

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

<b>JRPP No</b>	2016SYW143
<b>DA Number</b>	DA/1234/2015/A (Lodged 19 July 2016)
<b>Local Government Area</b>	Hornsby
<b>Proposed Development</b>	Section 96(2) application for minor design changes to an approved Performing Arts Centre at an existing educational establishment
<b>Street Address</b>	Lot 1 DP 1042630, No. 449C Pennant Hills Road, Pennant Hills
<b>Applicant/Owner</b>	Applicant: Paynter Dixon Constructions Pty Ltd Owner: Sisters of the Good Samaritan
<b>Number of Submissions</b>	Nil
<b>Regional Development Criteria (Schedule 4A of the Act)</b>	The Section 96(2) application is referred to the JRPP pursuant to Schedule 4A of the Environmental Planning and Assessment Act 1979, as amended. The Panel is authorised to exercise the consent authority functions of Council as the development proposed is for an educational establishment and has a capital investment of more than \$5 million. Capital investment value of the development - \$11,700,000
<b>List of All Relevant s79C(1)(a) Matters</b>	<ul style="list-style-type: none"> <li>• Environmental Planning and Assessment Act 1979</li> <li>• Hornsby Local Environmental Plan 2013</li> <li>• State Environmental Planning Policy No. 44 - Koala Habitat</li> <li>• State Environmental Planning Policy No. 55 -Remediation of Land</li> <li>• State Environmental Planning Policy (Infrastructure) 2007</li> <li>• Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005</li> <li>• Hornsby Development Control Plan 2013</li> <li>• Hornsby Section 94A Contributions Plan 2012- 2021</li> </ul>
<b>List all documents submitted with this report for the panel's consideration</b>	<ul style="list-style-type: none"> <li>• Locality Plan</li> <li>• Architectural Plans</li> <li>• Floor Plans</li> <li>• Landscape Plan</li> <li>• Notice of Determination</li> <li>• Approved Plans</li> </ul>
<b>Recommendation</b>	Approval

<b>Report by</b>	Debra Clydsdale – Town Planner from Hornsby Shire Council
------------------	---

## **ASSESSMENT REPORT AND RECOMMENDATION**

### **EXECUTIVE SUMMARY**

- The Section 96(2) application involves minor design changes to an approved Performing Arts Centre at an existing educational establishment.
- The proposed modification is substantially the same development as approved pursuant to Section 96(2) of the *Environmental Planning and Assessment Act 1979* and is generally in compliance with the *Hornsby Local Environmental Plan 2013* and the *Hornsby Development Control Plan 2013*.
- No submissions have been received in respect of the application.
- It is recommended that the application be approved.

### **RECOMMENDATION**

THAT pursuant to Section 96(2) of the *Environmental Planning and Assessment Act 1979*, Development Application No. DA/1234/2015 for the erection of a Performing Arts Centre at an existing educational establishment at Lot 1 DP 1042630, No. 449C Pennant Hills Road, Pennant Hills be amended as detailed in Schedule 1 of this report.

---

### **BACKGROUND**

On 3 May 2016, the Sydney West Joint Regional Planning Panel approved Development Application No. 1234/2015 for the erection of a Performing Arts Centre at an existing educational establishment.

On 19 July 2016, a Section 96(2) application was lodged to complete minor design changes, including the deletion of a large retaining wall on the southern elevation of the building. This application is the subject of this report.

### **SITE**

The subject site is identified as Lot 1 DP 1042630, No. 449C Pennant Hills Road, Pennant Hills, and known as Mount St Benedict College. The site has an area of 4.5Ha and is located on the southern side of Pennant Hills Road, one property to the west of the corner of Beecroft Road.

The land slopes in a southerly direction away from Pennant Hills Road towards the rear of the site. The land also exhibits a cross fall from west to east. The current built upon area of the site has a reasonably gentle slope; however the land drops steeply from the edge of the built upon areas into the densely vegetated remnant Blue Gum High Forest from the middle to the rear of the site.

Mount St Benedict College is a Catholic girl's high school with an approved enrolment of 920 students. The existing development comprises a number of substantial buildings (eight in total) which are single storey, two storeys and three storeys in height. Several demountable class rooms (four in total) are also situated on site as well as a number of car parking areas.

There are 115 car spaces on site. A number of sporting fields are situated on a level expanse of land in the north western corner of the site.

An easement for the Northconnex tunnel corridor traverses the site from the south-west to the north-east. The southern portion of the site contains dense bushland identified as Blue Gum High Forest, which is a critically endangered ecological community. The site's bushland area forms part of the headwaters of Devlin's Creek.

The site is adjoined to the west by an existing convent, 'The Sisters of the Good Samaritan' and to the east by a reserve with frontage to Beecroft Road which contains significant vegetation. The south of the property is adjoined by a mixture of residential developments, both single dwelling houses and multi-unit residential.

### **APPROVED DEVELOPMENT**

The approved development is for a two storey Performing Arts Centre(PAC) to serve the current school population. The PAC is to be constructed on a steeply sloping section of the site, between the sporting fields in the north-west, existing school buildings to the north-east and dense bushland to the south and south-east.

The approved PAC comprises a performance space with 220 seat capacity, a number of music / art class rooms, storerooms, amenities and landscaped forecourt. The development comprises a large retaining wall on the southern side of the building and forecourt to support the development.

The PAC was designed to be positioned low in the landscape, with the roof slab corresponding with the level of the existing sporting oval and the two storeys positioned below. The approved building is to reach a maximum height of 17.55m from natural ground level, which exceeds the 8.5m height development standard that applies. The 4.6 variation submitted with the proposal was supported.

A total of 14 trees have been approved to be removed to accommodate the development.

Earth works associated with the development have commenced.

### **PROPOSED MODIFICATION**

The application proposes to modify the PAC by completing minor design changes including the deletion of the large retaining wall on the southern elevation of the building. Details of the proposed modification are as follows:

- The retaining wall supporting the forecourt slab is to be removed and the existing filled batter will be altered so that it will extend to the bottom of the removed retaining wall at a grade of 1:1.5 as agreed by a geotechnical engineer.
- The forecourt slab to be suspended on columns and reduced in width by up to 4.3 metres.
- Soil from the excavated area will be placed over the existing sports ground.
- Minor change to the forecourt landscaping.
- Metal screen provided under the forecourt area to screen the underside of the building.

- The height of the roof level of the building will be raised by 100mm to enable the roof water to drain to the outer edge.
- The removal of two additional trees (Tree B and C) on the western end of the building to accommodate the proposed changes.
- Condition No. 2 is proposed to be amended to refer to the trees required to be removed as per the applicant's arborist report. The condition omitted tree 26B and should have separated trees 61 and A by a comma.

