

Enclosure

**(Report to
Council Meeting of 8 March 2005)**

**for meeting of
5 September 2006**

X03/0520
‘The Braes’, 62-68 Grose Street
Leura

LAND USE MANAGEMENT

Ordinary Meeting, 8/3/05

ITEM NO: 11

SUBJECT: SECTION 96 (2) APPLICATION TO MODIFY DEVELOPMENT CONSENT NO. X03/0520/A FOR THE REMOVAL TREES AND ADDITIONAL LANDSCAPING AT 'THE BRAES' LOTS 17, 18, 19, AND 34 DP 5936, LOT 13 AND 53 DP 4565, LOTS 14-18 DP 4303 AND LOT 1 DP 820338, NOS. 62-68 GROSE STREET, LEURA.

FILE NO: X03/0520

Recommendation:

That Development Application No. X03/0520/A for modification of consent for the removal of trees and additional landscaping at 'The Braes', Lot 34 DP 5936, Nos. 62-68 Grose Street, Leura be determined pursuant to Section 80 of the Environmental Planning and Assessment Act 1979 by the granting of consent subject to the amended conditions shown in Attachment 1 to this Report.

Report by Acting Group Manager, Environmental and Customer Services:

Reason for report Development Application No. X03/0520 was approved by Council on 3 October 2003.

In accordance with Council policy, an application seeking to modify a Development Consent that was determined by Council must also be reported to Council for consideration and determination.

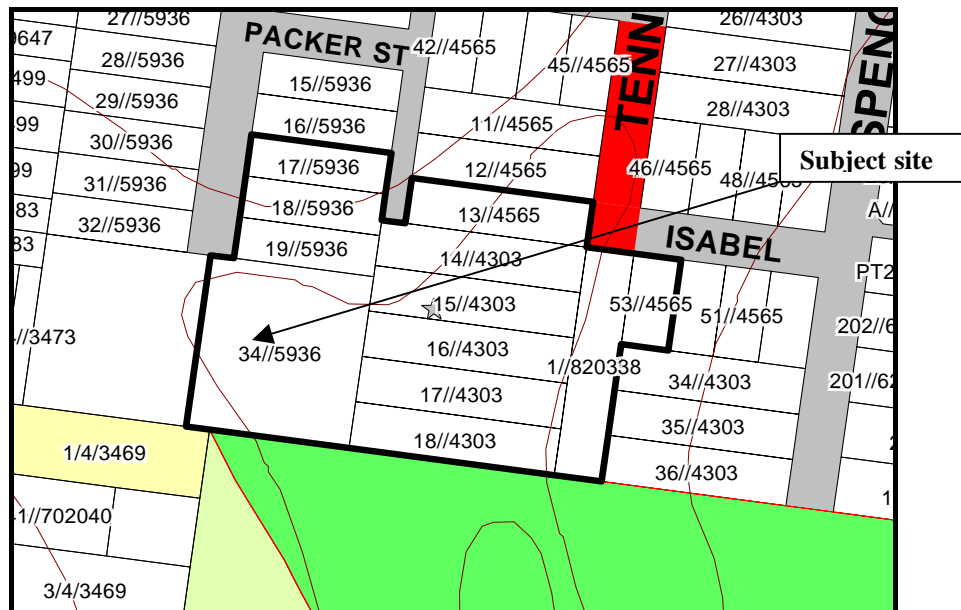
Applicant/Owner John V Egan Associates Pty Ltd

Application lodged 13 August 2004.

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Property address 'The Braes' Nos. 62–68 Grose Street, Leura.

**Site description**

The site is located on the eastern side of Grose Street, Leura. The property also has frontages to Isabel Street, Beattie Street and an unmade portion of Tennyson Avenue. The area affected by the proposed modification is adjacent to the site's western property boundary.

The site adjoins Leura Oval and the Blue Mountains National Park to the south, with residential development to the north, west and east. The site has a total area of approximately 21,810m² and contains an existing cottage, ancillary structures and gardens. The property is also traversed by two watercourses that converge toward the southern boundary.

Background

On 26 February 1996, Council issued approval to demolish the cottage on the property, however this consent subsequently lapsed.

On 23 June 1997, an application was approved for the selected removal or thinning out of a significant number of Radiata pines and other trees on the site. The approval was subsequently renewed on 4 August 1998 and again on 13 August 1999, however a significantly greater number of trees were removed from the south-western portion of the site than was approved. Therefore, on 23 May 2000, the owner was requested to cease further tree removal from the site until development consent was obtained from Council.

