



general
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environment

GENERAL PURPOSE COMMITTEE - ENVIRONMENT

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ITEM: 21 **Request to amend consent - 36 Lot Subdivision - Subdivision Lots 20 and 21 DP748280 - Peel Parade, Kurrajong - Golf Course Estate**

FILE NUMBER: SA45/97 & SA46/97/EVD/ENH25LBX.V15

REPORT:

Introduction

Deferred commencement consent was issued on 18 December, 1997 for a thirty six (36) lot rural/residential subdivision on the subject property. The subdivision was proposed to be Community Title and a reticulated sewerage scheme was proposed for the rural/residential lots with treated effluent to be irrigated onto a proposed nine (9) hole golf course. The golf course was the subject of a separate development consent, but is closely related to the development in terms of effluent disposal and also one of the deferred commencement conditions requires substantial commencement of the golf course prior to the subdivision consent becoming operative.

The applicant has lodged an application under Section 102 of the Environmental Planning and Assessment Act to delete a number of conditions from the consent. What is essentially proposed is a Torrens Title subdivision rather than Community Title and individual on-site effluent disposal systems for each allotment rather than a reticulated system which irrigates the golf course.

Details of Proposed Amendments

The applicant requests deletion of the following conditions:

Deferred Commencement Conditions

- B2. *Submission of written evidence of pollution control approval from the Environment and Protection Authority for a reticulated sewerage system, including installation of a sewerage treatment plant with spray irrigation of tertiary treated effluent onto the proposed golf course.*
- B3. *Submission of a plan demonstrating that all nominated areas on the golf course for the spray irrigation of treatment effluent have a slope of less than 6E and secondly a plan demonstrating that the distance from the nearest dwelling not associated with the golf course and the 35 lot rural subdivision is at a distance of at least 250m from the nominated irrigation areas.*

Operational Conditions

- C1. *The subdivision shall be by community title and shall be in general accordance with the submitted plan by Toby Fiander and Associates dated 21 October, 1997, plan No. TFA2063/01 and supporting documentation except where amended by conditions of this consent.*

- C2. *A reticulated sewerage scheme with effluent treatment to a tertiary standard is to be provided. Treated effluent is to be irrigated onto the proposed golf course on slopes than less than 6E. All effluent disposal areas are to be a minimum of 250m from any dwelling not part of the community title subdivision.*
- C3. *The creation of an easement for irrigation over the effluent disposal areas on the golf course in favour of the community title subdivision.*

A Management Statement which includes:

- C5 (i) *the maintenance, monitoring and management of the effluent disposal system by the Community Association and reporting of the results to Council or the Environment and Protection Authority;*
- (ii) *the maintenance of any nutrient and sediment control works on the property.*
- (iii) *provision for the estimated costs of monitoring, maintenance and depreciation for all infrastructure, including but not limited to sewerage treatment plants, drainage lines, treated effluent irrigation areas, erosion and sediment control works.*
- C21. *The creation of restrictions on the use of land covering the designated effluent disposal areas on the golf course lot.*
- C22. *The creation of a positive covenant requiring the maintenance of the designated effluent disposal areas on the golf course irrespective of whether it operates as a golf course or not.*
- C23. *The submission of detailed specifications for the proposed sewerage treatment plant and reticulated system.*
- C24. *The completion of the sewerage treatment plant and all major drainage lines prior to the release of any linen plan for subdivision or, alternatively, any outstanding works are to be bonded.*

Statutory Situation

Hawkesbury Local Environmental Plan (HLEP) 1989 was amended by the inclusion of Clause 41A to permit the subject development. The relevant sub-clauses for the purposes of the application to modify the consent are as follows:

- "(2) *The Council must not grant consent to the carrying out of development on the land to which this clause applies unless arrangements satisfactory to the Environment Protection Authority have been made for the on-site disposal of sewage. Those arrangements must not be made without the agreement of the owner.*

- (3) *The Council must not grant consent to the subdivision of land to which this clause applies unless:*
- (e) *The Council is satisfied that an integrated system of waste water management will be implemented and maintained on that land and that water discharges and run-off from that land will maintain or improve existing levels of water quality.*
- (4) *In considering an application for consent to the subdivision of land to which this clause applies, the Council must take the following matters into consideration:*
- (f) *the effect on the water quality of the Hawkesbury River as a result of the subdivision and any subsequent development of the allotments to be created by the subdivision.*
- (j) *the provision to the land of a water supply, facilities for sewage and waste disposal and drainage and electricity services."*

Community Consultation

All previous objectors, the EPA and Hawkesbury Nepean Catchment Management Trust (HNCMT) were advised of the applicant's request and invited to comment.

