



general
purpose
committee

1
section

environment

GENERAL PURPOSE COMMITTEE - ENVIRONMENT

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ITEM: 62 **3 (Three) Townhouses - Lot 19 DP207834, 42 Grose Vale Road, North Richmond NSW 2754**

FILE NUMBER: DA0357/03/EVD/ENI30NAX.V09

Applicant: Mr John Gallo
Applicants Rep: N/A
Owner: Mr V Bosco
Stat. Provisions: Hawkesbury Local Environmental Plan 1989
 Hawkesbury Development Control Plan
Area: 936 sqm
Zone: Residential 2(a)
 Residential 2(a) under Hawkesbury Local Environmental Plan 1989
 Housing
 The proposed zone under draft local environmental plan 1/01 -
 Amendment 130 is Housing.
Advertising: 15/08/2003 to 29/08/2003
Date Received: 31/03/2003

Key Issues: Non compliance with Draft Amendment 130 to HLEP 1989
 Inconsistent with Hawkesbury Development Control Plan.

Action: Refusal

REPORT:

Introduction

Council has received a development application seeking approval for the erection of 3 (three) townhouses.

The application was received prior to the exhibition of draft LEP Amendment No. 130 and the land is outside the proposed multi unit housing zone. The application is therefore, reported to Council.

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

The Proposal

The proposal is for the erection of 3 (three) dwellings on the subject land. The dwellings will be constructed of brick and tile and are double storey with 3 (three) bedrooms each.

An existing dwelling house on the land is to be demolished. The subject property has an area of 936sqm. Access to the land is via an existing driveway from Grose Vale Road. 2 (two) trees located on the land are to be retained.

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	(b) For sites fronting a local road buildings are to be set 7.5m back from the front boundary. In areas where there is prior development the established pattern is to be regarded as the standard setback.	Setback of 7.5m	Yes
	(c) For battleaxe blocks the general setback from the rear boundary of the property in front is to be 6 metres.		N/A
	(d) For the minor frontage on corner blocks, the minimum building setback is to be 2 metres.		N/A
Development Fronting Rear Lanes	(e) The front of the dwellings are to face the rear lane.		N/A
	(f) The laneway is to be constructed to a width of 4.5m wide sealed pavement from a sealed road to and over the frontage of the site. Kerb and guttering is also to be provided along one side of the rear lane.		N/A
	(g) Buildings are to front the rear lane and setback a minimum of 5.5m from the boundary to the rear lane.		N/A
	(h) Access to the site is to be widened to allow for satisfactory manoeuvring for vehicles entering or leaving the site.		N/A
	(i) Front fences are to be a maximum height of 1.2m to maximise site distances for vehicles leaving the site.		N/A
	(j) Visitor parking shall be provided at a rate of one per single dwelling and two per each fire units or part thereof. Parking spaces shall be located clear of the access to the garage/carports.		N/A
	(k) A 1.2m wide legal pedestrian and service access is to be provided to the front street.		N/A

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Landscaped Areas	(l)	All forms of residential development are to contain pervious soft landscaped areas to a total of 30% of the total site area. This may be calculated by adding together soft landscaped areas of private and common open space. Development proposals, where required, are to indicate the proportion of the total site area that is: • total "soft" landscaped area; • total ground level private open space; and • total common open space.	280.8sqm required to be landscaped. Provided.	Yes
Private Open Space	(a)	Single dwelling houses and multi unit housing are to provide at least one area of private open space for each dwelling.	Each dwelling has an area of private open space.	Yes
	(b)	The total of private open space at ground level must be a minimum of 20% of the site area, regardless of permeability of the surface. This space must: • be capable of containing a rectangle 5 metres x 6 metres that has a slope less than 1:10;	187.2sqm of private open space required. Provided.	Yes
		• not be comprised of any area with a dimension less than 4 metres; and • be exclusive of clothes drying areas, driveways, car parking and other utility areas.	Unit 3 courtyard does not comply due to presence of clothes drying area. This area can be relocated.	Yes
	(c)	Any above ground level balcony or rooftop area designed for private open space must have a minimum area of 10 square metres with a minimum dimension of 2 metres. This area is not included in the calculation for the provision of total private open space.		N/A

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Common Use Open Space	(a)	For development proposals than contain 5 or more units common use open space is encouraged. Concession may be given where it is demonstrated that sufficient useable private open space has been provided.	Communal open space not required. Development comprise 3 units	N/A
	(b)	The communal open space should generally have access only from within the site.		N/A
	(c)	Common open space for multi-unit housing developments should be accessible from all dwellings within the development. Surveillance of this space should be possible from at least 2 dwellings.		N/A
	(d)	Any proposed communal recreational facilities must be designed and located to avoid nuisance or danger to neighbours, residents and visitors.		N/A
Access and Parking	(a)	Driveways next to any side or rear boundary must have a landscape strip of at least 1 metre to separate them.	1.5m of landscaping has been provided along the boundary.	Yes
	(b)	Shared driveways, access lanes and car parks must be setback a minimum of 1.5 metres from windows to main habitable rooms of dwellings. This standard does not apply if the floor level of the dwelling is at least 1 metre above the driveway.	Unit 1	No
	(c)	All driveways must have a minimum width of 3 metres and must be sealed to prevent surface erosion.	The driveway has a minimum width of 3m.	Yes
	(d)	For development that contains more than 2 units driveways are to have a minimum driveway width of 6m from the layback/kerb line to 6m inside the property.	This has been provided.	Yes
	(e)	Garages and carports must not visually dominate the street facade, should occupy less than 50% of the building facade and must be compatible with the building design.		Yes

