



# Hawkesbury City Council

## ordinary meeting business paper - Maps

date of meeting: 31 May 2011

location: council chambers

time: 6:30 p.m.



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#### CITY PLANNING

**Item: 103** CP - Modification of Consents DA0341/91, DA1325/03 and DA0733/04 to alter commencement date of the approved trial period for trading hours at the Clarendon Tavern - Lot 4 SP 73508, 244 Hawkesbury Valley Way Clarendon - (DA0518/05A, 10517, 82728, 95498)

**Previous Item:** 255, Ordinary (9 December 2008)

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#### Development Information

**File Number:** DA0341/91, DA1325/03, DA0733/04 and DA0518/05  
**Property Address:** Lot 1 DP 730903, SP 73508 No. 244 Hawkesbury Valley Way Clarendon  
**Applicant:** Pacific Islands Express Pty Ltd  
**Owner:** Pacific Islands Express Pty Ltd  
**Proposal Details:** Modification of Development Consent No. DA0341/91, DA1325/03 and DA0733/04 to alter the commencement date of the approved trial period for trading hours at the Clarendon Tavern  
**Estimated Cost:** N/A  
**Zone:** Mixed Agriculture under Hawkesbury Local Environmental Plan 1989  
**Draft Zone:** IN2 Light Industrial under Draft Hawkesbury Local Environmental Plan 2009  
**Date Received:** 17 December 2010  
**Advertising:** 10 February 2011 to 1 March 2011  
  
**Key Issues:**

- ◆ Delayed commencement of 12 month trial period
- ◆ Land and Environment Court Directions

  
**Recommendation:** Approval

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#### REPORT:

##### Executive Summary

The modification sought is to allow the delayed commencement of a 12 month trial period for late night trading of the Clarendon Tavern as previously considered and approved by the Land and Environment Court. This matter is being reported to Council for determination as it involves a matter that was dealt with by the Land and Environment Court. The application is recommended for approval so as to enable the directions issued by the Land and Environment Court to be fulfilled.

##### Key Issues

- Delayed commencement of 12 month trial period
- Land and Environment Court Directions

##### Background

The following Development Approvals have been issued by Hawkesbury City Council in relation to the subject site:

**DA0341/91** – issued on 13 May 1993 for the construction of a 'Tourist facility/service station and convenience store'. The plans associated with this approval show the existing hotel premises. Initially, the approved hours of operation were between 9.00am to 10.00pm daily. Subsequent amendments to this

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approval granted an extension to approved operating hours so as to allow trading between 5.00am to 12 midnight, Mondays to Saturdays and 10.00am to 12 midnight on Sundays.

**DA1325/03** – issued on 18 November 2003 for the conversion of a café into a function room associated with the hotel.

**DA0733/04** – issued on 14 September 2005 for commercial alteration/additions involving a new office and cool room.

**DA0518/05** – issued on September 2005 for building works and the creation of a gaming room, TAB bar and bottle shop in conjunction with the hotel.

On 1 September 2008 Council received an application pursuant to S96(2) of the Environmental Planning and Assessment Act 1979 seeking consent to extend the trading hours to allow trading on Thursday, Friday and Saturday nights until 3.00am (inclusive of a 12 midnight shut-out).

Council considered the application at its Ordinary Meeting held on 9 December 2008 where it was resolved to refuse the application for the following reasons:

1. *The likely negative impact on the amenity of the locality.*
2. *The occurrence of anti-social behaviour in the vicinity of these premises previously when this business operated for extended hours.*
3. *The concerns of Hawkesbury Local Area Command of the NSW Police that increased incidents of malicious damage, assaults and drink driving are foreseeable.*
4. *The lack of public transport in the area after midnight.*
5. *The absence of evidence of tourist demand for such facilities after midnight. The proposed "no new entry after midnight" restriction would preclude operation as a tourist-focused facility.*
6. *The proposal is not in the public interest."*

The applicant subsequently appealed this refusal in the Land and Environment Court. On 2 October 2009 the Court upheld the appeal and approved the modification of Development Consent No.s DA0341/91, DA1325/03 and DA0733/04 (*Pacific Islands Express Pty Ltd v Hawkesbury City Council* [2009] NSWLEC 1321; 2 October 2009) to allow for extended trading for a trial period as follows:

- *"Late-night trading on Friday and Saturday nights only, until 2.00am the following day otherwise trading is to cease at midnight.*
- *The trial period is to be for 12 months after which a further modification application will be required to be submitted to the council.*
- *The bus service is to be available from 11.00pm until close of business on Friday and Saturday nights."*

In addition to permitting a trial period relating to the extension of trading hours the Land and Environment Court approval included the imposition of conditions requiring:

- Compliance with an operational management plan
- 250 person maximum capacity
- Exclusion period after midnight
- Provision of security staff
- Sound/noise/amplification controls
- Installation of acoustic walls and other noise measures
- Restriction of live music after midnight
- Entertainment and restrictions on usage of the rear courtyards
- Patron transport arrangements

The management plan prepared for the site provided for a number of additional operational matters involving:

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- The location and operation of the CCTV camera positions, loudspeakers, external plant and waste collection and storage points.
- Liquor service is to cease 15 minutes prior to the close of trade.
- Enforcement of responsible service of alcohol requirements of the liquor licence including training of staff and management
- The availability of food during all trading hours.
- Identification policy and gambling measures and strategies.
- The number of and licensing of security personnel as well as their patrolling and other responsibilities.
- Incident reporting and registering of complaints.
- The provision of a complimentary bus service for patrons.
- Signage associated with the bus service, the midnight lockdown etc.
- Noise management and the use of the rear courtyard.
- A mechanism for the amendment of the management plan.

### **Description of Proposal**

The applicant has submitted the application to modification of the three nominated development consents relating to the Clarendon Tavern so as to enable the implementation of the trial period approved by the Land and Environment Court. It has been acknowledged that there has been a delay by the site operator in completing the works associated with implementation of the acoustic measures associated with the site. The Court decision was made in October 2009 however the applicant has advised that the works required to be undertaken to achieve acoustic compliance were only completed in October 2010.

Accordingly, the trial period was unable to be undertaken within the time period prescribed in the consent, being between 2 October 2009 to 2 October 2010 (being 12 months from the date of the judgement).

It is highlighted that prior to the commencement of the trial period that:

*"Prior to occupation of the Premise for the extended hours of trading an acoustic audit shall be undertaken by a suitably qualified person (approved by Council) to certify that all noise mitigation recommendations have been implemented and effective."*

In addition, it is also noted that follow-up acoustic audits are required to be undertaken during the first two weeks and within six months of trading to:

*"...certify that all noise mitigation recommendations are operating effectively and the level of noise emitted from the Premises satisfies the approved noise conditions."*

The modification request seeks approval to change Development Consent No.s DA0341/91, DA1325/03 and DA0733/04 to commence the trial after the acoustic audit is approved and alter the following conditions as shown in bold below:

#### *Development Consent No. D0341/91*

Condition No. 28 in Development Consent No. D0341/91, as modified by the Land & Environment Court, provides as follows:

28. (a) *The hours of operation of the premises are to be restricted as follows:*
- (i) *5.00am Friday to 2.00am Saturday;*
  - (ii) *5.00am Saturday to 2.00am Sunday;*
  - (iii) *5.00am – midnight – Monday to Thursday;*
  - (iv) *10.00am – midnight on Sunday.*
- (b) *The hours of operation detailed in (a) above are for a trial period of twelve (12) months from the date of this modified consent notice. A Section 96 application will be required*

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*to be submitted to Council prior to the expiration of the twelve (12) month period for the continuation of the hours detailed above.*

The subject application seeks approval to modify this condition as follows:

28. (a) *The hours of operation of the premises are to be restricted as follows:*
- (i) 5.00am Friday to 2.00am Saturday;
  - (ii) 5.00am Saturday to 2.00am Sunday;
  - (iii) 5.00am – midnight – Monday to Thursday;
  - (iv) 10.00am – midnight on Sunday.
- (b) *The hours of operation detailed in (a) above are for a trial period of twelve (12) months from the date **on which Council approves the acoustic audit required by Condition 39n.** A Section 96 application will be required to be submitted to Council prior to the expiration of the twelve (12) month period for the continuation of the hours detailed above.*

Development Consent No. DA1325/03

Condition No. 19 in Development Consent No. DA1325/03, as modified by the Land & Environment Court, provides as follows:

19. (a) *The hours of operation of the premises are to be restricted as follows:*
- (i) 5.00am Friday to 2.00am Saturday;
  - (ii) 5.00am Saturday to 2.00am Sunday;
  - (iii) 5.00am – midnight – Monday to Thursday;
  - (iv) 10.00am – midnight on Sunday.
- (b) *The hours of operation detailed in (a) above are for a trial period of twelve (12) months from the date of this modified consent notice. A Section 96 application will be required to be submitted to Council prior to the expiration of the twelve (12) month period for the continuation of the hours detailed above.*

The subject application seeks approval to modify this condition as follows:

19. (a) *The hours of operation of the premises are to be restricted as follows:*
- (i) 5.00am Friday to 2.00am Saturday;
  - (ii) 5.00am Saturday to 2.00am Sunday;
  - (iii) 5.00am – midnight – Monday to Thursday;
  - (iv) 10.00am – midnight on Sunday.
- (b) *The hours of operation detailed in (a) above are for a trial period of twelve (12) months from the date **on which Council approves the acoustic audit required by Condition 39n.** A Section 96 application will be required to be submitted to Council prior to the expiration of the twelve (12) month period for the continuation of the hours detailed above.*

Development Consent No. DA0733/04

Condition No. 9 in Development Consent No. DA0733/04, as modified by the Land & Environment Court, provides as follows:

9. (a) *The hours of operation of the premises are to be restricted as follows:*
- (i) 5.00am Friday to 2.00am Saturday;
  - (ii) 5.00am Saturday to 2.00am Sunday;

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- (iii) 5.00am – midnight – Monday to Thursday;
  - (iv) 10.00am – midnight on Sunday.
- (b) The hours of operation detailed in (a) above are for a trial period of twelve (12) months from the date of this modified consent notice. A Section 96 application will be required to be submitted to Council prior to the expiration of the twelve (12) month period for the continuation of the hours detailed above.

