



# Hawkesbury City Council

## ordinary meeting business paper

date of meeting: 28 March 2006

location: council chambers

time: 5:00 p.m.



**ORDINARY MEETING****Table of Contents****TABLE OF CONTENTS**

| <b>ITEM</b>                                  | <b>SUBJECT</b>                                                                                                                              | <b>PAGE</b> |
|----------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------|-------------|
| <b>SECTION 4 - Reports for Determination</b> |                                                                                                                                             | <b>5</b>    |
| Item: 63                                     | CP - 203 Cattai Road, Pitt Town - Amendment 145, Hawkesbury Local Environmental Plan - (95498, 7972)                                        | 5           |
| Item: 67                                     | IS - Road Naming Proposal - Subdivision Lot 2, DP814567 - No. 703 Blaxlands Ridge Road, Kurrajong - Proposed Kirkwood Road - (95495, 79346) | 12          |
| Item: 70                                     | SS - Proposed Acquisition by RTA for Road Widening - Lots 1 & 3, Section K, DP 759096 (Windsor Catholic Cemetery) - (95496, 96333, 33305)   | 16          |

**ORDINARY MEETING**

Meeting Date: 28 March 2006

## ORDINARY MEETING

Meeting Date: 28 March 2006

### SECTION 4 - Reports for Determination

**Item: 63**                      **CP - 203 Cattai Road, Pitt Town - Amendment 145, Hawkesbury Local Environmental Plan - (95498, 7972)**

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#### REPORT:

Council has received a request from Mr P Dunesky on behalf of his father, concerning their property at 203 Cattai Road, Pitt Town and it's partial inclusion in Amendment No. 145, where part of the property will be zoned Rural Housing. This matter has been reported to Council as requested via email transmission received from Councillor Rasmussen on 17 March 2006.

Council received an email transmission from Mr Dunesky on 20 February 2006, which was responded to on 24 February 2006. Both these items of correspondence are attached. Further correspondence was received at Council on 16 March 2006, a copy has also been attached.

The primary point of the first letter was to request Council to remove the property from the effects of Amendment No. 145 to the Hawkesbury Local Environmental Plan, which would rezone part of the land to Rural Housing as part of the Pitt Town rezoning. An extract of the map associated with this draft plan is attached.

Mr Dunesky was advised that in light of Council's previous resolutions on matters such as this, it is unlikely that this would proceed and should he wish to essentially rezone the property on the assumption of Amendment No. 145 would be gazetted, then Council's normal rezoning application fee would apply. He was also informed of the fact that the Director General of the Department of Planning would prefer Council to concentrate on its comprehensive review rather than carrying out spot rezonings.

Council's previously dealt with a request by Mr Tim Elliot, with regards to his property being excluded from the Amendment, however Council resolved no to do this but did resolve to remove Mr Elliot's land from the Development Control Plan. Mr Dunesky's land is affected by lot averaging provisions to the corner of his property, as per Amendment No. 145. The recently adopted charges for stormwater and the associated Water Management Plan indicate that a wetland detention basin located on this land would serve both Mr Dunesky's land and the land to the south owned by the Weller brothers.

Mr Dunesky reiterates his objections to the construction of a wetland on his property. It should be noted, as was advised to him, that should he or his father not wish to proceed with development of their property there is no obligation for the construction of a wetland to take place unless it is associated with development in accordance with the Amendment. The need to construct a wetland arises directly from the application to develop the land for housing blocks, as envisaged by the draft Amendment. If Mr Dunesky does not wish to proceed with the wetland then the associated property adjacent that needs the wetland, would have to find alternative arrangements.

The letter then addresses the question of: 'existing use rights' and when they might apply. In respect of Rural Housing, the most likely circumstances where 'existing use rights' may apply, is to do with intensive agriculture. If Mr Dunesky can establish that he had intensive agricultural activities on his land prior to 1998 when Council amended the LEP, and the land is zoned Rural Housing, then he may well have 'existing use rights' for that activity. However, unless all these circumstances can occur, then 'existing use rights' as defined in the EP&A Act would not arise.

