






INNER WEST

DEVELOPMENT ASSESSMENT REPORT

Application No.	REV/2022/0022
Address	36 Orpington Street ASHFIELD NSW 2131
Proposal	S8.2 Review of Development Application DA/2021/0959 which refused the removal of a tree
Date of Lodgement	10 August 2022
Applicant	Mrs Clare M McNally
Owner	Mr Theo N Magoulas Mrs Clare M McNally
Number of Submissions	Initial: 1
Value of works	\$4,000.00
Reason for determination at Planning Panel	Review of a refusal for removal of a tree on a heritage site previously determined by Planning Panel
Main Issues	Loss of a healthy, established tree
Recommendation	Refusal
Attachment A	Reasons for refusal
Attachment B	Plans
Attachment C	Conditions in the event of approval



LOCALITY MAP

Subject Site		Objectors		 N
Notified Area		Supporters		

1. Executive Summary

This report is an assessment of the application submitted to Council pursuant to S8.2 of the Environmental Planning and Assessment Act 1979 (EP&A Act 1979) for a review of Determination No. DA/2021/0959 dated 8 February 2022, which sought the removal of a tree at 36 Orpington Street Ashfield. The application was refused for the following reasons:

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.*
4. *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.*

A review of the determination under Section 8.2 of the EP&A Act 1979 has been requested.

The application was notified to surrounding properties and 1 submission was received in response to the initial notification. The submission was in support of the application.

The main issues that have arisen from the application include:

- Loss of a healthy and established tree

2. Proposal

This application seeks a review of Determination No. DA/2021/0959 under Section 8.2 of the EP and A Act 1979. The original application was for the removal of a tree in the rear yard. The original application was refused by the Inner West Local Planning Panel (IWLPP) on 8 February 2022.

The following provides a list of the additional information provided to support the Review:

- Reply To Notice of Determination – Refusal
- Engineering Site Inspection report
- Climate Change Statement
- Expanded Heritage Impact Statement
- Expanded Statement of Environmental Effects
- Supporting Letters from Neighbours

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.

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 subject tree, a flooded gum, is located adjacent to the north-eastern boundary of the subject site between the dwelling and the swimming pool.

