



general
purpose
committee

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section

environment

GENERAL PURPOSE COMMITTEE - ENVIRONMENT**Table of Contents****Meeting Date: 29 August 2000****Page 2**

ITEM	SUBJECT	PAGE
SECTION 1 - ENVIRONMENT.		
141:	Mobile Phone Telecommunications Facility - Lot 130 DP 807321, 16 Walker Street, South Windsor M652/00/EVD/ENH29NAX.V13	4
142:	Section 96 Modification of Consent, Storage Units - Lot 12 and Lot 13 DP843673 No. 24 and 26 Bowman Street, Richmond DA176/95/EVD/ENH29NAX.V16	18
143:	Car Repair Station - Lot 12 DP233001 420 Old Stock Route Road, Pitt Town M539/00/EVD/ENH29NAX.V14	26
144:	78 Greens Road, Lower Portland - Additional Caravan Sites and Storage Sheds M619/00/EVD/ENH29NAX.V10	39
145:	Water Management Bill GW020/003/GMA/ENH29NAX.G08	49
146:	Notification of Waterways Authority of new noise limits when processing Aquatic Licenses PK205 PT06/ENG/ENH29NBX.E19	55
147:	Windsor Marketplace, George Street, Windsor M1077/00/EVD/ENH29NBX.V18	59
148:	Farm Gate Sales GT160/002Pt02//ENH29NBX.V09	67
149:	Draft Local Environmental Plan - Amendment No.122 - No's 70 and 80 Macquarie Street, Windsor LEP0002/00 Pt01/EVD/ENH29NBX.V03	69
150:	State Environmental Planning Policy No. 1 and Subdivision of Urban Lots GC280/004Pt03, DCP005/00/EVD/ENH29NBX.V06	71
151:	Tilmunda Pastoral Company Pty Ltd - 219 Springwood Road, Yarramundi - Further request to amend development consent to allow a continuation of extraction of materials for an additional two years DA144/93/EVD/ENH29NBX.V02	74
152:	Drug and Alcohol Rehabilitation Centre - West Side Mission - Lot 289 DP751665 71 Sargents Road, Ebenezer P1920/30/EVD/ENH29NBX.V05	79

GENERAL PURPOSE COMMITTEE - ENVIRONMENT

Table of Contents

Meeting Date: 29 August 2000

Page 3

- 153: Proposed rezoning at Lot 258 FP658249 and Lot 21 DP518147 - Nos 719 & 721
George Street South Windsor for family restaurant and service
station/convenience store
P731/1630, P731/1640/EVD/ENH29NBX.V17 83**
- 154: Review of Determination Under Section 82A of EPA Act 1979 - Development
Application MA69/00 - Boundary Adjustment at Apple Tree Service Station,
Bells Line of Road, Bilpin
MA69/00/EVD/ENH29NBX.V07 89**

oooO END OF TABLE OF CONTENTS Oooo

ENVIRONMENT

Meeting Date: 29 August, 2000

Item: **141**

ITEM: 141 **Mobile Phone Telecommunications Facility - Lot 130 DP 807321, 16 Walker Street, South Windsor**

FILE NUMBER: M652/00/EVD/ENH29NAX.V13

Applicant: The Ozitel Network
Applicants Rep: Connell Wagner
Owner: Mr G P Hutchison and Mr D J Butcher
Stat. Provisions: Hawkesbury Local Environmental Plan 1989
Area: 4051m²
Zone: Industry General 4(a)
Advertising: Surrounding lands owners/occupiers and a notice in Hawkesbury Gazette
Date Received: 27 April 2000

Key Issues: - Visual impact
 - Health concerns
 - Proximity to surrounding offices
 - Alternative locations and co-locations

Action: Approval subject to conditions

REPORT:

Introduction

The applicant seeks approval to establish a telecommunication facility at the rear of 16 Walker Street, South Windsor.

This matter is being reported to Council due to the number of objections received in relation to the application. This report will detail the proposal, the current statutory situation and provide an assessment of the application in accordance with Section 79C (1) of the Environmental Planning and Assessment Act 1979.

The Proposal

The proposal consists of:

- a 35 metre slimline monopole which will contain:
 1. on the top of the pole is a triangular shaped headframe with 9 panel antennae measuring 2670mm long
 2. two parabolic dish antennae (600mm and 1200mm diameter) at a height of approximately 30m

- a colorbond steel equipment hut at the base of the tower measuring 3m long by 2.5m wide by 3m high

The facility is to be located in the north-eastern corner of the property and is to be enclosed by a 2.4m high cyclone wire mesh fence 10m long by 7m wide.

Background

In considering this application Council should be aware of other mobile phone base station in the immediate area. They are:

Site	Carrier
53 Argyle Street, South Windsor	Telstra
61 Argyle Street, South Windsor	Telstra
100 Mileham Street, South Windsor	Optus / Vodaphone

Council has recently approved a development application (MA1400/99) for a mobile phone base station at 121 Fairey Road, South Windsor. This facility was for Hutchison Communications and consisted of a 30m high monopole. The application by Ozitel was received prior to Council's determination of MA1400/99 and at the time of submitting their application Ozitel were not aware of Hutchison's proposal. Development consent for Hutchison was granted subject to a condition requiring Ozitel and Hutchison to discuss the possibility of co-locating the facilities at 121 Fairey Road, South Windsor.

This matter is discussed later in the report.

Description of Property

The property is located on the eastern side of Walker Street, South Windsor and has an area of 4051m². At the present the site is used by Metaland, a steel and sheet metal fabricator. A large factory building is located towards the front of the property and along the southern boundary. The site's driveway and car parking area is located along the northern boundary. The rear of the property is used for vehicle manoeuvring and open area storage.

Properties surrounding the site are zoned and used for a variety of industrial purposes.

Statutory Position

Hawkesbury Local Environmental Plan 1989

The property is zoned Industry General 4(a) under HLEP 1989. The relevant objectives of the Industry General 4(a) zone are:

- (a) *to set aside certain land for the purposes of general industry within convenient distances of the urban centres of the City of Hawkesbury;*

...

- (c) *to ensure that industrial development creates areas which are pleasant to work in and safe and efficient in terms of transportation, land utilisation and services distribution.*

“Mobile phone base stations” or “Telecommunication facilities” are not specifically defined in Hawkesbury Local Environmental Plan 1989 hence they are known as “innominate uses” which are permitted within the zone subject to development consent being obtained.

Draft Hawkesbury Local Environmental Plan Amendment No. 110

Draft HLEP 1989 Amendment No. 110 defines this type of development as a “public utility undertaking”. Under Amendment No. 110 the proposed facility would be classified as development without consent in the Industry General 4(a) zone.

Telecommunications Facilities Development Control Plan - Amendment No. 1

Council’s Telecommunication Facilities Development Control Plan - Amendment No. 1 contains a number of performance criteria and matters for consideration which are to be taken into account when determining a development application for a mobile phone base station. These will be identified and discussed later in this report.

Sydney Regional Environmental Plan No. 20 (No.2 -1997)

The subject site falls within the South Creek Catchment area defined by SREP No. 20. The site is not within an environmentally sensitive area or in an area of scenic significance. SREP No. 20 contains general and specific matters for consideration which are to be considered in the assessment of a development application. The relevant specific considerations are total catchment management, water quality, water quantity and flora and fauna. It is considered that the proposal is consistent with the provisions of SREP No. 20.

Community Consultation

Surrounding land owners and occupiers were notified of the proposal and a notice was placed in the Council Notices section of the Hawkesbury Gazette. The application was exhibited from 6/7 to 21/7/2000.

Seven letters of objection were received. A summary of the objections is provided below.

- concerned about the cumulative impact of towers
- visual impact of the tower
- possible health risks resulting from exposure to electro magnetic energy (EME)
- concerned about proximity of facility to surrounding offices

These concerns are discussed in the report.

Planning Assessment

The following are the relevant matters for consideration under Section 79C (1) of the EP & A Act 1979.

Objectives of the Zone

The relevant objectives of the Industry General 4(a) zone are:

- (a) *to set aside certain land for the purposes of general industry within convenient distances of the urban centres of the City of Hawkesbury;*

The proposed facility is not inconsistent with this objective.

- (c) *to ensure that industrial development creates areas which are pleasant to work in and safe and efficient in terms of transportation, land utilisation and services distribution.*

The proposed facility is not inconsistent with this objective.

Telecommunication Facilities - Amendment No. 1 DCP

The relevant performance criteria of this DCP are:

1. *Proposal for telecommunication facilities should utilise buildings, structures or other non-residential and non-community based features of the built environment for support of towers, antennas and ground based facilities, wherever possible;*

Ozitel advise that no buildings or structures in the locality were considered practicable for the support of their antennae.

2. *Proposals for towers, greater than 5 metres in height shall in the first instance be encouraged to locate in commercial/industrial zones and/or premises used for commercial premises;*

The proposed facility is located on land which is zoned and used for industrial purposes.

3. *Proposals for towers should consider and provide evidence of investigation into co-locating with other carriers, wherever possible;*

The applicant has investigated the following sites.

1. Telstra pole at 61 Argyle Street, South Windsor
2. New structure at 16 Walker Street, South Windsor
3. New structure at 17 Walker Street, South Windsor
4. New structure on Water Reservoir, Mileham Street, South Windsor
5. Vodaphone tower, 100 Mileham Street, South Windsor

6. New structure at Home Hardware, Argyle Street, South Windsor
7. Telstra pole at 53 Argyle Street, South Windsor

Ozitel found that sites 1 and 5 were unsuitable for their radio coverage objectives. Sites 3 and 6 were not pursued due to Ozitel being unable to obtain a lease. Site 4 was not pursued due to its proximity to surrounding residences.

Site 7 was unsuitable because it was not tall enough for Ozitel's requirements this pole is approximately 20m high).

An industry adopted condition of co-location is that carriers' antennae are a minimum of 5m apart. Ozitel have advised that for them to achieve their network coverage it is essential for the antennae to be located as high as practicable. Co-locating on the existing structures at 100 Mileham Street and 61 Argyle Street would mean that their antenna would be located at a height of 25m above ground level. Ozitel advise that their antennae needs to be at an elevation of not less than 35 metres for effective cover age of the area.

In respect to the co-location of the recently approved facility in Fairey Road Connell Wagner, acting on behalf of Ozitel, have advised that Hutchison have not contacted them regarding the possibility of co-location. Connell Wagner have also advised that if the standard 5m separation distance between carrier's antennae is applied on the Hutchison pole then Ozitel's antennae would have to be located at a height of 25m above ground level (as opposed to 35m on the pole at 16 Walker Street). This would be unacceptable for Ozitel's radiofrequency coverage objective for the area.

Council staff have contacted Hutchison's representative CellSites regarding possible co-location. CellSites have advised that Hutchison are yet to decide whether or not to use the facility for their CDMA network or GSM network and that a time period for construction is unknown at this stage.

Connell Wagner advise that Ozitel the prompt commissioning of a site in the area of paramount importance and as such wish to proceed with the proposed site.

4. *Not applicable*
5. *Proposals for towers and/or other telecommunications works should avoid environmentally sensitive lands. Such environmentally sensitive lands would include wetlands, creeks and protected habitats of endangered flora and fauna;*

The proposed facility is not located in or near an environmentally sensitive area.

6. *Proposals for towers should have regard to environmentally sensitive areas and should be located to have minimal visual impacts wherever possible;*

The existing visual landscape is dominated by factory buildings and industrial uses.

ENVIRONMENT

Meeting Date: 29 August, 2000

Item: **141**

The facility has been located at the rear of the property in order to reduce its visual impact when viewed from Walker Street. The monopole will be visible when viewed from within the immediate area and from a distance. Notwithstanding, the appearance of the tower and associated equipment shelter will not be inconsistent with the existing character of the area and will not significantly change or degrade the existing visual landscape.

7. *Not applicable*

8. *Any proposal for a tower needs to justify the location in terms of the servicing area.*

At present Ozitel have no coverage in the area. The proposed facility will provide coverage to the South Windsor area including Macquarie Street, Wilberforce Road and Richmond Road.

9. *Not applicable*

10. *A report from an independent consultant 12 months from the start up of any telecommunications facility on the emission will be required. Where emission are found to be under predicted levels further reports will be required on a 5 year basis. Where emissions are over the predicted levels further reports will be required on a 12 month basis.*

Connell Wagner have advised that the predicted annual average EME from the facility will be:

Location	Annual Average Power Flux Density (uw/cm2)
Base of Tower	0.031
120 metres southeast	0.0056
100 metres south	0.5
100 metres southwest	0.17
300 metres south	0.031
400 metres west	0.008
120 metres northeast	0.176

The predicted levels are below the ACA standard.

Relevant matters for consideration are:

- *the location, design and siting of the facility;*

The location, design and siting of the facility is considered satisfactory given the coverage objectives of the carrier and present use of the property.

- *the existing and proposed use of the land and adjoining properties;*

The property is presently used by Metaland a sheet metal and steel fabrication company. The site contains a factory building and associated parking area. The facility has been located at the rear so as not to interfere with the day to day operations of the site. The facility will not interfere with the existing and future uses of surrounding properties.

- *the need for the proposal with respect to expansion of the carriers network and alternatives examined within the proposed area to be covered;*

Previously discussed.

- *the proximity of the proposed facility to residential and community facility land uses;*

The proposed base station is located approximately 350m from the nearest residence and 600m from the nearest community based facility (a church). These separation distances are considered satisfactory.

- *the visual impact of the proposal and measures to ameliorate this impact;*

This matter has been previously discussed.

- *site access, security and landscaping proposals;*

Access to the site is via Walker Street and the property's internal driveway. The proposed access is satisfactory. The facility is to be enclosed by a wire mesh fence 2.4m high. Given the industrial nature of the area no landscaping is considered necessary.

- *the impact of electromagnetic radiation on public health, safety and other electronic communications; and*

Connell Wagner advise that Ozitel believe that mobile phone base station do not pose a risk to human health.

The Commonwealth Government's position is that there is no substantiated evidence to suggest that living near a mobile phone tower causes adverse health effects. This position is based on a comprehensive review of substantiated scientific evidence from Australia and overseas.

The Australian Communications Authority's (ACA) standard for exposure to the general public is 200 micro watts per square centimetre (uw/cm²). These standards incorporate substantial safety margins to address concerns for potentially sensitive groups in the community, such as children, pregnant women, the infirm and aged. The ACA standard requires the aggregate of electromagnetic energy (EME) from all mobile phone antennas at any one site comply with the exposure limit of 200uw/cm².