Mr Dunesky appears to be concerned with whether Council will take action to ensure that his current agricultural activities can continue unhindered by the adjacent residential development. Council has been informed on many occasions that this is not possible, and that anyone can take action under their common law rights to prevent a nuisance being incurred by themselves from adjacent land use, notwithstanding

## ORDINARY MEETING

Meeting Date: 28 March 2006

whether or not Council has or has not given consent to that land use. This was an issue that was canvassed in the preparation of Amendment No. 145, and Council resolved not to instigate any buffer zones to help alleviate this situation.

Finally, Mr Dunesky raises the issue of the quality of the stormwater being discharged to his property, from the surrounding development. Council will recall that the standards for discharge were set by the Department of Environment and Conservation, and it is these standards that led to the design of the wetland system that Councillors recently adopted fees and charges for. It is assumed that provided Council meets these discharge standards, then on the authority of the Department of Environment and Conservation this stormwater should be suitable for use downstream. It was not Council that set the standards for discharge, but the DEC. It will be a matter of fact on the performance of the wetlands, whether or not these standards have been met and Council will be clearly obliged to ensure that these standards are fulfilled in its operation of these wetland detention basins.

In summary, Mr Dunesky has been a consistent opponent to the rezoning of the land at Pitt Town. Part of his father's land will be zoned for Rural Housing, and the remainder will remain in the same zone. If he, or his father does not wish to participate in the zoning's potential, then no development will take place. There is no compulsion on him to carry out the construction of a wetland proposed on his land until such time as it's need arises from the development of his land. It should be noted that funds have been allocated in the fees and charges for the development of a wetland system to compensate Mr Dunesky and other landowners for the land that will need to be transferred to Council, but this is purely voluntary and does not occur unless Mr Dunesky wishes for it to take place.

In view of Council's previous decision on Mr Elliot's land, it is assumed that Council will not be seeking to amend Amendment No. 145 and Mr Dunesky should be advised accordingly.

### Conformance to Strategic Plan

The proposal is deemed to conform with the objectives set out in Council's Strategic Plan i.e:

*"Objective: Identify and implement appropriate actions to protect and rehabilitate the natural environment."*

### Funding

No impact on funding.

### RECOMMENDATION:

That Council advise Mr Dunesky that in view of the fact it has sent Amendment No. 145 to the Minister for gazettal, it is not going to withdraw it and amend it at this late stage.

### ATTACHMENTS:

- AT - 1** Emailed correspondence received from Mr P Dunesky - 20 February 2006.
- AT - 2** Correspondence received from Mr P Dunesky concerning the rezoning of 203 Cattai Road, Pitt Town - 16 March 2006.
- AT - 3** An extract of the map associated with draft Amendment No. 145 to the Hawkesbury Local Environmental Plan.

**ORDINARY MEETING**

Meeting Date: 28 March 2006

**AT - 1 Emailed correspondence received from Mr P Dunesky - 20 February 2006.**

Hawkesbury City Council

366 George Street

Windsor

NSW 2756

20th. February 2006

Dear Mr. Faulkner

I write to you on behalf of my father, Mr. George Dunesky, owner of the land at 203 Cattai Road, Pitt Town. He requires a reversal of the proposal to rezone his land within the investigation area and site a detention basin on his land that is outside the investigation area.

We find it necessary to make this request due to the fact that a detention basin is still shown in the Pitt Town Water Management Plan, 30th November 2005, Revision 2, which has just been released and which we understand is the final version of this plan.

A detention basin was first indicated on his land in the Pitt Town Local Environmental Study, Stormwater Management Principles, Figure 5.1. It is also noted that " this network will only be required for the High Growth Scenario". The present proposal of 631 lots is well below the high growth scenario of 1405 lots.

