

HAWKESBURY SHIRE COUNCIL

BUSINESS PAPER

SPECIAL MEETING - TUESDAY, 31ST MARCH, 1987

NOTICE OF RESCISSION MOTION

SPECIAL MEETING - 31ST MARCH, 1987.

By Councillor C.J.Stanley
Councillor S.E.Durrington
Councillor W.J.Sledge

That the resolution passed at the Ordinary Meeting of Council held on 10th March, 1987, (Minute No. 751) which reads :

RESOLVED that Council support the rezoning of the subject land from Rural 1(a3) Environmental Protection to Part Rural 1(c) and Part Residential 2(d) Environmental Protection.

That the Department of Environment & Planning be advised that, in Council's opinion, an environmental study is not required.

be rescinded.

(Refers to application for support of Draft Local Environmental Plan - Residential Subdivision McGraths Hill - Applicant : W.D. & B.L. Wilson. Owner : A.G.Johnson. L6/86)

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NOTICE OF MOTION

SPECIAL MEETING - 31ST MARCH, 1987

If the above Rescission Motion is carried, it is intended to move the following motion :

By Councillor C.J.Stanley
Councillor S.E.Durrington
Councillor W.J.Sledge

That Council support the rezoning of the subject land from Rural 1(a3) Environmental Protection to Part Rural 1(c) and Part Residential 2(d) Environmental Protection.

That the Department of Environment & Planning be advised that, in Council's opinion, an environmental study is required in relation to the emission of odours in the locality.

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SHIRE CLERK/GENERAL MANAGER'S REPORT

SPECIAL MEETING - 31ST MARCH, 1987

Shire President and Councillors:

1. RESTORATION PROJECT - THOMPSON SQUARE. H105/17A

Following the initial report regarding this matter to Council's Ordinary Meeting in November last year, discussions have taken place with the owners of the various properties with the view to reaching agreement on overall funding. It was indicated to Council that generally a 30% contribution would be required from the owners to satisfactorily complete the project including the restoration of the park and significant works that need to be completed at the Hawkesbury District Museum.

Indication was also given that special consideration would need to be given in the case of 10 Bridge Street, where it will be necessary to demolish the existing takeaway food premises, which is a major source of income to the owner of the building and the lessee.

10 Bridge Street

It is suggested that payment of \$15,000 should be made to the owner to compensate her for loss of income in rental from the shop premises for the balance of the lease period. Current rental is \$70.00 per week and the lease currently has a little in excess of four years to run including option for renewal.

Council's Valuer has advised that a payment of \$50,000 for 'Goodwill' plus equipment and plant at value would not be unreasonable for compulsory acquisition of the takeaway food premises.

Discussions with the owner and lessee have indicated that they would be prepared to accept these amounts with the lessee to retain ownership of equipment and plant.

The restoration works regarding this building are estimated to total \$32,700 which under these arrangements would be at Council's cost.

74 George Street (A.C. Stearn Building)

Total estimated cost of restoration	\$46,530
Council cost	32,571
Owner's contribution (30%)	13,959

64/68 George Street (Triple fronted double storied building)

Total estimated cost of restoration	\$103,400
Council's cost	72,380
Owner's contribution (30%)	31,020

62 George Street (Real Estate Office)

Total estimated cost of restoration	\$7,480
Council's cost	5,236
Owner's contribution (30%)	2,244

17 Bridge Street (Cottage)

Total estimated cost of restoration	\$38,600
Council's cost	27,020
Owner's contribution	11,580

6 Bridge Street (Cottage)

Total cost of restoration	\$5,540
Council's cost	3,878
Owner's contribution (30%)	1,662

School of Arts Building

Written advice has been received from the owners of this building that they are financially unable to participate in the restoration project. It is believed, however, that the balance of the project should proceed and hopefully circumstances may change in the interim to allow restoration of this building also.

While verbal agreement had been reached with the owner of 6 Bridge Street to participate in the project, this building is currently 'for sale' and indications are that a sale may be effected shortly. If this is the case, the new owners will be approached to determine their willingness to participate.

The owners of all the other buildings involved have advised their agreement on the figures presented and it will now be necessary for working drawings to be prepared in each case in order that tenders may be called to establish the actual cost of restoration. Once this has been done the actual contribution required from the owners will be determined and upon formal agreement the matter will be brought back to Council for approval to enter into individual contracts.