Four objections were received from the public, including an objection on behalf of the Peel Estate Environmental Relation Group (PEER). Objections were also received from the EPA and HNCMT.

A brief summary of the grounds of public objection follows:

1. Why was a waste water treatment that had already been rejected again being put forward;
2. Concern that the licensing of individual systems had been put on hold and potential for the licensing of such systems to be dumped completely i.e. the individual system would not be maintained;
3. Concern that the proposed Ecomax system would be unsuitable especially as the site was in places steep and clayey;
4. The evidence provided by the developer is a little thin.
5. The concept of the subdivision is being downgraded to a non-watered, non-sewered development.
6. That the subdivision be retained as Community Title:
 - (a) To maintain the integrity of the sewerage system.
 - (b) To improve the visual amenity of the subdivision.

The EPA advised that it “does not agree with the proponents view that the use of the Ecomax system for each lot would be the ‘ecologically correct course of action’. Subsurface waste water treatment systems are harder to maintain and are for more likely to lead to waste water seeping into the ground water and eventually polluting nearby waterways. The EPA consider that irrigation of the treated effluent over the golf course, as detailed in the original proposal, represents a beneficial re-use of the treated effluent is a far better option.

The HNCMT was concerned at the potential for the development to have a significant impact on both the water quality and flow of Little Wheeny Creek which is classified as Class P - Protected Water under the Clean Water Act 1970. It stated that the applicant has not demonstrated the viability of the proposed alternative scheme and that the central facility has the potential to achieve better environmental outcomes in the longer term.

The relevant matters are addressed in our assessment.

Assessment

The main purpose of using the Community Title form of subdivision was to provide an appropriate mechanism for the establishment and maintenance of an integrated system of waste water management. The applicant now proposes that individual "Ecomax" waste disposal systems would be provided on each allotment, rather than a reticulated system with a treatment plant which irrigates the golf course. The applicant proposes to place a positive covenant on the individual lots to ensure that purchasers are required to install an "Ecomax" type system rather than an aerated system.

In determining this application, there are two fundamental issues for consideration:

- whether or not the installation of a separate on-site effluent disposal system for each allotment, required to be installed by the purchasers by a positive covenant, can be interpreted as an "integrated system of waste water management" in accordance with Clause 41A of the LEP; and
- whether or not the individual systems proposed will treat effluent to a level where Council can be satisfied that "the effect on the water quality of the Hawkesbury River as a result of the subdivision" is acceptable in terms of Clause 41A of the LEP.

The first matter is one of legal interpretation, while the second matter is concerned with the merits of the particular treatment system proposed. It is considered that the legal test must be satisfied in the first instance prior to assessing the merits.

Interpretation of "Integrated System of Waste Water Management"

Although Clause 41A requires Council to be satisfied that an "integrated system of waste water management" will be implemented there is no statutory definition provided. The applicant has submitted detailed advice from their solicitor which proposes the following definition:

"Integrated system of waste water management means a system of waste water management on each allotment which is consistent in the method and quality of waste water treatment and complies with an overall concept plan of the management site."

It was submitted that the concept plan is the development of the lots and golf course in a manner sympathetic to the environment.

An opinion was sought from Council's solicitors, Abbott Tout, who were provided with the advice submitted by the applicant. Abbott Tout advise that although the clause could be interpreted to mean that the system approved should be consistent throughout the development and form part of an overall plan or objective, there is no need to subject the words used in the LEP to such a strained interpretation.

Abbott Tout further advise that the use of a restriction as to user on the land or the prior construction of specific waste water systems would not have the effect of turning a separate system for each lot into an integrated system for the purposes of the clause. It would however be open to the applicant to lodge a SEPP 1 objection against the requirement of the clause.

