



Hawkesbury City Council

special meeting business paper

date of meeting: 20 May 2003

location: Council Chambers

time: 7:00pm

SPECIAL MEETING

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ITEM: 81 **Shopping Centre Complex and Roadworks. Private owned - Lot 1 DP 586790 (Hollands Paddock); Lot 5 DP 67626 No. 223 Lot 20 DP 752061 No 227 to 229 and Lot 10 DP 586815 No. 235 George Street; Lot 1 DP 998433 No. 8 New Street, Windsor and Council owned - Pt Lot 30 and Pt Lot 31 New Street; Lot 1 and Lot 2 DP 788531 and Lot 1 DP 550135 Johnston Street and Lot 3 DP 759095 The Terrace (Howe Park), Windsor.**

FILE NUMBER: 78987, 8736/EVD/ORE20SBX.V01

REPORT:

Council has received a development application for the development (and re-development) of the site, which generally corresponds with the privately owned land, involving:

1. The demolition of the existing commercial buildings that front George Street being No. 233, No. 225-227 and No. 235;
2. The erection of a two storey building, with an overall gross retail floor area 9435sqm, to be used as a two storey shopping centre being one (1) level of retail space (first floor) and one (1) level of car parking (ground). The internal space of the first floor to be used for a supermarket, specialty shops, kiosks, eating areas, public and employee amenities and centre management facilities. The external space of the first floor to be used as a loading/delivery area (service vehicle docks and worker access ways) and the plant room. The building would achieve total site coverage; and
3. Roads widenings (including the removal of trees) onto Council owned land, to facilitate access.

Details about the shopping centre "Windsor Riverview Shopping Centre" are:

Shops:

Gross Floor Area of 9435sqm, including supermarket of 3,600sqm;

Car park:

Car parking for 325 cars;

Loading Facilities:

Two (2) loading docks and one (1) delivery area on the eastern side of the shopping centre, with the provision of an elevated turning bay for service vehicles, over the car park entrance/exist. To accommodate up to four (4) trucks with a maximum length of 19m (ie. semi trailer);

Access to Site:

- To car park - one (1) access from New Street (two way) and two (2) accesses from Johnston Street, one (1) being north of No 17 Johnston Street (two way) and one (1) being between No 19 and No 23-27 Johnston Street (two way and one way only into car park),

- To loading facilities - one (1) access (two way) from Johnston Street;

Road Work:

Widening of the intersection of Johnston Street and The Terrace to the boundary with the site to provide access for services vehicles and two-way traffic; widening of the laneway between No. 19 and No. 23-27 Johnston Street; reconstruction of the driveway in New Street;

Building Design:

The elevation fronting George Street has a stylised façade made up of an eclectic mix of classical and traditional elements. It would read as five (5) two storey buildings with a parapet roof line.

Remaining elevations have architrave design elements and a parapet roof line. The roof is flat and includes six lantern roof elements, which are referred to as skylight features;

Building Height:

Generally two (2) storey over the site, achieving about 8m (and 11m to main parapet feature) on George Street. The remainder of the building achieves an overall height of about 13m, excluding the roof features;

Trees and Landscaping:

The removal of all the trees on the north-western boundary and on the laneway between No. 19 and No. 23-27 Johnston Street.

Minor landscaping to the north-eastern corner of the site and between No.19 and No. 23-27 Johnston Street.

Hours of Operation:

7.00am to Midnight, Monday to Saturday; 8.00am to 8.00pm, Sunday (customers);

Employment:

At full operation about 200 full-time and part-time employees expected; and

Evacuation Route:

For flood events, through the shopping centre (service corridor) and construction of a two pedestrian ramps.

The application does not include:

1. The rezoning of any of the site, as indicated in the Planning Report;
2. Any signage, as confirmed by the applicant which would be subject to a separate development application;
3. Any gates or changes to fencing on the boundary with residential properties in Johnston Street;
4. Any landscaping works, earthworks or the removal of the road in Howe Park (clarified in letter dated 7 November 2002 from applicant); and
5. Any works to the existing Girl Guide Hall.

The application includes the in-principal support for the demolition of the existing Girl Guide Hall and the relocation and erection of a new Girl Guide Hall in Howe Park, which would be undertaken subject to granting of development approval for the shopping centre.

Statements about works principally in Howe Park being part of the application or contributing to the merits of the application are noted only. The applicant has no ability to ensure these works would occur in conjunction with the shopping centre, as they are on Council land and outside the scope of the proposal. The application must be considered on its individual merits.

The application was accompanied by supporting information, which has been assessed.

Description of the Site and its Locality

The site is irregular in shape and has an approximate area of 1.17ha (excluding Council owned lands.) It achieves a maximum elevations of about 17m AHD in the far north-eastern corner and about 16m AHD in the south-eastern and north-western corners and then drops steeply to a minimum elevation of about 12m AHD in the centre and on the northern boundary of the site. It forms a natural basin on the floodplain, which transports and stores flood water for the Hawkesbury-Nepean River catchment. The River in this locality, under certain flood events, functions in conjunction with the South Creek Catchment which meet at a near by low point in George Street. The River is about 120m north of the main site (closest point.) The site is affected by the 1:100 year flood level for the area being 17.3m.

Principal frontages for the site are George Street and Howe Park given the established land uses in the locality. Vehicle access to the site is from New and Johnston Streets and The Terrace (through Howe Park). Pedestrian access exists from all boundaries. The site consists of commercial buildings fronting George Street, a water treatment plant structure on Johnston Street and a large bitumen sealed area that is used for car parking, though not a public carpark. There are a few mature trees on the north-western boundary and adjacent to No.23-27 Johnston Street.

The site is located in the western end of the Windsor Township. The Town is characterised by a traditional mix of urban land uses, including residential, business, recreational and tourist uses. Adjacent uses/zones to the site are:

- East - residential and business;
- South - business;
- West - residential and business; and
- North - residential and recreation.

The site is located in a transitional area between the business land uses that front George Street (south) and the residential and recreational land uses that are focused on The Terrace and the River (north.) Within the immediate locality of the site are eight heritage items, and in conjunction with the street layout, they form part of the historical and streetscape character of the Town. There is, however, only one item that adjoins the site.

George Street is the main street of Windsor. Most businesses have been established along this street which reflects the historical development of the Town. Building form is characterised by small and medium sized single and two storey buildings. Modern shops have adopted design elements of traditional building forms and sizes. Business development in recent times has grown along Macquarie Street and into the cross streets of Baker Street and Kable Street, which in part reflects changing location and operational needs. However, George Street remains the focus for business, despite the road system that encourages the indirect use of this street in the Town.

Background

(a) Owners consent - Council owned lands

The application, while it primarily involves private land, includes Council owned land. Council on 11 December 2001 considered a report on a request from the applicant for Council's consent as owner of lands that provide access to the site for a similar shopping application. In the report Council's Solicitor advised that Council should not unreasonably withhold its consent as owner to allow the application to be lodged and assessed to determine the appropriateness of the proposal. Council's owners consent has been given to the current proposal in light of the above and Council's resolution of 11 June 2002 which is shown in (c) below.

Concern was raised by respondents to the Public Exhibition (Issue 1), that Council has an interest in the development and in accordance with the recommendations of ICAC, should distance itself from the assessment process (and the offer to complete landscaping works in Howe Park). Council cannot unreasonably withhold owners consent, despite the uncommon situation where Council owns the existing access ways to the site. The overall assessment of the development will determine its merits under the Environmental Protection and Assessment Act.

(b) Public Meeting, 19 February 2002 - A proposed shopping centre

On 7 May 2002, Council considered a report on a meeting of 19 February 2002 between the applicant and community about a shopping centre proposal for the site. About 90 people attended. Similar issues raised by the public in the notification of the development that is now before Council were raised at that meeting, including linkages between Howe Park and the site, proximity of the development to adjacent residential land uses, business impact, heritage impact and Howe Park-Plan of Management. The proposal presented at the meeting is different to that which is now before Council (which was raised by respondents to the Public Exhibition (Issue 2). The meeting led to resolutions shown in (c) below.

(c) Windsor Town - Traffic Study and Economic Development Study

On 11 June 2002, in response to (b) above, resolved that in relation to the Hollands Paddock site:

“1. *Council supports in town and integrated development.*

2. *Discussions continue between the proponent and Council about all options for the proposed development, including traffic access over Council land, to determine the best outcome for the development.*
3. *The traffic study agreed to at Council's Ordinary Meeting on 12 March be enhanced to include all alternative options, including access over Council land, and the impact on residential amenity.*
4. *An Economic Development strategy agreed to at Council's Ordinary Meeting held on 12 March 2002 be carried out within this financial year and be confined to:*
 - *a supply and demand study including the impact and opportunity of the North West sector on Windsor town centre;*
 - *escape expenditure; and*
 - *displacement issues.”*

Council has now been briefed on the studies prepared in response to Resolutions (3) and (4) above. They have been prepared to provide an independent assessment of the matters.

Public Participation

The application was publicly exhibited and adjoining landowners and landowners in the locality were notified of the development in accordance with the Notification Chapter of Hawkesbury Development Control Plan. A Public Meeting was held on Monday 11 November 2002. As a result of the public exhibition process, forty five (45) submissions were received being two (2) supports and forty three (43) objections to the shopping centre. Submission ranged from simple to detailed comments, with expert advice sought by some objectors. The issues of concern raised by respondents will be further discussed in the report, being:

1. Council's interest in the application;
2. Previous meetings about a shopping centre with the applicant;
3. Howe Park and Community Land;
4. Access to adjacent properties;
5. Planning procedure - 5(a) zoned land;
6. Stormwater;
7. Flooding and the SEPP No. 1 Objection;
8. Heritage and Archaeology;
9. Traffic, Truck Movement and Parking;
10. SREP 20 - Hawkesbury Nepean River;
11. SREP 55 - Contamination;
12. Town Character and Vision and Tourism;
13. Pollution and Hours of Operation;
14. Near by residential uses; and
15. Business impact.

Local Government Act MattersRoad works and vehicle access to the site

Service vehicle access to the site is essential for the functioning of the shopping centre. Roads in vicinity of the site are narrow which reflects the historical development of the Town and road widenings will need to take place to accommodate the development. The applicant's proposal is to widen the intersection of The Terrace and Johnston Street and the laneway between No. 19 and No. 23-27 Johnston Street to enable services vehicles to access the site.

Council must first determine whether it supports the proposed road widenings as it is fundamental to the development proceeding and because the matter needs to be dealt with under the Local Government Act, 1993 (LG Act), which provides for Council's dealings in Public lands. If the road widenings is supported, then the application can proceed to the next stage, if not, then the application cannot proceed.

All Public lands are classified under the LG Act. The purpose of classification is to identify land which should be kept for use by the general public (community) and that land which need not be (operational) and determines the ease or difficulty with which land may be alienated by sale, leasing or some other means. The lands required for road widening are classified Community.