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	(f)	Uncovered car parking spaces and turning areas can be located within the front setback to the required building line provided that this area is dominated by landscaping and/or addresses established streetscape patterns.		Yes
	(g)	Where parking spaces are located as 90° to the driveway alignment the minimum driveway width adjacent to the space is to be 6.7m, increased as necessary to allow adequate manoeuvring on site.	This has been provided.	Yes
	(h)	On site manoeuvring areas shall be provided to allow entry and exit to the site in a forward direction.	This has been provided.	Yes
	(i)	On site manoeuvring areas shall be provided to allow entry and exit to and from all car spaces including garage, carports, uncovered spaces and visitor spaces by a single turning movement.		Yes
	(j)	Where more than 3 units are served by an access or the access is greater than 30m long, a turning area shall be provided at or near the end of the access.	Turning area have been provided.	Yes
	(k)	On site manoeuvring shall be based on the Ausroads Standard 5.0m design vehicle. Templates for this standard are provided in the appendices. When using the templates a minimum of 150mm shall be provided between any fixed object and the extremities of the swept paths.		Yes
	(l)	All on site car spaces shall comply with the minimum dimensions set out in Part C Chapter 2 (Car Parking and Access). Where a space adjoins a wall, fence or other fixed structures, the width shall be increased as follows to allow adequate door opening: • On one side only to 3.2m • On both sides to 3.8m. • Refer to Part C Chapter 2 - Car Parking and Access for additional requirements.	Dimensions of all parking spaces comply.	Yes

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Basement Parking	(a)	Only the basement's parking entry should be seen as a separate level in a building. Large exposed foundations, voids and walls are not to be used.		N/A
	(b)	No part of a basement should extend more than 1 metre above natural ground level so the height of the building is not excessive.		N/A
	(c)	Consideration may be given to a sump and pump where storm water volumes are low based on merits of the site		N/A
Visual Amenity	(a)	Where there is potential for loss of privacy the proposal should incorporate some of the techniques illustrated in the DCP.	Visual amenity adequate.	Yes
	(b)	Where there is no alternative to a window, it should be screened.	Visual amenity adequate.	Yes
Acoustic Privacy	(a)	Acoustic privacy is to be considered at the design stage.		Yes
	(b)	Site layouts should ensure parking areas, streets and shared driveways have a line of sight separation of at least 3 metres from bedroom windows		Yes
	(c)	A distance of at least 3 metres should separate openings of adjacent dwellings.		Yes
External Noise and Vibrations	(a)	A noise and vibration assessment must be undertaken by a suitably qualified noise consultant for any proposed residential development other than a single dwelling house located within 100 metres of the railway line or within Australian Noise Exposure Forecast (ANEF) 25 or greater.	ANEF 20 to 25 Noise attenuation measures can be achieved.	Yes
	(b)	Proposals must comply with the current Environment Protection Authority criteria and the current relevant Australian Standards for noise and vibration and quality assurance and incorporate appropriate mitigation measures.	Acoustic report required as a condition of consent.	Yes
Safety and Security	(a)	Each dwelling is to be provided with direct and convenient pedestrian access to a private or public road.	Satisfactory	Yes

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	(b)	Barriers to prevent movement between internal roof spaces of adjoining dwellings are required.	Can be conditioned.	Yes
	(c)	Elements to be incorporated in site and building design and include: • doorway/entry safety and surveillance to and from the footpath • illumination of public spaces including all pedestrian paths, shared areas, parking areas and building entries to the relevant Australian Standard • visibility to the street from the front of the development • restricted access to the rear of the site.	Can be conditioned.	Yes
Utility and Site Services	(a)	Where reticulated water is not available, a minimum storage of 100000 litres must be provided. A minimum of 10000 litres must be available at all times for fire fighting.		N/A
Cables	(a)	The design, location and construction of utility services must satisfactorily meet the requirements of both the relevant servicing authority and Council.	Can be conditioned	Yes
Recycling, garbage and mail	(a)	Collection areas must be integrated into the overall site and building design.		yes
Fencing and Retaining Walls	(a)	Front fences where not screening private open space walls are to be a maximum height of 1.2m if solid.		N/A
	(b)	Solid front fences may be 1.8m high and articulated if: • the main private open space is in the front of the building facade; • the site is located on a main or arterial road; • the site is not located within an established heritage character; and		N/A

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	- the length is limited to 75% of the frontage where private open space fronts the street and some surveillance is maintained from the front dwelling; and - fences do not exceed 10m in length without some articulation or detailing to provide visual interest.		
	(c) The integration of trees and natural ground vegetation with the fence line is desirable.		N/A
	(d) The setback of the fence will be used for landscaping.		N/A
	(e) Solid fences are to be 1 metre from the front boundary.		N/A
	(f) Retaining walls shall: - not be taller than 500mm; and - not cut through roots of any tree to be retained.		
Energy Efficiency Chapter	(a) NatHERS Assessment and/or Energy Performance Statement	EPS required	No

The DCP requires that shared driveways, access lanes and car parks must be setback a minimum of 1.5 (one point five) metres from windows to main habitable rooms of dwellings. The visitor car parking space is located adjacent to the living room window and front entrance to unit 1 (one).

