

**SYDNEY NORTH PLANNING PANEL
HORNSBY COUNCIL ASSESSMENT REPORT**

Panel Reference	2018SNH051
DA Number	DA/142/2018
LGA	Hornsby Shire Council
Proposed Development	Demolition of an existing building and the construction of a new creative arts building
Street Address	12 Edgeworth David Avenue, Hornsby
Applicant	Crawford Architects
Owner	Minister For Education And Training
Date of DA lodgement	21 February 2018
Number of Submissions	Nil
Recommendation	Approval
Regional Development Criteria	Crown Development
List of all relevant s4.15(1)(a) matters	<p>Hornsby Local Environmental Plan 2013</p> <p>State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017</p> <p>Stat Environmental Planning Policy (Infrastructure) 2007</p> <p>State Environmental Planning Policy No. 55 - Remediation of Land</p> <p>Sydney Regional Environmental Plan No. 20 - Hawkesbury-Nepean River (No. 2 - 1997)</p> <p>Hornsby Development Control Plan 2013</p> <p>Hornsby Section 94A Development Contributions Plan 2014 – 2024</p>
List all documents submitted with this report for the Panel's consideration	<p>DA/142/2018 – Plans Architectural</p> <p>DA/142/2018 – Survey Plan</p> <p>DA/142/2018 – Statement of Environmental Effects</p> <p>Exemptions extract - <i>Hornsby Section 94A Development Contributions Plan 2014 – 2024</i></p>
Report prepared by	Madeleine Brown
Report date	26 September 2018

Summary of s79C matters

Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report? **Yes**

Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report? **Yes**

e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP

Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report? **N/A**

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions? **N/A**

Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions

Conditions

Have draft conditions been provided to the applicant for comment? **Yes**

Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report

ASSESSMENT REPORT AND RECOMMENDATION

EXECUTIVE SUMMARY

The application involves the demolition of an existing building and construction of a new creative art building in a similar location at Hornsby Girls High School. The creative arts building would comprise of a music/drama studio, outdoor entry/patio and three storage rooms.

The subject land is zoned B4 Mixed Use under the *Hornsby Local Environmental Plan 2013 (HLEP)*. The proposed development is defined as an 'educational establishment' and is permissible in the zone with development consent. The proposal satisfies the requirements of the *HLEP* and is generally consistent with the relevant controls within the Hornsby Development Control Plan 2013 (HDCP). A summary of the proposal's compliance with the relevant environmental planning instruments is provided below.

- *State Environmental Planning Policy (Educational Establishments and Childcare Facilities) 2017 (Education SEPP)* outlines certain development that may be undertaken as exempt or complying. Whilst the proposal was not lodged as a complying development, a brief assessment against some of the complying development standards for educational establishments has been undertaken in this report as a guideline for the assessment of the proposal. The proposed development does not comply with the *Education SEPP* as it is located on land identified as a heritage item. Further discussion in relation to heritage is outlined in Section 2.6.1 of this report.
- *State Environmental Planning Policy (Infrastructure) 2007 (Infrastructure SEPP)* provides guidelines for identifying matters to be considered in the assessment of development adjacent to particular types of infrastructure development. In this case, the application was referred to Sydney Trains for consideration under the *Infrastructure SEPP*. Sydney Train's provided conditions of consent to impose, which are recommended in Schedule 1 of this report. These conditions of consent relate to noise and vibration, stray current and electrolysis, geotechnical and structural stability, demolition and construction impacts, crane and aerial operations, drainage, scaffolding and high voltage transmission lines.
- *State Environmental Planning Policy No. 55 Remediation of Land (SEPP 55)* provides guidelines for the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment. Clause 7 requires Council to consider whether land is contaminated prior to granting consent to the carrying out of any development on that land. The site has been historically used for educational purposes. It is not likely that the site has experienced significant contamination, and further assessment under *SEPP 55* is not required.
- *Sydney Regional Planning Policy No. 20 – Hawkesbury Nepean River (SREP 20)* applies to the proposal as the site is within the catchment of the Hawkesbury-Nepean River. The proposed extractive industry is satisfactory having regard to the general planning considerations and recommended strategies within the instrument. Subject to the implementation of sediment and erosion control measures and stormwater management to protect water quality, the proposal would meet the aims of the Policy.

The application was notified to adjoining and nearby land owners in accordance with the requirements of the *Environmental Planning and Assessment Regulation 2000* and the *HDCP*. The application was off notification on 22 March 2018, during which time Council received no submissions.

