



general
purpose
committee

1
section

environment

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ENVIRONMENT

Meeting Date: 31 July, 2001

Item: 70

ITEM: 70 **Three (3) Lot Re-Subdivision No. 36 Vincents Road, Kurrajong, Lot 1 DP 746365, Lot B DP 375491 and No. 18 Vincents Road, Kurrajong, Lot A DP 355664**

FILE NUMBER: MA420/01/EVD/ENG31NAX.V08

Applicant: Bennett Real Estate Pty Ltd
Applicants Rep: Ken Bennett
Owner: David and Christine Seal and Dalkeith Holding Pty Ltd
Stat. Provisions: Hawkesbury Local Environmental Plan 1989
 State Environmental Planning Policy No. 1 - Development Standards
 Sydney Regional Environmental Plan 20 - Hawkesbury - Nepean River
 State Environmental Planning Policy No. 44 - Koala Habitat
 DCP - Public Notification of Development Proposals
 DCP - Soil Erosion & Sedimentation Control
Area: Lot 1 - 5581m², Lot B - 6.103ha, Lot A - 4.556ha
Zone: Rural 1(b)
Advertising: 4 May 2001 to 18 May 2001
Date Received: 18 April 2001

Key Issues - SEPP No. 1

Action: Approval, subject to conditions

REPORT:

Introduction

An application has been received seeking consent for the re-subdivision of Lot 1 DP 746365, Lot B DP 375491 and Lot A DP 355664.

Council's Policy of 9 June 1998 requires subdivisions involving more than one undersized lot, or a variation greater than 10% from the minimum lot requirement, to be considered and determined by Council. The proposal involves the re-subdivision of three (3) existing undersized lots. The resultant lots will therefore be undersized and will have a variation in excess of 10% from the minimum allotment size.

This report details the proposal, the statutory situation and an assessment of the application in accordance with Section 79C of the Environmental Planning and Assessment Act 1979, and recommends approval of the proposal subject to conditions.

History of Application

Development Application M 1338/00 was received 15 September, 2000 proposing the re-subdivision of Lot 1 DP 746365 and Lot B DP 375491. This proposal received one objection due to

the location of the access handle in close proximity to the adjoining dwelling house. The proposal also required the construction of an access to the future building area which included access through/over a watercourse. This required approval of the Department of Land and Water Conservation as Integrated Development. The applicant did not wish to pursue this proposal as Integrated Development and withdrew the application. The current application was lodged on 18 April 2001.

Description of Proposal

The application proposes to re-subdivide the subject properties. Lot 1 and Lot A each contain a dwelling house. Lot B has a shed and dam situated on it and has no frontage to Vincent Road.

The subdivision will result in two lots with houses and one vacant lot. The resultant lots will be as follows:

- Proposed Lot 11 will have an area of 4700m² and a dwelling house situated on it;
- Proposed Lot 12 will have an area of 6.66 hectares and will have a dwelling house, rural shed and dam sited on it; and
- Proposed Lot 13 will have an area of 4.09 hectares and will be vacant, with only a dam situated on it.

A SEPP No. 1 objection has been received in support of the application as the proposed lots are all below the minimum lot size of 10 hectares.

Note: the existing lot sizes are approximately 5600m², 6.1ha and 4.6ha.

Statutory Situation

Hawkesbury Local Environmental Plan 1989

General Restrictions of HLEP 1989

The subject land is zoned Rural 1(b) under the provisions of HLEP 1989. The objectives of this zone are -

- to primarily provide for agricultural uses and animal establishments;
- to ensure that development does not create unreasonable demands, in the present or in the future, for provision or extension of public amenities infrastructure;
- to prevent the establishment of traffic generating development along main and arterial roads; and
- to ensure that development maintains the rural character of the locality and to minimise disturbance to the landscape through clearing, earthworks and access roads.

Clause 9(A) states that consent shall not be granted for a development unless, in the opinion of Council, the carrying out of the development is consistent with the objectives of the zone.

Comment: It is considered that the proposal is consistent with the objectives of the zone as the subdivision:

- will not diminish the existing potential for the land to be used for agricultural uses or as an animal establishment.
- the development is unlikely to create an unreasonable demand, in the present or future, for the provision or extension of public amenities infrastructure;
- Vincent Road is not classified as a main or arterial road; and
- the proposed development will maintain the rural character of the locality and will involve minimal disturbance to the landscape.

Specific Provisions of HLEP 1989

Clause 10(1) requires development consent for the subdivision of land.

Clause 11(1) clarifies that a satisfactory ratio of depth to frontage, in relation to an allotment of land, means the ratio of allotment depth to allotment frontage which, in the opinion of Council, is satisfactory in relation to the use of the land.

Clause 11(2) requires land zoned 1(b) to be subdivided into lots of not less than 10 hectares and have a satisfactory ratio of depth to frontage.

Comment: The three (3) existing lots are undersized in relation to the minimum allotment size requirement, and hence the re-subdivision of the land will also result in the lots created being undersized. An objection under State Environmental Planning Policy No.1 (SEPP No.1) has been received in respect to the minimum allotment size standard. The SEPP No.1 objection was referred to the Department of Urban Affairs and Planning for their concurrence. The SEPP No. 1 variation is supported (see discussion below). The ratio of depth to frontage is satisfactory.

Clause 11(3) only allows the subdivision of land, other than for agricultural purposes, if the resultant lots have an area of land above the 1-in-100 year level that is sufficient for the erection of a dwelling house.

Comment: The subject property is not flood liable.

Clause 18(1) states that development consent will not be granted unless satisfactory arrangements have been made for the provision of water, sewerage, drainage and electricity to the land.

Comment: Whilst services to the property are existing, written evidence that satisfactory arrangements for the provision/extension of these services for this development will need to be provided.

The proposed development is consistent with Hawkesbury Local Environmental Plan 1989 including the Rural 1(b) zone objectives.

State Environmental Planning Policy No. 1 - Development Standards

A SEPP No. 1 objection has been received in support of the application seeking a variation in the minimum lots size requirement. HLEP 1989 requires a minimum lot size of 10 hectares within the Rural 1(b) zone. The resultant lots will have areas as follows:

Proposed Lot 11 - 4700m²
Proposed Lot 12 - 6.66ha
Proposed Lot 13 - 4.09ha

The objection states that “the development standard to be varied is to permit the existing allotments to be relocated such that any future development for housing can occur in an environmentally less sensitive area. The proposed subdivision does not contravene the intention of cl 13 of HLEP 1989. No additional lots are created or are capable of being created. The size of the lots is not inconsistent with other lots along Vincent road.”

Comment: The proposed subdivision is satisfactory as:

- no additional lots are being created;
- no allotments created will become capable of subdivision;
- the number of undersized allotments before and after the re-subdivision is the same;
- the number of dwelling houses capable of being built will not increase;
- the lots are capable of on-site effluent disposal; and
- the proposed subdivision is consistent with the existing subdivision pattern.

The application was referred to the Department of Urban Affairs and Planning for their consideration. In their letter of 29 June, 2001 the Department concurs with the granting of consent for the variation of the minimum subdivision standard of the Rural 1(b) zone to enable the re-subdivision of the subject land in accordance with the development application.

It is therefore considered that the proposed re-subdivision of the subject lots is acceptable and that the SEPP No. 1 objection be supported.

Sydney Regional Environmental Planning Policy No. 20 (SREP 20)

The subject land falls within the boundary of SREP 20. This Policy aims “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 20 requires Council to assess development applications with regard to the general and specific considerations, policies and strategies set out in the Policy.

Comment: Clause 8(17) of SREP No. 20 applies to this proposal. It is unlikely that the proposed development will be capable of connection to a sewerage system now or in the future. The site is suitable for on-site disposal of effluent as per the recommendations of the geotechnical report, submitted with the application, with minimum impact on the surrounding area.

The proposed development is consistent with the relevant provisions of SREP No. 20.

State Environmental Planning Policy No. 44 - Koala Habitat Protection

SEPP No. 44 *“aims to encourage the proper conservation and management of areas of natural vegetation that provide habitat for koalas to ensure a permanent free-living population over their present range and reverse the current trend of koala population decline:*

- a. by requiring the preparation of plans of management before development consent can be granted in relation to areas of core koala habitat; and*
- b. by encouraging the identification of areas of core koala habitat; and*
- c. by encouraging the inclusion of areas of core koala habitat in environment protection zones.”*

SEPP No. 44 applies to land within the Hawkesbury Local Government Area to which a development application has been made and has an area of more than 1 hectare.

Comment: The proposed re-subdivision of the lots will not require the removal of any vegetation. The resulting development (vacant) lot is predominantly cleared, and consists mainly of grasses in the proposed development area. Therefore, any future development of this lot is unlikely to impact on native vegetation. There will be no impact on native vegetation at the rear of proposed Lot 12 as there will be no disturbance as a result of the proposed subdivision and there is ample area between this vegetation and the existing dwelling house.

As the development area is cleared it is not considered to be 'potential koala habitat' or 'core koala habitat' as defined by this Plan.

Under clause 8 of SEPP No. 44 Council is not prevented from granting consent to the proposal.

Development Control Plan - Public Notification of Development Proposals

The aim of this DCP is to identify under what circumstances development proposals will need to be advertised and the means by which it will be advertised to provide for public participation.

Comment: The adjoining neighbours were notified as per the requirements of this DCP.

Development Control Plan - Soil Erosion & Sedimentation Control

The objectives of this DCP is *"to develop, implement and enforce a uniform set of soil erosion and sedimentation control standards for all forms of private and public development within the City"*.

It is a requirement of this plan that *"all development, building and subdivision proposals submitted to Council involving the disturbance of the existing surface of the earth or placement of fill thereon, run-off entering waters, or flowing over land must include a Soil Erosion and Sedimentation Control Plan."*

No plan has been submitted with the application.

Comment: Erosion and sediment control will be enforced through conditions of consent.

Community Consultation

The adjoining neighbours were notified as per the requirements of the Development Control Plan for Public Notification of Development Proposals. No submissions were received.

Planning Assessment

The following are the relevant matters for consideration under Section 79C(b), (c), (d) and (e) of the Environmental Planning and Assessment Act, 1979:

Context & Setting

The Vincent Road area has a rural residential character and amenity and it is considered that the subdivision and the subsequent development of the resultant lots will not compromise this character or amenity. A residential subdivision adjoins the subject land. The resultant lots will be compatible with the existing subdivision pattern of the area.

Subdivision of land for the purposes of erecting a dwelling house is compatible with these surrounding landuses. The proposed subdivision will have no significant impact on the existing streetscape or scenic qualities of the area.

Access Transport & Traffic

Vincent Road is sealed with no kerb and gutter.

The re-subdivision of the subject land will not result in an increase in traffic in the area as no additional lots are being created.

Utilities

The provision/extension of services to the site will be clarified by conditions of consent.

Flora & Fauna

It is considered that the proposed subdivision will not impact on critical habitat or threatened species, populations, ecological communities or their habitats.

The vacant lot to be created is predominantly cleared, providing a suitable development site that will not require the removal or disturbance to native vegetation.

Waste

A report on the "Feasibility of On-Site Disposal of Wastewater" prepared by H.J. Fiander was

submitted in support of the application. The report concludes that *"the site is capable of being developed for a total of three house sites (including the existing two houses) which dispose of wastewater efficiently and without damage to the adjoining land or the watercourse."* The report outlines the options available for on-site waste disposal and provides recommendations in this respect.

The consent will be conditioned to ensure that any on-site effluent disposal is carried out in accordance with the above report.

Site Design & Internal Design

The design of the lots are appropriate in relation to maintaining the existing streetscape and rural character.

The size, shape and location of the proposed allotments are considered satisfactory having regard to the provisions of HLEP 1989, the location of existing development on the land and the existing subdivision pattern of the area.

The subject land is located in an area of moderate bushfire risk. The majority of the land is cleared which provides protection for the existing dwelling houses, as well as for the future dwelling house.

Conclusion

While the applicant seeks a variation to the minimum lot requirement of Hawkesbury Local Environmental Plan 1989, the development is only changing the current situation in a very minor way.

A SEPP No. 1 objection to vary the minimum lot size standard was received. This SEPP No. 1 objection required the concurrence of the Department of Urban Affairs and Planning, which was granted 29 June 2001. The SEPP No. 1 variation should be supported.

From the above discussion it can be seen that the proposed development is suitable for the locality. It is recommended that the proposed subdivision be approved, subject to conditions.

RECOMMENDATION:

That:

1. the variation to clause 11(2) of Hawkesbury Local Environmental Plan 1989 under SEPP No. 1 be supported; and
2. the application for a re-subdivision of Lot 1 DP 746365 Lot A DP 355664 Lot B DP 375491, Vincent Road, Kurrajong be approved subject to the following conditions-

General

1. To confirm and clarify the terms of this approval, the development shall be carried out in accordance with the approved stamped plans (prepared by McKinlay Morgan and Associates Pty Ltd, numbered 90392:DA:4 dated 16 March 2001) submitted with the application and any supportive documentation, except as otherwise provided by the conditions of this consent.
2. Compliance with the provisions of the Environmental Planning and Assessment (Amendment) Act 1979.

Prior to Issue of Subdivision Certificate

3. A section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained. Application must be made through an authorised Water Servicing Coordinator, for details see the Sydney Water web site - www.sydneywater.com.au/customer/urban/index or telephone 13 20 92.

Following application a "Notice of Requirements" will be forwarded detailing water and sewer extensions to be built and charges to be paid. Please make early contact with the Coordinator, since building of water/sewer extensions can be time consuming and may impact on other services and building, driveway or landscape design.

The Section 73 Certificate must be submitted to the Principle Certifying Authority prior to release of the linen plan/occupation of development.

4. 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.
5. 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.
6. The submission of the plan of subdivision, together with 4 (four) exact copies thereof, suitable for lodgement with the Registrar General.
7. Payment of a linen release fee of \$258.25. This amount is valid until 30 June 2002.
8. The creation of a restriction on the use of the land under section 88b of the Conveyancing Act requiring:
 - Any on site effluent disposal system installed on lot 13 is to be designed, installed, located, certified and maintained in accordance with the report prepared by Toby Fiander and Associates titled "Feasibility of On-Site Disposal of Wastewater, Proposed Subdivision & Boundary Adjustment, Lot B DP 375491; Lot 1 DP 746365, No. 36 Vincent Road, Kurrajong,

NSW Lot A DP 355664, No. 18 Vincent Road, Kurrajong, NSW", Report No. TFA 2601/01, dated 19 April, 2001;

- The establishment of Principle Development Areas showing suitable envelopes for dwelling house and effluent disposal areas as per Figure 3A to the report prepared by Toby Fiander and Associates titled " Feasibility of On-Site Disposal of Wastewater, Proposed Subdivision & Boundary Adjustment, Lot B DP 375491; Lot 1 DP 746365, No. 36 Vincent Road, Kurrajong, NSW Lot A DP 355664, No. 18 Vincent Road, Kurrajong, NSW", Report No. TFA 2601/01, dated 19 April, 2001;

ATTACHMENTS:

AT-1 Locality Plan

AT-2 Subdivision Plan

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Locality Plan

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Subdivision Plan

oooO END OF ITEM 70 Oooo

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Item: 71

ITEM: 71 Road Link - Bligh Park/South Windsor

FILE NUMBER: GT230/011 PTS 5, 6 & 7, GC281/076 PT 1, 0850/R PT 1/ENG/ENG31NBX.E20

REPORT:

The report to the General Purpose Committee meeting on 26 June 2001 is reproduced below:

"At its meeting held on 29 May 2001, in relation to a proposed road link between Hobbs Street and Berger Road, Council resolved that:

- "1 The residents of Bligh Park and South Windsor be consulted regarding the proposal; and,
- 2 The matter be further reported to the next General Purpose Committee."

