



Hawkesbury City Council

special
meeting
business
paper
supplementary

date of meeting: 19 March 2004

location: Council Chambers

time: 7:00pm

SPECIAL MEETING

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AGENDA

- Apologies.
- SECTION 4 - Reports for Determination
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Principal frontages for the site are George Street and Howe Park. The site is also visible from the secondary frontages of Johnston and New Streets.

Formed vehicle access to the site is from New and Johnston Streets, via Council owned land. The site consists of commercial buildings fronting George Street, disused water treatment plant structures on Johnston Street and a large bitumen sealed area. There are a few mature trees on the north-western boundary and adjacent to No.23-27 Johnston Street.

Adjacent uses/zones to the site are:

- (a) North - residential and business;
- (b) East - business;
- (c) South - business and residential; and
- (d) West - residential and recreational.

The site is located in a transitional area between the business land uses that front George Street and the residential and recreational land uses that are focused on The Terrace and the River. 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.

Background

- (a) Owners consent - Council owned lands

The application, while it primarily involves private land, includes Council owned land as access is proposed over this land. Council on 11 December 2001 consider 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 development application. In that report, Council's Solicitor had 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 owner's consent has been given to the current proposal in light of the above and Council's resolution of 11 June 2002.

- (b) DA1228/02 - Application for Shopping Centre and Roadworks and DA 0098/04 - Application for Shopping Centre and Roadworks

On 3 October 2002, the applicant lodged DA1228/02 for a Shopping Centre on the same site. On 20 May 2003 Council resolved to refuse the application for the following reasons:

1. *Council not make available land to provide access to the development proposed in DA 1228/02 being part of Lot 3 DP759095 (part of Howe Park necessary to widen Johnston Street) and Lot 30 and Pt Lot 31 New Street.*
2. *The SEPP 1 objection is not supported to vary the process of Cl. 25(2) of HLEP 1989.*
3. *DA 1228/02 be refused for the following reasons:*

- (a) *It does not comply with Cl. 25(2) of LEP1989;*
- (b) *There is no appropriate access available to the site;*
- (c) *It has an adverse noise impact on the adjacent properties;*
- (d) *There is a severe loss of amenity on the adjacent properties;*
- (e) *The impact on the adjacent heritage items is too severe;*
- (f) *Not in the public interest;*
- (g) *The proposal represents an over-development of the site;*
- (h) *The proposal will have an unacceptable impact on the economic viability of Windsor and South Windsor; and*
- (i) *The impact on the development by flood waters is unacceptable.*

On 17 September 2003, the applicant requested a Review of Determination of DA1228/02 under Section 82 A of the EP&A Act. On 9 December 2003 Council resolved not to reconsider its decision of 20 May 2003.

DA0098/04 and DA1228/02 may appear to be the same applications but in fact are different, irrespective of the degree of the variations. Therefore, the full assessment process must be completed for DA0098/04. For reference, the difference between the 2 (two) applications are listed below.

- (i) The recessing of the supermarket loading dock is further into the supermarket space (in response to noise);
- (ii) The building is setback 1 (one) metre from The Terrace side of No. 17 Johnston Street and is to be subdivided, by way of a boundary adjustment, so it may be included in the property of No. 17 Johnston Street (response to access). An offer to cover costs of constructing a driveway has been made by the applicant;
- (iii) The removal of the access way/point through the basement car park to no. 17 Johnston Street (response to access);
- (iv) Minor amendments to the loading dock, near No. 17 and No. 19 Johnston Street (improve landscaping buffer via planter boxes and reduce building bulk);
- (v) Clarification of façade treatment to the basement car park in the south-western corner of the building;
- (vi) Reduction in the width of the pedestrian ramp, to be used as an emergency link (flood free route), on the New Street side of the building and simplification of the façade of the building in this location;
- (vii) Relocation of the 2 (two) sets of amenities to inside the building, 1 (one) from the western exterior and 1 (one) from the eastern interior (in response to matters raised by the Police);
- (viii) A reduction in floor area from 9,435 (nine thousand, four hundred and thirty five) to 9,270 (nine thousand, two hundred and seventy) square metres (supermarket of 3,600 (three thousand and six hundred square metres to remains);

(ix) Relocation of the plant room to the roof of the southern boundary, eastern corner.

(c) Owners consent - No. 17 Johnston Street

The EP&A Act requires the consent/approval of both parties to effect a boundary adjustment. The boundary adjustment is Complying Development under Hawkesbury LEP, and would need to be completed separately by both parties.

Community Consultation

The application was publicly exhibited and adjoining landowners, landowners in the locality and persons who made submissions to DA1228/02 were notified of the development in accordance with the Notification Chapter of Hawkesbury Development Control Plan. As a result of the public exhibition process, 67 (sixty seven) submissions were received being 17 (seventeen) in support and 50 (fifty) objections to the shopping centre. Submission ranged from simple to detailed comments, with expert advice submitted by some objectors. These submissions include some from people who have a direct and indirect link to the town i.e. live in town, work in town, visit town from within the LGA and outside etc. The issues of concern raised by respondents after reviewing the documents included:

1. Council's interest in the application;
2. Howe Park and Community Land;
3. Access to adjacent properties;
4. Planning procedure - 5(a) zoned land;
5. Stormwater;
6. Flooding and the SEPP No. 1 Objection;
7. Heritage and Archaeology;
8. Traffic, Truck Movement and Parking;
9. SREP 20 - Hawkesbury Nepean River;
10. SREP 55 - Contamination;
11. Town Character and Vision and Tourism;
12. Pollution and Hours of Operation;
13. Near by residential uses;
14. Business impact;
15. Strategic Planning and Windsor Masterplan;
16. Due process in assessing the application;
17. Safety; and
18. Inconsistencies in application details.

Comments on these issues are identified within the Planning Assessment.