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However, further unauthorised works occurred, including the construction of a culvert. Council subsequently issued Orders, which resulted in three (3) further Development Applications being lodged in 2003.

One of those applications was X03/0520, for the removal of 64 trees and additional landscaping works. Council granted consent to this work on 3 October 2003.

Proposal

The current proposal is to amend, under Section 96(2) of the *Environmental Planning and Assessment Act, 1979*, the additional landscaping works approved in consent X03/0520 by replacing the approved *Fraxinus rotundiflora ssp. Oxycarea 'Raywood'* (Claret Ash) trees on the western property boundary with *Cupressocyparis leylandii Naylor's Blue* (Leyland Cypress).

The proposed modification plan is provided as Attachment 2 to this Report.

Development controls

- Residential Bushland Conservation (Consolidation) zone under Local Environmental Plan 1991 (LEP 1991).
- Partial Residential 2(a1) zone (Lot 17, DP 5936) under Local Environmental Plan No. 4.
- Partial proposed 'Living—Bushland Conservation' zone (Lot 17, DP 5936) under Draft Local Environmental Plan 2002.
- Protected Area-Environmental Constraint Area under LEP 1991.
- Heritage item (LA 25) under LEP 1991.
- State Environmental Planning Policy No. 58 – Protecting Sydney's Water Supply.

Notification

The application was notified in the Blue Mountains Gazette, with written notification also sent to adjoining and nearby property owners, as well as to those who made a submission for the original application. The proposed modification was on exhibition between 1 December 2004 and 15 December 2004.

A total of six (6) submissions were received as a result of this notification process, all objecting to the proposal.

The main issues raised in the submissions are discussed in the body of this report. These issues are summarised as follows:

- Overshadowing the living area of the adjacent western dwelling.
- Increased fire hazard.
- Inappropriate alteration of breeze and wind passages.

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- Alterations to creek and ground water flows.
- Fragmentation to views of the creek line and valley.
- Unsympathetic to existing landforms and adjoining bushland.
- Detracts from visual amenity of the area.
- Inhibits growth of native gardens due to overshadowing.
- Creates a visually impenetrable barrier of 20-30 metres in height.
- Provides an inappropriate interface with the natural environment, both physically and aesthetically.

Issues

Assessment issues—

1. Microclimate and amenity
2. Protection of the watercourse
3. Bushland character
4. Heritage
5. State Environmental Planning Policy No. 58

Discussion of Issues

The application has been assessed in accordance with the relevant provisions of the *Environmental Planning and Assessment Act, 1979* (the Act), in particular Section 96(2), Modification of Consents, and Section 79C, Matters for Consideration.

The proposed modification does not alter permissibility of the development under Local Environmental Plan 1991. The proposed change in species of trees planted along the western boundary comprises substantially the same development as that originally approved and can be assessed under Section 96(2) of the Act.

The potential environmental impacts from the proposed modification can be summarised as changed microclimate, decreased residential amenity, and degradation of the watercourse.

Microclimate and Amenity

A summary of the proposed Leyland Cypress compared to the approved Claret Ash has been outlined as follows:

Leyland Cypress (proposed):

- a conifer
- grows to an evergreen hedge
- provides denser shade
- reaches an approximate height of 10 metres at maturity

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Claret Ash (approved):

- a deciduous species
- has scattered foliage
- provides less dense shade
- reaches an approximate height of 30 metres at maturity

It has been submitted that shadowing to the adjoining (western) property will increase substantially as a result of the Leyland Cypress plantings. Shadow diagrams submitted with an objection letter show that the proposed Leyland Cypress at full growth would cast a shadow over living areas of the adjoining (under construction) dwelling between 8am and 9am in mid-winter. However, this is assuming a height at full growth of 30 metres. The applicant has stated that the proposed species will reach a maximum height of 10 metres over a period of 30 to 40 years. This reduced height is a result of its hybrid nature and site conditions.

On the basis of the 10 metres maximum height, overshadowing will marginally affect the adjacent dwelling, which is located approximately 40 metres west of the proposed trees. The overshadowing will occur by 8am in mid winter but will be clear of the dwelling by 9am. This is not likely to cause a substantial increase in overshadowing of the neighbouring dwelling. The extent of overshadowing is therefore considered reasonable. It will be required as a condition of consent that the proposed trees are maintained at a maximum height of 10 metres.