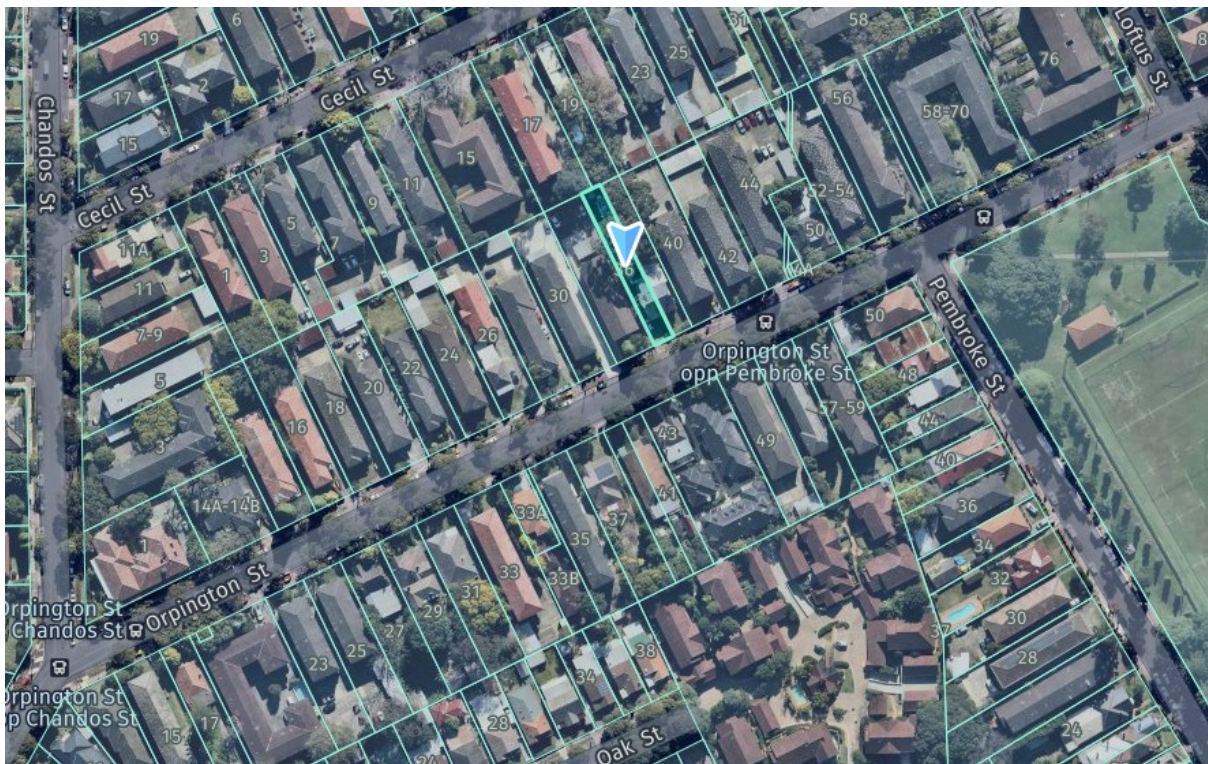


Image 1: Location Map (Nearmap)



Image 2: Site Photo with subject tree shown behind dwelling



Image 3: Photo from rear of subject property looking towards tree



Image 4: Photo taken from the rear of the dwelling showing distance between tree and the dwelling

4. Background

4(a) Site history

The following application outlines the relevant development history of the subject site and any relevant applications on surrounding properties.

Subject Site

Application	Proposal	Decision & Date
DA2015/135	Alterations and additions to an existing dwelling	Approved – 3 August 2015
DA10.2016.49	In ground concrete swimming pool	Approved - 17 May 2016
DA/2021/0959	Tree Removal	Refused by Inner West Local Planning Panel – 8 February 2022

Note- Under DA10.2016.49, 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 the tree has been removed but 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
10/08/2022	Application Lodged
26/10/2022	Site Inspection by Assessing Officer

5. S8.2 Review

The application was lodged under Section 8.2 of the *Environmental Planning and Assessment Act 1979*.

Requirement	Proposal
8.2 Determinations and decisions subject to review	
<p>(1) The following determinations or decisions of a consent authority under Part 4 are subject to review under this Division—</p> <p>(a) the determination of an application for development consent by a council, by a local planning panel, by a Sydney district or regional planning panel or by any person acting as delegate of the Minister (other than the Independent Planning Commission or the Planning Secretary),</p> <p>(b) the determination of an application for the modification of a development consent by a council, by a local planning panel, by a</p>	<p>The subject application relates to the review of a determination of an application for development consent by a local planning panel.</p>

<p>Sydney district or regional planning panel or by any person acting as delegate of the Minister (other than the Independent Planning Commission or the Planning Secretary),</p> <p>(c) the decision of a council to reject and not determine an application for development consent.</p>	
<p>(2) However, a determination or decision in connection with an application relating to the following is not subject to review under this Division—</p> <p>(a) a complying development certificate,</p> <p>(b) designated development,</p> <p>(c) Crown development (referred to in Division 4.6).</p>	<p>The subject application does not relate to any of the applications noted in Clause 2.</p>
<p>(3) A determination or decision reviewed under this Division is not subject to further review under this Division.</p>	<p>Noted.</p>
<p>8.3 Application for and conduct of review</p>	
<p>(1) An applicant for development consent may request a consent authority to review a determination or decision made by the consent authority. The consent authority is to review the determination or decision if duly requested to do so under this Division.</p>	<p>Noted.</p>
<p>(2) A determination or decision cannot be reviewed under this Division—</p> <p>(a) after the period within which any appeal may be made to the Court has expired if no appeal was made, or</p> <p>(b) after the Court has disposed of an appeal against the determination or decision.</p>	<p>The original application was determined on 8 February 2022. Pursuant to Section 8.10(1)(b)(i) of the <i>Environmental Planning and Assessment Act 1979</i>, an appeal may be made to the Court 12 months after the date of determination. The subject application was lodged on 10 August 2022 and has been reported to Council staff for determination prior to the expiry of the appeal period (8 February 2023).</p>

