

**ITEM NO: 10**

**SUBJECT: DEVELOPMENT APPLICATION NO. X594/2007 FOR A DWELLING ON LOT 13 DP 1008539, NO. 69 SINCLAIR CRESCENT, WENTWORTH FALLS**

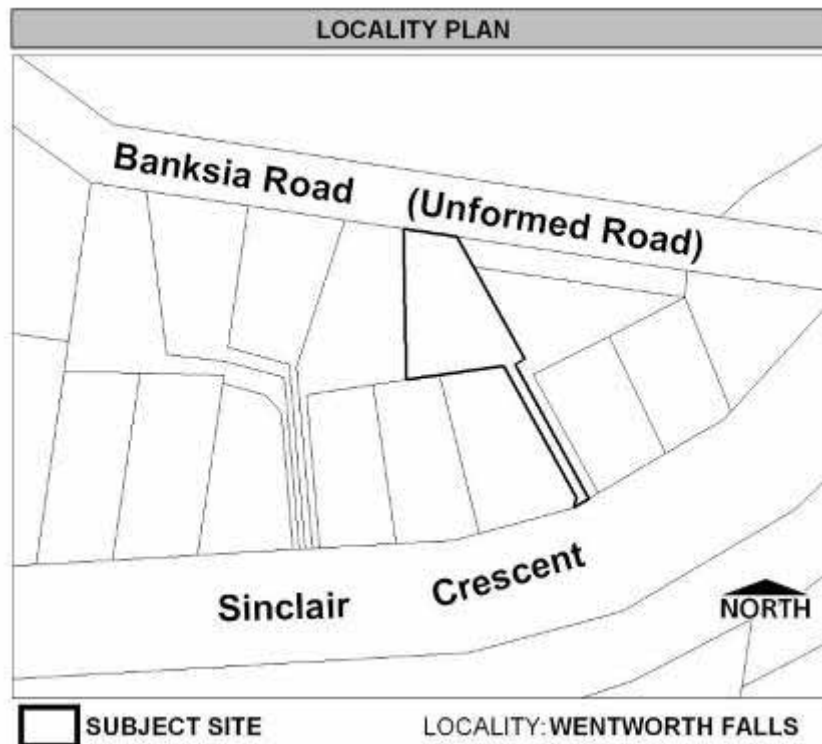
**FILE NO: X07/0594**

**Recommendation:**

*That Development Application No. X594/2007 for a dwelling on Lot 13 DP 1008539, No. 69 Sinclair Crescent, Wentworth Falls be determined pursuant to Section 80 of the Environmental Planning and Assessment Act 1979 by the granting of consent subject to conditions shown in Attachment 1 to this Report.*

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

- Reason for report**            The application relies on a State Environmental Planning Policy (SEPP) 1 application to vary development standards in respect of site coverage by more than 20%.
- Applicant/Owner**            Mr D R Fern and Mr J R Ballard
- Application lodged**        19 June 2007
- Property address**            Lot 13 DP 1008539, No. 69 Sinclair Crescent, Wentworth Falls



**Site description**

The subject site is located on the northern side of Sinclair Crescent, Wentworth Falls and is part of an existing 1995 subdivision which was registered on 31 January 2000. The property has a battleaxe configuration and is zoned Residential Bushland Conservation under the provisions of Local Environmental Plan 1991 with a total site area of 1784m<sup>2</sup>. The site slopes gently to the rear and has little vegetation apart from a few middle aged trees and some native ground covers which are mainly grasses.

Under the provisions of Section 88B of the Conveyancing Act 1919, the property is burdened with a Restriction on the use of land, which prevents any construction taking place within the northern 20 metres of the property. The Section 88B Restriction also requires that the roof stormwater is disposed of to rainwater tanks or an onsite detention/absorption system.

The site is surrounded with a number of recently constructed dwellings of various styles and sizes which form part of this subdivision. At the rear of the property is an unformed section of Banksia Road which is used as a walking trail and adjoins the Wentworth Falls Lake Reserve.

**Proposal**

This application is a combined Development Application and Construction Certificate for the construction of a single storey brick veneer dwelling with pre-painted roof.

A copy of the plans showing the site area and extent of the proposed development form Attachment 2 of this Report.

