





INNER WEST

DEVELOPMENT ASSESSMENT REPORT

Application No.	DA/2021/0959
Address	36 Orpington Street ASHFIELD NSW 2131
Proposal	Tree Removal
Date of Lodgement	08 October 2021
Applicant	Mrs Clare M McNally
Owner	Mr Theo N Magoulas Mrs Clare M McNally
Number of Submissions	Nil
Value of works	\$4,000.00
Reason for determination at Planning Panel	Removal of a tree on a heritage site
Main Issues	Loss of substantive healthy tree
Recommendation	Refusal
Attachment A	Reasons for refusal
Attachment B	Plans of Proposed Development
Attachment C	Statement of Heritage Significance
Attachment D	Arborist Report
Attachment E	Draft conditions if application approved



LOCALITY MAP

Subject Site		Objectors Nil		↑ N
Notified Area		Supporters Nil		

1. Executive Summary

This report is an assessment of the application submitted to Council for tree removal at 36 Orpington Street, Ashfield.

The application was notified to surrounding properties and no submissions were received in response to the initial notification.

The main issues that have arisen from the application include:

- Loss of a healthy tree

The non-compliances are unacceptable given the subject tree is significant, makes a positive contribution to the landscape character, amenity and environmental performance of the site and therefore the application is recommended for refusal.

2. Proposal

The proposal seeks the removal of a tree from the rear yard of the property.

3. Site Description

The subject site is located on the northern side of Orpington Street, between Loftus Street and Chandos Street. The site consists of one allotment and is generally rectangular shaped with a total area 466.26 sqm and is legally described as Lot A in DP437278, 36 Orpington Street Ashfield.

The site has a frontage to Orpington Street of 7.62 metres. The site is not affected by any known easements except for a cross easement for support of the party wall.

The site supports a two-storey semi-detached dwelling house, a gazebo, shed and an in ground swimming pool. The adjoining properties support a two storey semi-detached dwelling house (heritage item) and three storey residential flat buildings.

The subject site is listed as a heritage item as is the adjoining semi-detached dwelling at 38 Orpington Street Ashfield. The property is not located within a conservation area.

The following trees are located on the site and within the vicinity.

- Flooded gum - adjacent to the north eastern boundary of the subject site.