Although requested an Energy Performance Statement has not been submitted.

Community Consultation

Following notification of the proposal, 3 (three) submissions were received from 4 (four) adjoining land owners. The matters raised in the submissions are addressed in the planning assessment below.

Planning Assessment

Full consideration has been given to s.79C (1)(b) of the EP & A Act as contained on file. Below are the relevant matters:

Context And Setting

Adjoining land uses predominantly consist of single dwelling houses. These dwelling house include a mixture of single and double storey construction and are varied in design. Multi unit developments are found within the locality.

Privacy/Overlooking (raised by respondents)

First floor windows of unit 1 (one) are associated with bedrooms and an ensuite. First floor windows of units 2 (two) and 3 (three) are associated with bathrooms and ensuites. It is considered that in view of the nature and frequency of use of these rooms, it is considered that there are no unreasonable impacts on privacy from overlooking. 1.8 (one point eight) metre boundary fencing will ensure visual privacy between the development and the adjoining properties at ground level.

2 (two) storey out of character (raised by respondents)

A 2 (two) storey dwelling house adjoins the subject land and 2 (two) storey development is located within the immediate locality.

Inconsistent with Draft Amendment No. 130 to HLEP 1989 (raised by respondents)

The subject land is proposed to be zoned Housing under the requirements of draft Amendment 130 to HLEP 1989. Multi residential development is prohibited within this proposed zone.

Traffic (raised by respondents)

It is considered that the development will result in a minor increase in traffic in the locality.

Removal of trees (raised by respondents)

2 (two) large trees situated on the property are to be retained. 1 (one) is located adjacent to the rear boundary and the other is located adjoining the driveway. Both are exotic species. A large palm located towards the front of the property is to be removed.

Overdevelopment (raised by respondents)

The proposal is inconsistent with the Residential Chapter of Hawkesbury Development Control Plan suggesting that the proposal is an overdevelopment of the land.

Noise (raised by respondents)

It is considered that noise generated from an additional 2 (two) dwellings on the site will not have an unreasonable impact on the adjoining properties.

Conclusion

The proposed development is inconsistent with the Residential Chapter of Hawkesbury Development Control Plan and provides poor amenity for the future occupants of the development. The proposal will be prohibited under the provisions of draft Amendment No. 130 to Hawkesbury Local Environmental Plan 1989.

RECOMMENDATION:

That the application for 3 (three) townhouses be refused for the following reasons:

1. The proposed development is inconsistent with and will be prohibited by the provisions of draft amendment 130 to Hawkesbury LEP 1989.
2. The design of the proposed development will not provide an acceptable level of amenity for future residents.

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3. The proposed development does not comply with the requirements of the Hawkesbury Development Control Plan, in particular Chapter 1, Part D - Residential Development.
4. In the circumstances, approval of the development would not be in the public interest.

ATTACHMENTS:

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

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AT1 - Site Plan

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AT2 - Locality Plan

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AT3 - Elevation Plan

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ITEM: 63 **Regulation of Open Burning, General Approval**

FILE NUMBER: 15638/EVD/ENI30NBX.V01

PREVIOUS ITEM: 72, Ordinary (26.08.2003)

REPORT:

Requirements under the Clean Air Act and Regulation

The uncontrolled burning of waste, such as household rubbish and garden clippings, creates an air impurity impact that should be avoided. Measures have been introduced over time to control backyard burning. These have been successful in bringing down average levels of particle pollution, especially in the Greater Metropolitan Region.

All burning controls are distinguished on the basis of the material that is being burnt, and not whether burning is undertaken in the open.

The Protection of the Environment Operations Act 1997, (Control of Burning) Regulation 2000 which replaced the Clean Air Regulation 1995, aims to minimise air pollution through the following measures:

- Taking into account the potential for smoke impacting on any person due to wind direction and weather conditions;
- Taking reasonable measures to ensure that the material being burnt is not wet;
- Burning only material that is suitable for disposal by burning, having regard to possible effects on human health and the environment. The regulation also stipulates certain items that are prohibited to burn.

It is not an offence under this regulation to cook or barbecue in the open, or to light, maintain or use a fire for recreational purposes such as camping, picnicking, scouting or other similar activities. As long as it complies with the obligations set out in the Act to minimise air pollution.

It also is not an offence to burn vegetation in the course of carrying on agricultural operations on premises to which the vegetation grows including the burning of stubble, orchard pruning, diseased crops, weeds, and pest habitats. It is the intent of the regulation to allow farmers operating an agricultural business to burn vegetation however this does not include the burning of packaging, boxes, plastic, and vegetation from land clearance for property development or domestic refuse.

Blanket Approval under the Protection of the Environment Operations Act

NSW Government legislation has enabled Council to adopt its own rules for the backyard burning of dead and dry vegetation. Council has the power to grant a general approval for burning dead and dry vegetation on the premises on which the vegetation grew for a selected period.

The approval:

- (a) remains in force for the period specified by Council, during the period of 1 April 2003 until 30 September 2003 or until the commencement of the bush fire danger period if this is declared earlier;
- (b) must be published in the local paper (The Hawkesbury Gazette) prior to April each year;
- (c) relates to properties located outside the NSW Fire Brigade boundaries;
- (d) does not extend to the burning of vegetation resulting from land clearance. Vegetation arising from land clearance can only be burnt if a particular written approval is obtained from Council; and
- (e) does not relate to premises used as a commercial business.

