.*

*Site configuration would require some landfill to address stormwater issues.*

**Officer's Comment:**

The issue of minimum allotment sizes has been raised with the applicant at pre-lodgement meetings and would in any case be the subject of a further development application to Council.

The access road width has not been accepted by Council's Traffic Engineer and would be the subject of further assessment once a formal development application for the future development of Lot 22 has been lodged.

It is unknown whether future development of the site would require any landfill, and if so, to what extent. This would be a matter for further assessment once a formal application for development of Lot 22 was received by Council.

**ITEM 4 (continued)****(18) Subdivision retains only 20% of useable open space****Officer's Comment:**

Of the total area of drainage reserve being subdivided, 3,742m<sup>2</sup> (or 47%) is to be dedicated to Council.

**(19) Council should purchase land via s.94 Contributions****Officer's Comment:**

In accordance with the detailed works program that accompanies Council's s.94 Contributions Plan, there is no dedication of s.94 monies towards the acquisition of Cudal Reserve.

**(20) City of Ryde Future Requirements for Open Space**

*It is Council's responsibility to plan for the future leisure and recreational needs of its future citizens.*

**Officer's Comment:**

In accordance with Council's existing s.94 Contributions Plan, numerous areas of expenditure have been identified for improvements to open space and recreation facilities and which are listed in Council's detailed works program.

**(21) The proposed north-western boundary will, if fenced, obscure the line of sight down to Arnold Street.****Officer's Comment:**

The north-western boundary of the site (being on Lot 21), which is proposed to be dedicated to Council for purposes of open space, would in all likelihood never be fenced.

**(22) The turning circle of the proposed road in Lot 22 covers the current flood path. Significant earthworks would be required to develop Lot 22.****Officer's Comment:**

A detailed flood study submitted with the development proposal and which has been assessed by Council's Drainage Engineer was found to be satisfactory. Should the application be approved, appropriate conditions of consent have been drafted to ensure the satisfactory inter-allotment of drainage is fulfilled.

Details of any proposed earthworks for the future development of Lot 22 would need to be provided with any future development application for that land.



**ITEM 4 (continued)**

- (23) **Stormwater Management DCP 2.8 is not addressed in relation to the development of the site.**

Officer's Comment:

The future management of stormwater on Lot 22 will have to be addressed as part of any future development proposal. The issue of overland flow is considered to have been appropriately addressed.

- (24) **Sydney Metropolitan Strategy and Draft Inner North Subregional Strategy call for good urban planning and highlight the importance of open space.**

Officer's Comment:

Assessment of this DA against the requirements of the Sydney Metropolitan Strategy or Subregional Strategy is not a mandatory requirement.

- (25) **Despite its ownership by Sydney Water, the reserve has been used as public land for hundreds of years**

Officer's Comment:

Despite its usability as an area of (unfenced) public open space, the subject land has since the adoption of the Ryde PSO always been reserved for purposes of drainage.

- (26) **Council should object to D-G of Planning**

Officer's Comment:

Council did not have any control over the issuing of the Site Compatibility Statement.

- (27) **Poor management by State Gov't has resulted in land sale to raise revenue**

Officer's Comment:

This is a political statement and is not relevant in the consideration of this proposal.

- (28) **Council will approve this DA to receive land rates**

Officer's Comment:

This statement is not relevant in the consideration of this development proposal.

- (29) **Subdivision and future development will result in a reduction in surrounding real estate values**

Officer's Comment:

There is no substantive evidence to prove that any development of Lot 22 will result in a net reduction in adjoining real estate values.

**ITEM 4 (continued)****(30) Development of Ryde Rehab will put added pressure on need to retain areas of open space**Officer's Comment:

As previously mentioned, Cudal Reserve is not the only area of open space in the immediate local area or within the vicinity of Ryde Rehab Hospital.

**(31) Planning Minister may have already granted approval for 12 dwellings on Lot 22**Officer's Comment:

There is no evidence of the Planning Minister having granted approval for the development of Lot 22. The future development of Lot 22 would require the further consent of Council.

**(32) Traffic assessment fails to consider higher development densities.**Officer's Comment:

A traffic report can only be prepared based on the nature of the proposed development. In this case, the traffic report submitted with the development application has been prepared based on the potential for the use of Lot 22 as a five lot residential subdivision. If the site were to be used for any other purpose, then an appropriate traffic report responding the specific type of development would need to be prepared and assessed accordingly.

**(33) Cudal Reserve is not used for organised sport and is therefore unique**Officer's Comment:

Cudal Reserve is not used for organised sport due to its limited size, lack of amenities, its use as a drainage reserve and that it is not owned by Council.

**(34) Lack of community involvement in the decision making process**Officer's Comment:

The notification and exhibition of this development proposal has been undertaken in accordance with the requirement of the Environmental Planning and Assessment Act (1979) and Council's own policy for notification of development applications.

**(35) Loss of public asset**Officer's Comment:

A number of submissions have raised the issue that the land is currently owned by "the public" through Sydney Water and that such public assets should not be disposed of.

Sydney Water is technically a corporation operating under the provisions of the Sydney Water Act 1994 and Cudal Reserve is a drainage reserve owned by Sydney Water.



