



general
purpose
committee

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section

environment

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ITEM: 43 Pitt Town - Possible Urban Development**FILE NUMBER:** LEP 003/00/GMA/ENE28NAX.G09**REPORT:**

The Local Environmental Study commissioned by the Council to Connell Wagner Pty Ltd has been received and made available.

It concludes that there are a number of environmental planning constraints and opportunities that could influence any future urban capability.

Possible future land use strategies are included in 3 (three) growth scenarios within the investigation area. The low growth scenario would provide a rural village of 280 dwellings, a rural urban fringe of 170 dwellings, making a total of 450 dwellings with a possible population of 1,575.

The medium growth scenario provides a rural village of 280 dwellings, a rural urban fringe of 405 dwellings, giving a total of 685 dwellings and possible population of 2,397.

The high growth scenario has a rural village of 1,140 dwellings, a rural urban fringe of 220 dwellings, providing a total of 1,360 dwellings and a possible population of 4,760.

Heritage/environmental issues are raised applying to the Bona Vista property and escarpment areas. It is indicated that further investigation to gain an understanding of the significant items and their contexts and constraints is required.

The consultants have been asked to provide some detail of the additional work and they indicate that further investigations will be of an incremental process to gain an understanding of the issues and constraints by stages. The cost of the next stage would be approximately \$25,000.00 (twenty-five thousand dollars) and this would provide an understanding of significant items on Bona Vista and the escarpment, their context and provide a higher level of understanding of particular items/areas of concern or constraints. They note that should the results of this phase of work indicate the need for sub-surface investigations (excavation) this would be an additional stage. Later stages may involve salvage/recording of items if required from the excavation work.

For the Council to proceed with exhibition of the study at this stage, would see a large unknown in the middle of any possible future development which would not be very constructive to discussion/debate over whether and what, if anything, should occur. Accordingly, the proponent of the proposal, Mr Johnson, was advised that the work should be undertaken, with which he concurs and has accordingly forwarded sufficient funds to cover that. Connell-Wagner has indicated that their consultant would take between four to six weeks to have this completed and have now been instructed to commence that work. The current study will still remain available for the community to access, including on the Council's web-site. As soon as the additional work is received, provided this indicates some certainty over what can and cannot occur, then the matter will be placed on formal exhibition.

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RECOMMENDATION:

That the information be received.

ATTACHMENTS:

There are no supporting documents for this report.

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ITEM: 44 **Section 96 Modification to Reduce Floor Area, Mezzanine and Awning - Lot 61 DP748779, 02 Macquarie Street, Windsor; Lot 19 DP1024573, 94 Macquarie Street, Windsor; Pt Lot 1 DP832585, Macquarie Street, Windsor; Lot 5 and 6 DP787880, 92 Macquarie Street, Windsor (Windsor Toyota)**

FILE NUMBER: MA1157/00/EVD/ENE28NAX.V03

Applicant: WD & BL Wilson
Applicants Rep: As above
Owner: Marnic Motor Company Pty Ltd, Mr and Mrs Seale,
 Health Administration Corporation
Stat. Provisions: HLEP 1989
Area: 7319sqm
Zone: Residential 2(c) and Special Uses 5(a)
Advertising: Notified to adjoining owners and occupiers until 12 April 2002
Date Received: 4 April 2000

Key Issues: Visual amenity

Action: Approval

REPORT:

Introduction

Consent was issued in April 2001 for the demolition of existing motor showroom to erect a new motor showroom. An application has been received seeking modification to the consent to reduce the approved floor area including a mezzanine and awning.

The application is being reported to Council as the original application was approved by Council (Policy PEA00712). This report details the modification proposal, the statutory situation and an assessment of the application. Based on the assessment, the modification is recommended for approval, subject to modified conditions of consent.

The Proposal

The application seeks to modify development consent MA1157/00 in the following manner:

1. *Workshop floor area* - reduces the floor area at the rear of the workshop. The tool storage and records room will be replaced with change rooms and staff amenities. This change in floor area will also reduce the height at the rear of the building by 1.5m. This modification will not be visible from the road. The reduction in floor area is approximately 50sqm.

2. *Awning* - The service area awning is to be deleted. This awning extended 7m from the side of the building to provide a covered area for cars being left for service. This awning also extended over the boundary. In removing the awning the roof of the building will be skillion from front of building to the rear.
3. *Mezzanine level* - the mezzanine level which primarily provides for office space and staff room/amenities is being reduced by 50%.

Statutory Situation

Hawkesbury Local Environmental Plan 1989

The subject property is zoned Residential 2(a) and Residential 2(c) under HLEP 1989. The proposed development falls over a number of properties, one property has been rezoned to allow motor showroom use and the other property enjoys existing use rights, therefore the development is permissible with development consent.

Community Consultation

The proposed application was notified to adjoining owners and occupiers in accordance with the Notification development control plan. There were no submissions received.

Planning Assessment

A full assessment of the application under Section 79C was considered within the report to the General Purpose Committee meeting of the 27 March 2001. The proposed modification does not alter the assessment under S79C significantly and the only additional relevant matter is as follows:

Visual Amenity

The proposed modifications are considered to reduce the overall bulk and scale of the development. The removal of the awning which extended 7m from the building to the northeast of the site will reduce the bulk of the building.

The other modifications relating to the reduction in floor area of the workshop and mezzanine will not be highly visible changes to the overall development.

Conclusion

The proposed modification is considered to be minor and of minimal impact to the environment. The development now proposed is substantially the same as already proposed. It is recommended that the proposed modification be approved subject to modifying the relevant conditions of consent.

RECOMMENDATION:

That the modification be approved subject to the following changes:

1. Amend Condition 1. to read:

- “1. To confirm and clarify the terms of this approval, the development shall be carried out in accordance with the amended approved stamped plans (prepared by WD & BL Wilson, Drawing No.1034, Sheets, 1,2,3,4 and 5 dated October 2001) submitted with Development Application No. MA1157/00 and any supportive documentation, except as otherwise provided by the conditions of this consent.”

ATTACHMENTS:

- AT-1** Locality plan
AT-2 Amended site plan
AT-3 Amended mezzanine level
AT-4 Amended elevations

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Locality plan

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Amended site plan

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Amended mezzanine level

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Amended elevations

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Item: 45

ITEM: 45 **Use Existing Shed as Truck Depot, Lot 4 DP843500, 66 Canoona Avenue, Windsor Downs**

FILE NUMBER: DA0095/02/EVD/ENE28NAX.V02

Applicant: DC Smith and RD Smith
Applicants Rep:
Owner: As above
Stat. Provisions: Hawkesbury Local Environmental Plan 1989
Area: 2Ha
Zone: Rural 1(c) under Hawkesbury Local Environmental Plan 1989
Advertising: 20 March 2002 to 4 April 2002
Date Received: 1 February 2002

Key Issues: Vehicle movements
 Amenity
 Hours of operation

Action: Approval, subject to conditions

REPORT:

Introduction

Council has received an application to use an existing shed at 66 Canoona Avenue, Windsor Downs for the purposes of a truck depot.

This matter is being reported to Council due to the number and nature of submissions received. This report details the proposal, the current statutory situation and provides an assessment of the application. A complete assessment is contained on file.

Background

The proposed truck depot has been in operation from the site for approximately five years. This development application was submitted as the result of investigations by Council officers after a complaint about the use.

The following development/building applications apply to the land:

BA 1048/95	Shed	Approved 1 September 1995
BA 1049/95	Dwelling house	Approved 13 September 1995
MA 329/01	Swimming pool	Approved 12 March 2001

The Proposal

The application proposes the use of an existing shed on the subject land as a truck depot for the garaging of 3 (three) trucks.

The owners of the property operate a transport company, with a total of 7 (seven) trucks. However, the applicant proposes that a maximum of 3 (three) trucks are to be garaged at the site. The remaining trucks are garaged at the drivers residences in other locations.

The application proposes storing 1 (one) six tonne truck, 1 (one) twelve tonne truck, 1 (one) 8 ton truck, a ute, and use as an office. The applicant has advised that there will be no mechanical work carried out on the site and there will be no storage of fuel.

Three employees are proposed, with parking for the employees located on an existing hard stand area near the shed. The proposed hours of operation encompass 6.30am to 7.00pm, 7 (seven) days a week. However, daily truck movements to and from the site vary from none to a maximum of four, depending on the day of the week.

The truck and employee vehicles are to enter and exit the site via an existing driveway from Canoona Avenue. No servicing or washing of vehicles on the site is proposed.

Description of the Site

The subject property has an area of approximately 2 hectares and is triangular in shape. The land contains a dwelling house, shed and dam. There is a sealed driveway and area surrounding the shed. Fencing has been erected in front of the shed, either side of the driveway, and landscaping has been provided. The shed has an area of 195sqm, with dimensions of 15m by 13m.

Canoona Avenue is a cul-de sac. Windsor Downs Nature Reserve is located at the rear of the land. Privately owned land is located fronting the road.

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 with development consent.

Community Consultation

Thirty submissions were received in relation to the proposed development. Of these, 12 (twelve) were in support of the proposed development, 17 (seventeen) objected to the proposal and 1 (one) provided comments from the National Parks and Wildlife Services.

