

# JRPP PLANNING REPORT

JRPP NO:	2010 SYW 033
DA NO:	1357/2010/JPZ
APPLICANT:	The Hills Shire Council (Property Team)
PROPOSED DEVELOPMENT:	A subdivision creating 45 lots and new road (Stage 3)
PROPERTY:	Lot 1020 DP 1149731 Withers Road, Kellyville
LODGEMENT DATE:	9 April 2010
REPORT BY:	Simon Turner – Senior Subdivision Planner The Hills Shire Council
RECOMMENDATION:	Approval

## BACKGROUND

## MANDATORY REQUIREMENTS

Owner:	The Hills Shire Council	1.	<u>BHLEP 2005</u> – Permissible
Zoning:	Residential 2(a)	2.	Draft The Hills LEP 2010 - Permissible
Area:	5.984ha	3.	SEPP 19 (Bushland in Urban Areas) - Satisfactory
Existing Development:	Vacant	4.	<u>SEPP 55 (Remediation of Lands)</u> – Satisfactory.
Capital Investment Value:	\$4,195,240 (Stage 3) \$3,536,614 (Stage 4) Total \$7,731,854	5.	<u>Compliance with SEPP (Major Developments) 2005</u> - Satisfactory.
		6.	<u>SREP 20 (Hawkesbury Nepean River)</u> - Satisfactory.
		7.	<u>BHDCP Part D Section 15 – Kellyville Rouse Hill</u> – Satisfactory.
		8.	<u>Section 79C (EP&amp;A Act)</u> – Satisfactory.
		9.	<u>Section 94 Contribution</u> – \$980,910.40

## SUBMISSIONS

## REASONS FOR REFERRAL TO JRPP

1. Exhibition:	Yes, 30 days	1.	Staged Capital Investment Value in excess of \$5 million where Council is the applicant and land owner pursuant to SEPP (Major Developments) 2005.
2. Notice Adj Owners:	Yes, 14 days		
3. Number Advised:	1 <sup>st</sup> Notification – 30 properties 2 <sup>nd</sup> Notification – 89 properties		

4. Submissions Received:	1 <sup>st</sup> Notification – 30 2 <sup>nd</sup> Notification – Two		
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## EXECUTIVE SUMMARY

The site is zoned Residential 2(a). The application is for the subdivision of one lot into forty five lots including thirty eight residential lots and seven residue lots. The applicant has advised that the proposed residue lots could be developed for residential flat buildings and a town house development site in the future. The application also seeks approval for physical works such as road, bridge construction and drainage infrastructure.

The development of each lot proposed under this application will be subject to future separate applications.

The application was originally notified for a period of fourteen days prior to the Conciliation Conference. During the Conciliation Conference, concern was raised that the original notification period of fourteen days was not sufficient to enable the community to consider the applications and provide an informed response. As a result of the concern expressed by the community the application was placed on further exhibition for a period of thirty days. Thirty submissions were received in response to the first notification and two were received in response to the second notification. The issues raised in the submissions mainly relate to flora and fauna and the BioBanking process. However, other issues relating to traffic, contamination, cultural heritage, bush fire management and access to schools were raised. The issues raised in the submissions have been addressed within the report.

Council's Vegetation Mapping indicates that the site contains the ecological communities Cumberland Plain Woodland and Shale Sandstone Transition Forest. The application relies on "BioBanking" to address biodiversity impacts of the development. The BioBanking process is reported on "vegetation types" not "ecological communities". The BioBanking Agreement Credit Report prepared by Brendan Ryan, a Biobanking Assessor accredited by the NSW Office of Environment and Heritage engaged by the applicant, identifies that the site contains:-

- Narrow-leaved Ironbark - Broad-leaved Ironbark - Grey Gum open forest of the edges of the Cumberland Plain, Sydney Basin
- Red Bloodwood - Grey Gum woodland on the edges of the Cumberland Plain, Sydney Basin

BioBanking was established under Part 7A of the Threatened Species Conservation Act 1995 (TSC Act) and is a voluntary alternative to the threatened species "assessment of significance" as a means to conduct threatened species assessment as required under the Environmental Planning and Assessment Act 1979 (EP&A Act). A BioBanking Statement confirms that a development is not likely to significantly affect any threatened species, population or ecological community, or its habitat. Where a BioBanking Statement has been issued for a development and supplied to a consent authority, it is not necessary for the consent authority to take into consideration the likely impact of the development on biodiversity values, however should the application be considered for approval, a condition of consent must be imposed requiring the conditions of the biobanking statement be complied with (refer to condition 9). The Director General - Department of Environment, Climate Change and Water (now known as the Office of Environment and Heritage) has issued a BioBanking Statement for this development and accordingly, this aspect of the development is deemed to have been satisfied.

In regard to improved biodiversity outcomes, it is noted that the parent lot (lot 102 DP 1140711) had an area of 25.831ha and is wholly zoned for residential development. A

facilitating subdivision of the parent lot created lots 1020 to 1024 DP 1149731. Of parent lot 102, a total area of 11.403ha, consisting of lots 1021 and 1023, is subject to a BioBanking Agreement and 14.428ha, consisting of lots 1020 and 1024, is proposed to be developed by respective applications being DA1357/2010/JPZ (Stage 3) and DA1356/2010/JPZ (Stage 4). This equates to 44% of the site being conserved and maintained in perpetuity which could otherwise be sought for development and is considered to deliver a superior ecological outcome compared to the outcome likely to be delivered by the assessment of significance process.

The proposal seeks approval for variation to the Baulkham Hills Development Control Plan – Part C Section 3 Residential with respect to minimum lot frontages and depth. The proposed variations are located at the head of the proposed cul-de-sac. The proposed variations have been addressed in the report.

Given that Council is the applicant and the landowner and independent peer review of the application and the assessment by Council staff has been undertaken. Refer to Attachment 11. The review is to ensure transparency and probity of the assessment process.

As a result of the peer review the report has been slightly amended to address issues raised by the consultant.

## **HISTORY**

<b>09/12/2008</b>	DA1985/2008/ZB was approved. Refer below for a description of this application.
<b>01/03/2010</b>	DA785/2010/ZB was approved. Refer below for a description of this application.
<b>09/04/2010</b>	The application was lodged.
<b>09/04/2010</b>	A separate application pursuant to DA 1357/2010/JPZ was concurrently lodged over Lot 1020 DP 1149731 adjacent for a 45 lot subdivision known as Stage 3.
<b>15/04/2010</b>	The application was referred to the NSW Office of Water (NOW) and the NSW Rural Fire Service (RFS) for comment.
<b>15/04/2010</b>	The applicant was requested to provide additional information in relation to the Capital Investment Value, biodiversity, contamination and engineering detail.
<b>19/04/2010</b>	The applicant advised the Capital Investment Value of the application.
<b>04/05/2010</b>	The NOW requested additional information to be provided.
<b>12/05/2010</b>	The NSW RFS requested additional information to be provided.
<b>25/05/2010</b>	The application was deemed to be "Major Development" under Section 13B of SEPP (Major Developments) 2005 based on the staged Capital Investment Value with DA 1357/2010/JPZ adjacent.
<b>25/05/2010</b>	The applicant was requested to provide additional information bush fire, biodiversity, salinity, engineering detail, contamination, heritage and traffic details.
<b>03/06/2010</b>	The Joint Regional Planning Panel (JRPP) were notified of the

proposed development.

<b>03/06/2010</b>	A letter was sent to objectors and those who were originally notified advising the application was deemed to be a "Major Development" and that the application would be determined by JRPP.
<b>07/06/2010</b>	The applicant provided a response to the requests for additional information made on 15/04/2010 and 25/05/2010.
<b>08/06/2010</b>	The response provided by the applicant was referred to the NSW RFS.
<b>18/06/2010</b>	The JRPP acknowledged the receipt of the application.
<b>23/06/2010</b>	The response provided by the applicant was referred to NOW.
<b>25/06/2010</b>	The applicant submitted amended plans with minor changes to road alignments and provision of asset protection zones.
<b>28/06/2010</b>	The NSW RFS provided their General Terms of Approval.
<b>01/07/2010</b>	The amended plans were referred to the NSW RFS, NOW and the JRPP.
<b>01/07/2010</b>	A preliminary meeting with the JRPP was held to discuss the status of the development application.
<b>02/07/2010</b>	The NSW RFS provided their General Terms of Approval.
<b>08/07/2010</b>	The applicant was advised of the preliminary meeting with the JRPP and was requested to address their concerns.
<b>14/07/2010</b>	NOW requested additional information.
<b>15/07/2010</b>	The applicant provided a further response to the request for additional information made on 15/04/2010 and 25/05/2010.
<b>19/07/2010</b>	The applicant was requested to provide additional information to address the concerns of NOW.
<b>05/08/2010</b>	A Conciliation Conference was held to discuss the development application with adjoining and affected property owners.
<b>09/08/2010</b>	The application was renotified.
<b>09/08/2010</b>	The applicant provided additional information for the NOW which was referred to the NOW for comment.
<b>12/08/2010</b>	The applicant submitted a soil salinity and aggressivity report.
<b>13/08/2010</b>	Adjoining and affected property owners were renotified of the application for opportunity to make additional comment.
<b>17/08/2010</b>	The application was placed on public exhibition, appearing in the newspaper, inviting comment.
<b>26/08/2010</b>	The NSW RFS advised Council that they agree to issue a Bushfire Safety Authority and conditions of consent.

<b>07/09/2010</b>	The NOW agreed to issue their General Terms of Approval.
<b>16/09/2010</b>	A further letter was sent to Sydney Water seeking comment on the application.
<b>17/09/2010</b>	A letter was sent to the applicant seeking comment on the outstanding information requested previously.
<b>24/10/2010</b>	The applicant provided comment on the request for additional information made 08/07/2010 addressing the concerns of the JRPP.
<b>29/11/2010</b>	The applicant provided a copy of the preliminary validation reports which are to be reviewed by an accredited site auditor.
<b>07/12/2010</b>	A copy of the preliminary validation reports relating to site contamination and the applicant's response dated 24/10/2010 was sent to the JRPP for their consideration.
<b>14/02/2011</b>	A BioBanking Statement was issued by the Director General of the then NSW Department of Environment, Climate Change and Water.
<b>01/03/2011</b>	The applicant provided additional information including a salinity assessment, heritage assessment, traffic impact statement, engineering details and bushfire advice.
<b>10/03/2011</b>	A further letter was sent to Sydney Water seeking comment on the application.
<b>24/03/2011</b>	The application was considered by the JRPP at a status report meeting.
<b>05/06/2011</b>	Sydney Water provided advice on the application raising no objections subject to conditions of consent.
<b>21/07/2011</b>	The application was formally submitted to Chris Young of Chris Young Planning for the peer review
<b>26/07/2011</b>	Chris Young of Chris Young Planning provided an initial response where some suggestions were made for further matters to be considered in the report;
<b>28/07/2011</b>	The report was amended based upon comments from the formal Peer Review and submitted back to Chris Young of Chris Young Planning.
<b>29/07/2011</b>	Chris Young of Chris Young Planning provided a final version of the peer review.

## **APPLICATION**

### **Proposal**

The application seeks approval for the subdivision (refer to plan at attachment 2) of the site into 45 lots, being: -

- 38 residential lots intended for the erection of single residential dwellings with areas ranging in size from 700m<sup>2</sup> to 840m<sup>2</sup> (Lots 1 to 38); and
- Six residue lots intended to be created for future residential flat buildings with areas ranging in size from 0.406ha to 0.438ha (Lots 39 to 41 and 43 45); and
- One residue lot intended to be created for future medium density residential development with an area of 0.992ha (Lot 42).

The application also seeks approval for the following physical works:

- The construction and dedication of five new public roads along with all associated drainage infrastructure and services extending from Withers Road.
- The construction of a new two lane circulating non-mountable roundabout controlled intersection between Withers Road/ Mungerie Road and proposed road five.
- The construction of a new road bridge over the upper tributary of Smalls Creek.
- Road shoulder formation in Withers Road fronting Lot 1021 DP 1149731 adjacent to the development site in a manner consistent with the eventual alignment of Withers Road as a four lane sub-arterial route. These works must include the extension of the existing road pavement, the construction of kerb and gutter, footpath verge formation, drainage, concrete footpath paving, service adjustments and other ancillary work to make this construction effective.
- The construction of an indented bus bay along Withers Road adjacent to the intersection of Withers Road/ Ironbark Ridge Road, which is proposed to be signalised, within the existing road reserve.
- Stormwater connections and outlet works to Smalls Creek and its upper tributary within Lot 1023 DP 1149731 and possibly Lot 103 DP 1140711 adjacent.

The development of the proposed lots (residential and residue) will require the submission of separate development application(s).

The application relies on "BioBanking" to address biodiversity impacts of the development and to enable the application to proceed to determination. BioBanking is a voluntary alternative to the existing threatened species "Assessment of Significance" and is permissible under the "Biodiversity Banking and Offsets Scheme" administered by the NSW Office of Environment and Heritage (NOEH). A Biobanking Statement has been issued for the project confirming that the development has satisfied the threatened species assessment requirements under the Environmental Planning and Assessment Act 1979.

## **Background**

The application is known as DA1357/2010/ZB. The proposal is stage 3 in 4 stages of development within the site. A brief description of the four stages is provided below: -

### **DA1985/2008/ZB (Stage 1)**

On 9 December 2008, DA1985/2008/ZB was approved (refer to plan at attachment 5). The proposal subdivided three lots (3) lots into three (3) lots, being: -

- Lot 101 having an area of 12.92ha and consisting of the land zoned Open Space 6(a).
- Lot 102 having an area of 25.83ha and consisting of the land zoned Residential 2(a).
- Lot 103 having an area of 3.332ha and consisting of the land zoned Special Uses 5(a). This is to be used for future trunk drainage purposes.

The proposal also sought to provide a strip of land 1.5m wide and variable having an area of 1523m<sup>2</sup> and consisting of land zoned Special Uses 5(b). The land was to be included as road widening when the plan was registered.

The intent of the subdivision was to create one lot which correlates with each of the site's four (4) different zones. The subdivision has been completed and registered with Land and Property Information.

### ***DA785/2010/ZB (Stage 2)***

On 1 March 2010, DA785/2010/ZB was approved (refer to plan at attachment 4). The proposal subdivided lot 102 created by DA1985/2008/ZB into four (4) lots, being: -

- Lot 1020 having an area of 8.362ha;
- Lot 1021 having an area of 5.472ha;
- Lot 1022 having an area of 5.984ha; and
- Lot 1023 having an area of 6.014ha.

The development of proposed lots 1020 and 1022 are subject to separate development applications.

Lots 1021 and 1023 are not intended to be developed in the future. They are subject to a BioBanking agreement with the Department of Environment, Climate Change and Water.

The subdivision has been completed and registered with Land and Property Information.

### ***DA1357/2010/ZB (Stage 3)***

The application seeks approval for the subdivision of the site into forty five (45) lots (refer to plan at attachment 2).

This is the development application on which this report is based.

### ***DA1356/2010/ZB (Stage 4)***

The application seeks approval for the subdivision (refer to plan at attachment 3) of the site into forty six (46) lots, being: -

- 45 residential lots intended for the erection of single residential dwellings with areas ranging in size from 701m<sup>2</sup> to 959m<sup>2</sup> (Lots 1 to 45); and
- One residue lot intended to be created for future residential flat buildings with an area of 0.851ha (Lot 46).

The application also seeks approval for the following physical works:

- The construction and dedication of three new public roads along with all associated drainage service utility infrastructure. This will allow for extension to the public road network created in stage 3 of this project (DA 1357/2010/JPZ) over Lot 1020 DP 1149731 adjacent.
- Road shoulder formation in Withers Road fronting Lot 1023 DP 1149731 adjacent to the development site in a manner consistent with the eventual alignment of Withers Road as a four lane sub-arterial route. These works must include the extension of the existing road pavement, the construction of kerb and gutter, footpath verge formation, drainage, concrete footpath paving, service adjustments and other ancillary work to make this construction effective.

- Stormwater connections and outlet works to Smalls Creek and its upper tributary within Lot 1023 DP 1149731 and possibly Lot 103 DP 1140711 adjacent.

The development of the proposed lots (residential and residue) will require the submission of separate development application(s).

Development Application DA 1356/2010/ZB is being evaluated concurrently with the subject application and a separate JRPP Planning Report has been prepared.

### **Subject Site and Surrounds**

The site (refer to attachment 1) is located within the Kellyville / Rouse Hill Release Area. The site is zoned for residential use (refer to attachment 6).

The land to the north of the site is zoned 6(a) for open space purposes. The site contains a netball complex consisting of netball courts, car parking and ancillary structures.

The site adjoins Smalls Creek to the east which is zoned 5(a) for trunk drainage purposes. The land beyond the creek is identified as the North Kellyville Release Area and was rezoned by the Growth Centres in December 2008.

The land to the south consists of land zoned for 2(b) residential and 5(a) special use purposes (education). The residential land consists of low density residential lots containing single dwellings. The land zoned for special use purposes is identified as being set aside for an educational establishment (school).

The land to the west is identified for 6(a) open space, 5(b) special use and 2(a) residential purposes. The open space land consists of a sports oval. The land zoned for special use purposes is identified as being set aside for an educational establishment (school). The residential land is currently vacant but it is anticipated that it will be utilised for low density residential lots containing single dwellings.

Council's Vegetation Mapping (refer to attachment 8) identifies that the site contains the ecological communities Cumberland Plain Woodland and Shale Sandstone Transition Forest, however the BioBanking process is reported on "vegetation types" not "ecological communities". The BioBanking Agreement Credit Report identifies that the site contains: -

- Narrow-leaved Ironbark - Broad-leaved Ironbark - Grey Gum open forest of the edges of the Cumberland Plain, Sydney Basin
- Red Bloodwood - Grey Gum woodland on the edges of the Cumberland Plain, Sydney Basin

### **CONCILIATION CONFERENCE**

A Conciliation Conference was held on 5 August 2010 and was attended by approximately 37 residents.

The Conciliation Conference was facilitated by an independent Chairperson who stated that he was a planning Barrister and confirmed that his selection as Chairperson was subject to an "Expressions of Interest" process that sought an independent mediator with no interests that would cause conflict or impartiality in carrying out the role.

Preliminary questions were invited from residents regarding the process of the application. Where possible the Chair answered the questions but indicated that some questions would need to be answered in due course by either the Assessment Team, Development Team or the Department of Environment, Climate Change and Water (DECCW). The matters raised in the preliminary questions are outlined below.



A brief explanation of the proposal, the Development Application (DA) assessment process and current status was provided by Council's Manager Subdivision and Development Certification. It was noted in particular that the decision on the application will be made by the Joint Regional Planning Panel without any Council representatives on the Panel. The Panel will therefore be constituted by its three independent members.

Some questions were taken from the floor and answered accordingly. The matters raised in the preliminary questions are outlined below.

The Chairperson briefly explained the BioBanking legislation and noted that if a BioBanking statement is issued, the impact of development on biodiversity values as required to be assessed under both the Environmental Planning and Assessment Act and Threatened Species Conservation Act are considered to be acceptable.

The Chairperson invited the Acting Director Landscape, Ecosystems Conservation Branch (DECCW) to outline the BioBanking process and its benefits. Points raised include: -

- The traditional test currently used in the assessment of biodiversity impacts associated with a development is inconsistent. One Council's assessment process may vary significantly from that of another.
- There is no guarantee that land set aside for biodiversity protection under the current system will be managed appropriately resulting in agreed outcomes on lots being diminished through benign neglect.
- The BioBanking process offers certainty and consistency in the assessment process which must be done in accordance with the BioBanking guidelines.
- The BioBanking process identifies areas that must be retained and allows development to occur in appropriate areas.
- If vegetation is proposed to be removed and offset, it must be done 'like for like'.
- BioBanking ensures a funding source for management of the banked site so that vegetation is managed appropriately to ensure long term survival.
- BioBanking aims at ensuring that the vegetation to be retained is improved to compensate for the removed areas.

The Chairperson requested an update from DECCW as to how the BioBanking assessment was proceeding. DECCW advised that the matter is currently under assessment in accordance with the BioBanking guidelines. DECCW advised that they are aware of the referral of the application to the Federal Department of Environment, Water, Heritage and the Arts under the Environment Protection and Biodiversity Conservation (EPBC) Act 1999 and will try to ensure that the process is completed around the same time.

The Chairperson requested advice from DECCW as to whether the BioBanking process takes community consultation into consideration. DECCW responded by stating that there is no formal consultation process but DECCW would be happy to consider submissions from the community in this instance and invited comments. A method of communication to DECCW would be provided.

The Chairperson invited 3 representatives of the community to comment on the proposals. The following points were raised: -

- The site is the largest patch of remnant woodland in moderate to good condition on the Cumberland Plain and in the Hills Shire
- The western portion of the site is classified as critically endangered Cumberland Plain Woodland and habitat for the Swift Parrot Powerful Owl
- The site should be defined a "red flag" site and therefore not able to be utilised for biobanking
- BioBanking will not deliver an improvement in biodiversity values
- The high biodiversity values of the land will be compromised by any clearing and/or development
- The land should be valued and protected, not biobanked or developed for housing

- Based on previous ecological reports, the land has limited development opportunity
- There are discrepancies between the information provided to DEWHA in conjunction with the current applications and previous ecological reports.
- DEWHA were not provided with the previous Hayes Environmental Report and the Gunninah report, both of which recorded threatened species and described the area as having high conservation value. They were only provided with the GHD report that differs from the two previous reports.
- The site has irreplaceable conservation values
- The proposed action by Council will undermine its environmental credibility and commitment to the community detailed in various Council documents
- Concerned that the Bushland Conservation 355 Committee (BCC) were not notified or consulted about the proposal
- Concerned that notification did not appear in some local newspapers and was carried out over the Easter period, limiting opportunity for comment
- Concerned that Council has not had input by an ecologist in the assessment of the application
- Proposal will reduce connectivity by narrowing the ecological corridor. The existing vegetation in the corridor is of poor quality
- Strategic fire management control burns that will be necessary to protect the development will diminish the quality of vegetation
- The application does not identify tree hollows for nesting
- BioBanking the land will limit public access and restrict passive recreation opportunity
- Given the quality and accuracy of the application, a full independent study is required before the application proceeds

After the presentations from the community representatives the Chairperson invited the ecologist from GHD to comment and also to respond to other questions raised about BioBanking earlier in the proceedings. The Chairperson sought advice regarding the differences between the vegetation mapping and the vegetation classifications in the BioBanking report and then suggested that the ecologist continue with the answering of questions from previous comments. The ecologist from GHD responded with the following points: -

- The BioBanking process is reported on "vegetation types" not "ecological communities" and uses this information to calculate ecosystem or species credits for a site. The BioBanking process outlines that there are over 140 vegetation types which the BioBanking assessment tool can consider. Cumberland Plain Woodland is a community whereas the reported vegetation type is Scribbly Gum Forest. A list of the vegetation types can be viewed on DECCW's website [www.environment.nsw.gov.au/biobanking](http://www.environment.nsw.gov.au/biobanking)
- The BioBanking tool does not recognise the Cumberland Plain Woodland on the site and it is not a matter to be considered in the BioBanking process.
- There have been no recordings of Cumberland Plain Snails on site. The Cumberland Plain Snails have been identified on the Department of Planning site to the south.
- The fire regime established for the site has been prepared utilising ecological principles. The regime was prepared by both ecologists and the RFS to determine the best possible outcome for positive ecological results and reduced threat to property and life.
- The BioBanking process does not just cover flora, it must be prepared to consider all possible species of fauna likely to occur on site.
- The establishment of BioBanking does not mean that access to the site would be restricted provided it was not in a manner that impacted upon biodiversity values.
- The BioBanking tool takes into consideration connectivity of vegetated areas. Should the connectivity be viable the BioBanking tool inflicts heavy penalties on the outcome.
- The BioBanking process is scientifically driven where the current biodiversity assessment process is not. The BioBanking of a site allows for the long term preservation of a site where the current biodiversity assessment process does not. The environmental outcome is better.

After comments by the GHD ecologist were provided the Chairperson directed questions from the audience to appropriate persons from Council's Assessment Team, the applicant or DECCW. The questions and responses are paraphrased below: -

Question	Response
Can an assurance be given that the matters raised and discussed at the conference will be considered in the assessment process.	Matters raised at the conference will be considered in the assessment process.
Is there a limit on distance between one BioBanking site to another?	No distance restrictions are in place within the tool. However, the vegetation must be "like for like" and it would be unlikely that similar vegetation categories would occur too far from each other. The BioBanking tool outlines the sub-catchment where credits must be obtained from.
Who polices the BioBanking site to ensure that is undertaken correctly?	BioBanking requires auditing to be undertaken to ensure compliance with agreement. Significant penalties exist for non compliance.
Will lots 1021 and 1023 be part of agreement? What about Porters and Cadwells Road?	A BioBanking Statement grants permission to clear a site while a BioBanking Agreement is put in place over the land in perpetuity to ensure its conservation and maintenance. Should the BioBanking process be finalised, proposed lots 1021, 1023, the Porters Road site and Cadwells Road site will be subject to a BioBanking Agreement to ensure the conservation of the sites flora and fauna and maintenance including prevention of weed invasion. Lots 1020 and 1022 will be subject to a BioBanking Statement which will allow the clearing of vegetation on those lots to occur enabling development.
The site contains Cumberland Plain Woodland where Porters Road and Cadwells Road do not, how is it 'like for like'?	The BioBanking assessment methodology considers Vegetation Types not Community Types. CPW is a community type, not a vegetation type.
Did DECCW visit the site as part of the assessment?	Yes.
How long was spent on the site by the applicant's ecologist to determine vegetation classification?	Significant time was spent on the site to have sufficient information to enable the BioBanking tool to be utilised.
Why was more money spent on additional reports when reports already existed that outlined vegetation communities?	Very specific flora and fauna reports were required to be undertaken in conjunction with the use of the BioBanking tool. The previous reports did not fulfil these requirements. The reports needed to be based upon vegetation types.
Is listing available for vegetation types on the internet?	A list of the vegetation types can be viewed on DECCW's website <a href="http://www.environment.nsw.gov.au/biobanking">www.environment.nsw.gov.au/biobanking</a>
If the vegetation found on the site is inconsistent with that found at Porters Road and Cadwells Road can the matter proceed?	Should there be inconsistent vegetation classifications the proposal would not meet the BioBanking tools requirements and the proposal would not comply with the requirements of DECCW.