Concurrence was requested from the Dept. Education to the conditions of consent imposed by Council. The Dept. Education consented to all conditions except for No. 3 in relation to Section 7.12 (formerly Section 94A) Contribution Fees under the *Hornsby Section 94A Development Contributions Plan 2014 – 2024*. The matter could not be resolved between Council, the Applicant and the Dept. Education and as such referred as Crown Development to the Sydney North Planning Panel under Section 4.33 of the *Environmental Planning and Assessment Act 1979*.

Council recommends that the application be approved, subject to conditions outlined in Schedule 1 of this report.

RECOMMENDATION

THAT Development Application No. DA/142/2018 for demolition of an existing building and construction of a creative arts building at Lot 1 Sec 2 DP 2669, Lot 2 Sec 2 DP 2669, Lot 3 Sec 2 DP 2669, Lot 4 Sec 2 DP 2669, Lot 5 Sec 2 DP 2669, Lot 6 Sec 2 DP 2669, Lot 7 Sec 2 DP 2669, Lot 8 Sec 2 DP 2669, Lot 9 Sec 2 DP 2669, Lot 10 Sec 2 DP 2669, Lot 11 Sec 2 DP 2669, Lot 12 Sec 2 DP 2669, Lot 29 Sec 2 DP 2269, Lot 30 Sec 2 DP 2269, Lot 1 DP 122994, Hornsby Girls H/S, No. 12 Edgeworth David Avenue, Hornsby be approved subject to the conditions of consent detailed in Schedule 1 of this report.

BACKGROUND

On 21 February 2018, DA/142/2018 was lodged with Council for the demolition of an existing building and the construction of a new creative arts building in a similar location at Hornsby Girls High School.

On 19 March 2018, Council requested additional information in relation Sydney Trains and Council's engineer requirements. The additional information was provided by the applicant on 30 April 2018.

On 20 June 2018, Council finalised the delegated report and issued the conditions of consent to the Department of Education for concurrence.

On 22 June 2018, Michael Beckwith from the Dept. Education questioned Council in relation to the requirement of Condition No. 3 with regards to Section 7.12 (formerly Section 94A) contribution fees.

On the 27 June 2018, Council responded by letter advising that *'Council are required to strictly follow the Hornsby Development Contribution Plan's and will not be able to waive this fee. Only Ministerial exemptions outlined in the Section 94A Plan apply.'*

On 2 July 2018, Council received a response from the Dept. Education that they agree with all conditions imposed with the exclusion of Condition No. 3 and noted the following:

'The Department of Education does not agree to a condition of consent requiring it to pay developer contributions under Section 7.11 or 7.12 (formally Section 94 and Section 94A) of the Environmental Planning and Assessment Act 1979. Planning Circular D6 represents the consistently held view that the Department of Education, as a Crown authority, provides critical community infrastructure and that to

levy any developer contribution on development of public education facilities increases the cost of such infrastructure for all taxpayers in the state.'

On 18 July 2018, Council responded as follows:

'We sought further advice from Council's Strategic Planning Manager and our previous advice still stands regarding this matter. Council's Section 94A (Section 7.12) Development Contributions Plan specifically applies to Educational Establishments. The Plan states that Council cannot provide an exemption to development contributions except those afforded under direction of the Minister. These are listed in the Plan and do not apply in this case.'

On 9 August 2018, a letter was sent to Council's Mayor from Geoff Lee MP Member for Parramatta requesting that the mayor investigates the matter and advises if it is possible to accommodate the request to waive the Section 7.12 contribution fees.

On 4 September 2018, a letter was sent to the applicant and forwarded to the MP noting that Council had reviewed the letter forwarded to the Mayor and Council's position remained the same regarding the matter. It was noted by Council that we cannot issue the approved application until concurrence to all conditions of consent is granted by the Dept. Education. As a consequence, the following options were posed by Council:

1. *Consent from the Department of Education to the conditions imposed by Council; or*
2. *A letter indicating that you would like the application to be referred to the Sydney North Regional Planning Panel for determination under Section 4.33 of the Environmental Planning and Assessment Act 1979.*

On 18 September 2018, a letter was received from the Dept. Education noting that they are referring the subject application under Section 4.33(2) of the *Environmental Planning and Assessment Act 1979* to the Sydney North Planning Panel.

SITE

The approximately 3 hectare site is located on the southern side of Edgeworth David Avenue, Hornsby and comprises the Hornsby Girls High School which occupies 45 allotments.

The site falls 12 metres to the eastern boundary.

The site is not flood or bushfire prone and is not burdened or benefitted by any easements or restrictions.

The site is heritage listed as item No. 476 - Hornsby Girls High school – buildings (excluding other school structures and grounds) under Schedule 5 of the *Hornsby Local Environmental Plan 2013* and is in the vicinity of heritage item No. 475 – the street trees within Edgeworth David Avenue, Hornsby.