The deletion of the retaining wall is proposed generally to reduce the construction costs of the development. There is no change proposed to the internal layout or materials and finishes of the building.

## **ASSESSMENT**

The development application has been assessed having regard to '*A Plan for Growing Sydney*', 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). The following issues have been identified for further consideration.

### **1. STRATEGIC CONTEXT**

#### **1.1 A Plan for Growing Sydney and (Draft) North Subregional Strategy**

*A Plan for Growing Sydney* has been prepared by the NSW State Government to guide land use planning decisions for the next 20 years. The Plan sets a strategy for accommodating Sydney's future population growth and identifies the need to deliver 689,000 new jobs and 664,000 new homes by 2031. The Plan identifies that the most suitable areas for new housing are in locations close to jobs, public transport, community facilities and services.

The NSW Government will use the subregional planning process to define objectives and set goals for job creation, housing supply and choice in each subregion. Hornsby Shire has been grouped with Hunters Hill, Ku-ring-gai, Lane Cove, Manly, Mosman, North Sydney, Pittwater, Ryde, Warringah and Willoughby to form the North Subregion. The *Draft North Subregional Strategy* will be reviewed and the Government will set housing targets and monitor supply to ensure planning controls are in place to stimulate housing development.

The proposed modification would maintain consistency with '*A Plan for Growing Sydney*', by providing additional educational facilities to support a growing population.

### **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 Environmental Planning and Assessment Act 1979 – Section 96(2)**

Pursuant to Section 96(2) of the *Environmental Planning and Assessment Act 1979*, Council may consider an application to amend development consent provided that, inter alia:

- a) *it is satisfied that the development to which the consent as modified relates is substantially the same development, and*

- b) *it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and*
- c) *it has notified the application in accordance with the regulations, and*
- d) *it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations.*

With regard to Section 96(2)(a), the modified proposal would remain a two storey PAC. The internal layout, material and finishes and the perceived bulk and scale of the development would remain generally unchanged. In this regard, it is considered that the modified application is substantially the same as the development originally approved.

With regard to Section 96(2)(b), the modified proposal was referred to the NSW Rural Fire Service (RFS) who raised no objections to the proposal subject to the condition originally recommended being satisfied.

The modified proposal was not required to be referred to the Roads and Maritime Services (RMS) as the modified proposal would not alter the capacity of the PAC, hours of use, vehicular access and parking arrangements, setbacks from Pennant Hills Road or depth of excavation.

In accordance with Section 96(2)(c) and (d), adjoining owners were notified of the application and no submissions have been received.

## **2.2     Hornsby Local Environmental Plan 2013**

The proposed development has been assessed having regard to the provisions of the *Hornsby Local Environmental Plan 2013 (HLEP)*.

### **2.2.1     Zoning of Land and Permissibility**

The subject land is zoned R2 Low Density Residential under the *HLEP*. The objectives of the R2 zone are:

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

The development is defined as an 'educational establishment' under the *HLEP* and is permissible in the zone with Council's consent.

### **2.2.2     Height of Buildings**

Clause 4.3 of the *HLEP* provides that the height of a building on any land should not exceed the maximum height shown for the land on the Height of Buildings Map. The maximum permissible height for the subject site is 8.5m.

The development was approved with a building height of 17.55m from natural ground level. The original application included a clause 4.6 variation which demonstrated that compliance with the height development standard was unreasonable and unnecessary in the circumstances of the case.

A clause 4.6 variation request is not applicable to a section 96 modification. The additional 100mm height is proposed to improve drainage from the roof and to achieve a roof level consistent with filled area of the sports ground. The additional height of the building is minimal and would have no notable change to the perceived bulk and scale of the building when viewed from surrounding areas. The amended proposal is substantially the same development to that approved and the modified height of the development is acceptable.

### **2.2.3 Heritage Conservation**

Clause 5.10 of the *HLEP* sets out heritage conservation provisions for Hornsby Shire.

The property is located within the Beecroft Cheltenham Heritage Conservation Area under the provisions of Schedule 5 (Environmental Heritage) of the *HELP*. The property is also located within the vicinity of a number of heritage items, including 'Mount Saint Benedict Convent and grounds' at No.449D Pennant Hills Road, 'Blackwood Memorial Sanctuary, including North Road culvert' located at the corner of Beecroft Road and Pennant Hills Road.

The original proposal was considered to have minimal impact on the adjacent heritage item as the PAC would be located within the slope of the hillside, resulting in the two storey section being below the ground level of the convent. In Council's heritage assessment of the modified proposal, it was noted that the amended proposal is considered to result in minimal change to the visual appearance of the approved PAC, with the 100mm height increase being negligible. The planting of trees to screen the proposed undercroft area on the southern elevation is supported.

The loss of two trees on the western side of the building is acceptable subject to replacement planting. Established trees to be maintained along the western boundary (Marked F, G, H, I and J on the Site Plan, dated 5/7/16) provide for a vegetative buffer between the PAC and the heritage listed convent to the west.

The modified proposal is assessed and acceptable on heritage grounds and satisfies Clause 5.10 of the *HLEP*.

### **2.2.4 Earthworks**

Clause 6.2 of the *HLEP* requires consent for earthworks and requires Council to assess the impacts of the proposed earthworks on adjoining properties, drainage patterns and soil stability of the locality, before granting development consent for such works.

The modified proposal involves the removal of the retaining wall supporting the forecourt slab and the existing filled batter is to be altered so that it will extend to the bottom of the removed retaining wall at a grade of 1:1.5. Soil from the excavated area is to be placed over the existing sports ground located to the north of the development. The depth of the fill will vary between 700mm on the southern side of the sports ground and 500mm on the northern side



of the sports ground. The fill will be battered around the perimeter of the filled area and will be re-laid with turf.

A geotechnical report was submitted with the original application which included a number of recommendations to be implemented during the construction phase of the development. An amended geotechnical report was not submitted as part of the modified application, however the applicant submits that the amended proposal was based on the advice of a geotechnical engineer.

It is recommended that condition No. 16 be amended to require a new geotechnical report or addendum to the original report (prepared by JK Geotechnics dated 13 April 2015) to be submitted to the Certifying Authority prior to the issue of a construction certificate which relates to the modified proposal. Details of any specific recommendations should accompany this report.

It is also recommended that condition No. 44 be amended to require a Geotechnical Engineer to certify that the development has been completed in accordance with the recommendations of the Geotechnical report (required by condition No. 14) and that the site has been appropriately compacted and stabilised.