Question	Response
A tip previously existed in the locality, where was it?	<p>It was indicated that the tip was contained wholly within the area now accommodating the Kellyville Netball Complex on adjoining land to the north.</p> <p>Note: - subsequent to the Conciliation Conference, this matter was further investigated by Council's Property Development Team which revealed that the land accommodating the Kellyville Netball Complex was formerly used as a tip for putrescible waste and was drained and sealed upon termination of its use. In addition, a 3.2ha cleared area within the proposed stage 3 site (lot 1020) was used as a waste transfer station for non-putrescible waste transfer only, including green waste. This area was backfilled with clean validated fill material upon termination of its use.</p>
Do you consider Withers Road to be a main road in the locality?	Withers Road is a sub-arterial road and is considered one of the main roads in the area.
Why did Council choose the BioBanking process to develop the site?	<p>The BioBanking process allows for the development of the site whilst ensuring the long term preservation of the 'Biobanked' land. The BioBanking process will provide revenue for the maintenance and management of the 'Biobanked' land where funds specifically for the management of the sites are not currently available. BioBanking will result in a better environmental outcome that the current planning regime delivers.</p> <p>The land is classified as Operational land under the Local Government Act, 1993. The land is not set aside as a parkland for community use. The land is zoned residential 2(a) in its entirety and like all land zoned Residential 2(a) is available for development.</p>
Does the BioBanking of a site remove the ability of residents to access the site?	<p>Access to the site for activities such as horse riding, dog walking and motor bike riding would not be appropriate.</p> <p>The BioBanking process does not necessarily require access to be restricted. Passive activities such as walking and bird watching that do not impact upon the vegetation are not required to be restricted. If access results in no adverse environmental outcome than DECCW do not have any reason to prevent access to biobank sites.</p>
What development is occurring on the large parcel of land south of Withers	The land belongs to the Department of Planning. The development or otherwise of

Question	Response
Road?	that land is subject the Department of Planning's intentions.
Will the site be suited to the proposed use in respect to soil contamination?	<p>A contamination assessment report was carried out to determine the suitability of the site for future development by investigating whether any contamination was present and if so, the nature, degree and extent of contamination and what remediation action would need to be undertaken to ensure the site is suitable for the intended purpose. This report was lodged with the DA's and is currently being reviewed by an independent expert qualified in land contamination.</p> <p>In addition, a further review of both the contamination report and the independent expert review will be subject to a "Site Audit" by a DECCW accredited Site Auditor. This will occur prior to determination by the JRPP (the determining authority).</p>
Was notification of the application undertaken, and if so, how long was it notified for?	<p>The notification of the application was undertaken in accordance with the Baulkham Hills Development Control Plan which is fourteen (14) days.</p> <p>Note:- Subsequent to the Conciliation Conference, it was decided that given concern was raised that the original notification period of fourteen (14) days was insufficient, that the applications be placed on an additional exhibition period to provide the community additional opportunity to comment. The applications were exhibited for an additional thirty (30) days commencing 17 August 2010.</p>
Has Council had an ecologist working for them?	Yes
What was the land zoned for prior to the current zoning and was the vegetation considered in the rezoning of the land?	<p>The land was rezoned to Residential 2(a) on 28 June 1991. Prior to that the land was zoned Rural 1(a). It is unknown whether vegetation was considered during the rezoning process.</p> <p>Land is rezoned throughout the shire which contains vegetation. The development assessment process determines the significance of that vegetation, its biodiversity values and the merit of development proposals.</p>
Who will be determining the development application?	The application will be determined by the Joint Regional Planning Panel (JRPP).
Who is on the JRPP?	Three appropriately experienced professionals appointed by the Minister of Planning when the JRPP was first established. It was noted that two Council

Question	Response
	representatives are usually on the panel but will not be part of the determination of this matter.
Has a traffic report been prepared that analyses impacts the proposal may have on the local road network?	The applicant submitted a Traffic Impact Statement prepared by Thompson Stanbury Associates dated February 2011 which addressed the proposed development application, the likely traffic generation and the ability of the local road network to accommodate the traffic generation. The report has been reviewed by both the Traffic Management Team and Council's Subdivision Engineer who have raised no objections in respect to this matter.
The site contains a sediment pond, will council ensure that the pond will have no detrimental impact upon the future residents?	The determining authority must be satisfied that State Environmental Planning Policy No. 55 – Remediation of land (SEPP 55) has been satisfied. To do this the JRPP have requested that a site validation report by a DECCW accredited Site Auditor be provided. A condition of consent has been recommended to address this (refer to condition 31)
Was the fire management plan considered in regard to ecological impact?	The fire management plan was prepared in consultation with ecologists and the RFS and considered ecological impacts.
How does Council respond to the allegation that false information has been put forward to the Department of Environment, Water, Heritage and the Arts (DEWHA)?	<p>This is a matter for the ecological consultants acting on behalf of Council's Property Team, however the allegation is strongly refuted.</p> <p>The stages 3 &amp; 4 applications were referred to the Federal Department of Environment, Water Heritage and the Arts (DEWHA) for assessment under the Federal Environmental Protection and Biodiversity Conservation Act on 29 June 2010.</p> <p>This followed a formal meeting between the Department, the applicant and their two expert ecological consultants. The purpose of the meeting was to clarify the Department's preferences for both the format of the applications and the extent of historical/supporting documents that should be included.</p> <p>On 3 December 2010, DEWHA determined the applications as "Controlled Actions" requiring a Public Environment Report (PER).</p> <p>The report has been submitted to the Department (now known as Department of Sustainability, Environment, Water, Population &amp; Communities - SEWPaC).</p>

Question	Response
	<p>The PER process involves a 90 day public consultation period before a final decision is made by the Minister's representative.</p> <p>This DA can be determined by the JRPP without consideration of SEWPaC's involvement as the EP&amp;A Act and the Federal EPBC Act operate independently. However, a condition of consent is recommended advising the applicant of their responsibilities under the EPBC Act to consult with SEWPaC (refer to condition 11).</p>

The following information was conveyed to the attendees at the conclusion of the meeting: -

- The applicant is to still obtain the concurrence of the Department of Environment, Water, Heritage and the Arts under the *Environment Protection and Biodiversity Conservation Act 1999*.
- The BioBanking process is to be finalised by DECCW.
- The issues raised in the Conciliation Conference will be taken into consideration in the assessment of the development application.
- The development application is to be assessed and a report prepared by Council Staff.
- The report will be peer reviewed by an independent consultant.
- Both the report prepared by the Council officer and any comments provided by the independent consultant will be submitted to the JRPP for their Review and determination of the development application.
- The JRPP will notify any person who made a submission of their meeting date and extend an opportunity to comment. The date of the meeting is yet to be determined.

## ISSUES FOR CONSIDERATION

### 1. Compliance with SEPP (Major Developments) 2005

Clause 13(B2) of SEPP (Major Development) 2005 provides the following referral requirements to a Joint Regional Planning Panel: -

- (2) *This Part also applies to development that has a capital investment value of more than \$5 million if:*
- (a) *a council for the area in which the development is to be carried out is the applicant for development consent, or*
  - (b) *the council is the owner of any land on which the proposed development is to be carried out, or*
  - (c) *the development is to be carried out by the council, or*
  - (d) *the council is a party to any agreement or arrangement relating to the development (other than any agreement or arrangement entered into under the Act or for the purposes of the payment of contributions by a person other than the council).*

### Comments:-

The applicant advised Council of the CIV for each application being: -

- Stage 3 (DA1357/2010/JPZ) \$4,195,240

- Stage 4 (DA1356/2010/JPZ) \$3,536,614

Planning Circular - PS 10-008 states that when calculating the CIV for a staged development, the CIV of the separate applications comprising the overall staged development must be considered in determining the CIV for that development.

As the application is staged and the CIV combined exceeds \$5 million, with Council being the applicant, thereby requiring referral to, and determination by, a Joint Regional Planning Panel. In accordance with this requirement the application was referred to, and listed with, the JRPP for determination.

## **2. Compliance with Baulkham Hills Local Environmental Plan 2005**

The site is zoned Residential 2(a) under the BHELP. Subdivision is permissible pursuant to clause 14 of the BHLEP.

The zone objectives are: -

- (a) *to make general provision for land to be used for the purposes of housing and associated facilities, and*
- (b) *to provide for development for medium-density housing forms (including apartment buildings, town-houses, villas and the like) in locations close to the main activity centres of the local government area, and*
- (c) *to allow people to carry out a reasonable range of activities from their homes, where such activities are not likely to adversely affect the living environment of neighbours, and*
- (d) *to allow a range of developments, ancillary to residential uses, that:*
  - (i) *are capable of integration with the surrounding environment, and*
  - (ii) *serve the needs of the surrounding population without conflicting with the residential intent of the zone, and*
  - (iii) *do not place demands on services beyond the level reasonably required for residential use.*

### **Comments:-**

The proposal seeks to create thirty eight (38) residential allotments intended for the erection of single residential dwellings. The application also seeks to create seven (7) residue allotment intended to be created for future apartment buildings and town house development. The proposed residential lots, in conjunction with those proposed under DA1356/2010/JPZ, will provide for a variety of housing types in the locality. The proposed development application is consistent with the zone objectives.

Clause 2 identifies the aims (2(1)) and objectives (2(2)) of the BHLEP. The proposal is generally consistent with the aims and objectives.

Clause 6 identifies that the Environmental Planning and Assessment Model Provisions 1980 (Clause 1 to 3, 6, 9 to 12, 18 and 29 to 32) adopted for the purposes of the BHLEP. Clause 6 has been repealed. Clause 10, 14 and 30 are relevant in the assessment of this application. Clause 10 and 14 relate to the opening and works within a public road and the proposal is consistent with said clause. Clause 30 relates to the servicing of the site for the purpose of water and sewer. Should the application be approved a condition is recommended (refer to condition 62) requiring the provision of a servicing certificate from Sydney Water which will satisfy this clause. The proposal is consistent with Clause 6 of the BHLEP.

Clause 19 states that consent must not be granted for the purposes of an apartment building unless the lot has a minimum lot size of 4000m<sup>2</sup>. The proposal seeks to create a residue parcel for the erection of a future apartment building. Proposed residue lots 39 to



45 have areas which exceed 4000m<sup>2</sup> which is of sufficient size to enable future development to comply with Clause 19.

Clause 23 states that consent must not be granted for development of land that may be subject to flooding, unless the application is considered with respect to the impact of flooding on owners and occupiers whilst ensuring the environment is conserved and protected.

The land zoned Special Uses 5(a) owned by Council and to be acquired by Sydney Water as Trunk Drainage Land is known as Lot 103 DP 1140711 adjacent to the development site generally encompasses the 1 in 100 year ARI flood extent associated with this section of Smalls Creek. The subject site is further separated from Smalls Creek by Lot 1023 DP 1149731 which encompasses an upper tributary of Smalls Creek and other land covered by the BioBanking Statement that has been issued by the NOEH.

A condition is recommended that all of the lots and public roads within the development are located above the 1 in 100 year ARI flood extent associated with Smalls Creek and its upper tributary (refer to condition 66). A further condition has been added requiring the creation of a restriction on the title of the lots adjacent to the watercourse to ensure any dwelling constructed is located a minimum of 500mm above this flood level (refer to condition 58(f)).

Clause 25(1) states that Consent must not be granted to the carrying out of development within 200 metres of a creek, unless the consent authority is satisfied that the development will not have a detrimental impact on natural ecosystems, flora and fauna, water quality, natural drainage channels, visual amenity, flooding, soil erosion or topographical features. The site is located within close proximity to a watercourse. The proposal seeks approval for works that are adjacent the watercourse.

A BioBanking Statement has been issued and the proposal, in the context of the Threatened Species Conservation Act, is not likely to significantly affect a threatened species, population, or ecological community, or its habitat. The consent authority is not required to consider Section 5A of the EP&A Act where a BioBanking Statement has been issued and must accept that the requirements for threatened species or populations under the EP&A Act have been met. A BioBanking Statement cannot be appealed in the Land and Environment Court.

The application has been referred to NSW Office of Water (NOW) who have agreed to issue their General Terms of Approval on the basis that they are satisfied that the proposal will not have a significant impact on the water courses within the locality. The conditions imposed by NOW will minimise the impact of the development upon the water quality, natural drainage channels, topographical features and soil erosion in the locality.

The proposed development is for subdivision with road construction. The proposal will not have a significant visual impact upon the locality. Given the proposed BioBanking lots (lot Nos. 1021 and 1023 DP 1149731) will adjoin Withers Road future development will be substantially screened so as to have minimal visual impact from Withers Road and the surrounding sites. The proposal satisfies Clause 25(1).

The RFS have considered the application and agreed to issue their General Terms of Approval based upon the proposal's compliance with Planning for Bush Fire Protection 2006. Accordingly, the proposed is considered to satisfy Clause 26 of the BHLEP.

Clause 27 states that the aim of the control is to maintain and enhance the visual amenity of the local government area through the effective control and management of actions likely to affect the health of trees and bushland. The proposed BioBanking lots (lot Nos. 1021 and 1023 DP 1149731) will adjoin Withers Road and will ensure that visual appearance is maintained from outside the development site. The proposal is consistent with Clause 27.

Clause 39 states that before granting consent to development in the vicinity of a heritage item the consent authority must assess the impact of the proposed development on the heritage significance of the heritage item or the heritage conservation area. The site is located within close proximity to a heritage item. Council's Forward Planning Team considered this matter and is satisfied that the proposal would not have any adverse impact upon the item. The proposal is consistent with Clause 39.

Clause 45 notes that consent must not be granted unless the consent authority is satisfied that adequate arrangements have been made for any provision or augmentation of water supply, sewerage or drainage services, electricity supply telephone service and the provision of roads. The development site is located within close proximity to an established residential area which is typically enough to satisfy Council subject to conditions being imposed requiring the provision of service authority certificate stating that satisfactory arrangements have been made with Sydney Water, Telstra and Integral. The subdivision certificate will not be released until the certificates have been provided (refer to condition 62, 63 and 64). The application seeks approval for road construction which will connect the site to a public road. The proposal satisfies this clause.

The proposal is consistent with the BHLEP.

### **3. Draft The Hills Local Environmental Plan 2010**

Section 79C(1)(a)(ii) of the Environmental Planning and Assessment Act 1979 requires a consent authority to take into consideration any draft environmental planning instrument in the determination of a development application. On 29 March, 2011 Council commenced exhibition of the Draft The Hills Shire Council Local Environmental Plan 2010 (Draft LEP) and as such the Draft LEP must be considered.

Clause 1.8A 'Savings provision relating to development applications' of the Draft LEP 2010 states that: -

*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 been exhibited but had not commenced.*

The application was lodged on 9 April 2010 which predates the exhibition of the Draft LEP. However, in the interest of undertaking a complete assessment the applicable sections of the Draft LEP have been considered below.

The proposal is consistent with the aims of the Draft LEP listed within Clause 1.2.

Subdivision is permissible pursuant to clause 2.6.

The Draft Principal Local Environmental Plan 2010 seeks to attribute a zoning of R4 High Density Residential. The objectives of the R4 zone are: -

- *To provide for the housing needs of the community within a high density residential environment.*
- *To provide a variety of housing types within a high density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To encourage high density residential development in locations that are close to established public transport routes and centres.*

**Comment:**

The objectives of the zone aim at ensuring that development provides a variety of housing types within a high density residential environment. Permitted development includes dwelling-houses, multi-unit dwelling houses and residential flat buildings with consent.

The proposal seeks to create 38 low density residential lots and 7 residue lots intended to be utilised for high density housing such as a residential flat building. The application is to be considered in conjunction with DA1356/2010/JPZ being stage 4. Stage 4 seeks approval for 45 low density residential lots and 1 residue lot intended to be created for a future residential flat building.

The two applications seek to establish their own development pattern in the locality which will provide for a variety of housing types at a density between low and high density ranges.

The traffic report submitted with the application notes that Hillsbus operate the following bus services past the subject site: -

- Route 610 – Rouse Hill to the City via Castle Hill (at a frequency of every 20 minutes during the morning, then 30 minutes during other periods);
- Route 617X – Rouse Hill to the City (at a frequency between 5 and 20 minutes during the morning and evening peak periods and 1 hour in other periods)

The closest bus stop is located at the junction of Withers and Mungerie Road. The site is within a reasonable distance of public transport.

The proposal is generally consistent with the zone objectives.

Clause 4.1 states that the size of any lot resulting from a subdivision of land is not to be less than the minimum size shown on the Lot Size Map. The Lot Size Map indicates that the minimum lot size is 1800m<sup>2</sup>. Proposed lots 1 to 38 have areas of less than 1800m<sup>2</sup>. Proposed lots 39 to 45 have areas exceeding 1800m<sup>2</sup>.

Clause 4.1B lists the following minimum lot sizes for types of development within the R4 High Density Residential zone: -

- |                             |   |                    |
|-----------------------------|---|--------------------|
| • dual occupancy (attached) | = | 1800m <sup>2</sup> |
| • dual occupancy (detached) | = | 1800m <sup>2</sup> |
| • multi dwelling housing    | = | 1800m <sup>2</sup> |
| • residential flat building | = | 4000m <sup>2</sup> |

Proposed lots 1 to 38, being the residential lots, could not be utilised for any of the above uses based upon their respective areas of 700m<sup>2</sup>. However, they are proposed as low density housing lots and are intended to only contain one dwelling. Proposed lots 38 to 45 being the development lots could be utilised for each of the uses listed above.

The minimum lot size controls listed above relate to development lots and not the final residential lots created by a development application. Clause 4.1(4) states that the minimum lot size clause does not apply in relation to the subdivision of individual lots in a strata plan or community title scheme. The intent of the control is to ensure that development lots are of a size to enable future high density development. The lots could then be subdivided in the future once completed pursuant to clause 4.1B. Proposed lot 38 to 45 being the development lot, is consistent with this control.

The 38 residential lots are intended as the final product. The lots may not be subdivided further and are permitted to contain a single dwelling pursuant to the Draft LEP. The lots are provided as part of an overall development strategy for the site in conjunction with DA1356/2011/JPZ where 45 residential lots and 1 development lot is proposed to be created.

Council's Forward Planning Team provided the following comments:-

*'Preparation of draft Local Environmental Plan 2010 involved development of a Local Strategy to guide major changes in land use management within the Shire. In locations outside those identified for change in the Local Strategy, the translation involved a 'best fit' approach to the new Standard Instrument. The result for the subject land was R4 Residential High Density with draft Development Control Plan 2011 acknowledging additional planning is required to reach a site specific response, which deals with the environmental and development issues.*

*The master plan prepared has determined an appropriate development form, consisting of a mixture of dwelling-houses, townhouses and apartments, that responds to the constraints of the site and is consistent with the permissible uses in both the current and proposed zones. Whilst draft LEP 2010 restricts the minimum lot size (1,800m<sup>2</sup>), Clause 4.6 – Exceptions to Development Standards provides flexibility in circumstances where better outcomes are achieved. In view of the extensive master planning it would be appropriate to consider the merits of the proposed development and whether flexibility is justified. Should this application be successful, it would involve a future amendment to the LEP to remove the R4 Zone in some locations and limit development to the type specified in the master plan.'*

The current zoning allows for high density development and as such the applicant could have proposed only development lots of 1800m<sup>2</sup> or greater with a view of undertaking residential flat buildings over the entire site whilst complying with the permissible uses in the Draft LEP. However, a mixture of low and high density housing is proposed for the site which has resulted in development that does not comply with the minimum development lot size of 1800m<sup>2</sup>. As a result it could be argued that the proposal seeks to underdevelop the site based upon the draft zone and controls. However, the site is not necessarily located in a position which would typically receive a high density zoning such as within close proximity to a town centre of transport hub and as such the develop density proposed by both DA1356/2010/JPZ and DA1357/2010/JPZ is more reasonable. The comments provided by Forward Planning indicate that the zoning for the locality will be reviewed and amended once development is approved within the site.

Based upon the comments provided by Forward Planning compliance with the minimum lot size control of 1800m<sup>2</sup> is considered to be unnecessary in this instance. The applicant has prepared a site specific response which does not result in over development of the site when compared with the draft zoning. The proposed variation is considered to be a reasonable outcome in this instance.

Clause 4.3 of the Draft LEP notes that the height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map. The maximum height permitted by 16m within the site. The application does not seek approval for built form.

Clause 2.6C of the Draft LEP relates to earthworks, both independent to, and as part of, a subdivision. This clause requires that the works not have a detrimental impact on "environmental functions and processes, neighbouring uses, cultural or heritage items and features".

Conditions have been recommended requiring that earthworks undertaken as part of this subdivision be limited to that necessary to provide for developable lots and a road and drainage design complying with Council's Design Guidelines and Works Specification for Subdivisions/ Developments (refer to condition 25). A further condition has been imposed to ensure the finished levels of roads and lots match the existing landform where they are located adjacent to Lot 1023 DP 1149731, being the lot that surrounds the development site covered by the BioBanking Statement that has been issued by the NOEH (refer to condition 25(xii)). This will ensure the subdivision works do not impact upon environmental functions and processes consistent with Clause 2.6C above.

There are no neighbouring uses that could be impacted by earthworks associated with this subdivision.

The relevant objectives of Clause 5.10 in relation to this application are summarised as ensuring that development conserves the value of items and places with heritage significance. Council's Forward Planning Team have considered the application in respect to this matter and raised no objections.

Clause 5.13 of the Draft LEP applies to land at or below the flood planning level, being the level of a 1 in 100 year ARI (average recurrent interval) flood event plus a 500mm freeboard.

This matter has been addressed earlier in this report. Refer to Council's consideration of Clause 23 of the BHLEP above.

Clause 6.2 states that development consent must not be granted for development on land in an urban release area unless the Council is satisfied that any public utility infrastructure that is essential for the proposed development is available or that adequate arrangements have been made to make that infrastructure available when required. The development site is located within close proximity to an established residential area which is typically enough to satisfy Council subject to conditions being imposed requiring the provision of service authority certificate stating that satisfactory arrangements have been made with Sydney Water, telecommunication provider and the electricity provider (refer to condition 62, 63 and 64). The subdivision certificate will not be released until the certificates have been provided. The application seeks approval for road construction which will connect the site to a public road. The proposal satisfies this clause.

The proposal is generally consistent with the Draft LEP.

#### **4. Compliance with Baulkham Hills Development Control Plan - Part E Section 15- Kellyville/Rouse Hill Release Area**

The proposed subdivision has been assessed for compliance with the requirements of BHDCP Part E, Section 15 – Kellyville / Rouse Hill Release Area and the numerical standards for lots No. 1 to 38 are shown in the tables below: -

<b>Development Standard</b>	<b>Lots</b>	<b>Proposal</b>	<b>Compliance</b>
Density Unidentified	83	9.4	See report
Min Allotment Size 450m <sup>2</sup>	Lot 1	700m <sup>2</sup>	Yes
	Lot 2	700m <sup>2</sup>	Yes
	Lot 3	700m <sup>2</sup>	Yes
	Lot 4	700m <sup>2</sup>	Yes
	Lot 5	700m <sup>2</sup>	Yes
	Lot 6	700m <sup>2</sup>	Yes
	Lot 7	700m <sup>2</sup>	Yes
	Lot 8	760m <sup>2</sup>	Yes
	Lot 9	799m <sup>2</sup>	Yes
	Lot 10	700m <sup>2</sup>	Yes
	Lot 11	700m <sup>2</sup>	Yes
	Lot 12	700m <sup>2</sup>	Yes
	Lot 13	750m <sup>2</sup>	Yes
	Lot 14	700m <sup>2</sup>	Yes
	Lot 15	770m <sup>2</sup>	Yes
	Lot 16	840m <sup>2</sup>	Yes
	Lot 17	758m <sup>2</sup>	Yes
	Lot 18	710m <sup>2</sup>	Yes

	Lot 19	713m <sup>2</sup>	Yes
	Lot 20	708m <sup>2</sup>	Yes
	Lot 21	708m <sup>2</sup>	Yes
	Lot 22	708m <sup>2</sup>	Yes
	Lot 23	708m <sup>2</sup>	Yes
	Lot 24	708m <sup>2</sup>	Yes
	Lot 25	709m <sup>2</sup>	Yes
	Lot 26	703m <sup>2</sup>	Yes
	Lot 27	770m <sup>2</sup>	Yes
	Lot 28	708m <sup>2</sup>	Yes
	Lot 29	700m <sup>2</sup>	Yes
	Lot 30	740m <sup>2</sup>	Yes
	Lot 31	730m <sup>2</sup>	Yes
	Lot 32	700m <sup>2</sup>	Yes
	Lot 33	760m <sup>2</sup>	Yes
	Lot 34	700m <sup>2</sup>	Yes
	Lot 35	700m <sup>2</sup>	Yes
	Lot 36	700m <sup>2</sup>	Yes
	Lot 37	700m <sup>2</sup>	Yes
	Lot 38	700m <sup>2</sup>	Yes
Minimum Frontage 15m	Lot 1	18m	Yes
	Lot 2	18m	Yes
	Lot 3	18m	Yes
	Lot 4	18m	Yes
	Lot 5	18m	Yes
	Lot 6	18m	Yes
	Lot 7	18m	Yes
	Lot 8	19.5m	Yes
	Lot 9	20.7m	Yes
	Lot 10	20.2m	Yes
	Lot 11	20m	Yes
	Lot 12	20m	Yes
	Lot 13	29.7m	Yes
	Lot 14	20.2m	Yes
	Lot 15	18m	Yes
	Lot 16	18.1m	Yes
	Lot 17	19.7m	Yes
	Lot 18	24.2m	Yes
	Lot 19	21.7m	Yes
	Lot 20	18m	Yes
	Lot 21	18m	Yes
	Lot 22	18m	Yes
	Lot 23	18m	Yes
	Lot 24	18m	Yes
	Lot 25	18.7m	Yes
	Lot 26	19.1m	Yes
	Lot 27	17.8m	Yes
	Lot 28	24.3m	Yes
	Lot 29	18m	Yes
	Lot 30	21.3m	Yes
	Lot 31	12.6m	No, see report
	Lot 32	19.8m	Yes
	Lot 33	11.6m	No, see report
	Lot 34	8.7m	No, see report
	Lot 35	17.9m	Yes
	Lot 36	15.3m	Yes
	Lot 37	18m	Yes
	Lot 38	18m	Yes

Minimum Depth 30m	Lot 1	39m	Yes
	Lot 2	39m	Yes
	Lot 3	39m	Yes
	Lot 4	39m	Yes
	Lot 5	39m	Yes
	Lot 6	39m	Yes
	Lot 7	39m	Yes
	Lot 8	39m	Yes
	Lot 9	39m	Yes
	Lot 10	31.5m	Yes
	Lot 11	35.1m	Yes
	Lot 12	35m	Yes
	Lot 13	35m	Yes
	Lot 14	35m	Yes
	Lot 15	39.5m	Yes
	Lot 16	45.8m	Yes
	Lot 17	34.7m	Yes
	Lot 18	32.7m	Yes
	Lot 19	36.3m	Yes
	Lot 20	39.2m	Yes
	Lot 21	39.3m	Yes
	Lot 22	39.3m	Yes
	Lot 23	39.3m	Yes
	Lot 24	39.3m	Yes
	Lot 25	34.5m	Yes
	Lot 26	34.5m	Yes
	Lot 27	31.6m	Yes
	Lot 28	37.5m	Yes
	Lot 29	39m	Yes
	Lot 30	39m	Yes
	Lot 31	27.4m	No, see report
	Lot 32	27.4m	No, see report
	Lot 33	30.9m	Yes
	Lot 34	30.3m	Yes
	Lot 35	30.3m	Yes
	Lot 36	38.4m	Yes
	Lot 37	38.4m	Yes
	Lot 38	39m	Yes
Building Platform 10m x 15m	Lots 1 to 38	Each lot is capable of containing a building platform of 10m x 15m whilst complying with the minimum setbacks required by the BHDGP	Yes
Front Setback 4.5 metres	Lots 1 to 38	Each lot is capable of containing a building platform of 10m x 15m whilst complying with the minimum setbacks required by the BHDGP	Yes
Rear Setbacks 4m	Lots 1 to 38	Each lot is capable of containing a building platform of 10m x 15m whilst complying with the minimum setbacks required by the BHDGP	Yes
Side Setbacks 900mm	Lots 1 to 38	Each lot is capable of containing a building	Yes

		platform of 10m x 15m whilst complying with the minimum setbacks required by the BHDCP	
Secondary Street Setbacks 2m	Lots 1, 4, 20, 22, 34 and 38	Each lot is capable of containing a building platform of 10m x 15m whilst complying with the minimum setbacks required by the BHDCP	Yes
Residential subdivisions are required to provide a mix of allotment sizes	Lots 1 to 38	The proposed lots range in size from 700m <sup>2</sup> to 840m <sup>2</sup> . A variety of lot sizes above 700m <sup>2</sup> are provided.  The development of lots 39 to 45 will provide for additional housing options in the locality which is consistent with the intent of the control.	Yes
Allotments are to be rectangular in shape and not splayed at the end of cul-de-sacs.	Lots 31, 32, 33, 34 and 35	The proposed lots are generally irregular in shape which is inconsistent with the DCP.	No, see report

### General Comments

The site is identified within Development Control Plan Sheet 1 of 4 of Part E Section 15 - Kellyville/ Rouse Hill Release Area with the following statement: -

*Area subject to later development control plan and further studies, including, soil contamination and flora and fauna.*

Council has not prepared a further development control plan which would provide for further or specific controls that could be applied to the site. Accordingly, the general controls for subdivision (i.e. lot size and shape) have been applied in the assessment of the application.