(3) In requesting a review, the applicant may amend the proposed development the subject of the original application for development consent or for modification of development consent. The consent authority may review the matter having regard to the amended development, but only if it is satisfied that it is substantially the same development.	No amendments have been made to the proposed development.
(4) The review of a determination or decision made by a delegate of a council is to be conducted- (a) by the council (unless the determination or decision may be made only by a local planning panel or delegate of the council), or (b) by another delegate of the council who is not subordinate to the delegate who made the determination or decision.	NA
(5) The review of a determination or decision made by a local planning panel is also to be conducted by the panel.	The original DA was determined by the local planning panel. The current application is to be determined by the panel.
(6) The review of a determination or decision made by a council is to be conducted by the council and not by a delegate of the council.	NA.
(7) The review of a determination or decision made by a Sydney district or regional planning panel is also to be conducted by the panel.	NA.
(8) The review of a determination or decision made by the Independent Planning Commission is also to be conducted by the Commission.	NA.
(9) The review of a determination or decision made by a delegate of the Minister (other than the Independent Planning Commission) is to be conducted by the Independent Planning Commission or by another delegate of the Minister who is not subordinate to the delegate who made the determination or decision.	NA.

The Section 8.2 Review application is supported by additional documentation including a document entitled Reply to Notice of Determination – Refusal, that responds to the reasons for refusal and is addressed below:

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***

Applicants Response: *“The tree needs to be removed to prevent further damage to the heritage house. The tree can be replaced with another to more suitable tree for the location. Please refer to the report from Paz Engineering regarding the damage which the tree is causing to the house.”*

Council Assessment: Council’s Tree Officer disputes that there is evidence that the tree is responsible for the cracking to the house and states that damage identified in the engineer’s report is minor cracking. Furthermore, the engineer’s report has not demonstrated that other solutions are not available to rectify the damage, whilst retaining the tree. It is acknowledged that the applicant is willing to provide a replacement tree and is supportive and aware of the general benefits of trees, however the removal of the mature, healthy and established tree fails to protect the existing tree canopy cover, nor does it 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.**

Applicants Response: *“Performance Criteria 15.2 clearly states that*

“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.

Please refer to the report from Paz Engineering. It is impractical to have the tree so close to the house. A more suitable tree can be planted in its place.”

Council Assessment: The existing tree is a substantial and significant tree which makes a positive contribution to the landscape character of the site and the streetscape (Refer to Image 2 and 3). Council’s Tree Officer does not support the removal of the tree and has not raised concern with the distance of the tree (approximately 8 metres) from the house.

- 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.**

Applicants Response: *“The Inner West Development Control Plan 2016, Chapter C: Sustainability. The Objectives are a guide.*

“Objectives

The following objectives guide the protection and management of trees within the Inner West LGA:

O3 To protect trees within and adjacent to development sites and to ensure that all new development provides an opportunity for existing and new trees to grow.

O5 To maintain and enhance the amenity of the Inner West Local Government Area through the preservation of appropriate trees and vegetation.”

Response to Objective 3:

The removal of the tree will not have a negative effect on trees adjacent to this site.

The removed tree will be replaced with one which is native to Ashfield and the land of the traditional owners of the property, the Wangal People of the Eora Nation. The tree is not native to Ashfield or the Eora Nation.

Response to Objective 5:

The tree is continuing to damage the Heritage house. The Heritage house contributes significantly more to the amenity of the Inner West than the tree.

