

Report No: D0411 Item 8
Subject: 117 RAILWAY ROAD, SYDENHAM
Action: Recommendation
File Ref: DA201000599/15143.11

Prepared By: Kim Linden - Development Assessment Officer (Planning)

SYNOPSIS

Application to demolish the existing improvements, including the former station master's cottage, remove 21 trees and remediate the land. Seventeen (17) submissions, including a submission from the Marrickville Heritage Society, and a petition with 314 signatories against the proposal were received. The key concerns raised in submissions included the impact on the locality of the loss of the station master's cottage and the visual and environmental impacts of the loss of trees from the site on the locality.

Although the Station Master's cottage is not a heritage item or located within a Heritage Conservation Area (HCA), nor a draft item or within a draft HCA, the cottage is in close proximity to the State listed Sydenham Railway Station group listing.

Insufficient information was submitted with the application to enable a proper assessment of the application to be carried out in accordance with the requirements under the Environmental Planning and Assessment Act. In view of the circumstances the application is not supported.

The applicant with respect to the application is RailCorp and as such the application is a Crown development application.

Under Section 89 of the Environmental Planning and Assessment Act, Council can not refuse a Crown development application except with the approval of the Minister. Under Clause 89 (2A) the application "must not be referred to the Minister unless it is first referred to the applicable regional panel."

The application is referred to the Council in view of significant community objection to the application.

In the event the Council wishes to endorse refusal of the application, the matter must be referred to the Sydney East Joint Regional Planning Panel under Clause 89 (2A) of the Environmental Planning and Assessment Act.

It is recommended that the application be referred to the Sydney East Joint Regional Planning Panel and that the Panel be advised that Council considers that the application should be refused on the basis of a lack of information in relation to the heritage potential of the former station master's cottage.

PART A - PARTICULARS

Location: The subject property is located on the north eastern corner of Railway Road and Burrows Avenue in Sydenham. The Illawarra railway line is located to the north of the site. The General Gordon Hotel is located to the north east of the site. The commercial centre of Sydenham is located to the east of the site and Sydenham Railway Station is located to the north east of the site.

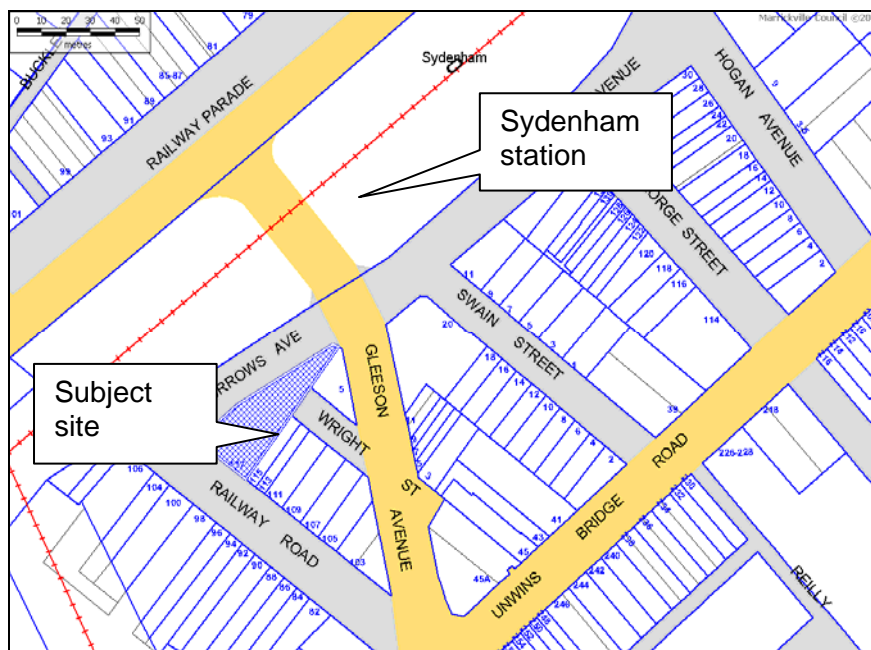


Image 1: Site location.

D/A No:	201000599
Application Date:	14 December 2010. Additional information was submitted on the following dates 28 January 2011 (in relation to acid sulfate soils) and 14 March 2011 (letter from Railcorp dated 14 March 2011 addressing concerns raised in submissions).
Proposal:	To demolish the existing improvements, remove 21 trees and remediate the land.
Applicant:	Rail Corporation of NSW
Estimated Cost:	\$450,000
Zoning:	Part Residential A and Part Open Space

PART B - THE SITE AND ITS CONTEXT

Improvements: Station Master's cottage and outbuildings

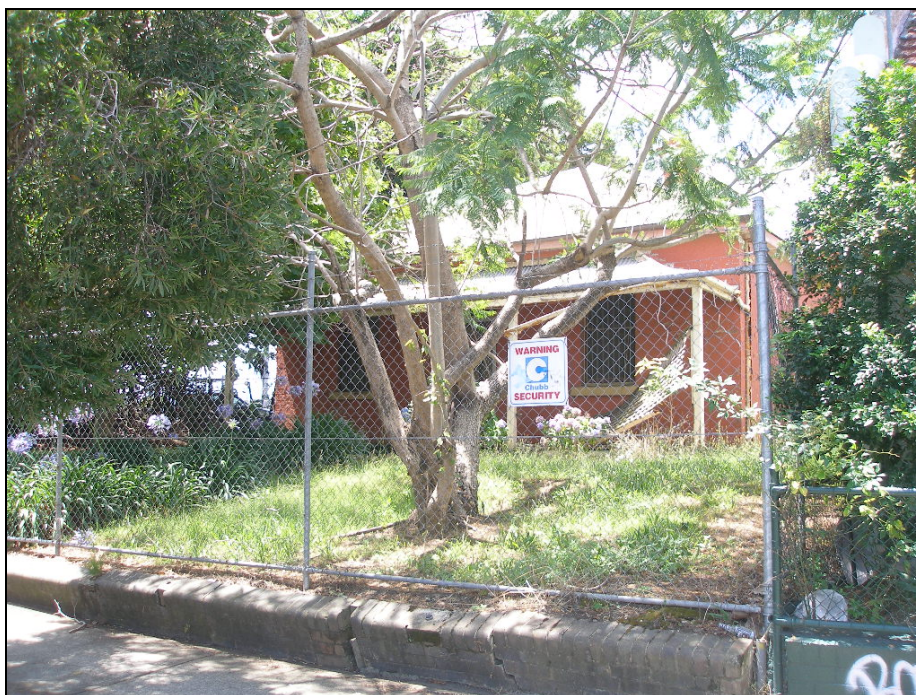


Image 2: The Railway Road frontage of the subject site.

Current Use: Vacant

Prior Determinations: Determination No. 200500503 dated 13 September 2005 approved an application to demolish part of the existing improvements and carry out category 1 remediation works for the contaminated soil including the removal of 6 trees. That Determination was modified on 13 September 2005 in relation to conditions of consent relating to hours of operation, landscaping and an easement.

Environment: Residential uses to the east and south, commercial centre to the east, railway line and industrial uses to the west, north and north east.

