

**JOINT REGIONAL PLANNING PANEL
(Sydney West Region)**

JRPP No	JRPP Reference Number: 2014SYW002
DA Number	DA/709/2011/E
Local Government Area	Parramatta City Council
Proposed Development	<p>Section 96 (2) modification to an approved development comprising a 3 lot Torrens title subdivision with earthworks and retaining walls, construction of a Bunnings Warehouse on proposed Lot 1 with associated signage and carparking.</p> <p>The modification seeks approval for a revised vegetation management plan to address the removal of vegetation required to be maintained on the site, and to incorporate a Voluntary Planning Agreement that seeks to redress the vegetation loss by investment in an upstream natural area. The modification will be determined by the Western Sydney Joint Regional Planning Panel.</p>
Street Address	312-316 Victoria Road Rydalmere (Lots 1-3 DP 1177708)
Applicant and Owner	Bunnings Properties Pty Ltd
Number of Submissions	Nil
Regional Development Criteria	The development has a capital investment value of greater than \$5 million dollars and relates to a site with Council interest
List of All Relevant s79C(1)(a) Matters	State Environmental Planning Policy 55 – Remediation of Land, State Environmental Planning Policy 65 (Design Quality of Residential Flat Buildings), State Environmental Planning Policy (Infrastructure) 2007, Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (Deemed SEPP) Parramatta City Centre LEP 2007, Parramatta Development Control Plan 2011
Recommendation	Approval
Report by	Liam Frayne, Senior Development Assessment Officer



Parramatta City Council	
(January 2012 Version)	
File No:	DA/709/2011/E

ASSESSMENT REPORT – SECTION 96 MODIFICATION

Environmental Planning & Assessment Act 1979

SUMMARY

Application details

DA No:	DA/709/2011/E
Assessment Officer:	Liam Frayne
Property:	Lots 1-3 DP 1177708, 312 -316 Victoria Road, RYDALMERE
Proposal:	<p>Section 96 (2) modification to an approved development comprising a 3 lot Torrens title subdivision with earthworks and retaining walls, construction of a Bunnings Warehouse on proposed Lot 1 with associated signage and carparking.</p> <p>The modification seeks approval for a revised vegetation management plan to address the removal of vegetation required to be maintained on the site, and to incorporate a Voluntary Planning Agreement that seeks to redress the vegetation loss by investment in an upstream natural area. The modification will be determined by the Western Sydney Joint Regional Planning Panel.</p>
Date of receipt:	7 January 2014
Applicant:	Bunnings Properties Pty Ltd
Owner:	Bunnings Properties Pty Ltd, at time of lodgement. Lot 1 is now owned by BWP

Management and lot 3 by Parramatta City Council.

Submissions received:	Nil
Property owned by a Council employee or Councillor:	No
Issues:	Nil
Recommendation:	Approval subject to conditions

Legislative requirements

Zoning:	IN1 General Industrial
Permissible under:	Parramatta Local Environmental Plan 2011
Relevant legislation/policies:	Parramatta Development Control Plan 2011, Section 94A Plan, Notification DCP, SEPP (Infrastructure) 2007, SEPP 55 – Remediation of Land, Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005
Variations:	Nil
Integrated development:	The original Development Application was Integrated Development under the Water Management Act 2000.
Crown development:	No

The site

Site Area:	8.402 ha
Easements/rights of way:	Yes – easement for electricity substation
Heritage item:	No
In the vicinity of a heritage item:	No
Heritage conservation area:	No
Relevant Site History:	Yes

Note:

Lot 1 – Bunnings Warehouse

Lot 2 – McDonalds Restaurant

Lot 3 – Parramatta City Council Rydalmere Operations Centre

DA/709/2011 - Three lot Torrens title subdivision with earthworks and retaining walls, construction of a Bunnings Warehouse on proposed Lot 1 with associated signage and carparking approved by the Sydney West Joint Regional Planning Panel on 31/8/2012

DA/507/2012 - Construction of an Operations Centre for Parramatta Council on proposed lot 3 in an approved re-subdivision of Lot 1 DP 883008. The proposal is Nominated Integrated Development as an approval is required under the Water Management Act 2000 approved by the Sydney West Joint Regional Planning Panel on 13/12/2012

DA/709/2011/A - Section 96(1A) modification to comprising amendments to the conditions of consent to remove the requirement specifying an area for the staff room, removal of specific area requirements for the waste storage area, correcting incorrect DA references in two conditions, and change to the hours of operation condition to clarify that restocking, store cleaning, and staff training could be conducted outside the defined operating hours.

DA/709/2011/B – Section 96(1A) modifications to signage, building height and building layout for the warehouse approved by Council on 17/7/2013

DA/709/2011/C - Section 96(1A) modification seeking deletion of conditions with respect to crossings required to Victoria Road partially approved by Council 9/9/2013

DA/709/2011/D - Section 96(1A) modification to the conditions of consent to allow shade cloth be fitted to the landscape area, relocation of a sign, provision of a canopy over the nursery entrance and modification of the timber trade sales area approved by Council on 11/11/2013

SC/134/2013 - Torrens title subdivision of the land into 3 lots approved by Council on 24/12/2013

DA/709/2011/F - Section 96 (1A) modification to conditions 105 and 114 relating to timing of completion of road works. The modification was approved by Council on 10 March 2014.