Council Assessment: The proposed removal of the tree does not protect the tree “within” the development site as required by Objective 3. As indicated in previous comments, Council’s Tree Officer contends that it has not been demonstrated that the tree is responsible for any significant damage to the house.

4. 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.

Applicants Response: 4.15 Evaluation

(1) Matters for consideration--general In determining a [development application](#), a [consent authority](#) is to take into consideration such of the following matters as are of relevance to the [development](#) the subject of the [development application](#)--

(e) the public interest.

It is in the public interest to preserve heritage buildings. The house on the property was built in 1892 and it is an important part of Ashfield, NSW and Australia’s history. Buildings such as this need to be preserved and kept safe from damage. It is in the public interest to preserve the Heritage house not the tree. Please refer to the report from Paz Engineering regarding the damage which the tree is causing to the house.

Council Assessment: It is acknowledged that the preservation of heritage items is in the public interest and Council agrees with the applicant that “*Buildings such as this need to be preserved and kept safe from damage*”. However, as indicated in earlier comments, in this instance it has not been demonstrated that the cracking observed is directly caused by the subject tree’s roots as only a visual assessment was undertaken by the engineer engaged by the applicant.

6. 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 (EPA Act 1979)*.

5(a) Environmental Planning Instruments

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

- *State Environmental Planning Policy (Biodiversity and Conservation) 2021*

The following provides further discussion of the relevant issues:

5(a)(i) *State Environmental Planning Policy (Biodiversity and Conservation) 2021*

Chapter 2 Vegetation in non-rural areas

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 Tree Officer whose comments are summarised as follows:

The tree has been identified as a Eucalyptus grandis (Flooded Gum) located in the rear yard of the subject property. The tree is approximately 25m in height and positioned around 8 metres from the rear of the building.

The tree has been noted in good, healthy condition. No signs of structural defects were observed on the lower part of the trunk. A small number of dead branches, less than average, for a tree of this size and age were identified. No decay, dieback, cavities or other obvious structural defects were identified.

The property owners have appealed Council determination outlining that Council did not consider assessment criteria 5.2(iii) of the Tree Management DCP. They have provided an Engineers Report as supporting information.

The Engineers Report prepared by PAZ Engineering dated 11 February 2022 has been reviewed. The report indicates that only a visual walk through of the property was conducted. No exploratory investigations were carried out by the engineer. The report includes a number of photos identifying minor internal and external cracking. The report outlines that:

“the soil type is clay and reactive in nature and sensitive to moisture variations resulting in swelling in volume when they are wet and shrinking when they are dry. This cyclic movement in the soils tend to cause structural damage to buildings of shallow foundation and especially masonry construction as this building.”

The report has concluded that variation of soil moisture is influenced by the tree's roots. However, the report fails to comment on several other trees surrounding the property which could also contribute to changing soil moisture.

The damage that has been identified in the engineer's report is minor cracking. The report has not demonstrated that this has been directly caused by the subject tree's roots as only a visual assessment was undertaken. The report has not demonstrated that extensive

damage is being caused to the building or recommended any mitigation options to prevent ongoing damage.

Council's Tree Officer notes the limitations of the engineer's investigation and considers it unsatisfactory reasoning to conclude that no other solutions are available to rectify the damage, whilst retaining the tree.

Therefore, the removal of the tree is not supported.

Further clarification was sought by the assessing officer with the Urban Forest team to ascertain whether any additional information could be provided by the applicant or further investigation undertaken to demonstrate the impact of the tree on the dwelling. In particular, whether the engineer should undertake further or exploratory investigation in addition to their visual assessment.

