



**general
purpose
committee**

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section**

environment

GENERAL PURPOSE COMMITTEE - ENVIRONMENT

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ENVIRONMENT

Meeting Date: 31 October, 2000

Item: 167

ITEM: 167 **Proposed Two Lot Subdivision - Lot 15 DP788232 30 O'Dea Place, North Richmond**

FILE NUMBER: M1150/00/EVD/ENJ31NAX.V07

Applicant: Ms Jenny Faulder
Applicants Rep: Ms Jenny Faulder
Owner: M & J Faulder
Stat. Provisions: Hawkesbury Local Environmental Plan 1989
 Sydney Regional Environmental Plan No. 20 (No. 2 - 1997)
Area: 2358m²
Zone: Residential 2(a)
Advertising: 28 August - 11 September 2000
Date Received: 8 August 2000

Key Issues - Traffic
 - Character and amenity of the area
 - Stormwater

Action: Approval

REPORT:

Introduction

The applicant seeks approval for a two (2) lot subdivision of Lot 15 DP 788232, 30 O'Dea Place, North Richmond.

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 application is for a two lot subdivision of Lot 15 DP 788232, 30 O'Dea Place, North Richmond.

The subject property has an area of 2358m² and contains a single residence, double garage and an above ground swimming pool. The applicant proposes to subdivide the property into two lots with the front lot having an area of 726.6m² and the rear battle axe lot having an area of 1631.4m².

The front lot is to contain the existing residence and garage and provide for a private open space area of approximately 210m². The rear lot is to be accessed via a 4m wide driveway along the properties eastern boundary and contains a building envelope of 255m². Construction of the driveway will require the removal of the above ground pool. The existing restriction as to user prohibits buildings within the vegetated area along Redbank Creek.

The proposed building envelope is outside this area.

The proposed subdivision also requires the approval of the Department of Land and Water Conservation under Part 3A of the Rivers and Foreshores Act 1948 and hence the application is "integrated development".

Description of the Site and Surrounds

The property is located on the northern side of O'Dea Place, North Richmond. It is irregular in shape with an area of 2358m². The site contains a single residence with double garage and an above ground swimming pool. The property is relatively flat (20 - 23m AHD) with most of the site sloping gently to O'Dea Place. A rear vegetated portion of the site slopes steeply to Redbank Creek.

This area is affected by an existing restriction as to user.

Surrounding properties along O'Dea Place are of similar slopes and all contain residences. Lot sizes in O'Dea Place vary from 500m² to 2990m².

Land to the north is zoned Rural 1(b), land to the south is zoned Special Use 5(a) Electricity and Open Space 6(a).

Statutory Position

Hawkesbury Local Environmental Plan 1989

Clause 9

The property is zoned Residential 2(a) under HLEP 1989.

The relevant objectives of the 2(a) 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;*
- (c) *to ensure that development does not create unreasonable demands, inn the present or in the future, for the provision or extension of public amenities or services.*

The subject property is in an area of high amenity and accessibility. It is within close proximity to shops, schools, child care centres, areas of employment, and sporting grounds and clubs. Water, electricity, telephone and sewer can be provided to the new lot. Monetary contributions for the provision recreational and communities facilities, and open spaces are to be required as a condition of consent. It is therefore concluded that the proposed development satisfies the objectives of the 2(a) zone.

Clause 12 Residential subdivision - general provisions

Clause 12 requires that allotments created in Residential 2(a) zoned land which are serviced by reticulated sewerage have an area of not less than 450m². The proposed allotments have areas of 726.6m² and 1631.4m².

Clause 18 Provision of water, sewerage etc service

Water, sewerage and electricity services can be provided to the additional lot. Stormwater from the new lot will be piped to an existing drainage outlet.

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

The subject site falls within the Middle Hawkesbury Nepean 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.

Relevant specific planning policies and recommended strategies are total catchment management, environmentally sensitive areas, water quality, water quantity, flora and fauna, riverine scenic quality, agriculture/aquaculture and fishing, and metropolitan strategy.

Soil Erosion and Sedimentation DCP

Soil erosion and sedimentation controls are to be implemented during works required for the subdivision.

Community Consultation

The application was publicly exhibited for the period 28 August - 11 September 2000.

1 letter of objection and a petition with 15 accompanying signatures was received. The objections related to:

- The proposal is not in keeping with the existing streetscape
- Concerned about increased stormwater to Redbank Creek

- Extra traffic will increase risks to neighbourhood children
- The amenity of the immediate area will be adversely compromised should this development be approved due to the increased density and closed in feeling

Refer to locality plan for location of objectors.

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 (raised in objections)

The subdivision pattern in O'Dea Place is dominated by irregular shaped allotments varying in area from 500m² to 2990m². The areas of the proposed lots are 726.6m² and 1631.4m². The proposed lots are consistent with the surrounding lots in terms of size, shape and width and depth.

A building area within the rear lot can be obtained without encroaching into the existing vegetated area adjacent to Redbank Creek hence the semi-bushland character of the area will be preserved and maintained.

The subdivision and resultant development of the rear lot for residential purposes is not expected to significantly impact of surrounding property in terms of overshadowing, increase in noise, or loss of privacy.

Access, transport and traffic (raised in objections)

The existing driveway is located on the northern side of a cul-de-sac and will be used to serve the rear allotment. The rear lot is of sufficient size to cater for off street parking demand that will be generated by the likely future residents of the property and their visitors.

There are 14 existing lots serviced by O'Dea Place. The additional lot is likely to increase traffic movements by 7%.

The proposed subdivision and resultant development of the rear lot will therefore not significantly increase the amount of traffic presently using O'Dea Place or significantly increase the amount of on-street parking.

The surrounding traffic network has sufficient capacity to cater for the likely increase in traffic. No significant conflict between vehicles, pedestrians and cyclists is expected as a result of the development.

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 of the rear lot.

Water, Soils, Air and Climate (raised in objections)

Adequate water and sewerage services can be supplied to the new lot. Stormwater runoff from the rear lot is not expected to have a significant impact on Redbank Creek because the bank of the creek within the proximity of the existing drainage outlet is stable and there is sufficient capacity within the existing drainage system to cater for the resultant development of the rear lot. Stormwater from future buildings on the proposed new lot will be piped through an existing easement, rather than directly to Redbank Creek.

The soil structure of the site is suitable for the proposed subdivision and development of the rear lot. Erosion and sedimentation devices are to be installed during works required for the subdivision.

The air quality and climate of the locality is suitable for the subdivision.

Flora and fauna

The area to be affected by the resultant development of the rear lot contains a few mature eucalypts, grass and domestic scale landscaping. The bushland area along Redbank Creek is currently protected by a restriction as to user which will not change with the proposed subdivision. It is considered that the subdivision and development of the rear lot will not significantly effect threatened or endangered flora and fauna, ecological communities or critical habitat as listed under the Threatened Species Conservation Act 1995.

Natural hazards

The property is within a low bush fire risk area. The risk of bush fire does not make the site unsuitable for the proposed development.

The site is also above the 1:100 year flood level.

Social and economic impact in the locality (raised in objections)

No significant negative social or economic impact is anticipated as the proposed lots are consistent with the surrounding subdivision pattern and the solar access and privacy of adjoining properties will not be significantly impacted upon by the resultant residential development.

Site design and internal design

The proposed lot size, shape and dimensions are satisfactory.

Cumulative impacts

The proposed subdivision is compatible with that of the surrounding property. The likely increase in traffic caused by the development of the rear lot will not create a significant negative cumulative impact.

Suitability of the site for the development

The constraints of surrounding landuses do not make this subdivision prohibitive. Development of the rear lot for residential purposes will not lead to unmanageable transport demands. Adequate services and utilities are available to the site. There are no known hazardous landuses/activities nearby. Ambient noise levels are suitable for the subdivision. The site is not critical to the water cycle of the catchment. The subdivision will not impact upon critical habitats and threatened species, populations, ecological communities and habitats.

