



Land and Environment Court New South Wales

Case Title: Newell Capital Pty Limited v The Hills Shire Council

Medium Neutral Citation: TBA

Hearing Date(s): 16 October 2013

Decision Date: 30 October 2013

Jurisdiction: Class 1

Before: Brown C

Decision:

1. The appeal is upheld.
2. DA 680/2013/JP for a three (3) stage development that seeks to demolish all existing structures and construct 3 residential flat buildings at 21 Balmoral Road Kellyville is approved subject to the conditions in Annexure A.
3. The exhibits are returned with the exception of exhibits 1, B and C.

Catchwords: DEVELOPMENT APPLICATION: demolition of all improvements and construction of a three stage development that seeks to demolish all existing structures and construct 3 residential flat buildings consisting of 109 units – amendments and further information address contentions raised by the council

Legislation Cited: Environmental Planning and Assessment Act 1979
Land and Environment Court Act 1979
The Hills Local Environmental Plan 2012

Cases Cited:

Texts Cited:

Category: Principal judgment

Parties: Newell Capital Pty Limited (Applicant)
The Hills Shire Council (Respondent)

Representation

- Counsel: Mr M Staunton, barrister (Applicant)
Mr C Wynn, solicitor (Respondent)

- Solicitors: Consolidated Lawyers Pty Limited
(Applicant)
The Hills Shire Council (Respondent)

File number(s): 10659 of 2013

Publication Restriction: No

JUDGMENT

- 1 **COMMISSIONER:** This appeal relates to the refusal by The Hills Shire Council of DA 680/2013/JP for a three (3) stage development that seeks to demolish all existing structures and construct 3 residential flat buildings, each being 5 storeys in height, consisting of 109 units with basement car parking for 280 resident spaces and 56 visitor parking spaces, at 21 Balmoral Road Kellyville.
- 2 The appeal was subject of a conciliation conference on 16 October 2013 under s 34 of the *Land and Environment Court Act 1979*. As no agreement was reached, the conciliation conference was terminated pursuant to s 34(4)(a). The parties consented to me disposing of the proceeding forthwith pursuant to s 34(4)(b)(i) and on the basis of what occurred at the conciliation conference pursuant to s 34(4)(b)(ii).
- 3 The site is located within the Balmoral Road Release Area, which is currently undergoing development for urban purposes. The release area contains a range of housing densities and supporting uses. The Northwest Railway Line is to be located directly to the west of the site with proposed

stations at Bella Vista and the intersection of Old Windsor Road and Samantha Riley Drive. Elizabeth Macarthur Creek adjoins the site to the east.

- 4 The site is zoned RI General Residential and SP2 Infrastructure (Stormwater Management System) under *The Hills Local Environmental Plan 2012* (LEP 2012). The proposed development, being characterised as a Residential Flat Building development, is permissible with development consent in the RI General Residential zone.
- 5 The council filed a Statement of Facts and Contentions that identified that the following matters warranted the refusal of the application:
 1. the lack of integration with future public transport infrastructure (the Northwest Railway Line),
 2. unacceptable urban design by way of excessive height and number of storeys, inadequate front and side setbacks, excessive building length, internal area for some 1 bedroom units, and
 3. inadequate information on potential flooding risks.
- 6 Prior to the conciliation conference, amendments were made to the plans that addressed the concerns of the council relating to the front setback and internal area for the 1 bedroom units. The lack of integration with future public transport infrastructure was addressed through further discussions and correspondence from Transport for NSW. Additional flooding information was also provided that satisfied the councils concern over lack of information on this matter. The council did not press the contentions relating to the number of storeys, side setbacks or building length.
- 7 There was agreement that the development breached the 16 m maximum building height standard in cl 4.3 of LEP 2012 by a maximum of 1.7 m. The extent of the breach was shown on the architectural plans. Mr Gosling, the applicants town planner, provided a written request for exception to the height development standard, in accordance with cl 4.6 of LEP 2012. Mr Buckam, the councils town planner, states that the written request for

exception to the height development standard adequately addresses the matters in cl 4.6(3) and that the proposal is considered to be in the public interest because it is consistent with the objectives of the height development standard and objectives of the R1 zone. On this basis, the variation to the height development standard can be supported.

- 8 Having read the written request for exception to the height development standard and with an understanding of the plans and the site, I concur with the conclusions of Mr Gosling and Mr Buckam that the variation to the height development standard is worthy of support.
- 9 There being no reason why development consent should not be granted, the orders of the Court are:
1. The appeal is upheld.
 2. DA 680/2013/JP for a three (3) stage development that seeks to demolish all existing structures and construct 3 residential flat buildings at 21 Balmoral Road Kellyville is approved subject to the conditions in Annexure A.
 3. The exhibits are returned with the exception of exhibits 1, B and C.



G T Brown

Commissioner of the Court

ANNEXURE A

Conditions of consent - three (3) stage development that seeks to demolish all existing structures and construct 3 residential flat buildings at 21 Balmoral Road Kellyville – 21 Balmoral Road, Kellyville

GENERAL MATTERS

1. Development in Accordance with Submitted Plans

The development being carried out in accordance with the following approved plans and details, stamped and returned with this consent except where amended by other conditions of consent.