DA/709/2011/G - Section 96(1A) modification for a boundary readjustment to increase the size of lot 2. The modification was approved by Council staff on 18 May 2014.

DA/510/2014 –Development application for the Construction of a McDonald's Restaurant including dual lane drive-thru, carparking and associated signage on lot 2 was approved on 28 October 2014.

SC/188/2014 lodged with Council seeking a boundary adjustment between Lots 1 and 2.

DA history

7 January 2014	Application lodged
22 January to 5 February 2014	Application notified to surrounding properties for a period of 14 days.
13 January 2014	Comments received from NSW Office of Environment & Heritage: no objections raised subject to the revised Vegetation Management Plan being implemented and the Voluntary Planning Agreement funding is provided to Council, in accordance with any Council conditions on the s96(2) amendment.
24 February 2014	<p>Council considered a report on the Voluntary Planning Agreement and resolved:</p> <ul style="list-style-type: none"> (a) That Council proceed with negotiations for matters for inclusion in a draft Voluntary Planning Agreement (VPA) as detailed in this report in relation to the current site development. (b) That Council authorises the CEO to negotiate and finalise the legal terms of the draft VPA on behalf of Council. (c) That the draft VPA be publicly exhibited in accordance with Council's Planning Agreements Policy. (d) Further, that the outcomes of the public exhibition of the draft VPA be reported back to Council.
19 August 2015	Voluntary Planning Agreement signed by both parties.

SECTION 96 ASSESSMENT

SITE & SURROUNDS

The site is located on the northern side of Victoria Road, opposite intersections with Euston Street and Clyde Street, Rydalmere. At the time of the original approval, the site consisted of a large irregular 'L' shaped allotment.

The site has a frontage to Victoria Road of 221m and a cumulative site area of 8.402ha.

The land has an irregular rear boundary of 331.5m to Council's riparian corridor along Subiaco Creek. The site has a western side boundary of 317.7m and an irregular eastern boundary of 435.1m.

The site has a history of industrial/warehouse uses, but was remediated under a 2005 development consent to (DA/773/2005). The original application which this

application seeks to amend was accompanied by a Site Audit Statement that stated that the site in its present state is suitable for commercial/industrial purposes.

Development in proximity to the site is of mixed character and use, with industrial uses located to the west and east of the subject site, residential uses located to the rear of the site, across Subiaco Creek and a mix of showroom and industrial uses located on the opposite side of Victoria Road. It is noted that the natural barriers of Subiaco Creek and Victoria Road clearly separate the large-lot industrial area within which the site is situated from other uses.

Three approved uses are operating on the site, with their buildings completed. Lot 1 contains a Bunnings Warehouse (approved under this consent), Lot 3 contains Parramatta City Council's Rydalmere Operations Centre (approved under DA/507/2012), and Lot 2 a McDonald's Restaurant (separately approved under DA/510/2014).