You would remember that Hawkesbury City Council resolved not to compulsorily acquire any land within Pitt Town, where the landholder was not agreeable to such an arrangement

At no time throughout the current rezoning process has my father been notified by Council that his land would be needed to site any type of stormwater device as shown in the studies and plans.

Neither has he indicated that he would be in agreement to such an arrangement.

What is also disturbing is that the detention basin indicated on his land is retaining stormwater runoff from the proposed subdivision of an adjoining neighbour's land. This detention basin should be sited on that neighbour's land as part of his subdivision proposal

**ORDINARY MEETING**

Meeting Date: 28 March 2006

As well Council has not notified him if there will be any easements across his land. Can you confirm what is proposed in this respect?

You should also be aware that under the current Environment Protection Zoning this property is still used for farming and any impacts brought about by the proposed rezoning could adversely affect its continued use. Will Council provide a buffer zone that affords adequate protection from any adverse impacts that might occur from the proposal to rezone adjoining farmland for residential use? Will our existing use rights be supported and protected by Council?

Further, we ask you to advise what the impacts on the non permanent creek that runs through the property will be. Will we be expected to accommodate increased water flows from adjoining properties (unacceptable), will this water be safe for our stock to drink, have our down stream neighbours been advised of any impacts on their properties?

I ask that you please reply to our concerns as soon as possible and confirm that the appropriate changes and amendments will be carried out before final decisions are made.