REFERENCED PLANS AND DOCUMENTS

DRAWING NO.	DESCRIPTION	REVISION	DATE
DA000	DRAWING LIST / CONTEXT PLAN	C	16 October 2013
DA001	SITE ANALYSIS PLAN	C	16 October 2013
DA002	OVERALL SITE PLAN	D	16 October 2013
DA003	GROUND FLOOR SITE PLAN	E	16 October 2013
DA004	BASEMENT CARPARK	D	16 October 2013
DA005	BASEMENT PART 1	D	16 October 2013
DA006	BASEMENT PART 2	D	16 October 2013
DA007	BASEMENT PART 3	D	16 October 2013
DA101	STAGE 1 SITE PLAN / ROOF PLAN	D	16 October 2013
DA102	GROUND FLOOR	C	16 October 2013
DA103	FIRST FLOOR	C	16 October 2013
DA104	SECOND FLOOR	C	16 October 2013
DA105	THIRD FLOOR	C	16 October 2013
DA106	FOURTH FLOOR	C	16 October 2013
DA107	ROOF PLAN	D	16 October 2013
DA108	ELEVATIONS	D	16 October 2013
DA109	ELEVATIONS	D	16 October 2013
DA110	SECTIONS	D	16 October 2013
DA201	STAGE 2 SITE PLAN / ROOF PLAN	D	16 October 2013
DA202	GROUND FLOOR	D	16 October 2013
DA203	FIRST FLOOR	C	16 October 2013
DA204	SECOND FLOOR	C	16 October 2013
DA205	THIRD FLOOR	C	16 October 2013
DA206	FOURTH FLOOR	C	16 October 2013
DA207	ROOF PLAN	C	16 October 2013
DA208	ELEVATIONS	C	16 October 2013
DA209	ELEVATIONS	C	16 October 2013
DA210	SECTIONS	C	16 October 2013

DA301	STAGE 3 SITE PLAN / ROOF PLAN	D	16 October 2013
DA302	GROUND FLOOR	D	16 October 2013
DA303	FIRST FLOOR	C	16 October 2013
DA304	SECOND FLOOR	C	16 October 2013
DA305	THIRD FLOOR	C	16 October 2013
DA306	FOURTH FLOOR	C	16 October 2013
DA307	ROOF PLAN	C	16 October 2013
DA308	ELEVATIONS	D	16 October 2013
DA309	ELEVATIONS	C	16 October 2013
DA310	SECTIONS	C	16 October 2013

No work (including excavation, land fill or earth reshaping) shall be undertaken prior to the issue of the Construction Certificate, where a Construction Certificate is required.

2.Compliance with Office of Water Requirements

Compliance with the requirements of the Office of Water attached as Appendix (A) to this consent and dated 15 August 2013.

3.Property Numbering

The responsibility for property numbering is vested solely in Council.

A plan is to be submitted to Council's Land and Information Section for approval prior to occupation of the development.

These unit numbers, as issued, are to be displayed clearly on all unit door entrances.

Clear and accurate external directional signage is to be erected on site at driveway entry points and on buildings. Unit numbering signage is also required on stairway access doors and lobby entry doors. It is essential that all numbering signage throughout the complex is clear to assist emergency service providers locate a destination with ease and speed, in the event of an emergency.

4.Provision of Parking Spaces

The development is required to be provided with 224 resident and 56 visitor off-street car parking spaces. These car parking spaces shall be available for off street parking at all times.

5.Australia Post Mail Box Requirements

Australia post requires there be one (1) single group of cluster mail boxes. Should more than one (1) cluster be required, contact Australia Post for their approval. The number of mail boxes to be provided is to be equal to the number of units, plus one (1) for the proprietors. Mail boxes are to have a minimum internal dimension of 230mm wide x 160mm High x 330mm long and are to be provided with an opening of 230mm x 30mm for the reception of mail.

6.Construction Certificate

Prior to construction of the approved development, it is necessary to obtain a Construction Certificate. A Construction Certificate may be issued by Council or an Accredited Certifier. Plans submitted with the Construction Certificate are to be amended to incorporate the conditions of the Development Consent.

7.Building Work to be in Accordance with BCA

All building work must be carried out in accordance with the provisions of the Building Code of Australia.

8.Notice of Required Inspections for demolitions

Council requires twenty four (24) hours notice for inspections. Please ring Development Certification on 9843 0301 before 3.30pm to book an inspection for the following day.

The proposed demolition works must be inspected by Council at the following key stages:-

- a) Pre-demolition including sediment controls and site fencing / signage; and
- b) Completion of demolition (incorporates Infrastructure Inspection).

9. Acoustic Requirements

The recommendations of the Acoustic Assessment and Report prepared by Renzo Tonin & Associates Pty Ltd, referenced as Report Number TG013-01F01, dated 21 November 2012 and submitted as part of the Development Application are to be implemented as part of this approval. In particular:

- Section 5 – Control of External Noise
- Section 9.2 – General Construction Noise Control Methods

10. Salinity Management Requirements

The recommendations of the Salinity Assessment and Management Plan prepared by EIS Pty Ltd, referenced as Report Number REF: E26106KB rpt, dated November 2012 and submitted as part of the Development Application are to be implemented as part of this approval.

11. Contamination Assessment & Site Remediation

The recommendations of the Advice for Potential Contamination Statement prepared by EIS Pty Ltd, referenced as E26106KB rpt dated 6th December 2012 and submitted as part of the Development Application are to be implemented as part of this approval. In particular:

- The undertaking prior to the issue of the construction certificate of a Stage 1 Environmental Site Assessment with sampling for the proposed development undertaken. Any required site remediation is to be undertaken and a compliance statement is to be provided to Council outlining that the proposed site is suitable for its intended use as a residential development.
- A Hazardous Materials Assessment for the existing buildings prior to the commencement of demolition works

12. Street Naming

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

The street names proposed must comply with the guidelines produced by the NSW Geographical Names Board.