**ITEM 4 (continued)****(36) Historic value of Cudal Reserve**Officer's Comment:

A number of submissions have raised an issue regarding the historic importance of Cudal Reserve. The origins of Cudal Reserve are not conclusive and have no bearing upon the lodgement or indeed the determination of this application.

**(37) Traffic report to be updated**

*Council should request a further traffic report taking into consideration the number of cars that will access the roads surrounding the reserve and the Rehab Hospital.*

Officer's Comment:

The traffic report submitted with the development application has been considered by Council's Traffic Engineer and comments are included in this report in Section 13.

**(38) Council should ask Sydney Water to defer the subdivision until effects of the Rehab development have been fully considered**Officer's Comment:

The lodgement of the development application in its current form requires it to be considered in accordance with the relevant provisions of the Environmental Planning and Assessment Act and Regulations. The relevant statutory provisions have been considered and assessed within this report and are presented to Council for its consideration.

**(39) The application should be sent back as the Site Compatibility Certificate has been incorrectly issued**

*The Site Compatibility Certificate has been incorrectly issued as it does not restrict the development to five future dwelling houses. In fact in the letter of the Director General it states:*

*"I would encourage you to discuss any future development proposals with Council at the earliest possible time, and I have attached a copy of Council's response to my Department for your consideration. It is apparent that higher density options for residential development may be permissible under the "Residential A" zoning and should be considered further before any meeting with Council."*

*Council should inform the Minister and request a new Certificate of Site Compatibility which restricts the development to the 'proposed five houses'.*

Officer's Comment:

As mentioned later in this report (see Section 9(b) Relevant SEPP's) the Certificate of Site Compatibility has been issued lawfully. The Certificate permits "Use of a portion of the allotment (4,185m<sup>2</sup>) for residential purposes." It does not restrict use of the land for subdivision into 5 allotments as suggested by the "indicative plans".

**ITEM 4 (continued)****(40) DA should include proposed buildings**

*Based on planning principles established in the Land and Environment Court (Parrott v Kiama [2004] NSWLEC 77) the submitted application should include plans of the future development of the subdivided allotment (Lot 22).*

**Officer's Comment:**

The legal case cited above concerns an undersized battle-axe allotment of land on which "The design of the future house (at least the outline design) is not a matter that is appropriately left till later." It is not particularly relevant to the subject development proposal.

A Certificate of Site Compatibility has been issued for proposed Lot 22 to be used for 'residential purposes'. In accordance with the relevant provisions of the Infrastructure SEPP, the Director-General has considered that the future residential development is compatible with the surrounding land uses and is not likely to have an adverse effect upon the environment or cause any unacceptable environmental risk to the land.

Lot 22 would effectively be developed for purposes that would ordinarily be permitted on the adjoining residentially zoned land, which in this case is R2 Low Density Residential.

**(41) Economic benefits of retaining open space**

*Cudal Reserve could provide a stream of income to Council for use by fitness trainers and community events. It can also be used for promoting physical activity and preventing weight gain and thereby providing social, economic and health benefits.*

**Officer's Comment:**

There exists in the locality several other public parks and spaces that have been developed to provide the necessary facilities to allow active use of their space for active physical purposes.

**(42) The remaining corridor of open space will not fulfil the objectives of the State Plan or Metropolitan Strategy**

*Cudal Reserve fulfils certain objectives of the State Plan with respect to providing opportunities to maintaining 'healthy and stronger communities'.*

**Officer's Comment:**

The ability of the current reserve to fulfil objectives of broader State plans and strategies is questionable. The reserve has never been improved by any facilities that either promote or facilitate the health and well being of surrounding residents or the broader community.



**ITEM 4 (continued)****(43) Inconsistency with CoR Environment Strategy 2007-2010**

*Subdivision of Cudal Reserve compromises the ability of future generations to meet their needs.*

**Officer's Comment:**

The CoR Environment Strategy "serves to integrate and coordinate Council's approach to environmental management and espouses the principles of Ecological Sustainable Development". It does not commit itself to the identification and purchase of privately owned areas of open space for community purposes.

**(44) Entrance should be through Henry Street**

*Vehicular access to Lot 22 should be via Henry Street due to its width, accessibility and existing turning circle at the cul-de-sac end. It will also overcome issues relating to possible affectation upon the fig tree in Arnold Street.*

**Officer's Comment:**

Due to topography and overland flow issues, the most logical choice for access is Arnold Street. The retention and protection of the existing fig tree has been discussed in this report and an appropriate condition of consent imposed (see deferred commencement condition).

**8. SEPP1 Objection received?**

Not applicable.

**9. Policy Implications****Relevant Provisions of Environmental Planning Instruments etc.:****(a) Relevant SEPPs****State Environmental Planning Policy (Infrastructure) 2007**

Clauses 18 and 19 of the Infrastructure SEPP applies to State owned land and permits land to be used for purposes that are compatible with the adjoining land use despite the provisions of any LEP that applies to that land (which includes zoning).

Council must not grant development consent unless the Director-General has certified in a Site Compatibility Certificate that, in the Director-General's opinion, the development is compatible with the surrounding land uses.

