



general
purpose
committee

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section

environment

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Item: **155**

ITEM: 155 **Proposed Detached Dual Occupancy and Conservation of Existing Heritage Listed Cottage ("Buena Vista") - Lot 1 DP546192 5 Bowen Mountain Road, Grose Vale**

FILE NUMBER: M1985/99/EVD/ENJ03NAX.V15

Applicant: Mr John Weir
Applicants Rep: Mr John Weir
Owner: Mr John Weir
Stat. Provisions: Hawkesbury Local Environmental Plan 1989
 Sydney Regional Environmental Plan No. 20 (No. 2 - 1997)
Area: 3.962ha
Zone: Environmental Protection Scenic 7(d)
Advertising: First notification 10 February - 13 March 2000 - two objections
 Second notification 27 July - 28 August 2000 - no objections
Date Received: 15 December 1999

Key Issues: - Conservation of heritage item
 - Heritage conservation incentives of HLEP 1989
 - Preservation of rural character

Action: Approved, subject to conditions

REPORT:

Introduction

The applicant seeks approval to carry out conservation works and additions to a heritage listed cottage known as "Buena Vista" and approval for a second dwelling on Lot 1 DP 546192, 5 Bowen Mountain Road, Grose Vale.

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 conservation works and additions to a heritage listed cottage on the subject property and the erection of a second detached dwelling on the property.

Refer to Attachments 1 & 2.

In summary the conservation works of the cottage consist of:

- stabilisation of the structure;
- reconstruction of piers and brick walls;
- re-pointing of brickwork;
- termite treatment;
- demolition of unsympathetic timber framed fibro clad rear addition and concrete paths adjacent the cottage;
- repair/reconstruction of timber floor, wall and roof framing, improvement of sub-floor ventilation;
- reconstruction of the front verandah and repair/reconstruction of window, doors, ceilings and decorative timber work, and timber floor boards;
- re-roofing, new gutter and stormwater lines;
- repainting of cottage in a mix of cream, indian red and imperial ivy green,

The additions to the cottage consist of one bedroom and an ensuite. The existing laundry, bathroom and kitchen are to be renewed.

The second dwelling is to be located approximately 120m from the cottage and is to be partially screened by existing and proposed vegetation. The second dwelling is a single storey modern Victorian interpretation timber clad building. It contains four bedrooms and has a floor area of 194m². A free standing double garage of matching style is to be constructed along side the residence. A driveway to serve this residence is to be constructed from the western end of the property using an existing vehicular entrance. The driveway is to be constructed of compacted road base.

Other works proposed include:

- restoration of the original gateway entrance near the intersection of Bowen Mountain Road and Cartes Lane;
- re-establishment of the semi-circular driveway entering through the gateway and exiting onto Bowen Mountain Road;
- establishment of a formal garden in front of the cottage;
- construction of an earth bank along Bowen Mountain Road to provide privacy and minimise vehicular noise from Bowen Mountain Road;
- restoration of a slab stable building including stabilisation, new footings, replacement of roof to match original, painting to match cottage;
- an aerated effluent disposal system to serve the two residences;
- water tanks located within the immediate vicinity of the two residences. Tanks are to be in ground 100,000 litre concrete tanks and 5000 litre galvanised tanks near the cottage and slab barn; and

- removal weeds and lantana throughout the property, and 8 pinus radiata trees along the western boundary and 5 self seeded pinus radiata throughout the property, and revegetation with native seedlings endemic to the area.

Description of the Site

The property is located on the south-western corner of the intersection of Bowen Mountain Road and Carters Lane. It is irregular in shape with an area of 3.962ha. The main street frontage of the property is Bowen Mountain Road. The property is substantially cleared of trees and shrubs etc and has a small plateau along Bowen Mountain Road. South of the plateau the property has a medium to steep slope and forms two gullies which feed into Bellbird Creek (a tributary of the Grose River). Within these gullies is a mix of endemic and introduced vegetation.

The cottage is of late Victorian period and is located on the north-eastern corner the property. The cottage is in a dilapidated condition and is in danger of collapse. The property has been recently sold and the new owner has carried out stabilisation works in order to minimise the likelihood of collapse. Other works carried out by the new owner include a general clean up of rubbish, weatherproofing of the cottage, planting of vegetation to help stop erosion of gullies feeding into Bellbird Creek, stabilisation of slab stables adjacent to the cottage, treatment of white ant activity, landscaping.

A right of carriage way exists on the western side of the property which provides access to a property to the south. Surrounding properties are of similar sizes and are primarily used for rural-residential and grazing purposes.

Statutory Position

Environmental Planning and Assessment Act 1979

The applicant has submitted the application in the belief that an approval under Part 3A of the Rivers and Foreshore Improvement Act 1948 would be required and hence the application would be defined as “integrated development” under Section 91 of the EP & A Act 1979. The relevant approval body the Department of Land and Water Conservation. (DLWC) have advised that a Part 3A will not be required.

Hawkesbury Local Environmental Plan 1989

Clause 9

The property is zoned Environmental Protection (Scenic) 7(d) under HLEP 1989. The relevant objectives of the 7(d) 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 buildings materials and the position of building, access road s and landscaping;*

...

(e) to protect the low density, broad acre character of the rural areas;

...

The existing cottage and new residence are located within cleared areas. The applicant proposes a revegetation program using native trees and shrubs endemic to the area. The choice and colour of building materials and the position of the proposed residence, driveways and landscaping is considered satisfactory. The new residence is to be located below the ridgeline such that only the roof of the residence will be visible from Bowen Mountain Road. It is considered that, given the existing small lot sizes which surround the property, the addition of one residence, garage and associated landscaped areas will not significantly impact upon the existing character of the area. It is therefore concluded that the proposal is consistent with the above mentioned objectives of the zone.

Detached dual occupancies are prohibited in the Environmental Protection (Scenic) 7(d) zone under HLEP 1989. Council may however grant consent to the proposal by way of the conservation incentives relating to heritage items contained within HLEP 1989.

This has been confirmed in a legal opinion obtained from Abbott Tout.

Clause 18 Provision of water, sewerage etc service

Water to serve the residences is to be collected from roof run-off and stored in water tanks. Sewerage is to be treated and disposed of on-site by aerated waste water systems. Electricity is to be provided by the local authority. The provision of these services is satisfactory.

Clause 21 Danger of bushfire

The property is within a high bush fire area. The property is substantially cleared and slopes to the south. The risk of bush fire does not make the property unsuitable for the proposed development. Appropriate conditions should be attached to any consent to minimise the loss of property as a result of bush fire and to ensure compliance with Council's Bushfire Mitigation Policy.

Clause 24 Development within Zone 7(d) and 7(d1)

The proposed height, siting and colour of the proposed additions and new residence is considered satisfactory and will not detrimentally impact upon the surrounding landscape, surrounding development or scenic quality of the area.

Clause 27 Heritage items and Clause 28 Development in the vicinity of heritage items

The proposed conservation works, additions, removal of trees, erection of the second dwelling will assist in preserving the heritage significance of the cottage and its setting. This will be further discussed later in the report.

Clause 29 Conservation incentives relating to heritage items

Clause 29 states:

Nothing in this plan prevents the Council from granting consent to the use for any purpose of a building that is a heritage item or of the land on which that building is erected, if the Council is satisfied that:

- (a) the use would have little or no adverse effect of the amenity of the area; and*
- (b) conservation of the building would be assisted by the granting of consent*

It is considered that the erection of a second dwelling and use of both dwelling for residential purposes will not significantly impact upon the amenity of the area. The applicant purpose to conserve the cottage as part of the development application.

The applicant has provided the following justification for the proposal with respect to the use of Clause 29:

The establishment of a new primary residence is essential to an appropriate restoration of the cottage. Without the new primary residence, the heritage cottage is unsuitable, as it is too small to serve as a viable family home by today's standards.

The proposed primary residence will provide a viable family home for the property facilitating not only financial security for the heritage cottage, but also physical security as the current owners may be in residence to monitor maintenance and ensure appropriate use of the cottage by tenants.

The cost of the initial restoration works, is estimated to be in excess of \$100,000. Interest expenses and the costs of ongoing maintenance will be met by the use of the heritage cottage as rental accommodation. This will generate a positive cash flow that will secure not only restoration of the cottage, but its ongoing preservation and appropriate setting in well-maintained grounds

Clause 30 Heritage advertisements and notifications

The application has been publicly exhibited in accordance with the requirements of this Clause. Submission received will be discussed later in the report.

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

The subject site falls within the Grose River Catchment area defined by SREP No. 20 (No. 2 - 1997)

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 contains general and specific matters for considerations, specific planning policies, recommended strategies and development controls which are to be considered in the assessment of a development application.

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The proposal is consistent with the aims of the plan as well as the general and specific planning policies, recommended strategies and development controls.

Dual Occupancy Development Control Plan

The provisions of the Dual Occupancy DCP relevant to this application are provided in the table below:

DCP STANDARD	REQUIRED	PROPOSED	COMPLY
MINIMUM ALLOTMENT SIZE	600m² for detached dual occupancy	3.962ha.	YES
FLOOR SPACE RATIO	0.5 : 1	significantly less than 0.5 : 1	YES
PRIVATE OPEN SPACE	Enclosed courtyard to be a minimum of 50 sq.ms. Per dwelling	Courtyards are not proposed as most of the 3.962ha of the property is to be used for private open space	YES
	Landscaping must be compatible with the scale of the building.	Proposed landscaping and revegetation is satisfactory.	YES
CAR PARKING	Two off street covered spaces are required.	Two covered spaces are proposed for the new residence, no covered spaces are provided for the cottage. It is considered that additional structures within the immediate vicinity of the cottage may be detrimental to preserving the heritage significance of the item, hence uncover parking for the cottage is not required.	YES
	Covered spaces to be setback 5.5m from street alignment	Setback approx 60m from Bowen Mountain Road.	YES
	Covered parking spaces shall have an minimum internal dimensions of 3mx6m.	Double garage has internal dimensions of 7m by 7m	YES
	Design of garage to be integrated with the dwelling.	Design of garage is satisfactory.	YES
	All parking spaces shall be a hard standing	All parking spaces are hard standing	YES
	Driveways to have a minimum width of 3m.	Driveways to serve residences can achieve minimum width.	YES

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DCP STANDARD	REQUIRED	PROPOSED	COMPLY
CAR PARKING (Continued)	• Driveways should be designed where possible to facilitate vehicular egress from the site and will be considered with regard to effect on local traffic safety and traffic flow.	Proposed driveways and egress is satisfactory.	YES
SETBACKS	• Setback of 7.5m to road.	Setback of new residence is 42.5m from Bowen Mountain Road.	YES
DESIGN CONSIDERATION S	• Living areas to be orientated to north wherever possible.	The kitchen on the new residence is orientated to the north. The living, dining room is orientated to the east and south to take advantage of the views to the south-east.	YES
	• Roofs of carport shall reflect roof form of existing dwellings or new dwelling.	The roof of the garage reflect roof form of the new dwelling.	YES
	• New construction shall incorporate building materials utilised within the existing or surrounding development.	New residence to be constructed of steel roof, weatherboards and timber framed windows.	YES
HEIGHT OF BUILDINGS	• In dual occupancy where a dwelling already exists on the land the second dwelling if detached shall not be higher than one storey (ie 3.6 metres).	The new residence is single storey. The front of the dwelling is approx 3.4m high (gutterline). The rear of the residence is approx 5.2m high (gutterline) The increase in height is due to the slope of the land and the suspending floor construction. This type of construction is preferred to the alternative of cut and fill because it will cause less disturbance to the landscape. As a result it is considered that strict compliance with the standard is unreasonable and unnecessary in this case.	YES

Based on the above assessment the proposal achieves satisfactory compliance with the objectives and development standards of the DCP.

Soil Erosion and Sedimentation DCP

Soil erosion and sedimentation controls are to be implemented during works on the cottage and new residence.

Community Consultation

The application was publicly exhibited in accordance with the provisions of the HLEP 1989 and the EP & A Act 1979 for the period 10 February - 13 March 2000

Two letters of objections were received. The objections related to:

- the ability of Council to grant approval for the second dwelling using the conservation incentives of HLEP 1989
- insufficient information provided relating to the second dwelling
- concerned about visual impact of the development and location of water tanks
- concerned about vehicular access from Bowen Mountain Road
- urbanisation of rural land

Council's solicitors Abbott Tout confirmed that Council could approve a second dwelling on the property by way of using the conservation incentive provisions of HLEP 1989. The applicant amended the application to take into consideration the concerns of the two objectors. The application as amended was re-exhibited for the period 27 July - 28 August 2000. No objections were received.

Note: The development as described earlier in this report is the proposal as amended by the applicant.

The other matters raised are addressed in the report.

Planning Assessment

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

Impact on the Environment*Context and setting*

Surrounding development primarily consists of similar sized properties which are used for rural / residential purposes and grazing. Surrounding residence are a mix of large and small, brick and timber. The new residence is of a compatible size, bulk and scale to surrounding residences and is to be located below the ridgeline which runs along Bowen Mountain Road. As such views of the new residence from Bowen Mountains Road will be substantially screened. The proposed additions to the cottage are considered to be of a sympathetic design and proportion.

The proposed development is consistent and compatible with the surrounding development pattern. Surrounding properties will not be significantly or unreasonably impacted upon in terms of sunlight access, overshadowing, loss of visual and acoustic privacy, loss of views and vistas.

The proposal will not significantly reduce to the potential for the property to be used for an agricultural use.

Access, transport and traffic

Access to the site is from Bowen Mountain Road. The access to the cottage is to be from an historic gateway. Access to the new residence is to off an existing driveway. The location of the driveway to the new residence takes into consideration the slope and contours of the property in order to minimise disturbance to the landscape. The proposed accesses are satisfactory and the proposed development will not create unreasonable traffic demands on the surrounding street pattern.

Public Domain

Section 94 contributions are to be imposed on this development to ensure that adequate provision can be made for the provision of open space, recreational facilities and community facilities likely to be used by the future residents.

Utilities

On-site effluent disposal is proposed for both residences. The applicant has submitted a geotechnical and water balance assessment of the property which demonstrates that the site can sustain on-site disposal of effluent. Electricity and telephone services can be provided by relevant authorities/carriers. Water is to be collected from roof run-off.

Heritage

Council's Heritage Advisor has examined and supported the initial plans submitted by the applicant with respect to the proposed conservation works and additions to the cottage and the erection of a second dwelling on the property. Suggestions were made about the location of the water tanks, as initially proposed, and the location of the second dwelling. The application has amended the proposal accordingly.

The slab stables are not recorded on Council's Heritage Study as being an item of heritage significance however it is obvious that the stables add to the significance and setting of the cottage. The proposed works to be carried out in the stable is considered satisfactory.

The proposed mound along Bowen Mountain Road will maintain the views of the heritage item.

It is concluded that the proposed conservations works, erection of second dwelling, and revegetation works will not detract from the significance of the cottage or its stylistic and horticultural setting. The applicant has provided adequate justification for the use of the heritage conservation incentives contained within HLEP 1989.

Flora and fauna

The applicant proposes to clear the property of a number introduced plant and weeds and revegetate the site with natives endemic to the area. The proposed works are appropriate and it is considered that the development will not significantly impact upon threatened or endangered flora and fauna, ecological communities or critical habitat as listed under the Threatened Species Conservation Act 1995.

Energy, Noise and vibration, Construction

The design of the development achieves satisfactory performance in terms of energy efficiency. The development will not create offensive noise pollution or vibration. Construction is not expected to unreasonably impact upon surrounding neighbours

Natural hazards

The property is within a high bush fire risk area. The site has been substantially cleared of trees and shrubs and slopes to the south. The likelihood of bush fire threatening the residents is therefore reduced and as such it is considered that the site suitable for the proposed development.

Social and economic impact in the locality

The proposed development will have a positive impact in that a heritage listed cottage will be conserved.

Site design and internal design

The proposed site and internal design demonstrates satisfactory compliance with the objectives of the zone and design criteria of Council's Dual Occupancy DCP and is therefore considered satisfactory.

Cumulative impacts

The proposed development is compatible with the surrounding landuses and no significant negative cumulative impact is foreseen.

