



general
purpose
committee

1
section

environment

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ITEM: 12 **Proposed Rezoning at Lot G DP164771, No. 820 Richmond Road, Clarendon**

FILE NUMBER: P1829/845/EVD/ENB25NAX.V08

Applicant: Falson and Associates P/L
Applicants Rep: Glen Falson
Owner: Hawkesbury Race Club Ltd
Stat. Provisions: Hawkesbury Local Environmental Plan 1989
Area: 9706m²
Zone: Open Space (Private Recreation) 6(c)
Advertising: N/A
Date Received: 7 November 2002

Key Issues: - Rezoning recreation land
 - Access

Action: Support rezoning request

REPORT:

Introduction

An application has been received requesting Council to rezone land at Lot G DP 164771, No. 820 Richmond Road, Clarendon, to permit the use of a motel on the land.

Proposal

The application seeks to amend Hawkesbury Local Environmental Plan 1989 by inserting a clause which will permit the subject land to be used for a motel. The application does not seek to change the existing zoning.

"Whilst a firm design of a proposed motel has not yet been decided upon, the Club has commissioned an architect to prepare preliminary sketch plans of a 30 unit motel with associated parking etc. It is envisaged that dining facilities would not be provided at the motel but rather patrons would be encouraged to dine at the nearby Club restaurant. An attractive pedestrian link would be provided between the motel and the restaurant".

Applicant's Justification

As part of the application, the following justification has been provided:

"Provision of a motel is seen to be an integral component of the race club activities. It will provide suitable accommodation for patrons, visitors, trainers, jockeys, bookmakers etc to the Club and also for those attending the Club for other functions not associates with horse racing. Obviously

the motel would be available to the travelling and holidaying public and would provide additional needed short-term accommodation within the Hawkesbury district."

Statutory Situation

Hawkesbury Local Environmental Plan 1989

The subject land is zoned Open Space (Private Recreation) 6(c) under the provisions of Hawkesbury Local Environmental Plan 1989 (HLEP 1989). The objectives of the 6 (c) zone are *to identify and set aside certain private land where private recreation activities are and may be developed.*

'Motel' is defined by HLEP 1989 to mean *"a building or buildings (other than a hotel, boarding-house or residential flat building) substantially used for the overnight accommodation of travellers and the vehicles used by them whether or not the building or buildings are also used in the provision of meals to those travellers or the general public."*

It is considered that a motel may be ancillary to the use of land for private recreation activities.

The subject site is located within a convenient distance from the Richmond and Windsor urban centres. It is located in an area immediately adjoined by Hawkesbury Racecourse, Hawkesbury Showground, and other recreational areas are nearby, including a tavern and park.

The future use of the site for a motel is not inconsistent with the objectives of the proposed 6(c) zone and of HLEP 1989. It is considered that such a development can be carried out so as to be consistent with the relevant clauses of HLEP 1989.

Section 117(2) Ministerial Directions

The proposed rezoning is consistent with the s.117 Directions.

State and Regional Environmental Planning Policies

The proposed rezoning is consistent with the provisions of the relevant State and Regional Planning Policies.

Planning Assessment

The Site

The subject property is 9706m² in size and, at present, is vacant. The site is predominantly cleared. The subject land does not have frontage to any road.

The land is flood affected, having a land level between approximately 14mAHD and 16mAHD. The 1-in-100 year flood level for the area is 17.3mAHD. HLEP 1989 permits the erection of building on land up to 3m below the 1-in-100 year flood level. There is sufficient land for the erection of a motel available within the subject property, which has a level at or above 14.3mAHD

The land is located within an Australian Noise Exposure Forecast contour of 25 to 30. The proposed motel can be designed so as to comply with AS 2021 Acoustics - Aircraft noise intrusion - Building siting and construction, as required by HLEP 1989.

The land is not identified as fire prone land.

The site is currently owned by Hawkesbury Racing Club.

Surrounding Development

A variety of land uses occur around the subject site and in the Clarendon locality. Land uses to the north include a mix of residential properties, a tavern, a service station, tourist facility, the RAAF base, and a vet. The Richmond railway line directly adjoins the northern boundary of the land.

Immediately adjoining to the west of the subject land is the racecourse, and further, is Hawkesbury Showground. To the south is part of the racecourse and a number of rural properties predominantly used for the stabling of horses. Rural zoned land lies to the east of the property.

Ham Common provides an important link between Richmond and Clarendon and the main land use along this area is recreation and tourism. The Common contains a children's playground, skateboard park, a shared cycle/footpath, amenities block and tourist information centre.

Character of the area

As described the major land uses within Clarendon are residential, recreational/tourism and a smaller commercial component, all of which contribute to the character of the area. The recreational uses of the Hawkesbury Race Club, Hawkesbury Showground and Ham Common provide a good basis for determining the most appropriate use for the subject land.

Proposed motel

The proposed motel is compatible with the character of the locality and is compatible with the surrounding land uses.

A motel would provide accommodation, for not only Hawkesbury Race Club patrons, but for visitors utilizing the Hawkesbury Showground for various functions.

Access to the proposed development would be from Racecourse Road over other land owned by the Race Club. The applicant proposes that a right-of-way be created across the adjoining land so that the motel land has both legal and physical access.

The proposed motel, containing 30 units, would require 1 parking space per unit, plus 1 space per employee. It is considered that traffic generated as a result of the development will be minimal. Any impacts on traffic flow or the local road network arising from a motel development will be capable of being mitigated.

Draft local environmental plan

There are two ways in which an environmental planning instrument can be amended to permit a motel on the subject land. One is by changing the existing zone to one that permits motels. This is not considered desirable as it opens the land up to being used for other land uses that are also permitted in the new zone. These land use may not be suitable in the locality.

The second way is by inserting a new clause into Hawkesbury Local Environmental Plan 1989 to permit the erection of a motel on the land.

The latter of these two options is considered most appropriate. The applicant is also agreeable to this method, as it will allow the motel to be established and also allow other Club activities to take place in the future as may be determined.

Due to the minor nature of the proposal a local environmental study is not required.

Conclusion

It is considered that the proposed motel is suitable for the subject land and it is therefore recommended that the proposed rezoning to allow a motel be supported.

RECOMMENDATION:

That:

1. A draft local environmental plan be prepared to permit the subject land to be used for a motel.
2. The draft local environmental plan be prepared in accordance with the Environmental Planning and Assessment Act 1979 and the Department of Planning's Best Practice Guidelines.
3. Council exercise its delegation in respect of s.65 and s.69 of the Environmental Planning and Assessment Act 1979.
4. A Local Environmental Study not be prepared.

ATTACHMENTS:

AT-1 Locality plan

ENVIRONMENT

Meeting Date: 25 February, 2003

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Attachment 1 - Locality Plan

oooO END OF ITEM 12 Oooo

ENVIRONMENT

Meeting Date: 25 February, 2003

Item: **13**

ITEM: 13 **Erection of two buildings, one building to be used as a supermarket and 17 speciality shops, one building to be used for 9 bulky goods retailing units, associated vehicle parking and loading facilities. Lot 2 DP535140, Vol 11156, Fol 248 & Lot 180 DP752061, 264 to 272, Windsor Road, Vineyard NSW 2765**

FILE NUMBER: DA1389/02/EVD/ENB25NAX.V04

Applicant: ICA Property Develop Fund No. 2 Spv T'ee P/L
Applicants Rep:
Owner: ICA Property Develop Fund No. 2 Spv T'ee P/L
Stat. Provisions: Hawkesbury Local Environmental Plan 1989
Draft Amendment No. 140 to Hawkesbury LEP 1989 - Rezone all land in Zone 3(b) Business Special to either Zone 2(a) Residential, Zone 3(a) Business General or Zone 4(b) Industry Light
Draft Amendment No. 141 - Acid Sulphate Soils
Area: 4.773 hectares
Zone: Zone 3(b) Business Special
Advertising: N/A
Date Received: 04/11/2002

Key Issues: - Preliminary assessment of development proposal completed.
- Removal of all native vegetation from site.
- Amendment 140 rezone the site to Industry Light.
- Applicant declined to provide requested additional information.
- Applicant has lodged Appeal in Land and Environment Court on deemed refusal of application.

Action: - Determine application.
- Engage Abbott Tout Solicitors to represent Council in the Land and Environment Court proceedings.

REPORT:

The Proposal

Council has received an application for the erection of two large buildings, one to be used as a supermarket and 17 (seventeen) speciality shops and the other to be used for 9 (nine) bulky goods retailing units, and associated car parking and loading facilities on the above property (site). Other details of the application include:

- The removal of all native vegetation on the site;
- The elevation of the majority of the site by about 2 metres with fill;
- Access to be formalised from both ends of Industry Road and to Windsor Road;

The supporting information accompanying the application includes:

- (a) Statement of Environmental Effects prepared by Glen Falson & Associates Pty Ltd;
- (b) Species Impact Statement prepared by Blue Mountains Wilderness Trust;
- (c) Economic Impact Statement prepared by KPMG;
- (d) Traffic Impact Statement prepared by Thompson Stanbury & Associates Study;
- (e) Landscape Concept Plan prepared by John R Brogan & Associates;
- (f) Hydraulic Concept Plan & Pipeline Sections & Hydrant Details - Concept Plan prepared by Toby Fiander & Associates.

Description of the Site

The site has frontage to Windsor Road and ranges in elevation from about 19m on the southern boundary to about 14m on the north-eastern boundary. The site is covered with Shale Transition Forest/Cumberland Plain Woodlands which are identified as endangered ecological communities in the Threatened Species Conservation Act, 1995.

Statutory Provisions

Hawkesbury Local Environmental Plan 1989

The site is zoned 3(b) Business Special. The primary objective of the zone is to provide for office development. The objectives of the 3(b) zone are:

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

While bulky goods retailing and shops are permitted in the zone, their consistency with the zone objectives is subject to the assessment of the development application. It is considered that the supermarket and speciality shops component of the development is not consistent with objectives (a) and (b) above. No office development is proposed and only the bulky goods retailing would be

consistent with the Industry and Rural character of the locality.