**Development controls**

- Local Environmental Plan 1991
- Better Living Development Control Plan
- Drinking Water Catchments Regional Environmental Plan No.1
- State Environmental Planning Policy No.1 (Development Standards)

**Zone**

- Residential Bushland Conservation (8/ha)

**Protected Areas**

- Environmental Constraint Area (68.65%)

**Notification**

The application was notified to adjoining property owners in accordance with the Council's requirements for a period of fourteen (14) days from 26 June 2007.

No submissions were received as a result of this process.

- Assessment Issues**
- Non compliance with the site coverage provisions of Clause 10.9 of Local Environmental Plan 1991.
  - Development within mapped Environmental Constraint Area.
  - Non compliance with front boundary setbacks for battleaxe properties under the provisions of the Council's Better Living Development Control Plan.

**Compliance Table: Local Environmental Plan 1991**

<b>Clause</b>	<b>Standard</b>	<b>Proposed</b>	<b>Compliance</b>
6.3	Zone Objectives	The proposed dwelling satisfies the objectives of the zone.	Yes
7.2 and 7.5	Protected Area Objectives	The proposed dwelling satisfies the objectives of the protected areas. Refer to discussion later in this Report.	Yes
10.1	Any Development	The development criteria of Clauses 10 and 11 have been applied to the assessment of this application.	Yes
10.2	Access	Suitable vehicular access has been provided to the property in accordance with the Council's requirements at the original subdivision stage.	Yes
10.3	Setbacks	Due to the location of the subject property not being on land adjoining a Classified Road this section is not applicable.	N/A
10.4	Design and Character	The proposed dwelling is a single storey brick veneer dwelling with a slab on ground construction and a pre-painted metal roof. The maximum depth of cut or fill on the site will be 430mm. It is considered that the design and character of the development is appropriate for the characteristics of the site and the surrounding locality.	Yes
10.5	Environmental Impacts	The development minimises environmental impacts through minimal site disturbance and clearing. In compliance with the Section 88B Restriction as to User on the title of the land, the dwelling is proposed to be located a minimum of 24 metres from the rear boundary. The roof stormwater is to be disposed of to a system incorporating a rainwater tank and an on-site absorption trench.	Yes
10.6	Maximum building height of 8 metres	The proposed dwelling has a maximum height above ground level of 6.7 metres with an eave height of 2.8 metres.	Yes

10.7	Heritage	The subject property is not listed or adjoins a heritage item nor is it located within a heritage conservation area.	N/A
10.8	Services	All services are provided to the property including the sewer.	Yes
10.9	Site Coverage - 40% of the notional development area i.e. 225.6m <sup>2</sup>	The proposed development has a total building site cover of 319.8m <sup>2</sup> . This represents a variation of the development standard by 41.7%. A request for a variation of the development standard has been submitted by the applicant under the provisions of State Environmental Planning Policy No.1. This matter is discussed in further detail in a following section of this Report.	No
11.3	Environmental Constraint Area	The majority of the middle section of the property, excluding the access handle and the rear north western corner, is designated as a Protected Area - Environmental Constraint Area and occupies 1220m <sup>2</sup> or 68.65% of the site. The dwelling is proposed to be located within this area and an assessment has been carried out to ascertain the potential impacts of the proposed dwelling and associated works on the Protected Area. Refer to discussions later in this Report.	Yes

**Compliance Table: Better Living Development Control Plan**

Clause	Standard	Proposed	Compliance
E1.5.10	Setbacks	Under the provisions of this clause, dwellings on battleaxe shaped properties are required to be set back 9 metres from the rear of the property directly in front.  Due to the characteristics of the site and the Section 88B Restriction that constrains the location of development on the property, the proposed dwelling has been located a minimum of 7 metres from the front boundary, increasing to 9.8 metres in the south western corner. Refer to discussions later in this Report.	No

**Discussion of Issues**

**1. Site Coverage**

The property has a total site area of 1784m<sup>2</sup> of which 1220m<sup>2</sup> is designated as a Protected Area – Environmental Constraint Area (ECA). In respect of this property, Clause 10.9 of LEP 1991 requires that the total building site cover shall not exceed 160 m<sup>2</sup> or 40% of the notional development area, up to a maximum of 300m<sup>2</sup>, whichever is the greater. The LEP

defines the notional development area as that area of the site not zoned Environmental Protection or not designated as a Protected Area - Environmental Constraint Area, which in the case of the subject property equates to a total area of 564m<sup>2</sup>, including the access handle. The maximum allowable building site cover under Clause 10.9 of LEP 1991 is 40% of the notional development area or 225.6m<sup>2</sup>.