Connell Wagner have advised that the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA) recently conducted a survey of radiofrequency emissions from 14 independently selected mobile phone base stations Australia wide. These sites were selected by local governments, who were asked to nominate two mobile telephone base station sites in major population centres that were of concern to local communities. ARPANSA found that the largest recorded EME was 0.082uw/cm², which is almost 2500 times lower than the ACA standard.

The previously shown table demonstrates that the proposed facility will comply with the ACA standard and is in fact well below the standard.

- any submission received from the public

The matter raised have been addressed in the report.

Design and siting of the facility

The design of the proposed facility is typical of other base stations and considered appropriate for the intended use.

The facility is located at the rear of the property with pole being located approximately 3m from the northern and eastern boundaries and the equipment hut being located 2.5m from the north boundary and 6m from the eastern boundary. The closest factory building is to the north and is approximately 4m from the property boundary.

Objectors from 8 Dowling Place (to the north of the development site) have requested that consideration be given to relocating the facility closer to Walker Street. Re-positioning the facility will act to fragment the existing open air store area and car parking area thus causing interference with the day to day operation of the site. Moving the facility closer to Walker Street will also increase the visual impact of the facility when viewed from Walker Street.

It is considered that the proposed location of the facility is satisfactory.

Social and Economic Impact

The proposed facility will provide enhanced mobile telephone coverage to South Windsor allowing for a more efficient and greater use of mobile telephones.

No adverse social and economic impact is anticipated.

Suitability of the Site

The proposal satisfies all the locational performance criteria contained with Council's Telecommunication Facilities Amendment No.1 DCP.

The uses and existing amenity of surrounding landuses do not make this development prohibitive.

As a result the site is suitable for the proposed development.

Public Interest

The concerns of the objectors are recognised and have been addressed in the above report. The greater public interest will be served by improving mobile telephone coverage in the area.

Conclusion

The proposed development is not inconsistent with the objectives of the zone or the relevant provisions of SREP No. 20. The proposed development satisfies all the performance criteria of Council's Telecommunication Facilities Amendment No. 1 DCP which was recently adopted by Council.

The applicant has demonstrated the need for the facility and adequately examined alternative sites including potential for location. It is recommended that the proposed development be approved.

RECOMMENDATION:

That the application for a mobile phone base station and associated equipment hut be approved subject to the following conditions:

General

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 Connell Wagner numbered S063B-S1 A, S0063B - S2 A, S063B - 01 A dated 11 April 2000) submitted with Development Application No. M652/00 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. Compliance with the provisions of the Environmental Planning and Assessment (Amendment) Act 1979, and the Building Code of Australia.
3. Prior to construction of the approved development it is necessary to obtain a Construction Certificate.

Prior to Issue of Construction Certificate

The following conditions in this section of the consent must be complied with or addressed prior to the issue of any Construction Certificate relating to the approved development, whether by Council or an appropriately accredited certifier. In many cases the conditions require certain details to be included with or incorporated in the detailed plans and specifications which accompany the Construction Certificate. **The Construction Certificate shall be obtained prior to the commencement of any earth works or building works.**

4. Submission of design plans and calculations covering all pavement and drainage works required by this consent.
5. Construction and engineering plans and specifications are to be submitted to the Principal Certifying Authority.

Prior to Commencement of Works

6. A sign must be erected in a prominent position on any work site on which the erection or demolition of a building is being carried out:
 - (a) stating that unauthorised entry to the work site is prohibited; and
 - (b) showing the name of the person in charge of the work site and a telephone number at which that person may be contacted outside working hours.

This condition does not apply to:

- (a) building work carried out inside an existing building; or
 - (b) building work carried out on premises that are to be occupied continuously (both during and outside working hours) while the work is being carried out.
7. Erosion and sediment control devices are to be installed and maintained to ensure that there is no increase in downstream levels of litter, vegetation debris or other water borne pollutants in accordance with Council's Development Control Plan 1/94 - Soil Erosion and Sedimentation
8. The applicant or person having the benefit of this development consent must give at least two days notice prior to commencement of works to Council of the intention to commence works. This notice is to be given in accordance with form 7 of the Environmental Planning and Assessment Regulation 1998.
9. The applicant shall advise Council of the name, address and contract number of the principle certifier, in accordance with Section 81A 4(b) of the Environmental Planning and Assessment Act, 1997.
10. The following documentary evidence is to be obtained prior to the issue of any Construction Certificate, whether by Council or an accredited certifier:
 - (a) A Section 73 Certificate issued by the Sydney Water Corporation Limited or other evidence of Sydney Water's non-objection to the commencement of work on the basis of service availability.
 - (b) A written clearance from Integral Energy, stating that electrical services have been made available to the development or that arrangements have been entered into for the provision of services to the development.

11. The name and licence number of the licensed contractor/builder who has been contracted to do or intends to do the work must be submitted to Council in writing by the owner prior to the commencement of any work relevant to this approval.

During Construction

12. All building work must be carried out in accordance with provisions of the Building Code of Australia.
13. Inspections shall be carried out and compliance certificates issued by Council or an appropriately accredited person for the following components of construction:
 - (a) erosion controls, site works and site set out;
 - (b) piers;
 - (d) steel reinforcement;
 - (e) on completion of the structure.
14. Compliance with the provisions of the Environmental Planning and Assessment (Amendment) Act 1979, and the Building Code of Australia.
15. A sign is to be erected adjacent to the access point to the site for the duration of the site works stating the following:
 - (a) owner of site and address;
 - (b) person/company carrying out site works and phone number;
 - (c) consent number and date of approval; and
 - (d) approval duration of site works.

Use of the Site

16. A report from an independent consultant 12 months from the start up of the facility on the emission rates is to be submitted to Council. Where emission rates are found to be under predicted levels, further reports will be required on a 5 yearly basis. Where emission rates are over the predicted levels further reports will be required on a 12 monthly basis.

ATTACHMENTS:

AT1 - Locality Plan

AT2 - Site Plan

AT3 - Elevations

ENVIRONMENT

Meeting Date: 29 August, 2000

Item: **141**

AT1 - Locality Plan

ENVIRONMENT

Meeting Date: 29 August, 2000

Item: **141**

AT2 - Site Plan

ENVIRONMENT

Meeting Date: 29 August, 2000

Item: **141**

AT3 - Elevations

oooO END OF ITEM 141 Oooo

ENVIRONMENT

Meeting Date: 29 August, 2000

Item: **142**

ITEM: 142 **Section 96 Modification of Consent, Storage Units - Lot 12 and Lot 13 DP843673 No. 24 and 26 Bowman Street, Richmond**

FILE NUMBER: DA176/95/EVD/ENH29NAX.V16

Applicant: Mr R Hanckel
Applicants Rep: Mr R Hanckel
Owner: Mr R Hanckel
Stat. Provisions: HLEP 1989
Area: 1409m2
Zone: Residential 2(a)
Advertising: Notified to adjoining owners and occupiers. 1 letter of objection has been received.
Date Received: 7 June 2000 - Application for Section 96 Application.

Key Issues: - Drainage
 - Overshadowing
 - Streetscape
 - Excessive car parking
 - Landscaping

Action: Modification be approved.

REPORT:

Introduction

An application to modify Development Consent DA 176/95 has been submitted.

The application proposes the following modifications to the approved site plan ;

- Renovate the existing cottage for use as a manager's residence;
- Delete 2 proposed caretakers residences;
- Vary internal storage unit dimension to create 17 units;
- Amend car parking layout; and
- Amend location of front fencing.

Plan attached as Appendix A & B shows the approved and modified site plan.

The application is being reported because the original application was determined by Council. This report details the proposed modification, issues raised during the notification period and an assessment of the application in accordance with section 79C of the Environmental Planning and Assessment Act (EP&A Act) 1979. Based on the assessment the application is recommended for approval, subject to conditions.

Background

The original application for 15 Storage Units and 2 caretakers dwellings was determined by Council on 31 October 1995. Consent was given subject to conditions (Appendix A shows the approved site plan).

Community Consultation

The application was notified in accordance with Council's notification policy. One (1) submission was received and the following concerns were raised;

- Overshadowing
- Streetscape
- Excessive car parking
- Landscaping

These matters will be discussed later in the report.

In order to address the issues raised by the objector a meeting was held onsite with Council officers, the objector and adjoining property owner. As a result of this meeting the following agreements were reached;

- Relocate a portion of the building from the western side to the eastern side of the site;
- Ensure the approved building envelope does not increase;
- Restore the existing dwelling to an acceptable standard;
- Readjust the alignment of the front fence;
- Provide a suitable treatment to the walls on the boundary adjoining No. 22 Bowman St.

These agreements have been conveyed to the applicant who has agreed to amend the plans. The plans attached as Appendix 'C' are the plans incorporating the above agreements.

Issues Raised by the ObjectorOvershadowing

The concern related to increasing the length of the wall along the western boundary. As a result of the on site meeting the layout was amended. The additional storage units proposed along the western boundary have been relocated to the eastern boundary which will reduce the amount of shadow that would be cast onto the adjoining property to the west.

The dimensions of the storage units as amended have been reconfigured in such a way that the overall footprint of the proposed storage units has not changed from those approved under the original consent.

Streetscape

The existing cottage (proposed managers residence) is to be renovated and will address Bowman St. The removal of the proposed fence from the front boundary in the vicinity of the proposed managers residence will aid in reducing the visual impact of the proposed development and help it better integrate into the street compared to the approved plans which proposed a 1.8 m fence along the entire Bowman St frontage.

Car parking

The number of car parking spaces provided is considered to be satisfactory

Landscaping

A landscaped buffer zone of 3 metres along the front boundary has been previously approved by Council. No variation has been requested in relation to landscaping.

Noise

The subject site is located within a 40 ANEF (Australian Noise Exposure Forecast) contour. The Department of Defence advises that sites within the 40 ANEF contour are unacceptable for residential, commercial and light industrial land uses.

Given the above, section 96 it is considered that the deletion of the proposed dwellings is acceptable.

Section 96

Under section 96 Council can modify a development consent when the amendment is substantially the same development.

In this regard the modifications do not change the approved building envelope for the storage units. The works to the front of the site are seen as a positive outcome. As a result a Section 96 modification can be used in this case.

Conclusion

The proposed development will remain substantially the same as what was originally approved by Council.

The subject site is located within a 40 ANEF contour. A residential building located in such a contour is considered to be unsuitable. Therefore the deletion of the proposed dwellings is considered to be acceptable.

The additional storage units proposed have been relocated to minimise the effect of overshadowing on the adjoining property to the west and will be positioned within the approved building envelope.

Given the above, it is considered that the proposed modifications to the development would not significantly effect surrounding properties.

It is recommended that the modification be approved subject to appropriate conditions.

RECOMMENDATION:

That:

- A. Approval be granted for modification of Development Consent at 24 and 26 Bowman Street, Richmond, Lot 12 & 13 DP 843673, subject to the following conditions:

General

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 RE & PA Collis Design numbered 33997/3 dated October 1999 Issue D) submitted with Development Application No. DA 176/95 as amended 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.

ATTACHMENTS:

AT1 - Approved site plan - Appendix A

AT2 - Proposed amended site plan - Appendix B

AT3 - Amended site plan incorporating agreements with the objector - Appendix C

AT4 - Location plan

ENVIRONMENT

Meeting Date: 29 August, 2000

Item: **142**

AT1 - Approved site plan - Appendix A

ENVIRONMENT

Meeting Date: 29 August, 2000

Item: **142**

AT2 - Proposed amended site plan - Appendix B

ENVIRONMENT

Meeting Date: 29 August, 2000

Item: **142**

AT3 - Amended site plan incorporating agreements with the objector - C

ENVIRONMENT

Meeting Date: 29 August, 2000

Item: **142**

AT4 - Location plan

oooO END OF ITEM 142 Oooo

ENVIRONMENT

Meeting Date: 29 August, 2000

Item: **143**

ITEM: 143 **Car Repair Station - Lot 12 DP233001 420 Old Stock Route Road, Pitt Town**

FILE NUMBER: M539/00/EVD/ENH29NAX.V14

Applicant: Mr Daniel Sammut
Applicants Rep: Mr Daniel Sammut
Owner: Mr Daniel Sammut
Stat. Provisions: Hawkesbury Local Environmental Plan 1989
 Draft Hawkesbury Local Environmental Plan 1989 - Amendment No. 110
 Sydney Regional Environmental Plan No. 20 (No. 2 - 1997)
Area: 2.023ha
Zone: Rural 1(c)
Advertising: Surrounding landowners/occupiers
Date Received: 6 April 2000

Key Issues: - Deemed refusal appeal to the Land and Environment Court
 - Character of the area
 - Visual appearance
 - Noise
 - Proximity to residences
 - Amenity
 - Draft HLEP 1989 - Amendment No. 110

Action: Defend appeal

REPORT:

Introduction

Council received a development application for the establishment of a car repair station at 420 Old Stock Route Road, Oakville. The applicant has lodged a Class 1 appeal with the Land and Environment Court of NSW against Council's deemed refusal appeal of the application. This matter was reported to Council on 11 July 2000. The report provides detailed assessment of the application and recommends that Council defends the appeal.

Background

In November 1998 Council received a development application for the erection of a farm shed on 420 Old Stock Route Road, Pitt Town. The application consisted of the construction of a shed measuring 36.5m long by 18m wide which was to be erected a levelled area on the subject property. The application was placed on public exhibition, no submissions were received. The application was assessed by Council staff, determined to be a rural industry and subsequently approved by staff under delegated authority in January 1999.

In May 1999 site works for the development commenced. As a result of these works Council received a number of objections from surrounding residents. Council also received legal advice stating that rural industries were prohibited in rural zones. On 16 November this matter was reported to Council where it was resolved that "Council withdraw its consent to Lot 12 DP 223001, No.420 Old Stock Route Road, Pitt Town in relation to the application for a rural industry for the repair of farm machinery".

The applicant has now submitted substantially the same application to Council for a "car repair station". Car repair stations are presently permissible, subject to Council, consent within the Rural 1(c) zone, however, upon the gazettal of Amendment No. 110 to HLEP 1989, car repair stations will be prohibited.

The Proposal

The application is for a car repair station, specifically to carry out repairs to agricultural machinery not being body building, panel beating or spray painting other than a touch up nature.

The plans submitted with the application show a shed measuring 36m long by 18m wide by 7.6m high (ridge line). Attached to the northern side of the shed is an awning measuring 36m long by 18m wide by 6m high. The shed and awning are to be constructed of steel frame with "mist green" coloured metal walls and roof. The shed is to have a concrete floor, the area under the awning is to be gravel. The northern side of the shed has five openings measuring 5m wide by 5m high. The southern side of the shed has no openings. Four car parking spaces are proposed underneath the awning.