The applicant advises that it is unlikely that any fill or excavated material will be imported or removed from the site. Notwithstanding, in the event that this is necessary, conditions apply for excavated material to be disposed of at a licenced facility and for all fill that is to be imported to the site to consist of Virgin Excavated Natural Material (VENM).

The Roads and Maritime Services (RMS) has acquired land for the Northconnex tunnel project beneath the development site. The original application was referred to the RMS who raised no objections to the proposal, noting that the land acquired for the tunnel is approximately 54 metres below ground level. The modified proposal would not involve excavation to a greater depth than approved and would therefore not impact on the integrity of the Northconnex tunnel. Accordingly, referral of the modified proposal was not required.

The amended proposal is assessed as satisfactory with regards to Clause 6.2 of the *HLEP* subject to conditions.

### **2.2.5 Terrestrial Biodiversity**

Clause 6.4 of the *HLEP* applies to the proposal as part of the site is identified as 'Biodiversity' on the Terrestrial Biodiversity Map. This Clause requires Council to consider whether the development is likely to adversely impact on the ecological value of flora and fauna and for Council to be satisfied that development has been designed, sited and managed to avoid any significant adverse environmental impact.

The site contains remnant Blue Gum High Forest which is listed as Critically Endangered under the *Commonwealth Environment Protection and Biodiversity Conservation Act 1999* and a Critically Endangered Ecological Community under the *NSW Threatened Species Conservation Act 1995*.

In the original consent, 14 trees were permitted for removal to accommodate the development. In Council's environmental assessment it was determined that the proposal is unlikely have any significant adverse impact on the Blue Gum High Forest. A condition was



applied requiring the preparation of an Integrated Fire and Management Plan to address the maintenance of the asset protection zone (APZ), weed control and replacement planting of 65 trees to compensate for the loss of 14 trees. The required Management plan has been prepared and was assessed as acceptable by Council's Natural Resource Team in July 2016.

The modified proposal involves the removal of two significant trees on the western side of the building. The trees are identified as *Syncarpia glomulifera* (Turpentine), identified as Tree B and Tree C on the site plan. In Council's Tree assessment it was noted that:

- The trees are isolated from the nearby forest and are planted specimens located in a mown grassed area.
- Tree B is a stunted specimen, of fair to poor form and the health and longevity of the tree will be compromised by the development as approved under the original application.
- Tree C is of good health, vigour and structure. The proposed works are unlikely to kill or destabilise the tree however there will be a reduction of the trees current useful life expectancy and the tree will be isolated.

Having regard to the circumstances, Council raises no objections to the removal of Trees B and C subject to replacement planting. The arborist addendum report proposes the replanting of 8 trees to compensate for the loss of two trees from the site. Council concurs with the recommendations of the arborist report, noting that there is sufficient area within the site to accommodate the additional plantings. Accordingly, it is recommended that condition No. 14 of the consent is amended to require the replanting of 73 trees on the site, instead of 65 as originally applied on the consent. Council requires the Integrated Fire and Vegetation Management plan to be amended to address the additional plantings and submitted to Council prior to the issue of a Construction Certificate.

Subject to conditions, the modified proposal is unlikely to have an adverse impact on the condition, ecological value and significance of the flora and fauna on the site.

### **2.3 State Environmental Planning Policy No. 44 – Koala Habitat Protection**

*State Environmental Planning Policy No. 44 – Koala Habitat Protection (SEPP44)* aims to encourage the proper conservation and management of areas of natural vegetation that provide habitat for koalas. This Policy was addressed in the original application, where it was noted that no koala feed trees were identified on the site. The site is therefore not considered a 'potential koala habitat' and no further consideration is required for the modified proposal.

### **2.4 State Environmental Planning Policy (Infrastructure) 2007**

The development was assessed against the requirements of *State Environmental Planning Policy (Infrastructure) 2007* in the original application. The proposed modification involves minor design changes and would not alter the capacity, setback of the development from Pennant Hills Road or excavation depths. The modified proposal was not required to be referred to the RMS and the conditions originally prescribed by the RMS are relevant to the modified proposal. No further consideration is required with respect to the *SEPP*.

## **2.5 Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005**

The application has been assessed against the requirements of *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005*. This Policy provides general planning considerations and strategies to ensure that the catchment, foreshores, waterways and islands of Sydney Harbour are recognised, protected, enhanced and maintained.

Subject to the implementation of installation of sediment and erosion control measures and stormwater management to protect water quality, the amended proposal would have minimal potential to impact on the Sydney Harbour Catchment.

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

Under the provisions of Clause 7 of *State Environmental Planning Policy No.55 – Remediation of Land*, a consent authority 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.

This matter was assessed under the original application. The proposed modification would not alter the compliance of the development with *SEPP 55*.

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

Clause 74BA of the *Environmental Planning and Assessment Act, 1979* states that a DCP provision will have no effect if it prevents or unreasonably restricts development that is otherwise permitted and complies with the development standards 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; facilitate development that is permissible under any such instrument; and achieve the objectives of land zones. The provisions contained in a DCP are not statutory requirements and are for guidance purposes only. Consent authorities have flexibility to consider innovative solutions when assessing development proposals, to assist achieve good planning outcomes.

## **2.8 Hornsby Development Control Plan 2013**

The proposed development has been assessed having regard to the relevant desired outcomes and prescriptive requirements within the *Hornsby Development Control Plan 2013 (HDCP)*. The proposed modification would not alter the approved floor area, site coverage, setbacks, capacity of the PAC, hours of use or vehicular access and parking arrangements on the site. The relevant matters of the HDCP that apply to the modified proposal are addressed as follows:

### **2.8.1 Scale**

The proposed modification involves a negligible increase in the building height by 100mm. Due to the topography of the site and the position of the building in the hillside, the modified proposal would maintain a development that appears low in scale in relation to the convent on the adjoining property and the existing development on the school site.

### **2.8.2 Heritage**

The modified proposal is acceptable on heritage grounds as addressed in Section 2.2.3 of this report

### **2.9 Section 94 Contributions Plans**

A requirement for a monetary Section 94 contribution was applied as a condition under the original consent and is not required to be modified under the current application.

## **3. 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”*.

### **3.1 Natural Environment**

#### **3.1.1 Tree and Vegetation Preservation**

The proposal's impact on vegetation has been addressed in Section 2.2.5 of this report.

#### **3.1.2 Stormwater Management**

An amended stormwater management plan was submitted with the modified proposal. Council's engineering assessment of the proposal raises no objections the proposed storm water management system.