Local Government Act Matters

(a) Road works, vehicle access to site and classification of Council owned lands

The land in Howe Park, which is required for road works and the Union Lane are classified Community. Cl. 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:

- (a) *a dedication of land for the purpose of widening an existing public road, or*
- (b) *a dedication by the plan of management applying to the land, in respect of existing roads, or*
- (c) *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 Cl. 47F(2)(a). Advice from Council's Solicitors is that Council has the ability to dedicate the required lands as public road which would provide the required access for the shopping centre.

Council, on 4 November 2003, resolved to prepare a local environmental plan to reclassify Union Lane from Community to Operational Land, with the intention of dedicating it as a road. The reclassification will need to occur to enable the roadworks to take place before other works could commence.

Part Lot 30 and Lot 31, 10 New Street are classified Operational and are not dedicated as a road. This land parcel could be leased, sold, or dedicated as road for the application to proceed.

Whatever option Council decides to pursue in determining the road works and use of Howe Park, the application cannot proceed until the LG Act decision-making matters and processes have been completed.

b) Emergency Pathway

Lot 1 DP550135, Johnston Street is unzoned and 1 (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 any structure on this land that facilitates the use of the pathway.

As an emergency access, the pathway must be provided at the 1:100 flood level of 17.3 (seventeen point three) metres.

(c) Works in Howe Park - Girl Guide Hall and Other Works

The existing Girl Guide Hall is located too close to the boundary of the site and would be adversely affected during construction and by the operation of the shopping centre. Its use would be compromised and alternative accommodation arrangements are required at the applicant's expense.

The Plan of Management (POM) for Howe Park would need to be in place before Council could make any decision on the replacement of the existing Girl Guide Hall, as a result of the development. The POM would need to cover all proposed works in Howe Park.

(d) Access Over Lands - Council and Private Owned

A number of properties on the block bounded by Johnston Street, George Street, New Street and The Terrace use access over the site. Legal opinion obtain about No. 17 Johnston Street, which has no access to the street, indicates that Council has no liability to provided access. Access over private lands is a private matter between landowners.

Planning Assessment

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 Provisions

1. Hawkesbury Local Environmental Plan

(a) Land use table and Zone objectives (Clause 9 & 9A)

The site is partly zoned Residential 2(a), Business General 3(a), Special Uses 5(a)-Water Treatment Plant and “unzoned” under Hawkesbury LEP.

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”.

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 under Hawkesbury LEP applies which provides special provisions for the land which enables:

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

Public Exhibition-Issue 4 submissions:

- The use of the 5(a) land is inconsistent with zone objectives; and
- It is not appropriate to rely on Cl. 31(5) to permit the development, as an interim use.
- If the land is surplus to need, then it should be assessed and rezoned to determine the most suitable land use. Council has previously undertaken 16 (sixteen) rezonings for 5(a) lands

in the Local Government Act, which are surplus to need and this process should be the same for this land. The use of the land should be determined by the planning process, not the development process.

- One of the ramps for the emergency pathway 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 130 (Multi Unit Housing) applies to the subject residential land in New Street. Under this draft amendment only a single storey house would be permitted on the land.
- 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 500 (five hundred) metres of a higher order class. Consent is required for works including the disturbance of more than 1 (one) 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 be preferable 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 authorities 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.

The appropriate use and zoning of the 5(a) land is fundamental to the development proceeding. If Council decides to support the application 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 can use Cl.31(5) to approve the development, as there is no qualification on the time associated with the interim use.

The ramp on the 2(a) land forms part of a pathway, which would provide emergency access. The ramp does not provide general entry to the building. As the only function of this pathway is to provide a flood evacuation route for neighbouring residents, it is permissible.

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

The development would not have an adverse affect on the local sewerage system. Works will need to be undertaken to Council standards and access to sewer lines from adjacent properties will need to be maintained.

The impact of the development on the capacity of the stormwater system in conjunction with flooding, which is addressed in the next section, have been considered and 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. 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.

(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 (three) metres below the 1-in-100 year flood level for the area in which the land is situated, except as provided by sub-Clause (4), (6) and (8) [not relevant].*
- 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 17.3 (seventeen point three) metres and the minimum level at which a building can be erected is 14.3 (fourteen point three) metres. The applicant has submitted a SEPP No. 1 objection to Cl. 25(2) to enable the erection of the building below 14.3 (fourteen point three) metres.

Public Exhibition - Issue 8 submissions include:

- The site is a floodway and is a natural basin safety-valve for the River during floods. As a result the development is inappropriate;
- Earthworks associated with the development will change the ability of the site to function in its role as a floodway and storage basin remain a flood storage area. It will increase the impact of flooding in the locality and will lead to other environmental impacts like heavy metals in various stages getting directly into the River;
- No development should be approved that raises any question of risk to life, which is why development standards are set in Hawkesbury LEP; and
- Cumulative impacts of development in the River's catchment are having an even greater impact on the River's function. Capacity levels are being approached and this development would have a significant impact.

The application provides information which includes the following:

- The site performs a dual role on the floodplain being a storage area for "localised" events and as part of the floodplain for larger event, as floodway between the River and South Creek Catchments (low point or sag in catchments is in George Street in front of site at AHD 14.7m). The 2 (two) catchments merge for floods greater than about the 1:50 year events making it a flow path for floodwaters;

- Based on the minimum finished floor level of the car park (RL 11.5metres), floodwaters from an event just over the 1:5 year flood level (AHD 11.1m) will commence to enter the car park and will rise until it is inundated at the 1:10 year flood level at 12.3m (twelve point three) metres. For larger events, water would rise in the car park and eventually reach the level of the sag point in George Street, which would be achieved for an event just below the 1:50 flood level (15.7 metres). Waters would enter George Street via easements on either side of the Macquarie Plaza, on the corner of George Street and New Streets;