The site is not located within a heritage conservation area.

PROPOSAL

The application proposes the demolition of an existing building and construction of a new creative arts building in a similar location.

The creative arts building would comprise a music/drama studio, an outdoor entry/patio and three storage rooms.

One small tree would be removed by the development.

ASSESSMENT

The development application has been assessed having regard to the '*Greater Sydney Region Plan - A Metropolis of Three Cities*', the '*North District Plan*' and the matters for consideration prescribed under Section 4.15 of the *Environmental Planning and Assessment Act 1979* (the Act). The following issues have been identified for further consideration.

1. STRATEGIC CONTEXT

1.1 Greater Sydney Region Plan - A Metropolis of Three Cities and North District Plan

The *Greater Sydney Region Plan - A Metropolis of Three Cities* has been prepared by the NSW State Government to guide land use planning decisions for the next 40 years (to 2056). The Plan sets a strategy and actions for accommodating Sydney's future population growth and identifies dwelling targets to ensure supply meets demand. The Plan also 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, Mosman, North Sydney, Ryde, Northern Beaches and Willoughby to form the North District. The Greater Sydney Commission has released the North District Plan which includes priorities and actions for Northern District for the next 20 years. The identified challenge for Hornsby Shire will be to provide an additional 4,350 dwellings by 2021 with further strategic supply targets to be identified to deliver 97,000 additional dwellings in the North District by 2036.

The proposed development would be consistent with the *Greater Sydney Region Plan - A Metropolis of Three Cities* and the *North District Plan*, by providing additional infrastructure 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 proposed development has been assessed having regard to the provisions of the *Hornsby Local Environmental Plan 2013 (HLEP)*.

2.1.1 Zoning of Land and Permissibility

The subject land is zoned B4 Mixed Use under the *HLEP*. The objectives of the B4 zone are:

- *To provide a mixture of compatible land uses.*
- *To integrate suitable business, office, residential, retail and other development in accessible location so as to maximise public transport patronage and encourage walking and cycling.*

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

2.1.2 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 16m. The proposal complies with this provision.

2.1.3 Heritage Conservation

Clause 5.10 of the *HLEP* sets out heritage conservation provisions for Council. Refer to Section 2.6.1 of this report for further comment in relation to heritage.

2.2 State Environmental Planning Policy (Educational Establishments and Childcare Facilities) 2017

State Environmental Planning Policy (Educational Establishments and Childcare Facilities) 2017 (Education SEPP) commenced on 1 September 2017. The *Education SEPP* outlines certain development that may be undertaken as exempt or complying, if the works comply with the development standards outlined in Schedule 1 and 2 of the *Education SEPP*.

Whilst the proposal was not lodged as a complying development, a brief assessment against some of the complying development standards for educational establishments has been undertaken as a guideline for the assessment of the proposal. The following table sets out the proposal's compliance with these standards.

Control	Proposal	Compliance
Development carried out by or on behalf of any person on land within the boundaries of an existing school is complying development if it consists of the construction of, or alterations and additions to:		
iii) a teaching facility (including lecture theatre), laboratory, trade facility or training facility	A one storey creative arts building	Yes
viii) demolition of a building or structure (unless a State heritage item or local heritage item)	There are heritage items identified on the site	No

As detailed in the above table, the proposed development does not comply with the complying standards of the *Education SEPP*. Therefore a Development Application was submitted to Council.

2.3 State Environmental Planning Policy (Infrastructure) 2007 – Sydney Trains

This policy provides guidelines for identifying matters to be considered in the assessment of development adjacent to particular types of infrastructure development. In this case, the application was referred to Sydney Trains for consideration under the *Infrastructure SEPP*.

Sydney Train's provided conditions of consent to impose, which are recommended in Schedule 1 of this report. These conditions of consent relate to noise and vibration, stray current and electrolysis, geotechnical and structural stability, demolition and construction impacts, crane and aerial operations, drainage, scaffolding and high voltage transmission lines.

2.4 State Environmental Planning Policy No. 55 Remediation of Land

The policy provides guidelines for the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment. Clause 7 requires Council to consider whether land is contaminated prior to granting consent to the carrying out of any development on that land.

Should the land be contaminated, Council must be satisfied that the land is suitable in a contaminated state for the proposed use. If the land requires remediation to be undertaken to make the land suitable for the proposed use, Council must be satisfied that the land will be remediated before the land is used for that purpose.

The site has been historically used for educational purposes. It is not likely that the site has experienced significant contamination, and further assessment under *SEPP 55* is not required.