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. Street Trees

Street trees must be provided for the section of Balmoral Road within or fronting the development site at a spacing of between 7m and 10m. The location of street trees must compliment driveway locations. The species and size of all street trees must comply with Council's requirements and DCP Part D Section 7. Street trees can be provided by Council subject to payment of the applicable fee as per Council's Schedule of Fees and Charges.

14. 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.

15. Recycled Water

The subject site must be connected to Sydney Water's Rouse Hill Recycled Water Scheme, unless written evidence from Sydney Water is submitted advising that this service is not available.

16. 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:

- a) The location and type of each WSUD element, including details of its operation and design;
- b) A brief description of the catchment characteristics, such as land uses, areas etc;
- c) Estimated pollutant types, loads and indicative sources;
- d) Intended maintenance responsibility, Council, landowner etc;
- e) Inspection method and estimated frequency;
- f) Adopted design cleaning/ maintenance frequency;
- g) Estimate life-cycle costs;
- h) Site access details, including confirmation of legal access, access limitations etc;

- i) Access details for WSUD measure, such as covers, locks, traffic control requirements etc;
- j) Description of optimum cleaning method and alternatives, including equipment and personnel requirements;
- k) Landscape and weed control requirements, noting that intensive initial planting is required upfront to reduce the requirement for active weed removal;
- l) A work method statement;
- m) A standard inspection and cleaning form.

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.

17. Separate Application for Strata Subdivision

A separate application must be submitted for any proposed strata titled subdivision of the approved development.

The strata subdivision cannot occur as complying development as individual parking spaces have not been allocated to individual units as part of the subject application.

18. Protection of Public Infrastructure

Council must be notified of any damage to public infrastructure caused by the development. Adequate protection must be provided prior to work commencing and maintained during building operations. Any damage caused must be made good, to the satisfaction of Council, before an Occupation Certificate can be issued. Public infrastructure includes the road pavement, kerb and gutter, concrete footpaths, drainage structures, utilities and landscaping fronting the site.

19. Vehicular Access and Parking

The formation, surfacing and drainage of all driveways, parking modules, circulation roadways and ramps is required, with their design and construction complying with:

- a) AS/ NZS 2890.1:2004
- b) AS/ NZS 2890.6:2009
- c) AS 2890.2:2002
- d) DCP Part C Section 1 – Parking
- e) Council's Driveway Specifications

Where conflict exists the Australian Standard must be used.

The following must be provided:

- i. All driveways and car parking areas must be prominently and permanently line marked, signposted and maintained to ensure entry and exit is in a forward direction at all times and that parking and traffic circulation is appropriately controlled.
- ii. All driveways and car parking areas must be separated from landscaped areas by a low level concrete kerb or wall.
- iii. All driveways and car parking areas must be concrete or bitumen. The pavement design must consider the largest design service vehicle expected to enter the site.
- iv. All driveways and car parking areas must be graded, collected and drained by pits and pipes to a suitable point of legal discharge.

20. Supervision of Works

All work in the road reserve must be supervised by a suitably qualified and experienced person. The supervisors name, address and contact phone number must be submitted to Council prior to works commencing in the road reserve. A construction programme and anticipated duration of works must be submitted to Council prior to works commencing in the road reserve.

21. Public Liability Insurance

All contractors working in the road reserve must have a current public liability insurance policy with an indemnity limit of not less than \$10,000,000.00. A copy of this insurance must be submitted to Council prior to works commencing in the road reserve.

22. Adherence to Waste Management Plan

All requirements of the Waste Management Plan prepared by LefflerSimes Architects, dated December 2013 must be implemented during construction of the development, except where amended by other conditions of consent. A Waste Data File that contains the approved Waste Management Plan together with written evidence that confirms waste transfer movements and lawful disposal of all waste materials must be kept on site at all times and presented to Council when requested.

23. Management of Demolition and Construction Waste

Waste materials must be appropriately stored and secured within a designated waste area on site at all times, prior to its reuse on site or removal off site. Any waste material removed from the site must be transported in accordance with the requirements of the *Protection of the Environment Operations Act, 1997* and only to a place that can lawfully be used as a waste disposal or resource recovery facility. Building waste containers are not permitted to be placed on the public way at any time unless a separate application is approved by Council to locate a building waste container in a public place.

24. Commencement of Domestic Waste Service

The Strata Management must ensure to arrange the commencement of each building's domestic waste service with Council no later than two days after occupancy, and no earlier than two days prior to occupancy of the development. Notification is to be received by agent acting for the owners by contacting (02) 9843 0310.

25. Construction of Waste Storage Rooms

All work involving construction of the waste storage rooms shall comply with the requirements of Council's *Bin Storage Facility Design Specifications*. Storage facility is to be provided for a minimum of:

- Stage 1 – five 1100 litre and twenty 240 litre mobile garbage bins.
- Stage 2 – five 1100 litre and twenty 240 litre mobile garbage bins.
- Stage 3 – five 1100 litre and twenty 240 litre mobile garbage bins.

26. Tree Removal

Approval is granted for the removal of forty four trees affected by the Tree Preservation Order plus three dead trees and five exempt weed and undesirable trees as identified in the Aboricultural Assessment of Redgum Horticultural dated 5 December 2012, page 20.

All other trees are to remain and are to be protected during all works. Suitable replacement trees are to be planted upon completion of construction.

