



# Hawkesbury City Council

## ordinary meeting business paper

date of meeting: 29 July 2008

location: council chambers

time: 5:00 p.m.



# mission statement

***“To create opportunities  
for a variety of work  
and lifestyle choices  
in a healthy, natural  
environment”***

**ORDINARY MEETING****Table of Contents****Meeting Date:** 29 July 2008**TABLE OF CONTENTS**

<b>ITEM</b>	<b>SUBJECT</b>	<b>PAGE</b>
<b>SECTION 4 - Reports for Determination</b>		<b>2</b>
<b>CITY PLANNING</b>		<b>2</b>
Item: 150	CP - Community Sponsorship Program - (2008-2009 - Round 1) - (95498)	2
Item: 151	CP - Section 96 Application to Modify Development Consent DA0134/95, Lot 2, DP628806, No. 6102 Singleton Road, Mellong - Tinda Creek - (79347, 27001)	7
Item: 152	CP - Subdivision, Dam, Landfilling Lot 1 DP 850151, 200 Cattai Road Pitt Town - (DA0687/07, 36345, 36344, 95498)	44
Item: 154	CP - Pitt Town Residential Precinct - Amendments to Hawkesbury Local Environmental Plan 1989, Development Control Plan and Section 94 Contributions Plan Review November 2005 - (95498)	59
Item: 155	CP - Construction of Exhibition Homes as part of an Exhibition Village comprising thirteen (13) Exhibition Homes, Lot 14 DP 865977 & Lot 14 DP 865977, Proposed Lots 1003 – 1007, 1010 – 1015, 1021 & 1022) - 17 Bootles Lane PITT TOWN NSW 2756	65
<b>INFRASTRUCTURE SERVICES</b>		<b>88</b>
Item: 156	IS - Colo Heights Generator Site - Part Lot 7004 in DP 1055569, Colo Heights Reserve 2996, Singleton Road, Colo Heights - (1298, 79551, 95495)	88
Item: 160	SS - Review of the Windsor Mall Policy - (95496)	90
<b>SECTION 5 - Reports of Committees</b>		<b>104</b>
ROC - Floodplain Risk Management Advisory Committee Minutes - 2 June 2008 - (86589)		104
ROC - Local Traffic Committee - 16 July 2008 - (80245)		110

## ORDINARY MEETING

Meeting Date: 29 July 2008

### SECTION 4 - Reports for Determination

#### CITY PLANNING

#### **Item: 150 CP - Community Sponsorship Program - (2008/2009 - Round 1) - (95498)**

This report has been prepared to advise Council of applications for financial assistance received from community groups and individuals to be determined under Round 1 of the Community Sponsorship Program for 2008/2009.

#### **Background**

On March 13 2007 Council resolved to adopt a Sponsorship Policy, prepared in accordance with the guidelines issued by the Independent Commission Against Corruption.

To give effect to the Sponsorship Policy, criteria and administrative arrangements for a Community Sponsorship Program were developed with implementation commencing in 2007/2008.

The adopted budget for 2008/2009, includes an allocation of \$59,000 for the Community Sponsorship Program. Pursuant to Council's resolution of 29 April 2008, \$18,000 of this amount has been set aside as a contribution to the staging of the Hawkesbury City Eisteddfod.

#### **Community Sponsorship Program (2008/2009)**

In accordance with Council's Community Sponsorship Policy, applications for community sponsorship under Round 1 of the Community Sponsorship Program 2008-2009 were called for in early June 2008 and closed on July 11, 2008.

15 applications were received. In addition to these 15 applications, a further two applications representing the second year of approved three-year event sponsorship events (approved by Council in 2007/2008) have been included for Council's determination. Sponsorship for the Hawkesbury Eisteddfod has also been included as well as a sponsorship payment for the Grose Vale Rural Fire Service (GVRFS) under the new category of sponsorship which has been reported to Council elsewhere in the Business Paper. A sponsorship proposal for the GVRFS has been included on the assumption that it would be Council's wish to expedite the GVRFS request.

In total 19 applications have been presented for Council's consideration under Round 1 of the 2008-2009 Community Sponsorship Program. Table 1 summarises the applications received, the proposed level of financial assistance and whether special conditions are proposed to be attached to the provision of funding.

Applicant	Type <sup>(1)</sup>	Proposal	amount recommended	Special Condition/Comment
1. Kurrajong Anglican Church	ES	Staging of Carols in the Park in Memorial Park, Kurrajong	\$500	nil. Year 2 of approved 3 year event sponsorship agreement
2. Rotary Club of Richmond	ES	Staging of Carols by Candlelight in Richmond Park	\$1,500	nil. Year 2 of approved 3 year event sponsorship agreement
3. Hawkesbury City Eisteddfod Society	ES	Staging of Hawkesbury City Eisteddfod	\$18,000	nil. Year 1 of 5 year event sponsorship agreement (as resolved by Council)
4. Grose Vale Rural Fire Service	ICF	Refund of Development Application Processing Fees	\$551	nil. Included subject to Council's determination re proposed new sponsorship category
5. Tecara Maconachie	MA	Participate in 2008 NSW	\$100.00	nil

## ORDINARY MEETING

Meeting Date: 29 July 2008

		Schools Tennis Tour		
6. Ben McCartney	MA	Participate in 2008 NSW Schools Tennis Tour	\$100.00	nil
7. Dylan Cruse	MA	Participate in IBA Pacific Friendship Tournament	\$100.00	nil
8. Kurrajong Community Forum	SG	Shade structure in Memorial Park Kurrajong	\$0	nil
9. Hawkesbury Public Schools Music Festival	SG	Use of Windsor Function Centre for festival	\$3,500	nil
10. St Albans Folk Festival	ES	Staging of Folk Festival	\$3,000	nil
11. Freemans Reach School of Arts	SG	Renovation of disabled toilet	\$2,000	yes
12. Aaron Trevarthen	MA	Participate in Football NSW Under 12 team tour	\$100	nil
13. Kurrajong RSL Sub Branch	SG	Hire of chairs for ANZAC Day and Remembrance Day	\$300	nil
14. Thomas & Jane Rose Family Society	MA	Preservation of historical shed at Rose Cottage, Wilberforce	\$500	nil
15. Luke McKeown-Todd	MA	Participation in NASA Space Engineering school	\$100	nil
16. The Kurrajong Scarecrow Festival	ES	Staging of annual Scarecrow Festival	\$5,000	nil
17. Pitt Town Public School	CF	Staging of annual Presentation Night	\$289	nil
18. Henry Doubleday Research Association of Australia	ES	Staging of annual Earthcare Fair	\$1,000	nil
19. Greater Western Sydney Bands Inc	ES	Staging of Jazz à Vienne Festival	\$2,000	nil
		<b>TOTAL</b>	<b>\$38,640</b>	

MA = Minor Assistance

ES = 3 Year Event Sponsorship

SG = Seeding Grant

CF = Access to Community Facilities

ICF = Improvement to Council Facility

**Table 1 - Requests for financial assistance Round 1 of 2007/2008 Community Sponsorship Program**

The applications received were assessed against the applicable criteria outlined in Council's Community Sponsorship program. This criteria reflects the provisions of Council's adopted Sponsorship Policy and the amounts recommended for approval are consistent with the policy. A more complete summary of the assessment of applications against the Community Sponsorship Program is appended to this report - including the details of special conditions to be applied to the recommended financial assistance (Attachment 1).

Should Council approve the provision of the proposed financial assistance, Council's standard Sponsorship Agreement will need to be executed for Applications 9 (Hawkesbury Public Schools Music Festival), 10 (St Albans Folk Festival), 11 (Freemans Reach School of Arts), 16 (Kurrajong Scarecrow Festival), 18 (Earthcare Fair) and 19 (Jazz à Vienne). Sponsorship Agreements are not required for the other recommended applicants or have already been executed.

There are sufficient funds to cover the total recommended amount of \$38,640 for Round 1 of the 2008/2009 Community Sponsorship Program leaving a balance of 20,360 for allocation in further rounds.

### Conformance to Strategic Plan

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

*"Investigating and planning the City's future in consultation with our community, and co-ordinating human and financial resources to achieve this future."*

## **ORDINARY MEETING**

Meeting Date: 29 July 2008

### **Funding**

Funding allocations recommended in this report are available within current budget provisions.

### **RECOMMENDATION:**

That Council:

1. Approve payments of Section 356 Financial Assistance to the organisations or individuals listed, and at the level recommended in Table 1 of this report.
2. Approve the execution of Council's standard Sponsorship Agreement for applications 9, 10,11,16, 18 and 19 as identified in Table 1 of this report.
3. Note the Special Condition recommended for Application 11 as identified in Attachment 1 of this report.
4. Note that the required Sponsorship Agreements for Applications 1, 2, and 3 have been previously executed to provide for the continuation funding for these proposals.

### **ATTACHMENTS:**

**AT - 1** Assessment of Applications under Round 1 Community Sponsorship Program 2007/2008.

# ORDINARY MEETING

Meeting Date: 29 July 2008

## AT - 1 Assessment of Applications under Round 1 Community Sponsorship Program 2007-2008

Attachment 1 - Assessment of Applications under Round 1 Community Sponsorship Program 2008/2009

Applicant	Sponsorship Type (1)	Description	Assessment Criteria								Amount requested (or previously approved for ES Sponsorship)	Amount recommended	Comments
			Local service	Not-for-profit	Not funded by State/Federal Agency	Co-contribution provided	Reflects agreed community priority	Meets sponsorship criteria	Financially sustainable	Documentation provided			
1. Kurralong Anglican Church	ES	Staging of Carols in the Park in Memorial Park, Kurralong	✓	✓	✓	✓	✓	✓	✓	✓	500	500	Continuation of funding for Year 2 of approved 3 year event sponsorship agreement
2. Rotary Club of Richmond	ES	Staging of Carols by Candlelight in Richmond Park	✓	✓	✓	✓	✓	✓	✓	✓	1500	1500	Continuation of funding for Year 2 of approved 3 year event sponsorship agreement
3. Hawkesbury City Eisteddfod Society	ES	Staging of Hawkesbury City Eisteddfod	✓	✓	✓	✓	✓	✓	✓	n/a	18,000	18,000	Year 1 of 5 year event sponsorship agreement (as per Council's resolution of 29 April 2008)
4. Grose Vale Rural Fire Service	ICF	Refund of Development Application Processing Fees	✓	✓	✓	✓	✓	✓	✓	n/a	1519	551	Funding recommended under provisional sponsorship category yet to be approved by Council. The amount recommended derived from application of proposed criteria for this category.
5. Tecara Maconachie	MA	Participate in 2008 NSW Schools Tennis Tour	✓	✓	✓	✓	✓	✓	n/a	✓	not specified	100	Fulfills criteria for Minor Assistance allocation
6. Ben McCartney	MA	Participate in 2008 NSW Schools Tennis Tour	✓	✓	✓	✓	✓	✓	n/a	✓	not specified	100	Fulfills criteria for Minor Assistance allocation
7. Dylan Cruse	MA	Participate in IBA Pacific Friendship Tournament	✓	✓	✓	✓	✓	✓	n/a	✓	not specified	100	Fulfills criteria for Minor Assistance allocation
8. Kurralong Community Forum	SG	Shade structure in Memorial Park Kurralong	✓	✓	✓	✓	✓	✓	×	✓	5,000	Nil	Proposal not endorsed due to concerns relating to vandalism, safety, and unfunded costs associated with ongoing maintenance and replacement.
9. Hawkesbury Public Schools Music Festival	CF	Use of Windsor Function Centre for festival	✓	✓	×	✓	✓	✓	✓	✓	3,500	3,500	Community Sponsorship Program provides for 50% of hire fee to be subsidised. In this case due to the nature of the event (which involves all public schools in Hawkesbury) a 100% reimbursement has been recommended.
10. St Albans Folk Festival	ES	Staging of Folk Festival	✓	✓	✓	✓	✓	✓	✓	✓	3,000	3,000	If approved would represent Year 1 of proposed 3 year Sponsorship Agreement
11. Freemans Reach School of Arts	SG	Renovation of disabled toilet	✓	✓	✓	✓	✓	✓	✓	✓	2,000	2,000	Special condition - funding to be provided subject to committee liaison with Council staff in relation to development consent.
12. Aaron Trevarthen	MA	Participate in Football NSW Under 12 team tour	✓	✓	✓	✓	✓	✓	n/a	✓	not specified	100	Fulfills criteria for Minor Assistance allocation

# ORDINARY MEETING

Meeting Date: 29 July 2008

13. Kurriong RSL Sub Branch	MA	Hire of chairs for ANZAC Day and Remembrance Day	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	300	300	Fulfills criteria for Minor Assistance allocation
14. Thomas & Jane Rose Family Society	MA	Preservation of historical shed at Rose Cottage, Wilberforce	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	500	500	Fulfills criteria for Minor Assistance allocation
15. Luke McKeown-Todd	MA	Participation in NASA Space Engineering school	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	n/a	✓	Not specified	100	Fulfills criteria for Minor Assistance allocation
16. The Kurriong Scarecrow Festival	ES	Staging of annual Scarecrow Festival	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	5,000	5,000	If approved would represent Year 1 of proposed 3 year Sponsorship Agreement
17. Pitt Town Public School	CF	Staging of annual Presentation Night	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	300	300	Policy allows for funding of half of hall hire fee, full cost is \$577.00
18. Henry Doubleday Research Association of Australia	ES	Staging of annual Earthcare Fair Festival	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	1,000	1,000	If approved would represent Year 1 of proposed 3 year Sponsorship Agreement
19. Greater Western Sydney Bands Inc	ES	Staging of Jazz àVienne Festival	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	2,000	2,000	If approved would represent Year 1 of proposed 3 year Sponsorship Agreement

oooO END OF REPORT Oooo



## ORDINARY MEETING

Meeting Date: 29 July 2008

**Item: 151**      **CP - Section 96 Application to Modify Development Consent DA0134/95, Lot 2, DP628806, No. 6102 Singleton Road, Mellong - Tinda Creek - (79347, 27001)**

---

### Development Information

**Applicant:** Birdon Contracting Pty Ltd  
**Applicants Rep:** Umwelt Environmental Consultants  
**Owner:** Birdon Contracting Pty Ltd  
**Stat. Provisions:** Hawkesbury Local Environmental Plan 1989  
**Area:** 90 hectares  
**Advertising:** 14 September 2006 to 29 September 2006  
**Date Received:** 17 July 2006

**Key Issues:**

- ◆ Lapsing of Consent
- ◆ Compliance with Conditions of Consent

**Recommendation:** Refusal

---

### REPORT:

Council has received an application under Section 96 of the Environmental Planning and Assessment Act to modify Development Consent DA0134/95. The modification involves:

1. Amend Condition 1 by changing the wording of the condition to reflect the plan and documentation of the Environmental Impact Statement dated 1 November 1995.
2. Amend Condition 27 by changing the wording of the condition to require a Site Environmental Management Plan (EMP) to be prepared and reviewed at least every 12 months.
3. Amend Condition B3 to increase the maximum annual production from 100,000 tonnes per year to 125,000 tonnes.

The report contains a more detailed discussion of the proposed changes.

### Background

In 1986 Council approved a development for the purpose of creating a dam on the site. The extraction of sand from the site also took place. The lease operator sought to formalise the sand mining activity and lodged a Development Application (DA0134/95), which is the current approval. The application proposed the following:

- Sand extraction from 50,000 tonnes up to 100,000 tonnes annually.
- Life span 25 years.
- Truck movements of 8 (eight) up to 16 (sixteen) daily.
- Final landform being rural grazing and large lake.
- Extraction relates to the rear portion of the site only.

Council considered this application at the General Purpose Committee Meeting on 26 November 1996 and resolved at the Ordinary Meeting on 10 December 1996 to issue a staged development consent for Stage 1, with the remaining stages being a Deferred Commencement approval subject to the conditions to be completed at Stage 1.

## ORDINARY MEETING

Meeting Date: 29 July 2008

The decision to issue a staged and deferred commencement approval was in recognition of concerns raised by the residents and government agencies as to the potential for the development to pollute.

Any stage after Stage 1 would only be permitted where the operator can illustrate that revegetation/rehabilitation is taking place, in accordance with the approved plan and with an acceptable time frame. A third party appeal was lodged by N. Diamond for Tinda Creek Spiritual and Environment Centre in the Land and Environment Court against Council's decision on the application and the wording of particular conditions of consent. A mediation conference was held with all parties and, as a result of the conference, the Appellant discontinued the proceedings and the Appeal was withdrawn.

An application to modify the development consent was lodged in December 1998. The application proposed to amend Condition 3 to extend the time period to complete Stage 1. This application was considered and approved at the Ordinary Meeting of the 14 December 2004.

A third party appeal was lodged by Mr N Diamond and the matter was considered by the Court who issued Court Orders in relation to the matter.

In April/May 2005 Council Officers identified that the operation had extended beyond the area shown on the approved plans. Council wrote to the applicant and in response to the matter the operator chose to lodge an application under S96 of the EPA Act which is the current application.

### The Proposal

The application proposes to modify the wording of Conditions 1, 24 and B3.

#### Condition 1

The condition currently states:

*"The development shall be carried out in accordance with Plan No. PS91/E130 dated April 1996 and documentation of Environmental Impact Statement dated 1 November 1995 as amended."*

The amended wording proposed by the applicant is:

*"The development shall be carried out within the Extraction Area shown on Drawing No. SK 2 Job No. PS91/E130 and in accordance with documentation of Environmental Impact Statement dated 1 November 1995 as amended by conditions of consent and the Environmental Management Plan referred to in Condition 27."*

The applicant has provided the following argument for the proposed modification:

*"The first reason for seeking this modification is that since consent was granted there has been confusion as to which plan Consent Condition 1 is referring to as PS91/E30 is the Job Number used by Port Stephens Design Service who prepared the EIS not a discrete plan number. As a result there are many figures and plans shown a range of things that have PS91/E130 on them."*

*"The second reason for seeking this modification is that the configuration of the extraction area and operating procedures will change over time as a result of ongoing extraction and improved extraction techniques. These changes are most appropriately addressed as part of the Environmental Management Plan (EMP) required by Condition 27. This has been recognised by Council in its fax of 3 March 2005 to Birdon Contracting which states:*

*"The EMP should be reviewed regularly at least 12 months and adjusted if necessary due to any change in operating procedures. The staging plans should be attached and that the EMP may need to be altered with each stage."*

## ORDINARY MEETING

Meeting Date: 29 July 2008

*The suggested wording change to Condition 1 will enable the development to be undertaken within the extraction area as defined in the EIS and in accordance with the current EMP.*

### **Condition 27**

The Condition currently states:

*"A site environmental management plan shall be prepared within one month of the date of this approval, to address:*

- a. On site materials management*
- b. Daily operating procedures*
- c. Erosion and sediment controls*
- d. Emergency contingency plans*
- e. On site drainage processes to ensure water quality.*

The amended wording proposed is:

*A site Environmental Management Plan (EMP) shall be prepared within one month of the date of this approval and reviewed at least every 12 months thereafter. The EMP shall address:*

- a. Extraction staging and rehabilitation*
- b. On-site material management*
- c. Daily operating procedures*
- d. Erosion and sediment controls*
- e. Emergency contingency plans*
- f. On-site drainage processes to ensure water quality."*

The applicant has indicated in accordance with Council's fax of 3 March 2005, it is suggested that the wording of Condition 27 be modified to provide for 12 monthly reviews and to address changes to staging plans.

### **Condition B3**

Condition B3 states:

*"The sand extraction not exceeding a yield of 100,000 tonnes per year"*

The amended condition is:

*"The sand extraction not exceeding a yield of 125,000 tonnes per year"*

In support of this variation the applicant has indicated:

*Modification is also sought to amend Condition B3 to increase maximum annual production from 100,000 tonnes per year to 125,000 tonnes per year. No changes are sought to Condition B4 which limits total extraction to 2,000,000 tonnes over a period of 25 years.*

*The reasons for the proposed modification to condition B3 are as follows:*

- *Sand extraction under DA0134/95 commenced at the site in the 1995/1996 financial year. Over the eleven years to the end of the 2005/2006 financial year, a total of 652,617 tonnes of sand was extracted from the site at an average rate of approximately 59,000 tonnes per year. In 2004/2005 annual production reached 94,157 tonnes with 89,720 tonnes being produced in 2005/2006. As at the end of May 2006 there was approximately 2.3 million tonnes of identified sand resource remaining in the 22 hectare area covered by the EIS (Port Stephens Design Services 1995) and*

## ORDINARY MEETING

Meeting Date: 29 July 2008

*approximately 1.3 million tonnes that could still be extracted from the site under development Consent Condition B4. Development consent DA0134/95 is valid until December 2021.*

- *As set out above in the first eleven years of operation, average annual sand production of 59,000 tonnes per year was below the maximum permissible level of 100,000 tonnes/year and below the average extraction rate of 80,000 tonnes that would be required to remove two million tonnes of sand over a 25 year period. Over the last three to five years the demand for sand from the site has been steadily increasing with the quarry production approaching maximum permissible production levels in 2004/2005. The demand for sand remains strong and as a result demand for sand from Tinda Park is likely to exceed 100,000 tonnes per year.*
- *Since consent was granted in 1996, the legal load limit for trucks has increased from 25 tonnes to 33 tonnes. As a result of this change, it is possible to transport up to 132,000 tonnes of sand per year from the site with the same number of truck movements as would have been required in 1996 to transport 100,000 tonnes of sand. It is understood that the 100,000 tonne per year limit imposed by Condition B3 was based on limiting truck movements to and from the site.*
- *Analysis of operations at the site shows that an annual production level of in excess of 125,000 tonnes per year could be achieved using the same equipment, operating hours and truck movements that are currently permitted on site under the existing development consent.*

*Birdon Contracting seeks to modify condition B3 to increase the maximum permissible annual production from 100,000 tonnes per annum as set out clause B3 of Development Consent DA0134/95 to 125,000 tonnes per annum. This would enable the quarry to be able to respond to increased market demand whilst still remaining in the overall bounds of the development consent which limit production over the life of the quarry to two million tonnes as provided for in Condition B4."*

### **Statutory Provisions**

The site is zoned Mixed Agriculture under Hawkesbury Local Environmental Plan 1989 within Mixed Agriculture zoning, extractive industries are permissible with Council consent.

### **Community Consultation**

The application was publicly exhibited and advertised from 7 August - 22 August 2006, in accordance with the provisions of the Environmental Planning and Assessment Act (EPAA) and associated Regulations. The EPAA and Regulations required:

- i) A Notice to be placed in a local newspaper circulating in the area;
- ii) Site sign being erected on the site;
- iii) Letter to adjoining and surrounding property owners and occupants, as well as those persons who previously made submissions on the initial application.

During the exhibition period:

- Four respondents provided submissions in respect to the application.
- Four submissions from Public Authorities.

The submission from the respondents raised the following issues:

- Loss of water to Tinda Creek caused by the current mining operation.
- Lack of compliance with the current conditions of consent.

## ORDINARY MEETING

Meeting Date: 29 July 2008

- Lack of annual environmental reports for the mining activity.
- Lack of any ground water monitoring bores.
- Proposal is to increase the approved area of mining from 14ha to 22ha and not substantially the same operation approved.
- Drawing submitted SK2 does not specify the approved extraction area.
- Illegal use of adjoining Lot 1 for a diversion channel and the dredge pond encroaching into the northern boundary buffer.
- Illegal clearing of land adjacent to existing mining area.
- Matters raised by the main respondent, Mr Diamond, are outlined separately elsewhere in the report.

These matters will be discussed in the report.

### Planning Assessment

#### Section 96E

Section 96(2) of the EPA Act States:

*"A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:*

- (a) It is satisfied that the development to which the consent as modified relates substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and*
- (b) It has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and*
- (c) It has notified the application in accordance with:*
  - i. The regulations, if the regulations so require, or*
  - ii. A development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
- (d) It has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be."*

The modification proposes to extend outside the area identified on the plans approved by the Development Consent.

A submission has been made by the Environmental Defenders Office Ltd argues that the modified development as proposed is not substantially the same development and cannot be considered under Section 96 of the EPA Act.

The matter of whether a modification can be considered under Section 96 is a matter of fact and not a question of law.

When Council is considering if the modifications can be dealt with by way of a S96 Modification the following matters are to be considered

- *Is the change in the proposed area of extraction so substantially different as to constitute a new development.*

## ORDINARY MEETING

Meeting Date: 29 July 2008

The original EIS document proposed the extraction of 3,000,000 tonnes (Approval granted for 2,000,000 tonnes) of sand and in Section 3.1 indicated it affected an area of approximately 22ha or 25% of the property.

The applicant's consultant (Port Stephens Design Services) provided a further letter and plans that indicated the development site area of 14ha. The applicants current consultant (Umwelt) has indicated that the two base maps in the EIS (Figures 7.5 and 7.6) show a proposed extraction area of approximately 14.5ha (Figure 7.5) and 15.6ha (Figure 7.6).

The EIS in sections 5.1.3 and 5.25 indicates the ultimate aim is to excavate an area of approximately 15ha and convert it into a lake.

Based on the above the approved development of the sand quarry involved 2,000,000 tonnes of sand over an area of approximately between 14 to 15.6ha.

The applicant's current consultant has modified the extraction sequence as shown in the Attachment to this report. The proposed modified sequence now occurs over approximately 15.6ha area.

The area under the existing silt pond and processing plan area is not proposed to be extracted due to the depth of silt that exists in this area.

The final landform shown in the Attachment consists of a lake/pond with a surface area of approximately 14.6ha with the area currently occupied by the silt pond and processing plant being rehabilitated.

The modified area of extraction has overall not substantially altered from what was contained and approved in the EIS being between approximately 14ha to 15.6ha of land. The amended sequence of mining is approximately 15.6ha. The applicant wishes to transfer a section of the area approved for mining but not yet mined to another section of the site.

The total area to be mined remains substantially the same.

As a result the modified area for sand extraction is not considered to be substantially different based on the area of extraction and would not constitute a new development application.

- *Is the proposed rate of change of tonnage extracted substantially different so as to constitute a different development application.*

The modification application does not propose to increase the total amount to be mined as approved by the Development Consent being 2,000,000 tonnes. The modification does seek to increase the maximum tonnage per year from 100,000 to 125,000. This is due to the increase in weight the cartage trucks can now haul on public roads.

The overall traffic movement of trucks will not alter.

The increase in yearly tonnage may shorten the life of the quarry. As a result the total tonnage to be extracted does not change and it is considered the modification is not substantially different so as to constitute a different development application.

The table below shows a comparison of the approved and modified development based on extracted area and total tonnage to be removed.

	Area of Extraction	Total Tonnage
Approved	14.5-15.6ha	2,000,000
Amended	15.6ha	2,000,000

## ORDINARY MEETING

Meeting Date: 29 July 2008

When one compares what was approved with the original DA with the modified application the modified application is seen to be substantially the same and not substantially different to the approved development.

It is considered that the application can be considered under Section 96 of the EPA Act.

### Lapsing of the Consent

A legal opinion from the Environmental Defenders Office Ltd to Mr Diamond has been submitted which indicated that as no approval was granted as required by Condition 4 prior to the works commencing the Development Consent DA0134/95 has lapsed.

Condition 4 States:

*"Erosion and sedimentation devices shall be installed and maintained during construction and ongoing operations. Details shall be submitted and approved by the Department of Land and Water Conservation prior to any works commencing."*

Erosion and sediment control plans were submitted to Council as part of the original development application. These plans were the subject of discussions during a mediation conference prior to the application being considered by Council. The outcome of the mediation conference was the inclusion of the second sentence in the condition that requires the approval of the Department of Land and Water Conservation.

Council does not have any records of amended plans being submitted and approved by the Department of Land and Water (Now Department of Water and Energy) as required by this condition. The Department of Water and Energy (DWE) have been consulted on two separate occasions to ascertain whether amended plans were lodged with the Department, and Council has received three separate letters from DWE in relation to this matter with at least two of those letters providing conflicting advice.

The first contact from Council resulted in a letter being received 25 June 2007 stating:

*"A review of files in this matter has found that in 1996/97 the Department provided advice to Council, received copies of the Erosion and Sedimentation Plans (as required under DA134/95 Consent Condition 4) and undertook discussions and inspection of the site. In its working with Council the Department did not raise any significant concerns in this matter, implying support for the plan and its implementation."*

Despite no request being sent from Council a second letter from the Department was received, dated 17 September 2007, stating:

*"While DLWC received and reviewed plans (December 1995 and July 1996), there is no indication that DLWC received details as required by Condition 4 or provided the approval sought by Condition 4, subsequent to the consent determination."*

These two letters provided conflicting advice and the matter was discussed with the applicant to clarify the situation. On 5 November 2007 the applicant submitted additional information in relation to the application that included a Statutory Declaration, dated 22 October 2007, that detailed the applicant's recollection of the facts in relation to compliance with Condition 4 of the development consent. This Statutory Declaration was referred to the DWE on 30 November 2007 as there was a reference to erosion and sediment control plans that had been recently viewed in the Department's Parramatta office. The response from DWE, received at Council on 7 March 2007, stated the following:

*"Notwithstanding claims made by Mr Bruce in his declaration, the Department is unable to locate any documentary evidence to support Mr Bruce's claims."*

*"Discussions with staff involved in the Tinda Creek matter at the time in question have also failed to substantiate Mr Bruce's claims of a verbal approval by a Department Officer."*

## ORDINARY MEETING

Meeting Date: 29 July 2008

Although the details in the Statutory Declaration by the applicant are not questioned, there does not appear to be satisfactory evidence that indicates that the Condition 4 requirement to submit erosion and sediment control details and obtain the approval of the Department of Land and Water Conservation has been complied with.