Three thousand letters outlining the background and proposal for a road link between Bligh Park and South Windsor from Hobbs Street to Berger Road, including a map indicating the surrounding area, and a response form were distributed to residents of Bligh Park and that area of South Windsor bounded by Macquarie Street, Ham Street and Fairey Road and to the South on Saturday 1 June 2001. Forms were also available on request. The property owners of Hobbs Street were advised in writing of the proposal and invited to attend the General Purpose Committee meeting.

The survey questions were:

Do you think that the construction of the additional link at this stage is (please circle Y or N):

- 1 Needed Y N
- 2 A priority over other construction projects Y N

Plus an area for other comments.

Five hundred and sixty eight forms were returned, a response rate of 18.63%, which is considered a high percentage for this type of survey.

A breakdown of the various permutations is shown in numbers in the table below.

Y + Y	Y + N	N + N	N + Y	Y(1)	N(1)	Y(2)	N(2)	Total
278	94	135	6	1	6	8	31	559

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Y + Y = Yes link road is needed and Yes it is a priority over other construction projects

Y + N = Yes link road is needed and No it is not a priority over other construction projects

N + N = No link road is not needed and No it is not a priority over other construction projects

N + Y = No link road is not needed and Yes it is a priority over other construction projects

Y (1) = Only Yes circled in question 1

N (1) = Only No circled in question 1

Y (2) = Only Yes circled in question 2

N (2) = Only No circled in question 2

Six photocopied response forms were received and there were three response forms where nil was circled, all of which have been excluded from the total.

Various comments were received ranging from "a high school is needed at Bligh Park"; "provide extra seating in Richmond Park" and "all this was a waste of money". Listed below are the comments that had ten or more similar responses:

- the Hobbs Street extension would provide reduced traffic at the intersection of Mileham and Drummond Streets (16)*
- connect the two sections of Woods Road (15)*
- the link would create too much traffic in the area (21)*
- a link should be provided between Bligh Park and Windsor Downs and/or Richmond Road (44)*
- the Hobbs Street extension was a good idea and thanked Council for the opportunity to comment (27)*
- the extension was urgent and/or about time it was completed (19)*
- sport at Berger Road Reserve and Netball created traffic problems which may be alleviated with the Hobbs Street extension (10)*

As well a petition was tabled at the General Purpose Committee meeting on 29 May 2001 requesting a "direct road link between Bligh Park and the eastern portion of South Windsor". It cannot be determined if these same people responded to the survey as well. Listed below is a breakdown of the totals for the suburbs:

<i>Bligh Park:</i>	<i>88</i>
<i>South Windsor:</i>	<i>27</i>
<i>North Richmond:</i>	<i>1</i>
<i>Berkshire Park:</i>	<i>2</i>
<i>Windsor Downs:</i>	<i>3</i>
<i>Richmond:</i>	<i>1</i>
<i>Londonderry:</i>	<i>1</i>
<i>Llandilo:</i>	<i>1</i>

Windsor: 2
Shanes Park: 1

Advice was tendered at the Ordinary meeting, that the owners of lot 12 DP27136 between the end of Colonial Drive and Woods Road would be willing to negotiate the sale of an appropriate strip of land for the extension of Colonial Drive to Woods Road. The owners of the land have been contacted and whilst they have exchanged contracts for the sale of this land they indicated that the new owners would also be willing to consider this option. The current owners also indicated that they would expect to receive in the vicinity of \$420,000 per hectare for the sale of the land. This would equate to an approximate purchase price for a 20 metre wide strip of \$340,000. The estimated cost of construction to connect the end of Colonial Drive to Woods Road is \$155,000, which would make the total cost of the project including purchase of the land \$495,000.

In conclusion, should Council wish to proceed with a link between Bligh Park and South Windsor, whilst the Hobbs Street-Berger Road connection may not be in the ideal location, it is certainly the most economically feasible option which has been identified to date. Notwithstanding, it is still considered that a link between South Windsor and Bligh Park, on a traffic needs basis is not necessary at this stage.

Funding for this project would necessarily require the reallocation of funds from projects proposed in the 2001/2002 Capital Works Program and this matter could be further reported to the Ordinary meeting should the project be likely to proceed.”

The additional information provided to the Ordinary Meeting of 10 July 2001 is reproduced below:

“ADDITIONAL INFORMATION

In relation to the original survey that was sent to the residents of Bligh Park and South Windsor, and subsequently the letter forwarded to the owners of properties in Hobbs Street, the advice regarding the date on which the report was to be considered at the General Purpose Committee was inconsistent. The date given on this information was Tuesday 27 June 2001 whereas in fact the Tuesday was the 26th.

Subsequently two property owners in Hobbs Street and a resident in Berger Road have advised it was their intention to address the committee when they made enquiries on Wednesday 27 June. Council may wish to further defer this matter until the General Purpose Committee in July to enable these people to address the committee.

Advice has been received from WestBus that the proposed link is supported by the company as it would provide options to alter existing bus routes in relation to both school and general use.”

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It was resolved at the meeting of 10 July, based on additional information:

“That this matter be deferred to the next General Purpose Committee.”

RECOMMENDATION:

That the information be received.

ATTACHMENTS:

There are no supporting documents for this report.

Oooo END OF ITEM 71 Oooo

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Item: 72

ITEM: 72 **Application for the Demolition of the Existing Dwelling House and Construction of a Three x Three Bedroom Two Storey Dwellings - Lot 6 DP235836 No. 344 Macquarie Street, Windsor**

FILE NUMBER: M1776/00/EVD/ENG31NAX.V11

Applicant: Mr M Dawson
Applicants Rep: N/A
Owner: Mr R & Mrs M Manning
Stat. Provisions: Hawkesbury Local Environmental Plan 1989
Area: 1012sqm
Zone: Residential 2(a)
Advertising: Notified to adjoining owners and occupiers for 14 days up to and including 15/1/2001
Date Received: 12/12/2000 (amended plans received 1/4/2001)

Key Issues - Non compliance with DCP (front setback)
 - Amenity impacts
 - Privacy and overlooking
 - Overshadowing
 - Road traffic noise
 - Loss of a tree

Action: Approval, subject to conditions

REPORT:

Introduction

Consideration of this application was deferred from the General Purpose Committee meeting of 26 June 2001.

An application has been received seeking approval for a 3 unit medium density housing development. The application proposes to demolish the existing dwelling house and construct 3 two storey dwellings, including two attached dwellings.

The application is referred to Council for determination due to the number of submissions received and, non-compliance with the front setback requirements of the Medium Density Housing DCP.

The applicant has requested that the 10m front setback required under the medium density DCP be varied. The setback to the realigned frontage will be 7m. The applicant seeks a variation of this requirement based upon the precedent set by a similar development on the adjoining property, provision of acoustic measures to mitigate road traffic noise, and the lack of such a standard in Council's Dual Occupancy DCP.

Background

An amended plan was received on 1 May 2001. This follows referral to the applicant of submissions from objectors and the RTA, and advice to the applicant about the need to address potential privacy impacts and road traffic noise.

The proposal has been amended compared to that originally submitted to remove first floor north facing balconies which would have potentially compromised the privacy of adjoining properties, and also provide for the acoustic treatment of windows facing Macquarie Street.

The Proposal

The proposal comprises of the following:

- Demolition of the existing weatherboard cottage;
- Construct 3 x 3 bedroom two storey dwellings, (one detached and two attached units);
- Open space/courtyards for each individual unit;
- Parking comprising a double garage for each unit;
- Two visitor parking spaces (one space to be deleted to provide satisfactory vehicle manoeuvring).

The proposed dwellings will be constructed using brick veneer bagged and painted, hardiplank/weatherboard, and concrete roof tiles

Special acoustic measures are proposed and shown in notes on plan for the windows of the dwelling facing Macquarie Street, to deal with road traffic noise.

Statutory PositionHawkesbury Local Environmental Plan 1989

The subject land is zoned Part Residential 2(a) and Part Proposed Road 9(b) under the provisions of Hawkesbury Local Environmental Plan 1989. The proposal is defined as a 'Residential Flat Building Class B' and is allowable within the 2(a) zone with development consent. It is noted that no part of the proposed development will be located on that part of the site zoned 9(b). The proposed road widening is a strip of land (lot 35 DP235836) varying in width from 3.53m (on the southern boundary) to 6.337m (on the northern boundary). The application was referred to the RTA, this is discussed below.

The objectives of the Residential 2(a) zone are as follows:

- (a) *to provide for housing and associated facilities in locations of high amenity and accessibility;*
- (b) *to enable development for purposes other than residential only if it is compatible with the character of the living area and has a domestic scale and character; and*

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

Comment: The subject land is located within an area of high amenity and accessibility. The site is located close to facilities such as shops schools and sporting facilities. Water, electricity, telephone and sewer are provided to the property. Monetary contributions for the increased provision of recreational and community facilities and open space are to be required as consent conditions.

It is considered that the proposed development is consistent with the objectives of the 2(a) zone.

The relevant clauses of Hawkesbury LEP 89 are the following:

Clause 31 - Acquisition and use of reserved land

- (6) *The Council shall not grant consent as referred to in subclause (5) to the development of land to be acquired by the public authority (other than the Council) specified in Column 1 of Part 2 of the Table to this clause unless it obtains the concurrence of that public authority specified opposite that authority in Column 2 of Part 2 of that Table.*
- (7) *In determining whether to grant concurrence under subclause (6), the public authority concerned shall take into consideration*
- (a) *the effect of the proposed development on the costs of acquisition;*
 - (b) *the imminence of acquisition; and*
 - (c) *the costs of reinstatement of the land for the purposes for which the land is to be acquired.*

Table (extract)

Part 1	
Column 1	Column 2
<i>Land within Zone No. 9(b) where it involves an arterial or main road</i>	<i>Roads and Traffic Authority</i>
Part 2	
<i>Roads and Traffic Authority</i>	<i>Roads and Traffic Authority</i>

Comment: The application was referred to the Roads and Traffic Authority in December 2000, in respect to section 138 of the Roads Act 1993. A reply was received from the RTA on 5 March 2001.

No objections were raised to the development provided that any new buildings or structures are erected clear of the land required for road widening. As already noted the buildings will be clear of the area reserved for road widening.

The Authority advised that while concurrence was required the proposal was not integrated.

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The Authority advised that:

"Council should continue to collect monetary contributions from developers under section 94 (or similar) to provide for future roadworks/traffic facilities as required.

*Any redundant driveways will need to be removed and kerb and gutter re-instated to match existing. All new kerbs on Macquarie St to conform to RTA standards.
All signposting, linemarking and other roadworks to be at no cost to the Authority.*

The RTA is concerned that residents of new developments have appropriate noise protection from existing roads and freeways and that any solutions to noise problems are durable, effective and are constructed in harmony with the existing urban design. Developers should ...have a responsibility under the EPA criteria (The Environmental Criteria for Road Traffic Noise, May 1999) to ensure these requirements are met for future residents... we require that any noise protection provided to residents along RTA roads meet the new EPA criteria..."

Comment: Amended plans have been submitted including details of proposed acoustic treatment to the western elevation windows of the proposed dwelling fronting Macquarie Street. Appropriate consent conditions can be imposed with respect to the reinstatement of redundant crossings.

Under Council's Section 94 contributions plan, contributions for this form of development are required for community facilities, recreation buildings and park improvements. No contributions are required for roadworks nor traffic facilities.

Development Control Plan Medium Density Housing

An assessment of the proposed development against the provisions of the DCP is shown in the table below:

STANDARD	REQUIRED	PROVIDED	COMPLY
Density	3 bedroom @ 1 per 300sqm of site area Requires 900sqm for 3 x 3 bedroom dwellings	Site area is 917.2sqm excluding the area of proposed road widening	Yes
Private Open Space	Minimum courtyard area of 50sqm	Dwelling 1 - 68sqm Dwellings 2 & 3 - 50sqm	Yes
	Courtyards to be accessible from living areas	Access via dining/living rooms	Yes
	At least half of each courtyard must receive sunlight between 9am and 3pm midwinter	Each courtyard will receive more than 50% sunlight, north facing with shadowing from adjacent townhouses and fencing in winter mornings	Yes
	Landscaping must be compatible with the scale of the building	Landscaping planting schedule provided	Yes

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STANDARD	REQUIRED	PROVIDED	COMPLY
Car Parking/Access	Minimum two off street covered spaces and one visitor space	Two covered spaces are provided for each dwelling and one visitor space in front of the dwellings	Yes
	Covered spaces internal dimensions of 5.5m x 3m	Garages with internal dimensions of 5.8m x 5.64m (double garage)	Yes
	Driveways to be a minimum of 3m wide + 6.7m for manoeuvring behind 90 degree parking spaces	Driveway width is min 3m Only 5.44m driveway width behind garages	No
	Design of garages must be integrated with the dwelling	Garages will be integrated with the existing dwelling	Yes
Setbacks	10m from proposed realignment of main arterial road	Setback to the proposed realignment will be 7m to 8m (setback to existing alignment will be 12.6m)	No
Building Height	Not to exceed two storeys or levels at any one point	Two storey	Yes
Design Considerations	Wherever possible living areas are to be oriented to north	Living and dining areas will be oriented to north	Yes
	Roof of garages shall reflect roof form of dwelling	Garages form part of the dwellings	Yes
	New construction should, where possible, incorporate materials used in the surrounding developments	The proposed materials are bagged and painted brickwork and hardiplank weatherboard cladding, tile roof and aluminium windows. This is compatible with the mix of construction materials used throughout the area	Yes
Landscaping	Landscaping to be compatible with the scale of the building	The landscaping is of suitable scale to the development	Yes
Heritage Building	Compatible with any existing heritage items	There is no heritage significance	N/A
Aircraft Noise	If ANEF exceeds 25 - noise attenuation measures shall be incorporated into the design	N/A, outside the ANEF contours	N/A

Based on the above assessment and consideration of the relevant objectives of the DCP, it is concluded that the proposal will not comply with the front setback requirements, nor the minimum 6.7m manoeuvring width.

Front setback

Dwelling 1 of the proposed development will be setback between 7m and 8m from the proposed re-alignment, while a courtyard wall for dwelling 1 will be approx. 1.5m from the proposed re-alignment.

Front setbacks would normally be considered on their merits dependent on adjacent setbacks and the provision of sufficient landscaping and parking. Council's Development Control Plan, requires however that where land has frontage to a collector, regional sub-arterial and state arterial road, a setback of at least 10 metres is required from the nearest existing alignment or proposed re-alignment of that road.

The proposal does not comply with the front setback requirements.

The objectives of the setback standards are -

- To ensure an attractive streetscape
- To ensure that there is adequate sight distance at intersections
- To minimise the cost of future widening to main or arterial roads
- To provide privacy for the dwelling.

It is considered that the proposal will meet these objectives despite the non-compliance with the above objectives.

It is noted that the adjoining town house development at 342 Macquarie Street which is similar to the development subject of this application, has a front setback of approximately 6m from the proposed road re-alignment. That development was approved on 24 September 1997 (DA178/97).

The applicant has requested that the 10m setback requirement be varied, having regard to the setback of the adjoining development. In relation to this matter, this applicant has advised -

“A development similar in nature was built on the adjoining property, (No. 342 Macquarie Street) the development was approved by council exclusive of the R.T.A. road widening easement, along with no acoustic compliance variation to mitigate traffic noise from Macquarie Street. (Refer to attached plan.) In addition, the Development Control Plan for Dual Occupancy does not enforce an R.T.A. setback restriction for an arterial, collector or sub-arterial road.”

