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ITEM: 95 **Two Storey Dwelling - Lot 25 DP742749, No. 17 North Street (Cnr. Palmer Street), Windsor**

FILE NUMBER: MA266/01/EVD/ENJ23NAX.V02

PREVIOUS ITEM: 16, Ordinary (08.02.2000)

Applicant:	Alann F James
Applicants Rep:	Nil
Owner:	Mr A F James
Stat. Provisions:	Hawkesbury Local Environmental Plan 1989
Area:	1366sqm
Zone:	Environmental Protection Scenic 7(d1)
Advertising:	Letters to owners and occupiers 22 August 2001 to 7 September 2001 - 4 (four) submissions received objecting to the development
Date Received:	12 March 2001

Key Issues:
- Variation to flood clause in LEP
- Loss of views/overshadowing
- Character of the area
- Suitability of the site
- Flood egress
- Drainage
- Non-compliance with condition of previous approval

Action:

REPORT:

Introduction

An application has been received for the construction of a 2 (two) storey dwelling. The application is being reported to Council in accordance with a resolution of Council on 8 February 2000.

Background

The following is a brief history of approvals and recent actions:

1973 - Building Application 8/73 approved for a dwelling.
1975 - Footings were constructed for the dwelling associated with BA8/73 (no further works completed).
1990 - Application to fill Lot 2, 3 and 25. Approved Lots 2 and 3, refused Lot 25.
1996 - Development Application for a 2 (two) storey dwelling was refused by Council.

2000 - Report to Council on the matter of the previous dwelling approval.
Applicant agreed to lodge another application for a dwelling.
Council also resolved that all applications for development within this block be reported to Council for the next two (2) years.

The Proposal

The application proposes to construct a two (2) storey dwelling. The dwelling will comprise the following:

- The ground floor will contain a garage, workshop/store, gymnasium and shower/WC facilities.

- The first floor will contain the habitable rooms and have a minimum floor level of 16.0m AHD (3 bedrooms, bathroom, kitchen, living and family rooms).

- The attic (loft) level will contain the main bedroom, ensuite and walk in wardrobe.

The dwelling will be of brick veneer construction with a cement tiled roof.

Statutory Position

Hawkesbury LEP 1989

The property is zoned Environmental Protection Scenic 7(d1). Dwellings are permissible with consent in the zone.

The development is considered to be consistent with the zone objectives. A full detailed assessment of the zone objective is contained on the Council file.

A full assessment of all the relevant clauses contained in HLEP 1989 is contained on the Council file. The development is consistent with all clauses except for clause 25 - development of flood liable land which is discussed later in the report.

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

The site is within the boundaries of SREP 20 and is not inconsistent with specific planning policies and recommended strategies of the plan.

Community Consultation

The application was notified to adjoining and surrounding owners and occupiers for a period of 14 (fourteen) days in accordance with “Public Notification of Development Proposals” DCP. Four individual submissions were received objecting to the proposal.

Planning Assessment

Development of Flood Liable Land (issue raised by respondents)

Clause 25 of the HLEP 1989 contains provisions that deal with the erection of buildings on flood liable land. Clause 25(2) requires the land level to be not lower than three (3) metres below the 1:100 year flood level. Clause 25(3) requires habitable rooms to have a floor level not lower than the 1:100 year flood level.

Clause 25(5) requires consideration of:

- flood liability of access to the land;
- is the land in a floodway; and
- effect of isolation of land by flooding.

Clause 25(7) requires the portion of the building below the 1:100 year level to be constructed of flood compatible materials.

Clause 25(8) allows the erection of a dwelling on land which has a level of not less than three (3) metres below the floor height standard for the land immediately before the clause was amended. This clause will not apply after 30 June 2002.

This application relies on the provisions of Clause 25(8). The previous flood height standard for the area was 16.0m AHD. The area on which the dwelling is to be sited has a ground level of 12.5m AHD which is 0.5m below the required height of 13m. The application is accompanied by an objection under SEPP No. 1 to vary the requirements of this provision on the grounds that it is unreasonable and unnecessary in these circumstances.

The SEPP No. 1 submission is reproduced below:

> *"An objection is raised to the provisions within clause 25 of Hawkesbury Local Environmental Plan 1989 (the LEP) which required, inter alia, land to be not lower than three (3) metres below the 1:100 year flood frequency level and/or not lower than three (3) metres below the floor height standard and also with a floor level of habitable rooms at the 1:100 level. These development standards are considered unreasonable and unnecessary in the circumstances of this case for the following reasons:*
>
> *1. The 7(d1) zone objectives are not compromised as indicated in the comments following each objective.*
>
> *(a) to preserve the river valley systems, scenic corridors, environmentally sensitive areas and other local features of scenic attraction.*
>
> *There are no recognised environmentally sensitive areas or other local features of scenic attraction on the site that require preservation. Notwithstanding this, however, the proposed dwelling will not adversely affect the river valley and its general scenic amenity.*

The erection of a dwelling can take place in harmony with the local environment and amenity of the area.

(b) to protect hilltops, ridgelines, river valleys and other local features of scenic significance by controlling the choice and colour of building materials and the position of buildings, access roads and landscaping.

Any impact on the hills and river valley will be minimal. In fact it is doubtful that the site can be viewed from these features. In any case the dwelling can be enhanced by appropriate colours and textures and through a landscaping program.

(c) to ensure that development does not create unreasonable or economic demands, or both, for provision or extension of public amenities or services.

All services are available to the site. No additional facilities are required for this development.

(d) to prevent the establishment of traffic generating development along main and arterial roads.

North and Palmer Streets are not main or arterial roads. Whilst an additional dwelling would increase traffic on these streets, they are more than capable of containing the extra traffic associated with this use.

(e) to control outdoor advertising so that it does not disfigure the rural landscape.

There is no outdoor advertising incorporated into the proposed development.

2. *There are numerous dwellings in the vicinity of the site of similar style, height and on similarly flood affected land. In this respect the proposal would be not inconsistent with other development in the locality.*

3. *There are not safety issues associated with flooding of the land, as there is adequate rising access to flood free land should it be required.*

4. *The departure from the numerical standard of floor height to ground levels and of minimum floor heights is only minor.*

5. *There has been a previous approval for a dwelling on the same site. This previous approval has been substantially commenced by the construction of concrete footings. Arguably this previously approved dwelling can continue to be constructed without reference to Council.*

6. *Development of the land in the manner proposed is both orderly and economic given the circumstances of the case. It is consistent with the primary objective of the Environmental Planning and Assessment Act in this respect. To leave the land vacant would not be in the community interest."*

Comment: The surrounding area contains numerous dwellings of a similar size and scale on similarly flood affected land.

The site represents the last vacant allotment in the block that faces Palmer Street that has land that is close to the requirements under HLEP 1989.

The other surrounding vacant land is well below the required level of 13m AHD. As a result it is considered that any approval of the dwelling would not create an undesirable precedent in the locality. (Refer to locality map AT-1). The first floor habitable rooms will have a floor level of 16m AHD which is consistent with the surrounding dwellings.

The site has been the subject of a previous approval for a dwelling (1973) which has commenced by the construction of concrete footings.

The variation of 0.5m in an area that is predominantly developed is not seen to set an undesirable precedent and this site represents the last of the vacant allotments in the locality. The arguments set out in the SEPP No. 1 objection in support of the variation are reasonable and should be supported in this instance.

<u>Flood Free Egress</u>

The site does not have a flood free access route during times of flooding. This is not dissimilar to the other surrounding dwellings in North and Palmer Streets. The matter that must be considered is the impact of the provision of 1 (one) additional dwelling on a site that has no flood free access.

It has been noted that a number of dwellings in the vicinity of this development do not have flood free access. The provision of 1 (one) additional dwelling without flood free access is unlikely to result in a significant impact. The future residents would have suitable warning time to vacate their premises in the event of flooding.

<u>Loss of Views/Overshadowing/Privacy (issue raised by respondent)</u>

The dwellings size and scale is considered to be consistent with the surrounding dwellings in Palmer Street.

The proposed dwelling will be located on the existing filled building platform which is adjacent to the existing single and two (2) storey dwelling at No. 19 North Street which adjoins the site to the south west.

The dwelling at No. 19 North Street contains a 2nd floor verandah/balcony area which looks towards the north east (floodplain). The siting of the proposed dwelling 1.8m from the property boundary will result in a partial loss of the view they enjoy to the north east. The dwelling being setback 11.8m from the northern boundary will still provide an opportunity for some view to the north east.

This view could be further increased by requiring the dwelling to be moved approximately 4m further to the east away from the dwelling at No. 19 to reduce the impact of overlooking and overshadowing. (Refer to attachment).

The balcony area can also be suitably treated with screening to reduce the potential to overlook the adjoining property from the balcony area.

The shadow diagram prepared for the dwelling shows the shadows cast by the proposed dwelling will impact on No. 19 North Street from 9.00am until about 12.00noon on the shortest day of the year. The shadow will fall on the adjoining dwelling which is built adjacent to the proposed dwellings location. The remainder of the site will not be affected by overshadowing.

The relocation of the dwelling to the east by 4m would reduce the shadow impact.

The impact of overshadowing and loss of view is not considered significant to warrant refusal of the application.

The relocation of the dwelling to the east will further help to reduce any impact.

<u>Character of Area (issue raised by respondent)</u>

The site is surrounded by two (2) storey residential dwelling of a similar size, bulk and scale. The proposed dwelling will not adversely impact on the scenic quality of the area or landscape. The character and amenity of the area also will not be adversely affected.

The proposed dwelling is not located adjacent to any heritage items

The respondent has raised concern with the non alignment with other homes facing Palmer Street. The existing allotments facing Palmer Street have their dwellings located on the higher portions of the allotments which is located to the rear.

The subject site lot alignment is similar to the adjoining allotments in North Street. The site is a corner allotment and as is the case in most corner allotments, dwellings provide a main and secondary building setback and as a result, they will be inconsistent with one street in terms of the building alignment. The proposed dwelling's main setback is from North Street (30m) with the building relocation 6.3m from Palmer Street.

It is considered that the building setbacks provided are larger than those normally associated with residential corner allotments.

The proposed dwelling is considered to be consistent with the surrounding built forms in the locality.

Drainage

The drainage issue relates to an adjoining property where the owners are concerned that this development will exacerbate an existing drainage problem. The stormwater from the dwelling will be piped to the existing street stormwater system.

Previously, a drainage system was installed on the subject site to overcome the drainage problems of the adjoining allotment. The dwelling construction will allow a better drainage system to be installed to control water runoff.

As a result, it is considered the dwelling may improve the current drainage problem.

Non-Compliance with Conditions of DA59/89

The approval granted for the filling of Lots 2 & 3 facing Palmer Street required the creation of a right of way across the rear of Lots 3 & 4 for access in times of flooding to those properties fronting North Street.

This matter was previously addressed in the report to Council on 28 May 1996. The comments provided in the report have been reproduced below:

> *"The right of carriageway has been created across the rear of Lots 3 & 4 but does nothing to service properties fronting North Street. The creation of a right of carriageway to the rear boundaries of properties fronting North Street would be impracticable as it would require a 9m wide splay on Lot 2 adjoining Lot 25 and the objector's property. In addition, the surface would require sealing to permit vehicular access after heavy rain which would occur prior to flooding.*
>
> *The creation of the right of carriageway would also permit access 24 hours which is not the intent of such a requirement and is considered unreasonable".*

Suitability of the Site

The site has an adequate area to provide reasonable setbacks from adjoining allotments and road frontage access.

The dwelling is consistent with similar dwellings in the immediate locality. It is acknowledged that the dwelling will be affected by certain flood events (1:100 year). The level of the land is only marginally (0.5m) below the required level. The site has previously obtained approval for a dwelling in which some works have commenced and it could be argued that this approval has been secured and the applicant could continue to construct the dwelling.

The site is located close to facilities and any approval will not create a substantial burden on the community.

Conclusion

The proposed dwelling is consistent with the objective of the zone and is permissible with consent.