Approval is granted subject to the provisions of the Protection of the Environment Operations (Control of Burning) Regulation 2000 and with the following conditions:

1. Only dry and dead vegetation originating on a property which is included in this approval shall be burnt on that property in accordance with the Rural Fire Service "Guidelines for pile burning" June 2003;
2. Plastics, rubber, chemical and pesticide containers and also the following specifically prohibited articles shall not be burnt in conjunction with this approval:
 - (a) Tyres, plastic coated wire, paint/solvent containers and residues;
 - (b) Timber treated with Copper Chromium Arsenate (CCA) or Pentachlorophenol (PCP) or painted timber.
3. Burning with this approval must at all times be carried out by such practical means as are necessary to prevent or minimise air pollution. The potential for smoke impacting on any person due to wind direction and weather conditions must be taken into account.
4. In the event of a Total Fire Ban being declared, this approval is suspended. Any existing fire is to be extinguished and cannot be re-commenced until the Total Fire Ban is lifted.
5. In the event of a "No Burn Day" being declared by the EPA this approval is suspended for the duration of the declaration.
6. Adjoining neighbours are to be notified at least 24 (twenty-four) hours before the fire is lit.
7. A responsible supervising adult over the age of eighteen shall be on site at all times with enough water to extinguish the fire if required for that time the fire is active.
8. Failure to comply with this approval may result in an On the Spot fine of \$500.00 (five

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hundred dollars) for an individual or \$1,000.00 (one thousand dollars) for a corporation. In the event of prosecution, the maximum penalty is \$5,500.00 (five thousand, five hundred dollars) for an individual and \$11,000.00 (eleven thousand dollars) for a corporation.

RECOMMENDATION:

That the General Approvals for the Hawkesbury Local Government Area be prepared under the provisions set out under the (Control of Burning) Regulation, to allow rural and residential properties to burn dead and dry vegetation in accordance with the Rural Fire Service "Guidelines for Pile Burning" June 2003 subject to a list of safety conditions and type/quantity of materials, between the months of April to September each year without reference to Council.

ATTACHMENTS:

There are no supporting documents for this report.

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ITEM: 64 **Zone Boundary Investigation and 112 Horans Lane, Grose Vale**

FILE NUMBER: 19424, 79347/EVD/ENI30NBX.V06

REPORT:

Introduction

Council at its meeting of 30 September 2003 deferred a report for 112 Horans Lane Grose Vale to the next General Purpose Committee. This report is reproduced for Council's consideration below.

Background

In August 2002 Council exhibited Draft LEP 8/98 (Amendment 108) and received approximately 40 (forty) submissions. A submission was received from the owners of 112 Horans Lane, Grose Vale requesting that the zoning of the land be reviewed and included under Amendment 108.

The rezoning requests from Draft Amendment 108 were reported to Council on the 28 January 2003 and Council at its meeting of 11 March 2003 resolved not to support the request to rezone the subject land.

Subsequent to this resolution a motion was adopted at Council's Ordinary Meeting on the 13 May 2003 regarding the subject land at No.112 Horans Lane, Grose Vale as follows:

"That a report be prepared for the General Purpose Committee meeting in August regarding the property at 112 Horans Lane, Kurrajong (DP 1015916) as to whether or not there exists a zone boundary anomaly, created as a result of the 1989 rezoning."

The purpose of this report to advise Council of the outcome of this investigation.

Consultants report

Consultant, Berzins Environmental Planning, was engaged to prepare a report to ascertain whether or not an anomaly exists in the zone boundary created as a result of the 1989 rezoning. To undertake this work, it was deemed necessary to review the history of zoning controls, the Blue Mountains Eastern Escarpment Study and other properties within this locality.

The report was completed on 28 July 2003 and the following information was contained within the report provided by Berzins Environmental Planning.

History of Planning Controls of 112 Horans Lane

In 1975, the subject land, No. 112 Horans Lane, was zoned Non-Urban 1(b2) under the provisions of Interim Development Order No.3, Shire of Colo. The minimum lot size for subdivision in this zone land was 10 (ten) hectares. The subject land was also designated as being in an Escarpment Protection Area.

Clause 45 of Interim Development Order No.3 contained provisions that protected vegetation and restricted both the site coverage and height of buildings on land designated as Escarpment Protection Area. At the time the subject land (Lot 101 DP 568797) had an area of just over 20 (twenty) hectares and therefore, the owner could seek approval from Council for a 2 (two) lot subdivision.

During the following 10 (ten) years planning controls were reviewed and a new Local Environmental Plan (LEP) was prepared that had regard to the then new Environmental Planning & Assessment Act 1979. On the 31 January 1984 Hawkesbury LEP 1984 (HLEP) was gazetted. Under HLEP 1984 the subject land was zoned Rural 1(b1) and the minimum lot size requirement remained at 10 (ten) hectares. Again, the LEP identified the subject land as being within an Escarpment Preservation Area. Clause 33 of HLEP was very similar to the provisions of Clause 45 in IDO No.3, Shire of Colo. The subject land still had an area of just over 20 (twenty) hectares and the owner could apply for a 2 (two) lot subdivision that would have been considered on its merits.

