

**ITEM NO: 12**

**SUBJECT: SECTION 82A APPLICATION FOR REVIEW OF DETERMINATION OF DEVELOPMENT APPLICATION NO. X06/0529 FOR A DWELLING ON LOT 8 DP 24339, NO. 99 BEE FARM ROAD, SPRINGWOOD**

**FILE NO: X06/0529**

**Recommendation:**

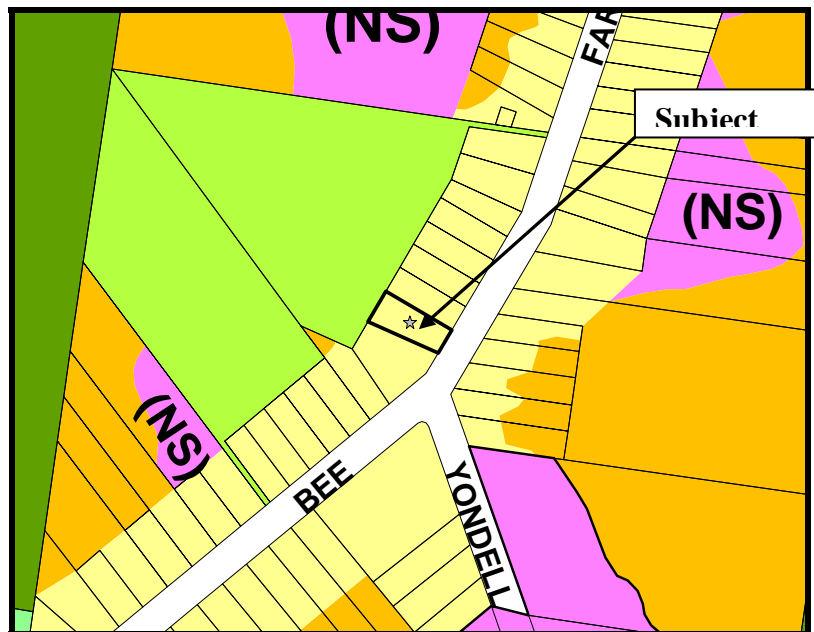
*That the application for review of Condition 13 of Development Application No. X06/0529 for a dwelling on Lot 8 DP 24339, No. 99 Bee Farm Road, Springwood, be determined pursuant to Section 82A of the Environmental Planning and Assessment Act 1979 by amending Condition 13 to read:*

- “13. Landscaping is required to ensure that the development contributes to the character of the Blue Mountains and its environmental sustainability, and maintains an acceptable level of privacy to adjoining properties. In this regard,*
- Vegetated landscape screens are to be provided along the southern boundary of the property between the rear of the dwelling and the workshop, and along the northern boundary extending from the rear corner of the double garage to the workshop. The plants used are to be fire resistant evergreen species capable of providing an effective screen to a height of between 2.5 and 3.0 metres at maturity. A 5 metre separation from the dwelling is to be provided in accordance with Condition 20.*
  - All plants are to be in an advanced stage of growth at the time of planting (minimum 50 litre container for trees and 25 litre container for shrubs).*
  - All planting and landscaping features on the site are to be maintained at all times. Any plants that die or are removed must be replaced with plants of the same species and of a similar stage of growth.*
  - Only non-invasive species shall be used.”*

**Report by Group Manager, Environmental and Customer Services:**

<b>Reason for report</b>	The original development application was determined by the Council.
<b>Applicant/Owner</b>	Mr P J Arnold and Mrs T A Arnold.
<b>Application lodged</b>	15 May 2007

**Property address** Lot 8 DP 24339, No. 99 Bee Farm Road, Springwood.



**Site description** The subject land is located at No. 99 Bee Farm Road, Springwood and comprises a single allotment of an irregular shape with a frontage to the street of 17.07 metres and an average depth of 48.9 metres. The total land area is 960.9m<sup>2</sup>.

The site is prominently located on the high side of Bee Farm Road and on an inside curve, near the intersection of Yondell Avenue.