The development is not considered to have any significant impact on the amenity of the area. The dwelling is consistent with the surrounding size and scale of the adjoining dwellings. The site represents the last vacant allotment in the locality that is close to the required provisions of the planning instrument.

The site has been subject to a previous approval for a dwelling in which some works have been completed to secure the approval. The request for variation of the flood requirements contained in the LEP have merit and should be supported in this circumstance. The variation to LEP requirements would not set an undesirable precedent in the locality for development of flood liable land.

RECOMMENDATION:

That:

1. The SEPP No. 1 objection to Clause 25(8) of HLEP 1989 be supported.

2. The application 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 submitted with Development Application No. MA266/01 dated 12 March 2001 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. The applicants shall make themselves aware of any use restriction relevant to this property and shall comply with the requirements of the Section 88b instrument relevant to this subdivision and property.

Prior to Issue of a Construction Certificate

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

4. Separate practising Structural Engineer's details of all structural concrete and steelwork shall be lodged prior to issue of construction certificate.

5. Submission of external finishes and colours.

6. The dwelling is to be relocated as shown in red on the approved stamped plans.

7. Suitable privacy screens are to be provided to the balcony area as shown in red on the approved stamped plans.

Prior to Commencement of Works

8. The applicant or person having the benefit of this development consent must give at least two days notice prior to commencement of works to Council of the intention to commence works. This notice is to be given in accordance with form 7 of the Environmental Planning and Assessment Regulation 1998.

9. The applicant shall advise Council of the name, address and contract number of the principle certifier, in accordance with Section 81A 2(b) of the Environmental Planning and Assessment Act, 1997.

10. 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.

11. 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. The enclosed warning sign shall be affixed to the sediment fence/erosion control device at all times.

12. 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

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

14. Inspections shall be carried out and compliance certificates issued by Council or an appropriately accredited person for the following components of construction:

    (a) erosion controls, site works and site set out;
    (b) piers;
    (c) steel reinforcement;
    (d) framework, after the installation of all plumbing, drainage and electrical fixtures, and after the external cladding and roof covering has been fixed prior to fixing of internal linings and insulation;
    (e) wet area flashing, after the installation any bath and shower fixtures;
    (f) internal drainage lines prior to covering;
    (g) external drainage lines, prior to backfilling;
    (h) on completion of the structure;

15. 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.

16. 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.

17. 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.

18. A Registered Surveyor's certificate indicating that the level of the top of the concrete slab formwork for the lowest habitable floor is at or above 16 metres Australian Height Datum obtained prior to placement of concrete, or alternatively, a defined bench mark AHD level shall be identified by survey report on a fixed location immediately adjacent to the building (eg. top of concrete strip footing, top of poured concrete pier).

Use of the Site

19. The external surfaces of the building shall be finished in materials having colours that blend with the surrounding landscape.

ATTACHMENTS:

AT-1 Locality Plan
AT-2 Site Plan
AT-3 Elevations
AT-4 Shadow Diagram
AT-5 Amended Location of Dwelling

Locality Plan

Site Plan

Elevations

Elevations

Shadow Diagram

Amended Location of Dwelling

oooO END OF ITEM 95 Oooo

ITEM: 96 **2 (two) Lot Subdivision and Construction of Duplex on Rear Lot at No. 39 Campbell Street, South Windsor, Lot 22, Sec U, DP759096. Modification of Development Consent under Section 96 of the Environmental Planning and Assessment Act 1979**

FILE NUMBER: MA407/01/EVD/ENJ23NAX.V01

Applicant:	Mr and Mrs Price
Applicants Rep:	As above
Owner:	As above
Stat. Provisions:	HLEP 1989, SREP No. 20
Area:	1113sqm
Zone:	Residential 2(a)
Advertising:	For 14 (fourteen) days until 7 September 2001, 2 (two) submissions
Date Received:	20 August 2001

Key Issues: - Tree removal

Action: Approval

REPORT:

The applicant seeks to modify development consent MA407/01 which approved a 2 (two) lot subdivision and the construction of a duplex on the rear lot at the subject property.

The matter is being reported to Council at the request of Councillor Williams. This report details the modification sought and provides an assessment of the application in accordance with Section 96(1A) of the Environmental Planning and Assessment Act 1979.

Based on the assessment, the modification application is recommended for approval.

Background

MA407/01 - development application for a 2 (two) lot subdivision and the construction of a single storey duplex on the rear lot was approved under Delegated Authority on 21 June 2001.

There was 1 (one) submission received in relation to the application. This submission was later withdrawn with the proviso that the gum tree was to be preserved. The consent was issued with a condition requiring the retention of the gum tree.

The Proposal

The Section 96(1A) modification requests to modify development consent M407/01 as follows:

1. Amend Condition 52 to relocate the required easement for pedestrians from the south eastern boundary to the north western boundary which is required prior to the release of the subdivision certificate.

2. Delete Condition 51 which required the duplex to be constructed to 500mm above ground level.

3. Amend Condition 2 which required the gum tree and shrubs to remain.

The modification application was accompanied by an arborist's report.

The site is zoned Residential 2(a) under Hawkesbury Local Environmental Plan 1989 and the approved development is permissible in the zone with development consent.

Community Consultation

The S96 application was notified to adjoining owners and occupiers for a period of 14 (fourteen) days in accordance with the "Public Notification of Development Proposals" development control plan.

There were 2 (two) submissions received:

1. <u>199A Mileham Street</u> - The concern raised is that the gum tree is to be removed.

2. <u>37 Campbell Street</u> - Concern is that the gum tree should be removed as a large limb fell off the tree and bruised and cut the arm of the respondent's partner, concerned that if tree retained it will fall on the respondent's house.

The concerns raised will be discussed in the assessment below.

Planning Assessment

A full assessment of the relevant matters under Section 79C were undertaken for the development application and are on file. Additional matters as well as matters under Section 96(1A) of the Environmental Planning and Assessment Act have been considered as follows:

<u>Section 96(1A)</u>

The proposed development satisfies the relevant subclauses under Section 96(1A) of the Environmental Planning and Assessment Act 1979. The full assessment is contained on file.

<u>Arborist Report</u>

As part of conditions of approval for MA407/01 the gum tree and shrub located on the north western boundary was to be retained. The applicant has requested that the gum tree be removed as part of the S96 modification application.

Development consent Condition 9 required an arborist report to be submitted demonstrating that the root system of the gum tree would not be impacted upon through the construction of the driveway. This report was provided and has now resulted in the request to remove the tree. The applicant, in support of the request to remove the tree, has indicated:

> *"The arborists report prepared at the request of Council recommended that the gum tree be removed and that replacement species be planted in its place. It was the owners wish to retain the tree if possible however, it is impracticable to do so. It is considered that the removal of the tree will not significantly affect the streetscape or amenity of the surrounding area."*

The arborist report submitted with the Section 96 application has concluded that the proposed duplex will affect the Gum tree in the following ways:

"1. The proposed driveway for the proposed duplex will be within 0.8m from the trunk of the tree thus reducing the root zone of the tree by 50%. This will result in the demise of the tree as the available nutrients and exchanges of gases vital for the survival of the tree have been halved.

2. The proposed duplex will be within 2.5m of the trunk of the Corymbia citriodora (Lemon Scented Gum) and will further reduce the root zone by up to 60%. When combined with the effect of the driveway, the tree will go into decline."

The Arborist provided the following recommendations:

> *"To retain the Corymbia citriodora (Lemon Scented Gum) would require the redesign of the driveway and a reduction in the size of the duplex adjacent to the tree so that it is at least 8m from the base of the tree.*
>
> *As this would reduce the practicability of the proposed duplex, it is therefore recommended that the tree be removed and replaced with two advanced species from the following*:
>
> - *Aemena Smithii - (Lilly Pilly)*
> - *Elaeocarpus reticulatus - (Blueberry Ash)*
> - *Tristaniopsis laurina - (Water Gum)*

<u>*Comment*</u>: Council's Tree Preservation Officer has reviewed the arborist report and has agreed with their assessment and recommendations. It is considered that the removal of one large tree in an established residential area is unlikely to have a significant impact. The subject site is located within the proposed multi-unit housing zone. To further restrict development within that multi-unit

housing zone due to the location of trees would reduce available land for development. The applicant is proposing to plant additional mature tree species to replace the tree that is to be removed.

Under Council's current policy, no approval is required to remove trees on residential allotments of less than 1000sqm. As a result, once the subdivision is registered the tree could be removed without the need to obtain Council approval.

The reasons outlined for the removal of the tree are reasonable and if the development proceeded and the tree was retained there is a high probability that the tree would not survive and begin to decline which would pose a safety and hazard risk to future residents and their property as well as adjoining properties and residents.

Location of Easement

The applicant requests to amend Condition 52 by relocating the easement requested to the south eastern boundary to the north western boundary. Condition 52 reads:

"52. The creation of a 1.5m wide right of carriageway along the south eastern boundary of proposed Lot 221 benefitting Lot 222 together with the construction of a centrally located 1.2m wide by 75mm thick concrete pathway within the right of way. The concrete path paving is not to be placed until services have been placed or conduits laid within the right of way."

The easement is required as part of Council's adopted interim laneway policy and was imposed by Council. The applicant's reasons for relocating the boundary are:

> *"The easement is proposed to be relocated due to an error in issuing the consent. The easement as specified in Council's development consent is impractical and not functional. Council required a 1.5 metre easement for pedestrian access along the south eastern boundary. Firstly, there is not sufficient room between the existing dwelling, which is to be retained, and the side boundary to create a 1.5m easement. Secondly, it would be impracticable for pedestrian access because of the occupants of Unit 2 would have to travel through the courtyard of Unit 1. By placing (creating) the easement on the north western boundary there is exactly 1.5m between the existing garage and the subject property boundary and the privacy of each unit is not affected."*

Comment: To relocate the easement to the north western boundary is considered acceptable and there is sufficient room to provide this easement in the desired location. The location of the easement will have less of an impact on the north western boundary as it will not be located adjacent to neighbouring properties but to the laneway.

Construction of the Duplex

The applicant requests to delete Condition 51. Condition 51 reads:

"51. The duplex is to be constructed to 500mm above ground level."

Comment: The duplex and subdivision can operate independently of each other, this condition is normally imposed when the subdivision created is under Council's minimum allotment size. This proposal is within Council's minimum allotment size providing lots 543sqm and 570sqm. It is recommended that this condition be deleted.

Additional Condition

As a result of further discussion with the applicant an additional condition is to be imposed relating to construction works in the laneway.

Conclusion

The request to modify MA407/01 is considered minor and will result in no significant impact to the environment and should be supported.

RECOMMENDATION:

That the modification under Section 96 of the Environmental Planning and Assessment Act 1979 be approved and amended in the following manner:

1. Condition 2 be amended as follows:

   "2. The large gum tree is to be removed and replaced by mature plantings of:

   - *Aemena Smithii - (Lilly Pilly)*
   - *Elaeocarpus reticulatus - (Blueberry Ash)*
   - *Tristaniopsis laurina - (Water Gum)*

   The existing shrub located along the north western boundary as shown on the stamped plans is to be retained."

2. Condition 13A be added:

   "13A. The stamped approved landscape plan is to be amended to incorporate 2 (two) of the following species:

   - *Aemena Smithii - (Lilly Pilly)*
   - *Elaeocarpus reticulatus - (Blueberry Ash)*
   - *Tristaniopsis laurina - (Water Gum)*

These species are to be of a mature height at time of planting. The amended landscape plan is to be submitted to Council for approval prior to issuing the construction certificate for the duplex."

3. Condition 51 be deleted.

4. Condition 52 be amended as follows:

"52. The creation of a 1.5m wide right of carriageway along the north western boundary of proposed Lot 221 benefitting Lot 222 together with the construction of a centrally located 1.2m wide by 75mm thick concrete pathway within the right of way. The concrete path paving is not to be placed until services have been placed or conduits laid within the right of way."

5. Condition 54 be added:

"54. The construction of the rear lane from Campbell Street to and over the frontage of the site with kerb and gutter on the south eastern side, a 4.5m wide sealed pavement, any necessary drainage together with any works necessary to make this effective."