2.5 State Regional Environmental Policy 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 meet the aims of the Policy.

2.6 Hornsby Development Control Plan 2013

The proposed development has been assessed having regard to the relevant desired outcomes and prescriptive requirements within the *HDCP*. The following table sets out the proposal's compliance with the prescriptive requirements of the Plan:

HDCP – Part 7 Community Uses			
Control	Proposal	Requirement	Complies
Building Height	5.8m	max. 16m	Yes
No. storeys	1	max. 4	Yes
Setbacks			
- <i>Front</i>	Unchanged	0m	Yes
- <i>Side</i>	Unchanged	0m	Yes
- <i>Side</i>	Unchanged	0m	Yes
- <i>Rear</i>	4.33m	0m	Yes
Open Space	no change to existing	20m ² per student	Yes

As detailed in the above table, the proposed development complies with the prescriptive measures within the HDCP. A brief discussion on compliance with relevant performance requirements and Part 1C General Controls is provided below.

2.6.1 Heritage

The subject site is heritage listed as item No. 476 - Hornsby Girls High School – buildings (excluding other school structures and grounds) under Schedule 5 of the HLEP and is in the vicinity of Heritage Item No.475 - street trees within Edgeworth David Avenue, Hornsby. Council's heritage assessment is provided below.

Demolition

The buildings on the site that are heritage listed are those built in the 1930s in the Inter-war classical style. The Heritage Impact Statement (HIS) submitted with the application states that the building to be removed is a later 20th century structure, in poor condition with no heritage value. A site inspection confirmed that the building has no heritage value and no heritage concern is raised to its demolition.

New Building

The new building is located in a similar footprint as the building to be demolished. The new building is a contemporary in style, single storey in scale and located to the rear of the heritage listed buildings. The HIS concludes that the proposal is minor, with a neutral impact on the visual setting of the listed school buildings. Overall, it is considered that the proposal would have no adverse heritage impacts on the significance of the listed school buildings on the site.

Materials and Finishes

The materials proposed include CFC cladding (fibre cement vertical panels east elevation), colorbond horizontal metal cladding (Lysaght-Imperial) and colorbond metal roof. The exterior cladding would have a grey appearance and would not be highly visible within the setting of the item or landscape. The north elevation facing toward the main school buildings and Edgeworth David Avenue is fairly bland and the existing landscaped strip to the north of the new building should be retained with additional screen planting to soften the appearance of the new building form.

Tree Removal/landscaping

The proposal involves retaining the majority of large canopy trees in close proximity to the proposed new building. Additional screen planting is recommended on the northern elevation of the new building.

Items in the Vicinity

The new structure would have no impact on the heritage listed street trees due to physical separation.

Summary

In summary, the existing building has no heritage value and the replacement creative arts building would be acceptable, subject to additional screen planting being provided on the northern side to soften the impact of the new contemporary building on the heritage listed school buildings and their setting.

The proposal meets the objectives of Clause 5.10 of the *HLEP* and the desired outcomes of Part 9.2 Heritage Items and Part 9.4 Development in the Vicinity of Heritage Items of the *HDCP* and is considered acceptable, subject to conditions.

2.6.2 Tree Preservation

One small tree would be removed by the proposed development.

It is noted that in order to protect some of the larger canopy trees to the south and east of the existing building, the new building would be located slightly further to the west to reduce the impact on the Tree Protection Zones (TPZ) of these trees. This would result in the removal of a smaller, less significant tree.

Whilst tree loss is not ideal, there is sufficient space on the site to provide compensatory plantings of locally occurring species to maintain the local amenity. As discussed in Section 5.6.1 of this report, additional screen planting must be provided to soften the impact of the new contemporary building on the heritage listed school buildings and their setting. A condition to this effect is recommended in Schedule 1 of this report.

A condition is also recommended in Schedule 1 of this report to ensure the trees to be retained remain undamaged and for building materials and site waste to be located outside of the TPZ of these trees.

The proposal meets the desired outcomes of Part 1B.6.1 Tree Preservation under the HDCP and is considered acceptable.

2.6.3 Noise and Vibration

Acoustic analysis was undertaken based upon data from attended noise surveys at the site. An assessment of potential noise breakout from the new facility and noise intrusion from surrounding developments such as road and rail traffic was made.

A condition is recommended in Schedule 1 of this report to ensure development is carried out in accordance with the Acoustic Report provided. Conditions imposed by Sydney Trains in relation to noise are also recommended in Schedule 1 to ensure all works comply with the document *"Development Near Rail Corridors and Busy Roads- Interim Guidelines"*.

The proposal meets the desired outcomes of Part 1C.2.5 Noise and Vibration under the HDCP and is considered acceptable.