### **3.2 Built Environment**

#### **3.2.1 Built Form**

The proposed modification would not have any notable impact on the perceived bulk and scale of the development. The removal of the retaining wall and replacement with piers to support the forecourt slab on the southern elevation of the building would have no significant impact on the presentation of the building when viewed from surrounding areas. The undercroft of the development would comprise mesh screening, with screen planting along the southern side of the forecourt. The southern elevation of the building is orientated towards bushland and would not be easily visible from any surrounding property.

There is no change proposed to the materials and finishes under the modified proposal. The proposed increase in building height by 100mm is to improve drainage from the roof. This is a minor change that would have no notable increase in the perceived height, bulk and scale of the development. The proposed modification is acceptable with respect to the built environment.

#### **3.2.2 Traffic**

The proposed modification would not impact on the capacity of the PAC and would not alter the existing approved vehicular access, parking and traffic arrangements.

### **3.3 Social Impacts**

The proposed modification is substantially the same development as approved in providing improved facilities at an existing educational establishment.

### **3.4 Economic Impacts**

The proposed modification is substantially the same as the approved development in generating economic activity in the construction phase of the development.

## **4. SITE SUITABILITY**

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

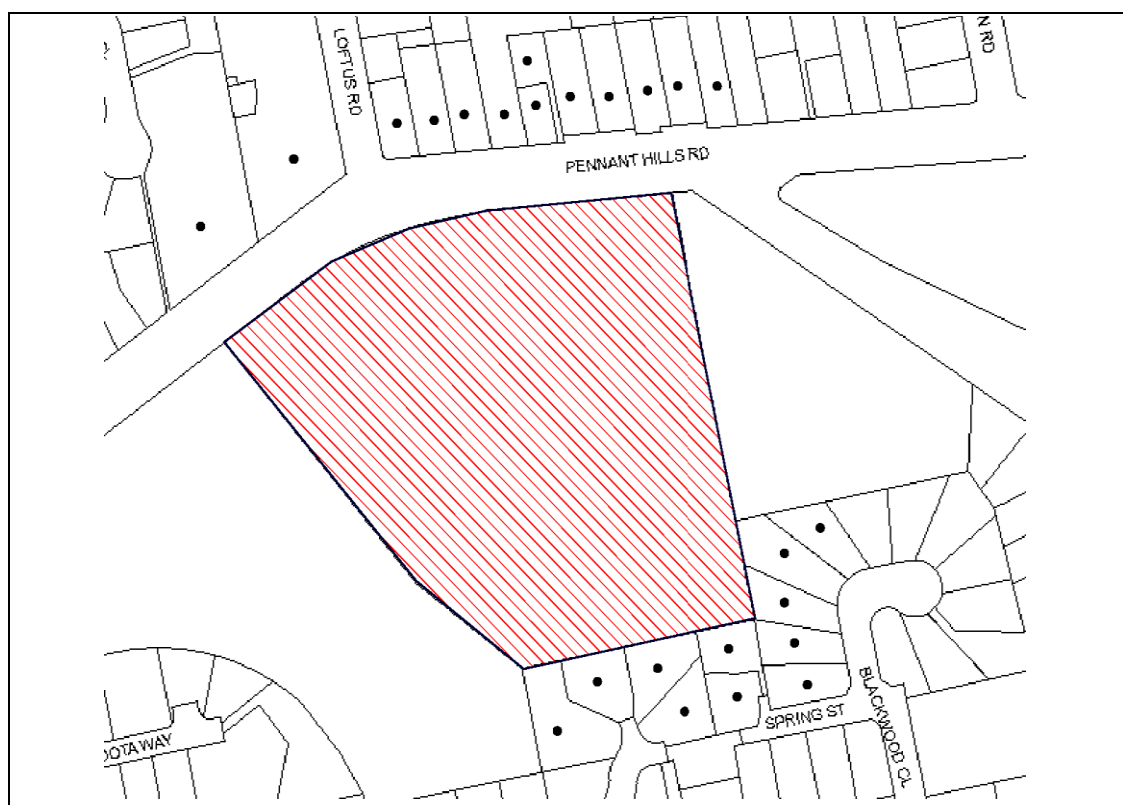
In the assessment of the original application it was determined that the site is suitable for the proposed development. The proposed modification has no impact on the suitability of the site for development.

## **5. PUBLIC PARTICIPATION**



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

### **5.1 Community Consultation**

The proposed development was placed on public exhibition and was notified to adjoining and nearby landowners between 28 July 2016 and 18 August 2016 in accordance with the Notification and Exhibition requirements of the HDCP. During this period, Council received no submissions. The map below illustrates the location of those nearby landowners who were notified of the development.



**NOTIFICATION PLAN**

• PROPERTIES NOTIFIED	X SUBMISSIONS RECEIVED	 PROPERTY SUBJECT OF DEVELOPMENT	
-----------------------	------------------------	---	---

## 5.2 Public Agencies

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

### 5.2.1 Rural Fire Service

The proposed modification was referred to the RFS for comments. The RFS raised no objections to the modified proposal subject to conditions for an asset protection zone, water and utilities, design and construction standards and emergency and evacuation management procedures.

During Council's assessment of the modified proposal it was recognised that a condition for emergency evacuation that was recommended by the RFS was omitted from the original consent. This matter was discussed with the applicant who consented to this condition being applied to the modified consent. This condition is applied as 50A in Schedule 1 of this report.

## **6. 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. Accordingly, it is considered that the approval of the proposed modification would be in the public interest.

## **CONCLUSION**

The Section 96(2) application seeks to modify an approved Performing Arts Centre at an existing educational establishment. The modified proposal involves the deletion of a large retaining wall on the southern elevation. Two additional trees would be removed to accommodate the modified development.

The modified proposal is substantially the same development as approved pursuant to Section 96 of the *Environmental Planning and Assessment Act, 1979* and is satisfactory in respect to the *Hornsby Shire Local Environmental Plan 2013* and the *Hornsby Development Control Plan 2013*.

No submissions have been received in respect of the application.

Approval of the proposed modification is recommended.

Note: At the time of the completion of this planning report, no persons have made a *Political Donations Disclosure Statement* pursuant to Section 147 of the *Environmental Planning and Assessment Act 1979* in respect of the subject planning application.