Amendment No. 141 to Hawkesbury Local Environmental Plan 1989

On 9 July 2002, Council resolved to prepare a local environmental plan to rezone all land in Zone 3(b) Business Special to either Zone 2(a) Residential, Zone 3(a) Business General or zone 4(b) Industry Light. Amendment No 141 to Hawkesbury Local Environmental Plan 1989, was prepared to implement Council's resolution and under this plan the site would be rezoned to 4(b) Industry Light. On 11 February 2003, Council resolved to re-exhibit Amendment No. 141 as a result of amendments made after consideration of submission during the public exhibition of the plan.

The objectives of the 4(b) zone are:

- (a) to set aside certain land for the purposes of light industry within convenient distances of the urban centres of the City of the Hawkesbury;
- (b) to allow commercial and retail development for;
 - (i) uses ancillary to the main use of land within the zone;
 - (ii) the display and sale of bulky goods;
 - (iii) the day-to-day needs of the occupants and employees of the surrounding industrial area; and
- (c) to ensure that industrial development creates areas which are pleasant to work in and safe and efficient in terms of transportation, land utilisation and services distribution.

The bulky goods component of the development is consistent with the proposed zone.

It is noted that it is only the use of the one of the buildings as a supermarket and for specialty shops presents an inconsistency with the current and proposed zoning of the site. This building could be used for a use that is consistent with the current and proposed zonings.

State Environmental Planning Policy No. 11 - Traffic generating Development

The application was considered by the Regional Traffic Committee (Roads and Traffic Authority) on 27 November 2002. A copy of the RTA's comments on the matter have been referred to the applicant. Importantly, the RTA does not support access to Windsor Road.

Concurrence development

As the development proposes the removal of all native vegetation from the site, a Species Impact Statement must be completed in accordance with the Environmental Planning and Assessment Act, 1979 and the Threatened Species Conservation Act, 1995 for the development. The concurrence of the National Parks and Wildlife Service is required for the actions outlined in the Species Impact Statement, unless Council decides to refuse the application.

Community Consultation

The application has not been advertised, as there were considerable deficiencies in the information provided.

Letter from applicant about requested additional information and Appeal

A letter was sent to the applicant after the preliminary assessment of the application requesting additional information be provided on 17 (seventeen) matters which included:

- Completion of the application for lodgement ie. company seal for owners consent and payment of additional fees;
- Compliance with Hawkesbury Local Environmental Plan and Hawkesbury Development Control Plan;
- The comments of the RTA on the referral of the development under SEPP 11;
- The role of National Parks & Wildlife Service as the concurrence authority; and
- Compliance of the Species Impact Statement with the provisions of the Threatened Species Conservation Act.

The applicant advised in part (letter dated and received 10 February 2003) that their:

"...solicitors have advised that ICA should lodge an Appeal with the Land and Environment Court as in effect the DA has been rejected as it has not been determined by Council within 60 (sixty) days as required by the EP&A Act and we would not be able to re-submit all the documentation requested by Council within 14 (fourteen) days. ICA have instructed their solicitors to lodge and appeal as required to help ensure our DA is protected as there are no savings or transitional provisions in the draft Hawkesbury LEP Amendment 140."

The applicant has declined to provide the requested additional information about the application that would enable Council to make a complete assessment and therefore informed decision about the development.

DA1389/02 was lodged on 4 November 2002. The 60 day deemed refusal period (for concurrence development) lapsed on 2 January 2003.

Under the Environmental planning and Assessment Act, 1979, nothing prevents a Council from determining the application after the expiration of the 60 (sixty) day assessment period (Section 82). It is therefore recommended that Council determine DA1389/02 by refusing the application having regard to the incomplete information and other matters.

Land and Environment Court Appeal

Council has received notice (dated 11 February 2003) of a Class 1 appeal against Council's deemed refusal of DA1389/02 (ICA Property Pty Ltd v Hawkesbury City Council LEC Proceedings No [1]10146 of 2003.) Call-over has been set for 18 March 2003.

Conclusion

Council has received an application to develop the site for a large mixed use retailing development, which includes commercial shops (supermarket, and speciality shops) and bulky goods retailing. The site is currently zoned 3(b) Business Special and the principal objective of the zone is provide for office development and associated non-commercial development that is consistent with the Industrial and Rural character of the locality. The supermarket and speciality shops component of the application are considered not to be consistent with the zone. The application proposes the removal of all native vegetation from the site, and is it considered that the Species Impact Statement accompanying the application is not complete. The application also proposes direct access to Windsor Road, which is contrary to Hawkesbury LEP.

The applicant has lodged an Appeal in the Land and Environment Court based on the deemed refusal of the application and has declined to provide the requested additional information about the application to enable a complete assessment. Having regard to the above matters, it is considered the application should be refused and that advice be obtained from Council's Solicitors as to the reasons for refusal.

RECOMMENDATION:

That:

1. Advice be obtained from Council's Solicitors regarding Development Application No. 1389/02 for the erection of two buildings, one to be used as a supermarket and 17 (seventeen) speciality shops and the other to be used for 9 (nine) bulky goods retailing units, and associated car parking and loading facilities on Lot 2 DP535140 and Lot 180 DP979731, 264 to 272 Windsor Road, Vineyard and, if appropriate, the application be refused under Delegated Authority.
2. Abbott Tout Solicitors be engaged to represent Council in the Land and Environment Court Proceedings No. [1] 10146 of 2003.

ATTACHMENTS:

AT-1 Locality Plan.

AT-2 Layout Plan.

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Attachment 1 - Locality Plan

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Attachment 2 - Layout Plan

oooO END OF ITEM 13 Oooo

ENVIRONMENT

Meeting Date: 25 February, 2003

Item: 14

ITEM: 14 **s.96 Modification to Development Consent DA 95/02 - No. Of vehicle movements, hours of operation and emergency repairs to trucks. Lot 4, DP 843500, 66 Canoona Avenue, Windsor Downs NSW 2756**

FILE NUMBER: DA0095/02/EVD/ENB25NBX.V11

Applicant: Dean Cooper Thomas Smith
Rosemary Diane Smith

Applicants Rep:

Owner: Mr DCT Smith & Mrs RD Smith

Stat. Provisions: Hawkesbury Local Environmental Plan 1989

Area: 2.000 H

Zone: Rural 1c

Rural 1c under Hawkesbury Local Environmental Plan 1989

Rural Living

The proposed zone under draft local environmental plan 8/98 (Amendment 108) is Rural Living.

Advertising: 18 December 2002 to 20 January 2003

Date Received: 4 December 2002

Key Issues: - Amenity
- Vehicle movements
- Hours of operations
- Vehicle repairs

Action: Refusal

REPORT:

Introduction

The application seeks to modify Development Consent DA 95/02, which approved a truck depot on the subject land.

This matter is being reported to Council in accordance with Council's Policy PEA00712. This report details the proposal, the current statutory situation and provides an assessment of the application. A complete assessment is contained on file.

Allegations have also been made that the applicant is operating outside of the conditions of development consent.

Background

Development Consent DA 95/02 was approved by Council at its Ordinary Meeting of 11 June 2002. The consent restricted the number of vehicle movements associated with the truck depot and the

hours of operation.

The applicant was of the belief that his vehicle movements were not subject to Condition 9 of the consent, which restricted vehicular movements associated with the truck depot to certain hours, as well as particular numbers on certain days. The intent to restrict vehicular movements associated with the truck depot was to include all truck and car movements resulting from the use of the site as a truck depot, including those of the owners.

The number of vehicle movements and the time constraints were imposed as the result of the owners submission outlining their requirements. Unbeknown to Council the owner had not included his movements.

The s.96 application has been submitted to resolve these anomalies.

Relevant Conditions of Consent

Condition 9 of Development Consent 95/02 states "*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. Further, that truck movements be limited to 12 (twelve) movements per week as per the Development Application.*"

Condition 10 states "*No washing, servicing or repairs of vehicles associated with the truck depot is to occur on site.*"

Alleged Breaches of Development Consent DA 95/01

Condition 19 of the Development Consent requires the applicant to submit a truck schedule for the movements to and from the property each week. From the schedules submitted, it can be seen that 28 breaches of the consent have been made.

Details of truck movements have also been submitted from residents. These details show that 79 breaches of consent have occurred.

These breaches relate to the number of vehicle movements per week, the number of vehicle movements that have occurred on Saturday or Sunday, and the times of movements.

The Proposal

Five separate modification applications have been received as follows:

1. The applicant requests that Condition 9 be amended to read:

"Trucks driven by employees of the truck depot shall not leave or enter the property outside the hours of 6am and 10pm, except for unforeseen circumstances."

2. The applicant requests that Condition 9 be amended to read:

"Movements of trucks associated with the depot are not to exceed an average of 20 movements per week in any one month."

3. The applicant requests that Condition 10 be amended to read:

"No washing, servicing or repairs of vehicles associated with the truck depot is to occur on site other than minor emergency repairs or to allow a vehicle to be operated legally."

4. The applicant proposes to introduce the following new condition:

"Trucks driven by the owner/resident of the property are permitted to enter or leave the property outside the hours of 6am to 10pm."

5. The applicant proposes to introduce the following new condition:

"Truck movements to and from the property for charity events such as school fetes etc are not required to be included as movements in relation to the truck depot."

Statutory Situation

The applications are to be determined under the provisions of s96(2) - Other Modification - of the Environmental Planning and Assessment Act, 1979.

The property is zoned Rural 1(c) under Hawkesbury Local Environmental Plan 1989. Objective (a) of the Rural 1(c) zone is to provide for a rural residential living style. It is considered that the proposed modifications will result in the development having an unreasonable impact on the residential amenity of the locality due to increased noise and traffic. This is inconsistent with the zone objective of providing for a rural residential living style.

Amendment No. 108 to HLEP 1989 applies to this proposal. The draft Plan was exhibited from 10 July, 2002 to 4 October, 2002. The proposed zone under draft local environmental plan 8/98 (Amendment No. 108) is Rural Living.

Whilst 'truck depots' are prohibited within the proposed Rural Living zone, the development was approved prior to the exhibition of the draft Plan and was not a consideration under s79C of the Environmental Planning and Assessment Act, 1979.

However, it is considered that the proposed modification of the development will result in increased impacts on the locality as the result of increased truck movements and hours of operation. These increased impacts will be incompatible with the residential nature of the area and inconsistent with objective (a) and (c) of the Rural Living zone objectives.