Council will recall the report from the Shire Engineer regarding necessary work to be carried out at the Hawkesbury District Museum. It was estimated that the total cost of carrying out the necessary works was \$92,754. It is proposed that these works be carried out by day labour and specialist tradesmen as part of the restoration project.

In addition, significant restoration works are proposed for the Park and the area on the eastern side of George Street where 90° angle parking is provided. In the Park it is proposed to provide a rotunda located to the northern side. Earthworks will include relocation of the playground equipment to the bottom end with sandstone paving to provide connection between these centres and George Street with installation of lighting and tree planting to return the park back to an area that will be used more by the public. As well, subject to approval by the Heritage Council, a low double sandstone wall is proposed on the main road side with a view to adding to the character of the area and through the use of sandstone retain the heritage aspect of this park.

It is estimated that the works proposed to be carried out to the Park will cost in the vicinity of \$104,000.

IT IS RECOMMENDED THAT:

- a) an offer of \$15,000 be made to the owner of 10 Bridge Street, in compensation for loss of income;
- b) an offer of \$50,000 be made to the lessee of the takeaway food premises located at 10 Bridge Street for compulsory acquisition of the business with the lessee to retain ownership of equipment and plant;
- c) the Architect be instructed to prepare working drawings for the restoration works of 10 Bridge Street, 74 George Street, 64/68 George Street, 62 George Street, 17 Bridge Street and 6 Bridge Street, with the view to calling tenders to have these works carried out.
- d) the report regarding the restoration of the Park and restoration to the Museum Building be received.

2. RANDON ROAD - UNITS FOR AGED PERSONS - REQUEST FOR ADVICE FROM
DEPARTMENT OF ENVIRONMENT AND PLANNING. DA 378/85

Council has received the following letter from the Department of Environment and Planning:

"Re: Development known as Windsor Country Village.

It has come to the Department's notice that Council has issued a Consent for a development within the North West Sector development area for a hospital or development for frail aged housing. The Department is extremely concerned at this situation as it now appears that the development is in fact a strata title aged persons' housing development, and in the Department's view the development is not permissible within the zone.

The Department has received representations from the Metropolitan Water Sewerage & Drainage Board expressing grave concern over the situation that has arisen on this site and that the Board's views were not properly taken into account by Council in dealing with this matter. The board was under the impression that it was being asked to provide services for a frail aged hostel on the basis that the development would remain in one ownership.

The Department is concerned about several aspects of this matter and would emphasise to the Council that development should not be permitted within the North West Sector for urban purposes and should not be allowed to prejudice the orderly and economic provision of utility services to the area.

I would therefore request that this letter be placed before Council and that Council advise the Department how it now intends to deal with the finalisation of outstanding issues related to this development. The Department would also like advice from Council as to how it intends to ensure that a situation like this never arises again so that the Department can make a proper assessment as to what, if any, action should be taken in this case."

The matters raised are serious in terms of the planning approval legally and professionally in terms of propriety and, accordingly, advice was sought from Council's Solicitor and is contained within the following report from the Shire Planner.

Shire Planner's Report

Council at its meetings of 12th November, 1985 and 8th April, 1986, approved of the development of the subject land for 120 aged persons units known as the "Windsor Country Village".

The development was considered under Council's Planning Scheme, Hawkesbury Local Environmental Plan 1984, as "a home for aged persons" being an allowable use as a "hospital" with Council's consent. Hospital within its definition including "... home for aged persons ... whether public or private ...".

Shortly after consent was issued the Metropolitan Water Sewerage & Drainage Board, on 18th June, 1986, wrote to Council in the following terms:

"We have received correspondence from Mermaid Waters Management Services Pty. Ltd. referring to the above proposed development and indicating that your Council requires written evidence that this Board's services can be provided. We have proceeded with initial investigation but, having noted the location of the proposed development within an area which is zoned non-urban, it would appear that the proposed development is contrary to State Environmental Planning Policy No.5.