The subject application seeks approval to modify this condition as follows:

9. (a) The hours of operation of the premises are to be restricted as follows:
- (i) 5.00am Friday to 2.00am Saturday;
  - (ii) 5.00am Saturday to 2.00am Sunday;
  - (iii) 5.00am – midnight – Monday to Thursday;
  - (iv) 10.00am – midnight on Sunday.
- (b) The hours of operation detailed in (a) above are for a trial period of twelve (12) months from the date **on which Council approves the acoustic audit required by Condition 39n**. A Section 96 application will be required to be submitted to Council prior to the expiration of the twelve (12) month period for the continuation of the hours detailed above.

#### Statutory Situation

#### Council Policies, procedures and Codes to Which the Matter Relates

- Environmental Planning and Assessment Act, 1979
- Sydney Regional Environmental Plan No. 20 – Hawkesbury Nepean River
- Hawkesbury Local Environmental Plan 1989
- Draft Hawkesbury Local Environmental Plan 2009
- Hawkesbury Development Control Plan
- Council Policy – Applications Determined by Council – Re-application Process Policy,

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

In determining the application, Council is required to take into consideration the following matters as are relevant to the development that apply to the land to which the development application relates:

Section 79C “Matters for Consideration” Comments	Section 79C “Matters for Consideration” Comments
Section 79C (1) (a)(i) – Provisions of any environmental planning instrument	The proposed development is considered consistent with the provisions contained in Hawkesbury Local Environmental Plan 1989 and Sydney Regional Environmental Plan No. 20.
Section 79C (1) (a)(ii) – Provisions of any draft environmental planning instrument	<b>The subject site is proposed to be zoned IN2 Light Industrial under the provisions of Draft Hawkesbury Local Environmental Plan 2009. A “hotel” use would constitute a permissible form of development within this zone. It is considered that the proposal is not inconsistent with the provisions of this Draft plan.</b>

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Section 79C (1) (a)(iii) – Provisions of any development control plan	<b>The proposal is not considered inconsistent with the provisions contained in Hawkesbury Development Control Plan 2002.</b>
Section 79C (1) (a)(iii) – Provisions of the regulations	None applicable.
Section 79C (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	The subject S96 application would not result in any additional environmental impact above that considered in conjunction with the approval granted by the Land and Environment Court.
Section 79C (1) (c) – the suitability of the site for the development	The location of the site is suitable for consideration of the application.
Section 79C (1) (d) and (e) – any submissions made in accordance with the EPA Act or EPA Regs and public interest	One (1) submission was received from the Hawkesbury Local Area Command. This matter is dealt with separately in this report.

### Lapsing of Consent

In conjunction with the assessment of the application legal advice was sought to advise whether Council was able to consider the application having regard to the fact that the application had been made after the expiration of the trial period granted by the Land and Environment Court.

It has been advised that Council does have the power to approve the application in the manner sought by the applicant.

### Section 96AA of the Environmental Planning and Assessment Act 1979

The proposed development is considered to be a modification made pursuant to Section 96AA of the Environmental Planning and Assessment Act 1979, relating to modifications having minor environmental impact. Sections 96AA (1) and (1A) provide that a Consent Authority may modify the consent if:

- (1) *A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the Court and subject to and in accordance with the regulations, modify the development consent if:*
  - (a) *it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*
  - (b) *it has notified the application in accordance with:*
    - (i) *the regulations, if the regulations so require, and*
    - (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*
  - (c) *it has notified, or made reasonable attempts to notify, each person who made a submission in respect of the relevant development application of the proposed modification by sending written notice to the last address known to the consent authority of the objector or other person, and*
  - (d) *it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.*

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- (1A) *In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 79C (1) as are of relevance to the development the subject of the application.*

Having regard to the above, it is noted that the proposal seeks approval for the delayed implementation of the trial period involving late trading hours that was granted by the Land and Environment Court. The subject application does not involve the alteration of any conditions of this approval other than those relating to its commencement. It is therefore considered that Section 1(a) is satisfied.

In accordance with Sections 1(b) and 1(c) the application was notified as described later in this report. No submissions were received in response to Council's notification of the application.

### **Hawkesbury Local Environmental Plan 1989**

The subject property is zoned Mixed Agriculture under Hawkesbury Local Environmental Plan 1989. The existing development was approved as a "tourist facility" being defined as:

**tourist facilities** means a building or place that is used to provide refreshment, accommodation, recreation or amusement facilities for the travelling or holidaying public

Tourist facilities are permissible with consent within the Mixed Agriculture zone.

In addition to the above, the following clauses of Hawkesbury Local Environmental Plan 1989 were taken into consideration:

Clause 2 - Aims, objectives etc,  
Clause 5 - Definitions  
Clause 8 - Zones indicated on the map  
Clause 9 - Carrying out development  
Clause 9A - Zone Objectives  
Clause 22 – Development fronting a main or arterial road  
Clause 37 – Land affected by aircraft noise

An assessment of the Development Application otherwise reveals that the proposal complies with the matters raised in the above clauses of Hawkesbury Local Environmental Plan 1989.

### **Community Consultation**

The application was notified to adjoining property owners and each person who made a submission in respect of the previous application (D0341/91D) of the proposed modification by letter dated 10 February 2011. In response to this notification no written submissions were received.

### **NSW Police Comments**

The application was forwarded to Hawkesbury Local Area Command as part of the consultation process. In response correspondence was received on 13 April 2011 providing the following comments in respect to the proposal:

*"I maintain the concerns from the previous application in relation to the extended trading hours and would like to object to this application being approved. I have attached a copy of the information given to Council on 9<sup>th</sup> December 2008, which is still relevant to our objection.*

*I request that if the application is approved, the same conditions given by the Land and Environment Court on 2<sup>nd</sup> October 2009 be added as conditions to the development consent, this includes the trial period of 12 months."*

Whilst the comments received from the Police are noted it is noted that the Land and Environment Court granted approval for a 12 month trial period to enable an adequate assessment to be undertaken of the

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environmental impact associated with the extension of trading hours associated with the Clarendon Tavern. Given that the trial period had not been undertaken within the period envisaged by this approval it would be considered unreasonable and contrary to the Court's directions to not allow this trial to take place.

In addition to the above, it is confirmed that the other detailed conditions that were included in the Land and Environment Court judgement handed down on 2 October 2009 are not proposed to be modified and will remain in force. In this regard the concerns of the Hawkesbury Local Area Command, i.e., that the Court conditions be applied and the trial period remain, are satisfied.

### **Conclusion**

The application has been assessed having regard to the provisions of Section 79C and Section 96AA of the Environmental Planning and Assessment Act, 1979; Sydney Regional Environmental Plan No. 20; Hawkesbury Local Environmental Plan 1989; Hawkesbury Development Control Plan 2002 and other relevant codes and policies.

The subject application seeks approval to enable the delayed implementation of the trial period for late night trading that had been approved by the Land and Environment Court. As described in the main body of this report the trial period has not been able to be commenced as a number of pre conditions included in the approval involving noise attenuation measures and acoustic audit relating to the premises had not been satisfied.

It is noted that the subject application had been made after the expiration period of the trial period as anticipated by the Land and Environment Court. The failure to make the application under Section 96AA of the Environmental Planning and Assessment Act 1979 has not led to the lapsing of this consent. Accordingly, Council has the authority to determine the application.

The matter relating to the merit and environmental implications associated with late night trading has previously been considered by the Land and Environment Court in conjunction with Proceedings No. 10024 of 2009 Hawkesbury City Council ats Pacific Islands Express Pty Ltd. Accordingly, it is recommended that the application be approved so as to facilitate the implementation of a trial period for late night trading.

### **Planning Decision**

As this matter is covered by the definition of a "planning decision" under Section 375A of the Local Government Act 1993, details of those Councillors supporting or opposing a decision on the matter must be recorded in a register. For this purpose a division must be called when a motion in relation to the matter is put to the meeting. This will enable the names of those Councillors voting for or against the motion to be recorded in the minutes of the meeting and subsequently included in the required register.

### **RECOMMENDATION:**

That Development Consent No.s D0341/91, DA1325/03 and DA0733/04 at Lot 4 SP 73508, No. 244 Richmond Road Clarendon (Clarendon Tavern) be modified as follows:

1. Development Consent No. D0341/91

Condition No. 28 in Development Consent No. D0341/91 be modified as follows:

28. (a) *The hours of operation of the premises are to be restricted as follows:*

- (i) 5.00am Friday to 2.00am Saturday;
- (ii) 5.00am Saturday to 2.00am Sunday;
- (iii) 5.00am – midnight – Monday to Thursday;
- (iv) 10.00am – midnight on Sunday.



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- (b) *The hours of operation detailed in (a) above are for a trial period of twelve (12) months from the date on which Council approves the acoustic audit required by Condition 39n. A Section 96 application will be required to be submitted to Council prior to the expiration of the twelve (12) month period for the continuation of the hours detailed above.*

2. Development Consent No. DA1325/03

Condition No. 19 in Development Consent No. DA1325/03 be modified as follows:

19. (a) *The hours of operation of the premises are to be restricted as follows:*

- (i) *5.00am Friday to 2.00am Saturday;*
- (ii) *5.00am Saturday to 2.00am Sunday;*
- (iii) *5.00am – midnight – Monday to Thursday;*
- (iv) *10.00am – midnight on Sunday.*

- (b) *The hours of operation detailed in (a) above are for a trial period of twelve (12) months from the date on which Council approves the acoustic audit required by Condition 39n. A Section 96 application will be required to be submitted to Council prior to the expiration of the twelve (12) month period for the continuation of the hours detailed above.*

3. Development Consent No. DA0733/04

Condition No. 9 in Development Consent No. DA0733/04 be modified as follows:

9. (a) *The hours of operation of the premises are to be restricted as follows:*

- (i) *5.00am Friday to 2.00am Saturday;*
- (ii) *5.00am Saturday to 2.00am Sunday;*
- (iii) *5.00am – midnight – Monday to Thursday;*
- (iv) *10.00am – midnight on Sunday.*

- (b) *The hours of operation detailed in (a) above are for a trial period of twelve (12) months from the date on which Council approves the acoustic audit required by Condition 39n. A Section 96 application will be required to be submitted to Council prior to the expiration of the twelve (12) month period for the continuation of the hours detailed above.*