2.7 Hornsby Section 94A Development Contributions Plan 2014 – 2024

Hornsby Section 94A Contributions Plan 2014 – 2024 applies to the development as the estimated costs of works is greater than \$100,000. As outlined in the 'Background' Section of this report concurrence was requested from the Dept. Education to the conditions of consent imposed by Council. The Dept. Education consented to all conditions except for No. 3 in relation to Section 7.12 (formerly Section 94A) Contribution Fees. The matter could not be resolved between Council, the Applicant and the Dept. Education and as such the DA has been referred as a Crown Development to the Sydney North Planning Panel under Section 4.33 of the *Environmental Planning and Assessment Act 1979*.

Council's Strategic Planning Branch provided the following comments:

The applicant has requested removal of the Section 7.12 development contribution condition for a development at Hornsby Girls' High School located at 12 Edgeworth David Avenue, Hornsby, being the "demolition of outbuilding and construction of new outbuilding for creative arts use." Consent Condition No. 3, copied at Annexure A, requires a Section 7.12 contribution of \$5,943.40 for the development.

The applicant has requested that the levy be waived for the following reasons:

- *“Public education provides an enormous benefit to Hornsby Shire Council and its community in the form of community infrastructure, and such benefit far outweighs any additional costs for stormwater, roads or other infrastructure that it might cause the Council.*
- *The Developer Contributions Practice Note (July 2005) states that the current limitations on impositions of levies on Crown Development as outlined in Circular D6 – Crown Development Applications and Conditions of Consent remain in force.*
- *The Draft local development contribution guidelines (2009) state that it is considered best practice to exempt those developments provided by the Crown with an underlying philosophy of community service, such as a courthouse, school or community centre, should not be levied a contribution as the material public benefit that is derived from the development exceeds any demand that it creates.*
- *The development application for a music classroom is not associated with any additional student enrolment expansion works – i.e. it does not create any new demand.*
- *The condition proposed by Council for developer contributions is unreasonable.”*

ASSESSMENT

1. Background to the Development

The site is zoned B4 Mixed Use under the Hornsby LEP 2013 and is owned by the Minister for Education and Training.

The development involves the demolition of an existing outbuilding on the site and the construction of a new building for creative arts use.

2. Hornsby Section 94A Development Contributions Plan 2014-2024 (now Section 7.12)

The Hornsby Section 94A Development Contributions Plan 2014-2024 applies to the following types of development:

- *Alterations or additions to residential accommodation (excluding additional dwellings);*
- *Alterations to commercial premises (excluding additional gross floor area (GFA));*
- *Industrial development;*
- *Residential Care Facilities;*
- *Hostel/Boarding House/Group Home/Hospital/ Educational Establishment;*
- *Tourist and Visitor Accommodation and Eco-Tourist Facilities;*
- *All other development that does not involve the creation of additional dwellings or, in the case of commercial premises – additional GFA.*

The Plan advises at Section 2.8 that Council will not provide exemption to development contributions made under this Plan other than exemptions afforded under direction of the Minister for Planning and Infrastructure and that Council does not apply discounts to the development contributions under this Plan. At present, the Minister of Planning has not directed that developments for the purpose of creative arts studios (forming part of an Educational Establishment) nor Crown Development are to be exempt from Section 7.12 Contributions.

3. Response to Applicant Submission

The applicant contends that the development should not be levied as discussed below:

Issue	Comment
<i>Public education provides an enormous benefit to Hornsby Shire Council and its community in the form of community infrastructure, and such benefits far outweighs any additional costs for stormwater, roads or other infrastructure that it might cause the Council.</i>	<i>Notwithstanding the identified community benefit, Section 1.5 of The Hornsby s94A Development Contributions Plan 2014-2024 identifies an 'Educational Establishment' as development to which the Plan applies.</i>
<i>The Developer Contributions Practice Note (July 2005) states that the current limitations on impositions of levies on Crown Development as outlined in Circular D6 – Crown Development Applications and Conditions of Consent remain in force.</i>	<i>Section 2.8 of the Hornsby s94A Development Contributions Plan 2014-2024 identifies the relevant Ministerial exemptions. In this instance, the exemptions do not extend to development for the purposes of 'Educational Establishment' or Crown Development.</i>
<i>The Draft local development contribution guidelines (2009) state that it is considered best practice to exempt those developments provided by the Crown with an underlying philosophy of community service, such as a courthouse, school or community centre, should not be levied a contribution as the material public benefit that is derived from the development exceeds any demand that it creates.</i>	
<i>The development application for a music classroom is not associated with any additional student enrolment expansion works – i.e. it does not create any new demand.</i>	<i>Consideration of the appropriateness for levying contributions in relation to additional demand generated by development falls under s7.11 of the EP&A Act.</i>

RECOMMENDATION

The Hornsby Section s94A Contributions Plan 2014-2024 does not provide an exemption for the development of new building for creative arts use (forming part of an Educational Establishment) or Crown Development. Therefore, Condition No. 3 of DA/142/2018 remains appropriate, consistent with Council's adopted policy.