The concerns raised in the submissions include:

- Traffic/Road Condition/Road Damage
- Covenants of Windsor Downs
- Amenity/lifestyle/Noise/Lights
- Pedestrian Safety
- Cleaning/Maintenance/Repairs of trucks on site
- Zoning Objectives
- Pollution
- Property Values
- Hours of Operation
- Expansion of Business

- Windsor Downs Nature Reserve
- Precedent
- Operating illegally

The concerns raised by the respondents are addressed in the assessment below.

Planning Assessment

A full assessment is available on the file. The following assessment covers the major issues only.

Provisions of Hawkesbury Local Environmental Plan 1989

The land is zoned Rural 1(c). The development is defined as a truck depot and is permissible within the zone with development consent. It is considered that the proposal is consistent with the objectives of the zone.

Traffic/Road Condition/Road Damage (raised by respondents)

Applicant's Response

"The applicant operates a range of different sized trucks of which the largest is permitted to have a maximum 12 tonne laden weight. The applicant has one truck of this capacity and the remainder of the trucks are smaller down to 1 tonne. The trucks when entering and leaving the Windsor Downs estate are empty.

The roads within the Windsor Downs estate are rural type roads constructed by the subdivider to Councils design standard. The roads are designed to except vehicles beyond the applicants limitations ie. Heavy concrete trucks, long buses and other delivery trucks operating within the estate.

None of the applicants trucks are articulated. There are no weight restrictions on the roads in Windsor Downs and never have been. Council's Engineering Department has verified this.

Our examination of the list of truck movements provided by one objector identifies a substantial number of vehicle movements which are unrelated to the subject property or business activity. The applicant has set a weekly routine which totals 8 vehicles movements over a weekly basis. The list of movements provided by the objector is vastly different to the applicants weekly routine and it is possible to identify from the objectors list deliveries of groceries and other products to various residences in Canoona Avenue. Other residences within Canoona Avenue receive deliveries in relation to their business or employment."

Comment: It is verified that there is no weight/load limit imposed for the roads in the Windsor Downs area.

The use of the local road system for 3 (three) trucks will not result in significant damage to the roads. An examination of Canoona Avenue revealed that there was damage to the road surface in the first section of this road. This is attributed to high use. The subject land is located at the end of Canoona Avenue. The road surface in this area is relatively undamaged, as this end of the road services fewer dwellings. As the development has been operated for the past 5 (five) years, this demonstrates that the

use of the roads by the 3 (three) trucks have no significant impact on the conditions of the road. It should also be noted that the service vehicles, such as garbage trucks, buses, concrete trucks, and delivery vehicles, which are comparable in size and weight, utilise the road system.

The applicant has advised that log books can be provided to demonstrate that a significant number of the truck movements identified in one of the submissions do not relate to the business carried out on the subject land. A schedule of the weekly truck movements provided indicates that the land is used for the garaging of the trucks only.

The site provides a sealed area at the front of the shed which provides adequate parking for employees and manoeuvring for the trucks. The existing shed provides room for the garaging of two of the trucks. The third truck is parked on a grassed area at the rear of the shed. It is considered that to reduce environmental impacts, the parking area at the rear of the shed should be sealed, as well as the access to this area.

The Roads and Traffic Authority's "Guide to Traffic Generating Developments" estimate daily vehicle trips for dwelling houses at a rate of 9 (nine) trips per dwelling. Canoona Avenue services 27 properties, which would generate approximately 243 vehicle movements per day (1701 per week). The proposal involves 8 (eight) truck movements per week, which is considered negligible in relation to the above estimation.

Covenants of Windsor Downs (raised by respondents)

Applicant's Response

"There is no covenant relating to the land prohibiting the parking of trucks on the site. For further verification please refer to Section 4.28 of the 88b Instrument."

Comment: It appears that the covenants applying to parts of Windsor Downs do not apply to this land.

Notwithstanding, Clause 34 of Hawkesbury Local Environmental Plan 1989 overrides any private covenant for the purposes of development consent.

Amenity/Lifestyles/Noise/Lights (raised by respondents)

Applicant's Response

"The applicant operates the business 24 hours a day, however, only 8 trucks movements occur within the estate on a weekly basis. All truck movements are scheduled between 6.30am and 7.00pm. This may vary in unforeseen circumstances such as a breakdown.

The trucks operated by the applicant are all registered vehicles checked annually by the Roads and Traffic Authority. This inspection checks the mechanical condition, emissions and noise of the trucks are checked and, if satisfactory, the vehicle is passed for registration.

The applicant has instructed the drivers of the trucks to minimise noise and speed of the trucks at ALL times regardless of the time of day."

Comment: The character of the area is rural residential. The adjoining properties are primarily used for residential purposes.

The scale of the proposal (ie three trucks, eight truck movements per week) is considered to be compatible with the rural residential character of the area. It is considered that the amenity of the locality will not be significantly impacted on if the number of trucks and the hours of operation are limited.

The application proposes operation times of 6.30am to 7.00pm, 7 days a week. These hours include 1 (one) truck movement at 6.45pm on Saturday, 1 (one) truck movement at 11.00am Sunday and 1 (one) at 6.00pm Sunday. Discussions took place with the owners in respect to the necessity of these truck movements. They advised that the movement on Saturday (departing) and Sunday morning (arriving) was the result of a trip by the owner. The departing time of 6.00pm on Sunday was chosen instead of a 5.30am start on Monday morning to minimise disturbance to the neighbourhood.

Safety - Children playing on or near the road, bike riders, pedestrians, horse riders (raised by respondents)

Applicant's Response

"The safety of children within the estate is paramount to the applicant, having children of his own. Concerns were raised by objectors regarding safety of children playing on the road. Being a large rural subdivision it would seem unnecessary to play on the road."

Comment: The safety of pedestrians and the like using the roadway is dependant on road conditions and driving in accordance with these conditions and speed limits of the area.

Cleaning/Maintenance/Repairs of trucks on site (raised by respondents)

Applicant's Response

"No mechanical repairs are carried out on the vehicles at the subject site. The applicants are serviced by a local truck mechanic in the South Windsor Industrial area. Service sheets and invoices are available if required. No oil changes, filters, greasing or lubricating is undertaken at the applicants address."

Comment: The application does not include the cleaning, repairs or maintenance of the trucks on the site. There will be no storage of fuels, oils or chemicals on the site. This will be ensured through the conditions of consent.

Contrary to Zoning Objectives (raised by respondents)

Applicant's Response

"Council will determine if the application is permissible within the zone in accordance with the requirements of HLEP 1989."

Comment: As discussed previously, the proposed development is considered to be consistent with the objectives of the Rural 1(c) zone. The landuse of 'truck depot' is permissible within the Rural 1(c) with development consent.

Pollution from Exhausts (raised by respondents)

Applicant's Response

"The trucks operated by the applicant are all registered vehicles checked annually by the Roads and Traffic Authority. This inspection the mechanical condition, emissions and noise of the trucks are checked and if satisfactory the vehicle is passed for registration."

Comment: It is considered that exhaust emission from 3 (three) trucks and 3 (three) employee vehicles will have no significant impact on the air quality of the locality.

Devalues Properties (raised by respondents)

Applicant's Response

No response.

Comment: There is no evidence that the proposed development would reduce the value of properties in the area.

Hours of operation of the company (Winston Express Haulage) advertise (yellow pages) 24 hour, 7 days a week service (raised by respondents)

Applicant's Response

"The applicant operates the business 24 hours a day, however, only 8 (eight) truck movements occur within the estate on a weekly basis. All truck movements are scheduled between 6.30am and 7.00pm. This may vary in unforeseen circumstances such as a breakdown."

Comment: It is considered appropriate that the hours of operation be limited to ensure that the proposal does not unreasonably impact on the amenity of residents in the locality. The application proposes operation times of 6.30am to 7.00pm, which is considered satisfactory in achieving this. The consent can be conditioned so that the proposal is limited to these hours.

Expansion of business/future increase in the number of trucks (raised by respondents)

Applicant's Response

"The applicant is seeking approval for the truck depot in accordance with the details submitted with the application. If any change occurs in the situation the applicant is aware that modification of the consent would be required to be approved by Council. In this event the applicant has no problem with conditions of the Consent limiting the operation of the truck depot to those parameters sought."

Comment: Any intensification of the use would require separate development consent

Impact on Windsor Downs Nature Reserve (raised by respondents)

Applicant's Response

“The proposed truck depot will be operated out of an existing shed approved on the property. Access to and from the property is via concreted driveways and access ways. In this regard there will be no generation of dust or erosion of open yard areas to impact on the immediate area or Windsor Downs Nature Reserve.”

Comment: It is considered that, due to the location of the proposed development in relation to the boundary with Windsor Downs Nature Reserve and the nature of the use of the activity, the proposed development will have no significant impact on Windsor Downs Nature Reserve.

Precedent (raised by respondents)

Applicant's Response

No response.

Comment: In the assessment of a development application, the cumulative impacts of developments within an area are considered. Each application is also assessed on its merits. The approval of one type of development in an area does not automatically guarantee approval of another such development nearby.

Operating illegally for 5 years (raised by respondents)

Applicant's Response

“The applicant has been conducting the business from the subject site for the past 5 (five) years. Although this is no means of substantiating the application before Council, until the current complaint, there has been no history of problems associated with the running of the business. It is unfortunate that the current complaint stem from a personal vendetta, relating to other issues within the estate.”

Comment: Although the site has been used for some years without approval, the issue for Council is determination of the present application on its merits.

National Parks and Wildlife Services (NPWS)

The NPWS requests that the issues outlined in the Guidelines for Development Adjoining NPWS Land be taken into account when Council assess the development application. A full assessment has been carried out and the development complies with the guidelines.