Vehicle manoeuvring

The proposal includes parking in the form of double garages for each dwelling at 90 degrees to the driveway. Council's code requires that where parking spaces are located at 90 degrees to the driveway alignment the minimum driveway width adjacent to the space shall be 6.7m to allow adequate manoeuvring. The proposal provides a width of only 5.44m behind four spaces. This can be increased to 6.7m by reorganising and deleting some proposed landscaping adjacent to the southern side of the driveway and southern boundary.

A proposed visitor parking space at the end of the driveway will also need to be deleted and provided as manoeuvring space for the end garage. A visitor space will be available at the front of the site. Only one visitor space is required.

The proposal can be appropriately amended by means of a consent condition to provide for the manoeuvring space required under the provisions of the DCP.

Community Consultation

The application was publicly exhibited from 27 December 2000 to 15 January 2001. Five (5) letters of objection were received. The objections raised relate to -

- Loss of privacy and overlooking
- Loss of large tree in rear yard of subject property
- Overshadowing

The matters raised are discussed in the planning assessment below.

Planning Assessment

The following matters are relevant for consideration under section 79C of the EP& A Act, 1979, as amended.

Context and Setting / Site Design and Internal Design *(also raised by respondents)*

The subject site is surrounded by residential development with two storey townhouses on the property to the north and detached dual occupancy dwellings on the property to the south. The proposed development is compatible with the existing residential development of the area, and almost identical to the development on the adjoining property, 342 Macquarie Street.

The proposed setback to the current alignment of Macquarie Street will be 12.69m. Once the road widening is taken the minimum setback will be min. approx. 7m. (This does not comply with min. 10m setback required under the Medium Density Housing DCP, as detailed above.) A visitor parking space is to be provided within the front setback and courtyard fencing for unit 1. The dwellings will be located 4m from northern boundary, 7m from the southern boundary and 1.7m from the eastern or rear boundary.

Existing trees will be removed including a large tree at the rear of the property, this is discussed below under the Flora and Fauna section of this report.

Driveway access will be provided on the southern side of the site, with the existing driveway and crossing on the northern side being closed and kerb and gutter to be reinstated.

Privacy/Overlooking *(also raised by respondents)*

The proposal as submitted included first floor north facing balconies opening off bedrooms of each proposed dwelling. Because of the potential privacy problems and concerns raised in submissions these balconies have been deleted and replaced with windows. South elevation first floor bedroom windows will face across the internal driveway. Retention of an existing tree on the southern boundary and provision of additional planting along the southern boundary will alleviate any overlooking problems for the adjacent dwellings to the south.

North facing windows will face across the courtyards of the dwelling and then the driveway area of the adjacent townhouse development. One bedroom window faces towards the rear lane and

towards the rear of dwellings facing. This can be provided as a hopper style window with frosted or opaque glass to avoid any overlooking of the rear yards of properties fronting Mileham Street.

It has been suggested that potential privacy and overlooking problems could be overcome by moving or shifting the proposed dwelling to the southern side of the site with the driveway adjacent to the northern boundary.

This would however create south facing living areas and courtyards with inadequate solar access. Also more direct overlooking could result for the property to the south.

If Council is of the view that this remains a significant issue, then the applicant could be required to fix privacy screens to the exterior of the 2 (two) first floor north facing bedroom windows.

Overshadowing *(also raised by respondents)*

It is considered that satisfactory sunlight access will be retained for the dwellings and property to the south of the proposed development. Mid winter shadow diagrams for 9am, 12 noon and 3pm have been submitted with the application. These show that shadows will project up to 10m at 9am in midwinter. By 12 noon the adjacent properties are unshaded. The 2 (two) rear dwellings do not have any significant windows adjacent to the common boundary which would be shaded.

The 9am and 12 noon shadows will not impact on the rear yards of 171 and 173 Mileham Street. The 3pm shadows will extend up to approximately 4.5m in to the rear yard of 171 Mileham Street, but within the shadowing cast by the existing rear boundary fencing.

It is considered that satisfactory sunlight access will be maintained for adjacent and neighbouring properties.

Flora and Fauna

The proposed development is located within an established residential area with domestic gardens. The proposal will not have any significant impact on any endangered flora and fauna, critical habitats or ecological communities as listed under the Threatened Species Conservation Act 1995.

There is a large eucalypt with low, spreading branches at the rear of the property. The impact of the removal of this tree has been the subject of adverse comment from respondents, who have referred to the privacy, shade and bird habitat the tree provides.

The applicant has advised that the loss of the tree was not taken lightly during the design process. Various options were explored to maintain the tree while achieving the performance criteria regarding privacy, solar access private open space vehicular access and the like. Due to the sheer size and nature of the tree any disturbance even close to the drip line would in all likelihood, result in the demise of the tree. To compensate, reasonably mature trees could be planted in more appropriate locations to provide privacy screening and in longer term, amenity for bird life.

Access, Transport and Traffic

Vehicular access will be obtained from Macquarie Street, via a new driveway to be constructed on the southern side of the site. The existing driveway is on the northern side of the site. There is an existing timber barrier adjacent to the southern boundary of the property, on the road reserve area, which restricts vehicular access to the service road. A condition of approval is proposed requiring kerb and gutter construction in accordance with RTA requirements.

Satisfactory on-site parking is proposed. The Parking DCP requires the provision of 2 covered spaces per dwelling and one visitor space. A double garage is to be provided for each dwelling and two visitor spaces. A visitor space proposed to be provided at the end of the driveway will need to be deleted to provide for vehicle manoeuvring. Only one space is required. Each garage will have dimensions of 5.8m x 5.64m which is considered satisfactory, a minor departure from 6m depth required by the Medium Density housing DCP.

Utilities

There is electricity and phone available to the site. Documentary evidence will be required from these agencies stating their services will be made available to the development.

Energy

The proposal provides for north facing living areas and courtyards which will maximise solar access to the development.

Noise and Vibration

The potential impact of road traffic noise has been addressed with appropriate acoustic treatment to be provided to windows facing Macquarie Street.

For rooms facing Macquarie Street external cladding is to be provided with moisture resistant plasterboard beneath external cladding, and cavities filled with insulation. Windows are to be fitted with laminated glass

Natural Hazards

The subject property is above the 1:00 year flood level.

Safety, Security and Crime

The proposal provides for satisfactory surveillance of common areas to avoid significant potential security problems

Suitability of the Site

Adjoining properties are occupied by medium density development, with the property to the north being occupied by three two storey dwellings similar to the dwellings proposed in this application,

and the property to the south being occupied by detached dual occupancy dwellings. A six metre lane at the rear of the subject site separates it from the rear yards of single dwellings houses fronting Mileham Street. Amenity issues in relation to adjacent development are discussed below.

Potential road traffic noise constraints have been considered in the amended plan for this proposal with acoustic treatment proposed for the windows/openings of the dwelling fronting Macquarie Street.

Proposed Multi Unit Housing zone

The Director of the Department of Urban Affairs and Planning has been notified in accordance with section 54 of the Environmental Planning and Assessment Regulation 2000 of Council's resolution to amend H L E P 1989. As the draft local environmental plan has not been publicly exhibited, the requirements of the plan are not a matter for statutory consideration under section 79C of the Act.

Although the property is outside the proposed multi-unit housing zone, the applicant has argued that:

"The proposal is not inconsistent with other similar types of housing in the immediate area, and in fact a development of near identical nature exists on the adjacent lot to north east of the subject site.

Whilst the proposed development may be outside the 1km radius from the railway station, it would not be far in excess of this arbitrary distance. It is within, what would be considered by reasonable assessment to be an acceptable walk to the station or the South Windsor shops."

The subject site is located within 800m of South Windsor shops, and as the applicant has indicated is adjacent to an existing medium density development at 342 Macquarie Street, almost identical to that proposed in this application.

The development at 342 Macquarie Street was approved in September 1997 (MA178/97).

Interim Laneway Policy

This application was submitted before Council's consideration and adoption of the interim policy for development fronting rear lanes (adopted at the Ordinary Council Meeting on 10 April 2001). This proposed development will have no access to the laneway at the rear. This continues the existing situation for the subject site where there is no rear lane access, and is the same situation as the existing townhouse development at 342 Macquarie Street. The elevation of the rear unit facing the laneway is considered to be satisfactory, with articulated features and a mix of materials.

In relation to this matter, the applicant has advised that:

"This policy came into action 4 months after the plans for the development in question were submitted, therefore this application should be excluded from this policy."

Conclusion

The proposal does not comply with the requirements of Council's Development Control Plan for Medium Density Development, in respect to a minimum 10m setback from the proposed realignment of Macquarie Street.

The applicant has requested a variation of the DCP requirements in respect to the front setback, having regard to the precedent set by the adjoining townhouse development at 342 Macquarie Street. It is also noted that the development provides for noise attenuation measures to deal with the potential impact of road traffic noise.

Non-compliance with the minimum driveway width can be rectified by increasing the driveway width, deleting proposed landscaping.

The privacy concerns raised in the resident submissions have been addressed by the removal of first floor balconies and the provision of opaque glazing for a first floor bedroom window facing the rear laneway.

The proposal provides for the development of two storey townhouses which will be of similar design to the townhouses already existing on the neighbouring property. The surrounding area contains a number of existing medium density developments. This proposal has been amended in response to concerns regarding impacts from privacy and overlooking, and to deal with road traffic noise.

If Council is of the view that privacy remains a significant issue then the applicant could be required to fix privacy screening to the exterior of first floor north facing bedroom windows to restrict oblique views/overlooking.

RECOMMENDATION:

That the application for demolition of the existing dwelling and erection of three two storey dwellings be approved, subject to the following conditions -

General

1. To confirm and clarify the terms of this approval, the development shall be carried out in accordance with the approved stamped plans (prepared for R & M Manning dated 15/9/2000 submitted with Development Application No. M1776/00 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 applicant is advised to consult with:
 - (a) Sydney Water Corporation Limited
 - (b) Integral Energy
 - (c) Natural Gas Company
 - (d) a local telecommunications carrier

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

5. No excavation or site works shall be commenced prior to the issue of the construction certificate.
6. An occupation certificate is to be obtained on completion of all works and prior to commencement of the approved use. The occupation certificate will not be issued if any conditions of this consent are outstanding.

Prior to Issue of Construction Certificate

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

7. To ensure compliance with environmental planning instruments, codes and policies which relate to the subject land, the design and layout of the development shall be modified in the following manner:
 - (a) a minimum driveway width of 6.7m is to be provided adjacent to proposed garage and parking spaces; and
 - (b) the proposed visitor space at the eastern end of the driveway is to be deleted and replaced with manoeuvring for the garage to dwelling 3.
 - (c) The east facing first floor bedroom window to unit 3 is to be provided with hopper/tilt style windows or similar [windows that open out from the bottom of the window frame] fitted with obscure glazing, with the extent the window can be opened being no more than 500mm.

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 | (\$2373) |
| (b) | Community Facilities | (\$3634) |

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. Payment of a sewer headworks contribution to Council of \$10,207. This contribution shall remain fixed for a period of 3 (three) months after which time it will be recalculated at the rate applicable at the time of payment.
10. The following documentary evidence is to be obtained prior to the issue of any Construction Certificate, whether by Council or an accredited certifier:
- (a) A Section 73 Certificate issued by the Sydney Water Corporation Limited or other evidence of Sydney Water's non-objection to the commencement of work on the basis of service availability.
 - (b) A written clearance from Integral Energy, stating that electrical services have been made available to the development or that arrangements have been entered into for the provision of services to the development.

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.

11. Submission of design calculations for all drainage and internal pavement works required by this consent.

Prior to Commencement of Works

12. 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.

13. 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.

14. 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.
15. If the work involved in the erection or demolition of a building:
- (a) is likely to be dangerous to a person in a public place or adjoining property;
 - (b) is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient; or
 - (c) involves the enclosure of a public place,

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

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

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

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

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. To ensure that site works do not cause soil erosion, site works involving construction of batters, embankments, cuts, mounds, and the like, shall incorporate measures for their restraint and stabilisation, with the use of physical barriers and planting of suitable vegetative cover.
18. 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.

19. 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.
20. 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
21. Sanitary accommodation shall be provided for workmen throughout the course of the building operations in accordance with the Local Government Act 1993 and the Environment Planning and Assessment Act.

During Construction

22. Compliance with the provisions of the Environmental Planning and Assessment (Amendment) Act 1979, and the Building Code of Australia.
23. Doors to WC's are to open out or be provided with cavity slider or lift off type hinges, to comply with the BCA.
24. All roofwater shall be drained to the street gutter. Where a ferrule has been provided in the kerb, such drainage shall be connected to it. Drainage across the footpath shall be 100mm sewer grade type.
25. The construction of concrete kerb and gutter sealed road shoulder and any drainage together with any works necessary to make this effective. All works to be completed in accordance with the plans submitted to and approved by the RTA and under their supervision. All fees, contributions or securities required by the RTA are to be lodged.
26. Construction of site drainage shall be carried out in accordance with Council's Guidelines for Stormwater Drainage Requirements for Commercial, Industrial and Medium Density Developments.
27. Construction of Council's standard heavy duty footway and layback vehicular crossing to suit the access to the site.
28. Parking shall be provided for minimum seven (7) vehicles (including one visitor space) in accordance with Council's Regulations and Parking Policy. Parking spaces, accessways and aisles to conform to Council's Development Control Plan and to be constructed, drained, sealed and marked. Full details of works shall be submitted for approval with the building application.
29. Parking spaces, accessways and aisles to conform to Council's Development Control Plan and are to be constructed with a sealed pavement, drained and marked.

30. 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) foundations;
 - (d) steel reinforcement;
 - (e) the second storey floor joists, prior to the fixing of any flooring material;
 - (f) 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;
 - (g) wet area flashing, after the installation any bath and shower fixtures;
 - (h) internal drainage lines prior to covering;
 - (i) external drainage lines, prior to backfilling;
 - (j) on completion of the structure;
 - (k) landscaping.
31. 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.
32. No spoil, excavated or demolition material from the site being deposited on any public road, footpath, public place or Council owned property without the approval of this office.
33. To reduce nuisance to the surrounding properties, all demolished material and excess spoil from the site shall be disposed of to a location and in a manner to the approval of this office (Note: no material shall be burnt or buried on the site).
34. 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.
35. The driveway is to be finished with a decorative treatment. Plain concrete is not acceptable.

Prior to Issue of Occupation Certificate

36. Landscaping shall be completed in accordance with the approved landscaping plan and shall be maintained in perpetuity by the existing or future owners and occupiers of the property. In this respect a occupational certificate will not be granted on the application until the landscaping is complete.
37. Registration of a plan of survey consolidating the site into a single allotment. Documentary evidence to be submitted prior to occupation of the building.
38. In order to enhance the amenity of the development, new boundary fences shall be provided at the applicant's expense. Such fencing behind the building line shall be to a height of 1.8m and at least lapped and capped.

39. In order to enhance the amenity of the area, all fencing fronting the street shall be a feature fence incorporating masonry piers with decorative infill panels.

ATTACHMENTS:

- AT-1** Locality plan (location of medium density, location of objectors)
- AT-2** Site plan
- AT-3** Elevation to Macquarie Street
- AT-4** Elevation to Rear Lane
- AT-5** Shadow diagram - 9am
- AT-6** Shadow diagram - 12noon
- AT-7** Shadow diagram - 3pm

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Locality plan

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Site plan

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Elevation to Macquarie Street

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Elevation to Rear Lane

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Shadow diagram - 9am

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Shadow diagram - 12noon

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Shadow diagram - 3pm

oooO END OF ITEM 72 Oooo

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Meeting Date: 31 July, 2001

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ITEM: 73 **Demolition of existing structures and the construction of Shop (Aldi Supermarket) at Lots 1, 2, 3, 4 DP211614, Lot 22 DP713157, Lots 50, 51 DP618636, Lot 2, 3 DP542955, Lot 1 DP209765, Paget Street and Windsor Street, Richmond**

FILE NUMBER: MA70/01/EVD/ENG31NAX.V13

Applicant: Reid Campbell Group Pty Ltd (Formerly Spowers Architects)
Applicants Rep: As above
Owner: Jonturn Pty Ltd, Penrich Holdings Pty Ltd
Stat. Provisions: HLEP 1989, SREP 20, SEPP11
Area: 6282sqm
Zone: Business Special 3(b)
Advertising: 21 January 2001 - 7 March 2001 (first period, 25 objections, 2 support)
 16 July 2001 - 20 July 2001 (second period, 6 objections)

Date Received: 25 January 2001, final plan amendments received 12 July 2001

Key Issues - Heritage
 - Traffic/Parking
 - Economic Impact
 - Security
 - Noise
 - Drainage
 - Soil Contamination

Action: Approval, subject to conditions

REPORT:

Introduction

An application has been received seeking consent to demolish existing structures and construct a shop being an Aldi Supermarket on the subject properties.

