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committee

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environment

GENERAL PURPOSE COMMITTEE - ENVIRONMENT

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ITEM: 69 **Bulky Good Retail Centre, Lot 2 DP535140 & Lot 180 DP752061, 264-272 Windsor Road, Vineyard NSW 2765**

FILE NUMBER: DA0560/03/EVD/ENJ28NAX.V04

Applicant: ICA Property
Applicants Rep: Mr Matthew Goodare
Owner: ICA Property Develop Fund No. 2 Spv T'ee P/L Stat.
Stat. Provisions: Hawkesbury Local Environmental Plan 1989
 Draft HLEP 1989 - Amendment No. 140
 Threatened Species Conservation Act 1995
 SREP No. 20 (No. 2 - 1997)
 SEPP No. 11 - Traffic Generating Development
Area: 4.773 hectares
Zone: Business Special 3(b)
Advertising: 11 September - 13 October 2003
Date Received: 21 May 2003

Key Issues: Removal of threatened species
 Economic Impacts
 Traffic Impacts
 NSW NPWS concurrence

Action: Deferred commencement consent subject to NSW NPWS concurrence

REPORT:

Council has received an application for a bulky goods retail centre and hardware store at 264 - 272 Windsor Road, Vineyard. In summary the application consists of a Bunnings Hardware Warehouse, 9 (nine) bulky goods retail stores, associated car parking and landscaping.

This matter is being reported to Council due to the submissions received in relation to the application and Council's previous decision regarding a development application on this site. The report will detail the proposal, the current statutory situation and provide an assessment of the application in accordance with Section 79C (1) of the Environmental Planning and Assessment Act 1979.

Background

In November 2002 the applicant submitted a development application for a supermarket, 17 (seventeen) speciality shops and 9 (nine) bulky goods retailing units on the subject properties.

In February 2003 the applicant lodged a Class 1 appeal at the Land and Environment Court against Council's deemed refusal of the application.

The matter was reported to Council on 25 February 2003 whereby Council resolved to defend the

appeal. The applicant discontinued the appeal on 11 March 2003 in favour of preparing the new amended application currently before Council.

The Proposal

The application is for a bulky goods retail centre and hardware store consisting of a Bunnings Hardware Warehouse, 9 (nine) bulky goods retail stores, associated car parking and landscaping.

The Bunnings store is a stand alone building with a floor area of 9,587sqm (nine thousand, five hundred and eighty seven square metres), approximate dimensions being 140 (one hundred and forty) metres long by 59 (fifty nine) metres wide by 11 (eleven) metres high.

The 9 (nine) bulky goods retail stores are contained in one "L" shaped building with a total floor area of 7,027sqm (seven thousand and twenty seven square metres). The approximate dimensions of the building are 130 (one hundred and thirty) metres long by 93 metres wide by 32-39 metres deep by 6.3 - 9.3 metres high. At this stage the applicant does not seek approval for the tenancy of these units, however, has provided an indicative list of likely tenants which include stores specialising in lighting, electrical, home wares, furniture, paint, food, car spare parts and accessories. Occupation of these units will be subject to subsequent development applications.

The proposed buildings are to be setback 15 (fifteen) metres from the realigned property boundary with Industry Road. Industry Road is currently under construction on behalf of the property owners by Council.

The main vehicular access to the site is via a 15 (fifteen) metres wide centralised driveway off Industry Road. 9 (nine) metres wide service vehicle accesses are proposed along the northern and southern boundaries of the site. A total of 390 (three hundred and ninety) car parking spaces are proposed.

Other details of the application include:

- the removal of vegetation from the site including removal of threatened species. As a result, the applicant has submitted a Species Impact Statement with the application. The development is defined as "threatened species development" under the provisions of the Environmental Planning and Assessment Act 1979 and associated Regulations 2000;
- the filling elevation of the majority of the site by on average 2 (two) metres with 35,000 (thirty five thousand) cubic metres of fill imported to the site. This is essentially to provide for a building floor level of 17.6 metres AHD;
- landscaping within the site and along the strip of land between the Industry Road and Windsor Road.

Information submitted with the application suggest, subject to approvals, the development being operational by June 2004.

Full size plans will be displayed at the meeting.

Description of the Site

The site comprises 2 (two) properties Lot 2 DP535140 and Lot 180 DP752061, 264 - 272, Windsor Road with a combined area of 4.773ha (four point seven seven three). The site is located on the western side of Windsor Road between Groves Avenue and Park Road. It has frontage of 220 metres to Windsor Road, and average depth of 225 metres and ranges in height from approximately 19 metres AHD at the southern boundary to approximately 14 metres AHD at the north-eastern boundary.

The site contains remnant Shale Transition Forest and at least 4 (four) bats species, 7 (seven) reptile species, 4 (four) frog species, 9 (nine) bird species, and 3 (three) invertebrate species. The site also contains threatened flora species of *acacia pubescens* and *grevillea juniperina subsp juniperina*, as well as the threatened invertebrate *meridolum corneovirens* (Cumberland Plain land Snail) as listed under the Threatened Species Conservation Act, 1995.

Surrounding development consists of a car yard to the north; rural residential land to the east; undeveloped land, landscape supplies business, and the AGL pipe line to the south; and a concrete casting plant to the west.

Further to the north, west and south are more developed and established commercial/industrial areas containing a wide variety of uses.

Statutory Provisions

Hawkesbury Local Environmental Plan 1989

The site is zoned 3(b) Business Special. The development is primarily for *bulky goods salesrooms or showrooms*, however, also includes *clearing of native vegetation, fencing, landfilling, refreshment room*. All of these uses are permissible in the 3(b) zone under the provisions of Clause 9.

Clause 9A requires Council, prior to granting a development consent, to be of the opinion that a development is consistent with the relevant objectives of the zone.

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; and*
- e) *to preserve the historic character of the City of Hawkesbury by protecting heritage items and by encouraging compatible development within and adjoining historic buildings and precincts.*

This report will demonstrate that the proposed development is consistent with these objectives.

Other relevant clauses of HLEP are Clause 18 Provision of Services, Clause 22 Development fronting a main or arterial road, and Clause 25 Development of flood liable land. The provisions of these clauses are discussed later in the report.

Draft Hawkesbury Local Environmental Plan 1989 - Amendment No 140

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 140 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.

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.*

Amendment No. 140 has been publicly exhibited and on 11 March 2003 Council resolved to proceed with making the plan. The provisions of this plan is, therefore, a matter for consideration in determining this application.

The proposed development would be permissible under Amendment No. 140 and it is considered that the development is consistent with the objectives of the 4(b) zone.

State Environmental Planning Policy No. 11 - Traffic Generating Development

The application was considered by the Regional Traffic Committee of the Roads and Traffic Authority on 21 May 2003. The RTA has not objected to the proposed development and has provided Council with comments for consideration.

The RTA advise that in the long term, additional developments along Industry Road and Park Road are likely to effect the efficiency and road safety of the proposed seagull island at the Windsor Road / Park Road intersection. The RTA recommended Council give consideration to the revision of Council's Section 94 contributions plan to include installation of traffic signals at Windsor Road / Park Road and that Council seek a monetary contribution from the development towards same.

Council's Section 94 plan currently provides for the levying of contributions for improvements to

both the Windsor Road / Groves Avenue and Windsor Road / Park Road intersections. The contributions are being collected for the upgrading and improvements, which includes traffic signals at both intersections.

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

The subject site falls within the South Creek Catchment area defined by SREP No. 20 (No. 2 - 1997).

The aim of SREP NO. 20 is to protect the environment of the Hawkesbury - Nepean River system by ensuring that the impacts of future landuses are considered in a regional context. It contains general and specific matters for consideration, specific planning policies, recommended strategies and development controls which are to be considered in the assessment of a development application.

Relevant specific planning policies and recommended strategies relate to total catchment management, environmentally sensitive areas, water quality, water quantity, flora and fauna, and metropolitan strategy.

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

Threatened Species Conservation Act 1995 and Section 5A of the Environmental Planning and Assessment Act 1979

The development proposes the removal of all native vegetation from the site west of Industry Road. Due to the presence of threatened species on the site and the impact of the development on same, a Species Impact Statement (SIS) has been submitted with the application. The findings and recommendations of the SIS will be discussed later in this report.

Due to the impacts of the development on threatened species the concurrence of the NSW National Parks and Wildlife Service (NPWS) is required.

NSW NPWS has advised Council, that if Council is to approve the application then prior to a consent being issued, the application and Council's recommended conditions of consent are to be forwarded to NSW NPWS for concurrence. If NSW NPWS grants concurrence then the consent can be issued by Council.