27. Planting Requirements

All trees planted as part of the approved landscape plan are to be minimum 75 litre pot size. All shrubs planted as part of the approved landscape plan are to be minimum 200mm pot size. Groundcovers are to be planted at 5/m².

28. Protection of Existing Vegetation

Vegetation not authorised for removal by this consent shall be protected during construction to ensure that 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.

PRIOR TO THE ISSUE OF CONSTRUCTION CERTIFICATE

29. Design Verification

Prior to the release of the Construction Certificate design verification is required from a qualified designer to confirm the development is in accordance with the approved plans and details and continues to satisfy the design quality principles in SEPP65.

30. Special Infrastructure Contribution – Growth Centres

The applicant is to make special infrastructure contribution in accordance with any determination by the Minister administering the Environmental Planning and Assessment Act 1979 under Section 94EE of the Act that is in force on the date of this consent, and must obtain a certificate to that effect from the Growth Centres Commission before a Construction certificate or subdivision certificate is issued in relation to any part of the development to which this consent relates

More information on the Special Infrastructure Contribution can be found at the Growth Centres Commission's website at www.gcc.nsw.gov

To obtain an estimate of the Special Infrastructure Contribution that may be payable for the application please email infrastructurecontribution@gcc.nsw.gov.au

31. Notice of Requirements

The submission of documentary evidence to the Certifying Authority, including a Notice of Requirements, from Sydney Water Corporation confirming that satisfactory arrangements have been made for the provision of water and sewerage facilities.

Following an application a "Notice of Requirements" will advise of water and sewer infrastructure to be built and charges to be paid. Please make early contact with the Co-ordinator, since building of water / sewer extensions can be time consuming and may impact on other services and building, driveway and landscape design.

32. Section 94 Contribution – Balmoral Road Release Area

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:-

	Purpose: 1 bedroom unit	Purpose: 2 bedroom unit	Purpose: Credit	No. of 1 Bedroom units: 20	No. of 2 Bedroom units: 89	Sum of Units	No. of Credits: 1	Total S94
Open Space - Land	\$ 12,930.96	\$ 17,904.40	\$ 19,119.91	\$ 258,619.20	\$ 1,593,491.60	\$ 1,852,110.80	\$ 19,119.91	\$ 1,832,990.89
Open Space - Capital	\$ 3,431.83	\$ 4,751.77	\$ 5,074.36	\$ 68,636.60	\$ 422,907.53	\$ 491,544.13	\$ 5,074.36	\$ 486,469.77
Transport Facilities - Capital	\$ 2,443.64	\$ 3,383.50	\$ 3,613.20	\$ 48,872.80	\$ 301,131.50	\$ 350,004.30	\$ 3,613.20	\$ 346,391.10
Community Facilities - Land	\$ 255.72	\$ 354.08	\$ 378.11	\$ 5,114.40	\$ 31,513.12	\$ 36,627.52	\$ 378.11	\$ 36,249.41
Community Facilities - Capital	\$ 1,047.63	\$ 1,450.57	\$ 1,549.04	\$ 20,952.60	\$ 129,100.73	\$ 150,053.33	\$ 1,549.04	\$ 148,504.29
Administration	\$ 179.48	\$ 248.51	\$ 265.38	\$ 3,589.60	\$ 22,117.39	\$ 25,706.99	\$ 265.38	\$ 25,441.61
Total	\$ 20,289.26	\$ 28,092.83	\$ 30,000.00	\$ 405,785.20	\$ 2,500,261.87	\$ 2,906,047.07	\$ 30,000.00	\$ 2,876,047.07

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. 12.

Council's Contributions Plans can be viewed at www.thehills.nsw.gov.au or a copy may be inspected or purchased at Council's Administration Centre.

33. Engineering Works and Design

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

- Council's Design Guidelines Subdivisions/ Developments
- Council's Works Specifications Subdivisions/ Developments

Variation from these documents can only be approved by Council's Manager – Subdivision and Development Certification.

Engineering works can be classified as either "subdivision works" or "building works" as categorised below:

- Works within an existing or proposed public road, or works within an existing or proposed public reserve. These works can only be approved, inspected and certified by Council in accordance with the Roads Act 1993 and the Local Government Act 1993 respectively. For Council to issue this approval the following must be provided:
 - 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.
2. Works within the development site, or an adjoining private property, that relates to existing or proposed Council infrastructure assets, such as the laying of a stormwater pipeline or the formation of an overland flowpath within a public drainage easement. These works can only be approved, inspected and certified by Council because Council will have an ongoing risk exposure and management/ maintenance liability with respect to these assets once completed.
- A "compliance certificate" as per Section 109(1)(a)(ii) of the Environmental Planning and Assessment Act 1979 can be issued certifying that the detailed design for these works complies with the requirements listed and the above documents. This "compliance certificate" can be issued by Council's Manager – Subdivision and Development Certification and not a private certifier, as discussed. Once approved, the works must be carried out under the supervision of Council's Construction Engineer in accordance with the terms attached to the issued "compliance certificate". Post construction, a further "compliance certificate" as per Section 109(1)(a)(i) of the Environmental Planning and Assessment Act 1979 can be issued certifying that the as-built infrastructure and associated works have been carried out to the satisfaction of Council's Construction Engineer. Alternatively, these works can be incorporated into any construction approval granted under category (1) above.
3. Works within the development site, or adjoining private properties, that do not relate to existing or proposed Council infrastructure assets, such as water sensitive urban design elements or inter-allotment drainage pipelines. Such works can be approved, inspected and certified by either Council or a private certifier, so long as the private certifier is accredited to do so.