ATTACHMENTS:

AT-1 Locality Plan and Location of Respondents
AT-2 Approved Site Plan

Locality Plan and Location of Respondents

Approved Site Plan

oooO END OF ITEM 96 Oooo

ITEM: 97 **Application for Aquaculture Farm (Four Ponds, Hydroponics and Shed) - Lot 3 DP616812, No 634 Grose Vale Road, Grose Vale**

FILE NUMBER: MA1565/00/EVD/ENJ23NAX.V03

Applicant: Mr and Mrs Mickaill
Applicants Rep: As above
Owner: As above
Stat. Provisions: HLEP 1989, SREP No 20
Area: 5.826 hectares
Zone: Rural 1(c1)
Advertising: 16 November 2000 to 15 December 2000 - 11 (eleven) submissions were received (7 object and 4 support)
Date Received: 2 November 2001

Key Issues:
- Not in keeping with the surrounding area
- Visual impact
- Noise from the pumps
- Traffic and Access
- Water quality and supply
- Sustainability of the development
- Soil erosion/Dam construction
- Flora and Fauna

Action: Approval subject to conditions

REPORT:

An application has been received seeking consent to carry out an aquaculture farm consisting of Silver Perch and Crayfish earthen ponds, associated shed and hydroponics cultivation on the subject property.

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

Background

M373/00: Application for same aquaculture farm (excluding the hydroponics). Additional information was requested which involved a site plan, access, earthworks, visual impact, ponds, drainage, noise, pumps, flora and fauna and shed details. There was also advice by Council officers that they considered the site inappropriate for the proposed development and it was suggested to withdraw the application until the concerns raised could be more fully addressed. The application was withdrawn and the applicant engaged relevant professionals to provide the additional information.

Current Application: Originally the application proposed 15 (fifteen) ponds involving 8 (eight) fish earthen ponds, 7 (seven) crayfish earthen ponds, 3 (three) sediment ponds, 2 (two) hydroponics areas measuring 4m x 80m and 4m x 40m, adjacent to the ponds. As a result of further discussion and assessment by Council officers and other government agencies the proposal was amended to the current proposal outlined within this report.

The Proposal

The current aquaculture farm proposal consists of:

- Four earthen ponds for the purpose of farming Silver Perch and Crayfish and two effluent ponds. The ponds are proposed to be located to the north of the property on the northern side of the watercourse, each pond having dimensions 12m x 50m, the two sediment ponds having proposed dimensions of 25m x 25m. It is anticipated by the applicant that Crayfish will be farmed in the four ponds initially, then gradually replaced with Silver Perch.

- Hydroponics cultivation area measuring 4m x 40m which is proposed to be located to the south of the watercourse.

- Rural Shed located to the south of the property adjacent to the hydroponics and having dimensions of 18m x 6m and setback 20m from the western boundary. The shed is proposed to be used for preparation and packing of stock pending their distribution.

Any excess water from the sediment ponds will be used to cultivate the proposed hydroponics or recycled back into the ponds.

There are 2 (two) dams existing on site which equate to 3 (three) megalitres. The dams will be used to extract 1 (one) megalitres per year in relation to the proposal. This amount of water will allow up to 1 (one) or 2 (two) ponds to be installed and operated per year without exceeding the Maximum Harvestable Right (MHR). Any water required above the MHR will be purchased by the applicant.

The establishment of the aquaculture farm operating at full capacity of 4 (four) ponds will take up to 4 (four) years. The introduction of the hydroponics will occur when the ponds create excess water. It is anticipated by the applicant that hydroponics operations may commence approximately a year after the installation and operation of the first ponds.

Access to the property is off Grose Vale Road with a gravel access track extending to the dwelling. Internal access to the ponds is via use of existing tracks on the property. Due to the proposed operation only requiring 1 (one) person, it is intended to access the ponds on site through the use of a ride on mower with a trailer attached.

The subject property is irregular in shape and has a total site area of 5.826 hectares. The property has a road frontage to Grose Vale Road of 56.68m. The site falls from Grose Vale Road to the centre of the property to a gully and then rises to the north.

Aquaculture Operation

The aquaculture operation consists of Crayfish and Silver Perch. Crayfish are stocked in the ponds at a rate of 2 (two) per sqm. The Crayfish feed on decaying plant material which is prepared prior to the ponds being filled and consists of mainly hay. After initial stocking, the first harvest would take approximately 4 (four) to 6 (six) months. The Crayfish are expected to breed also during this period.

Silver Perch are stocked in the ponds at a rate of 1 (one) per sqm and should grow to harvesting potential within 12 (twelve) to 18 (eighteen) months. The Silver Perch are fed on a daily basis mainly by demand feeding. This can be carried out by 1 (one) person. Aerators are required for the Silver Perch ponds to ensure adequate oxygen is available.

The Crayfish and Silver Perch are harvested in the ponds either through netting or trapping.

It is also expected to Poly Culture in the Silver Perch ponds. This means that Crayfish can be added and grown on the bottom of the Silver Perch ponds. These Crayfish will eat any leftover Silver Perch food and recycle Silver Perch waste.

Once harvested the Crayfish and Silver Perch will be stored live in tanks within the shed and will either be taken to market live or sold chilled. Chilling is carried out by ice brought to the premises.

The aquaculture operation, due to availability of water supply, will be implemented over a 4 (four) year period.

Statutory Situation

Full consideration of the relevant statutory requirements is contained on file. A summary is provided below:

<u>Hawkesbury Local Environmental Plan 1989</u>

The subject land is zoned Rural 1(c1) under the provisions of Hawkesbury Local Environmental Plan 1989 (HLEP 1989). The proposal is defined as Intensive Agriculture, which is permissible in the zone with development consent. The proposal is considered to be consistent with the objectives of the zone.

<u>Sydney Regional Environmental Plan No. 20 Hawkesbury Nepean River (No.2 - 1997)</u>

The subject site falls within the Middle Nepean and Hawkesbury River Catchment Area defined by SREP No. 20. The subject land is not within a riverine scenic corridor.

Integrated Development

Department of Land and Water Conservation (DLWC)

The subject application was identified as Integrated Development requiring approval from the DLWC due the need for a licence to be issued for pumping water from a dam for commercial purposes as originally proposed. An approval is required under the Water Act.

As a result of discussion with DLWC the applicant modified the original proposal and the Department has advised that they do not have an approval role as the 4 (four) ponds can be maintained by the applicant's harvestable right. The DLWC also advised that for this proposal only 1 (one) sediment pond is required.

There is also an approval role by the Department under the Rivers and Foreshores Improvement Act due to the proposed ponds being constructed within 40m from a watercourse. The Department has not provided their general terms of approval within the specified time period under the Regulations. Therefore, Council can determine the application. A condition can be imposed that requires the applicant to obtain a Part 3A permit (see condition 46).

NSW Fisheries

The application also requires an approval from NSW Fisheries requiring an aquaculture permit. NSW Fisheries have provided General Terms of Approval.

Community Consultation

The application was notified in accordance with the EP&A Regulations, (as it was Integrated Development) and Council's DCP for Public Notification. This included letters to adjoining property owners and occupiers and an advertisement in the local paper for a period of 30 (thirty) days. The exhibition period closed on 15 December 2001, but at the request of some residents, extension was granted until 12 January 2001. This notification involved the originally proposed 15 (fifteen) ponds.

The applicant, due to concerns raised by the residents and DLWC, has reduced the number of ponds. When the application was modified and reduced to the 4 (four) ponds, it was not re-notified as it did not change the location of the proposed ponds. Also, it was considered that the reduction of the number of the ponds is likely to reduce the impacts and resolve some concerns.

There were 4 (four) letters of support and 7 (seven) letters of objection.

Summary of matters raised:

- Not in keeping with the surrounding area
- Visual impact
- Noise from the pumps
- Traffic
- Water quality of the creek through the property

- Water supply
- Sustainability of the development
- Soil erosion
- An EIS should be required
- Access
- Detriment to flora and fauna in particular frogs
- Loss of Property Value

The full submissions are retained on file.

The location of the respondents are shown on the attached map and the matters raised are discussed in the planning assessment below.

Planning Assessment

A full assessment of the matters required to be considered under the EP&A Act 1979 is contained on file. The following planning assessment summarises the main issues:

<u>Character of the Area</u> (*issue raised by respondent*)

Surrounding properties are mainly used for rural - residential purposes. The proposed development is not considered to be inconsistent or incompatible with the rural - residential development which surrounds the site. There is a mix of agricultural uses consisting of orchards, market gardens and horse grazing which is unlikely to result in land use conflict with the proposed development.

The proposed development will not significantly impact upon the scenic quality of the landscape, the proposed shed and hydroponics will not be visible from the road. In addition, the 4 (four) ponds and sediment pond on the northern side of the watercourses will not be highly visible, being partly screened by the existing vegetation. The character and amenity of the area will not be adversely affected by the proposal.

<u>Visual Impact</u> (i*ssue raised by respondent*)

There was concern raised that the proposed development would create unreasonable visual impacts on the surrounding area. It is considered that the cleared area to the north of the property is visually prominent from Grose Vale Road, however due to the topography and vegetation on the site, it is unlikely that the proposed 4 (four) ponds located on the lower portion of the cleared area will be highly visible from Grose Vale Road and surrounding areas.

The proposed ponds are not unlike other farm dams in the Grose Vale and Grose Wold area only they will be more uniform in shape for the operation.

The proposed shed and hydroponics will also not be visible from the road or adjoining properties due to the topography of the site and existing vegetation.

There was concern from the respondents that the proposed development will require unsightly netting to prevent predators in the area. Known predators would include cormorants, water rats and eels. The ponds design should eliminate eels. As for the water rats and cormorants, these would require netting. The proposal does not include netting at this stage and it may not be needed. The applicant intends to use fishing line laid out in a grid pattern floating on the waters surface of the ponds which should deter the predators and not be visible. A condition can be imposed that should the applicant want to use netting structures in the future that a new application be required (see condition 5).

It is considered that the proposed development will not create be visually obtrusive in the landscape. The applicant proposes landscaping on adjacent side boundaries as indicated on the site plan. A suitable condition has been imposed requiring the provision of landscaped planting (see condition 75).

Access, Transport and Traffic (i*ssue raised by respondent*)

The proposed development will gain access from Grose Vale Road. Grose Vale Road is a rural sealed road with no kerb and gutter.

The proposed development is a 1 (one) person operation so additional employees will not be visiting the property. The only vehicle movements associated with the operation include the delivery of the first batch of baby Crayfish (they will then breed from this batch) and Silver Perch and the distribution of the farmed Crayfish and Silver Perch. The applicant is intending to carry out all delivery and pick-ups particularly now that the farm is only of a small scale (four ponds).

Additional movements of trucks will be encountered for the delivery of water if required. It is anticipated by the applicant that during full operation only 20 (twenty) trucks will be required per year. Water will only be required should the area encounter an unusual dry season.

It is considered that the proposed development will not generate unreasonable traffic volumes and the existing road network can adequately cater for any increase in traffic generated by the proposal.

Noise from Pumps (i*ssue raised by respondent*)

There was concern raised that the proposed development would generate noise due to the use of pumps and aerators required for the development. The applicant proposes a small pump shed which will be located south of the watercourse as indicated on the attached site plan, to house the pump required for the aquaculture operation. It is likely that only 1 (one) pump will be required for the 4 (four) ponds and that aerators will only be required when Silver Perch are being farmed.

The proposed pump shed is 1.7m x 2.7m and 2.8m high and to be constructed of rendered brickworks with a colourbond roof. The pump required is not unlike other dam pumps in the area and, with a masonry shed housing the pump, it is unlikely that the proposed pump will exceed the recommended noise level at the boundary.

A condition has been imposed that the proposed development does not exceed 5(d)BA above background noise level (see condition 77).

Flora and Fauna (i*ssue raised by respondent*)

The proposed development does not require the removal of any trees for the proposed development. There was originally 1 (one) tree to be removed where the upper northern ponds were proposed. It is considered that the proposed development is unlikely to generate or require excessive land application of excess water (effluent) and therefore there will be minimal impacts on flora and fauna and in particular any frog population as raised by the respondents.