Clause 47F(2) - Dedication of Community Land as Public Road, of the LG Act, outlines the limited circumstances under which community land may be dedicated for public roads being:

1. A dedication of land for the purpose of widening an existing public road, or
2. A dedication by the plan of management applying to the land, in respect of existing roads, or
3. A dedication of land for the purpose of a road that is the subject of an order under Division 1 of Part 5 of the Roads Act 1993.

The applicant proposes that Council make use of Clause 47F(2)(a). Advice from Council's Solicitors is that Council has the ability to dedicate the required lands as public road (assuming it is the road authority for the roads) which would provide the required access for the shopping centre.

Whilst Clause 47(2)(a) may be used, it can be argued that the primary use of the clause is to improve the overall local road network system for the community and not to directly facilitate a private development. Concern was raised by respondents to the Public Exhibition (Issue 3), that Community land should not be used/changed/reduced to accommodate the applicant's commercial development and that the use of public land in this way sets a precedent for any one else who cannot accommodate their development on-site.

Alternative options for dealing with the road widenings is under Cl. 47(2)(b) or via the re-classification process to Operational (Cl. 30 LG Act), which includes public consultation about management, use and disposal of Community land like Howe Park. Either option requires a Plan of Management (POM) to be in place for the lands, which is currently not the case.

Whatever option Council decides to pursue in determining the road widenings/use of Howe Park, the application cannot precede until the Local Government Act decision-making process has been completed. The application would have to be deferred until that time.

In regard to Part Lot 30 and Lot 31 (10 New Street) it is classified Operational and is not a public road (ie. driveway in freehold title.) If the development were to proceed the lots would need to be sold to the applicant or the applicant be given a long-term. Again if this does not occur, then the development cannot proceed.

Pathway and the evacuation route

Lot 1 DP550135, Johnston Street is unzoned and one of the pedestrian ramps for the evacuation route would be on it. It was dedicated as road for the purpose of pathway and is an open road. Council may consent to structures on the pathway that facilitate the use of the pathway (as the road authority under the Roads At, 1993.) Adjacent lands right to use the pathway needs to be maintained.

Council will need to ensure the pedestrian ramp is maintain etc by the applicant, should Council support the development so that no costs are born by Council. The applicant will need to enter into a commercial agreement with Council to cover its management and maintenance for the life of the development so there are no liability issues to Council.

Works in Howe Park - Girl Guide Hall and other works

Decision about the use and the development of Community land, including the demolition and erection of a building, can only be determined in accordance with an adopted POM. The POM for Howe Park would need to be in place before Council could make any decision the replacement of the existing Girl Guide Hall. Council and the community are yet to consider a POM and in fact whether community buildings are appropriate in the future. Therefore the use of Howe Park cannot change until such time as the POM is adopted.

However, the development can be considered by Council and conditions of consent included on any approval to ensure the new Girl Guide Hall was provided within a reasonable time at no cost to Council. Council will need to consider the POM for Howe Park within the time frame of the subject conditions of consent.

The existing Girl Guide Hall is located too close to the boundary of the site and would be adversely affected by the development and during construction its use would be compromised and alternative accommodation arrangements are required for the length of the works at the applicant's expense.

While earthworks in Howe Park are not part of the application, despite the comments in the application. If any earthworks, other than those of a minor nature for maintenance as defined by the LG Act, were to be undertaken they need to be in accordance with the POM.

Access over lands - Council and privately owned

A number of properties on the block bounded by Johnston Street, George Street, New Street and The Terrace use the site for access. Legal opinion obtain about No. 17 Johnston Street, which has no access to the road, indicates that Council has no liability to provided access. It is, however, a planning matter as to how access to this site is to be maintained.

Assessment under the Environmental Planning and Assessment Act, 1979

The application has been assessed against the heads of consideration under Section 79C of the EP&A Act and having regard to those matters, the following issues are identified for further consideration.

Statutory Provisions1. *Hawkesbury Local Environmental Plan*(a) *Land use table and Zone objectives (Clause 9 and 9A)*

The site is zoned partly zoned Residential 2(a), Business General 3(a) and Special Uses 5(a)-Water Treatment Plant under Hawkesbury LEP (Clause 9). Lot 1 DP550135 is unzoned.

The main part of the site (Hollands Paddock) is zoned 3(a) Business General and 5(a) Special Uses -Water Treatment Plant. The proposed development is defined as a "shop" which is permissible with development consent. The objectives of the Business General 3(a) zone are:

- "(a) to promote the development and expansion of business activities to meet the optimum employment and social needs of the City of Hawkesbury;
- (b) to promote 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."

As to whether the shopping centre achieves the objectives of the zone, the merits of the development must be assessed to determine the extent to which the objectives are achieved.

The relevant objective of the Special Uses 5(a) zone that applies to the site is to recognise the existing public land, being the Water Treatment Plan, and to enable its continued operation, growth and expansion. Clause 31 - Acquisition and use of reserved land of Hawkesbury LEP applies which provides special relevant provisions for the land which enables:

Cl. 31(5) the interim use of the land for any purpose until the land is acquired by the public authority.

Concern was raised by respondents to the Public Exhibition (Issue 5), about the procedure for determining the use/zoning of the land zoned 5(a) Special Uses - Water Treatment Plant, including:

- The use of the 5(a) is inconsistent with the zone objectives;
- It is not appropriate for Council to rely on Cl 31(5) to permit the development, which provides for interim uses;
- If the land is surplus to need, then it should be assessed and rezoned to determine the most suitable land use. Council has previously undertaking 16 rezonings for 5(a) land which are surplus to need, the process should be no different for the site. The use of the land should be determined by the planning process, not the development process.

One of the pedestrian ramps for the evacuation route is located on land zone Residential 2(a) in New Street. The overall objective of the zone is to provide housing and other developments that are compatible with the character of the living area and which has a domestic scale.

Amendment No 141 (Acid Sulphate Soils) to Hawkesbury LEP applies to the site and aims to minimise the impact of development on the disturbance of acid sulphate soils. The site is Class 5 on the Acid Sulphate Soils Planning Maps and is within 500m of a higher order class. Consent is required for works including the disturbance of more than one (1) tonne of soils, foundations and works likely to lower the water table. The applicant needs to complete an assessment of the development in accordance with the Acid Sulphate Soils Assessment Guidelines.

Comment

It would have been good practice for the land zoned 5(a) to have been rezoned prior to its sale, given the sale is a clear indication that Sydney Water no longer needs the land and to ensure a prospective purchaser may use the land for any intended use. It is practise for government authority's to formally request the rezoning of such lands, when it is known that land is not required for a public purpose, which did not occur in this case. However, the zoning of any land does not prevent its sale. It is preferable that the 5(a) land be strategically rezoned first so that a suitable zone is determined. The land would be zoned either residential, business or open space, based on its location and assessment via the local environmental planning process.

The appropriate use and zoning of the 5(a) land is fundamental to the development proceeding. If Council decides to support the application and the presumed use of this land for business uses, it is recommended that Council resolve to rezone the land. The intent of Cl. 31(5) is to provide for intervening uses which implies a temporary use in nature. However, it is considered that Council could use Cl. 31(5) to approve the development as there is no qualification on the time associated with the interim use.

Whether the pedestrian ramp on the 2(a) landing New Street is used for evacuation purpose and/or for general access (noting the layout of the development in that vicinity), it is inconsistent with the zoning as it does not have a domestic scale and would have an impact on the use of the land for residential uses. (note demolition of garage). It is not a permitted use in the land use table for the zone and. It would mean residential land is used to provide access for commercial purposes.

(b) Provision of water, sewerage etc. services (Clause 18)

Council must not consent to any development on land unless satisfactory arrangements have been made for the provision of essential services.

The impact of the development on the capacity of the sewerage system has been assessed and while additional details will need to be provided the proposed sewerage system would not be adversely affected by the development.

The impact of the development on the capacity of the stormwater system has been assessed and it is considered that it will be better to allow the site to free drain to the River than to provide on-site detention; the applicant's design only addresses drainage of the site and does not cater for all properties that drain over the site; that the applicant's design has not taken into account that the stormwater outlet in the River is close to water level and will be blocked regularly by frequent flood events below the 1:100 year event which mean the pit will back up and surcharge.

A comprehensive design report that addresses the capacity of the existing stormwater drainage system capacity, drainage of the site, adjacent and up stream properties and the effect of water from the 1:1 to 1:100 storm events needs to be completed.

Comment

Concern was raised by respondents to the Public Exhibition (Issue 6), about potential changes in stormwater flows from adjacent properties over the site, which will need to be addressed in the comprehensive design report.

(c) Development of flood liable land (Clause 25)

In this clause the relevant provisions that apply to the development are:

Cl.25(2) A building shall not be erected on any land lying at a level lower than 3 metres below the 1-in-100 year flood level for the area in which the land is situated, except as provided by subclause (4), (6) and (8).

Cl. 25(5) The Council shall, in the assessment of a development application, consider the flood liability of access to the land and, if the land is within a floodway, the effect of isolation of the land by flooding, notwithstanding whether other aspects of this clause have been satisfied.

Cl. 25(7) Any part of a building below the 1-in-100 year flood level is to be constructed of flood compatible materials.

The 1:100 year flood level for the area is 17.3m and the minimum level at which a building can be erected is 14.3m. The applicant has submitted the SEPP 1 objection to Cl. 25(2) to enable the erection of the building below 14.3m. Council's support of the SEPP 1 objection is fundamental to the development as the majority of the site is below 14.3m.

Concern was raised by respondents to the Public Exhibition (Issue 7), about flooding including:

1. The site is a floodway and is subject to major floods and heavy storm events; the site is a natural basin safety-valve for the River during floods; the development is inappropriate;
2. Earthworks for development will change the ability of the site to remain a flood storage area; the development will increase the impact of flooding in the locality. How will oils from vehicles be controlled from entering the River?
3. The flooding report indicates risk to life is small, no risk is warranted; how can the site be insured;
4. The flood report does not address the cumulative impact of urban development in the River's catchment like the impact of stormwater from hard surface areas which affects the ability of the site to dissipate water from the River; the site is situated in a high hazard flood storage area; the car park in theory is open to floodwaters, but in practice the ability of floodwaters to enter the carpark freely and disperse is greatly restricted by the building. No study/details provided on the effect of change/behaviour of water flows as a result of a flood event; and
5. The flood plan should not be prepared as a condition of consent, as it assumes development consent will be granted; it should be part of the assessment process and be assessed by an independent hydraulic engineer; there will be evacuation chaos.