Whilst shadowing from the Leyland Cypress will have an additional impact on the growth of vegetation directly under the trees, this impact is considered acceptable. The affected areas are primarily located within the subject site and will not adversely affect its identified heritage significance. The most critical zone of vegetation is located in the vicinity of the watercourse traversing the western boundary. The existing consent contains conditions designed to protect this vegetation and the watercourse. The conditions have been appropriately expanded to increase the buffer zone around the watercourse, which will ensure the proper maintenance of an effective riparian buffer and vegetation species.

It has also been submitted that the proposed plantings will block easterly breezes to the adjoining western dwelling. Whilst there will be some variation of wind patterns, it is not considered that this constitutes a significant adverse impact. The adjoining western property does not include original bushland rather is a formed garden with scattered native species and a 40 metres distance between boundary and the dwelling.

Whilst Leyland Cypresses are visually denser than the Claret Ash, they are unlikely to result in a substantial degradation of views from any surrounding public place. The subject trees are along the property's western boundary with views being to the south and south west. The proposed modification will most significantly impact on the views between the subject property and the adjoining western property.

Consideration has been given to whether wider spacing between trees is desirable, however, the trees tend to grow to fill the space they are given, and will form a hedge even if planted 3-5 metres apart.

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Overall the impact on views and potential overshadowing is considered minor. The proposal generally complies with the landscape character and amenity provisions of Local Environmental Plan 1991 and is in keeping with the nature of the subject site.

Protection of the Watercourse

The watercourse traversing the western property boundary feeds directly into Gordon Falls, with a portion of the area affected by the proposal identified as a Protected Area – Environmental Constraint Area.

In accordance with clause 10.5(da) of Local Environmental Plan 1991, development ancillary to a dwelling is required to have no significant adverse environmental impact on any watercourse, with the proposed modification considered ancillary to a dwelling.

A sufficient riparian buffer of native vegetation has been proposed and will reduce the potential impact of the Leyland Cypress on stream temperature and ecology. In comparison to the Claret Ash, the proposed Leyland Cypress are unlikely to cause any additional alteration to creek and groundwater flow, particularly given the increased setbacks proposed from the watercourse. The existing consent contains a number of conditions designed to protect the watercourse, which will continue to apply to the site.

Council has referred the application to the Department of Infrastructure Planning and Natural Resources (DIPNR), who advise that there is no objection to the proposed modification provided that there is no reduction in the riparian zone to the watercourse.

Conditions of consent shall be included to ensure the maintenance of appropriate riparian zones.

Bushland Character

Regeneration of native bushland across the site is not appropriate due to its heritage significance. This is associated with the formal garden character and the use of exotic species at 'The Braes'. Neither Leyland Cypress nor Claret Ashes harmonise with the surrounding bushland, although both are considered in keeping with the historic character of the site.

The previously approved landscape plan allowed the planting of Leyland Cypress along the southern boundary, with the Blue Mountains National Park located directly to the south. The proposed modification will allow the further planting of Leyland Cypress along the western property boundary, which is set back from the National Park area and considered unlikely to have any significant additional impact.

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Heritage

The site is listed as a heritage item under Local Environmental Plan 1991 (LA025 – The Braes). A Heritage Assessment was completed for the removal of trees and landscaping works (X03/0507) by Patricia Gosling, Heritage Architect (2003). It is concluded that the heritage significance of the property will not be adversely affected by the planting of Leyland Cypress along its western boundary. The proposed modification is wholly contained within an area of the garden that has little identified heritage significance.

The site is also adjacent to a number of other heritage items:

- LA060, Lone Pine Avenue, a war memorial located south of the site and listed under Draft Local Environmental Plan 2002;
- LA002, Lyrebird Dell, listed under Local Environmental Plan 1991;
- Heritage Conservation Area K007, Jamison Valley, listed under Local Environmental Plan 1991 and Local Environmental Plan No. 4.

The proposal is unlikely to impact on the significance of Lyrebird Dell or the Jamison Valley, due to its distance from these areas and the approved buffers associated with the protection of the watercourse.

Lone Pine Avenue is located immediately south of the proposed Leyland Cypress trees. Some objections have stated that the proposed plantings will subject trees in Lone Pine Avenue to increased bush fire risk, threatening the significance of this site. Since bush fire would most likely approach from the south or east, via Jamison Valley, it is unlikely that the proposed modification will significantly increase bush fire threat to this heritage item. However, it shall be included as a condition of consent that a three (3) metre buffer is maintained between the Leyland Cypress trees and the Lone Pine Avenue property.

State Environmental Planning Policy No. 58.

The site is located within the Water Supply Catchment Area under SEPP 58. The concurrence of the Sydney Catchment Authority is not required. The development will not increase the flow of stormwater from the site. The proposed modification is considered to have a neutral effect on water quality.