The Department of Urban Affairs and Planning (DUAP) have provided written advice to the applicant that Clause 41A(3)(e) was added to the LEP amendment by the Minister to provide a high level of protection to Little Wheeny Creek which is classified as a Class P - Protected Waterway. The aim was that the existing water quality could be maintained or improved with an integrated system managed as a whole, however the interpretation of the clause rests with the Council.

Although the advice from the applicant's solicitor puts forward a persuasive argument about the literal interpretation of the clause, it is clear from the advice from Council's solicitors that the proposal to install individual treatment plants does not satisfy the provisions of the clause. A SEPP 1 objection has not been submitted by the applicant, so in legal terms Council could not approve the current application even if Council was so inclined based on the merits of the proposal. In our view it would be inappropriate to invite the applicant to lodge a SEPP 1 objection unless Council was satisfied as to the merits of the proposal.

Likely Effect on Water Quality of the Hawkesbury River as a result of the Subdivision

The applicant has submitted various information over a number of months in an attempt to justify the use of separate Ecomax systems in lieu of a central reticulated system. Council will recall that separate Ecomax systems were canvassed and rejected when the application was originally considered.

Information submitted in support of the application includes:

- Drawing from Ecomax indicating how to build their system on slopes up to 1 in 5.
- Various test results from Western Australian companies dated from 1992-1997.
- A performance evaluation by Australian Water Technologies (AWT) on three Ecomax systems and one Bioseptic system at Valley Heights between 1994 and 1995.

- A letter from Supertreat (the NSW distribution for Ecomax) stating that the cells are guaranteed for 25 years and testing indicates in excess of 40 year life.
- A letter from Blue Mountains Council in relation to the three Ecomax systems at Valley Heights which states that "Council regards Ecomax as an alternative on-site residential effluent disposal system that is required to comply with DCP13." (This DCP deals with the requirements for on-site disposal only, not as an alternative to a reticulated sewer system.)

As there was little to tie the information together the applicant was requested to have a report prepared by a suitably qualified person to provide an overall assessment.

A report prepared by Black Wattle Environmental was submitted on 4 August, 1998. The consultant concludes:

"The report finds that the use of the Ecomax System will conform to the requirements of AS1547-1994 and provide protection of the environment to a standard equal or better than a domestic aerated waste water system of similar size." There is no comparison with the approved system. The report does not address the quality of the effluent but seeks to show that no effluent discharge would occur.

An Ecomax system comprises a standard septic tank and two mounds which each contain a storage cell surrounded by a special soil which basically absorbs phosphorus. The soil is contained within a impervious membrane and liquid is disposed of by transpiration from the mound with any excess overflowing into the surrounding ground. In operation only one cell is used at a time with each cell being rested on alternative six months. This is controlled by the owner turning a tap to redirect flows.

It is considered that the consultant's calculations over estimate the available storage as it assumes that both cells are able to store effluent. The figure quoted is approximately twice that which is available as each cell is to be rested for six months.

Based on this incorrect calculation, the report concludes that no overflow will occur in an average year and by inference some overflow will occur in wetter years. If calculated correctly it may be assumed that overflows will occur regularly.

Clause 41A(3)(c) requires "that water discharges and run-off from land will maintain or improve existing levels of water quality". No evidence has been submitted that this will be achieved nor has anything been submitted to show that run-off will be improved as compared to the conditionally approved centralised system.

In view of the above, no variation should be made to the consent in regard to effluent disposal.

Community Title Subdivision

While the application was submitted as a Torrens Title subdivision condition C1 of the consent required that it be by Community Title. The main reason for this was to provide the overall control and running of the central treatment plant and its irrigation areas.

As the centralised system is recommended to be retained the subdivision should proceed as a Community Title system. It is noted that no alternative management system has been proposed although there were some preliminary suggestions made by the applicant some time ago. He has not pursued this course or provided any details.

Conclusion

As outlined in this report, there are two fundamental issues for consideration in determining the application to modify the consent. It is clear from Council's solicitors opinion that the modified proposal does not satisfy the definition of "integrated system of waste water management" as set out in Clause 41A(3)(e).