In 1989, Hawkesbury LEP 1989 was gazetted. This LEP resulted in the minimum subdivision requirement for a large part of the Grose Vale area changing from 10 (ten) hectares to 4 (four) hectares. However, the subject land was not included in the Rural 1(c1) zone ((4 (four) hectares) but, was rather included in the Environmental Protection (Scenic)7(d) zone. The minimum lot size for the Environmental Protection (Scenic)7(d) zone is 40 (forty) hectares. There is no Escarpment Preservation Area Clause in HELP 1989, however, the issue of preserving the escarpment is included as a zone objective within the Environmental Protection (Scenic) 7(d) zone. The subject land could not be subdivided into 2 (two) lots after 1989 because the minimum lot size increased from 10 (ten) hectares to 40 (forty) hectares.

The eastern boundary of the subject land coincides with the zone boundary between the Rural 1(c1) zone and the Environmental Protection (Scenic) 7(d) zone. Council, in adopting LEP 1989 and setting the zone boundary in the Grose Vale / Kurrajong area, was influenced by the Blue Mountains Eastern Escarpment Study, published by the Department of Planning also in 1989.

Blue Mountains Eastern Escarpment Study

The Study was largely conducted in response to an increasing pressure for development along the eastern edge of the Blue Mountains in the mid 1980's. The Study area ran from south of Penrith through to north of Kurrajong Heights.

The objectives of the Study were to:

- a) *"investigate and identify areas of visual, landscape and heritage significance;*
- b) *assess the adequacy of current planning controls in the conservation of areas and items identified in (a) above; and*
- c) *develop and set out appropriate planning controls and land management techniques which facilitate the conservation of those significant areas and items."*

The boundaries of the study area were defined in close consultation with Penrith, Blue Mountains, and Hawkesbury Councils. In the case of the latter 2 (two) Councils, the study area was defined largely on the basis of the location of the Escarpment Preservation Areas in the planning instruments applying at the time. In Hawkesbury's case this would have been HLEP 1984. It

should be noted, however, that the process of setting the boundary of the study area, especially in the Grose Vale/Kurrajong area would have been reiterative because Council officers were at the same time examining the best location for the zone boundary between the Rural 1(c1) zone and the Environmental Protection (Scenic) 7(d) zone.

The Blue Mountains Eastern Escarpment Study addressed the following issues:

- Geology, soils and land capability;
- Vegetation and bushfire hazard;
- Landscape and visual assessment;
- Environmental heritage; and
- Planning controls and policies.

1 (one) of the findings of the study was that the Eastern Escarpment contains, at the broadest level, 3 (three) elements which define the escarpment's landscape. These elements are the footslopes, the escarpment wall/slopes and the gorges and water courses. In the Kurrajong area, the footslopes were found to have limited visual significance, however, they were found to be an integral or important part of the study area's visual experience and it was recommended in the study that the footslopes be upgraded through vegetation and woodlot planting. The subject land falls within the footslopes category.

An outcome of the study was that it identified a number of precincts within the study area for more detailed policy purposes. The subject land lies within the Little Wheeney Creek policy precinct. The principal objective for this precinct was to improve landscape quality. The recommended actions for this precinct in the Study were as follows:

- Revegetation along local road reservations and property boundaries; and
- Retain existing zoning controls.

In relation to the subject land, the study area boundary closely matches the western boundary of the Rural 1(c1) zone. The study area boundary and the zone boundary under the HLEP 1989 are identical over the subject land (No. 112 Horans Lane, Grose Vale).

Hawkesbury Local Environmental Plan 1989

Research into Council's files reveals that the HLEP 1989 was exhibited as draft LEP 1987. The boundary between the Rural 1(c1) zone and the Environmental Protection (Scenic) 7(d) zone in the Grose Vale / Kurrajong area did not change from Draft LEP 1987 to HLEP 1989.

At the time of Draft HLEP 1987 going on exhibition the Department of Planning raised concerns about the potential increased lot yield in the Grose Vale area and the irregular shape of the proposed Rural 1(c1) zone.

In responding to the Department's concerns, Council in its letter dated 12 August 1987 stated inter alia that:

"Secondly, the irregular zoning boundary alignment around Kurrajong is due to the concerns of the Metropolitan Water, Sewerage and Drainage Board regarding the adequacy

of the existing supply and the cost of augmentation. The western boundary is regarded as the best definition of the escarpment area, notwithstanding that some of the land is defined as escarpment in Hawkesbury Local Environmental Plan, 1984."

In other words, Council officers had undertaken an assessment at the time as to what constituted the escarpment and in fact had lifted Escarpment Protection provisions from a considerable part of the Grose Vale area. The zone boundary between the Rural 1(c1) zone and the Environmental Protection (Scenic) 7(d) zone in the Grose Vale / Kurrajong was viewed at the time to be the best representation of the lands that needed protection due to their status as being much more representative of "escarpment lands".

Conclusions of the report

The report concludes that the setting of the zone boundary in the locality of Horans Lane was done with due diligence and represented the best location of defining escarpment lands at the time. It is emphasised that the setting of the zone boundary was undertaken using local knowledge as well as drawing on a regional study, that is, the Blue Mountains Eastern Escarpment Study.