Community Consultation

Twenty (20) submissions were received in relation to the proposed development. Of these, thirteen 13 were in support and seven 7 objected to the proposed modification.

The concerns raised in the submissions include:

- Amenity
- Vehicle movements
- Hours of operations
- Vehicle repairs

The concerns raised by 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.

Context and Setting/Amenity

The locality is rural residential in character. Adjoining land uses consist of predominantly dwelling houses. Windsor Down Nature Reserve also adjoins the rear of the property.

It is considered that an increase in the number of truck movements per week and the extension of time to 10.00pm will have an adverse impact on the residential amenity of the locality.

Truck Movements (raised by respondents)

The effect of averaging the truck movements has the potential to concentrate truck movements in particular weeks. Such a concentration may result in unacceptable impacts on the residential amenity of the locality in terms of noise.

The removal of the restriction to the number of vehicle movements permitted on Saturday and Sunday may also result in unreasonable impacts on the amenity of the area, even more so if the number of movements are concentrated.

Hours of Operation (raised by respondents)

The locality surrounding the site is characterised as a quiet rural area where daytime and evening background noise levels would be expected to be quite low. The activity's noise source will primarily be vehicles entering and exiting the site.

The impact of noise will also be a function of the hours of operation of the truck depot. It is considered that with more truck movements per week and an extension to the hours of operation, that noise resulting from the use of the truck depot will have unreasonable impacts on residents in the Canoona Avenue area.

Vehicle Repairs (raised by respondents)

The request to permit '*minor emergency repairs or to allow a vehicle to be operated legally*' has no limitations. This could encompass major mechanical works. It is considered that it is not necessary to specify in a development consent minor repairs such as changing a tyre or a flat battery. It is

assumed that these types of works occur in all garages on residential properties.

In the original application, it was stated that no mechanical work would be carried out on site and that maintenance and servicing of the truck were done by a local mechanic at their premises in South Windsor.

New Conditions

The applicant proposes two new conditions in respect to truck movements by the owner outside of approved hours and truck movements in association with charity events. It is considered that the conditions would be inappropriate. Regardless of the purpose of a truck movement, the impact on amenity is the same.

Conclusion

It is considered that the proposed modifications to Development Consent 95/02 will result in the truck depot development having an increased and unreasonable impact on the residential amenity and character of the locality.

RECOMMENDATION:

That:

1. The s.96 applications to amend Development Consent 95/02 be refused for the following reasons:
 - (a) The proposed modified development is inconsistent with the objectives of the Rural 1c zone.
 - (b) The proposed modified development is inconsistent with the objectives of the proposed Rural Living zone under draft Amendment No. 108 to Local Environmental Plan 1989.
 - (c) The proposed modified development is out of character with the locality.
 - (d) The proposed modified development will have unreasonable impacts on the amenity of the locality.
2. Council write to the applicant/owners reminding them of their obligation to comply with the conditions of Development Consent 95/02 and that any future breaches of these conditions will result in penalty notices being issued immediately.

ATTACHMENTS:

AT-1 Locality Plan

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Meeting Date: 25 February, 2003

Item: **14**

Attachment 1 - Locality Plan

oooO END OF ITEM 14 Oooo

ENVIRONMENT

Meeting Date: 25 February, 2003

Item: **15**

ITEM: 15 **Four (4) lot subdivision of Lot 23 DP 250464, 330 Grono Farm Road, Wilberforce**

FILE NUMBER: DA1625/01/EVD/ENB25NAX.V09

PREVIOUS ITEM: 1, GPC Section 1 - Environment (28.01.2003)

Applicant: Gary White Property Centres
Applicants Rep: As above
Owner: Leppington Pastoral Co Pty Ltd
Stat. Provisions: Hawkesbury Local Environmental Plan 1989 (HLEP 1989)
Area: 40.2 Hectares
Zone: Environmental Protection Scenic 7(d1)
Advertising: 4 November 2002 to 18 November 2002
Date Received: 24 December 2001

Key Issues - Shape of Lots
 - Contaminated Land
 - Heritage Item

Action: Conditional approval

REPORT:

Introduction

The applicant seeks approval for 4 (four) lot subdivision. The application was reported to the January General Purpose Committee Meeting. At the ordinary meeting on 22 February 2003 Council resolved to defer the matter to the next General Purpose Committee meeting and requested a report addressing the issues raised by Mr McKinlay.

This report provides an assessment of the key issues. A complete assessment of the application is available on the file.

Background

The initial development proposed a 9 (nine) lot subdivision which involved 5 (five) existing allotments. This application was exhibited 8 April 2002 to 26 April 2002. One submission objecting to the proposal was received.

The applicant amended the application to a 4 (four) lot subdivision involving 1 (one) allotment.

The Proposal

The application seeks approval for a 4 (four) lot subdivision of Lot 23 DP 250464. The size of the

proposed lots are as follows:

- Lot 2 10 hectares
- Lot 3 10 hectares
- Lot 4 10 hectares
- Lot 5 10.2 hectares

All lots will have access from Grono Farm Road.

The application was accompanied by an effluent disposal report, which included investigations in relation to site contamination.

Statutory Situation

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

The proposed development complies with the provisions contained in SREP 20.

Hawkesbury Local Environmental Plan 1989 (HLEP 1989)

The subject land is zoned Environmental Protection (Scenic) 7(d1). The proposed development is permissible with development consent.

State Environmental Planning Policy No. 55 - Remediation of Contaminated Land

The object of this Policy is to provide for a Statewide planning approach to the remediation of contaminated land.

Comment:

Part of the subject land has been identified as being contaminated (area in the vicinity of the Heritage item caused by the use of lead paint). SEPP No. 55 provides the requirements for development applications for contaminated land. The proposal was not advertised as per the requirements of SEPP No. 55 as it was not initially identified as being contaminated land. It is proposed that the consent will be conditioned so that development consent be obtained for the remediation of the land prior to the occupation of Proposed Lot 2. It is considered that this approach is satisfactory, as the report submitted with the application demonstrates that remediation of the site can be achieved to the necessary standard.

Hawkesbury Development Control Plan

The following table provides an assessment of the proposed development against the requirements of the Subdivision Chapter of the Development Control Plan:

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Meeting Date: 25 February, 2003

Item: **15**

Element	Rule	Provides	Complies
General			
Flora and Fauna Protection	(a) Any subdivision proposal which is likely to result in any clearing of native vegetation or impact on any environmentally sensitive area is to be accompanied by a flora and fauna assessment report prepared by a suitably qualified person. This report is to primarily address the Eight Part Test pursuant to the Act (Section 5A), State Environmental Planning Policy 44 - Koala Habitat protection.	The proposed subdivision does not involve the removal of native vegetation.	Yes
	(b) Vegetation cover should be retained where ever practicable as it acts to stabilize soils, minimize runoff, acts as a pollutant trap along watercourses and is important as a habitat for native fauna.	The proposed subdivision does not involve the removal of vegetation.	Yes
	(c) Degraded areas are to be rehabilitated as part of the subdivision.	There are no degraded areas on the subject land	Yes
	(d) Vegetation should be retained where it forms a link between other bush land areas.	All vegetation is to be retained.	Yes
	(e) Vegetation which is scenically and environmentally significant should be retained.	All vegetation is to be retained.	Yes
	(f) Vegetation which adds to the soil stability of the land should be retained.	Vegetation will be retained.	Yes
	(g) All subdivision proposals should be designed so as to minimize fragmentation of bushland.		Yes
Visual Amenity	(a) Building envelopes, access ways and road shall avoid ridge tops and steep slopes.	N/A	Yes
	(b) Subdivision of escarpments, ridges and other visually interesting places should: - Be managed in such a way that the visual impact rising from development on newly created allotments is minimal; and - Retain visually significant vegetation such as that found on ridge tops and other visually prominent locations.		Yes

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Element	Rule	Provides	Complies
	(c) Development Applications for subdivision shall take into consideration the provisions of SREP No. 20 in relation to scenic quality.		Yes
Heritage	(a) A subdivision proposal on land which contains or is adjacent to an item of environmental heritage as defined in Schedule 1 of the Hawkesbury LEP should illustrate the means proposed to preserve and protect such items.	The proposed subdivision will have no adverse impact on the heritage item and its setting and preserves and protects the heritage significance of the item.	Yes
Utility Services	(a) Underground power provided to all residential and industrial subdivisions. Where infill subdivision is proposed, the existing system, whether above or underground shall be maintained.		Yes
	(b) All lots created are to have the provision of power.		Yes
	(c) Where reticulated water is not available, a minimum storage of 100,000 litres must be provided. A minimum of 10,000 litres must be available during bush fire danger periods.	Will be conditioned.	Yes
Flooding, Landslip and Contaminated Land	(a) Compliance with clause 25 of Hawkesbury Local Environmental Plan 1989.		Yes
	(b) Access to the subdivision shall be located above the 1% AEP flood level.		Yes
	(c) Where a subdivision proposal is on land identified as being potentially subject to landslip, the applicant shall engage a geotechnical consultant to prepare a report on the viability of subdivision the land and provide recommendations as to the siting and the type of buildings which could be permitted on the subject land.	N/A	Yes
	(d) In the event the Council deems that there is the potential that land subject to a subdivision application is contaminated then the applicant shall engage a suitably qualified person to undertake a soil and ground water assessment.	A report has been provided	Yes

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Element	Rule	Provides	Complies
	(e) Contaminated Land shall be remediated prior to the issue of the Subdivision Certificate.	Will be conditioned.	Yes
Rural Lot Size and Shape	(a) The minimum allotment size for land within rural and environmental protection zones are contained within Hawkesbury Local Environmental Plan 1989.	N/A	Yes
	(b) Lots should be able to accommodate a building envelope of 2000m2 with a minimum dimension of 20 metres. Building envelopes should be located a minimum of 30 metres from significant trees and other significant vegetation or landscape features. Building envelopes will contain the dwelling house, rural sheds, landscaping, and on-site effluent treatment and disposal areas, and bushfire mitigation.		Yes
	(c) In calculating the area of a battle-axe or hatchet shaped allotment, the area of the battle axe handle should be included.		Yes
	(d) The width to depth ratio of allotments should not exceed 1:5.		No Seeks a variation See below
	(e) Lot layout shall consider the location of watercourse vegetation and other environmental features.		Yes
Effluent Disposal	(a) An effluent disposal report prepared by a suitably qualified person is required to accompany any development application for rural and rural-residential subdivisions.	Can be conditioned.	Yes
	(b) Any system proposed other than a Household Aerated Wastewater Treatment System is required to be installed prior to release of Subdivision Certificate.		Yes
Rural Road and Access Way Design	(a) The design specifications in Figure 4 at the end of this clause are to be met.	N/A	Yes
	(b) Where the road width is insufficient or unsatisfactory, an applicant should dedicate or provide land required for local road widening or new roads at no cost to Council.	N/A	Yes