As a result, the proposed development will not have a significant impact on any threatened or endangered species of flora or fauna.

Designated Development *(issue raised by respondent)*

There was concern raised from the respondents that the proposal should require an Environmental Impact Statement (EIS) because it was designated development. Under Schedule 3 of the Environmental Planning and Assessment Regulations 2000, the proposed development does not fall under the aquaculture definition or the requirements that require the preparation of an EIS.

Dam Construction Dam Development Control Plan/Soil Erosion *(issue raised by respondents)*

The Dam DCP is relevant to the proposal. The proposed earthen ponds do not comply with the Dam DCP in a number of areas such as minimum dimensions of the crest, freeboard, and embankments. The other performance standards for Dams are generally covered by standard conditions of consent and can be achieved by the proposed development.

The Dam DCP suggests that 15% or less is the desired slope for the construction of dams due to visual impacts and slope stability. The proposed dams are to be situated on land greater than 15%. Due to the non-compliance with a number of areas within the DCP, the applicant was requested to submit dam designs from a suitably qualified engineer.

A Geotechnical Report undertaken by Brinks and Associates was submitted by the applicant to address the above concerns. The report concluded that *"Various tests and calculations, based on the available terrain, have confirmed that the site is suitable for the proposed fish farming development"*. Although the proposed ponds do not strictly comply with Council's DCP for Dam Construction, the applicant's engineer has concluded that the ponds can be constructed and will be structurally adequate.

The consultants provided a list of recommendations for site preparation and earthworks that the applicant will need to comply with to ensure the stability and the operation of the proposed ponds. These recommendations are included as conditions of consent (see condition 59). In addition to those recommendations, additional conditions have been imposed which include:

- All ponds to be aligned along the contours to minimize cut and fill (see condition 6).

- A certificate from a suitably qualified engineer to the effect that the design of the ponds are structurally adequate and that the site will remain stable during and after the construction including when operating at full capacity (see condition 50).

- All work is to be carried out under the direct supervision of a geotechnical engineer (see condition 73).

- Prior to filling the ponds with water the submission of a certificate from a suitably qualified engineer to the effect that the works have been completed in accordance with the approved plans and that the work and site will remain stable after the ponds are filled (see condition 74).

<u>Water Supply</u> *(Issue raised by respondent)*

As previously discussed, DLWC has concluded that they do not have an approval role as the applicant can maintain the farm within the harvestable right of 1 (one) megalitre per year. Due to the Harvestable right being only 1 (one) Megalitre, the applicant will need to construct the ponds dependent on the availability of water, therefore only two ponds can be constructed within the first 1 (one) to 2 (two) years.

Each pond is 0.9 Megalitres and will be filled via the 1 (one) Megalitre harvestable right and any direct rainfall that enters the ponds. Runoff is directed away from the ponds. The ponds are drained every 4 (four) years to the sediment ponds then recycled back into the ponds or to the hydroponics system.

Any additional water required beyond the Harvestable right will be purchased. DLWC has advised that should this be required then it is strongly advised that evidence (receipts) of when/how much water is imported, for periodic auditing by the Department.

The above recommendation of the Department has been included as a condition of consent.

<u>Disposal of Excess Water (Effluent)</u> *(Issue raised by respondent)*

Where possible the aquaculture operation will recycle and reuse the water within the ponds. When there is excess water this water will be piped to a hydroponics systems to ensure minimal water reaches the ground. Hydroponics rely on high levels of nutrients so the excess water from the ponds is suitable for this type of farming, the applicant may need to add nutrients for produce uptake. It is anticipated by the applicants and the applicant’s consultant, Crayhaven, that the hydroponics may not be needed within the first 1 (one) to 2 (two) years as the ponds will not generate any excess water.

It is recommended prior to releasing the construction certificate for the ponds that a water balance report is provided by a suitably qualified person in relation to excess water (effluent), consumption of water from the hydroponics and disposal of water, if any, onto the land. This report will need to be complied with throughout the operation of the aquaculture development.

NSW Agriculture

The application was referred to NSW Agriculture for comments. NSW Agriculture provided the following comments:

- *"The proponent has addressed the concerns of the Department regarding impacts upon the aquaculture from adjoining farms, noise from pumps and effluent management.*

- *There should be some strategy for the disposal of dead fish/yabbies in the normal operation and the disposal of dead fish/yabbies once sun dried and limed in the case of mass mortality.*

- *Hydroponics operations usually require good quality water to which nutrients are added in specific ratios for the type of plant that is to be grown. The suitability of using effluent for hydroponics production may require water testing and addition of specific nutrients for the particular plant that is to be grown. Alternatively irrigation of a perennial crop in the soil would be less sensitive to changes in nutrient levels."*

The Department has sent a subsequent letter clarifying the issue of disposal of mass mortality suggesting that the above comments may create land use conflict and that burying or removal to a rendering facility would seem more appropriate. A condition has been imposed in relation to this matter (see condition 80).

Erection of Rural Sheds Development Control Plan

The Shed DCP is relevant to the proposal. The proposed shed is to be used for purging and packing of Silver Perch and Crayfish for their distribution. The proposed shed is considered to be ancillary to the farm operation. The proposed shed generally complies with the Shed DCP with the exception of the siting and height.

The Shed DCP requires cut and fill to be limited to 2m cut and 900mm fill and the proposed shed to be sited behind the existing dwelling. The proposed cut and fill is 1m cut and 1m fill, and the proposed shed is to be sited in front of the existing dwelling. Given the topography of the site, both the variations to the DCP are considered to be acceptable. The proposed shed will not be highly visible from the road or adjoining properties and it would not be visually dominant on the landscape.

The Shed DCP also requires a maximum height of 5m, the proposed shed is 6m. Verbal discussions with the applicant confirm that the height of the shed can be reduced by way of condition of consent to ensure compliance with the Shed DCP in this area (see condition 48).

The proposed shed does generally comply with the design principles of the Shed DCP with the exception of the above. The variations to the design principles in relation to siting are only minor and the objectives of those principles can still be maintained by approving the proposal.

Sustainability of the Proposal (*issue raised by respondent)*

There was concern that the proposed ponds would not be sustainable and in that event there would be abandoned ponds which would be unsightly. The applicant has reduced the number of ponds since that concern was raised to 4 (four) ponds to ensure, amongst other things, that the aquaculture operation is viable.

Conclusion

The proposed aquaculture proposal complies with the relevant provisions of Hawkesbury Local Environmental Plan 1989 and SREP No. 20. The proposal is permissible within the zone with development consent.

In light of the concerns of the respondents the applicant has reduced the number of ponds considerably from 15 (fifteen) to 4 (four) to ensure that the proposed development produces minimal impacts to the environment.

The proposal is unlikely to have a significant impact on traffic, flora and fauna, water pollution and slope stability. The proposal does not create an adverse visual impact on the surrounding area.

The issues raised by the respondents do not warrant refusal of the application. It is considered that the application should be approved, subject to conditions of consent.

RECOMMENDATION:

That the application for Aquaculture Farm comprising 4 (four) ponds, 1 (one) sediment pond, rural shed and hydroponics at Lot 3 DP616812, No. 634 Grose Vale Road, Grose Vale, 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 submitted with Development Application No. MA1565/00 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. No excavation or site works shall be commenced prior to the issue of the construction certificate.

5. This consent is restricted to 4 (four) earthen ponds, 1 (one) sediment pond, rural shed for purging facilities and hydroponics cultivation. Any further development of the site including netting of the ponds for predator trapping requires further approval from Council.

6. All ponds are to be aligned along the contours to minimise cut and fill.

7. The ponds are to be constructed only as water becomes available.

General Terms of Approval - NSW Fisheries

8. The Minister for Fisheries may, if the Minister thinks fit, suspend, revoke, vary or add to any of the conditions of a permit.

9. An aquaculture permit is not transferable.

10. Except where specific exception is made, all provisions of the Fisheries Management Act 1994, the Regulations made thereunder and Landbased Aquaculture Policy, are to be strictly complied with.

11. Where applicable, the permit-holder shall obtain and keep current the approval of and any necessary licences issued by government agencies including the authorities listed below:

    - Department of Land and Water Conservation (DLWC)
    - Environment Protection Authority (EPA)
    - Department of Urban Affairs and Planning (DUAP)
    - NSW National parks and Wildlife Service (NEWS)
    - Waterways Authority
    - Local Shire or Municipal Council

12. The Director of Fisheries or any officer of the Department shall be allowed access to the premises covered by an aquaculture permit at all reasonable times and the permit-holder shall cooperate by facilitating inspection of the premises and fish therein. Information obtained from these inspections will be regarded as confidential and will not be divulged to other fish farmers unless necessary for the purposes of regulation of the industry or for disease control.

13. Upon request, the permit holder shall supply, in writing, any reasonable information relating to the fish farm sought by the Director of Fisheries or any other officer of the Department. Changes in particulars (ie business address, trading name or change of directors) must be notified to the Department in writing within 28 (twenty eight) days.

14. An annual production report, covering production and sales for each financial year, is to be submitted to the Department before 30 September each year.

15. Unless otherwise specified, for the purposes of a permit:

"Fish" means the eggs, milt, larvae, juveniles and adults of the species authorised by a permit.

"Waters" means all waters that are within the limits of the State and include rivers, creeks, lakes, lagoons and artificial dams, tanks, reservoirs, ponds, canals, channels, waterways, estuaries and the ocean.

"Sell" includes -

(a) sell by wholesale, retail, auction or tender;
(b) barter or exchange;
(c) supply for profit;
(d) offer for sale, receive for sale, or expose for sale;
(e) consign or deliver for sale;
(f) have in possession for sale; or
(g) cause, or allow any of the above to be done.

"Premises" means all or part of the lands referred to in a permit and includes all structures thereon.

"Hatchery" means a facility for the maintenance and maturation of broodstock, spawning (natural and artificial) and larval rearing to fingerling or post-larval stage.

"Extensive" means aquaculture undertaken without providing supplementary food for fish that are being cultured.

"Intensive" means aquaculture undertaken by providing supplementary food for fish that are being cultured.

"Food" includes any form of nutrient.

16. The permit holder shall not propagate, hatch or rear species of fish other than those specified in a permit.

17. A permit holder shall not cross breed species of fish without the written approval of the Department.

18. The permit holder shall not extend the propagation, hatching or rearing of fish beyond the facilities covered by a permit. Any extension of operations or expansion of facilities requires written approval from the Department.

19. The permit holder shall maintain during the term of the permit, the right to occupation of the land or to immediate possession of the land on which the fish farm is situated for the purpose of aquaculture.

20. The permit holder shall prevent fish escapement into waterways from any authorised area covered by a permit.

21. The permit holder shall not obtain any live fish from any person, whether in New South Wales, interstate or overseas, unless that person is authorised as a supplier of fish under State and/or Commonwealth legislation.

22. A person must not bring into New South Wales, live fish of a species not taken in New South Wales' waters without the authority of a permit.

23. A record of all purchases and sales of fish is to be maintained by the permit holder. The record shall include the date, names and addresses, the species name, life-cycle-stage, quantity and species of fish.

24. The permit holder shall not liberate live fish into any waters, by themselves or their agents, except those species authorised by the permit into the waters of the fish farm specified by the permit, or sell live fish for such purpose, without the prior approval in writing from the Director of Fisheries.

25. The permit holder shall not sell any live fish interstate without first obtaining authorisation from the fisheries authority in that State, or sell any live fish overseas without first obtaining relevant approvals from the Australian Quarantine Inspection Service (AQIS) and the Australian Nature Conservation Agency (ANCA).

26. The permit holder shall not liberate, sell, offer or consign for sale any species other than those propagated, hatched, reared or grown on the premises to which a permit applies.

27. Fish sold for human consumption must not be smaller than the legal minimum size for each species unless the permit holder (other than Class F permit holders) has authority under a permit to sell prohibited size fish.