The concurrence of the NSW NPWS is not required if Council resolves to refuse the application.

Hawkesbury Development Control Plan

Relevant chapters of the Hawkesbury DCP are *General Information, Notification, Landscaping, Soil Erosion and Sedimentation Control, Car Parking and Access and Signage*.

The relevant provisions of these chapters will be discussed below.

Contaminated Land DCP and SEPP No 55

The applicant has submitted a preliminary Contamination Investigation in support of the application. The investigation found that detected levels of heavy metals, hydrocarbons, benzenes, phenyls and pesticides were all within NSW EPA guidelines for commercial/industrial land uses and hence the site in its present state is suitable for the proposed development.

All fill material imported to the site is to be tested for contaminants with analytical reports being provided to Council.

Community Consultation

The application was publicly exhibited for the period 11 September - 13 October 2003 in accordance with the provisions of the Environmental Planning and Assessment Act 1979 and associated Regulations 2000.

4 (four) submissions were received. Relevant matters raised in the submissions were:

- Council should consider the economic impact of the development on the proposed Rouse Hill Regional Centre;
- the development is inconsistent with the objectives of the zone;
- car parking has not been correctly calculated;
- insufficient information has been provided regarding the proposed flora and fauna offset site;
- uncertainty as to the timing of Council and RTA road work improvements;
- concerned about drainage and sedimentation onto neighbouring property;
- visual impact of fill and height of buildings. Why is so much fill required?
- dust generation during construction; and
- maintenance of sale vehicle due to construction works (i.e. Dust, etc) and access to neighbouring car yard.

Planning Assessment**Impact on the Environment*****Car parking, access and traffic generation (Raised by Respondents)***

Based on the layout of the proposed Bunnings Warehouse and the indicative list of tenants the relevant car parking ratios from the Car Parking and Access Chapter of the Hawkesbury DCP are:

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Bulky Goods Retail	1 space for 40sqm of Gross Floor Area (GFA)
Warehouse	4 spaces for first 300sqm of GFA then 1 space for each 90sqm or part thereof
Retail Plant Nursery	1 space per 200sqm
Refreshment Room	1 space per 30sqm of GFA

Using these ratios, the number of spaces required by the development is as follows:

Description	Area	Ratio	No. of Spaces
Bunnings - main entry, warehouse, food vending and playground, and staff amenities/lunch room etc	6615sqm	1 space per 40sqm of GFA	166
Bunnings - timber trade sales	1504sqm	4 spaces for first 300sqm of GFA then 1 space for each 90sqm or part thereof	18
Bunnings - retail plant nursery	1468sqm	1 space per 200sqm	8
Bulky Goods Retail	6926sqm	1 space per 40sqm of GFA	174
Proposed Subway	101sqm	1 space per 30sqm of GFA	4
Total			370

The applicant proposes 390 (three hundred and ninety) car parking spaces, i.e 20 (twenty) spaces more than that required by Council's DCP. 14 (fourteen) spaces are to be designated disabled parking spaces and 3 (three) spaces allow for trailer parking.

One respondent claimed that the applicant had miscalculated the parking required by Council's DCP. This claim was based on the respondents misunderstanding of the proposed floor area (the respondent quoted the applicant's figures as gross leasable area and then added an arbitrary extra 20% (twenty per cent) to produce an inflated figure for gross floor area) and applying a 1 (one) space per 40sqm (forty) of GFA for Bunnings timber trade sales area. Using the above correct gross floor areas and applying a 1 (one) space per 40sqm (forty) of GFA for Bunnings timber trade sales area produces a total car parking requirement of 390 (three hundred and ninety) spaces.

Proposed car parking spaces are to be 2.5 (two point five) metres wide by 5.5 (five point five) metres long with aisle widths of 7 (seven) metres and 7.5 (seven point five) metres. Council's DCP requires that car parking spaces be a minimum of 2.6 (two point six) metres wide, this however, is based on a minimum aisle width of 6.7 (six point seven) metres. Aisle widths and space widths are interrelated and space width may be reduced if aisle widths are increased. The layout of the

passenger car parking spaces allow for adequate manoeuvring for all cars up to the 85% design turning template (i.e Ford Falcon or similar). The space width could be increased to 2.6 metre, however, this would be at the expense of reducing the number of spaces and reducing aisle widths. Given the satisfactory manoeuvring achieved it is recommended that the 2.5 metres width be supported.

The proposed northern, central and southern accesses allow for separation of heavy vehicle movements associated with serving the site, from passenger vehicle movements associated with customers.

The northern and southern service driveways are 9 metres wide and are located 1.25 metres from adjoining property boundaries. They are connected by an internal driveway adjacent to the western boundary at the rear of the proposed building. Circulation through the service vehicle driveway is to be one - way with entry being from the south and exit to the north. The layout of the driveway is satisfactory and allows for B doubles to enter and exit the site in a forward direction.

The central driveway consists of one ingress and 2 (two) egress lanes each being 3.5 metres wide. The ingress and egress lanes are separated by a landscaped island.

The applicant has submitted a traffic analysis prepared by Thompsons Stanbury Associates in support of the application. This report has been submitted to the RTA for consideration and no objection was raised by the RTA.

The report examined the impact of the development on the efficiency of surrounding intersections and the distribution of the traffic generated by the proposed development along the major approach routes

The report assumes that the major traffic generated to and from the site will be from McGraths Hill, Windsor, Richmond, Wilberforce, and the Lowlands.

The findings of the report are based on construction of the Windsor Flood Evacuation Route, construction of Industry Road, a seagull intersection at the junction of Windsor Road and Park Road, a median provided in Groves Avenue in the vicinity of Industry Road resulting in Industry Road access movements being restricted to left in / left out, and the construction of the Railway Road North link between Park Road and Groves Ave.

The Railway Road North link has been completed and Industry Road is presently under construction. The median in Groves Avenue can be required as a condition of consent. The Windsor Flood Evacuation Route and provision of the seagull intersection being part of the Windsor Road upgrade are RTA responsibilities. It is understood that construction of the Windsor Flood Evacuation Route is to commence in the foreseeable future with a completion date of 2006.

In summary, the traffic analysis found that with the improvements outlined, the surrounding road network will be capable of accommodating the additional traffic projected to be generated by the development. It is noted, however, that the subject development is likely to result in a minor increase in the average vehicle delay at the junction of Windsor Road and Groves Avenue, however, the intersection degree of saturation and level of service is expected to remain satisfactory.

If this development is approved, there will most likely be a time lag between the completion of the development and the completion of the Windsor Flood Evacuation Route. Based on projections of the RTA and the applicant this time lag could up to 18 (eighteen) months. The effect of this will be to increase traffic movements through the Windsor Road / Park Road and Windsor Road / Grove Avenue intersections. The applicant has not provided an assessment of these impacts, however, it is considered that these impacts will be temporary and will adversely effect customers of the development more than it will effect traffic already on Windsor Road. It is considered that this time lag should not be fatal to the proposed development.

Economic and Social Impact (Raised by Respondents)

The applicant has submitted an Economic Impact Assessment prepared by KPMG Assurance and Advisory in supported of the application. The report considered competition, status of road network (including upgrades), size of the catchment area, population and expenditure growth, and sales potential.

In brief, the assessment claims that:

- Hardware and bulky goods dollars are currently escaping the City of Hawkesbury because of the scale and composition of homemaker and hardware type centres located further to the south. A proportion of this escape will be retained by the proposed development, which will retain jobs in the local area and offer consumers a broader choice of merchandise;
- the estimated catchment area of the proposed development is roughly defined as being within a circular area bounded by North Richmond, Ebenezer, Maraylya, and Riverstone. 81% (eighty one percent) of the catchment area's population is concentrated within Hawkesbury, 13% (thirteen percent) in Blacktown, 4% (four percent) in Penrith and 2% (two percent) in Baulkham Hills;
- expected first financial year of trading is 2004/2005, with the development's bulky goods retail sales component being approx \$20,000,000 and the Bunnings Warehouse (hardware) sales component being approximately \$23,000,000. Sales growth of 8.8% is expected in the second year of trading via the opening of the Windsor evacuation route and growth in the market;
- 70 % of sales for the proposed bulky goods component will be derived from shoppers who live within the catchment area with 30% of the sales being from outside the catchment (i.e \$14,000,000 from within the catchment and \$6,000,000 from outside the catchment). Of the \$14,000,000 from within the catchment it is estimated that \$5,000,000 would ordinarily leave the catchment to other homemaker type centres to the south. This leaves \$9,000,000 in sales being redirected from retail establishments within the catchment. The report argues that redirected sales will be split evenly between Windsor/McGraths Hill and Richmond/North Richmond;
- in the first year of trading average bulky goods economic impact on other traders created by the development is expected to be less than 6% (six percent) in Windsor/McGraths Hill and less than 4% (four percent) in Richmond/North Richmond. Real growth in this sector is

expected to be between 2% (two percent) and 5% (five percent) per annum, hence the economic impact is expected to be offset by real growth in less than 2 (two) years;