A Site Compatibility Certificate was issued on 28 November 2008 and was issued to Sydney Water Corporation by the Director-General for Planning and applies to Cudal Reserve (being Lot 2, DP 602362), known as 22 Henry Street, Ryde. The project description permits "Use of a portion of the allotment (4,185m<sup>2</sup>) for residential purposes."

**ITEM 4 (continued)**

The Site Compatibility Statement has been issued in accordance with the requirements of the Infrastructure SEPP 2007.

**State Environmental Planning Policy 55 – Remediation of land (SEPP 55)**

SEPP 55 requires the consent authority to consider whether land is contaminated prior to granting consent for development. The consent authority must be satisfied that any necessary remediation has occurred before use of the land is permitted.

Clause 7 of SEPP 55 specifies that Council must not consent to the carrying out of any development on land unless it has considered whether the land is contaminated, and if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out. Also, if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, Council must be satisfied that the land will be remediated before the land is used for that purpose.

The subject land is not identified under Council's LEP as being "*land that is within an investigation area*", nor has there been any scheduled activities undertaken as identified in Table 1 of the Contaminated Land Planning Guidelines (i.e.: agricultural activities, engine works, gas works, metal treatment and the like). There has, however, been no demonstrated site contamination investigation report submitted to Council that demonstrates that proper testing of the site for any contaminants has been undertaken.

Notwithstanding that the likelihood of the site being contaminated would be very low, a site investigation would need to be undertaken prior to any future residential development taking place. An appropriate condition of consent has been imposed accordingly (see General consent condition No. 2)

**(b) Ryde Local Environment Plan 2010 (LEP)**

Ryde LEP 2010 was published on 30 June 2010, as the new environmental planning instrument applicable to the City of Ryde. This instrument contains a savings provision clause (cl. 1.8A) which states:

*"If a development application has been made before the commencement of this Plan in relation to land to which this Plan applies and the application has not been finally determined before that commencement, the application must be determined as if this Plan had not commenced."*

The DA was lodged on 26 February 2010 prior to the commencement of this Plan, and so it may be determined as if Ryde LEP 2010 had not commenced. Under Ryde LEP 2010, the zoning of the property is SP2 – Infrastructure (WS&DB). The proposed development is permissible with consent within this zoning under the LEP, and it is considered that the proposal is not contrary to the objectives of the LEP or those of the proposed zoning.

**ITEM 4 (continued)****(c) Ryde Planning Scheme Ordinance****Zoning**

The subject site is zoned '5(a) Special Uses (M.W.S & D.B)' under the provisions of the Ryde Planning Scheme Ordinance. Subdivision of the site is permissible with the consent of Council.

**Mandatory Requirements**

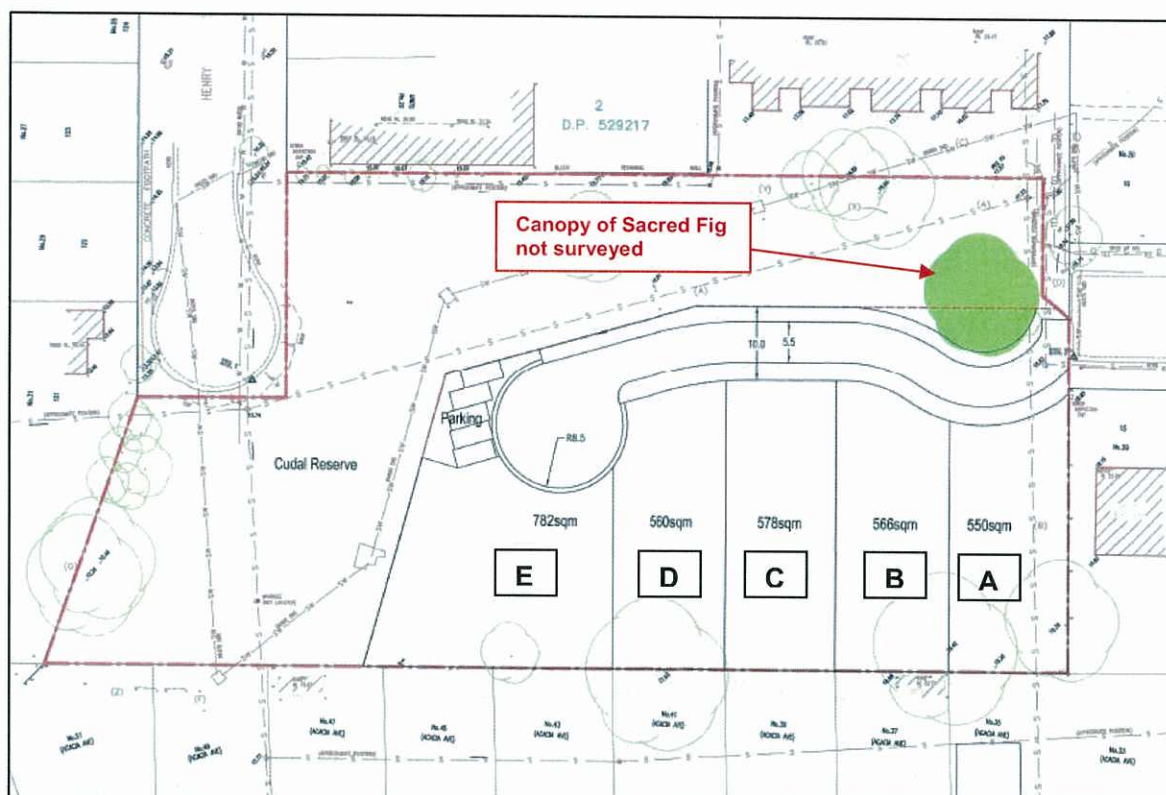
**Clause 41A – Subdivision of land generally:** This clause states that a person shall not subdivide land except with the consent of the responsible authority. The application has been submitted as required by this clause.