Suitability of the site for the development

The constraints of surrounding landuses do not make this development prohibitive. The proposed development will not lead to unmanageable transport demands. Access to the site is satisfactory for the intended use. Adequate services and utilities are available to the site or are to be provided on site. There are no known hazardous landuses/activities nearby. Ambient noise levels are suitable for the development. The site is not critical to the water cycle of the catchment. The development will not impact upon critical habitats and threatened species, populations, ecological communities and habitats.

It is therefore concluded that the site is suitable for the proposed development.

Public Submissions

Matters raised by objectors to the initial application appear to have been addressed by the applicant given that Council received no objections to the amended application. Notwithstanding, the concerns of the objectors have been assessed in this report.

Public Interest

The public interest will be served by the conservation of a heritage listed cottage.

Conclusion

The issues raised in the submissions do not warrant refusal of the application. The heritage incentive provisions of HLEP 1989 can be used in this case to approve the proposed development.

This has been confirmed by legal advice received from Abbott Tout.

The development will ensure the long term maintenance and viability of the heritage item. The development will have no significant environmental impact on the surrounding properties in the area.

The development provides a positive result for the heritage item in need of repair and restoration.

It is recommended that the proposed development be approved.

RECOMMENDATION:

That the application for a restoration of heritage listed cottage and construction of a second dwelling be approved subject to the following conditions:

Advisory

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 Graham Edds & Associates numbered B16-3 dated November 1999 and Schedule of Works dated 24 November 1999, plans prepared by New England Country Homes numbered SKI-0 AND SK2-0 dated 7 July 2000) submitted with Development Application No. M1985/99 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. The building shall comply with the requirements of Council's "Bush Fire Mitigation Policy" for development within a high fire risk zone (copy attached).
3. Compliance with the provisions of the Environmental Planning and Assessment (Amendment) Act 1979, and the Building Code of Australia.
4. Prior to construction of the approved development it is necessary to obtain a Construction Certificate.

5. All exterior works relating to the heritage listed cottage as amended in plans and schedule of works prepared by Graham Edds & Associates are to be finished within 6 months of the occupation of the new residence.

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.**

6. A monetary contribution is to be paid to Council, pursuant to Section 94 of the Environmental Planning and Assessment Act 1979, towards the provision of the following public facilities in the locality:

- | | | |
|-----|---------------------------|----------|
| (a) | Open Space and Recreation | (\$899) |
| (b) | Community Facilities | (\$1375) |

The above contributions have been determined in accordance with Hawkesbury Section 94 Contribution Plan. A copy of the Contributions Plan may be inspected at Council's Offices, George Street, Windsor.

Contributions are to be paid prior to issue of the construction certificate.

The amount of contribution payable under this condition has been calculated on the basis of costs as at the date of consent. In accordance with the provisions of the Contributions Plan, this amount shall be INDEXED at the time of actual payment in accordance with movement in the Consumer Price Index as published by the Australian Bureau of Statistics. In this respect the attached fee schedule is valid for 3 (three) months.

7. Details to be provided of the access driveways in the vicinity of the heritage item. These are to include paving materials.
8. Submission of details in relation to the proposed landscaping to be implemented in the vicinity of the heritage item. This is to include the earth mound adjacent to the Bowen Mountain Road frontage. The mound details are to include cross sections and planting details.
9. Separate practising Structural Engineer's details of all structural concrete and steelwork shall be lodged prior to issue of construction certificate.
10. A septic drainage system shall be provided and a separate application shall be lodged with Council for approval of the septic tank installation.

Prior to Commencement of Works

11. 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.
12. 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.
13. 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.
14. Sanitary accommodation shall be provided for workmen throughout the course of the building operations in accordance with the Local Government Act 1993 and the Environment Planning and Assessment Act.
15. Building work that involves residential building work (within the meaning of the *Home Building Act 1989*) must not be commenced unless the principal certifying authority for the development to which the work relates:
 - (a) in the case of work to be done by a licensee under that Act:
 - (i) has been informed in writing of the licensee's name and contractor licence number, and
 - (ii) is satisfied that the licensee has complied with the requirements of Part 6 of that Act, or
 - (b) in the case of work to be done by any other person:
 - (i) has been informed in writing of the person's name and owner-builder permit number, or
 - (ii) has been given a declaration, signed by the owner of the land, that states that the reasonable market cost of the labour and materials involved in the work is less than the amount prescribed for the purposes of the definition of owner-builder work in Section 29 of that Act

and is given appropriate information and declarations under paragraphs (a) and (b) whenever arrangements for the doing of the work are changed in such a manner as to render out of date any information or declaration previously given under either of those paragraphs.

Note: A certificate purporting to be issued by an approved insurer under Part 6 of the *Home Building Act 1989* that states that a person is the holder of an insurance policy issued for the purposes of that Part is, for the purposes of this condition sufficient evidence that the person has complied with the requirements of that Part.

16. 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.
17. 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.
18. The submission of a Certificate from Telstra Australia that satisfactory arrangements have been made for the provision of cables for telephones to the development.
19. 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 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.

Separate documentary evidence from Integral Energy shall be provided stating that the requirements of that Authority have been met with regard to the nearby high voltage transmission line.

During Construction

20. All building work must be carried out in accordance with provisions of the Building Code of Australia.
21. 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;
 - (c) steel reinforcement;
 - (d) framework, after the installation of all plumbing, drainage and electrical fixtures, and after the external cladding and roof covering has been fixed prior to fixing of internal linings and insulation;
 - (e) wet area flashing, after the installation any bath and shower fixtures;
 - (f) internal drainage lines prior to covering;
 - (g) external drainage lines, prior to backfilling;
 - (h) on completion of the structure.
22. The roof space shall be well sarked using an approved flame retardant sarking material, in accordance with AS 3959-1991 for tiled roofs.
23. 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.
24. No burning of demolition or construction material being carried out on the site.
25. The site shall be kept clean and tidy during the construction period and all rubbish shall be removed from the site upon completion of the project to the satisfaction of this office.
26. 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.
27. The dwelling shall be provided with on-site water storage vessels of minimum 60,000 litres capacity, a draw off line with a 38mm Storz fitting and foot valve shall be installed in the water tank and shall extend to the base of the water tank for bush fire brigade access. The domestic line shall terminate, retaining a minimum 10,000L permanently in the tank.
28. The proposed waste water treatment systems are to be installed in accordance with report from Blue Mountains Geological and Environmental Services Pty Ltd dated June 2000.

Prior to Issue of Occupation Certificate

29. All ventilation openings, including opening external windows and doors, shall be protected with metal gauze to prevent the entry of sparks and fire brands in the event of bushfire.

Use of the Site

30. The location of the water storage tank shall be such that it provides easy access to the tank by Council's Fire Control Department and the applicant should consult with Council's Fire Control Officer prior to locating tanks or erecting buildings.
31. The waste water treatment system is to be operated and maintained in accordance with the recommendations of the report from Blue Mountains Geological and Environmental Services Pty Ltd dated June 2000.
32. Landscaping within the immediate vicinity of the cottage is to consist of draught resistant species in order to minimise damage/movement caused to the footing of the cottage as a result of water saturation.

ATTACHMENTS:

- AT-1** Site plan
- AT-2** Floor Plan (proposed dwelling)
- AT-3** Floor Plan (existing cottage)
- AT-4** Elevations (existing cottage)
- AT-5** Elevations (proposed cottage)
- AT-6** Elevations (proposed cottage)

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SITE PLAN

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FLOOR PLAN (PROPOSED DWELLING)

ENVIRONMENT

Meeting Date: 3 October, 2000

Item: **155**

FLOOR PLAN (EXISTING COTTAGE)

ENVIRONMENT

Meeting Date: 3 October, 2000

Item: **155**

ELEVATIONS (EXISTING COTTAGE)

ENVIRONMENT

Meeting Date: 3 October, 2000

Item: **155**

ELEVATIONS (PROPOSED COTTAGE)

ENVIRONMENT

Meeting Date: 3 October, 2000

Item: **155**

ELEVATIONS (PROPOSED COTTAGE)

oooO END OF ITEM 155 Oooo

ENVIRONMENT

Meeting Date: 3 October, 2000

Item: **156**

ITEM: 156 **Unauthorised Landfill at Lot 1 DP874920 34 Inalls Lane, Richmond**

FILE NUMBER: MA863/00/EVD/ENJ03NAX.V16

Applicant: Falson & Associates Pty Ltd
Applicants Rep: Mr Glenn Falson
Owner: Mr S Delkou
Stat. Provisions: Hawkesbury Local Environmental Plan 1989
 Sydney Regional Environmental Plan No. 20 - Hawkesbury Nepean River
 (No. 2 - 1997)
Area: 1.464ha
Zone: Part Residential 2(a) and Part Environmental Protection 7(d1)
Advertising: Surrounding landowners/occupiers
Date Received: 5 June 2000

Key Issues: - Unauthorised activity
 - Character of the area
 - Surrounding heritage item
 - Visual impact
 - Amenity

Action: Refusal

REPORT:

Introduction

An application has been received for landfill at 34 Inalls Lane, Richmond. The application seeks approval for unauthorised landfill that has already been placed on the site and for restoration works involving topdressing, grassing and landscaping. The landfill occupies an area of approximately 2166m² and contains approximately 2500m³ of fill.

Background

Council first became aware of the unauthorised landfill on 9 June 1999 and the owner was requested to cease all activity, remove all fill and install sedimentation control devices on the subject site. A notice of intention to serve an order was issued on the owner under the provisions of Section 121 of the Environmental Planning and Assessment Act 1979.

As a result of the notice of intent, the owner engaged the services of Mr Glenn Falson to prepare the necessary documentation to lodge a Development Application for the landfill.

Mr Falson had written to Council on several occasions requesting an extension of time in which to lodge the Development Application.

As a result of this action, Council Officers refrained from issuing an Order until the application was determined.

Council had also received correspondence from the Heritage Office and EPA raising concerns with the landfill that had taken place.

Proposed Development

The application proposes to retain the existing and unauthorised fill on the subject land. The fill has an area of approximately 2166m and is located towards the rear of the site in the northern corner. The fill has a depth of approximately 2.74m and varies across the site. The total volume of fill is approximately 2500m³. Attachment 1 indicates the contours of the subject site and a detailed plan of the fill is displayed on the notice board at this meeting.

The application states that the fill placed on the site comprises of clean fill including soil, sand, gravel, bricks and other hard demolition material.

The Site

The subject land has an area of 1.464 hectares and has road frontage to Inalls Lane. An access handle also provides access to Silverburn Avenue. The property contains a two storey dwelling house, small cottage, swimming pool and three machinery sheds.

The land is irregularly shaped and slopes to the western and northern boundaries. The level of land ranges from 11m Australian Height Datum (AHD) to 20m AHD and the land drains to the western boundary.

Statutory Position

Hawkesbury Local Environmental Plan 1989 (HLEP 1989)

The property is zoned part Residential 2(a) and part Environmental 7(d1) under the provisions of HLEP 1989. The objectives of these zones are as follows:

Residential 2(a)

- "a. to provide for housing and associated facilities in locations of high amenity and accessibility;*
- b. to enable development for purposes other than residential only if it is compatible with the character of the living area and has a domestic scale and character; and*
- c. to ensure that development does not create unreasonable demands, in the present or in the future, for provision or extension of public amenities or services."*

Environmental Protection (Scenic) 7(d1)

- "a. to preserve the river valley systems, scenic corridors, environmentally sensitive areas and other local features of scenic attraction;
- 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 buildings, access roads and landscaping;
- c. to ensure that development does not create unreasonable or economic demands, or both, for provision or extension of public amenities or services.
- d. to prevent the establishment of traffic generating development along main and arterial roads; and
- e. to control outdoor advertising so that it does not disfigure the rural landscape."

The proposed landfill is permissible with development consent in the two zones. The provisions of HLEP1989 as they relate to this application will be discussed later in this report.

The relevant Development Control Plans are:

1. Soil Erosion & Sedimentation Control.
2. Landfill.

Sydney Regional Environmental Plan No. 20 - Hawkesbury Nepean River (No. 2 - 1997) (SREP 20)

The subject site falls within the Middle Nepean and Hawkesbury Catchment area as defined by SREP20. The area along the western boundary falls within a Regionally Significant Scenic Corridor.

SREP20 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, water quality, water quantity, visual/scenic quality and fauna and flora. The details as they relate to SREP20 will be discussed below in the planning assessment.

Community Consultation

The surrounding landowners and occupiers were notified of the proposal. 34 letters of objection were received. A summary of the objectors concerns is provided below:

- Changes to the lay of the land, creating higher flooding tables;
- Concerns over future uses of the land;
- Retrospective approval not appropriate;
- Impact of development on historic Mountain View;
- Close proximity to Mountain View;
- Deliberate procrastination by applicant to lodge DA;

- Devaluation of heritage value of Mountain View;
- Variations to natural profile of land will concentrate the flow of surface drainage water onto our property;
- Archaeological artefacts may have been destroyed;
- Quality of landfill;
- Increased erosion in flood times and detrimental impact on backswamps below and immediately downstream;
- Landfill alters the historic siting of Mountain View;
- The proposed recreational use could have been set into the slope and not require landfill;
- Scale of development not appropriate in relation to lot size, location and proximity to residential dwellings;
- Landfill intrusive alteration to landscape;
- The unauthorised developments are adversely affecting the setting and the significant visual link between the historic homestead on Dight Hill and the original Dight grant on the Lowlands;
- Retrospective approval sends inappropriate message to the community; and
- Inconsistent with the provisions of SREP20.

The location of objectors are indicated on Attachment 2 and it is noted that 3 objectors reside in the vicinity of the site. 31 objections related primarily to heritage matters and the unauthorised works.

Planning assessment

The following are the relevant matters for consideration under Section 79C(1) of the Environmental Planning and Assessment Act 1979.

Provisions of any planning instruments

Sydney Regional Environmental plan No.20-Hawkesbury Nepean River (No.2-1997)

Filling of land requires development consent under SREP 20 and the following applicable strategies under Part 2 and must be considered by the consent authority:

1) Total Catchment Management

The relevant strategies of the Total Catchment Management Policy relate to the impact of the development on the catchment and the cumulative impact of the development.

Comment: The applicant has provided a report prepared by Toby Fiander and Associates which addresses flooding issues. The report does not address the cumulative impact of the development.

2) Environmentally Sensitive areas

This policy action provides for minimising adverse impacts on water quality; protecting wetlands; impact of the proposal on acid sulphate soils and the water table.

Comment: The subject site is located within an environmentally sensitive area as defined under SREP 20 due to being located partly within a scenic corridor. No consideration has been given to the wetlands located downstream, water table or the formation of acid sulphate soils in the application.

3) *Water Quality*

The relevant strategies of the Water Quality relate to the development of the land to its capability of the site; the need for an erosion and sedimentation control plan; and the likely impact of any predicted increase in pollutant loads on receiving water.

Comment: Whilst the proposal is not located close to the actual Hawkesbury River, the development is located upstream of the River and may impact on water quality.

4) *Water Quantity*

The relevant strategies require consideration of the impact of the development on the level and quality of the water table and ensuring the amount of stormwater from the site and rate it leaves the site does not significantly increase as a result of the development.

Comment: The report prepared by Toby Fiander and Associates suggests that there will be some localised restriction to water flow in a local drain but due to the steepness of the watercourse and limited nature of the restriction, significant effects on other properties are unlikely. The report has not considered the impact on the water table.

5) *Cultural Heritage*

This strategy considers the importance of the river in contributing to the significance of items and places of cultural heritage which should be protected and sensitively managed. It also aims to encourage development that facilitates the conservation of heritage items if it does not detract from the significance of the items.

Comment: The subject land is located adjacent to "Mountain View" which is listed as item 40 on HLEP 1989. The applicant has not provided sufficient information in relation to the impact on both the adjoining heritage items or potential aboriginal sites. This issue will be addressed in detail elsewhere in the report.

7) *Riverine Scenic quality*

The relevant strategies require the proposed development to be consistent with the Scenic Quality Study; consideration of the siting, size, bulk and scale of the development and the opportunities to improve riverine scenic quality.

Comment: The proposed development is visible from adjoining properties and across the Richmond lowlands. The application has not considered that the impact of the development on scenic quality in relation to the SREP 20.