- 70% of sales for the proposed hardware component will be derived from shoppers who live within the catchment area with 30% of the sales being from outside the catchment (i.e \$16,000,000 from within the catchment and \$7,000,000 from outside the catchment;
- it is estimated that current hardware spending dollars escaping the catchment area is \$24,900,000 per annum, and that 75% of this escape spending is going to Blacktown and Baulkham Hills;
- The \$16,100,000 in hardware sales generated from within the catchment it is estimated that \$14,800,000 will come from escaped expenditure and \$1,300,000 will be directed from existing hardware stores within the catchment. This represents an average economic impact of 8.3% (eight point three percent) on existing hardware stores within the catchment;
- it is estimated that the new development will create 170 full time positions and 77 part time positions. This increase in employment will support further local employment via a multiplier effect of 1:1 (i.e another 247 positions); and
- an estimated 234 jobs will be generated during the construction phase.

One respondent was concerned about the impact of the proposed development would have on the Rouse Hill Regional Centre and cites Regional Environmental Plan No. 19 as a matter for consideration.

The proposed RHRC is at Mungerie Park some 10 (ten) kilometres south-east from the subject site (eastern side of Windsor Road opposite Schofields Road) and is to include, inter alia, retail area of between 60,000sqm and 100,000sqm of gross leasable floor area of which up to 30,000sqm to is be made up of bulky goods retailing. Stage 1 of RHRC is scheduled for completion in 2006 and is likely to draw its customers from the new residential development areas located within Rouse Hill and Kellyville.

The subject development has a much smaller total gross floor area of 16,614sqm and the subject site falls outside the land to which REP No. 19 applies. Further, the REP does not suggest that existing zoned commercial area either within or outside of its area should not be developed in accordance with the applicable Council zone requirements.

The economic analysis demonstrates that the development will have a minor economic impact for businesses with the catchment area i.e those businesses closest to the development. The RHRC is beyond the catchment area, has a different customer base and is a much larger development. It is therefore, considered that the proposed development will not undermine the financial or economic success of the RHRC.

In summary, the proposed development will add 10 (ten) new business to the local area, make a contribution to local and state revenues, add to the range of consumer choice for local residents, and contribute to job generation within the Hawkesbury. The development will also retain escaped

spending in the homemaker and hardware categories. For these reasons it is considered that the development will have a positive economic and social impact.

Flora and Fauna (Raised by Respondents)

The development will require the removal of all vegetation from the site west of Industry Road. This will require the removal of threatened species *acacia pubescens* (78 plants), and *grevillea juniperina subsp juniperina* (20 plants), and the removal of *meridonlum corneovirens* (Cumberland Plain Land Snail found in 7 locations). Due to the impact of this clearing a Species Impact Statement prepared by Blue Mountain Wilderness Services Pty Ltd accompanies the application.

The SIS states that at present the *acacia pubescens* and *grevillea juniperina subsp juniperina* on the site are long term viable local populations with genetic diversity and a viable seed bank. Whilst little is known about the land snail, the SIS concludes that even small populations should be considered both viable and significant for overall genetic diversity within the species.

Whilst the site contains threatened species and a number of native flora and fauna it could not be said that it is in a pristine condition as it also contains remains of feral cat, foxes and rabbits, various weeds and a ground cover predominantly made up of exotics.

Alternatives considered by the SIS included retention of the site as a conservation reserve, developing part of the site and retaining some of the site as a conservation reserve, developing the whole of the site and landscaping an offset site with plants sourced from local seed stock.

Options involving the conservation reserve, in whole or in part, were discounted due to a variety of factors including the presence of the surrounding commercial land uses, widening of Windsor Road, isolation of the threatened species, degradation by weed infestation, industrial pollutants loads, changes to hydrology and solar access, and the ultimate conclusion that these alternatives would not be economically feasible.

In consultation with the NSW NPWS the applicant is presently exploring sites external to the development which, could be used to offset the flora and fauna losses incurred by the proposed development. At present this involves securing a site or sites of at least 8 hectares in area that would be intensively restored for 2 years then annually maintained in a Class One weed reduced condition for a period of 5 years. The burden of the restoration and maintenance would be placed on the title of 264 - 272 Windsor Road, Vineyard.

The SIS concludes that provided an appropriate offset site can be found, which is suitable to Council and NSW NPWS that in total the development will have no significant effect on the threatened species present on the site.

Searches for offset sites by the applicant's representative have included advertising in the Hawkesbury Gazette for the period 3 April - end July 2003 as well as direct contact with the owners of some 23 (twenty three) properties in Kurrajong, Wilberforce, Windsor, Freemans Reach, Grose Vale, Cattai, South Maroota, Lower Portland, Springwood, Pitt Town and East Kurrajong. The main obstacle experienced by the applicant is the land owner's fears regarding potential loss of land value as a result of the revegetation and subsequent restriction on title preserving the offset site.

The applicant has now reached agreement with National Parks with regards to compensating habitat for clearing of land on the subject site.

The sites are situated at Springwood in the Blue Mountains City Council area. The applicant has provided letters from Blue Mountains City Council and National Parks and Wildlife Services supporting the sites. It is an appropriate use of Section 80(3) (Deferred Commencement Consent) to give the applicant certainty as to Council's position regarding the development as a whole subject to final resolution of the offset site. Section 80(3) also provides Council with certainty that if this matter is not resolved the development cannot proceed. Note also that this development, including approval of and requirements for the offset site, is subject to the concurrence of the NSW NPWS and Council cannot issue any type of consent without their concurrence.

Landscaping

Landscaping is proposed within the 25 (twenty five) metre wide strip of land between Industry Road and Windsor Road, along the Industry road frontage and within the car park area.

The existing canopy of native trees in the strip between Industry Road and Windsor Road is to be maintained and supplemented with additional tree and shrub planting. Plantings have been designed in informal bands with breaks allowing sight line corridors. Groundcovers are to consist of sedges and grasses.

The RTA has requested that the Windsor Road frontage landscaping be consistent with the Windsor Road Corridor Urban Design Scheme. The landscape architect's written submission in support of the application states that the planting design has been developed in consultation with the RTA and in consideration of the RTA Master Plan guidelines for Windsor Road. If the application is to be approved it is recommended that the applicant obtain written confirmation from the RTA that the landscaping is consistent with the Windsor Road Corridor Urban Design Scheme. Based on discussions with RTA representatives it is considered that no or only minor changes to the landscaping plan will be made in order for this to occur.

Planting within the carpark will consist of mainly trees with groundcovers planted where possible. Trees will consist of large canopy eucalypts along the central driveway with small canopy melaleuca scattered throughout the car parking spaces.

Plantings along the Industry Road frontage is to consist of a mixed species of eucalypts with a native understorey of shrubs and groundcovers. Shrub planting is designed to soften the view of the car park while maintaining views of the buildings beyond.

In general the plant selection will be focussed upon indigenous trees and shrubs, in particular the threatened species of *acacia pubescens* and *grevillea juniperina subsp juniperina* cultivated from the existing plants on the site.

It is considered that the proposed landscaping scheme is consistent with the objectives of the Landscaping Chapter of the Hawkesbury DCP.

Context and Setting and Site Design and Internal Design

The site is within a commercial 3(b) zone which is partly developed and partly undeveloped. In general the proposed development is consistent with the recent development of the area and its terms of overall design and finish would set a good example for future development within the 3(b) zone.

The applicant contends that the development will appear as a modern shopping precinct with the attraction aimed at home improvements, fixtures and furnishings with at the same time providing for associated activities such as food shops for the workers employed on the site and for customers.

The buildings are to be constructed of prefabricated concrete panels with metal roof.

The proposed design and location of the development demonstrate satisfactory compliance with the objectives of the zone and other relevant provisions of HLEP 1989, as well as the aims, objectives and the design solutions of the Hawkesbury DCP.

The location of the development is within an established development zone and is not considered to be ribbon development. The provision of the service road is consistent with other similar areas of development along Windsor Road in the vicinity of the site.