Yours Sincerely

Mr. P. Dunesky

203 Cattai Road

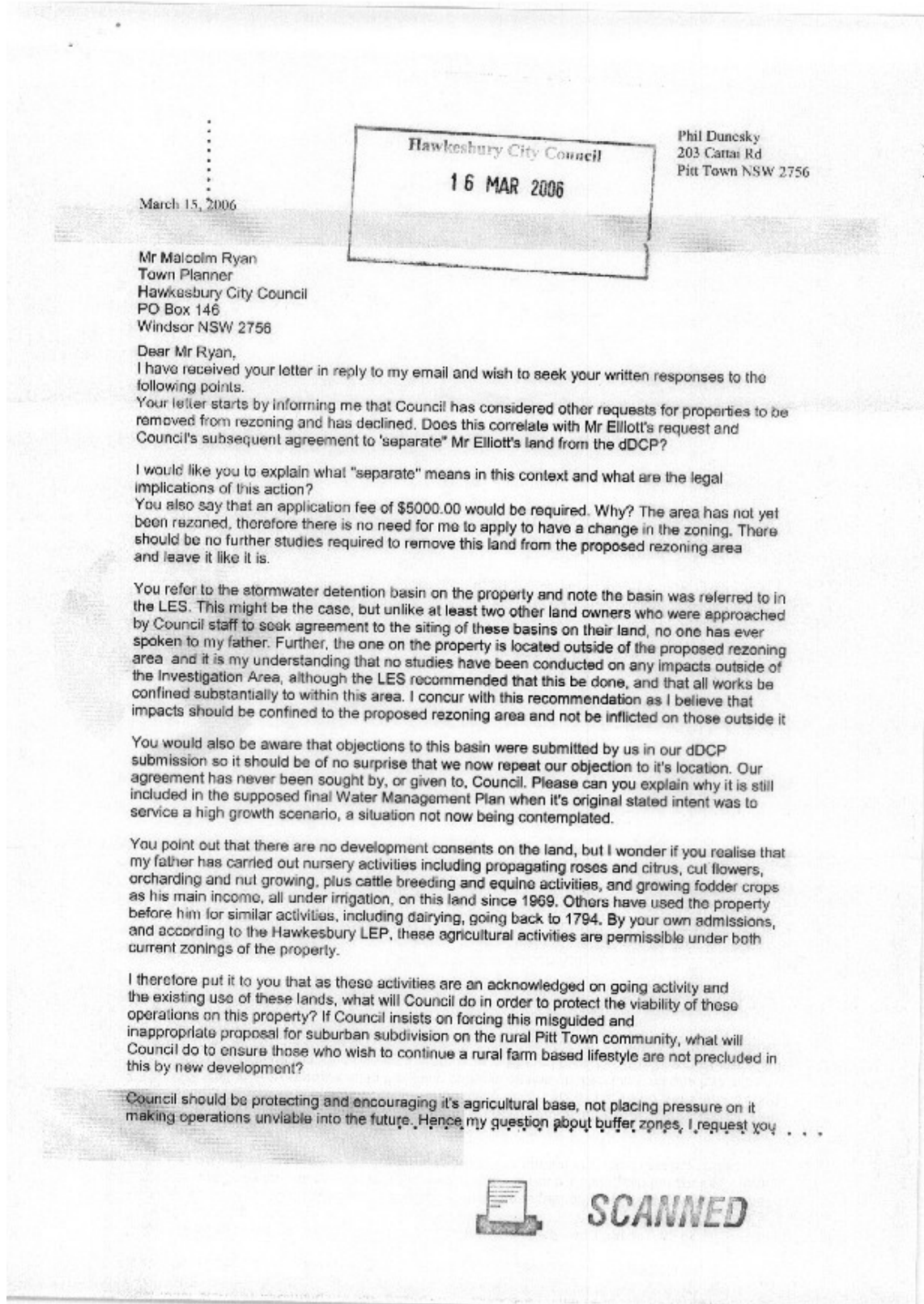
Pitt Town



ORDINARY MEETING

Meeting Date: 28 March 2006

**AT - 2 Correspondence received from Mr P Dunesky concerning the rezoning of 203 Cattai Road, Pitt Town - 16 March 2006.**



## ORDINARY MEETING

Meeting Date: 28 March 2006

*March 15, 2006*

*Page 2*

seek assurances from Council that adequate buffer zones be employed to protect the livelihoods of those wishing to continue agricultural enterprises.

Finally, you state that the water that will enter the creek on the property will be safe for our stock to drink. Under what authority do you make that judgement? Are you a water expert? I intend to keep a record of your statement for reference in the unhappy event of our stock needing veterinary attention for water borne sickness.

Mr Ryan, I feel that as the "experts", Council is obligated under legislation to work out satisfactory methods of protecting agricultural lands and not just impose a housing subdivision on those who wish to continue farming in the Hawkesbury. To ignore this request is to ignore farming and agriculture in the Hawkesbury.