PART C - REQUIREMENTS

1. **Zoning**
Is use permissible in zoning? Yes
2. **Development Standards (Mandatory Requirements):**
None applicable
3. **Departures from Council's Codes and Policies:**
None applicable
4. **Community Consultation:**
Required: Yes (newspaper advertisement, on-site notice and resident notification)
Submissions: Seventeen (17) submissions, including a submission from the Marrickville Heritage Society, and a petition with 314 signatories
5. **Other Requirements:**
ANEF 2029 Affection: 30-35 ANEF
SEPP 55 (Remediation of land)
EP&A Act – Part 4, Division 4 - Crown developments

PART D - ASSESSMENT**1. Background**

Determination No. 200500503 dated 13 September 2005 approved an application to demolish part of the existing improvements and carry out category 1 remediation works for the contaminated soil including the removal of 6 trees. That consent did not include the demolition of the station master's cottage on site and did not address the requirement for the remediation of the area under the cottage. That Determination was not acted upon and the consent has subsequently lapsed.

2. The Site and Surrounds

The legal description of the site is Lot 1 DP 1039552. The site is located on the north eastern corner of Railway Road and Burrows Avenue Sydenham and has secondary access from Wright Street. The site is roughly triangular in shape and has irregular boundaries with approximate frontages of 22 metres to Railway Road, 64 metres to Burrows Road, 2.5 metres to Gleeson Avenue and 14 metres to Wright Street. The site has an approximate area of 924m². Currently existing on the site is a single storey detached period building, formerly used as a dwelling house and as a Station Master's cottage, fronting Railway Road. Adjoining the site, towards the east of the site and across Railway Road, are predominately residential uses. There are other structures on site including an outhouse and carport at the rear of the dwelling house. There are also boundary treatments including retaining walls to the Railway Road side of the property and a footpath to the cottage, centrally located on the Railway Road side of the building.

3. The Proposal

Approval is sought to demolish the existing improvements, including the station master's cottage, remove 21 trees on the property and remediate the land.

A copy of the site plan submitted with the application and showing brick cottage, carport and shed to be demolished is reproduced below:

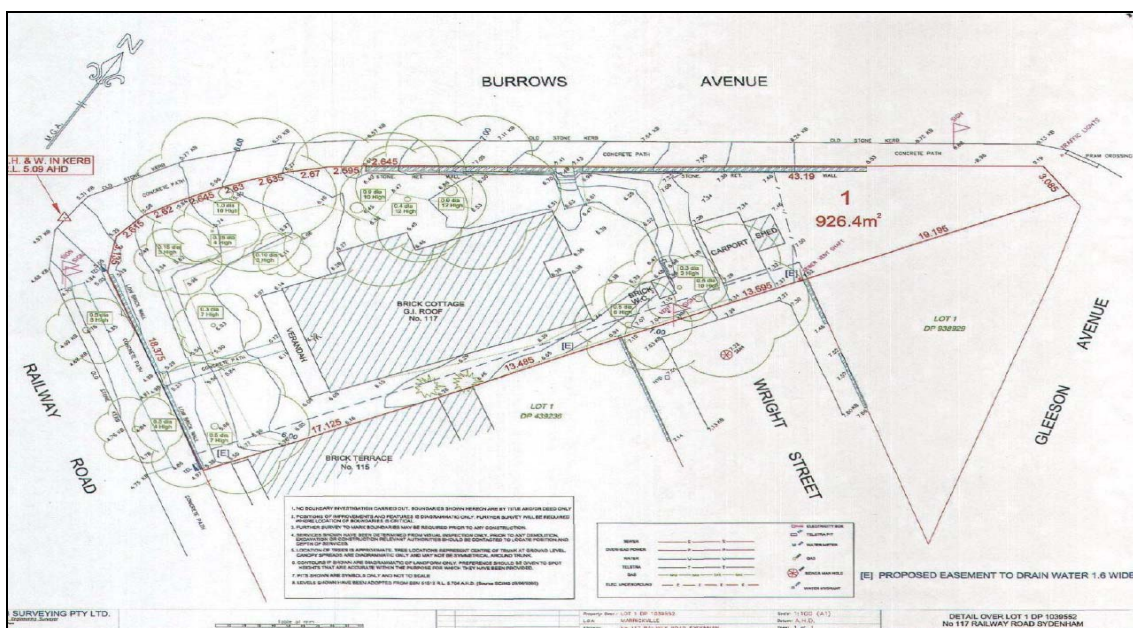


Image 1: Existing site layout

The plan below shows the trees to be removed from the site. The two (2) street trees on the Railway Road side of the site are to remain.

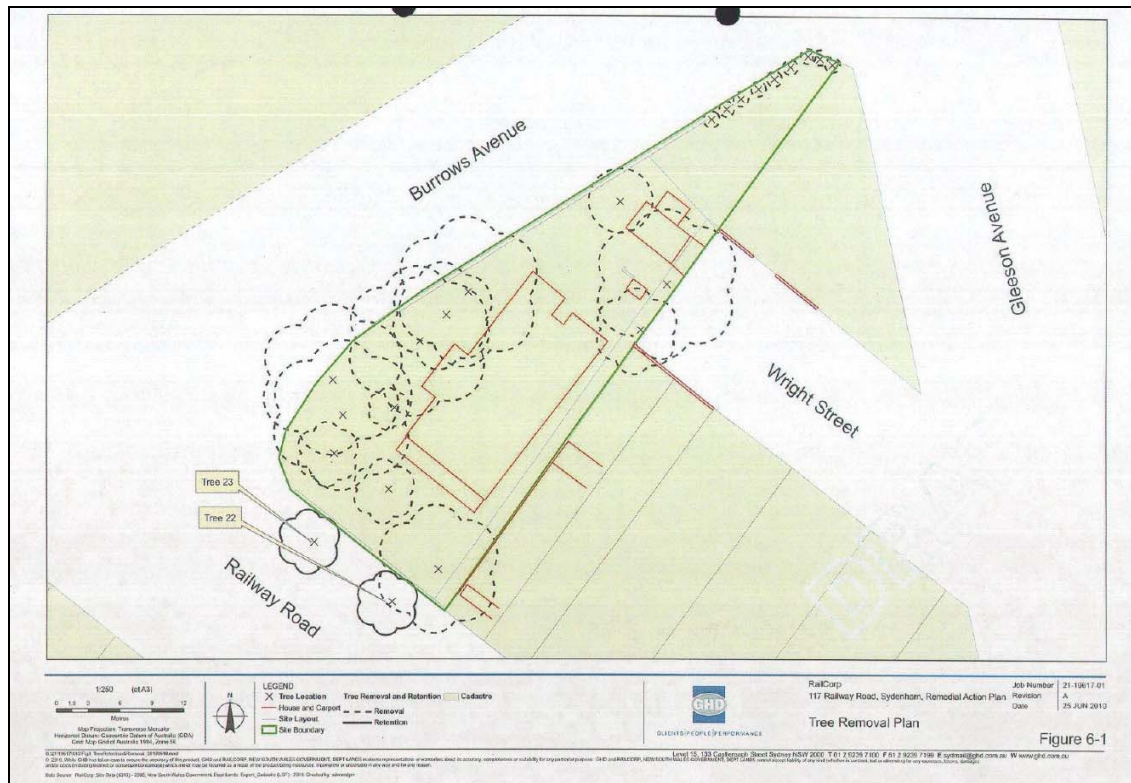


Image 2: Proposed trees to be removed shown in dashed outline.