Reminder - delete when attached below if applicable

### **Attachments:**

1. Locality Plan
2. Architectural Plans
3. Floor Plans
4. Landscape Plans
5. Notice of Determination
6. Approved Plans
7. Approved Landscape Plans

## SCHEDULE 1

---

<b>Date of this modification:</b>	27 September 2016
<b>Details of this modification:</b>	Section 96(2) application for minor design changes to an approved Performing Arts Centre at an existing educational establishment
<b>Conditions Added:</b>	50A
<b>Conditions Deleted:</b>	Nil
<b>Conditions Modified:</b>	1, 2, 14, 16 & 44

---



## 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:

*Approved Plans:*

<b>Plan No.</b>	<b>Plan Title</b>	<b>Drawn by</b>	<b>Dated</b>
DA000 – Rev B	Cover Sheet	Paynter Dixon	5/7/2016
DA001 – Rev B	Site Plan Overall	Paynter Dixon	5/4/2016
DA002 – Rev B	Site Analysis Plan	Paynter Dixon	5/7/2016
DA003 – Rev B	Site Plan Localised Building	Paynter Dixon	5/7/2016
DA110 – Rev B	Ground Floor Plan	Paynter Dixon	5/7/2016
DA111 – Rev B	First Floor Plan	Paynter Dixon	5/7/2016
DA112 – Rev B	Roof Plan	Paynter Dixon	5/7/2016
DA300 – Rev B	East & South Elevations	Paynter Dixon	5/7/2016
DA301 – Rev B	Elevations	Paynter Dixon	5/7/2016
DA350 – P4	External Finishes	Paynter Dixon	14/7/2016
DA400 – Rev B	Sections A & B	Paynter Dixon	5/7/2015
340 – Rev D	Landscape Plan	Iscape	July 2016
341 – Rev C	Roof Terrace Plan	Iscape	July 2016
342 – Rev C	Landscape Details	Iscape	July 2016

343 – Rev D	Overlaid Landscape Plan	Iscape	June 2016
240	Landscape Plan	Iscape	June 2016

*Supporting Documentation:*

<b>Doc. No. / Ref.</b>	<b>Document No.</b>	<b>Prepared by</b>	<b>Dated</b>
SW00 – SW07	Stormwater Management Drawings	Demlakian	11/7/2016
-	Stormwater Report	Demlakian	29 July 2015
-	Arboricultural Impact Assessment	Jackson Nature Works	3 August 2015
	Arboricultural Impact & Addendum Assessment Report	Jackson Nature Works	14 July 2016
-	Flora and Fauna Impact Assessment and additional letter	Keystone Ecological	August 2015 and letter dated 18/2/2016.
-	Geotechnical Report	JK Geotechnics	13 April 2015
-	Waste Management Plan	Paynter Dixon	August 2015
20150386.2	Acoustic Report	Acoustic Logic	21 July 2015
-	Air Quality Report	Airsafe	12 August 2015
1485	Statement of Environmental Effects	Coastplan consulting	August 2015
1485	Statement of Environmental Effects – Section 96(2)	Coastplan consulting	July 2016
120469b	Bushfire Hazard Assessment Report	Building Code & Bushfire Hazard Solutions Pty Ltd	13 August 2015
-	Letter – Outcomes of Parking Study	SECA Solution	1 December 2015

**2. Removal of Existing Trees**

- a) This development consent permits the removal of trees numbered 1, 26, 26A, 26B, 26C, 26D 27, 28, 29, 30, 31, 32, 61, A, B, C, D and E as identified in the Arboricultural Assessment Report prepared by Jacksons Nature Works dated 03/8/2015, the Arboricultural Addendum Report prepared by Jackson Nature

Works dated 14/7/2016 and the Approved Site Plan No. DA003, dated 5/7/2016.

- b) The removal of any other trees requires separate approval in accordance with the Tree and Vegetation Chapter 1B.6 Hornsby Development Control Plan (HDCP).

### 3. **Project Arborist**

A Project Arborist is to be appointed in accordance with AS 4970-2009 (1.4.4) to provide monitoring and certification throughout the development process.

Details of the Project Arborist are to be submitted to Council and the Certifying Authority prior to the issue of a Construction Certificate.

### 4. **Construction Certificate**

- a) 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.
- b) A separate Construction Certificate must be obtained from Council for all works within the public road reserve under S138 of the *Roads Act*.
- c) A separate Construction Certificate must be obtained from Council for all works within drainage easements vested in Council.
- d) The Construction Certificate plans must not be inconsistent with the Development Consent plans.

### 5. **Section 94A Development Contributions**

- a) In accordance with Section 80A(1) of the *Environmental Planning and Assessment Act, 1979* and the *Hornsby Shire Council Section 94A Development Contributions Plan 2014-2024*, \$117,000.00 must be paid to Council to cater for the increased demand for community infrastructure resulting from the development, based on development costs of \$11,700,000.
- b) The value of this contribution is current as at 23/03/2016. If this contribution is not paid within the financial quarter that this condition was generated, the contribution payable will be adjusted in accordance with the provisions of the Hornsby Shire Council Section 94 Development Contributions Plan and the amount payable will be calculated at the time of payment in the following manner:

$$\frac{\$C_{PY}}{CPI_{DC}} = \frac{\$C_{DC} \times CPI_{PY}}{CPI_{DC}}$$

Where:

$\$C_{PY}$  is the amount of the contribution at the date of Payment

- $\$C_{DC}$  is the amount of the contribution as set out in this Development Consent
- $CPI_{PY}$  is the latest release of the Consumer Price Index (Sydney – All Groups) at the date of Payment as published by the ABS.
- $CPI_{DC}$  is the Consumer Price Index (Sydney – All Groups) for the financial quarter at the date applicable in this Development Consent Condition.

- c) The monetary contributions must 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.

*Note: 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 S94A 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.

<b>REQUIREMENTS PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE</b>
--

**6. Building Code of Australia**

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

**7. Sydney Water – Approval**

This application must be submitted to *Sydney Water* for approval to determine whether the development would affect any *Sydney Water* infrastructure, and whether further requirements are to be met.

Building plan approvals can be obtained online via *Sydney Water Tap in™* through [www.sydneywater.com.au](http://www.sydneywater.com.au) under the Building and Development tab.

**8. Dilapidation Report**

A 'Dilapidation Report' is to be prepared by a 'chartered structural engineer' detailing the structural condition of the western adjoining property, Lot 2 DP 1042630, No. 449D Pennant Hills Road, Pennant Hills.

- a) To record the structural condition of all properties adjoining the approved development, a dilapidation report must be prepared by a suitably qualified structural engineer for inclusion with the application of the Construction Certificate.

**9. Stormwater Drainage**

- a) The stormwater drainage system for the development must be designed for an average recurrence interval (ARI) of 20 years and be gravity drained to the existing internal drainage system.
- b) The stormwater drainage system for the head wall must be designed in accordance with Council's *Civil Works – Design and Construction Specification 2005*.