The siting and design complies with the relevant sections of the Hawkesbury Development Control plan and provides adequate front setback and landscaping opportunities to provide an attractive presentation to Windsor Road.

The scale of the development is consistent with other similar commercial/industrial developments in the immediate area of Vineyard.

Soil and Stormwater Management (Raised by the Respondents)

The soil type of the site consists of Londonderry Clay of tertiary age and is suitable for the proposed development. Material imported to the site is to be virgin excavated natural material appropriately compacted in order to achieve minimum required density ratios for buildings and pavements.

The applicant has submitted a detailed soil erosion and sedimentation control plan which identifies a number of measures to be undertaken prior to construction and during construction. These proposed measures are considered suitable and can be controlled by conditions of consent.

A concept hydraulic plan was provided which incorporated on-site Detention (OSD). Council's DCP requires that OSD systems be designed for major storm events up to the 1:100 year event.

The concept plans while providing some OSD do not comply with the DCP requirement. The development has adequate opportunity on site to comply with Council's requirements. It is appropriate that this issue being a matter of detail can be resolved in Schedule 1 of the Deferred Commencement Consent.

The development can be suitably drained and will not impact on the adjoining sites and areas in terms of stormwater runoff.

Natural and Technical hazards (raised by respondent)

Natural ground levels of the land vary from approximately 14 metres to 19 metres AHD. The 1% AEP flood event level for the area is 17.3 metre AHD. The site is distant from the main floodway of the Hawkesbury River and the nature of floodwater inundation of this land would be slow moving back-up waters.

For this site, Clause 25(2) of HLEP 1989 requires that all buildings are located on land above 14.3 (fourteen point three) metres AHD. The development achieves compliance with this standard as the natural ground level below the proposed buildings is greater than 14.3 (fourteen point three) metres AHD and the land is to be filled in order to provide for a finished floor level of 17.6 (seventeen point six) metres AHD.

The applicant has provided for an almost entirely elevated site above the 1% (one percent) flood in preference to either building at a lower level and be subject to flood events at a greater frequency than that of the 1% (one percent) flood event or having a split level design with elevated buildings and a lower car parking area. The reasons why the applicant has pursued this include:

- greater ability for owners/tenants to obtain building and contents insurance;
- the bulky goods outlets require a large floor area and associated same level loading and parking areas for suppliers and customers;
- without level access most retailers will not commit to the project;
- without level access to the retail floor area the functionality to customers deteriorates and historically they will seek to shop in other centres with good level access;
- if different levels were used for car parking compared with retail floor space then a series of ramps, travelators etc would be required including a series of retaining walls and probable reduction in aesthetic appeal of the development; and
- having car parking areas and retail areas at the same level provides easier access for aged persons or and persons with a disability.

The owners of the property to the north were concerned about the amount of filling proposed along the property boundary.

The plans submitted indicated that the access road adjacent to the boundary will only be partly filled to a maximum of 1 (one) metre and this will be retained by a suitable masonry retaining wall. It is considered this amount of fill is unlikely to have a significant impact.

The NSW Floodplain Management Manual requires consideration of such matters including floodwater forces, evacuation procedures, and affect on flood behaviour. The applicant has submitted satisfactory preliminary information addressing floodwater forces and evacuation procedures, which can be further developed by way of condition of consent. The applicant is presently investigating impacts on flood behaviour in the locality and has requested that this matter be subject to a deferred commencement condition of consent. This approach is considered appropriate given the large size of the catchment and the prima facie evidence that the development will have a minimal impact on local flooding characteristics.

The site is within a bushfire prone area with a minor bushfire risk and low bushfire hazard classifications. Under the provisions of Section 79BA of the Environmental Planning and

Assessment Act 1979 development consent cannot be granted unless Council is satisfied that the development will comply with the relevant provisions of Planning for Bushfire Protection 2001 or Council has consulted with the NSW RFS. Planning for Bushfire Protection 2001 applies to Class 1, 2 and 3 buildings under the BCA and other specialised types of development. The proposed development does not fall within these classifications or types of development hence Planning for Bushfire Protection 2001 does not apply. Advice received from NSW RFS is that if Planning for Bushfire Protection 2001 does not apply then a referral to NSW RFS under 79BA is not required. It is considered that the threat of bushfire does not make the site unsuitable for the proposed development.

Utilities, Waste, Energy, Air and Micro-climate

Provision of utilities to the site can be addressed by way of condition of consent. Council is the sewer authority of the area and, therefore, sewer head works contributions are to be levied.

Waste services can be provided to the site by either Council or private contractor as per Council practice and the requirements of individual tenancies.

It is considered that the proposed buildings achieve satisfactory energy efficiency performance via good access to natural light, thermal massing, building orientation and landscaping.

The existing and likely future air and microclimate of the area is suitable for the proposed development. The development is not expected to significantly impact upon the air quality and microclimate of the area.

Noise and Vibration, Construction

Given the surrounding landuses it is anticipated that noise and vibration associated with the construction and ongoing operation of the development will not significantly impact upon surrounding neighbours. Hours of construction and access to the site during construction are to be controlled by condition of consent.

Safety, Security and Crime Prevention

The design of the complex allows for good visibility of common areas. The applicant advises that security lighting will be provided within the car parking area to assist with night time security

Cumulative Effects

It is considered that the proposed development is compatible with the surrounding landuses and no long term significant negative cumulative impact is foreseen.

Suitability of the Site for the Development

The constraints of surrounding landuses do not make this development prohibitive. The proposed development will not lead to unmanageable transport demands and access to the site is satisfactory for the intended use. Adequate services and utilities are available to the site or are to be provided to

the site. There are no known hazardous landuses/activities nearby and ambient noise levels are suitable for the development. The site is not critical to the water cycle of the catchment.

Specific site attributes have been discussed above and are considered to be suitable for the proposed development.

It is, therefore, concluded that the site is suitable for the proposed development.

RECOMMENDATION:

That:

1. Council refer the application to NSW NPWS seeking their concurrence for the proposed development.
2. On the basis that NSW NPWS issue concurrence, Council issue a deferred commencement consent subject to the following conditions and any changes to the development or conditions as required by NSW NPWS issuing concurrence.

Schedule 1

- A. Submission to Council for approval of all necessary details relating to the flora and fauna offset site as referred to in the documentation submitted with the application. The selection of the offset site and its management is to be approved by the NSW NPWS prior to submission to Council.
- B. Submission of a report demonstrating that the proposed development will not increase flood hazard or flood damage to other properties or adversely affect flood behaviour. This report is to be prepared by a suitably qualified and experienced expert and where necessary refer to the provisions of the Floodplain Management Manual: the management of flood liable land, January 2001.
- C. The submission to Council of confirmation from the Roads and Traffic Authority that the proposed landscaping along Windsor Road is consistent with the Windsor Road Corridor Urban Design Scheme.
- D. Submission of a concept drainage plan demonstrating compliance with the OSD provisions as outlined in Hawkesbury DCP Appendix E Civil Works.

Schedule 2**General**

1. To confirm and clarify the terms of this approval, the development shall take place in accordance with the plans submitted with the application and accompanying documentation, as amended in red and as modified by these further conditions.

2. No excavation or site works shall be commenced prior to the issue of the Construction Certificate.
3. To legally establish the first use of each unit and ensure any required additional facilities are provided, separate Development Consent shall be obtained prior to the first occupation of each unit within the approved building.
4. Compliance with the provisions of the Environmental Planning and Assessment (Amendment) Act 1979, and the Building Code of Australia.
5. Prior to construction of the approved development it is necessary to obtain a Construction Certificate.
6. The applicant shall make themselves aware of the Discrimination Against People with Disabilities Act (DDA) in order to assess their responsibilities and liabilities with regards to the provision of access for all people.
7. All part 4 certificates issued under the Environmental Planning and Assessment Act, 1979 are to be submitted to Council within seven (7) days of the date of issue. The registration fee is \$16.00 per certificate.
8. An occupation certificate is to be obtained on completion of all works and prior to commencement of the approved use. The occupation certificate will not be issued if any conditions of this consent are outstanding.
9. Separate Development Application is to be lodged for all the signage proposed by the development.
10. No signage is approved by this Development Consent

Prior to Issue of Construction Certificate

11. Details demonstrating that the proposed building will comply with the requirements of the Building Code of Australia are to be submitted to the principal certifying authority for approval.
12. Should any part of the building be proposed to be used as a food shop then separate details of the floor, wall and ceiling finishes and of any benches, appliances, equipment, fittings and mechanical exhaust ventilation system shall be lodged with Council in duplicate for approval. Such details shall be approved by Council prior to construction or installation of the relevant work.
13. Construction of civil works including road, drainage, access, or sewer works are not to commence until three (3) copies of the plans and specifications of the proposed works are submitted to and approved Hawkesbury City Council or an accredited certifier.
14. Payment of the appropriate design checking and inspection fee when submitting Engineering plans for approval. Fees required will be provided on request.