The requirements of Condition 4 of the Development Consent must be complied with prior to any works commencing on the site following issue of the approval. As this requirement has not been complied with, the Development Consent has, technically, not been commenced and, as such, it is considered that the Development Consent has lapsed.

### **Loss of Water to Tinda Creek**

Concerns have been raised in respect to the mining activity causing the loss of water to Tinda Creek that flows through some adjacent properties.

In response to this issue Council commissioned Mr Chris Jewell to undertake an independent assessment of the impact on the ground water and the existing creek system and local water bodies that are adjacent to the sand mining operations. The assessment was to provide Council with advice to assist in resolving some of the issues in relation to this matter.

Mr Jewell met with the respondents and applicant on site to hear their concerns and inspect the quarry operation and the respondents properties. At the meeting all persons were given the opportunity to express their concerns on the ground water and flows in Tinda Creek.

A further meeting was held with all the persons who attended the site meeting and the consultant to discuss the final report that was presented to Council.

The report has discussed the potential impact on the groundwater system and includes site water balances for a range of scenarios as indicated below:

- Pre-development
- Current Operational
- Final Operational
- Post Closure
- Post Closure (proposed)

The quarry has the potential to impact on the groundwater water balance and the water balance assessment provides values for:

- Precipitation
- Evapotranspiration
- Bare Soil evaporation
- Open water evaporation
- Export
- Outflow to Tinda Creek

The conclusion of the report is produced below.

*"Although an assessment of the site water balance indicates that it is unlikely that, to date, the quarry has had a significant impact on the water balance of Tinda Creek, as the operation proceeds, evaporative losses from the ponds will increase and the reduction in outflow from the upper catchment to Tinda Creek will become significant. If the site is closed with a water-table window lake remaining, then a long-term reduction of the order of 37 percent of the original outflow from the catchment upstream of the quarry is possible. Losses will be higher if the final landform includes a lake extending across the entire 22ha site.*

*It is unlikely that the site operation will impact on groundwater quality provided that the requirements of the site's Environment Protection Licence are followed. Any impact on ground water quality would be*



*manageable within the site boundaries provided that it was detected promptly, by a groundwater monitoring program."*

The final landform involves a lake of approximately 15ha.

The report also proposed a number of recommendations which are produced below:

#### **"7.1 General Recommendations**

*It is recommended that:*

- *Dams and drains on the site and adjacent properties that do not serve any useful purpose should be removed. If necessary the assistance of the Department of Water and Energy in implementing this recommendation should be sought.*
- *A groundwater monitoring program be implemented, and this program include the construction of six properly designed and constructed groundwater monitoring boreholes, and regular monitoring of groundwater levels and groundwater quality.*
- *The recommendations of Umwelt (2006a) with regard to regrading of the diversion drains be implemented.*
- *A new environmental management plan for the sand operation be prepared, incorporating the recommendations of this report, including those for groundwater monitoring, and that the plan be reviewed by Council.*
- *An annual independent audit of the implementation of the Environmental Management Plan be carried out.*
- *An appropriate quarry closure plan detailing the eventual closure of the site at the completion of extraction operations be prepared now. This requirement is consistent with good industry practice. The plan should seek to minimise long-term impacts on the hydrology of Tinda Creek.*
- *Council does not consent to changes to the approved development that result in a larger area of open water in the final landform that is currently approved, unless the proponent can demonstrate, using a more sophisticated and site-specific water balance than is presented in this report, that the final landform will not result in lower catchment outflows to Tinda Creek. Preparing a better water balance would require the collection of site-specific hydrological data over a period of several years.*

#### **7.2 Ground Monitoring Recommendations**

*It is recommended that a network of six groundwater monitoring boreholes be installed. Appropriate locations are shown on Figure 4, but some flexibility in siting is possible.*

*Monitoring boreholes should be 12 metres deep, screened from 2 to 12 metres, and be constructed as standard groundwater monitoring wells, with:*

- *50-mm uPVC screw-jointed casing and screen*
- *an appropriate filter pack*
- *bentonite annular seals*
- *lockable monuments*

*Groundwater levels should be monitored monthly.*

*Groundwater quality should be monitored six-monthly.*

## ORDINARY MEETING

Meeting Date: 29 July 2008

*Groundwater quality monitoring should include pH, conductivity, nitrate, ammonia and Total Petroleum Hydrocarbons (TPH).*

*Groundwater quality monitoring should be reported annually."*

### **Matters raised by Mr Diamond's Submissions**

Mr Diamond has in respect to the S96 application and the quarry operation has lodged at least 30 submissions. Some of these submissions were lodged multiple times with Council, Councillors or individual staff. The submissions were lodged as a letter with a number of attachments which involved former submissions or copies of letters from other Government Authorities.

A review of the submissions received from Mr Diamond has found that there are common issues raised in each submission, but expressed in different ways. To clarify the matters raised they have been summarised into groups as follows:

### **General Complaints Against Individuals (Councillors and Former Staff)**

1. Council at its meeting of 14 December 2004 was misled and lied to when it was stated that the mine is not operating in groundwater.
2. Formal complaints against former Council staff, including the former General Manager, former Director, former Manager and town planner and a current Councillor.
3. The previous undertaking by a former General Manager to independently investigate complaints has not been undertaken.
4. Council has never investigated any of the complaints made.
5. Complaint by Danny Pullicin (an adjoining neighbour to the quarry) has not been investigated.
6. Council reports re Tinda Creek have been fabricated to protect Birdon Contracting, either negligence or a Councillor was paid to do work for previous owner.
7. Fraud by Council staff for not collecting correct fees for S96 applications.
8. Council has not verified the EDO legal advice dated 27 September 2006.
9. General complaints re staff handling of supervision and compliance with consent.
10. Several allegations that involve persons "associated" with the quarry.
11. Staff may be personally liable for fines.

### **Complaints re Original Application and Consent**

1. No consent from Crown, as owner of the land, to operate beyond 15.24 metres below natural surface.
2. EIS (1984) made false statements re excavations not in creek.
3. November 1995 EIS claimed six monitoring bores to be installed.
4. Birdon did not install ground water monitoring bores as agreed to in mediation conference December 1996.
5. Council retrospectively approved Birdon Contracting's application on 10 December 1996 ignoring legal and ethical responsibilities.

## ORDINARY MEETING

Meeting Date: 29 July 2008

6. The approval was for staged development and each stage required sign off prior to granting separate approval for each subsequent stage of work. Work in each stage should not commence until this separate approval issued.
7. Applicant failed to supply archaeological study.

### **Complaints regarding existing Section 96 application**

1. The current Section 96 application states the quarry is operating to a finished area of 22 ha. However, the Port Stephen's letter of 4 June 1996 states only 14ha.
2. Diagram SK2, submitted with the Section 96 application, is not the approved document. (See page 2 of Hawkesbury Nepean Catchment Management Trust letter of 12/1/96). Approved plan PS91E130 shows approved dimensions.
3. Legal advice that consent has lapsed, therefore Section 96 cannot be processed.
4. S96 application used to cover up out of area works.
5. Council cannot grant consent for illegal use of unlicensed water.
6. Under Act and Regs any alterations or modifications to a designated development consent, including the current S96 applications requires an EIS.
7. Current S96 is not the same development under the Act (See Lloyd J decision re BHSC v Dixon Sands).
8. Issues have not been dealt with by Chris Jewell report (specialist report on advice requested by Council) specifically:
  - a. Tinda Creek is not flowing
  - b. Council and Jewell report fail to deal with the State Government Policy on ground water eco dependent creeks.
  - c. Failure of Council & Chris Jewell to have access to all relevant information including working file of the former General Manager.
  - d. Failure of report to deal with Birdon not installing 6 ground water bores.
  - e. River & Foreshore Improvement Act issues not considered.
  - f. States that the Water Act 1912 is the appropriate Act to use in this matter.
  - g. Asks for Chris Jewell report to be revised with above matters considered. Also asks for report to be peer reviewed by Lionel Ethridge or ERM.
9. Suggests that S96 application is false and makes threats that if these are not withdrawn Mr Diamond will notify the Department and the Police.
10. Comments regarding the Statutory Declaration by Tom Bruce, indicating that Mr Diamond questions some of the statements.

### **Dealing with legal advice**

1. Legal advice received from Birdon Contracting, dated 9 November 2000, was not considered properly or professionally. (Council had not viewed documents advice relied upon)
2. Pike Pike & Fenwick of 30/8/05 advised certain action and it was not taken.
3. EDO advice (dated September 2006) that consent had lapsed was not acted upon.

## ORDINARY MEETING

Meeting Date: 29 July 2008

### General Matters

1. Council has failed to enforce/comply with the conditions of Land & Environment Court matters 40230 of 2005 & 40430 of 2005.
2. There has been fraud in non payment and non indexation of Section 94 contributions.
3. Council corruptly ignored breaches since 1984.
4. The bypass channel is incorrectly installed and not approved.
5. The natural swamp under the power lines has been illegally filled and Council has done nothing to rectify and covered this up.
6. GM has not instructed solicitors correctly.
7. Council file must be modified as it is false and incorrect.
8. Diamond is being threatened because he is pursuing compliance.
9. Request meeting with Chris Jewell (water balance consultant engaged by Council) to explain connection between creek and pond 15m below groundwater and illegal use of 150 ML when only licensed for 40ML.
10. Council ignored responsibility under SREP 20 re erosion control plans and the ground water issues (see Page 19, 31 & Clause 6, Part 2 on page 16 re erosion and control prior to commencement).
11. Requests reports from investigations into 5 items listed in Clr Bassett's undertaking of 13 July 2006.
12. Fraud in quantity survey used to calculate tonnages excavated and survey was done after the land was levelled.
13. Council staff have ignored tree clearing.
14. Allegations of drug dealing, standover tactics, arson, death threats from the operators or persons related to the quarry operations.

### Consent Condition Compliance

1. Council has failed to enforce conditions of development consent.
2. Condition 4 not complied with, therefore consent has lapsed. Comments related to Statutory Declaration by Tom Bruce stating that it is misleading and false.
3. Condition 27 required an environmental management plan but this has not been submitted.
4. Condition 17B – requires submission of monitoring program details for ground and creek water quality & contingency plan.
5. The quarry is working out of the development approved area.
6. Quarry using more water than licence permits.
7. The Tinda Creek quarry is operating on Lot 1 (by-pass channel & test bores) and Lot 3 (Test Bores) and Council should take action for this to cease. Should be operating only on Lot 2 DP 628806.
8. No EPA or DLWC licences until 2004.

## ORDINARY MEETING

Meeting Date: 29 July 2008

9. On 4 December 2004 Council insisted that erosion & sedimentation control plan should be submitted re conditions 1, 2, 3, 4, 17b and 27. This not yet done.
10. Council staff failed to properly instruct solicitors re erosion & sedimentation plans and compliance with conditions 27 or 17b.
11. Auditor has defrauded Council in not mentioning the shortfall in S94 fee collection.

### **Comments on specific issues raised by respondent**

#### **General Complaints against individuals (Councillors and former staff)**

1. Council at meeting of 14 December 2004 was misled and lied to when it was stated that the mine is not operating in groundwater.

The tapes from the Ordinary meeting of 14 December 2004 and the General Purpose Committee meeting of 27 November 2004 have been reviewed. Whilst not all of the tapes were audible, much of the comments and debate relating to the Tinda Creek quarry matter was audible. The comments on the tape used words to the following effect:

"In my expert opinion, the operation runs fairly well. Does not appear to be any escape from the mining operation sites which is a wet dredge operation adjacent to a dam which flows into where the dredging is operating. The tailings, the extraction area drains to a separate set of dams and is sealed. No water escapes. Tinda is some distance away from the operation. No sedimentation."

There was no evidence found on the tape that advice or comments on groundwater in the fashion suggested was given at the Council meeting.

2. Formal complaints against former Council staff, including the former General Manager, former Director, former Manager and town planner and a Councillor.

These complaints and allegations are in the form of statements and were not backed by any form of proof from the respondent. However, the respondent has been advised previously by the current General Manager that no action could be taken under Council's code of conduct as there would be limited, if any, sanctions that could be taken against former employees even if any allegations, hypothetically, gave rise to concern. Mr Diamond was also advised that if he had evidence of corrupt conduct of any former staff that he should refer these complaints to the ICAC.

3. Council has never investigated any of the complaints made.
4. The previous undertaking by a former General Manager to independently investigate complaints has not been undertaken.

See response above. The respondent has made a variety of allegations about Councillors and Management but has not supplied sufficient details or proof of any of the allegations. Much of the information supplied has been in the form of "draft Affidavits" that contain a range of statements but lack evidence. The respondent was formally requested by Council's former General Manager for additional information which has not been provided.

The respondent has also submitted to Council a letter forwarded to the Independent Commission Against Corruption (ICAC) in which he has made allegations about corrupt conduct by Council staff and Councillors. The response from the ICAC, in part, was as follows:

"You have not provided any information to support your claims despite being requested to do so."; and,

"The Assessment Panel has determined that your complaint not be investigated as you failed to provide any information to support your allegations and which might tend to indicate corrupt conduct."

## ORDINARY MEETING

Meeting Date: 29 July 2008

The respondent has made numerous allegations and complaints that are attached to this file. A review of the file indicates that preliminary investigations were made regarding most of these allegations but did not find substantive evidence to warrant the matter to proceed. The respondent was also requested to supply specific evidence to substantiate the allegations but this evidence has not been provided. Given the lack of substantive evidence and detail of these allegations, it is not proposed to take those matters further.

5. *Complaint by Danny Pullicin (an adjoining neighbour to the quarry) has not been investigated.*

Council received, on 15 May 2006, an email request for information or assistance in ensuring that the Tinda Creek remains flowing. The letter states:

*"As Council is aware the Birdon Sand Mine has Tinda Creek on its site we would appreciate if council can check The Tinda creek and confirm its no flow status is only due to climate conditions.... For the first time in 20 years we are witnessing this wetlands (in the adjoining National Park) drying up."*

A response was sent to Mr Pullicin on 6 September 2006 stating that the NSW EPA was the regulatory authority for the water use at this site. It should also be noted that the climatic conditions at that time, as verified in the letter from Mr Pullicin, were extreme. Council monitoring of the quarry operation at that time did not indicate that water use had changed significantly from the last 20 years to indicate that the drop in water flow could be wholly contributed to the quarry operation.

Mr & Mrs Pullicin met with the Mayor (Councillor Stubbs) and a Council Officer concerning this issue and it was agreed that Council would engage an independent consultant to investigate the matter. Mr Chris Jewell undertook the independent assessment and Mr Pullicin was involved in the process and provided a copy of the final report.

6. *Council reports re Tinda Creek have been fabricated to protect Birdon Contracting, either negligence or a Councillor was paid to do work for previous owner.*

See comments regarding complaints above. These allegations are made as statements in letters or affidavits with no evidence to support the claims. It seems that these statements were made based on the respondent not agreeing with the reports or conclusions rather than being based on evidence to contradict the reports.

7. *Fraud by Council staff for not collecting correct fees for S96 applications*

Fees for development applications and section 96 applications are set by Statute and relate to the value of the development with section 96 application fees being either a percentage of the original application fee or, where a building is involved, a modified scale of fees based on the estimated value of the development.

At the time of acceptance of the original application (1994), Council did not have a system for checking the estimated value, quoted by the applicant on the original application form, of developments. At the time of lodgement of the current section 96 modification application, the fee was based on the appropriate percentage, as set in the Environmental Planning and Assessment Regulation 2000, of the original development application fee.

Council has relied in the past on the honesty of applicants to provide a realistic estimate of development costs when lodging an application. This approach has been applied to all development applications lodged with Council. An allegation of fraud implies that the way of calculating the fees for the subject or original development application was changed to enable the applicant to be charged a lower rate. As the way of calculating fees for all development applications was the same at the time of lodging the original development application and in the absence of any evidence to indicate the contrary, there does not seem to be any fraud in the collection of application fees.

## ORDINARY MEETING

Meeting Date: 29 July 2008

It should be noted that Council does recognise that the estimated costs of development quoted on the application form may not be a true reflection of the actual costs. Council is developing a scale of building and development costs with the intention of using this scale of costs as a baseline for checking the estimated costs of developments.

8. Council has not verified the EDO legal advice dated 27 September 2006

The Environment Defenders Office (EDO) provided a legal advice to Mr Diamond on 27 September 2006. This advice was subsequently forwarded to Council. The advice is titled "*Lapsing of consent - failure to comply with conditions*" and deals with two separate matters being "*The Colo Heights Quarry Consent*" and "*The Mangrove Mountain Quarry Consent*". It is assumed that the "Colo Heights Quarry" referred to is the subject quarry at Tinda Creek.

The EDO letter refers to Mr Diamond's letter of 5 September 2006 (not provided to Council) and provides comments on a number of development consent conditions, legislation and case law. The letter concludes the following:

*"Failure to comply with conditions in the Colo and Mangrove Mountain consents that expressly require compliance 'prior to works commencing' may lead to lapse of development consent. It is uncertain whether failure to comply with other conditions would have resulted in the lapse of the consent."*

It is unclear what the instruction to the EDO are and to what information the EDO had access in order to provide the advice. Mr Diamond was requested verbally to provide that detail but the information was not provided.

It is not usual practice for Council to verify all advice, legal or otherwise that is submitted. Any advice submitted to Council is reviewed and if it is considered that further consideration or additional legal advice is required then advice is sought from Council's solicitors. On this occasion additional advice has been received from Council's solicitors.

The issue of effects of the matter of compliance with conditions and lapsing of consent is addressed elsewhere in this report.

9. General complaints re staff handling of supervision and compliance with consent.

This complaint is general in nature and does not specifically nominate individual staff. The complaint refers to the way the development consent has been enforced and compliance matters pursued.

The file indicates that there have been a number of inspections of the quarry and assessments in relation to compliance with development consent conditions. (The detail of condition compliance is addressed elsewhere in this report). The areas of non-compliance were discussed with the applicant/operator and additional information requested. The follow up of these requests could have been more actively pursued by staff at the time. However, it is noted that over the years since approval was granted, due to staff changes, a number of different staff have managed the file. This seems to have led to some confusion or misunderstandings as to what was requested previously.

It is conceded that the supervision of the file has not been optimal. However, this has led to this review and an undertaking by the current staff to improve this supervision depending on the outcome of this review and the Section 96 application.

10. Several allegations that involve persons "associated" with the quarry.

A number of allegations have been made in regards to the conduct of persons working or "associated" with the quarry. It seems that these allegations have been sent to Council as a form of 'character reference' for the operators of the quarry and the relevance of these allegations to the development consent or the functions and authority of Council is unclear. These allegations are of a

## ORDINARY MEETING

Meeting Date: 29 July 2008

civil or criminal nature and the respondent is advised to pursue these allegations with the appropriate authorities.

11. Staff may be personally liable for fines, staff may be held responsible for misleading statements made in applications if the application is accepted.

These statements are examples only of some of the statements made in a number of the letters by the respondent. Whilst it seems that the respondent is simply pointing out the responsibilities of the staff in these matters, the context and use of some of the statements, ie, when used in conjunction with statements suggesting legal action by the respondent, may be viewed as threats against staff unless certain action, that is consistent with the respondent's requests, is taken. These statements have no relevance to the assessment of the current Section 96 application.

### Complaints re original application and consent

1. No consent from Crown, as owner of the land, to operate beyond 15.24 metres below natural surface.

The original development application stated that the proposed excavation for the mining operation was to a depth of 20 metres below the natural surface. At the time of assessment and not until after the determination of the development application it was not realised that the title to the land was limited to a depth of 15.24 metres below the natural surface.

In a report to Council on 14 December 2004 there was discussion regarding a site survey, by a registered Surveyor, Mr Matthew Freeburn, for the purpose of estimating the natural surface of the site prior to the quarry operation commencement to determine the depth and volume of the excavation. This survey, and recent discussions with the quarry operators, indicates that the depth of the excavation has not yet reached a depth of 15.24 metres below the natural surface.

It may be the intention of the quarry operators to ultimately extend the excavation below the 15.24 metre level. The operator was advised by Council staff that this would not be possible without the consent of the Department of Lands as owner or a licence from the Department to use that portion of land. A letter was received by Council on 9 May 2008 from the Department of Lands making an offer of a licence authorising the use or occupation of land. Prior to any excavation or occupation of the land 15.24 metres below the natural surface the licence will need to be finalised.

2. EIS (1984) made false statements re excavations not in creek

The current development consent was based on an Environmental Impact Statement (EIS) dated November 1995. An EIS was prepared in 1985 for a previous development application for the construction of a Dam and extraction of sand from the site. A review of the 1984 file indicates that there were some issues in relation to the statements made in the EIS that were addressed in the assessment of that application. Development consent for DA 0192/85 was issued in November 1986. Following extensions granted by Council, that consent expired in 1991. It is unclear what relevance the EIS dated 1985, relating to a separate, now expired development consent, has to the current application and approval.

3. November 1995 EIS claimed six monitoring bores to be installed.
4. Birdon did not install ground water monitoring bores as agreed to in mediation conference December 1996.

The November EIS stated that "In addition, a series of bores will be installed to monitor groundwater behaviour." (Section 5.1.4. Hydrology. P23). The only other reference to bores in the EIS is in Figure 7.4 - Exploratory Drilling Plan. This plan indicates the location of six exploration bores undertaken as part of the investigation of the sand material for the operation. In addition there are no conditions that require six bores to be installed. Should the section 96 application be approved, the operator has agreed to the installation of monitoring bores.



## ORDINARY MEETING

Meeting Date: 29 July 2008

5. Council retrospectively approved Birdon Contracting on 10 December 1996 ignoring legal and ethical responsibilities.

It is understood that the development application, DA 0134/95, related to an operation that was already operating without approval. (In this case some works had continued following the expiration of a previous approval granted in 1985) The application was prepared and lodged with Council in accordance with the requirements at the time and the application was determined in December 1996. There does not seem to be any legal requirements that has been breached in this process and the time limit for any legal challenge of the issue of the consent has expired. It is clear that the respondent does not agree with the operation of the quarry at this time. However, there is no indication on the file that the assessment and determination of the development application did not follow the correct process.

6. The approval was for staged development and each stage required sign off prior to granting separate approval for each subsequent stage of work. Work in each stage should not commence until this separate approval issued.

Condition 3 of the development consent states:

*"The development approval being limited to a period of two years. Subsequent stages will require formal submission, under Section "B" of this consent, to Council and supported by evidence that the operation has complied with the conditions of the State (sic) 1 consent."*

Whilst the condition states certain requirements regarding staging, the condition does not require a "sign off" and separate approval for each subsequent stage. The condition does require a "submission" to Council addressing several conditions nominated in the consent.

The respondent has argued that the intent of the condition, as discussed in the assessment report for the original development application to Council, was that each stage required a sign off and subsequent development approval of each following stage. The respondent also asserts that a letter from a Council officer at the time of the determination of the application also states that subsequent stages require separate approval prior to proceeding.

Whilst the review of the Council officer's letter may be interpreted in the way that the respondent asserts, there is doubt regarding that interpretation. However, when the wording of the condition is reviewed it is clear that, apart from the obvious typing error (State rather than stage) the condition is clear regarding the requirements for staging. It is clear from the above condition that, whilst there is a requirement to receive a submission, or "sign off" at a particular stage, the condition does not require a separate approval to be granted for each subsequent stage of development.

This matter was addressed in the report to Council on 14 December 2004. The report states, in part, the following:

*"Council's legal opinion has suggested that the letter dated 15 December 1998 from the applicant seeking an extension of the development consent was an application for modification as it then stood and was made in accordance with the requirements of the regulations as they stood then. ...As a result the application was made prior to the lapsing of the consent and that Council can still make a determination of the application."*

The Section 96 application relating to condition 3 of the consent, referred to above, was determined at the meeting of 14 December 2004. The timeframe for any challenge to the validity of that determination has now expired.

7. Applicant failed to supply archaeological study.

The EIS dated November 1995 submitted with the application, contained advice from Dr H Brayshaw, dated 4 August 1992, in relation to the proposal. This advice referred to a previous study undertaken for the site in August 1984 by the same firm. The advice concluded *"Under these circumstances it is our view that no further archaeological investigation is warranted."* Additional and

## ORDINARY MEETING

Meeting Date: 29 July 2008

amended detail was submitted for the application on 6 June 1996 with a covering letter from Port Stephens Design Services. In that letter the following statement was made:

*"Archaeological Survey Consultant has confirmed Development Area covered by study."*

This conclusion was considered reasonable considering the advice from the National Parks and Wildlife Service dated 6 February 1992, contained in the EIS dated November 1995 that states:

*"The archaeological study undertaken in 1984 for the previous operation was considered to be adequate."*

In this regard, the applicant has satisfied the requirement to supply an archaeological study. This information was considered as part of the assessment information prior to the determination of the application in December 1996.

### Complaints regarding existing Section 96 application

1. *The current Section 96 application states the quarry is operating to a finished area of 22 ha. However, the Port Stephen's letter of 4 June 1996 states only 14ha.*

This matter is discussed in another section of the report.

2. *Diagram SK2, submitted with the Section 96 application, is not the approved document. (See page 2 of Hawkesbury Nepean Catchment Management Trust letter of 12/1/96). Approved plan PS91E130 shows approved dimensions.*

It is clear that there are differences in the information submitted with the original application and the Section 96 application. That is the whole intention of the applicant in the submission of the Section 96 application. The assessment of the information submitted with the Section 96 application against the information in the original application is compared as part of the assessment of the application. The letters and statements will be considered as part of the assessment of the current Section 96 application elsewhere in this report.

3. *Legal advice that consent has lapsed, therefore Section 96 cannot be processed.*

The legal advice referred to is the EDO advice submitted to Council in September 2006. This matter is addressed elsewhere in this report.

4. *S96 application used to cover up out of area works.*

It is correct that the quarry is operating outside the area originally approved in December 1995. The primary purpose of the Section 96 application is to make application to Council to vary the original approval to rectify that encroachment and propose a revised quarry area. It should be noted that the application is for a variation to the quarry location and not the overall quantity extracted from the site or the overall finished area.

This has been discussed elsewhere in the report.

5. *Council cannot grant consent for illegal use of unlicensed water.*

This statement is correct. Council is not the consent authority for the extraction of groundwater. The Department of Water and Energy is the authority that licences the use of groundwater bores and water extraction. The original development consent contains a condition that requires the operator to comply with other Government Agencies permits or licences. Should a Section 96 application be approved for the site, this condition will remain and Council will advise the Department of the quarry variation so that the Department can review the water use on the site.

6. Under Act and Regs any alterations or modifications to a designated development consent, including the current S96 applications requires an EIS.

A Section 96 application, by definition in the Act, must be "substantially the same development" as originally approved. It is not a 'development application' but rather an application to modify an approval. Should this not be the case then a matter cannot be dealt with as a Section 96 modification application and would require a separate development consent.

In the case *Contrite Quarries Pty Ltd v Wingecarribee Shire Council (2000) 108 LGERA 166* Lloyd J concluded that the requirement for an Environmental Impact Statement in the case of designated development applied only in the case of a "development application". In this judgement, Lloyd J states:

*"Part 2 of Schedule 3 provides that in the case of alterations or additions to designated development, if in the opinion of the consent authority, the alterations or additions do not significantly increase the environmental impact, compared with the existing or approved development, then it is exempted from the provisions of Schedule 3. The requirement for an Environmental Impact Statement arises from section 78A of the Act. Subsection (8) provides:*

*'(8) A development application must be accompanied by:*

- a if the development application is in respect of designated development - an Environmental Impact Statement prepared by, or on behalf of the Applicant in the form prescribed by the Regulations, or ...'*

*In my opinion, subsection 78A(8) does not apply in this case. The requirement for an Environmental Impact Statement in the case of designated development applies only in the case of a development application. This is an application for modification of an existing development consent. In my opinion, section 78A has no application, and neither does Schedule 3."*

It is clear from the above quote from the judgement in the *Contrite* case that a separate EIS is not required when an application is a section 96 modification application. This has been verified by Council's solicitors.

7. Current section 96 application is not the same development under the Act (See Lloyd J decision re BHSC v Dixon Sands).

It is assumed that the case the respondent is referring to is *Baulkham Hills Council v Dixon Sands (Penrith) Pty Ltd & ors (1998) NSWLEC 316 (18 December 1998)* as this was the only case that Baulkham Hills Council and Dixon Sands were involved in where the hearing Judge was Lloyd J.

This case judgement has been reviewed. Without discussing the detail of the case, the matter related to an application to the Court by Council for an order restraining the use of the land for the purpose of an extractive industry as the development consent had expired. The original development consent contained a condition that limited the consent to a five year period. The operator lodged a section 96 application, two months prior to the consent expiring, requesting an extension to the consent for twelve months to enable them to prepare another development application for the quarry. The operator then commenced legal proceedings against the Council for not determining the application within the timeframe.

Whilst there are some general similarities with this case and the Tinda Creek quarry, i.e, they are both quarries that are designated development, there does not appear to be any relevance of the case with the current section 96 application before Council. The previous case related to an application to extend the time of an expired development consent. The current application is to modify the area within which the quarry can operate.