The application is being reported to Council due to the nature of the submissions received and the gateway location of the site. This report details the background of the site, the statutory situation and an assessment of the application in accordance with Section 79C of the Environmental Planning and Assessment Act (EP & A Act 1979). Based on the assessment, the application is recommended for approval subject to conditions.

Background

On the 25 January 2001 the application was lodged with Council. Subsequently a number of meetings have been held with the applicant, Aldi and Council officers to overcome design issues in relation to the proposal.

Amendment 110 was gazetted on 30 March 2001 which, amongst other things, permitted shops within Business Special 3(b) zones.

The Proposal

The proposal involves the demolition of a number of structures including two weatherboard dwellings and associated garages fronting Paget Street and two commercial structures formerly known as Richmond Car Centre and Fraser's Auto Electrical fronting Windsor Street, to provide an area of approximately 6282sqm to construct a shop (Aldi Store) and associated parking, loading area, landscaping and signage.

The proposed shop will provide a total gross floor area of 1330sqm with 835sqm being used for retail and display area.

The proposed building ranges in height from 4m to 8m at the ridgeline. The materials used in the building consist of face brick Boral 'nevada cream' walls and prefinished metal sheeting in slate grey for the roof. Glazing is provided to the Windsor Street elevation. A zero front setback to Windsor Street is proposed.

The proposed development provides parking for 107 vehicles, two of which are for disabled parking. Access/egress to the development site is primarily from Paget Street with an egress only proposed onto Windsor Street. Trucks will enter and leave from Paget Street.

Three signs are proposed, two 5.4m high illuminated pole signs, one at the Paget Street access point and the other near the building fronting Windsor Street, and a wall sign attached to the gable end of the building.

The proposal involves the removal of trees on the site and introduces extensive landscaping on the site, particularly along the Windsor Street frontage.

The proposed shop will operate 6am - 12am (midnight) Monday to Fridays and 7am to 12am (midnight) Saturdays and Sundays, including public holidays.

A total of twelve (12) employees are required to operate the proposed shop excluding truck drivers.

Aldi Stores sell approximately 600 to 800 basic grocery and household items, no tobacco or alcohol is sold at the store. All goods are pre-packaged elsewhere before delivered to the store.

A photomontage has been provided with the application and will be displayed at the meeting.

The Site

The proposed development will occupy a total of 10 allotments bounded by Windsor Street in the north-east, Paget Street in the south-east and the railway commuter car park to the south-west. Richmond commercial centre extends beyond the property to the north-west. The site as a whole is irregular in shape and has a frontage of 71 metres to Windsor Street and 62 metres to Paget Street. The site wraps around number 126 Windsor Street which is the corner property to Windsor and Paget Street and is identified as a heritage item under Schedule 1 of Hawkesbury Local Environmental Plan 1989 (HLEP 1989).

The site has a total site area of 6282sqm.

Statutory Position

Hawkesbury Local Environmental Plan 1989

The zoning of the site is Business Special 3(b) under HLEP 1989. The objectives of the zone are-

- (a) *to promote office development to meet the optimum employment and social needs of the City of Hawkesbury;*
- (b) *to permit non-commercial development within the zone where such development is compatible with the commercial character of the locality;*
- (c) *to ensure that there is adequate provision for car parking facilities within the zone;*
- (d) *to minimise conflicts between pedestrians and vehicular movement systems within the zone; and*
- (e) *to preserve the historic character of the City of Hawkesbury by protecting heritage items and by encouraging compatible development within and adjoining historic buildings and precincts.*

The proposed development is defined as a 'shop' under HLEP 1989 and is permissible with consent.

Relevant Clauses from HLEP 1989 relevant to the proposal:

Clause 9A - zone objectives

Comment: Those objectives which are relevant to the proposal are objectives (b)-(e). The development provides for adequate car parking facilities on site and provides almost twice the amount of parking required of Council's parking DCP. The proposal is unlikely to create conflict between pedestrians and vehicular movements within the zone. The development is considered to be compatible with the heritage nature within the area. It is preserving and protecting adjoining heritage items by opening up vistas to the adjoining heritage item and providing a compatible transition between residential development and commercial development in the Richmond gateway area. This is discussed in more detail in the planning assessment below.

It is considered that Council can form the opinion that the development is consistent with the objectives of the zone.

Clause 18(1) Provision of water, sewerage etc. services - Adequate arrangements can be made for the provision of water, sewerage, drainage and electrical services. Documentary evidence will be required to demonstrate these services are available should the application be supported.

Clause 22 Development Fronting a Main or Arterial Road - Windsor Street is a main road. The development is generally consistent with subclause (1). In regards to subclause (3) direct vehicular access from land to a Main road is prohibited unless there is no other reasonable access. The land being the subject site has 3 (three) existing access points to Windsor Street, the applicants are proposing to consolidate those access points to one access point which will provide for an egress point only. This is discussed in more detail below. It is considered that the proposed development is generally consistent with this clause.

Clause 23 Advertising Structures - This clause states that Council can consent to an advertising structure which displays notices relating to the purposes for which the land is used. The proposal includes the erection of 3 (three) signs which will display "ALDI" which is what the land is being used for.

Clause 28 Development within the vicinity of a heritage item - This clause states that Council should make an assessment of the effect of carrying out the development on adjoining heritage items prior to issuing consent. This assessment is undertaken below in the planning assessment.

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

The subject site falls within the boundary of SREP20. The subject property does not fall within a riverine scenic corridor. There are no additional matters for consideration under this plan relevant to the proposed development.

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

State Environmental Planning Policy No. 11 - Traffic Generating Developments

This policy aims to ensure that the Traffic Authority is made aware of, and is given opportunity to make representations in respect of development referred to in Schedule 1 or 2. The proposed development is listed in Schedule 2 of SEPP 11 meaning that it was referred to the Local Traffic Committee (LTC). The LTC recommended:

"In light of concerns regarding impact of traffic on the intersection of Paget and Windsor Streets, Richmond, particularly if the proposed access to the site direct from Windsor Street is denied, that this matter be referred to the Roads and Traffic Authority for investigation and comment."

The above recommendation was adopted by Council at the Ordinary Meeting of 13 March 2001.

The development proposal and associated documents were forwarded to the Roads and Traffic Authority (RTA) under the Integrated Development process due to proposed works on a main road. The RTA provided comments and the applicant responded to those comments which is discussed in more detail below under the heading '*Access Transport and Traffic*'.

The applicant's response went back to the Local Traffic Committee which recommended:

- 1) *That advice recommendation by Roads and Traffic Authority conveyed in its correspondence dated 29 March 2001 be supported;*
- 2) *The ingress/egress driveway to the development located on Paget Street be widened to fifteen (15) metres;*
- 3) *A central median island, to Roads and traffic Authority Standard, be installed on Windsor Street to prevent right turn into the development;*
- 4) *Paget street be upgraded to a standard sufficient to carry semi-trailers; and*
- 5) *The applicant be advised that some concern exists as to the adequacy of manoeuvrability of trucks within the proposed car park layout.*

The above recommendations were adopted at the 8 May 2001 Ordinary Meeting.

Community Consultation

The proposal was notified twice due to amended plans being received.

The first exhibition period was from 21 January 2001 - 7 March 2001 with 25 (twenty five) objections and 2 (two) support submissions received. Of the objections received 12 (twelve) were proforma letters. Following are the nature of objections and support letters.

Objections

Objections were received from adjoining residents (particularly 126 Windsor Street), local residents, National Trust (Hawkesbury Branch) and Don Fox Planning on behalf of Richmond Market Place. The general theme throughout the submissions included -

- Traffic, impact on the intersection of Paget and Windsor Street
- Parking, impact on availability of parking in area
- Heritage impact
- Unattractive building at the gateway to Richmond
- Impact on lighting affecting sleep
- Hooligans in the area
- Too many vacant shops already, an additional supermarket will divide the town further
- Removal of trees on site
- Flooding and drainage problems
- Hours of operation of store
- Archaeology
- Noise

- Soil toxicity
- Realise that development must happen on site however concerned about impact on heritage precinct.
- Economic impact
- Land values reducing
- Setback should be further back then what is proposed
- Parking should be well setback from the street
- Development is prohibited in the zone

Support Letters

There were two letters of support from Hawkesbury Chamber of Commerce and Hawkesbury Economic Development Board.

- Provides opportunity to rejuvenate a section of the Richmond Town Centre
- Greater trading from the overflow of the Aldi Store

Amended plans were forwarded to previous respondents and were exhibited from 16 July 2001 to 20 July 2001. Four objections were received as follows-

126 Windsor Street

- Heritage Impact
- Traffic
- Environmental Impacts
- Noise
- Soil Contamination
- Introduction of palm trees into the landscape haven for lice etc.
- Loss of native species
- Increase in hoodlum activity
- Overall negative impact on residents and businesses
- Windsor Street major thoroughfare for traffic such as emergency vehicles which Aldi development will cause a bottleneck
- Not against the development or the jobs created, however would like to see a development in keeping with the area and that will not impact on the residents and businesses.

7/20 Paget Street

- Economic impact
- Noise of trucks in Paget Street
- Heritage
- Tree removal

14 Starlight Place

- Economic Impact

Metcash Trading

- Economic Impact
- Traffic management
- Heritage
- Appropriateness of the zoning
- Fragmentation of shopping precinct

Richmond Marketplace

- Traffic
- Need for New Supermarket
- Noise

3 Paget Street

- No improvement from original plans
- Heritage
- Noise
- Traffic
- Don't need another supermarket

The above concerns are addressed in the planning assessment below.

Planning Assessment

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

Notification of Development Proposals DCP

Under Council's Notification of Development Proposals DCP, Shops are not required to be notified in Business Special 3(b) zones. Given the scale of the development adjoining owners and occupiers were notified. The first period of notification was 21 January 2001 - 7 March 2001 in which twenty five (25) submissions were received. The second notification period was 16 July 2001 - 20 July 2001 (being five [5] working days) and was notified to the previous respondents only. Included with the notification letter was a copy of the amended plans. Due to Council report deadlines and the minor amendments to the original plan this was considered sufficient time to comment.

Contaminated Land DCP

Previous land uses on the subject site are not listed in Appendix 1 of the Contaminated Land DCP as being potentially contaminating activities. However, it has been noted that two (2) underground storage tanks exist on the site formerly used by Richmond Car Centre, these tanks require removal. An investigation of the site was carried out by Coffey Geosciences Pty Ltd who concluded that the site is suitable for the proposed use, subject to particular works. This assessment is discussed in more detail below under the heading '*Soils*'. A remedial action plan and validation report will be required prior to

issuing a construction certificate and prior to commencing any works should the application be supported.

Sign DCP

The sign DCP applies to the proposal. Generally, signs proposed within a commercial zone are assessed on merit. There are three (3) signs proposed which include:

- One (1) wall mounted illuminated sign being 2m x 2.4m which is proposed to be positioned on the gable end fronting Windsor Street.
- Two (2) illuminated pole signs at a height of 5.4m with a face area of 2m x 2.4m. One of the signs is proposed near the building fronting Windsor Street and the other is proposed at the entrance in Paget Street.

The original application included five (5) signs. After numerous meetings with Council officers the applicant has now deleted one wall mounted sign and one 10m illuminated pylon sign.

The proposed signs are predominately blue with yellow and red trim and white writing detailing 'ALDI' on the wall mounted sign and 'ALDI FOOD STORE' on the pole signs.

The proposed signs are considered to be consistent with commercial signage within the Richmond area and are not unsympathetic to the surrounding area.

Parking DCP

The proposed development requires 4.5 spaces per 100sqm of gross leasable floor area. The floor area of the development is 1330sqm, therefore under the parking DCP requires a total of 60 car spaces. The applicant proposes to provide 107 car spaces for the site, being in excess of 47 car spaces than required.

All vehicles including trucks will be able to enter and leave in a forward direction.

Two spaces have been provide for drivers with disabilities.

The DCP requires a minimum dimension of 5.5m x 2.6m, the applicant proposes car spaces with dimensions of 5.5m x 2.5m, a variation of 100mm. The applicant has requested a variation to the minimum requirement and provides the following justification from their traffic consultants:

"..It is a priority of Aldi to provide parking facilities that are easy to access and navigate for both pedestrian and driving customers alike. For this reason, the car park has been designed with generous aisle widths to allow vehicles and pedestrians to share the space without threat of conflict to pedestrians. Providing wide aisles also allows easy manoeuvring of vehicles into and out of parking spaces.

In order to make the site viable, in terms of land area and the number of parking spaces required, it has been necessary to provide parking spaces of 2.5 metres in width. It is recognised that the benefits gained by providing wider aisles outweigh those gained from providing parking spaces with narrower aisles.

The car park has been designed in accordance with AS2890.1 and refers to Appendix B, Table B2, which sets out parking space widths required for varying aisle widths. A space width of 2.5 metres requires an aisle width of 5.8 metres, this includes 600 millimetres manoeuvring clearance. Clearly, the provision of 7 metre and 10 metre wide aisle satisfies these requirements while providing a safe environment and allowing the site to be viable for this development.

In this respect we seek Council's approval of this minor deviation from its Car parking code..."

Comment: The applicant proposes additional parking spaces and provides larger aisle widths to that required. The variation is very minor and still complies with the Australian Standard. The variation should be supported if the proposal is approved by Council.

It is considered that the proposed development generally complies with the Parking DCP.

Context and Setting

The proposed development is surrounded by a diverse mix of land uses which consist of restaurants, schools, residential flat buildings, the railway line, commercial development and residential uses. There are also heritage items in the vicinity of the site. The site makes up part of the gateway into the Richmond Town Centre.

The proposed development is not inconsistent or incompatible with the development which surrounds the site.

Access, Transport and Traffic (concern also raised by respondent)

The development proposes to gain access from Paget Street for both vehicles and trucks. Egress only is proposed to Windsor Street. Both streets are sealed and have kerb and guttering.

There was concern raised that the development will impact on the availability of parking in the area and impact on the commuter rail parking area. The proposed Aldi store provides parking in excess of Council's minimum requirement by 47 spaces, therefore customers will not have to rely on other forms of parking in the area such as on street parking and the rail commuter parking area.