#### ATTACHMENTS:

AT - 1 Locality Plan

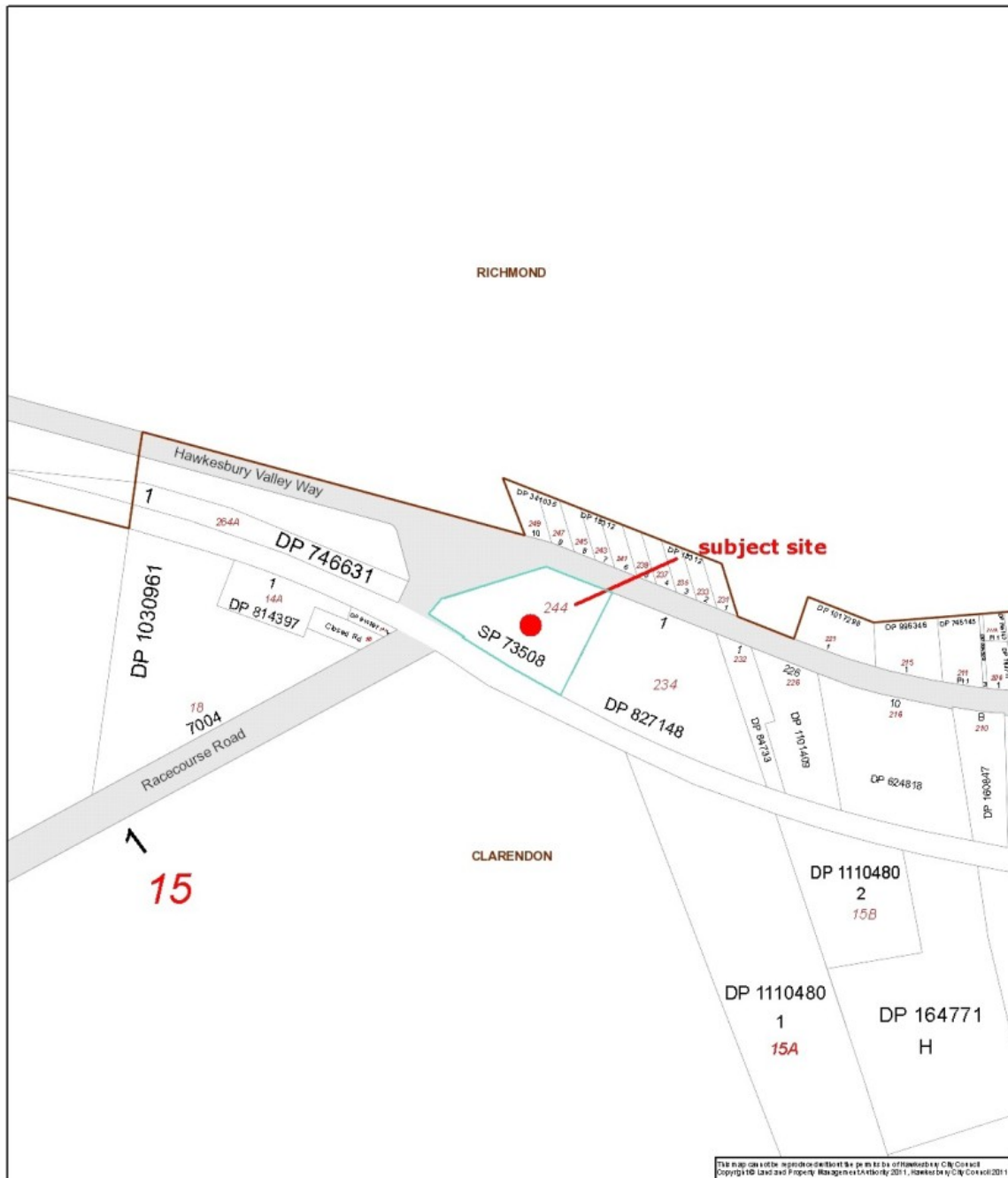
AT - 2 Aerial Photograph

AT - 3 Land and Environment Court Conditions of Consent

AT - 4 Management Plan

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AT - 1 Locality Plan



AT - 2 Aerial Photograph



**AT - 3 Land and Environment Court Conditions of Consent**

*Appeal No: 10024 of 2009*

**Annexure 'A'**  
**Conditions of Consent**

**Pacific Islands Express Pty Ltd v Hawkesbury City Council**

**Development Consent DA 0341/91**

1. Condition No. 28 in Development Consent DA 0341/91 being modified as follows:
  28. (a) The hours of operation of the premises are to be restricted as follows:
    - (i) 5.00 am Friday to 2:00 am Saturday;
    - (ii) 5:00 am Saturday to 2:00 am Sunday;
    - (iii) 5.00am - midnight – Monday to Thursday;
    - (iv) 10.00am - midnight on Sunday,
  - (b) The hours of operation detailed in (a) above are for a trial period of twelve (12) months from the date of this modified consent notice. A Section 96 application will be required to be submitted to Council prior to the expiration of the twelve (12) month period for the continuation of the hours detailed above.
2. Addition of the following conditions in Development Consent DA 0341/91:
  34. The maximum patronage of the tavern, for the place of public entertainment, exclusive of staff, shall not exceed 250 persons.
  35. No new patrons are to be given entry to the premises from midnight onwards other than patrons of the premises seeking to re-enter from the designated outdoor smoking area.
  36. Security staff are to ensure that patrons of the premises do not loiter or linger in the immediate surrounding area and do not cause noise or other nuisance in the immediate area including car parking areas and adjacent businesses to the site.
  37. An appropriate number of Security staff are to be provided to control patron behaviour within the premises, access to the premises and within the vicinity of the site.
  38. The Management Plan annexed and Annexure B shall be complied with at all relevant times.
  39. Noise emitted from the licensed premise shall comply with the standard noise conditions issued by the OLGR.

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- a Noise from the Licensed Premises
- i The  $L_{A10}$  noise level emitted from the licensed premises shall not exceed the background noise level in any Octave Band Centre Frequency (31.5Hz – 8kHz inclusive) by more than 5dB between 07.00am and 12.00 midnight at the boundary of any affected residence.
  - ii The  $L_{A10}$  noise level emitted from the licensed premises shall not exceed the background noise level in any Octave Band Centre Frequency (31.5Hz – 8kHz inclusive) by more than 5dB between midnight and 07.00am at the boundary of any affected residence.
  - iii Notwithstanding compliance with the above, the noise from the licensed premises shall not be audible within any habitable room in any residential premises between the hours of 12.00 midnight and 07.00am.
- For the purposes of this condition, the  $L_{A10}$  can be taken as the average maximum deflection of the noise emission from the licensed premises.
- b Noise from mechanical plant installed on *the Premises*
- i The  $L_{Aes}$  noise level emitted from mechanical plant installed and operated on the Premises shall not exceed the background noise level by more than 5 dB when assessed at any point on a residential property.  
  
In accordance with assessment procedures recommended in the DECC, INP modifying factor corrections shall be applied to the source noise to account for tonality, intermittency, etc.
- c All speakers shall be removed from the front (Richmond Road frontage) of *the Premises*.
- d No entertainment shall be provided in the courtyard at any time.
- e Access to the rear courtyard when entertainment is provided inside the premises shall be via the rear sound lock door arrangement only.
- f The sound lock servicing the courtyard shall be reconfigured such that one door is closed at all times.
- g All amplified sound equipment installed on the premises shall be installed and operated with sound limiting controllers.
- h Access and egress for *the Premise* between 10.00pm and midnight shall be restricted to the rear door and front door.
- i Access and egress for *the Premise* after midnight shall be restricted to the rear door only.
- j Patrons waiting for transport shall not congregate outside *the Premises* after 10.00pm.



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*Appeal No: 10024 of 2009*

- k No patrons shall be permitted to consume beverages provided at *the Premises* outside the licensed area.
  - l The fire doors servicing *the Premises* shall be acoustically upgraded or replaced with a sound lock.
  - m The fire door shall be fitted with an automatic switch installed to shut off power to the bar lighting if the doors are opened after 10.00pm or when any amplified music is provided within *the Premises*.
  - n Prior to occupation of *the Premise* for the extended hours of trading an acoustic audit shall be undertaken by a suitably qualified person (approved by Council) to certify that all noise mitigation recommendations have been implemented and effective. A report shall be submitted to Council for approval prior to extending trading hours.
  - o During the first two weeks of trading an acoustic audit shall be undertaken by a suitably qualified person (approved by Council) to certify that all noise mitigation recommendations are operating effectively and the level of noise emitted from *the Premises* satisfies the approval noise conditions. A report shall be submitted to Council to present the findings.
  - p Within six (6) months of trading a second acoustic audit shall be undertaken by a suitably qualified person (approved by Council) to certify that all noise mitigation recommendations are operating effectively and the level of noise emitted from *the Premises* satisfies the approval noise conditions. A report shall be submitted to Council to present the findings.
40. There shall be no live music provided on the premises between midnight and 3am.
- 41 The external semi-enclosed courtyard when used after midnight and before 3am shall be restricted to a maximum of ten (10) persons at any time. No drinking is to occur in this area between these hours.
42. The following additional noise control measures to the hotel shall be carried out:
- 42.1. The rear courtyard acoustic walls shall be reconfigured and constructed to a height of not less than 3 metres above the finished courtyard level. The maximum height of the courtyard wall shall be no more than 4 metres above existing ground level and its external colours are to be in keeping with the external colours of the hotel building. The wall can be constructed of masonry, lapped and capped timber fencing, clear polycarbonate, modular wall system, cement panelling and timber framework or an acoustic equivalent.

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Details to be provided to Council for approval prior to extended hours of the hotel commencing.

Acoustic absorption panels to 50% of the internal walls of the semi-enclosed external smoking area shall be provided. These panels are to be 50mm thick 35kg/m<sup>2</sup> fibreglass faced with perforated metal, or timber providing an open area of not less than 21%.

- 42.2. The external semi-enclosed smoking area is to comply with the restrictions and requirements of the *Smoke Free Environment Act 2000* and the *Smoke Free Environment Regulations 2007*.
- 42.3. Doors, windows and other openings (including the airlock to the smoking area) are to be kept closed except when patrons are leaving the ground floor public bar.
- 42.4. No speakers or PA systems are to be used in any external areas or the semi-enclosed smoking area between the hours of 12am to 3am, excluding emergencies.