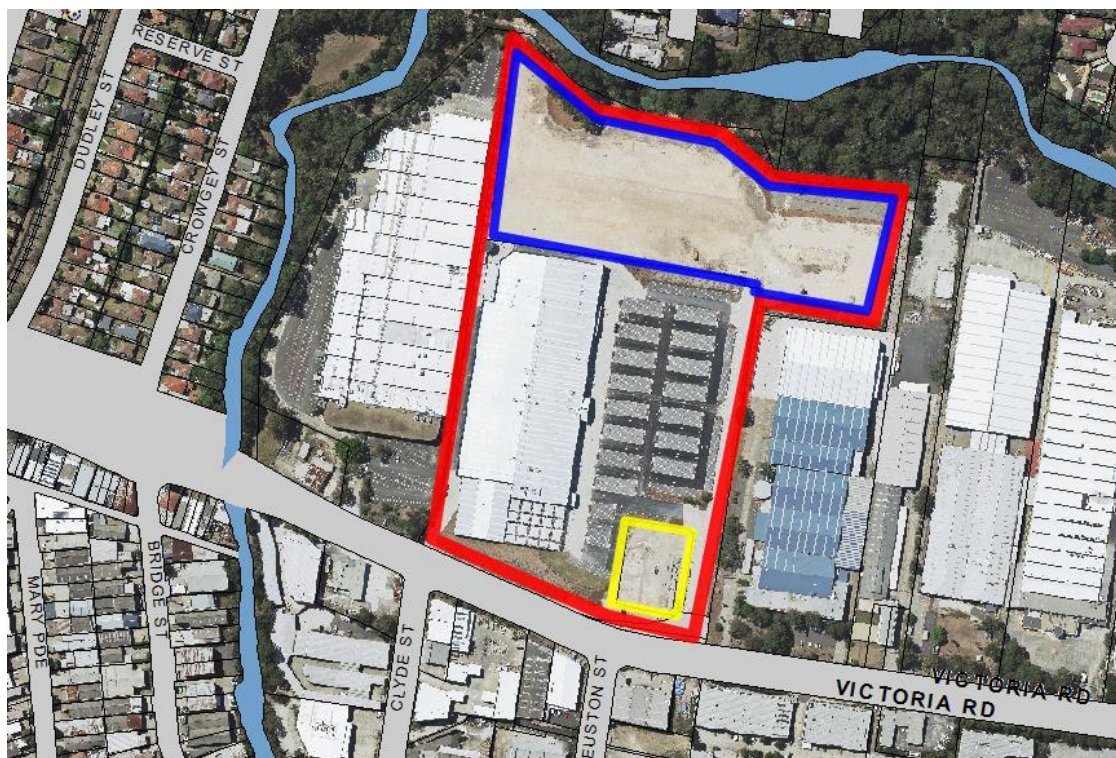


Figure 1: 2014 Aerial photograph of the site showing the completed Bunnings Warehouse on Lot 1, the Parramatta Council Rydalmere Operations Centre site (Lot 3 in blue) and the McDonalds site (Lot 2 in yellow). It is noted that Lots 2 and 3 have been developed since this aerial photograph.

Discussion of site vegetation and background



Figure 2: Aerial photograph from 2011 showing the site boundaries (in red) and the approximate extent of the unauthorized vegetation removal (in yellow).

The vegetation in the creek reserve to the rear of the site consists of Blue Gum High Forest, which, in the Sydney Basin Bioregion is listed as a critically endangered ecological community under Schedule 1A of the Threatened Species Conservation Act 1995.

At the time of assessment of the original application, the rear of the development site contained vegetation that had grown from the creek reserve onto the rear of the site following site works around 1930. The application proposed removal of all vegetation from the site.

The applicant's ecologist did not consider that this met the definition of an endangered ecological community (EEC) as it was growing on a previously disturbed earth. In contrast, an ecologist engaged by Council considered that the vegetation was Blue Gum High Forest regrowth and constituted an EEC regardless of whether or not the site had previously been cleared.

In light of this difference of professional opinion, the report for the original application advocated a precautionary approach whereby the vegetation subject to the discussion would be retained, first to ensure its protection if it did in fact constitute an EEC, and second, even if it did not constitute an EEC, to provide a vegetation buffer to the Blue Gum High Forest EEC in the creek reserve.

In this regard, conditions were proposed (and subsequently adopted by JRPP) to protect these trees by creation of a buffer area, the width of which was to be determined by the structural root zones of the trees that the ecologist retained by Council indicated in his opinion formed part of the EEC.

Additionally, the conditions required a vegetation management plan to outline how this vegetation would be retained and where necessary regenerated.

In June 2013, the bulk of vegetation in area 2b (shown in yellow figure 2 above and referenced in the conditions below) in the north eastern corner of the site was removed without consent by the site contractor. Vegetation in other areas of the site remains intact.

Following investigation by Council's compliance unit and by the Department of Environment and Heritage, and as redress for the damage caused, the applicant proposed to:

- (1) Revegetate the impacted area of the site; and additionally;
- (2) Enter into a Voluntary Planning Agreement with Council to facilitate a monetary contribution for bushland regeneration works to an area of similar quality to the lost vegetated area.

The conditions included in this regard stated the following:

Deferred Commencement condition "a"

The area between the northern and eastern boundaries of proposed Lot 3 and a line created by the root protection zones of the following trees (Trees T186, T84, T77, T128, and T145) stretching to the eastern boundary (a minimum of 20m south of the northern boundary) is to be retained at the existing level (ie no cut or fill is to occur) and the indigenous trees and vegetation within is to be retained. The root protection zone is to be identified by a suitably qualified arborist and is to be determined by an assessment of the area of the tree roots which must be retained (as identified in red on the approved plan, Drawing Nos DAC005, issue F, and DA006, Issue D) without any fill to ensure the protection of the trees. This A batter slope is to commence at the line and slope back to the finished level of the building platform.

Deferred Commencement condition "b"

The area within the 'gully' located at the north-western corner of the site is to be retained at the existing level (i.e. no cut or fill is to occur) and the indigenous trees and vegetation within is to be retained (inclusive of Trees T99-T109)

Deferred Commencement condition "c"

A suitably qualified arborist is to assess the area of the roots of the trees located within the adjacent reserve in close proximity to the site boundary tree which must be retained without any fill to ensure the protection of trees. The location of the batter slope for the fill is to be relocated accordingly.

Deferred Commencement condition "e"

The proposed vegetated buffer adjacent to the northern boundary of the site shall be provided to the top of the proposed fill batter (as shown amended in red on the approved plans and as amended by the deferred commencement conditions).

Notes: The batter slopes identified above can be replaced by suitably designed retaining walls made using suitable rock to create habitat for native species in lieu of batter slopes if desired. The identified finished levels of the building platforms are not to be increased from that shown on the approved plans in the above changes.