*Phil Dumesky*

C/C Hon. Frank Sartor Minister For Planning

Hon. John Aquilina

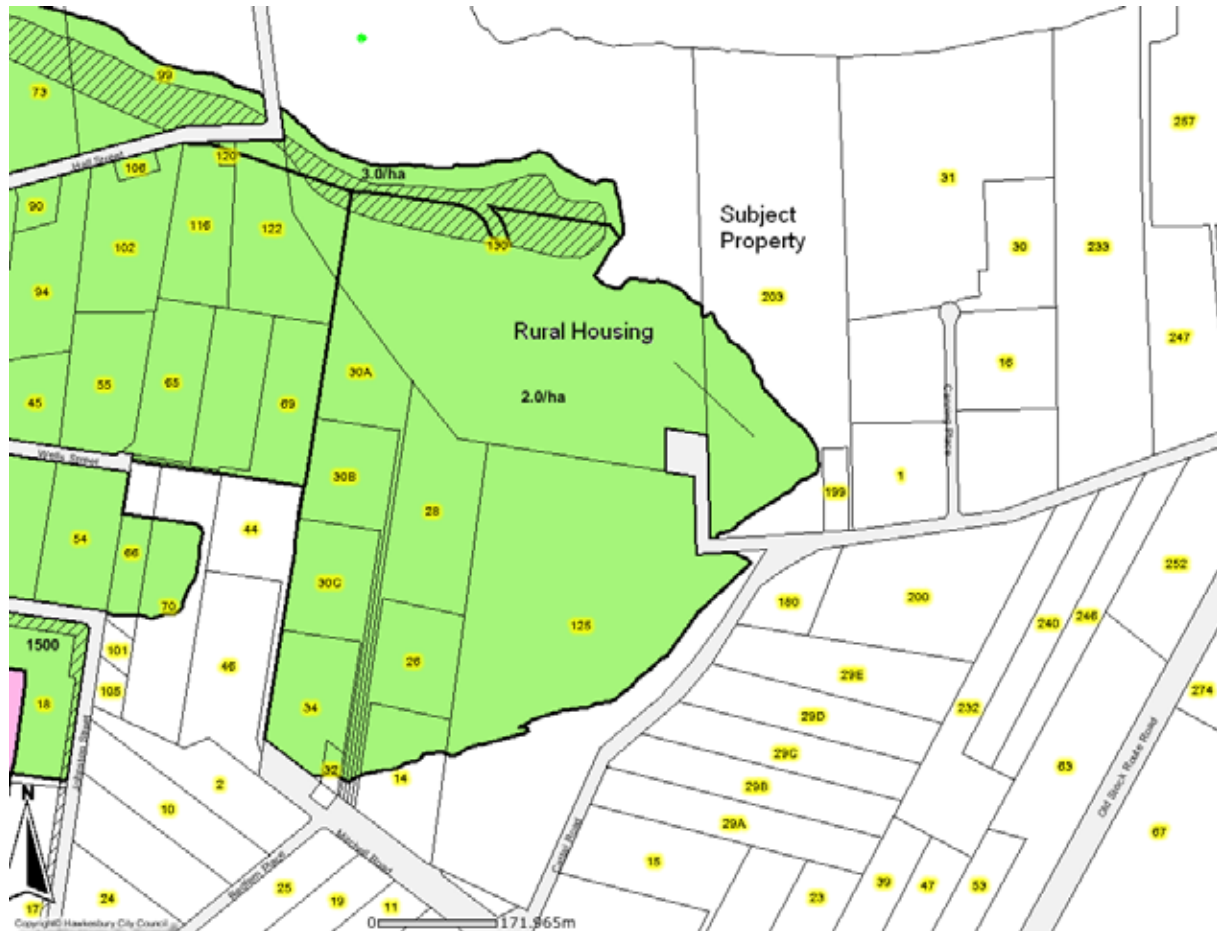
Hon. Dianne Beamers, Minister for Western Sydney

Mr Graeme Faulkner, General Manager, Hawkesbury City Council

ORDINARY MEETING

Meeting Date: 28 March 2006

**AT - 3 An extract of the map associated with draft Amendment No. 145  
to the Hawkesbury Local Environmental Plan.**



oooO END OF REPORT Oooo

## ORDINARY MEETING

Meeting Date: 28 March 2006

**Item: 67**                    **IS - Road Naming Proposal - Subdivision Lot 2, DP814567 - No. 703 Blaxlands Ridge Road, Kurrajong - Proposed Kirkwood Road - (95495, 79346)**

**Previous Item:**            325, Ordinary (1 November 2005)

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### REPORT:

Council at its meeting held on 1 November 2005 resolved that public comment be sought regarding naming of the public road incorporated within subdivision of Lot 2, DP814567, No. 703 Blaxlands Ridge Road, Kurrajong as Kirkwood Road.

Public comment was sought by way of advertisement in the local press and correspondence addressed to statutory authorities/organisations/proximate residents. The public comment period expired on 6 January 2006 with the following results:

1. No Objection - 2 (Department of Lands/Rural Fire Service)
2. Objection - 6 (Local Residents)

Local residents have requested either "Ironbark Ridge Road" or "Ironbark Road". The bases of objection devolve to use the name "Ironbark" locally for at least 50 years and resident expectation that the name would be used when purchasing lots.

Guidelines issued by the Geographical Names Board of New South Wales state that name duplication within a Local Government area should be avoided as well as names comprised of two or more words.

An Ironbark Drive, Wilberforce, exists.