The shed and awning is to be erected on an existing levelled area created by cut and fill. This area, including batters, measures approximately 55m by 65m. The height of the fill, as shown on the plans, is approximately 2.2m high with the toe of the batter being approx 700mm from the southern boundary of the property. Inspection of this levelled area suggests that part of the fill is higher than 2.2m and the toe of the batter extends to the property boundary.

No advertising structures are proposed.

The applicant has provided the following written information and justifications to support the application:

The use will be conducted within the shed and involves dismantling, repairing and assembling farm machinery such as turf mowers, ploughs, bailers and other small machinery. Electrical welders oxy cutters and drilling machines are used - minimal noise is caused. The area around the shed is to be landscaped. Unloading by hand or forklift. Only one or two traffic movements a day will occur / approx one client per day.

All earth works associated with the development have been completed. Minor adjustment to front batters will be undertaken as requested by Council.

Work shall take place from 7am - 6pm Monday to Friday, 7am - 4pm Saturday. 3 persons are to be employed.

No mechanical work that requires the disposal of oil, petrol, coolants or other wastes are undertaken.

The shed shall contain five workbays. The size of the shed is necessary to store the machinery being worked upon, the equipment, my vehicles including a forklift and bobcat and storage of materials.

Most clients do not generally come to the property. In the majority of cases I pick up the machinery to be repaired from their property bring it to the workshop undertake repairs and return it to the owner.

Three employees are needed to efficiently undertake the repairs, attend customers properties to pickup and deliver repaired machinery, give quotations, undertake office work, clean up and handle machinery.

The Site

The property has an area of 2.023ha and is located on the eastern side of the Old Stock Route Road approximately 40m to the north of Schofield Road. The property contains a two storey residence, small shed, and a levelled area for the proposed shed and awning. Access to the site is from Old Stock Route Road via a compacted road base driveway. The property is substantially cleared around the residence and proposed development area, the balance of the property contains mature and regrowth vegetation endemic to the area.

The site slopes gently to the south draining partly into a small dam on the property and partly into the property immediately to the south. This property drains into a small dam near the intersection of Old Stock Route Road and Schofield Road.

Statutory Position

Hawkesbury Local Environmental Plan 1989 (HELP 1989)

The property is zoned Rural 1(c) under HLEP 1989. The objectives of the Rural 1(c) zone are:

- (a) *to primarily provide for a rural residential living style; and*
- (b) *to prevent the establishment of traffic generating development along main and aerial roads.*

Car repair stations are presently permitted within the zone subject to development consent.

Draft HLEP 1989 Amendment No. 110 seeks to prohibit car repairs stations in all rural zones. The draft plan has been publicly exhibited and is presently with the Minister of Urban Affairs and Planning for gazettal.

The provisions of HLEP 1989 as they relate to this application will be discussed later in the report.

Relevant Development Control Plans are:

Parking Policy Development Control Plan No. 2

Soil and Erosion Development Control Plan

Sydney Regional Environmental Plan No. 20 (No.2 -1997)

The subject site falls within the Middle Nepean and Hawkesbury River Catchment area defined by SREP No. 20. The site is not within an environmentally sensitive area or in an area of scenic significance. SREP No. 20 contains general and specific matters for consideration which are to be considered in the assessment of a development application. The relevant specific considerations are total catchment management, water quality, water quantity and flora and fauna. It is considered that the application is not consistent with some of the specific strategies of SREP No. 20 which relate to total catchment management, water quality and flora and fauna. This is mainly due to the potential for pollutants to run off the development site.

Community Consultation

The surrounding land owners and occupiers were notified of the proposal. 13 letters of objection were received. A summary of the objections is provided below.

- the business would be more accurately described as a manufacturing or fabrication engineering workshop;
- the size of the shed and awning is excessive and does not comply with Councils limitation of shed sizes for small rural properties;
- concerned about visual impact of the shed and awning and how the activity and structures will detract from the rural feel of the area;
- the amount of traffic movements generated by the activity is underestimated;
- concerned about large trucks visiting the site. Surrounding roads are narrow and are not designed for such use. Access to the site is unsatisfactory, drive visibility is poor;
- the activity is not acceptable in the rural zone of this type and should be in an commercial/industrial area;
- the activity will generate significant noise and its impact will be enhanced by topography of the area ie the shed is at the bottom of a natural amphitheatre and the noise will radiate up the adjoining slopes;
- no study has been undertaken with respect to the change of stormwater drainage;
- the original application was of such poor quality that it would deceive possible objectors;

- the original application was in error and should not have been approved;
- the development is not in the public interest;
- the proposed development will adversely affect the quality of lifestyle of the surrounding residents;
- spills of fuel, oils, greases, solvents etc would flow down through adjoining properties;
- concerned about odour;
- impact on flora and fauna;
- the size of the shed cannot be justified given the intended use;
- the application does not state that small and large hammers as well as rattle guns will be used. All make a lot of noise when used;
- the proposed hours of operation are unacceptable;
- no provision has been made for toilets, showers, lunch room or tea room or somewhere to clean up. This is a WorkCover requirement (*Council staff have confirmed with WorkCover staff that under the provisions of the Factories (Health and Safety) General Regulations 1913 such facilities are required and that under the provisions of the Factories (Health and Safety Spray Painting) Regulation 1977 a spray booth is required for spray painting that involves toxic, lead based or 2 pac paints*);
- if the applicant has to fabricate non genuine parts this would make this business a industry and hence prohibited in the zone;
- management of waste has not been considered adequately by the applicant; and,
- no details have been provided with respect to what materials will be stored on site or why a forklift and bobcat are required to be used.

Planning Assessment

The following are the relevant matters for consideration under Section 79C (1) of the EP & A Act 1979.

Hawkesbury Local Environmental Plan 1989

Objectives of Rural 1(c) Zone

The relevant objective of the zone is:

- (a) *to primarily provide for a rural residential living style*

Clause 9(3) states, inter alia, that Council shall not grant consent to the carrying out of development on land to which this plan applies unless the Council is of the opinion that the carrying out of the development is consistent with the objectives of the zone within which the development is proposed to be carried out.

Typically a rural residential living style is characterised by a relatively quiet rural area where properties sizes are generally less than 4ha with dwelling houses, landscaped gardens, small rural sheds, and agricultural uses dominating the landscape. It is considered that a car repair station of the type proposed is best characterised as being a light industrial type activity which is inconsistent with a rural residential living style. It is not an activity that could be said to be ancillary or complementary to what which may be reasonably considered to be a rural residential living style. This idea has been recognised by Council through draft Amendment No. 110 which seeks to prohibit car repair stations in all rural zones. Assessment of the impacts of this development later in this report will further confirm that the proposed development is inconsistent with objective (a).

Draft HELP Amendment No. 110

As stated above, Draft Amendment No. 110 seeks to prohibit car repair stations in rural zones. This plan is presently with the Minister of Urban Affairs and Planning for gazettal. It is understood that gazettal of the plan is imminent. The status of this plan is a relevant planning matter which must be considered by Council.

Parking Policy Development Control Plan No. 2

This DCP requires 6 spaces per work bay. The applicant proposes five work bays hence 30 car spaces are required. The applicant has provided only 4 spaces.

Soil Erosion Sedimentation Control Development Control Plan

A detailed soil erosion and sedimentation control plan has not been submitted with the application. This could however be required by condition of consent.

Council Policy regarding Rural Sheds

In January 2000 Council considered a report outlining a policy for the erection of rural sheds. This report contained a number of design guidelines, including:

- cut and fill should be limited to 2m of cut and 900mm of fill
Comment: The height of the fill as shown on the plans is 2.2m.
- the maximum of size of sheds in Rural 1(c) zones will not exceed 120m²
Comment: The area of shed and awning is 1296m².
- the total height of rural shed is to be limited to 5m or the height of the ridgeline of the dwelling on the property, which ever is the less
Comment: The height of the shed is 6m to the gutterline, 7.6m to the ridgeline.

The proposed shed does not comply with these design guidelines.

Likely impact of the development

Context and setting

The properties surrounding the subject site are primarily used for rural residential living purposes. The closest residences to the proposed shed and awning are approx 75m to the north, 130m to the east, 120m to the south and 250m to the west. Vegetation cover in the immediate area may be described as part grazing/paddocks and part bushland. The locality has a typical quiet rural atmosphere.

The shed is to be positioned in a highly visible area when viewed from surrounding residences and Schofield Road, and to a lesser extent Old Stock Route Road. The provision of landscaping is unlikely to adequately screen the shed and awning. There is little option to relocate the shed and awning elsewhere on the property in order to reduce its visual impact. It is therefore concluded that the shed and awning is inconsistent with the bulk and scale of surrounding development and that ameliorative measures such as landscaping and relocation/re-orientation will not be sufficient to soften its visual impact.

The use of the shed and awning for a car repair station is inconsistent with the context and setting of the surrounding area due to the likely noise, traffic movements, and hours of operation.

Traffic Generation and Site Access

The applicant states that 1 or 2 traffic movements per day would be created by the development. This is an underestimation. It is difficult to estimate the likely number of traffic movements however one could expect the sources of the movements would be the arrival and departure of staff and clients, spare parts and material delivery, and movement of trucks to cart machinery being serviced. Whilst the local road network could cater for the increased number of traffic movements, particular concern is raised about the access to the site.

The access to the site is at the bottom of a valley. A number of objectors have identified that speeding is a problem in this area. Traffic conflict could occur between a truck attempting to turn into the site and a motor vehicle coming down either side of the valley.

The proposed access and driveway is to be constructed of compacted road based. Given its slope and the likely usage by cars and trucks, the access and driveway should be constructed of concrete or bitumen.

Odour

The development and the proposed operation and its scale has potential to cause odour nuisance/offence to surrounding neighbours. The constant emission of these potential odours is not a characteristic of a rural residential living area. These potential odours are more appropriate within an industrial area.

Waste

The applicant has advised that no mechanical work that requires the disposal of oil, petrol, coolants or other wastes are to be undertaken. It is difficult to envisage how a car repair station, even one that specialises in the repair of agricultural machinery would not generate such wastes. At a minimum one would expect that machinery would require washing to remove excess dirt, grass, grease, oil, fertilizer etc prior to repairs being undertaken. The applicant has not provided any details for waste control and collection. Without appropriate waste control the potential exists for these wastes to cause pollution.

The collection and disposal of solid waste such as broken parts and equipment, packaging and scarp metal has not been addressed in the application.

If this application is to be supported appropriate pollution control devices such as collection pits and garbage containers would be required to be provided.

Flora and Fauna

A number of persons objecting to the proposed development raised concern about the loss of trees that has been caused by the construction of the levelled area for the shed and awning as well as the potential for pollutants to run off site and affect downstream flora and fauna.

Noise

The background noise level of the area would be expected to be quite low given its rural nature. The development would have potential to generate considerable noise due to the use of compressors, welding equipment, rattle guns, hammers, dropping of tools etc.

The topography of the immediate area acts as a natural amphitheatre which would be likely to make sound generated echo throughout the valley. Upon site inspection, the main areas of echo return were from the north, east and south.

The hours of operation proposed would result in nearby residents having potential to experience excessive noise generated by the development for an unreasonable amount of time during Monday to Saturday.

The applicant has not proposed any noise attenuation measures.

Social Impact

The resultant impacts of the development particularly the visual and noise impacts could detrimentally effect the social pattern of surrounding neighbours.

Suitability of the Site

The erection of the shed and use of the site for a car repair station in the manner proposed is unsuitable because of its siting, the building's scale and bulk, the potential for traffic conflicts, the low ambient noise levels and potential noise impact, the potential for wastes to cause pollution.

Public submissions

The matters raised in the letters of objection are relevant to the construction of the shed and awning and the ongoing usage of the property for a car repair station. Whilst some of the objections such as waste management and a reduction in the hours of operation could be addressed by condition of consent other issues such the appearance of the building, noise, traffic conflict cannot be overcome by either modification of the application or condition of consent.

Public Interest

It is considered that a car repair station in a quite rural area is not in the public interest as there is sufficient opportunity within the industrial and commercial zones of the City to cater for such activities.

Deemed Refusal Appeal

The Environmental Planning and Assessment Act 1979 provides for applicants to lodge an appeal with the Land and Environment Court (LEC) if a Council has not determined an application within 40 days of receipt of the application. For the purposes of the appeal it is deemed that Council has refused the application.

As stated previously the applicant has lodged an appeal in the LEC against Council's deemed refusal of this application. The assessment of the application contained within this report shows that the application is inconsistent with the zone objectives and has potential to significantly impact on the area and surrounding residences. It is therefore recommended that Council defend the appeal.

RECOMMENDATION:

That Council defend the Class 1 appeal lodged by Mr Daniel Sammut against Council's deemed refusal of the application.

ATTACHMENTS:

AT1 - Locality plan

AT2 - Site plan

AT3 - Elevations

AT4 - Elevations

ENVIRONMENT

Meeting Date: 29 August, 2000

Item: **143**

AT1 - Locality plan

ENVIRONMENT

Meeting Date: 29 August, 2000

Item: **143**

AT2 - Site plan

ENVIRONMENT

Meeting Date: 29 August, 2000

Item: **143**

AT3 - Elevations

ENVIRONMENT

Meeting Date: 29 August, 2000

Item: **143**

AT4 - Elevations

oooO END OF ITEM 143 Oooo

ENVIRONMENT

Meeting Date: 29 August, 2000

Item: **144**

ITEM: 144 **78 Greens Road, Lower Portland - Additional Caravan Sites and Storage Sheds**

FILE NUMBER: M619/00/EVD/ENH29NAX.V10

Applicant: Clr Glenys Gilling
Applicants Rep: N/A
Owner: Clr Glenys Gilling
Stat. Provisions: "Integrated Development" under EPA Act
 Hawkesbury Local Environmental Plan 1989
 SREP 20
Area: 13.206ha
Zone: Environmental Protection Scenic 7(d)
Advertising: Adjoining owners notified and site sign - 1 submission received
Date Received: 19 April 2000

Key Issues: - Visual impact of development
 - Effluent disposal
 - Suitability of the site

Action: Approval as "Deferred Commencement Consent"

REPORT:

The Application

The application has been made for:

- i Additional eleven (11) caravan sites which will be used for relocatable homes.
- ii Relocation of three (3) of the nine (9) sites approved in M319/98.
- iii Additional one (1) short term site.
- iv 2 colorbond sheds 12m x 7.2m for the storage of various equipment.

The proposed additional eleven (11) sites will be located adjacent to the existing access driveway and Greens Road.

The three (3) relocated and one (1) additional caravan site are located adjacent to existing sites that front the Hawkesbury River.

The proposed sheds are located adjacent to sites 29 to 31.

The additional and relocated sites are to be connected to the existing effluent system on the site.

Plan attached as appendix "A" shows the location of the proposed sites.

