



Issued: 6 July 2016 11:47 AM

JUDGMENT/ORDER

COURT DETAILS

Court	Land and Environment Court of NSW
Division	Class 1
Registry	Land and Environment Court Sydney
Case number	2016/00151941

TITLE OF PROCEEDINGS

First Applicant	HENLONG PROPERTY GROUP PTY LTD
First Respondent	HORNSBY SHIRE COUNCIL

DATE OF JUDGMENT/ORDER

Date made or given	27 May 2016
Date entered	23 June 2016

TERMS OF JUDGMENT/ORDER

The final orders to give effect to the parties' agreement are:

- 1.The applicant is granted leave to rely on the amended Plan of Subdivision No. 75633, prepared by Rygate Surveyors Revision 'K' dated 12 May, 2016.
- 2.The appeal is upheld.
- 3.Deferred Commencement Development Consent pursuant to s80(3) of the Environmental Planning and Assessment Act 1979 is granted to DA No. 94/2013 as amended for the subdivision of land, being Lot 2 in Deposited Plan 847605, known as Nos. 79 – 87 Malton Road, Beecroft, into six (6) separate Torrens Title allotments of land, subject to the conditions of consent in Annexure 'A' hereto.

SEAL AND SIGNATURE



Signature	Maria Anastasi
Capacity	Assistant Registrar
Date	6 July 2016

If this document was issued by means of the Electronic Case Management System (ECM), pursuant to Part 3 of the Uniform Civil Procedure Rules (UCPR), this document is taken to have been signed if the person's name is printed where his or her signature would otherwise appear.

ANNEXURE 'A'
Land and Environment Court
Appeal No. 151941/2016
Premises: 79 – 81 Malton Road, Beecroft

1. Introduction

Deferred Commencement Development Consent pursuant to s80(3) of the *Environmental Planning and Assessment Act* 1979 ('the Act') is granted to DA No. 94/2013 as amended for the subdivision of land, being Lot 2 in Deposited Plan 847605, known as Nos. 79–87 Malton Road, Beecroft, into six (6) separate Torrens Title allotments of land, subject to the conditions of this Consent.

2. Deferred Commencement Condition of Consent

Pursuant to Section 80(3) of the Environmental Planning and Assessment Act 1979, this consent does not operate until the following information is submitted to Council:

a) Integrated Vegetation and Bushfire Management Plan

- i) An Integrated Vegetation and Bushfire Management Plan for the management of the native vegetation along Malton Road and within the Asset Protection Zone (as specified in Condition 45). The Plan will apply to each of the newly created allotments where a future dwelling will occur (5 lots);
- ii) The Plan must be prepared by a suitably qualified bush regenerator or restoration ecologist who is a vegetation management specialist and has 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;
- iii) The Plan must be prepared in consultation with a Bushfire Management Consultant and include strategies for management of the Asset Protection Zones in a manner that has the least impact on the natural environment and maintains indigenous vegetation for the benefit of the Byles Creek corridor function and include, but not be limited to, the following:
 - a. The appointment of a Project bush regenerator or restoration ecologist to oversee the implementation of the Plan;



- b. Consideration of the recommendations of the Environmental Assessment (Flora & Fauna) Report prepared by Ecological Surveys & Planning, January 2014 and the Assessment of Proposed Development at Lot 2 DP 847605, 79-87 Malton Road Beecroft on Threatened Species of Fauna Report prepared by Gaia Research Pty Ltd, October 2012;
- c. Consideration of the recommendations of the Amended Bushfire Assessment Report (Reference No. 2013/15A) prepared by Bushfire Safety Solutions, February 2013;
- d. Weed control and suppression using bush regeneration methods;
- e. Habitat protection including hollow-bearing tree retention and the potential population of threatened *Leptospermum deanei* habitat;
- f. The restoration of all disturbed areas using bush regeneration techniques;
- g. Consideration of the NSW Rural Fire Service document *Standards for Asset Protection Zones (APZ)* which outlines how an APZ should be created;
- h. Consideration of all the trees approved for removal as per Condition 6;
- i. Identification of all trees proposed for removal and retention, clumps of vegetation to be retained including the *Leptospermum deanei* hybrid population (including potential hybrid plants too small for identification but growing in the vicinity of identified hybrids), areas of exposed rock cover contributing to reduced fuel loading;
- j. Permanent marking of the extent of the APZ at the intersection of boundaries of proposed lots 1-5 and proposed lot 6;
- k. Permanent marking of the extent of the *Leptospermum deanei* hybrid population as shown on Plan Showing Location of *Leptospermum deanei* x *trinervium* prepared by Rygate Surveyors and dated 24/03/2016.
- l. Retention of an uncleared native vegetation buffer at least 5m in radius around the *Leptospermum deanei* hybrids and potential hybrids. Vegetation within the