The impact of the development on the catchments of Hawkesbury River and South Creek and the role of the site in the floodplain has been assessed and it is considered that:

- The applicant's flood report is generally a synopsis of known flooding characteristics which have been previously documented. The flood report correctly identifies the site as a high hazard category based on the rate at which water depths are achieved;
- Change and bank erosion upstream of the site has led to the migration of the River's channel at the bend at Howe Park towards the site. Past bank regrading and retaining walls have stabilised the bend, but there is a history of localised recurring bank failure/erosion which has had a direct impact on the road pavement in The Terrace and

essential services ie. sewerage and drainage. If maintenance of the upper bank on the bend and down stream is neglected then the bank will continue to fail and have an impact on nearby lands;

- The site performs a dual role on the flood plain being a storage area for "localised" events and as part of the floodplain for larger event; and as floodway between the River and South Creek catchments. The two catchments merge for floods greater than a about the 1:50 year events making it a flow path for floodwaters;
- A large structure located in the flow path of water between two interacting catchments would result in some differential in water levels and therefore exacerbate local flooding of adjacent lands. However, the development would not significant impact on the overall floodplain storage capacity of either catchment;
- The applicant's flood study needs to consider all physical factors that influence flood behaviour on the site (including both catchments) along with the development. It only considers the building in isolation and assumes it is only a storage area of relevance to the 1:100 year event;
- The NSW Floodplain Management Manual provides guidelines that is intended to assist in determining hazards and risk, but does not replace the need to undertake site specific analysis if the impact of flooding when it is not fully understood.

Comment

Much debate has surrounded the interpretation of Cl. 25(2) and whether it is a prohibition on development or a development standard as defined in the EP&A Act. This has occurred because SEPP 1 only applies to development standards within an environmental planning instrument.

Cl. 25(2) as a prohibition was raised by respondents to the Public Exhibition (Issue 7) and legal advice on the matter formed part of a submission. Council obtained legal advice from Council's Solicitors and Senior Counsel on the matter to advise on the interpretation of Cl. 25(2). Senior Counsel advice on Cl. 25(2) is that it is a development standard, as it does not prevent the erection of a building but seeks to regulate the level at which a building is erected (standard.) Council may consider the development subject to a well founded SEPP 1 objection to the subject development standard (ie. 14.3m.) The SEPP 1 objection is considered below.

The completion of a comprehensive flood study is required to ensure all information about flooding factors and behaviour on the site in the locality is known to make an informed decision ie. causes, effects and cumulative impacts. The applicant's flood study which concentrates on the building on the site and the role of the site as a storage area at the 1:100 year event is misleading. The site will be affected by a 1:10 or greater event (say 12m AHD) will result in flood waters on the site, which will affected on the operation of the developments. The carpark would not be able to be used during these events. The dispersion of water onto adjacent properties is likely to be exacerbated which needs to be addressed in a flood report. The applicant's flood report does includes

conflicting information like flow velocities are low yet it is a high hazard storage area (p. 6, 7, 9). The completion of a localised flood study would address concerns of respondents on flooding.

At this stage it is difficult for the development to achieve satisfactory compliance with the aim of Cl. 25(5) which is to achieve a certain level of safety for access and isolation. This maybe able to be achieved by the recommended localised flood study. The applicant's flood study should not be accepted.

1. SEPP 1 Objection - Assessment

The aim of SEPP 1 is to provide flexibility in the application of planning controls (operating via development standards) in circumstances where strict compliance with a standard would be unreasonable or unnecessary in the attainment of the objectives in Section 5(a) (i) and 5(a)(ii) of the EP&A Act.

The applicant objects to the development standard of Cl. 25(2) - 3m maximum level at which a building maybe erected below the flood level for the area being 14.3m. Council is asked to support the SEPP 1 objection (because the variation of the standard is required for Council to approve the development). The justification put forward is:

- (i) That adherence to the development standard is not more important in planning terms than the development itself which should be allowed to proceed because:
 - (a) The object of the EP&A Act, being Cl. 5(a)(i) and Cl. 5(a)(ii) are pursued by the development. Non-compliance with the development standard will not raise any matters of significance for State of regional planning, (other than the positive achievement of the introduction of a facility that will reinforce the commercial centre status of the Windsor Town);
 - (b) The standard in Cl. 25 is likely to have been introduced to minimise flood damage costs both on the subject development and on the community and to minimise human risk;
 - (c) The development will not exacerbate flooding in adjacent areas and will not increase the overall flood risk to Windsor. Any costs of flooding on the development is minimal. Compliance with the development standard is unreasonable and unnecessary in the circumstances and the objective of control. The applicant's flood study found that the development is acceptable in terms of potential flood impacts as:
 - "The proposed floor level of the supermarket and adjacent areas is 200mm above the 1:100 flood planning level and hence the building will not displace flood plain storage;
 - The carpark underneath is open to flood waters;

- Flow velocities in the area are low, consequently the development will not have an adverse impact on local flooding patterns, and risk to life and limb will be small;
- The carpark, switch rooms and substation are able to be built from flood-compatible materials. Similarity that part of the trading floor area that is flood-labile in order to have the appropriate relationship with the street, can be constructed of flood compatible materials;
- There is over a day's warning time available of the arrival of floodwaters, therefore the affected specialty stores have adequate time to relocate stock to their flood-free mezzanine areas;
- With the flood warning time available, there is ample time also for the removal of vehicles from the carpark and people from the area generally;
- The development in the form will provide the residents and workforce to the east, a flood-free evacuation route thorough the centre and wet to New Street."

Concern was raised by respondents to the Public Exhibition (Issue 7), that the SEPP 1 objection did not address the five SEPP 1 tests which makes the SEPP 1 objection flawed and without merit and Council is not in a position to consider the objection.

Comment

Council assumes the Director-General's concurrence under SEPP 1 for determining objections, other than for certain objections to development standards that involves the erection of houses and subdivision of land (rural areas). The Department Urban Planning and Transport (Department) provides guidelines for examining the SEPP 1 objections. Development standards are often general numeric tools used to achieve the underlying planning objective. Assessment of the SEPP 1 objection is:

(i) State and regional planning objectives

There are no specific State and regional planning policy objectives (except SREP 20) that directly apply to the land and there are no specific planning standards notified to Council by the Department. Section 5(a)(i) of the EP&A Act provides generally planing objectives and deals in part with the proper management, development and conservation of resources, including water and towns for the social and economic welfare of the community and a better environment. These two matters are of importance for the development noting the assessment of flooding and economic impact which have raised consistency with environmental planning instruments.

The SEPP 1 objection does not address general State planning provisions adequately as no details have been provided to justify the position.

(ii) Local planning objectives

The five local planning objectives for the 3(a) -Business General zone under Hawkesbury LEP are outlined in 1(a) above and are summarised as:

- Existing and Future Business - development and expansion to meet employment and social needs;
- Town Amenity - allow non-commercial uses compatible with commercial character; adequate car parking;
- Conflict Management - minimise between pedestrians and vehicular movements; and
- Heritage Conservation - preserve the historic character of Hawkesbury by protecting and encouraging compatible development in and adjoining historic buildings/precincts.

Overall the planning objectives for the zone relate to the scale and design that when balanced achieve a business place in a historical townscape. It has not been demonstrated that the variation to the standard will be consistent with scale and design objectives. Business development is not opposed, provided planning objectives are met. It would appear that a large building like the development could be justified provided that the local objectives can be demonstrated to have been met.

(iii) Underling objective of the standard

Cl. 25(2) applies to all land in Hawkesbury that is flood liable. It provides opportunity for the erection of a building on natural ground level which is situated below the 1:100 planning standard. The standard sets the desired minimum level at which a building may be erected and reflects a scale and bulk (height differential between the construction level and floor level at or above the 1:100 flood level and the scale of development to minimise risk to life and property and to enable evacuation and access for emergency services etc. The standard is appropriate in general terms and in the specific circumstances. The standard also reflects the scale/bulk of business development in the Town which has been constrained by the need for "flood free" land which has dictate the physical pattern of the Town.

While the SEPP 1 objection has considered flooding and risk to life, concern is expressed at the conclusions based on the comments made about the flood study in 1(c) above. The SEPP 1 has not considered the underlying objective of the zone which relates to scale and bulk. As a note, the NSW Floodplain Management Manual indicates that a different flood planning level for commercial buildings may be appropriate for different levels on a

floodplain. That is to justify the height of the building or the need to have the floor level at the 1:100 year level needs to be tested against the 2001 Manual. Again this could be done and support for the variation sought.

(iv) Likelihood of similar applications

A significant amount of land in Hawkesbury is flood affected which can only be developed under the provision of Cl. 25(2). While a similar commercial development is unlikely that would seek variation to the 14.3m standard, it is likely that residential and rural-residential development would seek variation to the 14.3m standard. The cumulative effect would undermine the objective of the standard and result in buildings out of scale and which are bulky and increase the risk to life and property.

Conclusion

The applicant's SEPP 1 objection has been examined and is considered lacking in some details to justify that the development standard is unreasonable or unnecessary in the circumstances of the case. It is considered that a well-founded SEPP 1 objection, however, would be supported. The proposed localised flood study discussed above, when married to the architectural solution, could justify the variation sought.

(d) Development in the vicinity of heritage items (Clause 28)

Council must consider the impact of a development in the vicinity of a heritage item in terms of its impact on the heritage items significances and its setting. There are eight heritage items located adjacent to the site or within the immediate vicinity including:

- (1) Nos 199-201 George Street, corner Johnston Street, (Item 197-Local);
- (2) Royal Exchange Hotel, No. 205-209 George Street (Item 199-Local);
- (3) Shop, No. 226-228 George Street (Item 200-Local);
- (4) No 242 George Street (Item 201-Local);
- (5) Former Inn, No 265 George Street, corner New Street (Item 202-Local);
- (6) No 23-27 Johnston Street (Item 238-Local and State);
- (7) No. 1 New Street (Item 251-Local); and
- (8) Anglican Church Hall, No 7 New Street (Item 252-Local).

The applicant states the development will not have a negative impact on the heritage items in the vicinity of the site, stating:

- (a) The shopping centre is compatible, apart from localised impact to the rear of The Terraces the development has few impacts on the heritage values of the commercial precinct; has moderately beneficial impacts on George Street, being designed as a series of buildings/bays consistent with the historic building pattern; has neutral impacts on the streetscape values of New Street and Johnston Street by virtue of being set back from the street alignment and into the natural hollow of the site.

The significance of The Terraces is its streetscape contribution to Johnston Street which won't be affected as the development is recessive in location, character and expression. Sufficient visual separation exists because of the lot boundary/curtilage and the maturity of trees on the boundary. The impact of the existing driveway is mitigated by planting an avenue of trees and screen fencing to reinforce existing landscaping. Secondary values of setting are only informal views of The Terraces from the car park and for The Terraces users and the effect on significance is negligible.