This certification must be included with the documentation approved as part of any Construction Certificate. The designer of the engineering works must be qualified, experienced and have speciality knowledge in the relevant field of work.

The following engineering works are required:

i. Partial Width Road Reconstruction

The partial width reconstruction of the existing roads listed below is required, including any necessary service adjustments and ancillary work required to make the construction effective.

Road Name:	Formation: (Footpath/ Carriageway/ Footpath) (m)	Traffic Loading: N(ESA)
Balmoral Road	Road Type: DCP Enhanced Collector Road (3) 3.5m/ 12.0m/ 4.5m (20.0m total)	5 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.

The wider (4.5m wide) footpath verge must be located on the southern side of Balmoral road as per the pre-planned road layout map from the DCP.

Where partial width reconstruction exists opposite, the completed road must comply with the overall requirements outlined in the table above. Where partial width reconstruction does not exist opposite, you will be responsible for the formation of the footpath verge, kerb and gutter and the reconstruction of 6m of road pavement. This new road pavement must transition into the existing road pavement opposite to provide for a total minimum carriageway width of 10m. Additional pavement reconstruction may be necessary to provide for this carriageway width.

Any requirements relating to partial width road reconstruction from the relevant section of Council's DCP must also be complied with. All works must be carried out in accordance with the submitted traffic safety statement.

The existing road reserve width of Balmoral Road is 20.115m. The additional 115mm is to be evenly distributed on either side of the road carriageway to provide for a slightly wider footpath verge on both sides.

ii. Concrete Footpath Paving

A 1.5m wide concrete footpath, including access ramps at all intersections, must be provided on the northern side of Balmoral Road fronting the site in accordance with the DCP and the above documents.

iii. 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.

iv. Street Names Signs

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

v. Driveway Requirements

The design, finish, gradient and location of the driveway crossing must comply with the above documents and Council's driveway specifications which can be found on Council's website:

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

The proposed driveway must be built to Council's heavy duty standard.

The driveway must be 6m (minimum) wide at the boundary splayed to 7m (minimum) wide at the kerb. The driveway must be a minimum of 6m wide for the first 6m into the site, measured from the boundary.

The turning head provided at the end of the road must be a minimum diameter of 19m measured from the face of kerb on either side.

The engineering plans show the overland flow path/ swale directing the upstream catchment away from the road on the western side of the proposed driveway within the adjacent property. Consent from the owner of 23 Balmoral Road for these works on their land needs to be provided before a Construction Certificate can be issued, or alternatively the design must be amended such that this overland flow path is provided wholly within the subject site.

The engineering plans show a retaining wall along the site's western boundary resulting from the grading of the driveway, which has a one way cross fall towards the boundary. The natural slope of the site falls towards the creek. The driveway is to be redesigned so that it slopes according to the existing contours, removing the need for the retaining wall on the boundary. The ramp leading to the basement car park will need to include a catch drain to direct water in the driveway towards the cul-de-sac head/ stormwater connection to the creek, whilst maintaining the crest in the driveway so that it is protected from floodwaters (the relevant FPL here is RL 61.1 AHD).

The driveway longitudinal section must be amended to ensure the gradient within the Balmoral Road verge is 2% (minimum) falling to the kerb.

The gradient of the ramp leading to the basement car park is 25% (as per Drawing DA004 Revision C) which is steeper than 22%, being the maximum permitted by Council's DCP/ driveway specification. The design must be amended to comply.

vi. Site Stormwater Drainage

The entire site area must be graded, collected and drained by pits and pipes to a suitable point of legal discharge based on a 1 in 10 year ARI storm event.

vii. Stormwater Drainage – Pipe Extension

The stormwater connection to Elizabeth Macarthur Creek must comply with the requirements of Sydney Water, the NSW Office of Water and Council.

viii. Stormwater Drainage – Temporary Management

Grassed swale drains or temporary piped drainage must be installed to intercept, control and redirect surface stormwater runoff from upstream undeveloped properties.

ix. Water Sensitive Urban Design Elements

Water sensitive urban design elements, consisting of 60m³ of rainwater tanks, pit inserts, vegetated filter strips and a gross pollutant trap are to be located generally in accordance with the plans and information submitted with the application.

Detailed plans for the water sensitive urban design elements must be submitted to Council for approval. The detailed plans must be suitable for construction, and include detailed and representative longitudinal and cross sections of the proposed infrastructure. The design must be accompanied, informed and supported by detailed water quality and quantity modelling. The modelling must 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.

These elements must be designed and constructed 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/tools-resources/index.html>
- Australian Runoff Quality – A Guide to Water Sensitive Urban Design, 2005, <http://www.ncwe.org.au/arq/>

34. Basement Car Park and Subsurface Drainage

The stormwater pump-out system must provide for the following:

- a) A holding tank sized to store the run-off from a 12 hour 1 in 100 year ARI storm event;
- b) A alternating two pump system capable of emptying the holding tank at either the Permissible Site Discharge rate or the rate of inflow for a 5 hour 1 in 5 year ARI storm event, whichever is lower;
- c) An alarm system to alert a pump failure;
- d) 100mm freeboard to all nearby parking spaces;
- e) The system must be connected to the Onsite Stormwater Detention system before being discharged to the street, under gravity.

All relevant plans, calculations, hydraulic details and manufacturer specifications for the pump must be submitted with certification from the designer confirming the design complies with the above requirements.