The response included the following points:

- Further exploratory investigation by the engineer is not likely to prove anything more than what has been provided as the issue mainly seems to be related to shrinking and expanding soils and not necessarily large tree roots causing substantial structural damage to the property.
- The following advice could be obtained to manage issues that do not appear to be related to the tree:
 - Further advice from an engineer could be sought on how to manage fluctuating soils around the dwelling footings.
 - An engineer could provide advice on mitigation measures that can be put in place to stabilise soil moisture and limit cracks from appearing in the building.
- If concern is for the tree itself, then independent advice from a consulting Arborist (minimum AQF Level 5) could be sought and an Arboricultural Risk Assessment to be undertaken.

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

5(a)(ii) Local Environmental Plans

Inner West Local Environmental Plan 2022

The *Inner West Local Environmental Plan 2022 (IWLEP 2022)* was gazetted on 12 August 2022. As per Section 1.8A – Savings provisions, of this Plan, as the subject application was made before the commencement of this Plan, the application is to be determined as if the *IWLEP 2022* had not commenced.

Section 4.15(1)(a)(i) of the *EPA Act 1979* requires consideration of any Environmental Planning Instrument (EPI), and Section 4.15(1)(a)(ii) also requires consideration of any EPI that has been subject to public consultation. The subject application was lodged on 10 August 2022 and on this date, the *IWLEP 2022* was a draft EPI, which had been publicly exhibited and was considered imminent and certain. Furthermore, it is noted that because this is a Review of a previously determined application, the subject application has been assessed against the controls relevant at the time of the original Development Application.

The Draft IWLEP 2020 contained 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 considered unacceptable having regard to the provisions of the Draft EPI for the following reasons:

- The development is not consistent with the aims of the Plan, in particular Clause 1.2(2)(c) of Draft IWLEP 2020

As such, the application is recommended for refusal.

Ashfield Local Environmental Plan 2013 (ALEP 2013)

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

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

Section 1.2 Aims of the Plan

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

1.2 (2)(h) *to ensure that development has proper regard to environmental constraints and minimises any adverse impacts on biodiversity, water resources, riparian land and natural landforms*

As per the previous discussion the removal of a large, healthy, established, native tree is contrary to this aim which seeks to minimise any adverse impacts on biodiversity.

Section 2.3 Land Use Table and Zone Objectives

The site is zoned R3 under the ALEP 2013. The ALEP 2013 defines the development as:

demolish, in relation to a heritage item or an Aboriginal object, or a building, work, relic or tree within a heritage conservation area, means wholly or partly destroy, dismantle or deface the heritage item, Aboriginal object or building, work, relic or tree.

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

Section 5.10 Heritage Conservation

The subject site is a listed heritage item. The application for tree removal was referred to Council’s Heritage Advisor who raised no objection to the proposal as the tree does not have an adverse impact on the heritage significance of the site.

5(d) 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.

IWDCDP2016	Compliance
Section 1 – Preliminary	
B – Notification and Advertising	Yes
Section 2 – General Guidelines	
A – Miscellaneous	
5 - Landscaping	No – see discussion
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 item
8 - Demolition	Yes
F – Development Category Guidelines	
1 – Dwelling Houses and Dual Occupancy	No – see discussion

The following provides discussion of the relevant issues:

Chapter A – Part 5 Landscaping

Part 5 Specifies Performance criteria that must be achieved when considering a development application with regard to significant vegetation:

PC5. To retain, protect and integrate significant vegetation within development

Note: significant vegetation can include that which provides wildlife habitat, contributes to the visual character and appeal of the street or neighbourhood or increases the amenity of the site, street or neighbourhood.

Comment: The application does not satisfy the performance criteria which seeks to retain and protect significant vegetation that contributes to the visual character and appeal of the street.

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: As shown in Image 4, the tree trunk is more than 2 metres from the dwelling. The property is identified as a Heritage Item under Schedule 5 of ALEP 2013 and so the tree is protected under Part 4.

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(s) is concerned 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. Pruning of any of the small dead branches identified by the Urban Forest team will minimise risk of such branches falling.

