



general
purpose
committee

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section

environment

GENERAL PURPOSE COMMITTEE - ENVIRONMENT

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ENVIRONMENT

Meeting Date: 25 September, 2001

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ITEM: 90 **Truck Depot - Lot 3 DP 235807, 82 Midson Road, Oakville**

FILE NUMBER: MA398/01/EVD/ENI25NAX.V04

Applicant: Mr Scott Sheridan
Applicants Rep: Mr Scott Sheridan
Owner: Mr S and Mrs E Sheridan
Stat. Provisions: HLEP 1989
 SREP No 20 (No 2 - 1997)
Area: 2.023 hectares
Zone: Rural 1(c)
Advertising: Adjoining owners and occupiers. One submission.
Date Received: 10 April 2001

Key Issues: - traffic generation
 - noise
 - privacy
 - dust
 - character of the area
 - visual impact

Action: 12 month approval with conditions

REPORT:

Council has received an application to use an existing shed at 82 Midson Road, Oakville for the purposes of a truck depot.

This matter is being reported to Council due to the nature of the objection received as a result of the exhibition of the application. This report details the proposal, the current statutory situation and provides an assessment of the application in accordance with Section 79C (1) of the Environmental Planning and Assessment Act 1979.

Subject Site

The property has an area of 2.023 ha and is zoned Rural 1(c). It is currently developed by way of a large metal shed, a pre-school (catering for 24 children) and a dwelling (currently under construction). The metal shed (the subject of this application) was constructed in 1998 and measures 30m long by 12m wide by 5.4m high (ridgeline). It is located approximately 8m from the property's northern boundary and approximately 33m from Midson Road. Immediately to the south of the shed is a pool, garage and dwelling. A pre-school is located immediately to the south of the dwelling.

The rest of the property is vacant except for a dam located in the eastern corner.

The property is triangular in shape with northern and southern boundaries adjoining rural -residential

properties, the nearest neighbouring residence is to the north approximately 10m from the boundary. The western boundary adjoins Midson Road with part of Scheyville National Park beyond.

Background

In 1998 the owner of the property built the shed and from then on used it and an area in front of the shed for the purposes of a truck depot. Council approved the construction of the shed in 1998 however the consent did not approve for its use as a truck depot.

Early this year, Council received a complaint from an adjoining neighbour about the use of the property as a truck depot. Council staff advised the owner that consent was required and the owner subsequently lodged a development application.

Proposed Truck Depot

The applicant proposes to use the existing shed to store up to 8 vehicles. The vehicles range from Toyota Landcruisers to an International ACCO bogie drive with a GVM of 20,400 kgs. Typically the vehicles are twin axle trucks fitted with flat top or tilt trays. The trucks are specially equipped to be used for work on the railways.

The applicant's major business is leasing these vehicles to the State Rail Authority for railway construction and maintenance works. As a result, the applicant states, that typically the trucks are moved from the property by himself and his employees, driven to the SRA compound at Rosehill where they are loaded with equipment and taken by the SRA to various job sites. The nature of SRA's requirement means that the trucks can be required for only 1 day or up to many months at a time.

The applicant advises that on average 12 truck movements per week would be generated by the activity, however if all trucks were used in one week then 16 movements would be generated. 3 persons are employed and the proposed hours of operation are 6am to 6pm, seven days a week.

Landscaping and the erection of a colourbond fence along the northern property boundary is also proposed.

No servicing of vehicles is proposed other than checking oil and water levels, tyres, and washing.

Statutory Situation

The property is zoned Rural 1(c) under Hawkesbury Local Environmental Plan 1989. "Truck depots" are permitted within the Rural 1(c) zone.

The property falls within the Cattai River Catchment Area of Sydney Regional Environmental Plan No. 20 (No.2 - 1997).

Public Notification

The application was on public exhibition from 5 - 19 June 2001 in accordance with Council's Public Notification of Development Proposals DCP. 1 submission was received from the neighbours immediately to the north.

The respondent raises concerns as follows:

- \$ the truck depot is out of character with the area;
- \$ parking of the trucks between the shed and front boundary is unsightly;
- \$ dust;
- \$ noise;
- \$ servicing of trucks;
- \$ reduction in privacy; and
- \$ a colourbond fence would be out of character.

The full submission and the applicant's response are retained on the file.

Planning Assessment

The development is permissible with Council's consent as a truck depot. The proposal is not inconsistent with the aims or objectives contained with HLEP 1987, SREP 20 or SEPP 55. A full assessment of the matters required to be considered under the EP&A Act is contained on file. The following report summarises the main issues:

Noise and Hours of Operation (raised by respondent)

The locality surrounding the site can be characterised as being a quiet rural area where daytime and evening background noise levels would be expected to be quite low. The activity's noise sources will primarily be vehicles entering and exiting the site, preparation of vehicles (i.e. changing trays, loading equipment and warming up) and the servicing and washing of vehicles.

The residence immediately to the north is the most affected by the operations of the truck depot. A constant or unrestricted coming and going of trucks, extended idling periods and washing of trucks with high pressure water spraying equipment would have the potential to create a significant amount of noise above the background noise level.

The applicant has advised that on average 12 truck movements per week would be generated however this could be up to 16 movements on rare occasions. In discussions with Council staff, the applicant has advised that typically only two trucks are moved from the site at any one time. It would be possible to condition any consent such the truck movements are controlled so that they do cause a significant impact upon the amenity of the area.

The idling of trucks being serviced and the washing of trucks with high pressure spray equipment typically need to be undertaken outside and/or can be undertaken for extended periods of time.

Controlling these activities by way of condition of consent and policing the same would be difficult. It is therefore recommended that these activities not occur on the site. Suitable conditions have been imposed.

The impact of noise will also be a function of the hours of operation of the truck depot. The applicant proposes 6am to 6pm. By way of comparison, Council's typical condition of consent for demolition and construction works limits hours of operation to 7.00am and 6.00pm Monday to Friday and 8.00am and 4.00pm Saturdays.

While the daily and weekly truck movements is relatively small, such movements early in the morning (say before 7.00am) or in the evening (say after 7.00pm) do have the potential generate noise which neighbours could find disturbing. The applicant has advised that if trucks are to leave early in the morning they could be parked on the other side of the pre-school the day before departure. Similarly if trucks arrive back to the depot late at night they could be parked near the pre-school and then moved into the shed the next day. However, it is recommended that truck movements to and from the property be confined to between 7.00am and 7.00pm, six days a week and no movements be permitted outside of these hours.

Access, Traffic and Dust (raised by the respondent)

Access to the shed is presently via a large crushed concrete driveway that is of a sufficient size to provide adequate parking and manoeuvring areas. Given the likely truck and employee vehicle movements a crushed concrete/rock pavement would be suitable in terms of withstanding loads. However, this type of pavement can create dust problems. The applicant has advised that he intends to seal this driveway however at the moment the cost of doing so is prohibitive (i.e. approx \$30,000 for a hot-mix seal).

As a compromise it is recommended that any consent issued be conditional upon the driveway being constructed within in specified period (6 months) from the date of the consent. A properly constructed and maintained sealed driveway and manoeuvring area for the trucks as well as the provision of boundary landscaping will significantly reduce any current dust problem.