buffer is to be managed for conservation of the *Leptospermum deanei* hybrid population. The extent of the buffer is to be permanently marked.

b) Fauna Management Plan

A *Fauna Management Plan* to manage the loss of habitat resources for tree dependent fauna prepared by a qualified and experienced ecologist.

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

- i) The appointment of a Project Ecologist to oversee the implementation of the Fauna Management Plan;
- ii) Tree hollows potentially to be salvaged from trees within the development area and placed within the bushland areas within Lot 6 to be considered and areas of Byles Creek dedicated to Council in consultation with the Project ecologist and Council's Natural Resources Branch;
- iii) Special consideration and protection must be made for hollow-bearing Tree No. 69 (a large *Angophora costata*) that contains a potential nest site for endangered Gang-gang Cockatoos. This tree is located in the APZ of proposed Lot 4;
- iv) A requirement for the Project Ecologist to be onsite during any tree removal and/or earthworks that will impact the rock escarpment or rock outcrops to re-locate displaced fauna that may be disturbed during this activity.

Such information must be submitted to Council within thirty-six (36) months of the date of this Consent.

Upon Council's written satisfaction of the information referred to in Deferred Commencement Condition 1, the following conditions of development consent apply:

3. 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:

<i>Plan No.</i>	<i>Plan Title</i>	<i>Revision</i>	<i>Drawn by</i>	<i>Dated</i>
75633	Plan of Proposed Torrens Title Subdivision	K	Rygate Surveyors	12 May 2016

Driveway Plans prepared by Acor Appleyard Consultants Pty Ltd

<i>Plan No.</i>	<i>Issue</i>	<i>Plan Title</i>	<i>Dated</i>
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D1	3	Cover Sheet and Notes	10/2014
D2	5	Driveway Plan	10/2014
D3	4	Driveway Long Sections	10/2014
D4	5	Driveway Cross Sections MC01 – Sheet 1	10/2014
D5	5	Driveway Cross Sections Sheet 2	10/2014

Stormwater Management Plans prepared by Acor Appleyard Consultants Pty Ltd

Plan No.	Issue	Plan Title	Dated
C1	2	Cover Sheet and Notes	11/2014
C2	4	Stormwater Management Plan	11/2014
C3	2	Drainage Longitudinal Section	11/2014
C4	2	Stormwater Management Details	11/2014

Supporting Documents

Document Title	Prepared by	Dated
Erosion & Sediment Control Plan (Drawing reference No. C5 Issue 2)	Acor Appleyard Consultants Pty Ltd	11/2014
Erosion & Sediment Control Notes & Details (Drawing reference No. C6 Issue 2)	Acor Appleyard Consultants Pty Ltd	11/2014
Plan Showing Details and Levels (Reference No. 74128, Sheet 1, Revision B)	Rygate Surveyors	10/8/2011
Plan Showing Details and Levels (Reference No. 74128, Sheet 2, Revision B)	Rygate Surveyors	10/8/2011
Plan Showing Details and Levels (Reference No. 74128, Sheet 3, Revision B)	Rygate Surveyors	10/8/2011
Assessment of proposed development Lot 2 DP 847605, 79-87 Malton Road Beecroft, on threatened species of fauna	Gaia Research Pty Ltd	October 2012
Preliminary Environmental Assessment (Flora)	Ecological Surveys & Planning	January 2013
Arboreal Impact	Allied Tree Consultancy	15 January