**Clause 41B – Subdivision of residential land:** The clause requires particular dimensional requirements of residential land to be complied with. Each allotment of land is to have an area of 580m<sup>2</sup>, a frontage of not less than 10m and a width of not less than 15m at a distance of 7.5m from the front alignment. However, due to the current zoning of the site being Special Uses 5(a) it is not applicable in this case and is only used as a guide for compatibility.

The current proposal is to subdivide the site into 2 lots. Lot 22 is intended for future residential development. This lot has an area of 4,173m<sup>2</sup> and generally exceeds the above minimum requirement of 580m<sup>2</sup>. This lot will have a frontage of 9m to Arnold Street. The purpose of this requirement is to ensure that future lots can be provided with appropriate frontages as well as permitting vehicular access. Although the lot does not comply with the 10m requirement, it will be able to provide adequate frontage to permit vehicular access and identification of the site.

In addition to the 2 lot subdivision, the applicant has submitted an 'indicative development outcome' which illustrates the future potential subdivision of Lot 22 into 5 allotments. As previously stated, this plan is indicative only and development consent is not sought for this layout. The following diagram demonstrates this layout plan.

## ITEM 4 (continued)



As the land is zoned Special Uses 5(a), the requirements of clause 41B are not applicable but are useful as a guide to determine the appropriateness of the development. The following table demonstrates the development's relationship with these requirements.

Lot	Min. Area req'd	Area proposed *	Difference
A	580m <sup>2</sup>	550m <sup>2</sup>	-30m <sup>2</sup>
B	580m <sup>2</sup>	563m <sup>2</sup>	-17m <sup>2</sup>
C	580m <sup>2</sup>	581m <sup>2</sup>	+1m <sup>2</sup>
D	580m <sup>2</sup>	560m <sup>2</sup>	-20m <sup>2</sup>
E	580m <sup>2</sup>	782m <sup>2</sup>	+202m <sup>2</sup>

\* Assuming Road Dedication

All proposed lots achieve the 10m minimum frontage requirement for regular shaped allotments and the minimum 15m width. Under this arrangement, not all the allotments would comply with the minimum area of 580m<sup>2</sup>. The smallest site would be 550m<sup>2</sup>. It would however be possible to erect a 2-storey dwelling house on an allotment of this size and such a development would be compatible with the surrounding area.

The indicative plan could meet the objectives of this clause.



**ITEM 4 (continued)****(d) Relevant REPs**

**Note:** From 1 July 2009 all REP's were taken as being State Environmental Planning Policies. However, the title of the plans has not changed and for ease of understanding the following comments identify their current, unchanged title.

**SREP (Sydney Harbour Catchment) 2005**

SREP (Sydney Harbour Catchment) 2005 applies to the subject site and has been considered in this assessment. The proposed subdivision is satisfactory having regard to the provisions contained within this regional plan.

**(e) Any draft LEPs**

There are no draft instruments applying to the subject site.

**(f) Any DCP****City of Ryde Development Control Plan 2010**

The provisions of Ryde DCP 2010 are not applicable to this development application. DCP 2010 would only be applicable in the future assessment of development of Lot 22 for residential purposes or for urban housing and the relevant controls would then need to be complied with once a formal application was lodged.

**City of Ryde Section 94 Development Contributions Plan 2007**

The development proposal envisages the creation of Lot 22 to be used for residential purposes. In accordance with the provisions of Council's Section 94 Contributions Plan (Table 1.2), the proposed development would generate a contribution of \$18,068.17\* for the one additional residential allotment of land (\* based on June 2010 quarter update)

Should any subsequent development applications be received for further subdivision or for the development of the site for multi-unit (urban) housing, then additional s.94 contributions would be applicable based on the number of further additional dwellings on proposed Lot 22.

A condition of consent has been imposed requiring the payment of **\$18,068.17** for the proposed residential allotment (see Condition No. 2 of General Conditions).

**City of Ryde Subdivision Code**

The provisions of this code with respect to minimum allotment sizes and areas are to the same extent as those of clause 41B of the Ryde PSO and have been addressed previously in this report.