Conclusion

The proposed development is permissible in the locality and it is considered that it will have no significant impact on the amenity of the locality, the natural environment or road network.

The concerns raised in submissions do not warrant refusal of the application.

Given concerns raised by respondents it would be prudent to issue a time limited approval to allow the applicant to demonstrate compliance with conditions.

RECOMMENDATION:

That the application for a truck depot at 66 Canoona Avenue, Windsor Downs 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. DA95/02 and any supportive documentation, except as otherwise provided by the conditions of this consent.

Note: Modifications to the approved plans will require the lodgement and consideration by this organisation of a separate application pursuant to Section 96 of the Environmental Planning and Assessment Act, 1979.
2. The development approval being limited to a period of 12 months of the date hereon. Further application is to be made to extend the development beyond this period.
3. Compliance with the provisions of the Environmental Planning and Assessment (Amendment) Act 1979, and the Building Code of Australia.
4. 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.
5. The applicant shall make themselves aware of the Discrimination Against People with Disabilities Act (DDA) in order to assess their responsibilities and liabilities with regards to the provision of access for all people.
6. This consent only approves the storage three trucks that are to be parked within the nominated shed and adjoining area.
7. The parking area at the rear of the shed and access to this area is to be sealed using a minimum of two coat seal and is in accordance with the requirements of Hawkesbury Development Control Plan.
8. Landscaping is to be provided along the western boundary adjacent to the shed and rear parking area. Such landscaping shall adequately screen this area when viewed from adjoining properties. Plant used shall be endemic to the area.

Prior to Issue of Occupation Certificate

9. 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.
10. Submission of a Fire Safety Certificate

Use of the Site

11. Movement of vehicles associated with the truck depot, including employees vehicles, are to occur only between the hours of 6.30am and 7.00pm, 7 days a week. Truck movements on weekends are limited to 1 (one) on Saturday and 2 (two) on Sunday.
12. No washing, servicing or repairs 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 and in accordance with WorkCover requirements.
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 development shall be conducted in such a manner so as not to interfere with the amenity of the neighbourhood with respect to noise, vibration, odour, dust, waste water, waste products or otherwise.
16. 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.
17. The subject development, including landscaping, is to be maintained in a clean and tidy manner.
18. All landscaping shall be permanently maintained in a good condition and in accordance with the intent of the landscaping plan.

ATTACHMENTS:**AT-1** Locality Plan**AT-2** Site Plan

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Locality Plan

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Site Plan

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Item: **46**

ITEM: 46 **Enlarge Dam, Clear Trees and Use of Property for the Growing of Cut Flowers, Lot 7 DP7571, 89 Boundary Road, Glossodia**

FILE NUMBER: DA0054/02/EVD/ENE28NAX.V06

Applicant: McKinlay Morgan & Associates Pty Ltd
Applicants Rep: As above
Owner: Mrs JD Bugeja and Mr BJ Bugeja
Stat. Provisions: HLEP 1989, SREP No. 20, SEPP No. 44
Area: 20.190Ha
Zone: Rural 1(b) under Hawkesbury Local Environmental Plan 1989
Advertising: First exhibition 6 February 2002 to 22 February 2002
Date Received: 17 January 2002

Key Issues: Rural amenity/visual impact
 Noise
 Traffic
 Spray drift
 Tree removal

Action: Approval, subject to conditions

REPORT:

Introduction

An application has been received seeking consent to enlarge the existing dam to 12 megalitres, clear native vegetation and establish a cut flower farm.

The application is being reported to Council due to the nature of the submissions received. This report details the proposal, the statutory situation and provides an assessment of the application. Based on the assessment the application is recommended for approval, subject to conditions.

The Proposal

The application seeks consent to enlarge the existing dam to 12 megalitres, clear native vegetation and establish a cut flower farm.

The existing dam size is approximately 10 megalitres with the extensions increasing the dam capacity to 12 megalitres. The dam is located in a natural drainage depression.

The application was identified as integrated development requiring a water licence from the Department of Land and Water Conservation and a Part 3A permit under the Rivers and Foreshores Improvement Act. The water licence is required as the dam size exceeds the harvestable maximum right of the property and the Part 3A permit is required due to the dam extensions being within 40m of a natural watercourse.

A flora and fauna report was submitted with the application to address the removal of approximately 300 trees from the subject property to allow for the dam extension and the cut flower farm.

Subject Land and Surrounds

The subject site is regular in shape and has a site area of approximately 20 hectares. The site has a road frontage of 221m.

The site is occupied by two residences, a number of sheds and four (dams). The large shed to the north will house the coolroom. The dam proposed to be enlarged is located at eastern end of the site. There is dense vegetation to the east and west of the site with scattered vegetation in between.

The site is surrounded by rural activities with vacant rural land to the east, and horse agistment to the north and south. Boundary Road has a number of rural activities which comprise a mushroom farm, market gardens and horse related activities.

Statutory Situation

Hawkesbury Local Environmental Plan 1989

The subject site is zoned Rural 1(b) under Hawkesbury Local Environmental Plan 1989 (HLEP 1989). The zone permits with development consent, the construction of a dam, tree removal and the establishment of a cut flower farm which is defined as Intensive Agriculture.

The proposal generally complies with the provisions of HLEP 1989 in particular Clause 44 which relates to Intensive Agriculture. A detailed assessment under HLEP 1989 is held on file.

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

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

State Environmental Planning Policy No. 44 - Koala Habitat Protection

There is a known feed tree species on the site - Forest Red Gum. 28% of the site contains this vegetation, comprising potential Koala Habitat. Most of this vegetation will be maintained as part of the proposal and as part of the requirements of the DLWC. The site is not considered core habitat, therefore Council can grant consent to the development application.

Integrated Development

As discussed above, the application has been identified as Integrated Development and Department of Land and Water Conservation has an approval role in relation to the application. The Department has provided General Terms of Approval meaning that they will permit the enlargement of the dam and issue a licence when requested.

A condition of consent issued by DLWC is that all woodland on the eastern side of the property be retained and the dam wall be rebuilt in its current position. This equates to the retention of approximately 148 trees which reduces the potential impacts on tree removal and concerns raised by residents.

Community Consultation

The application was notified initially in accordance with the Notification Chapter of the DCP for a period of 14 days until 22 February 2002. There were 3 (three) submissions received.

Whilst awaiting amended plans it was noted that due to the application seeking an approval from the Department of Land and Water Conservation for a water licence that the application needed to be notified in accordance with the Environmental Planning and Assessment Regulations 2000. The application was notified for 30 days and in the local paper. There were 4 (four) submissions received, three were previous respondents.

The concerns raised in the submissions include:

- Chemical and fertiliser drift
- Tree removal
- Use of guns to scare birds
- Noise of pumps and machinery
- Traffic
- Council is powerless to control such activities
- Visual impact of market garden
- Peaceful environment eroded
- Noise of cattle grid on site when vehicles enter the property.
- Downstream effect of fertilizers and pesticides
- Hours of operation
- Water supply and water quality to other properties

The above matters are addressed in the planning assessment below.

Planning Assessment

The following are the relevant matters for consideration under Section 79C of the EP& Act 1979. A complete assessment is contained on the file.

Context and Setting (*issue raised by respondents*)

There was concern that the proposed market garden will cause a visual impact to the area. The area is primarily agriculture which makes up the landscape. The establishment of the market garden is unlikely to create a visual impact but rather enhance the rural qualities of the area. Most of the vegetation will be maintained along the eastern boundary which is visible from Boundary Road, therefore the rural streetscape maintained. The primary objective of the rural 1(b) zone is to provide for agricultural uses.

Access, Transport and Traffic *(issue raised by respondents)*

The existing access is considered satisfactory. The proposed development will not create unreasonable traffic demands on the surrounding street pattern. The proposal requires the use of the existing access track which is currently part bitumen and part gravel. A condition of consent will require all weather access to be provided.

The application indicates that there would be two vehicle movements per day and once per month a ten tonne truck coming to the site to make a delivery. There are no employees on a regular basis. The anticipated vehicle movements are not considered excessive given the nature of the operation.

Air and Microclimate *(issue raised by respondents)*

There was concern raised regarding the impact of fertilisers and pesticides used on the flower farm on downstream properties and adjoining properties. The applicant advises *"that the need to spray is to be kept to a minimum and only on a needs basis. The current practice would indicate that fungicides and insecticides would be used say on a twice yearly basis. Herbicides would be used occasionally for weed control, mainly around the edge of crops and selectively. Our client would stress that the use of sprays is kept to a minimum and that the likelihood of any drift is negligible, as the plants are quite short and spray pressures are low. The current farm management utilises very little spraying in the production of flowers."*

It is considered that due to the minimal use of pesticides, farm management and the vegetation on the site that there would be minimal impacts from spray drift. There are conditions of consent by the DLWC that ensure that water quality into the dam is such not to create a significant impact on the environment.

It is recommended that the area for cut flower farm on the southeast boundary be deleted to ensure that there is no farming adjacent to the property to the south, this would also provide additional areas to incorporate replacement planting into the vegetation management plan.

Flora and Fauna *(issue raised by respondents)*

A Flora and Fauna report prepared by Blue Mountains Wilderness Trust was submitted with the application to address the eight part test and the impacts of the tree removal on the subject site.