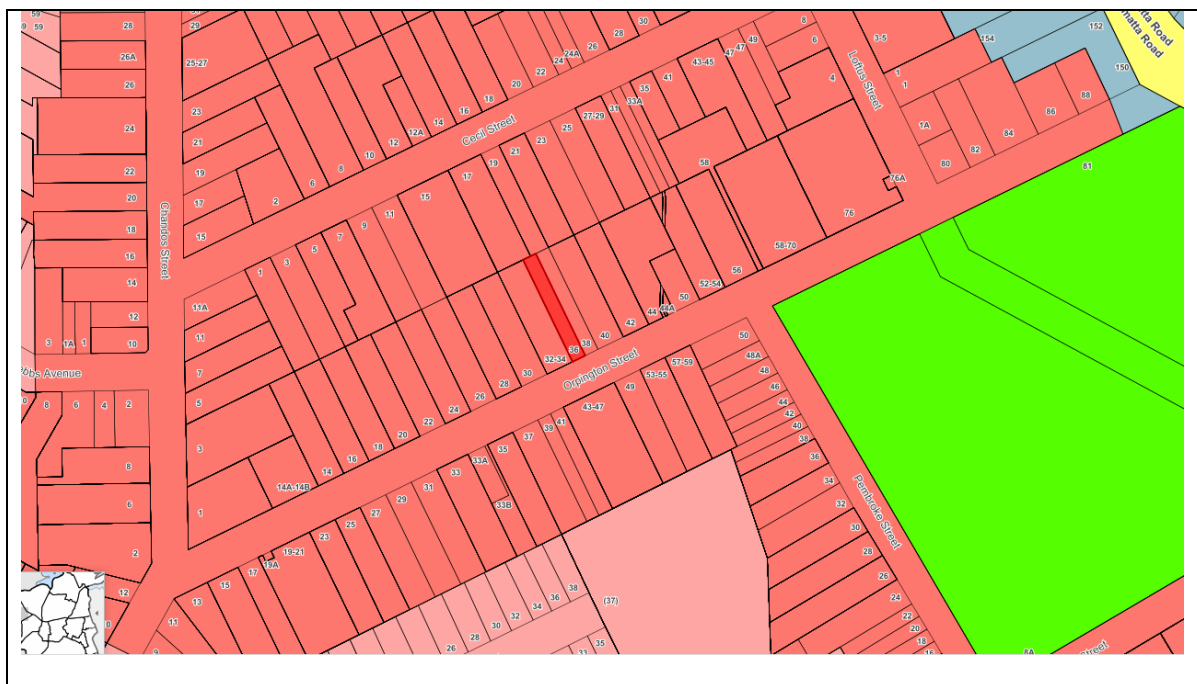


Image 1: Zoning Map

4. Background

4(a) Site history

The following application outlines the relevant development history of the subject site.

Subject Site

Application	Proposal	Decision & Date
DA10.2016.49	In ground concrete swimming pool	Approved - 17 May 2016

A 12-metre-high Sydney Red Gum tree was approved to be removed from the rear of the property subject to the planting of a replacement tree. It is noted that a replacement tree has not been planted.

4(b) Application history

The following table outlines the relevant history of the subject application.

Date	Discussion / Letter / Additional Information
December 2021	Applicant advised that Council officers cannot support the removal of the tree.

5. Assessment

The following is a summary of the assessment of the application in accordance with Section 4.15 of the *Environmental Planning and Assessment Act 1979*.

5(a) Environmental Planning Instruments

The application has been assessed against the relevant Environmental Planning Instruments listed below:

- *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017*

The following provides further discussion of the relevant issues:

5(a)(i) *State Environmental Planning Policy (Vegetation in Non-Rural Areas) (Vegetation SEPP)*

Vegetation SEPP concerns the protection/removal of vegetation identified under the SEPP and gives effect to the local tree preservation provisions of Council's DCP.

The application seeks the removal of vegetation from within the site. The application was referred to Council's Urban Forest Officer whose comments are summarised as follows:

A mature *Eucalyptus grandis* (Flooded Gum) is located in the rear yard. The tree has a height of approximately 15m and canopy of 20m.

The applicant has claimed damage has occurred which has been caused by dead branches falling, considering the tree has a wide crown extending over a number of lots.

The owner confirmed no tree maintenance works have been carried out in the last 5 years.

The tree was found to be in good health and vigour at the time of inspection. This is consistent with provided sections of the Tree Report prepared by Apex Tree & Garden Experts, dated 14/12/2015.

Given the above, removal of the tree is unable to be supported.

There is a reasonable expectation that property owners will maintain their properties and engage a Level 3 Arborist as required to periodically remove deadwood from trees.

Overall, the proposal is considered unacceptable with regard to the *Vegetation SEPP* and IWCDCP 2016 Chapter C4 and Chapter F.

5(a)(ii) *Ashfield Local Environment Plan 2013 (ALEP 2013)*

The application was assessed against the following relevant clauses of the *Ashfield Local Environmental Plan 2013*:

- Clause 1.2 - Aims of Plan
- Clause 2.3 - Land Use Table and Zone Objectives
- Clause 2.7 - Demolition
- Clause 5.10 - Heritage Conservation

(i) Clause 2.3 - Land Use Table and Zone Objectives

The site is zoned R3 under the *ALEP 2013*.

The development is permitted with consent within the land use table. The development is consistent with the objectives of the R3 zone.

5(b) Draft Inner West Local Environmental Plan 2020 (Draft IWLEP 2020)

The Draft IWLEP 2020 was placed on public exhibition commencing on 16 March 2020 and accordingly is a matter for consideration in the assessment of the application under *Section 4.15(1)(a)(ii) of the Environmental Planning and Assessment Act 1979*.

The Draft IWLEP 2020 contains provisions for the inclusion of amended/new clauses which are applicable to the proposal as discussed below:

- (i) Clause 1.2 – Aims of the Plan

Clause 1.2 prescribes the following relevant aim to the proposed development:

1.2(2)(c) *to protect, enhance and sustainably manage biodiversity, natural ecosystems, water resources, ecological processes and urban forest,*

As per the previous discussion the removal of a healthy established tree is contrary to this aim which seeks to protect trees which contribute to the 'urban forest' of the LGA.