It is also noted that even though the subject land is barely visible from any significant viewpoint it still represents an essential element of what constitutes the escarpment. That is, the subject land falls within the footslopes component or element of the escarpment. It is important to repeat that the escarpment at the broadest level, consists of 3 (three) elements which define the escarpment's landscape. These elements are the footslopes, the escarpment wall/slopes and the gorges and water courses. The footslopes are necessary to protect and interpret in a visual sense the steeper, mostly forested lands of the escarpment proper. If the footslopes were more intensely developed then there is the potential for the escarpment's significance to be devalued. This issue is recognised in the Blue Mountains Eastern Escarpment study where recommendations are made to improve the vegetation cover of the footslopes in the precinct where the subject land is located.

In the Kurrajong area, the footslopes were found to have limited visual significance, however, they were found to be an integral or important part of the study area's visual experience and it was recommended in the study that the footslopes be upgraded through vegetation and woodlot planting. The subject land falls within the footslopes category.

Given the above discussion, it is the consultants opinion that setting of the zone boundary in the vicinity of the subject land at No.112 Horans Lane, Grose Vale was undertaken with due diligence and reflected a reasonable interpretation of what constituted escarpment lands at the time. The corollary of this statement is that there is no zone boundary anomaly created as a result of the 1989 rezoning. It should be remembered that the "escarpment" is much more nebulous or harder to define than a fence or a property and therefore is open to interpretation and review.

Options for 112 Horans Lane

There are several options as to how to proceed with this matter and these are discussed below.

Preparation of a Local Environmental Study

The consultants report outlines that a much more localised study into what lands constitute the

escarpment and footslopes in the Kurrajong / Grose Vale area may lead to a slight modification of the current zone boundary.

This study would need to be provided in the form of a Local Environmental Study before consideration could be given to a review of the zone boundary in the Grose Vale / Kurrajong area. The consultant recommends that if the rezoning option were to be advanced by Council then it should be undertaken in a holistic manner and the entire western boundary of the Rural 1(c1) zone in the Grose Vale / Kurrajong area re-examined.

Such a study would not only need to examine the definition of what constitutes the escarpment in this locality, but would also need to examine the suitability of land in the locality for increased subdivision potential. Other issues apart from visual issues would need to be addressed and these include the following:

- Significant vegetation and habitat corridors;
- Bushfire;
- On-site waste disposal; and
- Traffic implications.

On a map to be displayed in the Council Chambers, the extent of the "Little Wheeny Creek" landscape unit is shown over the current zone map. This shows that north of the Bells Line of Road the unit has been included in the 1(c) zone whilst south of the Bells Line of Road it has been included in the 7(d) zone, except for a section along the western side of Cabbage Tree Road south of Grose Lane. If the criteria for rezoning is based on elevation, slope, orientation or visibility from major roads then there are other lands in the locality that have many of the characteristics of this property. A computer generated mould of the slope and aspect of the lands in the locality demonstrates this. This map is also displayed.

Should Council proceed in this manner, a resolution to prepare a draft local environment plan and local environmental study would be required and the study would need to look at the whole of the landscape unit. Appropriate funds would also need to be allocated for this work.

Amend zone boundary at 112 Horans Lane

Council may resolve to amend the zone boundary at 112 Horans Lane to allow the subdivision of this property. To date, no work has been undertaken by the owners or the consultant as to what may be an appropriate lot yield for the subject site. The subject land currently has an area of approximately 34 (thirty four) hectares. A Local Environmental Study would be required for this.

This option is not recommended due to the precedent that would be set for similar properties in this locality. As indicated above, the zone boundary should be viewed in a holistic manner and the entire western boundary of the Rural 1(c1) zone in the Grose Vale / Kurrajong area re-examined.

Amend the LEP to allow exclusion of 112 Horans Lane

Council could consider amending the LEP to maintain the current zone but to allow subdivision to take place. The owner contends if the zone boundary was to extend along the ridge, which Horans Lane is on, then approximately 20 (twenty) hectares of this land would have been included in the

1(c) zone resulting in a 5 (five) lot subdivision. Conversely, if the previous subdivision potential, that is, prior to LEP 1989, then the property could have been subdivided into 2 (two) lots.

Conclusion

The request by the owners of 112 Horans Lane to review the zone boundary is not dissimilar to rezoning requests to allow further subdivision of the rural land that Council has considered over the past several years. Council has consistently not supported rezoning requests seeking subdivision potential.

The critical question is whether or not there exists a zone boundary anomaly created as a result of the 1989 zoning. The findings of the consultant's report indicate that the boundary is a reasonable approximation of the escarpment land.

Given this information, it is considered that no further work should be undertaken in relation to 112 Horans Lane and the zone boundary remain in its current location.

This matter was deferred at the General Purpose Committee at the request of the owners of 112 Horans Lane. Since this time, the owners have lodged a report which is detailed below.

Further investigations of 112 Horans Lane, Grose Vale

The owners of 112 Horans Lane engaged Mr Roger Gain of Don Fox Planning to carry out further investigations in relation to the subject property. This report was submitted on 5 September 2003 and seeks to undertake a more localised study into what lands constitute the escarpment boundary and footslopes in the Kurrajong/Grose Vale area.

The report outlines the physical location of the subject land and considers that from the topographical features to the cadastral boundaries within 112 Horans Lane can be regarded as an anomaly. Part of the report, is reproduced below:

"It is suggested that the zone boundary could be moved within the subject property so that it properly takes account of the topographical features and rural residential characteristics of the land. A revised zone boundary arrangement is presented on Illustration 5 (five) Proposed Zone Boundary. The proposed zoning would treat the subject site in the same manner as the land to east, which it closely resembles.

