

# JOINT REGIONAL PLANNING PANEL

## (Sydney West Region)

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| JRPP No  | 2014SYW010   |
| DA Number  | DA/1370/2013 (Lodged 10 December 2013)   |
| Local Government Area                                  | Hornsby Shire Council  |
| Proposed Development                                   | Demolition of existing structures and construction of three, nine storey residential flat buildings comprising a total of 295 units with basement car parking and dedication of land for a public park.  |
| Street Address   | No.s 21-39 Waitara Avenue and No.s 20-30 Orara Street, Waitara   |
| Applicant/Owner  | Applicant - Winten Property Group<br>Owners – May Harlow Pty Ltd , Woodsinta Pty Ltd, Owners Corp SP 42931, Mr F Chui, Mrs B Tantillo  |
| Number of Submissions                                  | 10   |
| Regional Development Criteria (Schedule 4A of the Act) | Item 3 General development over \$20 million<br>Development that has a capital investment value of more than \$20 million.   |
| List of All Relevant s79C(1)(a) Matters                | <p>Relevant EPIs</p> <ul style="list-style-type: none"> <li>SEPP 32 Urban Consolidation</li> <li>SEPP 55 Remediation of Land</li> <li>SEPP 65 Design Quality of Residential Flat Development</li> <li>SEPP (BASIX)</li> <li>SEPP (Infrastructure)</li> <li>SREP 20 Hawkesbury Nepean River</li> <li>Hornsby LEP 2013</li> </ul> <p>Draft Exhibited EPIs</p> <ul style="list-style-type: none"> <li>Nil</li> </ul> <p>Relevant DCP</p> <ul style="list-style-type: none"> <li>Hornsby DCP 2013</li> </ul> <p>Existing or proposed VPA</p> <ul style="list-style-type: none"> <li>A VPA is proposed to be entered into for the dedication of public open space</li> <li>A second VPA may be entered into for the embellishment of the public open space as a condition of consent</li> </ul> <p>Any coastal zone management plan:</p> <ul style="list-style-type: none"> <li>Nil</li> </ul> <p>Relevant regulations:</p> <ul style="list-style-type: none"> <li>Nil</li> </ul> |

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| List all documents submitted with this report for the panel's consideration | <ol style="list-style-type: none"><li>1. Locality Plan</li><li>2. Site Plans</li><li>3. Floor Plans</li><li>4. Elevations and Sections</li><li>5. Shadow Diagrams</li><li>6. Landscape Plans</li><li>7. Draft VPA for dedication of land</li></ol> |
| Recommendation  | Approval   |
| Report by   | Scott Barwick – Consultant Planner SJB Planning  |

## **ASSESSMENT REPORT AND RECOMMENDATION**

### **EXECUTIVE SUMMARY**

1. The application proposes demolition of existing dwellings and construction of three (3) x nine (9) storey residential flat buildings containing 295 units.
2. The proposal generally complies with the provisions of State Environmental Planning Policy No. 65 – Design Quality Residential Flat Development, the Residential Flat Design Code, 2013 and Hornsby Development Control Plan 2013.
3. A total of 10 submissions have been received in respect of the application.
4. It is recommended that the application be approved including a condition of consent requiring the dedication of land for public open space via the proposed Voluntary Planning Agreement.

### **RECOMMENDATION**

THAT the Joint Regional Planning Panel assume the concurrence of the Director-General of Planning and Environment pursuant to Clause 4.6 of the *Hornsby LEP 2013* and vary the height of buildings development standard and approve Development Application No. 1370/2013 for demolition of existing structures and construction of three, nine storey residential flat buildings comprising a total of 295 units with basement car parking and dedication of land for a public park subject to the conditions of consent detailed in Schedule 1 of this report.

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### **HISTORY OF THE APPLICATION**

The application was lodged on 10 December 2013.

The application was notified from 9 January 2014 to 23 January 2014.

On 13 March 2014, a meeting was held with the applicant to review preliminary assessment issues.

On 20 March 2014, the Joint Regional Planning Panel was briefed regarding the proposal.

On 7 April 2014, the applicant submitted amended plans to address issues raised in the preliminary assessment of the application.

On 15 May 2014, Council considered a report on the proposed VPA offer for the dedication of open space land to Council. Council resolved to exhibit the VPA for public comment.

### **HISTORY OF THE SITE**

No relevant previous Development Applications apply to the site. Of relevance is the zoning of the northern portion of the site as RE1 Public Recreation under Hornsby LEP 2013 (*HLEP 2013*). The land was originally identified for public open space purposes under the now repealed Hornsby Shire High Density Multi-Unit Housing Development Control Plan. The intent of the now repealed DCP was that the identified land be dedicated at no cost to Council. Any embellishment of open space dedicated was to be undertaken in accordance with the then applicable Section 94 Contribution Plan 2007. This Contribution Plan has now been repealed.

Therefore, no funds have been collected for the purchase of the land. The funds under the now repealed Section 94 Contribution Plan 2007 for embellishment have been expended on the

embellishment of the western half of the open space link between Romsey Street and Orara Street dedicated previously to Council. Should the land zoned RE1 Public Recreation be dedicated to Council via the proposed Voluntary Planning Agreement (VPA) no conflicts would arise with previous development contributions plans as no money has been collected by Council for the purpose of the acquisition of the subject land.

## **THE SITE**

The site has an area of 10,064m<sup>2</sup> and enjoys frontages to Waitara Avenue to the east and Orara Street to the west. The site has a frontage of 137.275m to Waitara Avenue and 91.52m to Orara Street. The site is approximately 90m south of Edgeworth David Avenue and is approximately 250m north of Waitara Railway Station.

The site slopes from the south western corner of the site to the north eastern corner of the site by 6.27m over a distance of 126m, representing a slope of 4.9%.

The site includes a number of trees, the majority of which are proposed to be removed. The application proposes the retention of 5 trees, 3 of which are located on adjoining properties close to the common boundaries.

The site is currently occupied by 15 dwelling houses which are all proposed to be demolished. Opposite the site to the east is Mark Taylor Oval, while development to the north, south and west comprises 8 to 9 storey residential flat development. The locality characterised by higher density housing, with the subject site representing one of the last sites in the locality to be redeveloped. The other undeveloped site is at 5-9 Waitara Avenue and is currently the subject of an undetermined development application (DA/1255/2013) which proposes the construction of a 9 storey residential flat building.

## **THE PROPOSAL**

The proposal is for the demolition of existing dwelling houses and construction of three (blocks A, B and C) x nine storey residential flat buildings containing a total of 295 dwellings. The dwellings are located over basement car parking for 344 cars.

Block A has frontage to Waitara Avenue and is the southernmost block. The building would contain 105 dwellings comprising 10 x 1 bedroom, 88 x 2 bedroom and 7 x 3 bedroom dwellings.

Block B, also fronting Waitara Avenue would contain 104 dwellings comprising 10 x 1 bedroom, 87 x 2 bedroom and 7 x 3 bedroom dwellings.

Block C has frontage to Orara Street. The building would contain 86 dwellings comprising 9 x 1 bedroom, 63 x 2 bedroom and 14 x 3 bedrooms dwellings.

The proposed basement car park comprises two full levels and a partial third level below building C. The basement has an access off Waitara Avenue adjacent to the southern boundary and an access to Orara Street also adjacent to the southern boundary. The basement levels also accommodate plant rooms, garbage storage rooms for each block, 59 bicycle parking spaces, 7 motorcycle parking spaces, storage for each dwelling and a bin tug parking space.

The proposal includes the landscaped treatment of the site which provides a communal open space area between buildings A and B and between buildings B and C. This communal open space includes deep planter areas for larger trees and communal seating and BBQ areas to cater for the residents of the development.

The proposal includes the proposed dedication of 2,520m<sup>2</sup> of the site as public open space. The proposed open space would have a frontage to Waitara Avenue of 15.3 m and a frontage to Orara Street of 40.9m. The open space would be a continuation of an existing area of open space between Romsey and Orara Streets west of the site. The proposed open space would complete the open space connection from Romsey Street through to Mark Taylor oval. The open space is proposed to be dedicated to Council via a VPA which was reported to, and adopted for exhibition, at Council's meeting held 14 May 2014. The dedication of the land is proposed at nil cost to Council. This agreement does not take effect unless development consent is granted to DA/1370/2013.

A second future VPA is also proposed for the embellishment of the dedicated open space land. The cost of the embellishment works would be off-set against the otherwise payable monetary contribution required under Council's Section 94 Development Contributions plan.

The dedication of the open space to Council via a VPA is a fundamental element of the application. The land zoned RE1 Public Open Space is also identified under *HLEP* 2013 on the Land Acquisition map, which places an obligation on Council to acquire the land if an owner initiated acquisition request is made.

Regardless of the mechanism by which the land could ultimately come into public ownership, the master planning of the Orara Street precinct has identified the provision of a public open space linkage between Waitara Avenue and Romsey Street. This open space would provide improved open space amenity for the higher density development in the vicinity as well as providing a pedestrian open space linkage to Mark Taylor Oval. The completion of the open space provision and pedestrian link is of considerable public benefit through the provision of open space for the benefit of existing and future residents in the locality.

Therefore, the proposed dedication of the land as open space has a direct public benefit through the open space becoming available for use. The second element of the public benefit relates to the land being dedicated at no cost to Council. While Council has an obligation under the *HLEP* 2013 to ultimately acquire the land, Council currently has no financial strategy or timeframe for the acquisition of the land. The proposed dedication via a VPA therefore negates a potential future need for Council to obtain funds to purchase the land if an acquisition request is made.

The trade-off for the dedication of the open space is the transferral of the development potential from the 2,520m<sup>2</sup> of land to be dedicated and its integration with the development proposed on the balance of the site. As the land is not subject to an FSR development standard, the development potential has been established via a building massing exercise based upon the Residential Flat Design Code (RFDC) and Council's DCP controls relating to setbacks and building height.

The accommodation of the development potential from the land to be dedicated is an underlying influence to the proposal seeking a variation to the building height control, deep soil basement setbacks, building length, no recess of the upper level, dwelling sizes and private open space requirements. While these variations are broad, the design has internalised impacts to the subject

site. That is, the relationship of the proposed buildings to existing development external to the site is consistent with the DCP and RFDC guidelines. For example, the part of the building that exceeds the building height development standard is located away from the common boundaries with other residential flat buildings. At the southern interface the proposed building height is consistent with the *HLEP* Height of Buildings development standard.

The merits and impacts are discussed in detail in the report. The material public benefit of the dedication of the land as open space has been a consideration in the overall assessment of the application. The material public benefit however, would not outweigh variation to a control which resulted in a material adverse impact upon adjoining development. The assessment has determined that overall the impacts to surrounding development is consistent with impacts that would result from the applicable development controls and able to be supported subject to conditions of consent.

## **ASSESSMENT**

The development application has been assessed having regard to the '*Metropolitan Plan for Sydney 2036*', the '*North Subregion (Draft) Subregional Strategy*' and the matters for consideration prescribed under Section 79C of the *Environmental Planning and Assessment Act 1979* (the Act). Subsequently, the following issues have been identified for further consideration.

### **1. STRATEGIC CONTEXT**

#### **1.1 Metropolitan Plan for Sydney 2036 and (Draft) North Subregional Strategy**

The *Metropolitan Plan for Sydney 2036* is a broad framework to secure Sydney's place in the global economy by promoting and managing growth. It outlines a vision for Sydney to 2036; the challenges faced, and the directions to follow to address these challenges and achieve the vision. The *Draft North Subregional Strategy* acts as a framework for Council in its preparation of the *Comprehensive LEP* by the end of 2011.

The *Draft North Subregional Strategy* sets the following targets for the Hornsby LGA by 2031:

- Employment capacity to increase by 9,000 jobs; and
- Housing stock to increase by 11,000 dwellings.

The proposed development would be consistent with the *draft Strategy* by providing an additional 280 dwellings and would contribute towards housing choice in the locality.

### **2. STATUTORY CONTROLS**

Section 79C(1)(a) requires Council to consider "*any relevant environmental planning instruments, draft environmental planning instruments, development control plans, planning agreements and regulations*".

#### **2.1 Hornsby Local Environmental Plan 2013**

The *Hornsby Local Environmental Plan 2013 (HLEP)* was gazetted by the Minister for Planning and Infrastructure on 27 September 2013 and came into force on 11 October, 2013. The relevant provisions of the *HLEP* are addressed below.

##### **2.1.1 Zoning**

The subject land is part zoned R4 High Density Residential and part RE1 Public Recreation under the *Hornsby Local Environmental Plan 2013 (HLEP)*. The objectives of the R4 zone are:

- *To provide for the housing needs of the community within a high density residential environment.*
- *To provide a variety of housing types within a high density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

The objectives of the RE1 Public recreation zones are:

- *To enable land to be used for public open space or recreational purposes.*
- *To provide a range of recreational settings and activities and compatible land uses.*
- *To protect and enhance the natural environment for recreational purposes.*
- *To protect and maintain areas of bushland that have ecological value.*

The proposed development within the R4 zone is defined as a “residential flat building” under the *HLEP* and is permissible in the zone with consent. The development in the RE1 zone is defined as a “recreation area” and is permitted with consent. The proposed development does not conflict with the applicable zone objectives.

### **2.1.2 Height of Building**

Clause 4.3 of the *HLEP* provides that the height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map. The maximum permissible height for the subject site is 26.5m. The proposal includes buildings to a height of 30.4m which does not comply with the development standard. An exception to the maximum height of buildings development standard has been requested under clause 4.6 of the *HLEP*.