The development is inconsistent with Clause 1.2(2)(c) of Draft IWLEP 2020, the provisions of which are considered imminent and certain as the draft instrument is awaiting ministerial consideration and gazettal. As such, the application is recommended for refusal.

5(c) Development Control Plans

The application has been assessed and the following provides a summary of the relevant provisions of Inner West Comprehensive Development Control Plan (DCP) 2016 for Ashbury, Ashfield, Croydon, Croydon Park, Haberfield, Hurlstone Park and Summer Hill.

IWCDCP2016	Compliance
Section 1 – Preliminary	
B – Notification and Advertising	Yes
1 - Site and Context Analysis	Yes
C – Sustainability	
4 – Tree Preservation and Management	No - see discussion
E1 – Heritage items and Conservation Areas (excluding Haberfield)	
2 – Heritage Items	Yes - No change to heritage building
F – Development Category Guidelines	
1 – Dwelling Houses and Dual Occupancy	No – see discussion

Chapter C – Part 4 Tree Preservation and Management

Part 4 specifies assessment Criteria when considering an application to remove a tree as follows:

- a) Distance

Automatic approval will be granted for any tree located within two (2) metres of a dwelling house or garage unless the tree is protected under section 4 of this part. The distance is measured horizontally from the closest point of the trunk at one (1) metre from ground level to the closest point of the vertical alignment of the building structure's wall via a permit application. The issued permit will identify the type of any replacement tree required with a preference for advanced species. As a condition of the permit, verification of the planting of any replacement tree is also required.

Comment: The tree trunk is more than 2 metres from a building and the property is identified as a heritage Item under Schedule 5 of ALEP 2013.

- b) Danger

Danger is assessed based on a number of factors including;

- *The potential/likelihood of a tree or tree part to fail;*
 - *A history of previous branch failure; • The size of the defective part of the tree;*
 - *The use and occupancy of the area that may be struck by a defective part; and,*
 - *The tree exceeds 15m in height and is within the strike zone of a habitable dwelling.*
- Meeting the danger criteria gives significant determinative weight to the application to approve the removal and/or pruning of a tree. Dangerous tree assessments are to be based on the safety risk in all weather conditions, not “normal” conditions.*

Comment: The owner contends that the tree is dropping branches which are a danger to the subject property, adjoining Heritage Item and persons. The canopy of the tree extends over a swimming pool and part of the dwelling house on the site and has not been pruned for more than 5 years.

c) Property Damage

The likelihood of the tree having an adverse effect on property including trees renowned for having extensive root systems, which cause damage to footings of houses or, trees that cause blockages to domestic sewer and drainage lines.

Comment: The application contends that there is damage to the building footings on the subject site and structure. A structural engineers report was not submitted to substantiate these claims and therefore without this evidence, this is not considered a valid justification for removal of the tree.

d) Condition of the tree

The structural integrity of the tree is assessed for any visible signs of decay or deterioration, this is usually indicated by a lack of foliage, dead branches evident in the canopy, presence of fungal fruiting bodies, excessive sap being exuded from the trunk and/or evidence of insect attack, particularly borer damage. Further, the likelihood the species displays toward branch failure and subsequent limb fall.

Comment: Council's Urban Forest Officer has reviewed the documentation submitted and inspected the tree and reaffirms that the tree is in good health.

e) Health of the tree

The species' susceptibility to environmental changes, which may affect the longevity of the species' survival in its current location. This would include changes in soil level, excessive root damage caused during construction works, changes in water availability, competition for other vegetation (particularly climbing vines), and compaction of soil (particularly in high usage areas such as car parking areas).

Comment: See comment above

f) Complying Development

The need for tree removal in order to allow for development that could otherwise be carried out under a Complying Development Certificate. A statement from the certifier confirming that tree removal is the only impediment to the issuance of a CDC must be submitted to support the application. These applications will be assessed based on the same criteria as a Development Application.

Comment: Not applicable.

g) Significance to Streetscape

An assessment of the visual environment and the significance the specimen plays within the streetscape. Other criteria would include if the tree is an endangered or rare species, is of historical significance or, the link the tree provides between bushland and reserves (the connectivity of habitat).