The area's air quality and microclimate are adequate for the proposed subdivision. Recreational opportunities and public spaces will be available to the likely future occupiers of the new lot. The site attributes such as size, shape, slope are conducive to the development.

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

Public Submissions

The matters raised by the objectors have been addressed in the above report.

DLWC have provided Council with their General Terms of Approval which are to be included in any consent issued by Council.

Conclusion

The proposed subdivision complies with the minimum allotment site contained within HELP 1989.

The proposed lots shape and size are consistent with the surrounding residential allotments in the vicinity of the site. The subdivision will not have any significant impact on the immediate area.

The matters raised by the submissions received do not warrant refusal of the application.

It is recommended that the proposed subdivision be approved.

RECOMMENDATION:

That the application for a two lot subdivision 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 (marked A and titled 'Proposed Subdivision of Lot 15 DP 788232, H/No 30 O'Dea Place, North Richmond) submitted with Development Application No. MA1155/00 dated 8/8/00 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. This consent covers the removal of trees and other vegetation necessary to allow the construction of works covered by any Construction Certificate issued for the development. No other trees or vegetation are to be removed without prior approval.
3. Prior to construction of the approved development it is necessary to obtain a Construction Certificate.
4. Compliance with the provisions of the Environmental Planning and Assessment (Amendment) Act 1979.

Department of Land and Water Conservation General Terms of Approval

5. If, in the opinion of a DLWC officer, any work is being carried out in such a manner that it may damage or detrimentally affect the stream, or damage or interfere in any way with any work, the operation on that section of the stream shall cease immediately upon oral or written direction of such officer.
6. If the permit conditions have been breached, the permit holder shall restore the site to the satisfaction of DLWC. If the necessary works are not completed then the permit holder shall pay a fee prescribed by DLWC for the initial breach inspection and all subsequent breach inspections.
7. Operations shall be conducted in such a manner as not to cause damage or increase the erosion of adjacent stream banks. The permit holder shall carry out any instructions given by DLWC with a view to preventing damage to the banks.
8. Any vegetation or other material removed from the area of operations shall be disposed of to an appropriate site where the debris cannot be swept back into the river during a flood.
9. No works are to be done in the current undisturbed area of Redbank Creek, diagrammatically shown in the DA Plan as the fenceline labelled "Restriction as to Use".
10. Soil and erosion control measures for both the construction and maintenance phases of the works are to be in accordance with best management practices as outlined in the Department of Housing's publication, "*Managing Urban Stormwater, Soils and Construction (1998)*" (The Blue Book).

11. The rehabilitation of the area to the satisfaction of DLWC is the responsibility of the permit holder and the owner or occupier of the land.
12. The permit holder and the owner or occupier of the land are responsible for any excavation or soil removal undertaken by any other person or company at this site.
13. Any Part 3A permit granted is not transferable to any other person or company and does not allow operations at any other site.
14. Any Part 3A permit granted does not give the holder the right to occupy any land without the consent from the owner(s), nor does it relieve the permit holder of any obligation which may exist to also obtain permission from local government and other authorities who may have some form of control over the site of the work and/or the activities you proposes to undertake.
15. These general terms of approval are issued with the proviso that operations shall be carried out on freehold land. Should operations be on Crown Land, this permit is rendered null and void and the occupier of Crown Land should contact DLWC.
16. Should any of the above conditions not be complied with, DLWC may issue a Stop Order on 3A permit related operations at the site until the condition(s) has(have) been complied with.

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.**

17. Submit plans of civil works including road, drainage, access, or sewer works are not to commence until three (3) copies of the plans and specifications of the proposed works are submitted to and approved by the Director Asset Services and Recreation or an accredited certifier.
18. Payment of a design checking and inspection fee of \$275.00 when submitting Engineering plans for approval. This amount is valid until 30 June 2001. Fees required if an accredited certifier is used will be provided upon request.
19. The submission of engineering designs and calculations covering all works required by this consent.
20. 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 (\$2,852.00)
- (b) Community Facilities (\$1,864.00)

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.

Prior to Commencement of Works

- 21. Erosion and sediment control devices are to be installed and maintained until the site is fully stabilised in accordance with the approved ESCP or SWMP. In the absence of any approved plan the work is to be in accordance with Council's Development Control Plan 1/94 - Soil Erosion and Sedimentation.

Note: Measures may include the installation of geofabric fencing, staked straw bale walls located on the contour down-slope of the construction, sediment detention basins, earthen contour banks and the like. The enclosed warning sign shall be affixed to the sediment fence/erosion control device at all times.

- 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 4(b) of the Environmental Planning and Assessment Act, 1997.

During Construction

- 24. All work must be carried out in accordance with the provisions of Council's Subdivision Construction Specification.

Prior to Issue of Subdivision Certificate

- 25. Construction of a centrally located concrete driveway a minimum of 2.5 metres wide and 150mm thick reinforced with F82 mesh over the full length of the access handle to Lot 15 (2) together with the construction of Council's standard residential crossing also 150mm thick reinforced with F82 mesh. All services or suitable conduits are to be placed prior to the placing of concrete.
- 26. All debris (including felled trees) resulting from the approved clearing of the site for

construction is to be removed from the property unless alternative arrangements are agreed to in writing with this office.

27. The provision of inter-allotment drainage and the creation of necessary easements free of cost to Council along the common boundary with Lot 14 to the existing drainage outlet location.
28. A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water.

An application form is available from Council or Sydney Water (call 13 20 93). Following application a "Notice of Requirements" will detail water and sewer extensions to be built and charges to be paid. Please contact Sydney Water early, since building of water/sewer extensions can be time consuming and impact on other services and building, driveway or landscape design.

29. Submission of a Certificate from Integral Energy that satisfactory arrangements have been made for the provision of electricity to each of the resultant lots of the subdivision.
30. Submission of a Certificate from an approved telecommunications provider that satisfactory arrangements have been made for the provision of cables for telephones through the subdivision.
31. The submission of a plan showing all existing services on the lots including septic tank and effluent disposal area, sewer connections, water connections and stormwater disposal, where applicable, and the correction of any encroachments or defects to the requirements of the Director Environment and Development.
32. The submission of the plan of subdivision, together with 4 (four) exact copies thereof, suitable for lodgement with the Registrar General.
33. The creation of a restriction on use of land requiring that all development on the lot 15 (2) be confined to that part of the plan marked "future building platform"
34. Payment of a linen release fee of \$250. This amount is valid until 30 June 2001.
35. The creation of a reciprocal right of carriageway over the shared vehicle access area.

ATTACHMENTS:

AT-1 Locality Plan

AT-2 Subdivision Plan

Locality Plan

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Subdivision Plan

oooO END OF ITEM 167 Oooo

ITEM: 168 **Proposed Attached Dual Occupancy - Lot 2 DP1010228 31A Flinders Place, North Richmond**

FILE NUMBER: M893/00/EVD/ENJ31NAX.V09

Applicant: Jacaroe Pty Ltd
Applicants Rep: Mr Phil Taylor
Owner: Jacaroe Pty Ltd
Stat. Provisions: Hawkesbury Local Environmental Plan 1989
 Sydney Regional Environmental Plan No. 20 (No. 2 - 1997)
Area: 1734m²
Zone: Residential 2(a)
Advertising: 27 July - 10 August 2000
Date Received: 13 June 2000

Key Issues: - Traffic and parking
 - Character of the area
 - Covenant of previous subdivision

Action: Approval

REPORT:

Introduction

The applicant seeks approval for a attached dual occupancy (duplex) at 31A Flinders Place, North Richmond.

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 comprises:

- 2 storey split level building containing 2 x 4 bedroom dwellings.
- 2 (two) double carports located adjacent to the main building.
- Paved access driveway and landscaping from Flinders Place.
- Open space areas associated with each dwelling.

The building is to be constructed of colourbond steel roof, painted weatherboard, aluminium framed windows, and a face brick base.