Part 3 of SREP 20 relates to Development Control and requires development consent for landfill. There are no additional matters for consideration under this clause.

Schedule 3 of the Environmental Planning and Assessment Act Regulation 1994.

Schedule 3 of the Environmental Planning and Assessment Regulation 1994 relates to Designated Development and when an Environmental Impact Statement is required. The proposed landfill is best defined as a “waste management facilities or works” as this relates to the use and reuse of material, including clean fill. In this regard the proposal may be fall into the provisions of Designated Development.

The application states that the proposal does not fall within the definition of designated development as the fill is for recreation/garden activities on a small scale.

Notwithstanding the above, previous legal advice from Council’s solicitors indicates that if the proposed landfill is ancillary to a particular use other than filling, then it is not “waste” for the purposes of Schedule 3. It is considered that the proposal development is ancillary to the use of the land and is therefore not defined as designated development.

Hawkesbury Local Environmental Plan 1989

Zone objectives

The relevant objectives of the 7(d1) zone are:

- “(a) to preserve the river valley systems, scenic corridors, environmentally sensitive areas and other local features of scenic attraction;*
- (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 buildings, access roads and landscaping;”*

The relevant objectives of the 2(a) zone are:

- “(b) to enable development for purposes other than residential only if it is compatible with the character of the living area and has a domestic scale and character;”*

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

The subject land is located within a scenic corridor and is on the fringe of Richmond Lowlands. The subject land can be viewed from across this area, as can the filled area.

It considered that the proposal is not of a domestic scale and character, nor does it preserve the scenic quality of the locality or its local features of scenic significance.

Clause 28 (Development in the vicinity of heritage items).

Clause 28 requires Council to make an assessment of the effect the carrying out of the development will have on the heritage item and its setting. The application has failed to provide sufficient information in relation to the impact of surrounding heritage items, in particular, “Mountain View” at 22 Inalls Lane. This matter is discussed further below.

Landfill Development Control Plan

The landfill DCP applies to this proposal. The aim of the plan is to provide guidelines and set requirements for the filling and to ensure that filling does not adversely affect existing ecosystems, cause adverse visual impact, sterilise lands or adversely affect the hydrology of floodwaters on surrounding properties.

The application has not addressed the provisions of the DCP and it is considered that the proposal does not meet the objectives of the DCP in relation to visual and scenic quality, impact on adjoining properties and enhancement of the land.

Soil Erosion and Sedimentation Development Control Plan

This DCP aims to provide guidelines for all forms of development in the City in relation to implementing erosion and sedimentation control measures. A detailed soil erosion and sedimentation control plan has not been submitted with the development application.

Likely impact of the development*Context and setting*

The surrounding properties to the west of the site consist predominantly of agricultural activities on the Richmond Lowlands. The area to the north of the site also consists of agricultural pursuits and land associated with Hobartville Stud.

Directly south of the property is a heritage site known as Mountain View which is listed on the State Heritage Inventory. Further south are residential properties fronting the William Cox Drive and Silverburn Avenue. Development across the road to the east of the site consists primarily of residential development.

The landfill is highly visible from the adjoining properties, particularly along the western and northern boundary. The view from this boundary is predominantly soil. The site and landfill can also be viewed from Old Kurrajong Road and Kurrajong Road. Photos of the site are attached to this report.

It is considered that the landfill is out of character with the locality and is not sympathetic with its context and setting.

Heritage (raised by Council and objectors)

Existing on the subject land is a small cottage which is listed as Item 41 on Schedule 1 Heritage Items) of HLEP 1989. The adjoining property is known as Mountain View and is located at 22 Inalls Lane Richmond. This property is listed on the following:

- Item 40 of HLEP 1989
- State Heritage Register (SHR) No. 44
- Register of the National Estate
- National Trust's Register

Mountain View is described in the North West Sector Heritage Study as having National significance and as:

“an excellent example of an early colonial homestead which must be one of the oldest remaining such buildings west of Parramatta. The house is well sited on a rise overlooking the Hawkesbury River Flats and is a worthy neighbour to the nearby Hobartville property”

The application was also referred to the NSW Heritage Office due to their previous interest in this matter and the impact of the development on Mountain View. The Heritage Office indicated the following:

- The Statement of Environmental Effects does not provide an assessment of the heritage impacts of the development or a statement of heritage impact.
- The curtilage of Mountain View extends beyond its current property title.
- The land affected by the unauthorised development forms the remaining significant physical and visual link between Mountain View, its historic landscape, the floodplain and mountain range beyond.
- The filling and levelling of the floodplain escarpment between 0-4m has significantly diminished the visual appreciation and legibility of this remnant cultural landscape.
- The proposal has not considered the impact on any archaeological or potential archaeological significance of the site.

The Heritage Advisory Committee also resolved to express its concern with the landfill and its significant impact on Mountain View.

The National Trust also lodged a submission concerning the proposal which also raised concerns regarding the curtilage of Mountain View and the detrimental impact the activity would have on the archaeological record of the site and the cultural landscape in general.

Council's heritage advisor has inspected the site and has provided comments in relation to the proposal. The comments relate to the inappropriateness of the development given the historical significance of 'Mountain View', the lack of detail in the application concerning the impact on surrounding properties and potential archaeological significance of the site.

The application states "that the landfill is sufficiently removed from the actual heritage buildings so that there is no affect on structural stability etc. Whilst there may have been some nuisance to the occupiers of these heritage items during the landfill, the finished product will enhance the attractiveness of the local environment by replacing part of an overgrown local drainage gully with a level landscaped garden area. In time, when landscaping is established, this area will further compliment these heritage items."

Both Council's heritage advisor and the NSW Heritage Office have concerns that the works have a significant detrimental visual impact on the historical viewscape and curtilage of Mountain View. Furthermore, the applicant has failed to demonstrate the impact on the surrounding heritage items or provide sufficient information to enable an adequate assessment in relation to heritage matters, including archaeological matters.

Water (raised by Council and objectors)

The report prepared by Toby Fiander and Associates does not address the impact on water quality in detail, however concludes that there will be no significant and probably no measurable effect from the filling of the land. The report does not address the impact on the wetlands located on the adjacent property.

Flooding (raised by Council and objectors)

The above report also addressed flood velocities and suggests that they are likely to be zero as the filled area lies outside the floodway.

Suitability of the Site

The landfill is unsuitable because of its impact on scenic quality, impact on the adjoining heritage item and the scale and bulk of the filled area on adjoining properties.

Public Submissions

Many of the matters raised in the letters of objection are relevant to the unauthorised landfill on the subject land. These issues cannot be overcome by way of conditions of consent or modification of the proposal.

Public Interest

It is considered that the approval of the unauthorised landfill would set an undesirable precedent for similar proposals, both on the floodplain and other visually significant localities.

Conclusion

The landfill and proposed landscaping will have a significant visual impact, both on the surrounding properties and the scenic corridor along the Richmond Lowlands. In this regard the proposal does not satisfy the objectives of HLEP 1989 or SREP 20. Furthermore the application contains insufficient information to adequately assess the proposal. The site is not suitable for this form of development. It is recommended that the application be refused and that owner be issued a notice to remove the existing landfill and rehabilitate the site.

RECOMMENDATION:

That

A) The application for landfill be refused for the following reasons:

1. The proposal is inconsistent with the aims and objectives of Hawkesbury Local Environmental Plan 1989, in particular the objectives of the Residential 2(a) zone and Environmental Protection 7(d1) zones and clause 28.
2. The proposal is inconsistent with the planning considerations, policies and recommended strategies of Sydney Regional Environmental Plan No. 20. - Hawkesbury Nepean River (No.2-1997).
3. The proposal will have an impact on water quality.
4. The proposal will have an impact on surrounding heritage items.
5. The siting and context of the proposal is out of character with the locality.
6. The proposal will have a significant visual impact on the locality.
7. The site is not suitable for the proposed development.
5. The proposal is not in the public interest.

B) The owner be required to remove the unauthorised fill and rehabilitate the site under the supervision of Council and Council's heritage advisor due to the likelihood of the site containing archaeological significance.

C) Orders be issued under the provisions of the Environmental Planning and Assessment Act 1979 and the Pollution of the Environment Operations Act 1997 to facilitate the matters outlined in B.

ENVIRONMENT

Meeting Date: 3 October, 2000

Item: **156**

ATTACHMENTS:

AT1 - Subject land and contour plan.

AT2 - Location of surrounding objectors.

AT3 - Photos of the site.

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Meeting Date: 3 October, 2000

Item: **156**

Subject land and contour plan

ENVIRONMENT

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Location of surrounding objectors

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Meeting Date: 3 October, 2000

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Photos of the site

oooO END OF ITEM 156 Oooo

ITEM: 157 **Request to Modify Development Consent - Indoor Swimming Centre - 6 St James Road, Vineyard**

FILE NUMBER: DA66/98/EVD/ENJ03NAX.V17

Applicant: Ms Lorna Ford
Applicants Rep: Ms Lorna Ford
Owner: Ms Lorna Ford
Stat. Provisions: Hawkesbury Local Environmental Plan 1989
 Sydney Regional Environmental Plan No. 20 (No. 2 - 1997)
Area: 2.027ha
Zone: Rural 1(b)
Advertising: Surrounding landowners/occupiers
Date Received: 5 July 2000

Key Issues: - Traffic
 - Parking provision
 - Noise
 - Amenity

Action: Approval

REPORT:

Introduction

On 7 May 1998 development consent was issued for an indoor swimming centre at 6 St James Road, Vineyard. Council has received a request to modify this development consent, specifically the modification seeks:

- i. to increase the hours of operation in the morning by 15 minutes ie 7.45am - 7pm Monday Saturday instead of 8am - 7pm Monday to Saturday and,
- ii. to increase the number of students from 8 to 10 per half hour lesson.

The applicant states the additional 15 minutes will assist parents with swimming lessons before school and that the additional students will enable 6 children in a parent and child class and 4 children in a separate class at the other end of the pool.

Description of the Property

The property has an area of 2.027ha and contains a single storey attached dual occupancy and the building which is used for the purposes of swim centre. Immediately to the east of the swim centre is a sealed car parking area and an informal visitor parking area.

The property is located on the northern side of the intersection of St James Road and an unnamed road. Access to swim centre is off St James Road, immediately after the intersection.

Properties surrounding 6 St James Road are primarily used for rural / residential purposes. The closest residence is approximately 70m to the south-east of the swimming centre. The Richmond - Blacktown railway line is located immediately to the north-east of the property.

Statutory Position

Section 96(2) of the Environmental Planning and Assessment Act 1979

The development as amended will be substantially the same as the approved development hence Council may consider the request to modify the development consent under Section 96(2) of the EPA & A Act 1979.

Hawkesbury Local Environmental Plan 1989

The property is zoned Rural 1(b) under HLEP 1989.

A swim centre is defined as a recreation facility under HLEP 1989. Recreation facilities are permissible within the Rural 1(b) zone subject to development consent.

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

Relevant Development Control Plans are:

Parking Policy Development Control Plan No. 2

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 proposal is consistent with the aims of the plan as well as the general and specific planning policies, recommended strategies and development controls outlined in Parts 1, 2 and 3 of SREP No. 20.

Community Consultation

The surrounding land owners and occupiers were notified of the proposal for the period 26 August to 9 September 2000. 3 letters of objection were received. A summary of the objections is provided below.

- concerned about the increase in traffic and speed of existing traffic;
- increase in litter along roadways;
- increase in noise / downgrading of peaceful rural/residential area;
- upset of domestic pets; and
- parking of vehicles on road verge in front of the subject property and adjoining properties.

Council has also received previous complaints from one of the objectors concerned about traffic, litter, the number of students, and a dispute between one of the swim centre's clients and the objector concerning the objector's dog and alleged damage to the client's vehicle.

The applicant has responded to the submissions by stating:

- we have requested in our most recent newsletter that our clients drive safely and try to stay under 50km/hr which is the new speed limit for built up residential areas.
- we cannot be blamed for the dumping all the rubbish in our road; we have always had trouble with rubbish before the centre was erected. This is due to the fact that patrons travelling on public transport have no bins inside the train so the window seems to be their best option.

The applicant has also advised that they propose to reconfigure and increase the size of the parking area to enable 17 vehicles to be parked on the site which is an increase of 11 spaces. * overflow parking provisions are also provided onsite. The additional parking area is to be constructed at the side of the swim centre. It is also noted that a sign has been erected within the grounds of the swim centre advising clients to put rubbish in the bin.

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

The relevant objectives of the Rural 1(b) zone are:

- (a) *to primarily provide for agricultural uses and animal establishments;*
- (b) *to ensure that development does not create unreasonable demands, in the present or in the future, for provision or extension of public amenities;*
- ...
- (d) *to ensure that development maintains the rural character of the locality and to minimise disturbance to the landscape through clearing, earthworks and access roads.*

The proposed increase in operating hours will not significantly increase the impact of the swim centre on the existing amenity of the area, nor will it be inconsistent with the above objectives of the zone. The increased in students and the resultant increase in vehicles visiting the site could be inconsistent with objectives (b) and (d) if the additional vehicles (potentially two per lesson) were parked on the road verge rather than on the property.

Inspections by Council staff and complaints from adjoining residents show that cars are parking on the road verge. The most recent inspection carried out by Council staff revealed that up to 8 cars were parked on the road verge.

The additional parking area as proposed by the applicant should alleviate this problem. It is considered that the location of the new parking area is satisfactory and will not be inconsistent with the above mentioned objectives of the zone.

Clause 18 Provision of water, sewerage etc services

The proposed modification will not require the augmentation of existing service provision to the property.

Parking Policy Development Control Plan No. 2

Council's Parking Policy does not contain any specific provision for a swim centre. The assessment of car parking is therefore based on merit. The current approval required the provision of 6 car parking spaces onsite. The applicant now proposes to provide 17 spaces onsite which is considered satisfactory. The reconfigured car park and additions to the car park are to be constructed in accordance with the provisions of the Parking Policy DCP No. 2 and will help overcome the current problems.

Likely impact of the development

Context and Setting

The properties surrounding the subject site are primarily used for rural residential living purposes. The closest residence to the proposed swim school is approx 70m to the south-east. The locality has a typical quiet rural atmosphere which is periodically interrupted by trains using the railway line.

The operation of the swim centre is relatively quiet and it is considered that the additional 15 minutes per day and increase in traffic associated with the additional pupils will not significantly impact upon the existing amenity of the area or be incompatible with the existing use of the property and surrounding properties.

Traffic Generation and Site Access

Access to the site is off St James Road. The existing car parking has been constructed substantially in accordance with the previous approved plans. The operation of the existing car park area, in part, has caused an unacceptable number of vehicles to be parked on the road verge during the operation of the swim centre. The reconfigured and increased parking area will allow for sufficient spaces on the site to cater for parking demand thus reducing potential conflict on the road and ameliorating some of the concerns of the neighbours.

Noise

Ambient noise levels for the area are relatively low and would typically only be interrupted by the operation of the adjacent train line. The noise generated by the swim centre is also relatively low. It is considered that the operation of the centre, including traffic noise, as amended will not significantly increase the noise generated by the centre nor significantly impact upon surrounding neighbours.

Social Impact

The swim centre provides a position social impact by providing opportunities for children to learn to swim. No significance adverse social impact in the surrounding landowners/occupiers is anticipated.

Cumulative Impact

The proposed modification will not substantially increase the operation for the swim centre. As a result, significant cumulative impact is anticipated.

Suitability of the Site

The constraints of surrounding landuses do not make the proposed modifications prohibitive. The proposed modifications will not lead to unmanageable transport demands. Access to the site is satisfactory for the intended use. Adequate services and utilities are available to the site. The air quality and microclimate of the surrounding area is appropriate for the proposed modification. There are no known hazardous landuses/activities nearby. Ambient noise levels are suitable for the development. The site is not critical to the water cycle of the catchment. The development will not significantly impact upon critical habitats and threatened species, populations, ecological communities and habitats.

It is therefore concluded that the site is suitable for the proposed development.

Public submissions

The concerns of the residents regarding traffic, noise, and parking have been considered in the above assessment.

The actions of the applicant in encouraging the clients of the swim centre not to speed or litter are considered satisfactory.