The applicant has undertaken further soil assessment which is discussed within this report. Additionally, the applicant has entered into a BioBanking Agreement with the Department of Environment and Heritage (formerly known as the Department of Environment, Climate Change and Water) which addresses flora and fauna issues. This matter is also discussed within the report.

### Proposed Variations

The proposal seeks approval for variation to the controls contained within the DCP. The proposed variations are discussed below: -

#### **Minimum Frontage**

The DCP requires that each lot be provided with a minimum frontage of 15m. Proposed lots 31, 33 and 34 do not comply with this requirement and are provided with respective frontages of 12.6m, 11.6m and 8.7m.



The proposed lots are located at the head of a cul-de-sac which often results in variation to the minimum frontage controls. The usual options at the head of a cul-de-sac are to provide either: -

- Splayed lots with narrow frontages, wide rear areas and irregular in shape; or
- Regular shaped lots with a small road frontage but consistent width and depth.

All three lots are of the splayed variety. Whilst the proposed lots seek approval for variation to the DCP they are of a generous size exceeding the minimum 450m<sup>2</sup> area control and are capable of containing a building platform of 10m x 15m whilst complying within minimum setback controls.

The proposed variation will not result in lots being constrained in such a manner so as to hinder development.

No objections are raised to the proposed variation in this instance.

### ***Minimum Depth***

The DCP requires that each lot be provided with a minimum depth of 30m. Proposed lots 31 and 32 do not comply with this requirement and are provided with a common side boundary with a depth of 27.4m.

Lots located at the head of a cul-de-sac may typically have a variation in depth on one side boundary. It is common for lots to share a short boundary at the head of a cul-de-sac, as the lot do in this instance.

Whilst the lots seek approval for variation to the minimum lot depth requirement they are of a generous size exceeding the minimum 450m<sup>2</sup> area control and are capable of containing a building platform of 10m x 15m whilst complying within minimum setback controls.

The proposed variation will not result in either of the lots being constrained in such a manner so as to hinder development.

No objections are raised to the proposed variation in this instance.

### ***Splayed Lots***

The DCP states that lots are to be rectangular in shape and not splayed at the end of cul-de-sacs. The proposed lots are generally irregular in shape which is inconsistent with the DCP.

The intent of the control is to ensure that lots of are a size and shape that will be conducive to residential development.

Whilst the lots are irregular in shape it is not to a point where the development potential of the lots is limited. The lots are of a generous size exceeding the minimum 450m<sup>2</sup> area control and are capable of containing a building platform of 10m x 15m whilst complying within minimum setback controls.

The proposed variation will not result in either of the lots being constrained in such a manner so as to hinder development.

No objections are raised to the proposed variation in this instance.

### **Other DCP Matters**

The following matters need to be considered in the assessment of the application: -

## Density

The DCP does not provide for any specific controls for the development site in relation to density. The DCP suggests four density types within the Kellyville/Rouse Hill Release Area. The density types are: -

- **Fringe Density** areas typically occur in environmentally sensitive areas and are to be dominated by large lot detached housing with environmentally significant features of the site are protected. The density range for these areas is 5 to 8 dwellings per net hectare, however the minimum density will depend on individual site constraints;
- **Cluster Density** areas are similar in character to the conventional lot subdivisions and are required to be developed within the density range of 10 to 13 dwellings per net hectare. The area requires a mix of residential allotment sizes;
- **Local Centre Density** areas typically occur within close proximity to community and/or commercial facilities and are similar to cluster density areas, however, the density range is between 15 to 20 dwellings per net hectare; and
- **Town Centre Density** areas are in close proximity to either the Regional Centre or the Kellyville District Centre. The density range for these areas is 30 to 35 dwellings per net hectare. Due to the high density requirement, it is envisaged that a major form of the housing will take the form of multi-unit housing.

The site is subject to a BioBanking Agreement and as a result the lot sizes are not required to be kept large due to environmental constraints.

The site is located within close proximity to community facilities being schools and open space. The Rouse Hill Town Centre is located nearby at a linear distance of less than 1km. Within close proximity to the site two main density types being Cluster Density and Local Centre Density are utilised. The density likely to be attributed to the development site is either Cluster Density or Local Centre Density being between 10 to 20 dwellings per net hectare.

The proposal seeks approval for an approximate density of 9.6 dwellings per net hectare which is consistent with the Fringe Density requirements. This has been calculated using the average lots size, the average lot width and the average road width proposed by the development. Development lots (lot 39 to 45) and the half road not adjoining residential lots were excluded from the calculations.

It must be noted that development lot 46 was excluded from the density calculations. However, when it site is developed it would be likely that the density for the development is calculated based upon the current site area of lot 1020 and the total number of dwellings proposed under this application and the future application. This would result in the density for the site being increased from the current 9.6 dwellings per net hectare.

## 5. Compliance with Baulkham Hills Development Control Plan - Part E Section 7- Apartment Building

The application does not seek approval for the erection of apartment buildings, but rather create allotments intended to be used in the future as apartment building development site (being lot 39 to 41 and 34 to 45). Accordingly, the controls which relate to apartment building development sites must be considered. A compliance table below is provided below: -

Min Allotment Size Apartment Building 4000m <sup>2</sup>	Lot 39	4300m <sup>2</sup>	Yes
	Lot 40	4062m <sup>2</sup>	Yes
	Lot 41	4062m <sup>2</sup>	Yes
	Lot 43	4379m <sup>2</sup>	Yes

	Lot 44	4369m <sup>2</sup>	Yes
	Lot 45	4166m <sup>2</sup>	Yes
Lot Shape Minimum Road Frontage Requirement 30 metres	Lot 39	>30m	Yes
	Lot 40	>30m	Yes
	Lot 41	>30m	Yes
	Lot 43	>30m	Yes
	Lot 44	>30m	Yes
	Lot 45	>30m	Yes
Access Access via battle axe or ROW not encouraged	Lot 39	Road frontage access	Yes
	Lot 40		Yes
	Lot 41		Yes
	Lot 43		Yes
	Lot 44		Yes
	Lot 45		Yes

The proposed residue allotment is consistent with apartment building development site requirements contained within the BHDCP and the proposal will not render adjoining allotments incapable of being development.

The proposed residue allotment is satisfactory.

#### **6. Compliance with Baulkham Hills Development Control Plan - Part C Section 6- Town Houses**

The application does not seek approval for the erection of town houses, but rather create an allotment to be used in the future as a town house development site (being lot 42). Accordingly, the controls which relate to town house development sites must be considered. A compliance table below is provided below: -

Min Allotment Size Town House 1800m <sup>2</sup>	Lot 42	9915m <sup>2</sup>	Yes
Lot Shape Minimum Road Frontage 28 metres	Lot 42	>28m	Yes
Lot Shape Average Width of 30 metres	Lots 42	>30m	Yes

The proposed residue allotment is consistent with town house development site requirements contained within the BHDCP and the proposal will not render adjoining allotments incapable of being development.

The proposed residue allotment is satisfactory.

#### **7. Issues Raised in Submissions**

The application has been notified on two separate occasions. The first notification was carried out between 15 April 2010 and 30 April 2010 to 30 adjoining and surrounding properties. The second notification was carried out between 13 August 2010 and 17 September 2010 to 89 adjoining and surrounding properties and other affected parties. 30 submissions were received in response to the first notification and 2 were received in response to the second notification.

The issues raised in submission are summarised as follows:

ISSUE/OBJECTION	COMMENT	OUTCOME
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ISSUE/OBJECTION	COMMENT	OUTCOME
<p>That the vegetation classification purported to be located on the site via the statement of environmental effects is inconsistent with NSW Wildlife Atlas records, the Department of Environment &amp; Climate Change vegetation mapping, Sydney Metropolitan Catchment Management Authority vegetation mapping, and Council's own vegetation map which identify Cumberland Plain Woodland and Shale Sandstone Transition Forest as being present.</p> <p>Both Cumberland Plain Woodland and Shale Sandstone Transition Forest are listed communities in both State (Threatened Species Conservation Act) and Commonwealth (Environmental Protection and Biodiversity Act) legislation. The proposal would result in the removal of significant areas of both vegetation communities which are possibly the last two remaining significant stands under Council's control.</p>	<p>Council's vegetation mapping identifies the site as containing both Cumberland Plain Woodland and Shale Sandstone Transition Forest.</p> <p>As part of the BioBanking process detailed flora and fauna surveys were carried out by GHD and Biosis Research being consultants engaged by the applicant.</p> <p>The BioBanking Agreement Credit Report does not identify that the site contains either Cumberland Plain Woodland or Shale Sandstone Transition Forest.</p> <p>The BioBanking process is reported on "vegetation types" not "ecological communities" and uses this information to calculate ecosystem or species credits for a site. The BioBanking process outlines that there are over 140 vegetation types which the BioBanking assessment tool can consider.</p>	Issue addressed
<p>BioBanking does not adequately compensate for the removal of flora and fauna to be removed to allow for the development of the site. Concern that BioBanking does not deliver better environmental outcomes than the current assessment process required under the Environmental Planning and Assessment Act and Threatened Species Conservation Act.</p>	<p>BioBanking provides a rigorous and credible environmental assessment process which must be done in accordance with the BioBanking guidelines. The BioBanking process identifies areas that must be conserved and managed and allows development to occur in appropriate areas.</p> <p>If vegetation is proposed to be removed and offset, it must be done 'like for like'. BioBanking aims at ensuring that the vegetation to be retained is improved to compensate for the removed areas.</p> <p>There is no guarantee that land set aside for biodiversity protection under the current system (assessment of significance under section 5A) will be managed appropriately resulting in agreed outcomes on lots being diminished through benign neglect.</p>	Issue addressed

ISSUE/OBJECTION	COMMENT	OUTCOME
<p>BioBanking allows vegetation to be removed from a local location whilst retaining vegetation at another location which could be potentially some distance away. This allows the biodiversity values of one location to be removed and enhanced in another location which is not connected to the development site and of no benefit to the residents where the removed is occurring.</p>	<p>No distance restrictions are in place within the tool. However, the vegetation must be "like for like" and it would be unlikely that similar vegetation categories would occur too far from each other. The BioBanking tool outlines the sub-catchment where credits must be obtained from.</p>	<p>Issue addressed</p>
<p>The proposal will not result in a "like for like" swap required for BioBanking to occur. This is due to the different vegetation classifications occurring on the site and the reliance of other sites to achieve the required BioBanking credits.</p>	<p>If vegetation is proposed to be removed and offset, it must be done 'like for like'.</p> <p>The Department of Environment and Heritage (formerly known as the Department of Environment, Climate Change and Water)</p>	<p>Issue addressed</p>
<p>The proposal is inconsistent with federal, state and local law/policies which all aim are conserving and protecting the environment.</p>	<p>The Department of Environment and Heritage (formerly known as the Department of Environment, Climate Change and Water) are satisfied that the proposal complies with the Threatened Species Conservation Act and the BioBanking process.</p> <p>Use of the BioBanking process sets aside the need to comply with the Environmental Planning and Assessment Act or the Baulkham Hills Local Environmental Plan and Baulkham Hills Development Control Plan.</p> <p>The applicant is required to consult with the Federal Department of Sustainability, Environment, Water, Population and Communities. Approval from the Department is only required if the proposal is deemed a controlled action for the purpose of the Environmental Protection Biodiversity Conservation Act and is a separate consideration for the applicant. Council has no assessment role in respect to the Environmental Protection Biodiversity Conservation Act.</p>	<p>Issue addressed</p>

ISSUE/OBJECTION	COMMENT	OUTCOME
The application is required to be referred to the Commonwealth Department of Environment, Water, Heritage and the Arts for consideration of the Environmental Protection and Biodiversity Act.	The applicant is required to consult with the Federal Department of Sustainability, Environment, Water, Population and Communities. Approval from the Department is only required if the proposal is deemed a controlled action for the purpose of the Environmental Protection Biodiversity Conservation Act and is a separate consideration for the applicant. Council has no assessment role in this matter.	Issue addressed
The vegetation to be retained from the site is of lesser value than that to be removed. This is due to the interface of Withers Road and the sites internal road and the associated impacts of such an interface upon the areas of vegetation to be retained.	<p>If vegetation is proposed to be removed and offset, it must be done 'like for like'.</p> <p>The Department of Environment and Heritage (formerly known as the Department of Environment, Climate Change and Water) has considered the application and is satisfied that the proposal complies with the BioBanking process and has subsequently issued a Biobanking statement.</p>	Issue addressed
Council should be seeking to retain vegetation rather than removing it to allow for the development of the site. The removal of vegetation will have detrimental impacts upon biodiversity in the locality and set a bad example in relation to development of sensitive sites. Development on remnant bushland is not model Ecological Sustainable Development (ESD) which Council should be pursuing.	<p>The application has been prepared in accordance with the Environmental Planning and Assessment Act and the Threatened Species Conservation Act. The BioBanking process has been utilised.</p> <p>The BioBanking process offers certainty and consistency in the assessment process which must be done in accordance with the BioBanking guidelines.</p> <p>BioBanking ensures a funding source to for management of the banked site so that vegetation is managed appropriately to ensure long term survival. BioBanking aims at ensuring that the vegetation to be retained is improved to compensate for the removed areas.</p>	Issue addressed
The need to manage the site to reduce bush fire threat within the locality will result in a reduced ecological value for the vegetation that is to be retained. The treatment of the site for reduced threat of bush fire will also result	Bush fire management has been built into the BioBanking conditions for the site. The BioBanking conditions require 'ecological burns' to be carried out intervals suited to each vegetation classification and wildlife likely to be located on the	Issue addressed

ISSUE/OBJECTION	COMMENT	OUTCOME
on impacts upon the site's fauna.	site.	
The proposal will result in the destruction of habitat for numerous varieties of fauna within the locality including the threatened Cumberland Plain Land Snail.	<p>An ecologist from GHD being the applicant's consultant has states that there have been no recordings of Cumberland Plain Snails on site.</p> <p>Notwithstanding, when a Biobanking statement is submitted with a development application, the development is taken to be development that is not likely to significantly affect any threatened species, population or ecological community, or its habitat.</p>	Issue addressed
The site adjoins a lot that was previously used for waste disposal. There is a concern that this may pose a danger to the health of the future residents via contaminated soils and off gassing.	<p>The applicant has submitted a validation report. Council's Health and Environmental Protection Team concluded that that the report methodology has followed EPA Guidelines. The report has been reviewed and is considered satisfactory. No further information or action is required.</p> <p>Notwithstanding, the JRPP have requested that a Site Audit Statement be provided. A condition is recommended requiring the submission of a Site Audit Statement prior to the release of the construction certificate (refer to condition 31).</p>	Issue addressed
The development of the north west growth centre was based on the premise that the construction of the North West Metro would provide for public transport needs of the current and future residents within the locality. As the North West Metro has not been constructed the public transport needs for residents have not been met and therefore Council should not be approving development applications within the locality that increase traffic demand without providing for public transport needs.	<p>On 15 May 2011 the Minister for Transport issued a media release calling for a major tender to help finalise design and operations options for the North West Rail Link.</p> <p>The provision of the North West Rail Link is not a matter which Council has any control over.</p> <p>It is not appropriate to stop releasing land and development sites on the basis that the north west rail link has not been completed.</p> <p>All subdivisions which create additional residential lots and or development lots suited to medium and higher density housing increase traffic generation to a degree.</p>	Issue addressed

ISSUE/OBJECTION	COMMENT	OUTCOME
	Public transport is available along Withers Road which connects to Rouse Hill Town Centre and the City.	
The proposal will generate additional traffic within the locality which the current roads cannot accommodate.	The applicant submitted a Traffic Impact Statement prepared by Thompson Stanbury Associates dated February 2011 which addressed the proposed development application, the likely traffic generation and the ability of the local road network to accommodate the traffic generation. The report has been reviewed by both the Traffic Management Team and Council's Subdivision Engineer who have raised no objections in respect to this matter.	Issue addressed
When will the roundabout be constructed?	The construction of a new two lane circulating non-mountable roundabout at the intersection of Withers Road/ Mungerie Road and proposed road five is included with the preceding Stage 3 proposal pursuant to DA 1357/2010/JPZ. The lots created by the subject application will not be able to be released until this roundabout is in place.	Issue addressed
Will vehicles be able to travel through the site to the netball courts?	Public vehicular access between the roads created by the subdivision and Lot 101 DP 1140711 adjacent will be made available during the netball season which lasts for sixteen weeks. At all other time access to the netball courts will be denied.  However, emergency access will be made available to the emergency vehicles only via a locked gate. The RFS will hold a copy of the key.	Issue addressed



ISSUE/OBJECTION	COMMENT	OUTCOME
	The NSW RFS have considered this aspect in their review of the proposal and raised no objection to the same.	
When will the upgrading of Withers Road occur?	A recommended condition (refer to condition 25(ii)) of approval is the construction the road shoulder formation of Withers Road fronting the site, including the construction of kerb and gutter and associated footpath verge formation. These works will need to be consistent with Council's design for the eventual alignment/ reconstruction of Withers Road as a four lane sub-arterial route.	Issue addressed
The development will require the destruction of an area/item of Aboriginal cultural significance.	<p>An Aboriginal Archaeological Assessment prepared by Insite Heritage was submitted with the application.</p> <p>Council's Forward Planning Team considered the report and raised no objections to the application subject to conditions including a condition requiring an application be made to the Department of Environment and Heritage should any evidence of an Aboriginal archaeological site or relic be found during soil disturbance activities (refer to condition 42).</p>	Issue addressed
The local primary school, Ironbark Ridge is already at capacity. The school expects to receive many more students from the new Rouse Hill. There is no consideration to how substantial increases in numbers will affect the logistical delivery of education for students. The school was built as a public/private partnerships, with limited land. The school does not have the capacity to increase numbers substantially via demountables. Where will these new students go?	<p>Within proximity to the site two lots (lot 1 DP 529200 and Lot 51 DP 1127842) are zoned Special Uses 5(a) (Education Establishment).</p> <p>Land has been set aside for the provision of additional education establishments within the locality.</p> <p>The timing of the provision of educational establishments is not a matter which Council can control. it is a matter for the State Government.</p>	Issue addressed
Is there a Hazard Reduction process established for the site? How often will it occur? Will residents be notified?	<p>The BioBanking Certificate allows for bush fire management in accordance with the conditions of the BioBanking Certificate.</p> <p>The BioBanking Certificate states that fire should be avoided earlier</p>	Issue addressed

ISSUE/OBJECTION	COMMENT	OUTCOME
	than every 5 years and not later than every 50 years.	

## 8. JRPP COMMENTS

On 1 July 2010, Council attended a preliminary meeting with the Joint Regional Planning Panel (JRPP) to discuss the development application. During the meeting the following key points were raised by the JRPP which were requested to be specifically addressed within any report that is prepared in the assessment of the development application. The issues raised include:-

### ***Bush Fire***

The JRPP reviewed the plans of proposed subdivision and raised concerns with the positioning of Asset Protections Zones and their impact on usability of the residential lots. The concerns relate to the impact that the APZ would have upon the ability of each affected lot to be developed in a manner which a future owner may expect.

It is noted in the comments provided by the RFS dated 2 July, 2010 that all APZ's are to be treated as inner protection areas.

The applicant provided the following comments addressing this matter:-

*All proposed lots (stages 3 and 4) have a minimum area of 700m<sup>2</sup> or greater and as such, comply with the DCP minimum area of 450m<sup>2</sup> for detached single residential dwellings.*

*In terms of usability, the building development areas of each of the proposed residential lots is burdened by the rear boundary asset protection zone setback of 10 metres (lots 1 to 9) is 421m<sup>2</sup>. This building development area allows for a minimum building platform of 10m x 15m as required by the Kellyville / Rouse Hill Release Area DCP and excludes the area between the front building line setback and the street boundary (5.5m).*

*Development will not be permitted within the asset protection zone area of lots 1 to 9 and 39 to 45 (stage 3) and lot 46 (stage 4) other than swimming pools, paved areas, maintained lawns and fire resistant gardens having separated trees with no continuous canopy leading to the dwelling. Similarly, development will not be permitted within the asset protection area located adjacent to the street boundary setback of lots 17 to 27 (stage 3) and lots 1 to 4 and 20 to 34 (stage 4) excepting driveways, maintained lawns and fire resistant gardens having separated trees with no continuous canopy leading to the dwelling.*

The imposition of the APZ over the proposed lots will not restrict future residential development to unreasonable level. Development of the lot may still occur outside of the APZ area and as such no objections would be raised in respect to this matter.

### ***Biodiversity***

During the meeting the issues surrounding Flora and Fauna were discussed with the JRPP. Particular attention was directed towards the BioBanking process and the *Environment Protection and Biodiversity Conservation Act 1999*.

Where an Application relies on the BioBanking scheme for the biodiversity assessment, the Consent Authority shall incorporate the conditions of a Biobanking statement (issued by DECCW) into the relevant development consent (refer to condition 9).

When a Biobanking statement is submitted with a development application, the development is taken to be development that is not likely to significantly affect any threatened species, population or ecological community, or its habitat, and is therefore deemed to have complied with the threatened species assessment requirements under Parts 4 and 5 of the Environmental Planning and Assessment Act.

The Department of Environment and Heritage (formerly the Department of Environment, Climate Change and Water) has issued BioBanking Statement (reference 01 addressing the development of Lot 1020 and Lot 1022 DP 1149731. Accordingly, the consent authority is not required to consider the impacts that the development may have upon the site's flora and fauna.

The applicant has advised that they are discussing the development of the site with the Federal Department of Sustainability, Environment, Water, Population and Communities under the Environment Protection and Biodiversity Conservation Act. Approval from the Department is only required if the proposal is deemed a controlled action for the purpose of the EPBC Act and is a separate consideration for the applicant. This is not a matter for a consent authority to consider as the EPBC Act and the EP&A Act operate independently. Notwithstanding, a condition of consent is recommended advising the applicant of their responsibilities under the EPBA Act to comply with the requirements of SEWPAC (refer to condition 11).

### ***Soil Contamination***

The JRPP requested that a site audit statement be provided by an accredited site auditor under the Contaminated Land Management Act 1997. A review of the form which would be completed by the accredited site auditor has been undertaken. Part 1 of the form deals with preliminary details such as the site address and the like. Part 2 deals with the findings of the audit and based upon those findings either Section A or Section B of the form would be completed, but not both.

Completion of Section A would indicate that the site is suitable for a specific use (residential in this instance). However, completion of Section B would indicate that the site is contaminated, the report indicates the extent of the contamination and that the site can be made suitable for a specific use (subject to a remedial action plan or the like). The form may not be completed if the site auditor is not satisfied that the site is or can be made suitable for residential development.

The applicant has submitted a Validation Report prepared by David Lane Associates providing information on contamination. Council's Health and Environmental Protection Team have reviewed the document and concluded that the report methodology has followed EPA Guidelines and is satisfied that the report concludes that the site presents no unacceptable risk to human health or the environment and is suitable for an end land use of Residential with Garden Accessible Soils.

Based upon comments provided above Council's Health and Environmental Protection Team was requested to consider if a condition could be imposed requiring the provision of a Site Audit Statement under the NSW Site Auditor Scheme. Council's Health and Environmental Protection Team raised no objections to the imposition of this condition.

Accordingly, condition 31 is recommended requiring the provision of a site audit statement prior to any works commencing on site. The site audit statement is to advise that the site presents no unacceptable risk to human health or the environment and is suitable for an end land use of Residential with Garden Accessible Soils.

### ***Road and Traffic***

It was suggested by the JRPP that Stage 3 may be the appropriate time for the roundabout construction. The construction of a new two lane circulating non-mountable

roundabout at the intersection of Withers Road/ Mungerie Road and proposed road five is included within Stage 3 (refer to condition 25(iv)). The lots created by the subject application will not be able to be released until this roundabout is in place.

The JRPP also requested consideration be given to the ability of the local road network to accommodate the traffic generation. The applicant submitted a Traffic Impact Statement prepared by Thompson Stanbury Associates dated February 2011 which addressed the proposed development application, the likely traffic generation and the ability of the local road network to accommodate the traffic generation. The report has been reviewed by both the Traffic Management Team and Council's Subdivision Engineer who have raised no objections in respect to this matter.

### ***Integrated Development***

The JRPP sought confirmation that the application was referred to the appropriate integrated development referral bodies under section 91 of the Environmental Planning and Assessment Act, 1979.