The total footprint of the building (including decks) is approximately 370m². The total floor area of the building (including decks) is approximately 550m². The maximum height of the duplex is approximately 7.8m (roofline). The roofs have been provided with shallow pitches of 7.5 and 15 degrees to reduce its bulk.

Description of the Site and Surrounds

The property is located on the south-eastern side of Flinders Place, North Richmond. It is irregular in shape with an area of 1734m². The property is served by a battle axe handle driveway and slopes steeply towards a public reserve adjacent to the Hawkesbury River. The property varies in height from 31m AHD towards Flinders Place and 14m AHD near the reserve. The duplex and carports are to be built on land varying in height from 16m to 25m. The property is cleared of all vegetation except for grass and one tree approx 4m high.

Surrounding properties along Flinders Place which face the river are of similar slope and almost all have been built upon with 2 - 3 storey brick and tile dwellings.

Statutory Position

Hawkesbury Local Environmental Plan 1989

Clause 9

The property is zoned Residential 2(a) under HLEP 1989. Dual Occupancies are permissible with Council consent in the 2(a) zone.

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

- (a) *to provide for housing and associated facilities in locations of high amenity and accessibility;*
- (b) *not relevant;*
- (c) *to ensure that development does not create unreasonable demands, inn the present or in the future, for the provision or extension of public amenities or services.*

The site is located in an area of high amenity and accessibility. It is within close proximity to shops, schools, child care centres, areas of employment, and sporting grounds and clubs. Water, electricity, telephone and sewer can be provided to the property. Monetary contributions for the increased provision of recreational and communities facilities, and open space are to be required as a condition of consent. It is therefore concluded that the proposed development satisfies the objectives of the 2(a) zone.

Clause 18 Provision of water, sewerage etc service

Water, sewerage and electricity services can be provided to the property. Stormwater will discharge to the public reserve adjacent to the river. The provision of these services is satisfactory.

Clause 25 Development of flood liable land

The relevant provisions of Clause 25 are:

- (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*

The 1 in 100 flood level for the area is 17.5m AHD, hence land above 14.5m may be built upon. The proposed duplex and carports are to be constructed on land above 16m AHD.

- (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*

All habitable rooms have a floor level greater than 17.7m AHD.

- (5) *The Council shall, in the assessment of a development application, consider the flood liability of access to the land and, if the land is within a floodway, the effect of isolation of the land by flooding, notwithstanding whether other aspects of this clause have been satisfied.*

Vehicle access to and from the property is above the 1 in 100 flood level for the area. The property will not be isolated in the 1 in 100 flood event.

- (7) *Any part of a building below the 1 - in - 100 year flood level is to be constructed of flood compatible materials*

Part of the building is to be built on land below 17.5m AHD. That part of the building which below 17.5m is to be constructed of face brick.

It is therefore concluded that the proposed development satisfies the provisions of Clause 25

Clause 37 Protection from aircraft noise

The property is located between the 20 and 25 ANEF contours. Clause 37 requires that the duplex have an indoor design noise level which complies with Australian Standard AS 2021. It is considered that appropriate construction and design elements can be readily incorporated into the current proposal. Any consent issued is to contain a condition requiring an acoustic report demonstrating compliance with AS2021.

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

The subject site falls within the Middle Hawkesbury Nepean River Catchment area defined by SREP No. 20 (No. 2 - 1997). The proposed is also within an area of Regional Scenic significance (Unit 3.4.1 Yarramundi Weir to South Creek junction landscape unit).

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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.

Relevant specific planning policies and recommended strategies are total catchment management, environmentally sensitive areas, water quality, water quantity, cultural heritage, flora and fauna, riverine scenic quality, agriculture/aquaculture and fishing, urban development, recreation and tourism, and metropolitan strategy. Relevant development controls relate to landuses in riverine scenic areas.

It is considered that 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 (No. 2).

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	400m ²	1734m ²	YES
FLOOR SPACE RATIO	0.5 : 1	0.33 : 1	YES
PRIVATE OPEN SPACE	Enclosed courtyard to be a minimum of 50 sq.ms. Per dwelling The courtyard must be sited as for as practicable so as not to be overlooked by adjoining dwelling or development. At least half of each courtyard must receive sunlight between 9am and 3pm midwinter. Landscaping must be compatible with the scale of the building.	Two open space areas per dwelling area proposed. The smallest open space area is 65m ² The location of the courtyard, articulation of facades and screening treatments to the courtyards provide sufficient screening. Both courtyards comply. Proposed landscaping consists of trees, hedges, shrubs, ground covers and climbers. The mix and selection of vegetation is satisfactory.	YES YES YES YES

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DCP STANDARD	REQUIRED	PROPOSED	COMPLY
CAR PARKING	Two off street covered spaces are required.	Two covered spaces are proposed for each residence plus one visitor space.	YES
	Covered spaces to be setback 5.5m from street alignment	Setback approx 40m from Flinders Place.	YES
	Covered parking spaces shall have an minimum internal dimensions of 3mx6m.	Double carports have internal dimensions of 6.3m by 6.3m	YES
	Design of garage to be integrated with the dwelling.	Design of carport is integrated with the duplex.	YES
	All parking spaces shall be a hard standing	All parking spaces are hard standing	YES
	Driveways to have a minimum width of 3m.	The driveway has a minimum width of 3m	YES
	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 building is approx 55m from the property boundary with Flinders Place.	YES
DESIGN CONSIDERATIONS	Living areas to be oriented to north wherever possible.	The living, dining room north. The family room and kitchen has been orientated to the east to take advantage of the views to the south-east.	YES
	Roofs of carport shall reflect roof form of the 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 (discussed later in the report)
HEIGHT OF BUILDINGS	Duplexes not to exceed a maximum of two storeys.	Proposed duplex is two storey	YES

Based on the above assessment and consideration of the relevant objectives of the DCP it is concluded that 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 construction.

Community Consultation

The application was publicly exhibited for the period 27 July - 10 August 2000

9 letters of objections were received. The objections relate to:

- Concern about original property being subdivided and now having a duplex built upon one of the resultant lots. Basis of concern is potential for cluttering and loss of views.
- Increase in traffic and on street parking
- Overdevelopment of the property
- Covenant on original subdivision required dwellings to be constructed of brick with tiled roof. The proposed building does not conform to this covenant.
- Access for construction vehicles.

These matters are discussed in the Planning Assessment. Refer to locality plan for location of objectors.

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 (raised in objections)

Surrounding development consists of similar sized properties which are developed for residential purposes. These includes single dwelling and duplexes. The properties immediately to the east of the subject site recently obtained approval for a multi-level attached dual occupancy. In the vicinity of the site along Flinders Place, (9) nine dual occupancy and multi unit developments have been approved in recent years.. Properties which face the river are similarly sloped to the subject property and contain 2 - 3 storey dwellings. The proposed development is of a compatible size, bulk and scale to surrounding residences but has more architectural and design merit than some earlier dual occupancies in this area.

The proposed dual occupancy has been located on the property and designed in manner to maximise the preservation of existing views currently enjoyed by surrounding neighbours. The applicant advises that achieving the aim of the preserving views of neighbours properties has resulted in the roof having a shallow pitch of 7.5 and 15 degrees. As a result a colourbond roof rather than tile is required. Further, the applicant states that the design, material selection and earthy colour scheme is proposed in order to lessen the overall bulk of the building. It is considered that the design of the building is compatible with the site's characteristics, adjacent landuses and will not detract from the

scenic qualities of the area.

Privacy of adjoining properties has been preserved by minimising window openings which have the potential to look onto adjoining properties and by the provision of hedge planting to a mature height of 3 - 4m along the side boundaries. Adequate internal privacy between the dwellings and courtyard areas has been achieved by the stepping of facades, use of fin walls, fencing and landscaping.

The proposed development will cause some overshadowing to adjoining properties. The amount of overshadowing is not considered to be significant nor will it unreasonably reduce the solar access enjoyed by adjoining properties. This is due to the amount and height of existing landscaping on adjoining properties, the location of adjoining residences and the amount of private open space available on adjoining properties which will not be affected by the shadow caused by this development.