The proposed development has a total building site cover of 319.8m<sup>2</sup> which exceeds the development standard by 41.7%. While the site has a relatively large area, the extent of the Environmental Constraint Area significantly reduces the permissible building footprint. If the property was not affected by the ECA the maximum allowable building site cover would be 378.4m<sup>2</sup>.

As part of the assessment of the application, investigations were undertaken into the history and relevance of the Environmental Constraint Area, and an assessment of the potential impacts of the proposed development on any environmentally sensitive land or buffers around areas of ecological significance.

These investigations revealed that maps prepared in 1987 as part of Environmental Management Plan 1 show a correlation between the designated ECA and a former mapped swamp. However there appears to be no apparent correlation between the mapped swamp and the present condition of the site with no evidence of the plant community remaining. Council's current maps show a Blue Mountains Swamp community located approximately 80 metres from the rear of the site.

The applicant has requested a variation to the maximum permissible site coverage of the building as set out in clause 10.9 of LEP 1991, under the provisions of State Environmental Planning Policy No.1 (SEPP1). The submission contends that strict compliance with the development standard would be unreasonable or unnecessary in the particular circumstances for the following reasons:

*“A strictly compliant development would severely limit the opportunity to provide any reasonable form of single storey dwelling house redevelopment unless that total area of the single storey proposal was either substantially reduced in area or the development was provided in the form of a compliant two storey development that would have other associated impacts given its location in relation to adjoining development and visibility from the public domain. ...*

*The actual site area meterage lost to the access handle, easements, restrictions on use of the land, Environmental Constraint Area and the need to setback from side boundaries on this landlocked part of the battle axe lot effectively dictate the location and siting of the dwelling and virtually mandate its location within the identified constraint area. ...*

*In terms of the entire site area, the proposal has a total site coverage of 16.3% thereby still allowing for minimal disturbance to a large percentage of actual site area, retention of deep soil planted areas and natural features.”*

In the absence of the Protected Area-Environmental Constraint Area designation over the property, the proposed dwelling would be well under the maximum building site cover permissible on a site of this size. Given that the mapped constraint area no longer correlates with the site conditions, it is considered unreasonable in the particular circumstances to

require compliance with the development standards and therefore the SEPP 1 application to vary the standard is supported.

## **2. Development within mapped Environmental Constraint Area**

The property is zoned as Residential Bushland Conservation under Local Environmental Plan 1991 with 68.65% of the property identified as Environmental Constraint Area. Development should generally be located outside a constraint area unless no other practicable alternative is available. However in respect to the subject property, the only parts that are not designated as being a Protected Area-Environmental Constraint Area are the access handle and the rear portion of the property. However, the Section 88b restriction on the use of land prohibits any clearing or construction work from taking place within 20 metres from the rear boundary of the property. This restriction effectively requires any development to be located on the front portion of the property which is designated as an environmental constraint area.

The objectives of the Protected Area-Environmental Constraint Area as outlined in Clause 7.2 of LEP 1991 are:

- (a) To protect environmentally sensitive land and areas of high scenic value in the City.
- (b) To provide a buffer around areas of ecological significance.
- (c) To restrict development on land that is inappropriate by reason of its physical characteristics or bushfire risk.

As discussed in the preceding section of the Report, the mapped Environmental Constraint Area no longer relates to the current site conditions. Mapping undertaken as part of the EMP1 process indicate the area once contained Blue Mountains swamp, although the landform and hydrology have changed over time resulting in the disappearance of the community. In this regard, the subdivision creating the lot was approved in 1996 and the absence of the swamp was confirmed at that time. Furthermore, this was prior to the adoption of amendment 25 to LEP 1991 in March 2001 which introduced provisions requiring new lots created as part of a subdivision to have a minimum area that was capable of accommodating a dwelling house and which did not include any development excluded land.

The rear of the subject property fronts an unformed section of Banksia Road and is directly opposite the Wentworth Falls Lake Reserve. The reserve contains an extensive swamp community, being an environmentally sensitive vegetation unit listed under Schedule 3 of LEP 1991 and known habitat for the Leura Skink. Blue Mountains swamps are also listed as a vulnerable ecological community under the Threatened Species Conservation Act and endangered ecological communities under the Commonwealth Environmental Protection and Biodiversity Conservation Act. Council's GIS mapping system indicates that the rear boundary of the subject property is in excess of 80 metres from the swamp community at its closest point. Notwithstanding, that part of the reserve between the swamp and the rear of the property, and a portion of the rear of the property itself, acts as a buffer to the swamp and contains potential habitat for the Leura Skink.