Given the above mentioned guidelines and to alleviate any confusion in relation to emergency services response times, it is felt that the name "Kirkwood Road" should be adopted.

### Conformance to Strategic Plan

The proposal is deemed to conform with the objectives set out in Council's Strategic Plan i.e:

*"Objective: Implement processes to identify and respond to the infrastructure requirements (information, access and mobility) of groups with special needs."*

### Funding

Funding is available within the current budget.

### RECOMMENDATION:

That the public road within the subdivision of Lot 2, DP814567 - No. 703 Blaxlands Ridge Road, Kurrajong be named as Kirkwood Road.

### ATTACHMENTS:

**AT - 1**    Plan - Proposed Kirkwood Road

**AT - 2**    Previous Report to Council Meeting of 1 November 2005

Meeting Date: 28 March 2006

## ORDINARY MEETING

Meeting Date: 28 March 2006

### AT - 2 Previous Report to Council Meeting of 1 November 2005

**ITEM: 325 IS - Road Naming Proposal - Subdivision Lot 2 DP814567, Blaxlands Ridge Road, Kurrajong - (95495, DA1208/03)**

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#### **REPORT:**

Incorporated within a three lot rural subdivision of Lot 2 DP814567, 703 Blaxlands Ridge Road, Kurrajong is a public road running in a generally north west direction from Blaxlands Ridge Road. This public road was originally a Crown Public Road. The transfer of the Crown Public Road to Council was Gazetted of 24 March 2005.

The plan of subdivision, was registered by the Land Titles Office as DP1082298 on 24 May 2005.

No suggested names have been put forward by the developer. In accordance with the guidelines set down by the Geographical Names Board of NSW and the requirements of the Road Act 1993, the Hawkesbury Historical Society and Council's Library Historian were approached to ascertain names for this new public road. The following information as provided is listed below.

**Hawkesbury Historical Society** recommends the name "Trafalgar". The Bicentenary of this battle falls on the 21 October 2005.

On receipt of the news of Nelson's victory the Bowman Flag was designed and flown in the Hawkesbury. The flag was the first flag designed in this country and was the first flag to include the kangaroo and emu, which are now part of the Australian Coat of Arms.

**Hawkesbury City Council Library Historian** advises the following suggestions:

- Ironbark Ridge - The name of the ridge at Blaxlands Ridge.
- Mitchell - Name of the first title holder of the land through which the road runs.
- Kirkwood - Lillian Kirkwood was a nurse and midwife who attended to the health needs of the "Ridge" for many years from 1930s.
- Connor - Nora Connor was a teacher at the school from 1930s and her home still stands a short distance from the school.
- Tierney - One of the families who lived on the "Ridge" for many years.
- Hennessey - (need to check exact spelling) another of the families who lived on the "Ridge" for many years.
- These are all names drawn from the local area.

With regard to "Trafalgar", the significance of this event in establishing British Maritime hegemony is recognised; however, the name/event is of singular import to the British nation. Evidence by the fact that Nelson's flagship, "Victory", is still maintained as a fully commissioned warship of the British Navy. It is felt that the Australian National identity has emerged sufficiently to recognise its own citizenry/event/milestones.

To this end it is suggested that the name "Kirkwood" be allocated to this road on the following bases:

- a) Lillian Kirkwood was a local identity within the Blaxlands Ridge community, she was a nurse/midwife.
- b) As nurse/midwife, Lillian Kirkwood fulfilled a crucial role within, at that time, a relatively isolated community requiring independent and self-reliance in serving the various needs of the community.

#### **Conformance to Strategic Plan**

The proposal has no linkages to the objectives set out in Council's Strategic Plan.

**ORDINARY MEETING**

Meeting Date: 28 March 2006

**Funding**

Funding is available within the current budget.

**RECOMMENDATION:**

That public comment be sought regarding naming of the proposed public road within the subdivision of Lot 2, DP814567 Blaxlands Ridge Road Kurrajong as "Kirkwood Road".