Public Interest

It is considered that the proposed modification is in the public interest as it will allow for more children to be taught how to swim and will improve the existing operation of the swim centre.

RECOMMENDATION:

That the request to modify development consent DA66/98 be supported and conditions 2, 12, and 17 of DA66/98 be amended as follows:

2. *Operating hours shall be limited to Monday to Saturday 7.45am to 7pm. Any alteration of these hours will require the approval of the Director Environment and Development.*
12. *Parking shall be provided for 17 (seventeen) vehicles, as shown on plan submitted on 20 September 2000, in accordance with Council's regulation and Parking Policy. Parking spaces, access way and aisles are to conform to Council's Development Control Plan and are to be constructed, drained, sealed and marked. Full details of works shall be submitted to Council for approval prior to works being undertaken.*
17. *Student numbers are to be limited to 10 (ten) in any half hour period.*

ATTACHMENTS:

There are no supporting documents for this report.

oooO END OF ITEM 157 Oooo

ENVIRONMENT

Meeting Date: 3 October, 2000

Item: **158**

ITEM: 158 **Truck Depot at Lot 5 DP620743 No. 166 Cedar Ridge Road, Kurrajong**

FILE NUMBER: M1005/00/EVD/ENJ03NAX.V10

Applicant: L Wells
Applicants Rep: N/A
Owner: L Wells
Stat. Provisions: HLEP 1989
Area: 1.087ha
Zone: Rural 1(c1)
Advertising: Notified to adjoining owners and occupiers. four (4) letters of objection and twelve (12) letters of support received.
Date Received: 3 July 2000

Key Issues: - Noise
 - Damage to roads
 - Traffic hazard
 - Inappropriate use in the zone

Action: Approval, subject to conditions.

REPORT:

Introduction

An application has been received seeking consent to use the subject property as a truck depot, for the parking one (1) truck (low loader) and the storing of earthmoving equipment occasionally.

The application is being reported to Council due to the number of submissions received. This report details the proposal, the current statutory situation, submissions received from the surrounding property owners and an assessment of the application in accordance with Section 79C of the E P & A Act 1979. Based on the assessment the application is recommended for approval, subject to conditions.

The Proposal

The proposal involves the use of the subject property as a truck depot, it is intended to park only one truck (a low loader) on the site adjoining the existing shed, this truck will be used at a maximum three times per week.

The activity also proposes to store some other machinery on the site which consists of a roller, grader, dozer and excavator. This machinery will only be stored on site for about 10% of the time with the remaining 90% of the time being stored on the various job sites. The machinery is generally moved from one job to another.

The truck and machinery is part of the applicants business which he has been operating for over 10 years. The activity involves only one employee. The hours of operation is between 7am and 6pm Monday to Friday. The truck is generally used for a maximum of three times per week.

General maintenance will be carried out on the truck and machinery when on site and will be carried out within the existing shed. Most of the maintenance is carried out on the job sites.

No oils or lubricants are stored on site, however diesel fuel is stored on site behind the shed which is proposed to be in a bunded area.

Access to the site is via Cedar Ridge Road (refer to Attachment 1).

The business trades as Wells Cargo which occasionally is sub contracted by Council to float heavy plant when the main contractor is not available

Site

The subject site is regular in shape and has an area of 1.087ha. The site contains a new dwelling, an unhabitable dwelling which is currently used for general storage, a shed which is 12.3m x 23.6m (290sqm), and a dam which is located behind the new dwelling.

Background

The current application is a result of a complaint received by Council officers when invited to attend the "Concerned Ratepayers of the Comleroy Road" area meeting in February 2000.

The site has been subject to the following approvals:

- MA402/99 - Dwelling
- B337/94 - Shed

Statutory Situation

Hawkesbury Local Environmental Plan 1989

The subject property is zoned Rural 1(c1) under Hawkesbury Local Environmental Plan (HLEP) 1989. The objectives of the zone are:

- (a) *to primarily provide for a rural residential living style with "on site" collection of water and disposal of waste;*
- (b) *to maintain a subdivision pattern which permits the land to be subdivided for an urban use where such a use has been identified as being appropriate in the long term;*
- (c) *to ensure that development does not create unreasonable demands, in the present or in the future, for provision or extension of public amenities infrastructure;*

- (d) *to prevent the establishment of traffic generating development along main and arterial roads;*
- (e) *to ensure that development maintains the rural character of the locality and to minimise disturbance to the landscape through clearing, earthworks and access roads.*

Under HLEP 1989 the proposed development is defined as a "truck depot" which means:

"a building or place that is used for the servicing and parking of trucks, earthmoving machinery and the like".

Truck depots are permissible within a Rural 1(c1) zone with development consent.

Reference should be made to Clause 9(3) under HLEP 1989 - Zone objectives and development control table:

9.

- (3) *Except as otherwise provided by this plan, the 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.*

The proposal is generally consistent with the relevant objectives of the zone as it does primarily provide for a rural residential living style which has on site collection of water and disposal of wastes.

The subject property can not be subdivided and will not increase densities on the site which may create unreasonable demands for public amenities infrastructure.

The proposed development is not a traffic generating development and the subject property gains access via Cedar Ridge Road which is a local road.

The proposed development does maintain the rural character as it is not generating the need to carry out extensive earthworks which can disturb the rural landscape. The property is not unlike others in the area consisting of a dwelling, shed and dam.

Draft Amendment 110 to HLEP 1989

Under this draft plan the permissibility of truck depots within Rural 1(c1) areas will remain unchanged. The proposal is considered to be consistent with Amendment 110.

Sydney Regional Environmental Plan No. 20 1997 - Hawkesbury-Nepean River

The subject site falls within the boundary of SREP 20, the aim of the plan 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". The subject property does not fall within a riverine scenic corridor and there are no additional matters to consider under this plan for this proposal.

It is considered that the proposed development will not significantly impact on the environment of the Hawkesbury-Nepean River either in a local or regional context and that the development is not inconsistent with the general and specific aims, planning considerations, planning policies and recommended strategies.

Community Consultation

The application was notified to adjoining owners and occupiers for a period of 14 days in accordance with the "Public Notification of Development Proposals" development control plan.

At the conclusion of the exhibition period there were four (4) submissions received objecting to the proposal and twelve (12) letters of support from residents in Cedar Ridge Road. Attachment 1 indicates location of the objectors/supporters.

The main concerns expressed in the objectors submissions included:

- Noise
- Setting a precedence
- Pollution from oils and lubricants
- Illegal tyre landfill on the site
- Proposal a repair workshop for other people's machinery
- Overdevelopment of the site
- Deterioration of the road
- Traffic
- Inappropriate development for the area

The issues are discussed in the assessment below.

The letters of support have indicated that:

- noise does not affect them
- the applicant should be able to make a living from his property
- the property is always tidy and clean

Planning Assessment

The following are relevant matters for consideration under Section 79C of the EP & A Act 1979:

Character of the Area *(issue also raised by objector)*

The surrounding area consists of mainly rural residential lots, with the average lot size of 4 hectares.

Attachment 3 shows a photo of the existing shed and truck which is proposed to be parked on site, this photo was taken from Cedar Ridge Road at the front of the property.

The objector raised the issue of the proposed truck depot setting a precedence in the area. The use is permissible within the zone with development consent. There was also the issue raised that the proposed truck depot is more of an industrial use and that it was inappropriate for the zone. The scale of the development involving one (1) truck and one (1) employee is not considered excessive and is consistent with other similar truck depots approved in other rural areas. The scale is not considered to warrant its location in an industrial area.

There was also concern raised that the repair of other peoples machinery would take place on the property. The owner has assured Council officers that they have only have ever repaired their own machinery. A suitable condition has been included in the recommendation.

Overdevelopment of the site *(issue raised by objector)*

An objection was raised to the proposal creating an overdevelopment of the site due to their being a shed, two dwellings , and two septic systems. As part of the approval for the new dwelling (M402/99), the old dwelling is to be removed or demolished. This has not been satisfied and the owner has been given thirty (30) days from the 19th September 2000 to remove the old dwelling which includes disconnecting the septic tank system.

The activity is considered to be what normally occurs on a rural residential property where a truck is parked on the property and forms part of the owners livelihood, it is similar to any tradesman parking their vehicle on their own property. The proposed development is considered not to create an overdevelopment of the site.

Traffic and Road Condition *(issue also raised by objector)*

The proposed development gains access from Cedar Ridge Road which has a central seal, this road runs off Comleroy Road which is a main road.

The activity only requires movement of the truck three (3) times per week at a maximum, which equates to six (6) movements per week. There are no other registered vehicles that enter and leave the property except for the household vehicles.

The minimal truck movements is not expected to create a traffic hazard along Cedar Ridge Road as there is adequate sight distance along the road when leaving the subject property.

It is considered that the additional traffic movements generated by one (1) truck will not adversely affect traffic safety in the locality.

Noise (*issue also raised by objector*)

The applicant proposes to park the truck on the property and use it at a maximum of three times per week, some weeks the truck is not needed at all. At a maximum the truck would be entering and leaving the subject property six (6) times per week.

The movement of the truck is not considered excessive. The activity will operate between 7am-6pm Monday - Friday.

The nearest dwelling is 50m to the north and the nearest objector being approximately 150m south from the truck site. The truck is not in direct view from these dwellings and it is considered that the intensity of the activity being one (1) truck and the proposed operating hours is unlikely to cause a significant noise impact on the properties in the locality. Any noise generation would occur only for a short period of time between the operating hours.

Pollution (*Issue also raised by objector*)

There was concern raised that the storing of oils and lubricants will leak and cause problems in the nearby creek which is known as McMahons Creek. The creek does not directly adjoin the subject property, there is another property between the subject site and the creek.

The applicant does not store lubricant and oils on the property, however diesel fuel is stored on the property in a tank behind the shed. This fuel is used for both the truck and the machinery.

The applicant has agreed as part of the approval to store the fuel in a bunded area. This has been included as conditions of approval should the application be supported.

Illegal Landfill (*issue raised by objector*)

As part of a submission a complaint was received regarding illegal landfill consisting mainly of tyres on the subject property. On the 15 September 2000, Council officers inspected the subject property, the reported "landfill" consisted of excavated material from the dam (which is not permitted to be removed from the site) and old timber and plaster from the site. The applicant was instructed to remove the tyres, clear the refuse and create a batter of not greater than 3 horizontal to 1 vertical which also is to be turfed immediately. The applicant was given 14 days to carry out the above works.

The above matter is considered to be a separate issue to the proposal and has been dealt with accordingly.

Conclusion

The proposal is considered to be of a low key nature which does not compromise the objectives of the zone or the surrounding area.

The parking of the one truck on the property is no different to any other tradesman parking work vehicles on their property. The use of the truck when entering and leaving the property is intermittent and generates acceptable impacts in relation to noise.

The activity has been operating from the site for about 10 years without any complaints being received. The proposed conditions will ensure the development will not impact on the locality. The issues raised in the submissions do not warrant a refusal of the application.

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

RECOMMENDATION:

That:

Approval be granted for a Truck Depot at No. 166 Cedar Ridge Road, Kurrajong, Lot 5, DP 620743 subject to the following conditions:

Advisory

1. To confirm and clarify the terms of this approval, the development shall be carried out in accordance with the approved stamped plans (numbered Plan A) submitted with Development Application No. M1005/00 dated 3/7/00 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.

The Use of the Site

3. The property is to be used for parking of only one (1) truck and any machinery is to be kept wholly within or behind the existing shed as nominated on the approved stamped plans.
4. All servicing of the machinery is to be carried out wholly within the existing shed.
5. To ensure that the external appearance of the site is not intrusive or offensive, and does not degrade the visual quality of the surrounding area, no materials, goods or vehicles to be stored between the existing shed and the street alignment.
6. The subject development, including landscaping, is to be maintained in a clean and tidy manner.

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7. The spillage of light, if any, shall be controlled so as not to reduce the amenity of adjoining residences.
8. In order to protect the amenity of the neighbourhood and the development, where machinery are stored outside the building, they are to be screened from view from any public place and adjacent premises. Details of method of screening (eg landscaping) are to be provided to Council for approval.
9. The area to be used for the approved development being limited to the area shown on the submitted plans.
10. Repair, servicing and maintenance carried out on the site is to be limited only to the truck and machinery associated with the business.
11. The site is not to be used as a "car repair station" as defined in Hawkesbury Local Environmental Plan 1989.
12. All landscaping shall be permanently maintained in a good condition and in accordance with the intent of the landscaping plan.
13. Operating hours for the movement of the truck shall be limited to Monday to Friday, the truck is not permitted to be started prior to 7am and shall be returned to the property before 6pm. The truck is only permitted 10 minutes after start up of the engine to leave the property and 5 minutes upon return.
14. The truck when parked on the property is to remain in the area directly adjacent to the existing shed.
15. All waste materials to be stored and disposed of at regular intervals.
16. The development shall be conducted in such a manner that noise levels measured at any boundary do not exceed 5dB(A) above background noise levels. This does not include the trucks entering and leaving the property.
17. 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.
18. No signs shall be displayed on the footpaths, pedestrianways, roadways or in the vicinity.
19. Any areas used for the storage of fuel or the like are to be contained within a suitable bunded storage area capable of holding 110% of the largest storage container.

Details of proposed bunding to be submitted to Council for approval.

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ATTACHMENTS:

AT1 - Locality plan and location of objectors.

AT2 - Site plan.

AT3 - Photo of site.

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Locality plan and location of objectors

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Site plan

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Photo of site

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ITEM: 159 **2 Lot Subdivision - Lot 1 DP749638 No. 201 Mahons Creek Road, Yarramundi**

FILE NUMBER: M989/00/EVD/ENJ03NAX.V06

Applicant: R K Cambridge & Co
Applicants Rep: N/A
Owner: Sharnu Pty Ltd
Stat. Provisions: Hawkesbury Local Environmental Plan 1989
 Sydney Regional Environmental Plan No. 20
Area: 32.640 ha
Zone: Rural 1(b)
Advertising: N/A
Date Received: 29/6/2000

Key Issues: - Lot size
 - Fauna and Flora
 - Effluent disposal
 - Inconsistent with zone objectives

Action: Refusal.

REPORT:

Introduction

The application seeks approval for a 2 lot subdivision at No. 201 Mahons Creek Road, Yarramundi.

This matter is being reported to Council at the request of the applicant. The report will detail the proposal and 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 involves a 2 lot subdivision with Lot 1 having an area of 31.8ha and Lot 2 8200m². Both lots propose access from Mahons Creek Road. The proposed plan of subdivision is attached to this report as Attachment 1.

The application was accompanied by an objection under State Environmental Plan No. 1 (SEPP No. 1) to the minimum subdivision allotment size.

Background

The application was lodged on 29 June and Council Officers advised the applicant on 3 July that Council and the Department of Urban Affairs and Planning would not support the variation to the minimum allotment size under SEPPNo. 1.

The applicant was requested to consider withdrawing or amending the lot layout to comply with the minimum area requirement.

The applicant responded requesting the matter be referred to the Council Meeting to allow the opportunity for them to address Councillors.

The Site

The property has an area of 32.64ha and is located on the western end of Mahons Road and adjoins the Blue Mountains National Park. The property has a large area of natural bushland.

Statutory Position

Hawkesbury Local Environmental Plan 1989 (HLEP 1989).

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

- (a) To primarily provide for agricultural uses and animal establishments.
- (d) To ensure that development maintains the rural character of the locality and to minimise disturbance to the landscape through clearing, earthworks and access roads.

Clause 11(2)(b) requires subdivisions to create allotments that have an area of not less than 10ha and a satisfactory ratio of depth to frontage.

Sydney Regional Environmental Plan No. 20

The site falls within the Grose River Catchment area defined in SREP 20. The site is not within an area of scenic significance.

The plan provides general and specific matters for consideration which are to be considered in the assessment of the application.

The relevant specific considerations relate to total catchment management, water quality, and flora and fauna. The application is not consistent with some of the specific strategies outlined above. This is mainly due to potential impacts from effluent disposal and threatened fauna and flora removal.

Community Consultation

The application was not placed on exhibition because of the significant variation to the minimum allotment size and the Department of Urban Affairs and Planning (DUAP) and Council Officers non support to the variation.