A major concern raised by respondents is the impact of the development on traffic flow in the area and traffic congestion to the Paget and Windsor Street intersection. A traffic report undertaken by Transport and Traffic Planning Associates was submitted with the application. RTA records indicate that 14000 vehicles use Windsor Street and 550 vehicles use Paget street per day. The traffic consultants estimate that the development will generate 103 vehicle movements during the peak period, i.e. Thursday evening. The traffic report concluded that the proposal will have minimal impact on the operation of the local road network and its associated junctions. The traffic report was referred to the RTA for comment not only through the Local Traffic Committee but also through the Integrated Development process. The RTA provided the following comments which required clarification/assessment -

- *As Windsor Street has no physical barrier (ie concrete median to restrict right turn movements) into and out of the site the Authority would ask that all access to the site be limited to Paget Street.*

- *The RTA however will consider access for left out only on Windsor St. To accommodate this access treatment a concrete median extending from Paget Street to a sufficient length to stop right turning traffic onto Windsor St from the site is required. This would also include a turning bay for traffic turning into Paget Street to reduce the potential for rear end accidents occurring on Windsor St due to the increase in traffic generated by the site. This will require on street parking to be removed on the northern side of Windsor Street.*
- *Semi-trailer turning paths are required to be shown at the intersection of Windsor St and Paget Street as parking may be affected.*
- *The current driveway layout on Paget Street is not suitable for use by semi-trailers, as it requires the driver to drive on the opposite side of the driveway and/or opposite side of Paget Street as parking may be affected.*
- *Traffic counts taken do not indicate all of the peak hours (ie Weekend peaks)*

The RTA comments have been addressed by the applicant in the following manner:

- All access is via Paget Street with only egress proposed to Windsor Street.
- Proposed is a median strip along Windsor in such a way that it will not restrict residents access from Windsor Street.
- A semi-trailer turning path has been submitted and it is considered that movement is capable.
- The applicant has provided this response to this concern raised by RTA; *"during the inbound manoeuvre the truck is able to turn into the car park without the need to drive on the opposite side of the driveway or Paget Street, other than the crossing point. During the exit manoeuvre the truck may, depending on the vehicle size, have to use the right hand side of the driveway, however, there is sufficient opportunity for customer vehicles to observe the truck and wait in Paget Street before making a right turn. Similarly, the same applies to the truck driver which can wait within the car park and allow customer traffic to enter the site safely before existing. Again, in order to limit the impact of the development, the driveway has been designed within the parameters of the Standards [Australian Standard AS2890.1]."*
- Traffic counts were taken on a Thursday night peak. Experience of other Aldi stores indicate that this is the 'peak' period.

Comment: It is considered that the concerns of the RTA and the Local Traffic Committee have been addressed by the applicant. The expansion of the driveway to Paget Street and the upgrade of Paget Street as requested by the Local Traffic Committee (LTC) can be included as conditions of consent should the application be supported. Truck manoeuvrability will work onsite and this has been tested by computer modelling by Council engineers. Details will be required for the upgrading of Paget Street which can be provided prior to issuing a construction certificate, however a management plan will be required with those details to ensure that the sandstone kerb and the trees in the road are preserved.

The egress proposed is considered to be beneficial in that it relieves some pressure from the Paget Street and Windsor Street intersection and also directs vehicles into the Richmond Town centre with the possibility that further shopping will be carried out in the area. A median strip is proposed in front of the egress along part of Windsor Street which restricts right hand turns into the development but does not restrict access to adjacent buildings. The RTA also requires the applicant to include a right turning

bay, extending from the median, for traffic turning into Paget Street to reduce rear end accidents on Windsor Street. Although not proposed by the applicant, this requirement can be imposed as a condition of consent. The right hand turning bay should be line marked to ensure access to the residents on Windsor Street is not denied. This requirement can be imposed as a condition of consent should the application be supported.

It is considered that the surrounding traffic network is capable of accepting the additional traffic generated by the proposed development.

Heritage (concern also raised by respondent)

The subject site adjoins a number of heritage items consisting of:

Number 126 Windsor Street - Georgian single storey cottage c1850, identifies as the only mid 19th century cottage remaining on the Sydney approach to the town and identified as "State" significance. The building has a small setback from a picket fence which allows for mature landscaping which is dominated by two mature date palms which are quite significant in the streetscape.

Number 122 Windsor Street - Victorian two storey residence c1850 with landscape elements on the street corner

125-135 Windsor Street - Six single storey Edwardian cottages c1905-1915, which represent suburban unified cottages of its era.

The original design was forwarded to Council's Heritage Advisor for comments who suggested that the design of the building should comprise a number of smaller shops extending along the frontage of Windsor Street. Upon this advice Aldi attempted to amend their plans and difficulty arose to achieve smaller shopfronts due to the overall design of Aldi stores in general and internal design of the floor area and plant room. The applicant engaged local Conservation Architect Graham Edds and Associates to provide a Statement of Heritage Impact for the amended plans.

Comments from the Heritage Impact Statement are derived from the second edition written by Graham Edds and Associates to reflect the changes made to the plans.

Graham Edds and Associates identified two physical elements which are important for buildings to fit the character of Richmond which include:

1. Roof form - the majority of roof forms in the Richmond area are hipped, a small number gabled such as Toxana in Windsor Street and several combine both.
2. Window Openings - proportion of window area to face wall area, first floor commercial building windows equate for 17-22% of the wall area. Early windows were also more vertical.

Graham Edds and Associates undertook the Statement of Heritage Impact in accordance with the Table of the Guideline to Preparing Statement of Heritage Impact, NSW Heritage Manual which relates to "new development adjacent to a heritage item". The assessment is summarised below:

- The form and scale of the building from approach to town is single storey with a large gable facing Windsor Street with a large awning projection to the side (to Windsor St).
- Although the scale and bulk of the development has not changed from the previous plans the facades have been altered substantially which has sympathetically tempered the buildings bulk and character. The result is modulation of the facades to introducing varying roof overhangs, unification of the awning (now flat) and wrapping around the corner, introduction of vertical elements and rectilinear vertical panels and altering shopfront window frames for vertical expression.
- Design more characteristic of the Richmond Township.
- The location of the proposed building is confined to the western end of the development site thus providing the maximum possible visual curtilage to the heritage items. The location of the formal parking will also ensure retention of this curtilage and could increase the view angle to and from Windsor St streetscape and continues the exotic planting theme containing date palms.
- The boundary wall has been altered to provide modulation of height along the shared boundary with 126 Windsor St. The revised plan provide a fence design of brick walling and lapped and capped timber panels.
- Provides transition between the commercial development to the west and the residential development to the east and opposite although realising that the two heritage items adjacent to the east are residential in character but commercial in use.
- Signs are considered acceptable
- It is expected that commercial development within a commercial zone would be either single or two storey, the height of the development is not considered excessive as the overall height is 8m at the apex and diminishes to less than 4m at the extremities.
- The overall design of the proposed building now sits more comfortably within the perceived character of Richmond township. It provides for the enhancement of the adjacent heritage items with the demolition of unsightly existing development and visually opens up the space between No. 126 and the proposed Aldi store building. Sight lines to and from the west along Windsor Street will be improved.

Comment: It is considered by previously requiring the development to consist of a number of small shop fronts would result in intruding on adjoining heritage items and maintain a restricted vista to those heritage items. Small shop fronts would also create a "hidden" car park which would not have main street surveillance and be subject to loitering which has been a concern of the objections raised.

The proposed amendment although not modified by way of scale and bulk does provide features in the facade which are representative of the Richmond Township also the introduction of fencing and landscaping with exotic plants allows a transition from residential development to commercial development while opening up the views and vistas to the adjoining heritage item.

The proposed building combines a pitched roof with a gable end which makes up the roof forms which are found in the Richmond area. The development also proposes windows fronting Windsor Street and provides vertical elements in the facade.

The proposed egress as discussed above provides for redirection of traffic, however does interfere with the transition as discussed by the Heritage consultant between the residential development and the commercial development. The egress, together with the five car parking spaces introduces engineering

features within a "garden setting" which does detract from the transition. It is recommended that should the application be supported that the five car parking spaces nearest to Windsor Street be deleted and replaced with landscaping. The removal of the five (5) car spaces would still provide forty two (42) parking spaces above the minimum requirement. The introduction of additional landscaping will provide an appearance of a small driveway within the 'garden setting' providing adequate transition between the heritage item and the Aldi building.

The unsightly buildings existing on the site does detract from the heritage items as they are obtrusive and dominant on the landscape. The proposal is considered to be compatible with the surrounding heritage items as required by Clause 28 of HELP 1989 and satisfies objective (e) of the Business Special zone.

Water (*Concern raised by respondents*)

Surrounding properties and the subject site currently experience drainage problems. The site drains to the rear into a pipeline located within the railway property which has been designed to handle all flows within the catchment.

The applicant proposes to fill the site (to create a level site) which will overcome the localised ponding that is occurring in storm events, as will the proposed internal site drainage. The proposed development will not obstruct flows to adjoining properties (No. 126 Windsor Street) as this property drains via a pipeline which discharges into Paget Street.

It is considered that the proposed development will improve the current drainage issues on and surrounding the site. As part of any approval of the development design calculations and engineering plans will be required prior to allowing construction on the site.

Soils (*concern also raised by respondents*)

A preliminary environmental site assessment and geotechnical investigation was undertaken by Coffey Geosciences Pty Ltd. Based on their assessment it is considered that the site is suitable for the proposed commercial use subject to:

1. remediation of oily soil around the aboveground storage area;
2. the removal of the two underground storage tanks and any associated pipework and local contaminated soil;
3. proper management/remediation of any further contamination found during site redevelopment.

Coffey Geosciences concluded that the probability of further significant contamination being found on site during site redevelopment is low. The consultants have recommended the following management /remediation options to render the site suitable for its intended use:

- Separation of the hydrocarbons affected soil by excavation, followed by remediation on site, then beneficial reuse;
- Burial/capping of the fill on site
- Off-site disposal.

Comment: The majority of the site will be sealed for use as formal car park therefore any risk of contaminating humans is relatively low, however it is recommended that prior to issuing the construction certificate that a remedial action plan be submitted to Council for approval incorporating the recommendations made within the Coffey report. In addition, a validation of those works by the consultant will be required prior to commencing any works on the site should the application be supported.

Concern was raised that dust and erosion will leave the site and enter the water system. A suitable condition of consent regarding erosion and sedimentation control would be imposed.

Air and microclimate (concern also raised by respondents)

There was concern raised that the lighting required for the Aldi store would impact upon adjoining residences particularly of an evening. An obtrusive spill light report was undertaken by Barry Webb and Associates (NSW) Pty Ltd. It stated that the car park lighting design will comply with Australian Standard AS4282 - 1997 "Control of the Obtrusive Effects of Outdoor Lighting". The AS4282 requires that lighting adjoining commercial and residential areas should be a maximum of 4 lux, from the lighting proposed, the measurement at the adjoining heritage item property being the closest residence to the development, is 2.5 lux which is well within the requirements.

The car park lighting consists of floodlights mounted on poles that are 9m above car park level and will be located to provide an even illumination throughout the car park area. The floodlights would be high cut off type and be fitted with (150W/250W) metal halide lamps. Shields could also be fitted to the lights.

Comment: It is anticipated that the proposed illuminated signs will not have an adverse impact on adjoining residences as the signs provide dark tones which limit white light. It is considered from the information provided that there will not be a significant impact on adjoining residences as a result of the lighting.

Flora and Fauna (concern also raised by respondents)

Concerns have been raised by the objectors in relation to the number of trees that are to be removed to make way for the proposed development. It is proposed to remove 25 trees from the site, and retain 2 trees to incorporate into the landscape plan which front Paget Street. Four (4) of the trees to be removed are noxious weeds, with 6 of the trees to be removed having deadwood throughout canopy or suffering from borer attack. A total of 15 trees in good condition will be removed from the site.

The applicant is proposing to replace the trees with additional mature tree species throughout the car park with a large area of landscaping fronting Windsor Street which will contain exotic species including mature date palms to enhance and be compatible with the adjoining heritage item. Within the car parking landscape plan species such as Claret Ash, Lily turf, photinia hedge, grevillea, flax, and other ground covers will be used. Twenty (20) mature trees will be incorporated into the landscape plan.

Comment: It is considered that due to the commercial zoning of the site and the surrounding commercial zoning, the removal of the trees is considered acceptable. The applicant is proposing extensive landscaping which will improve the aesthetics of the site. The exotic species along Windsor

Street are suitable as it assists in the transition of the residential zone to the commercial zone as discussed in the heritage assessment.

Waste

Most waste will be stored and collected regularly by a independent contractor. All plastic waste and empty palletes will be returned via empty delivery trucks to the main warehouse located at Minchinbury. Method of waste disposal is considered adequate.

Noise and Vibration (*concern also raised by respondents*)

A noise assessment undertaken by Wilkinson Murray Pty Ltd was submitted with the application. The noise impacts included within the assessment were:

- Continuous operation of fixed plant and equipment
- Trucks at loading dock and patrons/vehicles using the car park
- Additional traffic on public roads
- Noise during construction

The noise assessment concluded *"subject to the implementation of noise mitigation measures recommended in this report, operational noise impacts associated with the proposed development will generally be within the relevant EPA criteria at the nearest residences during the weekday early morning, daytime and evening. At night time EPA intrusiveness and sleep arousal guidelines would be exceeded at the nearest residences in Windsor Street and Paget Street by noise from truck deliveries and patron use of the car park."*

On this basis we consider the following store opening and delivery times would be acceptable:

- *Monday to Friday - 6.00am to 12 midnight*
- *Weekend - 7.00am to 12 midnight."*

During construction it is anticipated that noise levels will exceed EPA goals but noise mitigation measures are recommended within this report for construction periods and these recommendations should the application be supported can be included within conditions of consent.

Originally a 3m masonry wall was proposed around No. 126 Windsor Street (within the subject property boundaries) to provide noise mitigation to provide "significant shielding from any activity within the car park and loading dock".

Currently, the applicant is proposing a brick wall with timber panels at a height of 3m which reduces to 2.4m towards the front of the heritage item. The reduction in the height does maintain and improve the amenity of the adjoining heritage property however does create some noise impacts therefore the hours of operation referred to now by the noise consultant are:

- Monday to Friday - 6.00am to 10.00pm
- Weekends - 7.00am to 10.00pm

Wilkinson Murray has provided a statement in relation to the modification in the fence and its impact on the noise generated by the development:

"A reduction in height to 2.4m would result in slight increases in noise level of 2-3 dBA from Aldi operations in the car park. Our noise predictions in the DA report indicated that noise from a truck manoeuvring or carpark activity would currently meet EPA criteria for the day and evening. The relatively small increases are predicted to marginally exceed these criteria in the evening. For acoustic reasons the higher wall is therefore preferable.

In relation to appropriate delivery times our DA assessment report considered delivery over the 24 hour period, but indicated that 6.00am to 12 midnight Monday to Friday and 7.00am to 12 midnight on weekends would most likely be considered acceptable to the nearest residences based on the 3m wall, even though minor exceedences were predicted. For the 2.4m wall acceptable delivery times between 6.00am and 10.00pm (7.00am on weekends) are considered appropriate."

Comment: From the information provided within the noise assessment it is considered that the nearest residence most affected by the proposal is No. 126 Windsor Street. The new fence with the timber infill is much more acceptable in relation to amenity to the heritage item. Noise levels from deliveries, however will not be acceptable after 10.00pm. Due to this, it is recommended that the hours of operation as proposed be maintained, however truck delivery times be restricted to 6.00am to 10.00pm Monday to Friday, and 7.00am to 10.00pm weekends. Should the application be supported the recommended hours of operation should be included within conditions of consent. It is considered with the recommended noise mitigation measures and hours of operation the proposal can achieve EPA recommended noise levels at the boundaries.

Natural Hazards

The subject property is above the 1:100 year flood level (17.3m AHD) and is within a low bush fire risk area. The proposed development does not increase these risks.

The natural ground level ranges from 18.32m AHD to 20.27m AHD, with the Finished Floor Level of the building requiring 20.25m AHD.

Safety, Security and Crime (concern raised by respondents)

There has been reference made to the existence of 'hooligans' and 'drunkenness' in the area within the submissions. The present existence of drunkenness and antisocial behaviour within the area is not a relevant matter for consideration in assessing the application. There is no evidence to suggest that Aldi stores will attract 'hooligans'.