**oooO END OF REPORT Oooo**



## ORDINARY MEETING

Meeting Date: 28 March 2006

**Item: 70                      SS - Proposed Acquisition by RTA for Road Widening - Lots 1 & 3, Section K, DP 759096 (Windsor Catholic Cemetery) - (95496, 96333, 33305)**

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### REPORT:

In association with the construction of the Windsor Flood Evacuation Route, the Roads and Traffic Authority (RTA) proposes to undertake road works to upgrade Richmond Road. They have advised that this will necessitate the acquisition of part of the Roman Catholic Burial Ground, being Part of Lots 1 & Lot 3, Sec K, DP 759096 located on the corner of Richmond Road and Macquarie Street, Windsor. The total area of the subjects lots is 2395.7m<sup>2</sup>.

In a Deed dated 4 July 1969 the Trustees of the Roman Catholic Church and Council agreed to vest the care, control and management of the Cemetery in Council. This was subsequently notified in the Government Gazette of 17 July 1970. Accordingly, the RTA have sought Council's consent to acquire a portion of the land being approximately 980m<sup>2</sup> by compulsory acquisition. A diagram of the area to be acquired is attached.

The RTA commissioned Archaeological & Heritage Management Solutions Pty Limited of Annandale to assist in the management of the exhumation and reinterment process, which is separate from the land acquisition process.

The Crown Solicitors has confirmed that to effect the acquisition of the exclusive rights of burial and to carry out the exhumation and reinterment of human remains, it will be necessary to enact an Act of Parliament.

The RTA proposes to base the new Act on the previous examples where Acts of NSW Parliament have been used for this purpose by the RTA's predecessor, the Department of Main Roads; in particular, the Campbelltown Presbyterian Cemetery Act 1984.

On that basis, it is proposed that the new Act will provide that, subject to preconditions:

- a) The cemetery land may be compulsorily acquired by the RTA for the purposes of public road;
- b) The RTA may arrange and carry out the exhumation and reinterment work;
- c) The property adjustment works (including the relocation of monuments) are to be in accordance with agreements between the parties (being the Crown, Council, Diocese of Parramatta and RTA) and as approved by the NSW Heritage Council and NSW Department of Health; and
- d) Such works are to constitute the full compensation under the Act and that no monetary compensation is payable.

These provisions are generally in accordance with the Campbelltown Presbyterian Cemetery Act 1984.

It is considered that, as minimal maintenance and improvement of the land has been undertaken by Council and as Council are not the owners of the land, a claim for compensation is considered unreasonable.

The RTA now seek the concurrence of Council, as Trustee of the Cemetery, to the acquisition of the required part of the cemetery by the proposed Act. The RTA has also written to the Crown and the Diocese of Parramatta requesting their consent in this matter.



## ORDINARY MEETING

Meeting Date: 28 March 2006

### Conformance to Strategic Plan

The proposal is deemed to conform with the objectives set out in Council's Strategic Plan i.e:

*"Objective: Processing of miscellaneous property matters including road closures /opening, easements acquisitions, etc."*

### Funding

No effects on current funding

### RECOMMENDATION:

That:

1. Council acknowledge the compulsory acquisition of Part of Lots 1 & 3, Sec K, DP 759096, being approximately 980m2 of Windsor Catholic Cemetery by the Roads and Traffic Authority in association with construction of the Windsor Flood Evacuation Route.
2. Council concur to the compulsory acquisition of Part Lot 1 & 3, Sec K, DP 759096, being 980m2 of Windsor Catholic Cemetery, subject to the enactment of an Act of parliament that provides for the preconditions a) to d) in the report and the concurrence of the Crown and the Diocese of Parramatta.
3. That all necessary documents, associated with this matter, be signed under the Seal of Council.