Background Comment:

Information to address the deferred commencement requirements above was submitted to Council on 2 August 2012 and on 16 August 2012 Council's Open Space and Natural Resources team advised that the information submitted satisfactorily addressed matters a, b, c, and e above.

Condition 30

A Vegetation Management Plan (VMP) shall be prepared by an ecological consultant who has experience in the regeneration of Blue Gum High Forest. The VMP must be approved by Parramatta City Council Open Space and Natural Resource team prior to the release of the construction certificate for the subdivision works.

The site must be divided into 2 main management units;

Area 1 - the toe of the embankment to the top of the embankment identified as a revegetation area (as shown highlighted in blue on Drawing Nos. DAC005, Issue F and DAC006, Issue D, as amended by the deferred commencement conditions).

Area 2 – The eastern section buffer between trees 129 and 169 to be identified as a bushland regeneration area and the 'gully' at the north western corner of the site (as marked in red on Drawing Nos. DAC005, Issue F and DAC006, Issue D, as amended by the deferred commencement conditions).

Each of these management units is to have separate actions that relate to the different type of environmental restoration works needed within these areas.

Area 1 – Is to be revegetated with tube stock grown from seedlings or seed collected within local Blue Gum High Forest remnants for the tree canopy species or seeds collected within regional Blue Gum High Forest areas for the shrub and ground cover species. Species selection should include a mix of ground cover, shrub layer and canopy species that are representative of the mix found within a Blue Gum High Forest. The proponent is to fund the implementation of the VMP in Area 1 for a period of two years after the release of the occupation certificate. This is to include plant establishment and maintenance.

Area 2 – A bushland regeneration program is to be funded within this zone to preserve and protect the existing Blue Gum High Forest species present. The proponent is to fund the implementation of the VMP in Area 2 for a period of two years after the release of the occupation certificate. The indigenous trees, shrubs and groundcovers within this Area must be protected during construction through appropriate sediment control techniques.

A costing for the funding of the above vegetation management plan is to be prepared and evidence provided to Council that money has been allocated for the works, by way of a bond, bank guarantee or other agreed arrangement, prior to the release of the subdivision certificate.

Background Comment:

A VMP was reviewed by Council and found satisfactory by Council's Open Space and Natural Resources team on 26 September 2012 addressing the first requirement

of this condition that needed to be addressed prior to the release of a Construction Certificate. The approved VMP required retention of the trees that were removed during works on the site.

Condition 97

The eastern section of buffer located between the Council reserve and tree number 129 through to 169 shall be dedicated as an Environmental Protection Zone and managed through recognised bushland regeneration practices and principles.

Prior to issue of the Subdivision Certificate, the applicant must create a positive covenant under Section 88E of the Conveyancing Act 1919, burdening the property with the requirement to maintain the vegetation within the environmental protection zone (Area 3) on the property. The terms of the instruments are to be generally in accordance with the vegetation management plan and to the satisfaction of Council (refer to Council's Open Space and Natural Resource Planner for terms). The location of the environmental protection zone subject to works, within the lot, must be shown on a scale sketch, attached as an annexure to the request forms. Registered title documents showing the covenants must be submitted to and approved by the Principal Certifying Authority prior to issue of an Occupation Certificate.

Reason: To ensure and enhance the protection of the critically endangered Blue Gum High Forest vegetation and ensure the long-term viability of the environmental protection zone via stabilisation of soils, improvement of water quality and reduction in exotic weeds.

Background Comment

A subdivision certificate (SC/134/2013) was issued subject to the wording of Condition 97 being amended to reflect the fact that an amended vegetation management plan would likely be required, and this would require replanting to occur as a result of the unauthorized tree removal. The covenant therefore references the 'latest' vegetation management plan as being the document to be complied with.

THE PROPOSAL

In June 2013, a contractor working on the site removed the bulk of vegetation in Area 2b as shown in the diagram above.

The area where removal occurred is 2,380m² of the total 2964m² in area 2b, and was subject to conditions requiring compliance with a vegetation management plan under which this area of vegetation was to have been retained and replenished.

The current application seeks to resolve the discrepancy between the post-work site conditions and the outcome sought by the consent. In order to do this, the applicant proposes a revised vegetation management plan that removes references to retention of the existing trees in the cleared area and outlines enhanced revegetation measures to enable regeneration of the damaged area.

Additionally, the applicant has entered into a Voluntary Planning Agreement with Parramatta City Council to make a monetary contribution towards bush regeneration works at Ponds Creek Reserve located at 15 Sturt Street Dundas as an off-set for the loss of the established trees removed.

To administratively facilitate these changes, the applicant seeks the following modifications to the Development Consent as issued (changes in **bold**):

Amend Condition 1 to read as follows:

1. The development is to be carried out in compliance with the following plans and documentation listed below, as amended in red, and endorsed with Council's stamp, subject to any changes required by conditions of this consent.