- (b) The removal of the open air car park which is an expansive intrusion in that part of Town is a positive impact in terms of landscape and townscape values;
- (c) Local impacts on views to and from Howe Park are mitigated by the proposal to mound and plant Howe Park to overcome impacts. There are no demonstrated archaeological potential for the site;
- (d) The water treatment plant is of low significance and does not justify listing on the basis it is interconnected to the earlier (significant) Windsor Water Supply Scheme infrastructure. It is independent of the earlier scheme and is not rare, as there were 25 other schemes taken over by Sydney Water. It should only be photographically recorded before demolition; and
- (e) The development makes use of the natural depression of the site to limit heritage impact; incorporates measures in the design and construction to effectively mitigate potential heritage impacts on the surrounding streetscape, public lands and near by heritage items and respects the historical character of Windsor at streetscape and planning levels and is a suitable use of the site meeting community needs.

Concern was raised by respondents to the Public Exhibition (Issue 8), about heritage and archaeology raising issues being:

- (a) The large retail development won't contribute to the heritage and historical character of Town as it will dominate nearby heritage buildings; the increase in heavy vehicles using the roads will damage nearby heritage buildings ie. cracks;
- (b) The Aboriginal heritage and potential archaeological significance has not been addressed and an archaeology report and dig for potential evidence should be mandatory; the site is undisturbed given its past low impact uses and excavation may have an impact on archaeological recourses;
- (c) The Heritage Impact Statement/Heritage Report only briefly considers 5 heritage items instead of 9 items in the locality and does not give the site a historical profile before 1820s-1840s which is a misunderstanding of Macquarie's plan for Windsor and the context surrounding Windsor's development. The plan drawn in 1812, was a grid pattern for managing growth, which is reflected in the Town layout - road widenings will change the significance; the colonial brick barrel drain revealed during previous road works in The

Terrace a potential heritage item. The extent of the drain and direction has never been established and could be affected by the development;

- (d) The potential heritage significance of the water supply tanks has not been established. It is not a minor water supply infrastructure of the 1950s and 1960s, as stated in heritage report, but are part of a rare and almost complete suite of industrial artefacts relating to a rural town water supply in the 19th and 20th centuries, which remain in close proximity to the River pumping station;
- (e) It is not appropriate to allow a large wall (and tree planting) to minimise the impact of the development on The Terraces which is a State Heritage Item. Views from the building to the mountains across the site would be lost because of the development's height. The reduction in the curtilage around the item from road widening is not appropriate;
- (f) Views of the Windsor ridge from Macquarie and Howe Parks, which are enjoyed by residents and tourists will be lost and will have no meaningful interpretation in the future. The interpretation of the view line is a key element in the significances of the Town from land along the River; and
- (g) The Windsor Conservation Area Study identified more properties for heritage listing and view lines for the town that need to be addressed in the application. The site reflects environmental significance for flooding and aspects of Town development (ie subdivision and water supply) that should not be lost as a result of the development.

Hawkesbury Heritage Advisor

The Heritage Advisor has considered the impact of the development on heritage and advises the shopping centre will have an adverse impact on a number of heritage significances and recommends that the development can be improved by:

- Reducing the footprint of the development, by say 30%, by deleting the northern part of the development; and
- Re-designing the northern façade of the reduced building to conform more with the traditional built form. It would need to be attractive and well integrated when viewed from the River and Lowlands.

Summarised detailed comments of the Heritage Advisor are:

1. In an historic context, only that part of the site that was historically developed which was dictated by flood levels, is suitable for future development. This corresponds with the existing buildings on the south-eastern boundary of the site. This scale of development would only be compatible with the historic pattern and established heritage values of the town;

2. The development changes the balance of traffic in the Town which will have an impact on the heritage values and amenity. It is a higher level of traffic intrusion that contrary to the degree of tranquillity enjoyed and which is more consistent with the national heritage status of the Town;
3. Windsor is a Macquarie-planned town and a place of national heritage significance. Any development in the Town needs to respect its historic form and be compatible with the heritage items in the vicinity. The development's design has an adverse impact due to its excessively large footprint on the traditional built forms of the heritage items in the locality;
4. The development's impact on George Street, is low and will not dominant the street;
5. The River at Windsor is a natural and cultural feature of high significance and views of the Town from the River and the Lowlands is a major component of the heritage/historical significance of the Town. It is equal to views such as the one from the Hunter River to Newcastle and equivalent in aesthetic values to many historic European towns. The development will had an adverse impact on Town views as the northern elevation of the development is hard and uncompromising;
6. The applicant's Heritage Report/Heritage Impact Statement does not address the values of the townscape and historic form and places undue emphasis on sight lines to and from the development. It assumes that if no-one notices the development from most vantage points then it would have a low impact. The development will have a substantial impact on the relationship with the River and devalue any future development on or by the River.

Comment

Having regard to the comments of the Heritage Advisor and the respondents it is considered that the development may have a significant impact on the State heritage item, The Terraces and the overall heritage significances of the Town in terms of scale, bulk, views and proximity. The applicant has focused on the assessment of the building and does not appear to have considered the development in the context of the Town. There is also reliance on external factors, like landscaping, to minimise the impact of the development, instead of addressing impacts internally.

The development will have a positive impact on George Street introducing better architectural design than currently exists, which is based on the historical building design established in the Town. The George Street elevation is at a suitable scale, being infill development. The development will have neutral impact on New Street, as it is set lower and is not a backdrop to any adjacent heritage item. The impact on the amenity of the use of the houses adjacent to the development on New Street is however, another matter.

SEPP 11 - Traffic Generating Developments

In accordance with the provisions of SEPP 11 - Traffic Generating Developments, the application was referred to the Sydney Regional Development Advisory Committee (RTA) for assessment and advice. The key comments for consideration in the determination of the application, which were supplemented by standard advice, were:

- "1. *Concerns are raised with the semi trailers accessing the proposed loading dock area via Johnston Street due to its narrow width. Council should ensure that semi trailers accessing the loading dock area via Johnston Street have a turning path that is on accordance with Australian Standards.*
2. *The applicant proposes to change Johnston Street from a one way to a two way street between The Terrace and Union Lane and therefore, the applicant must prepare and submit a "Traffic Management Plan" (TMP) to the RTA for approval.*
3. *Council has commissioned a traffic report to determine the impact of the proposed development on the local road network, which should include the traffic impact of the proposed development on nearby residential areas. Council should implement the recommendations of this report through a Section 94 Contributions Plan."*

The RTA has advised Council that for the RTA to approve the TMP it requires from the applicant the results of any community consultation and advice of amelioration measures to be adopted to address the concerns. The RTA have been contacted in regard to the matter, and it was established that the RTA was referring to the Public Meetings before and after lodging the application. The RTA must be satisfied that community concerns about traffic management are addressed. The results of community consultation will be considered by Council when considering this report. Afterwards, Council can refer details about traffic community consultation to the RTA. A deferred commencement consent, could be issued to enable the TMP to be approved by the RTA.

All related traffic issues for the shopping centre will be considered in this part of the report to ensure they are addressed concurrently.

The applicant's traffic report concludes based on the projected traffic generation for the shopping centre (about 630 vehicles per hour), using the SCATES and INTANAL models, that the intersections in the vicinity of the site would continue to operate at a level of service C or better and therefore the road network has the adequate capacity to cater for existing land uses and the shopping centre. Semi trailer movements of 5 to 7 per day would occur in Johnston Street.

Council's Traffic Study of Windsor Centre

Council's traffic consultant used the TRACKS traffic model and concluded the development has been designed with minimal impact on the Town and that while there are current points of congestion in the local network, trips to the shopping centre (about 600 vehicle trips two-way in the Friday evening peak hour and 420 vehicle trips two-way in the Sunday peak hour) would not adversely impact on the performance and capacity of the local roads, which would operate at a level of service C or worse, taking consideration of delays. Traffic generated by the shopping centre would be distributed evenly to a number of viable local access routes and to the regional connectors. Findings include:

- The movement of heavy vehicles through Windsor should not be seen as an obstacle to the development, as the development has been designed to meet its needs. The most appropriate route to The Terrace would be via Kable Street and a designated route would provide for safe

movement along an already used service route, keep trucks out of the tighter north-east sector of the Town and keep trucks off the residential route via Moses Street and The Terrace. Large trucks to be restricted from New Street where the tight carriage way and gradient at George Street could lead to access and safety problems;

- There is no significant increase in the vehicle flow along the "residential route" of Moses Street and The Terrace.

Council's traffic consultant recommends that:

1. The three access points to the shopping centre be adopted as they improve the distribution of trips through the Town, and minimise additional flows through the northern sector (Baker and George Streets);
2. Speed profiles along the residential route be monitored to ensure vehicle speeds do not exceed current demands;
3. The potential for a designated heavy vehicle route be examined to minimise intrusion into residential and retails streets by relevant parties;
4. That relevant parties be consulted on the potential changes to the Town (Stage 2 of Study) as a result of the impact of the Windsor Flood Evacuation Route for incorporation into the design of the shopping centre.

Concern was raised by respondents to the Public Exhibition (Issue 9), about traffic, vehicles, parking and access raising issues being:

- (a) Existing traffic problems in the Town due to narrow streets, trucks and car parking and movements which will be made worse by the shopping centre; the impact of the development is not justified given the site's constraints;
- (b) Increased traffic will lead to conflicts like dangerous movements; truck deliveries at all hours in residential streets; access to No. 17 Johnston Street unsuitable through the car park, service trucks for uses in Johnston Street, especially in the one way section; loss of on-street car parking to facilitate the development;
- (c) The widening of Johnston Street and the corner of Johnston Street and the Terrace will require the destruction of large trees (ie Jacaranda) and destroy the residential and heritage nature of the street;
- (d) Access to No 17 Johnson Street, through the car park, falls short of the existing access arrangements and are not practical. Occupants have no control over anti social behaviour etc and will be not enjoy access to the current level; access to No 17 Johnson Street over Hollands Paddock, approved in the development consent, created an equity in favour of that property;

- (e) Not appropriate for the owner of No. 249 George Street to be required to provide a right of way for adjacent properties because existing access arrangements over the site would be removed;
- (f) The Terrace's width between Johnston Street and Kable Street is 7m wide. Passing along that part of the street is hazardous. The two way access required for trucks requires a minimum width of 8m (2.8 width of truck, 0.7m clearance and 1m between passing trucks). The Terrace is too narrow, despite the road widening proposed to accommodate trucks;
- (g) The site provides the only considerable unrestricted day parking in Town and on street parking will be removed as a result of the development. There is a lack of parking in Town. The development has an impact on the horse float that parks on Sundays in The Terrace;
- (h) The development is detrimental to tourism industry of the Town. The Terrace is a popular destination for visitors and it is not appropriate to significantly increase traffic on this road.

Comment

The conclusions of the Traffic Study of Windsor Centre are noted, which generally concurs with the results of the applicant's traffic study in that the local roads can sustain the increased traffic generated by the development. The recommendations of the consultant would be addressed as conditions of consent and as part of the local road network management program.