SEPP5, as amended on 7th October, 1983, in Clause 11 (2a) requires that the land to be developed should be within, or adjoining, land zoned for urban use. In this instance this proviso is not achieved due to the area surrounding being non-urban. It may also be that Clause 11 (2b) is not reasonably satisfied.

Before responding to the correspondence from the applicant I would invite your comment as to how the proposed development has been approved by Council in view of SEPP5. A copy of this letter has been forwarded to the Regional Manager, Department of Environment and Planning, Parramatta."

The letter from the Board was considered unusual in that the proposal had already been discussed with the Board by the applicant prior to submission to Council and, additionally, that it purported to interpret Council's Planning Scheme and State Planning Policies. A reply was forwarded on 27th June, 1986, as follows:

"Your interpretation of the proposal being contrary to State Environmental Planning Policy No.5, is correct, however, as you will be aware, State Environmental Planning Policy No.5 merely allows aged and disabled accommodation within certain localities notwithstanding that there may be a prohibition under a particular Council planning scheme. In the subject case, however, Hawkesbury Local Environmental Plan 1984 does allow the proposal as hospitals are an allowable land use and, by definition, includes a 'home for aged, infirmed, incurable or convalescent persons'...

Further applications of this magnitude will be referred to the Board for comment prior to deliberation by Council, however, if the Board had realised a concern in a particular locality within the Shire, it could have made comments relating to statutory development referral conditions within Council's planning scheme at the time of its preparation in 1983 when the Board was formally advised...

It would be appreciated if the Board would now respond to the applicant and a copy of this letter has also been forwarded to the Regional Manager, Department of Environment & Planning, Parramatta."

It should be noted that at this time the building had not commenced.

In respect of the actual supply of water, the Board advised that it was prepared to supply water on the basis of a domestic connection only. The applicant did indicate this in his submission and, accordingly, made subsequent arrangements for a holding well and pressure pumping system which was subsequently approved by the Board by letters dated 30th June, 1986 and 4th March, 1987.

The servicing constraints were known by Council at the time. Information from the Board at the time of consideration by Windsor Council in 1979/80 was that any expansion of the urban development in the Vineyard area would require amplification of mains. While the existing servicing was known to be limited; because of the method of water storage proposed, supply for development of the subject magnitude was not thought to create a problem and this was assumed to be evidenced by the Board's approval to the applicant for a limited supply, presumably commensurate with the subject development.

The original application made reference to the units being strata titled and, accordingly, on 13th April, 1986, Stage 1 creating 41 strata units was approved.

On 15th January, 1987, the Board wrote in the following terms:

"...(the domestic connection) is considered inadequate for the extent of development now proposed in the strata subdivision of the above site.

The revised proposal to develop the site for a strata subdivision for aged housing would appear to be contrary to the provision of the rural zone under Hawkesbury LEP 1984, and would be affected by the requirements of State Environmental Planning Policy No.5.

As the site is situated in the proposed North West Sector, amplification of the water supply and the provision of sewerage services to this area, can only be considered by the Board in the context of proposals for future urban development. Accordingly, this proposal is being forwarded to the Department of Environment and Planning for its advice."

Because of the obvious importance of the matters raised, opinion was sought from Council's Solicitor Mr. D. Forrester of McDonnell Moffitt Dowling Tayler. His advice supports Council's dealing with the matter and is as follows:

"... Council has taken the view that the development is permissible being a hospital as defined by Clause 4 of the Model Provisions 1980. This definition is in the following terms:-

'"hospital" means a building or place used as a -

- (a) hospital;
- (b) sanatorium;
- (c) health centre;
- (d) nursing home, or
- (e) home for aged persons, infirm persons, incurable persons or convalescent persons;

whether public or private, and includes a shop or dispensary used in conjunction therewith, but does not include an institution;'

The subject premises would otherwise by virtue of their physical configuration be regarded as residential flat buildings, being a group of buildings containing two or more dwellings.

A similar factual situation arose for consideration in the case of *Vanderwolf v. Warringah Shire Council* (1975) 34 L.G.R.A. 358.

In that case the subject land was situate within a Non-Urban 1(a) zone within which the erection of residential flat buildings was absolutely prohibited. The development of a hospital was permissible with the consent of Council. The Warringah Planning Scheme Ordinance defined hospital as including a building designed for use as a home for aged, infirm, incurable or convalescent purposes whether public or private.