## ORDINARY MEETING

Meeting Date: 29 July 2008

The respondent seems to be attempting to apply a "question of law" to the section 96 application when the matter is a "question of fact". The question of whether an application may be dealt with is an individual merit decision that is made by the Council and involves a detailed factual comparison between the development as originally approved and the nature and degree of the proposed alterations. In the case of the current section 96 application, the matter of amending the quarry operation area, within the area studied as part of the original EIS, is considered to be a matter that may be dealt with via a section 96 application.

This matter is discussed in more detail elsewhere in the report.

8. Issues have not been dealt with by Chris Jewell report (This was a specialist advice report on groundwater requested by Council staff to assist in the application assessment) specifically:

a. Tinda Creek is not flowing

The consultant visited the site and was provided with the necessary information to address the brief for the required work. At the time of visiting the site the creek was flowing. However, the consultant was aware of the extreme drought conditions that prevailed prior to the site inspection.

b. Council and Jewell report fail to deal with the State Government Policy on ground water eco dependent creeks.

The report was commissioned to provide some specialist advice to Council staff. The report was not intended to be the full assessment of the application but to merely provide advice on some matters to staff.

The conclusions and recommendation of the report are discussed elsewhere in the report.

c. Failure of Council & Chris Jewell to have access to all relevant information including working file of former General Manager.

The consultant and staff were provided access to all relevant information in order to undertake the necessary work.

The consultant was also provided the information submitted by Mr Diamond and the applicant after the site inspection.

d. Failure of report to deal with Birdon not installing 6 ground water bores.

As mentioned previously, the EIS required additional bores should certain conditions prevail. These conditions have not occurred and, as such the bores have not been required to date. The Jewell report has recommended the installation of monitoring bores (less than six) and the applicant has agreed, should the Section 96 modification application be approved, to comply with the recommendation of the report.

e. River & Foreshore Improvement Act issues not considered.

f. States that the Water Act 1912 is the appropriate Act to use in this matter.

These two comments have been made in relation to the section 96 modification application. The provisions of these Acts, whilst they apply to aspects of the original operation and development approval, they are of only minor relevance to the modification application. Licences are required for the use of groundwater and approval is required for works that interfere with an aquifer. The appropriate approvals and licences are a requirement of the existing development consent condition No.30. This condition would not be amended should the section 96 application be approved and the operator is responsible to ensure that the appropriate licences and approvals are obtained. A copy of the section 96 application was referred to the Department of Water and Energy for comment.

## ORDINARY MEETING

Meeting Date: 29 July 2008

- g. Asks for Chris Jewell report to be revised with above matters considered. Also asks for report to be peer reviewed by Lionel Ethridge or ERM.

As mentioned previously, the Jewel report was commissioned by Council staff to assist and provide some specialist advice in the assessment of the application. The report is to be used for advice in the assessment of the application only and does not form part of the application. The findings of the report are not necessarily adopted and only the relevant parts of the report are used in the assessment. It is not considered that it is necessary to expend additional money reviewing a report that is only commissioned for advice.

9. Suggests that S96 application is false and makes threats that if these are not withdrawn Mr Diamond will notify the Department and the Police.

The provisions of Section 283 of the Environmental Planning and Assessment Regulation 2000 provides for the making of false or misleading statements. Council, as provided by the Act and Regulations, accepts statements made in applications as being true unless there is evidence that shows this to be incorrect. It should be noted that this does not mean that Council always agrees with the statements and assertions made in any application. That is the whole purpose of Council making an assessment.

During the assessment of the application the details of the application have been reviewed, investigated and assessed and there is no evidence that the application is "false". It should also be noted that there is a difference between making a "false" statement and not agreeing with statements made in an application. Following assessment of some of the allegations made by the respondent, it seems that there may be some confusion in this regard.

10. Comments regarding the Statutory Declaration by Tom Bruce, indicating that Mr Diamond questions some of the statements.

It is not suggested that the respondent or Council should agree with all statements made by applicants or others. However, the applicant for the current Section 96 modification application has, in response to requests for additional information by Council staff, submitted a properly executed Statutory Declaration. This Statutory Declaration sets out the applicants understanding of events in relation to compliance with Condition 4 of the development consent. Whilst the respondent is entitled to an opinion of this Statutory Declaration, the assertion from the respondent that this Statutory Declaration is false is difficult to reconcile as the document asserts the applicant's recollection of events that occurred a number of years ago.

### Dealing with legal advice

1. Legal advice received from Birdon Contracting, dated 9 November 2000, was not considered properly or professionally. (Council had not viewed documents advice relied upon)

The legal advice received from Birdon dated 9 November 2000 related to the staging of the consent and the validity of the request for extension. This matter has been considered on several occasions by staff and by Council's solicitors (In particular Abbot Tout letter 12 July 2002). Whilst the specific letter from Birdon is not referenced, the substantive issues relating to the advice have been adequately addressed. This led to the approval by Council of the Section 96 application on 14 December 2004.

2. Pike Pike & Fenwick of 30 August 2005 advised certain action and it was not taken.

The Pike Pike and Fenwick letter of 30 August 2005 refers to the Land and Environment Court matter that is discussed in point 1 of "General Matters" below. The letter also suggests that the matter of a Section 96 application be followed up by Council. Whilst this matter did take some time, a Section 96 application was followed up as it has resulted in the lodgement of the Section 96 application currently before Council.

## ORDINARY MEETING

Meeting Date: 29 July 2008

3. EDO advice (dated September 2006) that consent had lapsed was not acted upon.

The letter from the Environment Defender's Office (EDO) provided comments, in response to Mr Diamond's letter of 5 September 2006 (not provided by Mr Diamond) on two separate developments being "Colo Heights Quarry and Mangrove Mountain Quarry". The letter provides a background to development consent conditions for both developments to provide advice *"in particular whether the consents have legally commenced if consent conditions are not complied with."* In the case of the subject development there are comments on conditions 3, 4 and 27. (Whilst these three conditions are mentioned the letter focuses on Condition 4 of the development consent.) Condition 3 has been addressed by Council via a Section 96 application previously in 2004. The EDO letter makes the following comments about Condition 27:

*"Condition 27 of the Colo Consent requires:*

*'a site environmental management plan shall be prepared within one (1) month of the date of this approval, to address:*

*((a) to (e) list matters the subject of the environmental management plan)"*

*However, there is no reference to the fact that works could not commence before this plan was prepared."*

The letter focuses on Condition 4 which states:

*"Erosion and sedimentation control devices shall be installed and maintained during construction and ongoing operations. Details shall be submitted and approved by Department of Land and Water Conservation prior to any works commencing".*

The EDO letter contains quotes from the Environmental Planning and assessment Act 1979 and quotes from a number of individual cases that dealt with development consent conditions that required compliance *"prior to works commencing"* in support of the EDO conclusion. The conclusion of the EDO letter states:

*"Failure to comply with conditions in the Colo and Mangrove Mountain consents that expressly require compliance "prior to works commencing" may lead to lapse of development consent.*

*It is uncertain whether failure to comply with other conditions would have resulted in the lapse of the consent"*

Advice from Council's solicitors has been obtained in relation to the EDO letter, particularly in relation to Condition 4 of the Tinda Creek development consent. A variety of questions and responses to this matter have been discussed and the outcome of this advice is discussed in the "Consent Condition Compliance, Condition 4" section of this report.

### General Matters

1. Council has failed to enforce/comply with the conditions of Land & Environment Court matters 40230 of 2005 & 40430 of 2005.

The matters referred to (40230 of 2005 & 40430 of 2005) are consent Orders issued by the Land and Environment Court. Both of these matters are identical in the Orders. However, 40230 states Neville Diamond as the applicant with Birdon Contracting Pty Limited, Poyneed Pty Limited and Hawkesbury City Council as the first, second and third respondent respectively, and 40430 has Neville Diamond and Peter Kent as the first and second applicant respectively with the same respondents as 40230.

The Orders issued for these matters set out the undertakings by the Applicant, and the respondents. The undertaking for the Applicant (objector to the current Section 96 application) in both these Orders are as follows:

## ORDINARY MEETING

Meeting Date: 29 July 2008

- a. *"The Applicant will not commence any further court proceedings in respect to the development approval dated 23 December 1996 for DA 134/95.*
- b. *The Applicant shall not commence any further proceedings in respect of or in relation to the issues raised by the applicant in the proceedings herein.*
- c. *The Applicant will not commence any further proceedings in respect to the section 96 application which was approved on 14 December 2004.*
- d. *The Applicant will not lodge any objection to or raise any issue of fact or law in respect to the proposed Section 96 Application and or Development Application or any approvals given to such applications with respect to the relocation of part of the diversion channel of Tinda Creek onto Lot 1 DP 628806 to amend the excavation area on Lot 2 DP 628806.*
- e. *That the Applicant will immediately stop all representations and contact with DIPNAR to prevent the issue of a Water Licence to the First Respondent or the impositions of any conditions of such licence."*

The undertaking of the First Respondent (applicant for the current Section 96 application currently with Council) are as follows:

- a. *"Implement the recommendations of its consultant "Eco Wise" in respect to the water issues relating to the operation of the quarry the subject of these proceedings.*
- b. *To comply with the conditions of the Development Approval.*
- c. *To take all reasonable steps to obtain a Water Licence for the site and shall comply with the conditions of such Licence relating to the site.*
- d. *To regrade within six months of the date hereof (9 September 2005) the diversion channel where required to assist with the flow of Tinda Creek."*

The undertaking of the Third Respondent (Hawkesbury City Council) is as follows:

*"The Third Respondent will properly monitor and enforce as appropriate the compliance of the First Respondent with the conditions of the Development Approval."*

In relation to compliance with these Orders it is clear that the Applicant (by lodging in excess of 30 submissions to the Section 96 application) has not complied with the Orders, in particular part d. in relation to not lodging objections to the proposed section 96 application. The section 96 application referred to is the application currently before Council.

The First Respondent has undertaken some of the matters in the Order and has not complied as yet with the others. The recommendations of "Eco Wise" have not been implemented as that consultant is no longer used by the First Respondent. However, the First Respondent has engaged another consultant to undertake the necessary works.

The Council's responsibility to "properly monitor and enforce" the conditions of approval have partly been undertaken, albeit protracted. (However, it should be noted that there is no timeframe placed on this undertaking). Monitoring of the quarry operations has been more regularly undertaken over the last 12 to 18 months and condition compliance requests have resulted in the current Section 96 application.

The comments that *"Council has failed to enforce/comply with the conditions"* of the Orders is not correct. Whilst the enforcement actions have been slow to date, there is no evidence to indicate that the Orders have been ignored or overlooked. In this case it seems that the respondent (Mr Diamond) does not agree with the time it has taken to deal with these matters.

## ORDINARY MEETING

Meeting Date: 29 July 2008

2. *There has been fraud in non payment and non indexation of Section 94 contributions.*

This allegation relates to condition No. 8 of the development consent that requires the payment of Section 94 contributions based on a set rate per tonne of extracted material. The nexus for the contribution is based on the damage made by haulage trucks to the roads along the principle haulage route. The contributions, including interest earned, are forwarded to the RTA on a semi regular basis. The rate, as specified by the condition of consent, is to be indexed each year.

The quarry operator has been paying the contribution on a regular basis and provides the appropriate receipts. However, the operator has not reviewed the contribution rate since the issue of the development consent in December 1996. When the respondent advised current staff of this non-indexation in 2007, the matter was addressed and the rate has been indexed. A calculation of the outstanding contributions has also been undertaken and the operator has been requested to pay the outstanding contributions. This matter is being followed up as a separate compliance matter and legal proceedings to recover the amount will be commenced if necessary.

See response to the following Item 12 in relation to total tonnages excavated from the site.

3. *Council corruptly ignored breaches since 1984.*

The Macquarie Dictionary defines Corrupt as “*Guilty of dishonesty, especially involving bribery*”. For behaviour to be corrupt, that behaviour would need to be intentionally dishonest and would involve bribery or some “reward” for acting in a particular way.

The review of the files for DA 0192/85 and DA 0134/95 have found various areas of non-compliance since the commencement of works in 1986. Throughout this time the areas of non-compliance have been followed up, with varying intensity, by a number of different staff. The staff changes over the years, combined with low resources to follow up these incidents and the fact that the applicant has lodged a number of different applications, resulting in the resolution of some matters being drawn out over the years have contributed to the, at times, slow compliance of the development.

Whilst it is true that the compliance enforcement for this quarry over the years could have been more robust, there is no evidence that the compliance enforcement was, or is, corrupt behaviour.

4. *The bypass channel is incorrectly installed and not approved.*

It is unclear if any of the operation is operating on the adjoining property being Lot 1. If this is the case, then those works must either be the subject of another development application (as the current section 96 application cannot deal with works on another property) or the works must be removed from the property and the property be reinstated.

The application plans do not indicate that the existing bypass channel is located incorrectly. It should also be noted that the current application is to relocate the bypass channel and the existing channel will no longer be required.

5. *The natural swamp under the power lines has been illegally filled and Council has done nothing to rectify and covered this up.*

A review of the file for DA 0192/85 indicates that some works were undertaken in the area within the electrical easement located on the property. These works were ultimately granted approval. Following inspection of the current operation, it is not evident when or if any further works have been undertaken in this area.

6. *GM has not instructed solicitors correctly.*

The manner in which anyone seeks and instructs solicitors is a matter between the solicitor and their client. In the case of Council, there are a variety of matters in which a legal opinion is sought to determine an appropriate course of action. The manner in which the instruction is given relates to



## ORDINARY MEETING

Meeting Date: 29 July 2008

the particular issue at hand. It seems that, following various inspections of the file, the instructions were adequate and the respondent simply does not agree with the decisions made.

7. Council file must be modified as it is false and incorrect.

The Council file for this matter, like all development application files in Council, is simply a record of correspondence and process for the application. The file contains internal and external correspondence and file notes by various staff that give a background to how many decisions have been made. It would seem that the respondent does not agree with the decisions made over the life of the file and is implying that the file has been falsely compiled. The review of the file has not found any evidence that the content is false or incorrect but it is acknowledged that the respondent may not agree with many of these views, actions or decisions. In this sense the file is a record of fact and events rather than opinion.

8. Diamond is being threatened because he is pursuing compliance.

This is a civil matter that the respondent should seek their own legal advice to resolve and is not relevant to this application.

9. Request meeting with Chris Jewell (water balance consultant engaged by Council) to explain connection between creek and pond 15m below groundwater and illegal use of 150 ml when only licensed for 40ml.

Council staff, to assist the assessment of the current section 96 application, sought the advice of an independent consultant Mr Chris Jewell. A report was provided by Mr Jewell and provided to the applicant, their consultant and to objectors to the development. At the request of the respondents a meeting was held on 18 September 2007 with the applicant, respondents and Council staff to discuss the report.

The meeting discussed the methodology and recommendations of the Jewell report. The applicant was provided with the opportunity to discuss the findings as were the respondents. The purpose of the meeting was for all interested parties to submit their comments on the report and for Council staff to hear all these comments so that a recommendation could be formulated.

The comments provided at the meeting differed widely, ranging from the applicant claiming that the amount of groundwater used was lower than that stated in the Jewell report and the respondents claiming that the water use was higher than that estimated in the Jewell report. The applicant's engineer submitted evidence to support their claims. The respondents claimed that the quarry was using significantly more groundwater than was stated in the Jewell report and relied on a comment made by a Department of Land and Water Conservation officer in a letter.

As the Jewell report was commissioned to provide advice on certain aspects of the assessment, it is not considered to be of benefit to engage the consultant, at the expense of ratepayers, further. Council staff have considered the report and the claims from both parties and have made a recommendation that should be contained in a consent condition if the current section 96 application is approved.

10. Council ignored responsibility under SREP 20 re erosion control plans and the ground water issues (see Page 19, 31 & Clause 6, Part 2 on page 16 re erosion and control prior to commencement).

The development consent for DA0134/95 contains the following condition:

*"Erosion and sedimentation control devices shall be installed and maintained during construction and no-going operations. Details shall be submitted and approved by Department of Land and Water Conservation prior to any works commencing."*

The fact that this consent condition has been placed on the development consent indicates that Council did not ignore its responsibility under SREP 20.

## ORDINARY MEETING

Meeting Date: 29 July 2008

11. Requests reports from investigations into 5 items listed in Clr Bassett's undertaking of 13 July 2006

This request from the respondent refers to undertakings that were made in 2006. The respondent was questioned about this matter as the undertaking could not be found on Council's records. It was found that these undertakings were made verbally. However, the matters raised by the respondent are summarised as follows:

1. *Council has failed to enforce consent conditions and has not investigated non-compliance as set out in Court case 40230 of 2005 and 40430 of 2005.*

See comment to 1. in *General Matters* above.

2. *Explanation of Section 94 "fraud" and non-compliance with consent conditions.*

See comment to 2. in *General Matters* above and comments in the "Consent Condition Compliance" section of this report.

3. *Allegations that staff lied to Council in the meeting of 14 December 2004.*

See comment to 1. in the *General Complaints against individuals* section previously in this report.

4. *Complaints against former staff and Councillors.*

See comment to 2. in the *General Complaints against individuals* section previously in this report.

5. *Independent investigation into the respondent's allegations against staff and Councillors.*

See comment to 3. and 4. in the *General Complaints against individuals* section previously in this report.

12. Fraud in quantity survey used to calculate tonnages excavated and survey was done after the land was levelled.

In a report to Council on 14 December 2004 there was discussion regarding a site survey, by a registered Surveyor, Mr Matthew Freeburn, for the purpose of estimating the natural surface of the site prior to the quarry operation commencement to determine the depth and volume of the excavation. This survey was undertaken by a Registered Surveyor for the purposes of estimating the original natural ground level and estimating the volume of material excavated. It is appropriate to use a Registered Surveyor for this type of work as they are suitably qualified for the purpose of a volume estimate.

Understandably, the volumes calculated were within a range as the natural surface was estimated for the purpose of the excavation. The volume of excavated material calculated from Council records, based on monthly reports submitted by the operator of the quarry, was within the range of volume estimated by the Registered Surveyor and was discussed in the report to Council referred to above.

13. Council staff have ignored tree clearing.

If the current Section 96 application is approved and there has been tree clearing within the approved area then that clearing may be approved as part of the consent. If that is the case then the appropriate fine for unauthorised clearing (\$600) should also be considered. If there has been unauthorised clearing outside the approval (if granted) area then this can be investigated as a separate compliance matter.

A review of the file indicates a variety of photographs of the site at different stages of the development and indicate only a sparse, if any, tree cover in some areas. Careful evidence would

## ORDINARY MEETING

Meeting Date: 29 July 2008

need to be collected to establish if the clearing has been within or external to the approved area. The respondent has not provided any evidence and the exact area approved for works has not yet been established.

14. *Allegations of drug dealing, standover tactics, arson, death threats from the operators or persons related to the quarry operations.*

These allegations are of a civil nature and the respondent is recommended to obtain their own legal advice for this matter.

### **Consent Condition Compliance**

1. *Council has failed to enforce conditions of development consent.*
2. *The quarry is working out of the development approved area.*
3. *Condition 4 has not been complied with, therefore the consent has lapsed. Comments related to Statutory Declaration by Tom Bruce stating that it is misleading and false.*
4. *On 4/12 04 Council insisted that erosion & sedimentation control plan should be submitted re conditions 1, 2, 3, 4, 17b and 27. This not yet done.*
5. *Council staff failed to properly instruct solicitors re erosion & sedimentation plans and compliance with conditions 27 or 17b.*
6. *Condition 27 required an environmental management plan but this has not been submitted*
7. *Condition 17B – requires submission of monitoring program details for ground and creek water quality & contingency plan*
8. *Quarry using more water than licence permits.*
9. *No EPA or DLWC licences until 2004*

The issues raised above relate to individual consent conditions. The following provides comments on each individual consent condition compliance.

#### **Condition 1**

*"The development shall be carried out in accordance with Plan No. PS91/E130 dated April 1996 and documentation of Environmental Impact Statement dated 1 November 1995 as amended."*

Comment: The existing operation has expanded outside the original approved area. The operators have lodged a Section 96 application (current application) to modify this condition to incorporate the existing and proposed operation area.

#### **Condition 2**

*"The area to be used being limited to the area shown on the submitted plans."*

Comment: As per the comments for condition 1. The Section 96 application is proposed to rectify this non-compliance.

## ORDINARY MEETING

Meeting Date: 29 July 2008

### **Condition 3**

*"The development approval being limited to a period of 2 (two) years. Subsequent stages will require formal submission under Section B of this Consent to Council and supported by evidence that the operation complies with condition of Stage 1 Consent".*

Comment: This matter was the subject of a Section 96 application that was approved by Council in December 2004.

### **Condition 4**

*"Erosion and sedimentation control devices shall be installed and maintained during construction and ongoing operations. Details shall be submitted and approved by Department of Land and Water Conservation prior to any works commencing".*

Comment: Erosion and sediment control plans were submitted to Council as part of the original development application. These plans were the subject of discussions during a mediation conference prior to the application being considered by Council. The outcome of the mediation conference was the inclusion of the second sentence in the condition that requires the approval of the Department of Land and Water Conservation.

Council does not have any records of amended plans being submitted and approved by the Department of Land and Water (Now Department of Water and Energy) as required by this condition. The Department of Water and Energy (DWE) have been consulted on two separate occasions to ascertain whether amended plans were lodged with the Department, and Council has received three separate letters from DWE in relation to this matter with at least two of those letters providing conflicting advice.

The first contact from Council resulted in a letter being received 25 June 2007 stating:

*"A review of files in this matter has found that in 1996/97 the Department provided advice to Council, received copies of the Erosion and Sedimentation Plans (as required under DA134/95 Consent Condition 4) and undertook discussions and inspection of the site. In its working with Council the Department did not raise any significant concerns in this matter, implying support for the plan and its implementation."*

Despite no request being sent from Council a second letter from the Department was received, dated 17 September 2007, stating:

*"While DLWC received and reviewed plans (December 1995 and July 1996), there is no indication that DLWC received details as required by Condition 4 or provided the approval sought by Condition 4, subsequent to the consent determination."*

These two letters provided conflicting advice and the matter was discussed with the applicant to clarify the situation. On 5 November 2007 the applicant submitted additional information in relation to the application that included a Statutory Declaration, dated 22 October 2007, that detailed the applicant's recollection of the facts in relation to compliance with Condition 4 of the development consent. This Statutory Declaration was referred to the DWE on 30 November 2007 as there was a reference to erosion and sediment control plans that had been recently viewed in the Department's Parramatta office. The response from DWE, received at Council on 7 March 2007, stated the following:

*"Notwithstanding claims made by Mr Bruce in his declaration, the Department is unable to locate any documentary evidence to support Mr Bruce's claims."*

*"Discussions with staff involved in the Tinda Creek matter at the time in question have also failed to substantiate Mr Bruce's claims of a verbal approval by a Department Officer."*

Although the details in the Statutory Declaration by the applicant are not questioned, there does not appear to be satisfactory evidence that indicates that the Condition 4 requirement to submit erosion and sediment

## ORDINARY MEETING

Meeting Date: 29 July 2008

control details and obtain the approval of the Department of Land and Water Conservation has been complied with.

The requirements of Condition 4 of the Development Consent must be complied with prior to any works commencing on the site following issue of the approval. As this requirement has not been complied with, the Development Consent has, technically, not been commenced and, as such, it is considered that the Development Consent has lapsed.

### **Condition 5**

*"All necessary works being carried out to ensure that stormwater flow from adjoining properties is not impeded".*

Comment: Site inspections indicate that this condition is being satisfied.

### **Condition 6**

*"All trucks arriving and leaving the site shall have their load/trays suitable covered to prevent spillage from the truck onto the road".*

Comment: There is no indication that this condition is not being complied with. This issue is an ongoing management measure.

### **Condition 7**

*"Council reserves the right to impose a condition to have a mechanism installed whereby wheels of trucks leaving the site are washed to minimise dust and debris being deposited on roads, however, it shall monitor the operation for 3 (three) months without such a facility to ascertain whether such is required".*

Comment: This condition has not been acted upon by Council (It should also be noted that this condition is unlawful and should be removed if a Section 96 application is approved).

### **Condition 8**

*"Payment of Section 94 Contribution under the provisions of the Environmental Planning and Assessment Act 197 towards the repair, reconstruction and maintenance of the roads based on 46.78 cents per tonne of material to leave the site. This contribution will be used for roadworks external to the site and towards the RTA's road maintenance program.*

*The contribution will be based on monthly tonnage to leave the site, with the applicant to submit to Council records of material removed. The said contribution will be paid on a monthly basis at the rate nominated and will be reassessed annually based on the Sydney Consumers' Price Index".*

Comment: The operator has been paying Section 94 contributions on a monthly basis as required. However, the base rate at which the contribution amount has been calculated has not been adjusted with the CPI since the commencement of the development consent.

This matter has been identified and the outstanding contribution amount, plus interest, has been calculated and a request for payment and a Notice of Intention to serve an Order, has been sent to the operator. This matter is the subject of ongoing action regarding the payment of the outstanding amount.

### **Condition 9**

*"Dust control measures, e.g. vegetative cover, mulches, irrigation, barriers and stone shall be applied to reduce surface and airborne movement of sediment blown from exposed areas".*

Comment: Site inspections indicate that this condition is being satisfied.

## ORDINARY MEETING

Meeting Date: 29 July 2008

### **Condition 10**

*"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 or natural watercourse".*

Comment: Site inspections indicate that this condition is being satisfied.

### **Condition 11**

*"Submission of a building application, plans and specifications complying with the Building Code of Australia for any future building construction".*

Comment: Two relocatable buildings have been located on the site (amenities and site office building). The necessary applications and approvals have been issued for these structures.

### **Condition 12**

*"No advertising structures to be erected, displayed or affixed on any building or land without prior approval. Any unauthorised advertising structure will be removed at the expense of the advertiser".*

Comment: At the last inspection there were no advertising signs. There is a site identification sign at the front of the site and advisory/ directional signs within the site.

### **Condition 13**

*"The development shall be conducted in such a manner so as not to interfere with the amenity of the neighbourhood in respect of noise, vibration, smell, dust, waste water, waste products or otherwise".*

Comment: At the time of the last inspection the activity was operating without significant impact on the surrounding area. There is no recent evidence of complaints from the neighbourhood.

### **Condition 14**

*"Operating hours shall be limited to 7.00am to 5.00pm Mondays to Fridays and 7.00am to 1.00pm Saturdays. Any alteration of these hours will require the approval of the Director Environment and Development".*

Comment: There is no indication from site inspections or records of complaint that the mining operation is not complying with this condition.

### **Condition 15**

*"All waste materials to be stored and disposed of at regular intervals to the satisfaction of the Director Environment and Development".*

Comment: There is no evidence that the operation is not complying with this condition.

### **Condition 16**

*"A waste management plan shall be submitted for consideration with the building application. 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".*

Comment: Condition not applicable with the location of relocatable buildings.

## ORDINARY MEETING

Meeting Date: 29 July 2008

### **Condition 17**

- "(a) An ambient water quality analysis is to be carried out in accordance with the Australian Water Quality Guidelines for Fresh and Marine Waters - "Protection of Aquatic Ecosystems", and submitted to Council on an annual basis for every three months' testing and results.*
- (b) Submission of details on a monitoring program for ground and creek water quality and a contingency plan should the proposed water quality controls fail".*

Comment: This condition has not been fully complied with to date. The matters in this condition are to be addressed if the Section 96 application is approved.

### **Condition 18**

*"No fertilizers or pesticides are to be used without prior consultation with Council".*

Comment: There was no evidence at the last inspection that these are used on the site.

### **Condition 19**

*"Maximum number of on-site employees, other than employees/contractors involved in truck haulage, shall be restricted to 15 (fifteen). Any increase in employment would require reassessment of the adequacy of on-site facilities for sewerage, water, car parking and the like".*

Comment: At the last inspection of the site this condition was complied with.

### **Condition 20**

*"All road and driveway surfaces shall be regularly watered to dampen the surface in order to reduce dust generation".*

Comment: At the last inspection the road had been watered to reduce dust generation. No evidence that this condition is not being complied with.

### **Condition 21**

*"Local grass seeds shall be collected from surrounding areas to be used as part of the revegetation program".*

Comment: The applicant has written to Council in the past explaining that due to severe weather conditions it is difficult to collect seed from local species. The operator has used other similar or identical seeds and mixes in the establishment of ground cover vegetation.

### **Condition 22**

*"The intersection of the existing driveway and Putty Road shall be upgraded generally in accordance with the amended Plan No. PS91/E130 (1 of 3) dated April 1996. All works to be carried out to the requirements and under the supervision of the RTA and any fees, securities or contributions paid".*

Comment: The intersection works are adequate for the development and this condition has been complied with.

### **Condition 23**

*"All drainage channels shall be constructed to avoid turbulence and scouring".*

Comment: The last site inspection was following recent rains. Some of the channels on the site showed some evidence of scouring. Temporary channels have been implemented in the current working areas

## ORDINARY MEETING

Meeting Date: 29 July 2008

and repairs to the scoured areas are being undertaken on an ongoing basis as required. This condition has been complied with

### **Condition 24**

- "(a) Revegetation Plan shall include the use of seed mixes (including endemic plant material) which reflect the changing seasons and provide short to medium term soil stability. Native grasses should be used as a supplementary secondary stabiliser. No Kikuyu grass to be used".*
- (b) A qualified Bush Regenerator shall be engaged to specify and supervise all revegetation works".*

Comment: The rehabilitation plan approved provides details of the rehabilitation measures and methods to be implemented. As mentioned in the condition 21 comments, some of the seed mixes used have been varied due to difficult local conditions. The last site inspection has indicated that the rehabilitation works are establishing and the operator is implementing suitable management measures to ensure survival of these works.