Document Title	Prepared by	Dated
Assessment (Reference No. D2057)		2013
Addendum - Arboricultural Impact Assessment (Reference No. 2057A)	Allied Tree Consultancy	17 October 2013
Amended Bushfire Assessment Report (Reference No. 2013/15A)	Bushfire Safety Solutions	February 2013
Environmental Assessment (Flora & Fauna)	Ecological Surveys & Planning	January 2014
Historical Archaeological Assessment	Mary Dallas Consulting Archaeologists	15 July 2015
Plan Showing Asset Protection Zones	Clarke Dowdle & Associates	3/03/2016
Plan Showing Location of <i>Leptopsernum deanei</i> x <i>trinervium</i> (Ref. No. 77431 Sheets 1 and 2)	Rygate Surveyors	24/03/2016

4. Amendment of Plans

- a) The Stormwater Management Plans prepared by Acor Appleyard Consultants Pty Ltd and dated 11/2014 are to be amended as follows:
- i) The portion of the stormwater line from pit 1 to pit 5 must be relocated 10 metres to the south.
 - ii) The installation of any services within the specified (AS4970) Tree Protection Zone (TRZ) of any tree to be retained must utilise tree sensitive construction method approved by Council.
 - iii) All detention and inspection pits must be located outside the Structural Root Zone of any tree to be retained.
 - iv) Onsite stormwater flow must be directed to an existing piped stormwater drainage system.
- b) The following plans are to be amended in accordance with the Plan of Proposed Torrens Title Subdivision (Drawing reference No. 75633 Issue H) prepared by Rygate Surveyors and dated 13/04/2016:

Plan No.	Plan Title	Issue	Drawn by	Dated
D2	Driveway Plan	5	Acor Appleyard Consultants Pty Ltd	10/2014
	Stormwater Management	4	Acor Appleyard Consultants Pty Ltd	11/2014



Plan No.	Plan Title	Issue	Drawn by	Dated
	Plan			
C5	Erosion & Sediment Control Plan	2	Acor Appleyard Consultants Pty Ltd	11/2014

5. 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.

6. Removal of Existing Trees

This development consent only permits the removal of trees numbered 4, 9, 11, 18, 24, 25, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 58, 59, 62, 63, 64, 65, 66 and 68 as identified on the approved Driveway Plan Revision 5, prepared by Acor Appleyard Consultants Pty Ltd, dated 10/2014.

7. Dedication of Land to Council

Lot 6 depicted on the proposed Plan of Subdivision of Rygate, Ref. No. 75633 "Revision K" of 12 May 2016, having an area of 1.033ha, shall be dedicated to Council free of cost. Such dedication is to be free of any trusts, estates, interests, covenants and encumbrances upon the registration at the Land and Property Information Office of New South Wales, of the plan of subdivision the subject of this Consent, with Council being noted as the Registered Proprietor of Lot 6.

Such dedication must be effected upon the registration of the Plan of Subdivision the subject of this Consent.

Note: The method by which such dedication is to occur is pursuant to s49 of the Local Government Act 1993, whereby Lot 6 on the Plan of Subdivision is to be marked with the words "Public Reserve" so that on the registration by the Registrar General of the Plan of Subdivision the fee simple of Lot 6 will be vested in Council.



8. Non-Payment of s94 Contributions

No contributions pursuant to ss94, 94A or 94EF of the EP&A Act are payable to Council relating to the proposed development, having regard to the dedication to Council of proposed Lot 6.

REQUIREMENTS PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

9. Water/Electricity Utility Services

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

- a) *Ausgrid (formerly Energy Australia)* – a letter of consent demonstrating that satisfactory arrangements have been made to service the proposed development.
- b) *Sydney Water* – the submission of a 'Notice of Requirements' under s73 of the *Sydney Water Act 1994*.

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

10. Road Works

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

- a) The existing paved width of the Malton Road sealed road across the frontage of the site must be maintained to be at least 5.0m, with suitable provision for splays to match existing pavements at either end of the work;
- b) A standard concrete rolltop kerb or other kerb type as required by Council shall be designed and constructed across the Malton Road frontage of the site, in line with the existing edge of seal and Council controlled drainage pipe system;
- c) The Malton Road shoulder pavement seal must be graded between 2% and 4% to the gutter invert;
- d) The existing road to be saw cut a minimum of 1.0m from the proposed lip of kerb and reconstructed as full depth 300 mm flexible pavement;
- e) Council standard kerb inlet pits and grates shall be designed and constructed in the gutter invert to drain runoff from Malton Road to the road piped drainage system;
- f) All existing assets within the road reserve, including utility poles, services, road shoulder pavements, dense graded base layers,



junction pits, shall be adjusted at the Applicant's cost in order to effect the required works. Details to be provided on construction plans;

- g) The submission of a compaction certificates from a geotechnical engineer for any fill work, subgrade and base material within the road formation; and
- h) Pursuant to Section 138 *Roads Act 1993*, a Construction Certificate application for these works must be made to Hornsby Council for assessment and approval prior to the commencement of any work. The Applicant must pay Council's fee for application assessment and compliance inspections prior to Construction Certificate approval.