Visual Impact and Privacy (raised by the respondent)

The appearance of 8 vehicles and 2 truck bodies plus the applicant's private vehicles and employees vehicles parked in a haphazard manner between the shed and front boundary is not consistent with the objective of the zone to create a rural- residential living style.

Similarly, the movement of these vehicles and drivers within close proximity to the property to the north does have the potential to adversely impact upon the neighbour's privacy.

The applicant has advised that once his house is constructed (expected to be by the end of this year) then he will be able to store all but 2 of the trucks and 2 truck bodies in the shed. This will greatly assist in reducing the visual impact of the depot. Further, the applicant has agreed that on the rare occasions when all trucks are parked on the property, the 2 trucks that can't fit in the shed will be parked on the southern side of the pre-school. The applicant has also proposed to implement landscaping along the northern boundary in order to provide added visual privacy. The landscaping consists of bottlebrushes and murayas and extends from the front boundary to approximately three

quarters along the side of the shed. The landscaping proposal is reasonable, however to be effective would need to be extended further to the east and the choice of plants be altered to provide for more appropriate height.

To maximise privacy it is recommended that employees park their cars adjacent to the applicant's dwelling house. This parking area would be approximately 60m from the neighbour's dwelling. The applicant has also agreed to store the 2 truck bodies in this area.

Character of the Area (raised by the respondent)

The general character of the area is that of a rural residential area. Surrounding properties primarily contain single dwellings, scattered stands of remnant vegetation, dams, and are typically used for low scale grazing.

The existing scale and operations of the truck depot are not generally compatible with the character of the area or provide adjoining landowners with a reasonable degree of visual or acoustic privacy. It is considered however that the proposed operation of truck depot suitably controlled by way of conditions of consent will not be inconsistent with the character of the area and that the rural residential living style of the area will be maintained and preserved.

Conclusion

The truck depot has been operating at the site for some time without consent and has adversely impacted upon the amenity of the closest residents. These impacts have largely been caused as a result of the uncontrolled nature of the truck depot and dual use of the shed (i.e. being used to store vehicles and material for the construction of the applicant's house).

It is however considered that the potential adverse impacts of the development can be controlled by way of modifying the applicant operations, additional landscaping, and conditions of consent. These modifications have been discussed with the applicant who has agreed to modify his operations.

Given that the applicant is already operating a truck depot from the site and the short term constraints faced by the applicant (i.e. finishing construction of the dwelling and the cost of the sealing the driveway) it is recommended that the conditions of the consent relating the parking of vehicles, sealing of the driveway, landscaping and hours of operation be linked to specific time periods after the date of issuing of any consent. The proposed time frames in the conditions below have been discussed with the applicant prior this report being finalised.

It is also recommended that any consent be conditional upon the consent being reviewed within 12 months of the date of issue.

This will allow a further period of time for Council to further assess the operation of the truck depot.

RECOMMENDATION:

That the application for a truck depot at 82 Midson Road, Oakville be approved subject to the following conditions:

1. To confirm and clarify the terms of this approval, the development shall be carried out in accordance with the approved stamped plans marked A and B submitted with Development Application No. MA398/01 and any supportive documentation, except as otherwise provided by the conditions of this consent.

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

2. Compliance with the provisions of the Environmental Planning and Assessment (Amendment) Act 1979, and the Building Code of Australia.
3. This approval is limited to a period of 12 months from the date of this consent. After this period the operations of the truck depot will be reviewed with respect to compliance with conditions and impact on the environment. The applicant will need to lodge a fresh development application at that time.
4. Within 14 days of this consent an amended landscaping plan is to be provided to Council for approval. The plan is to show the landscaped area extending to the rear of the shed as well as the provision of species endemic the area that upon maturity will reach a height of at least the ridgeline of the shed. These plants are to be planted within the immediate vicinity of the shed.
5. Within 21 days of this consent a staff parking and truck body storage area is to be provided immediately adjacent to the dwelling/garage. Details of this area is to be provided to Council prior to construction. This area is to be constructed of a crushed rock pavement. Staff vehicles and a maximum of 2 truck bodies are to be stored only within this area.
6. Within 45 days of the date of this consent all landscaping is to be installed in accordance with the approved landscaping plan.
7. Within 90 days of the date of this consent all vehicles associated with the truck depot are to be parked inside the shed or on the southern side of the pre-school. The storage of vehicles and the southern side of the pre-school is only to occur after at least 6 of the vehicles are stored within the shed or in accordance with conditions of consent relating to hours of operation.
8. Within 180 days of the date of this consent the driveway to the shed and associated turning areas is to be provided with a sealed pavement. Details of proposed works are to be submitted to Council for approval prior to construction. The pavement is to be maintained at all times to the satisfaction of Council.
9. A maximum of 16 truck movements associated with the truck depot are to occur per week. The

holder of this consent is to keep a dairy of vehicle movements that is to be presented to Council upon request.

10. Preparation of vehicles (i.e. changing truck bodies, loading equipment, "warming up" etc) in or within the vicinity of the shed and the movement of vehicles associated with the truck depot in and out of the shed is to occur only between the hours of 7.00am and 7.00pm, Monday to Saturday.
11. All items ancillary to the operation of the truck depot (i.e. tyres, wheels, chains etc) excluding 2 truck bodies are to be stored within the shed.
12. No washing or servicing (other than checking water levels and tyre pressures, and changing/checking oil, lubricants, coolants) of vehicles associated with the truck depot is to occur on site.
13. All lubricants, coolants, oils etc are to be stored in bunded areas within the shed. Waste liquids are to be collected and disposed of to the satisfaction of Council.
14. Oil, lubricants, coolants and hydraulic fluid spills or stains are to be removed by an approved absorbent material and disposed of at an authorized waste depot. The absorbent material is to be kept in good supply at all times.
15. The subject development, including landscaping, is to be maintained in a clean and tidy manner.
16. All landscaping shall be permanently maintained in a good condition and in accordance with the intent of the landscaping plan.
17. The premises shall not be used in any manner which may create objectionable noise under the provisions of the Noise Control guidelines, (Noise Control Act).

ATTACHMENTS:

- AT-1** Locality Plan
- AT-2** Site Plan
- AT-3** Landscape Plan

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Location Plan

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Site Plan

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Landscape Plan

oooO END OF ITEM 90 Oooo

ITEM: 91 Application to remove significant trees under Council's Tree Preservation Order**FILE NUMBER:** GE020/031 Pt6/ENG/ENI25NBX.E06

REPORT:

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.

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 91 Oooo

ITEM: 92 **Signing of Co-operation agreement for Regional Illegal Dumping Squad Project (RID Squad)**

FILE NUMBER: GW010/033 PT 1/EVD/ENI25NBX.V02

REPORT:

The Western Sydney Waste Board (WSWB) has provided Council with 2 (two) copies of the Co-operation agreement for the Regional Illegal Dumping Squad Project for signature, for the period 7 September 2001 to 30 June 2002.

Council has been party to the agreement over the past twelve months under a Section 355 of the Local Government Act management committee, which controls the activities of the squad through its co-ordinating officer.