The request for the variation is discussed at Section 2.10.3 of this report. The assessment concludes that the request to vary the development standard is appropriate in the context, would not result in a building that is out of character with existing development in the locality and would not result in an undesirable precedent as the site is one of the last undeveloped land parcels in the locality.

### **2.1.3 Exceptions to Development Standards**

The application is supported by a request to vary the maximum Height of Buildings standard that applies to the site under clause 4.3 of *HLEP*. The request for the variation to the height control is discussed at Section 2.10.3 of this report.

### **2.1.4 Land reservation Acquisition**

Clause 5.1 of *HLEP* identifies that the portion of the site zoned RE1 Public Recreation is subject to be acquired by Council. The only form of development permitted under the provisions of Clause 5.1A is a “recreation area”. The proposed dedication and embellishment of the land for public open space purposes is consistent with this requirement of the *HLEP*. The dedication would be achieved via a VPA which has been proposed by the applicant and has been endorsed for public exhibition by Council at its meeting on 14 May 2014.

A second future VPA is also proposed for the embellishment of the dedicated open space land. The cost of the embellishment works would be off-set against the otherwise payable monetary contribution required under Council’s Section 94 Development Contributions plan.

### 2.1.5 Heritage

The site does not contain any heritage items and is not within a Heritage Conservation Area. The site is located opposite a Landscape Heritage Item being Mark Taylor oval.

The proposed development is not considered to detract from the heritage significance of the item.

### 2.1.6 Earthworks

Clause 6.2 requires consideration to be given to a range of matters for development which involves ancillary earthworks. The development involves excavation of the site to accommodate the basement car parking and mounding for the landscape treatment of the proposed open space area. In considering the matters associated with the earthworks, it is noted that:

- the development is unlikely to adversely disrupt drainage patterns or soil stability,
- the excavation and mounding is consistent with the intended purpose for which the land is zoned,
- the excavation is to be undertaken on sites with a long history of residential use and present a low risk to potential contamination,
- the excavation is unlikely to result in adverse amenity impacts on adjoining properties, and conditions of consent would be imposed relating to hours of work and management of soil and sedimentation impacts,
- any fill material for mounding would be re-used from the site excavation and excavation material would be required to be disposed of at appropriately licensed waste disposal sites,
- there is a low likelihood of disturbing relics,
- the site is not in proximity to any waterway, drinking water catchment or environmentally sensitive area and is therefore, unlikely to have adverse impacts with appropriate site management conditions being imposed, and
- standard conditions of consent would be imposed relating to site management requirements to mitigate against potential adverse impacts

## 2.2 State Environmental Planning Policy No. 32 (Urban Consolidation)

The application has been assessed against the requirements of *SEPP 32*, which requires Council to implement the aims and objectives of this Policy to the fullest extent practicable when considering development applications relating to redevelopment of urban land. The application complies with the objectives of the Policy as it would facilitate increased availability of housing in close proximity to transport and community facilities. The proposal would also provide greater diversity of housing types in the locality to meet the demand generated by changing demographics and household needs.

## 2.3 State Environmental Planning Policy No. 55 – Remediation of Land

*State Environmental Planning Policy No. 55 (SEPP 55)* requires that Council must not consent to the carrying out of any development on land unless it has considered whether the land is contaminated or requires remediation for the proposed use.

The site has a long history of residential use and is considered to have a low risk of potential contamination from past land uses. As the development includes the demolition of existing buildings and substantial excavation works a condition of consent is recommended regarding the site disposal of demolished building waste.



No further assessment is considered necessary in regard to potential site contamination.

## **2.4 State Environmental Planning Policy No. 65 – Design Quality Residential Flat Development**

The Policy provides for design principles to improve the design quality of residential flat development and for consistency in planning controls across the State.

The applicant has submitted a design verification statement prepared by a qualified designer stating how the proposed development achieves the design principles of *SEPP 65*. The design principles of *SEPP 65* and the submitted design verification statement are addressed below.

### **2.4.1 Principle 1 - Context**

Design Principle 1 is as follows:

*Good design responds and contributes to its context. Context can be defined as the key natural and built features of an area. Responding to context involves identifying the desirable elements of a location's current character or, in the case of precincts undergoing a transition, the desired future character as stated in planning and design policies. New buildings would thereby contribute to the quality and identity of the area.*

The context of the site is defined by the zoning of the site and surrounding land as R4 High Density Residential. The proposal is for the development of nine storey residential flat buildings (RFBs) which are of a consistent scale and configuration as existing surrounding and neighbouring development.

### **2.4.2 Principle 2 - Scale**

Design Principle 2 is as follows:

*Good design provides an appropriate scale in terms of the bulk and height that suits the scale of the street and the surrounding buildings. Establishing an appropriate scale requires a considered response to the scale of existing development. In precincts undergoing a transition, proposed bulk and height needs to achieve the scale identified for the desired future character of the area.*

The subject site is one of the last development parcels in the locality to be redeveloped for higher density RFB development. All surrounding lots have been redeveloped consistent with the now repealed Hornsby Shire High Density Multi-Unit Housing Development Control Plan. The scale of the proposal is consistent with the surrounding built environment comprising eight and nine storey RFBs.

While sections of the proposed buildings exceed the numerical height of building development standards, the proposed building height is consistent with the height and scale of existing development in the immediate vicinity. The proposed building scale has been assessed as being appropriate in the context and is a function of the principle of accommodating development potential from the land to be dedicated as open space into the balance of the land proposed to be developed.

### **2.4.3 Principle 3 – Built Form**

Design Principle 3 is as follows:

*Good design achieves an appropriate built form for a site and the building's purpose, in terms of building alignments, proportions, building type and the manipulation of building elements. Appropriate built form defines the public domain, contributes to the character of streetscape and parks, including their views and vistas, and provides internal amenity and outlook.*

The proposal contemplates the development of three separate buildings each with its own entry and address to the public domain. The design includes a tripartite separation of the bottom middle and top and includes articulation of the facades through design features of recessed and protruding balconies.

The DCP requires floor plates which have maximum dimensions of 35m x 35m. The proposed buildings have floor plate dimensions of 46m x 22m (Building A), 46m x 23m (Building B) and 39m x 19.5m (Building C). The long edges are presented to Waitara Avenue and Orara Street respectively. The proposed building depths measured from the respective street frontages establish a building footprint commensurate with the footprints of existing adjoining development.

The length of the elevations presented to the streets, while in excess of the DCP control, are a function of the accommodation of the development potential from the land to be dedicated as open space. The massing exercise undertaken by the applicant indicates that with no dedication of open space, three 35m long blocks would be provided to Waitara Avenue and two 35m blocks would be provided to Orara Street.

To accommodate the transferred development potential, the proposed building footprint has been elongated on the north south axis. While this is a non-compliance with the DCP, the length of building elevations to the streets in the locality is not uncharacteristic. Given the consistency with the pattern of development in the locality and that the architectural treatment manages the perception of building bulk, the proposed floor plates are supported. It is also considered that given the circumstance of existing surrounding development the variation would not establish a precedent for development in the locality.

The DCP also seeks to control built form and bulk by requiring the upper level of buildings to be recessed from the facades. This provision is not complied with and again is a direct consequence of accommodating the development potential of the land to be dedicated as open space. As the resulting building form and scale is consistent with the form of existing surrounding development and no material adverse amenity impacts arise the non-compliance is acceptable and would facilitate the provision of the adjoining open space for public benefit.

The built form is consistent with the existing character and pattern of development in the locality and is appropriate in the circumstances applying to this development.

#### **2.4.4 Principle 4 – Density**

Design Principle 4 is as follows:

*Good design has a density appropriate for a site and its context, in terms of floor space yields (or number of units or residents). Appropriate densities are sustainable and consistent with the existing density in an area or in precincts undergoing a transition, are consistent with the stated desired future density. Sustainable densities respond to the regional context, availability of infrastructure, public transport, community facilities and environmental quality.*

The Planning Controls for the higher density residential precincts within the Hornsby Shire do not incorporate any Floor Space Ratio (FSR) or Site Coverage development standards. Building bulk and scale is instead controlled by a height of buildings development standard in the *HLEP 2013* of 26.5m and setback and building envelope controls in the Hornsby Development Control Plan (HDCP).

The site density is regulated by the statutory height control of 26.5m and the applicable DCP setbacks and building separation requirements. While elements of the building exceed the height of buildings development standards, the DCP building setbacks and building separation requirements are generally complied with. The variations sought relating to building separation have been addressed through design treatment to protect privacy and amenity of existing and proposed dwellings. The overall density achieved, having regard to the transfer of development potential from the land to be dedicated as open space, is consistent with the density of existing surrounding development.

The density is therefore considered to be appropriate for the location in close proximity to high frequency public transport, shops and community facilities.

#### **2.4.5 Principle 5 – Resource, Energy and Water Efficiency**

Design Principle 5 is as follows:

*Good design makes efficient use of natural resources, energy and water throughout its full life cycle, including construction. Sustainability is integral to the design process. Aspects include demolition of existing structures, recycling of materials, selection of appropriate and sustainable materials, adaptability and reuse of buildings, layouts and built form, passive solar design principles, efficient appliances and mechanical services, soil zones for vegetation and reuse of water.*

The applicant has submitted BASIX Certificate No. 51961M\_03 61893M for the proposed 295 dwellings. The proposed development achieves the BASIX targets for sustainable water use, thermal comfort and energy efficiency. The building design achieves an efficient use of natural resources, includes sustainable materials and passive solar design principles.

#### **2.4.6 Principle 6 – Landscape**

Design Principle 6 is as follows:

*Good design recognises that together landscape and buildings operate as an integral and sustainable system, resulting in greater aesthetic quality and amenity for both occupants and the adjoining public domain. Landscape design builds on the existing site's natural and cultural features in responsible and creative ways. It enhances the development's natural environmental performance by co-ordinating water and soil management, solar access, micro-climate, tree canopy and habitat values. It contributes to the positive image and contextual fit of development through respect for streetscape and neighbourhood character, or desired future character. Landscape design should optimise useability, privacy and social opportunity, equitable access and respect for neighbour's amenity, and provide for practical establishment and long term management.*

The application includes a landscape plan which integrates the proposed buildings with landscaped grounds and common open space areas. The proposal includes the provision of canopy trees within deep soil zone areas central to the site and to the public domain interface. The proposed landscape treatment is consistent with the desired outcomes for residential flat building development.

### 2.4.7 Principle 7 – Amenity

Design Principle 7 is as follows:

*Good design provides amenity through the physical, spatial and environmental quality of a development. Optimising amenity requires appropriate room dimensions and shapes, access to sunlight, natural ventilation, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas, outlook and ease of access for all age groups and degrees of mobility.*

The proposed development is consistent with the requirements of the *Residential Flat Design Code* including requirements for visual and acoustic privacy, apartment layouts, and natural ventilation. The proposal achieves 66% of the dwellings with cross ventilation and dwelling configuration has been carefully planned to avoid living rooms looking into living areas. The apartments have been designed to minimise south facing apartments and maximise outlooks to the proposed new park, Mark Taylor Oval and to Orara Street.

The proposal is inconsistent with solar access and private open space provisions. The proposal is unable to achieve 2 hours of solar access to the dwellings in mid-winter as recommended by the RFDC. The inability to achieve this requirement is largely a function of the site having its longest boundary oriented to the east. The application is supported by a detailed analysis of effective solar access which identifies if solar access between the 7.30 and 4.00pm is considered, effective solar access is achieved for 73.6% of the dwellings.

In regards to private open space, the balconies proposed range from 7m<sup>2</sup> to 17m<sup>2</sup> for 1 bedroom dwellings, 7m<sup>2</sup> to 28m<sup>2</sup> for 2 bedroom dwellings and 7m<sup>2</sup> to 28m<sup>2</sup> for 3 bedroom dwellings. The HDCP requires 10m<sup>2</sup>, 12m<sup>2</sup> and 16m<sup>2</sup> respectively. The private open space balconies provided are all located off living rooms and appropriately oriented. It is however recommended as a condition of consent that 58 of the dwellings have the depth of the balconies increased by 500mm. This would make these balconies a minimum of 2.5m in depth and increase the sizes by between 1.75m<sup>2</sup> through to 2.75m<sup>2</sup> in area. This would result in a more effective balcony width and be more consistent with Council's desired control.

Although not all of the balconies would be strictly compliant, the balance between those that are slightly undersized and those that are oversized would be such that the level of private open space is consistent with the DCP intent. It is noted that the proposed enlarged balconies would protrude from the façade alignment by 500mm but would remain consistent with the building setback controls and the modulated form of the proposed building.

The submitted statement is supported in respect to this Principle.

### 2.4.8 Principle 8 – Safety and Security

Design Principle 8 is as follows:

*Good design optimises safety and security, both internal to the development and for the public domain.*

*This is achieved by maximising overlooking of public and communal spaces while maintaining internal privacy, avoiding dark and non-visible areas, maximising activity on streets, providing*

*clear, safe access points, providing quality public spaces that cater for desired recreational uses, providing lighting appropriate to the location and desired activities, and clear definition between public and private spaces.*

The proposal addresses the two streets and provides clear delineation of access points and separation of the private and public domain areas. The proposed buildings are considered satisfactory in providing passive surveillance of access points and common open space areas. The proposed design includes secure access to the basement car parks and to the lift access. NSW Police has raised no objection to the proposal.

The applicant's statement is supported in respect to this Principle.