11. Vehicular Crossing

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

- a) The crossing must be designed and constructed for two-way movement of vehicles on the crossing allowing for the swept-out manoeuvring of vehicles accessing the crossing;
- b) The crossing ramps grades must be designed and constructed in accordance with AS2890.1-2004;
- c) A longitudinal section of the crossing must be provided with Construction Certificate plans; and
- d) Approval must be obtained from all relevant utility providers that all necessary conduits be provided and protected under the crossing.

Note: An application for a vehicular crossing can only be made to one of Council's Authorised Vehicular Crossing Contractors, or be the subject of a Construction Certificate Application to Hornsby Council as Roads Authority. You are advised to contact Council on 02 9847 6940 to obtain a list of contractors.

12. 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 and be submitted to Council for approval. The TCP must detail the following:

- a) Arrangements for public notification of the works.
- b) Temporary construction signage.
- c) Vehicle movement plans.
- d) Traffic management plans.
- e) Pedestrian and cyclist access/safety.



13. Parking Restriction

Pursuant to Section 138 Roads Act 1993, to control parking across the Malton Road frontage of the site and improve safety, a separate Application must be made to Council's Traffic and Road Safety Branch:

- a) Application shall take the form required by Council's Traffic and Road Safety Branch, with scaled Plans prepared by a suitably qualified person showing drawing number, RMS Standard sign detail, sign directional arrows, dimensions between signs, street name, north point and location of driveways.
- b) The Applicant shall pay Council's Traffic and Road Safety Branch's fee as required for assessment of the parking control proposal.
- c) Council's Local Traffic Committee shall consider and approve signage plans prior to any signage's construction.
- d) Approved signage construction shall be arranged by the Applicant and constructed at the Applicant's cost prior to release of the Subdivision Certificate.

The required Traffic Control Plan (TCP) must be submitted and approved by Hornsby Council.

14. Internal Driveway/Vehicular Areas

The driveway and parking areas on site must be designed in accordance with the approved plans, Australian Standards 2890.1, 3727 and the following requirements:

- a) Design levels at the front boundary must be obtained from Council;
- b) The driveway width must provide for two-way movement of vehicles in proposed Lots 4 and 5 to the crossing;
- c) The driveway grade must not exceed 25 percent and transitions for changes in grade must not exceed 8 percent per plan metre;
- d) The driveway pavement must be a minimum 3 metres wide, 0.15 metres thick reinforced concrete with SL72 steel reinforcing fabric and a 0.15 metre sub-base;
- e) Retaining walls must have a setback of at least 300 mm from kerb lines and drop edges of the minimum 3.0m carriageway;
- f) The pavement must have a kerb to one side and a one-way cross fall with a minimum gradient of 2 percent with kerb inlet pits provided on grade and at low points;
- g) Retaining walls required to support the carriageway and the compaction of all fill batters must be in accordance with the requirements of a chartered structural engineer;



- h) Safety rails must be provided where there is a level difference more than 0.3 metres and a 1V:4H batter cannot be achieved. Details to be provided on construction plans;
- i) Conduit for utility services including electricity, water, gas and telephone must be provided.

15. Stormwater Drainage

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

- a) Connected to an existing Council controlled natural watercourse;
- b) Method of water disposal to the watercourse must use water sensitive dissipation methods or other methods in accordance with Section 5.4.5 Energy dissipaters and outlet protection of '*Managing Urban Stormwater: Soils and Construction (Landcom 2014)*' as required by Council's Subdivision Engineer and Natural Resources Branch or a controlled activity approval;
- c) The driveway and interallotment drainage system be piped to contain the 20 year *Average Recurrence Interval* storm event with an overland flow provided above it where required;
- d) An inter-allotment stormwater drainage system to service the proposed subdivision with pits being cast in situ or pre-cast concrete pits being used.