In terms of carparking the following comments are made:

- The applicant's truck turning and traffic management details for Johnston Street and The Terrace assumes there are no cars parked on these streets. The truck turning circles for access on Johnston Street is satisfactory and would comply with Australian standard;
- Carparking is provided in accordance with Hawkesbury DCP. The required number of spaces is 315 and 325 are provided. The excess spaces could be deleted, if Council decides to amend the application for any reason and make use of that space for another use.

SEPP No. 20 - Hawkesbury - Nepean River

The site is within the SREP 20 but is not in a Scenic Corridor. The aim of the policy is to protect the environment of the Hawkesbury-Nepean River System by ensuring the impacts of future land use are considered in the regional context.

Concern was raised by respondents to the Public Exhibition (Issue 10), about SREP 20, being the flood report does not address relevant policies that address matters like recent urban development in the H-N Catchment, cumulative impact of stormwater and the need for a water report and the like.

Comment

It is considered the relevant specific considerations for the site are water quantity, part 2(6)(2) and cultural heritage, part 2(6)(5). The quantity of water from the site will need to be assessed and appropriate measures used for storm water. The impact on flood behaviour from the filling would need to be considered. SREP 20 aims to promote development which facilitates the conservation of heritage items, including those in other planning instruments, should be encouraged and the significance of the River to these items must be considered.

Flooding (inc. total catchment management), stormwater, filling and heritage issues for the development have been previously considered in the report. Cut is proposed in the development, but no details about its extent are provided. Details would normally be provided with for the Construction Certificate (like for retaining walls), unless it is of an amount that is considered to have an impact.

SEPP No.55 - Remediation of Lands

This policy introduces planning controls for the remediation of contaminated land. Its aim is to reduce risk of harm to human health or any other aspect of the environment when there is a change of use of the land like a change from industrial to residential. If the land is contaminated then it must be remediated before it is developed. The policy required development to comply with certain standards and that land be investigated if contamination is suspected.

There are inconsistencies in the application in regard to submitted information about the potential for contaminants on the site, referring to reports for the previous application on the site, being satisfactory for determining the potential contamination of the site for the current development. The subject report was not lodged with MA1077/00 from Council's records. However, the applicant's planning report indicates:

- Hollands Paddock has been filled, but an audit at the time of sale did not identify incidents, practices or operations that are likely to significantly contaminate the site;
- Soil sampling by Douglas Partners in May 2000 revealed no concentrations of potential contaminants above investigation levels and no sightings of contamination were detected that warranted site remediation. Hollands Paddock was considered suitable for re-development; and
- The 5(a) zoned land requires further investigation to determine the possibility of contamination and should be done as a condition of development consent.

Concern was raised by respondents to the Public Exhibition (Issue 11), about SREP 55, being the site was subject to fill when used by Sydney Water. A contamination report has not been completed pursuant to SEPP 55 and Council cannot lawfully determine the application unless a report is prepared. Conditions of consent are not appropriate and leave Council open to appeal under Cl 123 of the EP&A Act.

Comment

Council has not been advised that the site is contaminated by the Environmental Protection Authority. The use of the 5(a) zone land is a potential hazard as it is unknown what process were used in the water treatment plant. As such a (soil) contamination report should be prepared, or the applicant's report submitted, and assessed to confirm the extent of any contamination, likely impacts of remediation and the likely steps required to remediate the site.

SEPP 55 is not designed to stop development but to ensure remediation of contaminated land takes place before the use of the land changes. It is considered it would not be unreasonable for Council to condition a development consent for the contamination report to be prepared. It is however recommended, that only a deferred commencement consent be used as it would ensure remediation is completed to the satisfaction of Council before works commence.

Hawkesbury Development Control Plan

Other than the Car Parking and Access Chapter, which has been considered previously in the report, the Landscaping and Soil Erosion and Sedimentation Control Chapters apply. Only very minor landscaping would occur in the development near the entrance to the car park on Johnston Street and between No. 19 and No. 23-27 Johnston Streets. The Landscaping Chapter provides for mounding which can perform the function of screening, buffer strips, barriers, noise attenuation and integration into the strategy. The shopping centre would achieve 100% site coverage and refers to "hypothetical" mounding on Council land as landscaping solutions. This does not necessarily enhance the natural, cultural and built environment of the site locality which is the objective of landscaping in the DCP. However, as shown and justified by the applicant and the applicants consultants, the landscaping of Howe Park would enhance the development and therefore Council could require these works as a condition of consent. The Landscaping would be subject to final design and would need to be in accordance with the POM.

Erosion and sedimentation control can be satisfactorily conditioned. Site specific controls will need to be considered given it's proximity to the River.

Likely impacts of the development

1. Context and Setting/Site Design and Internal Design

Concern was raised by respondents to the Public Exhibition (Issue 12), about this matter, being:

- (a) Visual impact - of the northern elevation of the building on the locality which does not enhance the views of the Town from the River; landscaping of the Howe Park (potentially at ratepayers expense) is not appropriate for minimising the impact of a private development;
- (b) Bulk and scale - excessive impact on surrounding street; the building will overpower the buildings in Johnston Street and occupants will look at a acoustic wall which is unsympathetic and dominant on the boundary;

- (c) Townscape - intrusive building on a prominent site; and
- (d) Overdevelopment - mounding in park won't hide bulk from 100% site coverage;
- (e) Character - large building out of character with smaller retail shops of the Town; the Town is peaceful with its setting near the River and the development with associated traffic will compromise the Town; the town will become too commercial like Macquarie Street;
- (f) Scenic qualities - Windsor is the 3rd oldest Town and its character should be preserved; riverine scenic quality will be affected by the development; and
- (g) Strategic vision - more thought is needed before decisions are made about the future of the Town that affects the whole community.

Comment

By nature, modern shopping centres, of the scale proposed, are buildings that emphasises façade treatments as design elements. The function of the building will preside over its form as flexibility in internal space is required. As such, these types of buildings contrast with traditional main streets (and associated buildings), like George Street, as they are larger in their size, bulk and scale. The building is consistent with existing building heights and scale in George Street and provides an appropriate façade treatment, which is divided to appear as smaller shops. It disguises the shopping centre function, which is appropriate in the streetscape.

In most cases, the subject design approach for a large modern shopping centre within a traditional streetscape is appropriate and importantly the centre is located in town and not "off-site" which can have a negative impact on the traditional business area of a town. However, the site is unique in located being a highly visible transitional area between different land uses and precincts that are used by the community and visitors. Therefore, the scale and bulk of the development must be appropriate in terms of external design, site coverage and bulk, especially for the "secondary" frontage, being The Terrace. It should be noted that the view from the river environs to the town through the current carpark is currently one of the buildings and cannot be regarded as of great value.

Other comments are:

- The building on Johnston Street will exceed the height of adjacent residential uses, by about 2.4m and will be imposing;
- The Terrace elevation of the building will achieve a height of about 13m (subject to cut levels), and will appear as a dominant building in the location, despite the topography. Design solutions like variation in building height and articulation have assisted in reducing scale and bulk and improve streetscape amenity. The elevation of the building would be solid if the advice of the noise consultant is adopted which is not encouraged in terms of building design and streetscape amenity;

- The floor height of the building could be the same throughout the development, which would assist in reducing the overall height, bulk and visual impact of the building. A reduced floor height would reduce the overall scale of the building. This can be done as there is excessive height in the car park level which varies from about 3.6m near George Street to 4m and then to 4.8m on the northern elevation and can be reduced to Australian Standard. A floor height of a minimum of 17.3m is not required where there are no habitable rooms. The reduction in height would also improve amenity for properties on New and Johnston Streets and The Terrace and the development's relationship to Howe Park.

2. Public Domain

Concern was raised by respondents to the Public Exhibition (Issue 3), about Howe Park, being mounding and loss of lands for road widenings would lead to the degradation of Howe Park and change/reduce its usage by residents and tourists.

Comment

Any works proposed for Howe Park must be subject to a Plan of Management. The comments by the applicant about linking the shopping centre to the park at a later point, as a result of Council works in the park, would require substantial works to the shopping centre by the applicant given the difference in levels between the park and the ground floor of the development. As mentioned previously, and advocated by the applicant, landscaping in the park would enhance the development, therefore Council could require the applicant to provide appropriate landscaping as part of the development.

3. Pollution and Hours of Operation

The application concludes the impact of noise on the surrounding residential area is acceptable with the implementation of attenuation measures, but the noise report makes the following conclusions, which is contrary to that portrayed in the application:

- (a) Minimal impact on The Terrace and New Street, within EPA criteria for road noise (1-2dB(A)), partly due to the existing noise levels from vehicles using the onsite carpark;
- (b) Significant impacts on Johnston Street, exceeding EPA criteria by 9dB(A) and attenuation required to comply with EPA (assessment assumes a limit number of trucks visiting per day);
- (c) Significant impact from the loading dock (inc deliveries area) on Johnston Street, exceeding EPA criteria. Attenuation and limits on night time operation not to be after 10pm; barrier along No. 17 and No. 19 is required to be agreed with neighbours;
- (d) Minor impact from carpark assuming solid boundary walls to the carpark and adjacent driveways and an oversized solid gate to No 17 Johnston Street, it is then predicted to

comply with EPA criteria. Noise levels don't strictly comply with background criteria but they are below the emergence level and therefore acceptable. Controls include concrete or asphalt floor in carpark (without sealer) and solid speed humps (one piece construction); and

- (e) Impact from mechanical plant room to be assessed when equipment determined and control measures to limit noise.

Concern was raised by respondents to the Public Exhibition (Issue 13), about noise and hours of operation, being:

- (a) Increased noise levels -affect use of Howe Park and Girl Guide Hall; on local roads; from more trucks ie. air brakes, engines;
- (b) Operational noise - consultant confirms significant noise impact on residents of Johnston Street that can only be controlled by barriers which are not a satisfactory control; no intention to comply with EPA criteria; noise from trolleys will be funnelled from the enclosed carpark to adjacent properties; no details for air conditioning units, alarms, waste management services; compliance and policing hours of operation;
- (c) Fumes - fog will mix with car fumes and toxic gases and affect surrounding residences; exhaust from vehicles will settle on adjacent properties affecting amenity;
- (d) Hours of operation - not appropriate.

Comment

The applicant's noise report acknowledges that the development will have an adverse noise impact on No. 17 and No. 19 Johnston Street. This noise impact could also be experienced by other adjacent properties given noise dissipation.

The report acknowledges that it would be difficult and costly, for the loading dock to meet noise goals and recommended restrict hours of operation and a 2m masonry noise wall on the boundary with No. 17 Johnston Street. While a wall or barrier is a last option for noise attenuation it would also not provide a level of amenity for adjoining residents as it will enclose the properties (including loss of solar access and views).