#### **2.4.9 Principle 9 – Social Dimensions and Housing Affordability**

Design Principle 9 is as follows:

*Good design responds to the social context and needs of the local community in terms of lifestyles, affordability, and access to social facilities.*

*New development should optimise the provision of housing to suit the social mix and needs in the neighbourhood or, in the case of precincts undergoing transition, provide for the desired future community.*

*New development should address housing affordability by optimising the provision of economic housing choices and providing a mix of housing types to cater for different budgets and housing needs.*

The location has good access to amenities such as open space and public transport. The site is well located to access retail and support services. The dwellings have been targeted towards a smaller unit size to achieve affordability. Of the proposed dwellings, 12.5% are designed to be adaptable, which is less than Council's target of 30%. This is discussed further at Section 2.10.3. Otherwise the proposal is considered appropriate against this Principle.

#### **2.4.10 Principle 10 – Aesthetics**

Design Principle 10 is as follows:

*Quality aesthetics require the appropriate composition of building elements, textures, materials and colours and reflect the use, internal design and structure of the development. Aesthetics should respond to the environment and context, particularly to desirable elements of the existing streetscape or, in precincts undergoing transition, contribute to the desired future character of the area.*

The applicant's statement includes the following comment:

*The development proposes to create a collection of complimentary buildings that are similar in their form and expression, and subtly differentiated through colour and response to their individual context. Like a village heir character and strength is in the group of buildings rather than the individual building.*

The proposed development includes materials and finishes and treatment that has regard to the surrounding built environment and complements the development in the streetscape.

The applicant's statement is supported in respect to this Principle.

## 2.5 SEPP 65 – Residential Flat Design Code

SEPP 65 also requires consideration of the *Residential Flat Design Code, NSW Planning Department 2002*. The *Code* includes development controls and best practice benchmarks for achieving the design principles of the SEPP 65. The following table sets out the proposal's compliance with the *Code*:

| Residential Flat Design Code        |   |   |                 |
|-------------------------------------|---|---|-----------------|
| Control                             | Proposal  | Requirement   | Compliance      |
| <b>Deep Soil Zone</b>               | 9.6% (excluding land dedicated as open space)<br><br>32% (including the 2,520m <sup>2</sup> to be dedicated as public open space) | 25%   | Yes             |
| <b>Communal Open Space</b>          | 41% (excludes land dedicated as open space)   | 25-30%  | Yes             |
| <b>Gnd Level Private Open Space</b> | 14m <sup>2</sup> - 72m <sup>2</sup><br>(only 4 terraces less than 25m <sup>2</sup> of 26 proposed)<br>Min Dimension 2.5m          | 25m <sup>2</sup><br>Min Dimension 4m <sup>2</sup>                             | No<br>No        |
| <b>Building Separation</b>          | 17m – 4 storey<br>17m – 5 -8 storey<br>17m – 9 storey   | 12m – up to 4 storey<br>18m – 5 storey to 8 storey<br>24m - 9+ storeys        | Yes<br>No<br>No |
| <b>Minimum Dwelling Size</b>        | 1 br – 49+m <sup>2</sup><br>2 br – 68-79m <sup>2</sup><br>3 br – 89-106m <sup>2</sup>   | 1 br – 50m <sup>2</sup><br>2 br – 70m <sup>2</sup><br>3 br – 95m <sup>2</sup> | No<br>No<br>No  |
| <b>Maximum Kitchen Distance</b>     | 8+m   | 8m  | Yes             |

|  |      |      |     |
|--|------|------|-----|
| <b>Minimum Balcony Depth</b>               | 2.0m | 2.0m | Yes |
| <b>Dual Aspect &amp; Cross Ventilation</b> | 66%  | 60%  | Yes |
| <b>Adaptable Housing</b>                   | 12%  | 10%  | Yes |

As detailed in the above table, the proposed development includes a number of inconsistencies with the prescriptive “Rules of Thumb” contained within the *Residential Flat Design Code* (RFDC). By their nature, the rules of thumb provide guidance for decision making. The RFDC identifies that applicants may be able to demonstrate better design practice to achieve the stated objectives rather than relying upon numerical compliance.

Below is a brief discussion regarding the relevant Rules of Thumb and best practice guidelines.

### 2.5.1 RFDC Deep Soil Zone

Taken as a whole, including the land to be dedicated as open space; the development site provides 32% of the site area as deep soil landscaping. This outcome is consistent with the RFDC guideline. A significant proposition of this is proposed to be dedicated to Council as open space. The dedication would leave the remainder of the site as providing 9.6% of the site as deep soil. The deep soil provided is to be augmented by planters centrally located throughout the development site above the basement slab. This outcome is a consequence of the proposed dedication of the land as public open space. On the balance of the development site would achieve the objectives of:

- Assisting with the management of the water table by maintaining opportunities for ground water penetration;
- Water quality management has been achieved through the incorporation of water quality management measures within the development site; and
- Planting for large to medium vegetation has been achieved within the deep soil areas and within planters central to the site.

The proposed development is consistent with the better design practice guidelines and objectives.

### 2.5.2 RFDC Ground level private open space

The RFDC encourages the provision of ground floor terrace private open space areas of a minimum 25m<sup>2</sup> with minimum dimensions of 4.0m. Four of the 26 ground floor dwellings provide terrace areas less than 25m<sup>2</sup> in area. The terraces sizes range from 14m<sup>2</sup> up to 72m<sup>2</sup> in area. The design is appropriate in the circumstance as the area of private open space provided is appropriate, provides acceptable amenity and will provide sufficient space to accommodate the needs of future residents.

The proposed development is consistent with the better design practice guidelines and objectives.

### 2.5.3 RFDC Adaptable Housing

The application as lodged provided 28 adaptable dwellings for a total of 9.5%. Council's DCP requires the provision of 30% of dwellings as adaptable housing. The applicant has revised the plans to increase the total number of adaptable dwellings to 35 or 12% of the total. The proposal is now consistent with the RFDC guideline but remains non-compliant with Council's DCP. The DCP non-compliance is addressed at Section 2.10.10.

### 2.5.4 RFDC Minimum dwelling sizes

The proposal includes dwellings sizes less than the rule of thumb guidelines from the RFDC. The 1 bedroom dwellings are generally with 1m<sup>2</sup> of the minimum size guide or compliant. The 2 bedroom dwellings are between 68 and 79m<sup>2</sup>. The smallest dwellings are therefore up to 7m<sup>2</sup> smaller than the rule of thumb recommendations.

The smaller two bedroom dwellings have effectively eliminated internal corridor space to maximise the provision of accommodation. The plans include furniture layouts to demonstrate that the proposed dwellings are functional. The inconsistency with the numerical guidelines have been addressed through efficient design to ensure the dwellings which have areas less than the recommended guidelines provide the required facilities and residential amenity.

The proposed development is consistent with the better design practice guidelines and objectives.

### 2.5.5 RFDC Maximum distance of kitchen from windows

The rule of thumb includes a recommendation that the back of kitchens should be no more than 8.0m from a window. The distances to the back of kitchens are up to 9.0m. In the circumstance, the inconsistency raises no substantial concerns that would warrant refusal of the application.

### 2.5.6 RFDC Storage requirements

Consistent with the RFDC guidelines, the proposed units include 50% of the required storage within the dwellings. In addition, the basement includes 295 individual storage cages to supplement the storage provided within the dwellings consistent with RFDC guidelines. Storage is adequately catered for in the design.

## 2.6 State Environmental Planning Policy (Building Sustainability Index – BASIX) - 2004

The application has been assessed against the requirements of *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*. The application includes a BASIX Certificate for the units within the proposed development which demonstrates compliance with the requirements of the SEPP.

## 2.7 State Environmental Planning Policy (Infrastructure) 2007

The application has been assessed against the requirements of *State Environmental Planning Policy (Infrastructure) 2007*.

The proposed development is located approximately 90m from a State Road (Edgeworth David Avenue) and the basement access is in Waitara Avenue located approximately 220m from the intersection, however Waitara Avenue does not connect with Edgeworth David Avenue. As the development proposes less than 300 dwellings and the vehicle access is greater than 90m from the intersection, referral of the application to the RMS for concurrence is not required in this instance.



## 2.8 Sydney Regional Environmental Plan No. 20 – Hawkesbury – Nepean River

The site is located within the catchment of the Hawkesbury Nepean River. Part 2 of this Plan contains general planning considerations and strategies requiring Council to consider the impacts of development on water quality, aquaculture, recreation and tourism.

Subject to the implementation of sediment and erosion control measures and stormwater management to protect water quality, the proposal would be consistent with and achieve the objectives and requirements of the Policy.

## 2.9 Clause 74BA Environmental Planning and Assessment Act, 1979 - Purpose and Status of Development Control Plans

On 1 March 2013, the *Environmental Planning and Assessment Act, 1979* was amended so that a DCP provision would have no effect if it has the practical effect of “*preventing or unreasonably restricting development*” that is otherwise permitted and complies with the development standards set out in relevant Local Environmental Plans and State Environmental Planning Policies.

The principal purpose of a development control plan is to provide guidance on the aims of any environmental planning instrument that applies to the development; facilitating development that is permissible under any such instrument; and achieving the objectives of land zones under any such instrument. The provisions of a development control plan made for that purpose are not statutory requirements.

## 2.10 Hornsby Development Control Plan 2013

The Hornsby Development Control Plan (HDCP) 2013 applies to all land within Hornsby Shire and provides development controls to complement the *HLEP*. The HDCP came into effect on 11 October 2013. The following table sets out the proposal's compliance with the prescriptive standards of the Plan:

| Hornsby Development Control Plan – Part 3.5 |   |                    |            |
|---|---|--------------------|------------|
| Control                                     | Proposal  | Requirement        | Compliance |
| Site Width                                  | 129m - Waitara Ave<br>49m – Orara Street                                  | Min - 40m          | Yes        |
| Height                                      | Max 30.4m<br>9 storeys  | 26.5m<br>8 Storeys | No         |
| Building width/length                       | 46m x 22m- Building A<br>46m x 23m- Building B<br>39m x 19.5m- Building C | Max 35m            | No         |
| Front Setback                               |   |                    |            |

|                                 |  |                     |     |
|---------------------------------|--|---------------------|-----|
| (Waitara Ave)                   |  |                     |     |
| Building Line                   | 2/3 – 10m, 1/3 8.5m  | 2/3 – 10m, 1/3 8.5m | Yes |
| Balcony                         | 7.95m  | 7m                  | Yes |
| Basement                        | 3.5m   | 7m                  | No  |
| <b>Front Setback</b> (Orara St) |  |                     |     |
| Building Line                   | 2/3 – 10m, 1/3 8.5m  | 2/3 – 10m, 1/3 8.5m | Yes |
| Balcony                         | 8m   | 7m                  | Yes |
| Basement                        | 9m   | 7m                  | Yes |
| <b>N Side Setback</b>           |  |                     |     |
| Building Line                   | 16.5 to existing boundary, and nil to the proposed boundary  | 2/3 – 9m, 1/3 - 7m  | Yes |
| Balcony                         | 15.5m to existing boundary and 1.0m to proposed boundary     | 6m                  | Yes |
| Basement                        | 16.5 to existing boundary, and 1.2m to the proposed boundary | 6m                  | Yes |
| <b>S Side Setback</b>           |  |                     |     |
| Building Line                   | 2/3 – 9m, 1/3 - 7m   | 2/3 – 9m, 1/3 - 7m  | Yes |
| Balcony                         | 8m   | 6m                  | Yes |
| Basement                        | 1.5m to ramp and 4m to basement                              | 6m                  | No  |
| <b>Rear Setback</b>             |  |                     |     |
| Building Line                   | 9.95m  | 2/3 10m, 1/3 8m     | Yes |
| Balcony                         | 10m  | 7m                  | Yes |
| Basement                        | 4m   | 7m                  | No  |
| <b>Top Storey Setback</b>       | Nil  | 3m                  | No  |

|  |  |  |                 |
|--|--|--|-----------------|
| <b>From Ground Floor</b>                       |  |  |                 |
| <b>Basement Ramp Setback</b>                   | 1.5m   | 2m   | No              |
| <b>Building Separation</b>                     | 17.1m  | Min – 12m up to 4 storey<br>Min 18m 5-8 Storey<br>Min 24m 9+storey | Yes<br>No<br>No |
| <b>Landscaping</b>                             |  |  |                 |
| Front  | 3.5m   | 7m   | No              |
| N side   | 16.5m exist boundary<br>1.2m new boundary  | 6m   | Yes             |
| S side   | 1.5-4m   | 6m   | No              |
| Rear   | 4m   | 7m   | No              |
| <b>Deep Soil Area between 2 buildings</b>      | 15.5m x 33m (provided above basement slab)   | 7m x 7m  | No              |
| <b>Min Private Open Space (Min Width 2.5m)</b> | 1 br units - 7m <sup>2</sup><br>2 br units - 7m <sup>2</sup><br>3 br units - 7m <sup>2</sup> | 10m <sup>2</sup><br>12m <sup>2</sup><br>16m <sup>2</sup>           | No<br>No<br>No  |
| <b>Communal Open Space</b>                     | 580m <sup>2</sup>  | 50m <sup>2</sup>   | Yes             |
| <b>Sunlight Access 9.00am to 3.00pm</b>        | 29.8%  | 70%  | No              |
| <b>Housing Choice</b>                          | 1 br units – 9.8%<br>2 br units – 80.7%<br>3 br units – 9.5%                                 | 10%<br>10%<br>10%  | Yes             |
| <b>Adaptable Units</b>                         | 12%  | 30%  | No              |
| <b>Car Parking</b>                             | 302 resident spaces<br>42 visitor spaces   | 302 resident spaces<br>42 visitor spaces                           | Yes             |

The following sections of this report include a detailed assessment of the proposal against the HDCP.