The land is presently vacant following the demolition of the original dwelling.

**Background** Development Application No. X06/0529 for a two storey dwelling on the site generated significant public interest with a total of 67 submissions received from 42 households. The impact of the dwelling on the streetscape and character was the overwhelming concern that was expressed by persons making submissions primarily in the way of a pro-forma response.

The Council, at its Meeting on 7 November 2006, considered a Report that recommended that the development be approved subject to appropriate conditions.

The Council at the Meeting resolved:  
*“That the Council defer this application to allow an on site meeting and then report back to the Council.”*

(Minute No 785)

A copy of the 7 November 2006 report is provided as an Enclosure to this Report.

Following the on site meeting, the application was reported back to the Council on 12 December 2006. The Report recommended that the development be approved as a deferred commencement consent subject to appropriate conditions.

The Council at the meeting resolved:

*“That Development Application No. X06/0529 for a dwelling on Lot 8 DP 24339, No. 99 Bee Farm Road, Springwood be determined pursuant to Section 80 of the Environmental Planning and Assessment Act 1979 by the granting of deferred commencement consent subject to conditions shown in Attachment 1 to this Report as amended by the following:”*

(Minute No 832)

Deferred Commencement Condition 1 and Operational Condition 13 were the conditions amended by the Council. The applicant subsequently submitted amended plans complying with Deferred Commencement Condition 1, and an Operational Consent was issued on 20 February 2007. A copy of the final approved plans is contained in Attachment 1 to this report. Condition 13 is discussed further in this Report.

The existing dwelling has now been demolished, and site works have commenced for the new dwelling.

## **Proposal**

The application seeks a review of determination of Condition 13 of Development Consent, as adopted by the Council at the meeting of 12 December 2006. Condition 13 states:-

*“Landscaping is required to ensure that the development contributes to the character of the Blue Mountains, its environmental sustainability, and maintains an acceptable level of privacy for adjoining properties. In this regard, in addition to works shown on the approved landscape plan:*

- *Vegetated landscape screens are to be provided along the southern boundary of the property between the rear of the dwelling and the workshop, and along the northern boundary extending from the front building setback to the workshop. The plants used are to be fire resistant evergreen species capable of providing an effective screen to a height of between 4.5 and 5.0 metres at maturity.*
- *All plants are to be in the advanced stage of growth at the time of planting (minimum 50 litre container for trees and 25 litre container for shrubs).*

- *All planting and landscaping features on the site is to be maintained at all times. Any plants that die or are removed, must be replaced with plants of the same species and of a similar stage of growth.*
- *Only non-invasive species shall be used.”*

The applicant argues that Conditions 13 and 20 of Consent are contradictory. Condition 20 is a bushfire safety condition recommended by the Rural Fire Service (RFS) which states:-

*“To prevent the accumulation of leaf litter in roof gutters and valleys, no trees are to overhang or be located within 5m of the dwelling.”*

The applicant also argues that the height and size of the plantings would adversely impact on solar access to the dwelling, and that the root systems could damage the drainage system.

The applicant requests that Condition 13 be deleted, or alternatively, be amended to reduce the height of the screen planting to 2.5 – 3.0 metres and located no closer than 5 metres to the dwelling.

**Environmental  
Planning Instruments**

**Local Environmental Plan 2005:  
Zone:**

Living-Bushland Conservation

**Protected Areas:**

Protected Area – Ecological Buffer Area (58.37% or 552m<sup>2</sup> of the lot).

**Sydney Regional Environmental Plan No. 20  
(Hawkesbury-Nepean River)**

The site is located within the sub-catchment of Glenbrook - Erskine Creek.

**Development Control  
Plan**

**Better Living Development Control Plan:**

- Part A, B and C
- Part D1 – LEP 2005 – Dwelling Houses and Ancillary Structures

**Notification**

The application was notified for a period of 14 days from 30 August 2007 to 13 September 2007 to adjoining and nearby property owners, as well as to all other households in the locality who made submissions to the original application.

A total of seven (7) submissions were received from six (6) households, including submissions from the property owners either side of the proposed development.