The applicant's consultant recommended the hours of operation are 7am to 10pm, Monday to Saturday and 8am to 8pm on Sundays. The Monday to Saturday times correspond with the EPA definition of Day and Evening. For Sunday and Public Holiday the EPA definition of Day is 8am to 6pm and Evening is 6pm to 10pm. At a minimum it is recommended the development comply with all EPA definition of Day and Evening. This is at odds with the applied for hours and would mean that trading would have to cease and the building shut down by 10.00p.m. to maintain a satisfactory amenity for the neighbouring property.

The applicant's noise report is accepted, but the applicant's options are not.

In regard to the local experience of an existing shopping centre being located adjacent to residential uses, the following pollution issues exist with the operation of Richmond Market Place:

1. After hours noise.
2. Car park noise.
3. Offensive smells.
4. Plant noise.
5. Water quality.

The above issues generate a significant number of complaints on a daily basis.

While non-compliance is a matter of centre management. Council will be required to police the development which will have an impact on Council resources. In terms of developments that regularly breach conditions of consent, the penalties of relevant acts are seen as operational costs and not as deterrents. This outcome will not resolve conflicts between the development and its residential neighbours.

4. Safety, Security and Crime

Council is required to consider "Crime Prevention Through Environmental Design" in the assessment of any development application ie. identify crime risk and opportunities for minimising risk through better design of buildings and places. Council have an obligation to ensure that a development provides safety and security to users and the community. The guidelines can be used to justify:

- Modification of the development to minimise the risk of crime; and
- Refusal of the development on the grounds that crime risk cannot be appropriately minimised.

The four CPTED principles that are used to minimise the opportunity for crime are surveillance, access control, territorial reinforcement and space management. The shopping centre is a type of use that could be a crime risk and was referred to the Hawkesbury Local Area Command (LAC) for comment. The Crime Prevention Officer provided preliminary advice on the development being:

- (a) Access to No. 17 Johnston Street via the car park, (and secured after hours) and a system of keys after hours etc. requires complex arrangements with occupiers. Compromise of this security system and the issue of liability should the gate be left unlocked is unacceptably high. Reliability on occupiers to ensure security long term is questionable. It is recommended that physical access to No. 17 Johnston Street be provided on the northern side of that property;

- (b) The location of the amenities block on the north-eastern side of the building means they would be a mixed traffic area with difficulties in access control (security); little if no natural surveillance. A detailed recommendation is reserved until more detailed plans are provided;
- (c) Other issues like lighting and security of specific areas would require further investigation at a future stage.

In response to comments about the crime risk assessment of the development, the applicant in summary, advised:

- The toilets on the north side of the supermarket are designed to work in conjunction with Howe Park and the food court. Shopping facilities there would not be financial or practical.
- The northern ramp (to the loading docks) provides a disabled access option, provides delivery facilities for the food court and is a trolley return area for the supermarket; and
- Extensive experience in retail development gives an understanding of the rationale of shopper use and management requirements for shopping centres. Toilet accommodation has been designed to provide convenience of user along with economies of location. The disabled and parenting facilities exceed expectations of shoppers for the size of the centre and their locations will meet financial and economic requirements.

Comment

The location of public amenities on the Johnston Street side of the building down a long corridor remote from shops and on the Howe Park side of the building external to the building in what will be used for deliveries and trolley storage and which is not linked and elevated above the park is a significant impact on crime risk. There is no natural surveillance, access control, territorial reinforcement and space management. There are multiple access points on the Johnston Street side which gives an offender opportunity to access the building. It would not be safe to travel down the corridor and response times to incidents from on site security is questionable. Likewise, it is unlikely that the office location would provide the expected worker amenity.

It is recommended that both sets of public amenities be re-located to the New Street side of the development inside the building, where they will be part of the main through-fare.

It is apparent from the applicant that the location of the public amenities is driven by construction costs as opposed to shopper safety, satisfaction and enjoyment which underpins the long term commercial viability of the shopping centre. It is not appropriate on CPTED grounds that public amenities be marginalised. The Crime Prevention Officers comments about lighting and security would need to be considered if development approval is given.

5. Social Impact in the Locality

- Disabled Access

Council's Disabled Access Committee advised that the development needs to comply with WSROC's Manual of Best Practice for People with Mobility Disabilities. Smooth passage between floor levels and travelator is required to ensure people with a mobility disability can use the travelator. Condition of consent to ensure Construction Certificate addresses these matters, the BCA and the DDA Act.

- Near by residences

The impact of the development on near by residences in The Terrace and Johnston Street was raised by respondents to the Public Exhibition (Issue 14) having a detrimental impact on quality of life ie. noise, increased traffic, centre operation, height of walls, overshadowing, loss of views to mountains and River, hours of operation, lights and disrupted sleep.

These matters have generally been addressed earlier in the report. The transition between business and residential zones must be balanced and compromises will need to be made by both land uses given there location. The type of business use (scale and operational requirements) will have a bearing on compatibility. The large development with its service requirements located adjacent to residences, will have an significant social impact beyond what is reasonable (alternative and better options can be identified).

6. Economic Impact on the Locality

The applicant's economic consultant concludes the development will benefit business growth in Windsor:

- (a) Retailing in Hawkesbury is dominated by Richmond Market Place which is overtraded. A substantial volume of spending flowing from the Windsor trade area. Richmond Market Place would continue to trade at sale levels above the norm and impact on other centres is acceptable; in net terms, Windsor should experience a increase in total retail sales of about 32.5million per annum in 2003;
- (b) Between 2000-2006 annual available retail spending in the trade area is forecast to increase by \$49.3million; net sales from the trade area are estimated at \$35.0 to \$43.3million per annum;
- (c) Modest down turn in spending being of -3.6% to -8.5% for other traders in the Town, attribute to supermarket sales;
- (d) The development would insulate Windsor from adverse impacts from Mungerie Park regional centre.

Windsor Economic Development Strategy

Council's economic consultant concluded:

- The report is based on assumptions that there are three supermarkets of some sort trading in Windsor;
- There is 10% (10,700sqm) vacant retail floor space in Hawkesbury. Of that 4,050sqm is in Windsor. This level has been influenced by the commencement of Richmond Market Place;
- There is currently an undersupply of shop floor space in non-food categories in Hawkesbury and Windsor. Food floor space is balance throughout Hawkesbury. There is a deficiency clothing and homewares and miscellaneous categories;
- Growth in sales in Windsor beyond 2002-2004 are expected to be about 0.5%;
- The development is estimated to turnover \$40.5 million in 2004 (in 2002 \$);
- Loss of trade for all other shops in Windsor would be 17million, equivalent to 11% of their total turnover. Maximum high impacts of negative 16-18% growth would be incurred by the existing supermarkets in Windsor and negative 10% in South Windsor. Many shops in Windsor are not overtraded and could find impacts of negative 5-10% growth;
- The development's supermarket will open into a situation of local oversupply of supermarkets. So its impact is expected to be high;
- Planned major centres outside Hawkesbury like Rouse Hill and the expanded Westpoint at Blacktown will see continuing poor trade levels in many shops in Windsor for the foreseeable future; and
- The high impact of similar developments, like Richmond Market Place, on other shops ranged up to 50%. Seven (7) to eight (8) years later, supermarkets in Richmond were only just returning to pre-Market Place trade levels and other shops in Richmond are still trading below pre-Market Place trade levels.

Concern was raised by respondents to the Public Exhibition (Issue 15) about the business impact including:

- (a) The attracted net sales and profits will be enjoyed by the development at the expense of other retailers;
- (b) Vacant premises are not in poor retail locations as there are many in the George Street Mall which is the core of Town;

- (c) More information on the long term economic impact of the development in the locality is required to properly assess the development; other supermarkets in Town etc are not overtraded; more retail space/another supermarket is not needed and the same products are sold in other supermarkets; there is an oversupply of space; the development will only re-arrange the location of vacant shops; it's a white elephant;
- (f) The results of the Windsor Economic Development Strategy should be considered with the application and include the future plans of LG Super to extend and improve Windsor Town Centre;
- (g) The development will change and divide shopping patterns and create conflicts; shopkeepers are committed to the main and side streets; the development will not contribute to the Town taking trade away from main street shopping environment;
- (h) Applicant's consultant stated the development will not attract 1st class national stores and Council should not allow Town to become a 2nd rate shopping destination; and
- (i) The business strategy of landlords in the southern end of Town has led to that end of Town being run down.

Comment

The conclusions of the Windsor Economic Development Strategy by Council's consultant are noted, they do not concur with the results of the applicant's economic study. There will be an adverse impact on trade level in Windsor across the board (existing supermarkets and other shops) for at least 8 years. It is interesting that Council's consultant indicates that Windsor is oversupplied with supermarkets. With this in mind, it would appear that Windsor supermarkets overall would not compete successfully with other supermarkets in Hawkesbury and outside the area that provide more and flexible floor space and access. It would appear that Windsor in economic terms needs to identify and establish its business niche.

Conclusion

Council has received a development application for a shopping centre, and associated road works, in the heart of Windsor, which proposes 100% site coverage. It includes 9435sqm of gross floor space of which would be a 3,600sqm supermarket and 325 car parking spaces. The shopping centre would be the largest building in Windsor.

The shopping centre is permitted on the majority of the site.

The development site is located on a transitional site between different land uses that make up part of the business, living and recreation spaces of the Town. It is the combination of these roles and the historical character of the Town that gives Windsor its sense of place. It is also a Town that is subject to physical constraints being access and flooding.

The site is highly constrained ie. flooding, access, adjoining uses and townscape and makes the site a challenging development site. However, for the development to proceed these constraints must be satisfactorily resolved to ensure a good development. Fundamental to the development is:

- (1) The road widenings that requires Council's approval under the Local Government Act, 1993 as the works involve public land that is classified Community;
- (2) Plan of Management for Howe Park;
- (3) The rezoning of the land zoned 5(a) - Special Uses Water Treatment Plant to 3(a)- Business General, so the zoning on that land is consistent with the proposed land uses;
- (4) A comprehensive localised flood study; and
- (5) Minimal impacts on the neighbouring residential properties.

Other impacts like design, scale, townscape/heritage, and economics are significant with some being adverse impacts. These impacts are largely a result of the site coverage and the floor space mix. On-site options for reducing impacts have not been used in this application.

Controls that could need to be considered include:

- Locking carpark at close of business;
- Restricted hours of operation;
- Relocate/locate plant room, air conditioning units, shop exhaust and substation not on a residential boundary;
- Moving the loading/delivery area to the car park and modify size;
- Articulation of the building to address scale and bulk;
- Integration of the building with Howe Park and the River foreshore;
- Relocate public amenities.