Access, transport and traffic (raised in objections)

Access to the site is via a battle axe handle driveway off Flinders Place. The access is located on a right angle bend in Flinders Place. The access is 4m wide with a brick paved driveway being 3m wide. Landscaping is proposed along either side of the driveway. A total of 5 parking spaces has been provided onsite, ie 4 for the residents and 1 visitor space.

The proposed access and parking arrangements are considered satisfactory. It is considered that the proposed development will not significantly increase the amount of traffic presently using Flinders Place or significantly increase the amount of on-street parking. The surrounding traffic network has sufficient capacity to cater for the likely increase in traffic. No significant conflict between vehicles, pedestrians and cyclists is expected as a result of the development.

The construction vehicles have the opportunity to access the site from Flinders Place. However, because of the site's slope, this may not be possible. The construction of other dwellings along this section of Flinders Place have used the public reserve to gain access to the site during the construction phase.

Council's Parks and Recreation Manager has indicated that construction vehicles can use the public reserve to gain access to the site, subject to meeting certain requirements such as suitable public liability insurance and repairing any damage caused to the reserve.

A suitable condition has been included in the recommendation.

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.

The proposed development will not significantly impact upon the present usage of the public reserve which is immediately to the south of the site.

Water, Soils, Air and Climate

Adequate water and sewerage services can be supplied to the development. Stormwater runoff created by the development is not expected to have a significant impact on the Hawkesbury River.

Part of the site has been disturbed by cut and filling of the land. It is recommended that prior to release of a construction certificate a geotechnical report be submitted to Council. Erosion and sedimentation devices are to be installed during construction .

The air quality and climate of the locality is suitable for the development.

Flora and fauna

The property has undergone significant disturbance due to previous activities of the land and as a result of works required for the subdivision. The site has been cleared of all vegetation except for grass and one wattle tree approximately 3m high.

It is considered that the development will not significantly effect threatened or endangered flora and fauna, ecological communities or critical habitat as listed under the Threatened Species Conservation Act 1995.

Waste, Energy, Noise and Vibration, Construction

Council waste services can be provided to the site. 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 or the Hawkesbury River.

Natural hazards

Part of the property will be inundated by flood waters during the 1 in 100 flood event. The proposed development complies with Clause 25 of HELP 1989. The property is within a low bush fire risk area. The nature of flood and bushfire risk does not make the site unsuitable for the proposed development.

Social and economic impact in the locality

No significant negative social impact anticipated as views and privacy of adjoining properties have been substantially preserved. It is anticipated that the economic impact of this development will be positive for the North Richmond.

Site design and internal design

The design of the development is sensitive to the surrounding environment, existing and future amenity of neighbours, site attributes such as size, shape and slope.

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 scenic quality of the area hence no significant negative cumulative impact is foreseen.

Suitability of the site for the development (raised in objections)

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. 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.

The area air quality and microclimate are adequate for the proposed development. Recreational opportunities and public spaces will be available to the likely future occupiers of the site. The site attributes such as size, shape, slope and affect of flooding are conducive to the development.

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

Public Submissions

All matters raised by the objectors have been addressed in the above report. An outstanding objection however is that of the choice of building materials, specifically, a covenant imposed by the original developer of the subdivision which required that residences be constructed of brick with tile roof.

The applicant has advised Council that the *"covenant on the original subdivision by Mirvac Projects Pty Limited dated 16 February 1989 has a terminating period of five (5) years or for as long as Mirvac is the registered proprietor of any land in the subdivision. My client is advised by his solicitor that this covenant no longer applies."*

This covenant was on the title of the original allotment Lot 33 DP 787272. This property was subdivided into 2 lots earlier this year. Notwithstanding, Clause 34 of HELP 1989 provides Council with the power to approve development which does not comply with a covenant.

A current restriction as to user on the subject property (Lot 2 DP 1010228) is:

The ridge height of any building erected on Lot 2 shall not exceed R29.00AHD and the building shall be located so as to minimise the impact on views from living areas of existing dwelling on adjoining lots.

The maximum ridge height of the carport is approx 27m AHD, the maximum ridge height of the main building is approx 26.7m AHD. It is considered that the building has been located so as to minimise the impact of views enjoyed from living areas of existing and proposed adjoining dwelling.

Conclusion

The proposal represents quality development and the design has adequately considered and assessed the sensitivity of the area and the site opportunities and constraints and surrounding development. The area currently contains a number of dual occupancy developments. The proposed development is consistent with the bulk and scale of the surrounding buildings.

The siting and design of the building is considered to be satisfactory and the development complies with all the requirements contained in the DCP for (Dual Occupancy).

The issues raised by those making submissions have been considered in the report and do not warrant refusal of the application.

It is recommended that the proposed development be approved.

RECOMMENDATION:

That the application for a duplex be approved, subject to the following conditions:

1. To confirm and clarify the terms of this approval, the development shall be carried out in accordance with the approved stamped plans (prepared by Graham Edds & Associates Pty Ltd numbered J1-1, J1-2, J1-3 dated May 2000) submitted with Development Application No. M893/00 and any supportive documentation, except as otherwise provided by the conditions of this consent.

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

2. Compliance with the provisions of the Environmental Planning and Assessment (Amendment) Act 1979, and the Building Code of Australia.
3. Prior to construction of the approved development it is necessary to obtain a Construction Certificate.
4. The applicants shall make themselves aware of any use restriction relevant to this property and shall comply with the requirements of the Section 88b instrument relevant to this subdivision and property.

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.**

5. Separate practising Structural Engineer's details of all structural concrete and steelwork shall be lodged prior to issue of construction certificate.
6. 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.
7. The building design shall incorporate components that will provide aircraft noise mitigation in accordance with AS 2021. Details prepared by an accredited acoustical consultant submitted with the construction certificate.
8. 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	(\$1386)
(b) Community Facilities	(\$905)

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.

9. Details of the proposed building demonstrating compliance with the BCA are to be submitted to the Principle Certifying Authority for approval. Details should include: installation and location of smoke alarms, doors to WC compartments; openings to boundaries; fire separation; roof framing details.
10. A geotechnical report addressing the potential for landslip arising from the previous cut and filling of the property is to be submitted to the Principle Certifying Authority. The report shall be referenced as required in all engineer's slab and footing designs.

11. 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.

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

Prior to Commencement of Works

13. 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.
14. 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.
15. Toilet facilities are to be provided, at or in the vicinity of the work site on which work involved in the erection or demolition of a building is being carried out, at the rate of 1 toilet for every 20 persons or part of 20 persons employed at the site.

Each toilet provided:

- (a) must be a standard flushing toilet; and
- (b) must be connected:
- (i) to a public sewer, or
 - (ii) if connection to a public sewer is not practicable, to an accredited sewage management facility approved by the Council, or
 - (iii) if connection to a public sewer or an accredited sewage management facility is not practicable, to some other sewage management facility approved by the Council.

The provision of toilet facilities in accordance with this condition must be completed before any other work is commenced.

16. 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
17. 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.
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. 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.
21. If construction vehicles associated with the development are proposing the use of the adjoining public reserve to gain access to the site during construction, written approval from Council's Parks and Recreation Manager is to be obtained prior to use of the public reserve.

During Construction

22. All building work must be carried out in accordance with provisions of the Building Code of Australia.
23. 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) external drainage lines, prior to backfilling;
 - (g) on completion of the structure.
24. Construction of Council's standard residential footway and layback vehicular crossing to suit the access to the site with a minimum width of 3m (three).
25. 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.
26. No burning of demolition or construction material being carried out on the site.
27. 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.
28. 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.