The revised zone boundary follows the ridge which extends from Horans Lane and then follows the site boundary along Little Wheeney Creek to meet the existing zone boundary at the northern end of the subject site.

The proposed boundary change would continue the Rural C1 designation of the eastern gully within the site as far as Little Wheeney Creek, while keeping the western gully as Environmental Protection (Scenic) and would make a more logical edge to the escarpment than the current zone boundary.

The effects of the modified zone boundary would be to allow Council to consider subdivision of the eastern and southern part of the subject site into 4 (four) hectare allotments, while the

remaining western and northern sections of the site would be smaller than the minimum lot size required under the Environmental Protection (Scenic) zone and thus could not be further subdivided.

The area within the proposed Rural C1 zone is approximately 24.5 (twenty four point five) hectares and thus this part of the site would have a maximum potential for approximately 6 (six) lots. Although the area within the Environmental Protection (Scenic) zone is smaller than the minimum lot size for this zone, it is suggested that this part of the site has the potential for 1 dwelling entitlement giving rise to a total maximum potential of 7 (seven) lots.

Any development application for subdivision would need to be accompanied by a detailed environmental investigation confirming the subdivision potential of the site. It is suggested that, even though the heavily vegetated land adjacent to Little Wheeney Creek is proposed to be zoned Rural C1, none of this land could be cleared to allow subdivision, since any detailed investigation would conclude that the vegetation must be preserved. If a method cannot be agreed to allow development of the maximum potential yield (say by lot size averaging), then the potential might not be achieved.

Because of the peculiarities of the zone boundary within and adjacent to the subject site, we consider that should Council approve the proposed changes to the zoned boundary as outlined above, it would not be setting any precedent for other changes in the immediate vicinity”.

The report contains the following summary and conclusion:

- "• The southern and eastern cleared sections of the subject site have characteristics more in common with the cleared agricultural and rural residential areas to the east and the boundary of the Environmental Protection (Scenic) zone should properly lie through the subject site as shown on **Illustration 5**.
- Large parts of the site are not visible from the surrounding area and particularly from public roads.
- This situation is unique to the subject site and should not set any precedents for other boundary adjustments, at least in the immediate vicinity.
- The proposed zone boundary adjustment would create a maximum potential of 6 rural residential lots within the extended Rural C1 zone and a further 1 building entitlement on the residue Environmental Protection (Scenic) area of the land.
- Any development application for subdivision would need to be accompanied by a detailed environmental assessment of the site and this would confirm the actual number of lots to be created.
- We suggest that the zoned boundary could be adjusted by the application of Clause 10 Subdivision - General of Hawkesbury LEP 1989 as shown on **Illustration 5**, or

preferably by Council agreeing to accept a combined rezoning and development application".

The illustrations referred to above are displayed on the display at this meeting.

Conclusion

As outlined in the previous report to Council there are 3 (three) options as to how to proceed with this matter:

1. Preparation of a Local Environmental Study;
2. Amend the zone boundary at 112 Horans Lane; and
3. Amend the Hawkesbury Local Environmental Plan 1989 to allow exclusion of 112 Horans Lane.

These options are explained in detail above and do not change as a result of the additional study carried out by the consultant engaged by the owners of 112 Horans Lane. The additional report does not consider the wider context or the implications of amending the zone boundary. The reports suggests that due to the topographic features to the cadastral boundaries within 112 Horans Lane can be regarded as a zone boundary anomaly. It could be also concluded that other properties in this locality may also be affected by the anomaly and equally capable of subdivision.

The request by the owners of 112 Horans Lane to review the zone boundary is not dissimilar to rezoning requests to allow further subdivision of the rural land that Council has considered over the past several years. Council has consistently not supported rezoning requests seeking subdivision potential as this is inconsistent with strategies such draft amendment 108. Furthermore, the support of the proposed rezoning and subsequent subdivision would set an undesirable precedent in this locality.

It is, therefore, considered that no further work should be undertaken in relation to the 112 Horans Lane and the zone boundary remain in its current location.

RECOMMENDATION:

That:

1. The information be received; and
2. The zone boundary remain in its current location, including 112 Horans Lane, Grose Vale.
3. Council resolve not to pursue this matter any further.

ATTACHMENTS:

There are no supporting documents for this report.

oooO END OF ITEM 64 Oooo

ENVIRONMENT

Meeting Date: 30 September, 2003

Item: **65**

ITEM: 65 **Animal Establishment - Lot 396 DP 664634 No.77 Godalla Road, Freemans Reach**

FILE NUMBER: DA1387, 18143/02/EVD/ENI30NBX.V05

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

REPORT:

Council at its meeting of 12 August 2003 resolved that:

- “1. The matter be deferred to the September GPC meeting after Council staff had notified all neighbours, including adjacent owners.
2. A report be sought from the Department of Agriculture.
3. A meeting be organised between neighbours and Council staff to undertake discussions.”

The application was placed on notification to adjoining and adjacent owners and during this period 2 (two) submissions were received. A meeting with the respondents has been arranged for the 25 September 2003 to undertake discussions as required by the resolution.

The matter has been referred to the Department of Agriculture and a response has yet to be received.

As a result, this application will be presented to the October General Purpose Committee, following the meeting with the respondents and report from the Department of Agriculture.

RECOMMENDATION:

The information to be received.