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: As previously discussed, the applicant has appealed Council's previous determination outlining that Council did not consider this particular assessment criteria of the Tree Management DCP. They have provided an Engineers Report as supporting information. Council's Tree Officer concluded that the Engineer's report has not demonstrated that extensive property damage is being caused to the building nor that the minor cracking evident has been directly caused by the subject tree's roots.

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 Tree Officer has reviewed the documentation submitted and inspected the tree. As previously discussed, the tree has been noted to be in a good, healthy condition. No signs of structural defects were observed on the lower part of the trunk. A small number of dead branches, less than average, for a tree of this size and age were identified. No decay, dieback, cavities or other obvious structural defects were identified.

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 regarding health of the tree. Furthermore, as previously raised by Council's Tree Officer, shrinking and expanding soils and not necessarily large tree roots are likely to be causing structural damage to the property and further advice from an engineer could be sought on how to manage fluctuating soils around the dwelling footings and mitigation measures to stabilise soil moisture.

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 highly visible from the street as shown in Image 2 and is considered to be a significant tree that 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. The owner(s) do not appear to have planted the tree.

The applicant has provided additional information for consideration with the S8.2 Review regarding solar access for renewable energy systems. There appears to be existing solar panels on the house.

The DCP specifically identifies criteria that will not be considered during the assessment, including - Solar access to solar panels.

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(e) The Likely Impacts

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

The assessment of the s8.2 review demonstrates that the proposed tree removal will have an adverse impact on the locality and is not supported.

5(f) 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(g) Any submissions

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

1 submission was received in response to the initial notification which was in support of the application to remove the tree.

The following issues were raised to support the application:

Issue: Danger to the adjacent property at 38 Orpington Street, Ashfield from falling branches...

Comment: See previous comments regarding the 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.

Issue: Property damage to gutters and drains from debris

Comment: The DCP identifies criteria that will not be considered during the assessment and includes: - Leaf and deadwood drop (natural processes). It is noted that pruning of deadwood could mitigate such concerns.

Issue: Potential future damage to the adjacent dwelling due to roots undermining footings

Comment: As discussed earlier in this report the Engineer's report provided has not demonstrated that the cracking evident at 36 Orpington Street has been caused by the subject tree's roots.

5(h) 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 considered 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 the *Ashfield Local Environmental Plan 2013*, the *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.