The supporting information concludes that as the two catchments merge at about 15.7 metres and that the majority of the development floor level is above 17.5 metres (200mm above the 1:100 flood level of 17.3 metres), the building will not displace or have a significant effect on floodplain storage. It goes on to state that:

- There will be some impact on stormwater drainage as a result of the development, as 1 (one) of the 3 (three) overland flow paths that currently link the 2 (two) floodplains through the Colonial Arcade, would be closed off.
- It is proposed to maintain flow capacity by providing a connection between the car park and George Street, to function as a surcharge pit in the event of a major from the direction of the River.
- A stormwater drainage concept plan will need to be provided to show how the 2 (two) catchments can be satisfactorily isolated both structurally and hydraulically for all events other than during cross catchment flooding. The concept plan will need to show provisional arrangements for stormwater internal and external to the site which will need to be designed in accordance with Hawkesbury DCP for major drainage systems;
- A large structure located in the flow path of water between 2 (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 preparation of a formal Flood Plan, which would be prepared during the detailed design phase of the project and which would be implemented by Centre Management as recommended by the applicant is supported;

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.

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 Senior Counsel on the matter to advise on the interpretation of Cl. 25(2). Senior Counsel advises that Cl. 25(2) 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 SEPP No. 1 objection to the development standard (i.e. 14.3m). The SEPP No. 1 objection is considered below.

The Flood Plan should be undertaken as even a 1:5 flood level, which is a regular event, would affect the operation of the shopping centre. It will assist centre management in their management of tenants, especially those that will have shops situated below 17.3 (seventeen point three) metres. It is considered that the development will achieve satisfactory compliance with the aim of Cl. 25(5), which is to achieve a certain level of safety for access and isolation.

(c1) SEPP No. 1 Objection - Assessment

The applicant objects to the development standard of Cl. 25(2) being a building may be erected up to 3 (three) metres below the 1:100 flood level for the area being 17.3 (seventeen point three) metres. As such a building can only be erected at a minimum height of 14.3 (fourteen point three) metres or greater. The justification by the applicant in summary 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 or for 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 reports 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 car park beneath 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 car park, switch rooms and substation are able to be built from flood-compatible materials. Similarly 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 car park 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.*

Comment

Council assumes the Director-General's concurrence under SEPP No. 1 for determining this type of Objection. The Department of Infrastructure, Planning and Natural Resources (Department) provides Guidelines for examining SEPP No. 1 objections. Development standards are often general numeric tools used to achieve the underlying planning objective.

Assessment of SEPP No. 1 Objection

(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 general planning 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.

The applicant contends that the proposal fulfills those objectives. Given there are no direct State Policies to the contrary the statement is accepted.

(ii) Local Planning Objectives

The 5 (five) local planning objectives for the 3(a)-Business General zone under Hawkesbury LEP are outlined in Section 1(a) of this report.

It is considered that the development meets the zone objectives.

(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 reflecting the height differential between the construction level and floor level at or above the 1:100 flood level and the scale of development to limit the unreasonable filling of land "to build up" to the standard to minimise risk to life and property and to enable evacuation and access for emergency services etc.

The broader issues of scale and bulk will be discussed later in the report. The clause seeks to exclude development from flood liable land and to keep the scale of buildings down. The applicant argues that given the design of the building and its location, the scale is not overpowering.

(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 a number of residential and rural-residential developments would seek variation to the 14.3m standard. However, it is considered that the risk associated with commercial development is much less than for residential.

Conclusion

The applicant's SEPP No. 1 objection has been examined and is considered to be satisfactory.

(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)

These properties represent architecture from the Georgian and early and late Victorian periods and reflect building styles in the evolution of the Town. There are later buildings styles in the Town as well but most of these have little architectural merit.

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 St, 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 is 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.

Public Exhibition - Issue 7 submissions

- Large developments, like one roof retail centres, won't contribute and conserve the heritage and historical character of Town as they dominate nearby heritage buildings and increase heavy vehicles usage on the roads for which they were not designed for and lead to multiplier effects of damage to heritage buildings ie. cracks;
- Aboriginal heritage and potential archaeological significance needs to be taken into account upfront in any application in this historically important Town. Reporting and digs need to be mandatory if Council is serious about maintaining the integrity of the Town;
- The community does not consider the Heritage Impact Statement/Heritage Report of the applicant as being a complete and objective document. It only considers five (5) heritage items instead of nine (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's layout - roadworks will change the significance; the colonial brick barrel drain revealed during previous roadworks in The Terrace is a potential heritage item. The extent of the drain and direction has never been established and could be affected by the development;
- 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. Representative examples of all heritage categories is required under legislation eg. industrial, social, historical, architectural and scientific;

- 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 space around the item from road widening and proximity of the development is not appropriate;
- 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 significance of the Town from Town lands and the River; and
- 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. land use and water supply) that should not be lost as a result of the development.

Hawkesbury Heritage Advisor

The Heritage Advisor has considered the application, and notes the similarities between this application and the DA1228/02. He is concerned with the development which is considered would have adverse impact on the heritage values of the Town ie. character of the Town and amenity of the precinct or site's locality. The following 5 (five) comments are made by the Heritage Advisor about the development:

"1. Suitability of the Site for development

Only part of the site is suitable for development due to the historic context. The history has been strongly influenced by flooding of the Hawkesbury River. The area at the south-eastern end of the site is suitable for development subject to appropriate integration into the built form. The north-western end of the site is unsuited for a large development or any development that would not conform to the historic patterns and established heritage values of the Town.

2. General impact

The nature of the development is inappropriate due to its high dependence on road vehicle access for traders and customers. A shopping centre development of this type would have a higher traffic impact than any equivalent number of individual businesses providing the same services and products. Indeed it is the cumulative impact of such a development that underpins its economic viability. Whereas people now come and go in non-aggregated groups, a shopping centre is a major attractor that generates floods of shoppers, most of whom would arrive and depart by car. I have witnessed the phenomenon at Broadway (city) where one formerly quiet street has been blighted by traffic and consequent traffic controlling measures, to the detriment and amenity of that precinct.