The application has been referred to:-

- The NSW Rural Fire Service (RFS) as the site is bush fire prone. The RFS have their general terms of approval.
- The NSW Office of Water (NOW) as the application seeks approval for works within 40m of a natural water course. The NOW issued their general terms of approval.

The application does not require referral under the Fisheries Management Act 1994 as the proposed bridge is a single span with no impediment to the flow of water.

## **8. CONSIDERATION OF PEER REVIEW**

On 21 July 2011 the application was formally submitted to Chris Young of Chris Young Planning for the peer review.

On 26 July 2011 Council was requested to provide an assessment against the environmental planning instruments that are referenced at the beginning of the report and includes:-

- SREP 20 (Hawkesbury Nepean River)
- SEPP 19 (Bushland in Urban Areas)
- SEPP 55 (Remediation of Lands)

Consideration of each of the environmental planning instruments is provided below:-

### ***SREP 20 (Hawkesbury Nepean River)***

Clause 2 notes that the policy applies to the Shire.

Clause 3 states that aim of this plan is to protect the environment of the Hawkesbury-Nepean River system by ensuring that the impacts of future land uses are considered in a regional context.

The proposed subdivision involves the creation of road and stormwater infrastructure. The stormwater generated by the future development will be directed to land which is to be acquired by Sydney Water for Trunk Drainage Purposes.

Sydney Water has recommended that Water Sensitive Urban Design (WSUD) principles be implemented as part of the development. The use of reduced the long term environmental

impacts that the development has upon the local environment and the Hawkesbury-Nepean River system.

Additionally, the applicant will be required to implement and maintain sediment and erosion control measures throughout the construction phase of the proposed development. This will reduce the short term impacts of the development upon the local environment and the Hawkesbury-Nepean River system.

### **SEPP 19 (Bushland in Urban Areas)**

The aims of the policy are listed in Clause 2. In general, the aims of the policy is to protect and preserve bush land due to its value to the community as part of the natural heritage, its aesthetic value, and its value as a recreational, educational and scientific resource.

Clause 9 deals with land adjoining land zoned or reserved for public open space. The clause states :-

(1) *This clause applies to land which adjoins bushland zoned or reserved for public open space purposes.*

(2) *Where a public authority:*

- (a) *proposes to carry out development on land to which this clause applies, or*
- (b) *proposes to grant approval or development consent in relation to development on land to which this clause applies,*

*the public authority shall not carry out that development or grant the approval or development consent unless it has taken into account:*

- (c) *the need to retain any bushland on the land,*
- (d) *the effect of the proposed development on bushland zoned or reserved for public open space purposes and, in particular, on the erosion of soils, the siltation of streams and waterways and the spread of weeds and exotic plants within the bushland, and*
- (e) *any other matters which, in the opinion of the approving or consent authority, are relevant to the protection and preservation of bushland zoned or reserved for public open space purposes.*

### **Comment:-**

Lot 101 DP 1140711 which is located to the north is zoned 6(a) Public Open Space. The land contains multiple netball courts which is that site's primary use. The site also contains a stand of trees/bushland adjacent lot 1020 (Stage 3).

The proposal does not seek to remove the stand of trees/bush land on the adjoining site. No works are proposed within the adjoining site. The future interface with the development site and the adjoining land zoned for open space purpose will be rear fencing of the residential lots. The future owners will have no right or expectation to access the land directly from their property which will help minimise future impacts.

The use of sediment and erosion control devices will help in preventing soil erosion. The fact that development is not proposed within the adjoining site will help minimise disturbance and possible impacts associated with the spreading of weeds and exotic plants into the adjoining open space land.

An important point to consider is the presence of two BioBanking lots within close proximity to the land zoned for open space purposes. The BioBanking lots are located adjacent the development sites proposed under stage 3 and stage 4. Accordingly, there will be bush land preserved in the locality which will meet the aims of the policy.

The proposal is consistent with SEPP.

### ***SEPP 55 (Remediation of Lands)***

Clause 2 lists the notes that the aims of the policy are to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health and to advise when consent is required for remediation of land and ensuring that remediation of land meets certain standards.

Clause 5 states that the policy applies to the whole of the State.

Clause 7 states that a consent authority must not consent to the carrying out of any development on land unless it has considered whether the land is contaminated. If the land is contaminated the consent authority must be 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. Furthermore, if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose. Comment: -

The applicant has submitted a Validation Report prepared by David Lane Associates providing information on contamination. Council's Health and Environmental Protection Team have reviewed the document and concluded that the report methodology has followed EPA Guidelines and is satisfied that the report concludes that the site presents no unacceptable risk to human health or the environment and is suitable for an end land use of Residential with Garden Accessible Soils.

Based upon comments provided above, Council's Health and Environmental Protection Team was requested to consider if a condition could be imposed requiring the provision of a Site Audit Statement under the NSW Site Auditor Scheme. Council's Health and Environmental Protection Team raised no objections to the imposition of this condition.

Accordingly, condition 31 is recommended requiring the provision of a site audit statement prior to any works commencing on site. The a site audit statement is to advise that the site presents no unacceptable risk to human health or the environment and is suitable for an end land use of Residential with Garden Accessible Soils.

The proposal is consistent with SEPP 55.

### **SUBDIVISION ENGINEERING COMMENTS**

The necessary road and drainage infrastructure works required to support the proposed subdivision were reflected on the conceptual details provided with the application and are deemed satisfactory, subject to a detailed design being prepared at the Construction Certificate stage as conditioned below (refer condition 25). These works include:

- The full width construction of three new/ proposed public roads.
- The construction of a new road bridge over the upper tributary of Smalls Creek.
- Construction of the road shoulder, kerb & gutter and footpath verge in Withers Road fronting Lot 1021 DP 1149731 adjacent to the development site.
- The provision of services to the lots created.
- Drainage, incorporating water sensitive urban design as discussed in more detail below, for the subdivision, including stormwater outlets to either Smalls Creek or its upper tributary.

- Earthworks to facilitate the above.

The applicant is responsible for providing water quality treatment and stormwater detention facilities as part of the subdivision to achieve compliance with the environmental targets specified in Condition 24 below. The applicant is proposing a combination of "in-subdivision" measures as well as treatment on a lot by lot basis. Condition 24 below requires a detailed design and modelling to be undertaken at the Construction Certificate stage for these elements complying with the requirements of Council and Sydney Water, as the future owner of the trunk drainage land encompassing Smalls Creek to which stormwater runoff is directed.

## **TRAFFIC MANAGEMENT COMMENTS**

Council's Traffic Management Team have reviewed the Traffic Impact Statement prepared by Thompson Stanbury Associates dated February 2011, the proposed road network and the plan of subdivision raised no objections subject to a condition being recommended for the provision of a cycleway/footpath through the BioBanking lot 1021 connecting to the junction of Withers Road and Ironbark Ridge Road. The proposed footpath is to be in addition to the road connecting the development site to Withers Road proposed under stage 3 of the application.

Lot 1021 is not part of the subdivision proposal and is subject to a BioBanking Agreement with the NSW Office of Environment and Heritage. The BioBanking Agreement limits activities to only those approved under a "Management Actions Plan" forming part of the agreement and as such a condition cannot be imposed requiring the construction of the cycleway or footpath through this lot.

The Fire Management Plan prepared over the site by Australian Bushfire Protection Planners Pty Limited (dated March 2010) identifies a Strategic Fire Management Zone (SFMZ) separation in the approximate location as outlined above. The applicant has indicated that it is their intention to construct a low impact walking path in the locality. However, it was noted that the final location, design and materials used in the provision of the walking path would be subject to agreement by the Office of Environment and Heritage (OEH). A condition is recommended which requires consideration of the provision of a footpath within the locality subject to agreement by the OEH (refer to condition 18).

## **TREE MANAGEMENT COMMENTS**

Council's Tree Management Officer has considered the application and raised no objections subject to standard conditions of consent being recommended allowing the removal of trees where road and drainage works are proposed (refer to condition 2). All other trees are to be retained on site at this point in time.

## **HEALTH & ENVIRONMENTAL PROTECTION TEAM COMMENTS**

The application was referred to the Health and Environmental Protection Team for comment in relation to flora and fauna, contamination and salinity. Comments in respect to each matter are provided below.

### ***Flora and Fauna***

The applicant engaged a BioBanking assessor accredited under section 142B of the Threatened Species Conservation Act to apply the BioBanking Assessment Methodology. The assessor produced a credit report confirming that suitable biodiversity offsets are provided to compensate for any loss. This report was submitted to DECCW (now known as the Office of Environment and Heritage) who issued a BioBanking Statement in support of the application. The BioBanking - Biodiversity Banking and Offsets Scheme is an offset scheme

which enables landowners in NSW to establish Biobank sites to secure conservation outcomes in some areas which are later used to offset proposed development.

The scheme utilises a strict assessment methodology to determine the credits generated by the creation of a Biobank site. Inversely, the number of credits required to be surrendered to offset the impact on biodiversity by a proposed development is also provided. BioBanking establishes an 'improve or maintain' test for biodiversity values.

The other important aspect of the Biobanking Scheme is the mechanism for funding for the maintenance and improvement of the Biobank sites. BioBanking ensures active management occurs on the offset site in order to counterbalance the loss in biodiversity value caused by the development. Without active management, offsets do not improve or maintain biodiversity.

Where an Application relies on the BioBanking scheme for the biodiversity assessment, the Consent Authority shall incorporate the conditions of a Biobanking statement (issued by DECCW) into the relevant development consent.

When a Biobanking statement is submitted with a development application, the development is taken to be development that is not likely to significantly affect any threatened species, population or ecological community, or its habitat, and is therefore exempt from complying with the threatened species assessment requirements under Parts 4 and 5 of the Environmental Planning and Assessment Act.

The release of the Biobanking Statement by the DECCW is deemed to satisfy the required assessment of Biodiversity Impacts under the EP&A Act for the proposal. The conditions of the Statement must be included in any consent issued.

### ***Soil Contamination***

The JRPP requested that a site audit statement be provided by an accredited site auditor under the Contaminated Land Management Act 1997. A review of the form which would be completed by the accredited site auditor has been undertaken. Part 1 of the form deals with preliminary details such as the site address and the like. Part 2 deals with the findings of the audit and based upon those findings either Section A or Section B of the form would be completed, but not both.

Completion of Section A would indicate that the site is suitable for a specific use (residential in this instance). However, completion of Section B would indicate that the site is contaminated, the report indicates the extent of the contamination and that the site can be made suitable for a specific use (subject to a remedial action plan or the like). The form may not be completed if the site auditor is not satisfied that the site is or can be made suitable for residential development.

The applicant has submitted a Validation Report prepared by David Lane Associates providing information on contamination. Council's Health and Environmental Protection Team have reviewed the document and concluded that the report methodology has followed EPA Guidelines and is satisfied that the report concludes that the site presents no unacceptable risk to human health or the environment and is suitable for an end land use of Residential with Garden Accessible Soils.

Based upon comments provided above Council's Health and Environmental Protection Team was requested to consider if a condition could be imposed requiring the provision of a Site Audit Statement under the NSW Site Auditor Scheme. Council's Health and Environmental Protection Team raised no objections to the imposition of this condition.

Accordingly, condition 31 is recommended requiring the provision of a site audit statement prior to any works commencing on site. The a site audit statement is to advise that the



site presents no unacceptable risk to human health or the environment and is suitable for an end land use of Residential with Garden Accessible Soils.

### ***Salinity***

The applicant submitted a Salinity and Aggressivity Assessment prepared by David Lane Associates, referenced DL2516 and dated July 2010 with the application.

No objections were made to the proposal subject to the recommendations contained within the report being complied with.

### **WASTE MANAGEMENT COMMENTS**

Council's Waste Management Team have considered the application and raised no objections subject to Council's Subdivision Engineer being satisfied that the proposed roads are consistent with Council's minimum requirements.

### **HERITAGE COMMENTS**

Council's Forward Planning Team has considered the proposal in respect to the impact that it may have upon both European and Aboriginal Cultural Heritage. Refer below for consideration of both: -

#### ***European Heritage***

The site is located *in the vicinity of a heritage item*. A Heritage Impact Statement prepared by Graham Edds and Associates has been submitted to address the impacts of the development upon the item.

The item is identified as a cottage, known as "Lintbrae", is located on part of an original grant of 57 acres to John Seath Snr farmer and publican (at one time owner of the "Royal Oak Inn" and one of the founding members of the Hawkesbury Agricultural Society) in the early 1860s. The cottage itself was built in the latter half of the nineteenth century (possibly by one of John Seath's Snr three children) and has strong associations with a significant early settler and inn-keeper John Seath Snr and his family.

The issues relate to the curtilage around the heritage item and the impact of development on how the past use of the cottage is perceived in its current/future use and setting. In this regard, little is known about the use of the cottage, its occupants or the use of the surrounding land, except a subdivision excising the dwelling from the original grant lot occurred in 1969. As such, the ability to connect the cottage to farm life in the era it was built is tenuous and its context within a larger farming property is now diminished. It is also noted that the item is in poor condition.

As a result, it is not considered that there would be any adverse impact created by the proposed subdivision on the heritage item known as "Lintbrae" and therefore no conditions are required.

#### ***Aboriginal Cultural Heritage***

The application was accompanied by an Aboriginal Archaeological Assessment prepared by Insite Heritage dated March 2010. The report has been considered and no objections have been raised subject to standard conditions of consent being recommended and the recommendations contained within the report being complied with (refer to condition 10).

### **FORWARD PLANNING COMMENTS**

Council's Forward Planning Team has considered the application and provided the following comments: -

#### Local Environmental Plan 2005

*Zone: Residential 2(a)*

*Objective of Zone: To provide housing (generally higher density) and associated facilities. Permitted Development: Uses include dwelling-houses, villas, townhouses and apartment buildings with consent.*

#### Baulkham Hills Development Control Plan

*Identifies that this land requires a site specific response and further planning particularly in relation to soil contamination and flora and fauna issues.*

#### Draft Local Environmental Plan 2010

*Zone: R4 - High Density Residential*

*Minimum Lot Size: 1800m<sup>2</sup>*

*Height Limit: 16m*

*Objective of Zone: To provide a variety of housing types within a high density residential environment.*

*Permitted Development: Uses include dwelling-houses, multi-unit dwelling houses and residential flat buildings with consent.*

#### Draft Development Control Plan 2011

*Identifies that this land requires a site specific response and further planning particularly in relation to soil contamination and flora and fauna issues.*

*Preparation of draft Local Environmental Plan 2010 involved development of a Local Strategy to guide major changes in land use management within the Shire. In locations outside those identified for change in the Local Strategy, the translation involved a 'best fit' approach to the new Standard Instrument. The result for the subject land was R4 Residential High Density with draft Development Control Plan 2011 acknowledging additional planning is required to reach a site specific response, which deals with the environmental and development issues.*

*The master plan prepared has determined an appropriate development form, consisting of a mixture of dwelling-houses, townhouses and apartments, that responds to the constraints of the site and is consistent with the permissible uses in both the current and proposed zones. Whilst draft LEP 2010 restricts the minimum lot size (1,800m<sup>2</sup>), Clause 4.6 – Exceptions to Development Standards provides flexibility in circumstances where better outcomes are achieved. In view of the extensive master planning it would be appropriate to consider the merits of the proposed development and whether flexibility is justified. Should this application be successful, it would involve a future amendment to the LEP to remove the R4 Zone in some locations and limit development to the type specified in the master plan.*

The proposal has been assessed against the Baulkham Hills Development Control Plan. Refer to section 4 and 5 of this report for consideration to the proposal's compliance with the respective parts of the DCP.

The proposal has been assessed against the current Baulkham Hills Local Environmental Plan 2005 and the Draft The Hills Local Environmental Plan. Refer to sections 1 and 2 for consideration to the proposal's compliance with the respective Local Environmental Plans.

#### **NSW OFFICE OF WATER**

The application proposes works within 40m of a watercourse. The NSW Office of Water (NOW) agreed to issue their general terms of approval (refer to condition 4).

#### **RURAL FIRE SERVICE COMMENTS**

The site is identified as being bush fire prone land. The application was referred to the NSW Rural fire Service who agreed to issue a bushfire safety authority subject to conditions (refer to condition 5).

## **SYDNEY WATER COMMENTS**

The application was referred to Sydney Water for comment who raised no objections to the proposal. Their comments are to be included in the conditions of consent, should the application be approved (refer to condition 6).

It must be noted that the comments provided by Sydney Water dated 5 April 2011 only refer to DA1357/2010/JPZ. However, Sydney Water have since confirmed via e-mail that the comments relate to both DA1356/2010/JPZ and DA1357/2010/JPZ.

## **CONCLUSION**

The proposed development has been assessed against Section 79C of the Environmental Planning and Assessment Act, 1979 Local Environmental Plan 2005, the Draft The Hills Local Environmental plan 2010 and the Baulkham Hills Development Control Plan and is considered satisfactory.

The proposed seeks approval for variation to the Baulkham Hills Development Control Plan – Part C Section 3 Residential with respect to minimum lot frontages and depth. The proposed variations are located at the head of the proposed cul-de-sac. The proposed variations have been addressed in the report and are considered to be acceptable.

The application relies on “BioBanking” to address biodiversity impacts of the development. The Director General - Department of Environment, Climate Change and Water (DECCW) has issued a Biobanking Statement confirming that the development will improve or maintain biodiversity values and is not likely to significantly affect any threatened species, population or ecological community, or its habitat. It also confirms that the development is deemed to have satisfied the threatened species assessment requirements under Parts 4 and 5 of the Environmental Planning and Assessment Act.

The application has been notified on two separate occasions. The first notification was carried out between 15 April 2010 and 30 April 2010 to 30 adjoining and surrounding properties. The second notification was carried out between 13 August 2010 and 17 September 2010 to 89 adjoining and surrounding properties and other affected parties. 30 submissions were received in response to the first notification and 2 were received in response to the second notification. The issues raised in the submissions mainly relate to biodiversity. However, other issues relating to traffic, contamination, cultural heritage, bush fire management and provision of schooling were raised. The issues raised in the submissions have been addressed within the body of this report and are not considered to warrant amendment or refusal of the application.

As a result the proposed development application is considered satisfactory.

## **IMPACTS:**

### **Financial**

As a property development matter, this project will have a positive financial impact on Council. As with all other developments of this nature, approval of this application will generate the need to pay section 94 contributions in accordance with Contribution Plan No. 8 which would contribute to the provision of services within the locality.

### **Hills 2026**

The proposed development is consistent with the planning principles, vision and objectives outlined in the Hills 2026 document as the proposal will enable the creation of a range of housing options to suit the different needs of people living in our Shire whilst ensuring the future built environment blends with our natural beauty.

## **RECOMMENDATION**

The development application be approved subject to the following conditions of consent:

### **GENERAL MATTERS**

#### **1. Approved Plan**

The subdivision must be carried out in accordance with the approved plan of subdivision prepared by G.J. Atkins and Associates Drawing 0873-9revG dated 22 September, 2009 except where amended by other conditions of consent.

Where a Construction Certificate is required, no work is to be undertaken before it has been issued.

#### **2. Tree Removal**

Approval is granted for the removal of those trees affected by road and infrastructure works. All other trees are to remain and are to be protected during all works.

#### **3. Protection of Existing Vegetation**

Care is to be exercised during the construction of the proposed works to ensure natural vegetation and topography on the subject site is not unnecessarily disturbed.

Any excavated material not used in the construction of the subject works is to be removed from the site and under no circumstances is to be deposited in bushland areas.

#### **4. Compliance with NSW Office of Water Requirements**

Compliance with the requirements of the NSW Office of Water throughout all stages of the subdivision as outlined in their letter dated 7 September, 2011 Ref 10ERM/ 2010/0379 attached to this consent as Appendix A.

#### **5. Compliance with NSW Rural Fire Service Requirements**

Compliance with the requirements of the NSW Rural Fire Service throughout all stages of the subdivision as outlined in their letter dated 5 August, 2010 Ref D10/0657 attached to this consent as Appendix B.

#### **6. Compliance with Sydney Water Requirements**

Compliance with the requirements of Sydney Water throughout all stages of the subdivision as outlined in their letter dated 5 April, 2011 attached to this consent as Appendix C.

#### **7. House Numbering**

The lots within the subdivision must be allocated a street address. Council is responsible for providing house numbering. You must apply for house numbering prior to lodging an application for a Subdivision Certificate.

#### **8. Subdivision Certificate Pre-Lodgement Meeting / Check**

Prior to the submission of a Subdivision Certificate application a final plan pre-lodgement meeting is required to establish that all conditions have been completed to the satisfaction of Council. Prior to a final plan pre-lodgement meeting a copy of the final plan and 88B Instrument must be submitted for checking.

#### **9. BioBanking**

The development must comply with all the conditions relating to the retirement of all required biodiversity credits (ecosystem and species credits) specified in the biobanking statement (biobanking statement ID: 01) attached to this consent as Appendix D before the development is physically commenced.

The development must comply with all conditions relating to on-site measures specified in the biobanking statement (biobanking statement ID: 01) attached to this consent as Appendix D.

## **10. Heritage**

The recommendations contained within the Aboriginal Archaeological Assessment prepared by Insite Heritage dated March 2010 are to be complied with.

## **11. Environment Protection and Biodiversity Conservation Act 1999**

You are advised that you may have responsibilities under the Environment Protection and Biodiversity Conservation Act 1999 to consult with the Department of Sustainability, Environment, Water, Population and Communities in relation to this application.

## **12. Street Naming**

A written application for street naming must be submitted to Council for approval.

The street names proposed must comply with Guidelines for the Naming of Roads produced by the NSW Geographical Names Board. The guidelines can be obtained from the Boards website:

<http://www.gnb.nsw.gov.au/>

The application must nominate three suggested names per street, in order of preference, and must relate to the physical, historical or cultural character of the area.

## **13. Engineering Works – Design and Construction Approval Process**

The design certification and construction approval of the engineering works nominated in this consent require an Engineering Construction Certificate (ECC) to be obtained prior to the commencement of any works.

An ECC can only be issued by Council.

For Council to issue an ECC the following must be provided:

- a) A completed application form.
- b) Four copies of the design plans and specifications.
- c) Payment of the applicable application and inspection fees.
- d) Payment of any required security bonds.
- e) Payment of a long service levy.

## **14. Street Trees**

Street trees and tree guards must be provided on both sides of all proposed public roads at a rate of two trees per lot frontage. The location of street trees must compliment driveway locations. The species and size of all street trees must comply with Council's requirements.

Street trees and tree guards must be planted by the applicant before a Subdivision Certificate is issued and a bond submitted to ensure the establishment of these trees.

Alternatively, street trees and tree guards can be provided by Council subject to payment of the applicable fee before a Subdivision Certificate is issued as per Council's Schedule of Fees and Charges.

## **15. Upgrading of Existing Water and Sewerage Services**

Should the development necessitate the installation or upgrade of water or sewerage services within an area that is either heavily vegetated or traversed by a natural watercourse, services must be located in a route that causes the least amount of impact on the natural environment. Excavation by hand or small machinery is required where the ecological impact would otherwise be considered excessive.

## **16. Recycled Water**

The subject site must be connected to Sydney Water's Rouse Hill Recycled Water Scheme, where Sydney Water indicates that this is required.

## **17. Water Sensitive Urban Design Handover Process**

An operations and maintenance plan must be prepared for all WSUD proposals. The operations and maintenance plan must include:

1. The location and type of each WSUD element, including details of its operation and design;

2. A brief description of the catchment characteristics, such as land uses, areas etc;
3. Estimated pollutant types, loads and indicative sources;
4. Intended maintenance responsibility, Council, landowner etc;
5. Inspection method and estimated frequency;
6. Adopted design cleaning/ maintenance frequency;
7. Estimate life-cycle costs;
8. Site access details, including confirmation of legal access, access limitations etc;
9. Access details for WSUD measure, such as covers, locks, traffic control requirements etc;
10. Description of optimum cleaning method and alternatives, including equipment and personnel requirements;
11. Landscape and weed control requirements, noting that intensive initial planting is required upfront to reduce the requirement for active weed removal;
12. A work method statement;
13. A standard inspection and cleaning form.

All constructed WSUD elements within public areas, being roads or drainage reserves, are to be transferred to Council at the end of the project. The following is required in order to facilitate this handover process:

14. The developer will be responsible for the maintenance of the item for a defined maintenance period agreed to by Council. For example, the consultation draft document entitled Managing Urban Stormwater: Urban Design prepared by the SMCMA and the then NSW DECCW suggests that the developer maintain WSUD elements within a subdivision until a given proportion of the dwellings on the lots created, say 80%, are erected and occupied.
15. The operations and maintenance plan for this element (above) is submitted to Council for review/ revision and subsequent approval.
16. Council staff inspects the WSUD measure to confirm that it is being maintained in accordance with the approved maintenance plan.
17. A whole of life assessment is provided for the WSUD measure which is based upon the expenses incurred during the maintenance period, and documentation is provided to confirm these expenses.
18. WAE drawings and any required engineering certifications are provided to Council.
19. Where water quality monitoring has been determined by Council as being required, monitoring results must be submitted to Council for review.
20. Details of all incidents including OHS incidents, public safety, WSUD performance and complaints received should be provided.

If Council determines that the WSUD measure is not complying with the conditions of this approval or monitoring identifies that it is not performing as anticipated, Council may request that alterations be made to the WSUD element prior to transfer.

The maintenance responsibility of all constructed WSUD elements within private property is to be transferred to the lot owner, community association or body corporate, including a copy of the approved operations and maintenance plan.

For the purposes of complying with the above a WSUD treatment system is considered to include all functional elements of the system as well as any landscaped areas directly surrounding the system.

Refer to the consultation draft document entitled Managing Urban Stormwater: Urban Design (October 2007) prepared by the SMCMA and the then NSW DECCW for more information.

### **18. Pedestrian Link to Withers Road/ Ironbark Ridge Road**

In order to provide a formal pedestrian link in the locality with a view of minimising disturbance to the environment it is preferable to provide a footpath link from proposed road two through the BioBanking Lot 1021 DP 1149731 connecting the subdivision with Withers Road/ Ironbark Ridge Road. It is noted that the provision of a footpath link through the BioBanking Lot 1021 DP 1149731 may not be consistent with the BioBanking Agreement and so its design and construction must be agreed upon by the NSW Office of Environment and Heritage. It is acknowledged that the pedestrian link may not be able to be provided should the NSW Office of Environment and Heritage not agree to the work in the BioBanking Lot 1021 DP 1149731.

## **PRIOR TO THE ISSUE OF CONSTRUCTION CERTIFICATE**

### **19. Bank Guarantee Requirements**

Should a bank guarantee be proposed in lieu of works or for another purpose in order to facilitate release of the Subdivision Certificate it must:

- a) Have no expiry date;
- b) Be forwarded direct from the issuing bank with a cover letter that refers to Development Consent DA 1357/2010/JPZ;
- c) Specifically reference the items and amounts being guaranteed. If a single bank guarantee is submitted for multiple items it must be itemised.