### **2.10.1 Desired Future Character**

Part 3.5.1 of the DCP identifies that the desired outcome for development in the zones that permit residential flat buildings of six or more storeys is for development that contributes to the desired future character of the area. Development is to have limited façade widths to avoid the appearance of a continuous wall of development, provide vegetated corridors through and around development sites, provide underground car parking and be accommodated in a landscaped setting, with articulated facades and located within campus like settings.

The proposal conforms with these desired outcomes. While the floor plate controls have been exceeded, the resulting building envelopes are consistent with the form of existing development in the immediate vicinity. The design has modulated the elevations through design and use of materials to minimise the perception of building bulk and the buildings would be accommodated in a landscape setting. The vegetated corridor would be provided in a consolidated area north of the site which is proposed to be dedicated to Council as open space. It is this transfer of development potential to facilitate the open space dedication that has resulted in the floor plate inconsistency. Regardless, the building form is consistent with the form of development in the vicinity and is appropriate in the circumstances.

Being one of the last undeveloped sites in the vicinity, the proposal provides a scale and configuration that does not conflict with existing development. The development delivers a wide choice of private and communal open space as well as delivering a public open space link between Orara Street and Waitara Avenue.

The proposal satisfies the desired future character requirements in the specific circumstances.

### **2.10.2 Site Requirements**

Part 3.5.3 of the DCP requires a minimum site frontage of 40m. The proposed site amalgamation exceeds this minimum requirement to Waitara Avenue and Orara Street.

The proposal would not result in the creation of isolated sites and has avoided this outcome through the process of amalgamation that has been pursued.

### **2.10.3 Height**

The site is subject to a maximum height of building standard of 26.5m and under *HLEP*. Part 3.5.4 of the HDCP translates the LEP height to a maximum of 8 storeys. The proposal seeks consent for buildings of up to 9 storeys and up to 30.4m in height.

The application is supported by a request to vary a development standard prepared in accordance with clause 4.3 of the *HLEP*.

The basis for the objection is that the resulting building is in context with the existing development in the locality, that the standard has been effectively abandoned through past approvals and no precedent would be established by the variation of the standard.

In considering if the request to vary the standard is reasonable the interface of the development to the southern boundary has been considered to be most critical. This is the potentially most sensitive interface and where greater adverse amenity impacts could arise to neighbouring dwellings as a result of a height non-compliance.

Building A fronting Waitara Avenue has a roof RL of 199.95m AHD. The building to the immediate south has a roof RL of up to RL 203.37m AHD. Further, the non-compliance at the southern-most portion of the roof is in the order of 300mm.

For building C fronting Orara Street, numerical compliance is achieved with the roof having an RL of 200.95m AHD compared to the neighbouring building which has a height of RL205.5m AHD. The proposed building heights are in context with the height of adjoining buildings, providing lower overall building heights.

The primary numerical non-compliance is therefore located within the development site and to the north and is a function of the site sloping downwards from south to north.

The non-compliance with the *HLEP* height control and the DCP maximum number of storeys control would result in additional adverse amenity impacts particularly in consideration of solar access compared to a building that numerically complied. This is reinforced with the buildings being setback 9.0m from the southern boundary consistent with the expected contribution for RFDC setback provision.

In considering the northern interface, the proposed building would be substantial separated from development to the north by the proposed public open space. The separation between building B and the southern boundary of the development to the north is 16.0m and from building C to the boundary the separation is 41.0m.

Given the lack of demonstrable adverse amenity impacts as a result of the height non-compliance and the consistency of the built form with existing development in the locality, the variation to the applicable height controls is acceptable and able to be supported.

#### **2.10.4 Setbacks**

Part 3.5.5 of the DCP details the required setback controls. The proposed buildings comply with the required setbacks from Waitara Avenue and Orara Street, and from the southern boundary. The building setbacks comply with the setback applicable prior to the dedication of the northern portion of the site for public open space. After dedication, the setback to the new public park would be inconsistent. The resulting setback to the public park would be 1.0m. This outcome is however consistent with the treatment of the public open space dedicated to the west of the site providing the balance of the open space link.

The primary inconsistencies of the proposal regarding setbacks relate to the setback of the basement car park from the site boundaries. The DCP requires basements to be 7.0m from the front and rear boundaries and 6.0m from side boundaries. Driveways are to be setback 2.0m from side boundaries.

The driveway from Waitara Avenue is setback 2.0m from the southern boundary, which complies and the driveway from Orara Avenue is setback 1.5m which is non-compliant.

The basement is setback from Waitara Avenue by 3.5m and from Orara Street by 8.8m. The setback of the basement from the rear boundary is 4.0m. The application was amended to increase the width of the setback of the basement particularly in the south west corner behind Building A to provide minimum setbacks of 4.0m.

The intent of the basement setback requirements are two fold, to assist in the provision of deep soil landscaping on development sites and to provide opportunity for substantial perimeter planting between development sites and to the public domain. In this instance, a significant portion of the deep soil landscaping retained for the site as a whole would be dedicated as public open space. The total quantum of deep soil landscaping is 32% achieving the RFDC guideline.

As the quantum of deep soil landscaping is achieved, the consideration has been given to the quality and amenity of the landscape provision that is able to be achieved in the basement setbacks proposed. The landscape plan demonstrates that the setback of the basement to Waitara Avenue is capable of accommodating substantial trees with mature heights of at least ten (10) metres. The visual amenity of the landscaping which would be uninterrupted by vehicle cross overs is considered appropriate. Similarly the capacity of the deep soil areas provided to the southern and western boundaries are capable of accommodating landscaping that would provide appropriate screening and landscaping to provide a visually attractive setting for the buildings.

The numerical non-compliance with the basement setbacks are therefore supported in this instance as the overall quantum of deep soil landscaping is achieved and the setbacks provided are capable of providing an appropriate landscaped setting for the buildings.

### **2.10.5 Building Form and Separation**

Part 3.5.6 of the DCP details Council's requirements for articulation and physical separation of buildings. The setbacks essentially adopt the Rules of Thumb from the RFDC which were discussed at Section 2.5 of this report. As outlined, the proposal is numerically non-compliant with RFDC separations of buildings where habitable rooms look onto habitable rooms within the development site.

Relative to adjoining development, the separations are at least 18.0m and all of the openings to the southern elevations are screened to augment the setbacks. As discussed at section 2.4.3, the proposed building form and separation is considered appropriate in the specific circumstance of accommodating the development potential that has been transferred from the land to be dedicated as open space to the balance of the development site.

In considering articulation, the design provides a distinct tripartite treatment and articulation of the facades through the use of balcony elements and varied materials and finishes.

### **2.10.6 Landscaping**

Part 3.5.7 of the DCP outlines the requirements for landscaping. The objectives include requiring landscape to integrate with the locality and to enhance the tree canopy and to retain prominent or significant trees.

The majority of existing vegetation is to be removed from the site. The removal of the vegetation is supported by an arborists assessment and by Council's Parks and Landscape assessment. The assessment of the proposed landscape treatment identifies that the landscaping would enable canopy

trees to be established and that the result would be consistent with the established character of the precinct.

To assist in the visual quality of the landscape treatment to Waitara Avenue a condition of consent is recommended to place the power lines on this frontage underground.

### **2.10.7 Open Spaces**

Part 3.5.8 of the DCP outlines the minimum requirements for private open space for proposed dwellings and communal open space. The DCP requires the provision of a minimum of 50m<sup>2</sup> of communal open space per building, for a total of 150m<sup>2</sup>. The central area between the three buildings provides a total of 960m<sup>2</sup> of communal open space. The layout and landscape treatment of the space provides distinct gathering spaces, seating and amenities such as BBQ areas and pergola covered areas. The proposal is well served for communal open space and amenities.

The DCP requires that balconies have a minimum width of 2.5m. The minimum areas required are 10m<sup>2</sup> for 1 bedroom dwellings, 12m<sup>2</sup> for two bedroom dwellings and 16m<sup>2</sup> for 3 bedroom dwellings. The balconies provided are a minimum of 2.0m deep adopting the RFDC guideline. The areas of the balconies (excluding those at ground level) range from 7m<sup>2</sup> to 17m<sup>2</sup> for 1 bedroom dwellings, 7m<sup>2</sup> and 28m<sup>2</sup> for 2 bedroom dwellings and 7m<sup>2</sup> to 28m<sup>2</sup> for 3 bedroom dwellings.

The balconies provided are all located off living rooms and would provide appropriate amenity and function. It is recommended as a condition of consent that 58 of the dwellings have the depth of the balconies increased by 500mm. This would make these balconies a minimum of 2.5m in depth and increase the sizes of the balconies by between 1.75m<sup>2</sup> to 2.75m<sup>2</sup> in area. While not all of the balconies would be strictly compliant, the balance between those that are slightly undersized and those that are oversized would be such that the level of private open space is consistent with the DCP intent. The proposal is considered acceptable in this regard subject to the imposition of the condition of consent.

### **2.10.8 Privacy and Security**

Part 3.5.9 of the DCP details the requirements for privacy and security. The building designs have regard for the positioning of window openings and balconies to manage potential privacy and inter-looking. The southern elevations of all three buildings are screened to avoid adverse impacts to adjoining development, and in the instance of Building B, to minimise potential privacy impacts from Building A.

Each building is provided by a clearly delineated entry from the public streets. The dwellings proposed orient to the public domain or the communal open space areas providing casual surveillance.

The proposal is considered to have satisfactorily responded to the objectives of the DCP for privacy and security considerations.

### **2.10.9 Sunlight and ventilation**

Part 3.5.10 of the DCP details the requirements for sunlight access and ventilation. The DCP substantially adopts the RFDC guidelines. As identified at section 1.5 of the report, 66% of the dwellings proposed achieve natural ventilation complying with the minimum requirement of 60%.

The DCP requires that 70% of dwellings should receive 2 hours of solar access between 9.00am and 3.00pm in midwinter to at least half of the principal living room windows and principal private open space. The proposal does not achieve these levels of solar access. A detailed solar study has been prepared. The study identifies that 29.8% of dwellings receive 2+ hours of required solar access between 9.00am and 3.00pm. By considering solar access received between 7.30am and 4.00pm the number of dwellings receiving 2+hours of solar access is 68.1% which is short of the desired 70%.

The solar access study identifies that a further 16 or 5.5% of the proposed dwellings would receive between 1.5 and 2.0 hours of solar access to the private open space and principal living room windows. If these dwellings are included then the total number of dwellings receiving solar access is 73.6%. The detailed analysis concludes that significant efforts have been made to provide solar access to the proposed dwellings and suitable solar access amenity is achieved.

The difficulty in achieving the RFDC and DCP recommendations for solar access relate to the site configuration and orientation. The longest elevation is to the east. The western elevation of the blocks fronting Waitara Avenue are restricted from receiving solar access from the development fronting Orara Street. The eastern elevation loses solar access from 10.30am in mid-winter. Re-orienting the development to provide the long edges to the north would alter this situation but would be inconsistent with the form of development in the locality and result in greater impacts upon the development to the south.

In the circumstance and given the nature of development characteristic of the locality the proposed building configuration is acceptable and acceptable solar amenity for the proposed dwellings has been demonstrated.

In considering the impact upon solar access to adjoining development is consistent with the level of impact that would be expected from the planning controls that apply to the development site.

#### **2.10.10 Housing Choice**

Part 3.5.11 of the DCP requires that a minimum of 10% of dwellings should be 1, 2 and 3 bedrooms types. The DCP also requires that 30% of all dwellings should be adaptable and a total of 10% should be adaptable and provided with an accessible car parking space.

The proposal provides 9.8% of the dwellings as 1 bedroom dwellings and 9.5% of the dwellings as 3 bedroom dwellings. The balance of the dwellings comprising 80.7%, are 2 bedroom dwellings. In consideration of dwelling mix the proposal is considered to be acceptable.

The primary non-compliance relates to adaptable dwelling provision. As lodged the application proposed 9.8% (28 dwellings) of the dwellings as adaptable. The applicant has revised the plan to provide a further 7 dwellings as adaptable for a total of 12%.

The applicant presents two arguments in support of the variation. The first is that all other development surrounding the site was subject to the provision of 2% of dwellings as adaptable as required by the DCP then in force. The second is that adjoining local government areas require between 5% and 10% of dwellings to be adaptable. It is also noted that a further example is the City of Sydney which would require the provision of 15% of dwellings as adaptable. Council's strong desire is to increase the adaptable housing provided in new development.



The subject site however is influenced by unusual circumstances relating to the zoning of a significant portion of the site as open space. To increase the provision of adaptable housing beyond the 12% that has been achieved would require significant redesign and enlargement of the proposed dwellings. Any modifications to the development to increase the unit sizes to achieve adaptable housing is not supported if it would result in a further increase in the building footprints. Considering the public benefit achieved from the dedication of the park, a reduction in the requirement to provide adaptable dwellings is supported in this specific circumstance, acknowledging that the application has been amended to increase the level of adaptable dwelling provision up to 12%.

#### **2.10.11 Vehicle Access and Parking**

Part 3.5.12 of the DCP requires the provision of 344 car parking space, which are provided by the proposal. In addition to the car parking spaces the proposal accommodates 88 bicycle parking spaces and 7 motorcycle parking spaces. Council's traffic engineers have recommended that the application be approved subject to standard conditions of consent.

#### **2.10.12 Public Domain and Traffic management Works**

Part 3.5.13 of the DCP requires that the public domain should encourage vitality in the precinct and traffic works should provide for safe and efficient movement.