3. State Environmental Planning Policy No. 55 (Remediation of Land)

SEPP 55 provides planning guidelines for remediation of contaminated land. Marrickville Development Control Plan No. 29 'Contaminated Land Policy' (DCP 29), provides controls and guidelines for category 1 and category 2 remediation works.

The proposed works are identified as category 1 remediation works and under the provisions of SEPP 55, consent is required for such remediation. SEPP 55 requires that remediation works must be carried out in accordance with a Remediation Action Plan (RAP) as approved by the consent authority and any guidelines enforced under the Contaminated Land Management Act 1997.

Clause 12(1) of SEPP 55 states:

"The consent authority must not refuse development consent for a category 1 remediation work unless the authority is satisfied that there would be a more significant risk of harm to human health or some other aspect of the environment from the carrying out of the work than there would be from the use of the land concerned (in the absence of the work) for any purpose for which it may lawfully be used."

A Remedial Action Plan (RAP), prepared by GHD and dated June 2010, was submitted with the application. The RAP states that the soils on the site are comprised of fill material which contains contaminants. The source of the fill is unknown and is not provided in the RAP. It is however understood the contaminants may have been on site for some time. The contaminants of concern on site are elevated concentrations of heavy metals (primarily lead but including arsenic, cadmium, copper, mercury and zinc), benzo(a)pyrene and polynuclear

aromatic hydrocarbons (PAHs). These were found in unacceptable concentrations in the surface fill material on the site. The Executive Summary of the RAP states:

“The horizontal distribution of contamination does not appear to be isolated to an easily defined portion of the site and is assumed to encompass the majority of the site area (926.4m²). The vertical extent of the heavy metal and PAH impact appears to be limited to the fill horizon, which extend to a maximum depth of 0.8 metres and is visually distinct from the residual clay horizons.”

The RAP made recommendations for the preparation of a site specific Remediation Environmental Management Plan (REMP). The remediation strategy is for excavation and off-site disposal of contaminated surface fill material. The RAP also made recommendations for further investigation and testing of the extent of contamination of the surface soils beneath the existing buildings on the site, including the dwelling, once those structures have been demolished.

While testing was undertaken directly adjacent to the cottage, the RAP did not investigate soils beneath the structures to be demolished including the soil beneath the cottage. It is considered that testing under the cottage should have been undertaken in this instance so as to confirm the extent of contamination under the dwelling. The proposal therefore fails to demonstrate that category 1 remediation under the dwelling is required.

The RAP makes reference to the testing done under the verandah of the cottage as part of the *Hazardous Building Materials Survey* prepared by HLA-Envirosciences Pty Ltd (HLA) and dated 28 November 2003 (HLA, 2003), stating that the findings in that study included elevated concentrations of arsenic under the verandah. The RAP states that “the area of arsenic impact appeared to be localized and likely associated with spraying of termites around the wooden verandah (RAP GHD 2010:24).”

An analysis of the cottage and other structures on site was undertaken in the HLA report which appears to presume the cottage is to be refurbished. This survey reported on the extent of asbestos and other material such as lead (in dust and exterior and interior paintwork), synthetic mineral fibre (SMF), such as insulation, and PCBs in the structures and provides guidance on how these materials are to be treated when the dwelling is demolished.

In relation to the dwelling on site the survey revealed that most asbestos in the dwelling was in good or undamaged condition. It also states that lead dust was found in the ceiling that more than likely is from vehicle emissions. Some SMF was found around the hot water unit and no PCBs were found in the dwelling. The survey concluded:

“All asbestos and SMF detected during the inspection were found to be generally in good condition and are unlikely to pose a risk to the buildings occupants while they remain in situ, undisturbed and in their present condition.

In several locations, including to the head of the study window and the ceiling of the rear lobby area, the asbestos cement linings are in good condition, however, the missing cover moulds and cover battens require replacing. These cover moulds and battens need only be replaced as part of the proposed refurbishment works. (HLA, 2003:12)”

The applicant in letter dated 14 March 2011 addressing concerns raised in submissions states that the fill material located directly adjacent to the house could not be fully removed if the dwelling was to remain in place. The letter states further that:

“refurbishing the house is not possible or viable given the presence of asbestos, lead paint and termite damage. Even it were, as soil contains contamination that poses a risk to human health, the site could not be utilised for any residential use and some non-residential uses, and as such would have to be boarded up to prevent vandalism.”

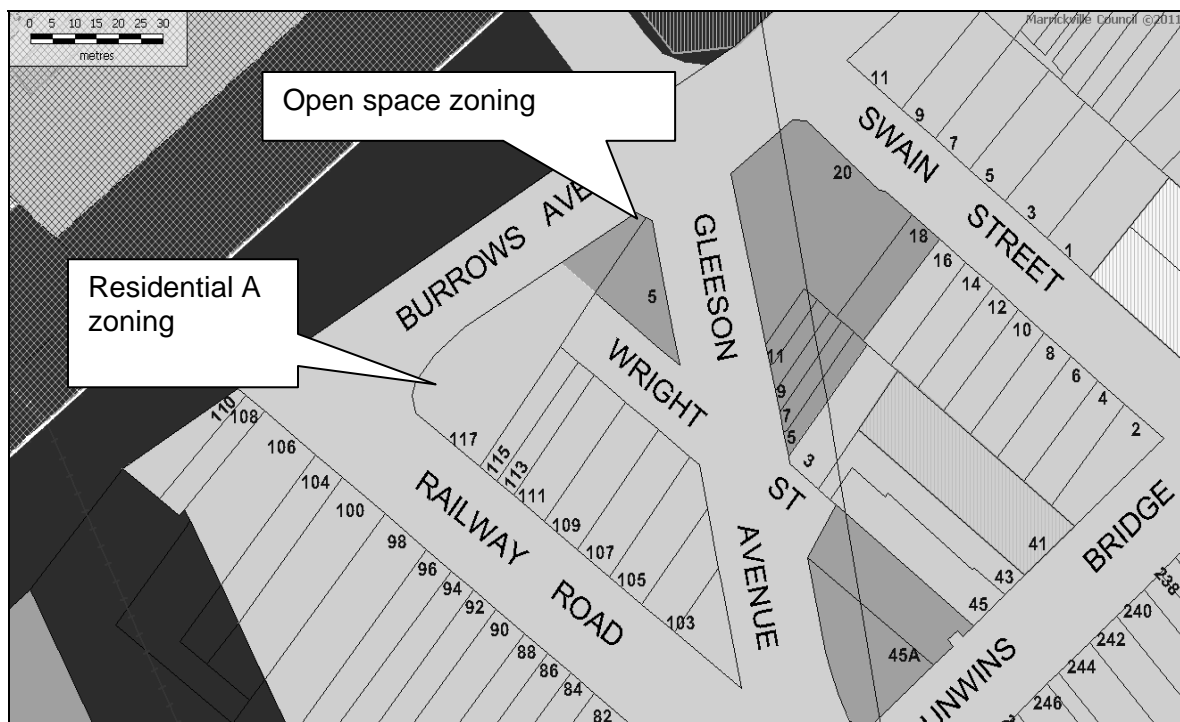
The findings of the report by HLA in relation to the condition of the house and the lack of testing for contamination in soils under the house, appear to contradict the statements in Railcorp’s letter. It should also be noted that there was no detail provided in relation to termites in the dwelling, apart from the reference in reports to the verandah being treated for termites on site.

