



Hawkesbury City Council

hawkesbury
independent
hearing and
assessment
panel
minutes

date of meeting: 28 March 2018

location: council chambers

time: 11:30 a.m.

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Minutes of the Hawkesbury Independent Hearing and Assessment Panel held in Council Chambers, Council Offices, Windsor, on 28 March 2018, commencing at 11:36am.

ATTENDANCE

- Present: Steve Kennedy, Expert Representative, Alternate Chair
John Brunton, Expert Representative
Jane Fielding, Expert Representative
Cassandra Holtom, Community Representative
- In Attendance: Mr Matt Owens, Director City Planning
Ms Cristie Evenhuis, Manager Development Assessment
Mr Andrew Johnston, Senior Town Planner
Ms Sanzida Alam, Town Planner
Ms Ursula Lang, Town Planner
Mr Nicholas Powers, Town Planner
Mr Michael Wearne, Manager Corporate Services and Governance
Miss Ammie Herrington, Governance Officer
- Apologies: Alison McCabe, Expert Representative, Chair

DECLARATIONS OF INTEREST

Alison McCabe declared an interest on Item 001 prior to the meeting and was not in attendance at the meeting.

ADDRESS BY INVITED SPEAKERS

The Chairperson enquired to those present in the Gallery as to whether there were any persons who would like to address the Panel.

The following persons addressed the Panel:

<u>SPEAKER/S</u>	<u>ITEM NO./SUBJECT</u>
Mr Ken Hardaker	001 – DA0332/16 - 396 Bells Line of Road, Kurmond - Lot 2 DP 607906 - Subdivision to create Thirty Seven (37) residential lots within a community title scheme.
Mr Mike Caris	001 – DA0332/16 - 396 Bells Line of Road, Kurmond - Lot 2 DP 607906 - Subdivision to create Thirty Seven (37) residential lots within a community title scheme.
Mr Robert Montgomery	001 – DA0332/16 - 396 Bells Line of Road, Kurmond - Lot 2 DP 607906 - Subdivision to create Thirty Seven (37) residential lots within a community title scheme.
Mr Peter John Caines	002 – DA0357/17 - 122 Hermitage Road Kurrajong Hills - Lot 22 DP 806072 - Telecommunications Facility.
Mr Andrew Malon	002 – DA0357/17 - 122 Hermitage Road Kurrajong Hills - Lot 22 DP 806072 - Telecommunications Facility.
Mr Steven Gow	002 – DA0357/17 - 122 Hermitage Road Kurrajong Hills - Lot 22 DP 806072 - Telecommunications Facility.

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Ms Belinda Gow

002 – DA0357/17 - 122 Hermitage Road Kurrajong Hills - Lot 22 DP
806072 - Telecommunications Facility.

Ms Jacqueline Crompton

002 – DA0357/17 - 122 Hermitage Road Kurrajong Hills - Lot 22 DP
806072 - Telecommunications Facility.

The public part of the Hawkesbury Independent Hearing and Assessment Panel meeting closed at 12:39pm.

The Panel retired to the Small Committee Room for consideration of the matters listed on the Business Paper and made its determinations as follows:

SECTION 1 – Reports for Determination

Item: 001 **CP - DA0332/16 - 396 Bells Line of Road, Kurmond - Lot 2 DP 607906 - Subdivision to create Thirty Seven (37) residential lots within a community title scheme (95498, 137333, 76639)**

Directorate: City Planning

The Panel Chair, Ms Alison McCabe, declared a non-pecuniary conflict of interest in this matter as the Council appointed Town Planning Consultant had previously undertaken contract work for the firm of which she is a Director. She was not in attendance at the meeting.

The Panel inspected the subject site and viewed the site, neighbouring properties and context prior to the public meeting.

Mr Ken Hardaker, Mr Mike Caris and Mr Robert Montgomery, speaking against the recommendation, addressed the Panel.