**10. On Site Stormwater Detention**

An on-site stormwater detention system must be designed by a chartered civil engineer and constructed in accordance with the following requirements:

- a) Have a capacity of not less than 60 cubic metres, and a maximum discharge (when full) of 49 litres per second;
- b) Have a surcharge/inspection grate located directly above the outlet;
- c) Discharge from the detention system must be controlled via 1 metre length of pipe, not less than 50 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.

**11. Traffic Control Plan**

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. The Traffic Management Plan shall be submitted and approved by Council's Manager Traffic and Road Safety prior to the issue of a construction certificate. 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; and

- f) Pedestrian and cyclist access/safety.

12. Identification of Survey Marks

A registered surveyor must identify all survey marks in the vicinity of the proposed development. Any survey marks required to be removed or displaced as a result of the proposed development shall be undertaken by a registered surveyor in accordance with Section 24 (1) of the *Surveying and Spatial Information Act 2002* and following the Surveyor General's Directions No.11 – "**Preservation of Survey Infrastructure**".

13. **Construction Traffic Management Plan**

In order to enable unencumbered movement of traffic in the public road during construction works, a Construction Management Plan, including a Traffic Management Plan and scaled construction plans prepared by a suitably Chartered and Qualified Chartered Civil Engineer and Qualified Worksite Traffic Controller shall be prepared and submitted to Hornsby Shire Council for approval according to the following requirements:-

- a) A copy of the plans shall be submitted for consideration and written approval by Hornsby Shire Council prior to the release of the Construction Certificate.
- b) The plans shall detail the order of construction works and arrangement of all construction machines and vehicles being used at the same time during all stages.
- c) The CTMP plans shall be in accordance with the approved Development Application plans and the Development Consent conditions.
- d) In order to prevent injury, accident and loss of property, no building materials, work sheds, vehicles, machines or the like shall be allowed to remain in the road reserve area without the written consent of Hornsby Shire Council.
- e) The Plan shall be generally in compliance with the requirements of the Road and Traffic Authority's "Traffic Control at Worksites Manual 1998" and detailing:-
  - i) Public notification of proposed works;
  - ii) Long term signage requirements;
  - iii) Short term (during actual works) signage;
  - iv) Vehicle Movement Plans, where applicable;
  - v) Traffic Management Plans;
  - vi) Pedestrian and Cyclist access and safety;
- f) The plans shall indicate traffic controls including those used during non-working hours and shall provide pedestrian access and two-way traffic in the public road to be facilitated at all times.

- g) The plans shall include the proposed truck routes to and from the site including details of the frequency of truck movements at the different stages of the development. The plan shall also include details of parking arrangements for all employees and contractors.
- h) The Applicant and all employees of contractors on the site must obey any direction or notice from the Prescribed Certifying Authority or Hornsby Shire Council in order to ensure the above.
- i) If there is a requirement to obtain a Work Zone, partial Road Closure or Crane Permit an application to Hornsby Shire Council is to be made prior to the issue the Construction Certificate

**14. Integrated Vegetation and Fire Management Plan**

An *Integrated Vegetation and Fire Management Plan* shall be prepared for the Blue Gum High Forest within the Asset Protection Zone required for the performing arts centre and other adjoining areas identified for compensatory revegetation and weed control works.

The Plan shall include, but not be limited to the following:

- a) Strategies to manage, maintain and conserve the bushland including;
  - i) On-going weed control and suppression using bush regeneration methods.
  - ii) Habitat protection including hollow-bearing tree retention.
  - iii) The restoration of all disturbed areas using bush regeneration techniques.
- b) Strategies for management of the Asset Protection Zones in a manner that has the least impact on the natural environment and maintains indigenous vegetation. This shall be undertaken in consultation with a Bushfire Management Consultant.
- c) Include the replanting of 73 trees on the site.
- d) Hand Removal of Bushfire Fuel;
  - i) Any clearing for bushfire protection within the approved Asset Protection Zones shall be undertaken using manual methods including manual removal of dead timber, raking and removal of leaf litter (fine fuel), manual slashing of understorey vegetation such as a hand held brushcutter and other methods that ensure minimal environmental damage and erosion whilst maintaining the vegetation at a low fuel reduced state. Indigenous vegetation including trees and shrubs shall be retained in partially thinned scattered clumps to ensure the vegetation is non-continuous. Underscrubbing is to retain 15 centimetres of groundcover vegetation (including grass and herbaceous species) and all vegetation greater than three metres in height is to be otherwise retained. No removal of native vegetation



shall occur within 10 metres of a natural watercourse. Clearing is not permitted in bushland outside the asset protection zone. No mulch or garden waste is to be deposited in bushland.

- e) The key performance criteria are to read 'Noxious Weeds to be less than 2% cover at the end of each maintenance visit. Other weed species to be less than 4% cover at the end of each maintenance visit.'
- f) Management of overhanging trees close to residential and open space areas.
- g) Schedule of works including timeframes and responsibilities for management actions. Provide a cost schedule to undertake all rehabilitation actions, including maintenance.
- h) Erosion, sediment and stormwater runoff controls including the management of impacts of run-off from all impervious surfaces including pavement areas. Management and maintenance of approved storm water drainage areas.
- i) Appropriate map of the site.
- j) Details of qualifications and experience of company preparing the plan.
- k) Details of site monitoring including the submission of monitoring reports to Council of bushland management and restoration.
- l) All on-ground works must be managed by a suitably qualified bush regenerator or restoration ecologist who is to be a vegetation management specialist and to have at least 5 years experience in the management of native bushland and at least a TAFE Certificate III in Bush Regeneration or Conservation and Land Management – Natural Area Restoration qualifications.
- m) Include a nest box management plan and strategy to compensate the loss of fauna habitat. A minimum of ten boxes that include a variety of sizes suitable for microchiropteran bats, arboreal mammals and Gang-Gang Cockatoo shall be provided.

The Integrated Vegetation and Fire Management Plan shall be prepared and to the written satisfaction on Council's Natural Resources prior to the issue of a Construction Certificate.