Should it become necessary for Council to uplift the bank guarantee, notice in writing will be forwarded to the applicant fourteen days prior to such action being taken. No bank guarantee will be accepted that has been issued directly by the applicant.

### **20. Landscape Plan**

A landscape plan prepared by a landscape architect for street tree planting within the subdivision must be submitted to Council for approval in accordance with DCP Part E Section 15.

### **21. Controlled Activity Authority – NSW Office of Water**

A copy of the Controlled Activity Authority required to be obtained from the NSW Office of Water must be submitted to Council before a Construction Certificate is issued.

### **22. Concept Engineering Design Approval**

The submitted concept engineering design plans are for DA purposes only and must not be used for construction. A detailed design must be submitted to Council for approval before a Construction Certificate is issued. Council may require amendments to the concept design.

### **23. Sediment and Erosion Control Plan**

A sediment and erosion control plan prepared in accordance with Council's Works Specification Subdivision/ Developments must be submitted. The plan must include:

- a) Allotment boundaries;
- b) Adjoining roads;
- c) Contours;
- d) Existing vegetation;
- e) Existing site drainage;
- f) Critical natural areas;
- g) Location of stockpiles;
- h) Erosion control practices;

- i) Sediment control practices; and
- j) A maintenance program for the erosion and sediment controls.

#### **24. Water Sensitive Urban Design Requirements**

Prior to the issuing of a Construction Certificate, the applicant must submit to Council, for approval, detailed drainage design plans for the subdivision incorporating WSUD, suitable for construction and inclusive of detailed and representative longitudinal and cross-sectional detail.

The applicant is to design and construct the drainage system in accordance with the following documents and requirements:

- a) Council's Design Guidelines Subdivisions/ Developments
- b) Council's Works Specifications Subdivisions/ Developments

The applicant is to design and construct the WSUD elements in accordance with best practice water sensitive urban design techniques and guidelines. Such guidelines include, but are not limited to, the following:

- Water Sensitive Urban Design – Technical Guidelines for Western Sydney, 2004, <http://www.wsud.org/tech.htm>; and
- Australian Runoff Quality – A Guide to Water Sensitive Urban Design, 2005, <http://www.ncwe.org.au/arq/>.

All WSUD elements proposed within public areas, being roads or drainage reserves, must be agreed to by Council. In considering any request to locate such items in public areas Council will consider the ongoing maintenance and liability responsibilities created by the same as discussed in more detail earlier in this consent. Council should be involved early in the planning process for these WSUD elements.

In support of the detailed design the applicant must also provide to Council, for approval, detailed water quality and quantity modelling of the stormwater system for the proposed development. Such detailed modelling is required to inform and support the detailed design and construction of the proposed WSUD elements. Modelling of the detailed design is to demonstrate a reduction in annual average pollution export loads from the development site in line with the following environmental targets:

- 90% reduction in the annual average load of gross pollutants.
- 85% reduction in the annual average load of total suspended solids.
- 65% reduction in the annual average load of total phosphorous.
- 45% reduction in the annual average load of total nitrogen.

All model parameters and data outputs are to be provided to Council.

Alternatively, a design based on the principals of disconnection of impervious areas from pipe networks and decreasing the frequency of small storm flows from the catchment may be submitted to Sydney Water and Council for acceptance as a deemed to satisfy alternative to meeting fixed pollution reduction targets through MUSIC modelling. Evidence of approval of the stormwater design by Sydney Water and Council shall be required prior to the issue of a Construction Certificate.

#### **25. Engineering Works and Design**

The design and construction of the engineering works outlined below must be provided for in accordance with the following documents and requirements:

- a) Council's Design Guidelines Subdivisions/ Developments
- b) Council's Works Specifications Subdivisions/ Developments

Any variance from these documents requires separate approval from Council.

The works listed below require an Engineering Construction Certificate (ECC) as outlined earlier in this consent. The following engineering works are required:



#### **i. Full Width Road Construction**

The full width construction of the roads listed below is required, including footpath paving and other ancillary work to make this construction effective.

Proposed roads must be constructed to the following requirements:

Road Name	Formation (Footpath/ Carriageway/ Footpath) (m)	Traffic Loading N(ESA)
Proposed Road 1	Road Type: DCP Collector Road (Modified) 3.5m/ 10.5m/ 4.5m (total width 18.5m)	1 x 10(6)
Proposed Road 2	Road Type: DCP Access Street (Modified) 8.5m/ 8m/ 3.5m (total width 20m)	5 x 10(5)
Proposed Road 3	Road Type: DCP Access Street 3.5m / 8.5m/ 3.5m (total width 15.5m)	5 x 10(5)
Proposed Road 4	Road Type: DCP Access Place 3.5m / 7.5m/ 3.5m (total width 14.5m)	5 x 10(5)
Proposed Road 5	Road Type: DCP Collector Road (Modified) 6m/ 10.5m/ 3.5m (total width 20m)	1 x 10(6)

The design must incorporate a standard kerb return radius of 7.5m based on a 4m splay corner unless otherwise directed by Council.

#### **ii. Road Shoulder/ Kerb and Gutter/ Footpath Verge Formation**

The applicant is responsible for the road shoulder formation in Withers Road fronting Lot 1021 DP 1149731 adjacent to the development site in a manner consistent with the eventual alignment of Withers Road as a four lane sub-arterial route. These works must include the extension of the existing road pavement, the construction of kerb and gutter, footpath verge formation, drainage, concrete footpath paving, service adjustments and other ancillary work to make this construction effective. Council is currently preparing a design for these works that must be followed.

A design traffic loading of 5 x 10(6) must be provided.

#### **iii. Indented Bus Bay – Withers Road**

As part of the above works, the applicant is responsible for the construction of an indented bus bay on the northern side of Withers Road adjacent to the intersection of Withers Road/ Ironbark Ridge Road, which is proposed to be signalised, within the existing road reserve.

The final location and extent of the indented bus bay is subject to further consultation with Council staff at the detailed design stage.

#### **iv. Roundabout Construction**

The applicant is responsible for the construction of a new two lane circulating non-mountable roundabout at the intersection of Withers Road/ Mungerie Road and proposed road five. This must include any and all required transitional works to the existing road carriageway.

**v. Turning Heads**

Cul-de-sac turning heads must be provided at the end of all roads within the site. The cul-de-sac must have a 19m diameter at its widest point measured from the face of kerb on each side.

**vi. Concrete Footpath Paving**

A 1.5m wide concrete footpath, including access ramps at all intersections, must be provided on one side of all proposed roads in accordance with the DCP and the above documents; with the exception of proposed roads one and five, which must be provided with a 1.5m wide concrete footpath, including access ramps at all intersections, on both sides.

**vii. Gutter Crossings**

Gutter crossings to each of the proposed new allotments are required.

**viii. Street Names Signs**

Street name signs and posts are required, as approved by Council.

**ix. Service Conduits**

Service conduits to each of the proposed new allotments, laid in strict accordance with the relevant service authority's requirements, are required. Services must be shown on the engineering drawings.

**x. Inter-allotment Stormwater Drainage**

Piped inter-allotment drainage designed for a 1 in 10 year ARI storm event catering for the entire area of each lot must be provided, with an assumed impervious surface of 80%. Each lot must be uniformly graded to its lowest point where a grated surface inlet pit must be provided. All collected inter-allotment stormwater is to be piped to an approved constructed public drainage system.

Where a WSUD element is required to be provided on each lot within the subdivision, a minimum level difference of 1m measured to the invert must be provided in the stormwater pit on each lot.

**xi. Stormwater Outlet/ Connection**

The design and construction of all public stormwater outlets to either Smalls Creek or its upper tributary must comply with the requirements of Council, the NSW Office of Water and Sydney Water. The location, number and design of stormwater outlets must consider the environmentally sensitive nature of the site.

**xii. Limiting Earthworks**

Earthworks undertaken as part of this subdivision must be limited to that absolutely necessary to provide for developable lots and a road and drainage design complying with the design specifications and documents cited earlier in this condition.

Further, the design must ensure that the finished level of all roads and lots adjacent to Lot 1021 DP 1149731 and Lot 1023 DP 1149731, being the lots that surrounds the development site covered by the BioBanking Statement that has been issued by the NOEH, must match the existing landform at that location such that there are no retaining structures or transitional earthworks at this interface.

**xiii. Intersection Treatment**

The treatment of the two intersections between roads five, one and two within the site must be finalised through consultation with Council's Local Traffic Committee and reflected on the engineering plans provided to Council.

**xiv. Driveway Construction – Lot 101 DP 1140711**

A 6m wide (minimum) reinforced concrete driveway and layback must be provided at the end of proposed road one at its boundary with Lot 101 DP 1140711 to the north. This

driveway must be constructed in accordance with Council's heavy duty standard considerate of its intended use.

#### **xv. Disused Layback/ Driveway Removal**

All disused laybacks and driveways must be removed and replaced with full kerb and gutter together with the restoration and turfing of the adjoining footpath verge area.

#### **26. Works on Adjoining Land**

Where the engineering works included in the scope of this approval extend into adjoining land, written consent from all affected adjoining property owners must be obtained and submitted to Council before a Construction Certificate is issued.

#### **27. Stormwater Discharge Acceptance**

Where the engineering works included in the scope of this approval necessitate the discharge of stormwater onto adjoining land, written consent from all affected adjoining property owners must be obtained and submitted to Council before a Construction Certificate is issued.

#### **28. Stormwater Discharge to Trunk Drainage Land**

Stormwater connections to Sydney Water owned trunk drainage land must be approved by Sydney Water.

#### **29. Stormwater Drainage to Natural Watercourse**

Stormwater connections to a natural watercourse must be approved by the NSW Office of Water.

#### **30. Bridge Crossing Requirements**

The applicant is responsible for the design and construction of a new road bridge over the upper tributary of Smalls Creek along the length of proposed road one.

If the design of the proposed road bridge is as per the NSW RTA's typical/ standard road bridge design, the design will not have to be peer reviewed. Any other non-standard road bridge design will have to be peer reviewed by a third party at the detailed design stage at the applicant's expense.

Prior to the issuing of a Construction Certificate, the applicant must submit to Council, for approval, detailed design plans and specifications for the road bridge prepared by a suitability qualified structural engineer with demonstrated experience and knowledge of road bridge design and construction. The design must be accompanied by certification from the design engineer confirming that the design complies with:

- All relevant or applicable RTA road bridge design standards;
- All relevant or applicable Australian Standards;
- Council's Design Guidelines Subdivisions/ Developments;
- Council's Works Specifications Subdivisions/ Developments;
- Any other relevant design or construction considerations.

The design engineer must nominate all necessary critical stage inspections. These inspections are to be carried out by a suitability qualified structural engineer with demonstrated experience and knowledge of road bridge design and construction as the bridge construction progresses, with a copy of the results submitted to Council as soon as practicable after the inspection. Additionally, Council, as the PCA for this project, must be notified of any upcoming inspections a minimum of 24 hours beforehand.

An operations and maintenance plan must be prepared for the proposed road bridge. The operations and maintenance plan must include:

1. The location and type of the road bridge, including details of its operation and design;
2. The method and frequency of any necessary inspections;
3. The method and frequency of any necessary maintenance actions;

4. Estimated life-cycle costs;
5. Site access details, including access limitations etc;
6. Description of optimum maintenance methods and alternatives, including equipment and personnel requirements;
7. A work method statement;
8. A standard inspection and maintenance form.

The proposed road bridge must be transferred to Council at the end of the project. The following is required in order to facilitate this handover process:

9. The operations and maintenance plan for the bridge (above) is submitted to Council for review/ revision and subsequent approval.
10. Council staff inspects the bridge.
11. A whole of life assessment is provided for the bridge and documentation is provided to confirm the expenses nominated.
12. WAE drawings and all required as-built structural engineering certifications and inspection results are provided to Council.

If Council determines that the bridge is not complying with the conditions of this approval, Council may request that alterations be made to the bridge prior to transfer.

## **PRIOR TO WORK COMMENCING ON THE SITE**

### **31. Site Audit Statement**

Prior to any works commencing on site a Site Audit Statement must be submitted to Council which has been prepared by an accredited site auditor.

The site audit statement is to advise that the site presents no unacceptable risk to human health or the environment and is suitable for an end land use of Residential with Garden Accessible Soils or suggest a Remediation Action Plan to undertake such works as necessary to achieve that standard.

### **32. Salinity**

Prior to any works commencing on site a Salinity Management Plan is to be prepared and submitted to Council which details the measures to be taken to ensure that future development of the site is not affected by salinity. The Salinity Management Plan must detail requirements for both civil (roads, bridges and drainage infrastructure) and private (dwellings, retaining walls, drainage and the like) developments likely to occur on site.

The recommendations contained within the Salinity and Aggressivity Report prepared by David Lane Associates (reference DL2516) and dated July 2010 must be incorporated into the Salinity Management Plan.

### **33. On-site Monitoring**

Prior to any construction or other activity that may cause soil disturbance, arrangements shall be made for an appropriately qualified representative of the Darug Land Observations and other interested Aboriginal stakeholders to be present on-site to monitor such works.

### **34. Permit under the National Parks and Wildlife Act 1974**

A permit under Section 90 of the National Parks and Wildlife Act 1974 is required to be obtained from the Office of Environment and Heritage prior to any construction or other activity that may cause soil disturbance on the site.

### **35. Consultation with Aboriginal Groups**

Prior to any construction or other activity that may cause soil disturbance, interested local Aboriginal groups shall be invited to be present on-site. This shall include those groups that were consulted in the preparation of the Aboriginal Heritage Assessment Report prepared by Insite Heritage Pty Ltd dated March 2010.

### **36. Protection of Existing Trees**

The trees that are to be retained are to be protected during all works to restrict the following occurring:

- Stockpiling of materials within the root protection zone,
- Placement of fill within the root protection zone,
- Parking of vehicles within the root protection zone,
- Compaction of soil within the root protection zone.

### **37. Traffic Control Plan**

A Traffic Control Plan is required to be prepared in strict compliance with the requirements of AS 1742.3 and the current RTA Traffic Control and Work Sites Manual and submitted to Council for approval. The person preparing the plan must have the relevant RTA accreditation to do so. Where amendments to the approved plan are required, they must be submitted to Council for approval prior to being implemented.

### **38. Erection of Signage – Supervision of Work**

In accordance with Clause 98A(2) of the Environmental Planning and Assessment Regulations 2000, a sign is to be erected in a prominent position displaying the following information:

- a) The name, address and telephone number of the Principal Certifying Authority (PCA). Where Council is the nominated PCA for the development, the following is to be displayed:  
  
The Hills Shire Council  
  
PO Box 75  
  
CASTLE HILL NSW 1765  
  
Phone (02) 9843 0555
- b) The name of the person responsible for carrying out the works;
- c) A telephone number on which the person responsible for carrying out the works can be contacted after hours;
- d) That unauthorised entry to the work site is prohibited.

This signage must be maintained while the subdivision work is being carried out and must be removed upon completion.

### **39. Contractors Details**

In accordance with Section 109E(3) of the Environmental Planning and Assessment Act 1979, the contractor carrying out the subdivision works must have a current public liability insurance policy with an indemnity limit of not less than \$10,000,000.00. The policy must indemnify Council from all claims arising from the execution of the works. A copy of this insurance must be submitted to Council prior to works commencing.

### **40. Sediment and Erosion Control**

The approved sediment and erosion control measures, including a stabilised all weather access point, must be in place prior to works commencing and maintained during construction and until the site is stabilised to ensure their effectiveness. For major works, these measures must be maintained for a minimum period of six months following the completion of all works.

## **DURING CONSTRUCTION**

### **41. Construction (Salinity)**

The construction of the civil infrastructure (roads, bridges and drainage infrastructure) is to be undertaken in accordance with the Salinity Management Plan submitted in accordance with the conditions of consent.

### **42. Aboriginal Archaeological Sites or Relics**

If, during activities involving earthworks and soil disturbance, any evidence of an Aboriginal archaeological site or relic is found, all works on the site are to cease and the

Office of Heritage and Environment and the Department of Planning and Infrastructure (Heritage Branch) must be notified immediately.

#### **43. Standard of Works**

All work must be completed in accordance with this consent and Council's Works Specification Subdivisions/ Developments and must include any necessary works required to make the construction effective. All works and public utility relocation must incur no cost to Council.

#### **44. Engineering Construction Inspections**

Construction inspections are required for the engineering works included in this consent at the completion of the following inspection stages:

- a) Prior to commencement of work;
- b) Traffic control to AS 1742-3;
- c) Bedding of pipes in trenches;
- d) Trench backfill within roads;
- e) Formwork for concrete structures;
- f) Sub-grade proof roller test;
- g) Proof roller test for kerb;
- h) Sub-base course proof roller test;
- i) Base course proof roller test;
- j) Prior to placing of fill;
- k) Road crossing;
- l) Final inspection; and
- m) Asphaltic concrete surfacing.

The inspection of works approved by Council can only be carried out by Council. An initial site inspection is required prior to commencement of works. 24 hours notice must be given for all inspections.

#### **45. Subdivision Earthworks – Allotment Topsoil**

Where earthworks are not shown on the engineering drawings, the topsoil within lots must not be disturbed. Where earthworks are shown, a 150mm deep layer of topsoil must be provided, suitably compacted and stabilised in accordance with Council's Works Specification Subdivisions/ Developments.

#### **46. Documentation**

A copy of the following documents must be kept on site and made available upon request:

- a) Sediment and Erosion Control Plan
- b) Traffic Control Plan

#### **47. Working Hours**

All work associated with the subdivision must be restricted to between the hours of 7.00am and 5.00pm, Monday to Saturday. No work can occur outside the hours specified above or on Sundays or public holidays. The contractor must instruct sub-contractors regarding the hours of work.

### **PRIOR TO ISSUE OF A OCCUPATION AND/OR SUBDIVISION CERTIFICATE**

#### **48. Final Subdivision Fees**

All outstanding fees must be paid before a Subdivision Certificate can be issued. The final fees that remain outstanding will be assessed following the submission of written advice confirming all works have been completed.

#### **49. Subdivision Certificate Application**

When submitted, the Subdivision Certificate application must include:

- a) The final plan and administration sheet, along with ten copies of both.
- b) The original plus one copy of the 88B Instrument.
- c) All certificates and supplementary information as required by this consent.
- d) A completed checklist confirming compliance with all conditions (a blank checklist is attached).
- e) An electronic copy of the final plan on disk in “.dwg” format.
- f) One copy of the strata or community titled subdivision plan that includes house/unit numbering consistent with numbering issued by Council.
- g) Two copies of the community or precinct management statement.

Council will not accept a Subdivision Certificate application without all the items listed above.

#### **50. Removal of Existing Right of Carriageway/ Easement for Services**

The existing right of carriageway/ easement for services must be removed before a Subdivision Certificate is issued. Where Council is listed as the benefiting authority, the relevant release or amendment documentation must be submitted along with payment of the applicable fee as per Council's Schedule of Fees and Charges.

#### **51. Completion of Subdivision Works**

A Subdivision Certificate must not be issued prior to the completion of all subdivision works covered by this consent, in accordance with this consent.

#### **52. Compliance with NSW Office of Water Requirements**

A letter from the NSW Office of Water must be submitted confirming that all works associated with the Controlled Activity Authority have been completed to their satisfaction and that no objection is raised to the issuing of a Subdivision Certificate.

#### **53. Compliance with NSW Rural Fire Service Requirements**

A letter from a qualified bushfire consultant must be submitted confirming that the requirements of the NSW Rural Fire Service have been complied with as outlined in their letter dated 5 August, 2010 Ref D10/0657 attached to this consent as Appendix B..

#### **54. Compliance with Sydney Water Requirements**

A letter from Sydney Water must be submitted confirming that the works have been completed to their satisfaction and that no objection is raised to the issuing of a Subdivision Certificate.

#### **55. Kellyville/ Rouse Hill Release Area – Regional Transport Infrastructure Contribution**

Before a Subdivision Certificate is issued, the applicant must submit to Council written evidence from the NSW Roads and Traffic Authority certifying that satisfactory arrangements have been made with respect to a contribution towards regional transport infrastructure.

#### **56. Works as Executed Plans**

Works as Executed (WAE) plans prepared by a suitably qualified engineer or registered surveyor must be submitted to Council when the engineering works are complete. The WAE plans must be prepared in accordance with Council's Design Guidelines Subdivisions/ Developments on a copy of the approved engineering plans. An electronic copy of the WAE plans, in “.dwg” format, must also be submitted.

Where applicable, the plans must be accompanied by pavement density results, pavement certification, concrete core test results and site fill results.

#### **57. Performance/ Maintenance Security Bond**

A performance/ maintenance bond of 5% of the total cost of the engineering works is required to be submitted to Council. The bond will be held for a minimum defect liability period of one year and may be extended to allow for the completion of necessary maintenance or in the case of outstanding works. The minimum bond amount is

\$5,000.00. The bond is refundable upon written application to Council along with payment of the applicable bond release fee, and is subject to a final inspection.

### **58. Final Plan and 88B Instrument**

The final plan and 88B Instrument must provide for the following. The terms and form of these matters must be as directed by Council:

#### **a) Constructed and Dedicated Public Road Access**

The roads within the subdivision must be dedicated as public road at no cost to Council. All lots shown on the final plan must be provided with constructed and dedicated public road access.

#### **b) Drainage Easements – Council**

Suitable drainage easements must be created over all stormwater drainage pipelines and structures which convey public stormwater runoff, in accordance with the requirements of Council. Easements are only required for stormwater drainage pipelines and structures that are not located within a public road or drainage reserve. Easement widths must comply with Council's Design Guidelines Subdivisions/ Developments.

#### **c) Drainage Easements – Inter-allotment/ Private**

Inter-allotment drainage easements must be provided to ensure each and every lot is provided with a legal point of discharge. The width of all inter-allotment drainage easements must comply with Council's Design Guidelines Subdivisions/ Developments and the terms must nominate each lot burdened and benefited.

#### **d) Restricting Development – Earthworks**

Fill on all residential lots is restricted to a maximum of 600mm above natural ground level, in accordance with DCP Part C Section 3. Where site constraints necessitate an excess of 600mm of filling, and provided that the filling does not exceed 1.5m, a concealed drop edge beam is required to contain the fill in excess of 600mm with the remainder to be retained external to the building in accordance with DCP Part C Section 3.

#### **e) Restricting Development – Site Slope 6% or Greater**

A restriction must be placed on the title of all allotments with a grade of 6% or greater to ensure the construction of a dwelling on the same should be of a split level design with a ground floor level no greater than 1m above the existing ground level at any one point. Where there are no lots that fall into this category this restriction is not required. The grade referred to is that shown on the works as executed drawings.

#### **f) Restricting Development – Flood Levels**

Restricting excavation on proposed lots 17, 42, 43, 44 and 45 to ensure the floor level of any dwelling or garage erected is a minimum of 500mm above the 1 in 100 year ARI flood level associated with the adjacent drainage system or easement in accordance with the DCP. The terms of the restriction must nominate the required Flood Planning Level (FPL) for each allotment along with the source of the flood data relied upon in deriving these values.

#### **g) Restricting Development – Site Coverage**

Restricting development of all residential lots to reinforce the maximum site coverage from DCP Part E Section 15, being 65% for single storey or 60% for two storey or more.

#### **h) Restricting Development – WSUD Requirements**

Where the WSUD strategy presented to Council at the detailed design stage includes requirements that apply to individual lots at the dwelling/ building design stage, a restriction must be placed on the title of the affected lots restricting residential development until the proprietor has constructed, or made provision for the construction of, the WSUD elements in question, to the requirements of Council.

#### **i) Restricting Development – WSUD Modification**



Where applicable, a restriction must be placed on the title of the above lots restricting development over or the varying of any finished levels and layout of the constructed WSUD elements on the lot. The purpose of creating this restriction at the subdivision stage is to remove the need to create restrictions on a lot by lot basis at the dwelling DA stage.

**j) Positive Covenant – WSUD Maintenance**

Where applicable, a positive covenant must be placed on the title of the above lots to ensure the ongoing maintenance of the constructed WSUD elements on the lot. The purpose of creating this positive covenant at the subdivision stage is to remove the need to create positive covenants on a lot by lot basis at the dwelling DA stage.

**k) Restrictions/ Positive Covenants – Asset Protection Zone**

Any necessary restrictions and positive covenants, in accordance with the approved bushfire report and the requirements of both Council and the NSW Rural Fire Service, must be created.

**l) Positive Covenant – Bushfire Construction Requirements**

A positive covenant identifying any special bushfire construction requirements must be created for those lots affected, in accordance with the approved bushfire report and the requirements of both Council and the NSW Rural Fire Service.

**m) Restrictions/ Positive Covenants – Riparian Corridor**

Any necessary restrictions and positive covenants, in accordance with the Controlled Activity Authority issued for the subdivision by the NSW Office of Water, must be created.

**n) Restriction – Salinity**

The construction of each dwelling is to be prepared in accordance with the salinity management plan prepared in accordance with this consent.

**59. Confirmation of Pipe Locations**

A letter from a registered surveyor must be provided certifying that all pipes and drainage structures are located within the proposed drainage easements.

**60. Removal of Sediment and Erosion Control Measures**

A \$5,000.00 bond must be submitted to Council to ensure the satisfactory removal of all sediment and erosion control measures, including the removal of any collected debris.

**61. Section 94 Contribution**

The following monetary contributions must be paid to Council in accordance with Section 94 of the Environmental Planning and Assessment Act, 1979, to provide for the increased demand for public amenities and services resulting from the development.

Payments comprise of the following: -

Subdivision

Purpose	Per lot	No. of lots: 45	No. of Credits: 1	Total
Open Space - Land	\$ 10,112.40	\$ 455,058.00	\$ 10,112.40	\$ 444,945.60
Open Space - Capital	\$ 4,159.19	\$ 187,163.55	\$ 4,159.19	\$ 183,004.36
Community Facilities - Land	\$ 217.91	\$ 9,805.95	\$ 217.91	\$ 9,588.04
Community Facilities - Capital	\$ 1,886.55	\$ 84,894.75	\$ 1,886.55	\$ 83,008.20
Studies and Administration	\$ 290.11	\$ 13,054.95	\$ 290.11	\$ 12,764.84
Roadworks - Land	\$ 1,666.16	\$ 74,977.20	\$ 1,666.16	\$ 73,311.04
Roadworks - Capital	\$ 3,961.28	\$ 178,257.60	\$ 3,961.28	\$ 174,296.32
<b>Total</b>	<b>\$ 22,293.60</b>	<b>\$ 1,003,212.00</b>	<b>\$ 22,293.60</b>	<b>\$ 980,918.40</b>

The contributions above are applicable at the time this consent was issued. Please be aware that Section 94 contributions are updated quarterly.