Planning Assessment

The following are the relevant matters for consideration under Section 79(c)(1) of the EPA Act 1979.

Hawkesbury Local Environmental Plan 1989

The minimum allotment size of subdivision of rural 1(b) zone is 10ha. The subdivision proposes allotment sizes of 8,200m² and 31.8ha.

The 8,200m² allotment is below the minimum allotment size of 10ha.

The applicant has requested a variation to this requirement under SEPP No. 1.

In support of the variation, the applicant has stated:

"Lederer and Fisher Investments Pty Ltd purchased the land in 1968, with an understanding between Paul Fisher and Andrew Lederer, that the rear portion of the land would subsequently be transferred to Paul and Susannah Fisher. The house built on the rear parcel was completed in 1973 and was the domicile for Paul and Susannah. The subdivision creating the rear parcel was registered on 3.3.1988. Paul Fisher passed away in October 1999.

The front portion of the land has been subdivided into 86 Community Titles ranging in size from 3000sqm to 7200sqm.

Zoning

The zoning of the land under HLEP 1989 is 1(b) (Rural "B") and the objectives of the zone area as follows:

- (a) to primarily provide for agricultural uses and animal establishments;*
- (b) to ensure that development does not create unreasonable demands, in the present or in the future, for provision or extension of public amenities infrastructure;*
- (c) to prevent the establishment of traffic generating development along main and arterial roads; and*

- (d) *to ensure that development maintains the rural character of the locality and to minimise disturbance to the landscape through clearing earthworks and access roads.*

Rural subdivision is controlled by Clause 11 of HLEP 1989. Clause 11(2)(b)(i) provides that land in the Rural "B" zone may be subdivided provided that each allotment created has an area of not less than 10ha. The consequence of this is that the land has the potential to generate 3 allotments. However, Mrs Fisher wants to create a lot of about 0.8ha (2Ac). The reasons for this are as follows:

Mrs Fisher has lived in the house with her late husband since 1973 and alone since Paul passed away. The house is isolated. Since 1997 she has had the services of a married couple to help with domestic duties and grounds maintenance. They live some distance away. Mrs Fisher would like to have the security of mind that comes from knowing she has help close at hand; ideally living on the property. She would like to reward their loyalty and concern by providing about 2 acres for them to own and build their home. The location of the new house, at the entrance to the property, would serve to act in the role of a gatekeepers cottage. This would provide the security and peace of mind to allow Mrs Fisher to continue living in her family home.

Subsequent to discussions with Council's Planner, Natasha Baker, I have revisited the site to determine its absorption characteristics. The area adjacent to the frontage of the road is generally slightly higher than the road. From this minor ridge line the property gently falls to the south east. Vegetation is essentially a dry eucalypt woodland. The average tree diameter is about 400mm with very few trees larger than this. This understorey is scrub. The property has been transected for the purpose of burying a water supply pipe. The surface exhibits sandstone outcrops together with extensive areas of sandy soil between. A small dam adjacent to the road discloses a soil depth of about 1 metre. In my opinion, the soil is capable of absorbing the waste water from the proposed dwelling.

The subdivision of creating a 0.8ha lot is in keeping with the objective of the zone. The lot is of the same order in size as those created by the adjacent community subdivision.

Objection is raised to the minimum requirement provisions of the zone, by virtue of clause 6 SEPP 1 in that the minimum requirement of 10ha is unreasonable, having regard to the above circumstances".

Comment

The front portion referred to in the submission is "Nepean Park" which was the subject of a rezoning request that was gazetted as Amendment No. 1 to HLEP 1989 on 8 June 1990. The subject site was not part of the Nepean Park rezoning (Amendment 1) but adjoined the rezoning boundary.

The relevant clause of HLEP 1989, 33A, limited the total number of allotments created by the rezoning to a maximum of 122. The maximum number of allotments have been created with the approved subdivision stages of Nepean Park.

The creation of an allotment of 8,200m² is inconsistent with objective (a) of the Rural 1(b) zone which states:

"to primarily provide for agricultural uses and animal establishments".

An allotment of 8,400m² cannot be adequately used for any agricultural uses or animal establishments..

This matter has been endorsed by the Land and Environment Court in the proposed subdivision of Hadden Farm in which the Court considered allotments of a similar size could not be adequately used for any agricultural uses or animal establishments.

The application was referred to the Department of Urban Affairs and Planning (DUAP) seeking the Director General's concurrence pursuant to SEPP No. 1. The department has responded as follows:

"Pursuant to clause 7 of SEPP No. 1, the Director General does not concur with Council granting consent to the variation of the minimum provisions in respect of the subdivision standard to enable the proposed development of the subject land for the following reasons:

- (a) no planning grounds have been advanced to support the argument that the standard is unnecessary or inappropriate; and*
- (b) the proposed subdivision of this site would result in a 90% variation to the minimum lot size and create an undesirable precedent".*

Council Officers have the same concerns as the Department with the variation to the minimum allotment size.

Likely Impact of the Development

Context and Setting

The properties surrounding and adjoining the subject site are generally larger size parcels of land. The small rural/residential allotments associated with Nepean Park do not directly adjoin the subject site but are well separated by several large parcels.

Attachment 2 shows the existing allotment patterns that adjoin the subject site.

The creation of an allotment size of 8,200m² would be inconsistent with the general allotment size in the immediate locality of the site.

Effluent Disposal

The application provided no water balance or effluent disposal report that provides any details on the proposed disposal system.

The applicant has indicated that the sandy soil in the area is capable of absorbing the waste water from the proposed dwelling.

The site has a significant cover of trees and undergrowth. No assessment has been made in the application as to whether the site has any threatened fauna or flora. Any effluent disposal system, especially one that relies on absorption, is likely to have a significant impact on the native bushland area on the site and the surrounding bushland areas which are below the site.

Flora and Fauna

The application was not accompanied by a flora and fauna assessment or report except for a comment by the applicant that indicates the vegetation is essentially a dry eucalypt woodland with the average tree diameter being 400mm. The understorey is scrub.

The proposed allotment would require some clearing to establish a dwelling site and access driveway. The removal of the vegetation, including the undergrowth, would have potential to have a significant impact.

No documentary evidence has been provided to demonstrate the subdivision has no impact on the flora and fauna.

Bush Fire

The site is within a high bush fire area. The application provides no details or assessment of this matter. The site is unlikely to comply with Council's Bush Fire Mitigation Policy.

Suitability of the Site

The application has not provided any substantive documentary evidence in the form of reports by suitably qualified professionals that suggest:

- i The site can accommodate a suitable effluent disposal system that will have no significant impact.
- ii There is no impact on the fauna and flora and any threatened species on the site.
- iii The site can satisfy suitable bush fire mitigation measures in accordance with Council's Bush Fire Mitigation Policy.

As a result, because of the lack of information in respect to the above matters, it is concluded that the site is not suitable for the proposed development.

Public Interest

It is considered that the approval of the proposed subdivision is not in the public interest due to the potential environmental impacts and precedent that could be set in respect to allotment sizes.

Conclusion

The application proposes an allotment that is significantly below the minimum (90%) required under HLEP 1989. The 8,200m² allotment is inconsistent with the Rural 1(b) objectives.

The subdivision has potential to have significant environmental impact in terms of effluent disposal, fauna and flora and bush fire risk.

The Director General does not concur with Council granting consent to the variation of the minimum provision in respect to subdivision allotment size.

As a result, Council has no discretion to approve the subdivisiion.

Notwithstanding the Director General's decision, Council Offices have concerns with the proposal which were outlined in the report.

RECOMMENDATION:

That the application be refused for the following reasons:

1. The proposed subdivison does not comply with clause 11(2)(b) of Hawkesbury Local Environmental Plan 1989.
2. The proposed subdivision is inconsistent with the aims and objectives of Hawkesbury Local Environmental Plan 1989.
3. The proposed subdivision is inconsistent with objectives (a) and (d) of zone 1(b) (Rural "B") of Hawkesbury Local Environmental Plan 1989.
4. The proposed subdivision is inconsistent with the aims of Regional Environmental Plan No. 20 - Hawkesbury-Nepean River (No. 2 - 1997).
5. The proposed subdivision is inconsistent with clauses 6(1)(3)(6)(9) of Regional Environmental Plan No. 20 - Hawkesbury-Nepean River (No. 2 - 1997).
6. The subdivision has made inadequate provision for the disposal of onsite effluent.
7. The proposal has the potential to impact on fauna and flora and any threatened species in the area as a result of clearing, site disturbance and inadequate effluent disposal.
8. The subdivision is not in the public interest.

ATTACHMENTS:

AT1 - Proposed plan of subdivision.

AT2 - Existing allotment patterns that adjoin the subject site.

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Proposed plan of subdivision

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Existing allotment patterns that adjoin the subject site

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ITEM: 160 **Proposed Tyre Landfill - 62 Level Crossing Road, Vineyard****FILE NUMBER:** M801/00/EVD/ENJ03NAX.V14

Applicant:	N E Peare Pty Ltd
Applicants Rep:	Mr Stephen Smith
Owner:	N E Peare Pty Ltd
Stat. Provisions:	Integrated Development Provisions of EP&A Act 1979 Designated Development Provisions of EP&A Act 1979 Hawkesbury Local Environmental Plan 1989 Sydney Regional Environmental Plan No. 20 (No. 2 - 1997)
Area:	53ha
Zone:	Rural 1(b)
Advertising:	Nil - unable to advertise due to incomplete application
Date Received:	23 May 2000

Key Issues:	- Incomplete application - Inconsistent with LEP objectives - Inconsistent with SREP20 objectives - Significant environmental impact
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Action:	Refusal
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REPORT:**Introduction**

Council has received a development application for a tyre landfill on 62 Level Crossing Road, Vineyard.

This matter is being reported to Council due to the application being incomplete and the applicant's refusal to withdraw the application until such time as all planning and environmental matters can be adequately addressed by the applicant.

The Proposal

The proposal is for a tyre landfilling of 4.13ha of flood affected land on 62 Level Crossing Road, Vineyard. The frequency of flood water inundation is in the order of 1 in 5 year. The landfill site is approximately 180m from Eastern Creek and approximately 400m from South Creek. The site is presently used for grazing.

The application is defined as an integrated designated development application under the EP & A Act 1979 (ie the development is “designated” as defined by Schedule 3 of the EP & A Regulations 1994 and is “integrated” because a licence is required from the EPA to carry out the activity). As such the application must be accompanied with an environmental impact statement (EIS) and be submitted to the EPA prior to or at the same time as being submitted to Council.

Background

The application was received on 23 May 2000. Prior to submitting the application the applicant was advised not to submit the application by Council Officers due to concerns about the adequacy of the EIS and because the application had not been submitted to the EPA. Notwithstanding this advice, the applicant chose to submit the application.

The application was referred to the EPA and the Hawkesbury Nepean Catchment Management Trust (HNCMT) as per the provisions of the EP & A Act 1979 and Sydney Regional Environmental Plan NO 20 (No. 2 - 1997). An initial assessment of the application was also undertaken and a letter advising the applicant to withdraw the application, and of the need for additional information and clarification of information was sent on 8 June 2000.

On 22 June 2000 a letter was sent to the applicant advising that no response had been received to Council’s letter of 8 June 2000 and requested that a response for forwarded to Council by 30 June 2000.

On 12 July 2000 a follow up letter was sent to the applicant advising that if the required additional information was not received by 20 July 2000 the application would be refused.

The applicant’s representative Mr Stephen Smith of Southern Environmental Pty Ltd faxed a response to Council on 20 July 2000 advising that a response to Council’s letters would be forwarded that day or as soon as possible afterwards. A response was not received that day hence a letter was sent to Mr Smith on 21 July 2000 requesting a specific date by which the information would be submitted.

A letter from Mr Smith which in part addressed some of the issues raised by Council was received on 26 July 2000. Mr Smith advised that further information was being prepared and would be forwarded to Council when available.

Finally, a letter was sent to the applicant on 5 September 2000 advising that if the additional information was not received on 13 September 2000 the application would be determined with the likely outcome being refusal. The applicant was again requested to withdraw the application.

On 12 September 2000 Mr Smith faxed Council stating that the additional information should be forwarded to Council by 19 September 2000.

At the time of writing the report the additional information had not been received.

EPA and HNCMT Comments

The EPA has written to Council stating:

"The EPA generally agrees with most of the issues raised in your [Council's] 8 June letter to the applicant, and supports your recommendation that the application be withdrawn.

Of particular concern to the EPA is the location of the proposed development in a flood prone area, which is defined in Department of Urban Affairs and Planning's (DUAP) EIS Practice Guideline : Landfilling as not being appropriate for landfilling. The EPA's position in such circumstances is that it would generally not be prepared to issue licences for landfills in such location. Any new or revised application for a landfill at the same location would need to rigorously address the matters raised in the DUAP guideline for the EPA to even consider licencing the proposal."

The HNCMT has written to Council stating:

"The Trust does not support the proposed development.

As a matter of principle, the Trust does not support the filling of the floodplain and the constriction of flood waters. Although the individual impact may not be great; the Trust is concerned at the cumulative effect of this and similar developments.

Further, the Trust does not consider that the floodplain is a suitable location for waste landfill and particularly a waste management facility.

We are concerned that the excavation will disturb saline soils and that leachate may rise through the porosity created by the tyres and fill.

The EIS does not indicate details of proposed soil erosion measures

The proposal does not include parameters for an environmental management plan for the site".

Public Exhibition of Application

The application has not been publicly exhibited because the application is incomplete

Council policy relating to incomplete applications

Council has adopted the following policy with respect to incomplete applications:

- a. *The initial letter to an applicant for additional information or amendments with a request for a response within fourteen days*
- b. *If no response after fourteen days, a follow up letter will be sent requesting the information within seven days and suggesting withdrawal of the application where appropriate*

- c. *Application be refused after forty days if no response or the information submitted is insufficient.*

The application was submitted on 23 May 2000. Council staff have requested a number of times that additional information be submitted or the application be withdrawn.

Due to the extended time period that this incomplete application has been with Council it is recommended that the application be refused.

Planning Assessment

Based on assessment of information submitted by the applicant the following issues are of concern:

- The proposal is inconsistent with the objectives of the HLEP 1989 and Rural 1(b) zone.
- The development does not demonstrate compliance with Council's Landfill DCP.
- Inconsistent with the provisions and objectives of SREP NO. 20 (No. 2).
- Inconsistent with DUAP Guidelines for Landfilling.
- EPA has advised that it is unlikely that they would be prepared to issue a licence for the activity.
- The applicant's justification for the proposal would appear to be untenable.
- The site is unsuitable for the development.
- The development has the potential to significantly impact on the environment.

Conclusion

The proposal does not satisfy provisions of the relevant environmental planning instruments, Council's development control plan and DUAP guidelines, and the activity would have a significant adverse environmental impact and the site is unsuitable for the proposed development.

Inadequate information has been submitted with the application to justify the proposal and the EPA have advised that it is unlikely that they would licence the activity.

It is therefore recommended that the application be refused.

RECOMMENDATION:

That the application for a tyre landfill on 62 Level Crossing Road, Vineyard be refused for the following reasons:

1. Insufficient information has been submitted with the application to allow for an adequate assessment of the application with respect to the provision of DUAP's EIS Guideline for Landfilling and the provisions of Hawkesbury Local Environmental Plan 1989, Sydney Regional Environmental Plan No. 20 (No. 20), and Council's Landfill Development Control Plan.
2. The proposal is inconsistent with the objectives of the Rural 1(b) zone.

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3. The application does not demonstrate compliance with Council's Landfill DCP.
4. The proposal is inconsistent with the provisions of Sydney Regional Environmental Plan No. 20 (No. 2)
5. The proposal is inconsistent with DUAP Guidelines for Landfilling.
6. The proposed activity is unlikely to obtain the necessary licence from the EPA to operate.
7. The proposal is not adequately justified.
8. The site is unsuitable for the proposed activity.
9. The proposal would have a significant adverse environmental impact.