The development would generate a level of vehicular traffic that would have an adverse impact on the Town amenity and therefore the heritage values of the Town. Furthermore it would change the balance of the Town by introducing high levels of traffic intrusion into an area that currently exhibits a degree of tranquillity consistent with the national heritage status of the town.

3. *Impact on heritage values on Windsor*

Windsor is one of the Macquarie-planned towns and a place of national heritage significance. As a consequence of its high significance and development in the Town would need to respect the historic form of the Town and also be compatible with the heritage items in the vicinity.

The proposed design for Riverview Shopping Centre would have a major adverse impact due to its excessively large footprint, which would have an adverse impact on the traditional heritage built form. Whereas now the fabric of the area is made up of modest scale units this development proposes an industrial size form and footprint, which would be entirely incompatible.

4. *Impact on George Street*

The impact at the George Street end of this site would not be as dominant. Due to its low scale at the south-eastern end and the existing two-story built form the impact on George Street would be low.

5. *Impact on view from the Hawkesbury River*

The Hawkesbury River at Windsor is a natural and cultural feature of high significance. The view from the River and lowlands to the Town is a major component of the heritage significance of the Town. It is equivalent in aesthetic values to many historic European Towns.

The historical importance of the elevation of the Town above the River and lowlands is high. Indeed the view of the tower of St Matthew's church from the north is unsurpassed in Australia. It features a delicate form of exquisite architectural style set against a soft landscape of trees and traditional roofscapes. By contrast the proposed north elevation of the Riverview proposal (as it would be seen from the River and lowlands) would be brutal and uncompromising.

In recent analyses of Pitt Town it became clear that the Hawkesbury town views are fragile and vulnerable. Developments of the scale of this proposed development should be avoided at all cost."

In conclusion, the Heritage Advisor states:

"It would be possible to minimise the adverse heritage impact of the proposed development but I would not be confident that the deficiencies could be overcome. It would be possible to further reduce the footprint of the development. That would be an important change. It would be possible to also re-design the north-western façade of the (reduced) development to conform more to the traditional built form. The revised design would need to be attractive and well integrated when viewed from the River and lowlands. It should not have a strong or harsh urban form."

Comment

Having regard to the comments of the Heritage Advisor and the respondents it is considered the development would have a significant impact on the overall character of the Town in terms of scale, bulk, views and proximity to listed heritage items in the site's locality. The applicant has focused on the assessment of the building and has not adequately considered the development in the context of the Town.

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 sits 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 another matter, however, these are owned by the proposed company.

State Environmental Planning Policy (SEPP) No. 11 - Traffic Generating Developments

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

The application was referred to the Roads and Traffic Authority (RTA-Sydney Regional Development Advisory Committee) as required by SEPP 11. The first available Regional Traffic Committee since lodgement of the application, was Wednesday 17 March 2003. Council Officers attended the Committee. Given the short time frame for reporting the application, these comments could not be included in this report. If the comments are available they will be tabled at the Meeting. Notwithstanding the above, Council has the ability to determine an application that is referred to the RTA, when advice is not received within twenty-one (21) days of the referral. The twenty-one (21) days has expired. It should be noted that for applications that are referred under SEPP 11 that RTA comments are taken into consideration in determining an application.

Given the footprint of the development, the roadworks and the proposed traffic management plan for the applicant have not changed from the DA1228/02, is considered that the RTA advice on DA1228/02 is suitable as a reference point and is reproduced below:

- "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 [south] 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 previously, that for the them to approve a TMP it requires the results of any community consultation and advice from an applicant on amelioration measures to be adopted to address any community concerns so the RTA can be satisfied that community concerns about traffic management are addressed. Such results could constitute the submissions submitted to any public exhibition period.

The applicant's traffic report concludes 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 (five) to 7 (seven) per day would occur in Johnston Street this is based on the projected traffic generation for the shopping centre (about 630 vehicles per hour), using the SCATES and INTANAL models.

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:

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.

Public Exhibition - Issue 8 submissions include the following:

- (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; service trucks for uses in Johnston St, especially in the one-way section;

- (c) On-street parking will be lost to facilitate the development; on street parking should be maintained; The development has an impact on the horse float that parks on Sundays in The Terrace;
- (d) 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;
- (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; and
- (g) 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 car parking 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. In this circumstance, truck turning circles for access on Johnston Street is satisfactory and would comply with Australian Standard. Council would have to restrict parking in both streets.
- Car parking is provided in accordance with Hawkesbury DCP. The required spaces are 315 and 325 are provided.

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.

Public Exhibition-Issue 9 included assessment matters like recent urban development in the Hawkesbury-Nepean 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 has been assessed in the flooding issue in a previous section, which showed appropriate measures can be provided. There will be some cut and fill as a result of the development, but no details were provided about the extent. Details would normally be provided with for the Construction Certificate.

SREP 20 aims to promote development which facilitates the conservation of heritage items, including those in other planning instruments, and the significance and relationship of these items to the River of is to be considered. Respondent comment about heritage, including built, natural and landscape, have been considered in previous sections.

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 requires development to comply with certain standards and that land be investigated if contamination is suspected.

Two reports lodged as supporting information are preliminary assessment reports (on risks to human health and to the environment) for Hollands Paddock and the Water Treatment Plant lands that make up the majority of the site. Limited site investigation using a restricted program of surface and subsurface sample screening and chemical testing and/or onsite observation and analytical findings were undertaken by the consultant. The reports indicate:

- Hollands Paddock Report - The site is underlain with alluvial deposits comprising silt, clay and gravel. It has been filled with sand, sandy clay and sandy silt, which was used to level the site. An audit at the time of sale did not identify incidents, practices or operations that are likely to significantly contaminate the land.