In this respect, the activities of the squad in the Hawkesbury area, have in the past few months been more directed to illegal landfilling rather than indiscriminate roadside dumping, which is not as prevalent in this Council area when compared to other metropolitan Councils. Notwithstanding this, there are a number of identified dumping locations in the City that now receive regular surveillance, with a number of infringement notices being issued in recent times.

With the commencement of the new agreement, a significant change in the distribution of the fees collected for infringements has been agreed upon by the management committee, which will see all fines collected being evenly distributed between the parties to the agreement, and not retained by the individual issuing Council.

With the abolition of the Western Sydney Waste Board in October this year, the functions that were undertaken by this Board as manager of the project, will be transferred to the replacement organisation, "Resource NSW", without changes.

Funding for the project for the upcoming year has been allocated in the current budget.

A copy of the Operational Evaluation Report in relation to the squads activities, for July-August 2001 has been included as an attachment to this report.

RECOMMENDATION:

That:

1. The agreement be signed under seal of Council for the period 7 September 2001 to 30 June 2002.

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2. The matter of membership of the Regional Illegal Dumping Squad for the period 1 July 2002 to 30 June 2003 be reviewed in February 2002 for the next financial year.
3. The information in the Operational Evaluation Report attached to this report be received.

ATTACHMENTS:

AT-1 Operational Evaluation Report

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Operational Evaluation Report

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ITEM: 93 **Existing Poultry Farm - 412 Stannix Park Road, Ebenezer**

FILE NUMBER: DA68/97/EVD/ENI25NBX.V05

PREVIOUS ITEM: 88, GPC Section 1 - Environment (28.08.2001)

REPORT:

Council considered this matter at its General Purpose Committee meeting on 28 August 2001 and at the Ordinary Meeting of 11 September 2001 resolved to defer the site inspection until this meeting. This report provides Council with detailed information and options concerning a number of issues relating to the existing poultry farm.

The issues the report will discuss are:

- Designated Development
- Compliance with conditions of consent
- Setbacks of existing shed
- Processing of feed on site
- Illegal buildings/structures
- Existing dam
- Alleged contaminated fill

Designated Development

Concern has been raised that the development approval (DA68/97) granted was for “designated development” and did not follow the procedures set out in the Environment Planning and Assessment Act (EP&A) and Regulations.

Comment:

The plans submitted with Development Application 68/97 showed no development area. At the time of assessing the application Schedule 3 of the EP&A Act which identifies activities as Designated Development, defined poultry farms as follows:

“(3) *“poultry farms” for the commercial production of birds (such as domestic fowls, turkeys, ducks, geese, game birds or emus), whether as meat birds, layers or breeders and whether as free range or shedded birds, that are located:*

- (a) *within 100 metres of a natural waterbody or wetlands; or*
- (b) *within a drinking water catchment; or*
- (c) *within 500 metres of another poultry farm; or*

- (d) *within 500 metres of a residential zone or 150 metres of a dwelling not associated with the development and, in the opinion of the consent authority, having regard to topography and local meteorological conditions, are likely to significantly affect the amenity of the neighbourhood by reason of noise, odour, dust, lights, traffic or waste.”*

In measuring distances for the purpose of designated development, Part 4 of Schedule 3 outlines how the distance is to be measured.

“Dwelling” - The distance from a dwelling is to be measured as the shortest distance between the edge of the dwelling and the boundary of any development or works to which the development application applies.”

The plans submitted showed a distance from shed 1, a minimum 150m to Stannix Park Road. The 2 (two) dwellings located opposite the site in Stannix Park Road represented the closest dwellings to the poultry farm at the time of assessment.

The location of the feed shed, which was approved with the development application, has been measured on site in relation to the nearest dwellings and is in excess of 150m to the front property boundary along Stannix Park Road. The access road was relocated further to the west to provide the required setback to the dwelling.

Whilst no development area was shown on the plans, based on the setbacks, a development area can be established that would not fit within the definition and, thus, is not considered to be “designated development”.

As well as the required distance, the Council must be of the opinion that topography and local meteorological conditions are likely to significantly affect the amenity of the neighbourhood by reason of noise, odour, dust, lights, traffic or waste.

Council’s assessing officer formed the opinion that the poultry farm would not have a significant affect on the amenity of the neighbourhood. As a result, the development as approved is not considered to be “designated development” under the EP&A Act and Regulations.

Compliance with Conditions of Development Consent

The site has been subject to 2 (two) development approvals:

- DA68/97 - Erection of 3 (three) poultry shed, feed shed, 6 (six) silos, rearing shed and associated facilities.
- DA28/00 - 2 (two) coolrooms.

The site has been recently inspected by Council officers (14 September 2001) in respect to identifying compliance with the conditions of approval. The results of the inspection are discussed below:

DA68/97Condition 1

“All sections of the proposed poultry farm including sheds and access roads to be located a minimum of 150 metres from any dwelling on adjacent, adjoining or opposite lots, full details to accompany the building application.”

Comment:

The sheds, access roads associated with this approval have been measured on site and are located in excess of the minimum of 150 metres from any dwelling on adjacent, adjoining or opposite lots.

Condition 2

“Provision of a suitably sized dam at the rear of the property, downstream of the proposed sheds and access roads, to collect all run off from roofs and pavement surfaces and to act as settlement/sedimentation dam for any contaminated or silt laden run off water, full details to accompany the building application.”

Comment:

The dam is constructed downstream of the sheds and access roads. This matter is discussed later in the report.

Condition 3

“No poultry manure to be stockpiled on the site external to the poultry sheds.”

Comment:

No poultry manure was stockpiled external to the poultry sheds.

Condition 4

“Submission of a waste management plan for the disposal of all waste from the site, including poultry manure and dead birds, full details to accompany the building application and to be approved before construction commences.”

Comment:

This plan was submitted with the building application for the poultry sheds. There is no evidence that this was approved. However, the information contained in the plan in respect to disposal of waste is considered acceptable.

Condition 5

“The operation of the poultry farm and all associated activities to be conducted in accordance with the guidelines for poultry farms produced by the NSW Department of Agriculture with particular reference to environmental impact management in regard to wastewater, waste products, dust, noise, light, vermin and odour controls.”

Comment:

Council has only received complaints in respect to the operation of the processing of feed (odour and noise), and not the poultry. This matter is discussed later in the report.

Condition 6

“Erosion and sedimentation control devices shall be installed and maintained during the construction phase, full details to be submitted and approved prior to release of the building application.”

Comment:

The development is partly constructed (feed shed and sheds 1 and 2). The dam required by Condition 2 has been constructed which acts as a sediment/settlement dam. There are several earth batters in the vicinity of shed 2 and shed 3 which are not suitably grassed and show signs of erosion. The sediment from these batters are directed into the sediment/settlement dam. The erosion is not considered to be a major environment issue. The applicant should be requested to grass these batters to help prevent any further erosion.

Condition 7

“Construction is only to take place between the hours of 7.00am and 6.00pm Monday to Friday and 7.00am and 1.00pm Saturday.”

Comment:

At the time of inspection this condition was being satisfied.

Condition 8

“All necessary steps are to be taken to suppress dust generated during the construction phase of the development to the requirements and satisfaction of the Directory of Environment and Development.”

Comment:

At the time of inspection this condition was satisfied.

Condition 9

“Full details of the proposed silos to be submitted with the building application.”