Prior to payment of the above contributions, the applicant is advised to contact Council's Development Contributions Officer on 9843 0268. Payment must be made by cheque or credit/debit card. Cash payments will not be accepted.

This condition has been imposed in accordance with Contributions Plan No.8. The CPI at the time of consent was 169.5, Quarter 4 2009 (Apr-Jun 2010).

Council's Contributions Plans can be viewed at [www.thehills.nsw.gov.au](http://www.thehills.nsw.gov.au) or a copy may be inspected or purchased at Council's Administration Centre.

#### **62. Section 73 Compliance Certificate**

A Section 73 Compliance Certificate issued under the Sydney Water Act 1994 must be obtained from Sydney Water confirming satisfactory arrangements have been made for the provision of water and sewer services. Application must be made through an authorised Water Servicing Coordinator. A list can be found by following this link:

[http://www.sydneywater.com.au/BuildingDevelopingandPlumbing/SupplierInformation/ws/c/waterserv\\_ext\\_print.htm](http://www.sydneywater.com.au/BuildingDevelopingandPlumbing/SupplierInformation/ws/c/waterserv_ext_print.htm)

The certificate must refer to the issued consent, all of the lots created and Development Consent DA 1357/2010/JPZ.

#### **63. Provision of Electrical Services**

Submission of a notification of arrangement certificate confirming satisfactory arrangements have been made for the provision of electrical services. This includes the under-grounding of existing electrical services where directed by Council or the relevant service provider. Street lighting is required for new roads and a hinged lighting column is required in any proposed pedestrian pathways links.

The certificate must refer to the issued consent, all of the lots created and Development Consent DA 1357/2010/JPZ.

#### **64. Provision of Telecommunication Services**

Submission of a telecommunications infrastructure provisioning confirmation certificate, issued by the relevant telecommunications provider authorised under the Telecommunications Act, confirming satisfactory arrangements have been made for the provision, or relocation, of telecommunication services including telecommunications cables and associated infrastructure. This includes the under-grounding of aerial telecommunications lines and cables where directed by Council or the relevant telecommunications carrier.

The certificate must refer to the issued consent, all of the lots created and Development Consent DA 1357/2010/JPZ.

#### **65. Geotechnical Report (Lot Classification)**

Submission of a lot classification report, prepared by a suitably qualified geotechnical engineer, following the completion of all subdivision works confirming that all residential allotments are compliant with AS2870 and are suitable for residential development. The lot classification report must be accompanied by a separate table which clearly shows the classification of all lots created as part of the subdivision.

#### **66. Stormwater CCTV Recording**

All piped stormwater drainage systems and ancillary structures which will become Council assets must be inspected by a CCTV and a report prepared. A hard copy of the report must be submitted along with a copy of the CCTV inspection on either VHS or DVD (in WMA format).

#### **67. Public Asset Creation Summary**

A completed public asset creation summary form must be submitted with the WAE plans. A blank form can be found on Council's website.

#### **68. Flooding Extent Plan**

A plan of survey prepared by a registered surveyor must be provided that shows the Probable Maximum Flood (PMF) and 1 in 100 year ARI storm event flood levels associated with the adjacent drainage system. The plan must reflect the WAE plans and clearly indicate the extent of inundation.

#### **69. Siting Plan**

A siting plan prepared in accordance with DCP Part E Section 15 must be submitted showing the subdivision layout, site constraints, the dwelling design and siting controls taken from the DCP and the solar rating of the lot. The siting plan must be prominently

displayed in all site offices, form part of any marketing and promotional material advertising the subdivision and conveyed to the purchasers of each lot at the time of sale.



Office  
of Water

The General Manager  
The Hills Shire Council  
PO Box 75  
Castle Hill NSW 1765

Attention: Simon Turner

Dear Sir/Madam

DOC. No.:
BOX No.:
- 9 SEP 2010
THE HILLS SHIRE COUNCIL

Contact: Gina Potter  
Phone: 02 9895 7259  
Fax: 02 9895 7501  
Email: gina.potter@water.nsw.gov.au

Our ref: 10 ERM2010/0379  
Our file: 9053461  
Your ref: 1357/2010/ZB

7 September 2010

**Re: Integrated Development Referral – General Terms of Approval  
1357/2010/ZB - 45 lot subdivision (Lots 1-45 Stage 3),  
Lot 102 DP1140711 Withers Road KELLYVILLE**

I refer to your recent letter regarding an Integrated Development Application (DA) proposal for the subject property. Attached, please find the NSW Office of Water's General Terms of Approval (GTA) for 'works' requiring a Controlled Activity Approval under the *Water Management Act 2000* (WMA), as detailed in the subject DA.

Please note Council's statutory obligations under section 91A(3) of the *Environmental Planning and Assessment Act, 1979* (EPAA) which requires a consent, granted by a consent authority, to be consistent with the GTA proposed to be granted by the approval body.

If the proposed development is approved by Council, the NSW Office of Water requests that these GTA be included (in their entirety) in Council's development consent. Please also note the following:

- The NSW Office of Water should be notified if any plans or documents are amended and these amendments significantly change the proposed development or result in additional 'works' on waterfront land (ie in or within 40 metres from top of highest bank of a watercourse, foreshore, or lake). Once notified, the NSW Office of Water will ascertain if the amended plans require review or variation/s to the GTA. This requirement applies even if the proposed 'works' are part of Council's proposed consent conditions and the 'works' do not appear in the original documentation.
- The NSW Office of Water should be notified if Council receives an application to modify the consent conditions. **Failure to notify may render the consent invalid.**
- The NSW Office of Water requests notification of any legal challenge to the consent.

Under Section 91A(6) of the EPAA, Council must provide the NSW Office of Water with a copy of any determination/s including refusals.

As a controlled activity (ie the 'works') cannot commence before the applicant obtains a Controlled Activity Approval, the NSW Office of Water recommends that the following condition be included in the development consent:

"The Construction Certificate will not be issued over any part of the site requiring a Controlled Activity Approval until a copy of the Approval has been provided to Council".

**The attached GTA are not the Controlled Activity Approval.** The applicant must apply (to the NSW Office of Water) for a Controlled Activity Approval after consent has been issued by Council but before the commencement of any 'works'.

Finalisation of a Controlled Activity Approval can take up to 8 weeks from the date the NSW Office of Water receives all documentation (to its satisfaction). Applicants must complete and submit (to the undersigned) an application form together with any required plans, documents, the appropriate fee and security (ie bond, if applicable) and proof of Council's development consent.

Application forms for the Controlled Activity Approval are available from the undersigned or from the NSW Office of Water's website  
<http://www.water.nsw.gov.au/Water-Licensing/Approvals/Controlled-activities/default.aspx>

The NSW Office of Water requests that Council provide a copy of this letter to the applicant.

Yours Sincerely



Gina Potter  
Licensing Officer (Controlled Activities)  
**NSW Office of Water**  
Licensing South



Office  
of Water

## General Terms of Approval – for works requiring a Controlled Activity Approval under the Water Management Act 2000

Our Reference	10 ERM2010/0379	File No:	9053461
Site Address	Lot 102 DP1140711 Withers Road KELLYVILLE		
DA Number	1357/2010/ZB		
LGA	The Hills Shire Council		
Number	Condition		
Plans, standards and guidelines			
1	<p>These General Terms of Approval (GTA) only apply to the controlled activities described in the plans and associated documentation relating to 1357/2010/ZB and provided by Council:</p> <p>(i) Plan of proposed subdivision, No. 0873-9revG, dated 22/09/09, prepared by G.J. Atkins &amp; Associates</p> <p>Any amendments or modifications to the proposed controlled activities may render these GTA invalid. If the proposed controlled activities are amended or modified the NSW Office of Water must be notified to determine if any variations to these GTA will be required.</p>		
2	<p>Prior to the commencement of any controlled activity (works) on waterfront land, the consent holder must obtain a Controlled Activity Approval (CAA) under the Water Management Act from the NSW Office of Water. Waterfront land for the purposes of this DA is land and material in or within 40 metres of the top of the bank or shore of the river identified.</p>		
3	<p>The consent holder must prepare or commission the preparation of:</p> <p>(i) Vegetation Management Plan</p> <p>(ii) Works Schedule</p> <p>(iii) Erosion and Sediment Control Plan</p> <p>(iv) Soil and Water Management Plan</p>		
4	<p>All plans must be prepared by a suitably qualified person and submitted to the NSW Office of Water for approval prior to any controlled activity commencing. The following plans must be prepared in accordance with the NSW Office of Water guidelines located at <a href="http://www.dwe.nsw.gov.au/water_trade/rights_controlled.shtml">www.dwe.nsw.gov.au/water_trade/rights_controlled.shtml</a></p> <p>(i) Vegetation Management Plans</p> <p>(ii) Riparian Corridors</p> <p>(iii) Outlet structures</p> <p>(iv) Watercourse crossings</p>		
5	<p>The consent holder must (i) carry out any controlled activity in accordance with approved plans and (ii) construct and/or implement any controlled activity by or under the direct supervision of a suitably qualified professional and (iii) when required, provide a certificate of completion to the NSW Office of Water.</p>		
Rehabilitation and maintenance			

[www.water.nsw.gov.au](http://www.water.nsw.gov.au) | NSW Office of Water is a separate office within the Department of Environment, Climate Change and Water  
Macquarie Tower, 10 Valentine Avenue, Parramatta NSW 2150 | PO Box 3720 Parramatta NSW 2124 Australia  
t + 61 2 9995 6211 | e [information@water.nsw.gov.au](mailto:information@water.nsw.gov.au) | ABN 47 661 556 763

Our Reference	10 ERM2010/0379	File No:	9053461
Site Address	Lot 102 DP1140711 Withers Road KELLYVILLE		
DA Number	1357/2010/ZB		
LGA	The Hills Shire Council		
Number	Condition		
6	The consent holder must carry out a maintenance period of two (2) years after practical completion of all controlled activities, rehabilitation and vegetation management in accordance with a plan approved by the NSW Office of Water.		
7	The consent holder must reinstate waterfront land affected by the carrying out of any controlled activity in accordance with a plan or design approved by the NSW Office of Water.		
Reporting requirements			
8	The consent holder must use a suitably qualified person to monitor the progress, completion, performance of works, rehabilitation and maintenance and report to the NSW Office of Water as required.		
Security deposits			
9	The consent holder must provide a security deposit (bank guarantee or cash bond) - equal to the sum of the cost of complying with the obligations under any approval - to the NSW Office of Water as and when required.		
Access-ways			
10	N/A		
11	The consent holder must not locate ramps, stairs, access ways, cycle paths, pedestrian paths or any other non-vehicular form of access way in a riparian corridor other than in accordance with a plan approved by the NSW Office of Water.		
Bridge, causeway, culverts, and crossing			
12	The consent holder must ensure that the construction of any bridge, causeway, culvert or crossing does not result in erosion, obstruction of flow, destabilisation or damage to the bed or banks of the river or waterfront land, other than in accordance with a plan approved by the NSW Office of Water.		
13	The consent holder must ensure that any bridge, causeway, culvert or crossing does not obstruct water flow and direction, is the same width as the river or sufficiently wide to maintain water circulation, with no significant water level difference between either side of the structure other than in accordance with a plan approved by the NSW Office of Water.		
Disposal			
14	The consent holder must ensure that no materials or cleared vegetation that may (i) obstruct flow, (ii) wash into the water body, or (iii) cause damage to river banks; are left on waterfront land other than in accordance with a plan approved by the NSW Office of Water.		
Drainage and Stormwater			
15	The consent holder is to ensure that all drainage works (i) capture and convey runoffs, discharges and flood flows to low flow water level in accordance with a plan approved by the NSW Office of Water; and (ii) do not obstruct the flow of water other than in accordance with a plan approved by the NSW Office of Water.		
16	The consent holder must stabilise drain discharge points to prevent erosion in accordance with a plan approved by the NSW Office of Water.		
Erosion control			
17	The consent holder must establish all erosion and sediment control works and water diversion structures in accordance with a plan approved by the NSW Office of Water. These works and		

Our Reference	10 ERM2010/0379	File No:	9053461
Site Address	Lot 102 DP1140711 Withers Road KELLYVILLE		
DA Number	1357/2010/ZB		
LGA	The Hills Shire Council		
Number	Condition		
	structures must be inspected and maintained throughout the working period and must not be removed until the site has been fully stabilised.		
Excavation			
18	The consent holder must ensure that no excavation is undertaken on waterfront land other than in accordance with a plan approved by the NSW Office of Water.		
19	N/A		
Maintaining river			
20-21	N/A		
River bed and bank protection			
22	N/A		
23	The consent holder must establish a riparian corridor along the Smalls Creek in accordance with a plan approved by the NSW Office of Water.		
Plans, standards and guidelines			
24-27	N/A		
END OF CONDITIONS			



## Appendix B – NSW Rural Fire Service Comments

*All communications to be addressed to:*

Development, Assessment & Planning  
NSW Rural Fire Service  
Locked Mail Bag 17  
Granville NSW 2142

Development, Assessment & Planning  
NSW Rural Fire Service  
15 Carter Street  
Lidcombe NSW 2141

Telephone: (02) 8741 5555

Facsimile: (02) 8741 5550

e-mail: [development.assessment@rfs.nsw.gov.au](mailto:development.assessment@rfs.nsw.gov.au)



The General Manager  
The Hills Shire Council  
PO Box 75  
Castle Hill NSW 1765

**Attention:** Simon Turner

DOC. No.:	
BOX No.:	
14 AUG 2010	
THE HILLS SHIRE COUNCIL	

Your Ref: DA 1357/2010/JPZ

Our Ref: D10/0657  
DA10042168832 BH

5 August 2010

Dear Mr Turner,

### **Integrated Development for 102//1140711 Withers Road Kellyville 2155**

I refer to your letter dated 1 July 2010 seeking general terms of approval for the above Integrated Development in accordance with Clause 55(1) of the Environmental Planning and Assessment Regulation 2000.

This response is to be deemed a bush fire safety authority as required under section 100B of the 'Rural Fires Act 1997' and is issued subject to the following numbered conditions:

This letter is in response to a further assessment of the application submitted and supercedes our previous general terms of approval dated 2 July 2010.

#### **General Conditions**

1. The development proposal is to comply with the subdivision layout identified on the drawing prepared by G.J. Atkins & Associates numbered 0873-9revG, dated 22 September 2009.

#### **Asset Protection Zones**

The intent of measures is to provide sufficient space and maintain reduced fuel loads so as to ensure radiant heat levels of buildings are below critical limits and to prevent direct flame contact with a building.

2. At the issue of subdivision certificate and in perpetuity all the lots within this stage (stage 3) and all asset protection zones for this stage shall be maintained as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones'.

### **Water and Utilities**

The intent of measures is to provide adequate services of water for the protection of buildings during and after the passage of a bush fire, and to locate gas and electricity so as not to contribute to the risk of fire to a building.

3. Water, electricity and gas are to comply with section 4.1.3 of 'Planning for Bush Fire Protection 2006'.

### **Access**

The intent of measures for public roads is to provide safe operational access to structures and water supply for emergency services, while residents are seeking to evacuate from an area.

4. Public road access shall comply with section 4.1.3 (1) of 'Planning for Bush Fire Protection 2006'.

- Alternate emergency egress for residents and access/egress for emergency services shall be provided to the north through adjoining lot 101 DP 1140711 to Wellgate Avenue.

The intent of measures for fire trails is to provide suitable access for fire management purposes and maintenance of APZs.

5. Fire trails shall comply with section 4.1.3 (3) of 'Planning for Bush Fire Protection 2006'.

### **General Advice – consent authority to note**

- This approval is for the subdivision of the land only. Any further development application for class 1,2 & 3 buildings as identified by the 'Building Code of Australia' must be subject to separate application under section 79BA of the EP & A Act and address the requirements of 'Planning for Bush Fire Protection 2006'.

For any enquiries regarding this correspondence please contact Bruce Hansen on 8741 5175.

Yours sincerely



Nika Forlin

**Team Leader Development Assessment & Planning**

The RFS has made getting information easier. For general information on 'Planning for Bush Fire Protection, 2006', visit the RFS web page at [www.rfs.nsw.gov.au](http://www.rfs.nsw.gov.au) and search under 'Planning for Bush Fire Protection, 2006'.



5 April 2011

Simon Turner  
Senior Town Planner  
The Hills Shire Council  
129 Showground Road,  
Castle Hill NSW 2154

**Re: DA 1357/2010/JPZ Proposed 91 Lot Residential Subdivision in Withers Road,  
Kellyville**

Dear Mr Turner,

Thankyou for your letter of 10 March 2011 about the proposed 91 lot residential subdivision in Withers Road, Kellyville. Sydney Water has reviewed the proposal and provides the following comments for Council's consideration.

**Water**

The proposed subdivision site does not front an available drinking water main. The developer will need to design and construct a 150 mm extension into the site from the 200 mm drinking water main at the corner of Withers Road and Mungerie Road. The developer will also need to construct 100 mm water mains into the site that will extend off the new 150 mm main as shown in Figure 1.

All works will need to be configured and constructed according to the Water Supply Code of Australia (Sydney Water Edition WSA 03-2002). Evidence of Code compliance should be attached with the extension design.

**Wastewater**

The existing wastewater system does not have sufficient capacity to service the proposed subdivision. The developer will need to design and construct a wastewater main from the existing 750 mm main located to the north of the site. The main will need to extend from Point A to Point B as shown on Figure 1. This main can then be extended to provide a point of connection at least 1 metre inside all the property boundaries (Figure 1).

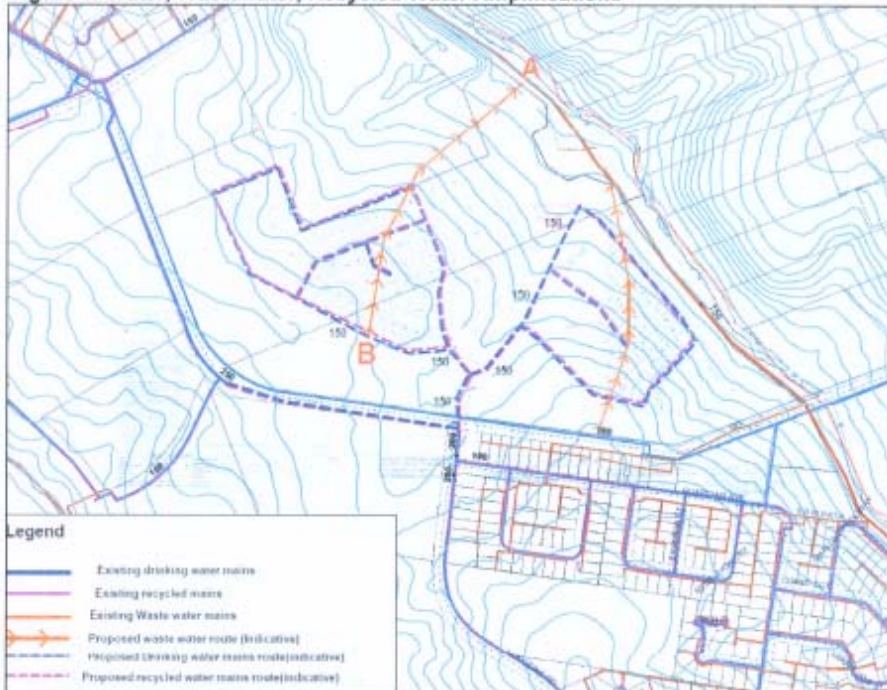
The developer will need to engage an accredited Hydraulic Designer to ensure that the proposed wastewater infrastructure for the site will be sized & configured according to the Sewerage Code of Australia (Sydney Water Edition WSA 02-2002). Evidence of Code compliance should be attached with the extension design.

### Recycled Water

The proposed subdivision site does not front an available recycled water main. The developer will need to design and construct a 150 mm extension into the site from the 200 mm recycled water main at the corner of Withers Road and Mungerie Road. The developer will also need to construct 100 mm recycled water mains into the site that will extend off the new 150 mm main as shown in Figure 1.

All works will need to be configured and constructed according to the Water Supply Code of Australia (Sydney Water Edition WSA 03-2002). Evidence of Code compliance should be attached with the extension design.

**Figure 1: Water, Wastewater, Recycled Water Amplifications**



### Stormwater

Sydney Water supports the developer's initiative to design all stormwater drainage in accordance with the 'Western Sydney Water Sensitive Urban Design Technical Guidelines- 2004'. In addition, the proposed drainage system for the subdivision needs to be designed and verified through an appropriate 'Model for Urban Stormwater Improvement Conceptualisation' in order to meet the Growth Centres Commission targets below:

Pollutant	Requirement
Gross Pollutants	90% reduction in pollutant loads
Total Suspended Solids	85% reduction in pollution loads
Total Phosphorous	65% reduction in pollution loads
Total Nitrogen	45% reduction in pollution loads

Source: Western Sydney Growth Centres – Stormwater Guidance For Precinct Planning  
Prepared by DEC, November 2006



The proposed development shows the proposed location of a number of pipe outlets to connect to Smalls Creek. The proposed connections must be designed according to Sydney Water's guidelines from the title "Pipe Connections to Sydney Water Natural Creeks and Stormwater Assets", which can be obtained from Sydney Water's stormwater team on request. The designs must be submitted for approval prior to the issuing of the Construction Certificate.

#### **Sydney Water Servicing**

Sydney Water will further assess the impact of the development when the proponent applies for a Section 73 Certificate. This assessment will enable Sydney Water to specify any works required as a result of the development and to assess if amplification and/or changes to the system are applicable. The proponent must fund any adjustments needed to Sydney Water infrastructure as a result of any development.

The proponent should engage a Water Servicing Coordinator to get a Section 73 Certificate and manage the servicing aspects of the development. The Water Servicing Coordinator will ensure submitted infrastructure designs are sized & configured according to the Water Supply Code of Australia (Sydney Water Edition WSA 03-2002) and the Sewerage Code of Australia (Sydney Water Edition WSA 02-2002).

Sydney Water requests the Hills Shire Council to continue to instruct proponents to obtain a Section 73 Certificate from Sydney Water. Details are available from any Sydney Water Customer Centre on 13 20 92 or Sydney Water's website at [www.sydneywater.com.au](http://www.sydneywater.com.au).

#### **Sydney Water e-planning**

Sydney Water has created a new email address for planning authorities to use to submit statutory or strategic planning documents for review. This email address is [urbangrowth@sydneywater.com.au](mailto:urbangrowth@sydneywater.com.au). The use of this email will help Sydney Water provide advice on planning projects faster, in line with current planning reforms. It will also reduce the amount of printed material being produced. This email should be used for:

- Section 62 consultations under the Environmental Planning and Assessment Act 1979
- consultations where Sydney Water is an adjoining land owner to a proposed development
- Major Project applications under Part 3A of the Environmental Planning and Assessment Act 1979
- consultations and referrals required under any Environmental Planning Instrument
- draft LEPs, SEPPs or other planning controls, such as DCPs
- any proposed development or rezoning within a 400m radius of a Sydney Water Wastewater Treatment Plant
- any proposed planning reforms or other general planning or development inquiries

If you require any further information, please contact Sonia Jacenko of the Urban Growth Branch on 02 8849 4004 or e-mail [sonia.jacenko@sydneywater.com.au](mailto:sonia.jacenko@sydneywater.com.au)

Yours sincerely,



Adrian Miller,  
Manager of Urban Growth Strategy and Planning

Statement ID: 01

# BioBanking

Biodiversity Banking and Offsets Scheme

## Part 7A of the *Threatened Species Conservation Act 1995*

### BIOBANKING STATEMENT

Statement ID  
01

Statement ID that this replaces  
not applicable

Plan (drawing) number 0873 Stage 2

Version / revision  
1

Name of maps

**Annexure A:** Development footprint

**Annexure B:** Vegetation communities within  
Development Areas

Accredited assessor's ID  
0025

Accredited assessor's name  
Mr Brendan Ryan

BioBanking credit calculator version  
Version 1.1



Environment,  
Climate Change  
& Water

## Section 1

Biobanking statement issued to		The Hills Shire Council	
ABN 25 034 494 656			
Contact name			
Laurie Doorey,		Manager Property Development	
Address			
129 Showground Road,		Castle Hill	
State	NSW	Postcode	2154

## Section 2

Development that this biobanking statement applies to	
Residential development at Kellyville	
Development site address	
418 Withers Road, Kellyville NSW 2155	
Site reference	
Easting: 308900	Northing: 6270700
AMG zone: 56	Reference system: GDA 94
Lot / DP number/s of development site	
1020 and 1022/DP 1149731	
Drawing number 1	Version / revision 01/00
Name of maps	
Annexure A: Development footprint	
Annexure B: Vegetation communities within Development Areas	



#### Description of the development

The Withers Road Development is a proposed residential development in Kellyville that will occur on 14.35 ha area close to the Growth Centre of North Kellyville. Kellyville is situated between Castle Hill, Parklea and Rouse Hill. Withers Road forms the southern and western boundary of the site. The subject land is flat to gently sloped, falling away from a moderate ridge running from the north and through the centre of the subject land. The majority of the area is vegetated, with the exception of a closed waste disposal facility to the north with associated access road.

The development will impact on 6 ha of Narrow-leaved Ironbark - Broad-leaved Ironbark - Grey Gum open forest of the edges of the Cumberland Plain, Sydney Basin and 5.4 ha of Red Bloodwood - Grey Gum woodland on the edges of the Cumberland Plain, Sydney Basin.



### Section 3

I, the Director General of the Department of Environment, Climate Change and Water, issue this BioBanking Statement on the basis that the development specified above, will improve or maintain biodiversity values in accordance with section 127ZL of the *Threatened Species Conservation Act 1995*. This determination is made on the basis of an assessment of the impact of the development on biodiversity values in accordance with the BioBanking Assessment Methodology.



Lisa Corbyn  
Director General  
Department of Environment, Climate Change and Water  
Date

14/2/11

## Section 4

### Conditions applicable to this Biobanking Statement

The conditions as set out in Schedule 1 and Schedule 2 are applicable to this Biobanking Statement.

## Schedule 1

### Conditions relating to on-site measures

1. The development to which this Biobanking Statement applies as described in Section 2, must be undertaken in accordance with the following on-site measures:

- a) Precise delineation of the areas to be cleared to minimise the risk of over-clearing or encroachment into the areas of the biobank sites;
- b) All earth works machinery will be excluded from the biobank sites through appropriate temporary fencing during construction phase with all future access controlled through the establishment of a permanent boundary delineation of the biobank sites;
- c) Locations where vegetation is being cleared and contains suitable soil seedbanks will have the top soil collected and placed (relocated) in areas of the biobank sites devoid of native vegetation to assist natural regeneration;
- d) Any hollow-bearing trees (including hollows that may be suitable as bat habitat) that are designated for removal will be identified and marked. Hollows will be searched by an ecologist and any fauna removed prior to tree removal;
- e) 'Hollows' available from the clearing will be translocated and placed within the biobank sites to improve habitat values;
- f) Other habitat features such as dead timber will be translocated to the biobanking sites to improve habitat values;
- g) Habitat suitable for *Meridolum* spp. such as bark, logs and leaf litter will be collected and relocated to the biobank sites at locations deemed potentially suitable for this species;

## Schedule 2

### Credit retirement conditions

#### General

- 2.1 The credits set out in Table 1 and Table 2 below must be retired to ensure that the development to which this Biobanking Statement relates improves or maintains biodiversity values.
- 2.2 All credits required by this statement to be retired in respect of the development to which this Biobanking Statement applies must be retired at the same time.