35. 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.

36. Stormwater Discharge to Trunk Drainage Land

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

37. Stormwater Drainage to Natural Watercourse

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

38. Draft Legal Documents

Where an encumbrance on title is required to be created as part of this consent, draft copies of all legal documents must be submitted to Council for checking before a Construction Certificate is issued.

39. Security Bond – Pavement and Public Asset Protection

In accordance with Section 80A(6)(a) of the Environmental Planning and Assessment Act 1979, a security bond of \$40,800.00 is required to be submitted to Council to guarantee the protection of the adjacent road pavement and public assets during construction works. The above amount is calculated at the rate of \$30.00 per square metre based on the public road frontage of the subject site (70m) plus an additional 50m on either side (170m) and the width of the road measured from face of kerb on both sides (8m).

The bond must be lodged with Council prior to the issue of a Construction Certificate.

The value of this bond shall be confirmed with Council prior to submission and may be in the form of cash or an unconditional bank guarantee. The bond is refundable upon written application to Council along with payment of the applicable bond release fee, and is subject to all work being restored to Council's satisfaction. Should the

cost of restoring any damage exceed the value of the bond, Council will undertake the works and issue an invoice for the recovery of these remaining costs.

40. Security Bond – External Works

In accordance with Section 80A(6)(b) of the Environmental Planning and Assessment Act 1979, a security bond is required to be submitted to Council to guarantee the construction, completion and performance of all works external to the site. The bonded amount must be based on 150% of the tendered value of providing all such works. The minimum bond amount is \$10,000.00.

The bond must be lodged with Council prior to the issue of any Construction Certificate.

The value of this bond shall be confirmed with Council prior to submission and may be in the form of cash or an unconditional bank guarantee. The bond is refundable upon written application to Council along with payment of the applicable bond release fee, and is subject to all work being completed to Council's satisfaction.

41. Bank Guarantee Requirements (Development)

Should a bank guarantee be the proposed method of submitting a security bond 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 680/2013/JP;
- 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.

42. 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.

43. Internal Pavement Structural Design Certification

Prior to a Construction Certificate being issued, a Certified Practicing Engineer (CPEng) must submit a letter to Council confirming the structural adequacy of the internal pavement design. The pavement design must be adequate to withstand the loads imposed by a loaded heavy rigid waste collection vehicle (i.e. 28 tonne axle load) from the boundary to the waste collection point including any manoeuvring areas.

44. Landscaping Plan to be submitted

An amended Landscape Plan is to be submitted to Council's Sustainability Team for approval prior to issue of a Construction Certificate certificate. The plan must contain at least 80% of all plants used in landscaping (excluding lawn) for this development must be grown from local provenance seed and cuttings of species found on the NSW Scientific Committee's Final Determinations for Cumberland Plain Woodland/River Flat Eucalypt Forest.

PRIOR TO WORK COMMENCING ON THE SITE

45. Principal Certifying Authority

A sign is to be erected in accordance with Clause 98 A (2) of the Environmental Planning and Assessment Regulations 2000.

46. Builder and PCA Details Required

Notification in writing of the builder's name, address, telephone and fax numbers to be submitted to the Principal Certifying Authority prior to work commencing.

Two days before work commences, Council shall be notified of the Principal Certifying Authority in accordance with the Regulations.

47. Management of Building Sites – Builder's Details

The erection of suitable fencing or other measures to restrict public access to the site and building works, materials or equipment when the building work is not in progress or the site is otherwise unoccupied.

The erection of a sign, in a prominent position, stating that unauthorised entry to the site is not permitted and giving an after hours contact name and telephone number. In the case of a privately certified development, the name and contact number of the Principal Certifying Authority.

48. Approved Temporary Closet

An approved temporary closet connected to the sewers of Sydney Water, or alternatively an approved chemical closet is to be provided on the land, prior to building operations being commenced.

49. Stormwater Management

All existing stormwater pits to the site will be covered with geofabric sediment fencing to prevent sediment runoff into the stormwater system. To prevent sediment contamination the filters will be regularly inspected and replaced during the duration of the works.

50. 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 RMS Traffic Control and Work Sites Manual and submitted to Council for approval. The person preparing the plan must have the relevant RMS accreditation to do so. Where amendments to the approved plan are required, they must be submitted to Council for approval prior to being implemented.

51. 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.

52. Pre-Construction Public Infrastructure Dilapidation Report

A public infrastructure inventory report must be prepared and submitted to Council recording the condition of all public assets in the direct vicinity of the development site. The report shall include:

- a) Designated construction access and delivery routes; and
- b) Photographic evidence of the condition of all public assets. The report shall clearly identify the date of recording.

53. Demolition Works and Asbestos Management

The demolition of any structure is to be carried out in accordance with the *Occupational Health & Safety Regulations 2001* Part 8 and AS 2601-2001. All vehicles transporting demolition materials off site are to have covered loads and are not to track any soil or waste materials on the road. Should demolition works obstruct or inconvenience pedestrian or vehicular traffic on adjoining public road or reserve, a separate application is to be made to Council to enclose the public place with a hoard or fence. All demolition works involving the removal and disposal of asbestos cement must only be undertaken by a licenced asbestos removalist who is licenced to carry out the work. Asbestos removal must be carried out in accordance with the WorkCover Authority, Environment Protection Authority and Office of Environment and Heritage requirements. Asbestos to be disposed of must only be transported to waste facilities licenced to accept asbestos. No asbestos products are to be reused on the site.