15. The submission of a satisfactory traffic management plan.
16. The submission of engineering designs and calculations covering all works required by this consent.
17. The submission of a satisfactory soil and water management plan (SWMP) prepared in accordance with the State Government guidelines titled "Managing Urban Stormwater: Soils and Construction (1988)".
18. Submission of proof of the payment of the Building Industry Long Service Levy where the value of civil works exceeds \$25,000.
19. Payment of a contribution of \$171,212.44 (one hundred and seventy one thousand, two hundred and twelve dollars and forty four cents). towards sewer headworks. This sum will remain fixed until 30 June 2004 after which it will be recalculated at the rate applicable at the time of payment.
20. The relevant sewer authority (Hawkesbury City Council) must be consulted regarding acceptable discharge limits to the sewerage system. A Trade Waste Agreement must be entered into with the relevant authority prior to discharge of trade waste from the premises.
21. The submission of a report from a suitably qualified and experienced engineer in respect of the proposed development, such a report to verify that:
 - a) any damage to the proposed development sustained in a flood will not generate debris capable of causing damage to downstream buildings or property;
 - b) the construction that is at or below the 1 in 100 flood level will be able to withstand the force of floodwaters (including buoyancy forces) and the impact of debris; and
 - c) all finishes, plant fittings and equipment subject to inundation will be of materials and functional capability resistant to the effects of floodwater

A construction management plan is to be submitted to Council for approval

22. Retaining walls or other approved methods necessary to prevent the movement of excavated or filled ground, together with associated stormwater drainage measures, shall be designed by an appropriately qualified person. Details are to be included with the plans and specifications to accompany any Construction Certificate.
23. Design and Construction of site drainage shall be carried out in accordance with Hawkesbury Development Plan Appendix E Civil Works Specification Part 1 Design and Part 11 Construction Specification. Full details of works shall be submitted for approval with the Building Application. Onsite detention shall be provided to maintain all stormwater discharges from the 1:1 year storm event up to the 1:100 year storm event at pre-development levels.

24. Payment of a Section 94 contribution covering the construction of the intersection of Park Road and Groves Avenue with Windsor Road of \$59,162.50 to Council. This contribution shall remain fixed for a period of 3 (three) months after which time it will be recalculated at the rate applicable at the time of payment. The contribution has been determined in accordance with Hawkesbury Section 94 Contribution Plan. A copy of the Contribution Plan may be inspected at Council's Offices, George Street, Windsor.
25. Separate details in duplicate of the proposed protective balustrades/railing alongside or around every stairway, ramp, terrace, balcony and the like shall be lodged and approved prior to issue of the construction certificate.

Prior to Commencement of Works

26. The applicant or person having the benefit of this development consent must give at least two days notice prior to commencement of works to Council of the intention to commence works. This notice is to be given in accordance with form 7 of the Environmental Planning and Assessment Regulation 1998.
27. The applicant shall advise Council of the name, address and contact number of the principal certifier, in accordance with Section 81A 2(b) of the Environmental Planning and Assessment Act, 1997.
28. The name and licence number of the licensed contractor/builder who has been contracted to do or intends to do the work must be submitted to Council in writing by the owner prior to the commencement of any work relevant to this approval.
29. Sanitary accommodation shall be provided for workmen throughout the course of the building operations in accordance with the Local Government Act 1993 and the Environmental Planning and Assessment Act.
30. Separate application shall be made by a licensed drainer for permission to carry out work in relation to Council's sewer. The attached application shall be returned with the appropriate fee prior to the relevant work commencing.
31. A sign is to be erected adjacent to the access point to the site for the duration of the site works stating the following:
 - a) owner of site and address;
 - b) person/company carrying out site works and phone number;
 - c) consent number and date of approval; and
 - d) approved duration of site works.
32. Separate application shall be made to Council's Asset Services & Recreation Department for the construction and location of the proposed crossover. (Refer to enclosed agreement form for driveways).
33. Erosion and sediment control devices are to be installed and maintained until the site is fully stabilised in accordance with the approved ESCP or SWMP. In the absence of any

approved plan the work is to be in accordance with Council's Development Control Plan 1/94 - Soil Erosion and Sedimentation.

Note: Measures may include the installation of geofabric fencing, staked straw bale walls located on the contour down-slope of the construction, sediment detention basins, earthen contour banks and the like. The enclosed warning sign shall be affixed to the sediment fence/erosion control device at all times.

During Construction

34. All building work must be carried out in accordance with provisions of the Building Code of Australia.
35. All demolition, construction and associated work necessary for the carrying out of the development being restricted to between the hours of 7.00am and 6.00pm on Mondays to Fridays and between 8.00am and 4.00pm on Saturdays.
36. All necessary works being carried out to ensure that "any water" flow from adjoining properties is not impeded.
37. All trucks entering or leaving the site shall have their trays suitably covered to prevent spillage from the truck onto the road.
38. The filled area, including batters, shall be grassed immediately after filling takes place.
39. All fill to be adequately compacted by track rolling or similar.
40. The site shall be secured to prevent the depositing of any unauthorised material.
41. Dust control measures, e.g. vegetative cover, mulches, irrigation, barriers and stone shall be applied to reduce surface and airborne movement of sediment blown from exposed areas.
42. Stockpiles of topsoil, sand, aggregate, spoil or other material capable of being moved by running water to be stored clear of any drainage line, easement, natural watercourse, footpath, kerb or road surface.
43. Measures shall be implemented to prevent vehicles tracking sediment, debris, soil and other pollutants onto any road.
44. No burning of demolition or construction material being carried out on the site.
45. No spoil, excavated or demolition material from the site being deposited on any public road, footpath, public place or Council owned property without the approval of this office.
46. The site shall be kept clean and tidy during the construction period and all rubbish shall be removed from the site upon completion of the project to the satisfaction of this office.

47. All filling material imported to the site is to be free of any contaminants or toxic material and is to consist only of virgin excavated natural material.
48. Analytical reports are to be submitted to Council for all filling material imported to the site. Such reports are to contain full details of the materials origin, soil and chemical composition, and quantity. Such documentation is to be submitted to Council prior to importation
49. All earthwork placement and compaction is to be under Level 1 supervision and testing in accordance with AS3798. The compaction of the fill is to be verified by the submission of appropriate test results as well as a contoured depth of fill plan.
50. All work must be carried out in accordance with the provisions of Hawkesbury's Development Control Plan, Appendix E Civil Works Specification Part 1 Design Specification and Part 2 Construction Specification.
51. Should any aboriginal site or relic be disturbed or uncovered during the construction of this development, all work should cease and the National Parks and Wildlife Service consulted. Any person who knowingly disturbs an aboriginal site or relic is liable to prosecution under the National Parks and Wildlife Act 1974.
52. The developer is responsible for full costs associated with any alteration, relocation or enlargement to public utilities whether caused directly or indirectly by this proposal. Such utilities include, but are not limited to, water, sewerage, drainage, power, communication, footways, kerb and gutter.
53. The provision of conduit/ducts under new driveways to the requirements of Integral Energy, in accordance with Integral Energy drawing 049759H dated 14/7/1987. Conduit and ducting material is available from Integral Energy.
54. Where the structure is built over the sewer, the sewer main must be exposed and concrete encased for the length of the structure plus 1 metre at both ends.
55. The main must be inspected and any damage repaired prior to encasement.
56. The structure must be pierced in accordance with HCC Standard Specification for Sewerage Works.
57. A manhole must be constructed over the main between the back boundary and the structure so that access is available at both ends of concrete encasement within the property.
58. Manhole lids and surrounds within the carpark must be replaced with gatic type covers.
59. The construction of sewerage reticulation, including junctions, to the development where not already provided.

60. All debris (including felled trees) resulting from the approved clearing of the site for construction is to be removed from the property unless alternative arrangements are agreed to in writing with this office.

RTA Conditions:

61. If not already in place, “No Stopping” parking restrictions are to be installed along both sides of Groves Avenue from Windsor Road to a point 10 metres west of Industry Road. Before installing the parking restriction the applicant must contact the RTA’s Traffic Management Services (telephone: 8814-2536) for a Works Instruction.
62. If not already in place, “No Stopping” parking restrictions are to be installed along both sides of Industry Road to a distance of 10 metres south of Groves Avenue.
63. It is recommended that “No Parking” restrictions be installed adjacent to the site’s access points to Industry Road subject to Council’s Local Traffic Committee approval.