The developer submitted to the Council a development application seeking permission to construct upon the land a 'retirement village' consisting of a number of townhouse units, a nursing home, a hostel, staff accommodation and a chapel. The Council approved the application and proceedings were taken to declare the approval invalid on the basis that the development constituted the erection of residential flat buildings.

The then Chief Judge in Equity, Mr. Justice Bowen, held that considered alone the townhouse units would fall within the definition of residential flat building. However it was necessary to categorise the development by reference to the dominant purpose. The development was required to be considered as a whole and if this was done the incontrovertible conclusion was that it was a home for aged persons and so a 'hospital'.

There was apparently a restriction that the persons occupying the accommodation must be aged persons although the decision does not canvass the meaning of that term.

In the later case of *Geoffrey Twibill & Associates v. Ku-ring-gai Municipal Council* (1979) 39 L.G.R.A. 154 the Court of Appeal had again to consider a similar problem.

The subject land in that case was in a Residential 2(g) zone within which premises could not be used for a residential flat building or boarding house however premises could be used for the purposes of a hospital, the definition of which was the same as in the Warringah case and substantially the same as in the Model Provisions. The

Council refused development consent for a proposal described in the development application as 'a planned retirement village comprising a 40 bed aged persons' hostel, dining and common rooms and related community facilities, 93 self-contained dwelling units, accommodation for warden and deputy warden and facilities for groundsmen, maintenance and storage'. The village was not associated with any church organisation but was to be self-funded and self-regulating. Under the draft Articles for the regulation of the proposed development every occupier whether original, allottee or aged relative of an under age shareholder must have obtained the minimum age of 55 years but any occupier might permit his or her spouse (of any age) or 'a relative whose occupation of the unit had been approved by the Directors to occupy the unit as his or her guest.

It was common ground between the Appellant and the Council that one of the proposed buildings would fall within the definition of boarding house under the Ku-ring-gai Planning Scheme Ordinance and the others would fall within the definition of residential flat building under the Ordinance. The Council refused the development application and ultimately an appeal by the developer came before the Court of Appeal for determination. The Court of Appeal held by a majority that the development was not a home for aged persons because the minimum age of 55 years was too young an age to qualify the proposal as a home for aged persons and also because there could be a number of spouses and relatives in residence who would be under the age of 55 years.

Mr. Justice Mahoney held that it was not a home for aged persons because there was no obligation on the occupants to avail themselves of the services offered and also because the age of 55 years was too young an age to qualify the development as a home for aged persons.

Subsequently, of course, State Environmental Planning Policy No.5 has now defined 'aged person' for the purposes of that Policy as meaning a person aged 55 years or over.

We note that the application in the instant case is not capable of being considered under the provisions of State Environmental Planning Policy No.5 nor was it so considered. Whilst the definition of aged person in State Environmental Planning Policy No.5 cannot be imported into the Hawkesbury Local Environmental Plan, in deciding what an aged person is for the purposes of the definition of home for the aged as contained in the definition of hospital, it seems to us that there is an argument that there is a general acceptance by the Central Planning Authority that 55 years and over is aged. Development, in our view, arguably permits the decision of the Court of Appeal in Twibill's case (supra) to be distinguished.

Further, with respect to the views expressed by the Department, the fact that Council has approved a strata subdivision does not, in our view, affect the purpose for which the development is to be used. The title arrangements are irrelevant for categorising the planning purpose.

By way of example, we are aware of at least two instances where the Land and Environment Court has permitted housing for the aged approved under State Environmental Planning Policy No.5 to be the subject of strata subdivision.

... In any event Council has issued a condition of approval of the strata subdivision as required and a restriction as to user in relation to the use of the premises and required that the units be occupied by at least one aged or disabled person as defined by State Environmental Planning Policy No.5."

The letter from the Department of Environment and Planning raises the following issues:

1. **The Ability of Council to Approve of the Application** - This is adequately addressed in the Shire Planner's previous reports to Council and is supported by legal advice.
2. **The Supply of Water** - The main protagonist, the Metropolitan Water Sewerage & Drainage Board appears to be under an impression that because the units are strata titled that there is a philosophical difference in management of the water supply. It is not totally evident what the objection is, other than they appear to be of the opinion that they now have to deal with 41 owners (i.e. the strata unit owners) compared with one owner prior to strata. It would seem that there should be no difference for the Board's purposes as, in fact, they are still only dealing with one owner, i.e. a body corporate. The capacity of water used and the required management of the water tank and pump facilities remains the same regardless of the titling system.