001 RESOLUTION:

The Panel unanimously resolved that the determination of the application be deferred to allow the applicant an opportunity to submit amended plans.

The amended plans are to be submitted to council by no later than 30 June 2018.

REASONS FOR DECISION:

The Panel acknowledged that there was merit to the proposal to subdivide the site into a number of smaller lots, for the reasons listed below:

1. The application is subject to a previous approval from a Planning Proposal that permitted subdivision of the subject site.
2. The RMS, RFS, and Office of Water have all given concurrence to the proposed development.
3. The site is suitable for connection to mains sewerage.

However, the Panel accepted the argument in the planning report that the right to subdivision was not the only relevant factor to consider.

Other factors considered relevant by the Panel included:

1. The pattern of development proposed, apart from the two larger lots protecting the riparian zone (which the Panel supports), does not demonstrate a differentiation in lot size reflective of the topography and prevailing rural-residential character of the area.
2. The proposed road works and site works associated with the application require substantial changes to, and impacts on, the rural-residential character of the site.
3. The impacts of the above on the visual character of the area.

The Panel was of the view that a modified design that provided a greater differentiation in lot size, with smaller lots (not less than the permissible minimum lot size) between Bells Line of Road and the creek corridor, and larger lots (with an average lot size of not less than 4000m²) to the east of the

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creek corridor, would provide an outcome more in keeping with the existing and desired future character of the area.

The Panel agreed to defer the matter to enable the applicant the opportunity to amend the plans in accordance with the above.

The amended plans are to indicate any trees that are proposed to be removed as a result of the subdivision, as well as any tree planting proposed to be provided as part of the subdivision.

Item: 002 **CP - DA0357/17 - 122 Hermitage Road Kurrajong Hills - Lot 22 DP 806072 - Telecommunications Facility - (95498, 137060, 134788)**

Directorate: City Planning

The Panel inspected the subject site and viewed the site, neighbouring properties and context prior to the public meeting.

Mr Peter John Caines, Mr Andrew Malon, Mr Steven Gow and Ms Belinda Gow, speaking against the recommendation, addressed the Panel.

They raised concerns regarding the proposed tower with respect to:

1. Visual impacts.
2. Impacts on views.
3. Lack of consultation.
4. Health risks associated with electromagnetic radiation.
5. The suitability of the site.

Ms Jacqueline Crompton, speaking for the recommendation, addressed the Panel.

002 RESOLUTION:

The Panel unanimously resolved that development application DA0357/17 at Lot 22 DP 806072, 122 Hermitage Road Kurrajong Hills NSW for - Telecommunications Facility - Installation of NBN Fixed Wireless Facility be approved, for the reasons below and in accordance with the assessing officer's recommendation, subject to following:

Condition 14 to be amended to state:

A detailed landscape plan is to be prepared by a suitably qualified person and submitted to Council for approval by Council's Park Officer prior to issue of the Construction Certificate. The plan shall include plantation of a minimum of 18 trees within the immediate vicinity and to the east of the NBN tower. The landscaping shall screen and soften the NBN tower to minimise any visual impact from the neighbouring properties.

The landscape plan shall consist of a mixture of native trees and shrubs of local provenance. The trees are to have good canopy and a height of no less than 20 metres at maturity.

REASONS FOR DECISION:

1. The proposed facility is an important piece of infrastructure that will provide benefits to the public.
2. Its location has been the outcome of extensive community consultation and thorough investigation.
3. It has been sited to ensure that visual impact is minimised.
4. A number of mitigation measures to visual impact have been proposed.
5. Based on the information provided, the forecast radiation levels are at acceptable levels, in accordance with the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA) standards.