The proposal is consistent with these outcomes through the deletion of multiple footpath crossing by removing redundant driveways and providing a well landscaped public domain interface. This interface to Waitara Avenue and Orara Streets would be augmented by the dedication of a new public open space area. This public open space would form a link between the higher density residential areas to the west and Mark Taylor oval to the east.

#### **2.10.13 Waste Management**

Part 1C.2.3 of the DCP details Council's requirements for waste management and requirements for on-site storage capacity for waste and recycling storage. Each floor of each building has a central garbage room. The garbage rooms provide garbage chutes to storage rooms in the proposed basement levels. The waste is to be compacted and delivered to the Orara Street and Waitara Avenue frontage for collection by Council's contractor. A bin tug is accommodated in the basement to tow the bins to the street frontages.

In addition to the garbage rooms bulky waste storage rooms are also provided for each of the three buildings.

The applicant's plan is based upon compaction of the waste at a 2:1 ratio. Council's Waste Management Services team have sought to impose conditions requiring the provision of amended plans to accommodate 17 x 660 litre garbage bins and 31 x 240litre recycling bins. The proposed plans accommodate 9 x 660 litre garbage bins and 33 x 240litre recycling bins.

The difference is a direct result of the proposed use of compaction. It is noted that Councils policy currently permits compaction and the proposal has been designed accordingly. Council's Waste Management Services team has identified a preference for compaction not to be used and have sought to have the Council's policies amended accordingly. As no amendment has been drafted or placed on exhibition it is reasonable that the applicants proposed use of compaction be supported in this instance being consistent with Council's adopted policy requirements.

### 3. DRAFT VOLUNTARY PLANNING AGREEMENT

The application is supported by a proposed Voluntary Planning Agreement (VPA) for the dedication of the land zoned RE1 Public Open Space. The open space is proposed to be dedicated to Council via a VPA which was reported to, and adopted for exhibition, at Council's meeting held 14 May 2014. The dedication of the land is proposed at nil cost to Council. This agreement does not take effect unless development consent is granted to DA/1370/2013. Conditions of consent have been provided to require the finalisation of the VPA and dedication of the land at no cost to Council as public open space prior to the issue of Occupation Certificates for the development.

A second future VPA is also proposed for the embellishment of the dedicated open space land. The cost of the embellishment works would be off-set against the otherwise payable monetary contribution required under Council's Section 94 Development Contributions plan. The extent of the embellishment works would be agreed as part of the finalisation of a future second VPA. If no agreement is reached, then the consent conditions provide for the full Section 94 contribution to be made to Council who would undertake embellishment works.

### 4. ENVIRONMENTAL IMPACTS

Section 79C(1)(b) of the Act requires Council to consider *"the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality"*.

#### 4.1 Natural Environment

##### 4.1.1 Trees

The site currently accommodates 35 trees. The proposal includes the removal of 30 trees and the implementation of tree protection measures for 5 trees. The landscape plan proposes planting of 148 trees ranging in mature height from 6.0m to 30.0m.

The landscape plan has been assessed by Council's landscape architect and found to be acceptable in contributing to the vegetated character of the area, utilising appropriate species and contributing to the local tree canopy. The tree removal, replacement and protection of the identified trees is supported. Conditions of consent are proposed requiring the street tree plantings to include 8 Sydney Red Gums, undergrounding of the power lines in Waitara Avenue and implementation of a landscape maintenance schedule.

Subject to recommended conditions, the proposed development is considered acceptable in respect to the natural environment.

##### 4.1.2 Stormwater Drainage

The proposed development involves the provision of an overland flow path and drainage connection between Orara Street and Waitara Avenue through the proposed new park. The proposed residential portion of the development includes on-site detention and stormwater drainage management which has been found to be appropriate by Council's engineers subject to the imposition of conditions of consent.

#### 4.2 Built Environment

##### 4.2.1 Built Form

The site is the last pocket of low density residential dwellings in a locality which has transitioned to higher density residential flat buildings. The development of the subject site would complete the redevelopment of this area and finalise the open space linkage to Mark Taylor Oval. The surrounding development forms comprise 8 and 9 storey buildings ranging in height from 25.6m to 32.5m. The proposed buildings have a maximum height of 30.04m which is compatible with the form and scale of existing development.

The boundary setbacks and building separations are also consistent with or greater than the setbacks of surrounding development. While the proposal results in a numerical non-compliance with the *HLEP* height control a variation under clause 4.6 of the *HLEP* has been lodged and is supported.

The built form and contribution to the streetscape is considered to be acceptable and appropriate in the local context.

The applicant submitted a Building Code of Australia (BCA) Compliance Statement which states the performance requirements of the BCA can be achieved by the proposed development.

#### **4.2.2 Traffic Generation and Road Safety**

The proposed development comprising 295 dwellings is recommended for approval by Council's traffic engineer. The development provides the required quantum of car parking spaces and has been assessed as having a traffic generation consistent with that expected when the land was rezoned to permit higher density residential development.

The traffic assessment prepared in support of the application identifies that the road and transport management network can accommodate the demand generated and that the increase in traffic generation at peak hours is modest at 60-85 dwellings per hour. Notwithstanding this, traffic management measures are to be provided for the precinct in accordance with Council's Section 94 plan including traffic signals at the intersection of Alexandria Parade and Waitara Avenue. This will assist in managing the traffic anticipated by this development.

Furthermore, the site is in close proximity to shopping facilities and public transport. Waitara railway station is south of the site, within some 300 metres walking distance. Services through Waitara operate on a 15 minute headway in each direction, with service frequency further improving in peak periods. In addition, a number of bus services run along Edgeworth David Avenue, with services in walking distance to the site. The site is also within walking distance of the Hornsby Town Centre which provides a full range of retail services and facilities.

#### **4.2.3 Excavation**

The proposal involves excavation works for the basement car park and the relocation of the sewer lines. A condition is recommended for Sydney Water requirements to be determined prior to the issue of a Construction Certificate.

A condition is also recommended for a dilapidation report to be prepared for the adjoining properties.

### **4.3 Social Impacts**

The proposed development would increase the availability of housing in the locality including the provision of adaptable housing and be of positive social impact. Furthermore the proposed dedication

of the park has a direct significant public benefit from the open space becoming available for use. The second significant element of the public benefit relates to the land being dedicated at no cost to the community.

4.4 Economic Impacts

The proposal would have a minor positive impact on the local economy in conjunction with other new residential development in the locality by generating an increase in demand for local services.

5. SITE SUITABILITY

Section 79C(1)(c) of the Act requires Council to consider “the suitability of the site for the development”.

The site is considered to be capable of accommodating the proposed development. The scale of the proposed development is consistent with the capability of the site and is considered acceptable.

6. PUBLIC PARTICIPATION

Section 79C(1)(d) of the Act requires Council to consider “any submissions made in accordance with this Act”.

6.1 Community Consultation

The proposed development was placed on public exhibition and was notified to 28 adjoining and nearby landowners between 9 January and 23 February 2014 in accordance with Council’s Hornsby Development Control Plan 2013. Council received 10 submissions. The map below illustrates the location of those nearby landowners who made a submission that are in close proximity to the development site.




NOTIFICATION PLAN

|              |               |   |  |
|--------------|---------------|---|--|
| • PROPERTIES | X SUBMISSIONS |  PROPERTY SUBJECT OF |  |
|--------------|---------------|---|--|

JRPP (Sydney West Region) Business Paper – 30 May 2014 – JRPP Reference 2014

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|          |          |             |   |
|----------|----------|-------------|---|
| NOTIFIED | RECEIVED | DEVELOPMENT |  |
|----------|----------|-------------|---|

The 10 submissions were received from 9 objectors.

The issues raised in the objections include:

|  |  |
|--|--|
| Non-compliance with adaptable housing provisions   | This issues is discussed in detail in the body of the report   |
| Recommendation of a VPA being entered into to improve the accessibility of Waitara Station | Upgrading of State government assets as a result of a local development is not considered to be an appropriate utilisation of the VPA provisions in this instance  |
| Privacy and building separation impacting upon 41-45 Waitara Avenue                        | These matters are addressed in detail in the body of the report. It is noted that the dwelling in question and the private open space is separated by a distance of 18.2 to 19.2m. The separation is to be occupied by proposed open space. It is also noted that the primary orientation of both areas of private open space is to the west rather than to the north and south. |
| Overshadowing of Mark Taylor Oval  | The solar access impact to the oval is minimal and occurs from 2.00pm in mid-winter  |
| High traffic generation  | The existing network has the capacity to accommodate the traffic generated. Furthermore the site is well suited to high density housing being located in walking distance to Waitara rail way station and Hornsby Town Centre.   |
| Congestion of Waitara Station  | The locality was rezoned to utilise public transport capacity. The concerns of ticket queues are being addressed through new ticketing options by Transport for NSW  |
| Construction noise and dust  | Appropriate conditions of consent would mitigate these concerns. See Condition 30.   |
| Adverse impacts on internet speeds   | Not a relevant S79C assessment consideration   |
| Insufficient capacity in local schools   | The development capacity is consistent with the contemplated yield from when the rezoning of the land originally occurred, which would have included consultation with the NSW Department of Education   |
| Insufficient open space and no new parks   | The proposal includes the dedication of a new public open space park.  |
| Building separation should be 30m for solar  | The solar access and building separations have   |

|  |  |
|--|--|
| access   | been assessed as appropriate.  |
| In sufficient car parking in the building impacting upon street car parking availability | The proposal complies with Council's requirements for car parking provision.   |
| Construction traffic impacts   | Conditions of consent recommend requiring the preparation of a construction management plan.   |
| Relocation of open space dedication closer to 21 Waitara Avenue                          | The open space dedication is consistent with the statutory framework identifying the required location of the new open space.  |
| Relocation of Waitara Avenue driveway should not be opposite the oval                    | The proposal effectively removes several driveways from opposite the oval minimising pedestrian conflicts and increasing on-street car parking capacity.   |
| Overshadowing impacts on 11-19 Waitara Avenue  | The impacts have been assessed as acceptable and consistent with the expected height and setbacks of the LEP and DCP controls applying to the site.  |
| Loss of gardens and tree loss  | The proposal would demolish existing single dwellings and gardens. This outcome, is however, consistent with the underlying zoning applying to the land and the expected future character. The landscape plan includes substantial replacement tree planting as well as the dedication of public open space. |
| Excessive height and size  | The proposed height has been assessed as consistent with the local context and the requested variation to the height of buildings standard is appropriate in the circumstance.   |
| Over development   | The development of the site is considered to be consistent with the local context and expected development outcomes from the controls that apply to the land.  |
| Development should be limited to 4 storeys   | A four storey building would be an inconsistent outcome in the local context and a substantially smaller building than contemplated by the applicable planning controls.   |
| FSR should not exceed 2:1  | The site is not subject to a maximum FSR standard.   |

## 6.2 Public Agencies

The development application was referred to the following Agencies for comment:

### 6.2.1 NSW Police

A response from NSW Police to the referral has not been received. Regardless conditions of consent relating to Crime Prevention Through Environmental Design Principles (CPTED) have been recommended.

## 7. THE PUBLIC INTEREST

Section 79C(1)(e) of the Act requires Council to consider “*the public interest*”.

The public interest is an overarching requirement, which includes the consideration of the matters discussed in this report. Implicit to the public interest is the achievement of future built outcomes adequately responding to and respecting the future desired outcomes expressed in environmental planning instruments and development control plans.

The application is considered to have satisfactorily addressed Council’s and relevant agencies’ criteria and would provide a development outcome that, on balance, would result in a positive impact for the community by providing additional housing opportunities, housing mix and public open space to meet the demands of a growing population with changing demographics. Accordingly, it is considered that the approval of the proposed residential flat building development would be in the public interest.

## 8. CONCLUSION

The proposed development is for the demolition of existing dwellings and construction of 3 x 9 storey residential flat buildings containing 295 dwellings over a basement car park and the dedication of new public open space.

The proposed development is in accordance with the provisions of *HLEP 2013*, and meets the zoning objectives for the provision of housing within a medium to high density residential environment. The proposal exceeds the numerical maximum height of buildings control and is supported by a clause 4.6 variation seeking a variation to the standard. The request to vary the development standard is supported in this instance as the resulting buildings are not out of character and scale with surrounding development, the variation would not result in a precedent as the site is one of the last sites to be redeveloped in the locality and the variation and approval of the application would result in the land zoned RE1 Public Open space being dedicated to Council via a VPA.

The proposal is considered satisfactory in respect to the requirements of the *Hornsby DCP* in meeting the key development principles for the development in the high density residential zones.

The proposal is consistent with the principles and desired outcome for future character, design quality, site requirements, building setbacks, setbacks, articulation, communal open space, privacy, sunlight, ventilation, housing choice and vehicle access and parking. The proposal seeks variations to the building footprint, adaptable housing requirements, building separation, boundary deep soil landscaping and private open space requirements. These departures from the DCP guidelines have been addressed in the assessment report and found to be appropriate in the circumstance of the delivery of the park to Council as public open space via a VPA and the acceptable protection of amenity to adjoining development. Without the delivery of this public benefit the relaxation of the controls sought and supported would not be acceptable.

The proposed development has addressed the design principle of *SEPP 65 – Design Quality Residential Flat Development* and the best practice requirements of the *Residential Flat Design Code*.

The departures from the rule of thumb guideline have been addressed in detail by the applicant and the design team and it is considered that the departures are warranted in the circumstance. The resulting building would demonstrate high quality design and residential amenity in a location well suited for higher density housing. The proposed buildings would provide a positive contribution to the built form of the locality.

The application is recommended for approval with the imposition of conditions of development consent.