**ITEM 4 (continued)**

There are, however, a number of objectives within the Subdivision Code for the various zonings of land. Notwithstanding that the current zoning of land is 5(a) Special Uses, the objectives in relation to subdivision in residential zones are:

*2.1.1 To preserve the amenity of residential areas by ensuring that subdivisions conform with the established subdivision patterns in the locality.*

*2.1.2 To provide minimum site requirements which will result in adequate aspect and outlook for buildings to be erected on the land.*

*2.1.3 To provide sufficient area for the erection of buildings which conform with current building design and the established building character of the locality and provide sufficient private outdoor living areas for the residents of those buildings.*

*2.1.4 To provide within hatchet-shaped allotments sufficient area to permit vehicles to enter and leave those sites in a forward direction.*

*2.1.5 To optimise public accessibility, both vehicular and pedestrian within the neighbourhood.*

*2.1.6 To ensure that adequate provision is made for public services and amenities for the future residents of the locality.*

**Officer's Comment:**

The response to these objectives is based on the 'Indicative Development Outcome' plan which proposes 5 single residential allotments on Lot 22.

The proposed 5 lot subdivision would be consistent with the established subdivision pattern in the locality. The proposed allotments of land will be adequate enough to provide for minimum site requirements and will provide adequate aspect and outlook for future buildings on those allotments.

Sufficient area exists on each allotment of land for the erection of a single dwelling house, the design of which would be subject to further assessment upon the submission of a subsequent development application to Council.

Public accessibility will be maintained by the provision of a public right-of-way over Lot 22 to gain access to the dedicated public reserve (Lot 21), and public services can be adequately provided for within the existing local area.

**10. Likely impacts of the Development****(a) Sacred Fig Tree**

Since the submission of this development proposal, Council's Works and Community Committee approved the listing of the Sacred Fig on Council's Significant Tree Register (WC&C meeting 1/6/10, Part B Item 3).

**ITEM 4 (continued)**

Prior to this, Council's Consulting Landscape Architect reviewed the arborist's report submitted with the development proposal and concluded that the documentation failed to provide sufficient detail to demonstrate how the access road could be provided without adversely impacting upon the tree. Council's Consulting Landscape Architect is of the view that none of the access road should be located beneath the canopy of the tree. Any construction beneath the canopy of the tree would result in excavation or compaction upon the root system which could adversely affect the tree.

To ensure that the tree is not adversely affected, any construction or road would need to be located beyond the canopy of the tree. The most appropriate way to ensure that this occurs is to undertake a minor amendment to the line of subdivision so that all of the canopy of the tree would be located within the Council dedicated allotment. There is sufficient width at the access point to the site in Arnold Street to ensure that vehicular access can still be achieved.

In order for this to occur, it will be necessary to submit a further detailed survey which identifies the precise location of the tree and its canopy. The current survey has not accurately detailed the canopy of the tree and could not be relied upon. A condition of deferred commencement (No. 1(a)) has been imposed ensuring that the entire canopy of the tree (which would therefore include most of its root system) will be located within the lot to be dedicated to Council.

Any future development of Lot 22 would still be required to submit a detailed arborist's report in respect to the protection of the Sacred Fig tree. These measures can be assessed once a formal application is submitted to Council.

**11. Suitability of the site for the development**

The site is not classified as a heritage item or subject to any natural constraints such as flooding or subsidence. Notwithstanding the listing of the Sacred Fig on Council's Significant Tree Register, the proposal is considered to be suitable for the site in terms of the impact on both the existing natural and built environments.

**12. The Public Interest**

The development proposal has been assessed in accordance with the relevant requirements of the Environmental Planning Assessment Act 1979 and Regulations, relevant SEPP's, REP's, Ryde Planning Scheme Ordinance and DCP for Subdivision and found to be compliant.

The interest of the public who made submissions have been considered as part of the development assessment process and their concerns in relation to the proposed development have been addressed within this report.

**ITEM 4 (continued)****13. Consultation – Internal and External****Internal Referrals:**

**Development Engineer, (14 April 2010):** Council's Development Engineer has provided the following comments with respect to the development proposal:

*The development is a one into two lot subdivision (a residential lot 1 and a residual lot 2 to be dedicated to Council) located on land currently mapped as being affected by overland flow and is also burdened by an existing 900 diameter Council pipeline.*

*The applicant's engineer has prepared a flood study which indicated that the entire overland flow path will be wholly contained within lot 21 (Proposed to be dedicated to Council for public reserve). The report has been reviewed by the drainage team and they have raised no objection to the proposal.*

*As lot 22 currently drains to the south west corner, it would be necessary to create a 1.2m wide drainage easement and construct a pipeline to legally facilitate the disposal of stormwater runoff from lot 22 onto lot 21. Likewise a positive covenant will be enforced on lot 22, requiring it to construct an OSD facility in conjunction with any future development proposed on the lot. This matter will be conditioned for compliance prior to release of Subdivision Certificate.*

*Access to lot 22 is feasible via a 6.5m wide frontage off Arnold Street. The internal lot and road layout arrangement will be a matter of future assessment when an application to develop lot 22 is received by Council.*

*No objections are raised to the proposal, from an engineering perspective, subject to the following engineering conditions."*

Council's Development Engineer has recommended 6 conditions of consent, which have been included in the recommended notice of determination (see Condition Nos. 4 to 9).