The Aldi car park as proposed will provide well lit areas during the hours of operation and due to its location will receive adequate surveillance from Windsor Road being a main road. Should the application be supported it is recommended that after hours of operation that the Aldi car park be locked to prevent vehicles loitering in the car park area.

Economic Impact on the locality (concern raise by respondents)

Concern was raised by an objection made on behalf of Richmond Marketplace regarding economic impact in the area by allowing an Aldi store. There was concern that there was already too many supermarkets in the Richmond area. Aldi stores sell 600 to 800 food lines compared to major supermarkets which sell over 30,000 lines.

A statement was provided by PDA Hill on behalf of the applicant which stated that Aldi firstly, provide lower prices, so more money can be spent in other local retail stores; secondly, increases pedestrian flow in the immediate area hence flowing to other retail stores; and thirdly, provides a limited range of products, so it would be necessary for consumers to conduct additional shopping in other speciality stores.

The mere threat of economic competition between individual competing businesses is not a relevant concern and is a matter for market forces. What is relevant in terms of economic impact of the proposal it is effect in the locality and particularly, whether it will result in the loss of some public benefit (social or economic) and that resultant loss will not be made good by the benefits of the proposal.

It is considered that there is unlikely to be any negative economic or social impact in terms of the broader public interest arising from the proposed development.

Construction

Prior to issuing the construction certificate it will need to be demonstrated to the Principle Certifying Authority that the building can comply with the Building Code of Australia. The applicant has submitted a Building Code of Australia Capability Statement which was undertaken by Philip Chun and Associates Pty Ltd stating how the building complies with the BCA.

Suitability of the site

Based on the above assessment is it considered that the proposed development is suitable for the site.

Conclusion

The proposed development is consistent with the provisions of Hawkesbury Local Environmental Plan 1989 and with the objectives of the Business Special 3(b) zone.

The applicant has demonstrated that the proposal will not impact significantly on the local traffic network and has provided parking which is above the minimum requirement.

The proposal includes mitigation measures for noise and soil which can be enforced through conditions of consent and ensure that the amenity of the surrounding area is not adversely affected.

The proposal is considered to be sympathetic to the surrounding heritage nature of the area by incorporating elements predominate in the architecture of the Richmond Town Centre without replicating them.

Based on the assessment, the application is recommended for approval subject to conditions of consent.

RECOMMENDATION:

That the development application for the demolition of existing structures and the construction of a shop (Aldi store) on Lots 1, 2, 3, 4 DP211614, Lot 22 DP713157, Lots 50, 51 DP618636, Lot 2, 3 DP542955, Lot 1 DP209765, Paget Street and Windsor Street, Richmond be approved subject to the following conditions:

General

1. To confirm and clarify the terms of this approval, the development shall be carried out in accordance with the approved stamped plans (prepared by Reid Campbell Group Pty Ltd numbered 001868 SK02A, SK04A dated 10 July 2001) submitted with Development Application No. MA70/01 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.

This consent covers the removal of trees and other vegetation from the site as indicated in the Tree Report undertaken by Pittendrigh Shrinkfield & Bruce Pty Ltd, dated 16 January 2001.

2. Compliance with the provisions of the Environmental Planning and Assessment (Amendment) Act 1979, and the Building Code of Australia.
3. Prior to construction of the approved development it is necessary to obtain a Construction Certificate.
4. The applicant is advised to consult with:
 - (a) Sydney Water Corporation Limited
 - (b) Integral Energy
 - (c) Natural Gas Company
 - (d) a local telecommunications carrier

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

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

Prior to Issue of Construction Certificate

6. Remediation actions as described in the Preliminary Environmental Site Assessment and Geotechnical Investigation, Reference No. E12427/1-AH, dated 9 February 2001 are to be incorporated into a Remedial Action Plan for the site. This plan is to be submitted to Council for approval.
7. Remediation Works are to be carried out as included in the Remedial Action Plan. A Validation and Monitoring Report undertaken by Coffey Geosciences Pty Ltd is to be undertaken after the remediation works and submitted to Council. Note: Both the remediation works and the validation report need to be complete prior to issuing the construction certificate.
8. Registration of a plan of survey consolidating the site into a single allotment. Documentary evidence to be submitted prior to occupation of the building.
9. Prior to the demolition of the structures on the site, a photograph of each of the elevations is to be submitted to Council.
10. Separate practising Structural Engineer's details of all structural concrete and steelwork shall be lodged prior to issue of construction certificate.
11. 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.
12. Details of the proposed building demonstrating compliance with the Building Code of Australia is to be submitted to the Principle Certifying Authority for Approval.
13. Submission of design plans and calculations for all civil works required by this consent. Any works within Windsor Street be approved by the RTA including the payment of any fees, contributions or securities.
14. Payment of a Section 94 Contribution of \$47,932.00 covering the construction of drainage for catchment 1 at Richmond. This sum will remain fixed for a period of 3 (three) months after which time it will be recalculated at the rate applicable at the time of payment. The contribution has been determined in accordance with Hawkesbury Section 94 Contribution Plan. A copy of the Contribution Plan may be inspected at Council's Offices, George Street, Windsor.
15. A detailed landscape plan is to be submitted to Council incorporating the planting as indicated in the landscape sketch plan (SK01B, 22/01/01). This shall include 2 super advanced date palms and exotic landscaping features fronting Windsor Street. In addition the five (5) car parking spaces are to be deleted and replaced with landscaping and the fence to be setback in line with the fence as proposed on the eastern side of the egress point.
16. Paget Street is to be upgraded to a standard capable of acceptable and providing safe use of semi-trailers. Design plans are required for the road upgrade. A conservation management plan is required to be submitted to Council regarding the preservation of the sandstone kerb and

guttering and the trees within the road, this plan is to be undertaken by a suitably qualified person.

Prior to Commencing Works

17. 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.
18. If the work involved in the erection or demolition of a building:
 - (a) is likely to be dangerous to a person in a public place or adjoining property;
 - (b) is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient; or
 - (c) involves the enclosure of a public place,

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

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

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

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

19. 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.
20. 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.

During Construction

21. All building work must be carried out in accordance with provisions of the Building Code of Australia.

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22. All necessary works being carried out to ensure that “any water” flow from adjoining properties is not impeded.
23. All trucks entering or leaving the site shall have their trays suitably covered to prevent spillage from the truck onto the road.
24. All fill to be adequately compacted by track rolling or similar.
25. Dust control measures, eg vegetative cover, mulches, irrigation, barriers and stone shall be applied to reduce surface and airborne movement of sediment blown from exposed areas.
26. Measures shall be implemented to prevent vehicles tracking sediment, debris, soil and other pollutants onto any road.
27. All demolition, construction and associated work necessary for the carrying out of the development being restricted to between the hours of 7.00am and 6.00pm on Mondays to Fridays and between 8.00am and 1.00pm on Saturdays. No audible work is to be carried out on Sundays or public holidays.
28. Should any relic or archaeological remains be disturbed or uncovered during construction of the development work shall cease and Council and the NSW Heritage Office shall be consulted. Any person who knowingly destroys a relic is liable to prosecution under the Heritage Act.
29. During construction and demolition, the quietest available plant should be used and be regularly maintained and fitted with appropriate mufflers; the use of hydraulic hammers should be minimised.
30. No burning of demolition or construction material being carried out on the site.
31. No spoil, excavated or demolition material from the site being deposited on any public road, footpath, public place or Council owned property without the approval of this office.
32. To reduce nuisance to the surrounding properties, all demolished material and excess spoil from the site shall be disposed of to a location and in a manner to the approval of this office (Note: no material shall be burnt or buried on the site).
33. 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.
34. 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.
35. The developer is responsible for full costs associated with any alteration, relocation or enlargement to public utilities whether caused directly or indirectly by this proposed subdivision. Such utilities include water, sewerage, drainage, power, communication, footways, kerb and gutter.
36. Any air handling system installed on the premises shall be registered with Council in accordance with Part 6 of the Public Health Act 1991, Microbial Control.
37. Construction of Council's standard heavy duty footway and layback vehicular crossing to suit the access to the site at Paget Street with a minimum width of 15m. The kerb and guttering material in Paget Street is to be retained and used to restore driveway crossing in Paget Street. Any excess material is to be delivered to Council's Works Depot.
38. Removal of the existing redundant layback crossings and replacement with concrete kerb and gutter in Windsor Street and sandstone kerb and gutter in Paget Street and the restoration of the footway area.
39. The provision of conduit/ducts under new driveways to the requirements of Prospect Electricity, in accordance with Prospect Electricity drawing 049759H dated 14/7/1987. Conduit and ducting material is available from Prospect Electricity.
40. The construction of a 1.2m wide concrete path paving over the full frontage of the site and Lot 21 DP713157 where not already provided to this or a higher standard.
41. Construction of site drainage shall be carried out in accordance with Council's Guidelines for Stormwater Drainage Requirements for Commercial, Industrial and Medium Density Developments.
42. Parking shall be provided for 102 vehicles in accordance with Council's Regulations and Parking Policy. Parking spaces, accessways and aisles to conform to Council's Development Control Plan and to be constructed, drained, sealed and marked.
43. Paget Street is to be upgraded in accordance with the approved design plans and the sandstone kerb and trees within the road are to be preserved.
44. A concrete median island restricting right hand turns into the development is to be installed. A linemarked right hand turn bay is to be provided in Windsor Street between the proposed concrete median and Paget Street. The works required by this condition are to be carried out at the applicant's expense.

Prior to Issue of Occupation Certificate

45. 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 of 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.

46. The following documentary evidence is to be obtained prior to the issue of any Construction Certificate, whether by Council or an accredited certifier:

- (a) A Section 73 Certificate issued by the Sydney Water Corporation Limited or other evidence of Sydney Water's non-objection to the commencement of work on the basis of service availability.
- (b) A written clearance from Integral Energy, stating that electrical services have been made available to the development or that arrangements have been entered into for the provision of services to the development.

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.

47. In order to ensure that the development complies with this consent, the approved use shall not commence until all conditions of this Development Consent have been complied with.
48. An occupation certificate is to be obtained on completion of all works and prior to commencement of the approved use. The occupation certificate will not be issued if any conditions of this consent are outstanding.
49. Landscaping shall be completed in accordance with the approved landscaping plan and shall be maintained in perpetuity by the existing or future owners and occupiers of the property. In this respect an occupation certificate will not be granted on the application until the landscaping is complete.
50. In order to ensure on-site car parking and loading facilities are utilised, exit/ entrance points are to be clearly signposted and visible from both the street and site at all times.
51. A fire safety certificate is to be submitted to Council.

Use of the Site

52. Any lighting on the site is to be directed in such a manner so that no nuisance is caused to adjoining properties or to drivers on surrounding streets.

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53. All landscaping shall be permanently maintained in a good condition and in accordance with the intent of the landscaping plan.
54. Operating hours shall be limited to 6.00am to 12.00 midnight Mondays to Fridays and 7.00am to 12.00 midnight Saturdays, Sundays and public holidays. Delivery times are restricted to 6.00am to 10.00pm Mondays to Fridays, and 7.00am to 10.00pm Weekends.
55. All waste materials to be stored and disposed of at regular intervals.
56. The development shall be conducted in such a manner that noise levels measured at any boundary do not exceed 5dB(A) above background noise levels.
57. No advertising structures to be erected, displayed or affixed on any building or land without prior approval. Any unauthorised advertising structure will be removed at the expense of the advertiser.
58. No signs shall be displayed on the footpaths, pedestrianways, roadways or in the vicinity.
59. The Aldi car park is to be adequately secured after operating hours.

ATTACHMENTS:

- AT-1** Locality Plan and Location of Objectors
- AT-2** Site Plan
- AT-3** Elevations
- AT-4** Perspective
- AT-5** Wall sign
- AT-6** Pole sign

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Locality Plan and Location of Objectors

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Elevations

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Wall sign

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Pole sign

oooO END OF ITEM 73 Oooo

ITEM: 74 **Hawkesbury City Council -v- Sammut****FILE NUMBER:** MA0609/9Pt03/EVD/ENG31NBX.V19

REPORT:

As Council is aware, this matter is now proceeding to the Court of Appeal and there will be a callover on 10 August 2001 where it is assumed the hearing date will be set.

In the appeal to the Land and Environment Court, Council met the costs of the neighbour, Mr John Hagar, to appear as a separate party to this appeal matter. Council has received advice from its Solicitors, Abbott Tout, that having Mr Hagar appear as a separate party in the Court of Appeal would enhance Council's case. The evidence provided by Mr Hagar may well be crucial in the Court determining this matter if the Court of Appeal refers the matter back to the Land and Environment Court on the question of the discretion of demolition of the building. To this end, Mr Hagar, via his Solicitor, has requested that Council again meet his costs to appear before the Court of Appeal and to indemnify him against any costs associated with orders or damages arising from this action. It has been indicated to Mr Hagar that it would seem reasonable for Council to meet the cost of a Barrister, who would be a Senior Counsel, to represent Mr Hagar.

In the matter of indemnifying him against costs and damages, Council's Solicitors have advised that if Council were to fail in this matter and damages and costs are awarded, it is highly unlikely that Mr Hagar will be ordered to pay any damages or costs associated with the case and that it is more likely that costs will be awarded against Council.

In these circumstances, it would seem reasonable that Council should undertake to indemnify Mr Hagar against any orders for costs or damages, so that Council has the best opportunity to defend this matter in the Court of Appeal.

RECOMMENDATION:

That Council advise Mr Peter Axtens on behalf of Mr John Hagar that it will meet Mr Hagar's legal expenses in the matter of Hawkesbury City Council -v- Sammut and will undertake to indemnify him against any orders for costs or damages.

ATTACHMENTS:

There are no supporting documents for this report.

oooO END OF ITEM 74 Oooo

ITEM: 75 **Proposed Amendment to Hawkesbury LEP 1989 (Subdivision for Agricultural Purposes)**

FILE NUMBER: GT150/004/EVD/ENG31NBX.V18

REPORT:

Introduction

The general provisions for rural subdivision are contained in clause 11 of Hawkesbury Local Environmental Plan (LEP) 1989. Sub-clause (3) of clause 11 has caused concern and the purpose of this report is to recommend an amendment to sub-clause (3).

Report

Clause 11(3) of Hawkesbury LEP 1989 states:

“The Council shall not consent to the subdivision of land within zone number 1(a), 1(b), 1(c), 1(c1), 7(d) or 7(d1) except for the purpose of agriculture, unless each allotment to be created has an area of land that is above the one in one hundred year flood level and that is sufficient for the erection of a dwelling house.”

Although there have only been a small number of applications which seek reliance on this clause, there are practical difficulties associated with the clause. The only practical way of approving a subdivision in accordance with the clause is for a restriction as to user to be placed on the title of the newly created allotment restricting the use of the land for agriculture only. Although such a restriction should be clearly obvious to a purchaser, it is debatable whether the restriction would be valid in a statutory sense. At some time in the future, a property owner could apply for the erection of a dwelling house on the land in accordance with clause 25(2) of LEP 1989 if the land is not at a level more than 3 (three) metres below the 1:100 flood level. In light of this statutory provision, a restriction on the title would not necessarily be a relevant consideration in considering an application for a dwelling.

Notwithstanding the above, it is considered that clause 11(3) may be contrary to the aims and objectives of LEP 1989, in particular objective (b) to provide appropriate land in area, location and quality for living, working and recreational activities and agricultural production. It is also relevant to note that the clause may be inconsistent with the prime objectives of the rural and environmental protection zones.

Council should be aware that there is a current application, MA194/01, which seeks to create an agricultural lot in accordance with clause 11(3). It is proposed that this application will be determined under delegated authority following Council’s decision on this report.

Conclusion

It is considered appropriate for Council to amend clause 11(3) for the reasons outlined in this report.