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General Conditions

1. Approved Plans and Supporting Documentation

The development must be carried out generally in accordance with the approved plans and supporting documentation listed below which have been endorsed by Council's approved stamp, except where amended in red on the plans and/or amended by other conditions of consent:

a) Plans Reference:

Drawing Number/Name	Prepared by	Issue No.	Date
Site Specific Notes, Dwg No. 2URR-51-08-KURJ-C1	Visionstream Pty Ltd	04	5/07/2017
Overall Site Plan, Dwg No. 2URR-51-08-KURJ-C2	Visionstream Pty Ltd	04	5/07/2017
Site Setout Plan, Dwg No. 2URR-51-08-KURJ-C3	Visionstream Pty Ltd	04	5/07/2017
Site Elevation, Dwg No. 2URR-51-08-KURJ-C4	Visionstream Pty Ltd	04	5/07/2017
Asset Protection Zone, Dwg No. 2URR-51-08-KURJ-C5	Visionstream Pty Ltd	04	5/07/2017
NBN Antenna Configuration & Setout Plan, Dwg No. 2URR-51-08-KURJ-A1	Visionstream Pty Ltd	04	5/07/2017

b) Document Reference:

Document	Reference	Prepared By	Date
Aeronautical Study - NBN Telecommunications Towers RAAF Base Richmond	Ref No. 060804-1	Aviation Projects Pty Ltd	13/04/2017
Vegetation Survey & Koala Habitat Assessment	-	James Gibson & Grant Harris	27/02/2017

No works, other than those approved (including raising or lowering of ground levels on the site, or construction of retaining walls on any property boundary) are permitted by this consent.

Note: Details of the development shown in the approved plans and documents referenced are altered in the manner indicated by:

- (i) any amendments made by Council on the approved plans or documents;
- (ii) any notes, markings, or stamps on approved plans or documents; and
- (iii) any conditions contained in this consent.

2. Appointment of a Principal Certifying Authority

No work shall commence until:

a) A Building Construction Certificate is issued by:

- (i) Council; or

- (ii) An Accredited Certifier;
- b) A Principal Certifying Authority is appointed for the building/engineering works and the following details relating to the carrying out of the works have been provided:
 - (i) name and licence number of the builder undertaking the construction works; or
 - (ii) name and permit number of the owner-builder (if relevant);
- c) The Principal Certifying Authority has:
 - (i) provided a copy of the notice of its determination to the consent authority, and to Council (within two days after the date of the determination);
 - (ii) notified the person having benefit of the consent of any critical stage inspections and other inspections that it requires to be carried out in relation to the approved work;
 - (iii) notified Council of its appointment (not less than two days before commencement of building work);
- d) The person having benefit of the consent (if not carrying out work as an owner-builder) has:
 - (i) appointed a principal contractor who must hold a 'contractor licence' if any residential building work is involved;
 - (ii) notified the Principal Certifying Authority of the appointment of the principal contractor;
 - (iii) notified the principal contractor of any critical stage inspections or any other inspections that are required to be carried out in relation to the approved work;
- e) At least two days' notice are to be provided to Council of the date on which it is proposed to commence work associated with this development consent.

3. Part 4A Certificates Required

The accredited certifier shall provide copies of all Part 4A certificates issued under the *Environmental Planning and Assessment Act 1979* relevant to this development to Council within seven days of issuing the certificate.

Note: A registration fee applies.

4. Prescribed Conditions - Compliance with National Construction Code

All building works must be carried out in accordance with the requirements of the National Construction Code (Building Code of Australia).

5. Tree Removal & Pruning - Approved Works

This consent is limited to the removal of nine trees and pruning of three trees as identified in the approved Vegetation Survey & Koala Habitat Assessment dated 27 February 2017.

6. Tree Pruning - Branch Removal

Tree pruning works are to be carried out by a suitably qualified arborist in accordance with the Australian Standard AS 4373 - '1996 Pruning of Amenity Trees'.

7. Disposal of Cleared Vegetation

Vegetation waste resulting from the approved clearing of the site shall be salvaged for re-use, either in log form, or as a woodchip mulch for erosion control and/or site rehabilitation. Non-salvageable material such as roots, stumps or declared weed species shall be disposed of in

an approved manner.