*Note: Council's Natural Resource Branch can be contacted on 02 9847 6542.*

#### **15. Environmental Site Management Plan**

An Environmental Site Management Plan shall accompany the application of the Construction Certificate. This plan shall satisfy the relevant Objectives and Controls of the Hornsby Shire Council Development Control Plan 2013 and shall address the following:

- a) Actions and works to be employed to ensure safe access to and from the site and protection to be provided to the road and footpath area from building

activities, crossings by heavy equipment, plant and materials delivery, and the like;

- b) The proposed method of loading and unloading excavation machines, building materials;
- c) Areas within the site to be used for the storage of excavated material, construction materials and waste containers during demolition / construction;
- d) Methods to ensure that material is not transported on wheels or tracks of vehicles or plant and deposited on surrounding roadways;
- e) The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be certified by a Certifier accredited in civil engineering;
- f) The provision of temporary fencing to secure the work site (fencing, hoarding or awnings over public land require Council approval under the Roads Act);
- g) The control of surface water flows within and through the construction site to minimise erosion and movement of sediment off site;
- h) The type and location of erosion and sediment control measures, strategies to minimise the amount of soil uncovered at any time, the conservation of topsoil for re-use on site, the location and protection of stockpiles;
- i) Identify all trees that are to be retained and the measures proposed to protect them (including fencing, mulching, watering, erection of signs excluding access to the protection zone, etc), and identify areas Blue Gum High Forest to be protected;
- j) Detail the location of tree protection fencing to protect trees to be retained. Tree protective fencing must be installed in accordance with AS 4970-2009 (Clauses 4.3 and 4.4).
- k) Measures to ensure the safety of students, staff and others attending the site during the construction period.

The Environmental Site Management Plan shall be prepared to the written satisfaction on Council's Natural Resources Unit prior to the issue of a Construction Certificate.

*Note: Council's Natural Resource Branch can be contacted on 02 9847 6542.*

#### 16. **Geotechnical Details**

A new geotechnical report or addendum to the original report (prepared by JK Geotechnics dated 13 April 2015) is to be submitted to the Certifying Authority prior to the issue of a construction certificate which relates to the modified proposal. Details of any specific recommendations should accompany this report.

#### 17. **Acoustic Details**

Details must be submitted with the application for a Construction Certificate demonstrating compliance with the recommendations within Part 8 of the Environmental Noise Assessment, prepared by Acoustic Logic dated 21/07/2015, relating to external windows and the mechanical services plant.

<b>REQUIREMENTS PRIOR TO THE COMMENCEMENT OF ANY WORKS</b>
--

**18. Erection of Construction Sign**

- a) A sign must be erected in a prominent position on any site on which any approved work is being carried out:
  - i) Showing the name, address and telephone number of the principal certifying authority for the work;
  - ii) 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
  - iii) Stating that unauthorised entry to the work site is prohibited.
- b) The sign is to be maintained while the approved work is being carried out and must be removed when the work has been completed.

**19. 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; and/or
- 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.*

**20. Toilet Facilities**

- a) To provide a safe and hygienic workplace, toilet facilities must be available or be installed 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.
- b) Each toilet must:
  - i) be a standard flushing toilet connected to a public sewer; or
  - ii) be a temporary chemical closet approved under the *Local Government Act 1993*; or
  - iii) have an on-site effluent disposal system approved under the *Local Government Act 1993*.

**21. Erosion and Sediment Control**

To protect the water quality of the downstream environment, 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 may be issued for any non-compliance with this requirement without any further notification or warning.*

**22. Tree Protection Fencing**

- a) Tree Protective Fencing must be installed in accordance with AS 4970-2009 to protect trees identified for retention.
- b) Certification must be provided by the Project Arborist to the Principal Certifying Authority stating that all required tree protection measures have been installed in accordance with AS 4970-2009.

<b>REQUIREMENTS DURING CONSTRUCTION</b>
---

**23. Construction Work Hours**

All works 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.

**24. 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.

**25. Street Sweeping**

To protect the surrounding environment, Street sweeping must be undertaken following sediment tracking from the site along Pennant Hills Road, Pennant Hills during works and until the site is established.

The street cleaning services must undertake a street 'scrub and dry' method of service and not a dry sweeping service that may cause sediment tracking to spread or cause a dust nuisance.

**26. Works Near Trees**

- a) To protect trees to be retained, all required tree protection measures are to be maintained in good condition for the duration of the construction period.

- b) All works within the Tree Protection Zone of any tree required to be retained must be carried out under the supervision of an 'AQF Level 5 Arborist'.
- c) A certificate must be submitted to the principal certifying authority detailing the methods used to preserve these trees during the course of construction.

*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 occurs within 4 metres of any tree to be retained.*

## **27. Bushland Protection During Construction**

To ensure the protection of bushland during construction, the following must be completed:

- a) The installation of 1.8 metre high chain wire fencing (or similar) outside the Tree Protection Zones of Blue Gum High Forest bushland to be retained as identified on Environmental Site Management Plan (prescribed by condition 15);
- b) All machinery to be cleaned of soil and debris before entering the site to prevent the spread of weeds and fungal pathogens.
- c) No material stock piles, no changes to soil aeration or hydrological capacity, no preparation of chemicals in adjoining areas, no open cut trenching, no placement of temporary buildings, no parking or movement of machinery, no spillage/disposal of building waste is to occur within the fenced off bushland
- d) The fencing shall allow access gate (with security locks) to allow bushland maintenance or other specific personnel to access environmentally sensitive areas
- e) The fencing shall include 'no entry' signage to inform construction personnel of the purpose of the fence as an environmentally sensitive area

*Note: The site contains Blue Gum High Forest Critically Endangered Ecological Community under the 'Threatened Species Conservation Act 1995'. The Act prohibits the disturbance to threatened species, endangered populations and endangered ecological communities, or their habitat, without the approval of the 'Department of Environment and Climate Change' where such activities are not authorised by a development consent under the 'Environmental Planning and Assessment Act 1979'.*

*Actions such as tree removal, understorey slashing or mowing, removal of dead trees within this vegetation would likely impact upon this endangered ecological community. Such action would qualify as illegally picking or disturbing the habitat and could render any person who carried out such action as LIABLE FOR PROSECUTION.*

28. **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.

29. **Disturbance of Existing Site**

During construction works, the existing ground levels of open space areas and natural landscape features, including natural rock-outcrops, vegetation, soil and watercourses must not be altered unless otherwise nominated on the approved plans.

30. **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 suitably qualified geotechnical engineer verifying that the specified compaction requirements have been met.
- c) This compaction certificate must be included with the application for an occupation certificate.

31. **Excavated Material**

All excavated material removed from the site must be classified by a suitably qualified person 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 be reported to the principal certifying authority prior to the issue of an Occupation Certificate.

32. **Survey Report**

A report(s) must be prepared by a registered surveyor and submitted to the principal certifying authority:

- a) Prior to the pouring of concrete at each level of the building certifying that:
  - i) The building, retaining walls and the like have been correctly positioned on the site; and
  - ii) The finished floor level(s) are in accordance with the approved plans.

**33. Waste Management**

- a) All work must be carried out in accordance with the approved waste management plan.
- b) Stockpiling, cutting and sanding must be performed a minimum of 10 metres from the shoreline and screened by sediment fencing.