Investigation 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. It is considered the land is suitable for re-development for commercial/industrial uses.

- Water Treatment Plant Report -The site is underlain with alluvial deposits comprising silt, clay and gravel. It has been filled with gravely silty sand, silty clay and sandy silt clay, ironstone gravel and cobbles and miscellaneous fill like coal and concrete. Water was observed at about 0.9metres below the surface and it is not known if this is ground or seepage water.

Investigation by Douglas Partners in May 2001 revealed a generally low level of contamination. It is considered the land is suitable for re-development for commercial/industrial uses.

- Any material excavated and removed off site will need to be classified by a qualified environmental consultant and disposed of according to NSW EPA Contaminated Sites": Assessment, Classification and Management of Liquid and non-Liquid Wastes (1999).

Public Exhibition - Issue 10 submissions include that the development, being the site was fill when used by Sydney Water, a contamination report has not been completed and Council cannot lawfully determine the application unless one is prepared, and 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 above details indicate the site has only a low level of contamination. SEPP 55 is not designed to stop development but to ensure remediation of contaminated land takes place before the use of the land changes so harm to human health and the environment is not a risk.

The preliminary investigations has revealed some limited contamination on the site and it's noted that the methods of investigation were limited. It is considered it would not be unreasonable for Council to condition a development consent for a contamination report to be prepared given the Water Treatment Plant land will be fully excavated with appropriate material disposal.

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 around No. 17 & No. 19 Johnston Streets (planters boxes). As some of the landscaping is proposed in accordance with the Landscape Concept Plan (that is not part of application) a site specific landscape plan will need to be provided.

While the planter boxes are commendable, maintenance of the vegetation is questioned and the type of species would need to be suitable for low light conditions, given the height of the shopping centre and its impact on solar access in this part of the development.

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

Likely impacts of the development

(a) Context and Setting/Site Design and Internal Design

Public Exhibition - Issue 11 submissions include that as a result the development will affect:

- Visual impact - of the northern elevation of the building on the locality which does not enhance the views of the Town from the River;

- Bulk & scale - excessive impact on surrounding street; the building will overpower the buildings in Johnston Street and occupants will look at an acoustic wall which is unsympathetic and dominant on the boundary;
- Townscape - intrusive building on a prominent site; and
- Overdevelopment -100% site coverage;
- 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 St;
- Scenic qualities - Windsor is the third oldest Town and its character should be preserved; riverine scenic quality will be affected by the development; and
- Strategic vision - more thought is needed before decisions are made about the future of the Town that affects the whole community.
- 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 would assist 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 (increases from existing George Street level to a floor height of 17.5m for the majority 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.;
- Often it is put forward buildings need to be located above the 1:100 flood level for insurances reasons. Some reduction in the overall height of the building could occur, given the recurrence interval of flood events and the details about localised flooding, which would improve site design. A flood event may not even occur in the life span of a business that would warrant elevating stock The Insurance Council of Australia advises that insurance for flood affected properties is not normally provided (whether, residential, rural or business) and for larger developments/business entities policies are negotiated between the parties (and cover for flooding could be a term of a policy).

- The development will achieve maximum site coverage having an impact on adjacent properties in New and Johnston Street and The Terraces in terms of access to sunlight (shadow diagram not provided for late afternoon) and existing views.

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 St, 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 this 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 uniquely located, being a highly visible transitional area between different land uses and precincts that are used by the local 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.

In terms of strategic vision comments, Council is in the processing of preparing the Windsor Masterplan which will create a strategic vision for the Town and provide an urban design framework for achieving the vision. It will address issues such as parking and traffic, built form controls and making the Town a vibrant and more user friendly and enjoyable place. It will include physical, economic and cultural policies area in the Implementation Program. Notwithstanding the Masterplan process Council has a statutory obligation to determine the DA which is now before it.

(b) Public Domain

Public Exhibition - Issue 2 submission - Howe Park would be lost for roadworks as a result of the development.

Comment

The above concern has been considered in a previous section. The site adjoins public land and development could be better integrated into Howe Park and the River foreshore, especially considering the western 13m boundary wall that will present to the park. It is considered that if the development was better integrated into the adjacent public domain it would enhance it and make it more attractive to users who could park, use the centre and then spend time in Howe Park and on the River foreshore with ease. The proposed landscaping for Howe Park is essential to promote the movement through the centre from the street to the river.

(c) Pollution & Hours of Operation

The application concludes the impact of noise on the surrounding residential area is acceptable with the implementation of attenuation measures. Two noise (2) reports were submitted by the

applicant, with the second one providing an update on the findings of the first report which concluded the development would have an adverse impact on the No. 17 and No. 19 Johnston Street.

Some comments from the second report are:

- (i) The Mechanical Plant has been relocated, therefore the increased distance between the plant and residences will reduce plant noise;
- (ii) Loading Dock -noise levels from dock to be 51dB(A), with no noise wall. The noise wall submitted with application would further reduce noise levels to comply with EPA limits. Requirements for habitable areas of the rear yard of No.17 Johnston Street is a noise wall approximately 3 metres high which could compromise of transparent perspex or polycarbonate panels on top of a masonry wall.

Loading dock use to be restricted to 7am to 10pm.

- (iii) Car park - noise from the car park can comply provided:
 - A solid wall is provided to the boundaries of No. 17;
 - A 3 metre masonry screen wall is provided to No. 19 Johnston Street;
 - Restricting use of Union Lane adjacent to No. 19 Johnston Street to eliminate sleep arousal. The driveway should not be used after 10pm at night or before 7am; and
 - Possible mechanical ventilation of No.1/19 Johnston Street; and
 - The floor of the car park slab to be finished using a rough grade concrete or asphalt, with no sealer to minimise tyre squeals and speed humps to be solid one piece construction.

The reports state the "in-principal noise" control measures in the documents are presented for the purpose of the approval process and that an acoustic consultant must be engaged at the stage or works to provide design detail and specifications prior to the Construction Certificate stage. It is also stated that all the above measure should comply with set noise limits for this development.