No vegetative material is to be disposed of by burning on-site other than in an approved heating or cooking device.

8. Tree Removal - Replacement Planting Required

A minimum of 18 replacement trees shall be planted on the property. These trees are to be native species and indigenous to local area and have a height of no less than 20 metres at maturity.

The replacement trees shall be planted no later than three months after tree removal has taken place and the trees shall be protected and maintained so as to ensure that they reach maturity.

9. Tower Height

The height of the NBN Fixed Wireless Facility (NBN tower) shall not exceed 268m AHD.

Prior to the Issue of Construction Certificate

10. Long Service Levy Payment

The payment of a long service levy as required under Part 5 of the *Building and Construction Industry Long Service Payments Act 1986* is required. Evidence that the levy has been paid, is to be submitted to the Principal Certifying Authority prior to the issue of any Construction Certificate.

Note: All building works valued at \$25,000 or above are subject to the payment of a Long Service Levy at the rate of 0.35%. Payments can be made at Long Service Payments Corporation offices or most councils.

11. Section 94A (Monetary) Contributions

A contribution under Section 7.12 of the *Environmental Planning and Assessment Act 1979* must be paid in accordance with the following:

a) Contribution Required

In accordance with Council's Section 94A Contributions Plan 2015, a monetary contribution (indexed at the time of payment) must be paid to Council for the amount specified below.

b) Amount of Contribution

The amount of the contribution is \$2,500.00.

This fee is based on the supplied value-of-works of \$250,000.00.

The contribution amount detailed in (b) will 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 (Table 6401.0).

Contributions must be receipted by Council and evidence of payment submitted to the Certifying Authority prior to the issue of any Construction Certificate.

Please present a copy of this condition when paying the contribution at Council's Customer Service Centre so that it can be recalculated.

Note: In the event that the estimated value of works increases in association with the Construction Certificate the Section 94A contribution payable is to be based on the revised value of works.

12. Structural Engineers Design - Concrete and Structural Steel

A qualified Structural Engineer's design for all reinforced concrete and structural steel shall be provided to the Certifying Authority prior to issue of Construction Certificate.

13. Tower Colour

The monopole and associated outdoor units shall be painted in 'Grey' or similar to recede into the landscape. Details are to be provided to Council for approval prior to the issue of a Construction Certificate.

14. Landscaping

A detailed landscape plan is to be prepared by a suitably qualified person and submitted to Council for approval by Council's Park Officer prior to issue of the Construction Certificate. The plan shall include plantation of a minimum of 18 trees within the immediate vicinity and to the east of the NBN tower. The landscaping shall screen and soften the NBN tower to minimise any visual impact from the neighbouring properties.

The landscape plan shall consist of a mixture of native trees and shrubs of local provenance. The trees are to have good canopy and a height of no less than 20 metres at maturity.

15. Access Track

- a) The submains cable is to be routed along the existing seal track and proposed access track extension as recommended in the approved Vegetation Survey & Koala Habitat Assessment dated 27 February 2017. This submains cable route shall avoid encroachment into tree protection zones (TPZs). Where required, under-boring is to be used to minimise arboricultural impacts.
- b) The access track, within the tree protection zones (TPZs) of trees to be retained, shall be constructed above the existing grade of a permeable material as recommended in the approved Vegetation Survey & Koala Habitat Assessment dated 27 February 2017.

Details are to be provided to the Certifying Authority prior to the issue of the Construction Certificate.

Prior to Any Works Commencing on Site

16. Principal Certifying Authority - Details

The applicant shall advise Council of the name, address and contact number of the Principal certifier, in accordance with Section 81A 2(b) of the *Environmental Planning and Assessment Act 1979*.

17. Toilet Facilities

Toilet facilities must be available or provided at the work site before works begin and must be maintained until the works are completed at a ratio of one toilet plus one additional toilet for every 20 persons employed at the site.