The applicant has lodged an appeal in the Land and Environment Court relating to a deemed refusal. This matter was reported to Council at its meeting on 11 July.

The application is recommended for approval as a "Deferred Commencement Consent", subject to conditions.

The Site

The property has an area of 13.206ha and occupies approximately 1.5km of Hawkesbury River frontage on a prominent meander downstream of the junction of the Colo River.

The property has been used as a caravan park since 1967. The existing development on the site includes:

- 55 caravan sites
- 3 holiday cottages
- a heritage listed stone cottage with approval to be used as a refreshment room
- 1 storage shed
- 6 boatsheds
- 2 large machinery sheds

Part of the property is flood affected and the floor height standard for the area is 8.7m AHD.

Statutory Situation

The development is defined as "Integrated Development" under Section 91 of the Environmental Planning and Assessment Act 1979.

The property is zoned Environmental Protection Scenic (7(d) under HLEP 1989. Tourist facilities are permitted within this zone.

The sandstone cottage is listed under Schedule 1 of HLEP 1989 as a heritage item.

In determining this application, consideration must be given to the relevant provisions of Sydney Regional Environment Plan No. 20 - Hawkesbury-Nepean River.

Public Notification

Adjoining owners were notified and the development application placed on public exhibition for the period 6-20 June 2000 with one (1) submission being received.

The submission was received from a property owner directly opposite the site in Baulkham Hills Shire Council area.

The matters raised in the submissions are:

- Overdevelopment of the site.
- Noise generated by the development, particularly at weekends and during school holidays.
- Impact of noise on their business involving a retreat facility.

Approvals/Consent Granted Over the Subject Property

Searches of Council records show that the following approvals have been granted for the subject property by Colo Shire Council or Hawkesbury City Council:

- Consent to Interim Development, dated 6/12/67 - Installation of nine caravan sites and facilities.
- Consent to Interim Development, dated 6/12/67 - Erection of a minimum six (6) holiday cabins.
- Consent to Interim Development, dated 14/1/70 - The establishment of a service station/refreshment room.
- Consent to Interim Development, dated 18/12/70 - The extraction of sand and the treatment of materials on the site of the proposed development.
- Consent to Interim Development, dated 4/7/75 - The erection of a dwelling.
- Development Consent No. 580/1981 - Establish a private recreational club incorporating sixty five holiday cottages, golf course and other related recreational facilities.
- Development Consent DA245/93 - Sewerage system for 25 caravan sites.
- Development Consent DA26/97 - Relocation of sites 5 to 28 inclusive including allocation of caravan sites to existing 3 cabins, being sites 5, 6, and 25.
- Combined Development and Building Consent DA/BA 1128/97 - Manager's residence.
- Combined Development and Building Consent BA 601/96 - Amenities block.
- Approval to Operate a Caravan Park and/or Camping Ground for 46 sites, dated 15/10/97. (Previous approvals to operate a caravan park and/or camping ground have been issued. The approval dated 15/10/97 is the current approval over this site.)
- Combined Development and Building Consent DA/BA 1612/97 - Erection of four colorbond sheds.
- Development Consent DA330/97 - Conversion of existing heritage listed cottage to a "Refreshment Room".
- Development Consent by Land & Environment Court M319/98 - Additional 9 caravan sites.

Planning Assessment**Matters for Consideration under Section 79(C) of the Environmental Planning and Assessment Act 1979**Provisions of HLEP 1989

The property is zoned Environmental Protection Scenic 7(d) under HLEP 1989. The current and proposed development is defined as a "tourist facility" under HLEP 1989. Tourist facilities are permitted within the 7(d) zone.

The relevant objective of the zone are:

- b) to protect hilltops, ridge lines, river valleys and other features of scenic significance by controlling the choice and colour of building materials and the position of buildings, access roads and landscaping; and,*
- e) to protect the low density, broad-acre character of the rural areas*

The following clauses of HLEP 1989 apply to development on the subject property; Clause 24 "Development within Zone No. 7(d) or 7(d1)", Clause 25 "Development of flood liable land", Clause 27 "Heritage items", Clause 28 "Development in the vicinity of heritage items".

The proposed eleven (11) caravan sites are located a minimum of 75m from the Hawkesbury River. The other 4 sites face onto the river. The 4 sites will house caravans or a relocatable home.

The eleven (11) sites will be screened from the river by the existing vegetation, no trees are to be removed and additional landscaping around the sites is proposed. These sites will not be visually obvious from the river. The relocated and one (1) additional sites will be located adjacent to the existing sites that face the river and will not have a significant visual impact.

The proposed sheds will be screened by the existing caravan site and the use of suitable external colours will reduce any potential visual impact.

The additional and relocated sites will not detract from the surrounding low density broad acre character of the area.

It is considered that the proposal satisfies the relevant objectives of the zone and the provisions of Clause 24 "Development within Zone 7(d) or 7(d1)".

The 11 relocatable home sites are to be located on land above the 1 in 100 flood event level. The proposal satisfies the provisions of Clause 25 "Development of flood liable land".

The proposed sites are located on the site in a position that will not impact on the heritage item. It is therefore considered that the proposal satisfies the provisions of Clause 27 "Heritage items" and Clause 28 "Development within the vicinity of heritage items."

Provisions of SREP No.20 Hawkesbury - Nepean River

The aim of SREP No. 20 is *"to protect the environment of the Hawkesbury - Nepean River system by ensuring that the impacts of future land uses are considered in a regional context"*.

SREP No. 20 also contains other relevant specific aims and objectives relating to total catchment management, water quality and water quantity.

The site falls within the Webbs Creek Catchment Area. The site is a scenic corridor defined as being of "Scenic Significance Beyond the Region".

It is considered that eleven (11) additional sites for relocatable homes will not significantly detract from the visual amenity of the area.

Effluent Disposal

The existing sewerage treatment and effluent disposal systems on the property comprise EPA approved septic systems with absorption trenches and other non approved systems with and without trenches or absorption pits. The installation of seventeen (17) septic tanks was approved by the EPA in September 1996. These systems are to replace the existing substandard and non approved systems and are to drain into the existing wetland in the middle of the property. The five (5) additional septic systems which are to be connected to the proposed nine (9) sites approved by the Court also drain to wetlands and were granted EPA approval on 11 August 1998.

The applicant has in previous applications provided a report of water quality testing taken from locations in and around the site which suggests that there is no evidence of effluent leakage to the river or to the bore (water table) on the site.

The applicant has provided information that argues that the existing system has the capacity to cater for the additional site proposed by this application.

This information has been assessed and it is not clear that the existing system can cater for the demand generated by the additional sites.

Notwithstanding the above, the site has the capability to provide an addition to the existing system that could cater for the effluent generated by the additional sites.

The provisions of the EPA Act allow Council to issue a "Deferred Commencement Consent" where the consent cannot operate until the applicant has satisfied Council in relation to any matter specified in the conditions.

The "Deferred Commencement Consent" is used where only further details are required and the general principle can be satisfied. In this case, it is appropriate to issue a "Deferred Commencement Consent".

It is considered that the proposed septic system addition is unlikely to significantly increase the environmental impacts of the existing and approved septic systems and hence the addition would not be defined as "designated development".

Likely Impacts of the Development on the Environment

The likely impacts of the development on the environment are those arising from on-site effluent disposal and increases in noise and traffic.

As stated above the existing septic systems can be altered to be able to cater for the additional effluent generated by the additional twelve (12) sites.

The site is currently developed with potential for 55 sites. The likely increase in traffic volumes created by the twelve (12) additional sites is considered to be minor relative to the total development. Likewise, the additional sites will not significantly increase noise levels in the locality.

Suitability of the Site

The additional sites represent a minor increase on the existing approved 55 sites.

The proposed eleven (11) sites are located above the 1 in 100 year flood event level. The applicant has demonstrated the site has sufficient water supply via an existing bore on the site. The applicant has stated that if the site achieved 100% occupancy all year round then water usage would be 15 megalitres. The property has approval from DLWC to extract up to 26 megalitres per annum

Effluent disposal can be achieved on the site, subject to further details being provided.

There is sufficient area on the property for the additional sites, the increase in patrons and the parking of their vehicles.

The nearest residence is located across the river approximately 300m from the sites. The proposed sites will not diminish the privacy presently enjoyed by surrounding residents.

It is considered that the site is suitable for the proposed development.

Public Interest

The other matter raised by the submission relates to overdevelopment of the site.

The proposed additional sites are not considered to be an overdevelopment of the site and will not detract from the visual amenity of the area.

Conclusion

The proposed development is considered to be satisfactory and will not have a significant impact on the visual quality of the area.

The additional eleven (11) sites for relocatable homes are located above the 1:100 year flood level.

The effluent disposal system for the additional sites can be accommodated onsite with an addition to the existing system

The Deferred Commencement Consent under the EPA Act is the most appropriate course of action in relation to this application.

RECOMMENDATION:

That:

- A.** The application for the twelve (12) additional and relocation of three (3) caravan sites and two (2) machinery sheds be approved as a "Deferred Commencement Consent", subject to the following.

SCHEDULE 1

Submission of a detailed report and plans from a qualified consultant showing the effluent disposal system for the additional sites.

SCHEDULE 2***Advisory***

1. The development being carried out in accordance with plan and associated documentation submitted with the development application M619/00 dated 19 April 2000.
2. All access roads that serve the additional sites are to be constructed of all weather surface.
3. A Compliance Plate must be attached to an accessible part of an associated structure that comprises a free standing garage.

Prior to Commencement of Works

4. Submission of detailed engineering plans showing the proposed access road and carparking for the eleven (11) units located adjacent to Greens Road.
5. All existing vegetation is to be retained and incorporated into the proposed access driveway and carpark area.
6. The caravan sites are to be located a minimum of ten metres (10m) from a public road (Greens Road).
7. Submission of external finishes for any relocatable cabins to be erected on caravan sites.

8. Provision of erosion and sedimentation control measures in accordance with Council's policy to protect the water quality of the river if the removal of the boat and machinery sheds or installation of the manufactured/relocatable homes disturbs grass or vegetation cover.
9. A detailed plan of landscaping being submitted and approved by the Director of Environment and Development. Landscaping is to be completed prior to the occupation of the proposed manufactured/relocatable homes and caravan sites.

During Construction

10. All demolition, construction and associated work necessary for the carrying out of the development being restricted to between the hours of 7.00am and 6.00pm on Mondays to Fridays and between 8.00am and 4.00pm on Saturdays.
11. No burning of demolition or construction material being carried out on the site.
12. A sign is to be erected adjacent to the access point to the site for the duration of the site works stating the following:
 - (a) owner of site and address;
 - (b) person/company carrying out site works and phone number;
 - (c) consent number and date of approval; and
 - (d) approval duration of site works.
13. Any tree or vegetation to be retained is to be suitably protected during construction of the civil and building works on the site.
14. Council is to be notified in writing of any installation of manufactured/relocatable homes within 7 days of installation
15. Exterior surfaces of the proposed manufactured/relocatable homes being painted or treated with a dark toned non-reflective material in such a manner so as to cause the structure to blend with the landscape of the site and its surroundings.

The Use of the Site

16. The subject development, including landscaping, is to be maintained in a clean and tidy manner.
17. All landscaping shall be permanently maintained in a good condition and in accordance with the intent of the landscaping plan.
18. 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.
19. No signs shall be displayed on the footpaths, pedestrianways, roadways or in the vicinity.

ENVIRONMENT

Meeting Date: 29 August, 2000

Item: **144**

20. Any manufactured/relocatable homes installed on the site are to be constructed, installed and maintained in accordance with the Local Government (Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 1995.
 21. The Approval to Operate a Caravan Park and/or Camping Ground issued by Hawkesbury City Council being updated to reflect the additional twelve (12) sites.
- B.** The applicant be advised that a Part 3A permit under the River and Foreshores Improvement Act 1948 will not be required if:
1. A minimum riparian buffer of 20m from the 'high bank' is kept within which no dwellings or earthworks are to be done.
 2. Any works are carried out within 40m from the 'high bank' of the Hawkesbury River.

ATTACHMENTS:

AT1 - Appendix A - Site plan.

ENVIRONMENT

Meeting Date: 29 August, 2000

Item: **144**

Site plan

oooO END OF ITEM 144 Oooo

ITEM: 145 **Water Management Bill****FILE NUMBER:** GW020/003/GMA/ENH29NAX.G08**PREVIOUS ITEM:** 241, Ordinary (08.08.2000)

REPORT:

At the August meeting of the Council it was resolved to defer consideration of the report that addresses the new Water Management Act to the August General Purpose Committee Meeting.

The Hawkesbury Local Economic Advisory Committee in considering the impact of water reforms has resolved as follows:

1. That the State Government be required to justify the restrictions placed on irrigating water from the Hawkesbury-Nepean system when it has not provided any facts and figures to prove that the river is stretched and in danger of running out of water, ie how can you place restrictions when there is no factual evidence to support arguments and agriculture and horticulture industries who have existed in the catchment for a number of years, have not observed a reduction in the available water.
2. The Government continue with obtaining returns from all licence holders to determine how much water is being used, so that if the system runs into unsustainable conditions in the future it will be clear what licence holders' rights may be.
3. Encourage the storage of water off-stream in dams and retention areas from the river in periods of high flow.
4. Consideration being given to establishing a system to allow transfer of dams within a catchment when existing dams are filled for residential and commercial development.

The continued growth of metropolitan Sydney with the construction of storage dams and the need to draw water into the Sydney catchment from the Illawarra area, has a significant impact on the river. The impact on the river in its current state is very well documented in the report of the independent inquiry into the Hawkesbury-Nepean River system by the Healthy Rivers Commission. That inquiry revealed that the way in which sewerage, stormwater, extractive industry, agricultural production and so on, must all change if river health is to be protected and/or enhanced. That change is necessary if the river system is to be sustained in both ecologically and economic ways. The inquiry concluded that advances in some areas are imperative, different decision processes and priorities are needed and significant modifications of behaviour are required on the part of all players involved. The commission's report addressed the institutional issues associated with managing the river and the need for an integrated approach to be implemented in the areas of water quality, flows, riverine corridors, urban stormwater, sewerage, extractive industries, aquatic weeds, agriculture and boating.

Both the Council and the Economic Advisory Committee have indicated the need to protect and encourage sustainable agriculture. NSW Agriculture facilitated the process in recent years with the development of the “Strategic Plan for Agriculture in the Sydney Basin”. That plan includes a number of issues particularly relevant and complimentary to the Healthy Rivers Commission’s inquiry and specifically including land use planning; implementation of best practices in farming and the implementation of measures which improve security and equity (necessary to engender a business climate conducive to the continued investment in agriculture enterprises in the catchment). In addressing this issue the Commission summarised the position indicating the need for strategies to be implemented now to mitigate agriculture’s impact on the river while also protecting sustainable agriculture from urban encroachment. The nexus between those two issues of urban encroachment, including rural residential development, need to be carefully assessed and balanced if there is to be any future for agriculture in the Sydney Basin.