Public Exhibition (Issue 13) submissions are:

- (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 -significant noise impact on residents of Johnston Street that can only be controlled by barriers which are not a satisfactory control; 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 demonstrates that the impact of noise transmission for No. 17 and No. 19 Johnston Street is apparent and noise attenuation measures will have to be implemented to comply with noise limit requirements set by the EPA, provided the qualifications take place. Of obvious concern, is the aesthetic impact of a 4.5 metre high wall. The applicant has provided a number of sections detailing the relationship of the wall to the adjoining number No. 17 Johnston Street. The height of the wall which will be visible above the shopping centre trading floor varies from 3.3 metres to 4.5 metres. It is proposed that the top of the wall will be constructed from clear polycarbonate. This will still allow views to be obtained to the north west while providing adequate acoustic screening. Given that the commercial zone allows the buildings to be constructed at the boundary, the proposed clear polycarbonate acoustic wall is considered an acceptable solution.

The hours of operation proposed by the applicant are:

Shopping Centre 7am to Midnight, Monday to Saturday; 8am to 8pm, Sunday; and

Loading Dock 7am to 10pm.

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. The loading dock operational times need to be amended in any consent to reflect EPA times for Sundays and Public holidays. The hour of operation are for shoppers and there would be other people associated with the development on-site after hours, like cleaners.

- (d) Safety, Security and Crime

The shopping centre presents a potential 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 issues like lighting and security of specific areas would require further investigation at a later stage in the development.

Comment

The Crime Prevention Officer's comments about lighting and security and the like would need to be considered during development and operational phases of the development. Conditions of consent can address this matter. The owner and operator of the site would need to comply with any Australian Standard that relates to any aspect the built environment and crime risk.

- (e) Social Impact in the Locality

- Disabled Access

The application was referred to the Disability Access Officer for referral to the Disability Access Committee, which next meets in mid-April. Given the short time frame for reporting the application, the Disability Access Committee's advice was not provided.

However, the Disabled Access Committee advised for DA1228/02 that development needed 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. Given the changes between DA0098/04 and DA1228/02, which do not impact on disability issues, it is considered the Council can utilise the advice of the Committee for DA1228/02. Conditions of consent to ensure any Construction Certificate addresses the BCA and the DDA Act would be standard.

- Nearby residences

Nearby residences in The Terrace and Johnston Street have raised issues about the proposal 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 their location centrally in the Town.

(f) Economic Impact on the Locality

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

- (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 32.5 million per annum in 2003;
- (b) Between 2000-2006 annual available retail spending in the trade area is forecast to increase by \$49.3 million; net sales from the trade area are estimated at \$35.00 to \$43.3 million 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.

Council's economic consultant prepared a report which concluded:

- The report is based on assumptions that there would be 3 (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 17 million, 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.

The following submissions were made during the exhibition:

- (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;
- (d) 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;

- (e) 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 first class national stores and Council should not allow Town to become a second 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 ie. short term leases and no leases.

Comment

The conclusions of the Windsor Economic Development Strategy by Council's consultant are supported in preference to the results of the applicant's economic study, noting the variation in outcomes. There will be an adverse impact on trade levels 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 more flexible floor space and access. It would appear that Windsor in economic terms needs to identify and establish its business niche. The comments were also based on 3 (three) supermarkets operating in Windsor and did not model the affect of one of the existing operations moving to the site.

The Public Interest

Council is in the process of preparing the Windsor Masterplan, which will provide a vision, future directions and urban design opportunities for Windsor in the future. Urban design is concerned with the physical, economic and cultural environments and their interrelationship. The process is not about considering issues in isolation, but about providing an overall framework for Council and the community to implement in Windsor. The Masterplan is a strategic direction which Council has decided to undertake in response to general issues for the Windsor and specifically in resolving the divergence of views on how the subject site should be used.

The Masterplan is about two-thirds complete and the two stakeholder workshops have been completed. The Masterplan is to be finalised in April and reported to Council in May 2004. Completion of the Masterplan is on time. Importantly, the Masterplan will divide the town into precincts, providing development/design principles, guidelines and actions etc. It is considered that given the nearness of completing the Masterplan and that the site is a key site in the Masterplan, that the recommendations of the Masterplan should be considered for any development of this site.

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 9,270sqm of gross floor space of which would be a 3,600sqm supermarket and 325 (three hundred and twenty five) car parking spaces. The shopping centre would be the largest building in Windsor.

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 by flooding, access, adjoining uses and townscape issues which makes it 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 roadworks which require Council's approval under the Local Government Act, 1993 as the works involve public land that is classified Community;
- (2) Reclassification and a POM for Lot 2 DP 788531 (Laneway access point), in favour of the development (which cannot be predicted);
- (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 well founded SEPP No. 1 - Development Standards objection;
- (5) Minimal impacts on the adjoining residential uses.

It is also considered necessary that the owner's consent of No. 17 Johnston Street is required to effect the boundary adjustment at an appropriate stage.

Council has for some time now identified the site as being suitable for commercial development, given its rezoning for that purpose some time ago. While it is normal to expect that commercial buildings would cover the majority of a site, in doing so a building must still provide a level of amenity to itself and its neighbours that are satisfactory.

In regard to the loading dock, the owner and operator would have to demonstrate a high degree of rigour that its operation would not affect No. 17 and No. 19 by adverse noise.

There are a number of matters that need to be resolved by Council as the land owner of certain lands that constitute the site and by the applicant for the development to proceed. With this in mind, the only options for dealing with the application are to:

- (a) approve the development as a deferred commencement consent; or
- (b) refuse the development, giving reasons for refusal.

This report clearly shows that an operational consent cannot be granted at the present time until the identified matters have been resolved. A deferred commencement consent is therefore appropriate.