Council has, for some time now, identified this site as being suitable for commercial development and did re-zone a majority of the site for that purpose. Whilst it is normal that in a 3(a) zone the buildings are expected to cover 100% of the site, in doing so still must supply a level of amenity to itself and its neighbours that is satisfactory. The impacts on Nos. 17 and 19 Johnston Street are severe and notwithstanding the fact that the properties do adjoin a commercial zone, they should not receive a reduction in daylight availability or suffer the impacts of noise. The diagrams submitted indicate that the shadowing during winter is not significant, however, it is not clear whether the noise attenuation wall has been included in this calculation.

The applicants would have to demonstrate to a high degree of rigour that the operation of the loading dock would not affect these properties by adverse noise. This would have to take place from inside the architectural treatment supplied with the development application and not included in extensions to cover the loading dock area.

There are a number of matters that need to be resolved by Council as landowner of adjacent properties before this application can proceed. This fact and the fact that Council has for some time perceived this site as being suitable for commercial development, it seemed to indicate that a deferred commencement consent is more applicable than a refusal of this application.

The report above quite clearly concludes that consent cannot be given at the present time until these matters have been resolved. The recommendations of the Acoustic Engineer for instance may well impact on the localised flood study as the open walls of the carpark currently shown in the application may need to be enclosed. This could also severely effect the external appearance of the building. There are several references in the application to the need to landscape Howe Park to assist in the amenity impact of the development. If this is the case, and has been expressed by the applicant's consultants, this work must be carried out under a Plan of Management and this requires Council to adopt such a plan. Again the application cannot commence until this matter is finalised.

It must be observed that this site has been highly constrained by the combination of historic issues and current land ownership and zonings. It is considered that with some small changes to the zoning or re-development of some adjacent properties, amenity issues associated with this application can be overcome. However, the applicant has chosen to submit the application that he has in his belief that it is his satisfactory solution to these issues.

RECOMMENDATION:

It is recommended therefore that a deferred commencement consent be granted subject to the following conditions:

That:

- A. That the SEPP 1 objection to Clause 25(2) of Hawkesbury Local Environmental Plan be supported.
- B. That the application for a shopping centre and road works be approved as a Deferred Commencement consent subject to the following conditions:
 - I Upon compliance with the condition appearing in Schedule 1, and with the issue of confirmation to that effect in writing from Council, this "Deferred Commencement" consent shall commence to operate as a development consent inclusive of all conditions appearing in Schedule 2 pursuant to Section 80(3) of the Act.
 - II The "Deferred Commencement" consent will lapse in twelve months from the date of this consent unless all conditions appearing in Schedule 1 have been complied with.

SCHEDULE A

1. Land necessary to widen Johnston Street has been dedicated and constructed as public road.
2. Submission of evidence demonstrating that suitable arrangement have been made for the use of part Lot 30 and 31 New Street and Lot 1 and Lot 2 DP 788531 Johnston Street as access for the proposed development.
3. A Plan of Management for Howe Park is in place that contemplates the relocation of the Girl Guide's Hall and the landscaping proposed in the application.
4. A localised Flood Study be carried out to prove that the building does not affect or is effected by inundation at times of flooding.
5. A Flood and Stormwater Drainage Report for the entire catchment area of the existing drainage system which will outline the effects of stormwater which will outline the effects of stormwater and flooding from the Hawkesbury River during all storm events.
6. That the findings of the Flood Report and the finding of the acoustic report on the architectural treatment of the building coincide.
7. That an Acoustic Report be submitted that proves that the amenity of Nos. 17 and 19 Johnston Street would not be adversely affected by the operation of this building (it should be noted any changes to the proposed architectural treatment of the external aspects of this building will require modification of the consent).
8. The submission of a Traffic Management Plan approved by the Road and Traffic Authority.
9. A schedule of materials, finishes and colours shall be submitted to Council for approval. In this regard a sample board shall be provided.
10. A detailed landscaping plan for works on the site, in accordance with Hawkesbury Development Control Plan shall be submitted to Council for approval.
11. A soil contamination report for the entire site to be submitted to Council for approval.

SCHEDULE B**General**

12. To confirm and clarify the terms of this approval, the development shall be carried out in accordance with the approved stamped plans as modified in red submitted with Development Application No. DA1228/02 and any supportive documentation, except as otherwise provided by the conditions of this consent.

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

13. To legally establish the first use of each shop/unit and ensure any required additional facilities are provided, separate Development Consent shall be obtained prior to the first occupation of each shop/unit within the approved building.
14. This consent covers the removal of trees and other vegetation from the site of approved buildings, structures, permanent accessways and car parks. This consent also covers the removal or lopping of trees within 6m (six) of approved buildings. No other trees or vegetation shall be removed or lopped except with prior written approval of the this office.
15. Compliance with the provisions of the Environmental Planning and Assessment (Amendment) Act 1979, and the Building Code of Australia.
16. Prior to construction of the approved development it is necessary to obtain a Construction Certificate.
17. The applicant is advised to consult with:
 - (a) Sydney Water Corporation Limited;
 - (b) Integral Energy; and
 - (c) a local telecommunications carrier;

regarding their requirements for the provision of services to the development and the location of existing services that may be affected by proposed works, either on site or on the adjacent public road(s). The relevant sewer authority Hawkesbury City Council, may also require the applicant to obtain a Trade Waste Approval as part of the operation of the approved development. Enquiries should be made to the relevant authority for their requirements for the eventual operation of the approved use.

18. The builder/contractor is advised that under the provisions of Regulation 86(16) of the Construction Safety Act, 1912, a qualified engineer is required to inspect and certify formwork for suspended slabs or beams where:
 - (a) the deck of the formwork is more than 3 metres above the lowest surrounding ground level; or
 - (b) the area of the formwork deck is more than 16 Sam and designed to hold more than 2.5 cubic metres or 7 tonnes of wet concrete.

The builder/contractor is advised that under the provisions of Regulation 86(16) of the Construction Safety Act, 1912, a qualified engineer is required to inspect and certify formwork for suspended slabs or beams where:

- (a) the deck of the formwork is more than 3 metres above the lowest surrounding ground level; or
 - (b) the area of the formwork deck is more than 16 Sam and designed to hold more than 2.5 cubic metres or 7 tonnes of wet concrete.
19. 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.
20. No excavation or site works shall be commenced prior to the issue of the construction certificate.
21. The applicant shall make themselves aware of the Disabled Discrimination Act, 1992 in order to assess their responsibilities and liabilities with regards to the provision of access for all people.
24. Provision of satisfactory vehicular access to the land in accordance with Hawkesbury Development Control Plan, Chapter 2 Car Parking and Access and Hawkesbury Development Control Plan Appendix E Civil Works Specifications Part 1 Design Specification and Part 2 Construction Specifications to the requirements of the Director Environment and Development.

Prior to Issue of Construction Certificate

22. 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 by the Director Environment and Development or an accredited certifier.
23. Payment of a design checking \$2,658.60 and inspection fee of \$4,202.50 when submitting Engineering plans for approval. This amount is valid until 30 June 2003. Fees required if an accredited certifier is used will be provided upon request.
24. The pedestrian ramp on the New Street elevation shall be deleted, as it is prohibited on the site. An alternative option is to be provided to complete the flood evacuation route through the development. Amended plans shall be submitted to Council for approval.
25. Details of any fill material removed from or imported to the site to be submitted with the engineering plans. Details to include quantities, borrow sites or disposal sites. A contribution based on 3 cents per tonne per kilometre shall be paid to Council prior to issue of the Subdivision Certificate.
26. Arrangements are to be made for the provision of common drainage and the disposal of drainage from the site. Where the disposal of drainage involves the provision of drains across land owned by others, drainage easements of adequate width shall be provided for which documentary evidence must be submitted.

27. The submission of engineering designs and calculations covering all works required by this consent.
28. 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)".
29. Submission of proof of the payment of the Building Industry Long Service Levy where the value of civil works exceeds \$25,000.
30. All public amenities for the development shall be located internally on the New Street side of the development. Amended plans shall be submitted to Council for approval.
31. The disabled car parking spaces shall be provided in the locations shown in red on the stamped approved plans, to improve accessibility. Amended plans shall be submitted to Council.
32. Payment of a contribution of \$3.48 sqm of gross floor area towards sewer headworks. This sum will remain fixed until 30 June 2003 after which it will be recalculated at the rate applicable at the time of payment. In this regard credit will be given for the gross floor area of the existing commercial buildings that are proposed to be demolished.

Prior to Commencement of Works

33. All work must be carried out in accordance with the provisions of Hawkesbury Development Control Plan, Appendix E Civil Works Specification Part 1 Design Specification and Part 2 Construction Specification.
34. The site and its locality is to be appropriately photographically recorded to archival standard prior to commencement of works to ensure there is a record of the site and its locality for historical and research purposes. The applicant shall liaise with Council about the level of detail to be provided to Council satisfaction. Three sets of the archival recording and original photographs are to be lodged with Council.
35. Prior to construction of the approved development it is necessary to obtain a Construction Certificate.
36. The development should be constructed of flood compatible materials in accordance with the NSW Floodplain Management Manual 2001. In this respect the following design precautions must be adhered to in all respects:
 - (a) all electrical, heating and air conditioning service installations are to be located above the 1 in 50 year flood level of 15.7m AHD;
 - (b) the building is to be constructed of flood compatible materials such as galvanised steel frame, galvanised zinc alum cladding doors and door frames; and

- (c) the structure and walls shall be strengthened to a height of 2m (two) above the 1:100 year flood level of 17.3m to increase resistance to floodwater flow and debris impact.

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

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

This condition does not apply to:

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

38. If the work involved in the erection or demolition of a building:

- (a) is likely to be dangerous to a person in a public place or adjoining property;
- (b) is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient; or
- (c) involves the enclosure of a public place,

a hoarding or protective barrier must be erected between the work site and the public place. such hoarding or barrier must be designed and erected in accordance with Council's *Local Approvals Policy* and WorkCover requirements/guidelines.

If necessary, an awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling into the public place.

The work site must be kept lit between sunset and sunrise if it is likely to be hazardous to persons in the public place.

The applicant is to provide drawings and details to Council's Building Surveyor for approval **prior** to such installation/erection.

39. Erosion and sediment control devices are to be installed and maintained to ensure that there is no increase in downstream levels of litter, vegetation debris or other water borne pollutants in accordance with Council's Development Control Plan 1/94 - Soil Erosion and Sedimentation. The enclosed warning sign shall be affixed to the sediment fence/erosion control device at all times.

40. The applicant or person having the benefit of this development consent must give at least two days notice prior to commencement of works to Council of the intention to commence works. This notice is to be given in accordance with form 7 of the Environmental Planning and Assessment Regulation 1998.
41. The applicant shall advise Council of the name, address and contract number of the principal certifier, in accordance with Section 81A 2(b) of the Environmental Planning and Assessment Act, 1997.
42. A waste management plan shall be submitted for consideration and approved by Council. Such plan shall address any builder's waste and waste generated during day to day operations and shall include types and quantities, recycling, reuse, storage and disposal.
43. Approval in the form of stamped Construction Certificate plans is to be obtained from Sydney Water to verify that the development meets its requirements concerning the relationship of the development to any water mains, sewers or stormwater channel.
44. 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.
45. The applicant should contact the New South Wales Fire Brigade (Fire Safety Division) in order to determine the Brigades requirements for submissions regarding, hydrants, boosters, sprinklers, etc.