The Department of Environment and Planning suggests that the Board's views were not properly taken into account. In this respect, it is advised that the applicant/architect, Morrison Design Partnership, is highly respected in the field of aged persons development having prepared many similar developments in the past, including the recent 3.4 million dollar proposal for extension to St. John of God Hospital. The applicant in his original submission indicated his awareness of fluctuations in water pressure and the requirement, therefore, of a booster pump facility and holding tank. Such a facility has been approved by the Board subject to conditions and would only appear to be strongly objected to after their knowledge of the strata subdivision.

The applicant's original application indicated the strata subdivision of the units and Council's Solicitor has indicated that he is aware of Court approvals for the strata titling of aged units and, additionally, contact with Warringah Shire Council indicates that similar development has been strata titled without objection from the Metropolitan Water Sewerage & Drainage Board in that Shire.

3. **Conflict with North West Sector** - The Department of Environment and Planning has raised this matter on the basis that the proposal may "prejudice the orderly and economic provision of utility services to the area".

It is considered that the development does not prejudice future provision of utility services in that any major urban development within the Rouse Hill area, including the subject site, would require massive implementation of servicing infrastructure and not mere augmentation of existing services. A general policy of the North West Sector Regional Environmental Plan is that "development of new areas will be planned to take advantage of available capacity in existing infrastructure (while new infrastructure is being developed) ..." The development is considered to be consistent with this policy. Additionally, the development is considered consistent with the following objectives of the relevant area of the Regional Environmental Plan, that is,

- . "to provide affordable accommodation to meet the needs of households of all types with a variety of housing in type, tenure, price and location";
- . "... to promote ... an average residential density of at least 10 dwellings ... (per) ... hectare ...";
- . "to encourage medium and high density development to be carried out in proximity to public transport routes ...";
- . "to allow medium density development wherever dwelling houses are allowed".

In the explanatory information attached to the Regional Environmental Plan it is indicated that the Government is committed to the implementation of its urban consolidation program. The proposal is consistent with this general aim. The Regional Environmental Plan indicates that Rouse Hill will develop from the east and proceed generally to the west. It is considered, therefore, unreasonable to thwart development in the western extremity of the North West Sector for allowable development and where servicing exists, pending implementation of major servicing infrastructure in accordance with the Regional Environmental Plan.

4. **How Council intends to deal with the finalisation of outstanding issues related to this development?** - There are a number of minor outstanding conditions which will be the subject of normal inspection. The strata subdivision for the first stage has been released and, as indicated, is lawful. An application for a second stage strata for the remaining units is expected shortly. While this too can be lawfully approved, it may be appropriate to refer the matter to the Department of Environment and Planning for comment prior to Council's determination of such an application and providing that a response is obtained in a reasonable time, say 30 days.

The sewerage connection to the waste water plant is in the course of construction as previously advised to Council, and is not considered to be at issue.

The supply of water has been approved by the Board for the physical development but apparently revoked because of the subsequent strata titling. It has been shown that such a stand is an unfortunate one by the Board and apparently not based on legal grounds. The advice of Council's Solicitor should be made known to the Department of

Environment & Planning with a request that they urge the Board for urgent reconsideration of their stance, particularly in relation to the apparent conflict with similarly titled development in other areas of the Board's jurisdiction.

5. How Council will ensure that a similar situation never arises again - The recent concerns of the Board have been documented and areas of critical water supply noted. Applications within these areas for other than domestic use are being forwarded for the Board's comments. Additionally, Council has written to the Board the following letter dated 9th March, 1987:

"Council is currently undertaking a major review of its current planning instrument, Hawkesbury Local Environmental Plan, 1984. The purpose of the review is to produce a comprehensive plan for the Shire aimed at reducing the number of land use zones and bringing the allowable uses within these zones in line with current Council policies and development trends.