Drawing N°	Dated
Plan of Subdivision, Plan No. 72768 P'SUB Sheet 1 of 1, Ver E, prepared by Land Partners	2/12
Cover Sheet, Notes and Legends, Drawing No. DAC001, Issue D, prepared by AT & L Civil Engineers and Project Managers	10-2-12
General Arrangement Plan, Drawing No. DAC003, Issue D, prepared by AT & L Civil Engineers and Project Managers	10-2-12
Bulk Earthworks and Demolition Plan Sheets 1 and 2, Drawing Nos. DAC005, Issue G and DAC006, Issue E, prepared by AT&L Civil Engineers and Project Managers, as amended by the Survey of Trees Removed from Exclusion Zone, Plan No. 7768.001 Removal of Trees, prepared by Land Partners, dated 03/07/13	24/7/2012
Site works and Stormwater Drainage Plan, Drawing Nos. DAC010, , Issue F, prepared by AT & L Civil Engineers and Project Managers	12/4/12
Site works and Stormwater Drainage Plan Sheets, Drawing Nos. DAC012,13 and14 Issue E, prepared by AT & L Civil Engineers and Project Managers	24/7/12
Site works and Stormwater Drainage Plan DAC011, Issue E, prepared by AT & L Civil Engineers and Project Managers	10/2/12
Typical Sections, Drawing No. DAC020, Issue F, prepared by AT & L Civil Engineers and Project Managers	24/7/12
Pavement, Signage and Line marking Plan, Sheets 1-2, Drawing No. DAC025 and-26, Issue D, prepared by AT & L Civil Engineers and Project Managers	10-2-12
Sedimentation and Erosion Control Plan Sheets 1-2, Drawing No. DAC030-31, Issue D, prepared by AT & L Civil Engineers and Project Managers	10-2-12
Architectural Plans – Site Plan, Job No. 12320, Drawing No. S96-1100, Issue 3, prepared by Group GSA	22/10/13
Architectural Plans – Warehouse & mezzanine Level Floor, Sections and Elevations Plans, Drawing Nos.	12.01.12

Drawing N°	Dated
100, 120 and 130, Amd B, prepared by John R Brogan & Associates as amended by Roof, Elevation and Sections, Job No. 12320, Drawing Nos. 2201, 2202, 3002 and 3102, Issue 2, and Ground Floor, Job No. 12320, Drawing Nos. S96-2001 and S96-2002, Issue 3, all prepared by Group GSA	9/9/13 22/10/13
Landscape Plans – Drawing Nos. L000-4, Rev F, prepared by Habitation	09.02.12

Document(s)	Dated
Statement of Environmental Effects prepared by DFP Planning Consultants (inclusive of all attachments)	October 2011
Letter from Bunnings entitled “Proposed Subdivision and Bunnings Development (DA 709/2011) Amendment to Application and Response to Letters Dated 6 December 2011 & 8 February 2012 (inclusive of all attachments)	1 March 2012
Letter from dfp planning consultants titled ‘Section 96(1a) application to modify development consent no. DA/709/2011/D 316 Victoria Road Rydalmere’, ref: 7855C.2DK including all attachments	16 January 2014

Reason: To ensure the event is carried out in accordance with the approved plans.

Note: To the extent of any inconsistency between the *Bulk Earthworks and Demolition Plan/ Site Works and Stormwater Drainage Plans* and other plans referenced in condition 1 these plans shall prevail.

Reason: To ensure that the deferred commencement conditions are complied with.

Amend Condition 30 as follows:

30. **An updated** Vegetation Management Plan (VMP) shall be prepared by an ecological consultant who has experience in the regeneration of Blue Gum High Forest. The **updated** VMP must be approved by Parramatta City Council Open Space and Natural Resource team prior to the **implementation of the updated VMP**.

The site must be divided into 2 main management units;

Area 1 - the toe of the embankment to the top of the embankment identified as a revegetation area (as shown highlighted in blue on Drawing Nos. DAC005, Issue F and DAC006, Issue D, as amended by the deferred commencement conditions.

Area 2 – The eastern section buffer between trees 129 and 169 to be identified as a bushland regeneration area (**Area 2a**) and a revegetation area (**Area 2b**) and the 'gully' at the north western corner of the site (as marked in red on Drawing Nos. DAC005, Issue F and DAC006, Issue D, as amended by the deferred commencement conditions).

Each of these management units is to have separate actions that relate to the different type of environmental restoration works needed within these areas.

Area 1 – Is to be revegetated with tube stock grown from seedlings or seed collected within local Blue Gum High Forest remnants for the tree canopy species or seeds collected within regional Blue Gum High Forest areas for the shrub and ground cover species. Species selection should include a mix of ground cover, shrub layer and canopy species that are representative of the mix found within a Blue Gum High Forest. The proponent is to fund the implementation of the VMP in Area 1 for a period of two years after the release of the occupation certificate. This is to include plant establishment and maintenance.