28. The permit holder shall issue to each purchaser of any fish species cultured on the premises, a receipt showing the number of fish of each species purchased.

Disease

29. The permit holder shall notify the Department within 24 hours of the discovery of any declared disease (see appendix), unusual disease or any significant event associated with the welfare of the fish on the premises (eg. Unexplained or significant fish mortalities, >5% of fish stock loss in a week). See Appendix for list of Declared Diseases.

30. Where any Declared Disease or other disease exists, or is reasonably suspected of existing on the farm premises covered by a permit, a permit holder shall carry out any directions so ordered by the Director of Fisheries for the treatment or destruction of fish including quarantine of the premises. Any such order shall remain in effect until revoked by the Directory of Fisheries in writing.

31. The permit holder must not sell, give away or release to waterways, any fish if it is known or suspected to be infected with a Declared Disease. The holder shall take precautions specified in writing by the Director of Fisheries to prevent the escape of fish or disease from the farm.

32. All outlets must be screened to prevent the escape of fish. A screen no greater than 1mm must be used for eggs and fry, a screen no greater than 5mm for fingerlings, and a screen no greater than 15mm for post-fingerling fish.

33. No effluent is permitted to reach any waterway except for farms licensed by the EPA to discharge effluent into waterways.

Conditions Relating to the Sale and Stocking of Indigenous Freshwater Fish of NSW

34. Live fish may be sold to other farmers holding a current permit authorising the farming of that particular species of indigenous fish; or to a fish wholesaler, retailer or restaurant for human consumption; to a registered wholesaler or retailer of aquarium fish; or to a recognised outlet authorised under State and/or Commonwealth legislation.

35. Live fish may also be sold to farm dam owners for stocking farm dams. Of the western, drainage species, only silver perch (*Bidyanus bidyanus*), golden perch (*Macquaria ambigua*) and eel-tailed catfish (*Tandanus tandanus*) may be sold for stocking arm dams on the eastern drainage. Permit holders must advise people purchasing fish for stocking farm dams on the eastern drainage that dams must be above the 1 in 100 year flood level and not be susceptible to overflow that would allow fish to escape.

36. Murray cod (*Maccullochella peelii peelii*) may only be cultured or stocked in farm dams on the western drainage.

37. Silver perch may not be grown for sale in farm dams (See "Aquaculture Permits for Silver Perch" Policy).

38. No fish may be sold for the purpose of stocking natural waterways and public impoundment's without first obtaining a Fish Stocking Permit issued for those waters by the Director of Fisheries.

Conditions Relating to the Farming of Indigenous Freshwater Fish in NSW

39. All outlets must be screened to prevent the escape of fish. A screen no greater than 1mm must be used for eggs and fry, a screen no greater than 5mm for fingerlings, and a screen no greater than 15mm for post-fingerling fish.

40. No effluent is permitted to reach any waterway.

Conditions Relating to the Sale and Stocking of Freshwater Crayfish

41. Live yabbies, *Cherax destructor*, may be sold to farm dam owners for stocking farm dams, or to a registered wholesaler or retailer or aquarium fish. The permit holder must advise people wishing to stock yabbies into eastern drainage dams that they can not stock yabbies where there are known populations of other species of freshwater crayfish that could be threatened by their introduction. This information is available from the NSW Fisheries. In addition, the dams must be above the 1 in 100 year flood level and not susceptible to overflow.

42. Live crayfish may only be sold to other fish farmers holding a current permit authorising the farming of that species, to a fish wholesaler, retailer or restaurant (authorised under state and/or Commonwealth legislation) for human consumption or to a registered wholesaler or retailer of aquarium fish. The permit-holder must advise the aquarium dealer that only the yabby *Cherax destructor* may be stocked into NSW waters.

43. Freshwater crayfish of a species not indigenous to NSW may not be stocked into New South Wales' water.

44. All ponds, raceways or other tanks containing marron (*Cherax tenuimanus*) or redclaw (*Cherax quadricarinatus*), or any species of crayfish not native to the area where the fish farm is located, must be surrounded by an unbroken fence extending at least 60cm above ground and 30cm below ground, and constructed of a smooth material (eg. plastic sheeting, galvanised iron) to prevent the escape of stock. Fences will be required where yabbies are to be grown on the eastern drainage in areas where native species of crayfish are present, as the introduction of yabbies may present a threat to native crayfish stocks.

Conditions Relating to Farming Freshwater Crayfish

45. All outlets must be screened to prevent the escape of crayfish. A screen no greater than 2mm must be used to prevent the escape of juveniles.

Prior to Issue of Construction Certificate

46. A Part 3A permit is required to be obtained from the Department of Land & Water Conservation prior to issue of Construction Certificate.

47. Separate practising Structural Engineer's details of all structural concrete and steelwork shall be lodged prior to issue of construction certificate.

48. 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) The height of the shed is to be reduced to a maximum height of 5m.

49. In order to ensure effective environmental management and rehabilitation of the development site, an Environmental Management and Rehabilitation Plan for the development site shall be prepared by a qualified professional Civil Engineer. The Plan shall address (without being limited to) the earthworks and erosion control and site rehabilitation and landscaping.

    All site works shall be carried out in accordance with the Plan. Implementation of the Plan shall be supervised by a qualified professional Civil Engineer.

    Where circumstances change during construction and those circumstances could not have been foreseen, the consent authority may require erosion or sediment control works to be carried out in addition to or instead of those work specified.

50. The submission of design plans for all civil works covered by the consent together with a certificate from a suitably qualified engineer to the effect that the design are structurally adequate and that the site will remain stable during and after construction including when operating at full capacity.

51. A water balance report undertaken by a suitable qualified person is to be submitted prior to issuing the construction certificate. This report is to address (but not limited to) excess water from ponds, consumption of water from the hydroponics and disposal of excess water onto the land.

52. Documentary evidence of the issue of a Part 3A permit from the Department of Land and Water Conservation.

Prior to Commencement of Works

53. 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. The enclosed warning sign shall be affixed to the sediment fence/erosion control device at all times.

54. 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.

55. In order to avoid pollution and sedimentation of the Hawkesbury-Nepean River Catchment, the following erosion and sedimentation controls will apply:

    (a) runoff and erosion controls shall be installed prior to clearing of site vegetation in accordance with Council's development control plan titled "Soil Erosion Sediment Control";

(b) topsoil shall only be stripped from approved areas and shall be stockpiled for re-use during site rehabilitation and landscaping;

(c) uncontaminated runoff shall be intercepted upsite and diverted around all disturbed areas;

(d) runoff detention and sediment interception measures shall be applied to the land to reduce flow velocities and to prevent topsoil, sand, aggregate, road base, spoil or other sediment escaping from the site or entering any downstream drainage easements or natural watercourses;

(e) the capacity and effectiveness of runoff and erosion control measures shall be maintained at all times;

(f) pollution control devices shall be installed and maintained to ensure there is no increase in the downstream levels of nutrients, litter, vegetative debris, and other water borne pollutants;

(g) stockpiles of topsoil, sand, aggregate, spoil or other material capable of being moved by running water shall be stored clear of any drainage line or easement, natural watercourse, footpath, kerb or road surface;

(h) measures shall be applied to prevent site vehicles tracking sediment and other pollutants onto any sealed roads serving the development; and

(i) an erosion control plan showing detailed runoff and erosion control measures shall be prepared by a qualified engineer prior to any works commencing on-site. This plan shall incorporate (without being limited to):

 (i) upsite interception of uncontaminated runoff and diversion of it around disturbed areas;

 (ii) sediment interception measures (catch drains, contour banks, detention basins, settling ponds, haybale or gabion barriers, sediment traps, silt fences, etc) sufficient to prevent sediment and other debris leaving the site or entering downstream drainage lines;

 (iii) regular maintenance of erosion control works; and

 (iv) satisfactory disposal of intercepted sediment.

56. The applicant shall advise Council of the name, address and contract number of the principle certifier, in accordance with Section 81A 2(b) of the Environmental Planning and Assessment Act, 1997.

During Construction

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

58. Inspections shall be carried out and compliance certificates issued by Council or an appropriately accredited person for the following components of construction:

    (a) erosion controls, site works and site set out;
    (b) piers;
    (c) steel reinforcement;
    (d) framework, after the installation of all plumbing, drainage and electrical fixtures, and after the external cladding and roof covering has been fixed prior to fixing of internal linings and insulation;
    (e) external drainage lines, prior to backfilling;
    (f) on completion of the structure;

59. All work is to be carried out in accordance with the recommendations within the Geotechnical report prepared by Brinks and Associates dated 16 July 2001 and the approved Environmental Management Plan.

60. All necessary works being carried out to ensure that “any water” flow from adjoining properties is not impeded.

61. No excavated material, including soil, shall be removed from the site.

62. The topsoil shall be stripped and stockpiled and used to rehabilitate disturbed areas.

63. The disturbed area, including batters, shall be grassed immediately after works take place.

64. 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.

65. Stockpiles of topsoil, sand, aggregate, spoil or other material capable of being moved by running water to be stored clear of any drainage line, easement, natural watercourse, footpath, kerb or road surface.

66. To avoid any unnecessary site disturbance, the excavated and filled areas are to be graded and drained in a manner that will not be detrimental to adjoining properties or the environment and all constructed batters are to be topsoiled and turfed.

67. Topsoil is to be stripped and stockpiled from the excavation and wall areas before the dam wall is constructed, with the stockpile located clear of any natural watercourse. Sediment control fencing is to be then placed around the stock pile.

68. The embankment is to be completed with 100mm (one hundred) of top soil. It is to be planted with a good holding grass such as kikuyu or couch. Trees or shrubs are not to be planted on the embankment as roots may provide seepage paths for water.

69. The dam wall is to be adequately compacted by track rolling or similar in layers no greater than 150mm.

70. 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.

71. 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.

72. 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.

73. All work is to be carried out under the direct supervision of a geotechnical engineer.

74. Prior to filling the ponds with water the submission of a certificate from a suitably qualified engineer to the effect that the works have been completed in accordance with the approved plans and that the work and the site will remain stable after the ponds are filled.

The Use of the Site

75. Those areas nominated on the approved plan for landscaping are to be planted with native species endemic to the area and of a mature height.

76. Trees and shrubs are to be kept clear from the dam wall at all times. When trees or shrubs grow on or near a wall and eventually die, the decomposing roots form tunnels which lend to seepage and leaks. Shrubs also provide cover for rabbits which can damage the wall by burrowing.

77. The development shall be conducted in such a manner that the LA(eq) noise levels, measured at any point in accordance with the NSW EPA's Industrial Noise Policy (2000), do not exceed 5dB(A) (LAeq) above background noise levels with respect to noise amenity of residential dwellings.

78. 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.

79. No signs shall be displayed on the footpaths, pedestrianways, roadways or in the vicinity.

80. Any mass mortalities of fish are to be stored appropriately and disposed of immediately to a suitable rendering facility.

81. Documentary evidence in the form of receipts as to when and how much water is imported to the site is to be maintained for periodic auditing by the Department of Land and Water Conservation.

ATTACHMENTS:

AT-1 Locality Plan and Location of Respondents
AT-2 Site Plan
AT-3 Site Plan of the Original proposed fifteen ponds

Locality Plan and Location of Respondents

Site Plan

Site Plan or the Original proposed fifteen ponds

oooO END OF ITEM 97 Oooo

ITEM: 98 **Application to remove significant trees under Council's Tree Preservation Order**

FILE NUMBER: GE020/031 Pt6/ENG/ENJ23NBX.E10

PREVIOUS ITEM: 91, GPC Section 1 - Environment (25.09.2001)

REPORT:

Council at its Ordinary meeting of 9 October 2001 resolved in relation to this report that a site inspection be carried out. The report from the General Purpose Committee is reproduced below.

A Tree Preservation Order (TPO) application was received in June 2001 from Ms Lorraine Hunt for the removal of 4 (four) large Sydney Blue Gums from her property located at 233 Greens Road, Lower Portland, known as the Mt Andrew Caravan & Ski Park. The reason for seeking removal was for safety reasons. Currently no camping has been allowed under these trees due to the potential of branches dropping, damaging property or causing injury. An inspection however found the trees to be significant within the area and to be in good health.