### **Condition 25**

*"Banks of the diversion drainage channel and perimeter mounding shall not exceed a slope of 1:3(V:H)".*

Comment: Site inspection has indicated that the channels are generally no greater than 1:3 (V:H).

### **Condition 26**

*"The batter of the ponds and dam shall not exceed a slope of 1:3 (V:H)".*

Comment: Site inspection has indicated that the pond walls are generally no greater than 1:3 (V:H).

### **Condition 27**

*"A site environmental management plan shall be prepared within 1 (one) month of the date of this approval, to address:*

- (a) on-site materials management;*
- (b) daily operating procedures;*
- (c) erosion and sediment controls*
- (d) emergency contingency plans'*
- (e) on-site drainage processes to ensure water quality".*

Comment: The operator has submitted several versions of an environmental management plan to Council. Staff have reviewed these plans and advised the operator where changes should be undertaken. The operator is preparing a more comprehensive environmental management plan.

It should be noted that the consent condition, whilst requiring the preparation of the environmental management plan, the condition does not require the plan to be approved by Council. As such, technically this condition has been complied with. However, the operator is prepared to work with Council staff to finalise a suitable plan for the quarry operations.

### **Condition 28**

*"A professional archaeological survey being carried out for the site by a suitably qualified person to particularly assess the site's Aboriginal Heritage potential".*

Comment: The operator provided a letter from Brayshaw McDonald Pty Ltd, Consultant Archaeologists who carried out a survey of the site in conjunction with the extraction of sand for an agricultural dam. The survey in 1984 focussed on the north western quarter of the extraction area. The consultant indicated that no further archaeological investigation is warranted.



## ORDINARY MEETING

Meeting Date: 29 July 2008

### **Condition 29**

*"All general stormwater shall be diverted around the work site other than any controlled inflow to maintain water levels within the work site".*

Comment: Site inspection revealed that stormwater diversion drains in place are complying with the condition.

### **Condition 30**

*"All water falling on or contained within the work site shall be retained within the work site and not permitted to leave the site otherwise in accordance with a license issued by the EPA".*

Comment: The operator has obtained licences for the use of groundwater that are issued by the Department of Environment and Climate Change. At the last site inspection there was no indication that water within the work site is permitted to escape the site beyond the levels that are permitted in any licence issued by the Department.

### **Condition 31**

*"The erection of truck warning signs with distance plates located 200m on approved sites to the access to the development".*

Comment: This condition has been satisfied.

### **Condition 32**

*"The payment of a Bond or Bank Guarantee of \$50,000 for rehabilitation and restoration of the extractive industry operation. Should the plan of rehabilitation not be carried out in accordance with the plan, this money will be used for such work. The Performance Bond for rehabilitation of the site will be reviewed annually with a review of the conditions of consent".*

Comment: A Bank Guarantee for \$50,000 was lodged in May 1997, but has not been reviewed to date. Should the Section 96 application be approved, this bond amount may require review.

### **Condition 33**

*"The applicant (extractor) is to lodge an annual report indicating compliance or otherwise with the conditions of approval of the consent and conformance with any other permits or licenses as issued by the EPA and the Department of Land and Water Conservation".*

Comment: The operator has submitted a number of condition compliance letters to Council on 21 December 1998, 18 January 2000 and 1 May 2002. In April 2004 a submission was lodged with Council that was titled as an annual report.

Compliance with this condition has been low. However, much of this seems to be due to the submission of two Section 96 applications and the protracted assessment process for those two applications and the wording and structure of the development consent generally. The development consent is difficult to assess compliance in all areas due to the wording of the conditions being difficult to measure compliance, and some of the conditions are vague and not specific in their intent. If the Section 96 application is approved some of these (but not all) may be reworded to make clearer.

10. The Tinda Creek quarry is operating on Lot 1 (by-pass channel & test bores) and Lot 3 (Test Bores) and Council should take action for this to cease. Should be operating only on Lot 2 DP 628806.

The development consent relating to DA 0134/95 relates to Lot 2 DP 628806. Council's records do not indicate that there are any approvals for excavation works on the adjoining properties. It is considered that the undertaking of test bores, as referred to in the submission and following inspection of the "test bores", consent for those works is not required.

## ORDINARY MEETING

Meeting Date: 29 July 2008

The diverting of the overland flows as a "by-pass channel" are works required by the development consent and should relate to Lot 2 only. To date there is no survey evidence that the diversion works are encroaching on the adjoining property. It should be noted that the current application proposes to relocate the diversion channel to the south of the quarry operations.

Should the application be approved a condition should be imposed that requires these works to be located in relation to the boundaries and, should they encroach onto the adjoining property, these works are to be relocated. Should the application not be approved, these works should be included in any remediation Order issued on the property owner.

11. Auditor has defrauded Council in not mentioning the shortfall in S94 fee collection.

The contributions for Section 94 projects are committed to identified projects which are only undertaken when the appropriate fees are collected. Whilst estimates of income are included in the budget process for Section 94 income, this income has no impact on Council's overall budget and auditing process. The Auditor has undertaken the audit in the appropriate manner.

### Conclusion

The report has provided a detailed assessment of all the matters raised by the respondents.

The application can be considered under the provisions of Section 96 as the modification is considered to be substantially the same development approved.

The legal advice provided by the EDO in respect to the lapsing of the consent has been considered and discussed with Council's solicitors.

Based on the evidence provided by the Department of Water and Energy it appears that this condition of consent has not been complied with as no approval from the Department has been obtained.

As a result based on the legal opinion and advice from Council's Solicitors the Development Consent DA0134/95 has lapsed and, as there is no current consent, Council cannot modify a Development Consent that has lapsed.

### RECOMMENDATION:

That:

1. The application under S96 to modify Development Consent DA0134/95, Lot 2, DP 628806, No. 6102 Singleton Road, Mellong be refused as, due to non-compliance with Condition 4 of the original consent, the consent has lapsed and Council is unable to consider the application.
2. A Notice of Intention to serve an Order be issued on the operator to cease operations due to there being no current consent for the operation.
3. A survey plan is to be submitted to Council within two months, showing the location of diversion works in relation to the property boundary. Should any works be located outside the property boundary of Lot 2 DP 628806, those works are to be removed immediately and the land rehabilitated to its natural state.

### ATTACHMENTS:

- AT - 1 Locality Plan
- AT - 2 Amended Sequence Plan
- AT - 3 Amended Final Plan

## ORDINARY MEETING

Meeting Date: 29 July 2008

### AT - 1 Locality Plan



# ORDINARY MEETING

Meeting Date: 29 July 2008

## AT - 2 Amended Sequence Plan



AT - 3 Amended Final Plan



oooO END OF REPORT Oooo

## ORDINARY MEETING

Meeting Date: 29 July 2008

**Item: 152**      **CP - Subdivision, Dam, Landfilling Lot 1 DP 850151, 200 Cattai Road Pitt Town - (DA0687/07, 36345, 36344, 95498)**

---

### Development Information

**Applicant:** Falson & Associates P/L  
**Applicants Rep:** Glenn Falson  
**Owner:** Mr M & Mrs L Black  
**Stat. Provisions:** State Environmental Planning Policy No. 1  
Hawkesbury Local Environmental Plan 1989  
Hawkesbury Development Control Plan  
**Area:** 4.59 H  
**Zone:** Rural Living  
Rural Living under Hawkesbury Local Environmental Plan 1989.  
9 (b) Proposed Road  
9 (b) Proposed Road under Hawkesbury Local Environmental Plan 1989  
**Advertising:** 2/6/2008 to 21/6/2008 No Submissions Received  
**Date Received:** 17/10/2007  
**Key Issues:** ♦ SEPP 1 Objection  
**Recommendation:** Approval

---

### REPORT:

#### Introduction

The application seeks approval for the subdivision of Lot 1 DP 850151, 200 Cattai Road, Pitt Town, the construction of a dam and filling of land.

The application is being reported to Council in accordance with Council's Policy relating to the use of State Environmental Planning Policy No. 1.

#### The Proposal

Approval is sought for the subdivision of Lot 1 DP 850151, 200 Cattai Road, Pitt Town into two (2) lots, and the construction of a dam and land filling to create a building platform on the resultant vacant lot.

The proposed subdivision seeks to create two (2) allotments having the following attributes:

- Proposed Lot 101 – 2 hectares and will have an existing dwelling house sited on it.
- Proposed Lot 102 – 2.58 hectares and will be vacant

The proposed dam will have a capacity of 1 megalitre, with dimensions of approximately 40m (length) by 26m (width) by 3.5m (depth), and will be located on proposed Lot 102.

Excavated material from the dam will be used to create a building platform at 16.9m AHD on proposed Lot 102. A building envelop, approximately 3500m<sup>2</sup> in size, will contain a building platform of 625m<sup>2</sup>, and will have a maximum depth of fill of approximately 1.2 metres.

No fill material is to be imported or exported from the site.

## Statutory Situation

### Matters for Consideration under Section 79(c) of the Environmental Planning and Assessment Act 1979

#### a) the provisions of:

##### i) any environmental planning instrument ( ie LEPs, REPs & SEPPs)

#### Hawkesbury Local Environmental Plan 1989.

The subject land is zoned part Rural Living and part 9(b) Proposed Road. Subdivision of land within the Rural Living zone (shown hatched on the map) is permissible only if the area of each of the allotments to be created is not less than 2 hectares.

Proposed Lot 101 will have an area of 2 hectares and proposed Lot 102 will have an area of 2.58 hectares, however, as this site is affected by two zonings, each lot does not contain an area of 2 hectares solely within the Rural Living zone. An objection under State Environmental Planning Policy No. 1 seeking a variation to the lot size requirement in respect to the Rural Living zone was submitted and is supported. This is discussed further in the report.

Clause 11(6) prohibits the granting of consent for subdivision of land within the Rural Living zone that creates an allotment that does not have an area of land above the 1 in 100 year flood level on that allotment.

The proposed development is inconsistent with this subclause as Proposed Lot 101 has a land level below the 1 in 100 year flood level for the area (being 16.9m AHD). This lot will contain the existing dwelling house. An objection under State Environmental Planning Policy No. 1 was submitted in this respect and is supported. This is discussed further in this report.

Proposed Lot 102 will also have a land level below the 1 in 100 year flood level. However, the application includes the filling of an area of this lot to provide a building platform with a level above the 1 in 100 year flood level.

The proposal is considered to be consistent with the Rural Living zone objectives.

#### State Environmental Planning Policy No. 1 - Development Standards

An objection under State Environmental Planning Policy No. 1 was lodged in respect to the minimum allotment size requirement for land zoned Rural Living. This SEPP No. 1 objection states:

*The development standard is both unreasonable and unnecessary to apply in the circumstances of this case. This is due to the following:*

- *The subdivision will be consistent with other lots in the locality.*
- *Each of the proposed allotments would not be distinguishable in an overall context from those that exist in the surrounding lot pattern.*
- *The allotments are of a size and shape adequate to contain the existing dwelling and future dwellings and associated development.*
- *There would be no adverse impact on amenity or streetscape arising from the subdivision.*
- *The only reason for the requirement of this SEPP 1 objection is to overcome the mapping error. Other than that there would be sufficient area within the Rural Living zone to allow the subdivision to be approved without reliance on SEPP 1*

#### **Comment:**

The underlying purpose of this development standard is to provide allotments of land of an appropriate size to support a rural residential living style.

## ORDINARY MEETING

Meeting Date: 29 July 2008

Advice from the Roads and Traffic Authority has been provided demonstrating that they have no road widening proposals requiring any part of the subject land zoned Proposed Road 9(b). In addition, a review of land within Councils area zoned Proposed Road 9(b) is being undertaken as part of the template conversion of Hawkesbury Local Environmental Plan 1989.

As the portion of land zoned 9(b) is no longer required for road widening purposes, and with the rezoning of the land under the template, it is considered that strict compliance with the minimum lot size requirements is unreasonable and unnecessary in this case.

An objection was also lodged in respect to the variation sought from Clause 11(6) of Hawkesbury Local Environmental Plan 1989. This objection states:

*"The development standard is both unreasonable and unnecessary to apply in the circumstances of this case. This is due to the following:*

- *The allotment on which exists the dwelling and the subject of this SEPP 1 objection is consistent with other lots in the locality.*
- *Each of the proposed allotments would not be distinguishable in an overall context from those that exist in the surrounding lot pattern.*
- *The allotments are of a size and shape adequate to contain the existing dwelling and future dwellings and associated development.*
- *The allotments are only marginally flood liable and there will be no property impact or personal safety matters arising given that the habitable space of the existing dwelling is above the 1:100 level and the land level of a dwelling on the vacant lot will be above the 1:100 level.*
- *There would be no adverse impact on amenity or streetscape as the existing and future dwelling are sufficiently separate.*
- *The subdivision has been designed to account for environmental and physical features and allows the best long-term management opportunities for the total landholding.*
- *There is nothing to be gained by not approving of the subdivision as a dwelling exists already on one lot and the proposed vacant lot will meet the relative 1:100 level after the minor amount of filling takes place.*

### **Comment:**

The underlying purpose of this development standard is to minimise the impacts of flooding on the community with respect to reducing flood damage to buildings, the consequential financial loss, risk to human life and burden on emergency services. Proposed lot 101 does not satisfy this Clause, however this lot will contain the existing dwelling house, and no additional burden will be created in respect to flooding. It is considered that the application adequately demonstrates that the standard is unreasonable in this case

Given that the variation in Lot size is in excess of 10%, the application requires the concurrence of the Director-General of the Department of Planning. It is proposed that should the Council support the proposed development, the application be referred to the Department of Planning for concurrence.

### **Sydney Regional Environmental Planning Policy 20. (No.2 - 1997) - Hawkesbury - Nepean River (SREP No. 20)**

In respect to the subject proposal Clause 11 (17) to SREP 20 specifies that Council consent is required for "domestic on-site disposal systems that are ancillary to development which requires consent". There are also specific considerations listed for the determining of an application. In view of these considerations on-site effluent disposal is appropriate for proposed Lot 102.

It is considered that the proposed development will not significantly impact on the environment of the Hawkesbury-Nepean River, and that the development is not inconsistent with the general or specific aims, planning considerations, planning policies, recommended strategies and development controls.



**ORDINARY MEETING**

Meeting Date: 29 July 2008

**State Environmental Planning Policy No. 44 - Koala Habitat Protection**

A report prepared by Dr Trevor J. Hawkeswood titled "*Flora and fauna survey and assessment of part of 200 Cattai Road, Pitt Town, New South Wales*" dated 31<sup>st</sup> March 2006 was submitted with the proposed Development Application. This report identified the plant species to be removed within the development area. None of these species include koala feed tree species as listed in the SEPP.

Therefore, the subject land is not considered to be 'potential koala habitat' or 'core koala habitat' as defined by this Plan and Council is not prevented from granting consent to the proposal.

**State Environmental Planning Policy No. 55 - Remediation of Land**

DA 167/92 approved a 'driver training facility' on Lot 1 DP 222237, which included the storage of fuels. This lot was subsequently subdivided into 10 lots (SA 127/93), including the subject land. A search of Council files indicate that the storage of fuel was not in the area of the subject land and therefore it is considered that there have been no activities carried out on the property which would render the soil contaminated to such a degree as to cause harm. The application is consistent with the provisions of State Environmental Planning Policy No. 55.

**ii) any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority**

There are no draft planning instruments that are relevant to the proposed development.

**iii) any development control plan applying to the land*****Hawkesbury Development Control Plan***

An assessment of the proposal against the relevant Chapters contained within the Hawkesbury Development Control Plan follows:

**Subdivision Chapter**

Element	Rule	Complies
<b>General</b>		
Flora and Fauna Protection	(a) Any subdivision proposal which is likely to result in any clearing of native vegetation or impact on any environmentally sensitive area is to be accompanied by a flora and fauna assessment report prepared by a suitably qualified person. This report is to primarily address the Eight Part Test pursuant to the Act (Section 5A), State Environmental Planning Policy 44 – Koala Habitat protection.	Yes
	(b) Vegetation cover should be retained where ever practicable as it acts to stabilize soils, minimize runoff, acts as a pollutant trap along watercourses and is important as a habitat for native fauna.	Yes
	(c) Degraded areas are to be rehabilitated as part of the subdivision.	Yes

**ORDINARY MEETING**

Meeting Date: 29 July 2008

Element	Rule	Complies
	<p>(d) Vegetation should be retained where it forms a link between other bush land areas.</p> <p>(e) Vegetation which is scenically and environmentally significant should be retained.</p> <p>(f) Vegetation which adds to the soil stability of the land should be retained.</p> <p>(g) All subdivision proposals should be designed so as to minimize fragmentation of bushland.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>
Visual Amenity	<p>(a) Building envelopes, accessways and road shall avoid ridge tops and steep slopes.</p> <p>(b) Subdivision of escarpments, ridges and other visually interesting places should:</p> <ul style="list-style-type: none"> <li>❖ Be managed in such a way that the visual impact rising from development on newly created allotments is minimal; and</li> <li>❖ Retain visually significant vegetation such as that found on ridge tops and other visually prominent locations.</li> </ul> <p>(c) Development Applications for subdivision shall take into consideration the provisions of SREP No. 20 in relation to scenic quality.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>See assessment above.</p>
Heritage	<p>(a) A subdivision proposal on land which contains or is adjacent to an item of environmental heritage as defined in Schedule 1 of the Hawkesbury LEP should illustrate the means proposed to preserve and protect such items.</p>	N/A
Utility Services	<p>(a) Underground power provided to all residential and industrial subdivisions. Where infill subdivision is proposed, the existing system, whether above or underground shall be maintained.</p> <p>(b) All lots created are to have the provision of power.</p> <p>(c) Where reticulated water is not available, a minimum storage of 100,000 litres</p>	<p>N/A</p> <p>Condition</p> <p>Condition</p>

**ORDINARY MEETING**

Meeting Date: 29 July 2008

Element	Rule	Complies
	must be provided. A minimum of 10,000 litres must be available during bush fire danger periods.	
<i>Flooding, Landslip &amp; Contaminated Land</i>	<p>(a) Compliance with clause 25 of Hawkesbury Local Environmental Plan 1989.</p> <p>(b) Access to the subdivision shall be located above the 1% AEP flood level.</p> <p>(c) Where a subdivision proposal is on land identified as being potentially subject to landslip, the applicant shall engage a geotechnical consultant to prepare a report on the viability of subdivision the land and provide recommendations as to the siting and the type of buildings which could be permitted on the subject land.</p> <p>(d) In the event the Council deems that there is the potential that land subject to a subdivision application is contaminated then the applicant shall engage a suitably qualified person to undertake a soil and ground water assessment.</p> <p>(e) Contaminated Land shall be remediated prior to the issue of the Subdivision Certificate.</p>	<p>Yes</p> <p>No - See discussion below</p> <p>N/A</p> <p>Not considered to be contaminated.</p> <p>N/A</p>
<i>Rural Lot Size and Shape</i>	<p>(a) The minimum allotment size for land within rural and environmental protection zones are contained within Hawkesbury Local Environmental Plan 1989.</p> <p>(b) Lots should be able to accommodate a building envelope of 2000m<sup>2</sup> with a minimum dimension of 20 metres. Building envelopes should be located a minimum of 30 metres from significant trees and other significant vegetation or landscape features. Building envelopes will contain the dwelling house, rural sheds, landscaping, and on-site effluent treatment and disposal areas, and bushfire mitigation.</p> <p>(c) In calculating the area of a battle-axe or hatchet shaped allotment, the area of the battle axe handle should be included.</p> <p>(d) The width to depth ratio of allotments should not exceed 1:5.</p>	<p>Yes (See SEPP 1 comments)</p> <p>Yes</p> <p>N/A</p> <p>Yes</p>

**ORDINARY MEETING**

Meeting Date: 29 July 2008

Element	Rule	Complies
	(e) Lot layout shall consider the location of watercourse vegetation and other environmental features.	Yes
<i>Boundary Adjustment</i>		N/A
<i>Effluent Disposal</i>	<p>(a) An effluent disposal report prepared by a suitably qualified person is required to accompany any development application for rural and rural-residential subdivisions.</p> <p>(b) Any system proposed other than a Household Aerated Wastewater Treatment System is required to be installed prior to release of Subdivision Certificate.</p>	<p>Yes</p> <p>Condition</p>
<i>Rural Road and Access Way Design</i>	<p>(a) The design specifications in Figure 4 at the end of this clause are to be met.</p> <p>(b) Where the road width is insufficient or unsatisfactory, an applicant should dedicate or provide land required for local road widening or new roads at no cost to Council.</p> <p>(c) Upgrading of the access way from the nearest sealed road to the proposed subdivision to an all weather standard suitable for the expected traffic generation arising from the subdivision. This work may require the sealing of the pavement dependent upon traffic generation.</p> <p>(d) Where access to the subdivision is via a Crown or Reserve road in addition to the above, the road should be fully constructed to a standard commensurate with roads in the locality and linked to the nearest Council road. Prior to any construction works being undertaken the relevant section of Crown road is to be transferred to Council.</p> <p>(e) The road fronting the subdivision shall be sealed into half width (minimum 3.5 metres). An all weather standard of road construction may be acceptable where the expected traffic volume generated by the subdivision proposal is low and no sealed road in the vicinity.</p>	<p>N/A</p> <p>N/A</p> <p>N/A</p> <p>N/A</p> <p>N/A</p>

**ORDINARY MEETING**

Meeting Date: 29 July 2008

Element	Rule	Complies
	(f) Water courses should be piped where they cross roads and the applicant should create drainage easements generally 10 metres long and 4 metres wide over the point of any discharge of any water from any public road onto private property.	N/A
	(g) All internal driveways shall be constructed to an all weather standard suitable for the expected traffic generation. An all weather access should also be provided across the footway to any battle-axe lot. Such access should be sealed within the vicinity of existing houses on adjoining lots where dust nuisance may occur and also on steeply sloping land.	N/A
	(h) Where 3 or more individual access handles are proposed, common roads are to be provided.	N/A
	(i) Battle-axe handles shall have a minimum width of 6 metres.	N/A
	(j) Access ways should have a maximum grade of 25% (1:4) and be sealed if the grade exceeds 1:6, concrete if exceeds 1 in 5.	Condition
	(k) Where an access way meets a public road there should be a minimum sight distance of 70 metres. This may be increased on roads with a high speed limit.	Yes
	(l) Cul-de-sacs for rural roads should have a minimum seal radii of 12.0 metres and boundary radii of 17.0 metres.	N/A

**Variation**

Access to proposed lot 102 is below the 1 in 100 year flood level of 16.9mAHD. The applicant states that "we assess the flood impact of access to be very minimal and not such as to warrant refusal of the application", based on the access being located at a height greater than the 2% AEP level of 15.4m AHD.

The subject land is located in close proximity to Pitt Town Dural Road, which is located above the 1 in 100 year flood level, and leads to a flood free area. For these reasons, it is recommended that the variation be supported.

**Dam Construction Chapter**

The proposed dam is generally consistent with the requirements of this Chapter.

**Landfill Chapter**

The proposed landfilling will enhance the use of the land for residential purposes. The landfill is minor and is consistent with the surrounding topography. Appropriate drainage of the filled land can be achieved. Suitable conditions of consent are to be imposed with respect to compaction, and erosion and sediment control. The proposed extent of land filling is not expected to adversely impact on the visual and scenic quality of the locality, and will have no adverse impact on adjoining properties or on the health and safety of residents. The proposal is not expected to affect water quality within the catchment. The proposed development is not expected to expose any acid sulphate soils, sodic soil or saline soils.

**iv) any matters prescribed by the regulations**

There are no relevant matters prescribed by the regulations

**b) the likely impacts the development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality****Context And Setting**

The locality is predominantly used for rural residential purposes. The proposed development is consistent with this character and with adjoining landuses. The proposal is consistent with the existing subdivision pattern of the locality.

The proposal will have no unreasonable impacts on adjoining properties in terms of overshadowing, loss of privacy or views and vistas. Existing vegetation provides screening between the development and adjoining properties.

**Flora and Fauna**

A report prepared by Dr Trevor J. Hawkeswood titled "*Flora and fauna survey and assessment of a part of 200 Cattai Road, Pitt Town, New South Wales*" dated 31<sup>st</sup> March 2006 was submitted with the proposed 2 Lot subdivision Development Application. This report concluded that the construction of the dam, building platform and asset protection zones will have no effect on threatened species.

It is therefore considered that the requirements of Part 5A of the EP & A Act are satisfied in that the proposed development will have no significant impact on threatened species, populations, ecological communities or their habitats.

**Effluent Disposal**

A report prepared by Toby Fiander and Associates, titled "*Feasibility Study for Onsite Disposal of Wastewater, Proposed Subdivision, Lot 1 DP 850151 200 Cattai Road, Pitt Town, NSW*" Report No. TFA3047/01 dated 3<sup>rd</sup> April, 2006 was submitted with the proposed 2 Lot subdivision Development Application. This report concluded that the "*site is capable of being developed for the proposed accommodation structure, and can dispose of wastewater efficiently and without damage to the adjoining land or watercourse*".

**Natural Hazards**

The subject land is identified as 'bushfire prone land'. A report titled "*Bushfire Threat Effects, 2 Lot Subdivision, 200 Cattai Road Pitt Town*", was prepared by Brian McKinlay, Reference 91905, dated 5 September 2007. The application was referred to NSW Rural Fire Service for approval. In their letter of 21 November 2007, the NSW Rural Fire Service granted a bush fire safety authority subject to conditions.

**c) the suitability of the site for the development**

There are no constraints from surrounding landuses that would make this development prohibitive. The proposed development will not lead to unmanageable traffic generation. Access to the site is satisfactory for the intended use. Adequate services and utilities are available to the site. There are no known

## ORDINARY MEETING

Meeting Date: 29 July 2008

hazardous landuses/activities nearby. Ambient noise levels are suitable for the development. The development will not impact upon critical habitats and threatened species, populations, ecological communities and habitats. The site is considered to be suitable for the development.

### **d) any submissions made in accordance with the EPA Act or Regulations**

Notification of the development was carried out from 2 June 2008 to 17 June 2008. No submissions were received.

### **e) the public interest**

The proposed development is considered to be in the public interest.

### **Conclusion**

The current proposal is not consistent with the minimum allotment size requirement for subdivision of Clause 11 (2) to Hawkesbury Local Environmental Plan 1989, the requirement that all rural lots created are to have an area above the 1 in 100 year flood level in accordance with Clause 11(6) of Hawkesbury Local Environmental Plan 1989 and all lots created have flood free access in accordance with Hawkesbury Development Control Plan. However, the application demonstrates that strict compliance with these requirements is unreasonable and/or unnecessary and therefore the variations a supported.

It is considered that the proposal will have no adverse impact on the natural or built environment.

Under the provisions of State Environmental Planning Policy No.1 (SEPP 1), Council cannot determine the application without the concurrence of the Director General. It is recommended that Council support the application and request the Director General to grant concurrence to the application. Should concurrence be granted the application can be approved. Should concurrence not be granted then the application must be refused. Both these determination options may be undertaken under the delegated authority of the Director City Planning.

### **RECOMMENDATION:**

That:

- A. The objections under State Environmental Planning Policy No. 1 be supported.
- B. Council seek the concurrence of the Department of Planning to the SEPP No. 1 variation.
- C. The application for Subdivision, Dam and Landfilling on Lot 1 DP 850151, No. 200 Cattai Road, Pitt Town be supported and, upon the receipt of the response from the Department of Planning, authority be delegated to the General Manager to appropriately determine the application.
- D. Should concurrence be received from the Department of Planning the likely conditions of approval will be as follows:

### **NSW Rural Fire Service Conditions**

- 1. The development proposal is to comply with the subdivision layout identified on the drawing prepared by McKinlay Morgan and Associates P/L numbered 919905:DA:2 Rev D dated 04/09/07.

## ORDINARY MEETING

Meeting Date: 29 July 2008

### ***Hawkesbury City Council Conditions***

#### **General**

1. The development shall take place in accordance with the stamped plans, specifications and accompanying documentation submitted with the application except as modified by these further conditions.
2. No excavation, site works or building works shall be commenced prior to the issue of an appropriate Construction Certificate.
3. The capacity of the dam shall not exceed 1 (one) megalitre.

#### **Prior to Issue of the Construction Certificate**

4. An Environmental Management and Rehabilitation Plan for the development site shall be prepared by an appropriately qualified person. The Plan shall address (without being limited to) the clearing of vegetation, lopping and removal of trees, earthworks, erosion control, site rehabilitation and landscaping.  
  
All site works shall be carried out in accordance with the Plan. Implementation of the Plan shall be supervised by an appropriately qualified person.
5. Construction of the access, dam and filling are not to commence until three (3) copies of the plans and specifications of the proposed works are submitted to and approved by the Director City Planning or an Accredited Certifier.
6. Payment of a Construction Certificate checking fee of \$920.00 and a Compliance Certificate inspection fee of \$1840.00 when submitting Civil Engineering Plans for approval. This amount is valid until 30 June 2009. Fees required if an Accredited Certifier is used will be provided on request.
7. A Traffic Guidance Scheme prepared in accordance with AS 1742-3 (1996) by an appropriately qualified person shall be submitted to Council. Where the works affect Roads and Traffic Authority controlled roads, the Traffic Management Plan is to be approved by the Roads and Traffic Authority before submission to Council.