It is therefore considered that the application fails to demonstrate that there are contaminants in the soil under the cottage and that the cottage has contamination that could not be addressed through refurbishment. In the absence of testing for contaminants under the dwelling there is not considered to be adequate evidence to support a case for demolishing the dwelling to allow for Category 1 remediation of soils under the dwelling.

4. Marrickville Local Environmental Plan 2001 (MLEP 2001)

(i) Zoning (Clause 10 and 19)

The majority of the property is zoned Residential A with the northern part of the property zoned Open Space under the provisions of Marrickville Local Environmental Plan 2001 (MLEP 2001). An extract of the zoning map is provided below:



The proposed development is permissible with Council's consent under the zoning provisions applying to the land.

It should be noted that the Open Space zoning appears to be an anomaly. The applicant (then known as the State Rail Authority) has previously sought to have this zoning clarified. Council advised the applicant in letter dated 12 January 2006 that it has no intention of acquiring that part of the property zoned Open.

(ii) Heritage (Clauses 47 to 55)

The subject property is not listed as a heritage item under MLEP 2001 or a proposed heritage item under the Marrickville heritage review and is not located within a Heritage Conservation Area under Marrickville Local Environmental Plan No. 2001 (Amendment No. 25) or an area considered as a draft Heritage Conservation Area under Marrickville draft Local Environmental Plan No. 111.

The Sydenham Railway Station group which is both State listed on the State heritage register and locally listed under Schedule 5 of Marrickville Local Environmental Plan 2001. Sydenham Railway Station is located approximately 32 metres to the northwest of the site, diagonally opposite the extreme north eastern corner of the subject site. Whilst the site is located in close proximity of the site to Sydenham Railway Station, the State Heritage Inventory (SHI) for the Sydenham Railway Station group listing does not include the subject property.

The site includes a period building which was formerly used as a station master's cottage. The cottage is a late Victorian free standing single storey dwelling house. It is unclear if the cottage was purpose built as a station master's cottage. It has been neglected for some time and is deteriorating. As noted, the station master's cottage was not proposed to be demolished in the previous approved development application (Determination No. 200500503 dated 13 September 2005).

(iii) Protection of Trees (Clause 56)

Clause 56 of MLEP 2001 concerns the protection of trees under Council's Tree Preservation Order. The site contains a large number of trees, including very mature trees, and shrubs which are highly visible from the public domain. The proposal seeks removal of 21 trees from the site. An Arboricultural Implication Study, prepared by GHD for Railcorp and dated June 2010, was submitted with the application. Table 6-1 and Figure 6-1 of the study detail the trees to be removed and those to be retained.

Section 5.0 (Tree Impacts) of the Arboricultural Implications Study (AIS) states that the 21 trees are to be removed because of the adverse tree impacts that the proposed remediation will have on the trees on site. The proposed remediation includes removal of 800mm depth of topsoil containing contaminated material. According to the study this will have the likely effect of "exposing primary roots which may reduce moisture to the root zone; permanently destroying primary, secondary and tertiary roots within the Structural Root Zone (SRZ) and the potential for inflicting wounds to primary and secondary tree branches by mechanical means." The study also states at section 5.2 that the demolition of the house will have direct impacts on the SRZ and Tree Protection Zones of Trees 1, 3, 5, 6, 8, 10 and 11.

Two (2) street trees (labelled Tree 22 and tree 23 on Figure 6-1 of the study) located adjacent to the site on the Council nature strip are to be retained.

The AIS states that if trees 1, 3, 5, 6, 8, 10 and 11 were retained, soil would have to be removed manually. In relation to manual removal of soil the AIS states further at paragraph 5.2.2:

"This process is not considered adequate because contaminated soil within the calculated TPZ would remain, and the residual risks to human health are significant."

The application was referred to Council's Tree Management Officer who has agreed to the removal of the trees covered by Council's Tree Preservation Order (TPO). Those are trees identified in the study as: Tree 1 – *Jacaranda mimosifolia* (Jacaranda), Tree 3 – *Cinnamomum camphora* (Camphor Laurel), Tree 5 – *Lophostemon confertus* (Brush box), Tree 6 – *Harphephyllum caffrum* (Kaffir Plum), Tree 7 – *Ficus elastica* (Rubber tree), Tree 10 –

Platanus x hypspanica (Plane Tree), Tree 11 – *Jacaranda mimosifolia* (Jacaranda). Council's Tree Management Officer has agreed to the removal of those trees subject to the imposition of appropriate conditions.

All other trees (Trees 2, 4, 8, 9, 12-21) are exempt from Council's Tree Preservation Order due to their dimensions or species and can therefore be removed without approval.

Council's Tree Management Officer has also required a condition of consent requiring that four (4) street trees be planted in the public domain. This would go some way to alleviating the impacts of the loss of the trees on the site, particularly as viewed from the public domain.

(iv) Acid Sulfate Soils (Clause 57)

The subject property is located within an area identified as being subject to acid sulfate soil risk, and will require removal of contaminated soil. Clause 57 of MLEP 2001 requires that before consent is granted, Council must consider a preliminary soil assessment which ascertains the presence or absence of acid sulfate soils.

The applicant has stated that the proposal will not affect acid sulfate soils. In email received on 28 January 2011, the applicant has stated the following:

"Based on the assessment reports the soils at the site are residual soils derived from the Ashfield Shale, which are very low permeable clays and silts. There are present beneath the shallow layer of fill, and no groundwater was encountered to a depth of 0.8 metres. Therefore based on this, there is no evidence to suggest that the soils are acid sulfate. In addition, the remediation is to remove the surface fill material only, not natural soils."

The GHD Arboricultural Implications Study and the Remedial Action Plan both state that groundwater is unlikely to be affected by the proposed works. It is also therefore not anticipated that acid sulfate soils will be disturbed by the proposed works.

(v) Waste Management (Clause 58)

Clause 58 of MLEP 2001 requires consideration of waste management for any proposed development. A Site Waste Management Plan was not submitted with the application but would be required as a condition on any consent.

5. Draft Marrickville Local Environmental Plan 2010

Draft Marrickville Local Environmental Plan 2010 was placed on public exhibition on 4 November 2010 and accordingly is a matter for consideration in the assessment of the subject development application under Section 79C of the Environmental Planning and Assessment Act 1979.

The following assessment considers the proposed development having regard to the zoning provisions and controls contained in draft MLEP 2010 that are of relevance in the assessment of subject development application:

Zoning:	R3	Medium Density Residential
Is development permitted under zoning?	Yes	
Floor Space Ratio (max):		
Permitted:	0.50:1, 0.60:1 or 0.85:1	(dependent on type of development proposed)

Proposed:	NA
Height of Building (max):	
Permitted:	9.5 metres
Proposed:	NA.
Land Reservation Acquisition:	No
Heritage:	
Draft Heritage Item:	No
Draft Heritage Conservation Area:	No
In vicinity of draft item or area:	Yes, draft Item No. 1290 (General Gordon Hotel, 20 Swain Street) and draft Item No. 1286 (Sydenham Railway Station buildings located north east of the site).
Flood Planning:	Partially affected
Acid Sulfate Soils:	Affected Class 2 and Class 5
Key Sites:	No
Foreshore Building Line:	No
Natural Resource – Biodiversity:	
Habitat Corridor	No
Bandicoot Protection Area	No

An assessment of the proposed development against the zoning provisions and relevant controls as contained in draft MLEP 2010 demonstrates that there are no variations from the above-described controls that would warrant the refusal of the subject development application, notwithstanding the fact that there are other merit matters that mean that the application is not supported on planning grounds.