16. Erosion and Sediment Control

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

17. 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**".



REQUIREMENTS PRIOR TO THE COMMENCEMENT OF ANY WORKS

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. Project Ecologist, Bush Regeneration Consultant



The name, qualifications and contact details of the consultants engaged to oversee the implementation of the Fauna Management Plan and the Integrated Vegetation and Bushfire Management Plan are to be submitted to Council.

22. Project Arborist

- a) The name, qualifications and contact details are to be submitted to Council of a Project Arborist engaged to supervise the construction works with respect to ensuring that all trees required to be retained are protected;
- b) The project arborist shall have a level 5 AQF accreditation and be a member of the Tree Contractors of Australia or similar professional body.

23. Tree Protection Barriers

Tree protection fencing must be erected onsite around trees numbered 1, 2, 3, 10, 23, 27 and 29 to the satisfaction of the Project Arborist.

24. Protection of Lot 6

The rear boundary along lots 1-5 must be permanently marked with metal stakes to ensure that no Asset Protection Zone works or encroachment occurs within lot 6.

REQUIREMENTS DURING CONSTRUCTION

25. Construction Work Hours

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

26. Project Arborist

The Project Arborist, as required to be appointed by this consent, must be present on the site whenever trees are being removed as permitted under this consent and during excavation works within 10m of any tree required to be retained to ensure:

- a) All pruning is undertaken as specified in the Australian Standard 'Pruning of Amenity Trees' (AS 4373-2007); and
- b) Protection of trees on development sites as specified in Australian Standard AS 4970-2009.

27. Project Ecologist – Fauna Management Plan

The Project Ecologist must supervise the works required to be undertaken under the Fauna Management Plan.



28. Project Ecologist, Bush Regeneration Consultant

The Project Ecologist, Bush Regeneration Consultant must supervise the works required to be undertaken under the Integrated Vegetation and Bushfire Management Plan.

29. Council Property

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

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

30. 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 or as approved by Council.

31. Excavated Material

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

32. Erosion and Sediment Control

Erosion and sediment control measures must be provided and maintained throughout the construction period and remain in place until the site has been stabilised and revegetated.

33. Street Sweeping

To protect the surrounding environment, Street sweeping must be undertaken following sediment tracking from the site along Malton Road 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.

34. 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.

35. 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 Subdivision Certificate.

36. Traffic Control Plan Compliance

The development must be carried out in accordance with the submitted Traffic Control Plan (TCP).

37. Archaeology Discovered During Excavation

If any object having interest due to its age or association with the past is uncovered during the course of the work:

- a) all work must stop immediately in that area, and
- b) the Office of Environment and Heritage must be advised of the discovery.

Note: Depending on the significance of the object uncovered, an archaeological assessment and excavation permit under the Heritage Act 1997 may be required before further the work can continue.

REQUIREMENTS PRIOR TO THE ISSUE OF A SUBDIVISION CERTIFICATE

38. Project Arborist - Final Certification

Certification by the project arborist shall be submitted to Council confirming that the works undertaken on site have been completed in accordance with Condition 26.

39. Project Ecologist, Bush Regeneration Consultant - Final Certification

Certification by the project ecologist, bush regeneration consultant shall be submitted to Council confirming that works have been completed on site in accordance with the Integrated Vegetation and Bushfire Management Plan.

40. Project Ecologist – Fauna Management Plan – Final Certification

Certification by the project ecologist, shall be submitted to Council confirming that works have been completed on site in accordance with the Fauna Management Plan.

41. 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 or telephone 13 20 92 for assistance.



42. Damage to Council Assets

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

43. Creation of Easements

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

- a) A right of access and easement for services over the access corridor.
- b) An inter-allotment drainage easement(s) over each of the burdened lots.
- c) The creation of a "Positive Covenant" over the proposed Lots 1 to 4 inclusive requiring that any future development is to provide an on-site detention system. The on-site detention system is to have a storage capacity of 5 cubic metres and a maximum discharge of 8 litres per second into the interallotment/natural drainage system in accordance with Council's prescribed wording.
- d) In order to provide access to proposed Lot 6, a Right Of Access in accordance with Part 11 Schedule 4A of the Conveyancing Act 1919 and Council requirements shall be created to benefit Hornsby Shire Council. The Easement shall be created over existing driveway pavements to Malton Road, and provide adequate turning and manoeuvring area for Council design vehicles obtaining access to bushland lots.