Having reviewed the information submitted by the applicant and their consultant's report, there is no conclusive evidence that "the effect on the water quality of the Hawkesbury River as a result of the subdivision" will be acceptable if waste water is disposed of by separate on-site treatment systems.

The Environmental Protection Authority does not agree with the applicant that the use of the Ecomax system for each lot would be the ecologically correct course of action, and consider that the irrigation of treated effluent over the golf course, as detailed in the original proposal, is a far better option. The Hawkesbury-Nepean Catchment Management Trust is concerned that the development will have a significant impact on Little Wheeny Creek and the applicant has not demonstrated the viability of the proposed alternative scheme. The local residents also object to the proposal based on their expectations from the original approval.

Having considered all relevant matters it is considered that the current proposal to install individual on-site treatment systems in place of a reticulated system which treats and irrigates waste water on the golf course cannot be supported both from a legal point of view and from an assessment of the merits. Accordingly, it is recommended that the application be refused.

RECOMMENDATION:

That:

1. The request to modify the consent be refused for the following reasons:
 - i. The proposal is contrary to Clause 41A(3)(e) of Hawkesbury Local Environmental Plan 1989:

(e) "The Council is satisfied that an integrated system of waste water management will be implemented and maintained on that land and that water discharges and run-off from that land will maintain or improve existing levels of water quality."
 - ii. The proposal is likely to have an unacceptable effect on the water quality of the Hawkesbury River as a result of the subdivision and any subsequent development of the allotments to be created by the subdivision.

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- iii. The proposal is contrary to Clause 41A(2) of Hawkesbury Local Environmental Plan 1989 in that the arrangements for on-site disposal of sewage are not satisfactory to the Environmental Protection Authority.
- iv. Approval of the proposal would not be in the public interest.
- 2. The applicant informed that all conditions of the consent are to be complied with.
- 3. The objectors be notified of Council's decision.

ATTACHMENTS:

There are no supporting documents for this report.

oooO END OF ITEM 21 Oooo

ITEM: 22 **Additional Information - Proposed grading and storage of pine bark at 53 Post Office Road, Ebenezer - Lot 262 DP 751665**

FILE NUMBER: DA142/98/EVD/ENH25LBX.V14

PREVIOUS ITEM: 14, GPC Section 1 - Environment (25.08.1998)

REPORT:

This report refers to Item 14 being considered by Council at this meeting. The applicant has lodged additional information to address concerns raised in relation to noise. The acoustical report was lodged on Wednesday 19 August 1998 and is discussed below.

The noise report was prepared by Renzo Tonin and Associates Pty Ltd on behalf of the applicant and recommends that the noise emissions from the proposal will generally comply with the noise criteria set out in the Environment Protection Authority's Environmental Noise Control Manual.

The application states that the trommel machine is to be the latest model and is much quieter than the one currently located at the Vineyard which is approximately fifteen (15) years old. The trommel machine will be housed within the large storage shed located at the eastern boundary of the site. The acoustic report recommends that the shed be lined with insulation and that the doors remain closed whilst the machine is operating. This will be required as a condition of consent.

Hours of operation

The proposed hours of operation in the application are 6.00am to 6.00pm Monday to Friday and 7.00am to 3.00pm on Saturdays.

The submission received by the owners directly opposite the site considers that the hours of operation should be limited to 9.00am to 5.00pm weekdays and 9.00am to 3.00pm on Saturdays.

The report recommends that a number of measures be undertaken to ensure that the use operates within acceptable guidelines. Low background levels were recorded in the 10pm to 6am time frame as listed in the acoustical report and the applicant's representative has advised that the proposed hours of operation have been amended to:

Monday to Friday	7.00am to 7.00pm.
Saturday	7.00am to 3.00pm.

Given the low background noise recorded and the submission received it is considered that the hours of operation should be limited to 7.00am to 7.00pm Monday to Friday and 7.00am to 3.00pm on Saturdays. The acoustical report also suggests that the storage of pine bark on the concrete slab will also assist further in limiting the noise emitted from the site.