The following is the report on the water management bill that was placed before the August meeting.

“The NSW Government has introduced into Parliament a Bill which proposes a new Water Management Act. The outcome will be the most significant change to water management legislation for 90 years. Comments on the Bill can be made up until 31 August 2000 to the Department of Land and Water Conservation.

One of the primary objectives of the proposed act is to protect and enhance water sources and the eco-systems which depend on them.

Water Management Plans will be drafted by local water management committees across the State. Through this planning process, water for the basic needs of eco-systems will be identified and protected.

The proposed Act specifies three types of environmental water:

- 1. Water for fundamental eco-system health, to be known as “environmental health water”. This is to ensure basic health of our water eco-systems and will include current environmental flow provisions on the Murrumbidgee, Namoi and other regulated rivers. At this stage the Hawkesbury is not considered as a regulated river.*
- 2. Water for specific environmental purposes which may or may not be needed every year, known as “supplementary environmental water”. This water will be set aside, but its use will be triggered by critical events, eg fish passage requirement. If this water is not used, it can be reallocated for extractive use or other purposes.*
- 3. Licensed water which is used for environmental purposes known as “adaptive environmental water”. This allows a holder of a water access licence to dedicate the water to environmental purposes.*

In terms of management of activities, the Act will simplify Government administrative processes with the following types of approvals specified:

1. *Water use approvals which authorise the use of water on land, issued for up to 10 years.*
2. *Water management approvals, being those for water supply works, drainage works or flood works, issued for up to 20 years.*
3. *Approvals for particular activities on water-front land including such things as sand and gravel extraction. These will be issued for up to three years.*
4. *Approvals for activities which interfere with aquifers including such things as mining operations and excavations. These licences will be issued for up to 10 years.*

In issuing any approval, the Department of Land and Water Conservation must be satisfied that adequate arrangements are in place to ensure minimal harm will be done to any water source or dependent eco-system.

The Act will also provide for the establishment of water source protection zones as part of the water management planning process with their establishment subject to rigorous consultation.

The reasons for the Act are that the Government believes that the stage has been reached that the continuing use of water is advancing degradation of the environment that will provide serious effects. This has clearly been pointed out in the Healthy Rivers Commission enquiries undertaken to date.

The competition for water has increased significantly, therefore to achieve the greatest community benefit there is a need to have sensible water-sharing arrangements and encouraging water users to employ water for its highest and best value use.

The Bill proposes that most of the previously existing Acts will be consolidated into one. It carries over many provisions from the Water Act, Rivers and Foreshores Improvement Act, Irrigation Corporations Act, Private Irrigation Districts Act, Water Supply Authorities Act, Hunter Valley Flood Mitigation Act and others.

In addition, it introduces new principles and processes which:

1. *Provide for a robust, functioning environment.*
2. *Strengthen the community/government partnership in managing water resources.*
3. *Clarify and strengthen water rights.*

The Act provides for land-holders to have two basic water rights. These rights will be tied to the land and cannot be transferred or sold and licences will not be needed.

1. *Domestic and stock rights. This will entitle land-holders to take water for domestic use and the watering of stock from any river, estuary or lake to which the land has frontage or from an aquifer underlying the land. Domestic use will include normal household purposes and watering a garden, although volumes may be specified and are likely to vary for different parts of the State. No approvals will be required for pumps, pipes, tanks needed to allow for the use of this right except for bores and in some instances, dams.*
2. *Harvestable rights. This will give land-holders the right to capture and use for any purpose a minimum of 10% of the average regional yearly rainfall run-off from their property.*

The proposed Act also introduces a more flexible and secure system of water licensing. Existing licences will be replaced with water access licences, water use approvals and water supply work approvals. The water access licence will be a right to a share of the available water from a water source, usually expressed in megalitres per year. This licence will be tradeable and will have a considerable value in some areas.

There are a number of categories of these licences that include:

1. *Local water utility which will have the highest priority and be issued for up to 20 years.*
2. *On regulated rivers, high security and general security water licences which will be issued for up to 15 years and opportunistic water licences which may be licensed for up to two years. High security will have priority over general security which will have priority over opportunistic.*
3. *Access licences for unregulated rivers, aquifers, estuarine water and coastal water, all issued for up to 15 years.*

The Act provides for transferable licences subject to the following:

1. *The rules set out in the relevant Water Management Plan or the Minister's plan.*
2. *Local and major water utilities can transfer allocations for one year only.*
3. *Opportunistic access licences are not transferable unless permitted by the relevant Water Management Plan or Minister's plan.*

The proposed Act provides for Water Management Plans that will give the rules and objectives at a local level to guide water management. The plans will have legal standing and include components such as water-sharing, water source protection, drainage management and flood plain management. The plans will be for a term of five years which can be extended by the Minister for a further five years if performance indicators are being met.

The plans will be prepared by water management committees that will include representatives from water users, councils, the aboriginal community, environmental protection groups, catchment management boards/trusts, the Department of Land and Water Conservation and others as deemed appropriate. Each committee will have an independent chair. They will be appointed by the Minister and will be given a specific task, eg to develop or review a particular type of plan within a particular area.

Where a Water Management Plan is not prepared and in place the Act allows the Minister to make a Minister's plan.

The proposed Act also establishes a Water Advisory Council as the peak advisory group to the Minister on matters relating to water management. The council will include State level representatives from the same interests as those specified for the water management committees.

The implementation of the Act is seen to take place in a period of up to five years and during this time licence holders should be able to continue operating as they currently are. The Act specifies that all existing licences, permits and approvals will be carried over, eg current water licence holders will continue to be able to use their current licences after the commencement of the Act for a transitional period.

If during the period of a Water Management Plan, the Minister adjusts the plan's bulk access regime in the public interest, the holder of an access licence whose water allocations are reduced as a result, can claim compensation from the Government. This does not, however, apply to opportunistic water licences.

The benefits seen from the proposed Act are:

- 1. Land-holders will have a basic right to access water from any river, estuary or lake to which the land has frontage, or to any aquifer underlying the land, to meet their domestic needs and for stock-watering.*
- 2. Land-holders have a harvestable right which can be used for any purpose.*
- 3. Basic water rights are available with no requirements for licences or approvals, except for bores and in some instances, dams will require approval.*
- 4. Basic water rights are free from Government fees and charges.*
- 5. Better to find and more secure licensed access to water.*
- 6. Rules for access to water in the future, defined and protected by statutory Water Management Plans.*
- 7. Simplified trading of water access licences.*

ENVIRONMENT

Meeting Date: 29 August, 2000

Item: **145**

8. *More opportunities for people to manage their water licence in ways that deliver financial advantages.*
9. *Greater flexibility in planning and developing water reliant enterprises.*
10. *Incentives for more efficient use of water.*

There has been some debate within the community regarding this matter and the Council may wish to hear representations at the next General Purpose Committee meeting. The deadline for comments to the Department is the end of the month and at this stage there is no indication of any extension.

It is considered that the reforms are in the interests of both water users and the environment are supported.”

RECOMMENDATION:

That the proposed reforms be supported and the Department of Land and Water Conservation advised accordingly.

ATTACHMENTS:

There are no supporting documents for this report.

oooO END OF ITEM 145 Oooo

ITEM: 146 **Notification of Waterways Authority of new noise limits when processing Aquatic Licenses**

FILE NUMBER: PK205 PT06/ENG/ENH29NBX.E19

REPORT:

During 1999 notification was received from the Waterways Authority regarding the implementation of a new Waterways Policy when processing Aquatic Licences.

Applicants wishing to exceed a noise level 100dB(A) at 30 metres were to seek Council approval. Council was then required to provide the Waterways Authority with written concurrence of the noise level for an event prior to aquatic licence being issued.

Whilst it was felt that the Waterways Authority should be taking the full responsibility of ensuring that current policies are being imposed and complied with, a reasonable approach by Council to ensure all current user groups and residents were treated equitably, would be to allow all events which had been approved during 1998 to continue at the existing noise levels at that time. This meant any new users groups or new events proposed by existing users would not necessarily comply with the reduced noise level imposed by the Waterways Authority.

Council at its meeting held on 9 March 1999 resolved that:

1. *Existing user groups and events which were held during 1998 be supported during 1999/2000 at the noise levels which were applicable during 1998.*
2. *Any events by new user groups or new events by existing user groups will be required to comply with the current noise regulations.*
3. *The matter be reviewed prior to the 2001 Governor Phillip Park event calendar being considered.*

Applications for use of Governor Phillip Park have been received from the Drag Boat Racers of Australia (DBRA), Upper Hawkesbury Power Boat Club (UHPBC), The Hawkesbury Aquatic festival and the NSW Water Ski Association Limited, for 2001.

Notification from the Waterways Authority has been received confirming new noise limits. Applicants who now wish to exceed 95dB(A) at 30 metres must submit to the Waterways Authority written concurrence from Council.

The Drag Boat Racers 2001 racing calendar is as follows:

Saturday 24 February 2001 - Set up and Equipment Testing (No Racing)
Sunday 25 February 2001 - NSW Drag Boat Championships (may require exclusive use)
Saturday 3 March 2001 - Set up and Equipment Testing (No Racing)
Sunday 4 March 2001 (only if 24 and 25 is cancelled due to inclement weather)

ENVIRONMENT

Meeting Date: 29 August, 2000

Item: **146**

Saturday 21 April 2001 - Rescue Training/Club Racing
Sunday 22 July 2001 - Club Racing

This organisation can currently operate within the following limits:

1. No competing vessel shall be permitted to emit noise in excess of:
 - (a) 115dB(A) - for more than 8 seconds measured at a distance of 30 metres during the race; or
 - (b) 105dB(A) - for more than 14 seconds measured at a distance of 30 metres during a race.
 - (c) 105dB(A) - for vessels running more than 14 seconds measured at a distance of 30 metres during the race.
2. The licensee shall ensure that noise levels from vessels of 105dB(A) and up to 115dB(A) shall not be exceeded for more than 2 minutes per hour.
3. The above noise criteria is not to be used more than four times a year at any one venue, and is only extended to specialised drag boat clubs affiliated with the Australian Power Boat Association.

The UHPBC 2001 calendar is as follows:

Sunday 7 January 2001	Club Day
Sunday 11 February 2001	Club Day
Sunday 11 March 2001	Club Day
Sunday 8 April 2001	Club Day
Sunday 6 May 2001	Bridge to Bridge and Club Day (Exclusive use required)
Sunday 20 May 2001	Alternative Bridge to Bridge day if 6 May 1999 cancelled due to inclement weather
Sunday 24 June 2001	Club Day
Sunday 15 July 2001	Club Day
Sunday 12 August 1999	Club Day
Saturday 8 September 2001	Spectacular (Exclusive use required)
Sunday 9 September 2001	Spectacular (Exclusive use required)
Sunday 14 October 2001	Club Day
Sunday 11 November 2001	Club Day
Sunday 2 December 2001	Club Day

The UHPBC has been complying with the limits outlined below to date:

- (a) Club Days - No competing vessel shall be permitted to emit noise in excess of 105dB(A) for more than 40 minutes per day.
- (b) NSW State Titles - No competing vessel shall be permitted to emit noise in excess of 105dB(A).

- (c) Bridge to Bridge Boat Race - No competing vessel shall be permitted to emit noise in excess of 105dB(A).
- (d) Unlimited Boat Race (Blown Boats) - This event is held directly after the Bridge to Bridge Boat Race and no competing vessel shall be permitted to emit noise in excess of 115dB(A).
- (e) Noise Test - (Prior to the Two Day Spectacular) - No competing vessel shall be permitted to emit noise in excess of 115dB(A) for more than 15 minutes in total through the day.
- (f) Two Day Spectacular - No competing vessel shall be permitted to emit noise in excess of 115dB(A) for more than 10 minutes in total per day.

The Hawkesbury Aquatic Festivals 2001 dates are 18 and 19 August 2001 and can operate within the following limits:

- (1) No Competing vessel shall be permitted to emit noise in excess of
 - (a) 114dB(A) - Straight Line Drags, at Windsor Marine Stadium, between South Creek and Windsor Bridge, for more than 10 seconds measured at a distance of 30 metres. They will be staggered at least one hour apart with five passes per day, not before 10.00am.
 - (b) 100-105dB(A) - Circuit Races, at Windsor Marine Stadium between South Creek and Windsor Bridge, each race maximum duration 10 minutes, maximum time per day 3 hours.
 - (c) 100-105dB(A) - Top End Sprint from Sackville to Windsor with up to sixty competitors with the full race duration taking no more than one hour. It should be noted that these vessels are easing off their acceleration by the time they are entering the Stadium area within Governor Phillip Reserve.
 - (d) 100-105dB(A) - Sackville one up Ski Race from Windsor and return to Windsor with up to one hundred vessels with the full race taking no longer than 4 hours. It should be noted that these vessels are easing off their acceleration by the time they are entering the Stadium area within Governor Phillip Reserve.
 - (e) 95dB(A) - Nippers, Wakeboarders and personal Watercraft all operate at or under the 95dB(A).

The NSW Water Ski Association has booked their event to be held on either 15 or 18 November 2001 and can operate within the following limit.

No competing vessel shall be permitted to emit noise in excess of:

- 100dB(A) with a tolerance of 3dB(A).

ENVIRONMENT

Meeting Date: 29 August, 2000

Item: **146**

This event has been running for the past 40 years and attracts around 260 boats from across Australia. Around 80 boats (320 crew members) travel from interstate, particularly from Queensland and Victoria. Last year ten international competitors attended and this year (2000) it is expected to have more with the Olympics being held in Sydney.

The Governor Phillip Reserve is the finish venue for the race and boats do not go past Windsor Bridge. Once past the finish line - just south of South Creek the boats are reducing their speed.

RECOMMENDATION:

That noise levels emitted by users of the waterway adjacent to Governor Phillip Reserve comply with the requirements of the Waterways Authority.

ATTACHMENTS:

There are no supporting documents for this report.

Oooo END OF ITEM 146 Oooo

ITEM: 147 **Windsor Marketplace, George Street, Windsor****FILE NUMBER:** M1077/00/EVD/ENH29NBX.V18

REPORT:**Introduction**

Council has received a development application and rezoning application for a proposed shopping centre in Windsor.

This report provides a brief overview of the proposal and makes recommendations with respect to Council granting owner's consent, resolving to prepare a Draft LEP to amend Hawkesbury local Environmental Plan and the opening of a road.