Comment:

Details were submitted with the building application.

Condition 10

“Provision of a 3.5 metre wide access, with passing bays, manoeuvring and turning areas and parking areas, together with any necessary drainage, is to be constructed with compacted crushed rock pavement. Full details to be submitted and approved before construction commences.”

Comment:

The access driveway and manoeuvring/turning areas have been constructed on crushed sandstone. The access driveway has an average width of 8 (eight) metres and is suitably drained.

A search of Council records has not found any details submitted to Council for approval.

Condition 11

“Stormwater drainage is to be disposed on site and not to be concentrated onto the unformed roads to the rear of the site, full details to be submitted and approved before any works are commenced.”

Comment:

All the stormwater from the sheds and access road drains to the dam located at the rear of the site. Details were provided with the building application.

Condition 12

“Submission of a building application, plans and specifications complying with the Building Code of Australia.”

Comment:

A building application was submitted and approved for the 3 (three) poultry sheds.

Condition 13

“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.”

Comment:

No advertising structures are erected on the site. A site identification and warning signs have been erected at the entry driveway and along the access road. These signs are not considered to be advertising structures.

Condition 14

“Provision of toilets in accordance with the requirements of the Building Code of Australia.”

Comment:

The activity employs a total of 7 (seven) staff which includes 3 (three) casuals. Toilet facilities are provided for the staff in the dwelling and a room adjacent to the garage associated with the dwelling. The provisions of the Building Code of Australia (BCA) requires 1 (one) toilet facility to be provided. The toilet facilities comply with the BCA.

Condition 15 and 17

“No excavation or site works shall be commenced prior to the issue of the building permit.”

Comment:

The inspection of the site revealed earthworks had commenced on site in the general vicinity of the rearing shed approved by DA68/97. A search of Council records has revealed that no building or construction approval has been issued for the rearing shed.

A notice of intention to serve an order under the EPA Act to comply with the condition and cease all excavation and site works has been issued.

Condition 16 and 18

“The development shall not be conducted in such a manner that noise levels measured at any boundary do not exceed 5dB(A) above background noise levels.”

Comment:

This is an operating condition and Council has recently carried out noise testing on adjoining property as a result of a complaint received in respect to noise generated by the activity. The noise levels were taken over several days at various times. The results indicated that the activities on the

site exceeded the background noise by between 9-13dB(A). As a result, this condition is not being satisfied.

The option available is to issue a Notice of Intention to Serve an Order under the EP&A Act to comply with the condition.

Condition 19

“Parking shall be provided for 8 (eight) vehicles in accordance with Council’s Regulations and Parking Policy. Parking spaces, accessways and aisles to conform to Council’s Development Control Plan and to be constructed, drained and marked. Full details of works shall be submitted for approval with the building application.”

Comment:

The site provides a hard stand area and covered area for parking of 8 (eight) cars adjacent to the dwelling. The approved Building Application plans showed the parking area in the general vicinity of where they are now provided.

Condition 20

“Provision of adequate loading and unloading facilities to cater for the proposed use of the land.”

Comment:

Adequate areas are provided on site for loading and unloading of vehicles.

Condition 21

“Submission of a schedule of proposed external finishes including sample materials for consideration and approval in conjunction with the submission of a building application.”

Comment:

The details provided indicated the poultry sheds would be painted in a matt “off white”. Shed 1, which is occupied by poultry, is painted “mist green” but has a roof that is unpainted corrugated iron finish. The unpainted roof finish does not cause any impact as the material has become weathered.

Condition 22

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

Comment:

No signs are displayed.

Condition 23

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

Comment:

Council has received complaints in respect to the noise and odour generated by the processing of poultry feeds. This matter is discussed later in the report.

Condition 24

“The spillage of light, if any, shall be controlled to the satisfaction of the Director Environment and Development.”

Comment:

No complaints have been received in respect to this matter.

Condition 25

“The development shall be carried out in accordance with plan 27197/2 dated 1 April 1997 as amended 8 May 1997.”

Comment:

As a result of the inspection of the site and measurements taken by Council Officers in respect to the buildings and side setback, the following table is produced to compare what was approved and what has been constructed on site.

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BUILDING	DA APPROVED	ACTUAL	COMMENT
Feed Shed	30m x 12m with a height of 8m to ridge and 6m to eaves (by scale)	65m x 21.6m height of approximately 10m to ridge and 8m to eaves	This building has substantially increased in size over what was approved
Poultry Shed No. 1 (completed and operational)	58.8m x 40.6m height approximately 4.5m	70m x 53m height approximately 4.5m	The overall shed dimensions have increased by 12m to 13m which has reduced the side setback distance
Poultry Shed No. 2 (under construction)	58.82m x 40.6m height approximately 4.5m	88.5m x 57m height approximately 4.5m	The overall dimensions have increased by 17m and 30m which has reduced the side setback distance
Side setbacks to western boundary (poultry shed)	50m	40m (shed 1) 21m (shed 2)	The increase in shed sizes have resulted in a reduction of the setback distances to the western boundary
Feed Shed side setbacks	75m (by scale)	40m	Setback reduced due to increase in shed size

Plans showing the approved and actual building envelopes are on display on the board in the Council Chambers.

The notation on the plans indicates that each laying shed was to contain 15,000 birds. The operator has indicated that shed 1, which is operational, contains 40,000 birds and the notation on the plan of 15,000 was only indicative.

The feed shed and 2 (two) poultry sheds have been constructed contrary to the approved DA and BA plans. It should be noted that only building approval has been given to the 3 (three) poultry shed and not the feed shed.

The options available to Council are:

- (a) Request a Section 96 application to modify the development consent to reflect the actual size of the buildings.
- (b) Require the building to be reduced in size to comply with the condition of consent and approved plans.

Option (b) should ensure that the side setback distances would comply with the approved plans in respect to the poultry sheds. It is noted that with the reduced setback distances the sheds are still well in excess of the 150m setback from the nearest dwelling to the west which is approximately 300m.

The feed shed is a much larger building than was approved by DA68/97. The option of reducing its size to comply with the approval may be unreasonable as it is a substantial building and any reduction in size would be difficult to achieve from a structural point of view. As the shed is significantly larger in size it is not appropriate to require a Section 96 to modify the development consent but a new development application should be submitted. The current application for the building certificate includes this building.

It is recommended that sheds 1 and 2 be amended to comply with the approved plans including the setback distances and that a new development application be lodged for the feed shed.

Condition 26

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

Comment:

At the time of inspection, no excavated material was taken from the site.

Condition 27

“The topsoil shall be stripped and stockpiled and used to cover the batters with such batter grassed immediately after earthworks are completed.”

Comment:

The inspection revealed that topsoil was used to cover some of the batters which were covered with hydra mulch.

Condition 28

“The submission of a Compliance Certificate under Section 73 of the Water Board (Corporation) Act 1994 prior to release of the Building Application.”

Comment:

A search of Council files has not found a Compliance Certificate. This matter can be addressed by the applicant applying for the certificate from Sydney Water.

DA28/00 (Coolrooms)

Condition 1

“To confirm and clarify the terms of this approval, the development shall be carried out in accordance with the approved stamped plans (prepared by R E & P A Collis Design numbered 56799 Sheets 1 and 2 dated 31 January 2000) submitted with Development Application No. MA28/00 and any supportive documentation, except as otherwise provided

by the conditions of this consent.”