Area 2 – A bushland regeneration **and revegetation** program is to be funded within this zone to preserve and protect the **remaining** Blue Gum High Forest species present **and to revegetate Area 2b**. The proponent is to fund the implementation of the VMP in Area 2 for a period of two years after the release of the occupation certificate. The indigenous trees, shrubs and groundcovers within this Area must be protected during construction through appropriate sediment control techniques.

A costing for the funding of the above vegetation management plan is to be prepared and evidence provided to Council that money has been allocated for the works, by way of a bond, bank guarantee or other agreed arrangement, prior to the release of the subdivision certificate.

Insertion of a new condition:

“The applicant shall comply with terms of the Planning Agreement dated 19 August 2015 between Parramatta City Council and Bunnings Properties Pty Ltd.”

PERMISSIBILITY

Parramatta Local Environmental Plan 2011

The approved Bunnings use is defined as 'hardware and building supplies', 'landscaping material supplies' and 'plant nurseries' premises under Parramatta LEP 2011.

The approved use is permissible under the IN1 zoning applying to the land. This S96(2) Modification will not alter compliance with the permissibility of the use in the zone.

REFERRALS

External:

NSW Office of Environment & Heritage

The development application was referred to the NSW Office of Environment & Heritage for comment as that department had been investigating action against the applicant with respect to removal of the vegetation in question.

The advice from the NSW Office of Environment & Heritage states that provided the revised VMP is implemented and the VPA funding is provided to Council to compensate for the damage caused, in accordance with any Council conditions on the S96(2) amendment, they will not further pursue an investigation of the Blue Gum High Forest.

Planning Comment:

Condition 30 of the consent will be amended to reflect the updated VMP being implemented, and proposed Condition 5(a) of the consent will be imposed requiring the applicant to enter into a Planning Agreement with Parramatta City Council to provide funding for the regeneration of the nearby area of Blue Gum High Forest in Ponds Creek Reserve over a three year period.

NSW Office of Water

The application was referred to the NSW Office of Water on 9 January 2014, as the original DA was Integrated Development. The Office of Water had no comment with respect to this application and no change to the previously issued General Terms of Approval are required.

Internal:

Open Space & Natural Area Planner

Council's Open Space & Natural Area Planner has advised that the amended VMP scope of works and the proposed VPA are supported, as they will provide a positive biodiversity outcome for the catchment. The Officer has recommended that the works under the VPA are to be implemented over a 3 year period, and the additional cost of increased scope of works within the amended Vegetation Management Plan is not to be funded from the Planning Agreement with Parramatta City Council. The additional cost of the amended scope of works under the VMP is to be funded by the applicant. Relevant conditions will be imposed reflecting this.

PUBLIC CONSULTATION

In accordance with Appendix 5 of DCP 2011, owners and occupiers of surrounding properties and previous objectors were given notice of the application for a 14 day period between 22 January and 5 February 2014. In response no submissions were received.

Amended Plan

No

SECTION 96 MATTERS OF CONSIDERATION

Has the consent lapsed?

No (the building works on the site have been completed).

Section 96(2) Modification

Substantially the same development

The development to be modified is considered to be substantially the same development as that to which the original development consent relates, being subdivision, earthworks and retaining walls and the construction of a Bunnings Warehouse on proposed Lot 1.

The proposed amendments will not change the approved development. It does however seek approval for the removal of more trees than originally approved. The clearing of vegetation will be mitigated by the implementation of a revised VMP and the agreement of Bunnings to enter into a planning agreement with Parramatta Council.

Consultant with the relevant Minister, public authority or approval body

The application was referred to the NSW Office of Environment & Heritage, who provided comments. No objection was raised provided the revised VMP is implemented and the VPA funding is provided to Council.

The application was also referred to the NSW Office of Water, however no response was received.

Notification & Submissions

The application has been notified in accordance with Appendix 5 of DCP 2011 and no submissions were received.

Consideration of Submissions

No submissions were received.

Section 79C Assessment

The proposed modifications have been assessed in accordance with the matters for consideration under Section 79C of the EP&A Act, 1979 as follows:

SEPP (Infrastructure) 2007

While SEPP (Infrastructure) applies to the site, the policy is not relevant to the proposed modifications which relate to vegetation at the rear of the site (away from Victoria Road).

SEPP 55 Remediation of Land

The proposed works do not alter the previous assessment of contamination done for the site under the previous Development Applications for subdivision and building works (DA/709/2011 and DA/507/2012). The site had previously been remediated. It is understood that the provisions of SEPP55 have already been met and the site is suitable for the use proposed.

This proposed modification does not affect this.

Local Environmental Plan 2011

The site is zoned IN1 General Industrial. The approved development is permissible in the zone as previously detailed.

The objectives of the IN1 Zone are:

- *To provide a wide range of industrial and warehouse land uses.*
- *To encourage employment opportunities.*
- *To minimise any adverse effect of industry on other land uses.*
- *To support and protect industrial land for industrial uses.*
- *To facilitate a range of non-industrial land uses that serve the needs of workers and visitors.*

The proposed modification will result in a development that is consistent with these zone objectives.