Conclusion

The application to change the approved Claret Ash planting along the western boundary to Leyland Cypress has been assessed against the relevant planning controls and considered supportable, subject to the modified conditions of consent included as Attachment 1 to this Report.

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Attachment 1 – Conditions of consent X03/0520, as amended

**Consent
(Amended March 2005)**

1. Blue Mountains City Council issues its consent, subject to conditions stated hereunder, in accordance with Section 80A of the Environmental Planning & Assessment Act 1979. Substantial physical commencement of construction is required within 2 years from the date the consent is issued.

To confirm and clarify the terms of consent, the development shall be carried out in accordance with the plans prepared by Patricia Gosling Architecture drawing numbers 1, 2 3 and 4 dated April 2003 as amended in red, with the following additional amendment:

- Delete “Proposed West Boundary Trees: Claret Ash (17 off)”
- Insert “West Boundary Trees: Cupressocyparis leylandii Naylor’s Blue (Leyland Cypress)”

and accompanying supportive documentation, except as otherwise provided or modified by the conditions of this consent.

**Soil and Water
Management**

2. All exposed earthworks and disturbed areas shall have suitable sediment control measures in place. Such measures shall be installed **prior** to the commencement of works to prevent soil erosion and the transport of sediment off the site during rainfall and runoff. The sediment control measures shall be continually monitored and maintained for the duration of work and for six months after completion. All disturbed areas shall be revegetated.

Site management

3. To safeguard the local amenity, reduce noise nuisance and to prevent environmental pollution during the excavation, felling, milling, chipping and grinding:
 - a. Works (including the delivery of materials to and from the property) shall be carried out Monday, Tuesday, Thursday and Friday between 8.30 am to 12 pm and 1 pm to 5 pm, with no operations to occur on any Wednesday, Saturday, Sunday or Public Holidays.

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Attachment 1 – Conditions of consent X03/0520, as amended

- b. Stockpiles of material shall be stored clear of any drainage path or easement, natural watercourse, footpath, kerb or road surface and shall have measures in place to prevent the movement of such material off site.

Prescribed plants

4. No day lilies, white lilies or agapanthus species shall be used in the landscaping of the site.

Distance of planting to southern boundary (Amended March 2005)

5. The Cupressocyparis x leylandii proposed for the southern boundary shall be planted no closer than three (3) metres to the southern boundary. The Leyland Cypress trees proposed for the western property boundary are to be set back from the southern property boundary by at least three (3) metres, to allow separation from Lone Pine Avenue.

Temporary access

6. Temporary access to Lone Pine Avenue is permitted for the purpose of tree felling during tree felling operations approved by this application only.

Trees in Grose Street

7. All Radiata Pine trees and dead trees in Grose Street adjacent to the subject site may also be removed.

Disposal of Vegetation

8. Any vegetation or other material removed from the area of operations shall be disposed of to an appropriate stockpile where the debris cannot be swept away during a flood.

Designation of Riparian Zone

9. A riparian zone as shown on the approved stamped plans should consist of local native plant species, shall be established and maintained along the edge of the watercourse for its entirety within the site (west-east stream).

Riparian buffer (Inserted March 2005)

10. The Leyland Cypress trees along the western property boundary are to be set back from the watercourse by at least six (6) metres from the north bank and at least nine (9) metres from the south bank, to allow a riparian buffer to be established adjacent to the watercourse. The riparian buffer is to be established with native plant species local to the area, consistent with the species approved in the Part 3A Permit issued by the Department of Infrastructure Planning and Natural Resources on 8 March 2004.