Comment:

The approved plans indicated a building with dimensions of 64m x 10m and a height of 5.8m to 6.5m. The building as constructed has dimensions of 76m x 13m. The building has increased in size by 3m in width and 12m in length. The height is generally in accordance with the approved plans. The 3m separation distance between the coolroom and the feed shed is not provided. The increase in dimension has no impact on adjoining properties.

The options available to resolve this matter are:

- (a) Section 96 modification to the Development Consent
- (b) Requiring the building to be reduced in size to comply with the approved plans and condition.

The coolroom building was not issued any construction approval but is included in the building certificate. The increased building dimensions still complies with the setback distance of 150m to the nearest dwelling. It is recommended Option (b) be pursued and that the applicant lodge a Section 96 application to modify the development consent.

Condition 2

“Compliance with the provisions of the Environmental Planning and Assessment Act and Building Code of Australia.”

Comment:

The applicant has submitted an application for a building certificate under Section 149D of the EPA Act.

Condition 3

“Prior to construction of the approved development it is necessary to obtain a construction certificate.”

Comment:

The applicant applied for a construction certificate which was not issued as further details were required in respect to stormwater disposal. Refer to comment under Condition 2.

Condition 4

“The applicant is advised to consult with:

- (a) Sydney Water Corporation Limited
- (b) Integral Energy

(c) *A local telecommunications carrier*

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

Comment:

This is an advisory condition.

Condition 5

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

Comment:

The works were completed without the issue of the construction certificate.

Condition 6

"To ensure that site disturbance is contained and treated in an environmentally acceptable manner, stormwater from roofs and sealed areas shall not be concentrated to one point and shall, via the installation of collection pits and/or absorption trenches, be disposed of wholly within the site."

Comment:

This information was not provided to Council. The stormwater drainage for the structure has been incorporated into the site drainage and drains to the rear dam.

Condition 7 to 11 related to matters that are required to be provided prior to commencement of works.

"Condition 7

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

- (a) *must be a standard flushing toilet; and*
- (b) *must be connected:*
 - (i) *to a public sewer, or*

- (ii) *if connection to a public sewer is not practicable, to an accredited sewage management facility approved by the Council, or*
- (iii) *if connection to a public sewer or an accredited sewage management facility is not practicable, to some other sewage management facility approved by the Council.*

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

Condition 8

A sign must be erected in a prominent position on any work site on which the erection or demolition of a building is being carried out:

- (a) *stating that unauthorised entry to the work site is prohibited; and*
- (b) *showing the name of the person in charge of the work site and a telephone number at which that person may be contacted outside working hours.*

This condition does not apply to:

- (a) *building work carried out inside an existing building; or*
- (b) *building work carried out on premises that are to be occupied continuously (both during and outside working hours) which the work is being carried out.*

Condition 9

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.

Condition 10

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.

Condition 11

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

Comment:

As the works are completed it is difficult to comment on Conditions 7 to 9 however, a search of Council records has not found the evidence to suggest compliance with Conditions 10 and 11.

Condition 12

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

Comment:

Refer to Condition 2.

Condition 13

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

- (a) piers;*
- (b) steel reinforcement;*
- (c) 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;*
- (d) external drainage lines, prior to backfilling; and*
- (e) on completion of the structure.”*

Comment:

No inspections were carried out by Council.

Condition 14 to 18*“Condition 14*

No spoil, excavated or demolition material from the site being deposited on any public road, footpath, public place or Council owned property without the approval of this office.

Condition 15

All demolition, construction and associated work necessary for the carrying out of the development being restricted to between the hours of 7.00am to 6.00pm on Mondays to Fridays and between 8.00am and 4.00pm on Saturdays.

Condition 16

No burning of demolition or construction material being carried out on the site.

Condition 17

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.

Condition 18

A sign is to be erected adjacent to the access point to the site for the duration of the site works stating the following:

- (a) owner of site and address;*
- (b) person/company carrying out site works and phone number;*
- (c) consent number and date of approval; and*
- (d) approval during of site works."*

Comment:

As the works are completed no comment can be made in respect to the conditions.

Condition 19

"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."

Comment:

This matter has been satisfied with services already available to the site.

Condition 20

"The new buildings are to be finished in the same colours as the existing farm shed adjacent."

Comment:

The colour of the building matches the feed shed.

Condition 21 and 22

“Condition 21

An occupation certificate is to be obtained on completion of all works and prior to commencement of the approved use. The occupation certificate will not be issued if any conditions of this consent are outstanding.

Condition 22

In order to ensure that the development complies with this consent, the approved use shall not commence until all conditions of this Development Consent have been complied with.”

Comment:

The coolrooms were not in use at the time of inspection. An occupation certificate has not been issued by Council.

Condition 23 to 27

“Condition 23

To ensure that the external appearance of the site is not intrusive or offensive, and does not degrade the visual quality of the surrounding area, no materials, goods or vehicles to be stored between the building and Stannix Park Road.

Condition 24

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

Condition 25

The subject development, including landscaping, is to be maintained in a clean and tidy manner.

Condition 26

All waste materials to be stored and disposed of at regular intervals.

Condition 27

The storage of eggs produced on farm are only to be stored in the coolrooms. No eggs from off-site are to be transported to the site for storage."

Comment:

The above conditions related to the use and, as the coolroom is not in use, no comments can be made at this point in time.

Existing Dam

Condition 2 of DA68/97 required the provision of a suitably sized dam at the rear of the property to collect all runoff from the roofs and pavement surfaces and to act as a settlement/sedimentation dam for any contaminated or silt laden run off water. Details were to be provided with the building application. The details of the dam were provided with the building application for a 7.5ml dam. The details of the proposed dam were approved by Council Officers subject to conditions contained in a letter dated 21 November 1997.

The dam as constructed on site is different in location and shape to the approved dam. The applicant has indicated the following in response to this matter:

"I would like to confirm that I have approval for the dam on DA68/97 and it was a condition (No. 2) to build this dam. The plans for the dam were approved BA1152/97 dated 20 November 1997. The size of the dam was 7.5ml.

I would like to notify Council of the fact that the dam was realigned and the shape of the dam slightly modified to suit the existing contour and dam. The size remains the same, the dam was brought forward as per plans 27197/3.

This modification preserves more of the existing bush at the lower end of the property."

The applicant has provided a plan which shows the location of the approved dam and the dam as constructed. This is shown on the plan which is on display on the board in the Council Chambers.

Council Officers have inspected the dam and found it to be constructed in a satisfactory manner with only minor additional works required relating to sediment control measure being established in the spillway. Council has written to the Department of Land and Water Conservation in respect to this matter. The Department have responded by indicating:

- The existing 7ml dam is a licensable work because its size is greater than the property's Maximum Harvestable Right Dam Capacity (MHRDC) which in this case is 1.8ml.
- Dams exceeding MHRDC which collect relatively clean surface water run off for re-use in a commercial operation, are regulated by licence through the DLWC under part 2 of the Water Act.

Further discussions with officers of DLWC has also indicated that if the water from the dam is not used for a commercial purpose and the dam was constructed prior to 1999 a licence is not required and the MHRCD does not apply.