ATTACHMENTS:

There are no supporting documents for this report.

oooO END OF ITEM 160 Oooo

ITEM: 161 **Proposed Rezoning of Lot 10 DP30468 No. 582 Terrace Road, Freemans Reach**

FILE NUMBER: P2003/2210/EVD/ENJ03NAX.V03

Applicant: Janlyn Planning & Certification Pty Ltd
Applicants Rep: Mr Maurice Higgins of M J Higgins and Associates
Owner: J F Neilson
Stat. Provisions: Hawkesbury Local Environmental Plan 1989
Area: 5.127 hectares
Zone: Environmental Protection 7(d1) (Scenic)
Advertising: Not required
Date Received: 3 July 2000

Key Issues: - Hawkesbury Sustainable Agricultural Development Strategy.

Action: Non support of rezoning.

REPORT:

Introduction

An application has been received which seeks to rezone Lot 10 DP30468 No. 582 Terrace Road, Freemans Reach to facilitate a five lot subdivision, consisting of lot sizes ranging from 3480sqm to 1.27 hectares.

Background

A Development Application was received on 1 July 1999 for a 9 lot subdivision on the subject land. The lots ranged in size from 688m² to 1.49ha. This application was refused on 9 August 1999 for the following reasons:

- “1. *The proposed subdivision does not comply with clause 11(2)(b) of Hawkesbury Local Environmental Plan 1989.*
2. *The proposed subdivision is inconsistent with the aims and objectives of Hawkesbury Local Environmental Plan 1989.*
3. *The proposed subdivision is inconsistent with objectives 1(a), (b) and (c) of zone 7(d1)(Environmental Protection(Scenic)) of Hawkesbury Local Environmental Plan 1989.*
4. *The proposed subdivision is inconsistent with the aims of Regional Environmental Plan No. 20-Hawkesbury Nepean River (No.2-1997).*

5. *The proposed subdivision is inconsistent with clause 6(9) of Regional Environmental Plan No. 20-Hawkesbury Nepean River (No.2-1997) Rural Residential Development and was not accompanied by a Total Water Cycle Management Study.*
6. *The proposed subdivision has made inadequate provision for the disposal of onsite effluent.*
7. *The proposal has the potential to impact on fauna and flora in the area as a result of clearing, site disturbance and inadequate effluent disposal.*
8. *The subdivision is not in the public interest”.*

The applicant has now lodged an appeal in the Land and Environment Court in respect to the refusal.

Council officers have met with the applicant and discussed the current rezoning application prior to lodgement. On these occasions, the applicant was advised that it was unlikely that a rezoning would be supported.

Rezoning Proposal

The rezoning application requests that Hawkesbury Local Environmental Plan 1989 (HLEP 1989) be amended to facilitate a 5 lot subdivision of the subject land. The applicant has suggested that a Rural 1(c1) zone would be appropriate as this zone provides for rural residential development. It should be noted that the minimum allotment size for subdivision for a Rural 1(c1) zone is 4 hectares and would not facilitate further subdivision of the subject land. The proposed plan of subdivision is shown on Attachment 1.

Applicant's Justification

The applicant in support has concluded that the site is suitable for the proposed development for the following reasons:-

- *The natural characteristics of the site such as soils, geology, climate significant vegetation do not preclude the site from being developed.*
- *The current land use is unsustainable due to its impact on the existing vegetation, lack of weed control and slope degradation.*
- *Due to topographical features on the site, shallow soil and vegetation it is not possible to carry out sustainable agriculture.*
- *The proposed zone under the Hawkesbury Sustainable Agriculture Development Strategy is Mixed Agriculture and reflects Council's failure to base zones on economic and physical reality and flexibility.*
- *The shape and size of the site is unique for the local area where fragmentation of allotments has already occurred.*

- *The subject site is a junction point between urban development and rural residential development.*
- *There is a demand for a variety of housing in the Hawkesbury.*
- *There is no visual evidence of heritage items, either European or Aboriginal.*
- *Any alternative development proposal is not available under the Environmental Protection zone which does not create any land use conflict or require the removal of vegetation.*
- *The proposal is consistent with applicable state and regional policies.*

Statutory ProvisionsHawkesbury Local Environmental Plan 1989

The subject land is zoned Environmental Protection 7(d1) under the provisions of HLEP 1989.

Clause 11(2) (b)(i) of the HLEP 1989 relates to the subdivision of land within an Environmental Protection 7(d1)(Scenic) zone and requires that each new lot created has an area of not less than 10 hectares. The subject land has an area of 5.127 hectares and has no subdivision potential to create additional lots.

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

The subject land falls within the Middle Nepean and Hawkesbury River Catchment as defined by SREP20. The site is not located in an environmentally sensitive area, however the southern part of the site is located with Regionally Significant Scenic Corridor.

Section 117(2) Directions

The Ministerial Directions under Section 117(2) of the Environment Planning and Assessment Act 1979 provide direction to councils in considering rezoning proposals. G12 relates to the alteration of environmental protection zones and states as follows:

"G12. Environmental protection zones

- Draft local environmental plans shall not alter or remove existing zonings, or identification, of land for scenic protection areas, environmental protection areas, escarpment preservation areas, conservation areas, harbour or foreshore protection areas, coastal protection areas etc (except that these may be altered or increased where justified by an environmental study).*
- Provisions in environmental planning instruments, relating to subdivision and development controls for land referred to in (i) shall be retained in draft local environmental plans (except that these may be amended where justified by an environmental study)."*

The rezoning application proposes to rezone the land from Environmental Protection 7(d1) to Rural 1(c1) and is not consistent with the Ministerial Direction.

Planning Assessment

Subject Land

The subject land is irregularly shaped and has road frontage to Cliff Road, Gormley Street and Terrace Road. The main access is currently via an unsealed access handle from Terrace Road.

The land is mainly undulating and steep in three gully areas that traverse the property. At the north eastern boundary, at the end of the access handle, the site is relatively flat and contains a dwelling house. A dam is located along the northern boundary of the site.

The site contains scattered vegetation and the gully areas are heavily treed and weed infested. A fauna and flora report was prepared as part of the rezoning application by Eco Search Consultants. The report found two of the gully areas contain Shale-Sandstone Transition Woodland which is listed as an Endangered Ecological community under the provisions of the Threatened Species Conservation Act, 1995.

Surrounding Development

The general locality surrounding the site to the north and east contains predominately rural and rural residential lots. Land uses include a landscaping supplier, grazing and a miniature horse stud. Land immediately to the west along the south western boundary consists of small lot residential housing in Gormley Street and Cliff Drive. The surrounding lots in relation to the subject land is shown on Attachment 2.

Cliff Drive runs along the southern boundary of the subject land that contains small lot rural residential development. The Hawkesbury River is located directly below Cliff Road and the subject land drains to the river.

Hawkesbury Sustainable Agricultural Development Strategy

The Hawkesbury Sustainable Agricultural Development Strategy (HSADS) was completed in 1997 and provided for the retention of agricultural pursuits within the City, as well as encouraging new activities to appropriate zones. The study also provided a framework for future development of the City's rural areas.

HSADS recommended a number of strategies that are currently being implemented by Council. One of the major changes recommended was the alteration of the rural zones and objectives. It is important to note that HSADS did not recommend any changes to minimum allotment sizes for subdivision.

The proposed amendments to the rural zones and objectives recommended in HSADS is currently with the Department of Urban Affairs and Planning for issue of the Section 65 Certificate to allow public exhibition.

Under the recommendations of HSADS, the subject site is located within an Environmental Protection - Agriculture Protection Zone. This area applies to the land currently zoned Environmental Protection 7(d1) and Environmental Protection 7(d) in the Bilpin area.

The proposed rezoning and subsequent five lot subdivision is inconsistent with the provisions of HSADS.

Shaping Western Sydney

Shaping Western Sydney - The Planning Strategy for Western Sydney was released by the Department of Urban Affairs and Planning in 1998. The Strategy provides for protecting Western Sydney's natural boundaries and protecting long term agricultural viability. It also recommends that the area north and west of the Hawkesbury River remain part of Sydney's bushland/rural fringe.

The applicant has not addressed the provisions of Shaping Western Sydney and considers that rural residential development is appropriate as the site cannot be used for viable agricultural activities.

Agricultural viability

The Department of Agriculture has advised that the land contains Class 2 and Class 4 agricultural land. Class 2 classification essentially states that the land is suitable for cultivation cropping but not suited to continuous cropping or intensive horticulture. Class 2 land is relatively scarce within the City, being restricted mainly to the floodplain.

Class 4 agricultural land is generally suitable for grazing but not for cultivation.

The applicant has provided detailed justification as to why the property is not suitable for agriculture, including that *"the site is well vegetated and intensification of grazing or any form of cultivation will ensure that the existing fauna and flora habitat will be destroyed"*. It is considered that future agricultural development could be managed as effectively as proposed by the five lot subdivision.

Conclusion

The subject land provides a good edge to the residential development in Gormley Street and Cliff Road, clearly indicating the transition from residential area to rural land. Whilst there are some smaller allotments surrounding the subject land, there are also parcels of similar size which would provide further pressure for subdivision. In short, it is not good planning practice to encourage spot rezonings of this nature where they are not consistent with the broader planning objectives.

The most appropriate manner of providing additional rural residential development is via a review of rural land and strategies such as HSADS. In this regard, a proposal such as this should be considered at the exhibition stage of the proposed amendments to the rural zones.

Furthermore, the proposal is inconsistent with the Ministerial Direction relating to the alteration Environmental Protection zones. It is also inconsistent with the State Government's policy of retaining land for agriculture and preserving further fragmentation of rural areas as outlined in Shaping Western Sydney.

Give the reasons outlined above it is considered that the proposal to rezone the land to allow a 5 lot rural residential subdivision should not be supported.

RECOMMENDATION:

That the application to rezone Lot 10 DP30468 No. 582 Terrace Road, Freemans Reach to allow a rural residential subdivision of five lots not be supported.

ATTACHMENTS:

AT1 - Proposed subdivision.

AT2 - Subject land and surrounding lot layout.

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Proposed subdivision

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Subject land and surrounding lot layout

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ITEM: 162 **Medium Density Development (5 units) at Lots 122, 121 & 120
DP872359 Nos. 8 & 10 Arndell Street, Windsor**

FILE NUMBER: M1742/99/EVD/ENJ03NAX.V11

Applicant: Enoch Taylor and Co Pty Ltd
Applicants Rep: N/A
Owner: Enoch Taylor and Co Pty Ltd
Stat. Provisions: HLEP 1989
Area: 1970sqm
Zone: Residential 2(a)
Advertising: Notified to adjoining owners and occupiers. Two letters of objections received.
Date Received: 4/11/99, amended plans 7/8/00

Key Issues: - Lack of privacy
 - Traffic
 - Development on flood liable and
 - Flood free access

Action: Approval, subject to conditions.

REPORT:

Introduction

An application has been received seeking consent to construct five (5) medium density units which consist of a mix of single and two storey dwellings.

Existing on the property is a single storey brick cottage which will be retained and incorporated into the development.

The application is being reported to Council due to the submissions received and Council's Medium Density development control plan relating to development on flood liable land. This report details the proposal, the current statutory situation, submissions received from the surrounding property owners 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 an approval, subject to conditions.

The Proposal

The proposal involves the demolition of an existing iron shed at the front of the property and the construction of five (5) medium density units which consist of a mixture of single and double storey dwellings. The existing dwelling on site is incorporated into the proposed development as Unit 1.

The subject site consists of two allotments and has a total site area of 1970sqm. Thompson Square is approximately 150m walking distance from the proposed development.

The proposed dwellings are setback approximately 23m from front boundary, with the garage of Unit 1 being setback 12m which maintains the existing streetscape.

Each of the units contains three (3) bedrooms, private open space and off street parking. The units are proposed to be constructed of brick veneer with concrete roof tiles.

All of the units provide habitable floor levels of 17.3m or higher with the exception of the existing dwelling. Approximately half of the subject property is below the 1:100 year flood level making access from Arndell impassable during a flood. To overcome the inundation of the access during flooding the applicant has proposed a 3m right of carriageway over the adjoining property which provides flood free access to George Street. This is shown on the locality plan in Attachment 1. Site plan and elevations are enclosed as Attachment 2-4.

Background

The application originally proposed six (6) units. As a result of an objection received by an adjoining neighbour regarding their privacy and the setback to Unit 1 which was inconsistent with adjoining setbacks. An amended design was prepared.

The amended plans addressed the concerns by deleting Unit 6 and moving Unit 1 back to give an 11m setback.

The applicant has now further amended these plans to provide all habitable levels in the development at or above the 1:100 year flood level with the exception of Unit 1 (existing dwelling).

Statutory Situation

Hawkesbury Local Environmental Plan 1989

The subject property is zoned Residential 2(a) under Hawkesbury Local Environmental Plan (HLEP) 1989. The objectives of the zone are:

- (a) *to provide for housing and associated facilities in locations of high amenity and accessibility;*
- (b) *to enable development for purposes other than residential only if it is compatible with the character of the living area and has a domestic scale and character; and*
- (c) *to ensure that development does not create unreasonable demands, in the present or in the future, for provision or extension of public amenities or services.*

Under HLEP 1989 the proposed development is defined as a Residential Flat Building Class B which means:

"a residential flat building containing more than 2 dwellings in a group such as are commonly known as group houses, villa homes, town houses, terrace buildings and the like;"

Residential Flat Buildings Class B are permissible within a Residential 2(a) zone with development consent.

Clause 9(3) under HLEP 1989- Zone objectives and development control table:

9. (3) *Except as otherwise provided by this plan, the 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.*

The proposal is considered to be consistent with the relevant objectives of the zone as it is providing a development which offers high amenity to future residents and is accessible to local shops, community facilities and public transport. The development should not create unreasonable demands for the provision or extension of public amenities and services, if the proposal was approved, Section 94 contributions will be levied to assist in the provision of public amenities and services. The development is a short distance from Windsor Town Centre, Windsor Railway Station, schools, parks and community facilities.

Clause 16 of HLEP 1989 - Erection of residential flat buildings Class B:

16. *A residential flat building Class B shall not be erected on land which is not serviced by reticulated water and sewerage.*

Comment:

The site is located in an area that is serviced by reticulated water and sewer. Should the application be approved, a Section 73 certificate will be required from Sydney Water. Council is the sewer authority requiring a sewer headworks contribution should the application be supported.

Clause 25 under HLEP 1989 - Development on flood liable land

25.

- (2) *A building shall not be erected on any land lying at a level lower than 3 metres below the 1-in-100 year flood level for the area in which the land is situated, except as provided by subclauses (4), (6) and (8).*
- (3) *Each habitable room in a building situated on any land to which this plan applies shall have a floor level no lower than the 1-in-100 year flood level for the area in which the land is located.*

....

- (8) *Notwithstanding subclauses (2) and (3), a dwelling or other building may, with the consent of the Council, be erected on an area of land which has a level not less than 3 metres below the floor height standard for the land immediately before the commencement day. However, the Council shall not grant consent for development pursuant to this subclause after 30 June 2002.*

....

Comment:

The development can achieve a habitable floor level of 17.3m AHD or higher which is consistent with the above subclauses. The applicant proposes a 3m right of carriageway over the adjoining property to the north west having direct access to George Street for flood evacuation purposes. These matters will be discussed in more detail in the assessment below under "*Natural Hazards*". Attachment 5 shows the site and land in the vicinity that is below the 1:100 year flood level.

Clause 28 of HLEP 1989 - Development in the vicinity of a heritage item:

28. *The Council shall not grant consent to an application to carry out development in the vicinity of a heritage item unless it has made an assessment of the effect the carrying out of that development will have on the heritage significance of that item and its setting.*

Comment:

The subject property is not a heritage item but there is a mix of residential development existing within the vicinity of the subject property which include heritage items. The development is compatible with surrounding heritage items. The proposed design allows for a modern design that is compatible with the surrounding development. There is vegetative screening along the rear boundary of the nearest heritage item which should be retained as part of conditions of consent should the application be approved.

Sydney Regional Environmental Plan No.20 Hawkesbury- Nepean River

The subject site is within the boundary of SREP No. 20 and is within the South Creek catchment area. The subject property is not within a scenic corridor and is not inconsistent with the planning policies and recommended strategies of the plan.

Community Consultation

The application was notified to adjoining owners and occupiers for a period of 14 days in accordance with "Public Notification of Development Proposals" development control plan. The application was further notified for 14 days when the final amended plans were received.