Locating the proposed development in the mapped constraint area allows for a further buffer area to be provided between the development and the reserve at the rear while also forming an asset protection zone for bushfire purposes. As part of the assessment, the application was referred to the Rural Fire Service (RFS) for comment in accordance with Section 79BA of the Environmental Planning & assessment Act (EP&A Act). The RFS have recommended that

the rear of the property be maintained as an 'Inner Protection Area' in accordance with Planning for Bushfire Protection 2006. The proposed dwelling is located at a minimum distance of 24 metres from the rear boundary and it is considered that this provides a better environmental outcome in terms of bushfire protection and buffer distances to the reserve and it is therefore consistent with the objectives of the Environmental Constraint Area.

In stating that, the rear of the property and the reserve are environmentally sensitive and it is therefore important to ensure that the 20 metre buffer area is managed in a manner that is acceptable to the RFS requirements for an asset protection zone, and at the same time balances the needs of the adjoining environmentally sensitive areas. The landscape plan submitted with the application does not adequately address these issues and therefore it is proposed to condition any Development Consent to require the submission of a suitable landscape and vegetation management plan, as well as requiring a stormwater disposal system which utilises both the reuse of stormwater through a rainwater tanks, and an onsite adsorption system.

It should also be noted that the property is located within a drinking water supply catchment and therefore Regional Environmental Plan (REP) No.1 (Drinking Water Catchments) applies to the property. In this regard, an assessment has been made of the potential impacts of the proposed development under the REP and it has been determined that there will be a neutral or beneficial effect (NorBE) on water quality.

### **3. Building Setback**

The subject property is of a battleaxe configuration and under the provisions of Councils *Better Living* Development Control Plan a minimum nine (9) metre setback is required from the rear boundary of the lot in front.

The subject development proposes a minimum 7.0 metre setback which increases to appropriately 9.6 metres due to the angle of the boundary.

As indicated above, the dwelling has been located forward on the property to comply with the Section 88B Restriction. The area of the dwelling that encroaches into the standard setback includes a bathroom, laundry and garage. The bathroom is the only room having windows facing the adjoining property that are less than 9 metres from the boundary. It is considered that the impacts of the reduced setback are negligible due to the orientation and layout of the proposed dwelling, and that an adequate setback is provided between the proposal and the adjoining property.

Considering the constraints on site and the limited opportunities for the placement of a dwelling, the minor variation of the standard setback is supported.

### **Conclusion**

The subject property is partly designated as a Protected Area-Environmental Constraint Area which significantly limits the development potential with respect to building site cover.

In this regard, the Environmental Constraint Area as shown on Councils zoning maps does not reflect the current conditions on the property. It is considered that the request for a variation of standards for the site coverage and front boundary setbacks are reasonable and can be supported without the proposal having an adverse impact on environmental features of the property and the surrounding area.

It is recommended that the Council support the SEPP1 application to vary the development standard and that the development application be approved subject to the conditions shown in Attachment 1 to this Report.

\* \* \* \* \*

**Attachment 1—Conditions of Development Consent**

**Confirmation of relevant plans**

1. To confirm and clarify the terms of consent, the development shall be carried out in accordance with the plans prepared by Beechwood Homes numbered 27045, dated 22/6/07 and accompanying supportive documentation, except as otherwise provided or modified by the conditions of this consent.

**Period of development consent**

2. Physical commencement of construction is required within a two year period from the date of this consent. Should this not occur, the development consent will lapse.

**Landscaping and Vegetation Management**

3. A Landscape and Vegetation Management Plan, prepared by a suitably qualified person, shall be submitted to the Principal Certifying Authority prior to the commencement of site works. The Plan shall:
  - a) Include the retention and regeneration of a 20 metre buffer of the northern side of the property;
  - b) Utilise plantings from local indigenous species representative of the buffer system to the Blue Mountains Swamps community located to the north of the property; and
  - c) Have due regard to and be consistent with the area being managed as a bushfire inner protection zone.