**ADVISORY NOTE:**

1. The applicant is to ensure that the fire safety provisions applicable to this hotel are met at all times.
2. If there is an inconsistency between the consent conditions and the plan of management then the consent conditions prevail.

**Development Consent DA 1325/03**

3. Condition No. 19 in Development Consent DA 1325/03 being modified as follows:
  19. (a) The hours of operation of the premises are to be restricted as follows:
    - (i) 5.00 am Friday to 2:00 am Saturday;
    - (ii) 5:00 am Saturday to 2:00 am Sunday;
    - (iii) 5.00am - midnight – Monday to Thursday;
    - (iv) 10.00am - midnight on Sunday,
  - (b) The hours of operation detailed in (a) above are for a trial period of twelve (12) months from the date of this modified consent notice. A Section 96 application will be required to be submitted to Council prior to the expiration of the twelve (12) month period for the continuation of the hours detailed above.
4. Addition of the following conditions in Development Consent DA 1325/03:

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28. The maximum patronage of the tavern, for the place of public entertainment, exclusive of staff, shall not exceed 250 persons.
29. No new patrons are to be given entry to the premises from midnight onwards other than patrons of the premises seeking to re-enter from the designated outdoor smoking area.
30. Security staff are to ensure that patrons of the premises do not loiter or linger in the immediate surrounding area and do not cause noise or other nuisance in the immediate area including car parking areas and adjacent businesses to the site.
31. An appropriate number of Security staff are to be provided to control patron behaviour within the premises, access to the premises and within the vicinity of the site.
32. The Management Plan annexed and Annexure B shall be complied with at all relevant times.
33. Noise emitted from the licensed premise shall comply with the standard noise conditions issued by the OLGR.
  - a Noise from the Licensed Premises
    - i The  $L_{A10}$  noise level emitted from the licensed premises shall not exceed the background noise level in any Octave Band Centre Frequency (31.5Hz – 8kHz inclusive) by more than 5dB between 07.00am and 12.00 midnight at the boundary of any affected residence.
    - ii The  $L_{A10}$  noise level emitted from the licensed premises shall not exceed the background noise level in any Octave Band Centre Frequency (31.5Hz – 8kHz inclusive) by more than 5dB between midnight and 07.00am at the boundary of any affected residence.
    - iii Notwithstanding compliance with the above, the noise from the licensed premises shall not be audible within any habitable room in any residential premises between the hours of 12.00 midnight and 07.00am.

For the purposes of this condition, the  $L_{A10}$  can be taken as the average maximum deflection of the noise emission from the licensed premises.
  - b Noise from mechanical plant installed on the Premises
    - ii The  $L_{Aeq}$  noise level emitted from mechanical plant installed and operated on the Premises shall not exceed the background noise level by more than 5 dB when assessed at any point on a residential property.

In accordance with assessment procedures recommended in the DECC, INP modifying factor corrections shall be



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- applied to the source noise to account for tonality, intermittency, etc.
- c All speakers shall be removed from the front (Richmond Road frontage) of *the Premises*.
  - d No entertainment shall be provided in the courtyard at any time.
  - e Access to the rear courtyard when entertainment is provided inside the premises shall be via the rear sound lock door arrangement only.
  - f The sound lock servicing the courtyard shall be reconfigured such that one door is closed at all times.
  - g All amplified sound equipment installed on the premises shall be installed and operated with sound limiting controllers.
  - h Access and egress for *the Premise* between 10.00pm and midnight shall be restricted to the rear door and front door.
  - i Access and egress for *the Premise* after midnight shall be restricted to the rear door only.
  - j Patrons waiting for transport shall not congregate outside *the Premises* after 10.00pm.
  - k No patrons shall be permitted to consume beverages provided at *the Premises* outside the licensed area.
  - l The fire doors servicing *the Premises* shall be acoustically upgraded or replaced with a sound lock.
  - m The fire door shall be fitted with an automatic switch installed to shut off power to the bar lighting if the doors are opened after 10.00pm or when any amplified music is provided within *the Premises*.
  - n Prior to occupation of *the Premise* for the extended hours of trading an acoustic audit shall be undertaken by a suitably qualified person (approved by Council) to certify that all noise mitigation recommendations have been implemented and effective. A report shall be submitted to Council for approval prior to extending trading hours.
  - o During the first two weeks of trading an acoustic audit shall be undertaken by a suitably qualified person (approved by Council) to certify that all noise mitigation recommendations are operating effectively and the level of noise emitted from *the Premises* satisfies the approval noise conditions. A report shall be submitted to Council to present the findings.
  - p Within six (6) months of trading a second acoustic audit shall be undertaken by a suitably qualified person (approved by Council) to certify that all noise mitigation recommendations are operating effectively and the level of noise emitted from *the Premises* satisfies the approval noise conditions. A report shall be submitted to Council to present the findings.

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34. There shall be no live music provided on the premises between midnight and 3am.
35. The external semi-enclosed courtyard when used after midnight and before 3am shall be restricted to a maximum of ten (10) persons at any time. No drinking is to occur in this area between these hours.
36. The following additional noise control measures to the hotel shall be carried out:
  - 36.1 The rear courtyard acoustic walls shall be reconfigured and constructed to a height of not less than 3 metres above the finished courtyard level. The maximum height of the courtyard wall shall be no more than 4 metres above existing ground level and its external colours are to be in keeping with the external colours of the hotel building. The wall can be constructed of masonry, lapped and capped timber fencing, clear polycarbonate, modular wall system, cement panelling and timber framework or an acoustic equivalent. Details to be provided to Council for approval prior to extended hours of the hotel commencing.

Acoustic absorption panels to 50% of the internal walls of the semi-enclosed external smoking area shall be provided. These panels are to be 50mm thick fibreglass building blanket (35 kg/m<sup>2</sup>) faced with perforated metal, or timber.
  - 36.2. The external semi-enclosed smoking area is to comply with the restrictions and requirements of the *Smoke Free Environment Act* 2000 and the *Smoke Free Environment Regulations* 2007.
  - 36.3. Doors, windows and other openings (including the airlock to the smoking area) are to be kept closed except when patrons are leaving the ground floor public bar.
  - 36.4. No speakers or PA systems are to be used in any external areas or the semi-enclosed smoking area between the hours of 12am to 3am, excluding emergencies.

**ADVISORY NOTE:**

1. The applicant is to ensure that the fire safety provisions applicable to this hotel are met at all times.
2. If there is an inconsistency between the consent conditions and the plan of management then the consent conditions prevail.

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**Development Consent DA 0733/04**

5. Addition of the following conditions in Development Consent DA 0733/04:
  9. (a) The hours of operation of the premises are to be restricted as follows:
    - (i) 5.00 am Friday to 2:00 am Saturday;
    - (ii) 5:00 am Saturday to 2:00 am Sunday;
    - (iii) 5.00am - midnight – Monday to Thursday;
    - (iv) 10.00am - midnight on Sunday,
  - (b) The hours of operation detailed in (a) above are for a trial period of twelve (12) months from the date of this modified consent notice. A Section 96 application will be required to be submitted to Council prior to the expiration of the twelve (12) month period for the continuation of the hours detailed above.
10. The maximum patronage of the tavern, for the place of public entertainment, exclusive of staff, shall not exceed 250 persons.
11. No new patrons are to be given entry to the premises from midnight onwards other than patrons of the premises seeking to re-enter from the designated outdoor smoking area.
12. Security staff are to ensure that patrons of the premises do not loiter or linger in the immediate surrounding area and do not cause noise or other nuisance in the immediate area including car parking areas and adjacent businesses to the site.
13. An appropriate number of Security staff are to be provided to control patron behaviour within the premises, access to the premises and within the vicinity of the site.
14. The Management Plan annexed and Annexure B shall be complied with at all relevant times.
15. Noise emitted from the licensed premise shall comply with the standard noise conditions issued by the OLGR.
  - a Noise from the Licensed Premises
    - i The  $L_{A10}$  noise level emitted from the licensed premises shall not exceed the background noise level in any Octave Band Centre Frequency (31.5Hz – 8kHz inclusive) by more than 5dB between 07.00am and 12.00 midnight at the boundary of any affected residence.
    - ii The  $L_{A10}$  noise level emitted from the licensed premises shall not exceed the background noise level in any Octave Band Centre Frequency (31.5Hz – 8kHz inclusive) by more

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than 5dB between midnight and 07.00am at the boundary of any affected residence.

- iii Notwithstanding compliance with the above, the noise from the licensed premises shall not be audible within any habitable room in any residential premises between the hours of 12.00 midnight and 07.00am.

For the purposes of this condition, the  $L_{A10}$  can be taken as the average maximum deflection of the noise emission from the licensed premises.

- b Noise from mechanical plant installed on *the Premises*

- iii The  $L_{A65}$  noise level emitted from mechanical plant installed and operated on the Premises shall not exceed the background noise level by more than 5 dB when assessed at any point on a residential property.

In accordance with assessment procedures recommended in the DECC, INP modifying factor corrections shall be applied to the source noise to account for tonality, intermittency, etc.

- c All speakers shall be removed from the front (Richmond Road frontage) of *the Premises*.
- d No entertainment shall be provided in the courtyard at any time.
- e Access to the rear courtyard when entertainment is provided inside the premises shall be via the rear sound lock door arrangement only.
- f The sound lock servicing the courtyard shall be reconfigured such that one door is closed at all times.
- g All amplified sound equipment installed on the premises shall be installed and operated with sound limiting controllers.
- h Access and egress for *the Premise* between 10.00pm and midnight shall be restricted to the rear door and front door.
- i Access and egress for *the Premise* after midnight shall be restricted to the rear door only.
- j Patrons waiting for transport shall not congregate outside *the Premises* after 10.00pm.
- k No patrons shall be permitted to consume beverages provided at *the Premises* outside the licensed area.
- l The fire doors servicing *the Premises* shall be acoustically upgraded or replaced with a sound lock.
- m The fire door shall be fitted with an automatic switch installed to shut off power to the bar lighting if the doors are opened after 10.00pm or when any amplified music is provided within *the Premises*.