Prior to Issue of Occupation Certificate

29. The submission of a Compliance Certificate under Section 73 of the Water Board (Corporatisation) Act 1994.

Use of the Site

30. 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.
- AT-2** Site Plan.
- AT-3** Elevations
- AT-4** Elevations
- AT-5** Section Plan
- AT-6** Floor Plan

Locality Plan

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Site Plan

Elevations

Elevations

Section Plan

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Floor Plan

oooO END OF ITEM 168 Oooo

ITEM: 169**Proposed Amendment to HLEP 1989 to Enable 3 Lot Community Title Subdivision - Lot 12 DP834771 99 Gadds Lane, Kurmond****FILE NUMBER:** P701/30/EVD/ENJ31NBX.V16

REPORT:**Introduction**

Council has received a request to amend Hawkesbury Local Environmental Plan 1989 (HLEP 1989) to enable the community title subdivision of an existing winery at Lot 12 DP 834771, 99 Gadds Lane, Kurmond. The community title subdivision proposes 3 lots, each containing a "boutique winery" and a community lot for a road access, a buffer zone to the banks of Howes Creek and a small dam.

The 3 lots would each have an area of 3ha (refer to proposed subdivision plan attached to report).

Background

Similar proposals for a community title subdivision of this property were reported to Council in September 1997 and June 1998. The proposal as reported to Council in June 1998 is essentially identical to the current proposal. Council has previously refused to support the requested amendment to HLEP 1989 for the following reasons:

The proposal is neither economically or environmentally sustainable

The proposal will set an undesirable precedent for further ad hoc rezoning proposals.

Description of the Site and Surrounding Lands

The property has an area of 10.65ha and is currently developed by way of a large shed which is used as a processing, bottling and storage area with a small residence attached. The site is gently undulating and slopes down to Howes Creek. The property is substantially cleared of endemic vegetation and is partially established with vines.

Surrounding lots are a variety of sizes and are used for rural residential purposes as well as for grazing.

Statutory Situation

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

Clause 11 of HLEP 1989 requires that the minimum size of lots created in this zone be not less than 10ha. The property has an area of 10.65ha, therefore, the property has no subdivision potential.

The applicant seeks to amend HLEP 1989, by way of an "enabling" clause or similar to permit the proposed community title subdivision.

The 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 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.*

Applicant's Justification of the Proposal

The applicant has provided the following justifications for the proposal:

The proposal is aimed at reviving viticulture and wine-making for the region plus providing a living for the current and new landowners with the 'complex' catering for diversification making the area much more attractive to visitors than is currently the case.

The proposed complex will specifically cater for high quality, low volume wines (Boutique Vineyards) which have a greater appeal to wine enthusiasts.

Each boutique vineyard would be owned separately but would have the advantage of economies of scale in the joint use of water and other facilities such as processing, marketing and visitor attractions.

Each vineyard would have the ability to erect a dwelling for use by the proprietor and family. Roof water would be utilised for potable purposes within the dwelling and processed waste water would supplement dam water for non-potable use. There would be a community management body set up to manage the water supply, processing area and the promotion and marketing of the estates.

The proprietor of a Lot must establish and maintain at least 1400 grape vines utilising at least one hectare of land as a condition of occupying the lot as a principal place of residence. Lots may additionally be used as a principal place of residence, tourist facilities and agricultural pursuits compatible with viticulture.

The proposal enhances the Hawkesbury region's agricultural and tourism development as a "micro industry" and will generate local jobs both directly and indirectly. The local environment will be enhanced through the application of environmentally friendly farming practices. This will be done in a manner of community co-operation whilst at the same time maintaining the individual estate owners autonomy as to "fruits of labour". Tourist interest

is assured as practice shows that those areas that offer a number of wineries all in the one location are assured of success and not only will be more attractive but in fact the other wineries in the area are also likely to benefit from the heightened interest.

There will be increased revenue opportunities for local businesses as a spin off from the estate. This also effects increased local employment opportunities.

The justifications put forward by the applicant are essentially the same as previous justifications of the proposal reported to Council in September 1997 and June 1998.

Assessment of Proposal

Matters raised in previous assessments relate to:

- insufficient information relating to water availability;
- unknown ability of soil to produce viable and sustainable vineyards;
- spray drift onto adjoining wineries and residences;
- what will be the selection of grape varieties;
- assessment of capital investment required to upgrade existing winemaking facilities and construct new facilities;
- ability of the land to cater for on-site effluent disposal;
- assessment of establishment and maintenance costs of the vineyards;
- area available for vineyards.

These matters were not sufficiently addressed by the applicant in previous proposals and the present application does not provide any additional reports/studies to adequately address these matters.

The main concern with this proposal is that there is no guarantee that these small boutique wineries will produce any product or that the vineyards will have long term economic and environmental viability. That is there is no certainty that, once the resultant lots are created, dwellings built upon the land and vineyards established, there will be sufficient production and supply of wine to make the venture financially viable. If the venture is not viable then there is the likely outcome that the vineyards will not be maintained, wine production will be abandoned and the result will be essentially a conventional 3 lot subdivision of land where, under the present minimum lot size provisions the property has no subdivision potential.

Whilst the applicant has not provided any existing or likely future cost/benefit analysis it is clear that the existing profitability of the present winery is marginal at best. In 1996 and 1997 the applicant submitted a "Declaration for Farm Land Rate" to Council which stated that the land was used for grape growing (4 acres) and wine making, and that the property had made zero gross profits

or gains in the preceding 12 months. This fact was mentioned in previous reports to Council and the applicant has not provided any information with this proposal to suggest that in the subsequent years the existing winery had made a profit.

Hence, it is not considered likely that a sustainable agricultural enterprise will emerge from this proposal which fragments the size and ownership of the land. If the proposal was to precede and dwellings and associated structures such as processing, storage and machinery sheds, swimming pools, tennis courts, waste water treatment systems, water storage devices (i.e tanks and dams) there would be little room available of the balance of the 3ha properties for a vineyard. The limited and constrained vineyard area available has a direct relationship to the production, ability to recover start up costs and ultimately the profitability and sustainability of the venture.

Conversely, if it can be shown that small wineries in this region can be financially viable then Council must consider the consequences of subdividing this property into lots significantly below the required minimum lot size in particular the precedent which may be set.

With respect to town planning principles the proposal is contrary to objectives of the Rural 1(b) zone and the recommendations of "Our City Our Future" and the "Draft Hawkesbury Sustainable Agriculture Development Strategy" because it would:

- diminish the rural character of the area;
- further fragment agricultural lands; and
- may increase rural/residential land use conflicts within the area.

Support of this application could also lead to considerable pressure on Council from other land owners in the City to support further subdivision or similar schemes which would exacerbate the problems above.

It has previously been suggested to the applicant that one way of potentially providing Council with an assurance of the proposal's long term viability, sustainability and management then the vineyards must be contained wholly within one community lot and managed/operated by one party. The applicant however has not explored this option.

A discussion was held with senior staff at Cessnock City Council, which covers the Hunter Valley vineyards. From experience in the Hunter Valley, the following points are noted:

- Generally to be viable, a vineyard requires a minimum of 10 hectares of vines.
- Community title vineyard subdivisions have not been less than 60 hectares in total, with the vineyard itself in community ownership.
- Major problems of land use conflict are being experienced with residential development close to vineyards, particularly due to spraying and night harvesting.

The above points confirm that further fragmentation of the existing vineyard will not achieve viability.

Hawkesbury Sustainable Agricultural Development Strategy

Council has completed the Hawkesbury Agricultural Development Strategy (HSADS) which recommends a number of strategies for retention of agricultural pursuits within the City.

The proposed LEP amendment to the rural zones and objectives is currently with DUAP for issue of Section 65 Certificate to allow public exhibition.

Several rezoning applications involving rural and environmental protection land for subdivision have been considered by Council recently and not supported as they should be considered via a review of rural lands and strategies such as HSADS.

Conclusion

It is considered that there are no sound town planning reasons to support this proposal. The proposal does not comply with the minimum lots size provisions of the zone and will create an additional two dwelling entitlements contrary to the objectives of the Rural 1(b) zone. Using the potential of establishing a vineyard to justify the proposal is no different to that which could be put forward by any other agricultural activity/pursuit.