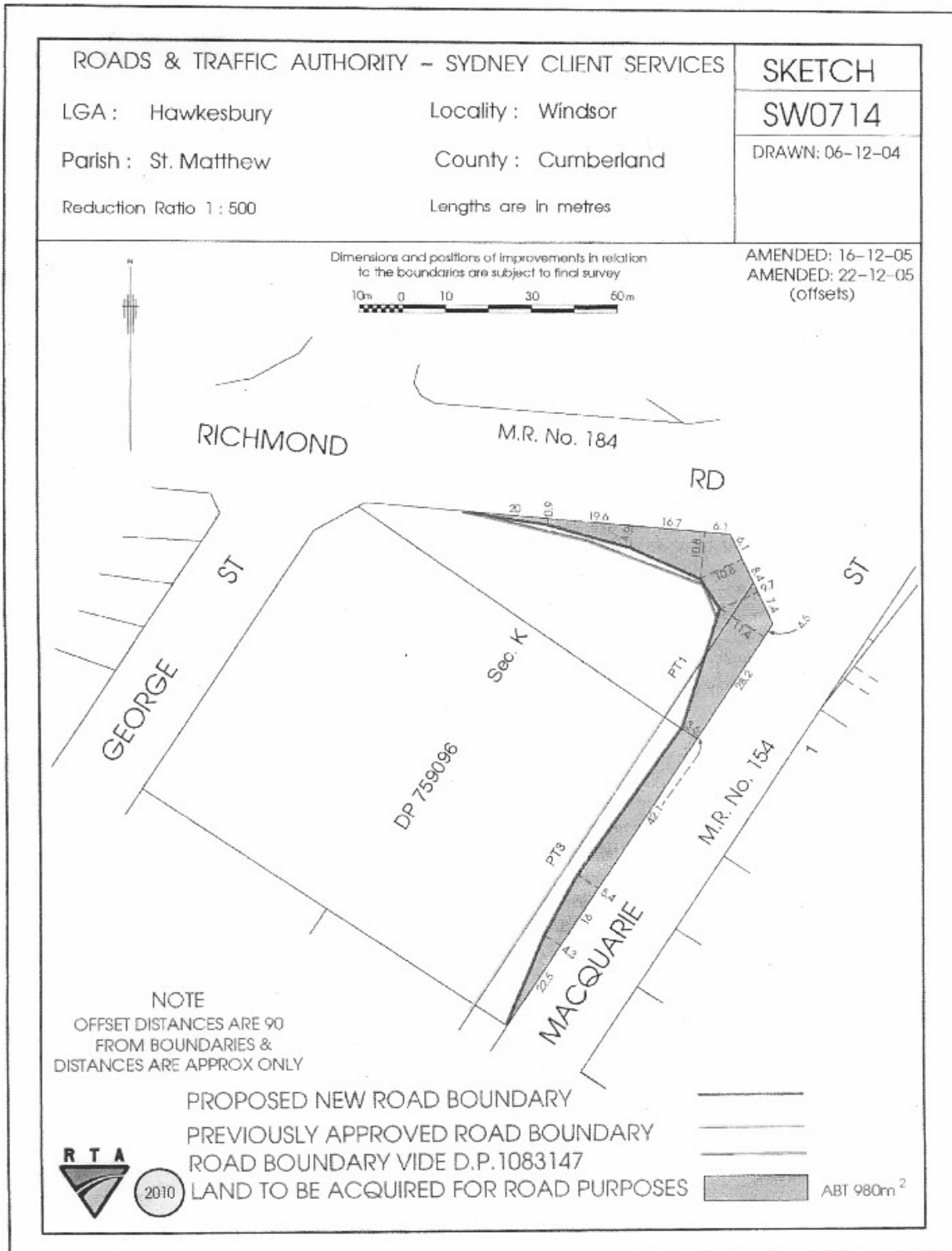
### ATTACHMENTS:

**AT - 1** Diagram of proposed area to be acquired.

# ORDINARY MEETING

Meeting Date: 28 March 2006

## AT - 1 Diagram of proposed area to be acquired.



PIMS

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**ORDINARY MEETING**

Meeting Date: 28 March 2006



ordinary  
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