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- n Prior to occupation of *the Premise* for the extended hours of trading an acoustic audit shall be undertaken by a suitably qualified person (approved by Council) to certify that all noise mitigation recommendations have been implemented and effective. A report shall be submitted to Council for approval prior to extending trading hours.
  - o During the first two weeks of trading an acoustic audit shall be undertaken by a suitably qualified person (approved by Council) to certify that all noise mitigation recommendations are operating effectively and the level of noise emitted from *the Premises* satisfies the approval noise conditions. A report shall be submitted to Council to present the findings.
  - p Within six (6) months of trading a second acoustic audit shall be undertaken by a suitably qualified person (approved by Council) to certify that all noise mitigation recommendations are operating effectively and the level of noise emitted from *the Premises* satisfies the approval noise conditions. A report shall be submitted to Council to present the findings.
16. There shall be no live music provided on the premises between midnight and 3am.
17. The external semi-enclosed courtyard when used after midnight and before 3am shall be restricted to a maximum of ten (10) persons at any time. No drinking is to occur in this area between these hours.
18. The following additional noise control measures to the hotel shall be carried out:
- 18.1 The rear courtyard acoustic walls shall be reconfigured and constructed to a height of not less than 3 metres above the finished courtyard level. The maximum height of the courtyard wall shall be no more than 4 metres above existing ground level and its external colours are to be in keeping with the external colours of the hotel building. The wall can be constructed of masonry, lapped and capped timber fencing, clear polycarbonate, modular wall system, cement panelling and timber framework or an acoustic equivalent. Details to be provided to Council for approval prior to extended hours of the hotel commencing.
- Acoustic absorption panels to 50% of the internal walls of the semi-enclosed external smoking area shall be provided. These panels are to be 50mm thick fibreglass building blanket (35 kg/m<sup>2</sup>) faced with perforated metal, or timber.
- 18.2. The external semi-enclosed smoking area is to comply with the restrictions and requirements of the *Smoke Free Environment Act 2000* and the *Smoke Free Environment Regulations 2007*.

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18.3. Doors, windows and other openings (including the airlock to the smoking area) are to be kept closed except when patrons are leaving the ground floor public bar.

18.4. No speakers or PA systems are to be used in any external areas or the semi-enclosed smoking area between the hours of 12am to 3am, excluding emergencies.

**ADVISORY NOTE:**

1. The applicant is to ensure that the fire safety provisions applicable to this hotel are met at all times.
2. If there is an inconsistency between the consent conditions and the plan of management then the consent conditions prevail.

  
T A Bly  
Commissioner of the Court  
l/jr

**AT - 4 Management Plan**

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**Annexure 'B'**  
**Plan of Management**

**1.0 Introduction**

This document sets out the methods by which the Hotel Management will address potential issues that may be of concern to neighbours of the Hotel, the Police, Council, the OLGR and the owners of the Hotel.

The key aspects of the Management Plan relate to:

- \* The hours of operation of the Hotel.
- \* Responsible Service of Alcohol.
- \* Patron behaviour and patron control.
- \* Security issues.

For assistance in understanding this Management Plan a Floor Plan has been included as Schedule 1 and a Site Plan has been included as Schedule 2. Detailed on the Floor Plan are:

CCTV Camera Positions  
CCTV Control position/monitors  
Speaker Positions  
Speaker Control Positions  
Location of external Plant  
Waste Collection and Storage points

Detailed on the Site Plan are the Security Patrol Areas.

**2.0 Hours of Trading**

2.1 The Hotel is authorised to trade:

- (a) Monday through to Wednesday 5.00am - 12.00am
- (b) Thursday 5.00am - 3.00am
- (c) Friday 5.00am - 3.00am
- (d) Saturday 5.00am - 3.00am
- (e) Sunday 10.00am - 12.00 midnight.

2.2 No live music entertainment on Thursday, Friday or Saturday is to extend past 12.00 am.

2.3 Liquor Service will cease 15 minutes prior to close of trade.

**3.0 Patron Capacity**

On any day or night when the premises trades after midnight the number of patrons is not to exceed 250 at any one time.



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#### **4.0 Key Management Policies**

##### **4.1 Responsible Service of Alcohol**

- 4.1.1 It is the Management policy, in addition to being a condition of the Liquor Licence that all laws are complied with, in particular with regard to the sale/consumption of alcohol on the premises.
- 4.1.2 It will be the Management's responsibility to educate the staff in order to help ensure the safety of customers. The Management's primary responsibility is for the safety and well being of all the patrons, staff and Management.
- 4.1.3 Staff and the Manager on duty will be responsible for not serving alcohol to intoxicated persons and minors or allowing intoxication on the premises.
- 4.1.4 Management and staff are responsible for adhering to all the policies on alcoholic beverage service.
- 4.1.5 Prior to any staff member serving alcoholic beverages, they must undergo and complete a Responsible Service of Alcohol Course approved by the Authority (NSW Casino Liquor and Gaming Control Authority).
- 4.1.6 Food in the form of a light meal will be available on the premises during all trading hours.

##### **4.2 Identification Policy**

- 4.2.1 A strict identification policy will be enforced to ensure that proper, valid identification of age is presented upon request before patrons are allowed to enter the premises. Minors may enter to attend the Bistro & Beer Garden area only if accompanied and in the immediate presence of a parent or guardian. No children will be permitted to the gaming area that is screened from view.
- 4.2.2 The Management will only accept the following as forms of identification:
  - \* A valid driver's licence with a photo; or
  - \* A valid passport with photo; or
  - \* A valid Photo Card.



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**4.3 Gambling**

The Management will focus on the following measures and strategies in relation to gambling:

- \* Management and security personnel will be vigilant to make sure there is no underage gambling on the premises.
- \* Brochures are & will be available to provide information about gambling responsibility and contact phone numbers available for problem gambling.
- \* Signs are & will be displayed advising the unavailability of credit.
- \* Signs are & will be displayed advising of the availability of problem gambling counselling services.
- \* Links are & will be established with community organisations in the area such as problem gambling and other counselling services, health centres, local doctors, hospitals, local councils, legal centres and welfare organisations.
- \* All signage required to be placed on or in the immediate vicinity of any gaming machine in the premises are & will be so placed. Management will conduct on a weekly basis an audit to ensure such signage remains posted as required,

**5.0 Security & Safety**

**5.1 Code of Conduct for Security Personnel**

5.1.1 All Security Personnel will:

- \* Be licensed under the appropriate Security Industry legislation and have completed a recognised RSA course.
- \* Wear distinctive uniforms that display "Security" and wear a badge with their name and security licence number.
- \* Maintain a well-kept, tidy and professional appearance and be at all times easily recognisable to other staff and patrons.
- \* Be respectful of people and treat people in a dignified manner.
- \* Maintain and carry in working order effective communication devices (walkie-talkies) in order to facilitate effective communication with all other security personnel on duty at the Hotel and Hotel Management.

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- 5.1.2 Management will, on nights when the premises trade through the extended hours ensure that security is available at the premises provided on a ratio of 1:100 patrons or such additional security as is deemed necessary by Management having regard to anticipated trading conditions.
- 5.1.3 The minimum level of security required for the Hotel may be varied by agreement between the Local Licensing Officer for the area and the Licensee provided that notice of such change is given to the Authority.

5.2 Security Officers Duties during Extended Trading Hours

- 5.2.1 General patrolling the area of the Hotel in the immediate proximity of the premises from 9.00pm till the last patron has left the immediate proximity of the premises.
- 5.2.2 General patrolling of the internal areas of the Hotel to ensure compliance with harm minimisation principles of the Liquor Act.
- 5.2.3 Prevention of food and drink entering the Hotel.
- 5.2.4 Prevention of any glassware leaving the Hotel (other than packaged liquor sales allowed under the Hotel Licence).
- 5.2.5 Ensure that all patrons leaving the Hotel do so quickly and quietly and from 12.00 midnight onwards and continually request patrons leaving the Hotel to do so quickly and quietly.
- 5.2.6 Assist patrons leaving the premises by either arranging taxis or assisting patrons onto the courtesy bus provided by the Hotel.
- 5.2.7 All staff and security personnel will ensure that the behaviour of patrons entering and leaving the premises does not detrimentally affect the amenity of the area.
- 5.2.8 Report to Police any drinking or antisocial behaviour of persons in the area (be they by patrons or other parties) in particular in any Alcohol Free Zones in the locale of the Hotel premises.
- 5.2.9 Prevent any patron or person (other than staff) entering the Hotel premises after 12.00 midnight (other than from the external smoking area).
- 5.2.10 Ensure that one security guard is stationed at the rear exit/entrance to the Hotel from 12.00 midnight till close of business.
- 5.2.11 All employed security officers are to perform security duties only and are not to be employed or used for other duties at the hotel.
- 5.2.12 Security will supervise vehicles vacating the car -park areas to ensure any patrons exit in a responsible manner, any patrons leaving in vehicles in a

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manner deleterious to the amenity of the immediate locale of the Hotel will be recorded and where appropriate/possible patrons counselled.

5.2.13 If queuing outside the premises does occur, management will ensure adequate numbers of security are in attendance and are to erect if necessary:

- \* temporary ropes and bollards;
- \* maximum queue numbers will be set determined by the nature of the event or occasion giving rise to such any queue; and
- \* staff will ensure all patrons queuing to enter the premises behave in an orderly manner.

5.2.14 From 9.00pm until 3.30am (or until the last patron has left the area – whichever is the earlier) on the following morning;

- (i) 1 or 2 Security will patrol the area of the Hotel, including the car park of the Hotel to ensure that patrons do not loiter or linger in the area or cause nuisance or an annoyance to the neighbourhood.
- (ii) 1 or 2 Security will regularly (at least every hour) patrol along Richmond Road 300 metres either side of the Hotel (such patrols to be at the discretion of Management in inclement weather) in accordance with the arrows on the Site Plan at Schedule 2.
- (iii) A minimum of 1 licensed uniformed security guard will be at each entry or exit point used during the extended trading hours from 12.00 am. Only the rear door will be utilised for entrance/egress to the Hotel from 12.00 midnight (apart from emergencies).
- (iv) On Thursday, Friday or Saturday nights when extended trading hours are utilised a minimum of 2 licensed uniformed security guards will be employed at the premises from 9.00 pm until 3.30am or until the last patrons have left the area (whichever is the earlier).