Property Zonings and Rezoning

The proposed development site is bounded by George, New and Johnston Streets and The Terrace and has an area of 1.28ha. The majority of the development is located on the land known as Hollands carpark.

(Refer to Attachment 1 - Locality Plan).

Properties the subject of the application are:

Nos 223, 227 & 229 George Street, Windsor. These properties are zoned 3(a) Business General

Lot 1 DP 586790, New Street, Windsor (known as Hollands Car Park). This property is zoned Part 3(a) Business General, Part 5(a) Special Uses - Water Treatment Plan and Part 5(a) Special Uses MWS & DB. This land is presently owned by Sydney Water Corporation and is under contract to be purchased by the proponent. The parts of the property which are zoned for 5(a) Special Uses are proposed to be used for car parking and vehicular access. It is proposed that the 5(a) Special Uses parts of this property be rezoned to 3(a) Business General.

No 6 and 8 New Street, Windsor. These properties are zoned 2(a) Residential. It is proposed that these properties be rezoned to 3(a) General Business to allow for vehicle access to the development.

Lot 2 DP 788531, 21 Johnston Street, Windsor. The property is zoned 2(a) Residential and is presently used as a road to gain vehicular access to townhouses at 19 Johnston Street and Hollands car park. This property is owned by Council and has not been opened as a public road. The applicant is investigating providing vehicle access to the site via this property. It is appropriate that the 2(a) Residential zoning be removed from this property so that it be opened as a public road.

Pt/Cnr Lot 3, The Terrace, Windsor. This property is zoned 6(a) Open Space Existing Recreation, classified as operational land and is owned by Council.

The development proposes to utilise the existing access and provide some additional landscaping.

The abovementioned rezonings will require the making of a draft local environmental plan which amends Hawkesbury Local Environmental Plan 1989.

Development Application

In summary the shopping centre contains:

- a two storey building with a gross floor area of 8195m² consisting of a 4185m² supermarket, a 180m² liquor store, a 615m² mini major and 2155m² of specialty shops;
- a loading dock which can accommodate up to 4 truck including 19m semi- trailers;
- car parking for 340m vehicles (282 undercover);
- a two storey medical centre with a floor area of 320m²; and,
- ancillary landscaping, including proposed landscaping on Council owned land open space

(Refer to Attachments 2 - 4).

The proposed hours of operation are 24 hours for the period 7.00am Monday to 12pm Saturday and from 8.00am to 10.00pm on Sundays.

The specialty shops are proposed towards the George Street frontage of the site with the supermarket behind over the existing carpark. The main pedestrian access to the shopping centre is from George Street and from the open car parking area.

The floor level of the speciality shops fronting George Street is approximately 16m AHD (ie existing ground level). The floor level of the supermarket is 17.5m AHD (ie approx 5.5 - 6m above the existing ground level). The height of the floor level is due to the 1% flood event for the area being 17.3m AHD.

The total height of the building above ground level when viewed from The Terrace is approx 13 - 15m.

Underneath the shopping centre 282 car parking spaces are provided. These will be substantially at the existing level of the ground.

Car access to the site is via New Street and The Terrace. Following discussions with Council staff, the applicant has deleted a proposed vehicle access from George Street.

Truck and service vehicle access to an elevated loading dock is off New Street.

The following buildings/structures are proposed to be demolished:

- three buildings in George Street being the former Retravision building and buildings either side of it.
- two residences at 6 and 8 New Street
- two decommissioned water tanks in Johnston Street

These buildings and tanks are not heritage listed under HLEP 1989.

The main planning issues relevant to the development application are:

- visual impact of the development, particularly when viewed from The Terrace
- traffic generation and provision of parking spaces
- noise
- impact on surrounding heritage listed buildings
- flooding
- impact of commercial viability on surrounding shops, particularly Colonial Arcade
- service vehicles traffic routes to the loading dock.

The applicant has submitted specialist reports on traffic, heritage impact, flooding, retail expenditure, and noise to accompany the application. The application has been referred to the RTA's Regional Traffic Committee. Chris Hallam & Associates (traffic consultants) and Council's Heritage Advisor have been engaged by Council to provide comment on the application.

Council owner's consent for the application

The application proposed access to the car parking area from the existing access in The Terrace. This land is zoned 6(a) Open Space and is classified as operation land under the Local Government Act 1993. The applicant also proposes landscaping on part of this open space.

Council consent as land owners is required to make the application complete.

Exhibition of application

The Environmental Planning and Assessment Act 1979 provides for draft local environmental plans (LEP) and development application to subject of the LEP to be exhibited concurrently. It is recommended that the draft LEP and the development application be exhibited together.

RECOMMENDATION:

That:

1. Council provide owner's consent for Pt/Cnr Lot 3, The Terrace, Windsor to be included in the development application.
2. Council resolve to prepare a local environmental plan to rezone lands as identified in this report.
3. The draft local environmental plan and development application be jointly exhibited in accordance with the Department of Urban Affairs and Planning Best Practice Guidelines.
4. Council resolve Lot 2 DP 788531, 21 Johnston Street, Windsor be dedicated as a public road.

ATTACHMENTS:

AT1 - Locality plan

AT2 - Site plan

AT3 - Floor plan

AT4 - Elevations

ENVIRONMENT

Meeting Date: 29 August, 2000

Item: **147**

AT1 - Locality plan

ENVIRONMENT

Meeting Date: 29 August, 2000

Item: **147**

AT2 - Site plan

ENVIRONMENT

Meeting Date: 29 August, 2000

Item: **147**

AT3 - Floor plan

ENVIRONMENT

Meeting Date: 29 August, 2000

Item: **147**

AT4 - Elevations

oooO END OF ITEM 147 Oooo

ITEM: 148 **Farm Gate Sales****FILE NUMBER:** GT160/002Pt02//ENH29NBX.V09

REPORT:

The Hawkesbury Harvest Group is seeking to promote the Hawkesbury City Council area as a place where members of the public can buy fresh produce and to also establish a group of producers to market these products in a coordinated promotion campaign. They are seeking to promote the sale of farm produce direct from the farm properties to members of the public.

Hawkesbury Local Environmental Plan has a definition for roadside stalls, which is essentially a structure on the side of the road designed to sell products produced on that land. A roadside stall does require development consent and often has difficulties with road safety, off street parking, on street parking and the integrity of the structure itself. Roadside stalls are also prohibited along all main roads.

This definition is not conducive to the concept that the Hawkesbury Harvest Group is trying to promote in that people should visit the actual farm itself, purchase products produced on the land from the farm owner and leave the property again.

It is considered that, in this case, a new definition will be required under Hawkesbury Local Environmental Plan and that this activity should become exempt development under certain circumstances.

It is proposed, therefore, that the following changes be made to Hawkesbury's Local Environmental Plan and its Development Control Plan.

1. New definition -

Farm Gate Sales - means of selling of agricultural products grown on the land and includes the sale of products made from the agricultural products grown on the land.

2. Farm Gate Sales would become exempt development where:

- i) all vehicles enter and leave the property in a forward direction
- ii) sales take place in an area of an existing building or part of an existing building not being greater than 75m²
- iii) parking is provided for at least 4 (four) cars
- iv) advertising signs displayed on the property do not have a total area exceeding 0.75m²

3. Changes to the Development Control Plan would include advice on how to lay out and design the carparking, explanation of what agricultural products grown on the land would mean and under what circumstances the products could be imported to replace them.

It should be noted that this is a relatively limited exemption to cope with the majority of farmers selling products from the land. If, however, the individual producer wishes to expand upon this proposal and include such items as restaurants, tea rooms, new sheds, or the construction of any new buildings then normal development application processes would apply. It would also include any larger advertising signs.

This may go in some small way in helping to assist the Hawkesbury Harvest Group in the promotion of this campaign, whilst at the same time maintaining appropriate development control over additional structures and use of farm buildings.

RECOMMENDATION:

That:

1. Pursuant to Section 54 of the Environmental Planning and Assessment Act, an amendment be carried out to Hawkesbury Local Environmental Plan to include the definition of "*farm gate sales*" as exempt development, as outlined in the report.
2. Pursuant to the provisions of the Environmental Planning and Assessment Act, the Development Control Plan on Exempt and Complying Development be modified as outlined in the report.

ATTACHMENTS:

There are no supporting documents for this report.

oooO END OF ITEM 148 Oooo

ITEM: 149 **Draft Local Environmental Plan - Amendment No.122 - No's 70 and 80 Macquarie Street, Windsor**

FILE NUMBER: LEP0002/00 Pt01/EVD/ENH29NBX.V03

REPORT:

On 11 April 2000 Council resolved to prepare a draft local environmental plan to delete Clause 42 of Hawkesbury Local Environmental Plan 1989 (HLEP 1989). The draft plan was prepared in response to a development application on 70 Macquarie Street, Windsor, for a motor cycle showroom.

Clause 42 of HLEP 1989 applies to Lots 101 and 102 DP 849449, Nos.70 and 80 Macquarie Street, Windsor and prohibits development for the purposes of a bus depot, car repair station, motor showroom, panel beating and spray painting undertakings, a service station, truck depot or any other purpose which is, in the opinion of the Council, similar to any of these purposes.

Deletion of Clause 42 of HLEP 1989 will allow the above-mentioned uses on the subject land.

In accordance with Section 62 of the Environmental Planning and Assessment Act 1979 the draft plan was referred to the Roads and Traffic Authority, Sydney Water, Integral Energy and Environment Protection Authority for comment. No submissions were received.

The draft plan was publicly exhibited for the period 29 June - 28 July 2000. The abovementioned public authorities and adjoining property owners were advised in writing of the draft plan. There were no submissions received as a result of the public exhibition.

Council has received Parliamentary Counsel opinion advising that the draft plan may be legally made, subject to the rewording of the aim of the plan. Attached to this report is the plan containing the recommended changes of Parliamentary Counsel. A report under Section 69 of the Act must now be sent to the Minister to enable the making of the plan. It is appropriate that Council exercise its delegated authority in preparing this report.

RECOMMENDATION:

That:

1. Council use its delegation in respect of the Section 69 report
2. Draft Hawkesbury Local Environmental Plan 1989 - Amendment No.122 be forwarded to the Minister for gazettal

ATTACHMENTS:

AT1 - Copy of Hawkesbury Local Environmental Plan 1989 - Amendment No. 122.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979**HAWKESBURY LOCAL ENVIRONMENTAL PLAN 1989****(AMENDMENT No. 122)**

I, the Minister for Urban Affairs and Planning, in pursuance of section 70 of the Environmental Planning and Assessment Act 1979, make the local environmental plan set out hereunder.
(P00/00327/S69)

Minister for Urban Affairs and Planning

Sydney,

2000

Citation

1. This plan may be cited as Hawkesbury Local Environmental Plan 1989 (Amendment No. 122).

Aims, objectives etc

2. The aim of this plan is to allow, with consent, the land to which this plan applies to be used for certain motor vehicles orientated uses, such as (but not limited to) a bus depot, a car repair station or motor showroom. The strategy used to achieve this aim is to repeal clause 42 of Hawkesbury Local Environmental Plan 1989 which prohibits such uses on that land.

Land to which plan applies

3. This plan applies to land within the City of Hawkesbury, being Lots 101 and 102 DP 849449, 70 and 80 Macquarie Street, Windsor.

Relationship to other environmental planning instruments

4. This plan amends Hawkesbury Local Environmental Plan 1989 in the manner set out in clause 5.

Amendment of Hawkesbury Local Environmental 1989

5. Hawkesbury Local Environmental Plan 1989 is amended by deleting clause 42.
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oooO END OF ITEM 149 Oooo

ITEM: 150 **State Environmental Planning Policy No. 1 and Subdivision of Urban Lots**

FILE NUMBER: GC280/004Pt03, DCP005/00/EVD/ENH29NBX.V06

REPORT:

Council at its meeting of 8 August 2000 resolved for a report to be prepared in relation to the use of State Environmental Planning Policy No.1 (SEPP1) for the subdivision of residential lots.

The current situation regarding the subdivision of residential lots is as follows:

1. Hawkesbury Local Environmental Plan 1989, Clause 12, requires that lots subdivided in residential zones must be at least 450m².
2. There is no exemption for the subdivision of duplexes or medium density housing using the Strata Titles or Community Titles Act, therefore, all these subdivisions must also be 450m². There used to be a general provision in State Environmental Planning Policies and Regional Environmental Planning Policies to allow the subdivision of these units, however, these have been repealed and no amendment has been made to Hawkesbury Local Environmental Plan.
3. Clause 15(a) of Hawkesbury Local Environmental Plan allows for a detached dual occupancy to be approved within Residential 2(a), 2(a1), or 2(c) zones.
4. Council's Development Control Plan on Dual Occupancy requires 600m² for the construction of detached dual occupancy or 400m² for the construction of an attached dual occupancy.
5. Council's Development Control Plan on Medium Density Housing requires 250m² per unit for a single bed unit, 275m² per unit for a two-bedroom unit and 300m² per unit for a three-bedroom unit.
6. Council's policy on dual occupancy and cluster houses requires a height limit of two stories, whereas, Council's Development Control Plan for Medium Density Housing sets a height limit of eight metres.
7. Hawkesbury Local Environmental Plan defines three types of residential housing. These are residential flat buildings, Class A, B and C, respectively these could be described as duplexes, town houses and three-storey walk ups. Residential flat buildings Class C are only allowed in Residential 2(c) zones.

The new Development Control Plan for Residential Development will take care of controls on height, density, carparking, private/public open space, external appearance, provision of amenities for the occupants, controls to ensure privacy is not affected for occupants and neighbours, and will replace the existing Development Control Plans for Dual Occupancy, Cluster Housing and Medium Density Housing.

This new Development Control Plan for Residential Development has been received in draft form and is currently being amended and finalised to allow it to be circulated to the Councillors, as it is part of an integrated package of combining all Council's Development Control Plans into one document.

There are inconsistencies regarding the policies concerning construction of housing. The LEP, for instance, allows for the subdivision of a lot in Residential 2(a) zones to be 450m². Further clauses allow a detached dual occupancy to be constructed in residential land. Development Control Plans, however, set different lot standards for detached and attached dual occupancy. These are left over from the previous State and Regional Environmental Plans. There is no provision to allow the subdivision of these units if the subsequent units are less than 450m², therefore as the LEP stands at the present time, if Council approves a dual occupancy on a 400m² lot, there is no ability to subdivide those subsequent units.

It should be noted however that until comparatively recently, these subdivisions were allowed to proceed and, in more recent times, the applicants have been required to use State Environmental Planning Policy No.1 to create units that are, in fact, less than the prescribed lot size set by the LEP.