The proposed new zoning effectively allows for an increase in the density of residential development on the site compared with that permissible under the current zoning.

The property is indicated in MLEP 2010 mapping as being partially flood affected. The proposal will have negligible impact on the flooding potential of the property. The issue of ASS has been addressed above.

5. Planning Assessment

Section 79C(b) of the *Environmental Planning and Assessment Act* requires consideration of the likely impacts of a proposal on the natural and built environments as well as the likely social and economic impacts of a proposal. The key impacts considered in this section are the impacts on the built environment and the potential loss of a dwelling which may have heritage value and which has been cited by residents in submissions as being important locally.

As noted above, the cottage is not listed as part of the Sydenham Railway station group and is not listed under schedule 5 of Marrickville LEP 2001, nor is it proposed for listing under the draft Marrickville LEP 2010. However Council's heritage officer has queried the lack of justification for the demolition of the cottage and its omission from the State listing of railway buildings which form part of Sydenham railway station.

Railcorp has stated the following in relation to heritage in its letter dated 14 March 2011:

"The fact that Sydenham Station is listed should not automatically trigger a listing for the house. The house has to be assessed on its own merits. As part of Railcorp's review of its section 170 Register a comparative assessment of railway residences was undertaken which determined that this house did not warrant listing on its register. It was considered to be a poor example of its type and does not form part of a heritage group – unlike most residences which are listed on the register (Ourimbah, Lithgow or Thirlmere etc) which are good examples of railway residences that also have a physical and historical relationship to a railway station precinct. There are 19 residences which have been listed on the register which collectively demonstrate good examples of a type of railway residence.

This determination supports the fact that Council's current LEP does not list the house nor is it proposed to be listed under the draft LEP. Further, this is also consistent with the report prepared by Paul Davies P/L (who undertook the original Railcorp assessment) for Marrickville Council in 2009 titled, "Marrickville Review of Potential Heritage Items."

The application was referred to Council's Heritage and Urban Design Advisor who provided the following comments:

"The property is a late Victorian free standing single storey dwelling, recently run down. It may have been purpose built as a Station Master's cottage. A photo of a similar but slightly more ornate Stationmaster's cottage in Queanbeyan is attached below, adjacent to a photo of the subject site. Stationmaster's dwellings were built according to 6 types of set plans...I do not know if the subject site fits one of the types..."



Above: Queanbeyan cottage



Subject cottage

The level of heritage status is questioned due to the lack of any written assessment or testimonial from a qualified heritage consultant. The fact that no expert has made note of it in the State listing of the Sydenham station group or in the Marrickville LEP Schedule 5, does not qualify as an assessment, it logically infers that no assessment has been made by such a person. As the site is substantially covered by foliage, and is located in a quiet side street, it is reasonable to see why it may have been overlooked."

In relation to the amount of foliage on the site, it should be noted that if the trees are removed from the site, and many can be removed without requiring prior approval, the cottage will be more visible from the public realm and more visible from Sydenham Railway Station, creating greater visual continuity between the Station Master's cottage and Sydenham Railway Station.

The applicant was requested by officers during site visit conducted 31 January 2011 and by the assessing officer in email dated 2 February 2011 to address the reasons for the possible omission of the house from the listing but the applicant has failed to satisfactorily address this aspect in its response regarding heritage matters.

The applicant was also asked to provide details from the assessment of the dwelling undertaken by Railcorp for the review of the subject cottage and/or the Sydenham station listing as required under section 170 of the NSW Heritage Act and as referred to in the Railcorp letter dated 14 March 2011. In response to this request, in email dated 14 March 2011, the applicant stated that the wording in Railcorp letter dated 14 March 2011 in relation to heritage assessment of the cottage (paragraph 15 of the letter) came from Railcorp's Office of Rail Heritage, being Railcorp's internal experts on such matters. The applicant stated further that there may not be an actual heritage report for the building. This contradicts the letter of 14 March 2011 which as noted above, states that as "part of Railcorp's review of its section 170 Register a comparative assessment of railway residences was undertaken which determined that this house did not warrant listing on its register." The applicant stated further in email dated 14 March 2011 that the Office of Rail Heritage would be asked to clarify the matter. No further detail or response has been received to date.

Council's Heritage and Urban Design Advisor has recommended that demolition of the Station Master's Cottage not be supported as its heritage status has not been sufficiently addressed and that demolition has not been proven to be necessary for decontamination of the site.

In view of the insufficient detail and assessment of the potential heritage value of the cottage, the demolition of the dwelling is not supported.

6. Community Consultation

The application was advertised, an on-site notice was erected and residents/property owners in the vicinity of the subject property were notified of the proposed development in accordance with Council's Notification Policy.

Seventeen (17) submissions and a petition with 314 signatures against the proposal were received. One (1) submission supported the proposal subject to various aspects being satisfactorily addressed. One (1) submission was from Marrickville Heritage Society.

The submissions objecting to the proposal raised the following concerns:

- (i) *Tree removal and impact on the locality and flora and fauna and conflict with tree removal and Council's adopted Tree Policy and Urban Forest Policy and Strategy.*

Submissions raised concern with the impact of tree removal on the locality and argued against the removal of trees planted by residents.

Tree removal requiring consent is assessed under Council's Tree Preservation Order. As noted above, there are several trees requested to be removed that are not subject to Council's TPO and can be removed without approval. The seven (7) trees which are subject to Council's TPO have been agreed for removal by Council's Tree Management Officer subject to conditions. As noted above, Council's Tree Management Officer has required that four (4) replacement trees be planted in the public domain. While it is acknowledged that the replacement trees will take time to grow, the replacement trees will assist in addressing concerns raised in relation to the visual impact of the tree removal on the locality. There are no

known threatened, endangered or vulnerable species or ecological communities present on the site.

The Arboricultural Impact Statement (AIS) submitted with the application states at paragraph 2.4 that none of the trees or other plants on the site are listed under the *Threatened Species Conservation Act 1995* and are not subject to the national legislation under the *Environmental Protection Biodiversity Conservation Act 1999*. A species impact statement is therefore not required.

- (ii) *The station master's cottage is of local social and heritage significance and should be saved. The omission of the cottage from State listing of Sydenham railway group is questioned. Reference also made to the listing of Tempe station. Council is requested to propose the cottage as an item under the draft LEP.*

The applicant has failed to justify the proposal to demolish the station master's cottage. This issue is discussed in detail in Sections 4 (ii) and 5 of this report.