5.3 Door Policy/Dress Code

5.3.1 The Management shall direct Security to refuse entry if guests:

- \* Do not meet the dress code requirements; and/or
- \* Exhibit signs of intoxication;
- \* Behave in a quarrelsome or unruly manner;

5.3.2 Guests must at a minimum be dressed in smart or casual attire, wearing suitable footwear having regard to the locality of the Hotel.

5.3.3 No guests will be allowed access (except from designated smoking areas) to the Hotel building on Thursday, Friday or Saturday after 12.00 am.



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**5.4 Occupancy/Capacity**

Management will ensure that security personnel monitor and maintain occupancy/capacity levels in the premises in accordance with their approved capacity of the Hotel (as from time to time provided for in any entertainment approval or relevant standard).

**6.0 Operational Procedures**

**6.1 Incident Report**

Management will provide the premises with an Incident Register in the Form issued by the OLGR. Management or security shall record in the "Incident Register" details of any matters upon which security has reported. Security or Management shall note in the incident register details of all incidents as provided for in the Incident Register.

**6.2 Registering of Complaints**

The Hotel shall make known to any complainants the Hotel phone number.

Any complaints received must be directed to the Manager on duty who must upon receipt of such complaint;

- a) Enter same into the Complaints Log to be kept at the Hotel;
- b) Investigate the complaint and take any action necessary to alleviate any disturbance to the quiet and good order of the neighbourhood if necessary;
- c) Record details of what action has been taken;
- d) Ensure that the complainant is spoken to the next day to determine that action taken to successfully resolve the matter complained of.

**6.3 Operational Management Report**

An Operational Management Report shall be kept on a daily basis identifying the nature of entertainment, the approximate number of patrons and the time of closing.

**6.4 Security Telephone number**

The Tavern's management shall (during times that the Tavern is) trading arrange for the display of a telephone number at the premises to clearly identify a number to be rang in relation to any complaints or issues in relation to the operation of the Tavern.

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**7.0 Bus Service**

**7.1 Provision of Bus Service**

The Hotel shall provide a bus service on Friday & Saturday nights for patrons to utilise upon their departure from the premises. The route of that bus service will be displayed inside the entrance to the premises. Announcements will be made from 11 pm to close of business that the bus service is available and the times that it will be leaving. Security is to register the names of any patrons wishing to utilise the bus service and advise such patrons when the bus service is leaving. Security will ensure that patrons waiting for the bus remain inside the premises. Security will use their best endeavours to ensure that those patrons waiting for the bus service are notified that the bus is leaving at least 5 mins prior to its departure.

The Bus Driver is to remain in contact with Security and shall advise security when he/she they are returning to the Hotel.

**7.2 Provision of daily log for Bus Service**

A daily log shall be kept identifying the number of patrons using the bus service. The daily log shall also include any incidents associated with the use of the bus.

**8.0 Signage Board**

The Licensee will erect a signage board, at the entrance and exits of the Hotel, which shall include appropriate notice as to available transport and policies relating to leaving the Hotel area. That signage board will also have clearly written on it that no glasses are to be taken from the premises together with a request that patrons leave quietly. The signage posted will advise of the availability of the Hotel bus service including the route the bus service takes and the expected departure times from the Hotel as well as the capacity of the bus.

Separate signage will be provided to inform patrons of the "lock out policy".

**9.0 Entertainment & Acoustic Measures**

Entertainment and acoustic measures will be carried out in accordance with this Management Plan.

**10.0 CCTV**

10.1 Management will ensure all CCTV cameras are operating in accordance with manufacturers specifications and any fault is rectified as soon as practicable after detection.

10.2 Management will adopt as a minimum the OLGR guidelines on the provision of CCTV cameras in licensed premises.

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- 10.3 CCTV surveillance recordings will be maintained for 28 days in normal circumstances.
- 10.4 Management and or appropriate staff will provide copies of any footage recorded within a reasonable time of any request by an appropriate officer of the NSW Police Service, the OLGR or Council.

#### **11.0 Noise Management**

##### **11.1 Noise from the Licensed Premises**

- The  $L_{A10}$  noise level emitted from the licensed premises shall not exceed the background noise level in any Octave Band Centre Frequency (31.5 Hz - 8 kHz inclusive) by more than 5 dB between 07:00am and 12:00 midnight at the boundary of any affected residence.
- The noise level emitted from the licensed premise shall not exceed the background noise level in any Octave Band Centre Frequency (31.5 Hz - 8 kHz inclusive) between midnight and 07:00am at the boundary of any affected residence.
- Notwithstanding compliance with the above, the noise from the licensed premises shall not be audible within any habitable room in any residential premises between the house of 12:00 midnight and 07:00am.

For the purposes of this condition, the  $L_{A10}$  can be taken as the average maximum deflection of the noise emission from the licensed premises.

##### **11.2 Noise from mechanical plant installed on the Premises**

- The  $L_{Aeq}$  noise level emitted from mechanical plant installed and operated on the Premises shall not exceed the background noise level by more than 5 dB when assessed at any point on a residential property.

In accordance with assessment procedures recommended in the DECC, IMP modifying factor corrections shall be applied to the source noise to account for tonality, intermittency, etc.

- 11.3 All speakers shall be removed from the front (Richmond Road frontage) of the Premises.
- 11.4 No entertainment shall be provided in the courtyard at any time.
- 11.5 No amplified sound shall be permitted in the rear courtyard between 7.00pm and 12.00 mid-day, seven (7) days a week.



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- 11.6 The rear courtyard acoustic walls shall be reconfigured and constructed to a height of not less than 3 metres above the finished courtyard level. Details to be provided to Council for approval prior to construction.
- 11.7 Sound absorption panels shall be applied to 40% of the internal walls, equivalent to 50mm thick 35kg/m<sup>2</sup> fibreglass faced with perforated metal or timber providing an open area of not less than 21%.
- 11.8 Access to the rear courtyard when entertainment is provided inside the premises when shall be via the rear sound lock door arrangement only.
- 11.9 The sound lock servicing the courtyard shall be reconfigured such that one door is closed at all times.
- 11.10 After midnight a maximum of 10 persons shall occupy the rear courtyard and their activities limited to smoking only (no drinking).
- 11.11 Amplified sound is not permitted for private functions held within the rear courtyard.
- 11.12 All amplified sound equipment installed on the premises shall be installed and operated with sound limiting controllers.
- 11.13 Access and egress for the Premises between 10.00pm and midnight shall be restricted to the rear door and one front door.
- 11.14 Access and egress for the Premises after midnight shall be restricted to the rear door only.
- 11.15 Patrons waiting for transport shall not congregate outside the Premises after 10.00pm.
- 11.16 No patrons shall be permitted to consume beverages provided at the Premises outside the licensed area.
- 11.17 The fire doors servicing the Premises shall be acoustically upgraded or replaced with a sound lock.
- 11.18 The fire door shall be fitted with an automatic switch installed to shut off power to the bar lighting if the doors are opened after 10.00pm or when any amplified music is provided within the Premises.
- 11.19 Prior to occupation of the Premise for the extended hours of trading an acoustic audit shall be undertaken by a suitably qualified person (approved by Council) to certify that all noise mitigation recommendations have been implemented and effective. A report shall be submitted to Council for approval prior to extending trading hours.
- 11.20 During the first two weeks of trading an acoustic audit shall be undertaken by a suitably qualified person (approved by Council) to certify that all noise

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mitigation recommendations are operating effectively and the level of noise emitted from the Premises satisfies the approval noise conditions. A report shall be submitted to Council to present the findings.

- 11.21 Within six (6) months of trading a second acoustic audit shall be undertaken by a suitably qualified person (approved by Council) to certify that all noise mitigation recommendations are operating effectively and the level of noise emitted from the Premises satisfies the approval noise conditions. A report shall be submitted to Council to present the findings.
- 11.22 Rear Courtyard
- 11.22.1 There is to be no entertainment in the rear courtyard at any time.
- 11.22.2 The speakers affixed to the rear wall of the tavern are not to be used after 7.00pm.
- 11.23 Internal music and other noise sources after midnight
- 11.23.1 Noise from any DJ or juke box shall not exceed 85 dB(A) measured at 2.0m from the noise source.
- 11.23.2 Noise from any TV shall not exceed 80 dB(A) measured at 1.0m from the noise source.
- 11.23.3 No microphones, public address systems, or projections are to be used after midnight.
- 11.23.4 No live music bands are allowed to perform after midnight.
- 11.24 Emergency doors in front (northern) elevation of eastern public bar facing Richmond Road
- 11.24.1 The emergency doors in the front (northern) elevation of the eastern public bar are to be acoustically upgraded to include 9.8mm compressed sheet 11 on the outside with a centric rebate of not less than 25mm, plus an acoustic seal.
- 11.25 Restriction of use of rear courtyard area to smokers only after midnight
- 11.25.1 The rear courtyard is only to be used by no more than ten (10) smokers after midnight.
- 11.25.2 Access by smokers into the outdoor courtyard area is to be via the exit with the air lock door.
- 11.25.3 A sliding gate or similar shall prohibit access to the rear courtyard for the main rear entry of the Tavern for operation after midnight.
- 11.25.4 The area designated as a smoking area is to comply with the restrictions



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and requirements of the *Smoke Free Environment Act 2000* and the *Smoke Free Regulation 2007*.

11.25.5 No consumption of alcohol is permitted in the outdoor courtyard area after midnight.

11.26 Front (northern) elevation facing Richmond Road

11.26.1 The verandah seating area adjacent to the front (northern) elevation is not to be used by patrons at any time when entertainment is being provided and not after 10.00pm on other occasions.

11.26.2 Patron access after 10.00pm on any night is to be restricted to the rear of the premises.

**12.0 Amendment to this Plan**

If, in circumstances where experience shows that it is reasonable or desirable to modify any provision of this plan for the better management of the Clarendon Tavern, that modification shall be made to the plan only after consultation with Windsor LAC and upon receipt of the consent the Hawkesbury City Council's Director of City Planning, of which such consent shall not be unreasonably withheld. The provisions of this plan shall be reviewed in writing by the Applicant at least once each year. The written review shall be provided by the Applicant to Windsor LAC and Hawkesbury City Council, Director of City Planning.