Request for removal of the trees dates back to 1988 when Council originally denied permission for removal. Permission was however given to remove dead wood and low overhanging branches and that such branches were to be identified by a Council officer prior to their removal. The works undertaken in 1989 included lopping the trees from 140ft down to 70ft, which did not seem to comply with Council's recommendation. It was reported to the Council on 24 April 1990 "Towards the end of 1989 information was received that heavy lopping was being undertaken on the property and an inspection was carried out which revealed that the Sydney Blue Gums had been severely lopped where only the main trunk and branch stubs approximately 1 metre long were left. At no time had these branches been identified by a Council officer as required by Council resolution."

Lopping is not a recommended Arborist practice due to it causing potential faults/weak branch structure and decay. Advice was sought regarding taking action in relation to the lopping, however, it was not recommended. Over the last 12 (twelve) years, no further TPO's for these trees have been submitted.

Due to the history of these trees, the TPO determination was that no works could be undertaken on these trees prior to an independent Arborist report. This determination was discussed with Ms Hunt during a telephone enquiry, and due to her dissatisfaction with the determination, information was also given to her about how she could request a review of the decision. Ms Hunt has since submitted an independent Arborist report suggesting that the 130ft trees be lopped down to 8ft. The aim of this is to eventually maintain/manage the trees at the height of about 40ft.

It is felt that lopping the trees this extensively is not only excessive but could cause the trees to die. It is preferable that the trees be managed with some canopy reduction. By reducing and shaping the canopy it would meet both good Arborist practice and to maintain aesthetic value. It would also reduce the weight leverage on the branches reducing the chances of branch failure.

How are applications assessed?

There is no doubt that public liability is an important issue for the operators of any commercial activity. The assessment of trees under the tree preservation order however must be consistent in its approach and is specifically designed to consider the cumulative impact on the environment of isolated and broadacre tree removal. Assessments are undertaken from a number of perspectives.

Perhaps the most important perspective is that of safety to people, and consequently, where a tree is determined to be unhealthy and/or unstable and is in a position to impact on people or property, permission is given to remove or prune the tree. Health of the environment however is also vitally important, and to ensure consistency in assessments, a risk management approach is taken where trees are assessed as being in a healthy and stable condition but pose a potential risk to people and/or property. All trees pose an inherent risk in any number of ways. Where that risk can be easily removed or greatly reduced by simple but regular maintenance routines, permission to remove is refused. An example of this is the cleaning of gutters around a house. Where that risk is minor and cannot be removed or reduced easily, a risk management approach requires an assessment of the likelihood of an incident, and the likely impact of an accident if and when it occurs.

In this instance, the caravan park appears to have been operating successfully for the last 12 (twelve) years, since initial maintenance, without any incident notified to Council. It is suggested therefore that whilst there is an obvious risk associated with the presence of the trees, the likelihood of an accident occurring is not high as long as regular maintenance occurs.

To prune, shape and chip the trees would cost initially in the order of $2000 (two thousand dollars), based on recent works undertaken by contractors to Council. The trees would then have to be revisited every 8 (eight) to 10 (ten) years.

Mrs Hunt has forwarded further correspondence in relation to this matter indicating that the details in the above report were "*totally misleading and incorrect*" in relation to the request for removal of the trees dating back to 1988. As stated in the report permission was denied for removal of the trees at that time, however, approval to remove dead wood and low overhanging branches was given and that such branches were to be identified by a Council officer prior to their removal. It appears that in lieu of identifying individual branches at the time it may have been agreed that 50% of the foliage was able to be removed. This appears to have been misunderstood with the result that the trees were reduced to 50% of their height. Notwithstanding this the report appears to be factual.

RECOMMENDATION:

That permission be granted to the owner to maintain the trees with some canopy reduction subject to the following conditions:

1. The trees are not to be lopped but pruned to maintain a good branch structure and aesthetic value;

2. Council Arborist to be on site before and during any works being undertaken; and

3. Such branches are to be identified by a Council officer prior to their removal.

ATTACHMENTS:

There are no supporting documents for this report.

Oooo END OF ITEM 98 Oooo

ITEM: 99 **714 Upper Colo Road, Upper Colo - Proposed Outdoor Testing Site for Electromagnetic energy - Update on Legal Proceedings**

FILE NUMBER: DA90/98/EVD/ENJ23NBX.V05

PREVIOUS ITEM: 52, GPC Section1 - Environment (29.05.2001)

REPORT:

Introduction

Previous reports on this matter have advised Council of the legal proceeding concerning Development Application DA90/98 being for an outdoor testing site for electromagnetic energy at 714 Upper Colo Road, Upper Colo. The purpose of this report is to update Council on the outcome of the most recent proceedings and seek direction regarding the recovery of legal expenses.

Summary of Legal Proceedings

<u>Land and Environment Court Proceedings No. 40023/99 - Hawkesbury City Council v Bongers</u>

These were Class 4 proceedings initiated by Ms Sally Bongers against Council concerning Council's ability to determine the application.

The appeal was heard before Justice Pearlman. The Court dismissed the appeal and ordered *"The applicant* [Ms Bongers] *must pay the costs of the respondent Council as agreed or as assessed"*.

Council's solicitors have advised that their costs for these proceedings have been assessed at $9,062.18 (nine thousand and sixty two dollars and eighteen cents).

Until recently the recovery of these costs has not been pursued given the legal actions that followed.

<u>Supreme Court of Appeal Proceeding No. 40663/1999</u>

This was an appeal lodged by Ms Bongers against Justice Pearlman's decision in Land and Environment Court Proceedings No. 40023/99 - Hawkesbury City Council v Bongers.

This appeal was lodged however not heard.

<u>Land and Environment Court Proceedings No. 10329/00 - Hawkesbury City Council v ADI</u>

These were Class 1 proceedings initiated by Australia Defence Industries Ltd (ADI) against Council's refusal of DA90/98. Council was joined in the proceedings by Ms Bongers. Prior to the hearing of the matter Council resolved to enter into consent orders.

The appeal was heard in two parts. Initially before Justice Pearlman and then Commissioner Bly.

The Court upheld the appeal and granted conditional consent to the development. No orders for costs were made.

Notice of Motion - Appeal under Section 56A of LEC Act - Land and Environment Court Proceedings No. 10329/00 - Hawkesbury City Council v ADI

This action, initiated by Ms Bongers, claimed that Commissioner Bly erred in law in granting consent to the proposed development. Ms Bongers and ADI sought an order for cost. Council's solicitors were given a watching brief to attend the appeal.

The Court dismissed the notice of motion and reserved its decision on costs.

Council's legal expenses for the Notice of Motion were $1,380.72 (one thousand three hundred and eighty dollars and seventy two cents).

Recovery of Costs

Council's solicitors have commenced action to recover costs from Ms Bongers for LEC Proceedings No. 40023/99 and have requested instructions regarding the recovery of cost for the Notice of Motion.

Ms Bongers has provided the following response to Council's solicitors.

I am writing to you [to] *outline our reasons why we hope you will reconsider this amount.*

The only reason we took this case to the Land and Environment court was as local citizens trying to protect the area we live in and love, not for any financial gain, which we believed was the purpose of the Land and Environment Court.

We believed [and still do] that this development is not appropriate for the environmental zoning [7D Scenic Protection]. The Hawkesbury City Council voted in agreement with us at this stage.

I feel we have acted out of the best interests for the environment. And it has turned out that under the new LEP in March 2001, such a development would be illegal. It really is bad luck of timing that means this development can go ahead.

To be hit with these financially crippling court costs seem very unfair, when we, of all the parties in this matter have the least money and stand to gain no money from it. This extremely large amount of money would put us under severe financial hardship.

I implore you to take pity on us. I hope you can find a way in your heart to see what was behind the case for us. We were trying to protect something precious for people beyond our lifetimes and I truly believed that Hawkesbury City Council supported us at this stage.

With this in mind, I would ask you to make enquiries as to whether this amount of money could be dropped.

Whilst the costs already incurred by Ms Bongers and possible future costs are noted, Council's legal expenses for advice and court proceedings for this application totalled $51,457.14 (fifty one thousand four hundred and fifty seven dollars and fourteen cents). The possible costs to be paid by Ms Bongers (approximately $10,500.00 [ten thousand five hundred dollars]) represent a small portion of these costs. Council should also be aware that in both of the proceeding instigated by Ms Bongers she sought an order for costs. The Court awarded costs against Ms Bongers in the first matter and reserved its decision on costs in the second matter.

In light of the above it is recommended that Council pursue the recovery of costs from Ms Bongers for LEC Proceedings No. 40023/99 and file a Notice of Motion seeking costs for the hearing of the Notice of Motion initiated by Ms Bongers.

RECOMMENDATION:

That Council's solicitors be instructed to pursue the recovery of costs from Ms Bongers for LEC Proceedings No. 40023/99 and file a Notice of Motion seeking costs for the hearing of the Notice of Motion initiated by Ms Bongers.

ATTACHMENTS:

There are no supporting documents for this report.

oooO END OF ITEM 99 Oooo

ITEM: 100 **Hawkesbury Development Control Plan**

FILE NUMBER: DCP1/99/EVD/ENJ23NBX.V08

PREVIOUS ITEM: 86, GPC Section 1 - Environment (28.08.2001)

REPORT:

Council at its meeting of 11 September 2001 resolved to defer this report due to the technical difficulties experienced in finalising the document. This report is resubmitted for Council's consideration.

Background

Council at its meeting of 12 December 2000 resolved to place the Hawkesbury Development Control Plan (DCP) on public exhibition for a period of 3 (three) months. The DCP consolidated the existing 18 (eighteen) DCP’s and introduced new chapters for residential development, subdivision, landscaping, energy efficiency and Exempt and Complying Development.

Public Exhibition

The DCP was placed on public exhibition from 16 March 2001 to 15 June 2001 and was advertised in the Hawkesbury 8 (eight) times during the exhibition period. Copies of the plan were available to interested persons and were free of charge.

During the exhibition period, approximately 200 (two hundred) DCP's were given away to interested persons, groups, businesses and professionals.

Information Seminars

Two information seminars were held during the exhibition period. The seminars explained the new format of the DCP, the new chapters and requirements and encouraged participants to make a submission.

The first information seminar was held on Wednesday 11 April 2001 for solicitors, surveyors, architects, drafting services and applicants. Approximately 45 (forty five) invitations were sent out to local solicitors, surveyors, architects, drafting services and applicants. The seminar was attended by 13 (thirteen) people.

The second seminar was held on Thursday 24 May 2001 for local real estate agents and approximately 30 (thirty) invitations were sent. This seminar was also advertised for any other interested person to attend and approximately 12 (twelve) people attended this seminar.

Submissions

During the exhibition 9 (nine) submissions were received and are summarised below:

1. David Gregory -

Supports the DCP, particularly the emphasis on rural issues, heritage, signage and restrictions on subdivisions and boundary adjustment.

Comment: There are no changes required to the DCP as a result of this submission.

2. Disability Advisory Committee -

This is a comprehensive submission which includes suggestions for references to be included in the DCP to highlight access and mobility principles. The Committee also recommends that an additional chapter be inserted into the DCP to deal with access and mobility and has offered their assistance in preparing this chapter.

The Committee also recommends that the DCP should specify that a quota of dwellings in any multi unit housing development (in excess of 10 [ten] units) particularly on a level site should be accessible or easily adapted for use by residents with disabilities or mobility impairments. The Committee believes that this would ensure that the City will have the appropriate housing stock to accommodate its ageing population and the rising incidence of disability within the community.

Comment: It is considered that some changes should be made to the DCP to incorporate access and mobility issues, for example in the aims and objectives of the DCP. Further, it is recommended that a new chapter be prepared to address access and mobility and that the consultation be undertaken with the Disability Access and Advisory Committee of Council to prepare this chapter. This chapter should also review the provision of appropriate housing stock as outlined above.