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".

The impacts of the proposed development on the natural and built environment have been addressed in Section 2 of this report. The proposal would not have an unacceptable impact on the natural or built environment.

4. SITE SUITABILITY

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

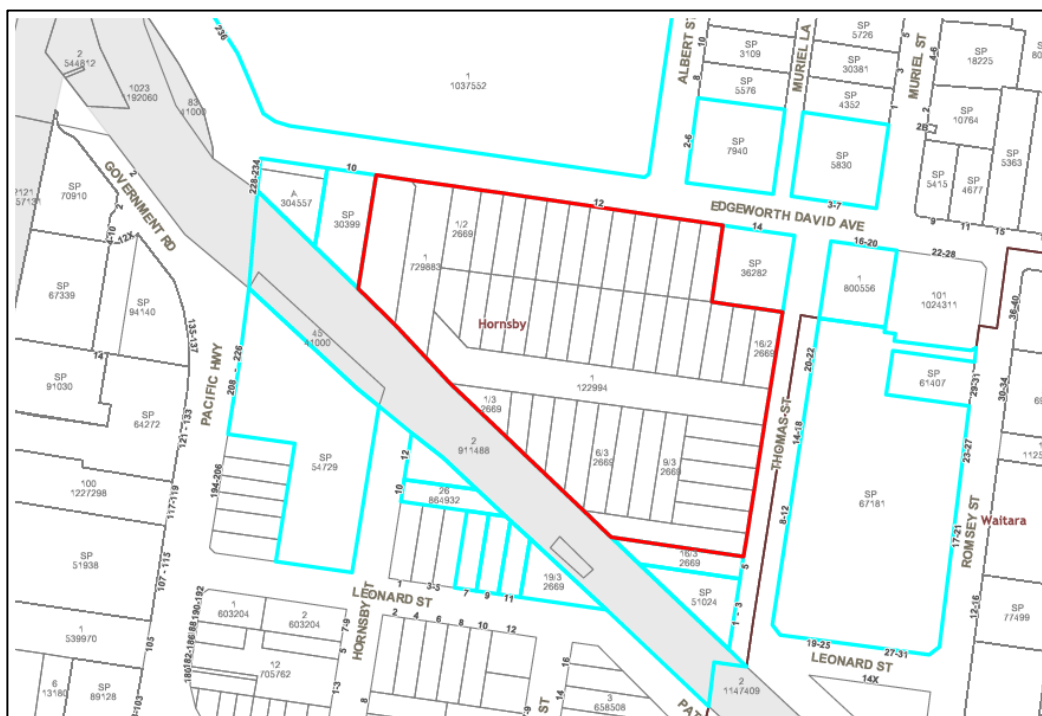
The subject site has not been identified as bushfire prone or flood prone land. The site is considered to be capable of accommodating the proposed development. The scale of the proposed development is consistent with the capability of the site and is considered acceptable.

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 8 March 2018 and 22 March 2018 in accordance with the Notification and Exhibition requirements of the HDCP. During this period, Council did not receive any submissions. The map below illustrates the subject site and the properties notified.



NOTIFICATION PLAN

 Properties Notified	 Submissions Received	 Property Subject of Development	
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5.2 Public Agencies

The development application was referred to Sydney Trains and their response is discussed in Section 2.3 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 development would be in the public interest.

CONCLUSION

The application proposes the demolition of an existing building and construction of a creative arts building in a similar location. The application is classified as Crown development. The application is submitted to the Sydney North Planning Panel for determination in accordance with Section 4.33 of *Environmental Planning and Assessment Act 1979*.

The development generally meets the desired outcomes of Council’s planning controls and is satisfactory having regard to the matters for consideration under Section 4.15 of the *Environmental Planning and Assessment Act 1979*.

Conditions are recommended to minimise disruption to residential amenity.