Dated:  
Signed

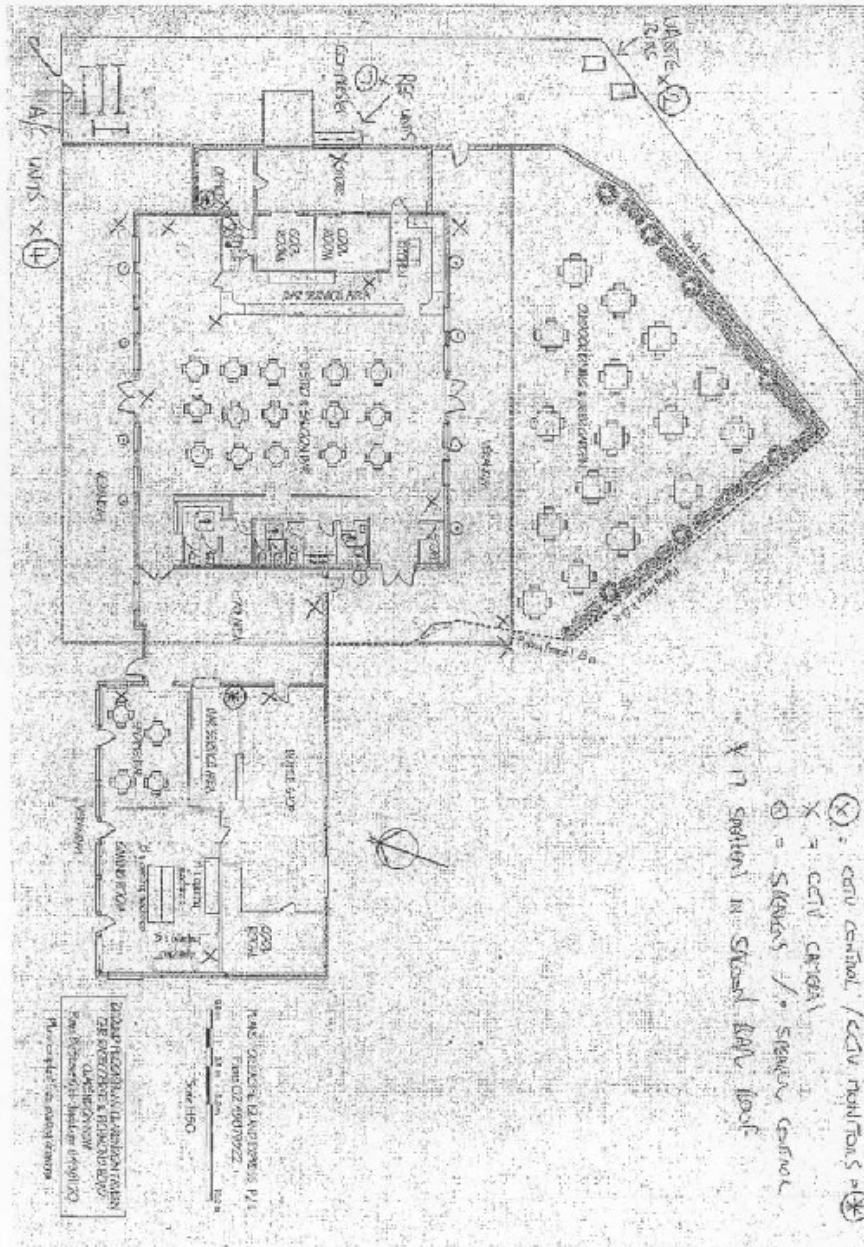
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Sanders Hospitality Management & Consulting

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### Schedule 1 – Floor Plan



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**Schedule 2 – Site Plan**

→ Represents approximate patrolling distance of external security guards to a maximum of 300m either side of the Clarendon Tavern.



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oooO END OF REPORT Oooo

Date: 20/10/2009 Document Number: 3/20024

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**Item: 104**                    **CP - Planning Proposal - 66, 68, 70 The Terrace, Windsor - (95498)**

**Previous Item:**            118, Ordinary (24 June 2008)  
                                 278, Ordinary (8 December 2009)

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**REPORT:**

**Executive Summary**

Council at its Ordinary Meeting of 8 December 2009 resolved to rezone Lot 1 DP 609363, Lot 1 DP 741997 and Lot 1 DP 159404 - 66, 68 and 70, The Terrace, Windsor from Housing to Business General 3(a), and prepare a planning proposal at the land owners' expense, to support the rezoning of the properties.

In accordance with the Council's resolution, a planning proposal seeking rezoning of the subject properties from Housing to Business General 3(a) to enable future retail/commercial development on the properties was received from Montgomery Planning Solutions, acting on behalf of the landowners on 22 July 2010.

The purpose of this report is to advise Council of the public authority consultation and public exhibition of the Planning Proposal and to recommend that with the planning proposal not proceed.

**Background**

An application seeking rezoning of certain properties bounded by George Street, New Street, The Terrace and Johnston Street, Windsor to Business General 3(a) was received from Ingham Planning acting on behalf of the applicant, Pirasta Pty Ltd on 1 January 2006. The application included the subject three properties being 66, 68 and 70 The Terrace that are currently used for residential purposes (see Attachment 1), and not heritage listed. The main aim of the rezoning was to enable a retail/commercial development with shop top housing on the land.

A report with a recommendation to proceed with the proposed rezoning with the exception of 66, 68 and 70 The Terrace was reported to Council at its meeting of 24 June 2008. At this meeting Council resolved to rezone the properties, excluding 66, 68 and 70 The Terrace, to 3(a) Business General as per the report recommendation. The reasons not to include these three properties in the report were:

- The inter-war style of housing on the subject properties significantly contribute to the streetscape and character of The Terrace.
- The re-development of these properties has the potential to adversely affect the character of Windsor.
- Adaptive re-use of the dwellings that may compliment development on the adjoining site can be achieved under the current provisions of Hawkesbury LEP 1989.

In accordance the above resolution, draft Hawkesbury Local Environmental Plan 1989 (Amendment 154) to allow a retail/commercial development with limited shop top housing on the site was prepared and consulted with the relevant public authorities under Section 62 of the EP& A Act 1979. None of the submissions received from the public authorities raised objection to the proposed rezoning. The submission received from the Heritage Branch of the Department of Planning supported the non inclusion of No.s 66, 68 and 70 The Terrace Windsor in the rezoning on the basis that redevelopment of these properties has potential to adversely affect streetscape and character of The Terrace and encouraged the adaptive reuse of these three properties.

That draft LEP was exhibited for the period Thursday 22 October 2009 to Monday 23 November 2009. Five submissions were received, two from Sydney Water and the Department of Defence with no objection to



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the proposed rezoning and three from the land owners of 66, 68 and 70 The Terrace, Windsor requesting to include their properties in the proposed rezoning to Business General 3(a) for the following reasons:

*"To have businesses all around us and not be able to likewise development is in our opinion unjust*

*The 3 houses in the Terrace would be the only residential properties in the entire block within the boundaries of George, Johnston, New and the Terrace. There would be no buffer between commercial and residential, usually a street or a park.  
The Council maintain that they want to retain the streetscape, residential environment, of the Terrace but not that of New St. or Johnston St.*

*The Terrace has already 2 commercially zoned properties being the 3 storey Professional Retail Centre on the corner of Kable Street and the car park and toilet block on the opposite corner. There is also at least 3 professional premises in The Terrace Physiotherapy with a hydrotherapy pool, Surveyors and a Massage and Aromatherapy business. The Terrace between New and Catherine Street is fully parked out during business hrs by staff from the commercial area. We find this not to be a typical residential environment.*

*If the properties are re-zoned commercial the council will remain in control of the type and design of the structure. Therefore why is it assumed that any new development would be detrimental to the streetscape."*

*Several properties that border the rear of my property have been rezoned to business general and I now face the prospect of having buildings to a maximum of 10 metres high being erected on my back boundary and looking into my property and destroying my privacy.*

*My property and my two neighbours are now unfairly affected with no proper buffer between our properties and the high rise behind us.*

*A proper buffer between high rise commercial and residential should be the Terrace itself and Hollands Paddock and New Street.*

*If my property remains "residential" Council's actions has seriously diminished its value".*

A report to Council on the outcome of the public exhibition and the consultation with the relevant public authorities recommended that the draft LEP be forwarded to the Department of Planning for finalisation and gazettal and maintained that the three properties not be rezoned. Council at its meeting of 8 December 2009 considered this report and resolved as follows:

*"That:*

- 1. Council forward the Draft Hawkesbury Local Environmental Plan 1989 (Amendment 154) to the Department of Planning requesting that the plan be finalised and made.*
- 2. Council resolve to rezone the following properties from Housing to Business General 3(a)/B2 Local Centre*

<i>Lot 1 DP159404</i>	<i>70 The Terrace, Windsor</i>
<i>Lot 1 DP741997</i>	<i>68 The Terrace, Windsor</i>
<i>Lot 1 DP609363</i>	<i>66 The Terrace, Windsor</i>

- 3. A Planning Proposal be prepared, at the landowner's expense, to support the rezoning of the properties.*
- 4. Prior to the finalisation of the draft LEP, a Development Control Plan be prepared for Windsor, in accordance with the principles of the Windsor Master Plan, to assist in the guidance of development on these properties in relation to setbacks, height and heritage matters.*

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5. *The Draft LEP and the draft Standard Template LEP be consolidated prior to sending to the Minister for gazettal if the progress and timing of the two draft plans becomes aligned".*

**Consultation**

On 22 November 2010 the Planning Proposal rezone Lot 1 DP 609363, Lot 1 DP 741997 and Lot 1 DP 159404 - 66, 68 and 70, The Terrace, Windsor from Housing to Business General 3(a) was forwarded to the Department of Planning (DoP) pursuant to Section 56 of the EP & A Act 1979. The DoP subsequently advised Council on 10 January 2011 that Council may proceed with the Planning Proposal subject to the following conditions:

1. *Community consultation is required under sections 56(2) (c) and 57 of the Environmental Planning and Assessment Act 1979 ("EP&A Act") as follows:*
  - (a) *the Planning Proposal must be made publicly available for 28 days, and*
  - (b) *the relevant planning authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 4.5 of A Guide to Preparing LEPs (Department of Planning 2009').*
2. *Consultation is required with the following public authorities under section 56(2)(d) of the EP&A Act:*
  - *Department of Environment, Climate Change and Water*
  - *Ministry of Transport*
  - *NSW Transport and Infrastructure*
  - *Roads and Traffic Authority*
  - *State Emergency Services*

*Each public authority is to be provided with a copy of the Planning Proposal and any relevant supporting material. Each public authority is to be given at least 21 days to comment on the proposal, or to indicate that they will require additional time to comment on the proposal. Public authorities may request additional information or additional matters to be addressed in the Planning Proposal.*

**Consultation with the Public Authorities**

The above public authorities were consulted with, and submissions were received from all the authorities other than the State Emergency Services. The submissions raised no objection to the Planning Proposal other than the following comments from the Ministry of Transport:

*Further traffic assessment by the Roads and Traffic Authority (RTA) is necessary to ensure the proposal will have no significant impact on traffic in the vicinity.*

It also advised that any impacts on pedestrians and cyclists and opportunities to improve their easy and safe access to the site should be taken into consideration. However, the RTA raised no issues.