At the conclusion of both the exhibition periods there were four (4) letters received objecting to the proposal (Two received on each occasion).

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The main concerns include:

- Privacy
- Traffic
- Flood free access (right of carriageway)

These issues are discussed in the assessment below.

Planning Assessment

The following are the relevant matters for consideration under Section 79C of the EP & A Act 1979:

Medium Density Development Control Plan

An assessment of the development under DCP for Medium Density is shown in the table below:

STANDARD	REQUIRED	PROVIDED	COMPLY
Density	3 bedroom @ 1 per 300sqm of site area. Require 1500sqm	1970sqm.	Yes
Private Open Space	Courtyards minimum 50sqm	Unit 1 - 100sqm Unit 2 - 52sqm Unit 3 - 54sqm Unit 4 - 70sqm Unit 5 - 90sqm	Yes
	Courtyards to be accessible from living areas	Access via living areas	Yes
	Courtyards not to be overlooked by adjoining dwellings	No overlooking is likely occur	Yes
	Half of each courtyard to receive direct sunlight midwinter	Each courtyard will receive at least 50% sunlight between 9am and 3pm midwinter	Yes

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STANDARD	REQUIRED	PROVIDED	COMPLY
Carparking	3 bedroom requires 2 covered spaces and 1 visitor space per 5 dwellings	Each unit has a double garage together with two visitor spaces	Yes
	Uncovered carparking to be 2.6m x 5.5m	5.5m x 2.6m	Yes
	Covered car spaces have a minimum of 3m x 5.5m internally	Each garage 6.5m x 5.6m at a minimum	Yes
Driveways	Minimum width of 6m at building line and 3m width for internal driveways	Internal driveway ranges from 3m to 7.6m	Yes
	90 degree parking spaces to have driveway width adjacent to car space of 6.7m	6.7m and 7.6m	Yes
	Driveways to be hard standing and pervious to water	Paved driveway	Yes
Setbacks from road frontages	Consideration to zero setback with landscaping and courtyards fronting	The setback is compatible with the surrounding setbacks. Setbacks range from 12m (unit 1 garage) to 23m (main dwellings) from the front boundary	Yes
Design Considerations	Living areas to be oriented north where possible	Living areas are oriented north where possible	Yes
	Half of living area windows to receive sunlight between 9am and 3pm midwinter	Yes	Yes
	Same mix of materials to be used across whole development	Brick veneer with concrete roof tiles	Yes
Landscaping	Landscaping to be compatible with the scale of the building	The landscaping is a suitable scale for the development	Yes
Heritage Buildings	Compatible with any existing heritage items	The development is compatible with surrounding heritage items	Yes

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STANDARD	REQUIRED	PROVIDED	COMPLY
Aircraft Noise	If ANEF exceeds 25-Noise Attenuation measures shall be incorporated into the design	N/A	N/A
Height of Buildings	Development shall not exceed two storey or levels at any point	Mix of single and two storey	Yes
Drainage	All roof and paved surfaces to be piped to Council's nearest piped stormwater system	OSD is required as system downstream of Arndell Street is inadequate	Yes
S94 Contributions	Contributions for community facilities, recreation and park improvements	\$9106	Yes

The proposed development complies with the numerical standards of the medium density DCP.

Character of the Area

The subject property is surrounded by a mix of single and two storey dwellings, dwellings, and medium density development. Thompson Square is only a short distance from the proposed development site.

The proposal is considered to be consistent with the surrounding character of the area, the proposed buildings are setback adequately and the applicant intends to retain all mature trees along the front boundary which will not alter significantly the existing streetscape.

Privacy (issue also raised by objector)

An objection was raised from number 46 and number 50 George Street in relation to privacy, there was concern that overlooking may occur from courtyards and the balcony on Unit 5.

Number 46 raised the issue of overlooking from courtyards and vehicles using the right of carriageway proposed along the southern boundary. Unit 4 which adjoins number 46 is a single and two storey structure. The single storey component adjoins number 46 with the unit being setback 3-5m from side boundary. The second storey window is to the toilet and not considered a main living area. It is considered that combined with adequate fencing and landscaping, overlooking is considered acceptable. Details relating to the right of carriage way will be discussed below under "Flood Free Access".

Number 50 raised the issue that the balcony from Unit 5 directly looks towards their open space. The balcony for Unit 5 opens from the bedrooms in the villa and not main living areas, the applicant has agreed to provide screen lattice on the north west side of the balcony which should provide some privacy to Number 50.

Both of the objectors have indicated that should the application be supported that a 1.8m high fence should be erected in addition with a lattice top to ensure added privacy, this can form part of conditions of consent should the application be supported. Also additional planting along the north west boundary with suitable species is a condition of consent.

The proposed development and conditions will ensure that minimal impact occurs in regard to overlooking and privacy. The applicant has made every effort to amend the plans to address this matter. The implementation of the proposed works (ie suitable landscaping and boundary fencing) will ensure that any visual impact and loss of privacy is reduced to an acceptable level.

Flora and Fauna

It is considered that the subject property is located within an established residential area with domestic gardens and therefore will not have any significant impact on any endangered flora and fauna under Section 5A of the EP&A Act 1979.

It is proposed to retain three mature casuarina trees and other mature trees at the front of the property which will maintain the existing streetscape.

Access, Transport and Traffic *(issue also raised by objector)*

The development proposes access from Arndell Street which is fully constructed.

An objection was raised that the intersection at Arndell Street and George Street is unsafe and that additional vehicles using this intersection will create a hazard. George Street and Arndell Street are not considered main thoroughfares and it is considered there is reasonable sight distance to the intersection.

The proposed development will generate traffic but the additional traffic movements is considered to be an acceptable and will not have a significant impact on the local road network.

The development meets all the parking requirements under the DCP for medium density development.

Heritage

The proposed development adjoins a heritage item located at 48 George Street. This heritage item is c.1870 and is an intact timber cottage with a bull nose verandah two sides. French doors to front verandah and a brick chimney with arched cowls. There is an associated shed at the rear of the property. There is dense vegetation between the heritage item and proposed development. The heritage item is not highly visible from the subject property.

There is also another heritage item across the road on the corner of Arndell Street and George Street to the north. This heritage item is a Victorian painted brick cottage with bull nose verandah and cast iron brackets c.1890. This has a basement and gives the appearance of two storeys from the side and rear.

The proposed development is considered to have an minimal impact on the heritage items in the vicinity.

Development on Flood Liable Land

The proposed development generally complies with Clause 25 of HLEP 1989. The development can provide habitable floor levels at 17.3m or greater.

The Medium Density DCP states in the Introduction:

"Land below the one in one hundred year flood frequency level are unsuitable for medium density development as flood damage potential and commitment of limited resources is unnecessarily increased where flood liable lands are developed at greater densities than low-detached housing ... Applications proposing development on flood liable lands will not accordingly be supported."

This requirement is not a development standard within the DCP but a statement contained in the introduction of the DCP. The proposed development is on land that is partly affected by the 1:100 year flood level. The development can achieve habitable floor levels above the 1:100 year flood level and is below its density potential.

In the immediate area, duplexes and villas have been approved above the 1:100 year flood level but they provide no flood free access (roads) for evacuation in the event of a flood. The proposed development can provide flood free access to George Street in the event of a flood to allow all future residents to evacuate.

The development will not increase the flood damage potential as only part of two units (non habitable rooms) will be inundated during a flood and these areas are garages. Additional resources will not be required during a flood event as the residents have opportunity to evacuate to the rear of the property on their own over the right of carriageway to George Street to higher ground. The main reason for prohibiting development in flood liable land is to avoid increasing the risk and difficulty of evacuating future residents during times of flood.

The proposed development overcomes the main reasons for Council implementing the policy and therefore should be supported in this case.

Flood Free Access (issue also raised by objector)

The applicant proposes a 3m right of carriageway (ROW) over the adjoining property to the north west having direct access to George Street. This will be used only in times of flooding is to provide flood free access for future residents of the development.

An objection was raised to the location of the ROW, that it would impact on number 50 George Street as the bedroom windows are located adjacent ROW. There was also concern that the ROW would further encourage people on the weekend to continue to use the adjoining property as a car park. The matter relating to the property being used as a car park is an issue for the owner to rectify by way of fencing the property to prevent trespassing.

In relation to the right of carriageway, the use of this access is not permanent, it is only to be used during times of flooding. This ROW can be chained/ fenced so it is only used in times of flood evacuation. Should the application be supported then the fencing imposed should extend along the boundary of number 50 that adjoins the ROW.

Conclusion

The proposed development is consistent with the objectives of the zone and satisfies Council's development control plan for medium density development.

The development is compatible with the residential nature of the area and will not adversely impact the existing or future amenity of the area. The units are in walking distance to Thompson Square and Windsor Town Centre.

While the development is not consistent in terms of allowing medium density to be established on flood liable land, the intent of the requirement (flood free access and habitable rooms above the flood level) has been satisfied by the applicant by proposing a right of carriageway for flood free access and constructing the garages below the 1:100 year flood level.

The issues raised by the objectors does not warrant refusal of the application.

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

RECOMMENDATION:

That:

A. Approval be granted for 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 55799/1 (10 Sheets) dated 10 April 2000, L/S55799 dated October 1999) submitted with Development Application No. MA1742/99 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.

4 The applicant is advised to consult with:

- (a) Sydney Water Corporation Limited
- (b) Integral Energy
- (c) Natural Gas Company
- (d) a local telecommunications carrier

regarding their requirements for the provision of services to the development and the location of existing services that may be affected by proposed works, either on site or on the adjacent public road(s). Sydney Water Corporation Limited may also require the applicant to obtain a Trade Waste Approval as part of the operation of the approved development. Enquiries should be made of the Corporation's requirements for the eventual operation of the approved use.

5. No excavation or site works shall be commenced prior to the issue of the construction certificate.

6. All mature trees onsite should be retained and incorporated into the landscaping for the site.

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.**

7. A monetary contribution is to be paid to Council, pursuant to Section 94 of the Environmental Planning and Assessment Act 1979, towards the provision of the following public facilities in the locality:

- | | |
|-------------------------------|-----------|
| (a) Open Space and Recreation | (\$5,545) |
| (b) Community Facilities | (\$3,561) |

The above contributions have been determined in accordance with Hawkesbury Section 94 Contribution Plan. A copy of the Contributions Plan may be inspected at Council's Offices, George Street, Windsor.

Contributions are to be paid prior to issue of the construction certificate.

The amount of contribution payable under this condition has been calculated on the basis of costs as at the date of consent. In accordance with the provisions of the Contributions Plan, this amount shall be INDEXED at the time of actual payment in accordance with movement in the Consumer Price Index as published by the Australian Bureau of Statistics. In this respect the attached fee schedule is valid for 3 (three) months.

8. A schedule of external finishes for the units is to be submitted to the Principle Certifying authority for approval prior to issue of construction certificate. consideration should be given to adjoining heritage items in the vicinity.
9. A schedule of finishes for the concrete driveway is to be submitted to the principle Certifying Authority for approval prior to issue of construction certificate.
10. Separate details of the proposed roofwater and surface water drainage system shall be lodged in duplicate for approval. Such details shall be approved prior to issue of construction certificate.
11. Details demonstrating that the proposed buildings comply with the Building Code of Australia are to be submitted to the Principle Certifying Authority for approval.
12. Separate practising structural engineer's details of all structural concrete and steelwork are to be submitted to the Principle Certifying Authority for approval. Note: Details should include sewer piercing specifications.
13. Submission of full designs for access ways including finished contours and site drainage.
14. Payment of a sewer headworks contribution to Council of \$241. This contribution shall remain fixed for a period of 3 (three) months after which time it will be recalculated at the rate applicable at the time of payment. Payment shall be made prior to the release of the building approval.
15. The sewer line to be located by survey. If the proposed buildings are over the line the sewer is to be relocated clear of the building.
16. The creation of a 3m wide right of carriageway over Lot 122 DP 872359 and its construction with a compacted gravel pavement to provide access to the development in times of flood.
17. All species to be planted along the northwest boundary are to be of a suitable mature height to provide visual screening to adjoining properties. Details to be submitted to Council for approval.

Prior to Commencement of Works

18. Building work that involves residential building work (within the meaning of the *Home Building Act 1989*) must not be commenced unless the principal certifying authority for the development to which the work relates:
 - (a) in the case of work to be done by a licensee under that Act:
 - (i) has been informed in writing of the licensee's name and contractor licence number, and
 - (ii) is satisfied that the licensee has complied with the requirements of Part 6 of that Act, or

- (b) in the case of work to be done by any other person:
- (i) has been informed in writing of the person's name and owner-builder permit number, or
 - (ii) has been given a declaration, signed by the owner of the land, that states that the reasonable market cost of the labour and materials involved in the work is less than the amount prescribed for the purposes of the definition of owner-builder work in Section 29 of that Act

and is given appropriate information and declarations under paragraphs (a) and (b) whenever arrangements for the doing of the work are changed in such a manner as to render out of date any information or declaration previously given under either of those paragraphs.

Note: A certificate purporting to be issued by an approved insurer under Part 6 of the *Home Building Act 1989* that states that a person is the holder of an insurance policy issued for the purposes of that Part is, for the purposes of this condition, sufficient evidence that the person has complied with the requirements of that Part.

19. 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.

20. If the work involved in the erection or demolition of a building:

- (a) is likely to be dangerous to a person in a public place or adjoining property;
- (b) is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient; or
- (c) involves the enclosure of a public place,

a hoarding or protective barrier must be erected between the work site and the public place. such hoarding or barrier must be designed and erected in accordance with Council's *Local Approvals Policy* and WorkCover requirements/guidelines.

If necessary, an awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling into the public place.

The work site must be kept lit between sunset and sunrise if it is likely to be hazardous to persons in the public place.

The applicant is to provide drawings and details to Council's Building Surveyor for approval **prior** to such installation/erection.

21. 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.
22. 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.
23. The applicant shall advise Council of the name, address and contract number of the principle certifier, in accordance with Section 81A 2(b) of the Environmental Planning and Assessment Act, 1997.
24. Sanitary accommodation shall be provided for workmen throughout the course of the building operations in accordance with the Local Government Act 1993 and the Environment Planning and Assessment Act.

During Construction

25. All building work must be carried out in accordance with provisions of the Building Code of Australia.
26. 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;
 - (c) steel reinforcement;
 - (d) framework, after the installation of all plumbing, drainage and electrical fixtures, and after the external cladding and roof covering has been fixed prior to fixing of internal linings and insulation;
 - (e) wet area flashing, after the installation any bath and shower fixtures;
 - (f) internal drainage lines prior to covering;
 - (g) external drainage lines, prior to backfilling; and
 - (h) on completion of the structure.
27. 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.
28. No spoil, excavated or demolition material from the site being deposited on any public road, footpath, public place or Council owned property without the approval of this office.

29. To reduce nuisance to the surrounding properties, all demolished material and excess spoil from the site shall be disposed of to a location and in a manner to the approval of this office (Note: no material shall be burnt or buried on the site).
30. The developer is responsible for full costs associated with any alteration, relocation or enlargement to public utilities whether caused directly or indirectly by this proposed subdivision. Such utilities include water, sewerage, drainage, power, communication, footways, kerb and gutter.
31. The building shall be set out by a Registered Surveyor and the Survey Certificate of the building shall be lodged with the Principal Certifying Authority upon completion of the footings and prior to the external wall construction proceeding above floor level.
32. A Registered Surveyor's certificate indicating that the level of the top of the floor joists of the lowest habitable floor is at or above 17.5 metres Australian Height Datum shall be obtained prior to construction proceeding above this floor level, or alternatively, a defined bench mark AHD level shall be identified by survey report on a fixed location immediately adjacent to the building (eg. top of concrete strip footing, top of poured concrete pier).
33. Should a relic be disturbed or uncovered during the construction of this development, all work should cease and the NSW Heritage Office consulted.
34. Parking spaces, accessways and aisles to conform to Council's Development Control Plan and are to be constructed with a sealed pavement, drained and marked.
35. Construction of Council's standard heavy duty footway and layback vehicular crossing to suit the access to the site with a minimum width of 7m.
36. Construction of site drainage shall be carried out in accordance with Council's Guidelines for Stormwater Drainage Requirements for Commercial, Industrial and Medium Density Developments. On-site detention shall be provided to maintain all stormwater discharges up to the 1 : 100 year storm at predevelopment levels.
37. The relocation of the gutter bridge fronting Lot 122 to suite the right of carriageway.
38. All trees and shrubs to be retained are to be suitably protected during construction.