Having regard to the circumstances of the case, approval of the application 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 10.4 of the Environmental Planning and Assessment Act 1979 in respect of the subject planning application.*

Attachments:

1. Architectural Plans
2. Survey Plan
3. Statement of Environmental Effects
4. Exemptions extract - *Hornsby Section 94A Development Contributions Plan 2014 – 2024*

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:

Plan No.	Plan Title	Drawn by	Dated	Council Ref.
Project No. 17085, Dwg No. A001, Issue A	Location Plan	Crawford Architects	06/02/18	
Project No. 17085, Dwg No. A002, Issue A	Demolition Plan	Crawford Architects	06/02/18	
Project No. 17085, Dwg No. A100, Issue A	Site Plan and Site Management Plan (trees identified)	Crawford Architects	06/02/18	
Project No. 17085, Dwg No. A200, Issue A	Floor Plan	Crawford Architects	06/02/18	
Project No. 17085, Dwg No. A201, Issue A	Roof Plan	Crawford Architects	06/02/18	
Project No. 17085, Dwg No. A151, Issue A	Material Board	Crawford Architects	06/02/18	
Project No. 17085, Dwg No. A300, Issue A	Elevation Plans (East and North)	Crawford Architects	06/02/18	

Plan No.	Plan Title	Drawn by	Dated	Council Ref.
Project No. 17085, Dwg No. A301, Issue A	Elevation Plans (South and West)	Crawford Architects	06/02/18	
Project No. 17085, Dwg No. A310, Issue A	Sections A-A and B-B	Crawford Architects	06/02/18	

Supporting Documents	Prepared by	Dated	Council Ref.
Acoustic Report	Cundall	19/01/18	D07394415
Geotechnical Investigation Report	JK Geotechnics	24/11/17	D07394429
Heritage Impact Statement	Damian O'Toole Town Planning	02/18	D07394409
Waste Management Plan	Crawford Architects	20/02/18	D07394413

2. Removal of Existing Trees

- a) This development consent permits the removal of tree No. 1 as identified on approved site plan, project No. 17085, Dwg No. A100 prepared by Crawford Architects, dated 06/02/18.
- b) The removal of any other trees requires separate approval in accordance with the Tree and Vegetation Chapter 1B.6 Hornsby Development Control Plan 2013.

3. Section 7.12 Development Contributions

- a) In accordance with Section 4.17(1) of the *Environmental Planning and Assessment Act, 1979* and the *Hornsby Shire Council Section 94A Development Contributions Plan 2014-2024*, \$5,943.40 must be paid to Council for the provision of community infrastructure, based on development costs of \$594,341.
- b) The value of this contribution is current as of 5 June 2018. 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:

\$CPY is the amount of the contribution at the date of Payment

\$CDC is the amount of the contribution as set out in this Development Consent

CPIPY is the latest release of the Consumer Price Index (Sydney – All Groups) at the date of Payment as published by the ABS.

CPIDC 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.

Note: Council's S94A Development Contributions Plan may be viewed at www.hornsby.nsw.gov.au or a copy may be inspected at Council's Administration Centre during normal business hours.

REQUIREMENTS PRIOR TO THE COMMENCEMENT OF ANY WORKS
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4. **Sydney Trains Concurrence**

The design of the development must satisfy the concurrence requirements of Sydney Trains.

5. **Building Code of Australia**

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

6. **Sydney Water**

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.

Note: Building plan approvals can be obtained online via Sydney Water Tap inTM through www.sydneywater.com.au under the Building and Development tab.

7. Stormwater Drainage

The stormwater drainage system for the development must be designed for an average recurrence interval (ARI) of 20 years and be gravity drained in accordance with the following requirements:

- a) Roof water must be connected to a rainwater tank having a minimum capacity to the BASIX requirement.
- b) The overflow from the rainwater tank and collected surface water must be connected to the existing internal drainage system.

8. Acoustic Requirements

Construction of the proposed development must be in designed in accordance with the Acoustic Report prepared by Cundall dated 19/01/18.

9. Geotechnical Engineer's Recommendation

Construction of the proposed development must be in designed in accordance with the recommendations of the Geotechnical Investigation Report prepared by JK Geotechnics dated 24/11/17.

10. 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.

11. 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.

12. 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*.

13. 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.

REQUIREMENTS DURING DEMOLITION AND CONSTRUCTION

14. 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.

15. Demolition

To protect the surrounding environment, 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 any building contain asbestos material, a standard commercially manufactured sign containing the words 'DANGER ASBESTOS

REMOVAL IN PROGRESS' and measuring not less than 400mm x 300mm must be displayed in a prominent position visible from the street.

16. Environmental Management

To prevent sediment run-off, excessive dust, noise or odour emanating from the site during the construction, 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*.

17. Building materials and Site Waste

The filling or stockpiling of building materials, the parking of vehicles or plant, the disposal of cement slurry, waste water or other contaminants must be located outside the tree protection zones as prescribed in the conditions of this consent or the prescriptive measures of Part 1B.6.1 Tree Preservation of the Hornsby Development Control Plan, 2013, of any tree to be retained.