- (iii) *Lack of detail of the proposed land use and change of zoning from low density to R3 under MLEP 2010. Railcorp should declare its intention with the land.*

The proposed use has not been stated in the Statement of Environmental Effects submitted with the application, however all other documentation submitted with the application infers or refers to future residential use. The applicant has stated in letter dated 14 March 2011 that the new zoning of the site under draft Marrickville LEP 2010 will allow for residential and other land uses. Railcorp has also stated in the letter that it is intended to offer the land for sale once remediation has been completed. Railcorp states "the proceeds of the sale have been earmarked for use by the Office of Rail Heritage who will use the funds for heritage projects."

Any new development of the site would require development consent which would require notification to the public, allowing for further opportunity for community consultation.

- (iv) *The proposed R3 zoning of the site is out of character with the low density character of the area. No other sites zoned R3 in the vicinity of the site. Coincidence of proposed new zoning and new proposal for demolition of dwelling.*

The proposed R3 zoning of the site is consistent with Council policy to allow for higher densities of properties nearby railway stations. The site is larger than surrounding properties lending itself to greater opportunity for appropriate redevelopment.

- (v) *Parking and traffic already an issue and any works, if approved, and any future development will exacerbate parking and traffic related problems and how will access to the land be addressed during works?*

Railcorp has stated that a Traffic Management Plan would be undertaken as recommended by the RAP. Truck movements would be required to be made in accordance with the plan. The parking and traffic aspects of any future proposal will be assessed in the consideration of any development application lodged for any future development of the land.

- (vi) *No information provided in application about the reasons for remediation, including extent of contamination. If contamination is disturbed it may present a danger to residents.*

The supporting documentation submitted with the application clearly states the remediation is required to decontaminate the site as there are heavy metals and PAHs present in the fill material on the site and that the contamination extends to between 300-800mm depth. The

decontamination can be managed so as to prevent impacts on neighbours and residents. The RAP provides recommendations on managing the decontamination process. The application was also referred to Council's Environmental Officer who has raised no objection to the proposal subject to the imposition of conditions on any consent granted.

- (vii) *Railcorp has shown no regard for amenity of area and has left the Station master's cottage in state of disrepair.*

Railcorp has stated that as the site is contaminated the site has been fenced off. Railcorp also stated that the house was boarded up as the house is contaminated. As discussed in detail above, the report prepared by HLA provides evidence which shows that the house itself could be decontaminated, given the good and/or undamaged condition of asbestos, the lack of presence of PCBs, and the possibility of managing the presence of lead and so forth.

- (viii) *Request Council consider uses of the site which would improve amenity including tree plantings and landscaping to provide a gateway to Marrickville and Sydenham.*

The site is quite tucked away from the main entrances to Sydenham, while one corner of the site abuts Gleeson Avenue, the site slopes south and away from this main commercial street. The site is located down slope from the main roads leading to Sydenham. Nonetheless, as noted above, Council's Tree Management Officer has recommended a condition on any consent requiring tree plantings to be undertaken in the public realm on any consent. This would go some way to compensate for the loss of trees on the site. It should be noted that many of the trees can be removed without approval as they are not covered by Council's TPO.

- (ix) *If approved Council should condition consent with same conditions as 2005 consent including replacement trees.*

As noted, Council's Tree Management Officer's recommendations include replacement trees in the public realm. This is discussed in detail above and in Section 4(iii) of this report.

- (x) *Previous consent included bond for trees which was grossly inadequate.*

There will need to be extensive conditioning in relation to the protection of street trees if this application was to be approved.

- (xi) *Sydenham is a "forgotten" and neglected suburb and needs to be preserved.*

The issue of the contribution of the cottage to the area is noted.

- (xii) *Acid sulfate soils are present on site and should not be exposed.*

As noted in Section 4(iv) above, the applicant has stated that ASS will not be disturbed by the works as the works will take place in the top 800mm of the soil.

- (xiii) *The grounds of house should be turned into a green corridor for public to enjoy. Council should acquire property.*

This issue is not relevant to the subject application. As stated previously Council has previously advised the applicant, in letter dated 12 January 2006, that it has no intention of acquiring that part of the property zoned Open Space.

- (xiv) *Two trees indicated as being removed are street trees.*

The street trees shown on the plan are to be retained.

- (xv) *Lack of information in relation to some aspects of the application such as protection from erosion by turfing and impact of dust coming off the site, parking and traffic management and pedestrian safety during works. Impact on sewerage pipes near Wright Street etc.*

Erosion and sediment controls and dust management could be addressed by conditions of any consent granted. The RAP makes recommendations for management of such issues. Any consent could address these issues including conditions requiring the person acting on any consent obtain relevant licences and permits and ensure adequate fencing protection of the site.

Railcorp in its letter dated 14 March 2011 stated that it is not aware of any plumbing problems. It states further that it may possibly be an issue with the drain on the easement from which Council benefits and that Council may need to investigate further. If there have been and are current issues with any Council owned or managed drainage, residents should direct their concerns to Council. Council's engineer has recommended a condition in relation to protecting the pipes at Wright Street and stormwater related conditions in the event the application was approved.

- (xvi) *Incorrect information - Easement is on eastern side of site not southern side.*

The incorrect description in the Statement of Environmental Effects of the easement is noted. The drainage is located on the eastern side of the property. The easement benefits Council.

- (xvii) *Pipes and gutters of dwelling at 115 Railway Road encroach on the subject property and need for Railcorp to contact nearby residents prior to any works being carried out.*

The protection of any overhanging structures to the subject site during remediation works could be addressed by conditions. Railcorp has stated in letter dated 14 March 2011 that it will contact residents.

Railcorp by letter dated 14 March 2011 have responded to the issues raised in the submissions and other issues by in a site visit. A copy of that submission is **ATTACHED** to the rear of this report as **ATTACHMENT 1**.

7. Public Interest

Section 79C(1)(e) of the EP& A Act requires the consideration of the impacts of a proposal on the public interest. In view of the level of objection and submissions raising concern regarding the loss of potentially important heritage building (station master's cottage), the proposal is not considered to be in the public interest.

8. Crown applications – Part 4, Division 4 of the Environmental Planning & Assessment Act

The applicant with respect to the application is RailCorp and as such the application is a Crown development application.

Under Section 89 of the Environmental Planning and Assessment Act, Council can not refuse a Crown development application except with the approval of the Minister. Under Clause 89 (2A) the application "must not be referred to the Minister unless it is first referred to the applicable regional panel."

The NSW Department has advised the following in relation to Crown applications in its document, *Joint Regional Planning Panels Operational Procedures*, April 2010:

“Where a council seeks to refuse consent or impose a condition to which the applicant has not provided their agreement, the application is also to be referred to the Regional Panel under section 89(2) of the EP&A Act.

An application can only be referred to the Regional Panel after the prescribed period under clause 113B of the EP&A Regulation has been reached. (The prescribed period in this instance is 70 days, which has lapsed).

The referral to the Panel Secretariat should take the form of a letter, with a request that under section 89(2) of the EP&A Act the matter be referred to the Regional Panel for determination. Sections 89(6) and (7) then set out additional procedures for the referral, including the requirement to notify the council in writing that the application has been referred.

Following the receipt of the letter, the Panel Secretariat will review the documentation. If accepted, the applicant or council will be requested to lodge the referral on the notification page on the Regional Panel's website.

Where a report or other documentation has been prepared by council, this is to be provided to the Regional Panel for consideration. The Panel Secretariat will undertake a review of that report or otherwise prepare an assessment report for the Regional Panel.”