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Element	Rule	Provides	Complies
	(c) Upgrading of the access way from the nearest sealed road to the proposed subdivision to an all weather standard suitable for the expected traffic generation arising from the subdivision. This work may require the sealing of the pavement dependent upon traffic generation.	N/A	Yes
	(d) Where access to the subdivision is via a Crown or Reserve road in addition to the above, the road should be fully constructed to a standard commensurate with roads in the locality and linked to the nearest Council road. Prior to any construction works being undertaken the relevant section of Crown road is to be transferred to Council.	N/A	Yes
	(e) The road fronting the subdivision shall be sealed into half width (minimum 3.5 metres). An all weather standard of road construction may be acceptable where the expected traffic volume generated by the subdivision proposal is low and no sealed road in the vicinity.	Grono Farm Road is sealed.	Yes
	(f) Water courses should be piped where they cross roads and the applicant should create drainage easements generally 10 metres long and 4 metres wide over the point of any discharge of any water from any public road onto private property.	N/A	Yes
	(g) All internal driveways shall be constructed to an all weather standard suitable for the expected traffic generation. An all weather access should also be provided across the footway to any battle-axe lot. Such access should be sealed within the vicinity of existing houses on adjoining lots where dust nuisance may occur and also on steeply sloping land.	Can be conditioned.	Yes
	(h) Where 3 or more individual access handles are proposed, common roads are to be provided.	N/A	Yes
	(I) Battle-axe handles shall have a minimum width of 6 metres.	N/A	Yes
	(j) Access ways should have a maximum grade of 25% (1:4) and be sealed if the grade exceeds 1:6, concrete if exceeds 1 in 5.	Can be conditioned.	Yes

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Element	Rule	Provides	Complies
	(k) Where an access way meets a public road there should be a minimum sight distance of 70 metres. This may be increased on roads with a high speed limit.		Yes
	(l) Cul-de-sacs for rural roads should have a minimum seal radii of 12.0 metres and boundary radii of 17.0 metres.	N/A	Yes

Variation

Hawkesbury Development Control Plan requires a width to depth ratio of 1:5. The width to depth ratio of the proposed lots range from 1:7 to 1:10. The applicant provides the following justification:

"With respect to the lot shapes we have already discussed with council officers the notional non compliance in this area, and drawn attention to the preponderance of long narrow lots in the general area including some historic developments in Pitt Town in the same form. The lot shapes are clearly a consequence of limited flood free building land and the existing boundaries..."

Following further discussion with Mr McKinlay it appears that, on paper, compliance with the DCP requirement may be achieved. The subdivision would include one lot fronting Grono Farm Road and three lots at the rear (see attachment No. 3). Such a subdivision can provide the required building envelopes on land above the 1-in-100 year flood level. The subdivision layout would require an access handle for the rear lots of approximately 542m in length.

The applicant has considered this subdivision layout and advised that an access along the eastern boundary of the front lot would have a portion that is on land below the 1-in-100 year flood level. An access along the western boundary is not desirable due to being located on a corner with limited sight distances.

The subject land is constrained due to its flood liability. While not complying with the depth to frontage ratio, the proposed subdivision provides adequate area for future development on land above the 1-in-100 year flood level, as well as flood free access on each of the proposed lots. The proposed lots are consistent in terms of shape with the subdivision pattern of the locality.

For these reasons, it is considered that the variation be supported.

Community Consultation

The amended application was publicly exhibited from 4 November, 2002 to 8 November, 2002. No submissions were received.

The initial application, which was for a nine (9) lot subdivision, was exhibited from 8 April 2002 to 26 April 2002. One submission objecting to the proposal was received. The issues raised in this submission are addressed below:

- (1) The plans submitted are deficient in information.

Applicant's Response

The respondent *"draws attention to some minor non-compliance with the Hawkesbury DCP, which was adopted only recently prior to the application. In view of the minor nature of the non-compliances we would have thought that the application would be considered as being prepared in the transitional period and was therefore acceptable."*

"The areas of land above the flood level as shown on the plan were determined by ground survey. The important issue of effluent disposal was addressed in great detail in the application and the supporting documents. There is not anticipated to be any effects on existing vegetation and the conversion from active dairy to rural residential in an environmentally positive transformation."

Comment:

It was considered, at the time, that the application provides adequate information for the assessment of the proposal.

- (2) The allotments do not comply with the depth to frontage ratio requirements of Hawkesbury Development Control Plan.

Applicants Response

"With respect to the lot shapes we have already discussed with council officers the notional non compliance in this area, and drawn attention to the preponderance of long narrow lots in the general area including some historic developments in Pitt Town in the same form. The lot shapes are clearly a consequence of limited flood free building land and the existing boundaries..."

Comment:

The proposed 4 (four) lot subdivision does not comply with the requirement as discussed previously.

- (3) Some of the lots do not have flood free access as required by Hawkesbury Development Control Plan.

Applicants Response

"In discussions with Council we have agreed with conditions that council will attach to any consent relating to flood free access."

Comment:

No requirements are needed as all resultant lots of the 4 (four) lot subdivision proposal will have flood free access.

- (4) Each lot is to have an area at or above the 1 in 100 year flood level.

Applicants Response

"As indicated in the application all lots have substantial building zones above the 100 year flood line."

Comment:

All resultant lots have an area of land above the 1-in-100 year flood level. These areas are a minimum of 2000m² in size to provide for the required building envelopes.

- (5) Excavation and burying of building material, concrete, fencing and manure.

Applications Response

The following works were carried out:

- *the main farm dam was full of sediment and nutrients from the cattle feed areas. This was removed by excavator and dried, for later spreading as enriched topsoil over restored areas.*
- *Concrete feed bins were demolished, the steel removed and ripped concrete placed in the basin in the cleaned out dam.*
- *Almost all of the old slabs described in the (respondents) letter remain on site.*
- *Derelict buildings were removed with the steel sold to Sims Metal and rubbish taken to Waste Disposal Authority Tip. Some asbestos was removed by specialists using strict OH&S methods and taken to the appropriate waste disposal.*
- *The large mound of topsoil which had previously been stripped from the cattle feed areas was blended with nutrient rich soil from the dams and was replaced on the cattle feed areas.*
- *No rubbish of any sort was buried on the site.*
- *No material was brought onto the site.*
- *The dam was back filled using natural materials from the dam and the relatively small amount of concrete from the cattle feed bins and then finished off with the nutrient rich topsoil.*

All of the above can be evidenced by tip dockets and such and we will be happy to meet with Council if necessary to provide such documents.

Comment:

On 8 August 2002 Council Officers inspected the subject property in response to notification of earthworks which have taken place. It was seen that sludge and built up sediment had been removed from the sediment pond and spread over land adjoining this pond. This work is considered to be general maintenance and does not require approval from Council.

The demolition of buildings requires development consent under the provisions of HLEP 1989. The applicant has provided details to demonstrate that the removal of the buildings was carried out satisfactorily. Therefore, no further action is required.

It is considered that any consent can be conditioned to ensure that the filled dams are sampled for

contaminants and that adequate compaction of the fill has been achieved.

Planning Assessment

Full consideration has been given to s79C (1)(b) of the EP & A Act as contained on file. Below are the relevant matters:

Context And Setting

The proposed allotment sizes and shape are consistent with the surrounding area and allotment sizes and shape.

The proposed development is consistent with the context and setting of the immediate area.

Heritage

There will be no significant impact on the heritage item located on Proposed Lot 2.

Three dwelling houses will be situated on proposed Lot 2, one of which is a heritage item. The applicant proposes the retention of all dwellings on this lot as an incentive/leverage for the refurbishment of the heritage item and that the consent be conditioned so that none of the dwellings are able to be utilised until the conservation of the heritage dwelling takes place. It was further suggested

that a reasonable incentive to a subsequent landowner of Lot 2 to refurbish the heritage dwelling would be for the two other dwellings to be retained, one as a dwelling and one for some other uninhabitable use.

It is considered that the above is an impracticable and uneconomic use of the land, as any future landowner cannot reside at the property until the heritage dwelling is refurbished. It is considered reasonable to permit the retention of the brick dwelling for habitable purposes, to facilitate the refurbishment of the heritage building. It will be a requirement of any consent that the third dwelling be demolished or removed prior to the release of the final plan (Subdivision Certificate).

Soils

It has been identified that the soil in the vicinity of the existing buildings have high levels of lead, mercury, and zinc. A consent can be conditioned so that the remediation of the site is carried out and that validation of the remediation be provided prior to the occupation of the buildings. This will involve the submission of a separate development application.

Flora and Fauna

The proposal does not involve the disturbance or removal of native vegetation. It is therefore considered that the requirements of Part 5A of the EP & A Act are satisfied in that the proposed development will have no significant impact on threatened species, populations, ecological communities or their habitats.

Conclusion

The proposed development is consistent with the provisions of Hawkesbury Local Environmental Plan 1989 and the objectives of Hawkesbury Development Control Plan. As discussed it is recommended that the variation sought to the Development Control Plan be supported.

The proposed allotment sizes and shape are consistent with the existing subdivision pattern in the locality. The proposed subdivision will have no significant adverse impact on the natural or built environment in the area.

RECOMMENDATION:

That the application for a four lot subdivision 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. MA 1625/01 and any supportive documentation, except as otherwise provided by the conditions of this consent.

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

2. Compliance with the provisions of the Environmental Planning and Assessment (Amendment) Act 1979.
3. All work must be carried out in accordance with the provisions of Council's Subdivision Construction Specification contained in Hawkesbury Development Control Plan.
4. The development is responsible for full cost associated with any alteration, relocation or enlargement to public utilities whether caused directly or indirectly by this proposed subdivision. Such utilities include, but are not limited to, water, sewerage, drainage, power, communication, footways, kerb and gutter.