The report concluded that although the site contains Cumberland Plain Woodland, the eight part test concluded that a species impact statement was not required. The report addressed the need to remove 303 trees as part of the proposal. The number of trees now required after DLWC conditions is approximately 150 trees. In addition, the applicant has submitted a vegetation management plan to address the replacement of the trees removed to ensure rehabilitation and ongoing maintenance.

Summary of the recommendations of the consultant include:

- A weed control program
- Erosion and sediment control structures are to be installed
- Vegetation Management Plan
- Diversion channel and berm to protect the western vegetation patch, and diversion channels and berms to direct irrigation water back to the water storage at the eastern dam.

Given the conditions imposed by the DLWC regarding tree protection and others matters raised by the respondents it is considered that the cleared area to the south of the dam proposed for cut flowers be used for replacement planting and part of the vegetation management plan. This cleared area is adjacent to a dwelling and replacement plantings instead of the flower farm will ensure that any impacts associated with the flower farm is kept to a minimum to the southern residence.

Noise and Vibration *(issue raised by respondents)*

There was concern raised that the proposed development will generate noise from the pump used on the dam, machinery on the site and vehicles entering over the cattle grid.

The pump used to pump water for irrigation of the flower farm will be the same pump currently used on the site. There are no records of complaints received regarding the noise of the existing pump. Notwithstanding the above, the existing pump is not used for irrigation of crops currently and as a result of the proposal may be required over longer periods. As a precautionary measure the pump should be enclosed in a sound proof pump house and this can be imposed as a condition of consent.

Noise generated from machinery will not be unlike other machinery used on other properties within the area. The removal of the cut flower farm would be via hand picking and the owner would move around the farm on a small utility. It is unlikely that the small utility over the property would generate significant noise. The other machinery would be deliveries which would be done during the day with the latest being 10pm which is not considered unreasonable. The owners 3 tonne truck would be used to take the flowers to market which would be done before 10pm and this vehicle currently is used on the property. It is reasonable to impose that no activity be carried out between the hours of 10pm and 6am Monday to Sunday.

There was concern raised that the existing cattle grid generates noise, this grid is directly adjacent to the residence to the south. It is considered that this can be a noise nuisance and it is recommended that the applicant remove it as part of the proposal. This can be imposed as a condition of consent.

There was concern that the applicant may intend to use hail guns which would generate noise and scare the residents. It is unlikely that guns are required as part of farm management. A condition can be imposed that hail guns not be used on the site.

It is considered that the proposal is unlikely to generate a significant amount of noise. Standard noise conditions can be imposed together with reasonable hours of operation. It is recommended that the applicant submit a Farm Management Plan to ensure that the farm is properly managed together with conditions of consent imposed by Council.

Conclusion

The proposal is promoting agricultural activities in an area that the zone permits.

The issues raised by the respondents in relation to the noise, traffic and spray drift can all be addressed through conditions of consent and the requirement of a farm management plan to be submitted. It is recommended that the consent be issued as a deferred commencement consent pending the submission of a Farm Management Plan.

The concern regarding tree removal has been addressed through the requirements of the Department of Land and Water Conservation and the Vegetation Management Plan submitted by the applicant.

RECOMMENDATION:

That the application for the establishment of intensive agriculture (cut flower farm), extensions to existing dam to 12 ML and removal of native vegetation be approved as a deferred commencement subject to the following:

- A. Upon compliance with the conditions appearing in Schedule 1, and with the issue of confirmation to that effect in writing from Council, this "Deferred Commencement" consent shall commence to operate as a development consent inclusive of all conditions appearing in Schedule 2 pursuant to Section 80(3) of the Act.
- B. This "Deferred Commencement" consent will lapse in six months from the date of this Consent unless all conditions appearing in Schedule 1 have been complied with.

Schedule 1

Submission of a Farm Management Plan as recommended and compiled by NSW Agriculture. The Farm Management Plan shall address (but not limited to):

- Spray drift
- Pesticides/herbicide management
- Noise
- Traffic movement
- Complaints
- Relevant conditions of consent

Schedule 2***General***

1. To confirm and clarify the terms of this approval, the development shall be carried out in accordance with the approved stamped plans (prepared by McKinlay Morgan and Associates Pty Ltd, numbered 90788:BP:1 dated 21 March 2002 and 90788:E:1 dated 16 January 2002) submitted with Development Application No. DA54/02 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.

3. The dam shall be constructed such that the grades of the batters are consistent with Council's Dam DCP, being 3:1 (one in three) (v:h) on the downstream side. The upstream side shall be no steeper than 1:4 (one in four), i.e. (1m [one] vertical, 4m [four] horizontal). All batters shall be revegetated using seeding or turf. No trees are to be placed on the structure.
4. The width of the dam crest is to be a minimum of 3m (three) for the first 3m (three) of a dam wall and is to increase in width by 0.5m for every metre above 3m (three).
5. A minimum of 1.0m is to be established for a freeboard and this is to increase by 10% (ten) for every metre over a 3m (three) high wall.
6. The material used to construct the embankment is to be sufficiently impervious to keep seepage low and to be stable. A soil with 25% (twenty five) clay content is ideal in this respect to form an impervious barrier.
7. The width of the spillway outlet is to be not less than the inlet width. The spillway is not to direct flows onto the downstream toe. The spillway area is to be grassed, stable and able to accept runoff flow. It will be necessary to turf the spillway area. The spillway cut batter should have a maximum steepness of 1.5:1.
8. The dam is to be constructed with a waterproof clay lining and the depth is to be kept above the water table in order to minimise the threat of groundwater contamination.
9. The following soil types are not to be used in the construction of the dam:
 - (a) sand;
 - (b) gravels;
 - (c) organic soils; and
 - (d) peat.
10. The pump used on the eastern dam is to be enclosed in a suitably sound proofed structure.
11. The Vegetation Management Plan shall be implemented within 6 months of removal of the trees and commencement of the activity on the site.

Department of Land and Water Conservation Conditions

DLWC - General and Administrative Issues

12. The licensee shall allow the Department of Land and Water Conservation, or a person authorised by it, full and free access to the works, either during or after construction, for the purpose of carrying out inspection or test of the works and its fittings and shall carry out any work or alterations deemed necessary by the Department for the protection and proper maintenance of the works, or the control of the water to prevent wastage and for the protection of the quality and prevention from pollution or contamination of other waters.
13. The applicant shall not allow any tailwater drainage to discharge into or onto
 - any adjoining public or crown road;
 - any other persons land;

- any Crown land;
 - any river, creek or watercourse;
 - any groundwater aquifer;
 - any area of native vegetation as described in Native Vegetation Conservation Act 1997;
 - any wetlands of environmental significance.
14. Works used for the purpose of conveying, distributing or storing water taken by means of the authorised work shall not be constructed or installed so as to obstruct the reasonable passage of floodwaters flowing into or from a river.
15. The pumping and ancillary equipment and pump site shall be, at all times, properly secured and/or sealed so as to prevent any leakage of petroleum based products, and/or noxious material from entering any river or lake. Typically, a bunding wall of hay bales or other approved material shall be installed around the pumping plant to avoid contamination of any river or lake through spills or leaks of oils, fuels, or greases.
16. The existing profile of the channel and bank of any watercourse or drainage depression must not be disturbed any more than is necessary in order to site and maintain the authorised work. Any area that is disturbed when carrying out such work shall be stabilised and maintained by vegetation cover, stone pitching or any other approved material as directed and to this Department's satisfaction so as to prevent the occurrence of erosion.
17. The size and location of the storage as shown on a plan at the time of licensing shall be retained in the Office of the Department of Land and Water Conservation shall not be altered, without prior written approval from the Department.
18. The work shall be constructed and maintained in such a manner as will ensure its safety and as will preclude the possibility of damage being occasioned by it, or resulting from it, to any public or private interest.
19. The level of the bywash crest shall be fixed so as to achieve the design storage capacity and safely pass excess flows. Levels shall be relative to a temporary bench mark established near the work. These particulars shall be provided to, and retained by, the Department of Land and Water Conservation.
20. The land immediately surrounding each storage shall be revegetated with a range of suitable local native species to ensure that surface runoff entering the storage does so in a controlled manner. Planting of species shall include a range of grass, shrub and tree species.
21. Any planting shall be maintained and fenced off from grazing animals for a minimum of twelve months to facilitate establishment of all plants.

DLWC - Conditions Specific to DA0054/02

22. All inflow and outflow drainage lines shall be maintained with sufficient vegetation coverage to facilitate optimum water quality entering the dam.
23. All woodland at the eastern end of the property be retained and the dam wall be rebuilt in its current position. Selective removal of trees is appropriate where required for machinery access.