Owing to difficulties which have arisen in the past concerning the adequacy of the Board's services in certain areas, it may be appropriate to identify such areas within the Shire on the LEP maps.

At the present there are limited areas identified by means of cross-hatching. However, due to problems which have arisen in the past, particularly in the Vineyard area, it may be prudent to 'flag' the plans in some manner to ensure that all applications in areas with limited services are referred to the Board.

As the comprehensive plan is only in the early stages of preparation it would be appreciated if representatives of the Board would be available to meet with Council's officers to discuss the matter, with particular emphasis on:

- * use of graphics to highlight LEP maps so as to identify all areas with limited services;
- * possible incorporation of the Board's 'model provisions' or a suitable alternative into the comprehensive plan;
- * development of a suitable referral system for appropriate development applications; and,
- * develop appropriate means of information dissemination on matters of mutual interest.

Council would appreciate a meeting at the earliest possible opportunity and would appreciate the names of your representatives to enable appointments to be made.

Your early attention to this matter would be appreciated."

To date no reply has been received. It should be noted that a similar request was sent to them prior to preparation of Council's Planning Scheme in 1984. While a reply was received highlighting some areas with supply difficulties, the subject locality was not identified as having such a difficulty.

Summary

There has appeared to be an apparent conflict of advice received from the Board dependent upon the level of officer and branch of the organisation. This is evidenced by the Board on one hand indicating on the 15th January, 1987, that water was not available because the development was to be strata titled and, on the other hand, on the 4th March, 1987, indicating that approval for on site water storage tanks and connection was approved subject to conditions. This aspect has certainly hindered the receipt of consistent information by Council from the Board and made it difficult to ascertain which was their viewpoint. It would also appear that the Board and the Department of Environment and Planning had some eight months to initiate positive action to stop the development, should that have been their intent. Their initial letter pre-dated start of construction. Council's immediate reply to that letter to both the Board and the Department of Environment and Planning was thought to have dispelled any queries when no reply was received within a reasonable time.

The frustration of servicing of the North West Sector is not thought to have any great weight as the development is not drawing capacity from future urban expansion, rather, it is maximising utilisation of existing servicing. Additionally, the North West Sector Regional Environmental Plan is only a Draft Plan with no ultimate guarantee that urban development in the vicinity of the subject land will ever take place.

For these reasons it is considered that the Department of Environment and Planning be advised that Council has not acted illegally or improperly in its dealing with the application.

IT IS RECOMMENDED THAT the Department of Environment and Planning be advised that Council has not acted illegally or improperly in its dealing with the application and that the Department be advised in the terms of the report to Council.

3. LOT 15, 31 AND 32 SOUTH WINDSOR INDUSTRIAL ESTATE. 802-15, 802-31, 32

Ansa Sheetmetal Pty Ltd has expressed interest in purchasing Lots 15, 31 and 32 South Windsor Industrial Estate for a total purchase price of \$210,000 cash on settlement.

The current list prices of the properties are as follows: Lot 15 - \$131,000; Lot 31 - \$83,000; and Lot 32 - \$84,000.

Council's marketing policy for the sale of industrial lots at South Windsor was to offer a mortgage over three years on 67% of the sale price. Subject to the industrial development being completed within 18 months, the interest charged at 15% paid under the mortgage would be refunded at the time the outstanding principal is paid. Interest earned over three years by a cash settlement now on the sale would amount to approximately \$53,600 on current interest rates.

The offer by Ansa Sheetmetal Pty Ltd would be a reduction of the listed price for these blocks of \$88,000. However, with the additional interest earned by early settlement of \$53,600 together with the saving of the Selling Agent's commission of \$12,000 Council would have a shortfall of \$22,400 over the listed price. No account has been taken of holding charges.

These lots have been available for sale for over six years and establishment of such a large industrial premises within the South Windsor Industrial Estate will no doubt provide considerable employment opportunities to local residents. This will also result in the sale of the three remaining lots in the estate.

IT IS RECOMMENDED THAT Council agree to the sale of Lots 15, 31 and 32 South Windsor Industrial Estate to Ansa Sheetmetal Pty Ltd for a total of \$210,000 cash on settlement within 30 days of exchange of contracts. All necessary documents to be completed under the Seal of Council.

G.M. McCully
Shire Clerk/General Manager