3. Jill Harvey -

This submission relates to planning for the Bilpin area and states that Bilpin has been forgotten in the DCP. The submission states that the main problem is due to the minimum allotment for subdivision being 40 hectares.

Comment - this issue relates specifically to the subdivision provisions of Hawkesbury Local Environmental Plan 1989 (HLEP 1989). The DCP cannot be amended to bring about a change to minimum allotment sizes in Bilpin. It is more appropriate for this matter to be considered with Amendment 108 which will be exhibited at a later date.

4. Michelle Nichols -

This submission relates to cultural and environmental heritage and suggests that these issues are not incorporated. The submission requests that the proposed changes outlined by the Hawkesbury Heritage Study Team be adopted in their entirety.

Comment - heritage matters will be addressed later in this report.

5. Dr M Hatherly -

This submission expresses concern at the limited scope of the DCP with particular reference to the omission of any reference to items of cultural and heritage significance.

Comment - heritage matters will be raised later in this report.

6. Brian McKinlay -

The main issues in this submission relate to the following:

- *Exempt development (Chapter 5*) - in rural areas Australia Post require the letter box to be within 2m of the edge of the carriageway. It also suggested that the size of exempt water tanks be 20,000 litres in rural zones rather than 60,000 litres as outlined in the DCP as considerable excavation is required.

4. *Residential Development (Chapter 15)* - it is suggested that the standard 2 (two) car spaces per large dwellings is excessive particularly with the introduction of a Multi Unit Housing Zone and the relationship to transport.

- *Bushfire Mitigation (Chapter 11)* - the submission states that this section is poorly presented and based on a policy that is 15 (fifteen) years old. All Development Applications for dwellings in bushfire prone areas should be referred to the Rural Fire Service for comment and work carried out prior to occupation.

The submission also addresses some inconsistencies in the DCP relating to the requirements for plans showing contour levels and site analysis.

Comment: In relation to the parking requirements in Chapter 15 (Residential Development), bonuses could be given for proximity to public transport, particularly within Richmond and Windsor where the proposed Multi Unit Housing Zone is within 1 (one) kilometre of a railway station. However, given the general lack of public transport within the City, this is not considered an adequate solution, particularly in North Richmond where public transport is not as frequent. Furthermore, most objections to Multi Unit Housing relates to traffic and lack of off street parking.

The Bushfire Chapter is currently being re-written by Fire Control (Rural Fire Service) to ensure compliance with current standards including the relevant legislation including Australian Standard 3959, the Rural Fires Act 1997 and the Department of Urban Affairs and Planning Circular, Planning for Buildings in Bushfire Prone Areas. The amended chapter will also address when Development Application are sent to the Rural Fire Service for comment. This chapter will need to be re exhibited when completed.

7. Jan Barkley Jack -

This submission also relates to heritage issues and relates to the lack of recognition of the City's environmental and heritage character. The submission requests that the proposed changes outlined by the Hawkesbury Heritage Study Team be adopted in their entirety.

Comment - heritage matters will be addressed later in this report.

8. Hawkesbury City Council Heritage Advisory Committee -

This submission also relates to heritage matters and states that the omission of cultural and environmental heritage is an inexcusable omission. The Committee is in full agreement with the philosophy and details of the submission made by the Hawkesbury Heritage Study Team and requests that all suggestions, amendments and insertions of the Teams submission are incorporated.

Comment - heritage matters will be raised later in this report.

9. Hawkesbury Heritage Study 2001 Team -

This submission was prepared by the Meredith Walker and Penelope Pike who are the consultants involved in carrying out the Hawkesbury Heritage Study 2001. The detailed submission deals with the inadequacies of the DCP and Hawkesbury Local Environmental Plan 1989. It also accompanied by an annotated version of suggested changes to the DCP.

The Submission also suggests the following:

- DCP's for each of the Macquarie Towns of Richmond, Windsor, Pitt Town and Wilberforce.
- DCP for early settlement pattern.
- DCP for each town and surrounding landscape.
- Provisions in the HLEP 1989 and DCP for archaeological resources, other heritage items such as barns, other specific areas eg. valley settlements/landscapes and concentrated groups of buildings and their surroundings.
- A section specifically relating to heritage.

The submission prepared by the Heritage Study Team is supported by several of the submissions by the above individuals.

Comments: The comments relating to incorporating comments throughout the DCP are considered important and it is recommended that the DCP be amended to incorporate the general comments contained with the annotated version of the DCP lodged with this submission.

Some of the changes proposed require amendments to the HLEP 1989 which is beyond the scope of the DCP. It may be more appropriate to alter HLEP 1989 at the conclusion of the Heritage Study. It may also be necessary to further amend the DCP at the conclusion of the Heritage Study.

As a result of some the issues raised in the submissions the DCP has been amended.

New Chapters

Council has previously adopted DCP's for the erection of Rural Sheds and Grose Wold. These separate DCP's have now been included into the new format.

Other Changes

Each chapter has been reviewed and minor alterations made to ensure that the requirements are clear and concise. Some formatting changes have also been made, with the most notable difference being the Aims, Objectives, Performance Criteria and Acceptable Solutions being replaced with Aims, Objectives and Rules. It is considered that these formatting changes will make the document easier to understand by all users.

Amendment to Hawkesbury Local Environmental Plan 1989

At the time the DCP for Exempt and Complying Development and associated draft local environmental plan was prepared, the Department of Urban Affairs and Planning required that HLEP 1989 contain an adoption date of the DCP. This date will need to be replaced when the consolidated DCP is adopted by Council.

Advice from DUAP indicates that the adoption date must be contained within the DCP regardless of whether or not the DCP or Exempt and Complying are being amended.

It is therefore necessary to amend the adoption date for the DCP for Exempt and Complying Development contained within Schedules 6 and 7 of HLEP 1989. This is a minor amendment to HLEP 1989 and under the provisions of DUAP's Best Practice Guidelines Council can use its delegation in preparing the draft plan for exhibition and finalisation.

Conclusion

Due to the changes outlined in this report it is recommended that the DCP be amended and placed on public exhibition for a further 28 (twenty eight) days. It is also recommended that a draft local environmental plan be prepared to amend the adoption date for the Exempt and Complying Development DCP.

Copies of the DCP with the amendments outlined in this report are being distributed at this meeting.

RECOMMENDATION:

That:

1. The information be received.

2. The Hawkesbury Development Control Plan be amended as outlined in the above report.

3. The Hawkesbury Development Control Plan be placed on public exhibition for an additional period of 28 (twenty eight) days.

4. A new chapter be prepared in consultation with the Disability Advisory Committee to address access and mobility.

5. A draft local environmental plan be prepared to amend the adoption date for Exempt and Complying development using the best practise guidelines.

6. Council exercise its delegation in respect of Section 65 and Section 69 of the Environmental Planning and Assessment Act 1979 in preparing the above draft local environmental plan.

7. In respect of the draft local environmental plan, a local environmental study not be prepared.

ATTACHMENTS:

There are no supporting documents for this report.

oooO END OF ITEM 100 Oooo

ITEM: 101 **Proposed Orders for Mushroom Substrate Production - 84 Mulgrave Road, Mulgrave**

FILE NUMBER: P136/445/EVD/ENJ23NBX.V09

PREVIOUS ITEM: 47, GPC Section 1 - Environment (29.05.2001)

REPORT:

Introduction

At the Ordinary Meeting on 12 June 2001, Council resolved that:

1. Council's solicitors be instructed to commence appropriate Class 4 proceedings in the Land and Environment Court.

2. Discussions continue with the applicant in an effort to resolve the matter.

The purpose of this report is to present a set of Orders which have been compiled through discussions with solicitors acting for Council and Mr Tolson. It is recommended that the Orders be made by agreement.

Background

- 13 February 2001 - Council resolved to issue modified orders in relation to the property.
- 7 March 2001 - Class 1 Appeal lodged against the Orders.
- 30 March 2001- Evidence obtained of a specific odour event.
- 12 June 2001 - Council resolution to continue discussions with the applicant.
- 20 September 2001 - Meeting held with Council's solicitor, residents and interested parties.

Report

On 20 September 2001 a meeting was held at Council offices, attended by Mr John Cole, Partner, Abbott Tout, Ms Tania Ritchie, EPA, Councillors Gilling, Davies and Williams and 9 (nine) residents/interested parties. The purpose of the meeting was to allow residents to talk to Council's solicitor first hand to ensure that they are fully aware of Council's options and limitations for legal proceedings. The meeting also provided an alternative forum to the General Purpose Committee for interested parties to voice their concerns. The meeting was made aware of the terms of the proposed Draft Orders.

In general, the concerns of those present may be summarised as follows:

- There is a level of scepticism about any filter or scrubber proposed if the details are not made public.

- Concern that December 2002 is too long a time frame to stop the odours.

- Concern that nothing is happening now to stop the odours.
- Maintenance of filter etc. should be part of any Orders.
- Question as to why Council is not taking Class 4 proceedings now.
- Concern that Mr Tolson may use Court processes for further delays.

Those who attended the meeting have also been invited to attend the General Purpose Committee meeting.

Attached to this report is a copy of the Orders as proposed.

The latest advice from Council's solicitors is that the proposed agreed Orders is a better alternative than Class 4 proceedings. They have advised that Class 4 proceedings may be of limited utility having regard to the proposed terms of amended Orders upon which the parties are endeavouring to settle the current proceedings. In other words, even if Council was successful in Class 4 proceedings, the Court may not issue any different Order from those now proposed to be entered into by agreement.

Council's solicitors have recommended that the agreed Orders could be put into place through the Class 1 Appeal against the existing Orders, which would then bring that Appeal to a close. Should the operator then not comply with the terms of the Orders, Council would be in a very strong position for successful Class 4 proceedings (especially if the terms of the Order have been agreed to by the operator).

In conclusion, having taken all maters into consideration, the most viable option for Council to pursue would be to present the attached agreed Orders to the Court to finalise the Class 1 proceedings and, at this time, not proceed with Class 4 proceedings.

RECOMMENDATION:

That:

1. Council instruct its solicitors that Council agrees to the Draft Orders as attached to this report and to have the Orders put in place.

2. Should the operator default on the Orders, that Class 4 proceedings be commenced.

ATTACHMENTS:

AT-1 Draft Orders

ELF FARM SUPPLIES PTY LTD
Lot 3 DP610341, 84 Mulgrave Road, Mulgrave

Listed below are the draft terms for an Order under Section 121B of the EP&A Act 1979 to be issued by Hawkesbury City Council to Elf Farm Supplies Pty Ltd. The draft terms are submitted at the request of Council. Should a new Order be issued, it would supersede a previous Order issued by Council on 22 February, 2001.

First draft prepared after discussion with Hawkesbury City Council representatives on 22 June, 2001 at the Parramatta office of Abbott Tout.

Second draft submitted 6 August 2001, following request from HCC for modifications.

Draft Order

The operator to be ordered to undertake the following:

1. Not to use or make use of the rick composting process at any time from the date of this Order.

2. Not to store substrate or composted material outside the confines of an enclosed building, except where the material is “finished” to a state where it is incapable of causing odour nuisance beyond the property. Such material may be pending delivery to mushroom farms or be surplus to requirements and retained for agricultural use.

3. To conduct the high temperature stage of mushroom substrate manufacture within the confines of an enclosed building only and at all times.

4. To conduct the second (higher temperature) phase of the pre-wet process associated with substrate manufacture within the confines of an enclosed building at all times after 31 December, 2001.

5. To install and operate pollution control measures, indicated as Stage 2 works on the attached plan, in accordance with the following programme:

   (a) by 30 September, 2001 - submit a development application for the Stage 2 works;

   (b) by 31 January, 2002 - install a roof over the stable bedding storage area;

   (c) by 31 July, 2002 - enclose the work area at the entry to all Phase 1 tunnels;

   (d) by 31 December, 2002 - install and commission an odour control system including a filter or scrubber to process all air exhausted from the enclosed high temperature stage of substrate manufacture to meet the licensing requirements of the Environment Protection Authority;

6. To design the Stage 2 works so that air emissions from the ingredients storage area are controlled to meet the licensing requirements of the Environment Protection Authority.