24. The Silt Dam is to be located an adequate distance from the watercourse (to be determined prior to the issue of the Part 3A Permit). All water quality treatment for the site is to be addressed before discharge into the 12 Megalitre dam and the watercourse.
25. The By-Pass Channel is to be designed and implemented in a manner which allows for the continuity of natural stream processes. The Department requires the By-Pass Channel be stabilised and vegetated with a diverse range of native plant species local to the area.
26. The construction technique adopted to repair and enlarge the dam is to ensure that disturbance to the existing watercourse and native vegetation is kept to an absolute minimum.
27. All disturbed soil surfaces are to be stabilised and rehabilitated immediately it is possible to do so with sterile exotic cover crops or couch turf. Kikuyu is not permitted.
28. If disturbance is deemed to be excessive, the Department may require the preparation and implementation of a Vegetation Management Plan and remedial works.
29. A *Rehabilitation Plan* is to be prepared by suitably qualified persons, with knowledge and experience in the preparation of such plans, in consultation with, and with the approval of DLWC **prior to the issue of the water licence**. The plan is to be in accordance with, but not limited to, the "Draft Guidelines for the preparation of a Vegetation Management Plan".
30. The *Rehabilitation Plan* must detail how the existing vegetation in the watercourse and within 40m, measured horizontally from the top of the banks, will be protected and rehabilitated following any disturbance due to the approved works. The plan must include methods of stabilising and revegetating the By-Pass Channel. Rehabilitation of the area is to consist of a diverse range of native plant species local to the area and is to be densely planted and fully structured (ie. trees, shrubs and groundcovers). Trees and shrubs are to be planted at approximately equal numbers at an average density of one plant per square metre. Groundcover species are to be planted at an average density of at least four plants per square metre in addition to trees and shrubs.
31. The area covered by the *Rehabilitation Plan* must be maintained and monitored for a period of two years following final planting and primary bush regeneration works to ensure successful native vegetation establishment. Maintenance must include any watering, weed control, replacement of plant losses, disease and insect control, mulching etc., necessary for successful plant establishment.
32. A brief and concise report addressing the performance criteria as specified in the *Rehabilitation Plan* and any problems implementing the land and means to overcome these shall be forwarded to DLWC every six months for the duration of the maintenance period.

33. A *Soil and Water Management Plan* (S&WMP) for all site works is to be prepared by a suitably qualified person(s) with knowledge and experience in the preparation of such plans, in consultation with, and with the approval of DLWC **prior to the issue of the Part 3A Permit**. The S&WMP is to cover all aspects of soil and water management requirements for the site that could impact on the stream and must include details of staging, monitoring, management responsibilities, maintenance and decommissioning requirements. The S&WMP must meet the requirements outlined in the NSW Department of Housing's "Managing Urban Stormwater: Soils and Construction" (1998) manual (the "Blue Book").

DLWC - Formal Application Issues

34. It is anticipated that a fee would apply to any licence issued.
35. Licences under Part 2 of the Water Act generally fall due for renewal every five years.
36. Design plans/survey of the licensable works will be required.

Prior to Commencing Works

37. Submission of a revised Vegetation Management Plan incorporating the requirements of this consent and the conditions imposed by the Department of Land and Water Conservation. The area nominated for the cut flower farm on the southeast boundary is to be deleted incorporated into the replacement planting.
38. To prevent stormwater from the development causing a nuisance to downstream properties, sediment control measures shall be installed in accordance with Council's development control plan titled "Soil Erosion Sediment Control" prior to the commencement of site works.

Note: Measures may include the installation of geofabric fencing, staked straw bale walls located on the contour down-slope of the construction, sediment detention basins, earthen contour banks and the like.

39. 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) the capacity and effectiveness of runoff and erosion control measures shall be maintained at all times;
 - (d) 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;
 - (e) measures shall be applied to prevent site vehicles tracking sediment and other pollutants onto any sealed roads serving the development; and

- (f) 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) upslope 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

satisfactory disposal of intercepted sediment.

40. 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.

During Construction

41. The cattle grid is to be removed from the access way to the site.
42. To ensure that site works do not cause soil erosion, site works involving construction of batters, embankments, cuts, mounds, and the like, shall incorporate measures for their restraint and stabilisation, with the use of physical barriers and planting of suitable vegetative cover.
43. All trucks entering or leaving the site shall have their trays suitably covered to prevent spillage from the truck onto the road.
44. All fill to be adequately compacted by track rolling or similar.
45. 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.
46. 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.
47. No burning of demolition or construction material being carried out on the site.
48. To reduce nuisance to the surrounding properties, all demolished material and excess spoil from the site shall be disposed of to a location and in a manner to the approval of this office (Note: no material shall be burnt or buried on the site).
49. 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.
50. Any overflow from the proposed dam must not concentrate water on any adjoining property.

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

Use of the Site

52. The activity is to operate in accordance with the details contained within the approved Farm Management Plan.
53. 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.
54. No activity associated with the cut flower farm be carried out between the hours of 10pm and 6am Monday to Sunday.

ATTACHMENTS:

AT-1 Locality plan and location of respondents

AT-2 Site plan

ENVIRONMENT

Meeting Date: 28 May, 2002

Item: **46**

Locality Plan

ENVIRONMENT

Meeting Date: 28 May, 2002

Item: **46**

Site Plan

oooO END OF ITEM 46 Oooo

ITEM: 47 **Intensive Agriculture (Market Garden), Lot 1, DP432723, 95 Godalla Road, Freemans Reach**

FILE NUMBER: MA1224/01/EVD/ENE28NAX.V01

Applicant: Charlie Muscat
Applicants Rep: Mullane Planning Consultants
Owner: Charlie Muscat
Stat. Provisions: Hawkesbury Local Environmental Plan 1989
 Sydney Regional Environmental Plan No. 20
Area: 4.087ha
Zone: Rural 1(b)
Advertising: 7 November 2001 to 22 November 2001
Date Received: 8 October 2001

Key Issues: Chemical exposure/overspray
 Noise impact
 Amenity
 Run off
 Suitability of site

Action: Approval, subject to conditions.

REPORT:

Introduction

The application seeks approval to establish a market garden (Intensive Agriculture) and dam at 95 Godalla Road, Freemans Reach. This report details the proposal, the statutory situation and provides an assessment of the application.

The application is being reported to Council at the request of Councillor Williams.

The Proposal

The Proposal is to establish a intensive agriculture activity which involves the following:

- Market garden (carried out on 2.2ha of the site);
- Construction of a new 7 (seven) megalitre dam;
- Removal of native vegetation (approximately 52 [fifty two] eucalypts and wattle clumps);
- Provision of boundary landscape buffer zones (5m [five] - 15m [fifteen]); and
- Future area 50m [fifty] x 50m [fifty]) for house and shed.

The layout of the development is shown on Attachment A2.

Subject Land and Surrounds

The site is located on the north-eastern corner of Godalla and Joshua Roads and is irregular in shape. It has a 166m (one hundred and sixty six) frontage to Godalla Road and 210m (two hundred and ten) to Joshua Road. The site is currently vacant and contains two small dams and scattered native vegetation. It slopes from the corner of Godalla and Joshua Road to the rear north-west corner.

The site is surrounded by a mixture of land uses including rural/residential uses (dwellings only) and an animal establishment that adjoins the western boundary and a nursery that is located to the south.

Statutory Position

The site is zoned Rural 1(b) under HLEP 1989 which permits Intensive Agriculture with Council consent.

Sydney Regional Environmental Plan No. 20 (No. 2-1997) Clause 44(3) and (4) relates to Intensive Agriculture.

It is considered that the proposal is consistent with the aims, as the general and specific planning policies, recommended strategies and development controls included in the LEP and REP.

Community Consultation

The application was publicly exhibited for 14 (fourteen) days in accordance with Council's Development Control Plan (Public Notification). 4 (four) submissions were received.

The respondents raise concerns about:

- Intensive Agriculture not appropriate or viable for the site area given the lack of town water, poor shallow soil types.
- Potential for chemical exposure to local residents and impact on human health in the locality.
- Noise impact from machinery especially early in the morning.
- Contamination of drinking water caused by overspray of chemicals (pesticides).
- Impact on amenity and lifestyle of the neighbourhood.
- Intensive Agriculture not suitable for area which is predominantly rural/residential.
- Odour impact from use of chemicals and fertilisers.
- Nutrients runoff to adjoining sites causing problems to other dams and livestock water supply.
- Impact on adjacent animal stud establishment with chemical residues.
- Removal of native vegetation.

In response to these concerns, the applicant's consultants (Mullane Planning Consultants) have addressed each issue raised and provided a Farm Management Plan which has been modelled on the Farm Management Plan as recommended and compiled by NSW Agriculture. The Farm Management Plan provides details on how the activity will manage a range of potential impacts such as:

- Chemical use;
- Fertiliser-Management;
- Odour;
- Noise;

- Water (irrigation) management;
- Waste (irrigation) management;
- Stormwater management;
- Dust;
- Community Liaison.

The relevant contents of the plan are discussed further in detail in the report.

Planning Assessment

The following are the relevant matters for consideration under Section 79C of the EPA Act 1979. A complete assessment is contained with the file.

Impact on the Environment (Raised by Respondents)

Chemicals/Pesticides (Raised by Respondents).

Concerns

The respondents raised concern about to the potential impact of chemicals and pesticides used on the farm on the drinking water, which is collected from the roofs of the dwellings shed as well as the dams on surrounding properties that are used for livestock.

The chemical/pesticides used also are seen to have potential impact on the health of local residents with spray drift from the farming activity.

Applicant's Response

The applicant's consultant has indicated that the problem would only occur when wasteful amounts of chemicals and fertilisers are used. The costs of chemicals and fertilisers are so high that a market garden operator risk complete lack of crop-viability resulting from over-use of chemicals, fertilisers and pesticides.

Comment: The Farm Management Plan (FMP) provides details on the management of chemicals which involves the use, application, storage disposal and recording.

(i) Chemical Use

The FMP indicates that the applicant will attend a course to obtain a Farm Chemical Certificate and will be then competent in respect to the correct selection, calibration and application of chemicals so as to create negligible impacts. The certificate will allow the applicant to be capable of assessing the risk to the safety of his farm, his family, his neighbours, the environment and consumers. Mr Muscat would be capable of operating with duty of care and complying with the Pesticides Act 1999.