Council officers have discussed this matter with the operator who has indicated that the dam is to store water only as a static supply. It is not used in conjunction with the poultry operation except in emergency situations.

Alleged Contaminated Fill

This matter was previously discussed in the status report to the General Purpose Committee meeting on 28 August 2001. This issue has resulted from allegations concerning the importation of fill material from the Homebush Bay site.

Comment:

The operator previously provided a letter from the contractor who has responsible for importing the fill. This indicated that fill originated from the old Sydney Showground site.

Council has written to the EPA seeking comments on this matter.

The EPA has responded as follows:

“In January 1997 the EPA received a Groundwater and Soil Contamination Assessment Report from ERM Mitchell McCotter commissioned by the Centennial Park and Moore Park Trust for the Royal Agricultural Society Showground at Moore Park. The EPA has no further record of work undertaken on this site or of an inspection being made by an EPA officer as claimed in the letter from Great Western Excavations. Inquiries made by the EPA through the Centennial Park and Moore Park Trust revealed that Daracon Engineering Pty Ltd was the major earthworks contractor for the Fox Studios Development at about the time indicated in the letter from Great Western Excavations. Lend Lease who managed the Fox Studios Development confirmed this advice and indicated that quantities of clean fill were taken from their site.

The letter from Tuscany Foods contains references to allegations of the imported fill originating from Homebush Bay. EPA records for the Homebush Bay remediation project show that the only fill taken from the area during the remediation was VENM from the Olympic Village. Daracon Engineering were also involved in these earthworks.

If Council is not able to ascertain the origins of the fill at 412 Stannix Park Road, Ebenezer and is concerned about possible contaminants in the fill and the potential risk of harm to human health or the environment Council can consider requiring the occupier or suspected polluter to carry out investigations under the Clean Up or Prevention Notice provisions of the Protection of the environment Operations Act 1997. Council may also wish to consider

annotating the S149 Certificate and would need to require further sampling and analysis of the fill if the land was to be developed in the future for a more sensitive landuse.”

There has been no evidence submitted to demonstrate that contaminated material was brought onto the site.

If Council is still concerned about this matter further testing of the fill material can be required to be undertaken.

Processing of Food

Concern has been raised about the processing of feed activity being conducted in the feed shed. The processing of feed involves a combination of drying and hammer milling various food materials such as cereals, bread and grains which are blended together to produce the feed for the poultry on site.

It has also been alleged that the feed that is processed on site is not used solely on site but is transported to other poultry farms.

The operator lodged an application under Section 96 to modify the existing poultry farm approval (DA68/97) to include the processing of feed. This application was accompanied by various technical reports on noise and air quality (odour) impact.

The application was notified in accordance with the “Public Notification” Development Control Plan.

The applicant has now withdrawn this application based on their interpretation that the processing of feed is a component of the initial DA approval being considered ‘associated facilities’.

The applicant has obtained their own legal opinion on the matter.

The applicant has provided the following in response to this issue.

“I have paraphrased some of our legal response as per our discussions.

- 1. Clearly development consent was granted by Council for a feed store and associated facilities on 22/5/97. A feed store or feed shed is common terms used by the farming industry to store and prepare feed used by the stock on the property.*

Although ready mix feed is available for farmers to purchase feed, many farmers continue to prepare their own feed in order to ensure a quality product as well as to control costs involved providing feed. We are instructed that the ingredients from Tuscany Farms produce is a mixture of ingredients obtained by manufacturers which are surplus to their needs. This includes - bread, cereal and biscuit. These ingredients are dried, ground and then mixed; although other farmers may use other ingredients the process is not uncommon. Certain machinery is used to assist in the process, but like any other farm activity this process may result in noise and some odour.

2. *We are of the view that the use of any machinery to blend the ingredients is also an ancillary use and envisaged within the development consent.*

This is quoted directly from our legal advice - Champion Legal, Parramatta (Jennifer Scott). Jennifer is experienced with legal matters pertaining to Council and has a good understanding of our situation and legal rights."

Council has also obtained a legal opinion from Abbott and Tout. The legal opinion states:

- “1. *On balance, it is our opinion that the preparation of feed for the chickens at the poultry farm can be considered an ‘associated facility’ for which Council has granted consent.*
2. *Alternatively, we suspect that the preparation of the feed for the chickens would be considered to be ancillary development to the development to which consent has been granted.*
3. *We have insufficient information to determine whether the preparation of feed for the chickens might be a ‘rural industry’. This depends on the proportion in the feed of non-primary products which include cereal and other food components.*
4. *Council could take action in relation to any amenity issues by giving an order that there be compliance with condition 23 of the development consent."*

Based on the two opinions it shows that they both agree that the processing of feed can be considered as an ‘associated facility’ which was granted approval (DA68/97).

The issues of noise and odour disturbance associated with this processing can be covered by Condition 23 which has been previously discussed.

The option to resolve this issue is for Council to issue a Notice of Intention to Serve an Order and request compliance with Condition 23 of DA68/97.

It should be noted that the operator has recently installed a range of equipment and implemented procedures to help reduce the odour and noise impact.

Setbacks of Existing Shed

This matter has been investigated by Council officers who have measured the setback distances.

The distances as shown on the approved development application plan to the three poultry sheds was 50m. The actual distances provided as follows:

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	Distance (Actual)	Approved
Shed 1 - occupied	40m	50m
Shed 2 - not completed	21m	50m
Shed 3 - not constructed		

The reduced distances were the result of the sheds having a larger dimension than shown on the approved plans.

Council has several options:

- (a) Request a Section 96 modification to approve the reduced distances.
- (b) Issue a notice of intention to comply with the relevant condition of DA68/97 which would involve a reduction in the shed's size to comply with the approved setback distances.

The reduced setback distances do not compromise the 'designated development' provisions in that the nearest dwelling to the west is well in excess of the 150m from the shed (approximately 300m). It is however recommended that Council pursue option (b) and issue a Notice of Intention to Serve and Order to comply with the approved setback distances.

Illegal Building/Structures

A number of buildings and structures have been erected on the site without any formal development or building approval.

As previously noted several of these buildings have been erected on the site with no formal building approval and are larger than the size approved by the development consent (ie, feed shed, poultry sheds, coolroom).

The owner has lodged a development application seeking approval for the buildings/structures without any development approval and an application under Section 149(D) - Building Certificate for those buildings/structures without any formal building approval.

These applications are being assessed by Council officers.

Matters Raised by Ms V Turner

A report to the General Purpose Committee meeting of 27 March 2001 addressed some of the matters raised.

The following is an updated response to the questions based on Council officers further investigations. The questions related to the existing and proposed development (additional rearing sheds).

Question

“I did not receive any notification of the original application for a poultry farm in 1997 and would definitely have objected most strenuously given the opportunity.”

Comment

A letter was forwarded to Ms Turner at a numbered post office box at Wilberforce, on 9 April 1997 advising of an application to construct three poultry sheds, rearing shed and feed store. Council's file DA068/97 has a signed copy of the letter sent.