Conclusion

It is considered that the application can be approved subject to conditions that ensure that the development will operate within acceptable limits and not adversely affect the amenity of the area.

RECOMMENDATION:

That the application for the grading and storage of pine bark at 53 Post Office Road, Ebenezer - Lot 262 DP 751665 be approved subject to the following conditions:

1. To confirm and clarify the terms of this approval, the development shall be carried out in accordance with the approved stamped plans (prepared by CH2M Australia dated 25 May, 1998) submitted with Development Application No. DA142/98 dated 28 May, 1998 and any supportive documentation, except as otherwise provided by the conditions of this consent.

Note: modifications to the approved plans will require the lodgement and consideration by this organisation of a separate application pursuant to Section 96 of the Environmental Planning and Assessment Act, 1979.

2. Parking shall be provided for 6 (six) vehicles in accordance with Council's Regulations and Parking Policy. Parking spaces, access ways and aisles to conform to Council's Development Control Plan and to be constructed, drained, sealed and marked. Full details of works shall be submitted for approval with the building application.
3. A waste management plan shall be submitted for consideration prior to any work commencing. Such plan shall address any builder's waste and waste generated during day to day operations and shall include types and quantities, recycling, reuse, storage and disposal.
4. A detailed plan of landscaping shall be submitted and approved by the Divisional Manager Environment and Development prior to the approval of the building application. Such landscaping is to be completed prior to the occupation of the building and shall be maintained for the life of the development.
5. In order to avoid pollution and sedimentation of the Hawkesbury-Nepean River Catchment, the following erosion and sedimentation controls will apply:
 - (a) run-off and erosion controls shall be installed prior to clearing of site vegetation in accordance with Council's development control plan titled "Soil Erosion Sediment Control";
 - (b) topsoil shall only be stripped from approved areas and shall be stockpiled for re-use during site rehabilitation and landscaping;
 - (c) uncontaminated runoff shall be intercepted up-site and diverted around all disturbed areas;

- (d) runoff detention and sediment interception measures shall be applied to the land to reduce flow velocities and to prevent topsoil, sand, aggregate, road base, spoil or other sediment escaping from the site or entering any downstream drainage easements or natural watercourses;
 - (e) the capacity and effectiveness of runoff and erosion control measures shall be maintained at all times;
 - (f) pollution control devices shall be installed and maintained to ensure there is no increase in the downstream levels of nutrients, litter, vegetative debris, and other water borne pollutants;
 - (g) stockpiles of topsoil, sand, aggregate, spoil or other material capable of being moved by running water shall be stored clear of any drainage line or easement, natural watercourse, footpath, kerb or road surface;
 - (h) measures shall be applied to prevent site vehicles tracking sediment and other pollutants onto any sealed roads serving the development; and
 - (i) an erosion control plan showing detailed runoff and erosion control measures shall be prepared by a qualified engineer prior to any works commencing on-site. This plan shall incorporate (without being limited to):
 - (i) up-site interception of uncontaminated runoff and diversion of it around disturbed areas;
 - (ii) sediment interception measures (catch drains, contour banks, detention basins, settling ponds, hay bale or gabion barriers, sediment traps, silt fences, etc) sufficient to prevent sediment and other debris leaving the site or entering downstream drainage lines;
 - (iii) regular maintenance of erosion control works; and
 - (iv) satisfactory disposal of intercepted sediment.
6. Installation of surface diversion banks along the northern edges of all hard stand areas to a height of one metre to divert overland flows to the concrete dam.
7. A mechanism is to be installed whereby wheels of trucks leaving the site are washed to minimise dust and debris being deposited on roads, however, the operation for 3 (three) months without such a facility will be permitted to allow Council to monitor the need for the facility. If it is deemed the facility is not required then Council will give written notice of this.
8. All areas to be used for the storing of pine bark, being either graded or ungraded are to be sealed. Details to be lodged with the building application.