54. Protection of Existing Trees

The tree/s that is/are to be retained is/are to be protected during all works strictly in accordance with AS4970-2009 Protection of Trees on Development Sites.

At a minimum a 1.8m high chain-wire fence is to be erected at least three (3) metres from the base of each tree and is to be in place prior to works commencing 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.

All areas within the root protection zone are to be mulched with composted leaf mulch to a depth of not less than 100mm.

A sign is to be erected indicating the trees are protected.

The installation of services within the root protection zone is not to be undertaken without prior consent from Council.

DURING CONSTRUCTION

55.Documentation On Site

A copy of the development consent and stamped plans together with the following documents shall be kept during construction.

- Arborist Report
- Waste Management Plan
- Erosion and Sedimentation Control Plan
- Traffic Control Plan

56.Hours of Work

Work on the project to be limited to the following hours: -

Monday to Saturday - 7.00am to 5.00pm;

No work to be carried out on Sunday or Public Holidays.

The builder/contractor shall be responsible to instruct and control sub-contractors regarding the hours of work. Council will exercise its powers under the Protection of the Environment Operations Act, in the event that the building operations cause noise to emanate from the property on Sunday or Public Holidays or otherwise than between the hours detailed above.

57.Compliance with BASIX Certificate

Under clause 97A of the Environmental Planning and Assessment Regulation 2000, it is a condition of this Development Consent that all commitments listed in BASIX Certificate No. 459807M be complied with. Any subsequent version of this BASIX Certificate will supersede all previous versions of the certificate.

A Section 96 Application **may** be required should the subsequent version of this BASIX Certificate necessitate design changes to the development. However, a Section 96 Application **will** be required for a BASIX Certificate with a new number.

58.Compliance with Critical Stage Inspections and Other Inspections Nominated by the Principal Certifying Authority

Section 109E(d) of the Act requires certain specific inspections (prescribed by Clause 162A of the Regulations) and known as "Critical Stage Inspections" to be carried out for building work. Prior to permitting commencement of the work, your Principal Certifying Authority is required to give notice of these inspections pursuant to Clause 103A of the Regulations.

N.B. An Occupation Certificate cannot be issued and the building may not be able to be used or occupied where any mandatory critical stage inspections or other inspections required by the Principal Certifying Authority are not carried out.

Where Council is nominated as Principal Certifying Authority, notification of all inspections required is provided with the Construction Certificate approval.

NOTE: You are advised that inspections may only be carried out by the PCA unless by prior agreement of the PCA and subject to that person being an accredited certifier.

59. Rock Breaking Noise

Upon receipt of a justified complaint in relation to noise pollution emanating from rock breaking as part of the excavation and construction processes, rock breaking will be restricted to between the hours of 9am to 3pm, Monday to Friday.

Details of noise mitigation measures and likely duration of the activity will also be required to be submitted to Council seven (7) days of receiving notice from Council.

60. Construction Noise

The emission of noise from the construction of the development shall comply with the *Interim Construction Noise Guideline* published by the Department of Environment and Climate Change (July 2009).

61. Contamination

Ground conditions are to be monitored and should evidence such as, but not limited to, imported fill and/or inappropriate waste disposal indicate the likely presence of contamination on site, works are to cease, Council is to be notified and a site contamination investigation is to be carried out in accordance with *State Environmental Planning Policy 55 – Remediation of Land*.

The report is to be submitted to Council for review prior to works recommencing on site.

62. Stockpiles

Stockpiles of topsoil, sand, aggregate or other material capable of being moved by water shall be stored clear of any drainage line, easement, natural watercourse, footpath, kerb or roadside.

63. Dust Control

The emission of dust must be controlled to minimise nuisance to the occupants of the surrounding premises. In the absence of any alternative measures, the following measures must be taken to control the emission of dust:

- Dust screens must be erected around the perimeter of the site and be kept in good repair for the duration of the construction work.
- All dusty surfaces must be wet down and suppressed by means of a fine water spray. Water used for dust suppression must not cause water pollution; and
- All stockpiles of materials that are likely to generate dust must be kept damp or covered.

64. 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.

65. 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.

PRIOR TO ISSUE OF AN OCCUPATION AND/OR SUBDIVISION CERTIFICATE

66.Compliance with Office of Water Requirements

The submission of documentary evidence from the Office of Water that all requirements have been satisfied, prior to the issue of the Occupation Certificate or Subdivision Certificate.

67.Landscaping Prior to Issue of Occupation Certificate

The landscaping of the site shall be carried out prior to issue of the Final Occupation Certificate (within each stage if applicable) in accordance with the approved plan. All landscaping is to be maintained at all times in accordance with BHDCP Part D, Section 3 – Landscaping and the approved landscape plan.

68.Section 73 Certificate

A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation.

Application must be made through an authorised Water Servicing Co-ordinator. Please refer to the Building Development and Plumbing section of the web site www.sydneywater.com.au and then refer to Water Servicing Co-ordinator under “Developing Your Land” or telephone 13 20 92 for assistance.

69.Provision of Electricity Services

Submission of a compliance certificate from the relevant service provider confirming satisfactory arrangements have been made for the provision of electricity services. This includes undergrounding of existing and proposed services where directed by Council or the relevant service provider.

70.Provision of Telecommunications Services

The submission of a compliance certificate from the relevant telecommunications provider, authorised under the Telecommunications Act confirming satisfactory arrangements have been made for the provision of, or relocation of, telecommunication services including telecommunications cables and associated infrastructure. This includes undergrounding of aerial telecommunications lines and cables where required by the relevant telecommunications carrier.