Prior to Issue of Occupation Certificate

64. A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained. Application must be made through an authorised Water Servicing Coordinator. Please refer to 'Your Business' section of Sydney Water's web site at www.sydneywater.com.au then the 'e-developer' icon or telephone 13 20 92.

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

The Section 73 Certificate must be submitted to the Principal Certifying Authority prior to occupation of the development.

65. Submission of a Certificate from Integral Energy that satisfactory arrangements have been made for the provision of electricity to the development.
66. Submission of a Certificate from an approved telecommunications provider that satisfactory arrangements have been made for the provision of cables for telephones through the development.
67. The construction of concrete path paving 1.2m wide along Industry Road with the remaining footway area being formed in earth and all necessary drainage, to the full frontage of the site.
68. Piping of existing watercourses within the property and the creation of necessary easements free of cost to Council.
69. The submission of a Surveyor's Certificate stating that all pipelines are contained within the proposed/existing easements.

70. The wind classification for the site has been assessed as minimum W30N, this classification should be referred to your glazing supplier, frame manufacturer and building contractor to enable the appropriate glazing, bracing and tie downs to be designed.
71. Exit/entrance points are to be clearly signposted and visible from both the street and site at all times.
72. A report by the Design Engineer and a Works-As-Executed (WAE) drawing by either a suitably qualified Engineer or Registered Surveyor of the stormwater drainage system are to be submitted to and approved by Council prior to the release of the occupation certificate. The report from the Design Engineer is to state the conformance or otherwise of the system in relation to the approved design.

The WAE drawings shall indicate the following as applicable:

- a) invert levels of tanks, pits and pipes;
 - b) surface levels of pits and surrounding ground levels;
 - c) levels of surrounding kerb;
 - d) floor levels of buildings;
 - e) top of kerb levels at the front of the lot; and
 - f) extent of inundation.
73. Street lighting, Line marking, Street Signage and Physical Restraints are required to be constructed where necessary.
74. Provision is to be made for Water Quality control as part of the stormwater drainage works to ensure that there is no increase in downstream nutrient pollution and that soil erosion and sediment is controlled.
75. A flood warning sign of durable material and permanently affixed shall be located in a prominent location within the works. The sign shall advise occupants that the site may be subject to inundation during times of flood.
76. The applicant shall prepare a flood emergency evacuation and management plan for the proposed development. The plan should advise occupants of flood evacuation procedures and emergency contact telephone numbers. The management plan should avoid the letting of the premises during periods of flood emergency or when flood warnings are issued. The applicant should contact Council and the State Emergency Service for advice in the preparation of the management plan. The evacuation procedures should be permanently fixed to the building in a prominent location and kept up to date at all times.
77. Disabled parking needs to be provided in accordance with AS 2890.1 - 1993 and the BCA.
78. Barriers are to be provided along the top of all retaining walls to prevent vehicles going over the edge.
79. To ensure the whole of the land essential to the proper operation of the development is preserved for that use, the subject land, comprising Lot 2 DP535140 & Lot 180 DP752061,

264 - 272, Windsor Road, Vineyard shall be consolidated into a single parcel, and written evidence of registration of consolidation by the Land Titles Office submitted to this office prior to the issuing of an occupation certificate.

80. A concrete median island being installed in Groves Avenue to the satisfaction and approval of the Roads and Traffic Authority. The median is to limit movements at the intersection of Groves Avenue / Industry Road to left in / left out.
81. A Fire Safety Certificate, in accordance with the Schedule of Fire Safety Measures issued for the development, is to be submitted to Hawkesbury City Council for separate registration. The registration fee is \$16.00.
82. All required landscaping is to be installed in accordance with the approved plans to the satisfaction of Council.
83. The industry Road construction and dedication up to the access is to be finalised prior to occupation of the site.
84. A Plan of Management for the on-site stormwater detention facilities within the development is to be submitted to and approved by Council for approval prior to the issue of an Occupation Certificate. The Plan of Management shall set out all design and operational parameters for the detention facilities including design levels, hydrology and hydraulics, inspection of maintenance requirements and time intervals for such inspection and maintenance.
85. Prior to endorsement and release of the Occupation Certificate the owner is required, at their costs and expense, to enter a positive covenant over all of the land comprised in the development providing as follows:
 - a) Covenanting with the Council (the prescribed Authority) to at all times at their costs maintain, repair and keep the on-site stormwater detention facilities in a good and safe condition and state of repair in accordance with the approved design to the reasonable satisfaction at all times of the said Council having due regard to the Plan of Management for the operation and maintenance of the on-site stormwater detention facilities, and
 - b) Providing that the liability under the said Covenant will jointly and severally bind the registered proprietors and the proposed dwellings, and
 - c) Providing that Council (the prescribed Authority) will be the body entitled to release or modify the Covenant.

All costs associated with the Covenant, including any legal costs payable by Council, are to be paid by the owner on whose behalf the applicant has lodged the application.

Use of the Site

86. Any lighting on the site is to be directed in such a manner so that no nuisance is caused to adjoining properties or to drivers on surrounding streets.
87. The subject development, including landscaping, is to be maintained in a clean and tidy manner.
88. All landscaping shall be permanently maintained in a good condition and in accordance with the intent of the landscaping plan.
89. All sound producing plant, equipment, machinery, fittings, and the like shall be sound insulated and/or isolated so as to control noise emissions from the premises to within the limits prescribed by the Noise Control guidelines.
90. No advertising structures to be erected, displayed or affixed on any building or land without prior approval. Any unauthorised advertising structure will be removed at the expense of the advertiser.
91. No signs shall be displayed on the footpaths, pedestrian ways, roadways or in the vicinity.

The submission to Council of all necessary fire safety certificates and statements in accordance with Part 9 of the Environmental Planning and Assessment Regulation 2000.

ATTACHMENTS:

- AT-1** Locality Map
- AT-2** Site Plan
- AT-3** Elevations

ENVIRONMENT

Meeting Date: 28 October, 2003

Item: **69**

At 1 - Locality Map

ENVIRONMENT

Meeting Date: 28 October, 2003

Item: **69**

AT2 - Site Plan

ENVIRONMENT

Meeting Date: 28 October, 2003

Item: **69**

At 3 - Elevation Plans (Page 1 of 2)

ENVIRONMENT

Meeting Date: 28 October, 2003

Item: **69**

At 3 - Elevation Plans (Page 2 of 2)

oooO END OF ITEM 69 Oooo

ENVIRONMENT

Meeting Date: 28 October, 2003

Item: **70**

ITEM: 70 **Unauthorised Clearing of Vegetation and Earthworks - 882 Grose Vale Road, Grose Vale**

FILE NUMBER: 18574/EVD/ENJ28NBX.V07

REPORT:

This report is to provide information on the clearing of vegetation and earthworks observed on the property located at 882 Grose Vale Road, Grose Vale.

Property

The property is identified as being Lot 1 DP236597 and known as 882 Grose Vale Road, Grose Vale.

The property is located on the eastern side of Grose Vale Road, below the escarpment and consists of 8 (eight) hectares. The land had been cleared of vegetation some years ago and now contains a limited variety of tree species. The area is also susceptible to thick lantana growth.

Clearing Works

On 5 September 2003 clearing works were observed to be taking place by a local contractor using a small tractor and slasher. The clearing works involved the removal of approximately 160 (one hundred and sixty) black wattle trees and lantana. An area covering some 200m x 350m was observed to have been cleared of vegetation and understorey.

There are no approvals issued for the removal of trees or vegetation from the property.

The following table indicates the specific number of Black Wattle trees located within each of the 6 (six) piles which were pushed up on the property:

Pile No:	Dimensions	Number of Trees in Pile
1	20m x 4m x 2m	10
2	20m x 4m x 2m	30
3	20m x 4m x 3m	20
4	20m x 8m x 3m	20
5	20m x 4m x 2.5m	30
6	20m x 4m x 6m	50
		Total 160

Reasons Given for Clearing Works

When questioned the landowner advised and provided documentation from the Hawkesbury River County Council dated May 2002 that indicated that the property contained 'Crofton Weed" and "Green Cestrum" both of which were declared noxious weeds and must be continuously suppressed and destroyed. One of the means to control the weeds is by regular slashing and possibly applying herbicide to the cut stump to prevent regrowth.

The landowner also advises that the property was purchased in 1987 and was completely covered in black wattle and lantana. During the following years the land was progressively cleared of the black wattle and lantana but more recently was left unattended which allowed the regrowth to occur.