The most appropriate manner of providing additional rural residential development is via the review of the rural land when HSADS provides.

As a result, a proposal such as this should be considered at the exhibition stage of the proposed amendments to the rural zones.

The proposal to allow community title subdivision of 99 Gadds Lane to enable the establishment of three boutique wineries has not demonstrated that it is either economically or environmentally sustainable. The justifications put forward by the applicant have not been substantiated and a number of issues relating to water availability, rural/residential conflict, effluent disposal, establishment and operating costs, and land area available for vineyards remain unanswered.

RECOMMENDATION:

That the application to rezone Lot 12 DP834771 99 Gadds Lane, Kurmond to permit a 3 lot community title subdivision not be supported.

ATTACHMENTS:

AT-1 Proposed Subdivision Layout.

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Proposed Subdivision Layout

oooO END OF ITEM 169 Oooo

ITEM: 170 Threatened Ecological Communities and Subdivision**FILE NUMBER:** LEP001/00PT01/EVD/ENJ31NBX.V18**REPORT:**

The recent amendments to Hawkesbury Local Environmental Plan 1989 concerning the Grose Wold Area introduced the concept of Environmental Constraint Areas (ECA) based on mapped areas of Cumberland Plain Woodland. The provisions allowed for subdivision into lots smaller than allowed in the zone where the ECA occurred provided the ECA is contained in larger lots. It also introduces some flexibility into the location of the small lots and sets the minimum area for them at one hectare. The basic philosophy of this zone was that where people had a Threatened Ecological Community on their land they in fact received a more flexible subdivision approach than those people who do not have it.

Elsewhere in the City area there are significant stands of threatened species and as more and more Endangered Ecological Communities are scheduled to be protected by the Threatened Species Conservation Act, the issue of the management of these communities when the land is proposed to be subdivided is becoming increasingly common. At the present time with the minimum lot size subdivision rules in Hawkesbury Local Environmental Plan 1989, there is no incentive to protect these species and, in fact, they can become a liability when determining the number of lots that can be subdivided on land. This contrasts with the position in the Grose Wold lands whereas, in fact, an incentive is to have these lands as it achieves a more flexible subdivision solution.

A solution to this may be to introduce incentive provisions into HLEP 1989 that, should these endangered communities be preserved in a large lot that is managed communally particularly using community title legislation, then the minimum lot size provisions could be reduced, much in the same way as the subdivision rules function at Grose Wold.

An example of this subdivision pattern has been prepared by a proponent of subdivision in Patterson Lane, Kurrajong, which shows two alternative layouts. One is a conventional Torrens Title and the second a proposal using the Community Titles legislation. These will be displayed on the wall at the meeting. Other examples could also occur in the Rural 1(b) zone where large areas of wetland would be better preserved should they be managed communally and subdivision take place on a smaller lot.

It must be stressed however that this provision should not be used to increase the number of lots that can be subdivided from a property but merely to rearrange their sizes to better protect the endangered community or areas such as regional wetlands.

It is suggested that changes could be made to the Hawkesbury Local Environmental Plan 1989 to undertake the following:

1. Allow for small lots to be established with a minimum of one hectare in the Rural 1(c1) zones and a minimum of 2.5 hectares in the Rural 1(b) zones where the land has the following characteristics:

- (a) 20% of the land contains threatened ecological communities or their buffer zones or regionally significant wetlands;
 - (b) the ecological communities are to be managed in a "community lot";
 - (c) communal management will be in place to manage fire hazards, buffer zones, effluent disposal areas and to locate dwelling sites;
 - (d) there is no increase in the yield than that currently achieved under the LEP through numerical standards
 - (e) the reduced size lots do not contain any of the threatened communities and contain suitable house sites, fire management zones, and effluent disposal area
2. It can be demonstrated that subdivision using this method arrives at a better environmental outcome than the conventional Torrens Title subdivision using minimum lot sizes.

It is considered that these clauses may create the situation where it is in fact beneficial to have threatened ecological communities on the land rather than a disincentive as it is currently.

It should also be noted that Council has resolved to review rural subdivisions generally for the protection of agriculture and this will take place after the exhibition of the Draft LEP to include the HSADS zones in the LEP which is currently awaiting certification from DUAP.

This analysis of subdivision patterns may indeed lead to further amendments to the LEP designed to protect agriculture, which would be in addition to these provisions designed to protect ecological communities.

RECOMMENDATION:

That pursuant to Section 54 of the Environmental Planning and Assessment Act Council prepare a Draft Local Environmental Plan using the Best Practice Guidelines to implement amendments to Hawkesbury Local Environmental Plan 1989 that will:

1. Allow for small lots to be established with a minimum of 1 (one) hectare in the Rural 1(c1) zones and a minimum of 2.5 hectares in the Rural 1(b) zones where the land has the following characteristics:
- (a) 20% of the land contains Threatened Endangered Ecological Communities or their buffer zones or regionally significant wetlands;
 - (b) the ecological communities are to be managed in a "community lot";
 - (c) communal management will be in place to manage fire hazards, buffer zones, effluent disposal areas and to locate dwelling sites;
 - (d) there is no increase in the yield than that currently achieved under the Hawkesbury Local Environmental Plan through numerical standards
 - (e) the reduced size lots do not contain any of the threatened communities and contain suitable house sites, fire management zones, and effluent disposal area

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2. It can be demonstrated that subdivision using this method arrives at a better environmental outcome than the conventional Torrens Title subdivision using minimum lot sizes.

ATTACHMENTS:

There are no supporting documents for this report.

oooO END OF ITEM 170 Oooo

ITEM: 171 Draft Energy Efficiency Development Control Plan**FILE NUMBER:** DCP3/95, GE020/061/EVD/ENJ31NBX.V17

REPORT:

In 1996, Council joined the NSW Energy Smart Homes Program, being implemented by the NSW Sustainable Energy Development Authority (SEDA). The program aims to reduce greenhouse gas emissions and promote energy smart design concepts in residential development with the assistance of an energy star rating system.

Since this time, Council has been working towards introducing a Development Control Plan (DCP) to implement the Energy Smart Homes Program. As part of the Energy Smart Homes Program, a generic DCP was prepared for Council by Greenlight Consortium and consisted of some 80 pages. In 1998, it was agreed that the policy should be incorporated into all of Council's DCP's where applicable to residential development.

SEDA has spent the last two years refining the contents of the Energy Smart Homes DCP which is now in a user friendly format for the community and developers. The document now consists of 12-15 pages, uses a range of diagrams and is relatively easy to follow descriptions to describe energy efficient design. Furthermore, SEDA is in the process of incorporating the Energy Smart Homes DCP into a chapter of Council's new consolidated DCP.

What would developers/residents gain from adopting the DCP?

There are a number of financial benefits/incentives from SEDA that are available to residents of Councils that adopt an Energy Smart Homes DCP. These include:

- \$500 discount off solar and heat pump water heaters.
- Up to 40% off roof top solar panels.
- Reduction in household energy bills of up to \$1000 per year.

Furthermore, an energy smart home can improve the comfort levels for occupants as the degree of extremes between heating and cooling levels in the house are reduced through the combined effect of such measures as improved thermal mass (ability of building to absorb and release heat), insulation, solar access and cross ventilation.

What would be the cost to residents?

The main implication for residents is that all residential development would need to achieve a certified residential energy rating of 3.5. A Nationwide House Energy Rating (NatHERS) assessment was developed by the CSIRO and the Office of Energy. This assessment is used to determine the energy rating for houses and is carried out by an accredited officer (either qualified Council officer or consultant). This assessment is then lodged with the development application.

The cost of NatHERS assessment ranges from approximately \$80 to \$200 and accredited assessors are widely available throughout the Sydney Region.

In most cases, the residential energy rating of 3.5 is achieved by installing insulation throughout the home.