7. To model the dispersion of odour emissions from the plant based on measurement of emissions from the filter or scrubber referred to in 5(d) above and to make any necessary adjustments to ensure that emissions from the plant meet the licensing requirements of the Environment Protection Authority. Such modelling to be supplied to Council within six months of the commissioning of the filter or scrubber.

8. To make a development application and gain approval of Council prior to conducting any alteration, additions or additional activity on the land.

9. To always comply with condition 3 of development consent DA58/79 which states: “The development being conducted in such a manner so as not to interfere with the amenity of the neighbourhood, in respect of noise, vibration, smell, dust, waste or waste products, or otherwise”. Interference with the amenity of the neighbourhood in respect of smell is taken to mean emission of an “offensive odour”, as defined in the Protection of the Environment Operations Act.

The dates quoted in items 4 and 5 are subject to variation by agreement with Council should delays occur beyond the control of Elf Farm Supplies, such as wet weather, flooding in the Hawkesbury, or an unreasonably long period to obtain development approval from Council.

Draft Orders

Draft Orders

Draft Orders

oooO END OF ITEM 101 Oooo

ITEM: 102 **Residential Development and Proposed Multi Unit Housing Zone**

FILE NUMBER: LEP1/01/EVD/ENJ23NBX.V07

PREVIOUS ITEM: 84, GPC Section 1 - Environment (28.08.2001)

REPORT:

Background

Council at its General Purpose Committee meeting of 28 August 2001 considered a report concerning Residential Development and the proposed Multi Unit Housing Zone. It was resolved at this meeting that a Councillor workshop be held to discuss the issue further.

Councillor Workshop

The workshop was held on 2 October 2001. A presentation was given by the Director of Environment and Development and covered the following issues.

<u>Shaping Western Sydney - The planning Strategy for Western Sydney</u>

"Shaping Western Sydney" is DUAP's Planning Strategy for Western Sydney and was released in January 1999. It covers the key planning areas of work, environment, housing and access. The Strategy applies to the City and Council is guided by the policy directions set out in this document.

In relation to residential development Shaping Western Sydney clearly requires urban consolidation and the creation of compact cities rather than increasing urban sprawl. Furthermore the Strategy requires a variety of housing types and housing choices that match the needs of the population within Western Sydney.

<u>State Environmental Planning Policy No. 53 - Metropolitan Residential Development (SEPP 53)</u>

In September 1997 SEPP 53 was gazetted and aimed to provide housing choice within Metropolitan Sydney and encouraged the principles of a "compact city". The SEPP also required all Councils to prepare a Housing Strategy showing how a compact city was being achieved.

A Housing Strategy was prepared by Council in November 1996 on the basis that multi unit housing was allowable in all Residential 2(a) zones which were serviced by reticulated water and sewer.

Council's Housing Strategy and subsequent exemption from State Environmental Planning Policy 53 (Metropolitan Residential Development) was approved by the Minister on 25 September 1997.

<u>Current Housing Strategy</u>

The approved Housing Strategy and Hawkesbury Local Environmental Plan 1989 (HLEP 1989) remains to be the basis on which multi unit housing can be approved within the City. In order to amend HLEP 1989 to introduce a Multi Unit Housing zone, DUAP have advised that the approved Housing Strategy must be amended.

The amendment to the Housing Strategy must be approved by the Minister of Urban Affairs and Planning *prior* to the preparation of the draft local environmental plan. DUAP has also advised that sufficient justification should be contained within the amended Housing Strategy.

<u>Proposed Multi Unit Housing zone</u>

The map displayed at this meeting indicates the proposed Multi Unit Housing zone. As a result of discussions at the workshop, the area has been extended in South Windsor and Richmond. It is proposed to incorporate all of Hobartville area as well as an additinoal area to the south of South Windsor. These areas were included as they contain older housing stock that has the potential for redevelopment. The justification for limiting multi unit housing is listed below and should form the basis of a revised Housing Strategy. It should be noted that Richmond, Windsor, South Windsor and Bligh Park are justified separately to North Richmond.

<u>Flooding</u> - The advice from the State Emergency Service concerning North Bligh Park highlights the reality of planning on and around a floodplain. The letter states that there has been *"an erosion of safety margins over time through the incremental infilling of existing land zoned urban"*. It appears that the cumulative impact of the continued infill of Richmond, Windsor, South Windsor and Bligh Park is worse than previously indicated. Therefore appropriate planning must take place according to this risk.

<u>Heritage</u> - the demolition and replacement of older style housing for Multi Unit Housing has resulted in the gradual loss of character of some streets within Richmond and Windsor. These houses may or may not be listed as heritage items on Schedule 1 of HLEP 1989 yet contribute to the overall streetscape of these localities.

Maintaining the status quo may have a detrimental impact on the remaining heritage items and the creation of Multi Unit Housing zone will provide for their retention, where appropriate, as part of the objectives of the zone.

<u>Aircraft Noise</u> - An updated Australian Noise Exposure Forecast (ANEF) map was prepared in 1997 by the Department of Defence and supplied to Council in April 2001.

The Department of Defence recommends that houses, home units and flats are unacceptable above the 25 ANEF contour and dwellings located between 20-25 should be appropriately conditioned to mitigate against aircraft noise.

Clause 37 of HLEP 1989 requires that:

> *"Council must not grant consent to the carrying out of development on land within 20 or higher ANEF contour for the purpose of a hospital, school, childcare centre or for a residential purpose unless the Council has taken into consideration the guidelines provided by AS 2021 regarding noise reduction and construction requirements"*.

Ultimately it is Council's decision as to what type of development is allowable in higher noise contours.

Previous resolutions of Council have related firstly, to the retention of Richmond RAAF Base and secondly, to the establishment of an aerospace related cluster industry. Whilst building may be able to be constructed within the flight path where appropriate noise attenuation is undertaken, the future uses of the RAAF Base must be considered. It is therefore considered necessary to reduce residential densities above the 25 ANEF contour so as not conflict with the existing and future operations of the Richmond RAAF Base.

<u>Multi Unit Housing Zone in North Richmond</u>

In North Richmond there are different reasons for creating a Multi Unit Housing zone as listed below:

<u>Isolation</u> - The North Richmond township, being located west of the Hawkesbury River becomes isolated in times of flood due to the river cutting the North Richmond Bridge. This creates a number of problems such as lack of accessibility to basic services such as hospitals and police. Physical access to other parts as well as linkages to other parts of Sydney is also difficult increasing community isolation. In larger floods the impact would be more severe where services such as electricity, water, sewer and telecommunications are damaged. It would therefore seem an appropriate reason to limit further Multi Unit Housing in North Richmond.

It should be noted that this argument may also preclude any extensions to North Richmond in the future. Further, it is not appropriate to argue that any housing lost in the North Richmond through the creation of a Multi Unit Housing zone can be provided in new release areas as this inconsistent with the provisions of “Shaping Western Sydney”.

<u>Accessibility</u> - North Richmond is somewhat limited in terms of accessibility to public transport, services and jobs. For examples, in 1999 the City as a whole had the highest number of vehicle registration per resident in Western Sydney, highlighting the reliance on the car and lack of public transport.

Shaping Western Sydney promotes housing opportunities that have good access to job opportunities, services and transport, thus reducing the distances travelled by car. In other areas of Sydney (such as Fairfield) the lack of accessibility has been sufficient justification for reducing residential densities.

Consideration has also been given to dealing with the proposed Multi Unit Housing Zone for North Richmond separately such that the amendment to Hawkesbury Local Environmental Plan 1989 could take place sooner. This would mean that the proposed Multi Unit Housing zone for Richmond, Windsor, South Windsor and Bligh Park would occur after the Housing Strategy is approved by the Minister as a separate draft local environmental plan.

DUAP have advised that North Richmond cannot be considered separately as limiting Multi Unit Housing zone is a fundamental change to the approved Housing Strategy. As previously advised any amendments to the Housing Strategy must be approved by the Minister prior to a draft local environmental plan being prepared.

Conclusion

The location of the City on the rural-urban fringe gives further justification for limiting Multi Unit Housing development. It could be argued that there are more reasons to limit this type of housing in the City of Hawkesbury, than any other Local Government Area within the Sydney Region.

Whilst the distribution of Multi Unit Housing will be limited to particular locations within the City, the creation of a specific Multi Unit Housing zone, together with the current Residential 2(c) zone will still allow for a range of housing choices, particularly where existing housing reaches the end of its economic life and is redeveloped. It is therefore considered that this will fulfil Councils obligations under “Shaping Western Sydney” in relation to providing a variety of housing types and housing choices that matches the needs of the population.

It is therefore recommended that a revised Housing Strategy Submission be prepared based on the information contained in this report and that upon the Minister’s approval Council proceed with the introduction of a Multi Unit Housing zone.

RECOMMENDATION:

That:

1. A revised Housing Strategy be prepared and forwarded to the Department of Urban Affairs and Planning for approval.

2. Upon approval of the revised Housing Strategy Submission Council proceed with the preparation of the draft local environmental plan to introduce a Multi Unit Housing Zone.

ATTACHMENTS:

There are no supporting documents for this report.

oooO END OF ITEM 102 Oooo

ITEM: 103 **Tracking Sensitive Development**

FILE NUMBER: GE020/029/EVD/ENJ23NCX.V11

REPORT:

Introduction

At the Ordinary Meeting on 9 October 2001 Council resolved that a report be prepared for the next General Purpose Committee on the proposed mechanisms to track sensitive Development Applications through Council.

Background

The request for this report came about from the various non-compliances at the poultry farm development located at Stannix Park Road. Buildings have been constructed on that property which are larger than those depicted on the approved development plans. This occurred as the buildings were constructed without a construction approval and/or inspections.

It is timely to report on this matter as Council staff are currently in the process of "building" the new application and licencing modules for the Proclaim business system to be introduced in December 2001.

Report

With the City's substantial area of 2,793 square kilometres, it is impossible for Council officers to monitor every site. This is particularly so with recent practice innovations, which has moved away from the previous inflexible district inspector approach to inspections.

The provisions of the Act, relayed to applicants through development consents require an applicant to obtain a Construction Certificate (either from Council or a private certifier) and to give Council 2 (two) days notice prior to construction commencing. In the case of privately certified construction work, Council should be provided with copies of inspection certificates, including a final inspection. In this case the onus is on the private certifier to ensure that the building complies with the development approval.

The majority of construction approvals are still issued by Council and inspections carried out by Council staff. This process, among other things, should ensure that buildings are constructed in accordance with approved plans. However, those applicants who choose not to seek construction approvals or inspections can concurrently do so and not be drawn to Council's attention unless a neighbour makes enquiries.

The new computerised application system to be introduced in December 2001, has the ability to overcome this situation by building in appropriate checks. Briefly, the system is process driven, with each process containing a series of "events" relating to a particular category of development. These events can generate specific actions, alarms or correspondence.

Development Applications have been divided into 3 (three) categories as follows:

Notified Development - Development required to be neighbour notified or advertised in accordance with the Development Control Plan.

Not Notified Development - Development not required to be notified, typically minor development.

Integrated Development - Development that requires separate land related approval from a State Agency. (The nature of these applications means that they are generally notified as well).

Construction applications fall into 2 (two) categories i.e. Council issued or private certifier issued.

The system is being built so that 6 (six) months after a development consent is issued, the assessing officer will receive an alarm to check whether any Construction Certificate has been issued and if so, whether work has commenced. If no Construction Certificate has been issued, a letter will be generated to the applicant requesting confirmation of the status of the development proposal. If no reply is received, a site inspection will be conducted. The alarm is to be attached to the notified and integrated development categories. A similar alarm will be built into the Construction Certificate process to ensure that appropriate inspections are called for once a Certificate is issued.

Although with any system there may be potential for problems to slip through, it is considered that the system as proposed will reduce the risk to an acceptable level. That is, all major approvals will be checked to ensure that any unauthorised building work is rectified prior to completion.

RECOMMENDATION:

That the information be received.

ATTACHMENTS:

There are no supporting documents for this report.

oooO END OF ITEM 103 Oooo