It was the intention of the landowner to plant native trees such as Sydney Blue Gums, Casuarinas, and Melaleucas in the cleared areas with a ground cover crop of millet and rye grasses to replace the black wattle and lantana.

Conclusion

Unauthorised clearing works have occurred on the property with the removal of approximately 160 black wattle trees, all of which were immature and considered to be regrowth. No other species of tree was identified in the survey. The nature and extent of the work can be rectified with an appropriate rehabilitation plan. If this is not done then the matter should be referred to Council's solicitor.

RECOMMENDATION:

That:

1. The report be received.
2. The landowner be requested to enter into a written undertaking to carry out the following: -
 - a) rehabilitate to property by planting native species of trees throughout the cleared area and to the satisfaction of the Manager, Parks and Recreation;
 - b) that the felled trees be retained on the land, mulched and the mulch material used in the rehabilitation process as ground cover to assist in the control of erosion;
 - c) that no further land clearing works of native vegetation will be undertaken on the land without written approval having first been obtained from Hawkesbury City Council.
3. That the rehabilitation works be carried out and completed within 6 (six) months of the date provided in the undertaking.
4. Should the landowner not agree then the matter should be referred to Council's solicitor.

ENVIRONMENT

Meeting Date: 28 October, 2003

Item: **70**

ATTACHMENTS:

There are no supporting documents for this report.

oooO END OF ITEM 70 Oooo

ITEM: 71 **Animal Establishment - Lot 396, DP664634, No. 77 Godalla Road, Freemans Reach**

FILE NUMBER: DA1387/02/EVD/ENJ28NBX.V03

PREVIOUS ITEM: 45, GPC Section 1 - Environment (29.07.2003)

PREVIOUS ITEM: 65, GPC Section 1 - Environment (30.09.2003)

REPORT:

Council at its meeting of 12 August 2003 resolved that:

1. *The matter be deferred to the September General Purpose Committee Meeting after Council staff had notified all neighbours, including adjacent owners;*
2. *A report be sought from the Department of Agriculture; and*
3. *A meeting be organised between neighbours and Council staff to undertake discussions.*

This report will discuss:

1. The submissions received during the notification period;
2. The report from the Department of Agriculture on the current activities being conducted on site and the application; and
3. The discussions held between the respondents and Council staff.

Notification of Proposal

The application was notified to all adjoining and adjacent landowners and residents for a 14 (fourteen) day period from 26 August until 10 September 2003. During the period, 2 (two) submissions were received that objected to the development. The submissions raised the following concerns:

- Odours generated from the pigs, cattle and goats;
- Noise generated from the pigs;
- Impact on the local creek that runs through the property;
- The free range pigs appeared on the site in 2002 not in 1987;
- Capacity of the dam and quality of the bore water to improve the pasture, crops and feed the animals;
- Maximum number of pigs on the site between 200-300 (two hundred to three hundred) at any time;
- The free range pig yards be relocated to the rear of the property away from the residence;
- The majority of the allotments in the immediate vicinity are smaller in size, of a rural/residential classification;
- Setback distances required by Department of Agriculture should be satisfied;
- Impact on the water quality from runoff of the site on Currency Creek at the rear;
- No suitable barriers prevent the pigs escaping the property;

- Property for sale - what guarantees the new owner would not increase the number of pigs on the property?
- Property devaluation;
- Property not suitable for a piggery given the closeness to residences;
- Regular inspections and supervision of site by Council if approved;
- 1 (one) submission was accompanied by 2 (two) documents:
 - “Intensive Piggeries - Level 1 Odour Impact Assessment” which contained no reference as to its author.
 - “Intensive Agriculture and the Development Control Process” prepared by NSW Agriculture.

The Odour Impact Assessment document provides information on how to calculate separation distances from proposed piggeries. The Agriculture document provides information on the development process and some issues that need to be addressed in the application.

The General Purpose Committee report of 29 July 2003 discussed a number of matters raised relating to:

- Odour/waste management
- Scale of activity
- Noise
- Impact on Currency Creek
- Property devaluation
- Animals escaping the property

The residents indicated that a water course runs through the property, however, as a result of discussion, the area in question is not on the property but on a property that is not adjoining the site.

The odour impact assessment document deals with piggeries that are conducted in a building with an effluent treatment system. The proposed development operates on a free range basis with effluent generated by the pigs being used to improve the pasture.

NSW Agriculture

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

1. *An officer from the Department visited the site on the 9 September 2003 between 11am and 12.15pm. The surrounding land uses are market garden (being developed), horse establishments and small rural (hobby) farms. The location is within Agricultural Lane Class 3 which is suitable for grazing, pasture improvement and rotational cropping.*
2. *The farm is well managed and had reasonable ground cover considering the dry conditions and all stock were in excellent condition. There is a bore which provides stock water and irrigation of pasture/crops. There were no odours noticeable throughout the farm. The*

nearest dwellings are located up slope of the pig areas which would minimise any odour movements due to katabatic draft. During the site inspection no noise was observed that would be classified as intrusive for a farming locality. The fences were in good condition, chain loop toward the ground and operate two electric lines, which is adequate for the stock proposed to be contained.

3. *Issues regarding the scale of activity. The operation requires supplementary feeding similar to that required for horse establishments. NSW Agriculture considers that the stocking rate propose would require supplementary feeding particularly during dry times. The number of pigs at any one time would vary according to the timing of the birth of piglets it would be unusual for each sow to have more than 10 piglets surviving after each birth. That is, the calculated maximum number of pigs on the property at any one time is unlikely to reach 200. The use of the property for assembling stock prior to sale will need to be monitored as any extended encampment of cattle may require some further design for the cattle area to minimise potential for sediment/nutrients entering the catchment.*
4. *The land gently slopes beyond the areas that the pigs are housed and the free ranged areas with large grassed areas buffer the down slope adjoining neighbour land and drainage lines. Trees in these areas showed signs of some stress most likely due to the dry conditions (near drought conditions) rather than due to build up of nutrients.*
5. *In conclusion:*
 - a. *The farm is operating at a stocking rate that requires good land and stock management to avoid environmental and amenity degradation. Due to the level of management required to maintain the amenity of the locality Council may consider that the duration of the consent is restricted to the current tenure. While the farm is managed at the current level of competence there should be no adverse impacts on the surrounding neighbours.*
 - b. *If continued complaints arise regarding odour there is opportunity for the pigs to be placed further away from the residents near Godalla Road. In the interim it is recommended that pig feeding areas should be set back from adjoining neighbour fences."*

Comment:

Conclusion (1) of the report suggested that the duration of the consent be restricted to the current operator. Any approval granted relates to the property and the details that accompanied the application. As a result, any future operators will be required to comply with the conditions of the consent and operate the activity as outlined in the application.

Conclusion (2) recommends a setback from adjoining neighbour fences. Condition 3 requires a 5 (five) metre vegetation buffer along the pig and goat paddocks to provide a suitable setback. This setback areas is to be protected when used by animals, as required by Condition 10.

Meeting with Respondents

A meeting was held with the 2 (two) respondents on the 25 September 2003 to discuss the application and their concerns. The main issues discussed related to:

- The keeping of pigs which was not supported, based on the free range proposal. However, if a building connected to a suitable effluent disposal system was used to house the pigs, this may be more suitable to reduce any odour and noise impact and ensure no pollution to Currency Creek.
- Complying with NSW Agriculture guidelines for setback distances.
- Unauthorised structures erected on the site. In this regard an aerial photo was submitted of the site, which showed no animal structures.
- Impact of the pigs escaping the property.

Conclusion

The report from NSW Agriculture indicated that the farm is well managed and the stock were in excellent condition. The nearest dwellings are located up slope of the pig areas which would minimise any odour movements due to Katabatic drift.

While NSW Agriculture considers the current operation to be well managed, they are concerned that if the property is sold another operator may not manage the farm at the same level and this could lead to potential impacts on the amenity of the area. Any approval granted cannot be limited only to the current operator, but any future operator must comply with the conditions of the consent and any management plans prepared for the activity.

The application was accompanied by documentation which addresses the operation of the activity. It is considered that a more detailed farm management plan be prepared in consultation with NSW Agriculture and this will be part of the conditions of consent.

Photos of the activity will be displayed at the meeting.

RECOMMENDATION:

That the application be approved subject to the following conditions:

1. To confirm and clarify the terms of this approval, the development shall take place in accordance with the plans submitted with the application, as amended in red and as modified by these further conditions.
2. Compliance with the provisions of the Environmental Planning and Assessment (Amendment) Act 1979 and the Building Code of Australia.