The training would enable the operator to minimise the potential risk of farm chemical drift to adjoining properties by only spraying when necessary with an appropriate product and in suitable weather conditions.

(ii) Chemical Storage

The chemicals will be stored in a lockable waterproof facility with warning sign and impermeable floor to prevent spills or leaks running into surface waters or leaching into ground waters.

An Emergency Response Plan for chemical spills will be provided in the storage area. The chemicals purchased will be only on a 'as needs basis' or sufficient for one season to reduce the quantity of chemicals stored on the property.

(iii) Chemical Sprayer

The sprayer used will be hand held and will be regularly maintained and calibrated to ensure correct chemical dosage and coverage is achieved.

(iv) Chemical Drift Management

The establishment and management of a hedge of Melaleuca and Callisteman along the property boundary will contain any drift that has escaped from outside weed management.

(v) Recording of Chemicals

Material Safety Data Sheets will be kept for the products stored and used on the farm.

A register of farm chemical applications will be kept. The details recorded will include chemical used, amount mixed and prevailing weather conditions.

(vi) Disposal of Chemicals

Empty farm chemical containers will be recycled. Unwanted or deregistered farm chemical concentrate will be disposed of at an approved Chemcollect site.

The methods of management outlined in the FMP in respect to the chemicals/pesticides have been modelled on a Farm Management Plan as recommended and compiled by the NSW Agriculture.

The plan demonstrates how the farm will be operated to ensure any potential impact is reduced and suitably managed and controlled.

Odour Impact (Raised by the Respondents)

The respondents are concerned about potential odours from fertilisers such as dynamic lifter, blood and bone and poultry manure to the soil.

Applicant's response

The proposed farm will operate in accordance with the FMP which is designed to ensure the various impacts are constantly being satisfactorily addressed.

Comment: The main source of odour from market gardens is generated from the use of various chemical and natural fertilisers such as dynamic lifter, blood and bone and poultry manure.

The FMP provides details on the management and use of fertilisers. The FMP indicates that Mr Muscat will regularly have the soil analysed to monitor excessive amounts of fertiliser (nitrogen and phosphorus) are not applied to crops and end up in the ground or surface waters.

Any organic animal manures will be purchased on an 'as needs basis' to avoid long storage or stockpiling periods on the farm. Any small manure piles will be covered with plastic to avoid odour release.

The location of the piles will be well away from neighbouring residences. Any animal manures used will be well composted to avoid potential microbe contamination of fresh product. Crop debris will be worked into the soil or composed in a dedicated remote area of the property. The potential nuisance of odour generated will be reduced by the following management practices.

- (i) Fertilisation will be incorporated into the drip irrigation system (fertigation) which will not generate any odour. The organic fertilisers will be stored in remote dedicated areas and covered with plastic to reduce the manure becoming damp which is a contribution to the odour.
- (ii) The methods of odour management outlined in the FMP are reasonable and should reduce the potential for odour generation and impact on the surrounding properties.

Stormwater Management and Runoff (Raised by Respondents)

The respondents are concerned that runoff from the farm will contain nutrients and have the potential to impact on adjoining dam's water quality and health of residents and livestock.

Applicant's Response

The management of water on the site both water and waste irrigation is outlined FMP.

Comment: The proposed farm will construct various diversion drains and swales to control any runoff. The diversions banks and swales have been designed to cater for a 1:100 year storm event.

The irrigation of the farm will involve a drip system which uses substantially less water than conventional overhead sprinklers. The drip system is targeted on the crop and as a result no overspray of water occurs and no significant wastage of water through runoff.

The FMP has identified a water recycling program. The proposed dam will be used to store the recycled water.

Nutrients and sediment will be captured in the nutrient and sedimentation traps before reaching the dam.

Runoffs with nutrients and any pesticides will be minimal because of the low volume and application rates and drip irrigation system. The management practices to be implemented will reduce the potential for stormwater runoff.

The various drains and banks to capture and ensure that runoff remains on the site have been designed to cater for a 1:100 year storm event. This is considered adequate for the proposal and reduce the potential risk of nutrient laden water running off the site into adjoining properties.

The capacity of the dam being 7 (seven) megalitres is adequate to capture all the runoff generated by the site.

Noise Impact (Raised by Respondents)

The respondents were concerned about the potential noise impact generated by the use of machinery and the times of operation being early in the morning with the loading of trucks with produce to be taken to the markets. The location of the dwelling to the west is approximately 8m (eight) from the boundary.

Comment: The main generation of noise would be from vehicle movements and farm equipment including the irrigation pump.

The FMP has suggested that delivery and distribution of goods and crops will attempt to avoid adverse noise created by early morning or evening vehicle movements. The irrigation pump will be housed in a purpose built shed and the irrigation times as far as possible will be restricted to daylight hours.

The equipment and machinery will be maintained so that noise levels do not exceed the manufacturer's specifications.

Tree Removal (Raised by Respondents)

The respondents have raised concern with the removal of trees and native vegetation on the site in order to establish the market garden.

Comment: The development will require the removal of approximately 52 (fifty two) eucalyptus and clumps of wattles.

The application was accompanied by a report which made an assessment of the flora and fauna and the impact of the removal of the native vegetation. The assessment has identified several areas on the site that contain remnants of Cumberland Plain Woodland.

The remnant areas are quite degraded due to grazing and weed invasion. The 8 (eight) point test concluded that the remnants do not represent a significant area of the ecological community. Several areas on the site still contain a reasonable number of

native plant species and are considered locally significant and worthy of retention. These areas have been retained as buffer areas along the Godalla and Joshua Roads, and the north-western corner of the site.

The development, while removing some native vegetation, is retaining the more significant areas on site which also provide a suitable landscape barrier to the market garden area.

Dam Size (Raised by Respondents)

The respondent raised the concern that the size of the dam exceeded the Department of Land and Water Conservation (DLWC) requirements for total storage capacity.

Comment: The application proposes a 7 megalitre dam which is “integrated development” under the Water Act 1912. The application was referred to the Department of Land and Water Conservation which has issued General Terms of Approval for the water licence.

These have been incorporated into the conditions of approval.

Suitability of the site (Raised by Respondents)

The respondents were concerned that the use of the site for intensive agriculture (market garden) was not appropriate or viable given the lack of town water supply, and the poor shallow soil type which would make the growing of crops difficult.

Applicant's Response

NSW Agriculture has indicated that the soil can be classified by texture as loam and is suitable for vegetable growing.

In respect to water supply, NSW Agriculture has suggested a well managed drip irrigation system can be an effective and efficient means of watering vegetables, providing a suitable filtration system, which is used to prevent blockages.

They consider the storage volume required for the drip irrigation system is about 3 (three) mega litres per hectare of crop. Therefore, 7 (seven) megalitres of storage is required.

Comment: The advice from NSW Agriculture confirms that the site is appropriate and viable for growing of vegetables.

Context and Setting (Raised by Respondent)

The respondents consider that the existing context and setting of the immediate area is not suitable for an intensive agriculture activity. They consider the area to be rural/residential in character with the majority of the properties used for residential purposes.

The establishment of an intensive agricultural activity is inconsistent with the existing context and setting of the area.

Applicant's Response

The individual choice for owners to use their property for residential purposes is not disputed but the individual choice does not bring with it any rights to restrain other owners from using their land for rural production purposes.

The provisions contained in Regional Environmental Plan No. 20 emphasises that:

- Priority is to be given to agricultural production in rural areas.
- Rural residential development should not reduce agricultural sustainability and should give priority to agricultural production in rural zones.

Comment: The site is zoned Rural 1(b) under Hawkesbury Local Environmental Plan (HLEP) 1989.

One objective of the zone is:

“To primarily provide for agricultural uses and animal establishments.”

Council has prepared the Hawkesbury Sustainable Agriculture Development Strategy (HSADS), which identifies the need to provide a local environment conducive to the maintenance and expansion of sustainable agriculture in the Hawkesbury. The strategy places the site within the mixed agriculture land use designation. The mixed agriculture designation reflects the diversity of the uses whilst recognising that the predominant use is for agriculture.

The current zone and future zone for the site reflects that agriculture should be promoted in the area and also should be carried out in an environmentally sensitive nature using the “best practice” procedures and methods.

The main issues with intensive agriculture are the potential environmental impacts. The applicant has provided a detailed Farm Management Plan, which is based on the NSW Agriculture Farm Management Plan, to ensure that the activity is operated in a manner that the potential for impact on surrounding properties is reduced and that the best practice procedures for management of the farm are incorporated into its operation.

It is considered that the development is consistent with the zoning of the site and is appropriate for the site.

Complaints from Neighbours

The Farm Management Plan provides a section that deals with Community liaison which outlines the procedure in the event complaints are received in respect to the activities operation.

The procedures identified involve:

- inform Council and neighbours of any problems causing unavoidable excessive odour, dust, noise and advise what is being done to rectify the occurrence, and give some indication on how long the neighbours will be impacted;

- where a complaint is found to be justified gather relevant evidence, and identify and implement strategies to remedy the problem;
- evaluate the risk of further problems and recommend further action;
- inform the complainant of the outcome of the investigation as well as the action that have been taken to avoid further problems.

This is an important component and the above procedures provide a clear process of dealing with complaints and any nuisances caused by the activity. The procedures are attempting to create communication between the neighbours and the operator of the activity.