Prior to Issue of Occupation Certificate

39. The submission of a Certificate from Telstra Australia that satisfactory arrangements have been made for the provision of cables for telephones to the development.
40. The following documentary evidence is to be obtained prior to the issue of any Occupation 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.
41. An occupation certificate is to be obtained on completion of all works and prior to commencement of the approved use. The occupation certificate will not be issued if any conditions of this consent are outstanding.
42. Landscaping shall be completed in accordance with the approved landscaping plan and shall be maintained in perpetuity by the existing or future owners and occupiers of the property.
43. In order to enhance the amenity of the development, new boundary fences shall be provided at the applicant's expense including the boundary that adjoins the right of carriageway. Such fencing behind the building line shall be to a height of 1.8m with a 300m lattice screening. The existing vegetation along the north western boundary is to be retained where possible.
44. In order to enhance the amenity of the area, all fencing fronting the street shall be a feature fence incorporating masonry piers with decorative infill panels.
45. The right of way over Lot 122 DP872359 is to be adequately fenced off to prevent trespassing and is to include fencing across the right of carriageway.
46. A gate is to be provided along the southern boundary to allow access to right of carriageway in times of flood and prevent access at all other times.
47. Screening (eg lattice) is to be provided along the northwest edge of the balcony to Unit 5.

The Use of the Site

48. All landscaping shall be permanently maintained in a good condition and in accordance with the intent of the landscaping plan.

ATTACHMENTS:

AT 1 - Locality plan and location of objectors

AT 2 - Site plan

AT 3 - Elevations Unit 1

AT 4 - Elevations Unit 5

AT 5 - 1:100 year flood level

ENVIRONMENT

Meeting Date: 3 October, 2000

Item: **162**

Locality plan and location of objectors

ENVIRONMENT

Meeting Date: 3 October, 2000

Item: **162**

Site plan

ENVIRONMENT

Meeting Date: 3 October, 2000

Item: **162**

Elevations Unit 1

ENVIRONMENT

Meeting Date: 3 October, 2000

Item: **162**

Elevations Unit 5

ENVIRONMENT

Meeting Date: 3 October, 2000

Item: **162**

1:100 year flood level

oooO END OF ITEM 162 Oooo

ITEM: 163 **Mobile Phone Base Stations - Submission by Liverpool City Council**

FILE NUMBER: GT001/007 PT2/EVD/ENJ03NBX.V01

REPORT:

A letter has been received from Liverpool City Council stating:

"I am writing to you at the request of Council in order to:

- 1. outline Council's concerns regarding the proliferation of telecommunication towers within Western Sydney and the potential health hazards relating to these towers; and*
- 2. seek your support in relation to this matter by requesting you to write to the Minister for Communications, Information Technology and the Arts, expressing your concerns."*

Liverpool City Council has also sent this letter to all WSROC Councils. The letter was prompted by their experiences with carriers and the concerns of residents. The Department of Communications, Information Technology and the Arts is the federal department responsible for the Telecommunications Act 1997.

It would appear that concerns about the number of mobile phone base stations due to the limited opportunities or unwillingness of carriers to co-locate and the possible health effects of electromagnetic energy are shared by a number of metropolitan councils. An example of similar concerns in the Hawkesbury LGA is the number of mobile phone base stations in the industrial area of South Windsor and the proximity of some proposals to residents in rural areas.

In response to these concerns, the Department of Urban Affairs and Planning (DUAP) is presently in the process of preparing a draft State Environmental Planning Policy governing telecommunications facilities. It is anticipated that the draft plan will be on public exhibition in the early part of 2001. It is therefore an opportune time for Council to also write to DUAP.

RECOMMENDATION:

That Council write to both the Minister for Communications, Information Technology and the Arts and the Department of Urban Affairs and Planning expressing concern about the number of mobile phone base stations and their possible health effects, and the unwillingness of carriers to co-locate.

ATTACHMENTS:

There are no supporting documents for this report.

oooO END OF ITEM 163 Oooo

ITEM: 164 **Elf Farm Supplies - Compliance with Conditions of Consent - Lot 3 DP610341 Mulgrave Road, Mulgrave**

FILE NUMBER: P1362/445, DA218/90/EVD/ENJ03NBX.V13

REPORT:

Introduction

This report will provide information to Council on the results of surveys and investigations to identify various odours being emitted from industrial and rural areas within Windsor and Mulgrave.

The cooperation of members of the local community was sought and obtained in order to gather information on odours over a three-month period. The survey period extended from 15 May 2000 until 15 August 2000.

Numerous enquiries had been received regarding alleged odours being emitted from the composting facility of Elf Farm Supplies, Mulgrave Road, Mulgrave. As this site appeared to be the main area of enquiry, it was reasonable to use the site as a focus for the survey. The cooperation and assistance of the management and staff of Elf Farm Supplies was paramount in achieving the results gained.

Background

At Council's Ordinary Meeting of 14 March 2000 it was resolved that:

1. *Council immediately take action to enforce all conditions of consent at the Elf Mushroom, Mulgrave site in particular conditions relating to:*
 - i. *Hours of operation*
 - ii. *Tonnage*
 - iii. *Noise*
 - iv. *Odour*
2. *The EPA be advised of Council's resolution.*
3. *Council re-exhibit Draft Local Environmental Plan 9/94 to rezone Lot 4 DP610341 and Lot 12 DP736138 Mulgrave Road, Mulgrave from Rural 1(c) to Light Industrial 4(b).*

As a result of the Council resolution and concerns raised by the residents a letter was sent to Elf Farm Supplies to undertake the following:

- a. *To comply with conditions of development consents issued over the land,*

- b. *Ensure that no odour is released from the property or emitted from the operation of the development that interferes with the amenity of the neighbourhood,*
- c. *Methods taken to stop odour from being emitted from the property are to be completed within 3 months of this date and by no later than 15 August 2000. No odour is to be produced which interferes with the amenity of the neighbourhood after that date.*
- d. *It is understood that the Environment Protection Authority (EPA) have issued a notice on Elf Mushroom Supplies to undertake measures to identify odour, and undertake mitigating measures within a six month period. Further, a list of proposed measures and a timetable was to be supplied to the EPA by Monday 1 May 2000. A copy of the proposed measures and the timetable are required to be provided to Council within 14 (fourteen) days of this date,*
- e. *Ensure that the meteorological equipment at the facility is functional at all times and provides accurate data. The equipment is to be certified as operating accurately by a suitably qualified and independent person. A copy of the certification is required to be supplied to Council within 14 (fourteen) days of this date,*
- f. *Data from the meteorological equipment is to be made available to Council Staff upon request,*
- g. *Nominate and cause an employee of Elf Farm Supplies, Mulgrave to complete the enclosed diaries for the emission of odour and for works undertaken on specific dates. The diaries are required to be completed in order to identify odours that are produced within the area, the possible causes of odours and to assist in identifying the source.*

Odour Survey and Investigation Results

The information was collected from 15 individuals and involved the following: -

- Date
- Time
- Wind direction
- Location
- Odour description
- Who was affected
- How were they affected

There were 140 reported odour incidents recorded over the survey period. Unfortunately some of the reports failed to describe the odour sufficiently or did not nominate a likely source and thus could not be used in this report.

To assist in the verification of reported odours, weather details were gained from the weather station operating at the Elf site. To confirm this data, details were also obtained from the Weather Bureau, Richmond RAAF site. Wind speed and direction were of particular interest to show possible odour plumes and the likelihood of odour dispersion.

The information gained from the survey has been collated in daily form. When more than one odour incident was reported from different locations and at approximately the same time, the information was plotted on a locality map using reference to the wind direction provided in the weather details. There are four separate maps showing these reported incidents. Each map relates to a different month of the survey period. The maps and graphs that show reported incidents are located on the viewing board at this meeting.

The maps provide details that give a better understanding of a potential odour source and the affected area. The graphs show the percentage of odour incidents and a nominated source of an odour.

Results

The graph which is attached to the report shows the percentage of odours detected. It can be summarised as follows:

Blood and bone	-	1%	
Fertilizer	-	6%	
	Insufficient description	-	24%
Manure	-	3%	
Mushroom	-	24%	
	Not described	-	20%
	Other	-	11%
Poultry	-	1%	
Septic system	-	1%	
Sewerage	-	9%	
Total identified		45%	
Total unidentified			55%

The results gained for identified odours can be grouped into three areas.

- Fertilizer
 - blood and bone
 - fertilizer
 - manure
- Mushroom
- Sewerage
 - Septic system

Cause of Odours

Fertilizers are commonly used throughout the Hawkesbury area on farms to promote growth of crops. This includes the growing of turf for which the Hawkesbury is renowned. Turf and vegetable farms are located on most low-lying areas and in close proximity to the townships of Windsor, Richmond and Pitt Town.

One of the main types of fertilizers in use is poultry manure. This is collected from poultry farms within the Hawkesbury area. The manure is spread over turf and vegetables farms at various times throughout the year. Poultry manure is very odorous and emits a pungent smell when disturbed. If the manure is left untouched it forms a crust within a few days that effectively seals in odours.

Mushroom compost is required for the growing of mushrooms. The manufacture of compost requires the mixing of various ingredients that ferments and produces odour. Not all of the ingredients are odour producing; however, poultry manure is used in the process and is naturally disturbed during mixing. When the mixing and fermentation process occurs in the open air, odour is dispersed via natural wind direction.

Sewerage treatment plants are located off Mulgrave Road McGraths Hill and Fairey Road South Windsor. Odours have been reported as being generated from this facility. It would be unreasonable to suggest that the treatment of sewerage is not odour producing. However, the incidents of odour generated from the treatment plants are less common than that of mushroom composting or the use of fertilizers.

Conditions of Consent**1. Hours**

The hours of operation are restricted to 6.00am to 6.00pm Monday to Saturday and 6.00am to 2.00pm on Sundays.

There was no breach of hours detected during the survey period.

2. Tonnage

The Statement of Environmental Effects for DA218/90 gave an output of 400 tonnes per week, which would increase to 600 tonnes per week within the tunnel development.

The present output of the development is 600 tonnes per week.

3. Noise

The development is restricted in use so that it must be conducted in such a manner so as not to interfere with the amenity of the neighbourhood in respect of noise, vibration, smell, dust, waste water, waste products or otherwise.

There have been no complaints received regarding the emission of noise from the development.

4. Odour

The development is to be conducted in such a manner so as not to interfere with the amenity of the neighbourhood in respect of noise, vibration, smell, dust, wastewater, waste products or otherwise.

This matter is addressed in the report.

Rick Composting Produces Odour

Prior to this survey being undertaken and the letter issued to Elf Farm Supplies. Rick composting was a form of manufacturing process on the site. Rick composting involves the mixing and manufacture of compost on a concrete slab in the open air. While it has not been confirmed, it is suggested that this practice generates odours that were capable of being offensive to local residents. Prior to the commencement of the survey and while rick composting was in progress odours from the site were considered to be offensive.

At the commencement of the survey, rick composting at the site was ceased. While odours did not totally disappear, their intensity and frequency appeared to decline. The management has indicated that this process will no longer be conducted on the site.

Methods to Prevent Odours

A chimney/ air extraction device was installed on tunnel two during the survey period. The chimney was constructed as a means to direct vapour and odours further into the atmosphere in an attempt to reduce odours produced in the composting process. Further measures including the expansion of the tunnel composting facility are expected to be used to further reduce odours produced on the site.

The rick composting process should not be used at any time on the site.

There are many environmental management agencies available that specialize in the identification and control of odours. Similarly, there are many methods on the market that claim to stop odours being emitted. Unfortunately, the topography and weather patterns are different at each site and there are no guarantees that a device if installed, would totally remove odours.

Conclusion

Odour assessment over the survey period shows that there are three activities conducted within the area that produce odours on a regular basis.

Odours produced in the treatment of sewerage can be controlled with appropriate measures and a notice should be issued to gain that result.

Odours produced in the manufacture of mushroom compost can also be controlled and this has been shown with the reduction of offensive odours since the rick composting ceased. Further, management and mechanical measures would be required to be implemented to ensure total odour control.

The use of fertilizers for turf and vegetable farming has long been a practice in the Hawkesbury area. It is a recognised form of soil management on farming properties and is to be expected within this area, which primarily contains agricultural land. This odour source is difficult to control.

RECOMMENDATION:

That a notice is issued to Elf Farm Supplies under the provisions of Section 121 of the Environmental Planning and Assessment Act 1979 to undertake the following:

1. Not to use or make use of the rick composting process at any time,
2. To manufacture compost material within the confines of an enclosed building only and at all times,
3. Not to store treat or deal with manure used in the process of the manufacture of compost in any manner other than in the confines of an enclosed building,
4. Not to store compost other than in the confines of an enclosed building,
5. To place an operational odour filter or odour control device on each tunnel used in the manufacture of compost,
6. To make development application and gain approval of Council prior to conducting any alteration, additions or additional activity on the land,
7. Not to conduct the development in any manner that interferes with the amenity of the neighbourhood with respect to odour, dust, waste water, waste products or in a manner that emits any odour, dust, waste water, waste product that is unacceptable or offensive to normal living standards.

ATTACHMENTS:

AT1 - Graph of odour sources

ENVIRONMENT

Meeting Date: 3 October, 2000

Item: **164**

Graph of odour sources

oooO END OF ITEM 164 Oooo

ITEM: 165 **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 PT4/EVD/ENJ03NBX.V12

PREVIOUS ITEM: 151, GPC Section 1 - Environment (29.08.2000)

REPORT:

This following report was considered by Council at its Ordinary meeting of 12 September 2000 when it was resolved that a site inspection be carried out.

"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:

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:
 - (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 (seventeen) 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 165 Oooo

ENVIRONMENT

Meeting Date: 3 October, 2000

Item: **166**

ITEM: 166 **Appeal to the Land and Environment Court - Lot 2 DP263213 No. 76
Pecks Road, North Richmond**

FILE NUMBER: M523/00/EVD/ENJ03NCX.V05

REPORT:

A Development Application was lodged on the 4 April 2000 for a detached dual occupancy and a two (2) lot Torrens Title subdivision.

The development comprised of the following:

- A detached dual occupancy of a single storey dwelling behind the existing dwelling.
- The existing dwelling with frontage and access from Pecks Road and the proposed dwelling with frontage and access from Merrick Place.
- Subdivision of the existing parcel of land into two (2) allotments with lot sizes 651sqm and 351sqm.

The application was refused by Council at its Ordinary Meeting of 11 July 2000.

The applicant has now lodged an appeal in the Land and Environment Court in relation to the refusal of the application. Solicitors, Abbott Tout, have been instructed to defend the appeal and Consultant Town Planner, Mr Glenn Falson, has been engaged to provide evidence on behalf of Council.

RECOMMENDATION:

That the information be received

ATTACHMENTS:

There are no supporting documents for this report.

oooO END OF ITEM 166 Oooo

ENVIRONMENT

Meeting Date: 3 October, 2000

Item: **167**

ITEM: 167 **Regional Illegal Dumping Squad**

FILE NUMBER: GE020/023 PT05, GW010/022 PT13/EVD/ENJ03NCX.V02

PREVIOUS ITEM: 137, GPC Section 1 - Environment (08.08.2000)

REPORT:

Council at its meeting on 8 August 2000 resolved to accept invitations to join the Regional Illegal Dumping Squad (RID Squad) and that a further report be brought back to Council outlining possible sources of funding including the Waste Budget.

Advice has been received from the Department of Local Government that it is not appropriate for Council to use funds from the Waste Budget for funding the RID Squad. This being the case, in order for Council to join the RID Squad and to make the membership payment of \$45,000, alternate sources of funding will be required. Funding would have to come from the reduction or elimination of currently funded projects or to move the budget into deficit. It is not recommended that the budget be placed in deficit and therefore funding will need to come from another currently funded project.

RECOMMENDATION:

That the information be received.

ATTACHMENTS:

There are no supporting documents for this report.

oooO END OF ITEM 167 Oooo