#### **Prior to Commencement of Works**

8. All traffic guidance devices shall be installed and maintained in accordance with the approved traffic management plan.
9. Erosion and sediment control devices are to be installed and maintained at all times during site works and construction. The enclosed warning sign shall be affixed to the sediment fence/erosion control device.
10. 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.
11. At least two days prior to commencement of works, notice is to be given to Hawkesbury City Council, in accordance with the Environmental Planning and Assessment Regulation.

#### **During Construction**

12. The dam shall be constructed in accordance with the Dam Construction chapter of Hawkesbury Development Control Plan.
13. The topsoil shall be stripped and stockpiled and used to cover the landfill.



## ORDINARY MEETING

Meeting Date: 29 July 2008

14. The filled area, including batters, shall be grassed immediately after filling takes place.
15. All fill to be adequately compacted by track rolling or similar in layers not exceeding 300mm.
16. No excavated material, including soil, shall be removed from the site. No fill or excavated material shall be imported onto the site.
17. Dust control measures, eg vegetative cover, mulches, irrigation, barriers and stone shall be applied to reduce surface and airborne movement of sediment blown from exposed areas.
18. Care is to be undertaken when excavating not to intercept ground water. If ground water is discovered then excavation works are to cease immediately and the Principal Certifier is to be notified.
19. All necessary works being carried out to ensure that any natural water flow from adjoining properties is not impeded or diverted.
20. All natural and subsurface water-flow shall not be re-directed or concentrated to adjoining properties. Water flows shall follow the original flow direction without increased velocity.
21. All civil construction works required by this consent shall be in accordance with Hawkesbury Development Control Plan appendix E Civil Works Specification.
22. Inspections shall be carried out and compliance certificates issued by Council or an accredited certifier for the components of construction detailed in Hawkesbury Development Control Plan Appendix B Civil Works Specification, Part II, Table 1.1.
23. Bitumen sealed rural footway crossing to suit existing driveway widths shall be constructed to lots 101 and 102 in accordance with Hawkesbury Development Control Plan Appendix E, Civil Works Specification.

### **Prior to Issue of Subdivision Certificate**

24. A Certificate from a telecommunications carrier confirming that provision has been made for services to the development shall be submitted to the Principal Certifying Authority.
25. Written clearance from Integral Energy shall be submitted to the Principal Certifying Authority.
26. The structural adequacy of the dam and spillway capacity is to be certified by a suitably qualified and experienced engineer.
27. A plan of subdivision prepared to the requirements of the Land Titles Office, shall be submitted to Council, with four copies.
28. A survey plan showing all existing services on the lots including septic tank and effluent disposal area, sewer connections, water connections and stormwater disposal shall be submitted. The plan shall demonstrate that there are no encroachments over remaining or proposed boundaries.
29. Payment of a Linen Release Fee in accordance with Council's Fees and Charges at the time of lodgement of the linen plan.
30. The submission, to Hawkesbury City Council, of a constraints plan showing the location of the building envelope containing the house site, disposal and buffer areas and Asset Protection Zones for Lot 102.
31. Creation of a restriction on use of land pursuant to Section 88B of the Conveyancing Act as follows:

## ORDINARY MEETING

Meeting Date: 29 July 2008

- a. Restricting the location of the house site, disposal and buffer areas and asset protection areas on Lot 102 to those areas defined on the Constraints Plan.
- b. Prohibiting the erection of a dwelling on Lot 102 unless connected to an on-site effluent disposal system in accordance with the 'Feasibility of On-Site Disposal of Wastewater Report, Report No. TFA 3047/01, prepared by H.J. Fiander dated 3 April 2006.

### Advisory

- \*\*\* Should any aboriginal site or relic be disturbed or uncovered during the construction of this development, all work should cease and the National Parks and Wildlife Service consulted. Any person who knowingly disturbs an aboriginal site or relic is liable to prosecution under the National Parks and Wildlife Act 1974.
- \*\*\* Non-compliance with any condition of this development consent may result in a penalty notice being issued by Council.
- \*\*\* The applicant is advised to consult with:
- (a) Integral Energy
  - (b) 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 roads.
- \*\*\* The developer is responsible for all costs associated with any alteration, relocation or enlargement to public utilities whether caused directly or indirectly by this proposed subdivision. Such utilities include water, sewerage, drainage, power, communication, footways, kerb and gutter.

### ATTACHMENTS:

- AT - 1 Locality Plan  
AT - 2 Site Plan, Subdivision Plan

**ORDINARY MEETING**  
Meeting Date: 29 July 2008

**AT - 1 Locality Plan**



Meeting Date: 29 July 2008

[illegible]

oooO END OF REPORT Oooo

**ORDINARY MEETING**

Meeting Date: 29 July 2008

**Item: 154****CP - Pitt Town Residential Precinct - Amendments to Hawkesbury Local Environmental Plan 1989, Development Control Plan and Section 94 Contributions Plan Review November 2005 - (95498)****Introduction**

As Council is aware the Johnson Property Group (JPG) requested the Minister for Planning to assess the proposal for additional lots at Pitt Town as a Major Project (Part 3A) and this declaration was made on 12 October 2007. On 10 July 2008, the Minister approved the Concept Plan which provides for an additional 893 lots with an additional population of 2858 persons.

647 lots are attributed to JPG with the remaining 246 lot being made up from other potential developers. The precinct breakdown of lots is shown in the table below:

<b>Precinct</b>	<b>Existing lots</b>	<b>Proposed lots</b>	<b>Net additional lots</b>	<b>Staging order</b>	<b>Cumulative net additional lots</b>
Bona Vista (VPA)	2	246	244	1	244
Fernadell (VPA)	1	210	209	2	453
Blighton (VPA)	2	19	17	3	470
Cleary (VPA)	6	112	106	4	576
Thornton (VPA)	1	72	71	5	647
Central Precinct	28	194	166	6	813
Cattai	9	80	71	7	884
Thornton East	1	10	9	8	893
<b>Total</b>	<b>50</b>	<b>943</b>	<b>893</b>		

(VPA = land the subject of a voluntary planning agreement, discussed later in this report)

The approved concept plan and amendment to the State Environmental Planning Policy (Major Projects) 2005 has several implications relating specifically to the Hawkesbury Local Environmental Plan 1989 (HLEP 1989), Hawkesbury Development Control Plan (DCP), Council's Section 94 Plan. The purpose of this report is to advise Council of these implications.

**Hawkesbury Local Environmental Plan 1989**

On 18 July 2008 an amendment to State Environmental Planning Policy (Major Projects)(Pitt Town) 2008 was gazetted. This has the affect of replacing the current controls relating to Pitt Town to be consistent with the Concept Approval, issued on 10 July 2008. HLEP 1989 is in the process of being updated to reflect these changes.

Council at its meeting of 31 July 2007 resolved to prepare a draft local environmental plan to rezone additional land at Pitt Town. A Section 54 Notice to the Department of Planning was subsequently prepared and a response was not received from the Department. As noted above the proposed additional development on the land owned or controlled by JPG was determined to be a Major Project on 12 October 2007 and the draft LEP became redundant. It is therefore recommended that the amendment (No.155) be formally abandoned.

### Hawkesbury Development Control Plan

A further consequence of the Minister approving the Concept Plan and SEPP amendment is that amendments are now required to Part E Chapter 4 (Pitt Town) of the DCP. The Minister's approval requires that the DCP be amended to update the controls and design guidelines. It is noted that the Concept Plan approval did not approve the proposed guidelines and development controls submitted by JPG with the application.

The Department have advised via the Concept Approval that the DCP is to address the following matters:

- Site coverage
- Front/side/rear setbacks
- Height
- Architectural character
- External finishes
- Flood risk

The Concept Approval states that:

*In relation to flood risk the design guidelines must consider the impact of climate change and formulate development options for future applications for houses in the Pitt Town subdivision, particularly within the precincts most effected by flooding and climate change i.e. Cleary and Thornton. In this regard, a combination of fill and raised habitable floor levels to 18.7m AHD is encouraged for houses proposed on blocks within the north of Cleary and Thornton Precincts.*

How this matter is addressed, ie, extent of fill, etc, is a matter that can be addressed in the DCP.

The Concept Approval also states that the design guidelines are to be submitted for approval by Council prior to lodgement of the first application to Council for housing on blocks created by the concept plan approval. If Council fails to approve the design guidelines/development controls by 31 August 2008, they are to be submitted for approval to the Director General of the Department of Planning.

The JPG lodged with Council an amended DCP on 17 June 2008 for consideration. Given this was prepared prior to the concept plan being approved, it does not cover the issues and requirements of the Concept Plan. It is therefore recommended that Council staff prepare a new DCP in accordance with the Concept Approval.

### Amendments to Council's Section 94 Contributions Plan Review November 2005

On 11 July 2008 Council received a letter from the Hon Frank Sartor, Minister for Planning, regarding future amendments to Council's Section 94 plan that would be required in the event that the JPG concept proposal was approved under Part 3A of the Environmental Planning and Assessment Act 1979.

#### Direction from the Minister

The letter from the Minister includes, in part, the following direction:

*I now direct Council pursuant to section 94EAA of the EP&A Act to amend its Section 94 Contributions Plan in accordance with the enclosed amendments. I request that Council exhibits the revised plan giving effect to the amendments by no later than 15 August 2008 and that Council approves it no later than 26 September 2008.*

*In making amendments to contributions plans, Council is normally subject to the public consultation requirements under clauses 26 - 33A of the EP&A Regulation. However I am able to approve the amendments directly under section 94EAA(3) of the EP&A Act without compliance with these requirements if either Council consent in writing for me to do so, or if Council fails to amend the Contributions plan in accordance with my direction*

## ORDINARY MEETING

Meeting Date: 29 July 2008

### Revised Local and Regional Infrastructure Contributions

Council's current Section 94 plan makes provision for the collection of contributions towards preliminary investigations/plans, land acquisition, community facilities, recreation facilities, park improvements, regional infrastructure within the Pitt Town Development Area as well as contribution towards district facilities which service the community as whole.

The current Section 94 plan is based on Hawkesbury Local Environmental Plan 1989 - Amendment 145 with 631 development lots and a population of 2020 persons. At present the per lot contribution is \$24,815.50.

In addition to the Section 94 contribution, developers are required to pay a regional transport infrastructure and services contribution which is determined by the Department of Planning at the time of assessment of respective development applications. Council has issued one (1) development consent for subdivision within the land affected by Amendment 145. This consent was issued to JPG and under the terms of their voluntary planning agreement with the Minister for Planning the per lot regional transport infrastructure and services contribution is approximately \$42,000.

The proposed amendments to Council's Section 94 plan provide for 2 classes of contributions, being:

- contributions applying to development of **all** land within the Pitt Town Development Area (known as Catchment 5 in the Section 94 plan); and,
- additional contributions applying to development of land in Catchments 5 not subject to voluntary planning agreements. These contributions relate only to the provision of regional infrastructure and only apply to certain land in Catchment 5.

The amendment provides for the following additional infrastructure and services to that which is already catered for in the current Section 94 plan:

- 0.72 ha on Lot 1 DP 1113833, Buckingham, Street, Pitt Town for active open space. (Note this land is currently identified in contribution required for drainage works and for which contributions are to be collected under Section 64 of the Local Government Act 1993. At present it is not known how this area of land now proposed to be a third playing field will impact upon the operation of the proposed adjacent wetland.)
- 1.6813ha of land in the Blighton Precinct fronting Hawkesbury River in Lots 1 and 2 DP 1021340.
- Additional 251m<sup>2</sup> of community facility to the north of the Pitt Town Public School. The estimated value of these additional works is \$749,961. (Note it is unclear in the cost breakdown provided in the amendments whether or not the currently proposed 50 car parking spaces are also to be increased. The increase in the value of works would suggest this, however, the items description still states 50 car parking spaces. If the car parking is to be increased in accordance with the increased number of lots/population then 71 car parking spaces should be provided.)
- Upgrading to Brinsley Park including earthworks, importation of soil, retaining walls, fencing, turfing, irrigation, a cricket wicket and lighting. The estimated value of these work is \$430,100.
- Various additional improvements on Fernadell Park including a third playing field, sports field lighting, seats, plants and gardens, irrigation, pumps, pathways, fencing, lighting. The estimated value of these additional works is \$277,500.
- Additional car parking at Mulgrave Station to the value of \$130,000.
- Additional interim bus service provisions to the value of \$219,310.

## ORDINARY MEETING

Meeting Date: 29 July 2008

- Contribution to construction of Pitt Town Bypass of \$6,000,000 - this contribution is payable upon the development of all land within Catchment 5.
- Contribution to construction of Pitt Town Bypass of \$6,100,000 - this contribution is payable upon the development of land within Catchment 5 that is not subject to a voluntary planning agreement.

The amendment provides for the following deletions or reductions for infrastructure and services to that which is currently catered for in the current Section 94 plan:

- Deletion of Roundabout at Chatham and Eldon Street. Estimated value \$178,620. The justification in the plan is that this has been excluded because there is no need for these works in addition to the Pitt Town Bypass works.
- Reduction in Local Road works from \$5,637,070 to \$5,353,162 i.e. a decrease of \$283,908. This includes removal of proposed works in Amelia Grove (\$217,461.60) and part of Hall Street (\$168,864.00). The justification in the plan is that these works have been excluded upon review and refinement of the facility needs for the proposed development. The cost of road works for the new road south of Bootles Lane to be funded by Section 94 has been increased from \$281,320 to \$383,738 i.e. an increase of \$102,418.
- Deletion of collection of contribution towards district facilities for community facilities, park improvements and recreation facilities. In total this equates to approximately \$2,200 per lot. This is in line with previous directions from the Department of Planning regarding restrictions of collection contributions for district facilities.

Certain lands, owned or control by JPG, are subject to a voluntary planning agreement (VPA) under Section 93F of the Environmental Planning and Assessment Act 1979. The agreement requires contributions to be made toward the following infrastructure:

- acquisition of additional land adjoining the Pitt Town Public School;
- contribution towards schools construction costs;
- upgrade of 5 intersections;
- upgrade Pitt Town Road shoulders;
- acquisition of conservation lands.

The estimated value of these works is approximately \$16.5 million, or approximately \$25,500 per lot i.e. \$16.5 million divided by the 647 additional lots attributed to JPG.

Hence the revised Section 94 and other contributions are as follows:

For the 647 lots attributed to JPG

Section 94 contribution	=	\$25,709.47
VPA contributions	=	\$25,500.00
<b>TOTAL</b>	=	<b>\$51,209.47</b>

For the 246 lots not attributed to JPG

Section 94 contribution	=	\$25,709.47
Pitt Town Bypass contribution (partial)	=	\$24,796.75
<b>TOTAL</b>	=	<b>\$50,506.22</b>



**Conclusion**

Given the Minister's ability to directly approve the proposed amendment under Section 94EAA(3) of the EP&A Act, the short timeframe given by the Minister for Council to exhibit and adopt and the revised plan (implying that the amended plan is not proposed to be amended by the Minister), and the fact that Council is about to enter "caretaker" mode prior to the upcoming local government elections, it is recommended that Council provide written consent to the Minister for the amendment of the plan.

In providing such consent it is also recommended that clarification be sought concerning the matters identified in the above section of this report with respect to the 0.72 ha on Lot 1 DP 1113833, Buckingham, Street, Pitt Town for active open space and the provision of car parking for the community facility to the north of the Pitt Town Public School. It is anticipated that these matters can be resolved at a staff level without further report to Council.

**Conformance to Strategic Plan**

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

*"Objective: Investigating and planning the City's future in consultation with our community, and co-ordinating human and financial resources to achieve this future"*

**Funding**

There are no direct financial implications from this report. However, there will be a significant impact on staff time in preparing and modifying the development controls for Pitt Town as required in the Concept Plan approval.

**RECOMMENDATION:**

That:

1. Hawkesbury Local Environmental Plan 1989 Amendment No.155 be formally abandoned.
2. Part E, Chapter 4 (Pitt Town) of the Hawkesbury Development Control Plan be amended to incorporate the approved Part 3A Concept Plan, the requirements contained within the Director General's Environmental Assessment report and SEPP (Major Projects)(Pitt Town) amendments and the draft DCP changes be placed on public exhibition.
3. Council provide consent in writing to the Minister for the amendment of Council's Section 94 Contributions Plan Review November 2005 as outlined in the Ministers correspondence received by Council on 11 July 2008.
4. In providing consent to amend the Section 94 plan, Council also seek clarification from the Minister regarding the relationship of the 0.72 ha on Lot 1 DP 1113833, Buckingham, Street, Pitt Town proposed for active open space and the adjacent wetland for stormwater management and the provision of car parking for the community facility to the north of the Pitt Town Public School.

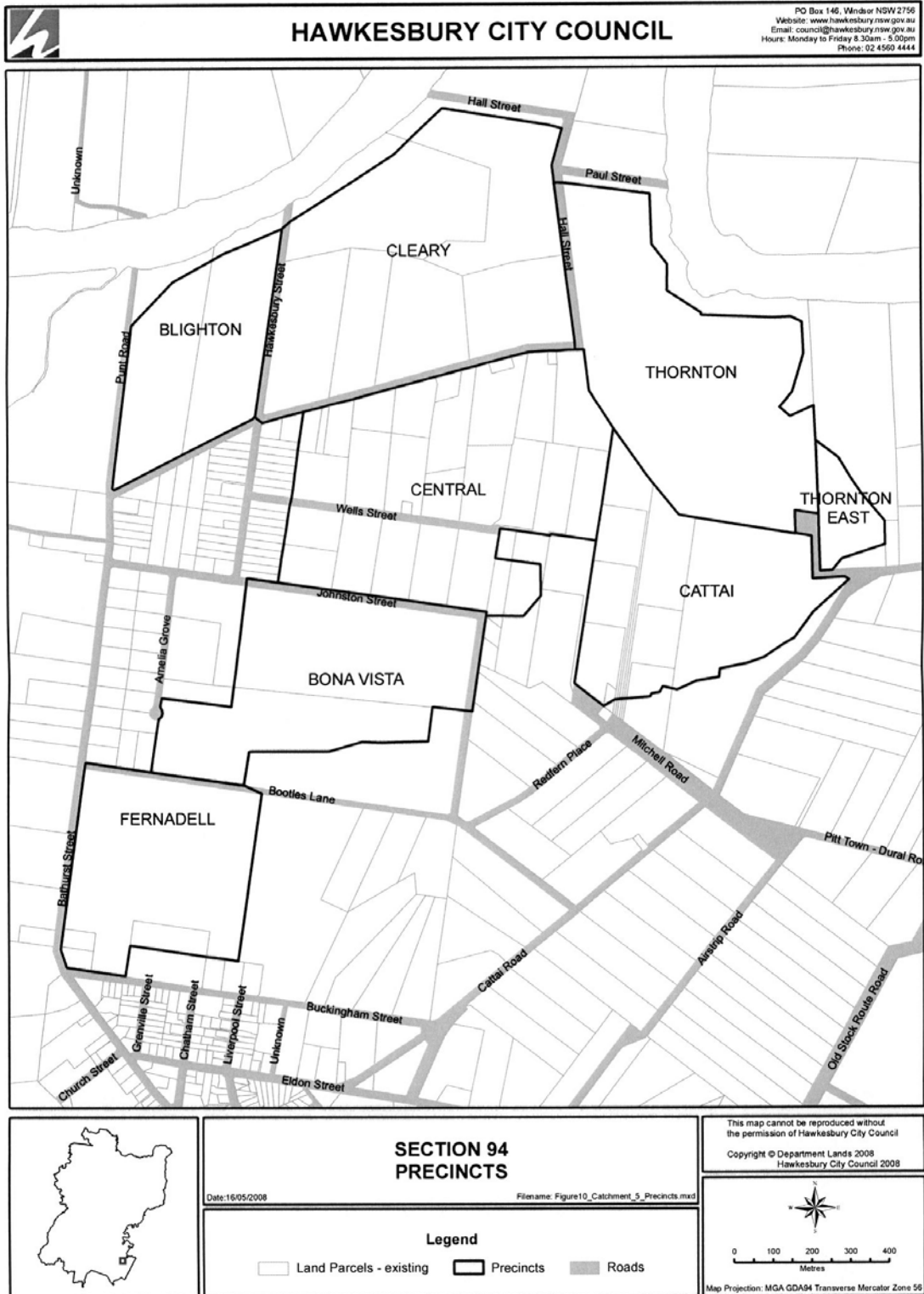
**ATTACHMENTS:**

- AT 1** Section 94 Precinct Plan (2008)  
**AT 2** Pitt Town Residential Precinct Section 94 Contributions Plan Amendment and SEPP (Major Projects) Amendment (Pitt Town) - (*Distributed under Separate Cover*).

## ORDINARY MEETING

Meeting Date: 29 July 2008

### AT 1 Section 94 Precinct Plan (2008)



oooO END OF REPORT Oooo

## ORDINARY MEETING

Meeting Date: 29 July 2008

**Item: 155**      **CP - Construction of Exhibition Homes as part of an Exhibition Village comprising thirteen (13) Exhibition Homes, Lot 14 DP 865977 & Lot 14 DP 865977, Proposed Lots 1003 – 1007, 1010 – 1015, 1021 & 1022) - 17 Bootles Lane PITT TOWN NSW 2756**

---

### Development Information

**Applicant:** Johnson Property Group Pty Ltd  
**Applicants Rep:** Richard Whitehead  
**Owner:** Bona Vista Properties Pty Ltd  
**Stat. Provisions:** Hawkesbury Local Environmental Plan  
Sydney Regional Environmental Plan No. 20 (No. 2)  
Hawkesbury Nepean River State  
Hawkesbury Development Plan 2002  
**Area:** 20.150 Ha  
**Zone:** Housing under Hawkesbury Local Environmental Plan 1989  
**Advertising:** 28/05/08 - 11/06/08  
**Date Received:** 11/03/08  
**Key Issues:** ♦ Variation to Hawkesbury DCP Pitt Town Chapter  
**Recommendation:** Approval

---

### REPORT:

#### Introduction

The applicant seeks approval to construct an exhibition village as part of an exhibition home development comprising of 13 homes.

This matter is being reported to Council due to variations proposed to the Hawkesbury Development Control Plan. The purpose of this report is to detail the proposal, the current statutory situation and provide an assessment of the applications in accordance with Section 79C (1) of the Environmental Planning and Assessment Act 1979.

#### Background

Hawkesbury Local Environmental Plan 1989 - Amendment 145 was gazetted on 18 August 2006 which altered the zoning of land at Pitt Town to allow for the subdivision of lots for housing and rural housing. DA0557/06 was approved for a staged subdivision of two existing allotments known as Lot 14 DP 865977 and Lot 132 DP 1025876 to create 226 allotments including 224 residential lots and one residual lot.

Stage 1A of the development comprised 29 Lots. The exhibition homes are to be constructed on the proposed lots within Stage 1A. Works relating to the provision of infrastructure services are currently being carried out.

On 17 March 2008, thirteen development applications were lodged for the construction of dwelling houses on various proposed allotments within the approved Stage 1A of the subdivision. On 20 May 2008 the applications were amended to change the description of the each of the development applications from the construction of a dwelling house to the construction of an exhibition home as part of an exhibition home development. The revised proposal is being considered in this assessment report.

## ORDINARY MEETING

Meeting Date: 29 July 2008

### The Proposal

The proposal is for the construction of 13 exhibition homes as part of exhibition village development on land comprising Stage 1A of the recently approved subdivision. Thirteen separate development applications have been lodged for the construction of an exhibition home on each of the proposed lots 1003 to 1007, 1010 to 1015, 1021 and 1022.

The exhibition homes on proposed Lots 1005, 1006, 1007, 1010, 1011, 1013, 1014 1015, 1021 and 1022 will be single storey and those on proposed Lots 1003, 1004 and 1012 will be of two storey construction.

The proposal includes car parking for 31 vehicles for the visitors to the exhibition homes. These car parking spaces are to be located on proposed Lots 1018 and 1019.

The hours of operation of the exhibition homes will be 9.00am to 5:00pm, seven days a week. It is intended that the use of the buildings will continue as exhibition homes for a maximum of 6 months after the registration of the linen plan for Stage 1A. A further application will be lodged to Council for the change of use for the display homes to convert to dwelling houses.

A maximum of 3 employees will be available on-site during the operating hours.

It is intended to provide amenities for employees and visitors within the exhibition homes. However should the services not be available to the area, temporary portable toilets will be installed on proposed Lot 1018 until services are available.

No signage is proposed for the display homes.

### Description of the Site and Surrounds

The proposed 13 Exhibition homes are to be located within Stage 1A of the approved subdivision. Access to these lots is from Bootles Lane. The part of Stage 1A where the proposed exhibition homes are to be located adjoins rural residential properties with single storey dwelling houses to the west and Bootles Lane to the south.

The proposed 13 lots have varying land areas ranging from 750m<sup>2</sup> to 900m<sup>2</sup> with a minimum frontage of 18m as approved in DA0557/06.

### Planning Assessment

#### Statutory Situation

##### (i) any Environmental Planning Instrument:

##### Hawkesbury Local Environmental Plan 1989 (HLEP 1989)

The land is zoned Housing under the provisions of HLEP 1989. Exhibition homes are a permissible use with Council's consent in the Housing zone.

#### Zone Objectives

The objectives of this zone are as follows:

- (a) *to provide for low density housing and associated facilities in locations of high amenity and accessibility;*

The proposal is for the construction of exhibition homes aimed to display the desired design and finishes for the future housing development within the approved subdivision. These exhibition homes are intended to be use as dwelling houses upon completion of the infrastructure works and registration of the linen plan for Stage 1A of the approved subdivision. This will provide low density

## ORDINARY MEETING

Meeting Date: 29 July 2008

housing together with associated infrastructure and services to ensure amenity of the future residents.

- (b) *to protect the character of traditional residential development and streetscape;*

The design of the proposed exhibition homes is consistent with the residential development in the locality and also sets the direction for future developments in the area.

- (c) *to ensure that new development retains and enhances the existing character;*

The subdivision pattern is such that smaller size allotments do not interface with the existing larger allotments especially fronting Amelia Grove. The proposal involves the construction of single and two storey exhibition homes which is adequate within the context.

- (d) *to ensure that development is sympathetic to the natural amenity and ecological processes of the area;*

The proposal involves the construction of exhibition homes on proposed lots within the approved subdivision. The siting and design of the buildings is considered sympathetic to the natural amenity and will minimise the impact on existing characteristics of the area.

- (e) *to enable development for purposes other than residential only if it is compatible with the character of the living area and has a domestic scale and character;*

The proposed exhibition homes will ultimately be used as dwelling houses. The design of the buildings is compatible with character of the living area

- (f) *to control subdivision so that the provision for water supply and sewerage disposal on each resultant lot is satisfactory to the Council;*

The proposal is not for subdivision of land.

- (g) *to ensure that development does not create unreasonable economic demands for the provision or extension of public amenities or services;*

The developer will bear all the cost associated with the extension of public utilities and services to the site. These services will be provided in accordance with the requirements of relevant authorities. The extension of services is not likely to unreasonable impact on the existing infrastructure in the area.

### **Clause 18 - Provision of water, sewerage etc. services**

The construction works are currently underway for the provision of water supply, sewerage, electricity, telephone and drainage to Stage 1A of the approved subdivision. The applicant indicates that these services will be completed before commencing the use of the proposed buildings as exhibition homes. In the event the services are not available by the time the display homes are completed and ready for use, it is proposed to provide portable toilets on Lot 1018 to service the exhibition homes. These toilets will remain in place until water and sewerage facilities are available.

Suitable conditions of consent will also be imposed to ensure necessary utility services are available to the sites prior to the commencement of use as exhibition homes. Separate development applications are required for the change of use from exhibition homes to dwellings.

### **Clause 28 - Development in the Vicinity of Heritage Items**

The Council shall not grant consent to an application to carry out development in the vicinity of a heritage item unless it has made an assessment of the effect the carrying out of that development will have on the heritage significance of the item and its setting.

## ORDINARY MEETING

Meeting Date: 29 July 2008

The approved Stage 1A land adjoins Bona Vista Homestead to the north which is an item of heritage significance in Schedule 1 of Hawkesbury LEP 1989 and the State Heritage Inventory.

The impact of the proposed subdivision and subsequent dwelling houses on the created allotments was considered as part of the Local Environmental Plan 1989 - Amendment 145 and DA0557/06 for the approved subdivision.

The Hawkesbury Development Control Plan – Part E – Chapter 4.11 (Pitt Town Development Plan) outlines requirements for heritage and conservation. The approved subdivision incorporates a minimum of 50m setback on all sides from any proposed allotment from Bona Vista. This setback from any future development including that from the exhibition homes is considered adequate to maintain the significance of Bona Vista Homestead

### ***Clause 54 - Pitt Town - Heritage***

This clause applies to development that will be carried out on an archaeological site or potential archaeological site on all land shown on the map marked "Hawkesbury Local Environmental Plan 1989 (Amendment No 145)". The Department of Environment and Climate Change issued an Excavation Permit under S90 of the National Parks and Wildlife Act 1974 in relation to the DA0557/06 for the subdivision of land comprising Bona Vista property. The construction works for the provision of services in Stage 1A are currently underway.

The proposed exhibition homes are to be constructed on proposed lots within Stage 1A and therefore it is considered that Clause 54 of the LEP 1989 has been addressed as part of the subdivision approval.

### ***Clause 55 – Pitt Town - Subdivision and Regional Transport Infrastructure***

This clause is not applicable as the proposal does not involve subdivision of land.

### **Sydney Regional Environmental Plan No. 20 (No.2 -1997)**

It is considered that the proposed development is consistent with the aims and objectives of the Plan.