#### Ecosystem credit retirement conditions

- 2.3 The specified number of ecosystem credits in Table 1 must be retired to offset the impacts of the development on the Narrow-leaved Ironbark Broad-leaved Ironbark vegetation type indicated on Map 2 in Annexure 2 to this statement. The ecosystem credits must be in respect of any one or more of the vegetation types within the CMA subregions listed and meet, as a minimum, the surrounding vegetation and patch size criteria specified in Table 1. The credits must be retired before physical work can commence on the development site.
- 2.4 The specified number of ecosystem credits in Table 2 must be retired to offset the impacts of the development on the Red Bloodwood - Grey Gum woodland on the edges of the Cumberland Plain, Sydney Basin vegetation type indicated on Map 2 in Annexure 2 to this statement. The ecosystem credits must be in respect of any one or more of the vegetation types within the CMA subregions listed and meet, as a minimum, the surrounding vegetation and patch size criteria specified in Table 2. The credits must be retired before physical work can commence on the development site.

**Table 1 Ecosystem credits required for the Narrow-leaved Ironbark – Broad-leaved Ironbark – Grey Gum open forest of the edges of the Cumberland Plain, Sydney Basin (HN556) indicated on Map 2**

<b>Number of ecosystem credits</b>	105
<b>Surrounding vegetation cover</b>	minimum percent cover 10%
<b>Patch size including low condition</b>	minimum area 100 ha
<b>CMA sub-region (Catchment Management Authority)</b>	Yengo (Hawkesbury/Nepean)
<b>Vegetation type(s) that can be used to offset the impacts from development</b>	Narrow-leaved Ironbark – Broad-leaved Ironbark – Grey Gum open forest of the edges of the Cumberland Plain, Sydney Basin (HN556)

**Table 2 Ecosystem credits required for the Red Bloodwood – Grey Gum woodland on the edges of the Cumberland Plain Sydney Basin (HN564) vegetation type indicated on Map 2**

<b>Number of ecosystem credits</b>	126
<b>Surrounding vegetation cover</b>	minimum class 30%
<b>Patch size including low condition</b>	minimum class 100 ha
<b>CMA sub-region (Catchment Management Authority)</b>	Yengo (Hawkesbury/Nepean)
<b>Vegetation type(s) that can be used to offset the impacts from development</b>	Red Bloodwood – Grey Gum woodland on the edges of the Cumberland Plain Sydney Basin (HN564)

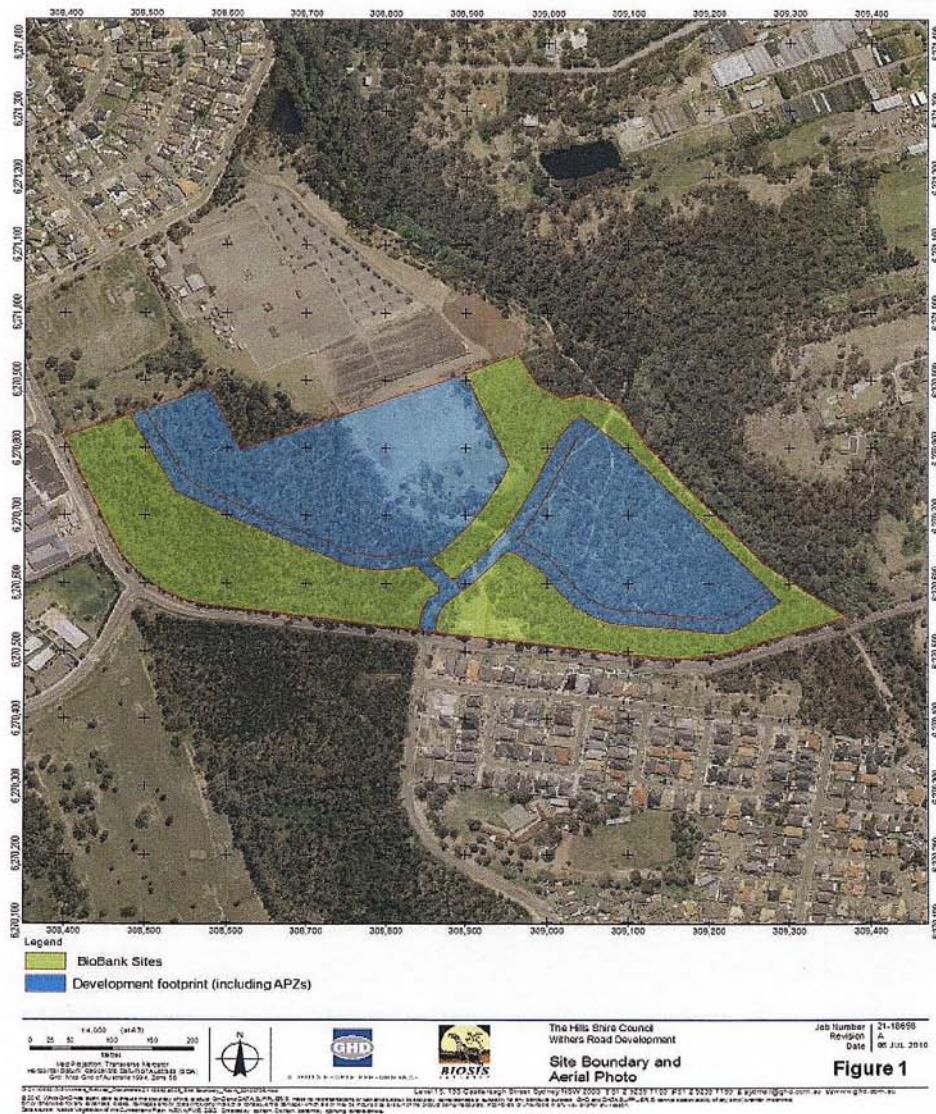
#### **Species credit retirement conditions**

- 2.5 To offset the impacts of the development on the *Epacris purpurascens* var *purpurascens* species (indicated on Map 2 in Annexure 2 to this statement) 500 species credits must be retired. The species credits must be retired before physical work can commence on the development site.



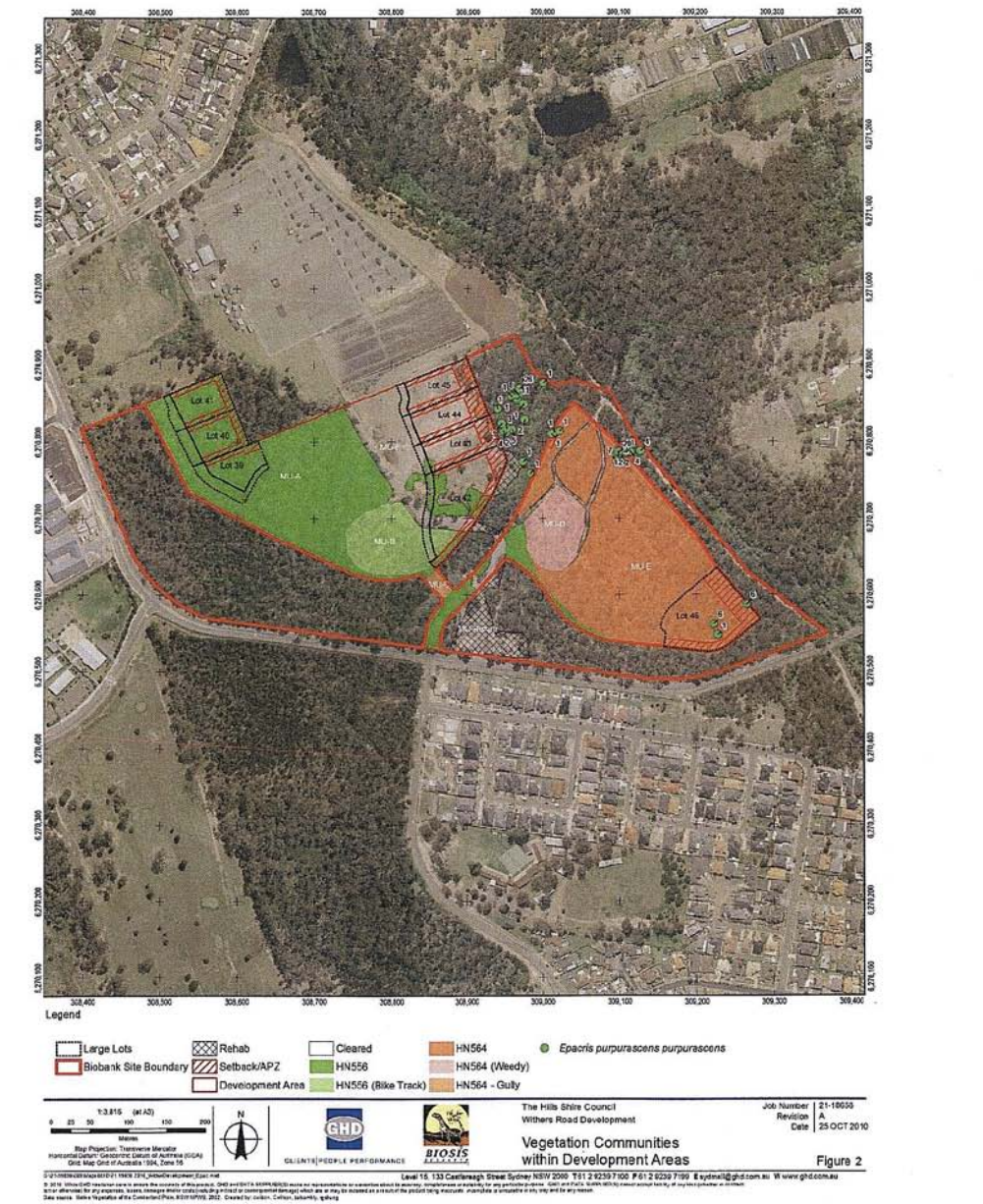
# ANNEXURE A

Map 1: Development footprint



## ANNEXURE B

### Map 2: Vegetation communities within Development Areas





## Information about this biobanking statement

### Development to which this biobanking statement applies

This biobanking statement has been issued in respect of the proposed development as described in Section 2 of this statement. The biobanking statement has been issued on the basis of an assessment of the direct and indirect impacts on biodiversity values from the proposed development shown on map 1. A revised biobanking statement will be required from DECCW where there are changes to the proposed development or development footprint that impact on biodiversity values.

### Modifying the biobanking statement

If the proposed development to which this biobanking statement applies is modified so that there is a different impact on biodiversity values, the applicant must apply to DECCW to modify the biobanking statement. An applicant is not required to apply for a modified biobanking statement if a consent authority is satisfied that any modification to the proposed development will have no impact on biodiversity values. However, the consent authority may require an updated biobanking statement that is consistent with the information provided within the development application.

### Exemption from threatened species assessment

The development to which this biobanking statement applies is taken to be development that is not likely to significantly affect any threatened species, population or ecological community, or its habitat, and is therefore exempt from complying with the threatened species assessment requirements under Parts 4 and 5 of the *Environmental Planning and Assessment Act 1979*.

### No additional assessment of impact on biodiversity values required

Where a biobanking statement has been issued and supplied to a consent authority, the authority is not required to take into consideration the likely impact or effect of the development on biodiversity values.

### Biobanking statements and the EP&A Act

If this biobanking statement is provided to a consent authority or a determining authority prior to the determination of an application under the *Environmental Planning and Assessment Act 1979*, the authority must, if it determines to approve the application, include a condition that requires the conditions of this statement to be complied with.

### Duration of biobanking statement

Unless an extension is granted by DECCW, this biobanking statement will lapse within two years of the date of issue if the proposed development to which this statement applies has not been approved under the *Environmental Planning and Assessment Act 1979*.

### Retiring biodiversity credits

To retire the biodiversity credits specified in the biobanking statement, an application must be submitted to DECCW using the application forms available from the web site <http://www.environment.nsw.gov.au/biobanking/forms.htm> and accompanied by the prescribed fee.

If an application to retire credits is successful, DECCW will issue a credit retirement report to the applicant and the relevant consent or determining authority that summarises the class and number of credits that were retired. This information will also be available from the biobanking statement register within the BioBanking public registers. Physical works on site cannot commence until confirmation is received from DECCW that the credits have been retired.



Enforcement options for breach of a biobanking statement

If this biobanking statement is incorporated into a development consent under Part 4 of the EP&A Act or the approval of an activity to which Part 5 of the EP&A Act applies, the holder of the statement must comply with any credit retirement condition and/or condition relating to on-site measures. Failure to comply with a condition of consent or approval *may be* an offence under the EP&A Act or other legislation under which the approval is granted.

Where a person fails to comply with a credit retirement condition, the Minister may direct the person to retire biodiversity credits within a specified time. Failure to comply with a direction by the Minister without reasonable excuse is an offence, the maximum penalty for which is \$1,100,000.

Other relevant provisions of the *National Parks and Wildlife Act 1974*

Significant penalties can be imposed by a court if a person harms, or causes or permits the harm to threatened species, or knowingly damages or causes or permits damage to threatened species habitat unless it was essential for the carrying out of development in accordance with a consent or approval within the meaning of the *Environmental Planning and Assessment Act 1979*. Interim protection orders may be issued in certain circumstances to protect threatened species and threatened species habitat.

**ATTACHMENTS**

1. Locality Plan
2. Plan of Proposed Subdivision (DA 1357/2010/JPZ) (Stage 3)
3. Plan of Proposed Subdivision (DA 1356/2010/JPZ) (Stage 4)
4. Approved Plan of Subdivision (DA 785/2010/ZB) (Stage 2)
5. Approved Plan of Subdivision (DA 1985/2008/ZB) (Stage 1)
6. Zoning Plan
7. Aerial Photograph
8. Vegetation Mapping
9. Draft LEP 2010 – Zoning
10. Draft LEP 2010 – Minimum Lot Size
11. Peer Review

## ATTACHMENT 1 – LOCALITY PLAN



- ☐ SUBJECT SITE
  - ☒ PROPERTIES NOTIFIED
  - ☒ SUBMISSION RECEIVED

**NOTE: 35 SUBMISSIONS  
RECEIVED OFF THE  
SCOPE OF THIS MAP**

**THE HILLS**  
Sydney's Garden Shire

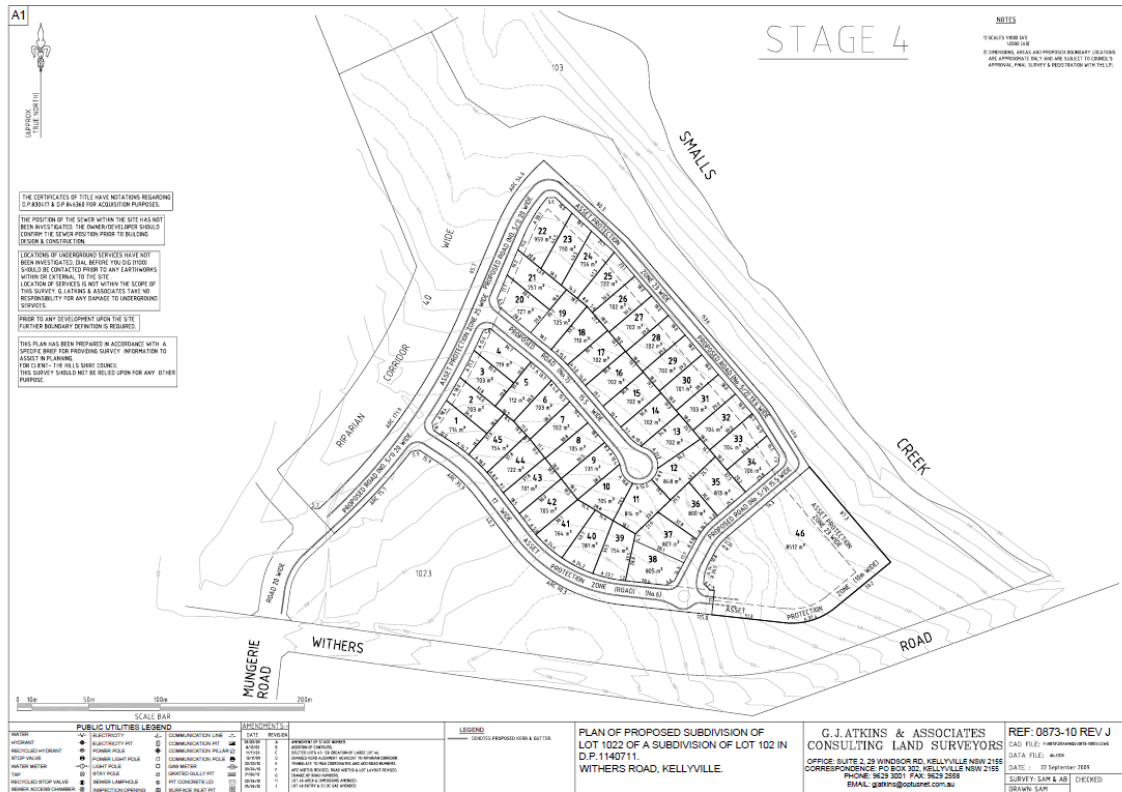
**THE HILLS SHIRE COUNCIL**

THE HILLS SHIRE COUNCIL DOES NOT GIVE ANY GUARANTEES CONCERNING THE ACCURACY, COMPLETENESS OR CURRENCY OF THE TEXTUAL INFORMATION HELD IN OR GENERATED FROM ITS DATABASE

BASE CADASTRE COPYRIGHT LAND & PROPERTY INFORMATION NSW (LPI). CADASTRE UPDATE INCLUDING COUNCIL GENERATED DATA IS SUBJECT TO THSC COPYRIGHT.



# ATTACHMENT 2 – PLAN OF PROPOSED SUBDIVISION (DA1357/2010/JPZ) (STAGE 4)



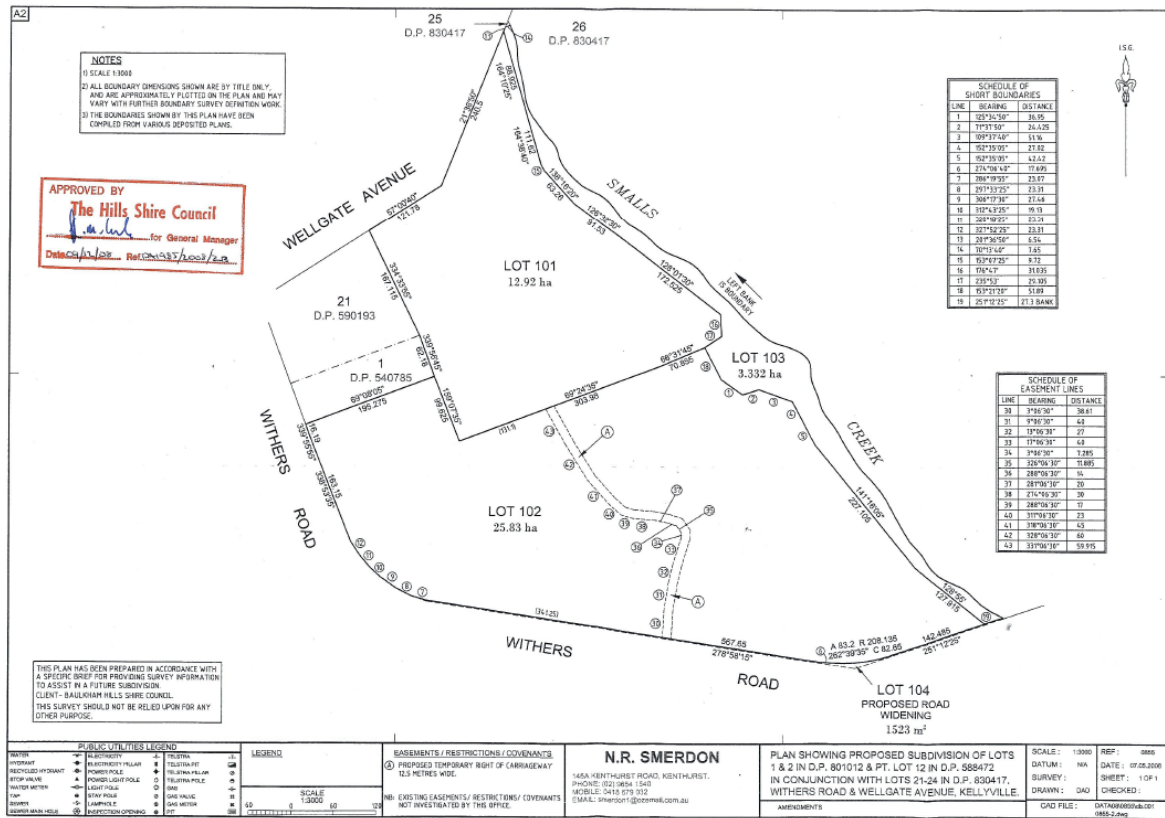
**STAGE 3**

**LEGEND**

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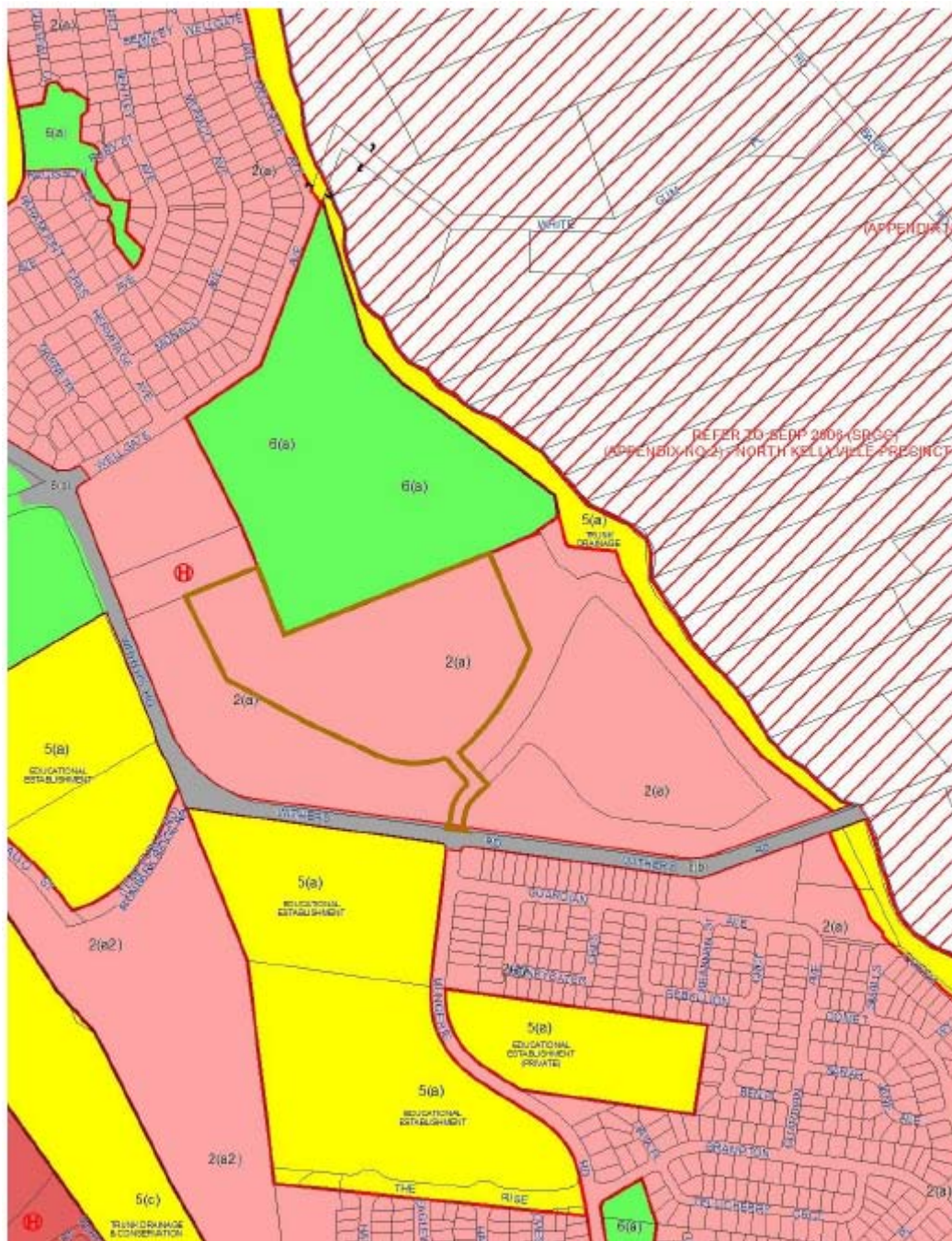