**Traffic and Access, (14 April 2010):** Council's Acting Manager – Access, has assessed the development and raised no objection to the development. The following comments have been provided:

*"General comments:*

- Proposed site is located on the eastern end of Henry Street and southern end of Arnold Street.*
- It is proposed to subdivide large parcel of land in to two lots and one lot around Henry Street to dedicate to Council for use as open space.*



**ITEM 4 (continued)**

- *The other lot will be further subdivided into five smaller lots for residential development. Council will prefer four lots with better access arrangement and wider street width.*
- *The access to the residential component will be from Arnold Street and open space access will be off Henry Street.*
- *Visitor parking has been provided along access way to the development.*
- *Access road to the development from Arnold Street will be dedicated to Council.*
- *The RTA Guide to Traffic Generating Developments indicates that this development will generate 4 vehicle trips per hour during peak hours.*
- *Council traffic section would prefer straight alignment instead of curved at the entrance to the sub-division.*
- *Speed humps need to be installed at several locations to control speeding within access driveway. (Spacing needs to be 50 metres and 10 km/hr signs to be installed).*
- *Pedestrian footpath is located in front of villas and not proper footpath at the cul de sac.*
- *There is no street parking in front of this lots and width is only 5.5m which is not accepted.*
- *Council will require a threshold at the entry point with 15 km/hr speed limit signs to maintain low speed environment.*
- *Applicant should provide street lighting for this section of road as per Council requirement.*
- *Applicant also need to provide drainage to Council satisfaction."*

Officer's Comment:

Many of these issues are not applicable to the development proposal as they relate directly to the indicative development outcome plan and would need to be given further consideration under a future DA for the site.

Updated comments were sought from Council's Traffic Engineer based on their assessment of the proposed subdivision of the site into 2 lots. In comments dated 10 May 2010, it was recommended that proposed Lot 21 (to be dedicated to Council) should maintain access to both streets. The applicant was requested to amend their subdivision plan to clearly indicate the area to be dedicated to Council and the manner in which access to the dedicated lot was to be maintained by right-of-way.

**ITEM 4 (continued)**

Amended plans were submitted on 21 June 2010 showing the dedication and right-of way. Appropriate conditions of consent have also been recommended to be imposed as part of the deferred commencement condition to ensure they are maintained (part 1, condition 1 (c)).

**Group Manager - Community Life (25 June 2010):** Council's Group Manager - Community Life, has considered the proposed subdivision and is in support of the dedication of Lot 21.

On 23 June 2010, the dedication of Lot 21 to Council was considered by Council's Executive Team where it was determined to be a worthwhile asset for the following reasons:

- Proposed Lot 21 provides a pedestrian thoroughfare or 'site link' between Arnold Street and Henry Street;
- Proposed Lot 21 provides some limited opportunities for passive recreation; and
- Proposed Lot 21 provides a significant separation distance between existing residential allotments (to the north) and the future residential development of Lot 22.

**Drainage Engineer, (31 March 2010):** Council's Drainage Engineer has raised no objection to the proposed subdivision nor recommended any conditions of consent. Appropriate conditions of consent have been imposed by Council's Development Engineer (above).

**Consulting Landscape Architect, (7 May 2010):** Council's Consulting Landscape Architect has concluded that, *"The DA documentation does not currently provide sufficient detail as to how an access road/handle can be provided, without potentially causing significant long-term damage to the Sacred Fig."*

An on-site meeting was subsequently held on 17<sup>th</sup> May and was attended by Council's Development Engineer, Consulting Landscape Architect and senior planning staff. It was determined at this meeting that the proposed line of subdivision submitted with the DA shows that line within close proximity of the Sacred Fig wherein the trunk of the tree falls within Lot 21 (to be dedicated to Council) and the remaining majority of canopy and tree root zone will be shared between Lots 21 and 22.

It was determined on-site that adequate space exists at the access point to the site from Arnold Street that could permit a minor amendment to the line of subdivision in which the majority of the Sacred Fig could be relocated within the Council dedicated allotment and still provide sufficient vehicular access to Lot 22 and therefore limit the extent of roots which would be affected by a future driveway to Lot 22.

**ITEM 4 (continued)**

Consequently, a deferred commencement condition has been imposed requiring an amendment to the line of subdivision so that the majority of the Sacred Fig (including its canopy and majority of its root zone) falls within Lot 22 (see deferred commencement condition 1(a)).

From an engineering/construction point of view, a design solution can be incorporated that would not adversely affect the root system of the tree and which has also been conditioned (see Advisory Condition) so that any future owner/s of Lot 22 are aware of the necessity to protect the Sacred Fig.

Council's Consulting Landscape Architect supports this amendment to the subdivision plan and has incorporated future protection measures within the proposed 'advisory condition' of consent.

**14. Critical Dates**

There are no critical dates or deadlines to be met.

**15. Financial Impact**

Adoption of the option(s) outlined in this report will have no financial impact.

**16. Other Options**

No other options have been considered

**17. Conclusion**

The proposed development has been assessed against all relevant matters under Section 79C of the Environmental Planning and Assessment Act (1979) and was found to be satisfactory.

As Sydney Water Corporation is the applicant, the application constitutes development by the Crown under the relevant provisions of the Environmental Planning and Assessment Act (1979). In accordance with Section 89(1) of the Act, Council must not impose a condition of its consent, except with the written approval of the Minister or the applicant.