18. Council Property

To ensure that the public reserve is kept in a clean, tidy and safe condition during construction works, no building materials, waste, machinery or related matter is to be stored on the road or footpath.

19. 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.

20. Landfill

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

- a) Prior to fill material being imported to the site, a certificate must be obtained from a suitably qualified environmental consultant confirming the fill wholly consists of Virgin Excavated Natural Material (VENM) as defined in Schedule 1 of the *Protection of the Environment Operations Act 1997* or 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) These certificates must be included with the application for an occupation certificate.

21. 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.

22. **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.

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:

23. **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.

24. **Installation of Screening - Heritage Requirement**

To soften the impact of the new contemporary building to the heritage listed school buildings and their settings, a screen of minimum 10 locally occurring tree species (minimum mature growth height of 3 metres), must be planted within the existing garden strip on the northern side of the new building.

OPERATIONAL CONDITIONS

25. **Noise Requirement**

Windows must be closed during high noise impact activities.

CONDITIONS OF CONCURRENCE – SYDNEY TRAINS

The following conditions of consent are from the nominated State Agency pursuant to Section 4.13 of the *Environmental Planning and Assessment Act 1979* and must be complied with to the satisfaction of that Agency.

26. **Noise and Vibration**

The proposed development is to comply with the deemed-to-satisfy provisions in the Department of Planning's document titled *"Development Near Rail Corridors and Busy Roads- Interim Guidelines"*.

27. **Stray Currents and Electrolysis from Rail Operations**

Prior to the issue of a Construction Certificate the Applicant is to provide structural details that the concrete slab or footings will be protected by a vapour barrier membrane. A copy of the

details is to be provided to the Principal Certifying Authority with the application for a Construction Certificate.

28. Geotechnical and Structural Stability and Integrity

Prior to the commencement of works, the Applicant must provide certification from a qualified Geotechnical and Structural Engineers stating that the proposed works are to have no negative impact on the rail corridor and associated rail infrastructure.

29. Demolition, Excavation and Construction Impacts

- a) Prior to the issue of a Construction Certificate a Risk Assessment/Management Plan regarding any potential risk to or from the rail corridor and assets, and detailed Safe Work Method Statements (SWMS) for the proposed works are to be submitted to Sydney Trains for review and comment on the impacts on the rail corridor. The Principal Certifying Authority must not issue the Construction Certificate until written confirmation has been received from Sydney Trains confirming that this condition has been satisfied.
- b) No metal ladders, tapes and plant/machinery, or conductive material are to be used within 6 horizontal metres of any live electrical equipment. This applies to the train pantographs and 1500V catenary, contact and pull-off wires of the adjacent tracks, and to any high voltage aerial supplies within or adjacent to the rail corridor.

30. Crane and Other Aerial Operations

If a crane is required to be used at any stage of the proposed works, the following condition applies:

- a) Prior to the issuing of a Construction Certificate the Applicant is to submit to Sydney Trains a plan showing all craneage and other aerial operations for the development and must comply with all Sydney Trains requirements. The Principal Certifying Authority must not issue the Construction Certificate until written confirmation has been received from Sydney Trains confirming that this condition has been satisfied.

31. Drainage

Given the development site's location next to the rail corridor, drainage from the development must be adequately disposed of/managed and not allowed to be discharged into the corridor unless prior approval has been obtained from Sydney Trains.

32. Scaffolding

No scaffolding is to be used within 6 horizontal metres of the rail corridor unless prior written approval has been obtained from Sydney Trains. To obtain approval the applicant will be required to submit details of the scaffolding, the means of erecting and securing this scaffolding, the material to be used, and the type of screening to be installed to prevent objects falling onto the rail corridor.

33. High Voltage Transmission Line

- a) Sydney Trains advises they have a 33kV H/V aerial transmission line near to this site and any works, scaffolding and crane movements within 6 metres of the nearest transmission line conductor must be discussed and approved by Sydney Trains beforehand.
- b) In addition, all works within 6 metres of the nearest transmission line conductor must comply with:
 - i) *ISSC 20 — Guideline for the Management of Activities within Electricity Easements and Close to Electricity Infrastructure.*
 - ii) The Safe Approach Distances (SADs) in the Sydney Trains Document titled "*SMS-06-GD-0268 — Working Around Electrical Equipment*".

- 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 4.17 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; and
- 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

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.

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 for free information on potential underground pipes and cables within the vicinity of the development site.

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 *SafeWork 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

www.adfa.org.au

www.workcover.nsw.gov.au

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