**ATTACHMENTS:**

1. Locality Plan
2. Site Plans
3. Floor Plans
4. Elevations and Sections
5. Shadow Diagrams
6. Landscape Plans
7. Draft VPA



## SCHEDULE 1

### GENERAL CONDITIONS

The conditions of consent within this notice of determination have been applied to ensure that the use of the land and/or building is carried out in such a manner that is consistent with the aims and objectives of the relevant legislation, planning instruments and Council policies affecting the land and does not disrupt the amenity of the neighbourhood or impact upon the environment.

*Note: For the purpose of this consent, the term 'applicant' means any person who has the authority to act on or the benefit of the development consent.*

*Note: For the purpose of this consent, any reference to an Act, Regulation, Australian Standard or publication by a public authority shall be taken to mean the gazetted Act or Regulation, or adopted Australian Standard or publication as in force on the date that the application for a construction certificate is made.*

### 1. Approved Plans and Supporting Documentation

The development must be carried out in accordance with the plans and documentation listed below and endorsed with Council's stamp, except where amended by Council and/or other conditions of this consent:

#### Architectural Plans

| <b><i>Plan No.</i></b> | <b><i>Drawn by</i></b> | <b><i>Dated</i></b> |
|------------------------|------------------------|---------------------|
| DA02.101 Rev 2         | Bates Smart            | 04-04-2014          |
| DA02.102 Rev 2         | Bates Smart            | 04-04-2014          |
| DA02.103 Rev 2         | Bates Smart            | 04-04-2014          |
| DA02.201 Rev 2         | Bates Smart            | 04-04-2014          |
| DA02.202 Rev 2         | Bates Smart            | 04-04-2014          |
| DA02.203 Rev 2         | Bates Smart            | 04-04-2014          |
| DA02.204 Rev 2         | Bates Smart            | 04-04-2014          |
| DA02.205 Rev 2         | Bates Smart            | 04-04-2014          |
| DA02.206 Rev 2         | Bates Smart            | 04-04-2014          |
| DA02.207 Rev 2         | Bates Smart            | 04-04-2014          |
| DA02.208 Rev 2         | Bates Smart            | 04-04-2014          |
| DA02.401 Rev 2         | Bates Smart            | 04-04-2014          |

|                |             |            |
|----------------|-------------|------------|
| DA07.101 Rev 2 | Bates Smart | 04-04-2014 |
| DA07.102 Rev 2 | Bates Smart | 04-04-2014 |
| DA07.103 Rev 2 | Bates Smart | 04-04-2014 |
| DA07.201 Rev 2 | Bates Smart | 04-04-2014 |
| DA08.101 Rev 2 | Bates Smart | 04-04-2014 |

## Landscape Plans

| <b><i>Plan No.</i></b> | <b><i>Drawn by</i></b> | <b><i>Dated</i></b> |
|------------------------|------------------------|---------------------|
| 13-150_DA_19 issue B   | Arcadia                | 04-04-2014          |
| 13-150_DA_20 issue B   | Arcadia                | 04-04-2014          |
| 13-150_DA_21 issue B   | Arcadia                | 04-04-2014          |
| 13-150_DA_22 issue B   | Arcadia                | 04-04-2014          |
| 13-150_DA_23 issue B   | Arcadia                | 04-04-2014          |
| 13-150_DA_24 issue C   | Arcadia                | 15-05-2014          |
| 13-150_DA_25 issue B   | Arcadia                | 04-04-2014          |
| 13-150_DA_26 issue B   | Arcadia                | 04-04-2014          |
| Plant Schedule         | Arcadia                | 04-04-2014          |

## Documents

| <b><i>Document</i></b>                          | <b><i>By</i></b>    | <b><i>Dated</i></b>                               |
|---|---------------------|---|
| Basix Certificate<br>519612M_03                 | Norman Disney Young | 4 April 2014                                      |
| ABSA Certificate<br>1006214108                  | Norman Disney Young | 4 April 2014                                      |
| NatHERS Certificate<br>1006214975               | Noni Nuriani        | 4 April 2014                                      |
| Stormwater management<br>Report                 | Enstruct            | April 2014 Revision 2                             |
| Arboricultural Development<br>Assessment report | Moore Trees         | November 2013 Final                               |
| Waste Management Plan                           | Elephants foot      | November 2013 and<br>supplementary letter dated 8 |

|  |                             |                  |
|--|-----------------------------|------------------|
|  |                             | April 2014       |
| SEPP 65 Amenity Compliance - Solar Access report | Steve King                  | 21 November 2013 |
| Traffic Report                                   | Colston Budd Hunt and Kafes | November 2013    |
| BCA compliance Statement                         | Steve Watson and Partners   | 3 December 2013  |

## 2. Amendment of Plans

The approved plans are to be amended as follows:

- a) Amended plans to increase the depth of the proposed private open space balconies with a 500mm projection to the following proposed dwellings

Block A - Levels 01 to 07, proposed dwellings 03 and 09 on each level and on Level 08 proposed dwelling 03.

Block B - Levels 01 to 07, proposed dwellings 03, 04, 09, 10 and 11 on each level and on Level 08 proposed dwellings 09, 10 and 11

Block C - Levels 01 to 07, proposed dwellings 02, 03, and 10.

## 3. Removal of Existing Trees

This development consent only permits the removal of tree(s) numbered 1-29, 31, 32, 34 as identified in the Arboricultural Impact Assessment on Trim Document No. D02718711 prepared by Moore Trees dated 27th November 2013. The removal of any other trees requires separate approval under Council's Tree Preservation Order.

## 4. Construction Certificate

With the exception of the demolition of the existing structures, a Construction Certificate is required to be approved by Council or a Private Certifying Authority prior to the commencement of any works under this consent.

## 5. Section 94 Development Contributions

- a) In accordance with Section 80A(1) of the *Environmental Planning and Assessment Act 1979* and the *Hornsby Shire Council Section 94 Development Contributions Plan 2012-2021*, the following monetary contributions shall be paid to Council to cater for the increased demand for community infrastructure resulting from the development:

| Description                         | Contribution (4) |
|-------------------------------------|------------------|
| Roads                               | \$325,415.95     |
| Open Space and Recreation           | \$3,548,752.25   |
| Community Facilities                | \$497,406.70     |
| Plan Preparation and Administration | \$14,627.75      |

|              |                       |
|--------------|-----------------------|
| <b>TOTAL</b> | <b>\$4,386,202.65</b> |
|--------------|-----------------------|

being for 29 x 1 bedroom units, 238 x 2 bedroom units, 28 x 3 bedroom units and including a credit for 15 existing allotments.

- a) If the contributions are not paid within the financial quarter that this consent is granted, the contributions payable would be adjusted in accordance with the provisions of the Hornsby Shire Council Section 94 Development Contributions Plan and the amount payable would be calculated at the time of payment in the following manner:

$$\text{\$C}_{PY} = \text{\$C}_{DC} \times \frac{\text{CPI}_{PY}}{\text{CPI}_{DC}}$$

Where:

$\text{\$C}_{PY}$  is the amount of the contribution at the date of Payment.

$\text{\$C}_{DC}$  is the amount of the contribution as set out in this Development Consent.

$\text{CPI}_{PY}$  is the latest release of the Consumer Price Index (Sydney – All Groups) at the date of Payment as published by the ABS.

$\text{CPI}_{DC}$  is the Consumer Price Index (Sydney – All Groups) for the financial quarter at the date of this Development Consent.

- b) The monetary contributions shall be paid to Council:
- i) prior to the issue of the Subdivision Certificate where the development is for subdivision; or
  - ii) prior to the issue of the first Construction Certificate where the development is for building work; or
  - iii) prior to issue of the Subdivision Certificate or first Construction Certificate, whichever occurs first, where the development involves both subdivision and building work; or
  - iv) prior to the works commencing where the development does not require a Construction Certificate or Subdivision Certificate.

**It is the professional responsibility of the Principal Certifying Authority to ensure that the monetary contributions have been paid to Council in accordance with the above timeframes.**

Council's Development Contributions Plan may be viewed at [www.hornsby.nsw.gov.au](http://www.hornsby.nsw.gov.au) or a copy may be inspected at Council's Administration Centre during normal business hours.

## **6. Voluntary Planning Agreement (Park land dedication)**

Pursuant to section 93F of the Environmental Planning and Assessment Act 1979, the applicant must prepare and enter into a Voluntary Planning Agreement (VPA) with Hornsby Shire Council for the dedication of land zoned RE1 on the site prior to the issuance of a construction certificate.

The terms of the VPA must include but not be limited to the following:

- a) The land is to be dedicated free of cost to Council;
- b) The reason for the VPA is for the development to realise the theoretical development potential of the open space dedication area (had it remained zoned residential) on the balance of the land that is the subject of the DA,
- c) This VPA does not exclude the application of Section 94 to the development,
- d) The applicant agrees to pay all costs (including Council's costs) associated with the preparation, public notification, legal costs and administration costs of the VPA.

## **7. Voluntary Planning Agreement (Park land embellishment)**

Condition 5 has no effect to the extent that it is excluded (under Section 93F(3)(d) of the Act) by a provision of a voluntary planning agreement (VPA) for the embellishment of the park.

The terms of the VPA must include but not be limited to the following:

- a) The Council is a party to the agreement;
- b) The VPA relates to the carrying out of embellishment works for the purposes of improving the amenity of the land zoned RE1;
- c) The Section 94 Contribution that would otherwise be applicable to the development under the *Hornsby Shire Council Section 94 Development Contributions Plan 2012-2021* (per Condition No.5) is reduced by the agreed cost of the embellishment works to be undertaken to the park;
- d) The applicant agrees to pay all costs (including Council's costs) associated with the preparation, public notification, legal costs and administration costs of the VPA.

*Note: If a satisfactory VPA for the embellishment of the park is not agreed and executed then Condition No.7 has no effect and the full Section 94 contribution required by Condition No.5 applies.*

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

### **8. Building Code of Australia**

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

### **9. Contract of Insurance (Residential Building Work)**

In the case of residential building work for which the *Home Building Act 1989* requires there to be a contract of insurance in force in accordance with Part 6 of that Act, that such a contract of insurance is in force before any building work authorised to be carried out by the consent commences.

### **10. Notification of Home Building Act, 1989 Requirements**

Residential building work within the meaning of the *Home Building Act 1989* must not be carried out unless the principal certifying authority for the development to which the work relates (not being Council) has given Council written notice of the following information:

- a) In the case of work for which a principal contractor is required to be appointed:
  - i) The name and licence number of the principal contractor; and
  - ii) The name of the insurer by which the work is insured under Part 6 of that Act.
- b) In the case of work to be done by an owner-builder:
  - i) The name of the owner-builder; and
  - ii) If the owner-builder is required to hold an owner-builder's permit under that Act, the number of the owner-builder's permit.

*Note: If arrangements for doing the residential building work are changed while the work is in progress so that the information notified becomes out of date, further work must not be carried out unless the principal certifying authority for the development to which the work relates (not being Council) has given Council written notification of the updated information.*

## 11. Fire Safety Upgrade

To ensure the protection of persons using the building and to facilitate egress from the building in the event of a fire, the application for a construction certificate must demonstrate that it would comply with the following Category 1 fire safety provisions:

- a) Smoke exhaust is required to the basement areas in accordance with Part E2.2 of the BCA. Details to be provided to the PCA with the Construction Certificate
- b) An acoustic report must comply with Part F5 of the BCA. Details to be provided to the PCA with the Construction Certificate
- c) The basement car park is to comply with Part E1.5 but not E1.4 of the BCA. Details to be provided to the PCA with the Construction Certificate
- d) Provide a list of fire safety measures in accordance with Part 3 of Schedule 1 of the Environmental Planning and Assessment Regulation 2000

## 12. Water/Electricity Utility Services

The applicant must submit written evidence of the following service provider requirements:

- a) *Ausgrid (formerly Energy Australia)* – a letter of consent demonstrating that satisfactory arrangements have been made to service the proposed development.
- b) *Telstra* – a letter of consent demonstrating that satisfactory arrangements have been made to service the proposed development.

*Note: Sydney Water requires that s73 applications are to be made through an authorised Sydney Water Servicing Coordinator. Refer to [www.sydneywater.com.au](http://www.sydneywater.com.au) or telephone 13 20 92 for assistance.*

## 13. Dilapidation Report

A 'Dilapidation Report' is to be prepared by a 'chartered structural engineer' detailing the structural condition of all adjoining properties.

#### **14. Adaptable Units**

A minimum of 35 units are to be provided as adaptable housing in accordance with AS4299 (Class A). 28 of the units are to be allocated a car parking space designed for people with a disability per AS2890.6. Details of the adaptable units must be provided with the Construction Certificate Plans.

#### **15. Road and Community Land Works**

All road works approved under this consent must be constructed in accordance with Council's Civil Works Design and Construction Specification 2005 and the following requirements:-

- a) Council's 150 mm integral kerb and gutter to be reconstructed across the Waitara Avenue frontage of the development between 19 and 41 Waitara Avenue and a minimum 300 mm thick standard shoulder pavement having width of 4.5m from face of kerb to match the existing Waitara Avenue sealed pavement;
- b) Council's standard 80 mm thick concrete footpath to be constructed over the same frontage within the road verge and the remaining area turfed;
- c) Removal of redundant crossings, assets, street furniture, pavements and services on the Orara Street frontage of the site and restoration of the area with turfing;
- d) Construction of street lighting along the whole Waitara Avenue and Orara Street frontages of the development using standard Ausgrid luminaires, poles and standards, with lighting designed for the AS1158 P4 lumen standard;
- e) Undergrounding of all overhead electricity and telephony cables along the Waitara Avenue and Orara Street frontages of the site as per requirements of the appropriate Ausgrid and Comms Alliance requirements;
- f) All street furniture, assets and services shall be adjusted and restored as necessary at the Applicant's cost;
- g) The submission of a compaction certificate from a geotechnical engineer for all road sub-grade and road pavement materials;
- h) Pursuant to Section 138 of the Roads Act 1993, a Construction Certificate Application shall be made to Hornsby Shire Council for consideration and approval of the proposed road works. Application requires payment of Council's fee for assessment, approval and inspection.