On this basis, it is recommended that the application be approved as a deferred commencement consent, subject to the applicant giving their concurrence to the recommended list of conditions.

## ITEM 4 (continued)

## ATTACHMENT 1

## ATTACHMENT 1 – Proposed Conditions

**Part 1 – Conditions Relating to a Deferred Commencement Consent pursuant to Section 80(3) of the Environmental Planning and Assessment Act 1979**

1. This consent shall not operate until the applicant has submitted to Council an amended plan of subdivision that shows the following:
  - (a) **Protection of Sacred Fig:** The plan of subdivision shall be amended so that the line of subdivision between the proposed lots diverts around the canopy of the Sacred Fig tree so that the tree falls within Lot 21. In this regard a detailed survey plan shall be prepared and submitted to Council that shows the location of the tree, its existing canopy and the amended line of subdivision.
  - (b) **Right-of-way:** The right-of-way upon Lot 22 shall be maintained to ensure unencumbered pedestrian access from Arnold Street onto Lot 21 (being the area to be dedicated to Council).
  - (c) **Dedication of Lot 21:** The plan of subdivision shall retain the dedication of Lot 21 to Council; and

**Part 2 – General Conditions of Consent: The following requirements shall apply upon satisfactory completion of the requirements outlined in Part 1 of this consent (above)**

1. Except where otherwise provided in this consent, the development is to be carried out in accordance with subdivision plans as endorsed by Council's stamp and support information submitted to Council with Lot 21 dedicated to City of Ryde at no cost.
2.
  - (a) The land shall not be developed for residential purposes until the applicant has submitted to Council a site investigation report which has determined whether any contaminants are present within the soil and demonstrating that the land is suitable for residential purposes or that the land can be remediated to the extent necessary for that land use; and
  - (b) If remediation is required then the site shall be remediated to the extent necessary for the proposed use prior to any development taking place.
3. A contribution for the services in Column A and for the amount in Column B shall be made to Council prior to the release of the Subdivision Certificate for registration at the Land and Property Management Authority (LPMA).

<b>A</b>	<b>B</b>
<b>Community &amp; Cultural Facilities</b>	\$3,819.50
<b>Open Space &amp; Recreation Facilities</b>	\$9,402.82
<b>Civic &amp; Urban Improvements</b>	\$3,197.98
<b>Roads &amp; Traffic Management Facilities</b>	\$436.14
<b>Cycleways</b>	\$272.48
<b>Stormwater Management Facilities</b>	\$865.78
<b>Plan Administration</b>	\$73.47
<b>The total contribution is</b>	<b>\$18,068.17</b>



**ITEM 4 (continued)****ATTACHMENT 1**

This contribution is a contribution under the provisions of Section 94 of the Environmental Planning and Assessment Act, 1979 as specified in Section 94 Development Contributions Plan 2007 adopted by City of Ryde on 11/12/2007. The above amount, if not paid within the quarter that the consent is granted, shall be adjusted for inflation by reference to the Consumer Price Index published by the Australian Bureau of Statistics (Catalogue No 5206.0) on the basis of the contribution rates that are applicable at time of payment.

**General Engineering Conditions**

4. **On-Site Detention.** To minimise downstream impacts due to future development on proposed lot 1, an instrument setting out Terms of Restrictions on the use of land intended to be created, pursuant to Section 88 B of the Conveyancing Act, 1919 shall be submitted in a form acceptable to Council indicating the following:

- (a) All future development on proposed Lot 22 shall incorporate an on-site stormwater detention system designed and constructed in accordance with City of Ryde, Development Control Plan 2010: - Part 8.2; Stormwater Management.
- (b) The 88B Instrument may not be extinguished or altered without prior approval being obtained from Ryde City Council.

The wording of the instrument shall be submitted to and approved by Council prior to release of the Subdivision Certificate

5. **Registration of easements.** The registration of all necessary easements as required to ensure all proposed lots will have legal access to all utility services, inter-allotment drainage and vehicular access. This shall include the creation of a reciprocal right of way over the first 6m of the access driveway to Lot 22.

Prior to release of Subdivision Certificate, certification shall be obtained from a registered surveyor confirming the above requirement will be met upon registration of the linen plan.

6. **Inter-allotment Drainage System.** To facilitate legal disposal of stormwater from Lot 22 onto Lot 21, the following shall be implemented at no cost to Council:

- (a) The design and construction of an inter-allotment drainage system to facilitate stormwater disposal from lot one into Council's existing underground drainage system located on Lot 21. The inter-allotment drainage system shall be located adjacent and parallel to the southern boundary of Lot 21 and connecting the southwest corner of Lot 22 to Council's existing drainage system traversing Lot 21.
- (b) The registration of a 1.2m wide drainage easement over the inter-allotment pipeline in favour of Lot 22.
- (c) The design and construction of the inter-allotment pipe line shall ensure it will have capacity to convey 1 in 100 year flow generated from Lot 21 and in accordance with Part 8.2 of Council's Stormwater Management Manual.

7. **Provision of Services.** To ensure satisfactory effluent disposal and utility services are available to all proposed lot, the applicant is required to submit to Council with the application for Subdivision Certificate certificates a s.73 Certificate from Sydney Water indicating reticulated sewer has been made available to each lot .