3. The southern part of the site shall be planted with 5 (five) metre vegetation buffers along the eastern and western boundaries of the property to the extent of the goat and pig paddocks, as shown in red on the amended plans, to provide a transitional area to the existing native vegetation and to adjacent land uses. The buffers shall be planted with small, medium and tall species from the Shale Sandstone Transition Forest that is in the vicinity of the buffers. The buffers shall be planted within 3 (three) months from the date of this consent. In this regard the buffers shall be provided to Council's satisfaction and a compliance inspection shall be undertaken.
4. Preparation of a Farm Management Plan for the operation, which is to be prepared in consultation with NSW Agriculture and Hawkesbury City Council, within 2 (two) months of the date of this consent. .

Use of the Site

5. In order to ensure that the development complies with this consent, the approved use shall not commence until all conditions of this Development Consent have been complied with.
6. A maximum of 20 (twenty) breeding sows, 2 (two) boar, 30 (thirty) does and 2 (two) bucks shall be kept on the property. A total of 90 (ninety) pigs shall be kept on the site at any one time, which includes piglets.
7. The operation of the development shall be conducted in such a manner so as to not interfere with the amenity of the neighbourhood with respect to noise, dust, waste water, odour, waste products or otherwise.
8. The development shall be conducted in such a manner that the LA(eq) noise levels, measured at any point in accordance with the NSW EPA's Industrial Noise Policy (2000), do not exceed 5dB(A) (Laeq) above background noise levels with respect to noise amenity of residential dwellings.
9. The activity shall be conducted in accordance with the Farm Management plan submitted with the application.
10. Native vegetation located in the paddocks including the vegetation buffers required by Condition 3 that are used by the pigs, goats, cattle and horses are to be protected when in use by the animals.
11. The activity is to operate at all times in accordance with the Farm Management Plan prepared in consultation with NSW Agriculture and Hawkesbury City Council.

ATTACHMENTS:

There are no supporting documents for this report.

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oooO END OF ITEM 71 Oooo

ITEM: 72 **Unauthorised Clearing of Vegetation - 38 Stewarts Lane, Wilberforce****FILE NUMBER:** 86243, 86244/EVD/ENJ28NBX.V05

REPORT:Introduction

This report is to provide information on the unauthorised clearing of trees and vegetation from the land at 38 Stewarts Lane, Wilberforce. Details of the species of trees, the vegetation communities, their significance and details of the core habitat cleared are discussed and the report recommends Court Action in this matter.

Background

The properties are identified as Lots 1 DP 803452, Lot 2 DP 803452 and Lot 1 DP 652461 and are collectively known as 38 Stewarts Lane, Wilberforce. Macdonald Investments (NSW) Pty Ltd and Mrs P J Macdonald purchased the properties from Hawkesbury City Council on or about the 18 July 2003.

The 2 (two) properties combined consist of 21.470 (twenty one point four seven zero) hectares of land and are located on the southern side of Currency Creek. Currency Creek being a "Prescribed Stream" as recognised by the Department of Infrastructure, Planning and Natural Resources. No applications have been made or approvals issued for removal of vegetation.

Clearing Works and Tree Removal

During September 2003 clearing works were conducted on the properties along Currency Creek. The clearing works involved the removal of trees and understorey with the use of a bulldozer and excavator. It is estimated that the average amount of clearing extends some 100 (one hundred) metres in depth along the entire length of the properties boundary along Currency Creek.

An unnamed watercourse runs through the property linking adjoining properties to Currency Creek. Substantial clearing has taken place on both sides of this watercourse and the vegetation on the eastern side of the unnamed watercourse appears to have been 100% (one hundred percent) native vegetation and there was little evidence of weed invasion observed.

During the inspection, some 25 (twenty five) piles of vegetation was inspected with a full list of the names and number of the trees and native plants identified attached for information.

It is estimated that the total area of clearing along the southern side of Currency Creek is approximately 10,000 (ten thousand) sqm.

Significance of the Trees

The vegetation communities that have been cleared appear to be Alluvial Woodland (part of the Cumberland Plain Woodland complex) and Shale Sandstone transition forest. The National Parks

and Wildlife Service "Vegetation of the Cumberland Plains" maps indicate this as well. In addition, the maps have identified the creek vegetation and the vegetation on the eastern side of the property to have been core habitat, with the remainder having been support for core habitat.

At the time of writing officers from the National Parks and Wildlife Services "Threatened Species" Unit have been contacted and are anxious to make an inspection of the property to ascertain the effect of the clearing works undertaken. It is anticipated a joint inspection will take place to allow a copy of their report to be submitted for perusal once completed.

The Department of Infrastructure, Planning and Natural Resources (formerly Department of Land and Water Conservation) is also to inspect the site as clearing has occurred within 40 (forty) metres of the "prescribed stream" - Currency Creek. The results of that inspection are to be provided to this office.

Submission by Landowner

The owner of the property has been briefly interviewed in relation to this matter. Orders have been issued under the Protection of the Environment Operations Act, 1997 to have work stopped on the property and to have soil, sedimentation and erosion control devices installed to minimise further damage to the property and to the creek. The owner has been advised not to carry out any other works on the property.

On the 2 October 2003 a written submission was received from the property owner in respect of the works undertaken. In that submission he indicates:

"I confirm that I have complied with your letter of the 22 September, 2003, and all activity on the site has ceased. The requirements of your notice of Clean Up action have been satisfied. Whilst the issue of dust emission is not a problem at the moment due to current rains it will be addressed by Tuesday of next week when the dead trees will be mulched and the mulch used to assist in dust emission from the bare areas along with ongoing fertilization and seeding on the effected areas."

In a phone conversation on Tuesday, 7 October 2003 held with Mr Macdonald he indicated the mulching had taken place with all piles having been mulched. This action was carried out despite being directed in earlier correspondence not to "dispose of any trees on the property as they assist in the conservation of soil and assist in the prevention of erosion".

In a series of point items the owner then raised the following points:

- I purchased the property about 2 (two) months ago for the purpose of establishing a horse stud.
- I was aware from having a pest inspection done subsequent to the purchase of the house that the majority of trees growing around the house were all infested with termites and dying.
- The existing dams on the property were full of silt.

- Because of the above matters I engaged a contractor to remove the termite infested trees around the house and to clean out the dam and recontour the bank and in so doing reduce the bank gradient so that it was safer for horses and cattle to walk down. The contractor was also engaged to clear the existing fence line. The existing fence is a star picket and wire fence, which was in disrepair. I intend to replace it with a post and rail timber fence. The contractor was also instructed to clean out some undergrowth on the property, which was an obvious fire hazard.
- As I did not currently reside on the property I was unfortunately not available to be at the site when the contractor carried out the work and I am aware that he did further work than I contemplated would be necessary for my use of the property. This appears to have occurred as a result of a misunderstanding between us.
- Over the course of the next month I intend to seed and fertilise the bare areas with a view to establishing a grass cover, commencing next Tuesday, mulch the trees which have been knocked over, after mulching has been completed, replant a number of melaleucas adjacent to the western bank of the creek on Lot 2 and generally tidy the place up so I can use it as a horse stud.

In the correspondence the property owner indicates that the works on the property commenced on the 19 August 2003.

Conclusion

Unauthorised clearing works have occurred on the properties. Vegetation removed may be listed as vulnerable or at risk under the Threatened Species Conservation Act 1995 and the works have occurred within 40 (forty) metres of a prescribed stream. It is estimated by Council's Parks Officer - that approximately 1600 (one thousand six hundred) trees were contained within the 25 (twenty five) piles of vegetation inspected on the 22 September 2003.

The owner did make enquiries with a Council staff member about the possibility of clearing the fenceline and was advised to make an appointment with the Parks staff to discuss the procedure and application requirements on site. This did not occur.

RECOMMENDATION:

That:

1. The matter be referred to Council's Solicitors with a view to commencing proceedings in the Land and Environment Court for carrying out unauthorised works once all reports are received.
2. The Solicitor be instructed to seek Orders from the Court for the owners to:
 - a) plant new trees and vegetation and maintain those trees and vegetation to a mature growth, and

- b) provide a security for the performance of any obligation imposed under paragraph (a).

ATTACHMENTS:

AT-1 Locality Plan

AT-2 NPWS Cumberland Plain Map extract

AT-3 Matrix indicating species identified

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AT1 - Locality Plan

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AT 2 - NPWS Cumberland Plain Map extract

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AT 3 - Matrix indicating species identified

oooO END OF ITEM 72 Oooo