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

44. Works as Executed Plan

A works-as-executed plan(s) must be prepared by a registered surveyor and submitted to Council for completed road works, utility works, kerb & gutter, public drainage systems, driveways, internal drainage systems, services and service conduits.

45. Placement of a Positive Covenant - Integrated Vegetation and Bushfire Management Plan

A positive covenant must be created under Section 88E of *The Conveyancing Act 1919* for each of the Lots 1-5 to provide for the ongoing management of the Asset Protection Zone on each allotment in accordance with the requirements of the *Integrated Vegetation and Bushfire Management Plan*. The Asset Protection Zone is the area of land located between the northern boundary of the easement for right-of-way (noted as F on D.P. 847605), services and drainage and the southern (Malton Road) boundary of the site.

46. Asset Protection Zone Boundary



To ensure that the Asset Protection Zone requiring treatment is clearly defined as an area separate to retained native vegetation, the boundary of the Asset Protection Zone for bushfire protection must be marked with permanent metal stakes to prevent fuel reduction activities and vegetation clearing from encroaching into native bushland.

47. **Boundary Fencing**

The exact location, design and costing for the erection of boundary fencing are to be the subject of negotiation and agreement in accordance with the relevant requirements of the *Dividing Fences Act, 1991*.

Fencing must be erected along all property boundaries behind the front building alignment to a height of 1.8 metres. Barbed wire fencing is not permitted due to potential impacts to local fauna.

Note: Alternative fencing may be erected subject to the written consent of the adjoining property owner(s).

48. **Allotment Numbering**

The allocation of allotment numbering must be authorised by Council prior to the numbering of each allotment in the development.

GENERAL TERMS OF APPROVAL – 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.

49. **Asset Protection Zones**

The intent of measures is to minimise the risk of bush fire attack and provide protection for emergency services personnel, residents and others assisting fire fighting activities. To achieve this, the following condition must apply:

- a) At the issue of subdivision certificate and in perpetuity the land from the north eastern boundary of the right of way (noted as F on D.P. 847605) to the south western (Malton Road) boundary for the width of the property shall be managed as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of '*Planning for Bush Fire Protection 2006*' and the NSW Rural Fire Service's document '*Standards for asset protection zones*'.

50. **Water and Utilities**

The intent of measures is to minimise the risk of bush fire attack and provide protection for emergency services personnel, residents and others assisting fire fighting activities. To achieve this, the following condition must apply:



- a) Water, electricity and gas are to comply with section 4.1.3 of 'Planning for Bush Fire Protection 2006'.

GENERAL TERMS OF APPROVAL – NSW OFFICE OF WATER

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. NSW Office of Water (Condition No. 1)

These General Terms of Approval (GTA) only apply to the controlled activities described in the plans and associated documentation relating to DA/94/2013 and provided by Council:

- a) Site plan, map and/or surveys

Any amendments or modifications to the proposed controlled activities may render these GTA invalid. If the proposed controlled activities are amended or modified the NSW Office of Water must be notified to determine if any variations to these GTA will be required.

52. NSW Office of Water (Condition No. 2)

Prior to the commencement of any controlled activity (works) on waterfront land, the consent holder must obtain a Controlled Activity Approval (CAA) under the Water Management Act from the NSW Office of Water. Waterfront land for the purposes of this DA is land and material in or within 40 metres of the top of the bank or shore of the river identified.

53. NSW Office of Water (Condition No. 3)

The consent holder must prepare or commission the preparation of:

- a) Vegetation Management Plan.
- b) Erosion and Sediment Control Plan.
- c) Soil and Water Management Plan.
- d) Amendments – stormwater outlet plans to be supplied in accordance with NOW Guidelines.

54. NSW Office of Water (Condition No. 4)

All plans must be prepared by a suitably qualified person and submitted to the NSW Office of water for approval prior to any controlled activity commencing. The following plans must be prepared in accordance with the NSW Office of Water guidelines located at

www.water.nsw.gov.au/water-licensing/approvals/controlled-activity

- a) Vegetation Management Plans.
- b) Riparian Corridors.
- c) Outlet Structures.