#### **16. Internal Driveway/ Vehicle Areas**

The driveways and parking areas on site must be designed and operated in accordance with *Australian Standard AS 2890.1 – 2004 – Off Street Car Parking* and *Australian Standard 2890.2 - 2002 – Off Street Commercial* and the following requirement

- a) All parking areas and driveways are to be sealed to an all weather standard, line marked and signposted;

- b) Car parking, loading and manoeuvring areas to be used solely for nominated purposes;
- c) Vehicles awaiting loading, unloading or servicing shall be parked on site and not on adjacent or nearby public roads
- d) Design levels at the front boundary must be obtained from Council;
- e) Ramp grades and transitions for changes of grade must not exceed those prescribed by the Australian Standard;
- f) The basement and ramps shall be designed by a chartered structural engineer;
- g) Retaining walls required to support the carriageway and the compaction of all fill batters must be in accordance with the requirements of a chartered structural engineer;
- h) Safety rails must be provided where there is a level difference more than 0.3 metres and a 1:4 batter can not be achieved;
- i) All parking for people with disabilities is to comply with AS/NZS 2890.6:2009 Off-street parking for people with disabilities.
- j) Bicycle parking spaces are to be designed in accordance with AS 2890.3-1993 Bicycle parking facilities
- k) Motorcycle parking spaces are to be designed in accordance with AS 2890.5-1993

## 17. Vehicular Crossings

A separate application under the *Local Government Act 1993* and the *Roads Act 1993* must be submitted to Council for the installation of a new vehicular crossings and the removal of the redundant crossings. The vehicular crossings must be constructed in accordance with Council's *Civil Works Design 2005* and the following requirements:

- a) Any redundant crossings must be replaced with integral kerb and gutter;
- b) The footway area must be restored by turfing;

*Note: An application for a vehicular crossing can only be made to one of Council's Authorised Vehicular Crossing Contractors. You are advised to contact Council on 02 9847 6940 to obtain a list of contractors.*

## 18. Traffic Control Plan

A Construction Traffic Management Plan detailing construction vehicle routes, number of trucks, hours of operation, access arrangements and traffic control should be submitted to Council prior to the issue of a construction certificate. A Traffic Control Plan (TCP) must be prepared by a qualified traffic controller in accordance with the *Roads & Traffic Authority's Traffic Control at Worksites Manual 1998* and *Australian Standard 1742.3* for all work on a public road and be submitted to Council. The TCP must detail the following:

- a) Arrangements for public notification of the works.
- b) Temporary construction signage.
- c) Permanent post-construction signage.
- d) Vehicle movement plans.



- e) Traffic management plans.
- f) Pedestrian and cyclist access/safety.

## 19. Stormwater Drainage

The stormwater drainage system for the buildings and paved areas must be designed and constructed in accordance with Council's *Civil Works – Design and Construction Specification 2005* and the following requirements:

- a) Designed and constructed in accordance with the Water Quality requirements of Hornsby's DCP Section 1C.1.2.i and connected directly via gravity to the proposed on-site detention (OSD) system
- b) Have capacity to contain the 20 year Average Recurrence Interval storm event flow rate with overland flow paths provided above wherever possible;
- c) Provide for all drainage pits, pipes, on-site detention and water quality treatment systems to be provided within the residential component of the land, not within community land.

## 20. On Site Stormwater Detention

An on-site stormwater detention system must be designed by a chartered civil or hydraulic engineer and constructed in accordance with Council's Design and Construction Specification 2005 and the following requirements:-

- a) Have a capacity of not less than 88 cubic metres, and a maximum discharge (when full) of 136 litres per second.
- b) Have a surcharge/inspection grate located directly above the outlet with slow rise and fall in tank head. High early discharge devices are not required;
- c) Discharge from the detention system to be controlled via 1 metre length of pipe, not less than 65 millimetres diameter or via a stainless plate with sharply drilled orifice bolted over the face of the outlet discharging into a larger diameter pipe capable of carrying the design flow to an approved Council system.
- d) Provide for an emergency tank overflow system to Waitara Avenue;
- e) Connected directly via gravity to an extension of the Waitara Avenue piped stormwater drainage system. More information is available on the Preliminary Drainage Improvements Plan and Longsection Sheet 1 of 1 Issue 1 by Hornsby Shire Council and Plan 4660 CV-0100 Rev 02 dated 3/04/14 by Enstruct Group Pty Ltd.

## 21. Park Land Stormwater Drainage

If a Planning Agreement for park land embellishment is executed pursuant to Condition No.7 then the following stormwater drainage conditions apply to the land zoned RE1:

- a) Council's minor and major drainage system shall be designed and constructed generally as per the Preliminary Drainage Improvements Plan and Longsection Sheet 1 of 1 Issue 1 by Hornsby Shire Council;

- b) The existing Orara Street drainage system shall be designed, graded and constructed to connect to the proposed Council piped drainage and then overland flow path system generally as per the Drainage Improvements Plan;
- c) The existing Waitara Avenue drainage system shall be designed and constructed to connect to the proposed Council piped drainage system generally as per the Drainage Improvements Plan;
- d) A depression and landscaped watercourse to Council's requirements shall be constructed to contain the 100 year Average Recurrence Interval storm event, and assuming pipes blocked, provide safe disposal of the design flow at the existing Waitara Avenue concrete footpath level to the public road;
- e) All services in public areas shall be discovered using advice from the relevant utilities and detailed on the construction plans;
- f) Pursuant to Sections 59A and 68 of the Local Government Act 1993, a Construction Certificate Application shall be made to Hornsby Shire Council for consideration and approval of proposed drainage works. Application requires payment of Council's fee for assessment, approval and inspection. Designs for these works shall be prepared in accordance with Council's *Civil Works Design and Construction Specification 2005*.

## REQUIREMENTS PRIOR TO THE COMMENCEMENT OF ANY WORKS

### 22. Erection of Construction Sign

A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

- a) Showing the name, address and telephone number of the principal certifying authority for the work;
- b) Showing the name of the principal contractor (if any) for any demolition or building work and a telephone number on which that person may be contacted outside working hours; and
- c) Stating that unauthorised entry to the work site is prohibited.

*Note: Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.*

### 23. Protection of Adjoining Areas

A temporary hoarding, fence or awning must be erected between the work site and adjoining lands before the works begin and must be kept in place until after the completion of the works if the works:

- a) Could cause a danger, obstruction or inconvenience to pedestrian or vehicular traffic.
- b) Could cause damage to adjoining lands by falling objects.
- c) Involve the enclosure of a public place or part of a public place.

*Note: Notwithstanding the above, Council's separate written approval is required prior to the erection of any structure or other obstruction on public land.*

#### **24. Toilet Facilities**

Toilet facilities must be available or provided at the works site before works begin and must be maintained until the works are completed at a ratio of one toilet for every 20 persons employed at the site. Each toilet must:

- a) be a standard flushing toilet connected to a public sewer; or
- b) be a temporary chemical closet approved under the *Local Government Act 1993*; or
- c) have an on-site effluent disposal system approved under the *Local Government Act 1993*.

#### **25. Erosion and Sediment Control**

Erosion and sediment control measures must be provided and maintained throughout the construction period in accordance with the manual '*Soils and Construction 2004 (Bluebook)*', the approved plans, Council specifications and to the satisfaction of the principal certifying authority. The erosion and sediment control devices must remain in place until the site has been stabilised and revegetated.

*Note: On the spot penalties up to \$1,500 may be issued for any non-compliance with this requirement without any further notification or warning.*

#### **26. Tree Protection Barriers**

Tree protection fencing must be erected around trees numbered 30 to be retained at a 8 metre setback. The tree fencing must be constructed of 1.8 metre 'cyclone chainmesh fence' or star pickets spaced at 2 metre intervals, connected by a continuous high-visibility barrier/hazard mesh at a height of 1 metre.

To avoid injury or damage, trees numbered 30 must have trunks protected by 2 metre lengths of 75mm x 25mm hardwood timbers spaced at 80mm secured with galvanised wire (not fixed or nailed to the tree in any way).

### **REQUIREMENTS DURING CONSTRUCTION**

#### **27. Construction Work Hours**

All work on site (including demolition and earth works) must only occur between 7am and 5pm Monday to Saturday. No work is to be undertaken on Sundays or public holidays.

#### **28. Work Zone**

All construction vehicles associated with the proposed development are to be contained on site as no construction zones would be permitted on Waitara Avenue or Orara Avenue in the vicinity of the site.

## 29. Demolition

All demolition work must be carried out in accordance with “*Australian Standard 2601-2001 – The Demolition of Structures*” and the following requirements

- a) Demolition material must be disposed of to an authorised recycling and/or waste disposal site and/or in accordance with an approved waste management plan;
- b) Demolition works, where asbestos material is being removed, must be undertaken by a contractor that holds an appropriate licence issued by *WorkCover NSW* in accordance with Chapter 10 of the *Occupational Health and Safety Regulation 2001* and Clause 29 of the *Protection of the Environment Operations (Waste) Regulation 2005*; and
- c) On construction sites where buildings contain asbestos material, a standard commercially manufactured sign containing the words ‘DANGER ASBESTOS REMOVAL IN PROGRESS’ measuring not less than 400mm x 300mm must be erected in a prominent position visible from the street.

## 30. Environmental Management

The site must be managed in accordance with the publication ‘*Managing Urban Stormwater – Landcom (March 2004)*’ and the *Protection of the Environment Operations Act 1997* by way of implementing appropriate measures to prevent sediment run-off, excessive dust, noise or odour emanating from the site during the construction of the development.

## 31. Works Near Trees

All required tree protection measures are to be maintained in good condition for the duration of the construction period.

All works (including driveways and retaining walls) within 5 metres of any trees required to be retained (whether or not on the subject property, and pursuant to this consent or the *Tree Preservation Order*), must be carried out under the supervision of an ‘*AQF Level 5 Arborist*’ and a certificate submitted to the principal certifying authority detailing the method(s) used to preserve the tree(s).

*Note: Except as provided above, the applicant is to ensure that no excavation, filling or stockpiling of building materials, parking of vehicles or plant, disposal of cement slurry, waste water or other contaminants is to occur within 4 metres of any tree to be retained.*

## 32. Council Property

During construction works, no building materials, waste, machinery or related matter is to be stored on the road or footpath. The public reserve must be kept in a clean, tidy and safe condition at all times.

*Note: This consent does not give right of access to the site via Council’s park or reserve. Should such access be required, separate written approval is to be obtained from Council.*

## 33. Landfill

Landfill must be constructed in accordance with Council’s ‘*Construction Specification 2005*’ and the following requirements:

- a) All fill material imported to the site is to wholly consist of Virgin Excavated Natural Material (VENM) as defined in Schedule 1 of the *Protection of the Environment Operations Act 1997* or a material approved under the *Department of Environment and Climate Change's* general resource recovery exemption.
- b) A compaction certificate is to be obtained from a geotechnical engineer verifying that the specified compaction requirements have been met.

#### **34. Excavated Material**

All excavated material removed from the site must be classified in accordance with the Department of Environment, Climate Change and Water NSW *Waste Classification Guidelines* prior to disposal to an approved waste management facility and reported to the principal certifying authority.

#### **35. Survey Report – Finished Floor Level**

A report(s) must be prepared by a registered surveyor and submitted to the principal certifying authority prior to the pouring of concrete at each level of the building certifying that:

- a) The building, retaining walls and the like have been correctly positioned on the site; and
- b) The finished floor level(s) are in accordance with the approved plans.

#### **36. Waste Management**

Waste management during the demolition and construction phase of the development must be undertaken in accordance with the approved Waste Management Plans.

Additionally written records of the following items must be maintained during the removal of any waste from the site and such information submitted to the Principal Certifying Authority within fourteen days of the date of completion of the works:

- a) The identity of the person removing the waste.
- b) The waste carrier vehicle registration.
- c) Date and time of waste collection.
- d) A description of the waste (type of waste and estimated quantity).
- e) Details of the site to which the waste is to be taken.
- f) The corresponding tip docket/receipt from the site to which the waste is transferred (noting date and time of delivery, description (type and quantity) of waste).
- g) Whether the waste is expected to be reused, recycled or go to landfill.

*Note: In accordance with the Protection of the Environment Operations Act 1997, the definition of waste includes any unwanted substance, regardless of whether it is reused, recycled or disposed to landfill.*

### **REQUIREMENTS PRIOR TO THE ISSUE OF AN OCCUPATION OR SUBDIVISION CERTIFICATE**

*Note: For the purpose of this consent, a reference to 'occupation certificate' shall not be taken to mean an 'interim occupation certificate' unless otherwise stated.*

### **37. Fulfilment of BASIX Commitments**

The applicant must demonstrate the fulfilment of BASIX commitments pertaining to the development.