Exemptions from achieving the star rating requirements

The Smart Homes DCP identifies seven special conditions under which an exemption can be claimed from the star rating requirements. These include:

1. *Lot geometry*- orientation or shape of the lot such as to preclude northerly orientation.
2. *Lot overshadowing* - the adverse slope of the block, existing or planned development resulting in overshadowing.
3. *Lot topography or geology* - slope drainage or geotechnical constraints that preclude slab construction.
4. *Novel construction* - where the prescribed assessment techniques do not reliably assess the performance of the construction being adopted.
5. *Conflicting guidelines* - in Council controls or DCP's which Council determines have a greater priority than energy efficiency design criteria, for example, heritage issues.
6. *Uneconomic requirements* - where it can be demonstrated that attainment of the 3.5 star rating would require additional expenditure which is not cost effective within a five year period.
7. *Water heating* - as for '6' above, in the case of requirement for solar hot water heating.

Conclusion

To date, approximately 57 local councils in NSW have joined the Energy Smart Homes Program and of these, 15 councils require compulsory energy rating in residential development. Other WSROC councils have also adopted similar policies and a large media launch by SEDA is planned for December 2000.

It is also noted that the Energy Smart Program already has widespread industry support across NSW through organisations such as the Housing Industry Association and Master Builders' Association.

Given the benefits that can be afforded to residents, it is recommended that the draft energy efficiency chapter of the consolidated DCP be completed separately and placed on public exhibition for a period of 28 days.

The matter will be further reported to Council following the exhibition.

ENVIRONMENT

Meeting Date: 31 October, 2000

Item: 171

RECOMMENDATION:

That the draft development control plan for energy efficiency be finalised and placed on public exhibition for a period of 28 days in accordance with the provisions of the Environmental Planning and Assessment Act 1979.

ATTACHMENTS:

There are no supporting documents for this report.

oooO END OF ITEM 171 Oooo

ITEM: 172 **Environment Protection and Biodiversity Conservation Act 1999 - Implications for Council**

FILE NUMBER: GM0001/031PT04/EVD/ENJ31NBX.V11

REPORT:

The Federal Government gazetted the Commonwealth's Environment Protection Biodiversity Conservation Act 1999 which commenced operation on 16 July 2000. An officer from the Department of Urban Affairs and Planning has supplied an overview document of the Act and the implications on Council's operations. This is summarised below:

"1. Overview

The Commonwealth Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act) commenced on 16 July 2000. The Act introduced a new assessment and approval system for:

- (a) actions that significantly affect matters of national environmental significance (NES);
- (b) actions that have a significant effect on the environment of Commonwealth land; and
- (c) actions carried out by the Commonwealth.

An action is defined in the EPBC Act as:

- a project
- a development
- an undertaking
- an activity or series of activities, or
- an alteration of any of the above

Examples of actions might include: the erection of a building; construction of a road; drainage works; clearing of native vegetation; planting an orchard; a mining operation; or construction of a track in a national park. An action does not include the preparation of a management plan; a master plan or planning instrument; entering into an agreement; or issuing an approval. However, it may include the physical activities that the plan, agreement or approval allow. An action that needs Commonwealth approval is called a "**controlled action**".

Matters of national environmental significance (NES) under the EPBC Act are:

- World Heritage areas [*none yet in Council Area*]
- wetlands protected by international treaty (the RAMSAR convention) [*none yet in Council area*]
- nationally listed threatened species and ecological communities [*Cumberland Plain Woodland*]
- nationally listed migratory species (CAMBA and JAMBA) [*not applicable*]
- all nuclear actions, [*not applicable*]
- the environment of Commonwealth marine areas [*not applicable*]

The Commonwealth is considering adding a trigger for actions that make a significant contribution to Greenhouse gases. A trigger is also being considered for nationally listed heritage places that are not World Heritage areas. [*This may affect Council*]

2. Bilateral Agreement

The EPBC Act allows for two types of bilateral agreement - one to accredit the State's assessment as an assessment under the EPBC Act; and the other to accredit the State's approval as an approval under the EPBC Act.

The NSW Government is negotiating an assessments bilateral agreement with the Commonwealth. The agreement is seeking to accredit the assessment of all actions that significantly affect NES matters, with the exception of nuclear actions and Commonwealth marine areas, and those actions that are not currently subject to a State environmental assessment. The Commonwealth has indicated that, at some stage in the future, it would like to extend the assessments bilateral agreement to cover projects having a significant effect on the environment of Commonwealth land, but this is not part of the current negotiations.

If agreement is reached, controlled actions would only be assessed once - by the State/Council. The assessment would then be used by both the State/Council and the Commonwealth in determining their respective approvals.

The Commonwealth has not indicated interest in pursuing approvals bilateral agreements with the States at this stage.

3. Implementation Issues

Significance Criteria

Actions require Commonwealth approval if they have a significant impact on NES matters. The decision on whether there is a significant impact is made by the Commonwealth, when an action is referred to it. The Commonwealth has released an administrative guideline which sets out the criteria it will use in making these decisions.

Attachment 1: extract of the Commonwealth's significance criteria.

The implication for threatened species assessment in NSW is that now the impact of a project on threatened species and ecological communities must be assessed against two separate sets of criteria - the State's criteria in section 5A of the EP&A Act to determine if an SIS is required; and the Commonwealth's criteria in the administrative guideline to determine if approval is required under the EPBC Act.

Since the criteria are different, a project may be determined to have a significant impact by one set of criteria, but not by the other. For example, a project may require an SIS under State legislation for impact on a species or community; but not require Commonwealth approval. Conversely, and more likely, a project may need Commonwealth approval, but not require an SIS for the same species.

Referrals process

An action must be referred to the Commonwealth to determine whether the impact is significant, and therefore if the action needs approval under the EPBC Act. The Act allows referrals to be made by the State or the proponent, but the primary responsibility for making the referral rests with the proponent.

Since the assessment process will change if an action is a controlled action, it is best that the referrals process is completed before the assessment process commences - e.g. before a DA is lodged. If it is designated development, it is best completed before the Director-General's requirements for the EIS are sought. However, legally a referral can be made at any time.

The Commonwealth advertises the results of its decision on referrals on the Internet. Council will not be directly advised of decisions.

Responsibilities of Councils in referrals:

- It is not a Council's responsibility to advise proponents on whether a particular action should be referred. Only the Commonwealth can determine if an impact is significant.
- It is not a Council's responsibility to ensure that a referral occurs.
- Council does have a responsibility to ensure that the proponent is at least aware of the EPBC Act and should advise the proponent to determine whether approval is needed under the Act. This may be best achieved by a notation and checkbox on the DA form. See Attachment 2 for suggested wording.
- Councils cannot make referrals but, if they wish, they can approach the State to refer an action on their behalf.

Environment Australia's website has referral forms and advice on the process of referrals.

Impact on the assessment process

Subject to an agreement being reached with the Commonwealth, an accredited assessment (i.e. an assessment used to determine approvals under both the EP&A Act and the EPBC Act) would differ from a normal assessment in the following manner:

NESA:

- the proponent/applicant would submit a National Environmental Significance Assessment (NESA), prepared in accordance with the State's NESA guideline - this guideline is currently being prepared and will be publicly exhibited before it is finalised.
- the NESA would either be included in an SIS (if the Commonwealth approval is required for the same species or communities that an SIS is required); or it would be included in the EIS or SEE - it is not proposed that the NESA be an additional document.

Exhibition:

- the assessment documentation would be exhibited for a minimum period of 20 business days (or 28 calendar days). This would result in the exhibition of some actions that currently do not require exhibition and would extend the exhibition period for some actions. For example, modification applications are currently exhibited for 14 calendar days.
- exhibitions would be advertised nationally, rather than just in a paper circulating in the locality .

Assessment and determination:

- the consent authority would assess all environment impacts of the action, including impacts on those matters of national environmental significance that the Commonwealth determined as requiring approval under the EPBC Act. Consultation with Environment Australia would occur during the assessment
- after assessing the proposal, if the consent authority is a council, the council would consult with the Director-General of DUAP before determining the proposal. If the proposal requires the concurrence of NPWS for a significant impact on threatened species, this would occur at about the same time as the consultation with DUAP.