**ITEM 4 (continued)****ATTACHMENT 1**

8. **Work as executed plan.** A "Works as Executed" plan of the constructed inter-allotment drainage system prepared by a registered surveyor including engineering certification by a chartered civil engineer with NPER registration confirming that the work has been constructed in accordance with the approved plans shall be submitted to Council, prior to release of Subdivision Certificate.
9. **88B Instrument.** The submission of an instrument under Section 88B of the Conveyancing Act 1919 plus 2 copies, creating any Easements, Positive Covenants and restrictions on use with Ryde City being the authority empowered to release vary or modify the same.

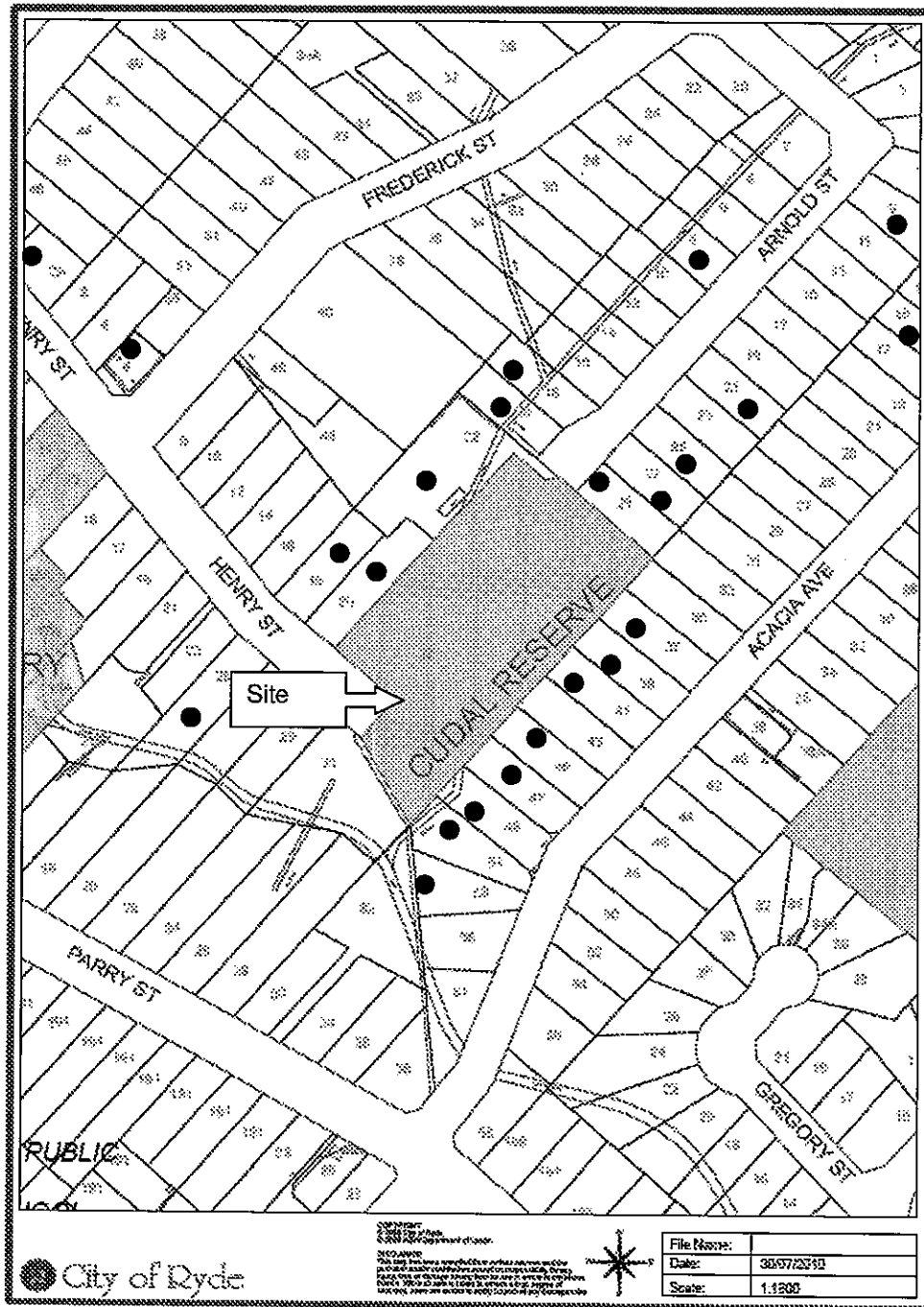
**ADVISORY CONDITION**

**Protection of fig tree:** The existing Sacred Fig tree located adjacent to the Arnold Street entrance to the site shall be protected during any future development of Lot 22. An updated arborist's report will need to accompany any future development proposal showing the protection of the tree's root zone and should also outline a construction management plan which includes the supervision of the driveway construction by an arborist. Design of the driveway is to be of a construction that minimises impacts within the root zone of the tree; in this regard engineering design shall be in consultation with a suitably qualified arborist.

## ITEM 4 (continued)

## ATTACHMENT 2

● Indicates submissions received  
● Submissions received outside map area



**ITEM 4 (continued)**

## ATTACHMENT 3