It would seem that the most basic issue is that a consistent approach must be adopted to the creation of lots in residential zones and the number of dwellings that can be constructed on them so there is, in fact, some logic to it. If 450m² is a suitable amount of land required to construct a single dwelling house, then it could be concluded that 900m² is required to construct a detached dual occupancy. If, however, the pair of houses are designed to integrate properly and afford appropriate privacy for neighbours and occupants, it is considered that the minimum lot size required could be reduced to 600m² in this circumstance.

If the Medium Density Development Control Plan requires 300m² for a three-bedroom unit, then 600m² will be required to construct an attached dual occupancy consisting of two-three bedroom units, and an attached dual occupancy consisting of one bedroom unit would therefore require 500m².

In view of the current situation, it is considered appropriate to let the new Development Control Plan on residential development deal with the area required for the construction of individual units. Discussion of this new Development Control Plan may well lead to an alteration to the Local Environmental Plan on the minimum lot size for residential development in residential zones, and the exhibition of this new Development Control Plan could be viewed as the vehicle for this discussion to take place. It should also be noted that, with regard to residential character, the new Development Control Plan will introduce new location criteria on where these types of housing can be located.

In the meantime, it would seem appropriate to adopt a policy to allow a variation on minimum lot sizes for the creation of lots in residential zones, using State Environmental Planning Policy No.1, and to extend this policy to the approval of Strata Title, Torrens Title or Community Title subdivisions that arise from the consent being given to the construction of medium density cluster housing or dual occupancy development.

Conclusion

The situation is confusing regarding the sizes of lots and strata title units, medium density units, town houses and cluster homes, dual occupancies arising under Council's current policies. This matter will be resolved by the preparation of the new single Development Control Plan. There is no provision to allow consent to be given to the strata title of a duplex, if the units are less than 450m² each, whereas, Council's current policies would allow these units to be constructed. It is therefore concluded that State Environmental Planning Policy No.1 policy is required to allow these matters to be dealt within the interim period.

RECOMMENDATION:

That:

1. Council adopt as policy that subdivisions for land in Residential 2(a), 2(a1) and 2(c) zones be allowed to take place using the provisions of State Environmental Planning Policy No.1 where the average lot size is 450m² (four hundred and fifty square metres), and the smallest lot is at least 90% (ninety percent) of the standard.
2. Where consent is granted for the construction of a duplex, a cluster house, or medium density housing in accordance with Council's Development Control Plans, State Environmental Planning Policy No.1 be used to approve the subsequent titling of those units.
3. The new Development Control Plan for Residential Development be used as a vehicle for discussion in the community on residential lot sizes.

ATTACHMENTS:

There are no supporting documents for this report.

oooO END OF ITEM 150 Oooo

ENVIRONMENT

Meeting Date: 29 August, 2000

Item: **151**

ITEM: 151 **Tilmunda Pastoral Company Pty Ltd - 219 Springwood Road,
Yarramundi - Further request to amend development consent to allow
a continuation of extraction of materials for an additional two years**

FILE NUMBER: DA144/93/EVD/ENH29NBX.V02

PREVIOUS ITEM: 114, GPC Section 1 - Environment (25.05.1999)

PREVIOUS ITEM: 85, GPC Section 1 - Environment (29.02.2000)

REPORT:

An application has been received to extend by a further two years from November 2000 the existing operation of a soil and gravel extraction operation located adjacent to the Nepean River at Yarramundi.

History

Council at its meeting of 8 November 1983 approved an application to extract alluvial soil from the land subject to a number of conditions. Condition 19 of the approval related to the dedication of land and read as follows:

19. *The applicant is to dedicate to Council, as a public reserve and free of all charges 5.6 hectares of land and delineated on the map forming part of Local Environmental Plan No. 65, such dedication to take place at the expiration of works on the land or within four years of the date of approval whichever first occurs.*

The date of the approval was 10 November, 1983 and therefore the consent was to expire on 10 November 1987.

Prior to the expiration of the consent in 1987, Mr Peter Graham wrote to Council requesting an extension of time for the extraction and subsequent dedication of the open space land. The request sought a further five years extension to complete the excavation and restore the land as proposed.

The amendment was approved for a further five-year period to expire on 10 November 1992.

In 1988 the company obtained approval to extract gravel in addition to the alluvial soil.

In November 1992 an extension was granted to allow a further four years to complete the works. Further amendments were made and this gave approval for the extraction of material up until 10 November 1999.

At Council's meeting of 8 June 1999, it was resolved to allow a further extension of time to carry out the works. The resolution took the following form:

- A. *That the application be extended for twelve months from 10 November, 1999.*
- B. *All works should be carried out in accordance with the Plan titled "Rehabilitation Plan of Extraction Site." All rehabilitation works are to be carried out to Council's satisfaction.*

Council at its meeting of 8 April 1997 resolved that the dedication of the land for open space be deleted as a condition of consent. This was as a result of the Department of Urban Affairs and Planning (DUAP) or the Department of Land and Water Conservation (DLWC) indicating they were not prepared to accept the land.

The property is now the subject of a proposal by Mr Graham to establish a park and this matter was reported to Council on 29 February 2000.

The use of the site

The subject land is zoned 7(d1) under the provisions of the Hawkesbury Local Environmental Plan 1989. Extractive industries are prohibited in the zone. Sydney Regional Environmental Plan 20 (SREP20) also prohibits extraction of materials from the river in this area.

Mr Graham's legal representative has argued that extraction of material does not occur within the river and therefore SREP20 does not apply. The Hawkesbury Nepean Trust indicated that they believe the development to be prohibited. The prohibition of extractive industries within this area would not allow Council to approve any future extractive industries in this locality.

The original application was given approval for the extraction of alluvial soil for a period of four years and involved the dedication of a public reserve. That approval was issued in 1983 for four years and still continuing some 17 years later as a result of Council granting further extensions to the Development Consent.

Council granted approval for the extraction of material from 'the spit' area on the property subject to a Part 3A Permit being obtained from the Department of Land and Water Conservation. The Department and the Hawkesbury Nepean Catchment Management Trust have raised environmental concerns regarding extraction of material in this area. It has been suggested that it is unlikely that a permit would be issued for the extraction of material from the spit area.

Justification for Extension

In the submission for the extension to the development consent the applicant has suggested that a higher than average rainfall prevented extraction of soil between September and January 1998/99. During the same period in 1999/2000 the applicant suggests that rainfall was worse compared to the previous year and this prevented the extraction of materials from the site.

Rainfall recorded by the Bureau of Meteorology at Richmond for the nominated periods is as follows:

ENVIRONMENT

Meeting Date: 29 August, 2000

Item: **151**

Month	1998/1999	1999/2000
September	36mm	62.6mm
October	22mm	156.4mm
November	82.2mm	67.2mm
December	21mm	12.2mm
June	122.8mm	33.8mm
Total	284mm	332.2mm

The chart shows a definite increase in rainfall for the months of September and October 99/2000, however, while the overall total for 99/2000 is higher than the previous year the amount of rain that fell in the months of November to January is far less than the previous year.

The applicant has provided the following estimation of quantities of material available at the site for extraction:

- | | | |
|----|---------------------------------|----------------|
| 1. | Top soil | 50,000 tonnes |
| 2. | Rock | 50,000 tonnes |
| 3. | Sand & gravel at the waterfront | 150,000 tonnes |

Annual sales for the last 12 months (1/7/99 - 30/6/00)

- | | |
|----------|---------------|
| Top soil | 34,650 tonnes |
| Rock | 5,650 tonnes |

Having regard to the past history of the site and the lack of recent environmental planning to address concerns by the Department of Land and Water Conservation and the Hawkesbury Nepean Catchment Management Trust under SREP20 it is recommended that the application not be supported. The initial approval of four years has already been extended to 17 years with no clear indication when the extraction of material from the site will conclude. Instead, the applicant chooses to make applications for extensions to the use without a proper assessment being undertaken to address environmental concerns and issues now contained in SREP20.

Available options

The following are the various options that are available:

1. Permit the extension of two years as requested.

This is not a preferred option as it allows the further extraction of material without a full environmental assessment being conducted on the effects of the activity. The long-term effects are unknown and cannot be accurately determined with a proper impact statement being prepared.

The operation has had 17 years to complete the development which was originally limited to 4 years. As indicated above any extension could have a significant environmental impact.

2. Refuse the application and issue an order to the applicant under the provisions of the Environmental Planning and Assessment Act 1979 to cease operation and rehabilitate the site.

This is the preferred option, as it would require the applicant to cease extracting material from the site and for rehabilitation to be undertaken within a 12-month period.

The rehabilitation of the site must be conducted and adequate time should be provided for this to occur. To achieve this and to bring this matter to a conclusion it is recommended that Council issue a Notice of Intention under the provisions of Section 121 of the Environmental Planning and Assessment Act 1979. The notice should be followed by the Order directing that the extraction of material is to cease and the site rehabilitated within 12 months from the date of the order. Failure to comply with the Order would allow Council to enter the land and carry out the rehabilitation of the site. Bank guarantees currently held by Council for the rehabilitation of the site in the amount of \$40,000.00 could then be used for this purpose.

Alternatively, should the applicant fail to comply with the order, proceeding could be commenced in the Land and Environment Court after the twelve month period had lapsed. Relief could be sought through the Courts in addition to orders for the restoration of the site.

Conclusion

The applicant has been given several extensions by Council over many years that have allowed the operation to continue for 17 years, which is 13 years beyond the limit of the original approval issued.

The evidence submitted does not indicate a significantly wet period compared to the previous year, especially in the period November-January.

Concern is raised in respect to the activity operating without any further appropriate environmental assessment against the current planning controls.

The options available to Council have been examined and the option of serving Orders to rehabilitate the site within 12 months is the most appropriate action and should be pursued.

RECOMMENDATION:

That:

1. The application to extend the existing consent for the extraction of materials be refused for the following reason:

ENVIRONMENT

Meeting Date: 29 August, 2000

Item: **151**

- (i) That there is insufficient information provided to fully assess the environmental impact of the continuation of the extraction of materials from the site.
 - (ii) There is no certainty that irreversible environmental damage will not result if the proposal continues to operate without potential impacts being considered by way of a full assessment.
 - (iii) It is inappropriate to continue an activity that was approved for a period of four years under an application to modify a consent that has now been operating for 17 years.
2. An Order be issued under Section 121 of the Environmental Planning and Assessment Act 1979 for all works including rehabilitation of the site to be completed and all crushing and screening plants to be removed within 12 (twelve) months from the date of service of the Order. All rehabilitation works are to be carried out to Council's satisfaction.
3. The applicant be advised that should he fail to comply with the Order the sum of money in the amount of \$40,000.00 (forty thousand dollars) held by way of a bank guarantee will be called upon and the works will be carried out at his expense and under the supervision of Council. Alternatively, the applicant could be advised that if he fails to comply with the Order the matter will be placed in the hands of Council's Solicitors with a view to seeking relief through the Courts.

ATTACHMENTS:

There are no supporting documents for this report.

oooO END OF ITEM 151 Oooo

ENVIRONMENT

Meeting Date: 29 August, 2000

Item: **152**

ITEM: 152 **Drug and Alcohol Rehabilitation Centre - West Side Mission - Lot 289
DP751665 71 Sargents Road, Ebenezer**

FILE NUMBER: P1920/30/EVD/ENH29NBX.V05

REPORT:

This report has been prepared for information on the existence of unauthorised structures and a drug and alcohol rehabilitation centre that has been operating on a property at Sargents Road, Ebenezer for a number of years without any formal approval.

The report recommends actions to rectify the unauthorised use and structures on the site.

The Site

The property has an area of 18.820 hectares and is zoned rural 1(b) under the Hawkesbury Local Environmental Plan 1989. It is located on the western side of Sargents Road at Ebenezer. The property is subject to the provisions of Sydney Regional Environmental Plan 20 as it is located in the vicinity of wetlands identified in SREP20.

The property contains an abundance of native bushland with rocky outcrops. There have been several structures built on the property, most of which are unauthorised. The owner has advised that they were constructed of second hand materials by unskilled labour.

History

Information obtained by Council Officers, suggests that the use commenced as a drug and alcohol rehabilitation centre at North Rocks. This was operated under the name Caring and Sharing. It was later known as Westside Mission.

The organisation commenced operating the centre at Ebenezer in 1986 under the name West Side Mission.

The centre is self funded and does not receive any grants or income from government departments. There are no controls on the operations of the centre with no input from the Health Department or any other regulatory body.

Council issued an order under the Environmental Planning and Assessment Act 1979 for the removal of the unauthorised structure and the cessation of the unauthorised use of land on 18 November 1998. Details of the order are discussed later in this report.

The Use of the Site

The centre is patronised by young members of the community, both male and female. Some are directed to the centre by the courts and others are there voluntarily. The most number of people who have stayed at the centre at one time was 19, with the normal number in the vicinity of 8. As at 26 July 2000 there were 9 people staying at the centre, three girls and six boys.

The lodgings used by these people are the unauthorised structures described below.

The structures involve:

1. A large steel framed shed clad with colour bond sheeting and a timber floor located near the entrance to the centre. The shed is equipped with gymnasium equipment and a boxing ring. Annexed on either side of the shed are two skillion roofed timber framed structures clad with fibro and metal panelling. The internal walls of these annexures are lined with gyprock sheeting. The annexures and gymnasium contain a total of 13 bedrooms plus storage rooms and a kitchen.
2. At the side of the annexure and behind the gymnasium there are two rooms, each contains a toilet, a shower and a vanity basin. Some of these facilities were not connected to water or waste disposal system and therefore were not functional.
3. A small transportable container unit is located to the front of the gymnasium and this has been converted to a bedroom accommodation unit.

There are a total of 16 bedrooms available for use in these unauthorised structures.

This was reconfirmed in a recent inspection of 26 July 2000.

(photographs of the above structures and site plan are annexed to this report)

Orders Issued

On 3 November 1998 a Notice of Intention to Serve an Order was issued to the owner of the land to undertake the following:

- To cease using the premises for the purpose of a drug and alcohol rehabilitation centre;
- To vacate the buildings and structures which had been constructed without the necessary approval of Council within a period of 21 (twenty-one) days of the date of the Order; and
- To demolish and remove all buildings and structures which have been constructed on the land without the approval of Council within a period of 60 (sixty) days of the date of the Order.

No response was received and as a result an order to undertake the above was issued on 18 November 1998.

Following the issue of the Order attempts were made by the owner to lodge an application for the use of the site. The application was insufficient and could not be accepted as it lacked in details required to fully assess the proposal.

Since that time the owner has made application and gained approval to subdivide the property into two lots. The application was made with a view to the owner gaining funds to be used for the proposed use of the site as a drug and alcohol centre.