### **State Environmental Planning Policy No. 55 - Remediation of Land**

Development consent DA0222/07 was granted for the site remediation works to make the site suitable for residential and open space land uses at Lot 41 DP 865977, Lot 132 DP 1025876 and Lot 1 DP 1330026 in Pitt Town.

The proposed works were identified in the report titled "Detailed site Investigation, Bona Vista and Fernadell Sites Proposed Residential development Pitt Town New South Wales" prepared by Golder Associates - dated June 2006 and to be carried out in two Stages with Stage 1 being the Bona Vista site on Johnson Street.

The remediation works have since been carried out on Bona Vista site in accordance with the DA0222/07 and signed off as suitable for residential development and occupation by ERM in September 2007. A copy of the report accompanies the current development application.

### **Hawkesbury Development Control Plan**

There is no specific chapter contained in Hawkesbury Development Control Plan that specifically relates to Exhibition Homes. Since these Homes are intended to be used in future as dwelling houses, the assessment of the proposal is carried out in accordance with the following section of the Plan:

### **Notification**

The applications were notified between 9 - 23 April 2008 for the construction of dwelling houses on the proposed lots. No submissions were received. Upon receipt of the amended plans for exhibition homes

## ORDINARY MEETING

Meeting Date: 29 July 2008

the proposal was again notified between 28 May 2008 and 11 June 2008. One submission was received. The issues raised are discussed further in this report. .

### Specific Areas - Pitt Town

Part E of Hawkesbury DCP provides controls for Pitt Town affected by land covered by Local Environmental Plan 1989 - Amendment 145. It provides site-specific principles for the subdivision and development control for Pitt Town. The following is the assessment of the proposed development applications against relevant section of the Pitt Town Chapter:

### Hawkesbury Development Control Plan - Specific Areas - Pitt Town

#### 4.13 Building envelopes

Elements	Rules	Proposed	Complies
<b>4.13</b>			
Building envelopes	<p>(a) The setback of dwellings from lot boundaries must substantially meet the requirements set out below unless there are special natural or cultural features within the lot that require variations to these requirements.</p> <p><b>North -south Oriented Lots</b> (Refer to the Table 1 in this report)</p> <p>1) Minimum lot size: 750m2</p> <p>2) Minimum front setback: 8m</p> <p>3) Minimum rear setback 8m</p> <p>4) Minimum side setback 3m one side</p>	<p>All proposed Lots are minimum 750m2</p> <p>With the exception of 6.0m setback proposed for DA0186/08, The exhibition homes on all other proposed lots have a minimum 8m front setback</p> <p>With the exception of 7.06m setback proposed for DA0179/08, the exhibition homes on all other proposed lots have a minimum 8m rear setback</p> <p>All Development applications comply except DA 0183/08.</p>	<p>Yes</p> <p><b>No, refer to comments on DA0186/08</b></p> <p><b>No, refer to comments on DA0179/08</b> Compliance achieved with Condition of consent</p> <p><b>No, refer to comments on DA0183/08</b></p>

# ORDINARY MEETING

Meeting Date: 29 July 2008

<b>East-west Oriented Lots</b> (Refer to the Table 2 in this report)			
5) Minimum lot size: 750m2	All proposed Lots are a minimum of 750m2.	Yes	
6) Minimum front setback: 7m	With the exception of 6.0m setback proposed for DA0177/08, the exhibition homes on all other proposed lots have a minimum 7m front setback	<b>No, refer to comments on DA0177/08</b>	
7) Minimum rear setback: 7m	All exhibition homes subject to this report have minimum 7m rear setback.	Yes	
8) Minimum side setback:			
• 4m north side	All development applications comply.	Yes	
• 1m south side	All exhibition homes subject of this report have minimum 1m side setback.	Yes	
(b) Garages may be attached or separate.	Attached garages provided	Yes	
(c) Garages must be a least 2 metres behind the front building line and designed to minimise visual prominence. Garages and outbuildings may be located in the rear and side set backs.	Between 1 and 2 metres	<b>No, refer to comments below.</b>	
(d) Dwellings in all precincts are limited to two storeys.	A mix of single and two storey dwellings	Yes	
(e) New buildings must comply with the Building Height Plane set out in Part D Chapter 1 Clause 1.3.	All exhibition homes are within the building height plane except DA0172/08 and DA0180/08	<b>No, refer to comments on DA0172/08 and DA0180/08</b>	
(f) Total building footprint area must comply with the site coverage for minimum lot size of 750m2 is maximum of 45%	With the exception of DA0186/09 which has a Building footprint coverage ranging between 37.16% % and 43.5%	<b>No Refer to comments on DA0186/08</b>	
(g) The building form for large houses is to be articulated or broken down to two or more	The buildings for exhibition homes are moderate in size. The design involves	Yes	



# ORDINARY MEETING

Meeting Date: 29 July 2008

	buildings that may be interconnected.	articulation and modulation to minimise the bulk and scale.	
--	---------------------------------------	---	--

**Table 1: North South Orientated Lots**

Development Application	Height in Storeys		Site Coverage (%)		Min Front setback (metres)		Min Rear Setback (metres)		Minimum Side Setback (metres)			
	1	2	Proposed %	Compliance	Proposed	Compliance	Proposed	Compliance	(Required: One side - 3.0m Other Side - 1.0m)			
									Proposed East	Compliance	Proposed West	Compliance
DA0172/08		2	37.16	Yes	8.84	Yes	14.49	Yes	2.25	Yes	4.00	Yes
DA0178/08		2	32.82	Yes	8.68	Yes	16.50	Yes	4.09	Yes	2.16	Yes
DA0179/08	1		42.46	Yes	9.20	Yes	<b>7.06</b>	<b>No</b>	6.90	Yes	1.35	Yes
DA0180/08		2	29.48	Yes	8.0	Yes	8.00	Yes	3.45	Yes	3.4	Yes
DA0181/08	1		36.24	Yes	9.8	Yes	19.30	Yes	1.42	Yes	4.34	Yes
DA0183/08	1		44.26	Yes	9.0	Yes	17.10	Yes	<b>1.35 to 4.23</b>	<b>No</b>	<b>0.9 to 1.42</b>	<b>No</b>
DA0184/08	1		39.24	Yes	9.68	Yes	11.07	Yes	4.78	Yes	1.35	Yes
DA0186/08	1		<b>50.27</b>	<b>No</b>	<b>6.0</b>	<b>No</b>	11.0	Yes	4.63	Yes	3.4	Yes

## Discussion of non-compliances

### Setbacks

#### North-South Orientated Lots

##### Front Setback:

##### DA0186/08

The DCP requires a minimum of 8m front for north-south orientated sites. The exhibition home on proposed Lot 1007 is 6m which does not comply. The proposed Lot 1007 is a corner lot with a short frontage to Bootles lane and the longer frontage to the proposed road.

The statement accompanying the application states that:

*"the lot is in a prominent location and JPG intends this house to form part of entry statement to this precinct. The house will be well detailed and its presentation will be reinforced by the lack of fencing along the street frontages."*

Pitt Town DCP does not provide any specific controls for corner allotments. From streetscape and urban design perspectives building on corners allotments can be sited closer to the street and forward of the other buildings without disturbing the established building rhythm. The proposed design incorporates the main frontage to the longer axis of the allotment. It also provides formal presentation to Bootles Lane. The applicant's argument on making this exhibition home prominent merits consideration and no objection is raised to the proposed variation to the front setback.

# ORDINARY MEETING

Meeting Date: 29 July 2008

## Rear Setback:

### DA0179/08

The DCP requires a minimum of 8m rear setback for north-south oriented allotments. The exhibition home on proposed Lot 1005 provides for 7.056m rear setback and 9.20m front setback. Variation to the rear setback is not supported for the reason that compliance with the DCP requirements would provide suitable private open space area. In this regard it is noted that compliance with the rear setback requirements can be achieved by shifting the building 0.944m forward. A condition is included in the recommendation that requires the rear setback to be a minimum of 8m. It is also noted that the front setbacks proposed for other buildings fronting Bootles Lane range between 8.0m and 9.6m and the proposed 8.26m front setback for the subject exhibition home will not be out of character with the emerging character of the area.

## Side Setbacks:

### DA0183/08

The DCP requires a minimum of 3m setback to one property boundary with the other setback to the other boundary being 1m. The proposed setback to the western boundary is in excess of 4m with the exception of an approximately 4m length at the north western corner of the building being 1.350m setback. The proposed eastern boundary setback is 1m with the exception of approximately 2.7m length of the building which has 970mm setback. This encroachment is for the kitchen area.

The applicant states that *"the minor non-compliance to be justified on the basis that the reduced setback is for one room only (approximately 4m long) at the rear of the dwelling and will not be obvious from the street frontage. The western wall of the room does not contain any windows, avoiding any privacy issues."*

The proposed exhibition home is single storey in height. The proposed variation will not result in any non-compliance with the building height plane or site coverage requirements. It would not impact adversely on privacy and solar amenity of the adjoining properties. No objection is raised to the proposed variation to the side setbacks.

**Table 2: East West Orientated Lots**

Development Application	Height (Storeys)		Site Coverage (%)		Min Front setback (metres)		Min Rear Setback (metres)		Mini Side Setback (metres)			
	1	2	Proposed	Compliance	Proposed	Compliance	Proposed	Compliance	(Required: North - 4.0m, South - 1.0m)			
									Proposed North	Compliance	Proposed South	Compliance
DA0171/08	1		45.0	Yes	7.22	Yes	13.25	Yes	4.36	Yes	1.8	Yes
DA0173/08	1		40.7	Yes	7.40	Yes	14.80	Yes	4.54	Yes	1.0	Yes
DA0175/08	1		43.4	Yes	8.76	Yes	11.97	Yes	4.55	Yes	1.0	Yes
DA0176/08	1		38.5	Yes	7.00	Yes	7.13	Yes	4.18	Yes	1.0	Yes
DA0177/08	1		39.8	Yes	6.00	No	11.57	Yes	4.2	Yes	1.8	Yes

**Discussion of non-compliances**

**DA0177/08**

The minimum front setback required for east-west orientated lots under the DCP is 7m. The exhibition home on the proposed Lot 1014 provides 6m setback which does not comply.

The subject land is located at the end of the cul-de-sac and the proposed building will not be readily visible from any street. Access to the land will be via a driveway off the cul-de-sac. It is considered that the proposed front setback will not have any significant impact on the streetscape. In addition the reduced front setback will provide larger private open space for the future occupants.

**Garage Setback:**

The DCP requires garages must be a least 2 metres behind the front building line and designed to minimise visual prominence. Garages and outbuildings may be located in the rear and side set backs.

All the garages are attached to the buildings with the majority being located clear of the side setbacks. The garages do not provide a minimum 2m setback behind the building line.

The statement accompanying the application states, in part, that:

*"none of the proposed houses has a setback of less than 1.44m from the front of the dwelling to the garages. We consider that this together with the detailing of the facades (parapets, a variety of materials, tall windows, pergolas, feature finishes to porch columns, varying roof lines) provides sufficient articulation and interest in the dwelling façade.*

*If the 2m garage setback and eaves width controls in the DCP are to be strictly applied, the likely outcome is that project builders will be excluded, or they will be forced to add several thousand dollars to the price of their homes.*

*In consultation with the builders, JPG has estimated that compliance with all areas will add in excess of \$15,000 to the cost of a dwelling to customise designs and structures, as well as causing delays while designs are prepared and approved. The additional cost will be passed on to the home buyers thereby reducing the ability to provide affordable housing. All the proposed dwellings are project homes and we consider it is reasonable that Council take into account the cost of complying with the DCP controls."*

The aim of requiring garages behind the front building line is to minimise visual dominance of garages in the street façade. The proposed exhibition homes provide garage setbacks ranging between 1.44m to 3.0m. The design of the buildings incorporate porches and verandas. With the exception of DA0172/08, DA0181/08 and DA0186 all the exhibition homes have double garages occupying less than 40% of the front façade.

The proposed variation is considered not to compromise the intent of the control in that the garage structure will not be dominant due to use of feature finishes for the front façade and incorporating elements such as verandas and porches to provide articulation of the facade. The proposed variation is therefore supported.

**Building Height Plane and width of garages in relation to front facade**

The Pitt Town Chapter of Hawkesbury DCP requires that New buildings must comply with the Building Height Plane set out in Part D Chapter 1 Clause 1.3.

The aim of the control is to protect the privacy, use of the private open space and solar access within the development and the on adjoining land. All development applications for the proposed exhibition homes comply with the Building Height Plane with exception of the following:

## ORDINARY MEETING

Meeting Date: 29 July 2008

### DA0172/08

The proposed building is two storeys in height and provides a triple garage. There is a substantial encroachment into the building height plan along the eastern and western ends of the building.

The statement accompanying the application states that:

*"The garage is located at the minimum setback from the western boundary but the dwelling still encroaches within the building height plane. The parapet over front of the garage and the guttering along the western wall of the garage are minor encroachments only. In relation to the encroachments of the eastern side of the dwelling, we note the following:*

- The dwelling setback to the side boundaries are greater than the required by the DCP (although the garage is 1m from the western boundary, the dwelling itself is 4metres);*
- The Lot 1004 is north south orientated and there will be little impact on the overshadowing of the adjoining lots; and*
- The dwelling on Lot 1005, which adjoins the double storey element of the dwelling on Lot 1004 is single storey, while the double storey dwelling on Lot 1003 adjoins the single storey garage on Lot 1004, thus reducing the combined bulk of the dwellings."*

The encroachment within the building height plane is a direct consequence of the design of the proposed building incorporating a triple garage. The garages occupy approximately 58% of the total length of the front façade. In accordance with Part D Chapter 1 Clause 1.3 of the DCP, the garages should occupy less than 50% of the façade. It is recommended that the design be amended to reduce the garages from 3 to 2 and building be moved 1.7m further to the west. This will remove the encroachment within the building height plane and also comply with the requirements for the garage width. It is noted that the third garage single storey and its deletion will not affect the overall planning or available habitable areas. A condition of consent requires the deletion and relocation of the building.

### DA0180/08

The proposed exhibition home is of two storey height. The second storey eaves encroach the building height plane. The applicant is seeking variation for the following reasons:

*"Despite the dwelling being located in the centre of the lot, with 3.4 metre setbacks from each of the side boundaries, the eaves encroach within the building height plane. The encroachment is minor and since the lot faces north south will have little impact on overshadowing into the adjoining lots. The generous side setback will ensure that there is adequate separation between dwellings and in this regard, we note that the dwelling to the east (Lot 1004) has a single storey element (the garage) adjoining the boundary."*

The proposed building complies with the setback controls and the proposed encroachment of the eaves is not likely to raise any significant privacy or overshadowing issues on the adjoining land. The proposed variation to the building height plane is supported.

### DA0181/08

The building on Lot 1010 complies with the building height plane. The proposed design however does not comply with Part D Chapter 1 Clause 1.3 of the DCP in regards to the maximum 50% allowable width of the garages. The proposed triple garages occupy approximately 57% of the total street façade. The proposed garages dominate the façade and in this regard it is recommended that the design be amended to reduce the garages from 3 to 2 car accommodation. It is noted that the deletion of third garage will not affect the overall planning or available habitable areas within the building. A condition of consent requires the deletion of the third garage.

## ORDINARY MEETING

Meeting Date: 29 July 2008

### Site Coverage

The DCP allows a maximum site coverage of 45% for allotments up to a maximum area of 1000m<sup>2</sup>. With the exception of DA0186/09 (proposed Lot 1007) which has a site coverage of 50.27%, building footprint for all the other buildings range between 37.16% and 43.5% and therefore comply. The proposed lot 1007 is a corner allotment having short frontage to Bootles Lane.

The building on proposed Lot 1007 is single storey in height and is oriented north-south with triple garage along the proposed road. The building occupies approximately 80% of the total street frontage and provides a setback of 2.33m to the northern boundary. Whilst the garages occupy less than 50% of the street façade, the provision of third garage is considered excessive as it adds to the overall length of the building and also contributes to the excessive site coverage and therefore cannot be supported. A condition of consent requiring the deletion of third garage is proposed. This will reduce the site coverage to approximately 47.5%. Although the site coverage still exceeds the DCP control, the variation is supported given the proposed lot being a corner allotment and that adequate separation will be achieved with the adjoining allotment to the north.

### 4.15 Building Design

Elements	Rules	Proposed	Compliance
<b>4.15</b> Building Design	a) The use of design elements such as verandas and window shades and eaves with at least 600mm overhang is required.	The design of all the Exhibition homes include verandas and / or porches.  Eaves have a overhang of 450mm plus gutter totalling 600mm overhang.	Yes  Yes
	b) The use of framed lightweight construction such as posted verandas and roof projections should dominate the appearance of buildings from the street.	The design of each exhibition home incorporates either a veranda, porch or roof projections at the street frontage. These projections are generally in light weight construction.	<b>Yes</b>
	c) Front verandas and porches should occupy at least 30 percent of the width house frontage and be at least 2.5 metres wide.	The proposed single storey exhibition homes provide a veranda and the two storey homes have porches with balconies at upper floor level. These porches and verandas are less than 30% of the width of the house and are also not 2m wide.	<b>No, refer to Comments</b>
	d) Windows and door frames are to be set into walls with a reveal or an articulated frame.	The windows and doors will be set into the wall and not be flushed which achieves the intent of the of the control. .	<b>Yes</b>

## ORDINARY MEETING

Meeting Date: 29 July 2008

e) External walls materials are to be limited to weatherboard or plywood sheeting, rendered and bagged masonry, stone, glass or metal sheeting. Face bricks may be used, provided the colour blends are uniform throughout.	The proposed exhibition homes will be constructed in a variety of finishes and materials especially for the front elevation rear setback. including hardwood timber, bagged and painted and rendered. The external walls to other elevations will be face bricks.	Yes, <b>a condition of consent</b> requires the face bricks to be colour blended and uniform throughout.
f) External colours are to be muted earth and bush vegetation tones. Large areas of white or primary, vibrant colours are to be avoided.	The exhibition homes generally adopt muted external colours	Yes, <b>also a condition requires the use of muted earth and vegetation tones.</b>
g) The visual privacy requirements set out in Part D, Chapter 1, Clause 1.11, must be met.	The visual privacy will not be compromised as 10 of the 13 exhibition homes are of single storey design. The two storey buildings have bedrooms windows facing the side or rear boundaries. The first floor rumpus rooms have windows facing the street only. Design of the proposed exhibition homes is consistent with the requirements of Clause 1.11.	<b>Yes</b>
h) External fixtures such as solar panels and satellite dishes etc should be designed to integrate with the building or should not be visible from the street.	No solar panels and satellite dishes are proposed with any of the development applications for the exhibition homes.	<b>NA</b>

### Discussion of Non-compliances

#### 4.15 Building Design

##### **a) Eaves Overhang**

The DCP requires the use of design elements such as verandas and window shades and eaves with at least 600mm overhang. The proposed exhibition homes provide for verandas and porches however the eaves for all the buildings have 450mm overhang.

The statement accompanying the application argues that most project homes have an eaves overhang of 450mm and to design custom plans for Pitt Town would require new roof truss layout and would also require alterations to the roof pitches to avoid the roofs appearing too large.

## ORDINARY MEETING

Meeting Date: 29 July 2008

The purpose of providing eaves is to improve environmental efficiency and to enhance the external appearance of the buildings. An individual BASIX Certificate has been submitted for all the building. These Certificates confirm that all the that the proposed buildings comply with BASIX requirements.

The external appearance of the buildings with a 450mm overhang would not be significantly different to that with a 600mm overhang. Further, a metal fascia and gutter is also attached to the ends of the eave which will bring the total overhang closer to 600mm. No objection is raised to the 450mm eave overhang.

### c) Front Verandas and Porches

The DCP requires that Front verandas and porches should occupy at least 30 percent of the width of the house frontage and be at least 2.5 metres wide.

The proposed single storey exhibition homes provide a veranda and the two storey homes have porches with balconies at upper floor level. In general, the porches and verandas either do not comply with either the 2.5m width or 30% of the building width and in some instances with both of these requirements.

The aim of the control is to achieve building designs that are compatible with the rural character of the area and incorporate contemporary expressions of design elements characteristic of historic development within Pitt Town.

The existing development in Pitt town comprises varying land sizes with a variety of housing styles and designs including those with large verandas at the front of the dwelling houses. These verandas are of varying widths and designs depending on the size of allotments. It should also be noted that not all the existing dwellings have verandas.

The design of the exhibition homes include verandas and porches and whilst the dimensions do not comply with the DCP controls, the variations are acceptable for the following reasons:

- The approved subdivision includes lots of varying sizes. The smallest allotment size allowed under Stage 1A is 750m<sup>2</sup>. None of the smaller lots have direct interface with the existing larger lots within Pitt Town.
- The proposed exhibition homes and any future dwelling houses to be constructed within Stage 1A will not directly face the existing dwelling houses in Pitt Town and therefore would have a minimal adverse impact on the existing character.
- The proposed exhibition homes will result in setting the future character of the new development in accordance with the DCP. (It should also be noted that the Part 3A concept approval requires the DCP to be amended generally in accordance with some of the variations in these applications).
- The front façade of the exhibition homes is adequately articulated with the porches and verandas providing clear entry statement and that together with the use of feature finishes would minimise any perceived impacts that may arise from variations to the controls.

### 4.16 Landscaping

Elements	Rules	Proposed	Compliance
4.16 Landscaping	a) The requirements for landscaped areas set out in Part D Chapter 1 Clause 1.6 must be met in addition to the requirements set out below.	A landscape plan prepared in accordance with the requirements of Part D Chapter 1, Clause 16 has been submitted with all the development applications	Yes

## ORDINARY MEETING

Meeting Date: 29 July 2008

	b) Existing trees greater than 3 metres high should to be retained within private open space areas. However, if they are to be removed they should be replaced at a ratio of 3 to 1.	There are no trees on any of the proposed lots which are over 3m and require removal.	Yes
	c) The historic windbreaks throughout the area that cannot be contained within public road reserves must be retained as part of the landscaping within private lots.	There are no historic windbreaks which will be affected by the construction of exhibition homes on any of the proposed lots.	Yes
	d) Vegetation should be used for boundary demarcation and privacy screening wherever possible rather than fences.	Landscaping is proposed to demarcate the front boundary. Paling fencing is proposed for the remaining boundaries to provide privacy which is adequate considering the size of the proposed lots upon which the exhibition homes are to be built.	Yes
	e) Native plant species should be used. No invasive exotic species should be planted.	The proposed landscaping includes native plant species.	Yes, a condition also reinforces the need for native plant species in any landscape design
	f) The extent of driveways and other hard surfaces is to be minimised. Paving and other water-permeable materials should be used.	The extent of hard surface is restricted to driveways and on-site manoeuvring areas. The remaining parts of each of the proposed lots are either soft soil or semi-permeable due to use of gravels.	Yes

### **4.17 Fencing**

Elements	Rules	Proposed	Compliance
<b>4.17 Fencing</b>	a) New boundary fencing and privacy screens are discouraged. Vegetation should be used wherever possible.	No front fences are proposed and landscaping is proposed to demarcate the boundary.  1.8m high lapped paling fencing will be to all other boundaries	Yes



**ORDINARY MEETING**

Meeting Date: 29 July 2008

	b) Front boundary fencing must not exceed 1.2 metres in height with preferred styles being post and open timber rails or post and wire with top rail.	No front fences are proposed and landscaping is proposed to demarcate the boundary.	Yes
	c) The integration of trees and natural ground vegetation with the fence line is encouraged.	No significant trees exist on any of the proposed lots which would interfere with the proposed fencing.	Yes
	d) Private open space screen fences and pool fences must not exceed 1.8 metres in height are to be constructed of materials that complement the buildings on the site.	The proposed private open space fencing are a maximum of 1.8m in height.  No swimming pools are proposed as part of any of the development applications which are the subject of this report.	Yes

**Community Consultation**

The application for the construction of thirteen individual dwelling houses was publicly exhibited from the 10 – 24 April 2008. No submissions were received.

The above applications were later amended from the construction of thirteen dwelling houses to the construction of thirteen exhibition homes. The adjoining and nearby property owners were notified from 28 May to 11 June 2008. No direct submissions were received, however an email was received from Pitt Town Residents Association enquiring about advertising by Johnson Property Group of a number of houses in Pitt town. Apart from that the following enquires were also made:

- any approvals for the construction of dwelling houses by Council;
- compliance of proposed exhibition homes with Hawkesbury DCP Part E Specific Areas - Chapter 4 Pitt Town;
- street lighting; and
- seeking further details of the proponent developer's application to NSW Department of Planning under Part 3A - Major Projects of the Environmental Planning and Assessment Act 1979 in regards to the previously approved subdivision of land.

The above email was responded to and necessary information was provided in relation to any approvals for dwelling houses, street lighting and application under Part 3A - Major Projects regarding the previously approved subdivision application.

In regards to the compliance with Hawkesbury DCP, it is noted that the exhibition homes generally comply with the aims objectives and numerical controls as stipulated in the DCP. Any non-compliances with the DCP were discussed in the preceding sections of this report.

**Planning Assessment*****Context and setting***

Properties surrounding the approved subdivision are primarily used for rural residential purposes. The subject land is part of Stage 1A of the recently approved residential subdivision. The proposed exhibition homes are aimed to display a variety of house designs and finishes for the future buyers. These exhibition homes will be converted to dwelling houses in the future.

The proposed exhibition homes are permissible in the housing zone. The proposed buildings are of contemporary design consistent with the emerging character envisaged for the area in the DCP. The surrounding properties along Amelia Grove will not be significantly or unreasonably impacted upon in terms of loss visual or acoustic privacy, loss of views and unreasonable increase in traffic.

***Access and Traffic***

Access to the Exhibition homes will be from Bootles Lane and other recently constructed internal roads as part of the approved subdivision. The proposed village will generate some additional traffic in the area, however both the Bootles Lane as well as the main roads leading to the approved subdivision have adequate capacity to accommodate the traffic generated by the proposed use. In addition the exhibition homes will be developed on a small portion of the precinct and the remaining land will be undeveloped at the time the exhibition homes are active.

Hawkesbury DCP as well as the RTA do not have any standards for traffic or car parking requirements for exhibition homes. It is proposed to provide car parking for 31 vehicles on two of the vacant lots in the vicinity of the exhibition homes. Car parking is also available within each of the exhibition homes in the form of garages and on the driveways. In addition the newly constructed streets can also be used for car parking as these are not yet dedicated public roads and are private property until that dedication. The proposed car parking is considered adequate for the intended use.

***Services***

Necessary works are currently being carried out within Stage 1A to provide water supply, sewerage and stormwater. The exhibition homes will not be occupied and will remain for display only until the above services are completed and the subdivision is finally registered with the Department of Lands. The application proposes to provide temporary amenities including portable toilets for the staff and visitors which is acceptable.

***Social Impact in the Locality***

The style of accommodation that is envisaged in the area will be displayed within the exhibition village. The addition of various styles of residential dwellings within the Hawkesbury area is likely to have a positive social impact.

***Suitability of the site for the development***

The proposed exhibition village will be established on land previously approved for residential subdivision. There are no specific constraints of surrounding land uses that will make the development prohibitive. The site has been remediated for contamination from past agricultural land uses and declared suitable for residential development. The exhibition village will not lead to unmanageable traffic demand in the area. It is unlikely to impact adversely upon critical habitats and threatened species, populations, ecological communities and habitats. The site is therefore considered suitable for the proposed development.

**Conclusion**

The proposed exhibition homes are permissible in the Housing zone and have many positive attributes. The design of the building is satisfactory and the design requirements contained within Hawkesbury DCP Part E Chapter 4 - Pitt Town are generally complied with. The exhibition homes will be converted to

## ORDINARY MEETING

Meeting Date: 29 July 2008

dwelling houses upon registration of the Linen Plan. Accordingly the application is recommended for consent subject to the conditions contained in the recommendation. Each development application will be issued with the recommended conditions. For ease of display in this report, the recommendation contains only one set of the generic conditions with some application specific conditions also listed.

### RECOMMENDATION:

That the Development Applications: DA0171/08, DA0172/08, DA0173/08, DA0175/08, DA0176/08, DA0177/08, DA0178/08, DA0179/08, DA0180/08, DA0181/08, DA0183/08, DA0184/08 and DA0186/08 for the construction of Exhibition Homes as part of an Exhibition Home development comprising thirteen (13) Exhibition Homes - on, Lot 14 DP 865977 and Lot 14 DP 865977, (Proposed Lots 1003 – 1007, 1010 – 1015, 1021 and 1022) - 17 Bootles Lane Pitt Town be approved subject to the following conditions:

### Conditions Relating to All Development Applications

#### General Conditions

1. The development shall take place in accordance with the stamped plans, specifications and accompanying documentation submitted with the application except as modified by these further conditions.
2. The approval for the use of the building as exhibition homes shall cease six months after the registration of the linen plan for subdivision of Stage 1A approved under DA0557/06.
3. A separate development application shall be lodged for Council's approval for the change of use of the exhibition home to an individual dwelling house.
4. No excavation, site works or building works shall be commenced prior to the issue of an appropriate Construction Certificate.
5. The approved use shall not commence until all conditions of this Development Consent have been complied with.
6. The building shall not be used or occupied prior to the issue of an Occupation Certificate.
7. The development shall comply with the provisions of the Building Code of Australia at all times.
8. The accredited certifier shall provide copies of all Part 4 certificates issued under the Environmental Planning and Assessment Act, 1979 relevant to this development to Hawkesbury City Council within 7 (seven) days of issuing the certificate. A registration fee applies.
9. Hawkesbury City Council is the sewer authority for this development, inspection for compliance certification for internal and external sewer drainage shall be requested and approved prior to covering any pipe. An inspection fee applies.
10. The development shall also incorporate the amendments made in red to the approved plans, specifications or documentation submitted.