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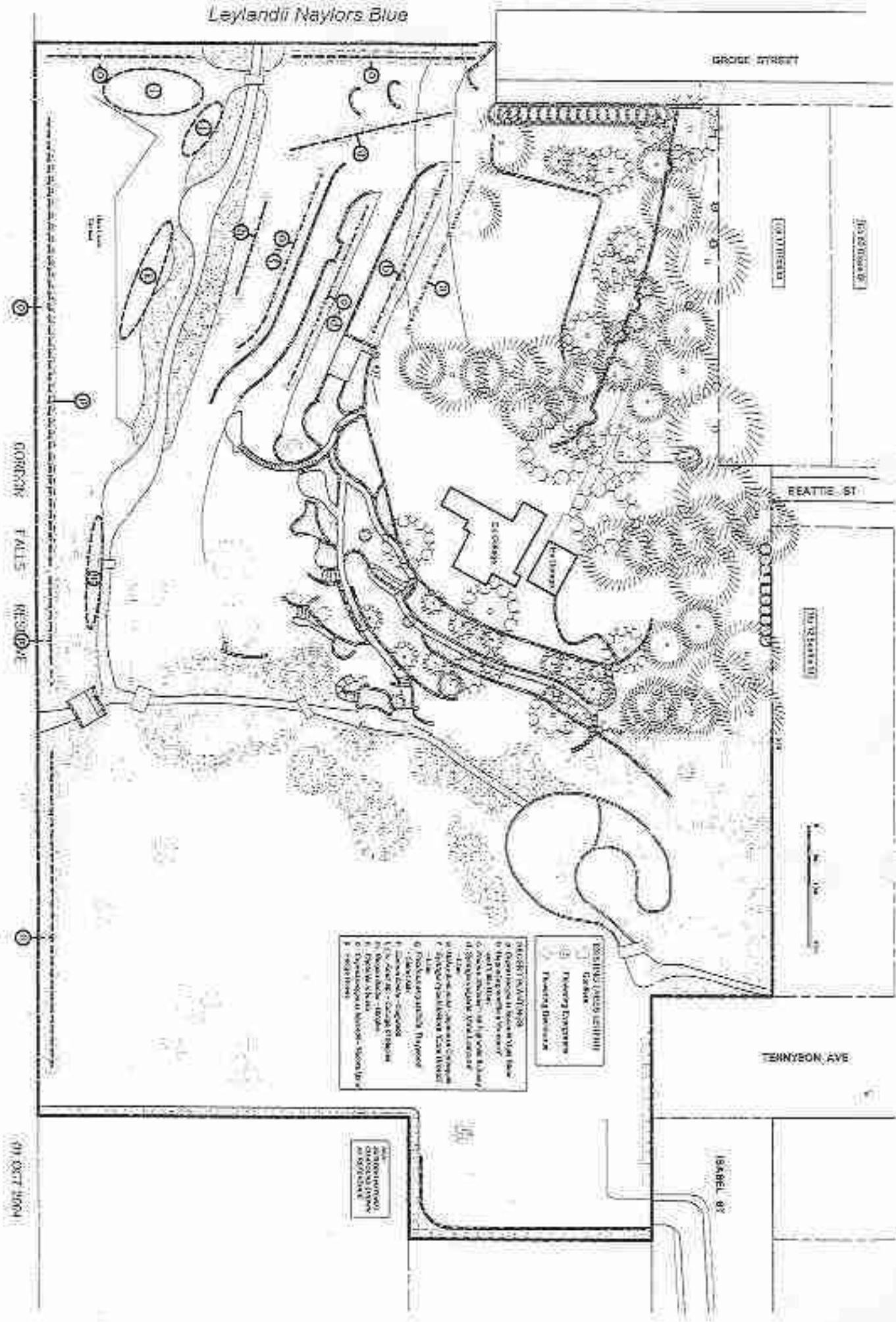
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Attachment 1 – Conditions of consent X03/0520, as amended

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| Exotic plant species not to be planted or placed within or near the riparian zone | 11 No exotic plant species, other than temporary sterile cover crops, are to be planted within the riparian zones on the site. |
| Use of mulching material | 12 Any mulch material used for riparian zone rehabilitation must be free of weed seeds, viable vegetative parts or contaminants. |
| Landscaping (Inserted March 2005) | 13 Landscaping is to ensure that the development contributes to the character of the Blue Mountains and its environmental sustainability. <ul style="list-style-type: none"> • The <i>Cupressocyparis leylandii</i> Naylor's Blue (Leyland Cypress) located to the site's western boundary shall be maintained at a maximum height of 10m. • All plants and landscaping 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. |
| 88B Instrument (Inserted March 2005) | 14 To ensure the maintenance of the approved heights, an instrument setting out a Restrictions on Use intended to be created pursuant to Section 88B of the Conveyancing Act 1919 is to be submitted in a form acceptable to Council indicating that the <i>Cupressocyparis leylandii</i> Naylor's Blue (Leyland Cypress) located to the sites western boundary shall be maintained at a maximum height of 10m. |

Attachment 2—Modification Plan

Leylandii Naylor's Blue



GORDON STREET

ISABEL ST

TENNYSON AVE

REATTIE ST

ISABEL ST

TENNYSON AVE

ISABEL ST

GORDON FALLS RESERVE

(1) DIST 100M

EXISTING TREES (WITHIN)
 1. Existing
 2. Proposed
 3. Proposed

NOTES:
 1. All trees to be removed to be replaced with Leylandii Naylor's Blue.
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PLANTING TYPES
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