Question

“I believe the original and further development applications (DA68/97 and DA28/00) are most relevant to the current application (MA609/99). I find it hard to understand why approval for additions to the existing poultry farm is even being considered as the existing farm and coolroom are still under construction, with a long way to go. Of the three poultry sheds, rearing shed, feed store, etc, approved in DA68/97 only the feed store and one poultry shed are complete.”

Comment

Although it is normal to consider applications separately, even though they are on the same property, in this case, the current application is dependent upon facilities, buildings, dams, etc, that were part of the previous application and, therefore, they need to be in place for the current proposal to proceed.

Question

“How can the true impact of this development be properly assessed under these circumstances?”

Comment

In assessing the impact of the current proposal, the applicant has engaged a suitably qualified consultant to determine the impact of the proposed development.

Question

“Have all conditions of approval for all approved development applications relating to the property 412 Stannix Park Road, Ebenezer, been met?”

Comment

A comprehensive discussion of this matter has been provided earlier in this report under the section 'Compliance with Conditions of Development Consent'.

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Question

“Have all building applications, plans and necessary documentation relating to the development been submitted to Council.”

Comment

This matter has been discussed in the report under ‘Illegal Buildings and Structures’.

Question

“Are all the buildings that have been added to the property (particularly the portable site buildings on the eastern side and the ‘feed store’ which is used for ‘feed processing’) included in an covered by those building applications and plans that have been approved?”

Comment

As a result of investigations of various files relating to the site and onsite inspection to identify the buildings and structures, the following buildings and structures have no formal approval for their construction:

The shed used for storage and processing of feed that is located adjacent to the poultry shed.	No building approval.
The coolroom building located adjacent to the feed shed.	No building approval.
Metal clad shed located adjacent to the existing brick garage associated with the dwelling.	No development or building approval.
Metal clad shed used as a coolroom adjacent to the existing brick garage associated with the dwelling. An inspection of an aerial photograph indicates that there was not an existing shed in this locality and it would appear that this building has been erected since 1997.	No development or building approval.
The portable site office building located adjacent to the above shed.	No development or building approval.
The site has a number of feed silos adjacent to the feed shed and poultry sheds	No building approvals..

The matter of illegal buildings and structures has been previously discussed in the report.

Question

“Council documentation (DA68/97) includes ‘the construction of the proposed amenities building shall be subject to a separate building/development application. Such application to be lodged with Council prior to business commencing’ (dated 6/12/97). Have such applications been lodged and approved? If so, why are they not on record at Council? If not, why has business commenced?”

Comment

This condition is from the Building Application BA1152/97. A site inspection has revealed that the subject building is not used for staff amenities. The applicant has now submitted an application for the amenities building.

Question

“Council documentation (DA28/00) included ‘Prior to Issue of Occupation Certificate’ 21 and 22 clause 21 ‘An occupation certificate is to be obtained on completion of all works and prior to commencement of the approved use’. Have such certificates been issued? If not, why has use commenced?”

Comment

This matter is discussed in the ‘Compliance with Conditions of Development Consent’ section of the report.

Question

“Council documentation (DA28/00) includes the use of the site 23-27, Clause 27 ‘The storage of eggs produced on a farm is only to be stored in the cool rooms. No eggs from off-site are to be transported to the site for storage’. Can Council assure this is the only use of this facility?”

Comment

This matter is discussed in the ‘compliance with Conditions of Development Consent’ section of the report.

Question

“Have the poultry sheds that have been built or are under construction built in the proper location? The stamped plans at Council show 50m from the western property boundary. The initial layout and amended layout plans show these buildings as close as 30m from the boundary.”

Comment

This matter has been discussed in the ‘Compliance with Conditions of Development Consent’ and ‘Setbacks of Existing Sheds’ sections of the report.

Question

“Have all alterations/extensions to the ‘existing’ dam below the poultry sheds been approved by Council? This once small dam seems to have completely moved location, size and shape on the property.”

Comment

This matter has been discussed in the report under 'Existing Dam'.

Question

"Does the dam comply with 10% runoff and all Council conditions?"

Comment

This matter has been discussed in the report under 'Existing Dam'.

Question

"Was Council approval required, sought, given for the importation of innumerable truck loads of fill, from Homebush Bay sites, to this site? Was this fill tested for contaminants?"

Comment

This matter was discussed under the Section 'Alleged Contaminated Fill'.

Question

"What is the status of the unnamed road on the western boundary of the property? Is it a public road? Can Council assure this road will not be sold to private interests?"

Comment

This road is a Crown public road and therefore is under the control of the Department of Land and Water Conservation. Council is not aware of any proposal to purchase part of Sargents Road.

Question

"Can Council assure that this development will not interfere with the amenity of the neighbourhood?"

Comment

In respect to the impact on the amenity of the area, it is Council officers' opinion, based on the evidence contained in the consultant's report and Council officers' assessment of the development, there will be no significant impact on the amenity of the area.

Question

“Can Council assure all local ratepayers that there will be no detrimental nor negative effect to our land values as a result of increasing intensive farming development in the area and/or this particular development?”

Comment

No evidence has been provided to demonstrate that approving the proposal would have an impact on land value. Council now has the report concerning a property at Maraylya but no other evidence on valuation.

Question

“As this application is for ‘an addition to the existing poultry farm’ is it not the total development on the site, rather than just the ‘addition’ that should meet all conditions of approval?”

Comment

The proposed Condition 36 relates to the current proposal and Condition 23 of Development Consent 68/97 is a similar condition for the existing approval. As a result, the total development is subject to this requirement.

Question

“Previous conditions of approval relating to development on this site state ‘..... between the house of 7.00am and 6.00pm Monday to Friday and 7.00am and 1.00pm Saturdays’ as the current ‘conditions of approval’ were acceptable to the applicant. It is it necessary for the hours of operation to be extended?”

Comment

The previous consent contains hours that were limited to construction activities only and not the operation. The proposed conditions limit the operating hours for the activity as well as the construction phase.

Conclusion

As a result of a detailed site inspection which involved measuring the existing buildings and setbacks a number of conditions of approval that related to DA68/97 and DA28/00 have not been satisfied. The major issues relate to the reduced side setbacks and the size of the poultry and feed sheds which do not comply with the approved plan.

The most appropriate option would be to require the setbacks, as approved, implemented which would result in the existing sheds being modified by reduction in their size to comply with the approved plans.

In respect to the feed shed it would appear unreasonable to require the size to be reduced to comply with the approved development application given the likely reduction in impact that would be achieved. The option in this circumstance is for the owner to lodge a new development application for the feed shed and an application for a building certification which has been lodged with Council.

RECOMMENDATION:

That a Notice of Intention to Serve an Order be issued to the owner and operator seeking:

1. Compliance with Conditions 6, 16, 18, 23, 25 and 28 of DA68/97.
2. Compliance with Condition 1 of MA28/00.
3. The submission of a development application for the feed shed.