Comment: The tree is visible from the street and is considered to be a significant tree offering a haven for birds and makes a positive contribution to the streetscape.

h) Termites: *Each case of termite infestation will be investigated on its merit.*

Comment: No termite damage reported.

i) Potential Future Damage

The potential for the tree to cause damage in the future is also considered in an assessment for removal.

Comment: There is a possibility of future damage by the tree if deadwood is not removed however, there is a reasonable expectation that property owners will maintain their properties by engaging a Level 3 Arborist as required to periodically remove deadwood from trees thereby removing the potential for damage.

j) Extenuating circumstances

Circumstances, such as the owner's capacity to undertake required maintenance of a tree and surrounds, whether the landowner planted the tree, or solar access for renewable energy systems and other like considerations

Comment: As discussed above, it is considered reasonable for the property owner(s) to employ a suitably qualified person to remove deadwood from the tree. Furthermore, the owner(s) has confirmed that no tree maintenance works have been carried out in the last 5 years. The owner(s) also do not appear to have planted the tree. Solar access for renewable energy systems is not affected.

In light of the discussion above, the proposed tree removal is not supported as it fails to satisfy the prescribed criteria for removal, and the application is therefore recommended for refusal.

Chapter F – Part 1 Dwelling Houses and Dual Occupancy

The following controls under this Section of the IWCDCP 2016 are applicable to the application:

a) *DS15.1 - Significant trees that make a contribution to the landscape character, amenity or environmental performance of the site are retained.*

Comment: The subject tree is significant, makes a contribution to the landscape character, amenity and environmental performance of the site.

b) *DS15.2 Where retention of trees is impractical due to site constraints, tree removal trees or planting of new or replacement trees is to be consistent with the Tree Preservation Order within Part C4 – Tree Preservation and Management of this DCP*

Comment: The width of the land is 7.62m and the 20m canopy of the tree spreads over the adjoining properties. Retention of the tree is not considered to be impractical due to site constraints.

In light of the discussion above, the proposed tree removal is not supported, and the application is recommended for refusal.

5(d) The Likely Impacts

The assessment of the Development Application demonstrates that the proposal will have an adverse impact on the locality.

The subject tree has a significant presence in the streetscape and makes a positive contribution to the streetscape.

A 12-metre-high Sydney Red Gum tree was removed, with council approval, from the rear yard under DA10.2016.49. However, no replacement tree has been planted on the site as required by the prescribed condition of development consent.

The removal of subject tree is considered to have an adverse impact on the locality and is not supported.

5(e) The suitability of the site for the development

It is considered that the proposal will have an adverse impact on the locality as the loss of vegetation diminishes the urban forest canopy and would remove a positive contribution to the streetscape.

5(f) Any submissions

The application was notified in accordance with the Community Engagement Framework for a period of 14 days to surrounding properties.

No submissions were received in response to notification.

5(g) The Public Interest

The public interest is best served by the consistent application of the requirements of the relevant Environmental Planning Instruments, and by Council ensuring that any adverse effects on the surrounding area and the environment are appropriately managed.

The proposal is contrary to the public interest.

6 Referrals

6(a) Internal

The application was referred to the following internal sections/officers and issues raised in those referrals have been discussed in section 5 above.

- Heritage Advisor: No objection.
- Urban Forest: Tree removal not supported – refer to discussion under Section 5 (a)(i).

8. Conclusion

The proposal does not comply with the aims, objectives and design parameters contained in *Draft Inner West Local Environmental Plan 2020* and Inner West Comprehensive Development Control Plan (DCP) 2016 for Ashbury, Ashfield, Croydon, Croydon Park, Haberfield, Hurlstone Park and Summer Hill.

The development would result in significant impacts on the amenity of the adjoining premises/properties and the streetscape and is not considered to be in the public interest.

The application is considered unsupportable and in view of the circumstances, refusal of the application is recommended.