[Note: The requirement for certification is a legal requirement under the EPBC Act (s130). The Commonwealth requires DUAP to certify Council assessments. The proposed SEPP would impose the consultation role as a formal statutory requirement. Although certification would occur after determination by Council, consultation is required before determination in the event that DUAP requires further work before the assessment can be certified (e.g. if an application was not advertised nationally).]

- the proposal would then be determined by the consent authority, after obtaining concurrence from NPWS if required, and any general terms of approval for integrated development. DUAP would then certify the assessment and forward it to the Commonwealth for its determination.

Responsibilities of Councils in assessments:

- National advertising will involve additional costs. NSW is of the view that these additional costs should not be borne by the consent authority. This issue is still unresolved.
- It is not a Council's responsibility to ensure that a proponent obtains any necessary approval under the EPBC Act. However, there may be some shared responsibility for enforcement and monitoring of conditions with the Commonwealth. This is still being negotiated.

Attachment 1:*The criteria for Critically endangered and endangered species:*

An action has, will have, or is likely to have a significant impact on a critically endangered or endangered species if it does, will, or is likely to:

- lead to a long-term decrease in the size of a population, or

- reduce the area of occupancy of the species, or
- fragment an existing population into two or more populations, or
- adversely affect habitat critical to the survival of a species, or
- disrupt the breeding cycle of a population, or
- modify, destroy, remove, isolate or decrease the availability or quality of habitat to the extent that the species is likely to decline, or
- result in invasive species that are harmful to a critically endangered or endangered species becoming established in the endangered or critically endangered species' habitat*, or
- interfere with the recovery of the species.

The criteria for Vulnerable species:

An action has, will have, or is likely to have a significant impact on a vulnerable species if it does, will, or is likely to:

- lead to a long-term decrease in the size of an important population of a species, or
- reduce the area of occupancy of an important population, or
- fragment an existing important population into two or more populations, or
- adversely affect habitat critical to the survival of a species, or
- disrupt the breeding cycle of an important population, or
- modify, destroy, remove or isolate or decrease the availability or quality of habitat to the extent that the species is likely to decline, or
- result in invasive species that are harmful a vulnerable species becoming established in the vulnerable species ' habitat*, or
- .interferes substantially with the recovery of the species.

The criteria for Critically endangered and endangered ecological communities:

An action has, will have, or is likely to have a significant impact on a critically endangered or endangered ecological community if it does, will, or is likely to:

- lead to a long-term adverse effect on an ecological community , or
- reduce the extent of a community, or
- fragment an occurrence of the community , or
- adversely affect habitats critical to the survival of an ecological community , or
- modify or destroy abiotic (nonliving) factors (such as water, nutrients, or soil) necessary for the community's survival, or
- result in invasive species that are harmful to the critically endangered or endangered community becoming established in an occurrence of the community*, or
- interfere with the recovery of an ecological community .

Attachment 2: Suggested Notation for Da Forms

Is approval required under the Commonwealth Environment Protection and Biodiversity Conservation Act 1999 - Yes / No / Don't know.

NB Failure to determine the need for an approval under the EPBC Act before the DA is lodged could result in delays in the assessment process. Please refer to Environment Australia's website for information and referral forms (www.environment.gov.au)”

The implications for Council could be quite dramatic particularly in the area of recovering the costs of advertising nationally a proposal that requires Commonwealth approval. The current bilateral agreement being negotiated between the State and Commonwealth Governments does not allow Council to recover these costs. There is also a question of Council's liability should it fail to carry out some action to implement or advise of the provisions of this Act. It would seem therefore that these two significant matters need to be clarified before the State Government signs the bilateral agreement.

It is understood by the Chairman of the Hawkesbury/Nepean Catchment Management Trust Local Government Reference Group, Councillor Robert Bell of Gosford Council, that these matters may well be raised at the forthcoming Local Government Shires' Association Annual Conference. It would appear that negotiations on the bilateral agreement have only included officers of the State Department Local Government and no representatives of the Association.

In general, however, it must be noted that the advent of this legislation has further complicated Council's role in the processing of development applications and has, indeed, increased Council's liability. It is also interesting to note that Council's assessment of an application is not considered suitable by the Commonwealth Government and has to be referred to the Department of Urban Affairs and Planning for endorsement before it can be sent on to the Commonwealth Government as being acceptable.

It would seem that there are significant issues for Council in the implications of this Act that need to be resolved, particularly with the Department of Urban Affairs and Planning and the Premier's Office, before the bilateral agreement with the Commonwealth Government is signed.

RECOMMENDATION:

That Council contact the Local Government and Shires' Association outlining its concern with the implications of the Commonwealth's Environment Protection and Biodiversity Conservation Act and that these issues be conveyed to the Premier of New South Wales.

ATTACHMENTS:

There are no supporting documents for this report.

oooO END OF ITEM 172 Oooo

ITEM: 173 **Draft Local Environmental Plan - Lot 194 DP 823986 and Lot 192 DP 729625 The Driftway, South Windsor**

FILE NUMBER: LEP004/00/EVD/ENJ31NBX.V10

PREVIOUS ITEM: 137, GPC Section 1 - Environment (25.07.2000)

REPORT:

Council at its meeting on 8 August 2000 resolved to prepare a draft local environmental plan to amend the Hawkesbury Local Environmental Plan to cover both these lots to enable their utilisation for uses associated with the garbage depot and, in particular, the construction of the pre-treatment plant proposed by the Western Sydney Waste Board.

Council also resolved to request the Department of Urban Affairs and Planning to issue a Certificate to allow this plan to proceed to exhibition.

The Department has now advised that, in its opinion, Council can issue the Certificate provided the LEP is prepared in accordance with the Department's publication "LEPs and Council Land-Best Practice Guideline January 1997". In order for this to take place, Council must resolve to prepare the Draft LEP in accordance with the Best Practice Guideline. This necessitates a new resolution for the preparation of this draft plan.

RECOMMENDATION:

That pursuant to Section 54 of the Environmental Planning and Assessment Act Council, in accordance with the Best Practice Guideline January 1997, prepare an amendment to the Hawkesbury Local Environmental Plan 1989 that affects Lot 194 DP 823986 and Lot 192 DP 729625 to alter the zonings to Special Uses Waste Management and to insert a clause in the Hawkesbury Local Environmental Plan that will allow the following activities if they are to be used for the purpose of waste management:

- industries
- rural industries
- junk yards
- extractive industries
- waste management facility or works

ATTACHMENTS:

There are no supporting documents for this report.

oooO END OF ITEM 173 Oooo

ENVIRONMENT

Meeting Date: 31 October, 2000

Item: 174

ITEM: 174 **Duck Abattoir - Pollution Prevention**

FILE NUMBER: P2330/80/EVD/ENJ31NCX.V02

REPORT:

In late March 1999, the Environment & Waste Branch was informed that "Pepe's Ducks" (a duck abattoir), located in Walker Street, South Windsor, may be conducting business in contravention of environmental legislation. As a result of this information, site inspections of Pepe's Ducks were conducted on 13 and 14 April 1999.

The inspections were conducted in the presence of Mr Huston, General Manager of Pepe's Ducks. A thorough inspection by two Council Officers found an illegal connection to the stormwater system and a number of water samples and photographs were taken.

A licensed plumber was employed by Pepe's Ducks to determine the flow direction of internal and external drainage. A camera had been placed through the pipework. As a result, Council received a drainage diagram based on the camera work.

A 'Notice of Intention to Serve an Order' and an Order under the Local Government Act 1993 were both served on the owner of Pepe's Ducks requiring a list of works to be completed. A fine under the Clean Waters Act was also issued.

The Order has been complied with and all details requested pertaining to the Order were received.

RECOMMENDATION:

That the information be received.

ATTACHMENTS:

There are no supporting documents for this report.

oooO END OF ITEM 174 Oooo