Prior to Issue of Subdivision Certificate

5. The creation of a restriction on the use of the land in respect to the following:
 - On all vacant lots that all future dwellings are to be located on the portion of the site that is above the 1:100 year flood level.
 - All future dwellings shall comply with the requirements of Planning for Bush Fire Protection prepared by Planning NSW and AS 3959 - 1999 Construction of Buildings in Bush Fire Prone Areas.
 - All sewerage Management Facilities are to be installed, maintained and operated in accordance with the Feasibility of On Site Disposal of Wastewater report prepared by

Toby Fiander and Associates Report TFA 2497/02 dated 13/3/02.

- Prior to occupation of Proposed Lot 2, a Development Application for the remediation of the land is to be submitted to and approved by Council, and the works required for the remediation be completed.
- A heritage conservation plan is to be prepared in relation to the heritage dwelling on proposed Lot 2 and submitted within 12 months from the date of registration of the plan.
- The heritage dwelling is not to be occupied until all works indicated in the conservation plan are carried out to the satisfaction of Hawkesbury City Council.

6. The existing clad dwelling on proposed Lot 2 is to be demolished or removed. Any demolition is to be undertaken in accordance with the appropriate Australian Standard and any requirements of Workcover. Council is to be provided with the necessary details in respect to method of demolition used and the disposal of the materials.
7. Internal driveways shall be constructed to an all weather standard. Access ways should have a maximum grade of 25% (1 in 4) and be sealed if the grade exceeds 1 in 6, concrete if exceeds 1 in 5.
8. Submission of a report verifying that the filled dams have been compacted to 98% standard compaction and that the fill material is not contaminated.
9. Submission of a Certificate from Integral Energy that satisfactory arrangements have been made for the provision of underground electrical reticulation to each of the resultant lots of the subdivision.
10. Submission of a Certificate from an approved telecommunications provider that satisfactory arrangements have been made for the provision of underground cables for telephones through the subdivision.
11. A monetary contribution is to be paid to Council, pursuant to Section 94 of the Environmental Planning and Assessment Act 1979, towards the provision of the following public facilities in the locality:

- | | | |
|----|---------------------------|-----------|
| a) | Open Space and Recreation | \$6255.00 |
| b) | Community Facilities | \$8844.00 |

The above contributions have been determined in accordance with Hawkesbury Section 94 Contribution Plan. A copy of the Contributions Plan may be inspected at Council's Offices, George Street, Windsor. The amount of contribution payable under this condition has been calculated on the basis of costs as at the date of consent. In accordance with the provisions of the Contributions Plan, this amount shall be INDEXED at the time of actual payment in accordance with movement in the Consumer Price Index as published by the Australian Bureau of Statistics. In this respect that attached fee schedule is valid for 3 (three) months.

12. Each allotment created shall have an area of not less than 10 hectares.

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13. The submission of a plan showing all existing services on the lots including septic tank and effluent disposal area, sewer connections, water connections and stormwater disposal, where applicable, and the correction of any encroachments or defects to the requirements of the Divisional Manager Environment and Development.
14. The submission of the plan of subdivision, together with 4 (four) exact copies thereof, suitable for lodgement with the Registrar General.
15. Payment of a linen release fee of \$309.90. This amount is valid until 30 June 2003.

ATTACHMENTS:

AT-1 Locality Plan

AT-2 Subdivision Plan

AT-3 Plan of Alternate Lot Layout

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Attachment 1 - Locality Plan

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Attachment 2 - Subdivision Plan

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Attachment 3 - Plan of Alternate Lot Layout

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ITEM: 16 **Section 96 Modification to relocate dam associated with the growing of cut flowers, Lot 7 DP 7571, 89 Boundary Road, GLOSSODIA NSW 2756**

FILE NUMBER: DA005/02A/EVD/ENB25NBX.V10

Applicant: McKinlay Morgan & Associates Pty Ltd
Applicants Rep: As above
Owner: Mrs JD Bugeja & Mr BJ Bugeja
Stat. Provisions: HLEP 1989, SREP 20
Area: 20.190 H
Zone: Rural (b)
 Rural 1(b) under Hawkesbury Local Environmental Plan 1989
 Mixed Agriculture
 The proposed zone under draft Local Environmental Plan 8/98
 (Amendment 108) is Mixed Agriculture.
Advertising: Notified to adjoining owners and occupiers until 14 January 2003 (1 submission)
Date Received: 11 December 2002

Key Issues: - Tree removal
 - Rural amenity
 - Privacy

Action: Approval

REPORT:

Introduction

A deferred commencement consent was approved at Council's Ordinary meeting of the 12 June 2002 for an extension to an existing dam, clearing of trees and use of the property for growing cut flowers. The consent became operational from the 22 July 2002.

An application has been received seeking modification to the consent by amending Condition 23. The applicant wishes to relocate the approved dam approximately 25m further downstream which will ensure the dam wall will not leak.

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.

The Proposal

The application seeks to modify development consent DA0054/02 by amending Condition 23, which reads:

"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 after an inventory of the existing trees has been undertaken."

The applicant requests that the dam wall be built 25m further downstream as in the original proposal. A dam already exists on the property at a capacity of 10 megalitres, the extension of the dam down some 25m further downstream would allow the applicant to take advantage of the clay and prevent the dam from leaking. The extension of the dam would increase the capacity of the dam to 12 megalitres.

The applicant discussed the application with the Department of Land and Water Conservation as the Department through their General Terms of Approval imposed Condition 23.

Statutory SituationHawkesbury Local Environmental Plan 1989

The subject property is zoned Rural 1(b) under HLEP 1989. The property is zoned Mixed Agriculture under Amendment 108 which still allows the proposal to be carried out with Council consent.

Community Consultation

The application was notified to adjoining owners and occupiers for 14 days in accordance with the Notification Chapter of the DCP until 14 January 2003. There was one submission received which raised the following concerns:

- Concern of clearing of a 'minimum' number of trees, how much is a minimum?
- Neighbours have to police unauthorised activities
- Request as per previous site meeting that 6 Grey Gums and 8 Ironbarks be retained as form a corridor and for aesthetic and privacy reasons.
- Fear that the applicant will plant trees on the northern side of the dirt road instead of along the boundary, the trees along boundary will maintain privacy and reduce dust.

The above matters are addressed in the assessment below.

Planning Assessment

A full assessment of the application under Section 79C was considered within the report to the General Purpose Committee meeting of the 28 May 2002. The proposed modification does not alter the assessment under Section 79C significantly and the additional relevant matters are as follows:

Tree removal

Concern has been raised that the dam relocation and extension will require a substantial amount of trees to be removed which will impact on the rural amenity of the area. The applicant submitted a Flora and Fauna report with the original application. The Flora and Fauna report concluded that a Species Impact Study was not required. The report addressed the need to remove some 300 trees as part of the proposal, which was considered acceptable provided that a Vegetation Management Plan is carried out. Most of the trees that require removal are to the south of the dam.

Under the original approval the applicant had to maintain the dam wall in its current position, which would only require the removal of approximately 150 trees. The Department of Land and Water Conservation required the dam wall to be maintained in its current position in the original approval.

The modification will require the removal of approximately 300 trees. The respondent is concerned about the number of trees that require removal as part of the proposal due to rural amenity and wildlife connectivity. It is recommended that prior to the removal of the trees an inventory is carried out and that the number of trees that are removed do not exceed those trees indicated and assessed under the Flora and Fauna report submitted. This is similar to what Condition 23 already imposes.

Department of Land and Water Conservation (DLWC)

Prior to lodging the application the applicant discussed the application with the DLWC. The DLWC provided the following comments:

".....I can advise that the department agrees to the relocation of the dam wall some 25m downstream as a means of arresting the current leakage.

While the department is generally averse to clearing native vegetation, on this occasion, given significant compensatory plantings proposed, the department agrees to the clearing of the minimum number of trees necessary for the proposed dam relocation of the dam wall....."

The DLWC originally imposed Condition 23 and is now allowing the dam to be relocated and extended. The DLWC has also written to Council advising that a Part 3A permit is not required for the application and that conditions originally imposed relating to Part 3A are to be deleted, these include Conditions 24, 29, 30, 31 and 32. It is recommended that condition 23 be modified and Conditions 24, 29, 30, 31 and 32 be deleted in accordance with the comments provided by the department. (These conditions relate to a Part 3A permit).

Retaining Vegetation

There was concern raised by the respondent that 6 Grey Gums and 8 Ironbarks be retained, which are located on the southern side of the dam. This was discussed at the previous site meeting with the applicant and the respondent. It was indicated at that meeting that the applicant would examine the possibility of shifting the surface area of the dam to try and retain those trees. It was recommended in the additional information provided to the Ordinary meeting of the 11 June 2002 that amended plans indicating the retention of those trees be submitted. The recommendation of that report is

extended to this application. The retention of those trees can be included in the Vegetation Management Plan and the Rehabilitation Plan required by the Department of Land and Water Conservation.

Conclusion

The proposed modification is considered substantially the same development and will not create significant impacts on the environment or surrounding area. The applicant has provided a flora and fauna report, which indicates the removal of trees, will not be significant and that there is significant compensatory planting. The DLWC also supports the relocation of the dam and removal of the trees. It is recommended that the proposed modification be approved subject to modifying Condition 23.

RECOMMENDATION:

That the proposed modification be approved subject the following:

1. Conditions 23 be amended as follows:
23 - An amended plan is to be submitted demonstrating the location of the dam in relation to the six Grey Gums and eight Ironbarks on the property located south of the dam, which are to be retained. The tree removal on the property is to be carried out in accordance with the Flora and Fauna report submitted with the application. Selective tree removal is appropriate where required for machinery access after an inventory of existing trees to be removed has been undertaken. Prior to trees being removed they are to be marked and inspected by Council staff.
2. Conditions 24, 29, 30, 31 and 32 be deleted from the consent.