Each toilet must:

- a) be a standard flushing toilet connected to a public sewer;
- b) be attached to an approved on-site effluent disposal system;

- c) be a temporary chemical closet that is regularly maintained; and
- d) appropriate facilities for the disposal of sanitary items are to be provided within the toilet.

18. Notice of Commencement

No work shall commence until a notice of commencement has been provided to Council. This notice is to be provided not less than two days from the date on which it is proposed to commence work associated with this Development Consent. The notice must also contain:

- a) details of the appointment of a Principal Certifying Authority (PCA) providing name, address and telephone number; and
- b) details of the name, address and licence details of the Builder.

19. Principal Certifying Authority (PCA) Site Sign

A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

- a) showing the name, address and telephone number of the Principal Certifying Authority for the work;
- b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours; and
- c) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

20. Safety Fencing

The site is to be secured by a fence, in accordance with NSW WorkCover requirements, to prevent unauthorised access during the period of all works.

21. Erosion and Sediment Control for Minor Development

Erosion and sediment control devices are to be installed and maintained until the site is fully stabilised in accordance with Landcom's publication 'Managing Urban Stormwater - Soils and Construction (2004)'.

During Construction

22. Construction Hours

Clearing of land, running of machinery, excavation, and/or earthworks, building works and the delivery of building materials shall be carried out between the following hours:

- a) between 7am and 6pm, Mondays to Fridays inclusive;
- b) between 8am and 4pm, Saturdays;
- c) no work on Sundays and public holidays; and
- d) works may be undertaken outside these hours where:
 - (i) the delivery of vehicles, plant or materials is required outside these hours by the Police or other authorities;
 - (ii) it is required in an emergency to avoid the loss of life, damage to property and/or

- to prevent environmental harm; and
- (iii) a variation is approved in advance in writing by Council.

23. Site Management During Construction

- a) All materials and equipment must be stored wholly within the work site unless an approval to store them elsewhere is held.
- b) Waste materials (including excavation, demolition and construction waste materials) must be managed on the site and then disposed of at a waste management facility.
- c) Copies of receipts stating the following must be given to the principal certifying authority:
 - (i) the place to which waste materials were transported;
 - (ii) the name of the contractor transporting the materials; and
 - (iii) the quantity of materials transported off-site and recycled or disposed of.
- d) Any run-off and erosion control measures required must be maintained within their operating capacity until the completion of the works to prevent debris escaping from the site into drainage systems, waterways, adjoining properties and roads.
- e) During construction:
 - (i) all vehicles entering or leaving the site must have their loads covered;
 - (ii) all vehicles, before leaving the site, must be cleaned of dirt, sand and other materials, to avoid tracking these materials onto public roads; and
 - (iii) any public place affected by works must be kept lit between sunset and sunrise if it is likely to be hazardous to the public.
- f) At the completion of the works, the work site must be left clear of waste and debris.

Note: In the event it is not possible to keep the footpath or road reserve clear during construction works written approval from Council shall be obtained prior to any closing of the road reserve or footpath area. The closure shall take place in accordance with Council's written approval. The area shall be signposted and such signposting be maintained in a way that ensures public safety at all times.

24. Loading and Unloading During Construction

The following requirements apply.

- a) All loading and unloading associated with construction activity must be accommodated on site.
- b) If, during excavation, it is not feasible for loading and unloading to take place on site, a Works Zone on the street may be considered by Council.
- c) A Works Zone may be required if loading and unloading is not possible on site. If a Works Zone is warranted an application must be made to Council at least 8 weeks prior to commencement of work on the site. An approval for a Works Zone may be given for a specific period and certain hours of the days to meet the particular need for the site for such facilities at various stages of construction. The approval will be reviewed periodically for any adjustment necessitated by the progress of the construction activities.
- d) Where hoisting activity over the public place is proposed to be undertaken including hoisting from a Works Zone, a separate approval must be obtained from Council.