#### Prior to the Issue of the Construction Certificate

11. External colours are to be muted earth and bush vegetation tones. A colour schedule together with details of materials and finishes shall be submitted for approval with the Construction certificate.
12. The face bricks to be colour blend and uniform throughout. Details are to be submitted for approval with the Construction certificate

## ORDINARY MEETING

Meeting Date: 29 July 2008

13. The landscaping shall include native plant species and no invasive exotic species should be planted. An amended landscape plan shall be submitted to the Principal Certifying Authority prior to the issue of a Construction Certificate.

### **Specific Conditions relating to DA0172/08 (Proposed Lot 1004)**

14. The plans shall be amended to convert the triple garage into a double garage. In this regard the proposed single storey garage shall be deleted and amended plans submitted to the Principal Certifying Authority prior to the issue of a Construction Certificate.
15. The proposed building shall be re-located 1.7m to the west to achieve compliance with the Building Height plane requirements of the Hawkesbury development Control Plan. Amended plans shall be submitted to the Principal certifying Authority prior to the issue of a construction certificate.

### **Specific Conditions relating to DA0179/08 (Proposed Lot 1005)**

16. The plans shall be amended to provide a minimum of 8m rear setback to the northern boundary. In this regard the building shall be moved forward to the southern boundary by 944mm and amended plans are to be submitted to the Principal Certifying Authority prior to the issue of a construction certificate.

### **Specific Conditions relating to DA0181/08 (Proposed Lot 1010)**

17. The plans shall be amended to convert the triple garage into a double garage. In this regard the proposed third garage adjoining the western boundary shall be deleted and amended plans submitted to the Principal Certifying Authority prior to the issue of a Construction Certificate.

### **Specific Conditions relating to DA0186/08 (Proposed Lot 1007)**

18. The plans shall be amended to convert the triple garage into a double garage. In this regard the proposed third garage adjoining the northern boundary shall be deleted and amended plans submitted to the Principal Certifying Authority prior to the issue of a Construction Certificate.

### **Prior to Commencement of works**

19. Erosion and sediment control devices are to be installed and maintained at all times during site works and construction. The enclosed warning sign shall be affixed to the sediment fence/erosion control device.
20. The building shall be set out by a Registered Surveyor. The Survey Certificate of the building showing the position of the external walls under construction and in compliance with the approved plans shall be lodged with the principal certifying authority. Any easements must be shown on the Survey Certificate.
21. A certificate issued by an approved insurer under Part 6 of the Home Building Act 1989 shall be supplied to the principal certifying authority prior to commencement of works.
22. A copy of receipt of payment of Long Service Levy shall be provided to the Principal Certifying Authority prior to any works commencing on site. Payments can be made at Long Service Corporation offices or most Councils.
23. 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.
24. At least two days prior to commencement of works, notice is to be given to Hawkesbury City Council, in accordance with the Environmental Planning and Assessment Regulation.

## ORDINARY MEETING

Meeting Date: 29 July 2008

25. Toilet facilities (to the satisfaction of Council) shall be provided for workmen throughout the course of building operations. Such facility shall be located wholly within the property boundary.
26. A sign displaying the following information is to be erected adjacent to each access point and to be easily seen from the public road. The sign is to be maintained for the duration of works:
  - (a) Unauthorised access to the site is prohibited.
  - (b) The owner of the site.
  - (c) The person/company carrying out the site works and telephone number (including 24 hour 7 days emergency numbers).
  - (d) The name and contact number of the Principal Certifying Authority.
27. A qualified Structural Engineer's design for all reinforced concrete and structural steel shall be provided to the Principal Certifying Authority prior to any works commencing on site.
28. The approved plans must be submitted to a Sydney Water Quick Check agent or customer Centre to determine whether the development will affect Sydney Water's sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met. Plans will be appropriately stamped. For quick Check agent details, please refer to the web site [www.sydneywater.com.au](http://www.sydneywater.com.au), see Building Developing and Plumbing then Quick Check or telephone 13 20 92.
  - a) The consent authority or a private accredited certifier must either:
  - b) Ensure that Quick Check agent/Sydney Water has appropriately stamped the plans before the issue of any Construction Certificate

### During Construction

29. Dust control measures, eg vegetative cover, mulches, irrigation, barriers and stone shall be applied to reduce surface and airborne movement of sediment blown from exposed areas.
30. Measures shall be implemented to prevent vehicles tracking sediment, debris, soil and other pollutants onto any road.
31. Thirty one (31) off-street car parking spaces, together with access driveways and turning areas, shall be constructed, as shown on the approved plan.
32. Disabled parking shall be provided in accordance with AS2890.1-1993.
33. All necessary works being carried out to ensure that any natural water flow from adjoining properties is not impeded or diverted.
34. Site and building works (including the delivery of materials to and from the property) shall be carried out only on Monday to Friday between 7am – 6pm and on Saturdays between 8am – 4pm.
35. The site shall be kept clean and tidy during the construction period and all unused building materials and rubbish shall be removed from the site upon completion of the project. The following restrictions apply during construction:
36. Stockpiles of topsoil, sand, aggregate, spoil or other material shall be stored clear of any drainage path or easement, natural watercourse, footpath, kerb or road surface and shall have measures in place to prevent the movement of such material off site.
37. Building operations such as brick cutting, washing tools, concreting and bricklaying shall be undertaken only within the site.

## ORDINARY MEETING

Meeting Date: 29 July 2008

38. Builders waste must not be burnt or buried on site. All waste (including felled trees) must be contained and removed to a Waste Disposal Depot.
39. The floor of the internal WC shall be graded and drained to an approved floor waste.
40. Roofwater (including overflow from water storage) shall be drained to the street gutter. Drainage lines across the footpath shall be 100mm sewer grade pipe.
41. The footings shall be piered or shall penetrate through any fill or unstable foundation material to bear upon a structurally adequate foundation material of a uniform load-bearing value.
42. The development shall be treated for termites in accordance with the Building Code of Australia and AS 3660 as amended by a suitably qualified person with particular attention to timber floors, slab penetrations, joints between slabs, additions to existing buildings. Details of the type and method of treatment are to be provided to the Principal Certifying Authority and a copy of durable material to be located in the meter box and at the entrance to any crawl space if chemicals are sprayed or pressurised into the soils.
43. An automatic fire detection and alarm system shall be installed within the building in accordance with the Building Code of Australia for Class 1A and 1B Dwellings. Alarms and Detectors shall be installed by a licensed electrician and multiple alarms shall be interconnected, an certificate of the installation shall be provided prior to occupation of the building or addition.
44. An automatic fire detection and alarm system shall be installed within the building in accordance with the Building Code of Australia for Class 1A and 1B Dwellings. Alarms and Detectors shall be installed by a licensed electrician and multiple alarms shall be interconnected, an certificate of the installation shall be provided prior to occupation of the building or addition.
45. All civil construction works required by this consent shall be in accordance with Hawkesbury Development Control Plan appendix E Civil Works Specification.
46. A heavy duty layback and footway vehicular crossing 4m wide shall be constructed to the proposed Lots 1018 and 1019. The crossing shall be constructed in accordance with Hawkesbury development Control Plan Appendix E, Civil Works Specification.

### **Prior to Issue of Occupation Certificate**

47. Compliance with all conditions of this development consent.
48. Written clearance from Integral Energy shall be submitted to the Principal Certifying Authority.
49. Necessary amenities and services shall be provided for the employees and visitors to the exhibition village. These amenities are to maintained until the use of the buildings cease as exhibition homes.

### **Prior to Use of the Development**

50. No internal or external alterations shall be carried out without prior approval of Council.
51. Operating hours of the exhibition homes shall be limited to 9am to 5pm seven days a week.
52. No advertising signs or structures shall be erected, displayed or affixed on any building or land without prior approval.
53. The development shall be limited to the area shown on the submitted plans.
54. The subject development, including landscaping, is to be maintained in a clean and tidy manner.
55. Any external lighting shall be directed in such a manner so that no nuisance is caused to adjoining properties or to drivers on surrounding streets.

## ORDINARY MEETING

Meeting Date: 29 July 2008

- 56. The exhibition homes shall not be occupied for human habitation/residential purposes.
- 57. All waste materials shall be regularly removed from the property.

### Advisory Notes

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.

Should any aboriginal site or relic be disturbed or uncovered during the construction of this development, all work should cease and the National Parks and Wildlife Service consulted. Any person who knowingly disturbs an aboriginal site or relic is liable to prosecution under the National Parks and Wildlife Act 1974.

The applicant is advised to consult with:

- (a) Sydney Water Corporation Limited
- (b) Integral Energy
- (c) Natural Gas Company
- (d) 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 roads.

The developer is responsible for all costs associated with any alteration, relocation or enlargement to public utilities whether caused directly or indirectly by this proposed subdivision. Such utilities include water, sewerage, drainage, power, communication, footways, kerb and gutter.

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.

### ATTACHMENTS:

- AT - 1 Locality Plan
- AT - 2 Site Layout Plan

Meeting Date: 29 July 2008

[illegible]



## Meeting Date: 29 July 2008

The site plan for Amelia Grove is oriented with North at the top. The property is bounded by Amelia Grove to the west, Prop. Road 16.6m Wide (3. to the south, and Pitt Town to the east. The plan includes 16 lots, each with a unique identifier (e.g., LOT 1001, LOT 1002, etc.). A legend in the top right corner defines the symbols for proposed lots, parking spaces, and amenities for staff and visitors. A north arrow is located in the bottom left corner. The plan also shows a parking area for 31 staff and visitor parking spaces (all weather gravel surface) and a bus stop area. The surrounding roads are Amelia Grove, Prop. Road 16.6m Wide (3. to the south, and Pitt Town to the east.

AMELIA GROVE

PROPOSED LOTS

PARKING SPACES

AMENITIES FOR STAFF & VISITORS

31 staff & visitor parking spaces (all weather gravel surface)

bus stop

PROP. ROAD 16.6m WIDE (3.

PIT TOWN

LOT 1001

LOT 1002

LOT 1003

LOT 1004

LOT 1005

LOT 1006

LOT 1007

LOT 1008

LOT 1009

LOT 1010

LOT 1011

LOT 1012

LOT 1013

LOT 1014

LOT 1015

LOT 1016

LOT 1017

LOT 1018

LOT 1019

LOT 1020

LOT 1021

LOT 1022

DA0175/08

DA0173/08

DA0176/08

DA0177/08

DA0171/08

DA0178/08

DA0183/08

DA0181/08

DA0184/08

DA0180/08

DA0179/08

DA0186/08

BOOTLES LANE

oooO END OF REPORT Oooo

## ORDINARY MEETING

Meeting Date: 29 July 2008

### INFRASTRUCTURE SERVICES

**Item: 156**      **IS - Colo Heights Generator Site - Part Lot 7004 in DP 1055569, Colo Heights Reserve 2996, Singleton Road, Colo Heights - (1298, 79551, 95495)**

---

#### **REPORT:**

Colo Heights Reserve (Reserve No 2996) Singleton Road, Colo Heights is Crown Land, which Council is the appointed trustee.

Integral Energy proposes to construct a stand-by generator facility, within the Colo Heights Reserve, to improve reliability of the electricity supply for residents and businesses in the surrounding area. In this regard, consultation has been undertaken with the Colo Heights Reserve Committee and Council, as trustee, to determine a site within the Reserve for the generator to be located.

The preferred site is located on the eastern corner of the access road to the Rural Fire Services Depot and Council's Community Centre off Singleton Road, Colo Heights. The site has dimensions of 40 x 35 metres, comprising a total area of 1400 square metres, as shown on the attached plan.

Integral Energy intend to acquire the subject area from the Department of Lands (Crown Lands) by way of compulsory acquisition in accordance with the Land Acquisition (Just Terms Compensation) Act 1991 by the giving of a proposed acquisition notice under Section 44 of the Electricity Supply Act 1995.

The Department of Lands (Crown Lands) has indicated that they raise no objection to Integral Energy acquiring the land, subject to agreement by Council in the form of a letter of concurrence.

The relevant Council officers have considered Integral Energy's proposal and the comments made by the Colo Heights Reserve Committee. Accordingly, a letter of concurrence from Council to Integral Energy, regarding the acquisition of part of Lot 7004 in deposited Plan 1055569, is considered reasonable and could be agreed to by Council.

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

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

*"A network of towns, villages and rural localities connected by well maintained public and private infrastructure which supports the social and economic development of the City."*

#### **Funding**

This proposal has no impact on Council's 2008/2009 budget.

#### **RECOMMENDATION:**

That Council provide Integral Energy with a letter of concurrence to the acquisition of part of Lot 7004 in Deposited Plan 1055569 (being 1400 square metres) for the purposes of constructing a stand-by generator.

#### **ATTACHMENTS:**

**AT - 1**    Plan of Proposed Site.

AT - 1 Plan of Proposed Site



oooO END OF REPORT Oooo

## ORDINARY MEETING

Meeting Date: 29 July 2008

**Item: 160**                    **SS - Review of the Windsor Mall Policy - (95496)**

**Previous Item:**            80, Ordinary (29 April 2008)

---

### REPORT:

At the meeting of 29 April 2008, in dealing with the fees and charges for outdoor dining, Council resolved as follows:

- "1.    *Following fees be included in Council's adopted fees and charges for 2008/2009:*

<b><i>Business Precinct</i></b>	<b><i>Annual Footpath Usage Fee Per m2</i></b>
<i>Thompson Square and Windsor Mall environs (excluding the use/licensing of areas where specific facilities have been provided by Council)</i>	<i>\$85.00</i>
<i>Elsewhere in Windsor, Richmond and North Richmond</i>	<i>\$70.00</i>
<i>Elsewhere in the City</i>	<i>\$50.00</i>

2.    *Fees not be implemented until such time as Council has reviewed the Policy and  
"Regulations" for Windsor Mall. Such review is to be completed by 31 July 2008."*

At that meeting it was noted that the Windsor Mall Regulations were currently being reviewed. That review has now been completed and a revised policy for the use of the Windsor Mall is submitted to Council for approval.

By way of further background, at its meeting of 13 March 2007 Council resolved in part as follows:

*"Council form a working party comprising Councillor Devine, Mr Ewin, Ms Mann and representatives of Hawkesbury City Chamber of Commerce, Windsor Business Group and Windsor Craft Markets to conduct a review of the Windsor Mall Regulations ... to ensure alignment with the objectives of Council."*

Following a review by Council officers, the current Windsor Mall Regulations were revised in draft form and a meeting of the Council nominated working party was called for Friday 20 June 2008. At that meeting the attendees were:

- Councillor Devine;
- Helen Clark (President Windsor Mall Craft Markets);
- Christine Mardon (representative of the Windsor Mall Craft Markets);
- Troy Myers, (delegate of the Windsor Business Group);
- Council staff.

An apology was received from Dwight Hodgets (Acting President Hawkesbury Chamber of Commerce). Mr Ewin was not contacted as he has left the area.

The draft Windsor Mall Policy takes into account the provisions of the existing Windsor Mall Regulations providing an improved format consistent with other Council policies, clearly identifying a variety of activities that may be permitted within the Mall and introduces an application approval process for such activities. The working party considered the draft Windsor Mall Policy and provided feedback. The comments by the

workshop participants have been considered as well as those comments submitted separately by Dwight Hodgets.

Importantly the workshop was in agreement with the purpose and objectives of the Policy which would provide the framework for Council decisions regarding applications to use the Mall.

Some key issues that have arisen as part of the review process include:

- **A structured approval process**

The Windsor Mall Policy has been structured to require Council approval for activities within the Mall. Approvals may be for "one off" events or for regular activities requiring annual renewal. The Policy articulates those activities that are permitted subject to approval and appropriate conditions of use. Uses governed by other policies have not been incorporated in the Policy, e.g. dogs and the use of alcohol. Every activity requires approval from Council as this enables Council to keep track of what is happening within the Mall. Council is then also able to guarantee the time and space that the applicant has booked. In addition bookings also provide legal and insurance safeguards for Council and importantly for the applicant.

Should the Policy be approved an application form, user guidelines and internal procedures will be developed to assist in the approval process under this Policy.

- **Exclusive use of the Mall**

Over time the Windsor Mall Craft Markets have received "exclusive use" of the Mall on Sundays for market purposes. Notwithstanding this, the Markets Co-ordinator has approved from time to time other activities to run concurrently in the Mall on Sunday, eg busking or similar smaller activities.

The revised draft Policy in effect removes the exclusive use provisions for the Markets and provides Council with the discretion, following a consultation process, to approve concurrent activities in the Mall including on Sundays. In practical terms and based on past events, the Markets Co-ordinator would seek annually approval for use of the Mall on Sundays. Given the size of the market operations and the space constraints within the Mall, this limits the type and size of other activities that may run concurrently with the Markets. However from time to time there may be opportunities to run some activities simultaneously and a consultation process will operate to achieve a suitable arrangement.

- **Alignment of the Windsor Mall Policy and Council's Outdoor Dining and Footpath Policy**

Council has adopted an Outdoor Dining And Footpath Policy to facilitate the appropriate use of footpaths for the purpose of outdoor dining areas and other footpath trading activities in the Hawkesbury Local Government Area. That Policy does not apply to outdoor dining areas or footpath trading activities that are carried out in Windsor Mall. These activities within the Mall are regulated by a specific development consent for outdoor dining areas and footpath trading activities. Council will consider the provisions of the Development Consent conditions and the Outdoor Dining and Footpath Policy in determining such applications.

- **Communication/Awareness Strategy**

Should the revised Policy be adopted, it is proposed to develop a Communication Strategy to compliment its implementation. It should be noted that in terms of Council's Community Engagement Policy, this revision is a Level 3 requiring the community to be informed. The desirable element of Level 3 engagement process is targeted consultation, which has occurred.

- **Provision of Food**

There was some discussion concerning the merits or otherwise of prohibiting the sale or provision of food as an approved activity, particularly whether there would be any impact on existing or future

## ORDINARY MEETING

Meeting Date: 29 July 2008

food businesses within the Mall. In order to achieve the objectives of the Policy it is proposed to allow with approval a range of activities to serve and make the Windsor Town Centre more vibrant. It is recognised that in doing so, there may be some potential conflict between users of Windsor Mall and adjacent property owners and traders. The Policy objectives are to minimise that potential and this will be achieved by the filter of an approval process and the conditioning of approvals. Such a mechanism is appropriate and enables activities to be examined on a case by case basis. Whereas a blank prohibition of food preparation and sale would eliminate for example the traditional sausage sizzling BBQ's, cake stalls, and other lunch time promotions organised by schools, non-profit clubs, charities and other non-profit organisations. Adherence to applicable food safety standards will be required for such activities.

The revised draft Windsor Mall Policy is attached and recommended for approval. Should the Policy be approved, the fees for outdoor dining applications as specified in Council's resolution of 29 April 2008, and included in Council's Fees and Charges for 2008/2009, will be implemented.

### Conformance to Strategic Plan

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

*"Objective: A prosperous community sustained by a diverse local economy that encourages innovation and enterprise to attract people to live, work and invest in the City."*

### Funding

Process to be accounted for in current budget.

### RECOMMENDATION:

That Council:

1. Adopt the Draft Windsor Mall Policy as attached to the Report in this regard.
2. Develop and undertake an appropriate communication/awareness strategy as part of the implementation of the revised policy.
3. Implement the relevant fees and charges included in Council's Revenue Pricing Policy and referred to in Council's resolution of 29 April 2008.

### ATTACHMENTS:

AT - 1 Draft Windsor Mall Policy

**AT - 1 Draft Windsor Mall Policy**

Hawkesbury City Council

**Council Policy**

Title:

**Windsor Mall Policy**

Adopted on:

Last Revision:

Next Revision:

Associated document:

Internal Procedure

Other Policy:

Outdoor Dining and Footpath Trading Policy

Responsible Directorate:

Support Services (Corporate Services & Governance)

Directorate Awareness:

All other departments

**Policy: Windsor Mall Policy**

**1.0 Definitions**

In this Policy, the following definitions apply:

**Council** means the Hawkesbury City Council.

**Activity** means an activity organised by an individual, business entity, community group or community entity.

**Display** means an exhibition, that involves the visual presentation of information.

**Fund raising** means the soliciting or collection of public money by any association or charity for the purpose of that association or charity.

**Nominated officer** means an officer appointed by the General Manager for the purpose of the policy;

**Permission** means the written approval of an application by Council in the form of a permit or licence;

**Policy** means Hawkesbury City Council Windsor Mall Policy

**Promotion** means a publicly conducted activity by one or more persons to advertise a commercial product, business or activity.

**2.0 Introduction**

**2.1 Policy Statement**

This Policy is a statement of Council's intent for the use of Windsor Mall for both community and business activities. It outlines the types of activities and the associated rules and criteria under which the public may use Windsor Mall for the purpose of contributing to a pleasant, safe and enjoyable environment.

Windsor Mall forms part of the Windsor Town Centre and both community and economic development activities are suitable uses in the Mall. Such activities will provide diversity in the use of the space and interaction between people.

## **2.2 Policy Purpose**

Windsor Mall is a pedestrian space in George Street, the main street of Windsor. Main streets are generally within central business districts and are locations for trade and public interaction and as such are part of the public domain. Pedestrian spaces are people places created to improve the utilisation and enjoyment of town centres

The purpose of the Policy is to make Windsor Mall available for a range of activities to promote:

- (a) the use of the Mall;
- (b) Windsor as a town centre,
- (c) the Hawkesbury community; and
- (d) the Hawkesbury as a destination for residents and visitors,

which will serve to activate and make the Windsor Town Centre more vibrant.

## **2.3 Policy Objectives**

The objectives of the Policy are:

- (a) to outline what Windsor Mall may be used for and under what circumstances;
- (b) to provide for the fair, safe and suitable conduct of persons undertaking an activity within Windsor Mall;
- (c) to minimise potential and actual conflict between users of Windsor Mall and adjacent property owners and traders;
- (d) to minimise any impacts on the visual and physical amenity of Windsor Mall;
- (e) to outline how a person seeking to and undertaking an activity in Windsor Mall will communicate with Council, other users of the Mall and adjacent property owners and traders; and
- (f) to outline how Council will communicate with persons seeking to and undertaking an activity in Windsor Mall, other users of the Mall and adjacent property owners and traders.

## **2.4 When does the Policy apply?**

The Policy applies to an activity in Windsor Mall, including activities on a profit (commercial) and not-for-profit basis.

## **2.5 Permission for activity in Windsor Mall**

A person seeking to undertake an activity in Windsor Mall requires permission in the form of a permit. This is to ensure that:

- (a) all permissions and approvals required under any legislation are obtained in a timely manner; and
- (b) Council is not exposed to any risk.

In certain circumstances Council's consent as owner of Windsor Mall may also be required when seeking approval under any other legislation that applies to land in Windsor Mall, in relation to an activity application.

### **2.5.1 Activities not permitted**

A person who undertakes an activity not approved or permitted by this Policy may be prosecuted under relevant legislation.



## **2.6 Obtaining permission for an activity in Windsor Mall**

Council will use this Policy to assess any application and its operation in Windsor Mall. It will also be used to monitor activities not in accordance with the Policy.

### **2.6.1 Application**

Before seeking permission to undertake any activity, the applicant is required to:

- (a) consider this Policy and establish which sections apply to the proposal;
- (b) obtain the relevant Application Form;
- (c) consider discussing the proposal with Council Officers to address any matters of interest and concern; and
- (d) ensure the activity proposal complies with the Policy.

When seeking permission to undertake an activity, the applicant is required to:

- (a) complete and lodge the relevant Application Form at least one (1) month prior to the commencement date of the activity, to enable the application to be assessed and processed in a timely manner;
- (b) provide all necessary information, including certificates (eg. insurances) and the like. This may include a risk assessment for the activity;
- (c) pay any relevant application fee as approved from time to time; and
- (d) comply with the Policy.

### **2.6.2 Lead times**

An application must be lodged in sufficient time to enable Council to properly consider, consult and determine the application having regard to the circumstances of the case.

As a guide, any application requiring a street closure shall be lodged at least six (6) months prior to the first date on which the activity is to be undertaken, so that any traffic assessment and determination processes may be completed.

### **2.6.3 Major activities**

Any activity that is considered to be a major event, because of its size, scale, attendance and the like may require consultation with adjoining property owners.

An application for a major event shall be lodged at least three (3) months prior to the first date on which the activity is to be undertaken.

### **2.6.2 Conditions and Terms**

The Nominated Officer may attach such conditions to a permit considered appropriate to the circumstances of the application.

### **2.6.1 Carrying of Permit and Availability**

A person to whom a permit has been issued must carry or display the permit while undertaking any activity in Windsor Mall. The permit shall also be presented on request for inspection by an authorised Officer of Council and a member of the NSW Police.

#### 2.6.4 Transfer and Termination of Permit

A permit is not transferable.

Should the Nominated Officer consider it within the public interest to do so, a permit may be terminated, withdrawn or modified at any time in order to comply with the purpose and objectives of the Policy.

Circumstances may arise, which require a permit for all or part of an activity to be held in abeyance, including road works any other special uses (including one-off events) in Windsor Mall.

#### **2.7 Legislation that applies to Windsor Mall**

The Policy is prepared under the Local Government Act, 1993. Other legislation also applies to land in Windsor Mall.

A person seeking to undertake an activity in Windsor Mall must comply with the Policy and any applicable Acts or other laws that apply to the circumstances of the activity proposal. In some circumstances, permission from other consent authorities may be required.

#### **2.8 Amendment of the Policy**

Council may amend, vary or add to the provisions of the Policy from time to time.

Council may consider a request to vary the Policy by an applicant. Such variation will be sought via an application, which includes a statement and supporting information that supports the variation proposed.

### **3.0 Windsor Mall**

#### **3.1 Where is Windsor Mall?**

Windsor Mall is located in George Street, Windsor, between Baker Street and Fitzgerald Street. It is paved section of George Street which provides for pedestrian priority. It is a (local) public road, with restricted vehicle access. A map is attached as Attachment 1.

Beneath the surface of Windsor Mall lies the former alignment of that part of George Street.

#### **3.2 Who is responsible for Windsor Mall?**

Council owns Windsor Mall and is responsible for its management. In managing Windsor Mall Council recognises that it is a key town centre space that should be available for use for both community and business activities.

#### **3.3 What spaces in Windsor Mall are available for activities?**

The general area of Windsor Mall is available for activities provided for in the Policy. In conjunction with this, specific structures in Windsor Mall are also available for activities, including:

- (a) Stall/ kiosk (1)
- (b) Rotunda (1)
- (c) Wagons (2)
- (d) General Area.

## ORDINARY MEETING

Meeting Date: 29 July 2008

### 3.3.1 Infrastructure in Windsor Mall

Windsor Mall contains furniture, gardens and the walking surface. Elements include trees, planter boxes, paddle wheel, clock, seats, paving and sandstone. These elements shall not be damaged by an activity in Windsor Mall.

## 4.0 Windsor Mall Activities

### 4.1 Activities permitted

The activities permitted in Windsor Mall are shown in Table (1).

A permit is required for an activity and authorises a person to undertake the activity (permit holder). A permit may be issued for more than one activity. In some circumstances a permit may constitute a licence or lease.

### 4.2 Nominated Officer for Permit

The Nominated Officer may issue a permit after considering an application for an activity in Windsor Mall, subject to the criteria in Section 4.3.

The Nominated Officer may advise of any other approval that is required in conjunction with an application for an activity in Windsor Mall.

Table (1): Windsor Mall Activities				
Type of Activity	Permitted	Permit required	Where in Mall	Fees
Signage	✓	✓	General area	✓
Busking	✓	✓	General area	✓
Displays & Promotions	✓	✓	General area, Rotunda	✓ - for profit ✗ - not for profit
Entertainment & Events	✓	✓	General area, Rotunda	✓
Fundraising	✓	✓	Area defined - stall	✗
Retail	✓	✓	Area defined - wagons	✓
Markets	✓	✓	General area	✓
Outdoor Dining & Footpath Trading	✓	✓	Area defined	✓
Public Research	✓	✓	General area, Rotunda	✓ - for profit ✗ - not for profit
Raffles or Lotteries	✓	✓	General area, Rotunda	✓ - for profit ✗ - not for profit

### 4.3 Criteria for EACH Activity

#### 4.3.1 Signage

- Signage meeting the definition of the type of advertisements which is Exempt Development under Hawkesbury Local Environmental Plan, 1979 (ie. sandwich boards A frame: Council property and public spaces) and banners for the promotion of events of a non-commercial nature only;
- If in conjunction with another activity, in the vicinity of the operation of the activity;

## ORDINARY MEETING

Meeting Date: 29 July 2008

- (c) If to be fixed to adjacent properties and displayed across the Mall only with adjacent property owners consent and at the discretion of Council;
- (d) Sponsorship recognition shall not exceed 20% of the size of a banner; and
- (e) Any other matter considered appropriate.