Clause 5.9 of the LEP relates to the removal of trees or vegetation. This clause is not relevant to the proposal as it contains no mechanism to allow for the retrospective removal of trees.

The application instead seeks to modify existing conditions that refer to a vegetation management plan which can no longer be adhered to given the unauthorized removals that occurred on site.

It is noted that Clauses 6.4 and 6.5 relating to Biodiversity Protection and Water Protection do not apply to the proposal as the site does not contain, and does not adjoin, land listed on the LEP Natural Resources – Biodiversity Map or LEP Natural Resources – Riparian Land and Waterways Map.

No other clause of LEP 2011 is relevant to the proposed modifications.

Development Control Plan 2011

The proposal is compared to the relevant clauses of LEP 2011 as follows:

2.4.2.2 Protection of Waterways

This control requires that development makes provision for buffer areas for the preservation and maintenance of floodway, riparian corridors, and habitat protection.

The control also seeks for such a buffer zone to be planted with locally indigenous species.

The proposed amendments to the Vegetation Management Plan will still maintain that vegetation that still exists on the site, and will additionally bring about the replanting and bush regeneration of the area that was cleared without consent. This area will provide a buffer to the adjoining remnant bushland.

The proposal is therefore consistent with the provisions of Clause 2.4.2.2.

2.4.7 Biodiversity

The relevant requirements of this part of the DCP is that further planting of appropriate trees and landscaping be encourage to assist regeneration of existing ecosystems. The modifications to the vegetation management plan proposed will facilitate regeneration of the area of bush damaged during works on site. Species proposed are appropriate for this location.

The proposal is therefore satisfactory with respect to the relevant clauses of DCP 2011.

SECTION 94A

An adjusted Section 94A development contribution is not payable as the value of the modification works does not increase as a result of the proposed modifications.

Voluntary Planning Agreement

Parramatta City Council at its meeting of 24 February 2014 considered a report on the VPA and endorsed proceeding with negotiations for the VPA and publicly exhibiting it.

The VPA was signed on 19 August 2015 by both parties.

The voluntary planning agreement is to facilitate Council revegetating Ponds Creek Reserve at 15 Sturt Street Dundas by payment of a monetary contribution towards the works.

Ponds Creek Reserve is in the same catchment as the development site, contains a Blue Gum High forest of a similar structure and quality that existed on this development site before its removal.

Given this the VPA will facilitate the restoration of a bushland community that will provide a benefit to the wider community, and will provide some redress for the damage caused by removal of the vegetation on site during works.

Conclusion

After consideration of the development against Section 79C of the Environmental Planning and Assessment Act 1979, and the relevant statutory and policy provisions, the proposal is suitable for the site and is in the public interest. Therefore, it is recommended that the application be approved subject to the imposition of appropriate conditions.

Recommendation

Approval

That the Sydney West Joint Regional Planning Panel, as the consent authority, modify development consent DA/709/2011 for a 3 lot Torrens title subdivision with earthworks and retaining walls, construction of a Bunnings Warehouse on proposed Lot 1 with associated signage and carparking to include modifications comprising amendments to Conditions 1 and 30, and the imposition of new condition 5(a) relating to the Amended Vegetation Management Plan prepared by Abel Ecology and reference to the Voluntary Planning Agreement between Bunnings and Parramatta City Council, on land at 316 Victoria Road Rydalmere, for a period of five (5) years for physical commencement to occur from the date on the **original** Notice of Determination subject to the following modifications:

1. Amend Condition No. 1 as follows:

The development is to be carried out in compliance with the following plans and documentation listed below, as amended in red, and endorsed with Council's stamp, subject to any changes required by conditions of this consent.

Drawing N°	Dated
Plan of Subdivision, Plan No. 72768 P'SUB Sheet 1 of 1, Ver E, prepared by Land Partners	2/12
Cover Sheet, Notes and Legends, Drawing No. DAC001, Issue D, prepared by AT & L Civil Engineers and Project Managers	10-2-12
General Arrangement Plan, Drawing No. DAC003, Issue D, prepared by AT & L Civil Engineers and Project Managers	10-2-12
Bulk Earthworks and Demolition Plan Sheets 1, and 2 Drawing Nos. DAC005, Issue G and DAC006, Issue E, prepared by AT & L Civil Engineers and Project Managers, <u>as amended by the Survey of Trees Removed from Exclusion Zone, Plan No. 7768.001 Removal of Trees, prepared by Land Partners, dated 03/07/13</u>	24/7/12
Site works and Stormwater Drainage Plan, Drawing Nos. DAC010, , Issue F, prepared by AT & L Civil Engineers and Project Managers	12/4/12
Site works and Stormwater Drainage Plan Sheets, Drawing Nos. DAC012,13 and 14 Issue E, prepared by AT & L Civil Engineers and Project Managers	24/7/12
Site works and Stormwater Drainage Plan DAC011, Issue E, prepared by AT & L Civil Engineers and Project Managers	10/2/12
Typical Sections, Drawing No. DAC020, Issue F, prepared by AT & L Civil Engineers and Project	24/7/12