Conclusion

The site is zoned 1(b) which aims to promote agricultural uses.

This is further reinforced in the HSADS report. The HSADS report has been adopted by Council and forms the basis of the Draft LEP for rural zones that will be publicly exhibited shortly.

The concerns raised by the respondents mainly relate to potential impacts that may be caused by poor management of the activity. The applicant has prepared a detailed Farm Management Plan which provides details of how the various aspects of the farm will be managed to avoid potential impacts on the amenity of the area. The plan is part of the application and has been included in the conditions of approval.

The plan demonstrates that with suitable procedures and practices being following the market garden can operate with minimal environmental impact.

RECOMMENDATION:

That the application for the establishment of intense agriculture (market garden), 7 (seven) mL dam and removal of native vegetation 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. MA1224/01 dated 8/10/01 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. Separate approvals are required for any structures proposed for the site which are not included in this approval.
3. Compliance with the provisions of the Environmental Planning and Assessment (Amendment) Act 1979, and the Building Code of Australia.

4. The dam shall be constructed such that the grades of the batters are consistent with Council's Dam DCP, being 3:1 (one in three) (v:h) on the downstream side. The upstream side shall be no steeper than 1:4 (one in four), ie. (1m [one] vertical, 4m [four] horizontal). All batters shall be revegetated using seeding or turf. No trees are to be placed on the structure.
5. The width of the dam crest is to be a minimum of 3m (three) for the first 3m (three) of a dam wall and is to increase in width by 0.5m for every metre above 3m (three).
6. A minimum of 1.0m is to be established for a freeboard and this is to increase by 10% (ten) for every metre over a 3m (three) high wall.
7. The material used to construct the embankment is to be sufficiently impervious to keep seepage low and to be stable. A soil with 25% (twenty five) clay content is ideal in this respect to form an impervious barrier.
8. The width of the spillway outlet is to be not less than the inlet width. The spillway is not to direct flows onto the downstream toe. The spillway area is to be grassed, stable and able to accept runoff flow. It will be necessary to turf the spillway area. The spillway cut batter should have a maximum steepness of 1.5:1.
9. The dam is to be constructed with a waterproof clay lining and the depth is to be kept above the water table in order to minimise the threat of ground water contamination.
10. The following soil types are not to be used in the construction of the dam:
 - sand;
 - gravels;
 - organic soils; and
 - peat.

Prior to Commencement of Works

11. 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 Draft Hawkesbury development control plan;
 - (b) topsoil shall only be stripped from approved areas and shall be stockpiled for re-use during site rehabilitation and landscaping;
 - (c) the capacity and effectiveness of runoff and erosion control measures shall be maintained at all times;
 - (d) 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;

- (e) measures shall be applied to prevent site vehicles tracking sediment and other pollutants onto any sealed roads serving the development; and
- (f) 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.
- 12. 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.
- 13. Submission of a detailed landscape plan for approval for the plantings proposed in the buffer areas identified on the approved stamped plan.

During Construction

- 14. To ensure that site works do not cause soil erosion, site works involving construction of batters, embankments, cuts, mounds, and the like, shall incorporate measures for their restraint and stabilisation, with the use of physical barriers and planting of suitable vegetative cover.
- 15. All trucks entering or leaving the site shall have their trays suitably covered to prevent spillage from the truck onto the road.
- 16. All fill to be adequately compacted by track rolling or similar.
- 17. 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.
- 18. 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.
- 19. No burning of demolition or construction material being carried out on the site.

20. To reduce nuisance to the surrounding properties, all demolished material and excess spoil from the site shall be disposed of to a location and in a manner to the approval of this office (Note: no material shall be burnt or buried on the site).
21. 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.
22. Any overflow from the proposed dam must not concentrate water on any adjoining property.
23. All necessary works being carried out to ensure that “any water” flow from adjoining properties is not impeded.
24. Any excavated material removed from the site is to be deposited at a suitable approved landfill site. Details to be provided to Council.

Use of Site

25. The activity is to operate in accordance with the details contained in the Farm Management Plan that accompanied the Development Application MA1224/01.
26. 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 emenity of residential dwellings.
27. The landscape buffer areas are to be planted and established prior to the commencement of the market garden operation.
28. The landscape buffer areas are to be maintained at all times and replacements are to occur when necessary.
29. A complaints register is to be established to records the complaints received and actions taken in accordance with the Farm Management Plan.

Department of Land and Water Conservation General Terms of Approval***General and Administrative Issues***

30. The applicant shall not allow any tailwater drainage to discharge into or onto
 - any adjoining public or crown road;
 - any other persons land;
 - any Crown land;
 - any river, creek or watercourse;
 - any groundwater aquifer;
 - any area of native vegetation as described in Native Vegetation Conservation Act 1997;
 - any wetlands of environmental significance.

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31. Works used for the purpose of conveying, distributing or storing water taken by means of the authorised work shall not be constructed or installed so as to obstruct the reasonable passage of floodwaters flowing into or from a river.
32. Works used for the purpose of conveying, distributing or storing water taken by means of the authorised work shall not be constructed or installed so as to obstruct the reasonable passage of floodwaters other than water to be impounded or obstructed.
33. The pumping and ancillary equipment and pump site shall be, at all times, properly secured and/or sealed so as to prevent any leakage of petroleum based products, and/or noxious material from entering any river or lake.
34. The existing profile of the channel and bank of any watercourse or drainage depression must not be disturbed any more than is necessary in order to site and maintain the authorised work. Any area that is disturbed when carrying out such work shall be stabilised and maintained by vegetation cover, stone pitching or any other approved material as directed and to this Department's satisfaction so as to prevent the occurrence of erosion.
35. The location of the dam as shown on a plan retained in the office of the Department of Land and Water Conservation (DLWC) shall not be altered.
36. The work shall be constructed and maintained in such a manner as will ensure its safety and as will preclude the possibility of damage being occasioned by it, or resulting from it, to any public or private interest.
37. The level of the crest of the bywash of the dam shall be fixed at a level relevant to the design plan provided by McKinlay Morgan & Associates Pty. Ltd. Consultant Surveyors 122 Macquarie Street (PO Box 217) Windsor.
38. Where any internal combustion powered work is used for the purpose of diverting water the power unit and any associated fuel storage shall be located outside any watercourse or drainage depression and a bunding wall of hay bales or other approved material shall be installed around the pumping plant to avoid contamination of any river or lake through spills or leaks or oils, fuels, or greases.

Conditions Specific to D/A

39. The holder of the license shall within three months of being called upon by the Department of Land and Water Conservation to do so, install to the satisfaction of the department in respect of location, form, type and construction, an appliance or appliances for the measurement of the quantity of water diverted or taken by means of the licensed work, such appliance or appliances to consist of either a measuring weir or weirs with automatic recorder or metre or meters of the dethridge type, or such other class of meter or means of measurement as may be approved by the department, and shall continuously maintain such appliance or appliances in good working order and conditions, and shall, after the installation of such appliance or appliances, record the measurements of all water diverted or taken by means of the licensed work and supply

particulars of such measurements to the department at such intervals as shall be directed by the Department. Whenever called upon to do so a test certificate furnished either by the manufacturer concerned or by some person or authority duly qualified shall be supplied by the holder of the licence as the accuracy of the appliance or appliances installed.

40. Water extracted by means of the licensed work shall not be used for the irrigation of grasses or pasture, which are not sown grasses, or improved pastures.
41. Any drainage channels or cross banks associated with the authorised diversion work or access roads, to or from that work, shall have installed and maintained a bunding wall of hay bales or other approved material, to prevent siltation due to the authorised diversion work of access roads from reaching any river or lake.
42. A pipe with a diameter of not less than 50mm, fitted with a stop valve or other control device shall be constructed through the dam to the satisfaction of the Department of Land and Water Conservation. The level of the invert of the said pipe shall be set at a level relevant to the design plans provided by McKinlay Morgan & Associates Pty Ltd.

Conditions Specific to DA

43. All inflow and outflow drainage lines shall be maintained with sufficient vegetation to ensure optimum quality of water entering the dam.
44. The building erected to house the water pump at the dam site shall be made of such material and in such a manner as to effectively suppress all noise emanating from the operations of the water pump. Such building will be constructed and soundproofed and maintained in good order and condition to the satisfaction of the Department of Land and Water Conservation.
45. As the site contains low quality remnants of Cumberland Plain Woodland it is required that the applicant retain a 10 metre buffer zone around the proposed dam and along the eastern boundary fronting Joshua Road.

Formal Application Issues

46. It is anticipated that a fee would apply to any licence if and when issued.

ATTACHMENTS:

AT-1 Locality Plan

AT-2 Site Plan

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Locality Plan

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Site Plan

oooO END OF ITEM 47 Oooo

ITEM: 48 **Draft Local Environmental Plan 4/01 (Amendment 134) - 77 and 79 Old Bells Line of Road, Kurrajong**

FILE NUMBER: LEP4/01/EVD/ENE28NBX.V05

PREVIOUS ITEM: 37, GPC Section 1 - Environment (24.04.2001)

REPORT:

Introduction

On 8 May 2001 Council resolved to prepare a draft local environmental plan to allow 77 and 79 Old Bells Line of Road, Kurrajong to be used for the purposes of a "shop" and "refreshment room".