The issues raised in the submissions are discussed in the body of the Report, and are summarised below.

**Issues**

**Resident Issues**

1. Reduction in height or deletion of the screen planting would provide inadequate screening of the dwelling from view of neighbouring properties.
2. Loss of privacy

**Other Assessment Issues**

1. Local Environmental Plan 2005
2. Bushfire
3. Solar access and root zone impact

**Compliance Table: Local Environmental Plan 2005**

Clause	Standard	Proposed	Compliance
12	Compliance with the principal objectives of the plan that are relevant to the development	The development as proposed is considered to meet the principle objective of limiting exposure to bushfire hazards and of ensuring that development on bushfire prone land incorporates effective measures that protect human life and property.	Yes
13	Compliance with the objectives of the Living Bushland Conservation zone that are relevant to the development	Objectives are met.	Yes
32	Permissibility	The proposed development is permissible in the zone.	Yes
44	Environmental Impact	Proposed variation would have no adverse impact on the natural environment.	Yes
60	Consideration of character and landscape	Proposed variation would not affect the appearance of the dwelling from the street.	Yes
65	Landscaping for residential development	Reduction in height as proposed would still provide adequate screening from adjoining dwellings.	Yes
78	Consideration for bushfire protection	Proposed variation would comply with <i>Planning for Bushfire Protection</i> .	Yes

**Discussion of Issues**

The application has been assessed in accordance with the relevant provisions of the Environmental Planning and Assessment Act, 1979, in particular Section 82A, Review of Determination and Section 79C, Matters for Consideration.

**Objector Issues**

**1. Reduction in height or deletion of the screen planting would provide inadequate screening of the dwelling from view of neighbouring properties.**

It is understood that the intent of Condition 13 is to maintain an acceptable level of privacy for adjoining premises, rather than to completely screen the dwelling from view.

A reduction in height of the mature planting to 2.5 -3.0 metres would provide reasonable screening of a significant percentage of the wall areas of the dwelling. While the roof would be visible, its east-west length of 13.77 metres comprises only a small percentage of the overall length of the allotment. The view of the dwelling from the street is unaffected.

## ▪ 2. Loss of privacy

Condition 13 specifies the location and height of boundary planting which would break the line of sight from the windows in the western and northern elevations of the dwelling, to preserve the privacy of the adjoining premises.

The ground floor level of the dwelling is screened by established boundary vegetation on the adjoining properties at 97 and 101 Bee Farm Road. The windows at this level do not present any unreasonable privacy impact.

The window arrangement on the first floor comprises the following:-

### *North Elevation (facing 97 Bee Farm Road)*

- One small WC window with frosted glazing
- One high set window in a TV room which has a sill height above floor level that allows only a horizontal line of sight over the roof of the neighbouring dwelling.

### *West Elevation (facing bushland reserve at rear)*

- One ensuite window with frosted glazing
- One window Bedroom 2
- One window Bedroom 3.

The bedroom windows do not directly face the adjoining properties 97 and 101 Bee Farm Road but have an angled line of view. Bedrooms do not form a significant privacy impact by nature of their use, compared to high use areas such as living rooms, kitchens or outdoor entertainment areas. Nevertheless boundary planting of 2.5 – 3.0 metres in height would maintain acceptable privacy screening from these windows to the rear yards of the neighbouring properties.

## **Other Assessment Issues**

### **1. Local Environmental Plan 2005**

As discussed in the above compliance table, it is considered that the proposed modification complies with the relevant clauses of Local Environmental Plan 2005.

### **2. Bushfire**

The site is located in a Flame Zone Bushfire Attack category and the original development application was referred to the Rural Fire Service (RFS) for advice. The RFS supported the application subject to conditions, one of which requires that no trees are to overhang within 5 metres of the dwelling to prevent the accumulation of leaf litter within roof gutters and valleys.