9. Recommendation

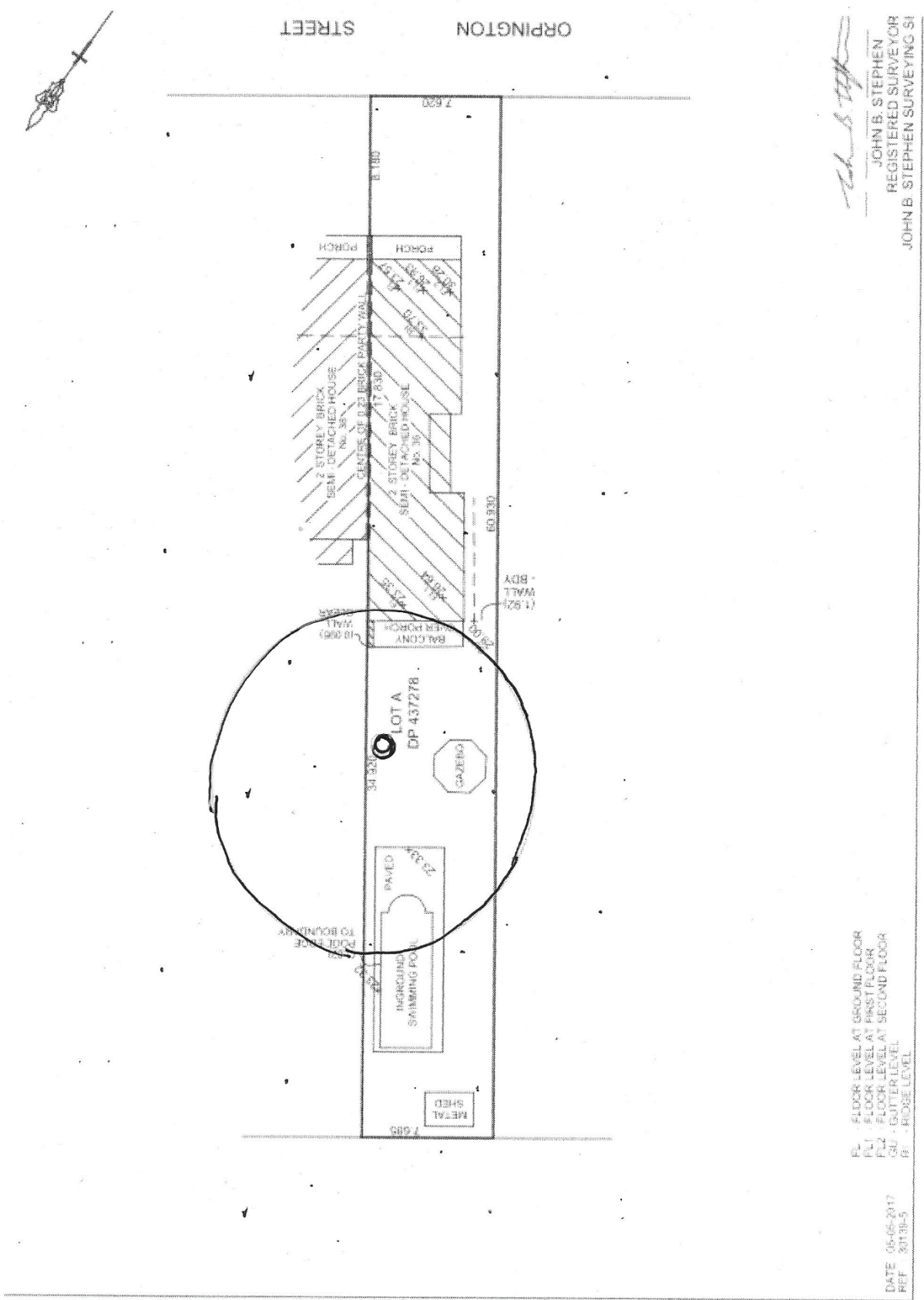
- A. That the Inner West Local Planning Panel exercising the functions of the Council as the consent authority, pursuant to s4.16 of the *Environmental Planning and Assessment Act 1979*, refuse Development Application No. DA/2021/0959 for tree removal at 36 Orpington Street, Ashfield for the following reasons in Attachment A.

Attachment A – Reasons for refusal

Attachment A – Reasons for refusal

1. The proposed development does not comply with the Clause 1.2(2)(c) of the draft Inner West Local Environmental Plan 2020 as the removal of a healthy established tree fails to protect, enhance and sustainably manage the urban forest
2. The proposed development does not comply with Chapter F, Part 1 - Performance Criteria 15 of the Comprehensive Inner West Development Control Plan 2016 as the subject tree is significant and makes a positive contribution to the landscape character, streetscape and environmental performance of the site.
3. The proposed development which seeks the removal of a healthy tree does not comply with Chapter C4, Objectives 3 and 5 of the Comprehensive Inner West Development Control Plan 2016 which seeks to maintain and enhance the amenity of the Inner West Local Government Area through the preservation of appropriate trees and vegetation.
5. Pursuant to the provisions of Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, it is considered that the proposal would not be in the public interest

Attachment B – Plans of proposed development



Attachment C - Statement of Heritage Significance

36 Orpington St, Ashfield NSW 2131
Tree Removal 04.10.2021

Heritage Impact Statement for NSW Planning Application.