It is observed that the site is highly constrained by a number of issues including historic and current land use ownership and zoning issues. However, it is considered that these issues can be resolved primarily through the measures proposed by the development. However, the applicant chose to submit the application for Council's consideration in the belief the applicant has satisfactorily provide solutions to the issues.

RECOMMENDATION:

That:

- A. The SEPP1 objection to Cl. 25(2) of the Hawkesbury Environmental Plan be supported.
- B. The development application for demolition of existing buildings, erection of a shopping centre and roadworks be approved as a deferred commencement consent subject to the following conditions:
 - I Upon compliance with the condition appearing in Schedule A, 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 B pursuant to Section 80(3) of the Act.
 - II The "Deferred Commencement" consent will lapse in 24 (twenty four) months from the date of this consent unless all conditions appearing in Schedule 1 have been complied with.

SCHEDULE A

- 1. Land necessary for roadworks to The Terrace and Johnston Street (Lot 3 DP 759095) and Union Lane (Lot 2 DP 788531) is to be dedicated as public road.
- 2. Submission of evidence demonstrating that suitable arrangements have been made for the use of Lot 2 DP 788531 Johnston Street for access to the proposed development.
- 3. Plan of Management for Howe Park is in place that contemplates the relocation of the Girl Guides Hall and landscaping.
- 4. The submission of a Traffic Management Plan approved by the Roads and Traffic Authority.
- 5. A soil contamination report for the entire site to be submitted to Council for approval.

SCHEDULE B

- 1. The development shall be carried out in accordance with the approved stamped plans as submitted with Development Application No. DA0098/04 and any supportive documentation, except as otherwise provided by the conditions of this consent.
- 2. This consent includes approval for the occupation and use of the building for a supermarket and individual retail tenancies.
- 3. This consent covers the removal of trees and other vegetation from the site of approved buildings, structures, permanent access ways and car parks.

4. Compliance with the provisions of the Environmental Planning and Assessment (Amendment) Act 1979, and the Building Code of Australia.
5. Prior to construction of the approved development it is necessary to obtain a Construction Certificates for the whole or any parts of the development.
6. 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).
7. Any part of the building to be used for food preparation shall comply with Council's Code for the fitting out of food premises.
8. No excavation or site works shall be commenced prior to the issue of a relevant Construction Certificate.
9. The applicant shall make themselves aware of the Disability Discrimination Act, 1992 in order to assess their responsibilities and liabilities with regards to the provision of access for all people.
10. 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.

Prior to Issue of Construction Certificate

11. 3 (three) copies of the plans and specifications, designs and calculations of proposed civil works are submitted to and approved by Council or an accredited certifier.
12. Submission of evidence demonstrating that suitable arrangements have been made with Council (as owner) for the use of part Lot 30 and 31 New Street as access for the proposed development.
13. 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.
14. A monetary contribution is to be paid to Council, pursuant to Section 94 of the Environmental Planning and Assessment Act 1979, towards the upgrading of local roads at the rate of 3 (three) cents per tonne per kilometre of local roads travelled by trucks delivering soil to or removing soil from the site.

This contribution is determined in accordance with Hawkesbury Section 94 Contribution Plan. A copy of the Contributions Plan may be inspected at Council's Offices, George Street, Windsor.

The amount of contribution payable under this condition has been calculated on the basis of costs as at the date of consent. In accordance with the provisions of the Contributions Plan, this amount shall be INDEXED at the time of actual payment in accordance with movement in the Consumer Price Index as published by the Australian Bureau of Statistics. In this respect the attached fee schedule is valid for 3 (three) months.

15. 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)".
16. Submission of proof of the payment of the Building Industry Long Service Levy.
17. The disabled car parking spaces shall be provided in the locations shown in red on the stamped approved plans.
18. Payment of a contribution of \$3.58 per sqm of gross floor area to Council for sewer headworks. This sum will remain fixed until 30 June 2004 after which it will be recalculated at the rate applicable at the time of payment. Credit will be given for the gross floor area of the existing commercial buildings that are proposed to be demolished.
19. The proposed shopping centre complex and all associated development is to be constructed in accordance with the requirements of the New South Wales Government Flood Plain Management Manual (2001), Interim Development Guidelines for a "high hazard-flood storage area".
20. Design and construction of site drainage shall be carried out in accordance with Hawkesbury Development Control Plan Appendix E Civil Works Specification: Part 1 Design Specification; and Part II Construction Specification. The drainage system shall be designed to:
 - (a) Minimise impacts on local flooding characteristics;
 - (b) Incorporate source control measures to provide a primary level of treatment for the removal of all gross pollutants.

Full details of works shall be submitted for approval.

21. All stormwater from impervious areas of the site and the immediate local catchment upstream of the site shall be collected and drained by the existing underground trunk drainage system. A concept drainage plan, including any modifications required, is to be submitted to and approved by Council.
22. A surcharge path sufficient to carry the 1:100 year storm flow is to be provided across the site and a drainage easement of adequate width shall be created over the surcharge path. Details are to be submitted for approval.

23. Design details (structural and hydraulic) of the proposed subterranean flood surcharge tube to link the carpark with George Street are to be submitted for approval. The surcharge bypass is to be designed to function in isolation from the existing street drainage system for all storm flow events.
24. Details of all street lighting, line marking and traffic signage to be submitted with the application for the construction certificate.

Prior to Commencement of Works

25. The site and its locality is to be 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.
26. 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. The enclosed warning signs shall be affixed to the sediment fences/erosion control devices at all times.
27. 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.
28. 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.
29. 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.
30. The applicant should contact the New South Wales Fire Brigade (Fire Safety Division) in order to determine the Brigade's requirements for submissions regarding, hydrants, boosters, sprinklers, etc.

During Construction

31. All civil 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.
32. All necessary works being carried out to ensure that stormwater flow from adjoining properties is not impeded.
33. All trucks entering or leaving the site shall have their trays suitably covered to prevent spillage from the truck onto the road.