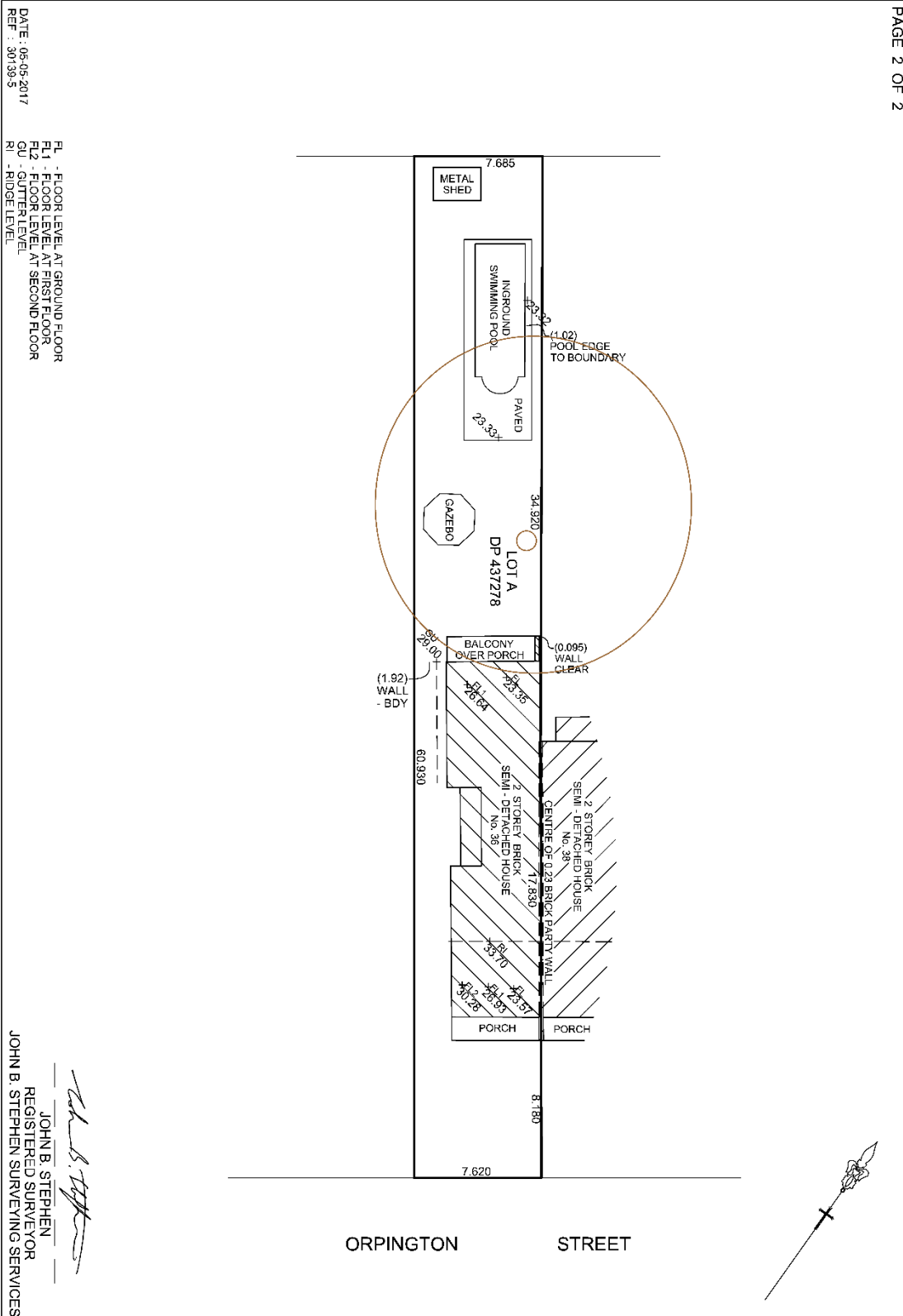
9. Recommendation

- 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 Review Application No. REV/2022/0022 for a S8.2 Review of Development Application DA/2021/0959 dated 8 February 2022 which refused the removal of a tree on a heritage item at 36 Orpington Street ASHFIELD for the following reasons in Attachment A.

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 A, Part 5 - Performance Criteria 5 of the Comprehensive Inner West Development Control Plan 2016 which seeks to retain and protect significant vegetation that contributes to the visual character and appeal of the street or neighbourhood.
3. 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.
4. 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 –Conditions in the event of approval

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	05/05/2017	John B Stephen

As amended by the conditions of consent.

FEES

2. Security Deposit - Standard

Prior to the commencement of demolition works or issue of a Construction Certificate, the Certifying Authority must be provided with written evidence that a security deposit and inspection fee has been paid to Council to cover the cost of making good any damage caused to any Council property or the physical environment as a consequence of carrying out the works and as surety for the proper completion of any road, footpath and drainage works required by this consent.

Security Deposit:	\$2,800.00
Inspection Fee:	\$350.00

Payment will be accepted in the form of cash, bank cheque, EFTPOS/credit card (to a maximum of \$10,000) or bank guarantee. Bank Guarantees must not have an expiry date.

The inspection fee is required for the Council to determine the condition of the adjacent road reserve and footpath prior to and on completion of the works being carried out.

Should any of Council's property and/or the physical environment sustain damage during the course of the demolition or construction works, or if the works put Council's assets or the environment at risk, or if any road, footpath or drainage works required by this consent are not completed satisfactorily, Council may carry out any works necessary to repair the damage, remove the risk or complete the works. Council may utilise part or all of the security deposit to restore any damages, and Council may recover, in any court of competent jurisdiction, any costs to Council for such restorations.