The landscaping design criteria in Chapter 6 of *Planning for Bushfire Protection 2001* states that trees and shrubs must not have branches overhanging the roof, and that tree canopies are not to be in continuous rows that would promote the spread of fire. As defined in the Rural Fires Act 1997, "tree" includes bush, shrub, scrub, timber, grass or vegetative or other material. The RFS condition, reinforcing the *Planning for Bushfire Protection 2001* provision, forms Condition 20 of the Consent.

The applicant correctly points out that Conditions 13 and 20 conflict with one another. The eave/gutter line of the dwelling is 5 metres above ground level, and there is potential for leaf litter to accumulate if the boundary planting has a mature height of 5 metres and is located up

to the building. The close proximity of the plantings to the dwelling in a continuous row could also promote the spread of fire from the rear of the property. There is also an element of risk to the adjoining dwelling at 97 Bee Farm Road due to its close proximity to the boundary. The applicant requests that Condition 13 be deleted, or alternatively, be amended to reduce the height of the screen planting to 2.5 – 3.0 metres and be located no closer than 5 metres to the dwelling.

In assessing the application, the deletion of Condition 20 is not supported as it reinforces the landscape design requirements of *Planning for Bushfire Protection 2001* (now replaced by *Planning for Bushfire Protection 2006* which carries the same requirement).

The deletion of Condition 13 is not supported as some screen planting is necessary for the development to comply with Clause 65 of LEP 2005 in regard to the provision of landscape screening between residential premises. The provision of additional planting to that originally proposed will enhance visual screening between the properties.

A variation of Condition 13 to reduce the mature planting height to 2.5 – 3.0 metres, and the maintaining of a 5 metre separation from the dwelling, will satisfy the requirements of *Planning for Bushfire Protection 2001*, and is an acceptable compromise. This would remove the potential for the accumulation of leaf litter and, by reducing the height and length of the vegetative screen, would also reduce the potential for the spread of any bushfire along the northern and southern side boundaries.

**3. Solar access and root zone impact**

The applicant argues that the height and size of the plantings required in Condition 13 would adversely impact on solar access to the dwelling, and that the root systems could damage the drainage system.

It is considered that boundary planting having a mature height of 5 metres in this location would not have a significant impact on solar access. The drainage system and the peripheral components of the dwelling can be appropriately located and designed to suit the landscape planting so as to avoid potential future maintenance issues.