9. Conclusion

The heads of consideration under Section 79C of the Environmental Planning and Assessment Act of relevance to the application have been taken into consideration in the assessment of the application. The application has failed to adequately address the issue of heritage. It is therefore recommended that Council approaches the Minister for Planning to request the application be refused for the reasons provided in 'A' below.

PART E - RECOMMENDATION

THAT the development application to demolish the existing improvements, remove 21 trees and remediate the land be **DEFERRED** and the following course of action be **ADOPTED** by Council:

- A. THAT** the application and a copy of Council's report on the application be forwarded to the Sydney East Joint Regional Planning Panel and that the Panel be advised that the proposed development is not acceptable to Council for the following reasons:
 1. The proposal fails to justify the demolition of the former Station Master's Cottage on the site. Insufficient detail in relation to the heritage impacts of the proposal was submitted with the application. The proposal also fails to demonstrate that Category 1 remediation of the area under the Station Master's Cottage is required. A detailed assessment of the impact of the proposed demolition of the cottage on the built environment therefore cannot be undertaken.
 2. In view of the above and the public submissions received raising concerns regarding the social and local heritage significance of the cottage, the proposed demolition of the cottage is not considered to be in the public interest.
- B. THAT** the Sydney East Joint Regional Planning Panel be requested to concur with Council's recommendation to refuse the application for the reasons listed in Part A of this recommendation and request the Minister of Planning's approval to refuse consent to the application.
- C. THAT** should the Minister concur with the Council delegated authority be granted to the General Manager to determine the application.
- D. THAT** those persons and the head petitioner who lodged submissions in respect to the proposal be advised of the Council's resolution.

Judy Clark
Manager, Development Assessment

ATTACHMENTS

1. Railcorp response to submissions and issues raised during site visit in letter dated 14 March 2011



RailCorp Property
PO Box K349
Haymarket NSW 1238
Tel: (02) 8922 1987
Email: jim.tsirimiagos@railcorp.nsw.gov.au

14 March 2011

The General Manager
Marrickville Council
PO Box 14
Petersham NSW 2049

Attn: Kim Linden

Dear Sir/Madam,

**DEVELOPMENT APPLICATION – DA201000599
117 RAILWAY ROAD, SYDNEHAM
DEMOLITION, TREE REMOVAL AND REMEDIATION OF SITE.**

Please find attached RailCorp's response to the submissions and issues raised during the public exhibition of the above development application.

For Council's benefit RailCorp has grouped the issues and provide a response to each of issue grouping.

It is hoped that RailCorp's response adequately address the matters that Council needs to consider in order for this development application to progress.

Should you have any queries regarding this submission please contact me on 8922 1987 or via the email address provided above.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Jim Tsirimiagos".

Jim Tsirimiagos
Manager, Land Use & Planning



Attachment A

Submissions - Sydenham former SM cottage

Trees

1. Why remove 21 (well-established) trees?

The Remediation Action Plan (RAP) that was submitted with the DA recommends the removal of all of the fill material (300 - 800mm) in order to fully remediate the site and to obtain DECCW Accredited Site Auditor sign-off. As a result this option will expose the primary tree roots and permanently damage the primary, secondary and tertiary roots making the trees unstable and dangerous over time.

For RailCorp to retain the trees, the roots will also need to be retained and as such contaminated soil would have to remain. This will mean that residual risks to human health would still be present and RailCorp would be unable to obtain DECCW Accredited Site Auditor sign-off to render the site suitable for any residential use and certain other uses. RailCorp would then continue to hold the risk of being forced to remediate the site even if the property is sold in the future and the remaining contaminants may also re-contaminate the remediated portion of the site.

It should be noted that nine (9) of the trees (being trees 13-21 in the Arborist Report) are fruit trees which were planted without permission by the adjoining owner who had been encroaching onto the rear of the site. Of the remaining twelve (12) trees to be removed under this DA, six (6) were previously approved for removal in the 2005 DA approval issued by Council.

Whilst the 2005 approval only specifically mentioned the removal six (6) trees, the approval was in fact for the total removal of all vegetation across the site to enable remediation works to occur. As it can be seen in the attached 2005 survey plan that accompanied the 2005 DA there were in fact twelve (12) trees in total on site at that time. Approval was only sought for six (6) trees as these were covered by Council's tree preservation order. Therefore, the removal of these twelve (12) trees under this DA is consistent with the works that were previously approved by Council in 2005.

The reason RailCorp has included the entire 21 trees, including those which may not require Council approval, is to ensure that RailCorp has a single approval for all the works and to remove any future ambiguity as to what can or cannot be undertaken. The removal of the 21 trees is acceptable given that the removal of 14 were previously approved by Council in 2005 and nine (9) are fruit trees illegally planted by the adjoining owner.

2. Will removing the trees increase noise and increase other environmental factors such as dust and dirt reaching our homes?

The main and loudest generator of noise at this location is from overhead aircraft as this site and adjoining properties are located under the flight path. The removal of trees will not increase this noise.



It is envisaged that any future development on the site will provide shielding through the construction of a new building structure and provisions of landscaping.

Dust and dirt would be managed in accordance with the methods detailed in the RAP and any Council conditions.

3. Will RailCorp re-plant trees once the remediation and demolition of the building are completed?

RailCorp is not proposing to replant trees as the property is proposed to be sold for development by a future owner. RailCorp considers that it would be more appropriate to add landscaping requirements to the conditions of consent for the future development DA, as it is likely that any trees planted by RailCorp at completion of the remediation works would likely be damaged and/or require removal during construction.

Soil

4. How will the remediation of the contaminated soil be managed to avoid serious health risks?

The RAP recommends the preparation of a site specific Remediation Environmental Management Plan (REMP) which will detail the measures to be in place in order to protect the environment and human health during remediation works. Section 11 of the RAP provides details as to what items the REMP will include in relation to:

- soil and water management
- stockpiling
- site access
- noise, odour and dust management
- disposal of contaminated soil

Further, RailCorp must abide by several regulations and guidelines for the proposed works and RailCorp officers are highly skilled and experienced in managing this type of work to ensure the community is protected and contractors are aware of their obligations.

5. Why does the soil need to be remediated?

Site investigations conducted in 2001, 2003 and 2010 have shown that the site's soil is contaminated with heavy metals (lead, arsenic, cadmium, copper, mercury and zinc), benzo(a)pyrene and polycyclic aromatic hydrocarbons (PAHs). Although safe in its current undistributed state these are considered to be a risk to human health and must be removed in order to render the site suitable for residential use and many other non-residential uses (the risk to human health from consumption, ingestion or inhalation of these toxins has been avoided to date because access to the site has been restricted since 2004).

In 2003, RailCorp notified the former EPA (now DECCW) of the contaminated status of the site, ie as posing a significant risk of harm based on the elevated concentrations of lead and PAH. In 2008, DECCW advised that whilst the contaminants were reported at levels exceeding health based levels for residential use, human exposure to these contaminants was unlikely as the site was vacant and with no access by the general public.



As it is intended to sell the site, and in order to comply with DECCW and Contaminated Land Management Act requirements as it is likely to be used for residential use based on current and future zoning, the site must be remediated, otherwise it would have to be locked up as it is presently, which is not an acceptable long term asset management solution.