ATTACHMENTS:

AT-1 Locality Plan and location of respondent

AT-2 Site Plan

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Attachment 1 - Locality Plan and location of respondent

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Attachment 2 - Site Plan

oooO END OF ITEM 16 Oooo

ITEM: 17**Draft Local Environmental Plan 6/00 - Draft Amendment 126 -
Protection of Threatened Species and Regionally Significant Wetlands****FILE NUMBER:** LEP 6/00/EVD/ENB25NBX.V05

REPORT:**Introduction**

Council at its meeting of 7 November 2000, resolved to prepare a Draft Local Environmental Plan (LEP) to amend the subdivision provisions of Hawkesbury Local Environmental Plan 1989 (HLEP 1989) to facilitate the protection of Threatened Species and Regionally Significant Wetlands. The purpose of this report is to advise Council of the submissions received and recommend how to proceed with the draft plan.

Background

The intention of the draft LEP is to provide a more flexible approach to subdivision where land contains Endangered Ecological Community or Regionally Significant Wetlands. The draft LEP does not increase the subdivision potential of land, rather proposes to introduce provision to preserve the Endangered Ecological Communities and Regionally Significant Wetlands.

The draft LEP introduces "lot averaging" and applies to land currently zoned Rural 1(b) and Rural 1(c1) that contains either 20% Endangered Ecological Community or Regional Significant Wetland. The requirements of the plan are that the land must have subdivision potential under the current provisions of HLEP 1989 and the lot yield is determined using a conventional subdivision.

The minimum lot sizes using lot averaging are proposed at 2.5 hectares for the Rural 1(b) zone and 1 hectare for the Rural 1(c1) zone. The large residue lot is to be preserved and communally managed using the Community Land Development Act 1989.

It should be noted that in this report the zone names are referred to as their current names under HLEP 1989 and not the proposed names under draft Amendment 108. The sequencing of the finalisation and gazettal of these two draft plans is such that draft Amendment 126 would be gazetted prior to draft Amendment 108. Council will recall that the new name under draft Amendment 108 for Rural 1(b) is Mixed Agriculture and Rural 1(c1) is Rural Living.

Section 34 Consultation

The Department of Planning requested that Council consult with the National Parks and Wildlife Service (NPWS) under Section 34 of the Environmental Planning and Assessment Act 1979 Act prior to the draft LEP being prepared. This was carried out and the NPWS advised in August 2001 that the service was supportive of the proposed amendments and did not have any specific considerations of the draft plan.

Following extensive consultation with the Department of Planning, the draft plan was prepared and

forwarded to the following government authorities for comment:

- Integral Energy
- Sydney Water Corporation
- NSW Heritage Office
- NSW Agriculture
- Department of Land and Water Conservation
- National Parks and Wildlife Service
- Department of Minerals and Energy
- Department of Housing
- Deerubin Local Aboriginal Land Council

Adjoining councils were notified and included Penrith City Council, Blacktown City Council, Rylstone Shire Council, Singleton Council, Baulkham Hills Shire Council, Blue Mountains City Council Cessnock Council, Gosford Council, Lithgow Council and Hornsby Shire Council.

The Department of Planning was requested to issue the Section 65 Certificate in March 2002, which was issued on 13 June 2002. The Department had also requested that the Draft LEP be exhibited concurrently with Draft Amendment 108.

Submissions

Blue Mountains, Cessnock, Rylstone and Blacktown Councils provided responses and had no objection to the draft plan. The National Parks and Wildlife Service and NSW Agriculture provided responses and these are outlined below.

NSW Agriculture

NSW Agriculture raised several issues with the draft LEP which related to the protection of agriculture and the creation of smaller lots in the Rural 1(b) zone in particular. NSW Agriculture was concerned that additional land use conflicts may occur and whilst supportive of the proposed amendments in the Rural 1(c1) zone, believed that land use conflicts would occur in the 1(b) zone and cause fragmentation of agricultural land.

A meeting was held with both NSW Agriculture and the Department of Planning and it was agreed that the draft plan would be amended to ensure that the patterns of lots created would minimise the impact on agriculture. The Department of Planning also required that the pattern of lots created would minimise the impact on bushfire threat.

National Parks and Wildlife Service

NPWS provided comments under both section 34 and section 62 of the Environmental Planning and Assessment Act 1979. The Service is supportive of the proposed amendment as it a positive initiative to strategically manage the conservation values of the affected lands.

Community Consultation

The draft plan was placed on public exhibition from 10 July 2002 to 19 September 2002. A number of public meetings were held to discuss five draft local environmental plans, including draft Amendment 126 as part of the Hawkesbury Our Future Consultations. These meetings were held in St Albans, Richmond, North Richmond and Windsor. Advertisements were also placed in the Hawkesbury Gazette during the exhibition period.

Submissions

Six submissions were received and these are outlined below:

Merit Manufacturing Pty Ltd (AK Lance AM)

The two main issues raised in this submission relate to the size of the lots and the communal management of the remaining large parcel of land. The submission suggests that the proposed 2.5 hectares lot in the Rural 1(b) zone is too large for an urban orientated household and too small for a rural orientated household. The reason for this is that land will either “be overrun with weeds as people will not own the tools, livestock or knowledge or aptitude to manage the land”, or “the land will be overstocked and degraded with pet animals breaking fences and feeding on adjoining properties”. The submission therefore suggests that 1 hectare lots should be considered in both the Rural 1(c1) and Rural 1(b) zones.

Secondly the submission raises the concern with the communal management of the remaining large parcel of land. It is suggested that “community land lacks the care an owner would normally give it”.

Teroma Pty Ltd (Dr M Brennan)

This is a comprehensive submission which also included a document titled “Environmental Subdivision: An Introduction to Practical Land Management employing EnvironDivision Techniques”.

The submission raises both positive and negative issues which are summarised below:

Positive:

- Providing the mechanism for the protection of significant ecosystems by the creation of a responsible management body.
- Encouraging land owners to preserve, maintain and even extend current natural ecosystems in order to qualify for the rights to utilise the small allotment criteria.
- Reducing the cost of rural subdivision and therefore the greater efficiency of natural resources.

Negative:

- The intensity of the holding could infringe on the rural aesthetics of the area unless

- the width of the block and setback are controlled.
- They may impinge on best practice in providing the essential infrastructure for the subdivision, particularly with regards to the provision of waste disposal, communication and energy source.
- They do not have specific measures for the encouragement of sustainable activity, recycling of waste material or minimisation of the use of resources.
- No provision for the determination or maintaining of social well being, as the minimum sizes suggested by Council do not necessarily represent a sensible landmass.

The submission also raises concern with the conservation area and its management by landowners. It recommends that subdivisions be accompanied by a voluntary Conservation Agreement, transferred to the National Parks and Wildlife Service or be managed by a suitably qualified third party who would be responsible for the environmental protection of the area.

Bowdens Group (A Currall)

Two submissions were received from the Bowdens Group, one being a general submission and secondly one relating specifically to a property known as Hadden Farm at Wilberforce. Both submissions are generally supportive of the plan, however raised the following concerns:

- The provisions should relate to the Rural 1(a) zone.
- The minimum allotment size should be consistent and be 1 hectare.
- Satisfactory ratio of depth to frontage should be more specific and a 1 wide to 6 deep ratio (based on an average) is recommended.
- The provisions requiring the Endangered Ecological Community or Regionally Significant Wetland to be contained in a community lot should be changed. The reason for this is that it does not give consideration to large parcels of land that have productive farming or agricultural activities. In the case of Hadden Farm, it is suggested in the submission that the productive farm will become unviable and therefore unable to create the required funds to manage and improve the wetland. It is therefore suggested that positive covenants and responsible development consent conditions would be appropriate.
- The provisions not allowing a dwelling on the community lot should be amended. It is suggested that this land should contain a dwelling house.
- The proposed clauses are inconsistent with the objectives of the Rural 1(b) zone, the Hawkesbury Sustainable Agriculture Development Strategy (where alternative subdivision provisions are suggested) and the strategic plan for Sustainable Agriculture.

SMID Pty Ltd (A Currall)

This submission raises similar arguments to those raised above in relation to Hadden Farm. It further suggests that the Hadden Farm will become unproductive if the land containing the wetland and endangered ecological community is severed as this land provides additional water and feed resources. Further, it would not work for a farm to have a lease over the sensitive land as a separate lot, because a lease has as a substantially less value.

The submission also suggests that the definition of original allotment needs to be amended or further explained.

McKinlay Morgan and Associates (B McKinlay)

This submission is supportive of the draft plan, however seeks to provide some flexibility and simplify the plan. The following issues were raised:

- Ambiguity between the lot averaging and the term ‘capable of subdivision’. The submission suggests that the lot averaging provisions should prevail so all landowners are encouraged to retain vegetation.
- Minimum allotment size should be 1 hectare to minimise land management issues. Furthermore, domestic pets should not be encouraged, dams not allowed, weeds controlled and bushfire protection zones maintained.
- Suitable depth to width ratio should be set to address the issue of streetscape amenity and landscaping.
- The 20% rule may be onerous and should be expanded to provide for the inclusion of habitat and vegetation management zones so that regeneration and expansion can occur.
- Conservation lot requirements are onerous and may not suit all development. A better management outcome may be single ownership, particularly for land containing wetlands. It is suggested that this allotment could be created under the Community Land Development Act 1989, the management could be subject to:
 - an approved vegetation management plan required by Council through a By Law in Part 5 of the Management Statement; or
 - a community lot being community property and subject to management as per above; or
 - subject to a Voluntary Conservation Agreement administered by the National Parks and Wildlife Service.

Hawkesbury Nepean Catchment Foundation Inc. North West Branch (S Gleeson)

This submission raises a number of issues concerning protection of wetlands in general and in relation to this plan. The issues are outlined below:

- Protection of wetlands is a specific issue and should not be dealt with in a general amendment.
- Amendment 126 is inconsistent in its wording as it applies to Rural 1(c1) and Rural 1(b), not 7(a) and 7(d).
- Council maps have omitted more than 20 of the SREP 20 listed wetlands.
- Committing wetlands to community title without any mandatory framework is to consign these important regions to ununiformed uses and rapid degradation. The seasonal nature of most ephemeral wetland areas induces recreational bike riding during dry times. The permanent sections are seen as unlimited water supplies and are not protected from stock grazing. Each land owner has their own ideas on what to do with the community land and no community plan within which to balance interests or limit activities.
- Lot averaging allows the concentration of small lots on high ground, which brings advantages to the developer, but brings a concentration of pets, weeds, family activities,

- storm and septic runoff, rubbish dumping, vehicles and grazing animals to a small area.
- The amendment is aimed to facilitate the subdivision potential of previously difficult to develop land.