55. NSW Office of Water (Condition No. 5)

The consent holder must (i) carry out any controlled activity in accordance with approved plans and (ii) construct and/or implant any controlled activity by or under the direct supervision of a suitably qualified professional and (ii) when required, provide a certificate of completion to the NSW Office of Water.

56. NSW Office of Water (Condition No. 6)

The consent holder must carry out maintenance period of two (2) years after practical completion of all controlled activities, rehabilitation and vegetation management in accordance with a plan approved by the NSW Office of Water.

57. NSW Office of Water (Condition No. 7)

The consent holder must reinstate waterfront land affected by the carrying out of any controlled activity in accordance with a plan or design approved by the Office of Water.

58. NSW Office of Water (Condition No. 8)

The consent holder must use a suitably qualified person to monitor the progress, completion, performance of works, rehabilitation and maintenance and report to the NSW Office of Water as required.

59. NSW Office of Water (Condition No. 9)

The consent holder must provide a security deposit to monitor the progress, completion, performance of works, rehabilitation and maintenance and report to the NSW Office of Water as required.

60. NSW Office of Water (Condition No. 11)

The consent holder must not locate ramps, stairs, accessways, cycle paths, pedestrian paths or any other non-vehicular form of accessway in a riparian corridor other than in accordance with a plan approved by the NSW Office of Water.

61. NSW Office of Water (Condition No. 14)

The consent holder must ensure that no materials or cleared vegetation that may (i) obstruct flow, (ii) wash into the water body, or (iii) cause damage to river banks: are left on the waterfront land other than in accordance with a plan approved by the NSW Office of Water.

62. NSW Office of Water (Condition No. 15)

The consent holder is to ensure that all drainage works (i) capture and convey runoffs discharges and flood flows to low flow water level in accordance with a plan approved by the NSW Office of Water; and (ii) do not obstruct the flow of water other than in accordance with a plan approved by the NSW Office of Water.

63. NSW Office of Water (Condition No. 16)



The consent holder must stabilise drain discharge points to prevent erosion in accordance with a plan approved by the NSW Office of Water.

64. NSW Office of Water (Condition No. 17)

The consent holder must establish all erosion and sediment control works and water diversion structures in accordance with a plan approved by the NSW Office of Water. These works and structures must be inspected and maintained throughout the working period and must not be removed until the site has been fully stabilised.

65. NSW Office of Water (Condition No. 18)

The consent holder must ensure that no excavation is undertaken on waterfront land other than in accordance with a plan approved by the NSW Office of Water.

- 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



Hornsby Development Control Plan (HDCP) Tree Root Zones:

HDCP Section 1B.6.1 (i).	TRZ
Trees with a diameter at breast height greater than 800mm	9m
Trees with a diameter at breast height greater between 400mm & 800mm	7m
Trees with a diameter at breast height greater less than 400mm	4m

Note: Diameter at Breast Height (DBH) for trees is in accordance with the Arboricultural Impact Assessment prepared by Allied Trees dated 15 January 2013. 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". In accordance with Clause 5.9 Hornsby Local Environment Plan (HLEP) a person must not ring bark, cut down, top, lop, remove, injure or wilfully destroy any tree or other vegetation to which any such development control plan applies without the authority conferred by a development consent or a permit granted by Council.

Subdivision Certificate Requirements

A subdivision certificate application is required to be lodged with Council containing the following information:

- A certificate by a Registered Surveyor certifying that all services, drainage lines or access are located wholly within the property boundaries. Where services encroach over new boundaries, easements are to be created.
- A certificate by a Registered Surveyor shall be submitted to the Principal Certifying Authority, certifying that there has been no removal, damage, destruction, displacement or defacing of the existing survey marks in the vicinity of the proposed development, or otherwise certifying that the necessary re-establishment of any damaged, removed or displaced survey marks has been undertaken in accordance with the Surveyor General's Direction No. 11 – "Preservation of Survey Infrastructure".
- Certification that the requirements of relevant utility authorities - such as Ausgrid and Telstra - have been met.

Note: Council will not issue a subdivision certificate until all conditions of the development consent have been completed.

Fees and Charges – Subdivision

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

Dial Before You Dig



Prior to commencing any works, the applicant is encouraged to contact *Dial Before You Dig* on 1100 or www.dialbeforeyoudig.com.au 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.