### **38. Safety and Security**

- a) Fire exit doors to the development must be fitted with single cylinder locksets (Australia and New Zealand Standard – Lock Sets) to restrict unauthorized access to the development.
- b) Ground floor windows must be fitted with window locks that can be locked with a key.
- c) A graffiti management plan must be incorporated into the maintenance plan for the development for graffiti to be removed within a forty-eight hour period.
- d) The basement car park entry must be secured by security gates/roller shutters and controlled by secure access located at the top of the driveway. The access control to include an audio/visual intercom system to allow visitor access to the parking area.
- e) Lighting of pedestrian pathways throughout the development must comply with Australia and New Zealand Lighting Standard 1158.1 – Pedestrian.
- f) Sign posting and way finding to be colour coded with the respective unit block in clear legible signage so that emergency services are able to clearly identify location of a unit and location of the unit block entry.
- g) Front fencing to be designed to allow casual surveillance at the frontage.
- h) Lobby access to be controlled by security card or similar.

### **39. Sydney Water – s73 Certificate**

A s73 Certificate must be obtained from *Sydney Water*.

### **40. Consolidation of Allotments**

The allotments zoned R4 the subject of this consent must be consolidated into one allotment. The allotments zoned RE1 the subject of this consent must be consolidated into one allotment.

### **41. Creation of Easements**

The following matter(s) must be nominated on the plan of subdivision under s88B of the *Conveyancing Act 1919*:

- a) A "Restriction on the Use of Land" for any lot adjacent to the floodway, requiring the finished floor level of any habitable room or ramp crest to be not less than 500mm above the 100 year average recurrence interval storm level. The levels must be related to Australian Height Datum;

- b) The creation of an appropriate "Positive Covenant" and "Restriction as to User" over the constructed on-site detention/retention systems and outlet works, within the lots in favour of Council in accordance with Council's prescribed wording. The position of the on-site detention system is to be clearly indicated on the title;
- c) To register the OSD easement, the restriction on the use of land "works-as-executed" details of the on-site-detention must be submitted verifying that the required storage and discharge rates have been constructed in accordance with the design requirements. The details must show the invert levels of the on site system together with pipe sizes and grades. Any variations to the approved plans must be shown in red on the "works-as-executed" plan and supported by calculations;

*Note: Council must be nominated as the authority to release, vary or modify any easement, restriction or covenant.*

#### **42. Garbage Collection Easement**

For the purpose of waste collection, an easement entitling Council, its servants and agents and persons authorised by it to enter upon the subject land and to operate thereon, vehicles and other equipment for the purposes of garbage collection must be granted to Council by the owner of the land.

*Note The easement must be in a form prescribed by Council and must include covenants to the effect that parties would not be liable for any damage caused to the subject land or any part thereof or to any property located therein or thereon by reason of the operation thereon of any vehicle or other equipment used in connection with the collection of garbage and to the effect that the owner for the time being of the subject land shall indemnify the Council, its servants, agents and persons authorised by it to collect garbage against liability in respect of any such claims made by any person whomsoever.*

#### **43. Completion of Landscaping Planter Boxes / On slab planting**

On slab planter boxes must include waterproofing, subsoil drainage (proprietary drainage cell, 50mm sand and filter fabric) automatic irrigation, minimum 500mm planting soil for shrubs and minimum 1000mm planting soil for trees and palms and 75mm mulch to ensure sustainable landscape is achieved.

#### **44. Street Tree Plantings**

Planting to the front verge must include eight (8) *Angophora costata* (Sydney Red Gum). Trees shall be installed at minimum 100 litre pot size.

*Note: Applicants are advised to pre-order plant material required in pot sizes 45 litre or larger to ensure Nurseries have stock available at the time of install.*

#### **45. Works to Public Open Space**

- a) If a Voluntary Planning Agreement is not entered into for embellishment works to the park pursuant to Condition No.7 of the consent, the following works are to be completed on the land zoned RE1 prior to the issuance of an occupation certificate:
  - i) Demolition and removal of the existing buildings on the land;

- ii) Earthworks at the interface with the proposed development in accordance with Drawing No. 13-150\_DA\_24 issue C; and
- iii) The land is to be stabilised to prevent the erosion of soil in accordance with the publication '*Managing Urban Stormwater – Landcom (March 2004)*'.

- b) If a Voluntary Planning Agreement is entered into for embellishment works to the park pursuant to Condition No.7 of the consent, all the landscaping and drainage works identified on the approved plans and as required by the VPA are to be completed prior to the issuance of an occupation certificate.

#### **46. Completion of Landscaping**

A certificate must be provided by a practicing landscape architect or person with similar qualifications and experience certifying that all required landscaping works have been satisfactorily completed in accordance with the approved landscape plans.

#### **47. Planning Agreement - Dedication of Public Open Space**

Prior to the issuance of an occupation certificate the applicant is to submit a certificate from the Council confirming that:

- a) All obligations under the Planning Agreement in Condition No.6 (Park land dedication) have been satisfied;
- b) The developer is not in breach of its obligations under the Planning Agreement in Condition No.6 (Park land dedication).

Council would issue this certificate at the request of the applicant or, if the certificate cannot be issued, provide a notice identifying the outstanding payments, obligations or breach.

#### **48. Planning Agreement - Embellishment of Public Open Space**

Prior to the issuance of an occupation certificate the applicant is to submit a certificate from the Council confirming:

- a) If a Planning Agreement has been entered into for the embellishment of the open space pursuant to Condition No.7 of the consent.
- b) If a Planning Agreement applies pursuant to Condition No.7 then the certificate from the Council is also to confirm that:
  - i. All obligations under the Planning Agreement in Condition 7 (Park land embellishment) have been satisfied;
  - ii. The developer is not in breach of its obligations under the Planning Agreement in Condition 7 (Park land embellishment).

Council would issue this certificate at the request of the applicant or, if the certificate cannot be issued, provide a notice identifying the outstanding payments, obligations or breach.



#### 49. Waste Management Details

The following waste management requirements must be complied with:

- a) The bin storage rooms at the basement level must include water or a hose for cleaning, graded floors with drainage to sewer, a robust door, sealed and impervious surface, adequate lighting and ventilation, and must be lockable.
- b) A minimum of 9 x 660 litre garbage bins and 33 x 240litre recycling bins and compactors are to be provided.
- c) The waste facility rooms at each residential level must include sealed and impervious surface, adequate lighting and ventilation.
- d) A report must be prepared by an appropriately qualified person, certifying the following:

- i. A comparison of the estimated quantities of each waste type against the actual quantities of each waste type.

*Note: Explanations of any deviations to the approved Waste Management Plan is required to be included in this report*

- ii. That at least 60% of the waste generated during the demolition and construction phase of the development was reused or recycled.

*Note: If the 60% diversion from landfill cannot be achieved in the Construction Stage, the Report is to include the reasons why this occurred and certify that appropriate work practices were employed to implement the approved Waste Management Plan. The Report must be based on documentary evidence such as tipping dockets/receipts from recycling depots, transfer stations and landfills, audits of procedures etc. which are to be attached to the report.*

- iii. All waste was taken to site(s) that were lawfully permitted to accept that waste.
- iv. Each unit must be provided with an indoor waste/recycling cupboard for the interim storage of a minimum one day's waste generation with separate containers for general waste and recyclable materials.

- v. Space must be provided for either individual compost containers for each unit or a communal compost container;

*Note: The location of the compost containers should have regard for potential amenity impacts.*

- vi. The bin carting routes must be devoid of any steps.

*Note: Ramps between different levels are acceptable*

- vii. Access to the waste volume handling equipment by unauthorised persons (including residents and waste collectors) must be prevented.

*Note: Locking the room housing the volume handling equipment or Caging of the volume handling equipment is acceptable.*

#### 50. Provision for National Broadband Network (NBN)

Provision must be made for fibre ready passive infrastructure (pits and pipes) generally in accordance with NBN Co's pit and pipe installation guidelines to service the proposed development. A certificate from NBN Co or Telstra must be submitted to the PCA that the fibre optic cabling provided for the development complies with MDU Building Design Guides for Development.

#### **51. Damage to Council Assets**

Any damage caused to Council's assets as a result of the construction of the development must be rectified in accordance with Council's Civil Works Specifications. Council's Restorations Supervision must be notified for a formwork inspection prior to pouring concrete.

|                               |
|-------------------------------|
| <b>OPERATIONAL CONDITIONS</b> |
|-------------------------------|

#### **52. Access to/from and use of the car park**

- a) Residential parking spaces are to be secure spaces with access controlled by card or numeric pad.
- b) Visitors must be able to access the visitor parking spaces in the basement car park at all times.
- c) Any proposed landscaping and/or fencing must not restrict sight distance from the driveway to pedestrians and cyclists travelling along the footpath.

#### **53. Landscape establishment**

The landscape works must be maintained into the future to ensure the establishment and successful growth of plant material to meet the intent of the landscape design. This must include but not be limited to watering, weeding, replacement of failed plant material and promoting the growth of plants through standard industry practices.

#### **54. Waste Management Caretaker**

The waste management on site must be in accordance with the following requirements:

A site caretaker must be employed and be responsible for moving bins where and when necessary, washing bins and maintaining waste storage areas, ensuring the chute systems and related devices are maintained in effective and efficient working order, managing the communal composting area(s), managing the bulky item storage areas, arranging the prompt removal of dumped rubbish, and ensuring all residents are informed of the use of the waste management system.

#### **55. Fire Safety Statement - Annual**

On at least one occasion in every 12 month period following the date of the first 'Fire Safety Certificate' issued for the property, the owner must provide Council with an annual 'Fire Safety Certificate' to each essential service installed in the building.

**ADVISORY NOTES**

The following information is provided for your assistance to ensure compliance with the Environmental Planning and Assessment Act 1979 Environmental Planning and Assessment Regulation 2000, other relevant legislation and Council's policies and specifications. This information does not form part of the conditions of development consent pursuant to Section 80A of the Act.

**Environmental Planning and Assessment Act 1979 Requirements**

The Environmental Planning and Assessment Act 1979 requires:

- The issue of a construction certificate prior to the commencement of any works. Enquiries can be made to Council's Customer Services Branch on 9847 6760.
- A principal certifying authority to be nominated and Council notified of that appointment prior to the commencement of any works.
- Council to be given at least two days written notice prior to the commencement of any works.
- Mandatory inspections of nominated stages of the construction inspected.
- An occupation certificate to be issued before occupying any building or commencing the use of the land.

**Long Service Levy**

In accordance with Section 34 of the *Building and Construction Industry Long Service Payments Act 1986*, a 'Long Service Levy' must be paid to the Long Service Payments Corporation or Hornsby Council.

*Note: The rate of the Long Service Levy is 0.35% of the total cost of the work.*

*Note: Hornsby Council requires the payment of the Long Service Levy prior to the issue of a construction certificate.*

**Tree and Vegetation Preservation**

In accordance with Clause 5.9 of the *Hornsby Local Environmental Plan 2013* a person must not ringbark, cut down, top, lop, remove, injure or wilfully destroy any tree or other vegetation protected under the Hornsby Development Control Plan 2013 without the authority conferred by a development consent or a permit granted by Council.

*Notes: A tree is defined as a long lived, woody perennial plant with one or relatively few main stems with the potential to grow to a height greater than three metres (3M). (HDCP 1B.6.1.c).*

*Tree protection measures and distances are determined using the Australian Standard AS 4970:2009, "Protection of Trees on Development Sites".*

*Fines may be imposed for non-compliance with both the Hornsby Local Environmental Plan 2013 and the Hornsby Development Control Plan 2013.*

**Disability Discrimination Act**

The applicant's attention is drawn to the existence of the *Disability Discrimination Act*. A construction certificate is required to be obtained for the proposed building/s, which would provide consideration

under the *Building Code of Australia*, however, the development may not comply with the requirements of the *Disability Discrimination Act*. This is the sole responsibility of the applicant.

### **Covenants**

The land upon which the subject building is to be constructed may be affected by restrictive covenants. Council issues this approval without enquiry as to whether any restrictive covenant affecting the land would be breached by the construction of the building, the subject of this consent. Applicants must rely on their own enquiries as to whether or not the building breaches any such covenant.

### **Fees and Charges – Work in Public Roads and Execution of Legal Documents**

All fees payable to Council as part of any construction, compliance, work in public land or inspection associated with the development (including the registration of privately issued certificates) are required to be paid in full prior to the issue of the final Occupation Certificate. Any additional Council inspections beyond the scope of any compliance certificate required to verify compliance with the terms of this consent would be charged at the individual inspection rate nominated in Council's Fees and Charges Schedule.

### **Dial Before You Dig**

Prior to commencing any works, the applicant is encouraged to contact *Dial Before You Dig* on 1100 or [www.dialbeforeyoudig.com.au](http://www.dialbeforeyoudig.com.au) for free information on potential underground pipes and cables within the vicinity of the development site.

Telecommunications Act 1997 (Commonwealth)

*If you are aware of any works or proposed works which may affect or impact on Telstra's assets in any way, you are required to contact: Telstra's Network Integrity Team on Phone Number 1800810443.*

### **Asbestos Warning**

Should asbestos or asbestos products be encountered during demolition or construction works, you are advised to seek advice and information prior to disturbing this material. It is recommended that a contractor holding an asbestos-handling permit (issued by *WorkCover NSW*) be engaged to manage the proper handling of this material. Further information regarding the safe handling and removal of asbestos can be found at:

[www.environment.nsw.gov.au](http://www.environment.nsw.gov.au)

[www.nsw.gov.au/fibro](http://www.nsw.gov.au/fibro)

[www.adfa.org.au](http://www.adfa.org.au)

[www.workcover.nsw.gov.au](http://www.workcover.nsw.gov.au)

Alternatively, telephone the *WorkCover* Asbestos and Demolition Team on 8260 5885.

### **Unit Numbering (Strata Units)**

A schedule of the units numbers and the corresponding strata numbers must accompany the application for a Strata Certificate when lodged with Council.