Drawing N°	Dated
Managers	
Pavement, Signage and Line marking Plan, Sheets 1-2, Drawing No. DAC025 and-26, Issue D, prepared by AT & L Civil Engineers and Project Managers	10-2-12
Sedimentation and Erosion Control Plan Sheets 1-2, Drawing No. DAC030-31, Issue D, prepared by AT & L Civil Engineers and Project Managers	10-2-12
Architectural Plans – Site Plan, Job No. 12320, Drawing No. S96-1100, Issue 3, prepared by Group GSA	22/10/13
Architectural Plans – Warehouse & mezzanine Level Floor, Sections and Elevations Plans, Drawing Nos. 100, 120 and 130, Amd B, prepared by John R Brogan & Associates as amended by Roof, Elevation and Sections, Job No. 12320, Drawing Nos. 2201, 2202, 3002 and 3102, Issue 2, and Ground Floor, Job No. 12320, Drawing Nos. S96-2001 and S96-2002, Issue 3, all prepared by Group GSA	12.01.12 9/9/13 22/10/13
Landscape Plans – Drawing Nos. L000-4, Rev F, prepared by Habitation	09.02.12

Document(s)	Dated
Statement of Environmental Effects prepared by DFP Planning Consultants (inclusive of all attachments)	October 2011
Letter from Bunnings entitled “Proposed Subdivision and Bunnings Development (DA 709/2011) Amendment to Application and Response to Letters Dated 6 December 2011 & 8 February 2012 (inclusive of all attachments)	1 March 2012
Letter from dfp planning consultants titled ‘Section 96(1a) application to modify development consent no. DA/709/2011/D 316 Victoria Road Rydalmere’, ref: 7855C.2DK including all attachments	16 January 2014
<u>The Planning Submission prepared by DFP Planning Consultants dated 19 December 2013 titled “Section 96(2) Application to Modify Development Consent No. DA/709/2011/D 316 Victoria Road, Rydalmere” including all attachments.</u>	19/12/2013

Reason: To ensure the event is carried out in accordance with the approved plans.

Note: To the extent of any inconsistency between the *Bulk Earthworks and Demolition Plan/ Site Works and Stormwater Drainage Plans* and other plans referenced in condition 1 these plans shall prevail.

Reason: To ensure that the deferred commencement conditions are complied with.

2. Insert Condition 5(a) as follows:

“The applicant shall comply with terms of the Planning Agreement dated 19 August 2015 between Parramatta City Council and Bunnings Properties Pty Ltd.”

3. Delete Condition No. 30 and insert same condition (as amended below) under the Section titled “Prior to Release of the Subdivision Certificate” as Condition 86(a) as follows:

An updated Vegetation Management Plan (VMP) shall be prepared by an ecological consultant who has experience in the regeneration of Blue Gum High Forest. The VMP must be approved by Parramatta City Council Open Space and Natural Resources team within *3 months of the approval of this section modification (DA/709/2011/E)*

The site must be divided into 2 main management units;

Area 1 – the toe of the embankment to the top of the embankment identified as a revegetation area (as shown highlighted in blue on Drawing Nos. DAC005, Issue F and DAC006, Issue D, as amended by the deferred commencement conditions.

Area 2 – The eastern section buffer between trees 129 and 169 to be identified as a bush regeneration area (**Area 2a**) and a revegetation area (**Area 2b**) and the ‘gully’ at the north western corner of the site (as marked in red on Drawing Nos. DAC005 Issue F and DAC006, Issue D, as amended by the deferred commencement conditions).

Each of these management units is to have separate actions that relate to the different type of environmental restoration works needed within these areas.

Area 1 – Is to be revegetated with tube stock grown from seedlings or seed collected within local Blue Gum High Forest remnants for the tree canopy species or seeds collected within regional Blue Gum High Forest areas for the shrub and ground cover species. Species selection should include a mix of ground cover, shrub layer and canopy species that are representative of the mix found within a Blue Gum High Forest. The proponent is to fund the implementation of the VMP in Area 1 for a period of two years after the release of the occupation certificate. This is to include plant establishment and maintenance.

Area 2 – A Bushland regeneration **and revegetation** program is to be funded within this zone to preserve and protect the **remaining** Blue Gum High Forest species present **and to revegetate Area 2b**. The proponent is to fund the implementation of the VMP in Area 2 for a period of 2 years after the release

of the occupation certificate. The indigenous trees, shrubs and groundcovers within this Area must be protected during construction through appropriate sediment control techniques.

A costing for the funding of the **increased scope of works within the Amended Vegetation Management Plan** is to be prepared and evidence provided to Council that money has been allocated for the works, by way of a bond, bank guarantee or other agreed arrangement, *within 4 months of the approval of this section modification (DA/709/2011/E)*

4. All other conditions of DA/709/2011 and subsequent modifications remain unmodified.