34. Measures shall be implemented to prevent vehicles tracking sediment, debris, soil and other pollutants onto any road.
35. Dust control measures, eg vegetative cover, mulches, irrigation, barriers or stone shall be applied to reduce surface and airborne movement of sediment blown from exposed areas.
36. 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.
37. All demolition, construction and associated work necessary for the carrying out of the development is restricted to between the hours of 7.00am and 6.00pm on Mondays to Fridays and between 8.00am and 4.00pm on Saturdays.
38. No burning of demolition, construction or vegetative material being carried out on the site.
39. 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.
40. 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.
41. 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.
42. 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.
43. 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 applicant is liable for the cost of all 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.

44. All fill to be adequately compacted by track rolling or similar.
45. The site shall be secured to prevent the depositing of any unauthorised material.
46. A minimum of 309 (three hundred and nine) 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.
47. 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.
48. 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.
49. 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.
50. Access to the development for people with disabilities shall be provided in accordance with the requirements of 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". It is preferred that disabled toilet facilities are identified Unisex and that doors open outwards to enable easy access in emergencies.
51. 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.
52. All recommendations contained in the soil contamination report required under Schedule A are to be implemented.
53. 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. Inspection fees apply.
54. 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 as per Council's Revenue Pricing Policy will apply.

55. The construction of sewerage reticulation, including junctions, to the development where not already provided.
56. Emergency ramps on Lot 1 DP550135, Johnston Street, Windsor and Lot 1 DP998433 No. 8 New Street, Windsor shall be constructed to BCA and DDA requirements. The ramp on Lot 1 DP998433 shall be maintained for use by the general public at all times by the owner and operator at no cost to Council.
57. Appropriate legal access be granted either in the form of a ROW or transfer of land to No. 17 Johnston Street, Windsor for the purpose of a boundary adjustment.

Prior to Issue of Occupation Certificate

58. Drainage easements of adequate width are to be created over existing water courses flowing through the subject land. Where necessary existing easements for stormwater created in favour of Hawkesbury City Council may be amended to suit approved alterations caused by the works.
59. The approved use shall not commence and an occupation certificate shall not be issued until all conditions of this Development Consent have been complied with.
60. Landscaping shall be completed in accordance with the approved landscaping plan.
61. A physical barrier is to be provided between the landscaped area and any driveways or parking areas.
62. Registration of a plan of survey consolidating the site into a single allotment.
63. The submission of a Surveyor's Certificate stating that all pipelines are contained within the proposed/existing easements.
64. 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 as per Council's Revenue Pricing Policy will apply.
65. Certification to be provided by qualified professionals advising that all measures and recommendations contained in the acoustic and soil contamination reports have been provided.
66. A report by the design engineer stating the conformance or otherwise of the system in relation to the approved design is to be submitted.
67. Works-As-Executed drawings which indicate the following are to be submitted to and approved by Council:
 - (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.

- 68. The car park 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.
- 69. 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.
- 70. Appropriate signage and line marking is required to prevent queuing across the access to the Fire Station car park in Union Lane.
- 71. The existing southern kerb and gutter in Johnston Street is to be repaired or replaced for its full length.
- 72. The existing kerb and gutter on the western side of the Union Street access is to be repaired or replaced and access to Numbers 19, 23 and 27 is to be provided.
- 73. The construction of concrete kerb and gutter, including layback vehicular crossings, concrete path paving for the width of the footway area 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.
- 74. 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.
- 75. 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.
- 76. The existing pavement depths in Johnston Street, New Street, Union Lane and the Terrace shall be increased as a result of the increased traffic generated by the development. The pavement shall be designed by a Geotechnical Engineer.
- 77. To ensure that structural stormwater source control devices are satisfactorily maintained the owner/s shall be required at their cost to enter a positive covenant over all of the land comprised in the development in favour of the Council to at all times maintain, repair and keep the devices operational.
- 78. Signs are to be erected in the loading dock and delivery access area "switch engine off while waiting and loading".

79. An acoustic screen wall is to be provided in accordance with the stamped approved plans. The sections of these screens which will be visible above the shopping centre trading floor level are to be constructed of clear polycarbonate or acrylic material with sufficient mass to prevent direct noise transmission to adjoining residential properties. Landscaping including mature trees and shrubs is to be incorporated with the screen wall. The acoustic wall shall extend from Johnston Street along the north and west boundaries of No. 17 Johnston Street and return to the building wall.
80. Acoustic installation is to be installed to the roof and walls of both of the loading dock stock area and covered truck bays at the loading dock.
81. The applicant shall prepare a flood emergency evacuation and management plan for the proposed development. The plan should advise occupants of flood evacuation procedures and emergency contact telephone numbers. The applicant should contact Council and the State Emergency Service for advice in the preparation of the management plan. The evacuation procedures should be permanently fixed to the building in a prominent location and kept up to date at all times.

Use of the Site

82. Trucks are not permitted to park with engines idling in the loading dock or loading dock access driveway.
83. The relevant sewer authority (Hawkesbury City Council) must be consulted regarding acceptable discharge limits to the sewerage system. A Trade Waste Agreement must be entered into with the relevant authority prior to discharge of trade waste from the premises.
84. 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.
85. The subject development, including landscaping, is to be maintained at all times in a clean and tidy manner.
86. 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.
87. All waste materials to be stored and disposed of at regular intervals.
88. 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.

SPECIAL

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89. 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 but not limited to public trading hours, the use of the loading/delivery area, stock movement, cleaners and garbage collection.
90. 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.
- C. The consent be issued at 12:00 midday on Monday, 22 March 2004, unless a Notice of Recision is received prior to that time.

ATTACHMENTS:

AT-1 Separate book of A3 Plans.

oooO END OF ITEM 33 Oooo



special
meeting

end of paper