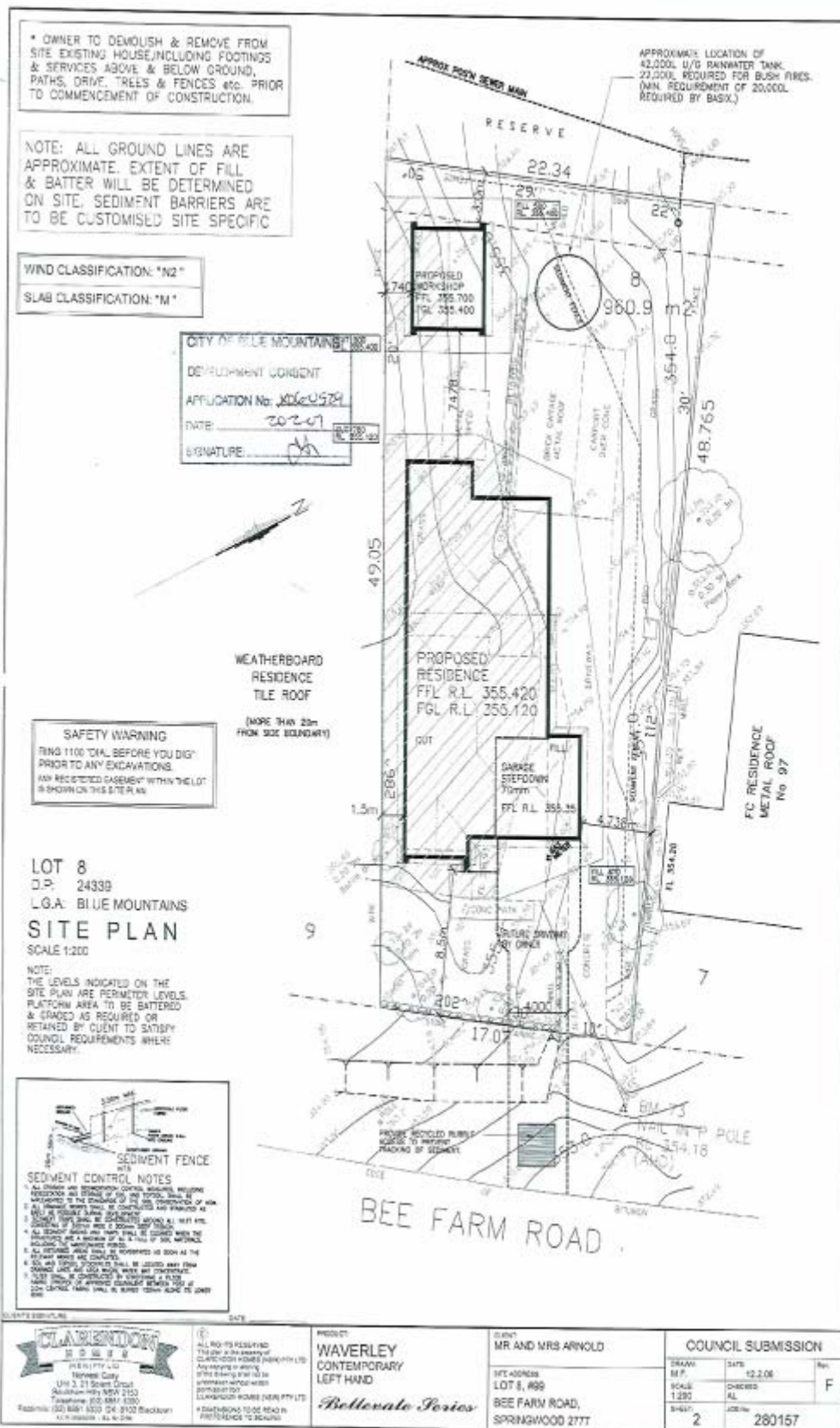
**Conclusion**

This application for review of Condition 13 of Development Consent is not supported in terms of deletion of the condition. However the applicant’s alternative proposal for a reduction in height of the screen planting to 2.5 – 3 metres, and the provision of a 5 metre separation between the screen planting and the dwelling is supported. The assessment shows that the proposed modification will comply with *Planning for Bushfire Protection 2001*, and will remove the conflict of Condition 13 with Condition 20. A reduction in screen planting height will not adversely impact on the privacy of adjoining properties. Planting height is adequate to screen a reasonable area of the dwelling elevations from view of neighbouring properties.

Accordingly, it is recommended that Condition 13 be amended to reduce the height of the screen vegetation to 2.5 – 3.0 metres and provide for a 5.0 metre separation between it and the dwelling.

\* \* \* \* \*

Attachment 1 – Plans



Attachment 2 – Plans

**LEGEND**

ASW	ALUMINIUM SLIDING WINDOW
AWW	ALUMINIUM AWWING WINDOW
AFW	ALUMINIUM FIXED WINDOW
ASD	ALUMINIUM SLIDING DOOR
ESD	EMERY SLIDING DOOR
FC	FIBRE CEMENT

5mm TOUGHENED GLAZING TO ALL WINDOWS & SL DOOR REFER TO BUSH FIRE REPORT

**EAST ELEVATION**

**SOUTH ELEVATION**

**WEST ELEVATION**

**NORTH ELEVATION**

**CITY OF BLUE MOUNTAINS**  
 DEVELOPMENT CONSENT  
 APPLICATION No: K16/0229  
 DATE: 20/12/07  
 SIGN OFF: [Signature]

**CLARENDON**  
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PROJECT: **WAVERLEY CONTEMPORARY LEFT HAND**  
*Bellevalle Series*

CLIENT: **MR AND MRS ARNOLD**  
 SITE ADDRESS: **LOT 8, 859 BEE FARM ROAD, SPRINGWOOD 2777**

**COUNCIL SUBMISSION**

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