ATTACHMENTS:

There are no supporting documents for this report.

oooO END OF ITEM 93 Oooo

ITEM: 94 **Draft Local Environmental Plan - Various Lots Fronting Windsor Street Generally Between Pitt and Hobart Streets, Richmond**

FILE NUMBER: LEP1/92/EVD/ENI25NBX.V03

PREVIOUS ITEM: 6, Ordinary (10.08.1999)

PREVIOUS ITEM: 128, GPC Section 1 - Environment (29.06.1999)

REPORT:

Council at its Ordinary Meeting of 10 August 1999 resolved to:

"Re-exhibit the draft local environmental plan 1/93 with the following alterations:

1. *Provide continuous rear access road zoned 9(b) from Lukis Avenue to Hobart Street.*
2. *Amend the denied access clause so that all development other than residential will be prohibited from direct access to Windsor Street.*
3. *The plan be placed on public exhibition with 3 alternatives proposed by the Planner.*

The 3 (three) alternatives proposed by the Planner are:

- Option 1** To rezone land from Residential 2(a) and Industrial Light 4(b) to Light Industrial 4(b) and Proposed Road 9(b) to allow the land to be used for light industrial purposes and provide rear access to the land.
- Option 2** To rezone land from Residential 2(a) and Industrial Light 4(b) to Light Industrial 4(b) and Proposed Road 9(b) to allow the land to be used for light industrial purposes and provide rear access to the land which includes parking in the road reserve.
- Option 3** To rezone lands from Residential 2(a) to Light Industrial 4(b) to allow the lands to be used for light industrial purposes and provide rear access to the lands via a right of carriageway.

The draft plan was exhibited from 10 May 2001 - 8 June 2001. Affected land owners and adjoining owners were advised by letter dated 8 May 2001. An advertisement was also placed in the Hawkesbury Gazette.

Background

10 December 1991 - Council considered a villa development and resolved to refuse the application. One of the adopted recommendations included that a report be prepared after consultation with relevant landowners of the desirability or otherwise of rezoning to Light Industrial 4(b) land fronting Pitt Street, Bowman Street and backing onto existing industrial land.

7 March 1993 - S65 Certificate issued under delegation.

10 March 1993 - Notified in gazette and to property owners and adjoining *10 March 1993 - 26 March 1993*.

13 July 1993 - Council's Ordinary meeting adopted recommendation to support the rezoning of the land but prepare a development control plan before proceeding.

11 February 1997 - Council resolved not to proceed with the DCP, that Council reaffirm its previous decision to rezone this land to Light Industrial and part of the rezoning have a restriction that no vehicular access from Windsor Road be allowed and that a road easement be created over the rear of the properties, that finalisation of the LEP will be dependent on a resolution of the rear access to all of the properties.

18 December 1997 - Affected property owners requested to advise if that would be willing to dedicate rear access road over their property via a letter.

9 March 1999 - Council resolved to prepare a draft LEP to zone the land shown on the map as part Light Industry 4(b) and part proposed road 9(b). The draft LEP will prohibit direct access to Windsor Street, and not allow development to proceed prior to the rear road access being suitable and constructed.

16 March 1999 - Section 65 Certificate issued under Delegation.

10 August 1999 - Council resolved to re-exhibit the draft local environmental plan with the following alterations:

1. Provide continuous rear access road (zoned 9(b)) from Lukis Ave to Hobart Street.
2. Amend the denied access clause so that all development other than residential will be prohibited from direct access to Windsor Street.
3. The plan be placed on public exhibition until 3 alternatives proposed by the planner.

2 May 2001 - Section 65 Certificate issued under Delegation.

10 May-8 June 2001 - Three options placed on public exhibition.

Consultation with Public Authorities

At the GPC of 29 June 1999, details of consultation with public authorities pursuant to S62 were provided. As previously reported, the draft plan was forwarded to:

- Integral Energy
- Roads & Traffic Authority
- Telstra
- Sydney Water
- Heritage
- EPA
- DLWC
- HNCMT

The Trust advised that they have no objections to the draft plan and DLWC have advised they have no comment. No replies were received from the other government authorities.

Submissions

10 (ten) submissions were received, 4 (four) supporting the proposal and 6 (six) objecting to the proposal. The concerns of respondents include:

- Road alignment through existing buildings.
- Unsightly approach to Richmond..
- Land too small for viable development.
- Some owners do not want to develop.

These concerns are discussed below.

IssuesRear Lane Access

There are a number of ways to construct the road:

1. Each developer to construct and pay for the road from nearest road being either Hobart Street or Lukis Avenue and across the frontage of property. This land would then be dedicated to Council as public road.
2. S94 contribution plan be prepared and require contribution from each developer and as funds become available the road will be constructed. The land used for the road would need to be dedicated to Council.
3. Option 3 of the draft plan included the provision of a right of carriageway instead of a 'road', which would require each individual land owner to construct and maintain the right of carriageway.

All three options are problematic. Option 1 requires sequential development from the existing road and Hobart Street will need to be fully constructed by the closest developer. Option 2 is not favoured due to administration costs. As a principle, Section 94 contributions are not favoured for the provision of local roads. Option 3 raises the same problems as Option 1 and it must be questioned whether a right of carriageway is appropriate in these circumstances.

There is existing direct vehicular access off Lukis Avenue to Nos 31, 29 and 27 Windsor Street. No. 31 objects to current LEP due to provision of the road and that it will sever an existing building on the site. No. 27 supports the proposal. Given that these properties have direct vehicular access which will not require road construction, it is recommended that these properties only are considered for Industrial 4(b) zoning. These properties logically extend from existing industrial land from Pitt Street and Lukis Avenue.

Feasibility of Industrial Development

The subject properties range generally from 531sqm to 1176 sqm in area. The properties are 48m-50m deep and 15m – 20m wide. A 10m setback from Windsor Street and an area for road and parking would be required.

Generally, industrial units are 12m x 20m, with warehouses approximately 15m x 40m. Turning circles for rigid trucks require 21.7m and small rigid trucks require 14.4m. Even if the lots were consolidated, the depth of the lots would still not be sufficient for viable industrial development. In addition, the provision of a 10m setback for buildings would be required for development fronting the main road. This setback would further restrict development and if the setback was reduced, this would impact on the streetscape.

Initial Decision to Rezone

Council at its Ordinary Meeting of 10 December 1991, resolved to refuse a villa development and to prepare this current draft LEP.

The intention of the rezoning was to provide industrial land but remove multi-unit housing due to aircraft noise. Under HLEP 1989, development on land affected by aircraft noise is controlled by clause 37. Council recently resolved to restrict multi-unit housing to particular zones. It is therefore considered that the original concerns of Council at the time have been addressed.

Conclusion

The draft local environmental plan to rezone the land from Residential 2(a) to Industrial 4(b) presents problems in relation to road construction and development potential of the land for industrial uses. It is therefore now clear that the draft LEP is not practical. It is recommended that the draft LEP, as exhibited, not proceed, however the lots with frontage to Lukis Avenue could proceed.

RECOMMENDATION:

That:

1. The draft LEP 1/93 be amended to rezone Lots 14, 15 & 16, DP23504, (Numbers 27, 29 & 30) Windsor Street, Richmond from Residential 2(a) to Industrial 4(b) with the provision of direct vehicular access off Lukis Avenue.
2. The draft LEP 1/93 be referred to Minister with a request the plan be made.

ATTACHMENTS:

AT-1 Properties affected by Draft Plan/Location of Objectors

ENVIRONMENT

Meeting Date: 25 September, 2001

Item: **94**

Properties affected by Draft Plan/Location of Objectors

oooO END OF ITEM 94 Oooo