# ATTACHMENT 5 – APPROVED PLAN OF SUBDIVISION (DA1985/2008/ZB) (STAGE 1)

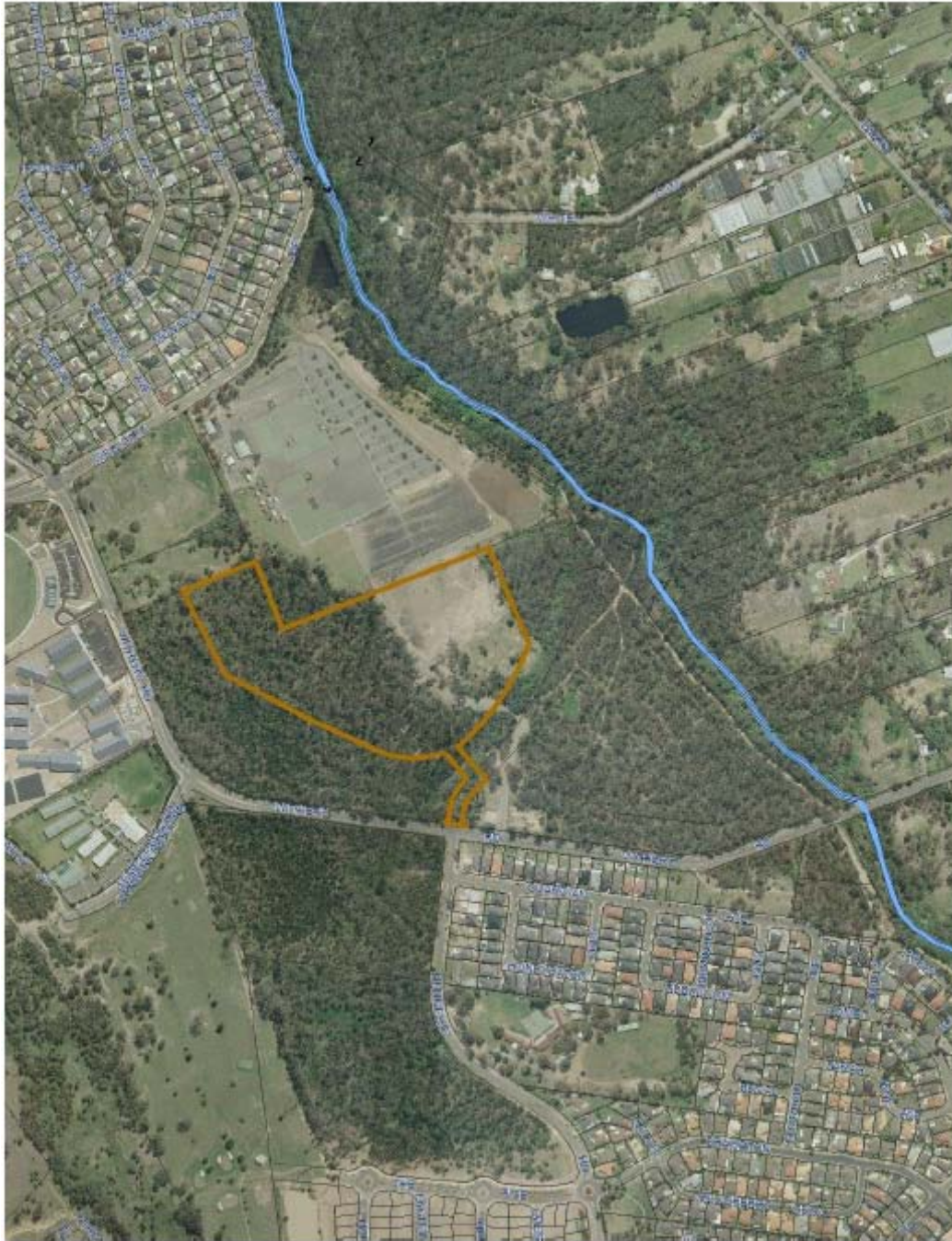




## ATTACHMENT 6 – ZONING PLAN

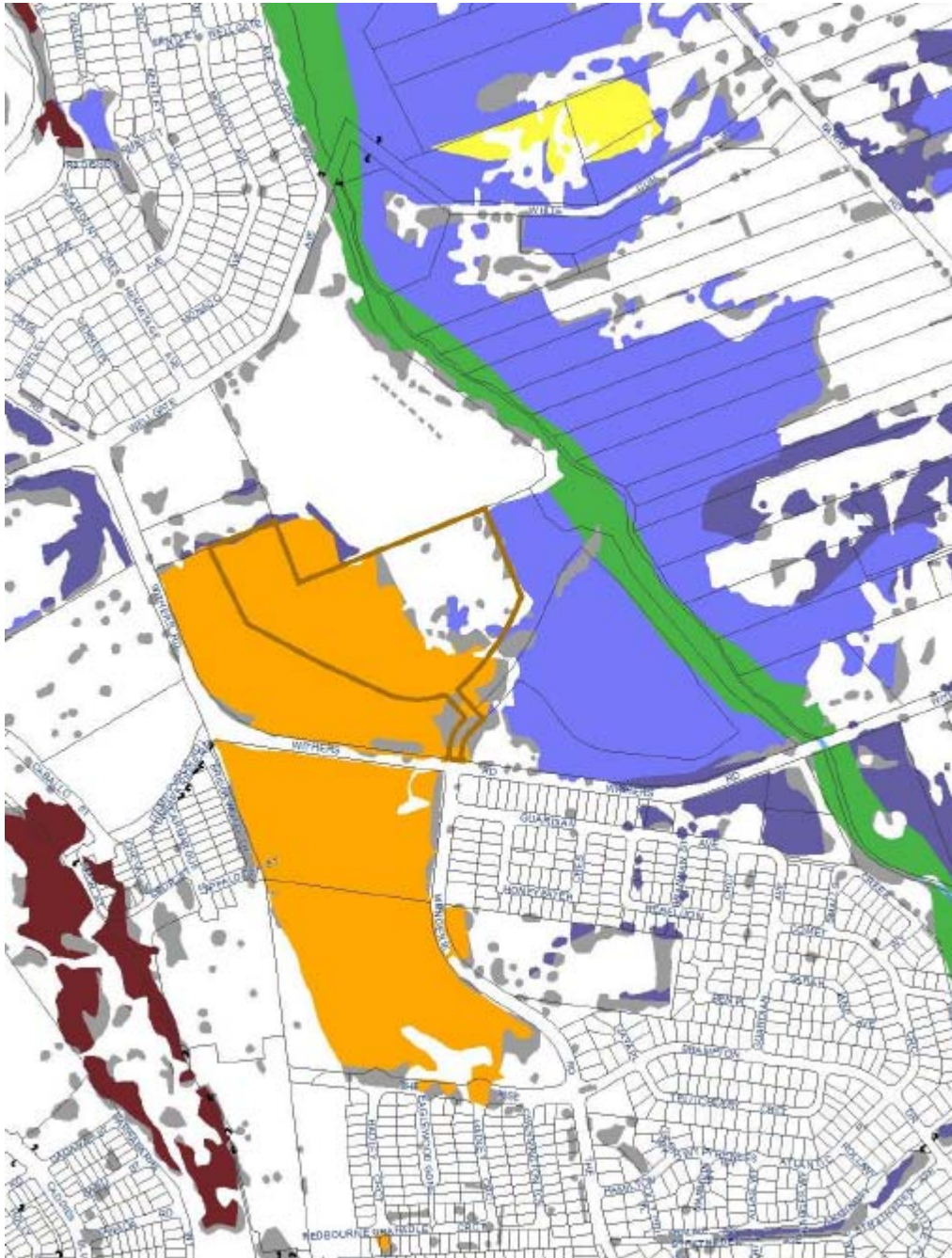


ATTACHMENT 7 – AERIAL PHOTOGRAPH





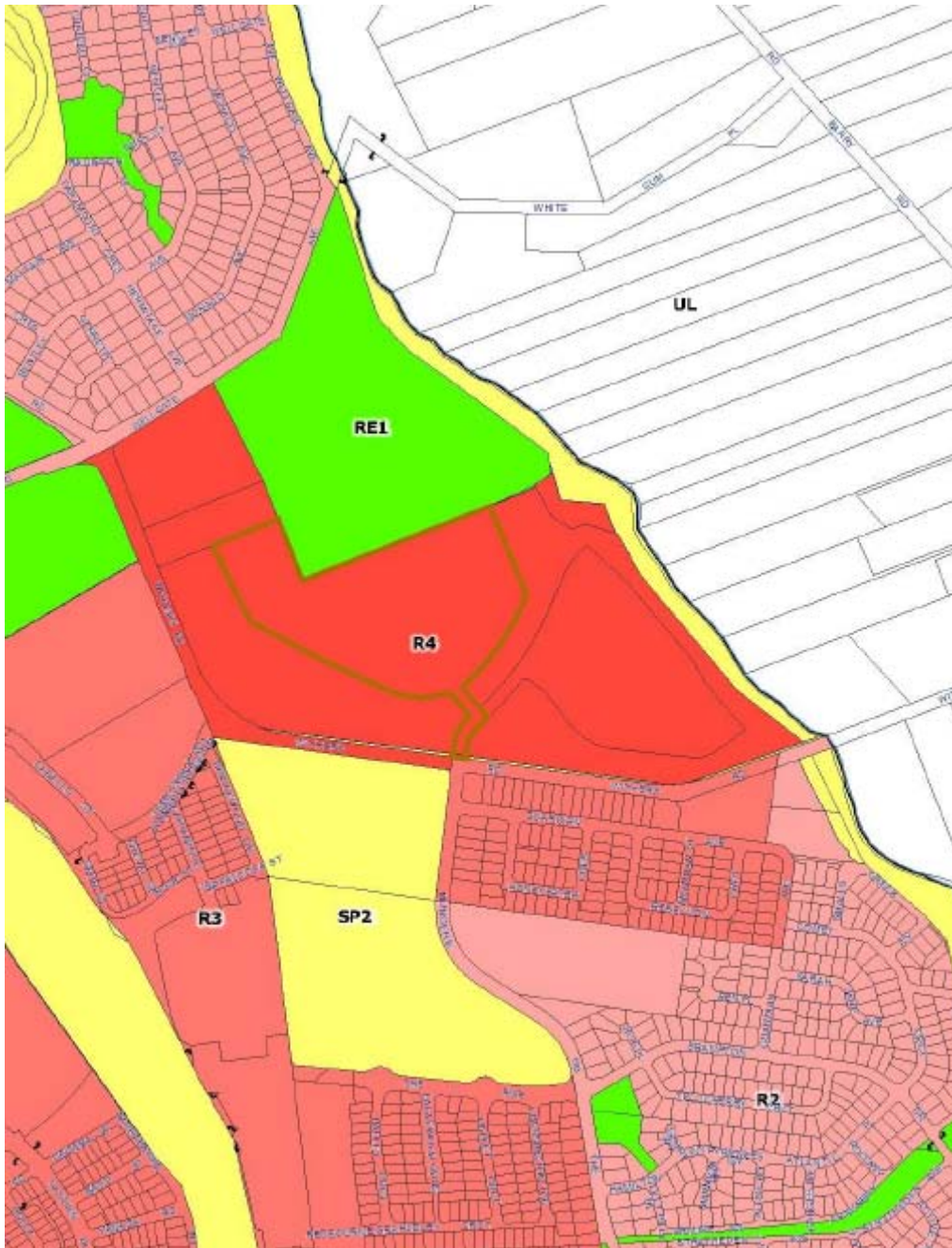
## ATTACHMENT 8 – VEGETATION MAPPING



### Key

Orange	=	Cumberland Plain Woodland
Purple	=	Shale Sandstone Transition Forest

ATTACHMENT 9 - DRAFT LEP 2010 ZONING PLAN





## ATTACHMENT 10 - DRAFT LEP 2010 MINIMUM LOT SIZE



Key

U2 = 1800m<sup>2</sup>  
G = 700m<sup>2</sup>

*Chris Young Planning*

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**PROPOSED STAGES 3 & 4 SUBDIVISION  
LOTS 1020 & 1022 DP1149731,  
WITHERS ROAD,  
KELLYVILLE**

**PEER REVIEW OF DEVELOPMENT  
APPLICATIONS  
DA1356/2010/JPZ and DA1357/2010/JPZ**

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July 2011

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## 1.0 INTRODUCTION

Chris Young Planning has been engaged by The Hills Shire Council to undertake an independent peer review of the Council staff assessment of development applications DA1357/2010/JPZ and DA1356/2010/JPZ being respectively:

- Stage 3 subdivision of Lot 1020 DP 1149731 creating 45 lots and a new road, and
- Stage 4 subdivision of Lot 1022 DP 1149731 creating 46 lots and a new road.

Both applications have been separately assessed however as the matters relating to each application are similar a combined review is produced.

The peer review is to cover:

1. Whether in my opinion the assessment is thorough.
2. Whether in my opinion the conclusions reached are reasonable
3. Making of recommendations where necessary.

## 2.0 DOCUMENTATION REVIEWED

In preparing this review, the following documents have been reviewed:

- Application forms (DA1356/2010/JPZ and DA 1357/2010/JPZ)
- Application information (DA1356/2010/JPZ and DA 1357/2010/JPZ) including Statement of Environmental Effects dated March 2010, Bushfire Hazard & Threat Assessment by Roy Free dated 20 January 2010, Fire Management Plan by Australian Bushfire Protection Planners dated March 2010, Aboriginal Archaeological Assessment by Insite Heritage Pty Ltd dated March 2010
- JRPP Status reports (DA1356/2010/JPZ and DA 1357/2010/JPZ),
- Subdivision Plans (DA1356/2010/JPZ and DA 1357/2010/JPZ),
- Biobanking Agreement ID No. 39 dated 21<sup>st</sup> March 2011,
- Contamination assessment final report prepared by SMEC Australia Pty Ltd dated August 2006,
- Validation report lots 1020 & 1022 prepared by David Lane Associates date August 2010,
- GIS Plans including Locality Plan, Aerial Photograph, Current zoning, Location of watercourses, Vegetation layer, Existing Stormwater infrastructure, Contour plan.
- Baulkham Hills Local Environmental Plan 2005 (BHLEP) written instrument,
- Baulkham Hills Development Control Plan (BHDCP) Part E section 15 Kellyville Rouse Hill Release Area,
- Draft The Hills Local Environmental Plan 2010 (DLEP) written Instrument, zoning layer. Minimum lot size layer and Heritage layer.
- Draft officers reports (DA1356/2010/JPZ and DA 1357/2010/JPZ)



It is not the intention of the review to discuss the above documents in detail other than the officers' report.

### 3.0 BACKGROUND

The officers' report contains a detailed & comprehensive background to the matter. The SEE also contains a detailed history of the applications up to the present application.

A brief description of the four stages is provided below:-

#### DA1985/2008/ZB (Stage 1)

On 9 December 2008, DA1985/2008/ZB was approved (refer to plan at attachment 5 in the officers reports).

The proposal subdivided three lots (3) into three (3) lots, being:-

- ☐ Lot 101 having an area of 12.92ha and consisting of the land zoned Open Space 6(a).
  - ☐ Lot 102 having an area of 25.83ha and consisting of the land zoned Residential 2(a).
  - ☐ Lot 103 having an area of 3.332ha and consisting of the land zoned Special Uses 5(a).
- This is to be used for future trunk drainage purposes.

The proposal also sought to provide a strip of land 1.5m wide and variable having an area of 1523m<sup>2</sup> and consisting of land zoned Special Uses 5(b). The land was to be included as road widening when the plan was registered.

The intent of the subdivision was to create one lot which correlates with each of the site's four (4) different zones. The subdivision has been completed and registered with Land and Property Information.

#### DA785/2010/ZB (Stage 2)

On 1 March 2010, DA785/2010/ZB was approved (refer to plan at attachment 4 of the officers reports). The proposal subdivided lot 102 created by DA1985/2008/ZB into four (4) lots, being:-

- ☐ Lot 1020 having an area of 8.362ha;
- ☐ Lot 1021 having an area of 5.472ha;
- ☐ Lot 1022 having an area of 5.984ha; and
- ☐ Lot 1023 having an area of 6.014ha.

The development of proposed lots 1020 and 1022 are subject to the separate development applications reviewed here. Lots 1021 and 1023 are not intended to be

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developed in the future. They are subject to a Biobanking agreement with the Department of Environment, Climate Change and Water.

The subdivision being Stage 2 has been completed and registered with Land and Property Information.

#### **4.0 THE SITE**

The officer's reports detail the site.

The parent lot being Lot 102 DP 1140711 had an area of 25.831ha. The Stage 2 subdivision mentioned above created the 4 lots of which Stage 3 is lot 1020 with an area of 8.362ha and Stage 4 being lot 1022 having an area of 5.98ha.

#### **5.0 THE PROPOSALS**

DA1357/2010/JPZ is Stage 3 of the subdivision development of the site.

The application seeks approval for the subdivision (refer to plan at attachment 2 of the officer's report) of the site into 45 lots, being:-

- ☐ 38 residential lots intended for the erection of single residential dwellings with areas ranging in size from 700m<sup>2</sup> to 840m<sup>2</sup> (Lots 1 to 38); and
- ☐ Six residue lots intended to be created for future residential flat buildings with areas ranging in size from 0.406ha to 0.438ha (Lots 39 to 41 and 43 45); and
- ☐ One residue lot intended to be created for future medium density residential development with an area of 0.992ha (Lot 42).

The application also seeks approval for the following physical works:

- ☐ The construction and dedication of five new public roads along with all associated drainage infrastructure and services extending from Withers Road.
- ☐ The construction of a new two lane circulating non-mountable roundabout controlled intersection between Withers Road/ Mungerie Road and proposed road five.
- ☐ The construction of a new road bridge over the upper tributary of Smalls Creek.
- ☐ Road shoulder formation in Withers Road fronting Lot 1021 DP 1149731 adjacent to the development site in a manner consistent with the eventual alignment of Withers Road as a four lane sub-arterial route. These works must include the extension of the existing road pavement, the construction of kerb and gutter, footpath verge formation, drainage, concrete footpath paving, service adjustments and other ancillary work to make this construction effective.

☐ The construction of an indented bus bay along Withers Road adjacent to the intersection of Withers Road/ Ironbark Ridge Road, which is proposed to be signalised, within the existing road reserve.

☐ Stormwater connections and outlet works to Smalls Creek and its upper tributary within Lot 1023 DP 1149731 and possibly Lot 103 DP 1140711 adjacent.

**DA1356/2010/JPZ is stage 4 of the proposal.**

The application seeks approval for the subdivision (refer to plan at attachment 2 of the officers report) of the site into forty six (46) lots.

☐ 45 residential lots intended for the erection of single residential dwellings with areas ranging in size from 701m<sup>2</sup> to 959m<sup>2</sup> (Lots 1 to 45); and

☐ One residue lot intended to be created for future residential flat buildings with an area of 0.851ha (Lot 46).

The application also seeks approval for the following physical works:

☐ The construction and dedication of three new public roads along with all associated drainage service utility infrastructure. This will allow for extension to the public road network created in stage 3 of this project (DA 1357/2010/JPZ) over Lot 1020 DP 1149731 adjacent.

☐ Road shoulder formation in Withers Road fronting Lot 1023 DP 1149731 adjacent to the development site in a manner consistent with the eventual alignment of Withers Road as a four lane sub-arterial route. These works must include the extension of the existing road pavement, the construction of kerb and gutter, footpath verge formation, drainage, concrete footpath paving, service adjustments and other ancillary work to make this construction effective.

☐ Stormwater connections and outlet works to Smalls Creek and its upper tributary within Lot 1023 DP 1149731 and possibly Lot 103 DP 1140711 adjacent.

The development of the proposed lots in each proposal (residential and residue) will require the submission of separate development application(s).

Both applications rely on "BioBanking" to address biodiversity impacts of the development and to enable the application to proceed to determination. BioBanking is a voluntary alternative to the existing threatened species "Assessment of Significance" and is permissible under the "Biodiversity Banking and Offsets Scheme" administered by the NSW Office of Environment and Heritage (NOEH). A Biobanking Statement has been issued for the project confirming that the development has satisfied the threatened species assessment requirements under the Environmental Planning and Assessment Act 1979.

## **6.0 APPLICABLE PLANNING INSTRUMENTS**

The Officers reports outline the applicable planning instruments being:

- SEPP 19 (Bushland in Urban Areas)
- SEPP 55 (Remediation of Lands)
- SEPP Major Developments 2005
- Deemed SEPP SREP 20 (Hawkesbury Nepean River)
- BHLEP 2005
- BHDCP Part E Section 15- Kellyville/Rouse Hill Release Area.
- Draft The Hills LEP 2010.

The reports consider each instrument and comments upon the compliance and applicability of each.

## **7.0 PROCEDURES IN ASSESSING THE APPLICATION**

The procedures undertaken in the assessments are in my opinion, thorough and as expected in a professional approach.

As issues have arisen, either in a legal or technical sense, the Council officers have sought explanations or opinions from either the applicant or technical experts.

The history of the assessment of the application shows a clear process of diligence in assessment of issues and answering matters as they arise.

The report shows a process of consideration of issues and assessment of matters either from submissions or technical examination leading to a clear recommendation.

In my experience of 40 years in development assessment as a Director of Planning in another Council, consultant to applicants for this form of development and a court appointed expert, the process followed in this application is highly professional, expected, thorough and usual in matters with these number of issues.

## **8.0 REVIEW PROCESS**

The information outlined above has been reviewed and analysed.

The matters which I considered to be of importance in these applications are as follows not in any order of priority:

- Contamination resulting from former uses in the area and on site,
- Flora and Fauna impacts of the development and on adjoining sites,
- Bushfire,
- Heritage both Aboriginal and European,
- Planning Instruments compliance, SEPP's, Zoning, density, BHLEP, BHDCP,
- The Draft The Hills LEP 2010 and future development strategies for the area,
- Submissions both Public and private sectors and resolution of valid issues.



In reviewing the plans, SEE, additional information, submissions, the officers' reports and having a local knowledge of the sites, the matters I considered of relevance and importance in consideration of the application are set out in the officers' reports. I agree with those comments and assessment.

**Contamination;** Under clause 7 of SEPP 55 – Remediation of Land, a consent authority must not consent to the carrying out of any development unless it has considered whether the land is contaminated and if so if the land will be suitable for the purpose after remediation and that it will be remediated before the land is used for the purpose. Further actions are required regarding reporting and remediation.

The sites have been investigated since 2006 and undergone remediation. A series of contamination reports have been prepared by various environmental consultants. The most report was a validation report prepared by David Lane Associates dated August 2010, which finds that the site is suitable for the intended use.

The JRPP previously requested a site audit statement be provided by an accredited site auditor to independently review the methodology used by the environmental consultants and to ensure their interpretation of data is consistent with current regulations and guidelines. The officer's report recommends at condition 31 for Stage 3 and condition 29 for Stage 4 that, prior to work commencing on the site, a site audit statement prepared by an accredited site auditor be submitted to Council advising that the site presents no unacceptable risk to human health or the environment and is suitable to an end use of Residential with Garden Accessible Soil. The conditions include scope for work under a Remediation Action Plan to achieve that standard should the site audit statement require additional remediation work to be carried out. I agree with these conditions being included to guarantee remediation, if required, is satisfactory.

Based on the validation report submitted with the application and the conditions of consent requiring a site audit statement prior to work commencing on site, the consent authority should be satisfied that an appropriate procedure is in place to address this issue. The officer's report addresses this matter and the concerns raised on the topic during submissions in a satisfactory manner in my opinion.

**Flora and Fauna impacts;** This matter has a large impact upon the development of the site and is a matter of concern to the community voiced through the conciliation meeting and submissions.

Of the original or parent site of 25.831ha, 110486ha (45%) is to be set aside for retention of bushland under the Biobanking agreement. The officers' reports detail this matter in response to community concerns voiced through the conciliation meeting and submissions. The extent of land preserved under this agreement impacts upon bushfire requirements as well as density and zoning strategy.

It is my opinion that the Biobanking proposals have been well addressed in the officer's reports and does produce a better and more controlled environmental outcome for the land than the traditional methods of subdivision consideration of such matters left to individuals or as a piecemeal approach.

It is noted that the conciliation meeting was held before the second exhibition of the proposals. That second notification was to a larger number of properties and resulted in only 2 submissions compared to the previous 30 submissions.

Conditions related to the Biobanking agreement are included in the recommendation by the officers.

**Bushfire;** With the amount of land on adjoining sites preserved as bushland under the Biobanking agreement and buffer lands, the threat of bushfire is of major importance to future residents of the subdivisions.

The JRPP raised concerns about the positioning of the Asset Protection zones on some sites and the impact on usability of the sites.

Bushfire assessment reports by Mr Free and the Fire Management Plan prepared by the applicant have all been considered in the assessment by the officers as well as comments by the RFS. These matters have also influenced the Biobanking agreement.

It is my opinion that the officer's comments including those of the RFS and the applicant's bushfire advisor satisfactorily address not only the threat of bushfire on development but also the usability of the lots with the Asset Protection zones.

**Heritage;** Both Aboriginal and European heritage have been adequately assessed in the applications and conditions imposed where necessary.

**Planning Instruments and DLEP 2010;** The reports deal with the compliances of the applications to the BHLEP, BHDCP and the DLEP

It is my opinion that the assessments against the relative instruments are comprehensive and satisfactory.

The assessments do bring to focus the development proposal and the apparent anomaly with the proposed R4 zoning and density.

The DLEP is a best fit of the current controls to the template document. The zones do not always transfer easily and the explanation of the report from the Forward Planning team gives the explanation for review of the suitability of the zone following the site specific responses of the subdivision with the resolution of the matters listed above in particular contamination and flora and fauna.

It is my opinion that the proposal is a sound town planning solution weighing all elements and the later fine tuning of the details of the zoning in the DLEP a practical way of resolving the issue. The outcome is not one of seeking greater density but one of lesser density reflecting the site constraints evolving from the detailed site analysis.

The assessments of the proposals against the BHDCP applicable are professional, comprehensive and practical to the site. The minor variations from the BHDCP are explained thoroughly and professionally and achieve the objectives of the standards.

**Submissions;** The officer's report details the public interest and the resolution of the matters raised from both the notification process and the conciliation meeting.

It is my opinion that the issues from public and private parties have been thoroughly and professionally analysed and assessed in the reports and conditions.

The application then is to be considered under s 79C of the EPA Act as amended.

That section states in part:

*“(1) Matters for consideration—general*

*In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:*

- (a) the provisions of:*
  - (i) any environmental planning instrument, and*
  - (ii) any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the draft instrument has been deferred indefinitely or has not been approved), and*
  - (iii) any development control plan, and*
  - (iiia) any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and*
  - (iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph),*
  - (v)*
- that apply to the land to which the development application relates,*
- (b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*
- (c) the suitability of the site for the development,*
- (d) any submissions made in accordance with this Act or the regulations,*
- (e) the public interest.”*

While the report does not address matters specifically under these headings, the matters are addressed in the report.

(a); These matters are dealt with in detail by all parties in the application, submissions and assessments and considered by the applicant, officers and myself to be met.

(b); These matters form the crux of the development considerations with the resolution of issues arising from the site analysis, contamination remediation, biobanking , bushfire hazard being professionally applied.

(c); It is my opinion the sites are suitable for these development based upon the officers reports and assessments and applicants professional reports.

(d); The many submissions received are addressed in the officer's reports. I have reviewed the comments of the submissions and agree with the officer's comments.

(e); It is my opinion that the proposals are in the public interest in that they meet the relevant objects of the EPAA.

## 8.0 CONCLUSION

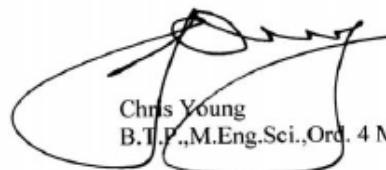
I have been asked to provide my opinion on this matter in three areas.

1. Whether in my opinion the assessment is thorough.
2. Whether in my opinion the conclusions reached are reasonable
3. Making of recommendations where necessary.

1. Yes the assessments are thorough, well considered and professional for reasons set out above.

2. Yes. I agree that the conclusions reached following the thorough reports and in depth analysis of matters raised are appropriate as are the recommended conditions.

3. A number of minor suggestions regarding the format of the reports and clarification of matters have been raised with Council at draft reports stage which has been incorporated into the reports. These did not alter the analysis or recommendation of the officers. No other recommendations are made on this development.



Chris Young  
B.T.P., M.Eng.Sci., Ord. 4 M.P.I.A.