RECOMMENDATION:

That Council resolve to prepare a draft Local Environmental Plan to amend clause 11(3) of Hawkesbury Local Environmental Plan 1989 to read as follows:

“The Council shall not consent to the subdivision of land within zone number 1(a), 1(b), 1(c), 1(c1), 7(d) or 7(d1) unless each allotment to be created has an area of land that is above the 1:100 (one in one hundred) year flood level and that is sufficient for the erection of a dwelling house.”

ATTACHMENTS:

There are no supporting documents for this report.

oooO END OF ITEM 75 Oooo

ITEM: 76 **Unauthorised Clearing of Vegetation Lot 42 DP555549, 1213 Bells Line of Road, Kurrajong Heights**

FILE NUMBER: P243/1295/EVD/ENG31NBX.V12

REPORT:

Introduction

This report is provided for information and consideration for a prosecution for the unauthorised clearing of land at 1213 Bells Line of Road, Kurrajong Heights. Photographs will be displayed at the meeting.

Property

The property consists of 3.075 hectares and is located on the escarpment of the Blue Mountains at Kurrajong Heights. Under the Hawkesbury Local Environmental Plan 1989 the land is zoned Environmental Protection Scenic 7(d), and the clearing of vegetation requires development approval.

Background

On 21 May 2001 a complaint was received advising that clearing works had been occurring at 1213 Bells Line of Road, Kurrajong Heights.

An inspection by Council Officers revealed that an area of approximately one hectare of land had been cleared of all vegetation apart from two turpentine trees. The tree and vegetation residue that had been removed were mounded into eight windrows at various locations within the cleared area.

The average height of the trees removed was between 20 - 22 metres and they had an average trunk diameter of 30 centimetres. The total number of trees removed with a trunk diameter of 150 millimetres or above was 309. The species of tree and shrubs removed includes the following:

- *Acacia parramatensis*
- *Pittosporum undulatum*
- *Ligustrum sinense* (Weed)
- *Doodia aspera*
- *Solanum prinophyllum*
- *Pratia purpurascens*
- *Oplismenus aemulus*
- *Stellaria* sp
- *Tylophora barbata*
- *Breynia oblongifolia*
- *Hydrocotyle peduncularis*

No approval was obtained for the clearing of the land.

Owner's response

On 30 May 2001 written advice was received from the owner outlining his reasons for removing vegetation. The letter reads:

"As Council will be aware, I have recently purchased the property. My goal is to establish an extensive garden, build a home and to live there with my elderly mother.

When I acquired the property, it was mainly vegetated with aged wattles (Acacia parramattensis), thick privet bushes and some ground covers including Wandering Jew. My mother suffers terribly with asthma from privet and was not able to visit the property.

I am truly sorry for all the concern of Council. However, I hope you will try to see why I had sought the removal of the vegetation -

- the wattle is highly combustible in a drought and I didn't wish to exacerbate any future problems next summer which may be caused to a neighbour by having so much vegetative fuel nearby. I believe the clearing to be a relief for this worry;*
- the wattle has been growing into the electric power lines, which serve two other adjoining properties as well. There have been a couple of recent instances where old or dead wattles have fallen over onto lines and brought them down. Apart from the inconvenience to the neighbours, again there is a fear of causing a fire in this way;*
- prior to and immediately after purchasing the property I have been acquiring many advanced native and exotic shrubs and trees for immediate planting. I am happy to list for Council those already purchased by me and I propose to acquire many more. These must have the benefit of sunlight and clear space to survive. I was hoping to plant them in the autumn. I have commissioned a landscape gardener to design the gardens. This designer has designed gardens under the Australian Open Garden Scheme;*
- there were two only turpentine trees (Syncarpia) at the property and these have, of course, been left standing. They will thrive now in the sunlight;*
- I wish to have a clear space for the future construction of a house, shedding and outbuildings;*

I am told that the vegetation at the property primarily comprises the aged wattle, the privet and wandering jew - all of which have grown since the property was used as an orange orchard some years ago. Rabbits abound. None of the property is natural bushland as such.

My proposal is to carry out maintenance to the existing roadway from Bells Line of Road to the property and upgrade it by sealing it. I have an earnest desire to make the property a garden of distinction and wish to have native birds and animals in the garden as I am very much aware of the positive contribution they make.

I feel contrite about not first seeking Council's approval to do the above but hope you can now understand from where I was coming."

Neighbouring Property

Concerns have been raised by an adjoining owner regarding the loss of visual amenity, privacy with the removal of the trees, the risk of erosion and the possible damage in value to his property in light of an approved resort development on his land.

Development approval was issued to establish a tourist facility on the adjoining parcel of land located at 1177 Bells Line of Road, Kurrajong Heights. The approval was issued on 24 October 1996, however the development has not proceeded at this stage.

The subject land is located immediately north of the proposed development and the clearing of vegetation has the potential to have a visual impact on that development.

Environmental impact

Ecological consultant

After investigations were commenced into the clearing works, the owner, at the request of staff provided details of the unauthorised works. Since then he has engaged an ecological consultant to conduct a flora and fauna survey on the land with emphasis on the species of flora removed and the possible presence of vulnerable or endangered species. The Blue Mountains Wilderness Trust carried out the assessment and has provided a report on the findings.

The report provides in part:

That a vegetation survey revealed the presence of no endangered Ecological Communities as listed under Schedule 1, Part 3, Threatened Species Conservation Act 1995.

The site carries no threatened flora or fauna species, endangered populations or endangered ecological communities.

History

The site was previously used for orchards and market gardens and was last cleared in about 1969. A photograph which was taken at the site in the 1940's shows the extensive clearing that occurred at the site when it was being cultivated as a market garden. From the photo it is clear that the native vegetation was all but totally removed from the site during this time. After cultivation ceased, the cleared areas were no longer managed or controlled, and as such weed infestation occurred unchecked. The present vegetation cover is a result of 30 years of uncontrolled weed growth. The Acacia forest that now occurs on the site is composed of Acacia parramattensis, a naturally occurring pioneer species which flourishes quickly once native vegetation is removed. This species once formed a closed canopy forest over the site. However, the infestation of privet, and other weed species, is of such density as to indicate the presence of a very high weed seedbank. Therefore it is expected that

germinating Acacia parramattensis would be quickly overtaken by Privet and other weed species.

The site contains significant infestations of Small-leaf Privet (Ligustrum sinense) and Wandering Jew (Tradescantia fluminensis). Small-leaf Privet is a schedule W4b Noxious Weed and is required to be controlled by the prevention of flowering and fruiting. The site also contains Crofton Weed (Ageratina adenophora) which is a schedule W2 and must be fully and continuously suppressed and destroyed on the site.

Recommended action in the report

- Clearing of the vegetation will control weed infestation. Replanting with canopy tree species and species local to the area is required,*
- Implementation of a landscape plan is required,*
- A weed control programme is to be undertaken to remove all weed species from W1 to W4 categories, consistent with the provisions of the Noxious Weeds Act 1993.*

Department of Land and Water Conservation

Advice received from the Department of Land and Water Conservation indicates that the site is not listed as protected land for the purpose of the Native Vegetation Conservation Act 1997.

National Parks and Wildlife Service

Advice received from the Richmond Office suggests that the NP&WS will not be taking any action under the Threatened Species Conservation Act 1995 with respect to the clearing works.

Options

There is no question that clearing works have been conducted on the land without first gaining development approval and that the owner caused the works to be done. There are options available to deal with this matter. The following options are considered to be the most appropriate.

- Commence prosecution in the Land and Environment Court or Local Court under Section 126 of the Environmental Planning and Assessment Act 1979 (EP & A Act) for carrying out works without first gaining development consent (Sec 76A).

Section 126 does not only provide for a penalty to be imposed but at 126(3) allows the court to direct works to be undertaken -

126(3) Where a person is guilty of an offence involving the destruction of or damage to a tree or vegetation, the court dealing with the offence may, in addition to or in substitution for any pecuniary penalty imposed or liable to be imposed, direct that person -

- (a) to plant new trees and vegetation and maintain those trees and vegetation to a mature growth, and*
- (b) to provide security for the performance of any obligation imposed under paragraph (a).*

(Statute of limitations - Land and Environment Court -12 months from the date the offence was alleged to have been committed. Local Court - 6 months from the date the offence was alleged to have been committed),

- Seek orders for the reinstatement of the land through the Land and Environment Court under Section 124 of the EP & A Act,
- Issue a notice of intention under Section 121 of the EP & A Act followed by an order for the reinstatement of the land to the satisfaction of Council.

In determining the appropriate course, consideration should be given to the amount of works conducted, environmental impacts, the reason for carrying out the works, and whether a deterrent is required.

Conclusion

Unauthorised clearing works have been conducted on the property at 1213 Bells Line of Road, Kurrajong Heights that could only be considered as substantial. It has been suggested that the species of vegetation removed amounts to regrowth wattle trees that are native to Australia, privet which is an introduced species of tree and weeds, with the most common being wandering dew. The maturity of the wattle trees cannot be questioned as they were on average 20 - 22 metres tall with an average diameter of 30 centimetres.

The work has been conducted on the escarpment of the Blue Mountains, which impacts on the natural visual amenity of the mountain range. The work also has the potential to impact on the proposed development of a neighbouring property.

However, the report provided by the Blue Mountains Wilderness Trust indicates that measures should be taken to control the weed infestation on the site and to promote the growth of native plant species.

An independent assessment report may be required if this matter is to proceed to court.

RECOMMENDATION:

That:

1. The owner be requested to provide an undertaking that the land will be rehabilitated in accordance with the report of the Blue Mountains Wilderness Trust within a reasonable timeframe.
2. Should the undertaking not be received, the matter be prosecuted in the Land and Environment Court.

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ATTACHMENTS:

AT-1 Location Plan

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Location Plan

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ITEM: 77 **Draft Local Environment Plan 7/00 - Part of Lot 19, DP1024573, No. 94 Macquarie Street, Windsor**

FILE NUMBER: LEP7/00/EVD/ENG31NBX.V10

REPORT:

Introduction

Council at its Ordinary meeting of 28 November 2000, resolved to prepare a draft local environmental plan (LEP) to allow part of Lot 19 DP1024573, No. 94 Macquarie Street, Windsor (Windsor Toyota) to be used as a motor showroom whilst retaining its current Residential 2(c) zoning.

The subject property is 2061sm and is a hatchet shaped lot, the rezoning is proposed at the rear of the subject property as indicated on Attachment 1, the rest of the subject site has been previously rezoned to allow for motor showroom uses.

Public Exhibition

The draft plan was exhibited from 10 May 2001 to 8 June 2001. Adjoining and affected owners were advised by letter dated 7 May 2001 and an advertisement was placed in the local paper on 9 May 2001 and 30 May 2001.

There were no submissions received.

Section 62 Consultations with Government Authorities

The draft plan was referred to the following agencies for comment pursuant to Section 62 of the Environmental Planning and Assessment Act 1979 -

- Department of Land and Water Conservation
- Sydney Water Corporation
- Hawkesbury-Nepean Catchment Management Trust
- Telstra
- Roads and Traffic Authority
- Integral Energy

The consultation letters stated that if no response was received it would be assumed that there were no comments to make by the government authorities in relation to the preparation of the plan.

Comments were provided by the Department of Land and Water Conservation and the Hawkesbury-Nepean Catchment Management Trust which did not state any objection to the draft LEP proceeding. Comments were made, however, relating more to the assessment of any future development application on the site and not directly the draft LEP. The comments included:

- Drainage
- Visual Impact (landscaping)
- Erosion and Sedimentation Controls

When a development application is received for the subject site the application will be assessed under Section 79C of the Environmental Planning and Assessment Act 1979 which will include the assessment of the matters raised by the above government authorities.

Conclusion

There were no objections received by the community or relevant government agencies regarding the draft local environmental plan. Any comments provided by government authorities related more to the development application process.

The proposed rezoning is considered to be minor and consistent with adjoining landuses, and therefore, it is recommended that Council proceed with the draft plan and exercise its delegation in respect of the Section 69 report to the Minister.

RECOMMENDATION:

That:

1. Council proceed with the draft plan to rezone part of Lot 19, DP1024573, No. 94 Macquarie Street, Windsor to allow the land to be used for the purposes of a motor showroom whilst retaining the current Residential 2(c) zoning.
2. Council exercise its delegation in respect of the Section 69 Report to the Minister.
3. Council forward the draft plan to the Department of Urban Affairs and Planning for finalisation and gazettal.

ATTACHMENTS:

AT-1 Area to be rezoned

ENVIRONMENT

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Map of area to be rezoned

oooO END OF ITEM 77 Oooo

ITEM: 78 **Request for Review of Determination - Alterations and Additions to Existing Residence for Restaurant - Lot 1, DP581544, No 1186 Bells Line of Road (Cnr. Old Bells Line of Road), Kurrajong Heights**

FILE NUMBER: DA37/97/EVD/ENG31NBX.V04

PREVIOUS ITEM: 42, GPC Section 1 - Environment (29.05.2001)

REPORT:

Introduction

An application for alterations and additions to existing residence for a restaurant was refused by Council at the Ordinary Meeting held on 12 June 2001.

The applicant has requested that Council review its determination in accordance with Section 82A of the Environmental Planning and Assessment Act 1979.

The matter is now submitted for Council to review the determination.

Report

At the Ordinary Meeting on 12 June 2001, Council resolved to refuse the application for the following reason:

1. *That alterations and additions to the existing residence for a restaurant at 1186 Bells Line of Road not proceed due to the hazardous road conditions and inclement weather conditions on Bells Line of Road.*

In support of their request to review the determination, the applicant's consultant (Falson & Associates) has requested an opportunity to address the General Purpose Committee meeting.

A copy of the report to the General Purpose Committee 29 May 2001 has been distributed with the Business Paper.

Comment

Under Section 82A of the Environmental Planning and Assessment Act 1979, Council may confirm or change its determination.

Note: The applicant has had discussions with Council staff and will not be attending the meeting.

ENVIRONMENT

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RECOMMENDATION:

That Council review its determination in accordance with the provisions of Section 82A of the Environmental Planning and Assessment Act 1979.

ATTACHMENTS:

There are no supporting documents for this report.

oooO END OF ITEM 78 Oooo

ITEM: 79 **Management of Environmental Community Disputes**

FILE NUMBER: GC280/004/EVD/ENG31NBX.V14

PREVIOUS ITEM: 114, GPC Section 3 - Organisation & Resources (03.10.2000)

REPORT:

Introduction

This report has been prepared in response to Council's resolution of 8 May 2001, i.e.

"That the Council to receive a report on various mediation processes being used in Local Government to progress development matters and reduce community concern/conflict. The report to advise of costs and savings of the various processes and provide a recommendation for such a program for Hawkesbury".

Current Practice at Hawkesbury

On 9 July 1996 Council adopted a conciliation conference process for development, building and subdivision applications. The process involves a conciliation conference to be arranged where there are a minimum of four (4) objectors to an application. This policy has met with varying levels of success, however has been overtaken in practice by a more flexible approach to dispute resolution as outlined below.

- Negotiation - direct communication between applicants and respondents in an attempt to resolve issues.
- Facilitated meetings - where the applicant, respondent and councillors meet in a public forum, facilitated by a staff member.

It should be noted that four (4) staff members within the Environment and Development Division, are accredited mediators, having completed training with the Australian Commercial Dispute Centre in Sydney.

Dispute Resolution in Other Councils

In a recent research paper for a Masters Degree in Dispute Resolution, Goldsmith, R carried out a survey of approaches to dispute resolution by the ten (10) WSROC Councils. Four (4) of the Councils have a formal policy, one (1) Council has a draft Policy and five (5) Councils have no formal Policy and apply various methods.