6. A number of trees have been planted by residents, why do these trees need to be removed?

The only trees that RailCorp is aware of that have been planted by residents are the nine (9) fruit trees (being trees 13-21 in the Arborist Report) planted without authorisation by the adjoining owner who had been encroaching into the rear of the site. The adjoining land owner had indicated to RailCorp that they intended to transplant these trees to their own land but as yet has failed to follow through with this undertaking.

RailCorp is not aware of any other trees which were planted by residents, if they were, these would have been planted without authorisation, and would have been legally removed in accordance with the approval issued by Council in 2005.

7. Are there contaminants under the house/front porch?

Samples have not been collected from beneath the building due to difficulty accessing this area, however the fill material is a source of contamination at the site and this is assumed to extend beneath the building. The RAP recommends that the soil currently under the cottage be investigated on completion of demolition works.

In addition to this the following points should be noted.

- The fill material directly adjacent to the building is known to be contaminated and complete removal of this material would not be possible if the dwelling was to remain in place. The site would therefore not be able to be certified as suitable for residential use.
- The lead paint on the dwelling is a source of the soil contamination (and a health risk inside the dwelling). Lead paint removal works would need to be undertaken if the dwelling was to remain in place.
- Lead-paint removal works are very difficult and costly, and the generation of dust containing high concentrations of lead is difficult to control. This was previously proposed back in 2005, and we received strong objections from the neighbours due to this fact.

8. Presence of Acid Sulphate Soils

Potential acid sulphate soils are naturally occurring soils containing iron sulphides (pyrite). They become actual acid sulphate soils when they are dried, usually because of human activity, and the pyrite is exposed to air. In air, pyrite is oxidised, resulting in production of sulphuric acid.

Based on the assessment reports the soils at the site are residual soils derived from the Ashfield Shale, which are very low permeable clays and silts. This is present beneath the shallow layer of fill, and no groundwater was encountered to a depth of 0.8 metres. Therefore based on this, there is no evidence to suggest that the soils are acid sulphate. In addition, the remediation is to remove the surface fill material only, not natural soils.



9. How deep is the contaminated soil?

The depth of fill material ranges from 300 – 800 mm and the RAP recommends the removal of all fill material as the preferred remediation option.

10. Lack of detail in relation to contamination under the cottage on site to support demolition.

This is covered in the response to Item 7.

Building

11. Why did RailCorp deliberately allow the cottage to become derelict?

RailCorp did not deliberately allow the cottage to become derelict. Due to soil contamination and the building containing hazardous material, being asbestos and lead paint, the use of the site for residential purposes had to cease in order to comply with DECCW requirements. The building was also affected by termite infestation which is typical in building of this type and age.

RailCorp boarded up the building to prevent vandalism and ensured that it was weatherproof. As the building is not heritage listed there were no other requirements that needed to be complied with.

12. Once the house has been demolished what is the plan for the land?

The subject property is surplus to RailCorp needs. It is intended to offer the site for sale once remediation has been completed with Site Auditor sign-off. The proceeds of the sale have been earmarked for use by the Office of Rail Heritage who will use the funds for heritage projects.

13. Will RailCorp be selling it?

See above.

14. The house is pretty dilapidated, has RailCorp thought of refurbishing the house?

Refurbishing the house is not possible or viable given the presence of asbestos, lead paint and termite damage. Even if it were, as the soil contains contamination that poses a risk to human health, the site could not be utilised for any residential use and some non-residential uses, and as such would have to be boarded up to prevent vandalism.

15. Sydenham Station is listed on the State Heritage list, I was wondering why the house was never listed as part of the station? Considering they were built at the same time, one would think the house is equally as significant.

The fact that Sydenham Station is listed should not automatically trigger a listing for the



house. The house has to be assessed on its own merits. As part of RailCorp's review of its Section 170 Register a comparative assessment of railway residences was undertaken which determined that this house did not warrant listing on the register. It was considered to be a poor example of its type and does not form part of a heritage group - unlike most residences which are listed on the register (Ourimbah, Lithgow or Thirlmere, etc.) which are good examples of railway residences that also have a physical and historical relationship to a railway station precinct. There are 19 residences which have been listed on the register which collectively demonstrate good examples of a type of railway residence.

This determination supports the fact that Council's current LEP does not list the house nor is it proposed to be listed under the draft LEP. Further, this is also consistent with the report prepared by Paul Davies P/L (who undertook the original RailCorp assessment) for Marrickville Council in 2009 titled "Marrickville Review of Potential Heritage Items"

16. Was the cottage built or purchased for the Station Manager?

The actual construction date of the building has not been confirmed but would likely be after 1883 when the contract for the Station buildings was awarded.

17. When was the front porch added to the building?

There are no records about when the front porch was added, but could have been constructed as part of the original building.

Other

18. How will work trucks access the property when the local streets are already congested with buses and heavy traffic?

RailCorp will require the successful contractor(s) to prepare a Traffic Management Plan (TMP) and Section 10.2 of the RAP details what objectives, at minimum, should be included in the TMP. As the site has street access from Burrows Avenue, Railway Road and Wright Street there are a number of options available for site access.

19. How much is that piece of land worth?

The reserve price is Commercial-in-Confidence and not a relevant planning matter.

20. Are there any protected fauna or flora species located on this property?

No.

21. How will pedestrians safely navigate around the site if/when works occur?

As the works will be entirely within the site the only impact would be any conflict with vehicle movements into and out of the site. As mentioned in item 18 above the contractor will prepare a TMP which will cover such issues. It is envisaged that Council would impose one of its standard conditions to cover such an issue which is the norm for construction projects.



22. Has council considered purchasing this property and return it to the community?

This is for Council to answer. It must pointed out that the all hazardous material from the site and building will still need to be removed for any future residential or community use in safe manner. Council may still end up doing what RailCorp is proposing.

23. In the draft Marrickville Local Environment Plan 2010, the site of the house has been rezoned from R2, low density housing to R3, medium density housing, which would make it the only area in Sydenham zoned for medium housing. Has RailCorp been speaking to developers who are interested in building multi-dwellings on the site?

RailCorp has not been speaking to any developers regarding this site. Whilst the adjoining land is zoned R2 it is considered that the R3 is the most appropriate given the size of the land which is substantially larger than those within the street.

Further, the R3 zoning, when compared to R2 provides more flexible uses, including non-residential use.

24. Will RailCorp fix the plumbing problems in Wright Street that has been caused by the cottage?

RailCorp is not aware of any plumbing problems. Drainage from Wright Street traverses the subject site via a drainage easement of which Council has the benefit. And plumbing problems may be associated with this Council drain and as such may need further investigation by Council.

25. Will the property at 115 Railway Road be compromised during excavation and demolition of the cottage?

RailCorp's contractor will complete a pre and post dilapidation survey of the external wall of 115 Railway Rd, to assess whether any damage has been caused to the building. All precautions will be undertaken to ensure that the integrity of the building is not compromised.

RailCorp will also ensure that its contractor prepares a safe work method statement covering how the works will be undertaken in safe manner and to protect adjoining property.

26. Will RailCorp contact the owner at 115 Railway Road and other residents before any work will be carried out?

Yes. It also intended to respond to all the public submissions lodged during the exhibition of the DA.

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