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9. Submission of a dust management plan addressing the suppression of dust from the small grades of pine bark such that all dust is contained within the site. This should include details of a sprinkler system to wet down the pine bark when necessary.
10. The installation of roller shutters on the shed at the western boundary of the site prior to the saw dust being placed in the shed. Details to be submitted prior to issue of a building permit or construction certificate.
11. The access drive is to be constructed with a sealed pavement and drained. Details to be lodged for approval prior to construction.
12. Discharge from the site requires a licence from the Environment Protection Authority under the Pollution Control Act. This licence shall be obtained prior the use commencing.
13. Submission of an application to operate the Sewerage Management Facility for approval prior to the use commencing.
14. Compliance with the recommendations of the acoustical report prepared by Renzo Tonin and Associates Pty Ltd and dated 19 August 1998 as outlined below.
15. The underside of the trommel shed roof shall be acoustically lined with sound absorptive insulation such as insulation wool protected with perforated foil or cellulose fibre acoustic insulation applied by spraying directly onto steel roof underside.
16. To minimise noise impact, the operator shall keep the four roller doors in the north west wall of the shed closed while the trommel machine is operating.
17. The three sided timber stalls proposed for pine bark storage situated at the north west boundary of the site should be renovated such that the rear wall is solid in construction and no gaps exist between the walls and the roof. Details to be lodged with the Building Application.
18. A high performance acoustic 'residential class' muffler is to be fitted to the exhaust of the Volvo front end loader to ensure that the noise levels from this machine does not exceed 5dB(A) above background noise levels at the nearest residential boundary.
19. The development shall be conducted in such a manner that noise levels measured at any boundary do not exceed 5dB(A) above background noise levels.
20. Written confirmation of the purchase of the water licence that is held by the owner of the site to allow water to be pumped from the Hawkesbury River.
21. No advertising structures to be erected, displayed or affixed on any building or land without prior approval. Any unauthorised advertising structure will be removed at the expense of the advertiser.
22. No signs shall be displayed on the footpaths, pedestrianways, roadways or in the vicinity.

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23. No retail sale of goods is to be made on the subject premises.
24. Operating hours shall be limited to 7.00am to 7.00pm to Mondays to Fridays and 7.00am to 3.00pm on Saturdays. Any alteration of these hours will require the approval of the Divisional Manager Environment and Development.
25. All waste materials to be stored and disposed of at regular intervals to the satisfaction of the Director Environment and Development.
26. Oil and other used lubricants shall be collected and stored for the purpose of recycling. Full details shall be submitted and approved prior to the proposed development commencing.
27. The development shall be conducted in such a manner so as not to interfere with the amenity of the neighbourhood in respect of noise, vibration, smell, dust, waste water, waste products or otherwise.
28. This consent covers the removal of trees and other vegetation from the site of approved buildings, structures, permanent access ways and car parks. This consent also covers the removal or lopping of trees within 6m (six) of approved buildings. No other trees or vegetation shall be removed or lopped except with prior written approval of the this office.
29. All demolition, construction and associated work necessary for the carrying out of the development being restricted to between the hours of 8.00am and 6.00pm on Mondays to Fridays and between 8.00am and 4.00pm on Saturdays.
30. No burning of demolition or construction material being carried out on the site.
31. No spoil, excavated or demolition material from the site being deposited on any public road, footpath, public place or Council owned property without Council's approval.

Advice

It is advised a building permit or a construction certificate is required to be obtained prior to commencement of works.

ATTACHMENTS:

There are no supporting documents for this report.

oooO END OF ITEM 22 Oooo

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ITEM: 23 **Additional Information - Proposed land clearing for the construction of a 5.9 megalitre rural dam and filled area for a shed - Lot 733 DP864751 No.189 Grono Farm, Ebenezer**

FILE NUMBER: DA104/98/EVD/ENH25LBX.V16

PREVIOUS ITEM: 12, GPC Section 1 - Environment (25.08.1998)

REPORT:

This report refers to Item 12 being considered by Council at this meeting. One of the submissions received in relation to this application claimed that the trees had been removed without Council approval. Consent was given for the removal of all trees by Council's Development Control Officer and it was also agreed that the applicant would compensate the loss of trees by planting additional trees.

RECOMMENDATION:

The information be received.

ATTACHMENTS:

There are no supporting documents for this report.

oooO END OF ITEM 23 Oooo