71.Design Verification Certificate

Prior to the release of the Occupation Certificate design verification is required from a qualified designer to confirm that the development has been constructed in accordance with approved plans and details and has satisfied the design quality principles consistent with that approval.

72.Acoustic Compliance Report

The acoustic consultant shall progressively inspect the installation of the required noise suppressant components as recommended in report titled TG013-01F01 (REV 0) ACOUSTIC REPORT FOR DEVELOPMENT APPLICATION prepared by Renzo Tonin and Associates dated 21st November 2012.

Certification is to be provided to Council as to the correct installation of components and that the required criteria's have been met.

73.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” or “.pdf” 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.

74.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.

75.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.

76.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).

77.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.

78.Completion of Engineering Works

An Occupation Certificate must not be issued prior to the completion of all engineering works covered by this consent, in accordance with this consent.

79.Post Construction Public Infrastructure Dilapidation Report

Before an Occupation Certificate is issued, an updated public infrastructure inventory report must be prepared and submitted to Council. The updated report must identify any damage to public assets in the direct vicinity of the development site and the means of rectification for the approval of Council.

80.Creation and Registration of Restrictions and Positive Covenants

a) Creation of Restrictions and Positive Covenants

The submission to Council of all necessary documentation together with payment of the endorsement fee prescribed in Council's Schedule of Fees and Charges to create the following over the title of the property. The wording must nominate The Hills Shire Council as the authority to release, vary or modify each restriction or positive covenant. Standard wording is available on Council's website and must be used.

i. Restriction – WSUD Modification

A restriction restricting development over or the varying of any finished levels and layout of the constructed water sensitive urban design elements.

ii. Positive Covenant – WSUD Maintenance

A positive covenant to ensure the ongoing maintenance of the constructed water sensitive urban design elements at the expense of the property owner.

iii. Positive Covenant – Stormwater Pump Maintenance

A positive covenant to ensure the ongoing maintenance of the constructed stormwater pump-out system at the expense of the property owner.

iv. Restriction – Bedroom Numbers

A restriction must be created on the title of each dwelling limiting the number of bedrooms to that shown on the plans and details approved with this consent. The restriction must also state that no internal alterations are permitted that result in the creation of additional bedrooms.

b) Registration of Request Documents

The request documents endorsed by Council must be registered and a copy of the registered documents submitted to Council before an Occupation Certificate is issued.

81.Pump System Certification

Certification that the stormwater pump system has been constructed in accordance with the approved design and the conditions of this approval must be provided by a suitably qualified hydraulic engineer.

82.Completion of Water Sensitive Urban Design Elements

An Occupation Certificate must not be issued prior to the completion of the WSUD elements conditioned earlier in this consent. The following documentation must be submitted in order to obtain an Occupation Certificate:

- a) WAE drawings and any required engineering certifications;
- b) Records of inspections;
- c) An approved operations and maintenance plan; and

d) A certificate of structural adequacy from a suitably qualified structural engineer verifying that any structural element of the WSUD system are structurally adequate and capable of withstanding all loads likely to be imposed on them during their lifetime.

Where Council is not the PCA a copy of the above documentation must be submitted to Council.

83. Internal Pavement Construction

Prior to an Occupation Certificate being issued, a Certified Practicing Engineer (CPEng) must submit a letter to Council confirming that the internal pavement has been constructed in accordance to the approved plans, and is suitable for use by a loaded heavy rigid waste collection vehicle.

84. Agreement for Onsite Waste Collection

Prior to an Occupation Certificate being issued, an Indemnity Agreement is to be obtained from Council by the applicant, completed, signed and returned to Council for approval to enable the ongoing onsite collection of waste from the use of the development by Council and its contractor.

85. Final Inspection of Waste Storage Areas

Prior to an Occupation Certificate being issued, a final inspection of each waste storage area must be arranged by the Principal Certifying Authority and must be undertaken by Council. This is to ensure compliance with Council's design specifications and the approved plans. The time for the inspection must be arranged with Council at least 48 hours prior to the Principal Certifying Authority's suggested appointment time.

THE USE OF THE SITE

86. Protection of Internal Noise Levels

The required internal noise levels for the development are as follows;

Location	Time period	Noise Limit dBA _{L_{Aeq}}
Bedrooms of all units with doors and windows closed	Day	40
	Night	35
All other habitable areas with doors and windows closed	Day	40
	Night	40

An appropriately qualified acoustic consultant shall be engaged to certify that the development meets the internal noise level criteria specified above. A copy of this certification shall be submitted to Council prior to the issue of the occupation certificate.

87. Lighting

Any lighting on the site shall be designed so as not to cause a nuisance to other residences in the area or to motorists on nearby roads and to ensure no adverse impact on the amenity of the surrounding area by light overspill. All lighting shall comply with the *Australian Standard AS 4282:1997 The Control of Obtrusive Effects of Outdoor Lighting*.

88. Domestic Waste Management

Engagement of a caretaker or manager responsible for the movement of all recycling bins to the kerb of the access road on the allocated day of collection, and returning the empty bins to their storage place inside each building as soon as possible the same day as collection. Caretaker or manager responsibilities shall also include the following:

- Washing of bins and the bin storage area;
- Arranging for the prompt removal of dumped rubbish; and
- Ensuring all residents are informed of the waste arrangements.



G T Brown
Commissioner of the Court