### 4.3.2 Busking

- (a) Any collection container for donations is to remain stationary on the pavement;
- (b) Busking shall not interfere with any other approved use or permitted activity in the Mall;
- (c) Buskers shall not obstruct or impede pedestrians using the Mall or visiting adjacent properties (eg business premises) and established pedestrian travel paths;
- (d) Buskers shall not obstruct or impede access to activities on adjacent properties (eg business premises);
- (e) Busking shall be for a maximum period of 4 hours on any one day;
- (f) Buskers shall not perform in a particular area for more than 30 minutes ie. rotate and move around;
- (g) Busking permits issued on any one day may be limited;
- (h) Buskers shall have a suitable appearance and dress standard;
- (i) Buskers under the age of 18 years must be accompanied by an adult at all times;
- (j) Buskers may be required to audition for a permit and will not be approved where busking is or may be intended to be conducted for purely political or religious purposes or is or may be objectionable in nature; and
- (k) Any other matter considered appropriate, including consultation requirements.

### 4.3.3 Displays and Promotions

- (a) Displays may be undertaken in the general area of the Mall and the rotunda;
- (b) Displays may include vehicles and boats that are stationary and installed prior to standard trading hours on any day;
- (c) Promotions may only be undertaken within three (3) metres immediately adjacent to the rotunda;
- (d) Displays and promotions shall not interfere with any other approved use or permitted activity in the Mall;
- (e) Displays and promotions shall not obstruct or impede pedestrians using the Mall or visiting adjacent properties (eg business premise) and established pedestrian travel paths;
- (f) Displays and promotions shall not obstruct or impede access to activities on adjacent properties (eg business premises);
- (g) Display material that is likely to detract from the appearance of the Mall may be limited or be required to be amended; and
- (h) Any other matter considered appropriate, including consultation requirements.

### 4.3.4 Entertainment and Events

- (a) Entertainment and events may be undertaken in the general area of the Mall and the rotunda;
- (b) Entertainment may be undertaken within three (3) metres immediately adjacent to the rotunda;
- (c) Entertainment and events shall not interfere with any other approved use or permitted activity in the Mall;
- (d) Entertainment and events shall not obstruct or impede pedestrians using the Mall or visiting adjacent properties (eg. business premises) and established pedestrian travel paths;
- (e) Entertainment and events shall not obstruct or impede access to activities on adjacent properties (eg business premises);
- (f) Entertainment and events material that is likely to detract from the appearance of the Mall may be required to be limited or be required to be amended;

## ORDINARY MEETING

Meeting Date: 29 July 2008

- (g) Entertainment and events shall not be, or intended to be, conducted for purely political or religious purposes or is or be objectionable in nature; and
- (h) Any other matter considered appropriate, including consultation requirements.

### 4.3.5 Fundraising

- (a) Fundraising may only be undertaken by an association or charity for the purpose of that association or charity;
- (b) Fundraising shall be based in or within five (5) metres immediately adjacent to the stall;
- (c) Display or sale of goods associated with the fundraising may be approved; and
- (d) Any other matter considered appropriate, including consultation requirements.

### 4.3.6 Retail

- (a) Wagons may be used only via agreement with an operator;
- (b) Retailing shall not interfere with any other approved use or permitted activity in the Mall;
- (c) Retailing shall be undertaken within or within a three (3) metres immediately adjacent to the wagons;
- (d) Retailing shall not obstruct or impede pedestrians using the Mall or visiting adjacent properties (eg. business premise) and established pedestrian travel paths;
- (e) Retailing shall not obstruct or impede access to activities on adjacent properties (eg business premises);
- (f) Retailing material that is likely to detract from the appearance of the Mall may be limited or be required to be amended; and
- (g) Any other matter considered appropriate.

### 4.3.7 Markets

- (a) Markets may only be undertaken via agreement with an operator for the staging of the markets;
- (b) One market operator per day;
- (c) Markets only be undertaken on Saturdays or Sundays;
- (d) If an activity application is received that would require the sharing of Mall space on a nominated market day, Council will liaise with the market operator in regard to sharing the space and impact on market operations in determining the application;
- (e) Markets shall not interfere with any other approved activity or use in the Mall;
- (f) Markets shall not obstruct or impede pedestrians using the Mall or visiting adjacent properties (eg. business premise) and established pedestrian travel paths;
- (g) Markets shall not obstruct or impede access to activities on adjacent properties (eg business premises);
- (h) Market material that is likely to detract from the appearance of the Mall may be required to be amended or removed; and
- (i) Any other matter considered appropriate.

### 4.3.8 Outdoor Dining and Footpath Trading

- (a) Development consent granted to Development Application No DA 0214/07 allows Council to regulate designated areas within the Mall for the purpose of alfresco/outdoor dining and commercial displays.
- (b) The provisions of Council's Outdoor Dining and Footpath Trading Policy will be applied under this Policy.

## ORDINARY MEETING

Meeting Date: 29 July 2008

### Notes:

- # Development consent to DA 0214/07 allows for areas within the Windsor Mall to be used for outdoor dining and footpath trading in conjunction with a business undertaken on land adjacent to the Windsor Mall. The Council's Outdoor Dining and Footpath Trading Policy is applicable elsewhere but will be referred to in dealing with applications for the Windsor Mall. Space in Windsor Mall used for outdoor dining and footpath trading is licensed at a commercial rate and may entitle the licensee to exclusive use of the approved space.

#### 4.3.9 Public Research

- (a) A permit maybe required for public research (including surveys, questionnaires, public opinion and polls) and the Nominated Officer may issue a permit subject to conditions.

#### 4.3.10 Raffles and Lotteries

- (a) A permit maybe required for raffles and lotteries otherwise permitted by law and the Nominated Officer may issue a permit subject to conditions.

### 4.3 Criteria for ALL Activities

#### 4.3.1 Activities undertaken without permission or contrary to permit

A person who undertakes an activity not approved or permitted or contrary by this Policy or contrary to a Permit may be prosecuted under relevant legislation.

In the case of an activity being undertaken contrary to a permit, repeated breaches will result in the termination of the permit by the Nominated Officer. Generally, a 3-strikes rule shall apply.

#### 4.3.2 Fees

An application fee and or an activity fee may be charged for any activity in Windsor Mall in accordance with the adopted Fees and Charges in Council's Management Plan. A security deposit or bond to cover the possibility of damage to Council property or assets may apply.

### Notes:

- # The application fee must be lodged with the application.  
# An activity fee, including rental fees, will be paid after a permit is issued and in accordance with any conditions of a permit.

#### 4.3.3 Insurance

- (a) Any damage or injury caused to a member of the public arising from an activity for which a permit has been issued will be the responsibility of the permit holder.  
(b) A permit holder will be required to have a minimum \$10 million public liability insurance policy for the activity undertaken in Windsor Mall. Evidence of the insurance policy cover must be provided with the application or at time to be determined.

### Notes:

- # The insurance policy shall include a statement that clearly states Council is indemnified in respect to the activity.

#### 4.3.4 Operation of Permit

A permit may include conditions that address the general operation of an activity, including hours of operation, dates, times and duration. A permit will be limited to not

## ORDINARY MEETING

Meeting Date: 29 July 2008

more than 12 months. An application to renew a permit may be lodged up to three months before the permit expiry date.

### 4.3.5 Clean and Tidy

A permit holder is responsible for maintaining the operating area free of waste and shall leave it in a clean and tidy condition. Cleaning costs will be met by the permit holder.

### 4.3.6 Damage to Infrastructure

A permit holder is responsible for any damage to infrastructure in Windsor Mall from undertaking the activity and this extends to any person involved in the activity at any time. Such damage does not extend to fair wear and tear. Damage costs will be met by the permit holder.

### 4.3.7 Food preparation

Food prepared in conjunction with an activity shall comply with the Food Act, 2003, Food Regulations 2004, other food safety standards and any other related legislation or policies.

Food preparation and display shall only be undertaken with a non-permeable barrier to protect the surface of Windsor Mall.

### 4.3.8 Amplification of Sound (Public Address Systems)

Amplification of sound is allowed in conjunction with any activity, but it must not be to a point that it is considered to be "offensive noise" as defined under the Protection of the Environment Act, 1998. Details of the proposed amplification of sound shall be supplied with an application.

The use of microphones and amplification with any activity may be limited if it is deemed to be loud.

### 4.3.9 Maintaining good relations

#### (a) With other activities and uses

Windsor Mall is a place in which a variety of activities may take place at any given time. It is also a central business district in which trade takes place on a daily basis. The permit holder is responsible for maintaining good relations with other activities undertaken in Windsor Mall and with traders on adjacent properties. Likewise, traders on adjacent properties shall maintain good relations with activities in Windsor Mall.

#### (b) With visitors and patrons

Pedestrians and visitors in Windsor Mall shall not be harassed by advertising, religious, political or commercial messages in any way.

## 5.0 Vehicle Access to Windsor Mall

There is no unauthorised vehicular access to Windsor Mall, except where provided below:

### 5.1 Emergency and Service Vehicle Access

## ORDINARY MEETING

Meeting Date: 29 July 2008

The following vehicles are allowed in Windsor Mall at any time, while involved in day-to-day operations:

- (a) Emergency Services Vehicles;
- (b) Public Utility Service Vehicles; and
- (c) Council Vehicles undertaking authorised work.

### 5.2 Activities in Windsor Mall Vehicles Access

Services and delivery vehicles to activities in Windsor Mall may access the area and stand to load/ unload for a maximum time of 45 minutes:

- (a) On Thursday from 9pm to Friday 9am;
- (b) On other days, between 6pm and 9.30am; or
- (c) Access outside times in shown in (a) and (b) above, in accordance with an approved activity.

### 5.3 Adjacent Properties to Windsor Mall Vehicles Access

Services and delivery vehicles to adjacent properties to Windsor Mall may access the area and stand to load/ unload for a maximum time of 45 minutes, where no other road or laneway access is available:

- (a) On Thursday from 9pm to Friday 10am; and
- (b) On other days, between 6pm and 9.30am.

## 6.0 Miscellaneous Use of Windsor Mall

### 6.1 Skate boards

The use of bicycles, skate boards, roller blades, roller skates and the like are prohibited in Windsor Mall.

## 7.0 Attachment

Map of Windsor Mall



## Meeting Date: 29 July 2008

**HAWKESBURY CITY COUNCIL**

PO Box 148, Windsor NSW 2781  
 Email: council@hwbcc.nsw.gov.au  
 Phone: (06) 3361 1300 or 1300 66 1300  
 Fax: (06) 3361 1444

**Windsor Mall Policy**

**Appendix (1)**

**Not to Scale**

This map should be read in conjunction with the  
 Regulations of the Hawkesbury City Council  
 Copyright © Hawkesbury City Council 2008

oooO END OF REPORT Oooo

## ORDINARY MEETING

Meeting Date: 29 July 2008

### SECTION 5 - Reports of Committees

#### ROC - Floodplain Risk Management Advisory Committee Minutes - 2 June 2008 - (86589)

The meeting commenced at 4.02pm.

---

**Present:** Councillor Trevor Devine (Chair)  
Councillor Ted Books  
Councillor Bob Porter  
Councillor Neville Wearne  
Mr David Avery  
Mr Geoffrey Bessell  
Mr John Miller  
Mr David Scott  
Mr Les Sheather  
Mr Bill McMahon  
Mr Peter Cinque

**Apologies:** Mr Kevin Jones  
Snr Inspector Robert Bowman

**In Attendance:** Mr David Miller  
Mr Matt Owens  
Mr Philip Pleffer  
Mr Chris Amit  
Ms Robyn Kozjak - Minute Secretary

---

#### REPORT:

**RESOLVED** on the motion of Councillor Books and seconded by Councillor Wearne that the apologies be accepted.

#### CONFIRMATION OF MINUTES:

**RESOLVED** on the motion of Mr John Miller and seconded by Mr Bill McMahon that the Minutes of the Floodplain Risk Management Advisory Committee held on the 7 April 2008, be confirmed.

Discussion subsequently arose re Item 1 of the Minutes of 7 April 2008 relating to attendance of observers at the Committee meetings. Councillor Devine advised he was of the understanding the following foreshadowed motion was adopted:

*"That State and Federal Government members be advised of Clause 5 (i) of the Floodplain Risk Management Advisory Committee constitution and be co-opted as additional members of the Committee from time to time."*

Further discussion arose re a request for specific names of the additional members. It was resolved Mr Ray Williams MP, Mr John Aquilina MP, Mr Alan Shearan MP and Mrs Louise Markus MP be co-opted as additional members from time to time.

## ORDINARY MEETING

Meeting Date: 29 July 2008

It was determined the **COMMITTEE RECOMMENDATION** should read:

1. An invitation to attend the Hawkesbury Floodplain Risk Management Advisory Committee, as observers, be extended to relevant local State and Federal Government members within the Hawkesbury area.
2. The minutes of the Hawkesbury Floodplain Risk Management Advisory Committee be forwarded to the same relevant local State and Federal Government members.
3. That State and Federal Government members be advised of Clause 5 (i) of the Floodplain Risk Management Advisory Committee constitution and be co-opted as additional members of the Committee from time to time.

# ORDINARY MEETING

Meeting Date: 29 July 2008

## Attendance Register of Floodplain Risk Management Advisory Committee

Member	17/09/07	19/11/07	04/02/08	07/04/08	02/06/08
Councillor Trevor Devine – (HCC)	✓	✓	✓	✓	✓
Councillor Ted Books - (HCC)	A	✓	✓	✓	✓
Councillor Kevin Conolly - (HCC)	✓	✓	✓	A	✓
Councillor Bob Porter - (HCC)	✓	✓	✓	✓	✓
Councillor Neville Wearne - (HCC)	N/A	✓	✓	✓	✓
Mr Peter Cinque OAM - (SES Sydney Western Division)	✓	✓	A	A	✓
Mr David Avery - (Dept. of Environment and Climate Change)	A	✓	✓	✓	✓
Mr David Scott – (Dept of Defence)		✓	✓	✓	✓
Snr Inspector Robert Bowman - (NSW Agriculture)		A	A	✓	A
Mr Les Sheather - (Community Member)	N/A	N/A	✓	✓	✓
Mr Kevin Jones - (SES Headquarters)	✓	✓	✓	✓	A
Mr Geoffrey Bessel - (Community Member)	✓	✓	✓	✓	✓
Mr John Miller - (Community Member)	✓	✓	✓	✓	✓
Mr Bill McMahon - (Community Member)	✓	✓		✓	✓

**Key.** A = Formal Apology  
✓ = Present

## ORDINARY MEETING

Meeting Date: 29 July 2008

### CHANGE TO ORDER OF BUSINESS

The Chair acknowledged the presence of Mr David Miller and recommended the matter listed as Item 2 be brought forward for discussion at this time.

### MOTION:

RESOLVED on the motion of Councillor Books, seconded by Councillor Wearne.

***Refer to COMMITTEE RECOMMENDATION***

### COMMITTEE RECOMMENDATION:

That the matter listed as Item 2 be brought forward for discussion.

## SECTION 4 - Reports for Information

### Item: 2      Attendance of Mr David Miller

---

The Chair welcomed Mr David Miller from the Estuary Management Unit of the Department of Environment and Climate Change (DECC).

### DISCUSSION:

Mr Miller proceeded to address the Committee, advising he understood the purpose of his attendance at the meeting was to discuss the potential impact of dredging the river.

Points raised for consideration:

- An Estuary Management Plan offers an opportunity to clarify issues and identify solutions.
- An Estuary Management Plan would consider a wide range of issues eg river health, wetlands, riparian areas, users as well as specific issues facing Council.
- An Estuary Management Plan for the Hawkesbury could be achieved with assistance from the State Government under the Estuary Management Program. Samples of Estuary Management Plans developed for lower areas of the Hawkesbury are available, if required.

*Councillor Conolly arrived at the meeting 4.14pm.*

- An Estuary Management Plan increases the possibility of Council securing funding (eg grants, levies) for rehabilitation works.
- The river is dynamic with complex interactions. Need to know what the impacts of works within and near the river will be. Removal of material from the bed can impact on the characteristics of the river, eg water depth, water velocity, erosion, increase in saltwater incursion, change in tidal influence and impacts on wetlands.
- Integrated approach desirable (joint effort with Councils upstream/downstream).

## ORDINARY MEETING

Meeting Date: 29 July 2008

- Estimated cost of Estuary Management Plan in the vicinity of \$150,000 to \$200,000 - would take approximately 1-2 years to finalise.
- Enquiry was raised as to the likelihood of DECC supporting clearing of the channel without a Estuary Management Plan in place. It was advised an Estuary Management Plan would not necessarily be required, however, legislative requirements would need to be met and approval sought from the Department.
- Mr Owens advised the activity would be classified as a sand extraction and as such, would be designated development. It was advised an Environmental Impact Study would also be required. It was suggested the option of investigating an Estuary Management Plan would be preferable.
- An informal invitation was extended to Mr Miller to tour the river.

The Chair thanked Mr Miller for his attendance and assistance in this matter.

*Mr David Miller left the meeting at 5.33pm.*

### **MOTION:**

RESOLVED on the motion of Councillor Books, seconded by Councillor Porter.

***Refer to COMMITTEE RECOMMENDATION***

### **COMMITTEE RECOMMENDATION:**

That the information to be received.

**Item: 1      Invitation from Penrith City Council to attend Penrith Flood Advisory Consultative Committee Meeting - 7 July 2008**

**Previous Item:**      1, FRMAC (4 February 2008)

---

### **MOTION:**

RESOLVED on the motion of Councillor Conolly, seconded by Councillor Porter.

***Refer to COMMITTEE RECOMMENDATION***

### **COMMITTEE RECOMMENDATION:**

That the information to be received.

## **ORDINARY MEETING**

Meeting Date: 29 July 2008

### **SECTION 5 - General Business**

- Mr John Miller reported the current Labor government had announced it would provide \$19.2M for the continuation of the Natural Disaster Mitigation Program and it was anticipated the opening of applications for funding was imminent. Mr Pleffer added the Digital Terrain Mapping had been funded under the program. Mr Owens subsequently advised the offer for funding would be pursued.
- Councillor Devine referred to a meeting to be arranged with Mr Brian Dooley. Mr Pleffer suggested a tentative date of 18 June, 2008 - to be confirmed. Attendees to include Councillors Devine, Conolly and Porter.
- Mr Amit provided an update on the Thorley Street project advising Council had applied for funding and to date had received part payment for the raising of Thorley Street.
- Mr Pleffer tabled documentation on behalf of Mr Andrew Docking from NSW DPI. The kit contained information on emergency management for properties along the Hawkesbury River from Cattai to Wisemans Ferry. Mr Pleffer reported any comments should be forwarded to himself ASAP as he had been advised the document was nearing final print stage.

The meeting closed at 5.55pm.

**oooO END OF REPORT Oooo**

## ORDINARY MEETING

Meeting Date: 29 July 2008

### ROC - Local Traffic Committee - 16 July 2008 - (80245)

Minutes of the Meeting of the Local Traffic Committee held in the Large Committee Room, Windsor, on Wednesday, 16 July 2008, commencing at 3.00pm..

#### ATTENDANCE

<b>Present:</b>	Councillor B Bassett (Chairman) Mr J Suprain, Roads and Traffic Authority Mr J Christie, Offices of Messrs A Shearan, MP and J Aquilina, MP
<b>Apologies:</b>	Mr R Elson, Department of Transport Mr R Williams, MP (Hawkesbury) Sgt N Jurd, NSW Police Service
<b>In Attendance:</b>	Mr C Amit, Manager, Design & Mapping Services Mr T Shepherd, Administrative Officer, Infrastructure Services

---

The Chairman tendered an apology on behalf of Mr R Williams, MP, advising that Mr Williams concurred with recommendations as contained in the formal agenda and had granted proxy to himself to cast vote(s) on his behalf.

#### SECTION 1 - Minutes

##### Item 1.1 Minutes of Previous Meeting

The Minutes of the meeting held on 18 June 2008 were confirmed.

##### Item 1.2 Business Arising

Nil Business Arising.

#### SECTION 2 - Reports for Determination

##### Item 2.1 LTC - 16 July 2008 - Item 2.1 - Additional Disabled Persons Parking Spaces and Safety Improvements - Hawkesbury Oasis Leisure Centre, South Windsor (Riverstone) - (80245; 93487)

---

#### REPORT:

##### Introduction

Representation has been received from the Centre Manager of the Hawkesbury Oasis Leisure Centre, South Windsor, requesting additional disabled persons carparking spaces within the Centre's carpark (Dataworks Document No. 2826012).



## ORDINARY MEETING

Meeting Date: 29 July 2008

The Centre Manager advises that the YMCA currently run an adults program, targeting the older generation in order to promote mobility, social interaction, fun and fitness. The aqua aerobics program is very successful with an average of 40-50 participants each day. The therapy sessions are undertaken by both the elderly as well as people with disabilities of varying degree. One of the difficulties for this sector of people visiting the Centre is the limited parking spaces dedicated for the disabled.

### Discussion

The Hawkesbury Oasis Leisure Centre carpark is accessed from the intersection of Church Street and Drummond Street, South Windsor. The carpark with its marked spaces and unmarked kerb side parking provides for 169 vehicles. The marked carparking spaces are located within a small (50) and large (100) carpark located side by side. The small carpark is directly opposite the main entrance to the Hawkesbury Oasis Leisure Centre.

The request from the Centre Manager is to provide the additional disabled persons parking spaces adjacent to the existing 4 disabled persons parking spaces, within the centre row of the smaller carpark in line with the raised threshold. This would result in converting 2 rows of 3 parking spaces (6 spaces) into 2 rows of 2 disabled persons parking spaces (4 spaces); effective loss of 2 parking spaces. The existing row of 3 parking spaces allows for 7.5 metres. Each disabled persons parking space needs to be 3.5 metres wide to satisfy the Australian Standards. This proposal will result in a total of 8 parking spaces for the disabled within the small carpark.

As part of the review of the Hawkesbury Oasis Leisure Centre carpark and access road, it is proposed to upgrade the existing regulatory signage within the carpark and roadway area to improve safety. This includes parking restrictions around the median islands, restrictions within the vicinity of the raised threshold to improve site distance and prohibiting parking adjacent to the copper log wall which currently restricts traffic movement to the cul-de-sac due to the roadway width of 6.5 metres. Overall, the additional signage will formalise areas that prohibit parking. The additional parking restriction signs will result in the loss of 2 legal unmarked kerb side parking spaces.

The loss of 2 marked parking spaces and 2 unmarked kerb side parking spaces (total 4 parking spaces) is not considered to have an adverse affect on the Hawkesbury Oasis Leisure Centre. It is recommended that the existing disabled persons parking spaces be increased from 4 to 8 and the parking restrictions implemented in accordance with Drawing TR004/08 - " Proposed Additional Parking Spaces for the Disabled, Hawkesbury Oasis Leisure Centre carpark". The Centre Manager has endorsed these proposed changes.

The total number of existing and proposed car parking spaces is outlined in the table below:

Parking Restriction	Existing No. of Parking Spaces	Proposed No. of Parking Spaces
Unrestricted Parking (Marked Spaces)	146	140
Disabled Persons Parking (Marked Spaces)	4	8
Unrestricted Kerb side Parking (Unmarked Spaces)	19	17
<b>Total</b>	<b>169</b>	<b>165</b>

### RECOMMENDATION:

That:

- Existing disabled persons parking spaces be increased from 4 to 8 within the Hawkesbury Oasis Leisure Centre carpark and the parking restrictions implemented in accordance with Drawing TR004/0; and,

**ORDINARY MEETING**

Meeting Date: 29 July 2008

2. A pedestrian crossing be marked on the raised platform at the entrance to the Hawkesbury Oasis Leisure Centre, and approach/departure signage be erected, in accordance with AS1742.10 / RTA T/D 2001/04.

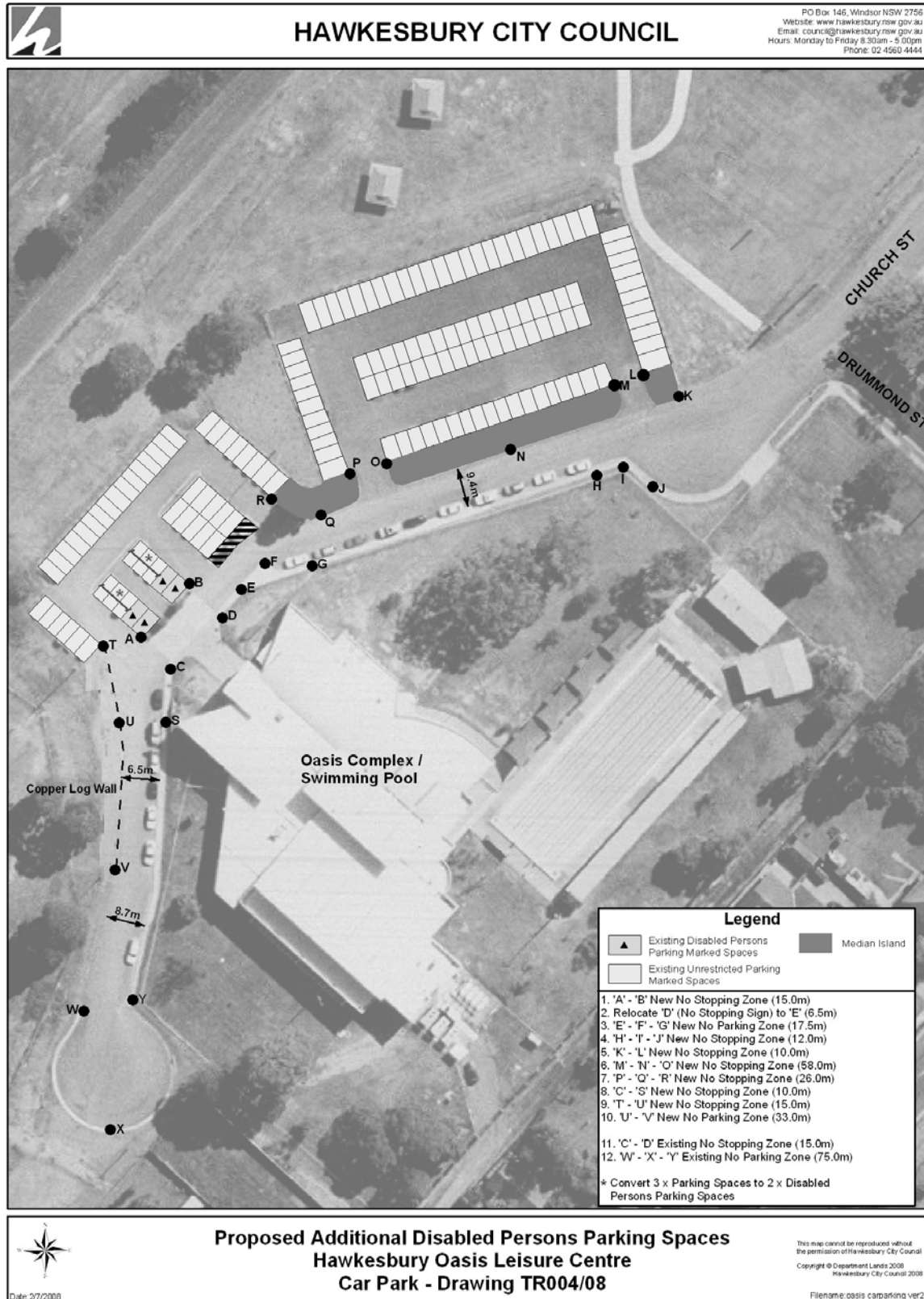
**APPENDICES:**

- AT - 1** Proposed Additional Disabled Persons Parking Spaces, Hawkesbury Oasis Leisure Centre carpark - Drawing TR004/08.

# ORDINARY MEETING

Meeting Date: 29 July 2008

## AT - 1 Proposed Additional Disabled Persons Parking Spaces, Hawkesbury Oasis Leisure Centre carpark - Drawing TR004/08.



## ORDINARY MEETING

Meeting Date: 29 July 2008

### SECTION 3 - Reports for Information

**Item 3.1      LTC - 16 July 2008 - Item 3.1 - Temporary Work Zones, Baker & Kable Streets, Windsor (Riverstone) - (80245)**

---

#### **REPORT:**

Council issued consent on 13 November 2007 for the Redevelopment of Windsor Town Centre Shopping Complex. On site works have substantially commenced and they have now reached a stage where temporary work zones need to be established on both Baker and Kable Streets.

The company has submitted a Construction Management Plan detailing the phases of work including approximate completion dates.

The major construction effort is to be off Kable Street, however, there will be a requirement for short term (hours) occupation on Baker Street.

To accommodate operations and to provide protection within adjoining public spaces it is proposed that temporary work zones be established on both Kable and Baker Streets as follows:

**1)      Kable Street**

Place barriers on the kerb alignment for the full frontage of the work site (about 60 metres). Pedestrian warning signs are to be provided at either end of the immediate street as shown on the attached Traffic Management Plan.

It is proposed that the arrangement be in place for five months until the end of December 2008.

**2)      Baker Street**

As discussed above the occupation of Baker Street is to be on a needs basis, mainly to allow for concrete pumping. During these short periods of occupation (one or two hours at a time), it is proposed to cover the existing signage and employ traffic controllers.

Council compliance section will be pre-advised of the above arrangement.

#### **RECOMMENDATION:**

That the information be received, and the applicant be requested to advise all businesses located in the block bounded by Baker/George/Kable Streets/The Terrace of proposed alterations to parking.

#### **APPENDICES:**

**AT - 1      Map 86 J-7/8 - Temporary Work Zones, Kable Street & Baker Street.**

## Meeting Date: 29 July 2008

[illegible]

Page 115



ordinary  
meeting

end of  
business  
paper

This business paper has  
been produced  
electronically to reduce  
costs, improve efficiency  
and reduce the use of  
paper. Internal control  
systems ensure it is an  
accurate reproduction of  
Council's official copy of  
the business paper.