The following table, reprinted with permission, summarises the findings in relation to Baulkham Hills, Blue Mountains, Fairfield, Liverpool and Penrith Councils.

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COUNCIL/APPROACH	COMMENTS
Baulkham Hills	
<i>Dispute Resolution Policy</i>	There is a formal policy, involving a "conciliation" approach.
<i>Approach for dealing with objections to DAs etc.</i>	There is a formal "pre-lodgment" process, with council officers and the proponents, to identify and address potential issues prior to the application being submitted. Where there are objections to an application, a conciliation meeting is arranged, with the objectors and the proponents, to address the issues. Depending on the nature of the application and the issues, the meeting is chaired by either council staff or external conciliators (approximately 50% are externally conciliated). Councillors can choose to attend the conciliation meetings, which are scheduled every Wednesday night.
<i>Approach for dealing with conflict policy projects</i>	Not specifically discussed.
Blue Mountains	
<i>Dispute Resolution Policy</i>	There is a formal policy, involving "facilitation" and "mediation". The policy can be accessed through the Council's website.
<i>Approach for dealing with objections to DAs etc.</i>	Where there is a request or recommendation (from proponent, objectors, assessing officer or Councillors) for an opportunity to negotiate issues, a facilitation meeting with objectors and the proponent is arranged. The assessing officer (as an observer) attends the meeting, which is facilitated by an external mediator. Agreements reached in the facilitation may be incorporated as conditions of consent, but the council must still meet its statutory obligations by making an objective determination of the proposal. If matters remain unresolved after the facilitation, and all parties agree, the objectors and the proponent may choose to go to mediation. External, trained mediators manage the mediation. Agreements reached in the facilitation may be incorporated as conditions of consent, but the council must still meet its statutory obligations by making an objective determination of the proposal.
<i>Approach for dealing with conflict in policy projects</i>	Consultation with relevant stakeholders, prior to and during project development, to avoid potential conflict. There is a strong commitment to increasing awareness and understanding through community involvement and education. The preferred approach focuses on "collaboration".
Fairfield	
<i>Dispute Resolution Policy</i>	There is a formal policy, involving "negotiation". A full-time council employee, trained in mediation, manages the process.
<i>Approach for dealing with objections to DAs etc.</i>	Where there are objections to an application, a meeting is arranged with the objectors, to discuss the details of the proposal. The assessing officer facilitates this meeting. Agreements reached in the negotiation would be incorporated as conditions of consent. If matters remain unresolved after the negotiation, the application is referred to an independent panel. The panel consists of a specialist in law, a specialist in architecture, an environmental specialist, and a community representative. The panel's recommendations are included in a subsequent report to the council, for its determination.
<i>Approach for dealing with conflict in policy projects</i>	Most dispute situations relate to development applications. The process for rezoning proposals is different.

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COUNCIL/APPROACH	COMMENTS
Liverpool	
<i>Dispute Resolution Policy</i>	There is a formal policy, involving "facilitation" and "mediation". A full-time council employee, trained in mediation, manages the process.
<i>Approach for dealing with objections to DAs etc.</i>	There is a formal "pre-lodgment" process with council officers and the proponents, to identify and address potential issues prior to the application being submitted. The proponent is encouraged to discuss the application with stakeholders. Where there is more than 1 objection to an application, a meeting is arranged with the objectors, to discuss the details of the proposal. This meeting is attended by the assessing officer, and facilitated by another staff member (who is trained in mediation and facilitation, and works in an unrelated area of council). Agreements reached in the facilitation would be incorporated as conditions of consent. If matters remain unresolved after the facilitation, and all parties agree, the objectors and the proponent may choose to go to mediation. External, trained mediators (selected from a panel) manage the mediation, and any agreements reached would again be incorporated as conditions of consent. If matters remain unresolved after the mediation, the application is referred to an independent panel. The panel consists of a specialist in law, a specialist in urban design, an environmental specialist, and a community representative. The panel's recommendations are included in a subsequent report to the council, for its determination.
<i>Approach for dealing with conflict in policy projects</i>	Most dispute situations relate to development applications. The process, when it is considered relevant and appropriate, has more recently been used successfully for other matters.
Penrith	
<i>Dispute Resolution Policy</i>	There is a draft policy, and guidelines, for dispute resolution. It involves "conciliation", "facilitation" and "mediation".
<i>Approach for dealing with objections to DAs etc.</i>	The draft policy notes the use of informal methods to resolve conflict, called "conciliation" meetings. The assessing officer would be initially responsible for deciding if there are matters (raised in objections or in the assessment) that can be resolved through negotiations with the objectors and developer. Most issues would be addressed through conditions in the consent. Where there is a request or recommendation (from proponent, objectors, assessing officer or Councillors) for an opportunity to clarify issues and information, or to negotiate issues, a facilitation meeting with objectors and the proponent may be arranged. Agreements reached in the facilitation may be incorporated as conditions or consent. The draft policy then suggests that if matters remain unresolved after the facilitation, and all parties agree, the objectors and the proponent may choose to go to mediation. External, trained mediators manage the mediation. Agreements reached in the facilitation may be incorporated as conditions of consent, but the council must still meet its statutory obligations by making an objective determination of the proposal.
<i>Approach for dealing with conflict in policy projects</i>	Consultation with relevant stakeholders, prior to and during project development, to avoid potential conflict. There is a strong commitment to increasing awareness and understanding through community involvement and education. The preferred approach focuses on "participation".

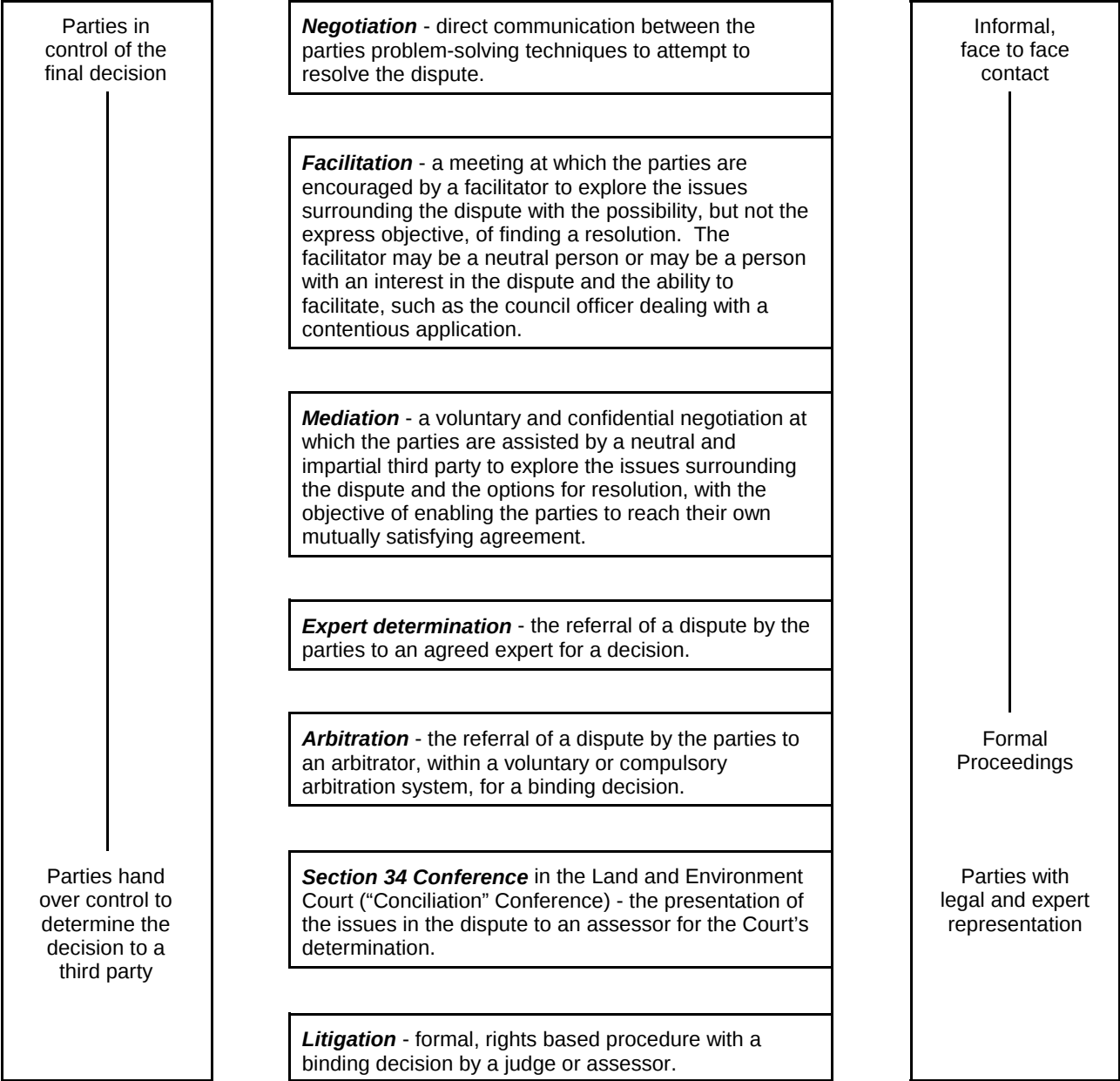
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Best Practice

In June 2001, the Law Society of New South Wales released Best Practice Guidelines for the Management of Planning and Development Disputes. The resource package includes a guide for the community, an information brochure and a Best Practice guide for Councillors and Council Officers. A copy of the guide has been distributed with the Business Paper. The following table from the Best Practice Guide is very informative for understanding the various dispute resolution methods.



The following definitions provided by the Australian Commercial Dispute Centre assist in understanding the difference between facilitation and mediation.

“Facilitation is a process for assisting communication. It is usually used where there are a large number of participants. Facilitations may be used for many purposes, including assisting parties to negotiate, setting an agenda, providing information to a group or receiving feedback on particular issues.”

“Mediation is a form of structured, assisted negotiation. A mediator, an independent neutral person, assists the parties to find their own solutions by isolating the issues and developing options for reaching an agreement which best accommodates the needs and interests of each participant. The mediator does not impose a solution or provide legal or technical advice or opinions. The parties retain control over the issues discussed. There is no obligation to reach an agreement, but once an agreement is reached, a final and binding settlement may be signed. The process is confidential and without prejudice.”

Policy Framework for Hawkesbury

Over the last five to ten years, Council has increased its role in assisting to resolve disputes related to development applications and local planning issues. With the exception of the 1996 Council resolution, a dispute resolution policy has never been formalised. As reported in more recent years, Council has used facilitated meetings, both small and large, in assisting the development approval process. The facilitated meetings have met with varying success, depending on how that success is measured and by whom. However, a common thread which joins all facilitated meetings has been that the parties have left with a much clearer understanding of the issues and indeed the process.

Better understanding of the process alone would be justification for a dispute resolution policy, however there are clear benefits and real opportunities to solve disputes available through such a policy. It is considered that an appropriate policy for Hawkesbury would be based on the first four dispute resolution methods listed in the Law Society Chart, i.e. negotiation, facilitation, mediation and expert determination. Negotiation and facilitation would be conducted by Environment and Development staff. Training opportunities should be provided to all relevant staff to develop the appropriate skills.

Mediation would require an external independent mediator. Staff have had talks with one mediation partnership who offer services including mediation, pre-lodgment development information sessions and independent reports. An indicative price for mediation is around \$2,000.00 per mediation with a minimum charge of \$750.00.

Expert determination would involve a panel of experts, comprising possibly a lawyer, urban planner/designer, and environmental specialist who would consider a report prepared by Council Officers. The experts would then make a recommendation to Council. The panel could be structured in a formal way and hold regular meetings, or reports and recommendations could be carried out via email and/or less formal meetings. The expert panel would need to be from outside the Hawkesbury City area. Depending on the structure of the panel, and the number of applications submitted to it, the annual cost is likely to be somewhere between \$20,000.00 to \$40,000.00.

For dispute resolution to be successful in terms of saving the Council time and money, it would be imperative that the application be determined under delegated authority in the following circumstances:

- (i) Where a negotiation reaches agreement between the parties;
- (ii) Where consensus is reached at a facilitated meeting and a minimum of six Councillors are in attendance;
- (iii) Where a written agreement is reached between the parties in mediation; or
- (iv) Where a recommendation has been provided by an expert panel.

In all other cases the matter would be referred to Court for determination.

It would also be appropriate for a dispute resolution policy to include potential disputes between Council and community groups. The policy could include discussion on the triggers and methods as appropriate.

Conclusion

It is considered that a comprehensive dispute resolution policy should be prepared around the framework as outlined above. The policy would need to include appropriate “triggers” for each dispute resolution method. It is therefore recommended that a draft Policy be prepared, including information brochures and submitted to Council for adoption as soon as possible.

References: Goldsmith, R
Dispute Resolution Strategies in Local Government, Research Paper, 2001

The Law Society of NSW
Best Practice for the Management of Environmental Disputes, 2001

RECOMMENDATION:

That:

1. Council resolve to prepare a Policy for the management of environmental community disputes.
2. The draft Policy be submitted to Council for consideration and adoption.

ATTACHMENTS:

There are no supporting documents for this report.

oooO END OF ITEM 79 Oooo

ITEM: 80 **Proposed Changes to State Environmental Planning Policy No. 1 - Development Standards**

FILE NUMBER: GT190/001/EVD/ENG31NBX.V15

REPORT:

Introduction

State Environmental Planning Policy No. 1 (SEPP1) - Development Standards was gazetted on 17 October 1980. SEPP1 is a valuable planning tool for allowing flexibility when applying development standards under Environmental Planning Instruments. Recently, DUAP has been concerned about the way that SEPP1 has been used by some councils.

There are draft amendments to SEPP1 currently on exhibition, with submissions closing on 31 August 2001.

The purpose of this report is to provide Council with an understanding of the proposed changes and an opportunity to make a submission to the Department of Urban Affairs and Planning.

Proposed Changes

Copies of documentation from the Department of Urban Affairs and Planning have been distributed separately with the Business Paper.

SEPP1 is proposed to be amended as follows:

1. To clarify that SEPP1 can only be used when the proposed development will meet the aims and objectives of the Environmental Planning Instrument (EPI). An objection made through SEPP1 must justify departure from the development standard and explain why such variation will not compromise the applicable aims and objectives of the EPI.
2. Grant consent only when the consent authority is satisfied that departure from the development standard is justified and will not compromise the applicable aims and objectives of the EPI.
3. Restrict the use of SEPP1 in rural, non-urban, environmental protection and water catchment zones for proposals involving subdivision and the erection of buildings. This restriction will apply in local government areas east of the Great Divide. It means that only one lot in any new subdivision can be less than the minimum standard. This lot must be at least 90% of the minimum size.

Comment

The proposed amendments 1 and 2 as outlined above are positive in that they place emphasis on the objectives of the applicable Environmental Planning Instrument and place the onus on the applicant of providing evidence in support of the proposed development.

The proposed amendment outlined in 3 above is however of concern as this would essentially prohibit resubdivision of existing undersized allotments. The recently amended boundary adjustment clause 13 of Hawkesbury LEP 1989 means that resubdivision, other than a very minor boundary adjustment, requires approval as a subdivision. For example, the proposed 3 lot subdivision in Vincent Road, which is reported elsewhere in this agenda, would not be permissible should SEPP1 be amended as proposed.

Conclusion

It is considered that an appropriate submission should be made to the Department of Urban Affairs and Planning in response to the proposed changes to SEPP1. The submission should raise concern about the proposed amended clause 9 and request that an appropriate amendment be made to allow resubdivision of existing undersized lots under SEPP1.

RECOMMENDATION:

That a formal submission be made on the proposed changes to State Environmental Planning Policy No. 1 as outlined in this report.

ATTACHMENTS:

There are no supporting documents for this report.

oooO END OF ITEM 80 Oooo