Comments on submissions

There are four main issues raised by the submissions received and these are addressed below.

Minimum allotment sizes

Several of the submissions requested that the minimum allotment size be a consistent 1 hectare in both the Rural 1(b) zone and Rural 1(c1) zone. It was suggested 1 hectare lots would be easier to manage than 2.5 hectares lots.

The comments provided initially by NSW Agriculture raised concerns with the creation of small lots in the Rural 1(b) zone, that is 2.5 hectares. Whilst being supportive of the draft plan in the Rural 1(c1) zone, NSW Agriculture believed it would lead to fragmentation of agricultural land and increase land use conflict in this zone.

As discussed above, discussions were held with the NSW Agriculture and it was agreed that the draft plan be amended to ensure that agriculture was considered in applying Amendment 126. Further, NSW Agriculture agreed that the lot size of 2.5 hectares would still allow for some forms of agriculture and therefore the draft LEP was supported.

The proposed 1 hectare lot in the Rural 1(c1) zone is consistent with both the existing and proposed zone objectives in that the zone provides for a rural residential style of living. However the Rural 1(b) zone is primarily an agricultural zone and is appropriate to provide larger lots in this zone.

It is not considered appropriate to amend the lot sizes for the Rural 1(b) zone.

Community Management of residue allotment

It was suggested in the submissions that the residual allotment containing the Endangered Ecological Community or Regionally Significant Wetland subdivision should be allowed to be in private ownership, rather than in a community lot. The main reason for this being the management of the community lot, in terms of weed control, recreational uses, environmental management and agriculture.

It is also suggested that the community lot should contain a dwelling house. This is also considered inappropriate as it will mean an additional allotment would be created, over and above the maximum lot yield given under the draft plan.

Containing the Endangered Ecological Community and Regionally Significant Wetlands in a residue allotment is the essence of draft LEP and is essentially how a better environmental outcome when subdividing land is facilitated and achieved. The management of the community lot is also crucial and to date the best method to achieve this is via the Neighbourhood Management Statement under the Community Land Development Act 1989 and to be the responsibility of all the

landowners. This statement would address management issues, including the rehabilitation of the vegetation or wetland.

Furthermore, it is unlikely that the Department of Planning will support an amendment to the draft plan will that allow the residual allotment to be privately owned, however it is acknowledged by the Department that there is limited experience with the community title legislation being used in this manner.

Development controls

Draft Amendment 126 provides that "legal" way in which this form of subdivision can occur. It is appropriate that the Hawkesbury Development Control Plan DCP would include explanatory notes or the "detail" such as setbacks for dwellings, depth to frontage ratios and the requirements for the management of the community/residue allotment. The DCP can also contain explanatory notes as to how to interpret the provisions of the draft plan.

It is also important to note that the draft LEP will not increase the subdivision potential of land, nor give previously difficult land to develop subdivision potential. The draft LEP clearly requires that the number of lots proposed does not exceed the number of allotments capable of subdivision under the current provisions of HLEP 1989. To this end, applicants will need to determine the lot yield using a conventional style of subdivision.

It is recommended that new provisions be prepared and inserted into the Hawkesbury DCP to provide the details for this form of subdivision.

Management and mapping of wetlands

Clause 11 of HLEP 1989 provides the minimum allotment sizes for subdivision of rural land. In drafting Amendment 126, it was considered appropriate to replace this clause and the new format of clause 11 includes the new requirements for lot averaging. The draft amendment does not alter the other minimum allotment sizes, merely alters the format of the clause. It is noted that wetlands can be subdivided with the development consent and draft amendment 126 does not alter this provision.

Sydney Regional Environmental Plan No. 20 - Hawkesbury Nepean River (No. 2-1997) protects the significant wetlands of the Sydney Region, including some 80 (eighty) in the Hawkesbury Local Government area. In addition, Council also protects wetlands via the Environmental Protection 7(a) zone. It is not uncommon for local and regional plans to be inconsistent and to this extent the regional plans prevail. It is also noted that SREP 20 provides for the subdivision of wetlands.

The management of wetlands where subdivision occurs is likely to be improved as a result of this amendment. The Neighbourhood Statement will clearly set the rules for how the wetland is to be managed, including its rehabilitation.

General Comments

It is considered that the submissions do not warrant further amendments to the draft LEP. Should applicants not want to subdivide in this manner there is no compulsion to do so. There is, of course, the option for the Council to refuse subdivisions that do not comply with the new requirements.

Conclusion

The use of "lot averaging" provisions has been used successfully in the Grose Wold area over the past 2 years and provided for the protection of the Cumberland Plain Woodland. The draft LEP provides a more flexible approach without providing additional subdivision potential and will result in a better environmental outcome. This style of subdivision may not be applicable in all circumstances, however it does provide an alternative to the current fixed lot size system. It may be that in the future further alternatives may be suggested but for the moment this system should be introduced.

It is therefore recommended that the draft plan not be amended and be forwarded to the Department of Planning for finalisation and gazettal.

RECOMMENDATION:

That:

1. The draft local environmental plan not be amended.
2. The draft local environmental plan (Amendment 126) be forwarded to the Department of Planning for finalisation and gazettal.
3. New provisions be prepared and inserted into the Hawkesbury Development Control Plan to reflect the requirements of draft Amendment 126.

ATTACHMENTS:

There are no supporting documents for this report.

oooO END OF ITEM 17 Oooo

ITEM: 18 **Review of Determination - DA408/02 - Re-subdivision of Lots 1 and 2, DP790878, 210 and 226 Kurmond Road, Freemans Reach**

FILE NUMBER: DA408/02/EVD/ENB25NBX.V03

REPORT:

Introduction

A development application was received on 12 April 2002 seeking consent for a two (2) lot re-subdivision of Lots 1 and 2, DP 790879 Kurmond Road, Freemans Reach. The application was approved on 29 October 2002 under delegated authority. Concurrence from the Department of Planning was granted for the re-subdivision.

The applicant has now requested a review of determination under Section 82A of the Environmental Planning and Assessment Act, in respect to the following conditions of the Development Consent:

Condition 16

"Submission of a Certificate from Integral Energy that satisfactory arrangements have been made for the provision of underground electrical reticulation to each of the resultant lots of the subdivision."

The applicant requests that electricity be provided above ground.

Condition 18

Construction of a 5.5 metres wide sealed pavement, shoulders, table drains and any necessary drainage. The seal construction is to extend to a vehicle access point to a suitable building site on proposed Lot 2. The minimum length is to be 10 metres beyond the proposed new boundary line.

The applicant requests that this condition be deleted.

Condition 23

The creation of easements to drain water over the site of drainage discharge from roads 4 metres wide and 10 metres long free of cost to Council.

The applicant requests that this condition be deleted.

Background

The existing Lot 1, No. 210 Kurmond Road is 1721sqm in size and contains a dwelling house and garage. Lot 2, No. 226 Kurmond Road is 7.977 hectares and contains a shed and dam. Both properties have frontage to Kurmond Road.

The proposed lots with the resubdivision are:

Proposed Lot 1 - 4.149 hectares and will contain the existing dwelling house, garage and shed. Access will be maintained from Kurmond Road.

Proposed Lot 2 - 4 hectares and will contain the existing dam. Access to the lot will be from Geakes Road as there is no frontage to Kurmond Road, however the location of this access was not specified in the development application.

The purpose of the re-subdivision was to provide two lots of approximately the same size to facilitate a change in ownership.

The proposed re-subdivision will also provide improved separation between the dwelling house and the agricultural use of the land. The increase in size of Lot 1 will also permit the use of onsite effluent disposal on each of the lots. At present, Lot 1 is too small to support the existing onsite effluent disposal system. The disposal area of this system is presently on Lot 2.

Assessment

Condition 16 - Underground Power

The existing lots and adjoining properties are presently serviced by above ground electricity. The condition requiring underground power was included in error and the applicant has been advised that underground power is not required.

Condition 18 - Construction of Geakes Road

This condition requires the sealing of Geakes Road from Kurmond Road to the access of Proposed Lot 2. The sealed pavement is to be 5.5 metres in width.

The applicant provides the following objections to this condition:

1. *"The re-subdivision does not create any additional lots, and therefore does not increase the overall demand for public amenities, services or infrastructure."*

Comment

The re-subdivision will result in the creation of a new access from Geakes Road to proposed Lot 2. At present, the existing lots have frontage to and access from Kurmond Road. Proposed Lot 2 will have frontage to Geakes Road only. The re-subdivision will increase usage of Geakes Road, however minor, with the use of the property for residential and/or agricultural purposes.

2. *"Whether or not the boundary relocation takes place, the proposed dwelling is to be situated close to the northern boundary of the lot and not fronting Kurmond Road for the following reasons;*

- (a) *To reduce the impact of noise-levels associated with traffic on Kurmond Road by positioning the dwelling well-away from Kurmond Road.*
- (b) *To take advantage of the higher aspect of the property at the north boundary with subsequent superior views.*
- (c) *To avoid having to orientate the dwelling facing south i.e. Kurmond Road.*
- (d) *To increase privacy by situating the dwelling well-away from pedestrian and vehicular traffic of Kurmond Road.*

As the boundary re-location will not affect the proposed siting of the building, the re-subdivision will not generate any traffic whatsoever. An access way is already in use at the north of the property fronting Geakes Road, and will remain in use regardless of the re-subdivision."

Comment

Both existing Lot 2 and proposed Lot 2 are adequate in size and dimension to provide choice in building site to achieve the applicants above requirements.

The existing access from Geakes Road to Lot 2 is not suitable as it would not drain effectively over time and would force stormwater drainage on to the road. It also makes existing maintenance of Geakes Road difficult. There are a number of alternative locations for access to proposed Lot 2 from Geakes Road.