**BASIX**

4. Under clause 97A(3) of the Environmental Planning and Assessment Regulation 2000, it is a condition of this development consent that all the commitments listed in each relevant BASIX Certificate for the development are fulfilled.  
In this condition:
  - a. relevant BASIX Certificate means:
    - (i) a BASIX Certificate that was applicable to the development when this development consent was granted (or, if the development consent is modified under section 96 of the Act, a BASIX Certificate that is applicable to the development when this development consent is modified); or
    - (ii) if a replacement BASIX Certificate accompanies any subsequent application for a construction Certificate, the replacement BASIX Certificate; and
  - b. BASIX Certificate has the meaning given to that term in the Environmental Planning and Assessment Regulation 2000.

**Survey plan**

5. A survey report by a registered land surveyor is required to ensure that the proposed development is located on the correct allotment and at the approved distances from the boundary. This is to be verified on completion of footings.  
The survey report is to be provided to the Principal Certifying Authority prior to works proceeding past floor level.

**Building Code of Australia**

6. All building work must be carried out in accordance with the provisions of the Building Code of Australia.

**Site management**

7. To safeguard the local amenity, reduce noise nuisance and to prevent environmental pollution during the construction period:
  - a. Site and building works (including the delivery of materials to and from the property) shall be carried out Monday to Friday between 7am-6pm and on Saturdays between 8am-3pm. Alteration to these hours may be possible for safety reasons but only on the approval of Council.
  - b. Stockpiles of topsoil, sand, aggregate, spoil or other 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.
  - c. Building operations such as brickcutting, washing tools, concreting and bricklaying shall be undertaken on the building block. The pollutants from these building operations shall be contained on site.
  - d. Builders waste must not be burnt or buried on site. All waste must be contained and removed to a Waste Disposal Depot.

**Erosion and sediment controls**

8. To preserve the unique environment of the Blue Mountains and to contain soil and sediment on the property, controls in accordance with Council's *Better Living* Development Control Plan are to be implemented prior to clearing of the site vegetation and the commencement of site works. This will include:
  - a. The installation of a sediment fence with returned ends across the low side of the site so that all water flows through. These shall be maintained at no less than 70% capacity at all times. Drains, gutters, roadways etc., shall be kept clean and free of sediment.

- b. To prevent the movement of soil off site, a single entry/exit point to the property shall be constructed of 40mm blue metal aggregate or recycled concrete to a depth of 150mm. The length must be at least 5 metres with the width at least 3 metres.

Soil erosion fences shall remain and must be maintained until all disturbed areas are restored by turfing, paving, revegetation.

**Workers amenities**

- 9. Before work starts, toilet facilities must be provided for construction personnel on the site on the basis of 1 toilet for every 20 workers. Amenities are to be installed and operated in an environmentally responsible and sanitary manner. Toilets cannot remain on site for any longer than 12 months, without the further approval of Council.

**Plans on site**

- 10 A copy of the stamped and approved plans, development consent and the construction certificate are to be on the site at all times.

**Stormwater drainage**

- 11 To control rainwater runoff, roof water shall be disposed of via rainwater tanks to an on-site absorption system in accordance with the Restriction on the Use of Land imposed on the title of the land under Section 88B of the Conveyancing Act. In this regard, details prepared by a suitable qualified person are to be submitted to Council for approval prior to the commencement of works.

The stormwater disposal system shall incorporate rainwater tank(s) providing both a static bushfire supply and for re-use on site in accordance with BASIX commitments with the overflow being directed to an on-site absorption system.

It is recommended that the drainage system be installed at the same time as the footings/slab. It must, however, be operational as soon as the roof is clad.

**Stormwater Runoff**

- 12 To ensure that any overland flow of stormwater or surcharge from the drainage easement is diverted clear of the dwelling:
  - a) The finished floor level of the garage and dwelling is to be a minimum of RL 9.6 (ie, 120mm above the natural ground level at the south east corner of the garage): and
  - b) Any extension to the existing driveway shall be graded to maintain the existing overland flow

path which is within the existing drainage easement.

- Materials and colours**      13    To have regard of the amenity of the area, the materials and colours to be used are to be of muted bushland tones. Details of an alternate colour scheme is to be submitted to and approved by Council prior to construction commencing.

**In this regard, the proposed colour of the bricks and metal roofing (Bricks-Austral Whitsunday, Roof-Colorbond Shale Grey) are not acceptable.**

Any outbuildings or other ancillary structures, including fencing, are to be finished in colours and materials of muted bushland tones and low reflective quality to blend with the surroundings. Any variation to the above materials / colours will require the prior approval of Council.