In our opinion the tree does not contribute to the heritage of the property. It has no heritage significance. There is no difference if the tree was on a non heritage listed property.

On the contrary, the tree is impacting on the structure of the heritage house causing cracking to the structure. The cracking is being caused by the drying out of the soil underneath the house. There is further evidence of this in the drying out of the lawn near the tree when we have not had significant rain. Images of example of the cracking to our heritage house are attached.

Because the tree covers the entire width of the heritage listed property at 38 Orpington Street, Ashfield, there is potential for damage to this heritage listed house.

We have discussed the removal of the tree with the owners of 38 Orpington St, Ashfield. They have no objections, and support our application for the tree's removal.

Attachment D –Arborist Report

Apex Tree & Garden Experts

A.B.N 80 076 296 903
60c Cardinal Avenue, West Pennant Hills 2125
Telephone: (02) 9980-7999
email: apex_tree_experts@bigpond.com
Fax: (02) 9980-7900
www.treesbyapex.com

14th December 2015

Ms. Clare McNally
36 Orpington Street
ASHFIELD NSW 2131
Email: clare.mcnally@optusnet.com.au
Ref: McNally.rpt

CONSULTATION at 36 ORPINGTON STREET, ASHFIELD

We confirm that we have inspected the above site on 30 November 2015 and now report as follows;

This report has been commissioned by Ms. Clare McNally to assess trees in the rear yard. The trees have been inspected by ground based observations using Visual Tree Assessment techniques (VTA). VTA undertaken by tree professionals is a recognised systematic method of identifying tree characteristics and hazard potential.

TREE REPORT:

Eucalyptus grandis (Flooded Gum)

The tree attains a height of ~ 25 metres, has a canopy spread of ~ 20 metres and a diameter at breast height (dbh) of ~ 700 mm. The tree is in good health and is of fair to good form.

The fair to good form rating has been given to the tree as it has a number of outward and upward heading branches which emanate from the lower part of the trunk. These branches can tend to be the ones which more readily shed over time.

Yours faithfully,
SCOTT GATENBY
Managing Director
DIP. APP. SCIENCE, AGRICULTURE
GRADUATE DIP. EDUCATION
U.P.C.A TREE CARE CERTIFICATE
PEST CONTROL CERTIFICATE
MEMBER OF INTERNATIONAL SOCIETY OF ARBORICULTURE
MEMBER OF ARBORICULTURE AUSTRALIA
MEMBER OF LOCAL GOVT. TREE RESOURCES ASSOCIATION
LEVEL 5 REGISTERED ARBORIST No. 1371

Attachment E - Draft conditions if application approved

CONDITIONS OF CONSENT

DOCUMENTS RELATED TO THE CONSENT

1. Documents related to the consent

The development must be carried out in accordance with plans and documents listed below:

Plan, Revision and Issue No.	Plan Name	Date Issued	Prepared by
-	Survey Plan	05/06/2017	John B Stephen

As amended by the conditions of consent.

DURING DEMOLITION AND CONSTRUCTION

2. Construction Hours – Class 1 and 10

Unless otherwise approved by Council, excavation, demolition, construction or subdivision work are only permitted between the hours of 7:00am to 5.00pm, Mondays to Saturdays (inclusive) with no works permitted on, Sundays or Public Holidays.

PRIOR TO OCCUPATION CERTIFICATE

3. Tree Planting

A minimum of 1 x50 litre size Australian native tree, which will attain a minimum mature height of 6 metres must be planted in a more suitable location within the property at a minimum of 1.5 metres from any boundary or structure and allowing for future tree growth. The replacement tree is to be planted within one month of the removal of the *Eucalyptus grandis* (Flooded Gum). The tree is to conform to AS2303—*Tree stock for landscape use*. Trees listed as exempt species from Council’s Tree Management Controls, and species recognised to have a short life span will not be accepted as suitable replacements.