Exhibition of draft LEP

Council exercised its delegation in respect of the Section 65 Certificate which was issued on 12 April 2002. The draft local environmental plan was placed on public exhibition for 33 (thirty three) days from Thursday 18 April 2002 to Monday 20 May 2002. All adjoining land owners and occupiers were notified of the proposed amendment. Advertisements were placed in the Hawkesbury Gazette on 17 April 2002 and 24 April 2002.

No submissions were received.

Section 62 Consultation with Government Authorities

The draft local environmental plan was referred to the following public authorities:

- EPA
- Sydney Water Corporation
- Integral Energy
- Telstra

No objections were received.

Legal Opinion as to the Making of the Plan

Council has received advice from Parliamentary Counsel stating that the plan can be made subject to some minor drafting corrections.

RECOMMENDATION:

That:

1. Council proceed with the draft local environmental plan to allow 77 and 79 Old Bells Line of Road, Kurrajong to be used for the purposes of a shop and refreshment room.

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2. Council exercise its delegation in respect of the Section 69 report to the Minister.
3. Council forward the Draft Local Environmental Plan to the Department of Planning for finalisation and gazettal.

ATTACHMENTS:

There are no supporting documents for this report.

oooO END OF ITEM 48 Oooo

ITEM: 49 **Draft Local Environmental Plan 7/01 (Amendment 137) - Change of Definition for General Store**

FILE NUMBER: LEP7/01/EVD/ENE28NBX.V04

PREVIOUS ITEM: 113, GPC Section 1 - Environment (27.11.2001)

REPORT:

Introduction

On 11 December 2001 Council resolved to prepare a draft local environmental plan to change the definition of general store within the Hawkesbury Local Environmental Plan 1989. The change to the definition seeks to restrict the gross floor area of a general store to not greater than 200sqm.

Exhibition of Draft LEP

The draft local environmental plan was placed on public exhibition for 33 (thirty three) days from Thursday 18 April 2002 to Monday 20 May 2002. Advertisements were placed in the Hawkesbury Gazette on 17 April 2002 and 24 April 2002.

No submissions were received.

Section 62 Consultation With Government Authorities

The draft local environmental plan was referred to all adjoining Councils and the following public authorities:

- National Parks and Wildlife Service
- Department of Land and Water Conservation
- NSW Agriculture
- EPA
- Sydney Water Corporation
- NSW Heritage Office
- Integral Energy
- Roads and Traffic Authority

No objections were received.

Legal Opinion as to the Making of the Plan

Council has received advice from Parliamentary Counsel stating that the plan can be made subject to some minor drafting corrections.

RECOMMENDATION:

That:

1. Council proceed with the draft local environmental plan to change the definition of general store.
2. Council exercise its delegation in respect of the Section 69 report to the Minister.
3. Council forward the Draft Local Environmental Plan to the Department of Planning for finalisation and gazettal.

ATTACHMENTS:

There are no supporting documents for this report.

oooO END OF ITEM 49 Oooo

ITEM: 50 **Poultry Farm - 412 Stannix Park Road, Ebenezer - Result of Court Hearing**

FILE NUMBER: DA68/97/EVD/ENE28NBX.V08

PREVIOUS ITEM: 93, GPC Section 1 - Environment (25.09.2001)

REPORT:

Introduction

The purpose of this report is to advise Council of the outcome of Appeal proceedings in the Land and Environment Court.

Background

On 9 October 2001 Council resolved to issue a Notice of Intention to Serve an Order on the owner and operator seeking compliance with various conditions of consents 68/97 and 28/00.

The Notice of Intention was served on 6 November 2001 in the absence of acceptable undertakings to comply with the conditions, the Order was issued on 12 December 2001.

The applicant lodged an appeal against the issue of the Orders. An appeal was also lodged against the deemed refusal of an application for a building certificate for the unauthorised structures.

The Appeals were heard in the Land and Environment Court on 16 May 2002.

Report

Attached to this report is a letter dated 16 May 2002 from Council's solicitors, which provides a summary of the Court proceedings.

The Appeal against the Order was upheld in favour of the applicant, and in accordance with advice from Council's solicitors, agreement was reached in relation to the building certificate. Although Council was able to avoid any Orders for costs, this is an extremely disappointing result. It would appear from the information provided by Council's solicitors that the Court is not all that concerned about non-compliance with conditions of development consent. In the case of the building certificate Appeal, the lack of development consent did not appear to present any problem for the Court.

RECOMMENDATION:

That:

1. Council write to the New South Wales Attorney General concerning this matter.
2. Council seek the assistance of the local State member.

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3. Council write to the Department of Local Government expressing concern.

ATTACHMENTS:

AT-1 Letter dated 16 May 2002 from Council's solicitors

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Letter from Council's solicitors

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Letter from Council's solicitors

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Letter from Council's solicitors

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Letter from Council's solicitors

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Letter from Council's solicitor

oooO END OF ITEM 50 Oooo

ITEM: 51 **Request for Rezoning - Lot 3 DP749638, 476 Hawkesbury Road, Yarramundi, Owners - Mr GJ and Mrs D Williams and Lederer & Fisher Investments Pty Limited**

FILE NUMBER: P1928/320/EVD/ENE28NBX.V07

REPORT:

Introduction

A request has been received from the owners of the property requesting Council's support to rezone the land to allow subdivision. The submission is made by Falson & Associates, Consultant Town Planners on behalf of the owners. A formal application for rezoning has not been lodged however, the matter is submitted at this time to ascertain whether Council wishes to support the proposal in principle.

Proposal

The subject property is 2.13Ha in area. The adjoining Nepean Park Development consists of lot sizes of approximately 5000sqm to 6000sqm. Other land in the immediate vicinity ranges from around 6Ha to 22Ha in size.

The rezoning proposal is to allow subdivision of the land into four allotments of 5000sqm to 6000sqm.

Submission in Support of Proposal

The following is a summary of the justification submitted on behalf of the owners:

- The Williams purchased their property in 1993, the main attraction being the large adjoining rural property of 190Ha.
- The rural amenity once enjoyed has been severely impacted on by housing development in Nepean Park - a number of houses have been positioned close to the Williams' house.
- The Williams were not notified about the individual houses on adjoining land - they would have liked an opportunity to comment on the house locations.
- The allotments in Nepean Park are in a different position than the Williams understood from earlier Nepean Park rezoning proposals.
- The Williams' property has been devalued due to the closeness of houses. The only way to replace that value is a rezoning.

Statutory Situation

The subject land is zoned Rural 1(b). The minimum allotment size permitted is 10Ha and the main objective of the zone is to primarily provide for agricultural uses and animal establishments.

On 8 June 1990 an amendment to Hawkesbury Local Environmental Plan 1989 was gazetted. This introduced Clause 33A to the LEP, which permits subdivision of land adjoining the subject land for a maximum of 122 lots with areas between 2,700sqm and 1Ha. The Clause also contains a number of environmental considerations.

Chronology

8 June 1990	Nepean Park rezoning gazetted.
14 May 1993	Property purchased by Mr and Mrs Williams.
20 February 1997	Letter forwarded to adjoining owners (including the Williams) advising of a Development Application for the current subdivision.
7 March 1997	Petition received objecting to the proposed subdivision. It is noted that the petition was signed by the Williams.
21 August 1997	Letter was forwarded to Mr and Mrs Williams advising that the application was being reported to Council and inviting them to attend and speak.
October 1997	Subsequent letter to Mr and Mrs Williams advising that the Application was again to be reported to Council.
24 November 1997	Letter to Mr and Mrs Williams advising that the subdivision had been approved.
1998	Roadworks commenced on the subdivision during the second half of 1998.
April/May 2000	Construction commenced on adjoining dwellings.

Assessment

When first approached by the owners of the property, Council Officers advised that Council is unlikely to support any rezonings for additional rural residential development, however, should their proposal have any merit, it may be on the basis of utilising the existing Nepean Park Sewerage Treatment Plan. The owners apparently made some enquiries however, subsequently submitted an effluent disposal report showing feasibility for the onsite disposal of effluent for four lots.

Essentially, the owner's justification for subdivision is a perceived loss of amenity due to the adjoining Nepean Park development. Although there were no houses constructed on the adjoining land at the time of their purchase, the Nepean Park zoning had in fact been in place for some three years. Some of the new dwellings are relatively close to the Williams property. However, they are located more than 10 metres from the boundary (ie. no requirement for notification) and the properties are separated by a six metre wide strip of community property. In fact, the Williams' house is located in the south west corner of the property quite close to the adjoining Nepean Park properties. Clearly, the Williams' surrounding outlook has changed since 1993. However, a review of the chronology shows that the amendment to the LEP to create Nepean Park happened three years prior to them purchasing the property.

It is considered that the circumstances outlined by the property owners do not warrant a change in zoning of their property. In fact, there is no town planning justification to support their proposal.

Conclusion

It is unfortunate that the property owner's expectations for the adjoining land were not realistic. The adjoining land had been zoned to permit subdivision of 122 lots some years prior to their purchase of the land. Although it appears that they were not aware of this fact, this is not justification for rezoning. In fact, other land in the immediate vicinity is somewhat larger than the subject property.

At the Strategic Planning Weekend in February, Council decided not to support any additional subdivision beyond that which is permissible under the provisions of the current LEP. Support of this proposal would conflict with that direction and may create an undesirable precedent for other rural land within the Local Government area.

RECOMMENDATION:

That the owners of the property be advised that Council does not support the proposal for rezoning to allow subdivision.

ATTACHMENTS:

AT-1 Locality Plan

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Locality Plan

oooO END OF ITEM 51 Oooo