- A Fire Risk Identification Guide (FRIDG) sticker**      14    A Fire Risk Identification Guide (FRIDG) sticker, as issued by the NSW Fire Brigade, is to be completed and affixed to the inside face of one side of the electricity meter box prior to issue of an Occupation Certificate. The sticker is to be completed using a black or other dark coloured, permanent marking pen, and identify the relevant design and construction features incorporated in the building. The sticker is to be clearly visible without obstruction when the box is opened.

Note Only: A sticker is enclosed for this purpose.

- Level of construction**      15    The building shall be of minimum Level 3 construction in accordance with AS3959-1999 ‘Construction of Buildings in Bushfire Prone Areas’.

- Roofing**      16    Roofing shall have leafless guttering and valleys are to be screened to prevent the build up of flammable material. Alternatively guttering shall be fitted with leaf guards having a flammability index of not greater than 5 when tested in accordance with AS1530.2.

- Roller doors**      17    Roller doors, tilt-a-doors and the like shall be sealed to prevent the entry of embers into the structure.

- Asset Protection Zone**      18    The entire property shall be managed as an ‘Inner Protection Area’ as outlined within Section 4.1.3 and Appendix 2 of Planning for Bushfire Protection 2006,

as well as the RFS standards for Asset Protection Zones (available electronically at [www.rfs.nsw.gov.au](http://www.rfs.nsw.gov.au). Individual trees may be retained within the IPA. Trees within the IPA must not be continuous and must not overhang the buildings on site. There must be a minimum 2 metre separation between tree canopies. A maximum of 5 metres is required for separation of canopies.

**NOTE:** Total clearance of all vegetation is not acceptable.

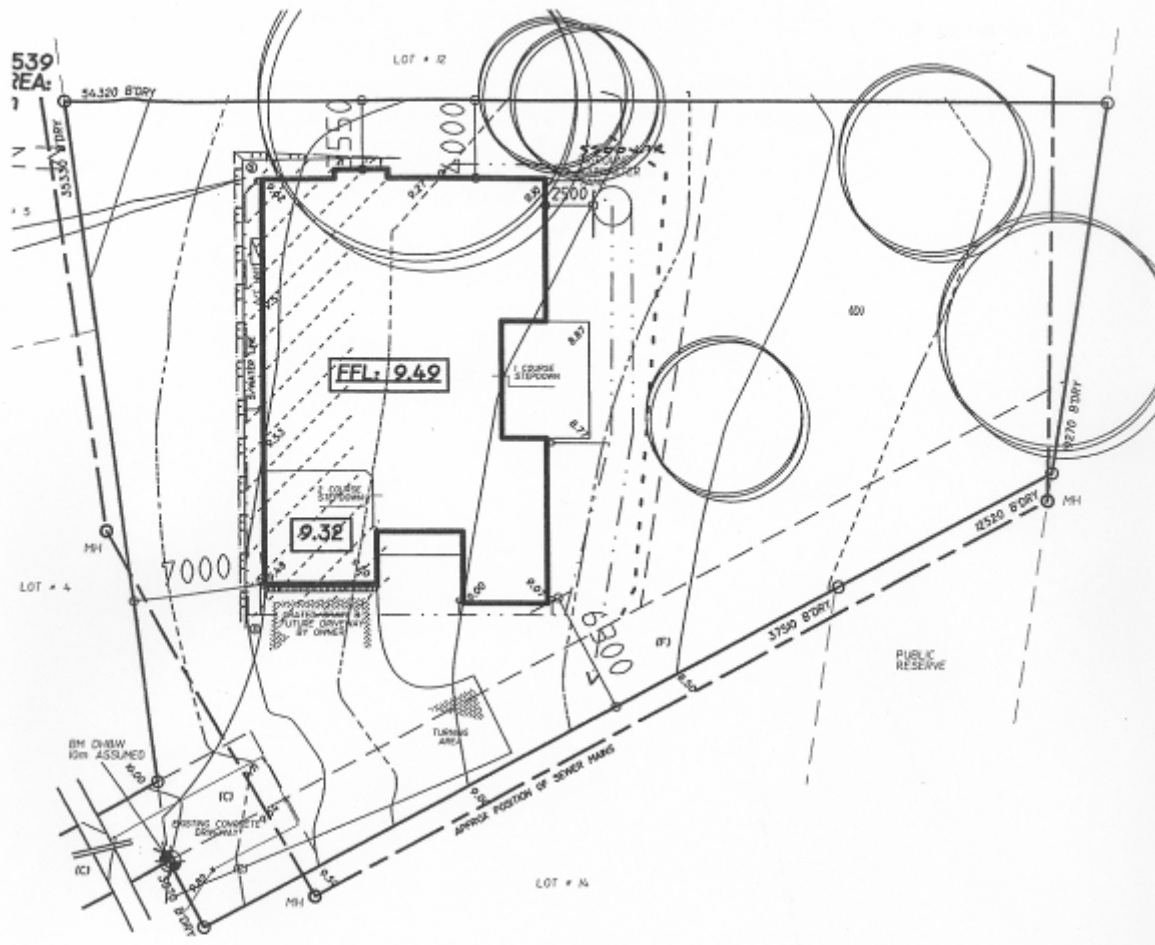
This work is to be completed prior to the issue of an Occupation Certificate.