If the replacement trees are found to be faulty, damaged, dying or dead within twelve (12) months of planting then they must be replaced with the same species (up to 3 occurrences). If the trees are found dead before they reach a height where they are protected by Council's Tree Management Controls, they must be replaced with the same species.

ON-GOING

4. Tree Establishment

The tree/s planted as part of this consent is/are to be maintained in a healthy and vigorous condition for 12 months from the planting. If any of the tree/s is/are found faulty, damaged, dying or dead within 12 months of planting it/they must be replaced with the same species within one (1) month (up to 3 occurrences).

ADVISORY NOTES

Storage of Materials on public property

The placing of any materials on Council's footpath or roadway is prohibited, without the prior consent of Council.

Failure to comply with conditions

Failure to comply with the relevant provisions of *the Environmental Planning and Assessment Act 1979* and/or the conditions of this consent may result in the serving of penalty notices or legal action.

Other works

Works or activities other than those approved by this Development Consent will require the submission of a new Development Application or an application to modify the consent under Section 4.55 of the *Environmental Planning and Assessment Act 1979*.

Dividing Fences Act

The person acting on this consent must comply with the requirements of the *Dividing Fences Act 1991* in respect to the alterations and additions to the boundary fences.

Permits from Council under Other Acts

Where it is proposed to occupy or carry out works on public roads or Council controlled lands, the person acting on this consent must obtain all applicable Permits from Council in accordance with Section 68 (Approvals) of the *Local Government Act 1993* and/or Section 138 of the *Roads Act 1993*. Permits are required for the following activities:

- a. Work zone (designated parking for construction vehicles). Note that a minimum of 2 months should be allowed for the processing of a Work Zone application;
- b. A concrete pump across the roadway/footpath;
- c. Mobile crane or any standing plant;
- d. Skip bins;
- e. Scaffolding/Hoardings (fencing on public land);
- f. Public domain works including vehicle crossing, kerb & guttering, footpath, stormwater, etc.;
- g. Awning or street verandah over footpath;
- h. Partial or full road closure; and
- i. Installation or replacement of private stormwater drain, utility service or water supply.

Contact Council’s Road Access team to ensure the correct Permit applications are made for the various activities. A lease fee is payable for all occupations.

Noise

Noise arising from the works must be controlled in accordance with the requirements of the *Protection of the Environment Operations Act 1997* and guidelines contained in the New South Wales Environment Protection Authority Environmental Noise Control Manual.

Dial before you dig

Contact “Dial Prior to You Dig” prior to commencing any building activity on the site.

Useful Contacts

BASIX Information	1300 650 908 weekdays 2:00pm - 5:00pm www.basix.nsw.gov.au
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Department of Fair Trading	13 32 20 www.fairtrading.nsw.gov.au Enquiries relating to Owner Builder Permits and Home Warranty Insurance.
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Dial Prior to You Dig	1100	www.dialprior toyoudig.com.au
Landcom	9841 8660	To purchase copies of Volume One of "Soils and Construction"
Long Service Corporation	Payments 131441	www.lspc.nsw.gov.au
NSW Food Authority	1300 552 406	www.foodnotify.nsw.gov.au
NSW Government		www.nsw.gov.au/fibro www.diysafe.nsw.gov.au Information on asbestos and safe work practices.
NSW Office of Environment and Heritage	131 555	www.environment.nsw.gov.au
Sydney Water	13 20 92	www.sydneywater.com.au
Waste Service - Environmental Solutions	SITA 1300 651 116	www.wasteservice.nsw.gov.au
Water Efficiency Labelling and Standards (WELS)		www.waterrating.gov.au
WorkCover Authority of NSW	13 10 50	www.workcover.nsw.gov.au Enquiries relating to work safety and asbestos removal and disposal.

Consent of Adjoining property owners

This consent does not authorise the applicant, or the contractor engaged to do the tree works to enter a neighbouring property. Where access to adjacent land is required to carry out approved tree works, Council advises that the owner's consent must be sought. Notification is the responsibility of the person acting on the consent. Should the tree owner/s refuse access to their land, the person acting on the consent must meet the requirements of the *Access To Neighbouring Lands Act 2000* to seek access.