The matter of the order was not pursued as the owner gave undertakings to submit applications for the use of the site and adequate details for the structures built on the land. Requests have now been received from the Honourable John Ryan MLC regarding the status of proceedings to terminate this unauthorised use.

Given the time that has lapsed from the issue of the order, it is considered inappropriate to continue on this path. The most appropriate means to resolve the matter is now to place the matter before the Land and Environment Court.

Conclusion

The land has been used over a number of years as a drug and alcohol rehabilitation centre without any Council approval. A number of buildings have been constructed on the site, also without Council approval being obtained. The quality of these buildings are considered substandard and would not comply with the Building Code of Australia.

The use of the order system under the provisions of the Environmental Planning and Assessment Act 1979 has not been successful in resolving this matter. Council Officers efforts to assist Mr King in this matter have not resulted in a satisfactory conclusion.

In order to resolve the matter, the only course of action left to Council is in the Land and Environment Court.

RECOMMENDATION:

That the owner of the land be advised that:

1. The unauthorised structures located on the land are not demolished and within 21 (twenty-one) days of notification.
2. The premises are not to be used for the purpose of a drug and alcohol rehabilitation centre or for any other purpose that requires development approval without first having gain that approval.
3. Class 4 proceedings be commenced in the Land and Environment Court without any further delay if the structures are not demolished within the required period or if the land is used for a purpose that requires development consent and such consent has not been first obtained.

ATTACHMENTS:

AT1 - Site plan and photographs.

ENVIRONMENT

Meeting Date: 29 August, 2000

Item: **152**

Site plan and photographs

oooO END OF ITEM 152 Oooo

ITEM: 153 **Proposed rezoning at Lot 258 FP658249 and Lot 21 DP518147 - Nos 719 & 721 George Street South Windsor for family restaurant and service station/convenience store**

FILE NUMBER: P731/1630, P731/1640/EVD/ENH29NBX.V17

REPORT:

Council at its Ordinary Meeting of 27 June 2000 considered a report to rezone of No. 719 & 721 George Street South Windsor to allow a family restaurant and service station/convenience store. At this meeting it was resolved that:

“Council defer its determination on this application of four (4) weeks to allow the applicant to address the issues that were raised by Councillors at the last General Purpose Committee”.

The matters raised by Councillors related mainly to pedestrian and traffic management in the vicinity of the subject site and the roundabout on Colonial Drive.

Additional Information

Additional information was received from the applicant on 8 August 2000 and two options for traffic management have been identified/proposed:

1. Retention of the existing roundabout at the George Street/Colonial Drive intersection with installation of pedestrian activated traffic signal.
2. Removal of the existing roundabout and installation of traffic signals.

The applicant's traffic consultant, John Coady of Project Planning Associates suggests:

“Both options achieve the objective of providing safe pedestrian access across George Street, with the option which retains the roundabout with pedestrian activated traffic signals being the less expensive option. However, the applicants are prepared to implement either option”.

The two options are shown in Attachments 1 and 2.

Comment

The rezoning application and amended traffic details as outlined above were referred by to Christopher Hallam and Associates to provide an independent review the traffic implications of the proposed development.

The review of the traffic implications by the Consultant for the proposed development has raised the following concerns:

ENVIRONMENT

Meeting Date: 29 August, 2000

Item: **153**

1. The access to the proposed development is directly off a major roundabout and is contrary to the usual practice of keeping private driveways to a minimum.
2. The proposed double access, that is one for the family restaurant and the second for the service station/convenience store, will further compound the problems of delays and increase the chance of accidents.
3. Drivers leaving Colonial Drive and wishing to enter the service station might have difficulty in changing lanes before the service station entry and therefore creating perceived or real issues of right of way.

In relation to the options of pedestrian activated signals or the removal of the roundabout and subsequent installation of traffic lights, these were also found to be unacceptable. The installation of pedestrian activated lights at the southern side of the roundabout will further clog the roundabout.

The removal of the roundabout and subsequent installation of lights on a State Road will potentially create additional delays and are costly to maintain. The installation of lights are not appropriate at this location to serve the needs of the proposed development.

Further assessment concerning traffic development was also carried out and contradictory results were obtained when compared to the figures provided by the applicants consultant. The table below relates to a traffic analysis for the intersection as carried out by Hallam and Associates:

**TABLE 1 INTANAL Analysis of George Street/Colonial Drive/Site Access
Monday PM Peak Hour**

Factor	Current	Current Layout Plus Site Access	Site Access plus Extra Right Turn Lane into Site
Level of service	B	F	F
Degree of saturation	0.83	0.96	0.53
Average delay (secs/veh)	11	66	18
Peak movement delay (secs/veh)	20	134	100

Table 1 indicates quite different results to those claimed by the applicant. The significance of the level of service can be seen from the following extract from the RTA's *Guide to Traffic Generating Developments*.

As indicated above the Level of Service for the intersection of Colonial Drive and would be reduced from "B" to and "F" which is the lowest level. A guide to the Level of Service as indicated on the first row of the table is shown below:

TABLE 2 GUIDE TO INTANAL LEVELS OF SERVICE FOR INTERSECTIONS

Level of Service	Average Delay Per Vehicle (secs/veh)	Traffic Signals, Roundabouts	Give Way & Stop Signs
A	less than 14	Good operation	Good operation
B	15 to 28	Good with acceptable delays & spare capacity	Acceptable delays & spare capacity
C	29 to 42	Satisfactory	Satisfactory, but accident study required
D	43 to 56	Operating near capacity	Near capacity & accident study required
E	57 to 70	At capacity; at signals, incidents will cause excessive delays; roundabouts require other control mode	At capacity, requires other control mode
F	over 70	Over capacity; excessive delays	Over capacity; excessive delays

Hawkesbury Local Environmental Plan 1989

There has been some confusion concerning the permissibility of the proposed development. The proposed development falls within the definitions of a “*refreshment room*”, “*shop*” and “*service station*”.

As indicated in the report to the General Purpose Committee on 27 June 2000, the subject land is zoned Rural 1(c) under the provisions of HLEP 1989 and “*refreshment rooms*” are not listed in the land use table as prohibited development. “*Service stations*” and “*shops*” are however listed as prohibited development.

Notwithstanding the above, Clause 22 of HLEP 1989 relates to development fronting main and arterial roads and “*refreshment room*”, “*shop*” and “*service station*” are prohibited in a Rural 1(c) zone where fronting a main or arterial road.

Conclusion

The proposed traffic arrangements are considered to be unsatisfactory and will lead to further congestion in this section of George Street. Furthermore support of the proposed rezoning and subsequent development would add to, and further encourage a continuous sprawl of development along this section of George Street, detracting from the gateway into Windsor.

The subject land is inappropriate for the proposed development and it is recommended that the rezoning application not be supported.

RECOMMENDATION:

That the application to rezone Lot 258 DP658249 and Lot 21 DP518147 to allow a family restaurant and service station/convenience store not be supported.

ATTACHMENTS:

AT1 - Roundabout with pedestrian activate traffic signal option

AT2 - Traffic Signal option

ENVIRONMENT

Meeting Date: 29 August, 2000

Item: **153**

AT1 - Roundabout with pedestrian activate traffic signal option

ENVIRONMENT

Meeting Date: 29 August, 2000

Item: **153**

AT2 - Traffic Signal option

oooO END OF ITEM 153 Oooo

ITEM: 154 **Review of Determination Under Section 82A of EPA Act 1979 -
Development Application MA69/00 - Boundary Adjustment at Apple
Tree Service Station, Bells Line of Road, Bilpin**

FILE NUMBER: MA69/00/EVD/ENH29NBX.V07

REPORT:

Introduction

The purpose of this report is for Council to review a delegated authority refusal of development application MA69/00. The application for review of the determination has been lodged under Section 82A of the Environmental Planning and Assessment Act 1979.

Background

On 17 January 2000 Council received a development application for a two lot boundary adjustment of two properties which are presently used as a service station ie the Apple Tree Service Station on Bells Line of Road, Bilpin. The application was accompanied by an objection to the provisions of Clause 13 of Hawkesbury Local Environmental Plan 1989. A copy of the plan of subdivision is attached in Appendix 1.

The application was placed on public exhibition for the period 28 January to 11 February 2000. Council received a petition in support of the application with 59 signatures.

The applicant was determined by the Development review Panel under its delegated authority by way of refusal on 19 June 2000. The reasons for refusal are outlined latter in this report.

The applicant has requested that the determination by reviewed in accordance with the provision of Section 82A of the Environmental Planning and Assessment Act 1979.

Description Of Proposal

The application involves a two lot boundary adjustment of Cert of Title Volume 8311 Folio 155 (known as Lot A DP 419789) and Deed of Conveyance Book 3617 No. 737. The two properties have areas of 894m² and 140m² respectively. The applicant states that Lot A DP 419789 is derived from a closed road.

The applicant seeks to subdivide these properties by way of boundary adjustment to create two lots of 460m² and 570m².

The applicant seeks to use Clause 13 of HLEP 1989 to carry out this subdivision. The proposed subdivision does not comply with Clause 13 (2) and (3). The applicant submitted an objection under State Environmental Planning Policy No.1 (SEPP No. 1) to 13(2) and (3). The SEPP No. 1 objection was referred to the Department of Urban Affairs and Planning (DUAP) for their concurrence. DUAP advised that SEPP No. 1 could not be used to modify Clause 13(3).

Description of Site

The subject site is presently developed by way of a small independent service station with associated shop, toilets and shed. The whole site is triangular in shape and has direct vehicular access from Bells Line of Road.

Planning Assessment

Hawkesbury Local Environmental Plan 1989

Clause 9

The properties are zoned Environmental Protection Scenic 7(d) under HLEP 1989.

The relevant objectives of the zone are:

- (a) to preserve the existing wooded ridges and escarpments.*
- (b) to protect hilltops, ridgelines, river valleys and other local features of scenic significance by controlling the choice and colour of building materials and the position of building, access roads and landscaping;*
- (c) to prevent the establishment of traffic generating development along main and arterial roads;*
- (d) to control outdoor advertising so that it does not disfigure the rural landscape;*
- (e) to protect the low density, broad-acre character of the rural areas;*
- (f) to protect orcharding in the Bilpin area.*

It is considered that the proposed subdivision and resultant development of the lots would be contrary to satisfying the objectives the 7(d) zone, specifically (a), (c) and (e).

Clause 13 Subdivision by adjustment of boundaries

Relevant parts of Clause 13 are:

13. (1) *Nothing in this plan prohibits consent being granted for a subdivision of land by adjustment or relocation of common boundaries provided that:*

- (a) no additional allotments are created; and*

Comment: No additional lots are being created.

- (b) no allotment becomes, as a consequence of the adjustment or relocation, capable of subdivision under this plan; and*

Comment: The minimum area of lots to be created by way of subdivision is 40ha. No lots will become capable of subdivision.

(c) *the number of undersized allotments resulting from the subdivision does not exceed the number of undersized allotments before the subdivision; and*

Comment: No additional undersize lots are being created.

(d) *the number of dwelling-houses capable of being erected, as a consequence of the adjustment or relocation, does not exceed the total number permissible prior to that adjustment or relocation.*

Comment: At present the two dwelling houses are permissible on the development site. The applicant has not submitted any information with respect to the capability of dwelling houses to be erected on the lots created. Notwithstanding this, the number of dwelling capable of be erected as a consequence of the adjustment would not exceed the number permissible prior to the adjustment.

(2) *Subclause (1) does not apply to land that includes or consists of allotments smaller than 450 square metres*

Comment: The applicant states that one of the existing lots is less 450m².

(3) *Subclause (1) does not apply to land that includes or consists of allotments derived from or forming the whole or part of land resulting from the closure of part or all of a road, irrespective of when that closure occurred.*

Comment: As stated above the larger lot (believed to be Lot A DP 471989) is derived from the closure of a road.

Hence it is argued that the application for boundary adjustment cannot be supported because the application does not satisfy Clause 13 (2) and (3).

Applicant's SEPP No. 1 submission with respect to Clause 13

The applicant submitted a SEPP No. 1 objection to 13(2) and 13(3). In summary the objection stated:

To clarify . . . objection is raised to Clause 13(2) relating to allotments smaller than 450 sq. M and to Clause 13 (3) relating to closed roads.

Mr Ineson (the owner) has been frustrated in leasing out part of his complex in as much as no person has entered into a lease. He has a various times tried to sell leather goods but the return therefrom was not commensurate with the effort.

The subdivision will allow him to provide premises that can be leased for more than five years (a lease of this term must be on its own title). He feels this would put him in a stronger economic positions than now exists.

Determination of Development Application

SEPP No.1 can only be used to vary development standards contained in environmental planning instruments such as LEPs and REPs. SEPP No.1 cannot be used to vary definitions or prohibitions contained within environmental planning instruments.

Clause 13 (2) is a development standard and may be varied under SEPP No. 1.

Clause 13 (3) defines a circumstance where Clause 13 cannot be used. It is not a development standard to which SEPP No. 1 can be applied.

The subdivision sought can only be considered by way of a SEPP No.1 objection to Clause 11 (2) (a) of HLEP 1989, ie the 40 ha minimum area provision. The applicant did not submit an objection to Clause 11 (2) (a). Further, it was considered that an objection to Clause 11 (2) (a) could not be supported because the resultant subdivision and development would be contrary to the objectives of the 7(d) zone.

The application was therefore refused on 19 June 2000 for the following reasons:

1. *The proposal is inconsistent with the objectives of the zone.*
2. *The proposal does not comply with Clause 13 of Hawkesbury Local Environmental Plan 1989 and is therefore prohibited*
3. *Insufficient information relative to vehicle access, provision of service and utilities, and the building's compliance with the Building Code of Australia has been provided to assess the application.*
4. *The proposal would create an undesirable precedent.*
5. *The proposal is not in the public interest.*

Review of Determination

Section 82A of the Environmental Planning and Assessment Act 1979 provides applicants with the ability to request Council review a determination of a development application.

The applicant has requested that this determination be reviewed. To support the request that applicant has stated:

I believe both clause 13(2) and 13(3) are unreasonable in their application to this matter.

ENVIRONMENT

Meeting Date: 29 August, 2000

Item: **154**

It is considered that no new information has been submitted by the applicant to warrant any change in Council's previous delegated authority determination of the application.

It is therefore recommended Council's previous determination of 19 June 2000 be upheld.

RECOMMENDATION:

That Council's previous determination of MA69/00 dated 19 June 2000 be upheld.

ATTACHMENTS:

AT1 - Sketch of proposed subdivision.

ENVIRONMENT

Meeting Date: 29 August, 2000

Item: **154**

Sketch of proposed subdivision

oooO END OF ITEM 154 Oooo