25. Critical Stage Inspections

Prior to the commencement of building work and at nominated stages during the construction of the building, a minimum of 48 hours' notice is required to be provided to allow the Principal Certifying Authority to ensure that the critical stage inspections are undertaken.

Note: Critical stage inspections are required to be carried out in accordance with Clause 162A of the *Environmental Planning & Assessment Regulation 2000*.

26. Management of Overland Flows

The works associated with the development shall ensure that:

- a) all natural water flow from adjoining properties is not impeded or diverted; and
- b) surface and subsurface water flows are not redirected or concentrated onto adjoining properties.

27. Heritage - Archaeological Discovery During Works

Should any Aboriginal relics or European historical relics be unexpectedly discovered on the site during excavation, all excavation or disturbance to the area is to stop immediately and the following agencies are to be informed of the discovery:

- a) Council;
- b) the Heritage Council of NSW in accordance with Section 146 of the *Heritage Act 1977*, and/or
- c) the National Parks and Wildlife Service is to be informed in accordance with Section 91 of the *National Parks and Wildlife Act 1974*.

28. Tree Protection

Tree protection fencing is to be installed to protect trees that are to be retained from construction impacts, in particular soil compaction.

29. Cut and fill batters

Cut and fill with battering for the access track and crane hard stand area to be placed outside of the tree protection zones (TPZs) of trees to be retained.

Prior to Issue of Occupation Certificate

30. Survey Certificate at Completion

A Survey Certificate, prepared by a Registered Surveyor, is to certify the location of the building in relation to the boundaries of the allotment.

The certificate is to be submitted to the Principal Certifying Authority prior to the issue of any Occupation Certificate.

31. Occupation Certificate - Prior to Commencement of Use

The development shall not be occupied or used prior to the issuing of a Final Occupation Certificate or Interim Occupation Certificate by the Principal Certifying Authority. Where an Interim Occupation Certificate has been issued, only that part of the building to which the Certificate applies may be occupied or used.

A copy of the Occupation Certificate shall be submitted to Council within two days of issue.

Advisory Notes

(i) Equitable Access

The applicant shall make themselves aware of the *Discrimination Against People with Disabilities Act (DDA)* and assess their responsibilities and liabilities with regards to the provision of access for all people.

(ii) Acid Sulfate Soils - Monitoring of Excavation During Works

All excavations are to be monitored to ensure that acid sulphur soils are not encountered during works. Signs that may indicate the presence of acid sulphur soils include:

- a) change in colour of the soil into grey and green tones;
- b) effervescence;
- c) the release of sulphur smelling gases such as sulphur dioxide or hydrogen sulphide; and
- d) lowering of the soil Ph by at least one unit.

Should any of the above indicators be present excavation work on the site is to stop and Council is to be notified to determine what action is required to be taken before work may commence.

(iii) Site Contamination Discovered During Demolition or Construction

Should any new information come to light during demolition or construction works which has the potential to alter previous conclusions about contamination, then the applicant must be immediately notified and works must cease. Works must not recommence on site until the consultation is made with Council.

(iv) Dial Before You Dig

Prior to commencement of work, the free national community service 'Dial Before You Dig' shall be contacted on 1100 regarding the location of underground services in order to prevent injury, personal liability and even death. Enquiries should provide the property details and the nearest cross street/road.

(v) Requirements of 88B Instrument

The applicant shall make themselves aware of any User Restriction, Easements and Covenants to this property and shall comply with the requirements of any Section 88B Instrument relevant to the property in order to prevent the possibility of legal proceedings against them.

(vi) Department of Defence

The applicant is required to make detailed enquiries with the Department of Defence prior to the commencement of any works in order to ensure there are no requirements concerning the methods of construction or installation of the approved structures.

The meeting terminated at 3:40pm.