During Construction

46. All building work must be carried out in accordance with provisions of the Building Code of Australia.
47. Toilet facilities are to be provided, at or in the vicinity of the work site on which work involved in the erection or demolition of a building is being carried out, at the rate of 1 toilet for every 20 persons or part of 20 persons employed at the site.

Each toilet provided:

- (a) must be a standard flushing toilet; and
- (b) must be connected:
 - (i) to a public sewer, or
 - (ii) if connection to a public sewer is not practicable, to an accredited sewage management facility approved by the Council, or
 - (iii) if connection to a public sewer or an accredited sewage management facility is not practicable, to some other sewage management facility approved by the Council.

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

48. The building site is to be adequately protected and drainage controlled to ensure that erosion and sediment movement is restricted to the site. The applicant will be responsible for restoration of any erosion and removal of sediment from the stormwater drainage system.
49. All necessary works being carried out to ensure that “any water” flow from adjoining properties is not impeded.
50. All trucks entering or leaving the site shall have their trays suitably covered to prevent spillage from the truck onto the road.
51. Dust control measures, eg vegetative cover, mulches, irrigation, barriers and stone shall be applied to reduce surface and airborne movement of sediment blown from exposed areas.
52. 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.
53. Measures shall be implemented to prevent vehicles tracking sediment, debris, soil and other pollutants onto any road.
54. 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.
55. No burning of demolition or construction material being carried out on the site.
56. 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.
57. 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.
58. A sign is to be erected adjacent to the access point to the site for the duration of the site works stating the following:
 - (a) owner of site and address;
 - (b) person/company carrying out site works and phone number;
 - (c) consent number and date of approval; and
 - (d) approval duration of site works.
59. Should any aboriginal site or relic, as defined under the National Parks and Wildlife Act, 1974 or a relic as defined under the NSW Heritage Act, 1977, be disturbed or uncovered during the construction of this development, all work shall cease and the National Parks and Wildlife Service or the Heritage Office consulted. Any person who knowingly disturbs an aboriginal site or relic is liable to prosecution under the National Parks and Wildlife Act 1974 or the Heritage Act, 1977.

60. The developer is responsible for full costs associated with any alteration, relocation or enlargement to public utilities whether caused directly or indirectly by this proposed development. Such utilities include water, sewerage, drainage, power, communication, footways, kerb and gutter.
61. 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.
62. If an excavation associated with the erection or demolition of a building extends below the level of the base of the footings of a building on an adjoining allotment of land, including a public road or place, the person causing the excavation to be made:
- (a) must preserve and protect the building from damage; and
 - (b) if necessary, must underpin and support the building in an approved manner; and
 - (c) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.

The owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this condition, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

63. All fill to be adequately compacted by track rolling or similar.
64. The landfill site shall be secured to prevent the depositing of any unauthorised material.
65. To ensure parking necessary for the development is provided and kept clear and available, 315 off-street car parking spaces, together with access driveways and turning areas, shall be constructed, paved, line marked, signposted and maintained, as shown on the approved plan.

In order to ensure on-site car parking and loading facilities are utilised, exit/entrance points are to be clearly signposted and visible from both the street and site at all times.

66. In order to maintain the structural integrity of the building should the adjacent sewer main need to be excavated, the footings shall be designed and constructed in such a manner that their zone of influence shall fall a minimum of 900mm below the angle of repose taken from a point 600mm from the centre line at invert level of the adjacent sewer main. The angle of repose shall be assumed to be 1:1 (45 degrees) in undisturbed clay or similar material and 1:2 (30 degrees) from horizontal in sand or filled ground whether compacted or not. All supporting piers adjacent to the sewer main shall contain appropriate starter bars cast in them for subsequent tying into the strip footing or perimeter beam. Design of the proposed footings system shall be certified by a structural engineer. The applicant shall accurately locate the position of the main prior to work commencing.

67. Any material or component used in the building shall comply with the early fire hazard indices stipulated in Specification C1.10 of the BCA. A separate schedule detailing such materials and their respective indexes and approved in writing prior to the acquisition, installation or fitting of such materials.
68. The building shall be set out by a Registered Surveyor and the Survey Certificate of the building shall be lodged with the principal certifying authority upon completion of the footings and prior to the external wall construction proceeding above floor level.
69. 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.
70. Access to the development for people with disabilities shall be provided in accordance with the requirements of Part D3 and the BCA and AS1428.1 (1993), 1228.2 (1992) and 1428.3 (1992) all thresholds and room access (both internal and external) shall have "lipless thresholds".
71. Access to the development and facilities for people with disabilities shall be provided in accordance with the requirements of Parts D3 and F2.4 of the BCA, it is preferred that disabled toilet facilities are identified Unisex and that doors open outwards to enable easy access in emergencies.
72. 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).
73. All construction vehicles associated with the development are to use the nominated traffic route as outlined in the Windsor Town Centre Traffic Study prepared by Christopher Stapleton Consulting, February 2003.
74. Written permission from adjoining property owners to undertake any proposed works on their property.
75. All recommendations contained in the localised flood study report required under Schedule A are to be implemented.
76. All recommendations contained in the flood and stormwater drainage report required under Schedule A are to be implemented.
77. All recommendations contained in the Windsor Town Centre Traffic Study, prepared by Christopher Stapleton Consulting, February 2003, are to be implemented.
78. All recommendations contained in the soil contamination report required under Schedule A are to be implemented.

79. All recommendations contained in the Acoustic Report required under Schedule A are to be implemented.

Prior to Issue of Occupation Certificate

80. 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.
81. Landscaping shall be completed in accordance with the approved landscaping plan and shall be maintained in perpetuity by the existing or future owners and occupiers of the property. In this respect a occupational certificate will not be granted on the application until the landscaping is complete.
82. In order to protect landscaped areas, a physical barrier is to be provided between public spaces, vehicular accessways, parking areas and the surrounding landscaped area.
83. Registration of a plan of survey consolidating the site into a single allotment. Documentary evidence to be submitted prior to occupation of the building.
84. Inspections for Compliance Certificate to be requested from the Sewer Authority (Hawkesbury City Council) for internal and external sewer drainage **prior** to covering any pipe (24 hours notice for inspection is required, the fee is \$70.30 per inspection to be paid prior to requesting the inspection).
85. 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.
86. 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.
87. Landscaping on the development site is to be completed in accordance with the approved landscaping plan.
88. Landscaping in Howe Park is to be completed in accordance with the approved Plan of Management for Howe Park.
89. The construction of sewerage reticulation, including junctions, to the development where not already provided.
90. All fill including existing fill must be compacted to 98% standard compaction and verified by the submission of test results and accompanied by a contoured depth of fill plan. Topsoil is to be stockpiled and respread over the finished surface. Copies of any reports submitted will be made available to the public.

91. The submission of a Surveyor's Certificate stating that all pipelines are contained within the proposed/existing easements.
92. Certification to be provided by a qualified professional advising that all measures and recommendation contained in the following reports have been provided:
 - (a) acoustic;
 - (b) soil contamination.
93. A report by the Design Engineer and A Works-As-Executed (WAE) drawing by either a suitably qualified engineer or registered surveyor of the land and 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.
94. The carpark shall be amended to comply with the Hawkesbury Development Control Plan in regard to where there are more than 50 car parking spaces, the access ramps to the roads are to have separate ingress and egress. This can be achieved by widening the access ways and providing a raised island between the ingress and egress.
95. Line marking, street signage and physical restraints are required to be constructed at the location where Johnston Street changes from a one way street into a two way street.
96. Appropriate signage and line marking is required to prevent queuing across access to the Fire Station car park in Union Lane.
97. The southern kerb in Johnston Street is cracked along the front of Numbers 17 and 19 and 1-metres to the west of the access running off Johnston Street. This is to be rectified.
98. The existing kerb and gutter on the western side of the Union Street access is to be fixed where necessary and access to Numbers 19, 23 and 27 is to be provided.
99. The construction of concrete kerb and gutter, including layback vehicular crossings, the footway area being formed in earth and all necessary drainage, together with the full construction of the frontage of the Union Lane access together with any works necessary to make this construction effective.

100. Need details of all street lighting, line marking and signage to be submitted with the application for the construction certificate.
101. The construction of concrete kerb and gutter, including layback vehicular crossings, the footway area being formed in earth and all necessary drainage, together with the full construction of the road within Johnston Street to the eastern property boundary to the intersection of The Terrace together with any works necessary to make this construction effective.
102. The construction of concrete kerb and gutter, including layback vehicular crossings, the footway area being formed in earth and all necessary drainage, together with the full construction of the New Street access together with any works necessary to make this construction effective.
103. The existing pavement depths in Johnston Street, New Road, Union Lane and the Terrace needs are to be increased as a result of the increased traffic generated by the development. The pavement shall be designed by a Geotechnical Engineer.

Use of the Site

104. The relevant sewer authority (Hawkesbury City Council or Sydney Water) 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.
105. 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.
106. The subject development, including landscaping, is to be maintained in a clean and tidy manner.
107. Any internal or external alterations being the subject of a separate development application.
108. To ensure vehicle movements associated with the land use do not adversely impact on the adjoining streetscape or traffic movement therein:
 - (a) all vehicles being loaded or unloaded shall stand entirely within the property;
 - (b) all vehicles must be driven in a forward direction at all times when entering and leaving the premises.
109. All waste materials to be stored and disposed of at regular intervals.
110. 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.

111. Operating hours shall be limited to 7.00am to 10.00pm Mondays to Saturdays and 8.00am to 6.00pm on Sundays and Public Holidays. The hours of operation includes all activities of the development, including public trading hours and ancillary operations of the development like the use of the loading/delivery area, cleaners and garbage collection.
112. All service vehicles associated with the development are to use the nominated traffic route in the Windsor Town Centre Study, prepared by Christopher Stapleton Consulting, February 2003.

ATTACHMENTS:

- AT-1** Locality Plan, Land Use Zoning Extract, Council Report of 9 April 2003 (propose shopping centre on the site and outcome of public meeting).
- AT-2** Distributed under separate cover - Site Plans and Elevations.

Locality Plan, Land Use Zoning Extract, Council Report of 9 April 2003
(proposed shopping centre on the site and outcome of public meeting).

Locality Plan, Land Use Zoning Extract, Council Report of 9 April 2003
(proposed shopping centre on the site and outcome of public meeting).

SPECIAL

Meeting Date: 20 May, 2003

Item: **81**

Distributed under separate cover - Site Plans and Elevations.

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special
meeting

end of paper