**34. Maintenance of public footpaths**

Public footpaths must be maintained for the duration of works to ensure they are free of trip hazards, displacements, breaks or debris to enable pedestrians to travel along the footpath safely.

**REQUIREMENTS PRIOR TO THE ISSUE OF AN OCCUPATION 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.*

**35. Sydney Water – s73 Certificate**

A s73 Certificate must be obtained from Sydney Water and submitted to the PCA..

*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.*

**36. Damage to Council Assets**

To protect public property and infrastructure, any damage caused to Council's assets as a result of the construction or demolition of the development must be rectified by the applicant in accordance with Council's Civil Works Specifications. Rectification works must be undertaken prior to the issue of an Occupation Certificate, or sooner, as directed by Council.

**37. Works as Executed Plan**

A works-as-executed plan(s) must be prepared by a registered surveyor and submitted to Council for completed drainage systems, water quality systems and on-site detention system.

**38. Creation of Easements**

The following matter(s) must be nominated on the plan of subdivision under s88E of the *Conveyancing Act, 1919*:

- a) 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;



- b) To register the OSD easement, the restriction on the use of land “works-as-executed” details of the on-site-detention system 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.*

**39. Water Saving Urban Design**

A Water Saving Urban Design (WSUD) is to be constructed generally in accordance with the engineering report and plans prepared by Demlakian Engineering, dated 29/07/2015. The Water Quality Targets as detailed within the report and Hornsby Shire Councils DCP are to be achieved in the design and supported by a MUSIC model.

**40. Certification of WSUD Facilities**

Prior to the issue of an Occupation Certificate a certificate from a Civil Engineer is to be obtained stating that the WSUD facilities have been constructed and will meet the water quality targets as specified in the Hornsby Shire Councils DCP.

**41. Damage to Council Assets**

To protect public property and infrastructure, any damage caused to Council's assets as a result of the construction or demolition of the development must be rectified by the applicant in accordance with Council's Civil Works Specifications. Rectification works must be undertaken prior to the issue of an Occupation Certificate, or sooner, as directed by Council.

**42. Completion of Landscaping**

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

*Note: Advice on suitable species for landscaping can be obtained from Council's planting guide 'Indigenous Plants for the Bushland Shire', available at [www.hornsby.nsw.gov.au](http://www.hornsby.nsw.gov.au).*

**43. Certification by Project Arborist**

Following the final inspection and the completion of any remedial tree works, the Project Arborist must submit to the Principal Certifying Authority documentation stating that the completed works have been carried out in compliance with the approved plans and the relevant conditions of consent. All certificates and

documentation relating to the protection of trees must be included in the Final Certification.

44. **Geotechnical Certification**

A Geotechnical Engineer to certify that the development has been completed in accordance with the recommendations of the Geotechnical report (required by condition No. 16) and the site has been compacted and stabilised.

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

45. **Noise**

All noise generated by the proposed development must be attenuated to prevent levels of noise being emitted to adjacent premises which possess tonal, beating and similar characteristics or which exceeds background noise levels by more than 5dB(A).

46. **Acoustic Management**

The use of the premises must be managed in accordance with the recommendations of the Environmental Noise Assessment prepared by Acoustic Logic dated 21<sup>st</sup> July, 2015. A management plan must be prepared and adhered to in accordance with the recommendations of the acoustic report.

47. **Operation of Performing Arts Centre**

The Performing Arts Centre(PAC) is to operate in accordance with the following conditions:

- a) The PAC is to be used for school related events only.
- b) The PAC is not to be leased or hired to neighbourhood groups.
- c) During school hours the PAC is to be used only by students and staff, with no parents or carers attending events in normal school hours.
- d) Performances open to the school community are to occur only outside normal school hours.
- e) Performances open to the school community are not to commence before 4:30pm to allow time for staff to vacate the on-site parking spaces at the conclusion of classes.

#### **GENERAL TERMS OF APPROVAL – NSW RURAL FIRE SERVICE**

The following conditions of consent are General Terms of Approval from the nominated State Agency pursuant to Section 91A of the *Environmental Planning and Assessment Act 1979* and must be complied with to the satisfaction of that Agency.

#### **48. Asset Protection Zones**

At the commencement of building works and in perpetuity, the property around the building to a distance of 24 metres on the southern and eastern elevations and the distance between the building and property boundary on the northern and western elevations, shall be maintained as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of '*Planning for Bushfire Protection 2006*' and the NSW Rural Fire Service's document '*Standards for Asset Protection Zones*'.

#### **49. Water and Utilities**

Water, electricity and gals are to comply with sections 4.1.3 and 4.2.7 of '*Planning for Bushfire Protection 2006*'.

#### **50. Design and Construction**

- a) New construction on the roof and on the eastern and southern elevations shall comply with sections 3 and 8 (BAL 40) Australian Standard 3959-2009 '*Construction of buildings in bushfire prone areas*' and section A3.7 of Addendum Appendix 3 of '*Planning for Bushfire Protection 2006*'.
- b) New construction on the northern and western elevations shall comply with sections 3 and 7 (BAL 29) Australian Standard 3959-2009 '*Construction of buildings in bushfire prone areas*' and section A3.7 of Addendum Appendix 3 of '*Planning for Bushfire Protection 2006*'.

*Note: Further information concerning planning for bush fire protection can be found at: [www.rfs.nsw.gov.au](http://www.rfs.nsw.gov.au).*

#### **50A. Evacuation and Emergency Management**

Arrangements for emergency evacuation are to comply with Section 4.2.7 of '*Planning for Bush Fire Protection 2006*'.

#### **CONDITIONS OF CONCURRENCE – ROADS AND MARITIME SERVICES**

The following conditions of consent are General Terms of Approval from the nominated State Agency pursuant to Section 91A of the *Environmental Planning and Assessment Act 1979* and must be complied with to the satisfaction of that Agency.

#### **51. Roads and Maritime Services**

- a) Any proposed buildings or structures are to be erected clear of the lands acquired for the Northconnex tunnel and Pennant Hills Road.

- b) The integrity of the Northconnex tunnel is not to be compromised.

*Note: The subsurface of the property that was compulsory acquired by RMS for the Northconnex tunnel is identified as Lots 13 & 15 DP 1209584. The top of the substratum level is approximately 54 metres below ground level.*

*The RMS has resumed and dedicated a strip of land as road along the Pennant Hills Road frontage of the site.*

*The PAC building is sited clear of the lands acquired by the RMS.*

**- END OF CONDITIONS -**

**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 will 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.

### **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.