3. *The applicant argues that the sealing of the road is not required as an all weather standard exists on Geakes Road, which Hawkesbury Development Control Plan states that to achieve this sealing MAY be required, and in the absence of traffic generation the requirement cannot be justified.*

The applicant has been advised by Council officers that the requirement for a 5.5 metres wide pavement was imposed to provide increased safety. The applicant rejects this argument for the following reason *"because a sealed road particularly if 5.5 metres wide, straight and through a rural area, would encourage speed and be less safe than the present unsealed road."*

The applicant further states that the re-subdivision has absolutely no impact on traffic volume and that *"it is grossly unreasonable to compare the standard of Geakes Road, a minor rural road with low traffic volume, to that of Kurmond Road which is a sealed main road. Common sense would dictate the reference to sealed roads in the vicinity under rule (e) is a reference to roads of similar traffic volumes and not a main arterial road which happens to pass by. Further, the prerequisite criteria of increased traffic generation, necessary to justify a road upgrade requirement, is totally absent in this case."*

Comment

Part D Section 3.8.3 Rule (c) of Hawkesbury Development Control Plan states:

"Upgrading of the access way from the nearest sealed road to the proposed subdivision to an all weather standard suitable for the expected traffic generation arising from the subdivision. This work may require the sealing of the pavement dependent upon traffic generation."

Part D Section 3.8.3 Rule (e) of Hawkesbury Development Control Plan states:

"The road fronting the subdivision shall be sealed into half width (minimum 3.5 metres). An all weather standard of road construction may be acceptable where the expected traffic volume generated by the subdivision proposal is low and no sealed roads in the vicinity."

Geakes Road services a network of unsealed roads to the north of the subject land. In view of the requirements of Hawkesbury Development Control Plan, it was considered that the sealing of the front section of Geakes Road was desirable and that due to this section adjoining Kurmond Road, which is sealed, that a higher level of construction than 'an all weather standard' was required regardless of the minor traffic generation of the development.

In the consideration of the application it was identified that a half road width (i.e. 3.5 metres) of a rural road is both dangerous to drivers and difficult to maintain and that the seal should be along the centre of the crown of Geakes Road. A pavement width of 5.5 metres was imposed for a much shorter length than half width seal (approximately 230m (two hundred and thirty metres) rather than 540m (five hundred and forty metres).

4. *The requirement for the sealing of Geakes Road is beyond Council's legal power. "As already discussed the re-subdivision does not create any additional lots and does not increase the demand for public amenities or services. In these circumstances I submit that the consent authority is not entitled to impose any condition which can be categorised as being a Section 94 contribution by the back door."*

Comment

This condition was not imposed as a contribution under Section 94 of the Environmental Planning and Assessment Act, 1979. The proposed development creates a new allotment with its only access from Geakes Road. The sealing of this road is an attempt to gradually improve the safety and amenity of the area. Similar conditions have been imposed on other subdivision/re-subdivision proposals.

5. *"Hawkesbury City Council is the roads authority for Geakes Road. Clearly under the Roads Act it is responsible for carrying out road works on roads which are under its authority. I submit that in circumstances where a development does not impact on traffic generation Council would be acting illegally by requiring a ratepayer to carry out road works at their own cost which by statutory enactment are the function of the Council. The limit of Councils powers to require ratepayers to pay for the cost of roadwork are set out in Section 217 of the Roads Act 1993 and are limited to half of the cost of paving, kerbing and guttering footways."*

Comment

The condition for the sealing of Geakes Road relates to upgrading of the road as part of a re-subdivision and was not imposed by Council using its powers under the Roads Act.

Condition 23 - Drainage Easement

While water is piped under Geakes Road, the flow is away from the property and there is no discharge from the property along Geakes Road. This easement would be located on a dam and would have no useful purpose.

Comment

Having reviewed this requirement, it is considered that there is no need to create the easement for maintenance of the pipe under Geakes Road. It is agreed that this condition can be deleted.

This condition was imposed to facilitate access to the pipe for maintenance purposes.

Conclusion

The requirement for electricity to be supplied to the subdivision by underground cables was imposed in error.

A condition for the upgrading of a road is a normal practice for subdivision approvals, which also ensures consistency and compliance with the requirements of Hawkesbury Development Control Plan. The sealing of Geakes Road will provide improved safety for vehicles as well as improving the amenity and environment by reducing dust and sedimentation.

The creation of an easement to drain water on proposed Lot 2 is not required, as access to the property for maintenance purposes is not needed.

RECOMMENDATION:

That having reviewed the determination in accordance with S82A of the Environmental Planning and Assessment Act 1979, Council amend the Development Consent notice as follows:

1. Condition 16 of Development Consent DA 408/02 be amended to read:

Submission of a Certificate from Integral Energy that satisfactory arrangements have been made for the provision of above ground electricity to each of the resultant lots of the subdivision.

2. Condition 18 of Development Consent DA 408/02 not be deleted.
3. Condition 23 of Development Consent DA 408/02 be deleted.

ENVIRONMENT

Meeting Date: 25 February, 2003

Item: **18**

ATTACHMENTS:

AT-1 Locality Plan

AT-2 Subdivision Plan

ENVIRONMENT

Meeting Date: 25 February, 2003

Item: **18**

Locality Plan

ENVIRONMENT

Meeting Date: 25 February, 2003

Item: **18**

Subdivision Plan

oooO END OF ITEM 18 Oooo

ITEM: 19 Tender for removal of soil at Hawkesbury City Waste Management Facility**FILE NUMBER:** 107/EVD/ENB25NBX.V01**REPORT:**

A tender for the purchase and removal of 98,000 cubic metres (cu.m) of soil from the excavated Cell No. 3 at the Waste Management Facility on The Driftway South Windsor closed on 5 September 2002.

Three (3) submissions were received as follows:

1. M P Schultz Excavations - offered to take soil at a cost to Council of \$12.90 (twelve dollars and ninety cents) per banked cu.m GST inclusive or \$6.802 (six dollars and eighty point two cents) per truck cu.m GST inclusive.
Estimated Cost: \$1,264,200 (one million, two hundred and sixty four thousand, two hundred dollars).
2. Heggies Bulkhaul Ltd - offered to take soil at a cost to Council of \$4.24 (four dollars and twenty four cents) per tonne GST exclusive.
Estimated Cost: \$747,963 (seven hundred and forty seven thousand, nine hundred and sixty three cents).
3. Waste Services NSW - offered to take the soil at a cost of \$1.00 (one dollar) per tonne delivered by Council to their Castlereagh Waste Management Centre.
Estimated Cost: \$923,936 (nine hundred and twenty three thousand, nine hundred and thirty six dollars) (inc. loading and transport).

In accordance with the Local Government (Tendering) Regulation 1999 No. 464 Clause 19 (1) (b) Council is not required to accept any of the tenders. The disposal of 98,000 me (ninety eight thousand cubic metres) of soil was expected to produce a modest financial return, not a significant cost. Accordingly it is recommended that Council decline to accept any of the tenders.

Since the closure of the tender process, a Mr Kerry Luscombe of Luscombe Contracting Pty Limited, has approached Council staff with a proposal to purchase the material under contract at \$0.30 (thirty cents) per tonne. Mr Luscombe proposes to screen and separate the material on site and then transport to markets that he has set up. All the soil will be removed within six months of commencement of the contract. This would produce a return to Council of approx. \$50,000 (fifty thousand dollars).

Clause 19 (3) (e) allows a Council that decides not to accept any of the tenders for a proposed contract or receives no tenders for the proposed contract, to enter into negotiations with any person (whether or not the person was a tenderer) with a view to entering into a contract.

Clause 19 (4) states that if a Council resolves to enter into negotiations as referred to in Clause (3)

(e), the resolution must state the reasons for declining to invite fresh tenders or applications for the contract.

Enquiries were made with the Roads and Traffic Authority to ascertain whether it was interested in the material for future road construction. After geotechnical examination of the material, the Roads and Traffic Authority declined the opportunity to bid for the material.

It is apparent that any new tendering process would result in only bids for Council to pay to have the material removed. Discussion with other earth moving companies regarding the current market for this type of material confirms this supposition.

RECOMMENDATION:

That:

1. Having considered the tenders submitted, Council decline to accept any of the tender applications submitted for Tender No. 003/FY03 - "Tender for soil removal from Hawkesbury Waste Management Facility".
2. Council resolve to not invite fresh tenders or applications for the soil removal, as the current market indicates that offers to purchase would not be forthcoming. Further, no budget allocation has been made to pay for the removal of the soil.
3. Council resolve to enter into negotiations with Mr Kerry Luscombe of Luscombe Contracting Pty Limited, with a view to entering into a contract to purchase and remove the subject soil.
4. All tenderers be notified that none of the tenders for the proposed contract were accepted.
5. Once negotiations have been completed with Luscombe Contracting Pty Limited, that Council enter into a contract with this company under seal of Council, for the purchase and removal of the soil material at \$0.30 (thirty cents) per tonne, and that all soil that is the subject of the contract, is removed from the site within 6 (six) months of commencement of the contract.

ATTACHMENTS:

There are no supporting documents for this report.

oooO END OF ITEM 19 Oooo

ENVIRONMENT

Meeting Date: 25 February, 2003

Item: **20**

ITEM: 20 **Additions to Dillwynia Women's Correctional Centre, The Northern Road, Berkshire Park**

FILE NUMBER: GT090/003Pt11/EVD/ENB25NCX.V02

REPORT:

Council has been advised that the Department of Planning has received a development application for extensions to the Dillwynia Women's Correctional Centre, the Northern Road, Berkshire Park. The applicant is the Department of Public Works, the consent authority is the Minister of Planning.

The extensions involve accommodation and ancillary facilities for 100 (one hundred) inmates. The extensions are located adjacent to the John Morony Correctional Centre and are in addition to the 200 (two hundred) bed Women's Correctional Centre currently under construction.

The applicant has advised that the additions are primarily due to recent changes in the Bail Act 1978, which includes a change to the presumption of bail for re-offenders. The development application and associated documentation are on exhibition for the period 29 January 2003 until 27 February 2003. The documents may be viewed at Planning NSW's Planning Centre, Sydney; Planning NSW's Western Sydney Region Office, Parramatta, and Penrith and Hawkesbury City Council offices.

RECOMMENDATION:

The information be received.

ATTACHMENTS:

There are no supporting documents for this report.

oooO END OF ITEM 20 Oooo