The Asset Protection Zone is to be maintained on a permanent basis.

- |                                   |    |  |
|-----------------------------------|----|--|
| <b>Static water supply</b>        | 19 | In recognition of the potentially unreliable reticulated water supply in the locality a 10,000 litre dedicated water supply tank shall be provided. The tank shall be provided with a minimum 3kW (5hp) petrol or diesel powered pump and associated fittings including a 38mm storz fitting and ball or gate valve.   |
| <b>Static Water Supply marker</b> | 20 | <p>Obtain a Static Water Supply (SWS) marker from the Blue Mountains NSW Rural Fire Service as part of the District's Static Water Supply Program once the dedicated tank water supply has been installed. The marker once issued is to be:</p> <ul style="list-style-type: none"> <li>▪ fixed in a suitable location so as to be highly visible;</li> <li>▪ positioned adjacent to most appropriate access for the static water supply;</li> <li>▪ fixed facing the roadway on a gatepost, fence or dedicated post, at the right hand side of the entranceway to the Static Water Supply;</li> <li>▪ markers not to be fixed less than 600mm from the ground surface to the base of the sign and not higher than 1200mm from the ground surface to the base of the sign;</li> <li>▪ should be fixed with suitable screws or nails.</li> </ul> |
| <b>Property access</b>            | 21 | To provide safe access to and from the road for fire fighters providing property protection, the existing access arrangements shall be maintained..  |
| <b>Water, gas and electricity</b> | 22 | Water, gas and electricity supply as appropriate shall comply with Section 4.1.3 of Planning for Bushfire Protection 2006.   |
| <b>Landscaping</b>                | 23 | Landscaping shall comply with Appendix 5 of Planning for Bushfire Protection 2006.   |

- Trees** 24 To prevent the accumulation of leaf litter in roof gutters and valleys, no trees are to overhang or be located within 5 metres of the dwelling.  
Where overhang occurs, pruning of overhanging branches, rather than complete tree removal, is the preferred option.
- Unrestricted access** 25 Unrestricted access shall be provided around the property for fire fighting personnel.
- Radiant heat shield** 26 Provide a 1.8 metres high non-combustible radiant heat fence for a total distance of 50 metres (being to the north of the battle-axe handle) directly adjoining the dwelling along the north east property boundary to the rear of the property and extending along the entire rear property boundary and incorporating a solid non combustible rear access gate for fire fighting personnel.

Attachment 2—Plans

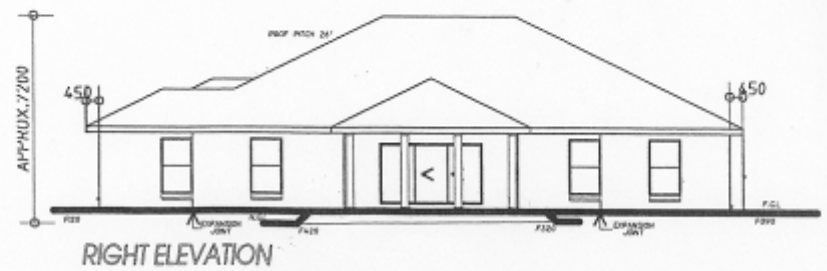


IT FOR  
KDE.

**INSET 'A'**  
L200



LEFT ELEVATION



RIGHT ELEVATION

Attachment 2—Plans (continued)