ATTACHMENTS:

There are no supporting documents for this report.

oooO END OF ITEM 65 Oooo

ENVIRONMENT

Meeting Date: 30 September, 2003

Item: **66**

ITEM: 66 **Review of Determination Under Section 82A of the Environmental Planning and Assessment Act 1979 - Lot 1 DP 1028107, 34 Chaseling Road, Wisemans Ferry**

FILE NUMBER: 27427/EVD/ENI30NCX.V10

REPORT:

At the time of preparing this report the additional information requested by the General Purpose Committee on 26 August 2003 had not been received.

Discussions with Mrs Ireland have revealed that the information has been prepared, however, her attempts to send the information electronically had failed. Mrs Ireland is to forward a hard copy version of the information to Council. If received in time, a supplementary report will be proposed.

RECOMMENDATION:

That the information be received.

ATTACHMENTS:

There are no supporting documents for this report.

oooO END OF ITEM 66 Oooo

ITEM: 67 **Participation Agreement and Cooperation Agreement between Resource NSW and Hawkesbury City Council for the Pre-Treatment Facility at South Windsor.**

FILE NUMBER: 80423, 74352/EVD/ENI30NCX.V02

REPORT:

Resource NSW has advised Council, by correspondence dated 19 August 2003, that it has exercised its right to terminate the contract between Resource NSW and Thiess to build, own and operate the pre-treatment facility at South Windsor (the BOO Contract). The effective date of termination of the BOO contract is 15 August 2003.

As a result, it has also been advised that the Participation Agreement and Cooperation Agreement between Resource NSW and Hawkesbury City Council for the Pre-treatment facility at South Windsor have been terminated, effective from 18 September 2003 and 23 August 2003 respectively.

With these decisions being reached, it is suggested that Council should now look at the future of the existing waste management facility and consider investigating its own preferred method of waste treatment as an alternative to the continued landfilling.

Also as a result of these decisions, it will now become necessary, because of EPA licence requirements, for Council to install a weighbridge system and new gatehouse, which would have been constructed as part of the now abandoned proposal.

As part of this upgrade, it is also suggested that a transfer station be constructed to receive waste in a designated area in skip bins so that the general public, in their smaller trucks, cars and trailers, will not have to go to the tip face. This, in turn, will provide a much safer all weather access for customers. The transfer facility was also part of the previous proposal for the pre-treatment system and a design, similar to that proposed, will be considered as part of the design process, which will be altered to suit current needs, but also to be suitable should a new technology for waste treatment be introduced at a later date.

The expected life of the waste management facility is approximately 9 (nine) years, based on current landfilling practices and quantities received. With this short period left for Council to dispose of its waste at a reasonable cost, it is timely to consider exploring other waste technologies that avoid the need to landfill the waste material taken to the facility.

It is also considered an opportune time to invite neighbouring Councils to participate in this research, with a view to providing a technology at the facility that would meet their future needs for waste disposal and, thus, keep the set up and disposal costs at an economically acceptable level, as it has been proven that most technologies would require more waste than the Hawkesbury produces to run within its optimum economic benefit.

The following strategy to achieve these goals is proposed:

1. The General Managers of Penrith Council, Baulkham Hills Council, and Blacktown Council, be invited to participate in the research of the technologies and, ultimately, the use of the South Windsor Waste facility as an alternative to their current disposal methods.
2. Council set up a committee comprising of 2 (two) Hawkesbury City Councillors, representatives from the neighbouring Councils who wish to participate, the Director of Environment and Development, the Manager of Environment and Waste Services, the Environmental Health Coordinator, the Manager of Building Services and a community representative, to investigate technologies available that would be suitable for the facility, as an alternative to the current practice of landfilling.
3. The formed committee would examine current technologies seeking to provide the most beneficial form of waste treatment, or a combination of waste technologies that would achieve an economically sustainable alternative to landfilling.
4. The committee would report its findings to Council recommending its preferred method of waste treatment from the technologies researched for adoption, prior to tenders being called from the providers of the chosen type of technology.

Arrangements for design and construction details of the upgrade of the facility, incorporating a weighbridge system, new gatehouse and transfer station, would need to commence during October 2003 to allow sufficient time for the completion of the proposed upgrade by December 2004.

The cost of the upgrade, after preliminary discussions with Council's Manager of Building Services, could cost in the vicinity of \$800,000.00 (eight hundred thousand dollars) to \$1,000,000.00 (one million dollars). Accurate figures would not be able to be produced until the design and tender process had been completed. The cost of construction would be taken from the waste reserve which has been accumulated for this type of purpose.

The need for the transfer station will still exist regardless of whether an alternate technology can be incorporated into the facility, or not, as at the end of the present land filling process a transfer station will be required for collection of waste prior to its transportation to another processing facility.

RECOMMENDATION:

That:

1. Designs for the construction of a new gatehouse, weighbridge system, and transfer station be commenced during October 2003, with an expected completion date of the construction works in December 2004, after the necessary tendering and reporting processes have been completed
2. The cost to construct the gatehouse, weighbridge system and transfer station be taken from the waste reserve, accumulated for expenditure on waste related matters.

ENVIRONMENT

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3. The suggested strategy numbered 1 (one) to 4 (four) in the report, be commenced during October 2003, with an expected completion of the strategy tasks by November 2004

ATTACHMENTS:

There are no supporting documents for this report.

oooO END OF ITEM 67 Oooo