A request for release of the security may be made to the Council after all construction work has been completed and a final Occupation Certificate issued.

The amount nominated is only current for the financial year in which the initial consent was issued and is revised each financial year. The amount payable must be consistent with Council's Fees and Charges in force at the date of payment.

GENERAL CONDITIONS

3. Works Outside the Property Boundary

This development consent does not authorise works outside the property boundaries on adjoining lands.

PRIOR TO ANY DEMOLITION

4. Advising Neighbours Prior to Excavation

At least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.

5. Construction Fencing

Prior to the commencement of any works (including demolition), the site must be enclosed with suitable fencing to prohibit unauthorised access. The fencing must be erected as a barrier between the public place and any neighbouring property.

PRIOR TO CONSTRUCTION CERTIFICATE**6. Sydney Water – Tap In**

Prior to the issue of a Construction Certificate, the Certifying Authority is required to ensure approval has been granted through Sydney Water's online 'Tap In' program to determine whether the development will affect Sydney Water's sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met.

Note: Please refer to the web site <http://www.sydneywater.com.au/tapin/index.htm> for details on the process or telephone 13 20 92

DURING DEMOLITION AND CONSTRUCTION**7. 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.

ON-GOING**8. Certification of Tree Planting**

Evidence is to be provided by a person holding a minimum qualification of AQF3 Certificate of Horticulture or Arboriculture that:

A minimum of 1 x two hundred (200) litre size additional tree, which will attain a minimum mature height of twelve (12) metres, must be planted in a more suitable location within the property at least one metre from any boundary and 2.2m from any structure and allowing for future tree growth. The tree is to conform to AS2303—Tree stock for landscape use. Trees listed as exempt species from Council's Tree Management Controls, palms, fruit trees 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.

ADVISORY NOTES

Prescribed Conditions

This consent is subject to the prescribed conditions of consent within Sections 69-86 of the *Environmental Planning and Assessment Regulations 2021*.

Notification of commencement of works

At least 7 days before any demolition work commences:

- a. The Council must be notified of the following particulars:
 - i. the name, address, telephone contact details and licence number of the person responsible for carrying out the work; and
 - ii. the date the work is due to commence and the expected completion date; and
- b. A written notice must be placed in the letter box of each directly adjoining property identified advising of the date the work is due to commence.

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.

Obtaining Relevant Certification

This development consent does not remove the need to obtain any other statutory consent or approval necessary under any other Act, such as (if necessary):

- a. Application for any activity under that Act, including any erection of a hoarding;
- b. Application for a Construction Certificate under the *Environmental Planning and Assessment Act 1979*;
- c. Application for an Occupation Certificate under the *Environmental Planning and Assessment Act 1979*;

- d. Application for a Subdivision Certificate under the *Environmental Planning and Assessment Act 1979* if land (including stratum) subdivision of the development site is proposed;
- e. Application for Strata Title Subdivision if strata title subdivision of the development is proposed;
- f. Development Application for demolition if demolition is not approved by this consent; or
- g. Development Application for subdivision if consent for subdivision is not granted by this consent.

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*.

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
Department of Fair Trading	13 32 20 www.fairtrading.nsw.gov.au Enquiries relating to Owner Builder Permits and Home Warranty Insurance.
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 - SITA 1300 651 116
Environmental Solutions

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.

Tree Planting

Council is to be provided with evidence certified by a person holding a minimum qualification of AQF3 Certificate of Horticulture or Arboriculture that:

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.

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.

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*.

REASONS FOR REFUSAL

1. 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 A, Part 5 - Performance Criteria 5 of the Comprehensive Inner West Development Control Plan 2016 which seeks to retain and protect significant vegetation that contributes to the visual character and appeal of the street or neighbourhood.
3. 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.
4. 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