The submissions did not warrant any amendments to the Planning Proposal.

**Community Consultation**

The Planning Proposal and the supporting documentation were placed on the public exhibition at the Council offices, 366 George Street, Windsor for the period Thursday, 17 March 2011 to Monday, 18 April 2011 in accordance with the Gateway Determination (see Attachment 2 to this report). 19 submissions including a petition containing 99 signatures were received. All the submissions received except the submission from Pirasta Pty Ltd which sought Council's view on the future use of the subject properties

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opposed the planning proposal and raised various issues of concern. A submission responding to the issues of concern raised in the public submissions was also received from the applicant on 17 May 2011.

The following section is a summary of the issues raised in the submissions together with assessment comments after each issue:

**1. Council Report and Resolution of 24 June 2008**

- We totally support the report's following statement:

*"The application seeks to rezone 3 properties along The Terrace, being No.s 66, 68 and 70. Whilst these properties are not listed as heritage items they contribute significantly to the streetscape and character of The Terrace and represent the inter-war style of housing. The re-development of these properties has the potential to adversely affect the character of Windsor. Adaptive re-use of the dwellings are encouraged and may compliment development on the adjoining site, however this can be achieved under the current provisions of Hawkesbury LEP 1989."*

*"The Heritage Branch also supports the non inclusion of No.s 66, 68 and 70 The Terrace Windsor in the rezoning on the basis that redevelopment of these properties has potential to adversely affect streetscape and character of The Terrace. The Heritage Branch encourages the adaptive reuse of No.s 66, 68 and 70 The Terrace Windsor."*

- Strongly reject the proposal and urge Council to uphold the original resolution.
- Council's previous decision to retain the current zoning of these properties is the correct decision.
- What is the reason for overturning Council's decision of 24 June 2008?
- The Heritage Branch and Council reports on the matter did not support the rezoning of the subject properties. Do Councillors listen to developers only?

The Applicant states that:

*The Council subsequently resolved on 8 December 2009 to rezone the subject properties. This resolution occurred in an open Ordinary Meeting of the Council when it was considering submissions in response to the exhibition of the previous draft LEP.*

**Comment:**

Submissions support of the above statement contained in Council reports dated 24 June 2008 and 8 December 2009 was noted. This report highlights the outcome of the public exhibition of the planning proposal and provides relevant background information for Council to determine the matter.

**2. Public Consultation**

- The proposed rezoning of 66, 68 and 70, The Terrace is unacceptable as residents were not consulted and advised of its determination by Council in 2009.
- There was no prior knowledge of the Planning Proposal other than its public exhibition.
- Residents seek effective notification and consultation process including open public meetings to voice their concerns over any planning proposal prior to its determination.
- Have only developers a say in future planning or development of our town?
- A public hearing on the matter is requested.

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The applicant states that the public hearing is a matter for Council to decide. However, the applicant respectfully submits that a hearing is not required in view of the size of the proposal, the nature of the issues raised and the relatively small number of objections received.

**Comment:**

The purpose of the exhibition of the planning proposal seeking rezoning of the subject properties was to consult the community on the proposal and consider any submissions received concerning the proposed rezoning prior to its determination by Council. According to Council's notification procedure, people who made submissions in response to a public exhibition of a draft plan only are advised of Council's decisions. This approach is totally consistent with Section 57 the *Environmental Planning Assessment Act, 1979*.

Given the relatively minor nature of the planning proposal a public hearing on the matter is not warranted.

**3. Heritage Significance and Unique Character**

- One of the reasons why we bought a heritage listed house and decided to live in The Terrace was the historic values of Windsor which is one of the oldest towns in Australia with rich heritage character and a long history. A significant number of heritage properties are located along Moses Street and The Terrace down to Windsor Bridge. The Terrace is one of the most historic streets in Windsor with 14 heritage buildings with varying architectural styles and is predominantly characterised by single dwellings.
- The proposal which seeks to redevelop the subject properties for future retail/business facility as an extension to the existing shopping centre will significantly impact on the unique character and the pleasing residential environment of The Terrace which attracts many tourists, visitors and architecture/building students as well as the future sustainability of Windsor as a viable historic and environmental precinct.
- Although Council appreciates Hawkesbury's historic values and character, Riverview Shopping Centre is an eyesore and it does not compliment the heritage significance and the character of The Terrace and Hawkesbury. During the Riverview Shopping Centre development assessment residents were advised that the future development of the shopping centre would not impact The Terrace as it is an important residential street with significant historic and heritage values. Now a similar development on the subject site would significantly affect the character of Windsor.
- The subject properties significantly contribute to The Terrace streetscape as they are next to and above Howe Park/Holland's Paddock.
- As a resident of The Terrace for more than 30 years I have observed that many heritage items have disappeared and Council has the opportunity to preserve these properties. Two of the subject properties have significant historic values and the house on 68, The Terrace has been built originally in 1860's.

The applicant states that:

*It is recognised that there are a number of heritage items in the locality, however, the existing dwellings are not listed as heritage items nor is the land within a conservation area. Notwithstanding, the planning proposal includes a framework for a site specific development control plan which recognises the setting of the land and suggests built form controls relating to:*

- Building Height
- Building Bulk and Appearance
- Roof Form
- Boundary Setback
- Front Gardens



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*Council is invited to prepare a site specific development control plan as suggested in the planning proposal.*

In response to the issue of significant impact on the character of The Terrace the applicant states that:

*This matter is addressed in the planning proposal and a number of detailed development controls are suggested to ensure that the scale and form of any buildings on the site respect the character of the surroundings.*

*It has been assumed by many that the proposal represents an expansion of the existing Riverview Shopping Centre. The planning proposal is not connected to the existing Riverview Shopping Centre and there is no proposal to expand the centre over this land. The Planning Proposal is submitted on behalf of the three owners of the land. Pirasta has no financial interest in the land nor are there any contracts or agreements in place in this respect.*

*In contrast, it is submitted that this site should be seen as an appropriate transition between the “big box” centre and the residential area to the south of New Street and to the west of the Terrace.*

**Comment:**

Both the objectors and the applicant's comments on historic values and heritage significance of The Terrace and Windsor are agreed with. As the subject properties are not heritage listed and are not adjoining any residential item or conservation area or within a conservation area redevelopment of the properties will not affect the heritage character or the significance of The Terrace.

Many of the submissions have claimed the subject three properties contribute significantly to the streetscape and character of The Terrace is supported. The statements in the June 2008 report are reiterated in relation to the importance of the retention of the existing inter-war style houses to preserve the streetscape and unique character of The Terrace.

Council's past assessment on the Riverview Shopping Centre development has concluded that the development compliments the heritage character and significance of the locality.

**4. Adaptive re-use of dwellings**

- Retain the existing zoning of the subject three properties and allow adaptive reuse of them for commercial uses whilst retaining their historic values.
- Council has approved certain business uses such as physiotherapy, hypnotherapy and aromatherapy as adaptive reuses. Similarly the adaptive reuse of the subject properties for certain office/business purposes whilst maintaining the current zoning may be more appropriate.
- The proposed rezoning is not the best way of achieving the objectives or intended outcomes. Employment opportunities such as professional services could easily be provided under the existing zoning through adaptive reuse of the subject properties as needs arise. A number of successful businesses currently operating in The Terrace are good examples to support this approach. By comparison, the “build and they will come” approach used in recent commercial development in Windsor has been a failure.

The applicant indicates that:

*'If this planning proposal does not proceed, the land will be zoned R2 Low Density Residential under the template LEP. This zoning does not permit professional and commercial chambers, as currently permitted in the 2(a) zone. Therefore the potential for adaptive reuse of the existing dwellings (as previously suggested by the Heritage Branch of the DOP) is significantly reduced in the absence of rezoning.*

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**Comment:**

It is agreed with the applicant's claim. Under the current Hawkesbury Local Environmental Plan 1989 the subject properties are zoned Housing and professional and commercial chambers are permitted in this zone. However the equivalent R2 Low Density Residential zone to Housing zone in the draft Hawkesbury Local Environmental Plan 2011 such land uses are not permitted.

**5. Employment and Retail/Business Opportunities**

- Given the significant number of vacant shops (approximately forty five (45) within the Windsor Town Centre), the main aim of the proposal is to create retail employment opportunities will not be achieved rather it will facilitate relocation of existing shops into the new facility and peoples shopping experience in the town centre would be limited mainly to the Riverview Shopping Centre and thereby discourage visitors or shoppers from surrounding suburbs. Also, the town centre has a disproportionate number of discount and charity shops which indicates that retail/business activities are declining in the town centre.
- There are vacant shops in the Macquarie Centre since its opening for business.
- Out of the three parallel streets namely The Terrace, George Street and Macquarie Street in Windsor, The Terrace is the only surviving residential street. Is Council planning to have a commercial zone for the entire town centre?
- The current Windsor population is inadequate to sustain existing retail facilities and there are no planning strategies to provide additional residential accommodation in Windsor.
- The likely development of a service station on The Terrace is a concern as the proposed rezoning to Business General 3(a) would allow these types of development. Now Woolworths has one in town and Coles will open one near the Riverview Shopping Centre.
- In the next ten (10) years, there will be more vacant shop in major shopping centres as online sales/businesses are becoming very popular and the demand for retails outlets may be less.

The applicant indicates that:

*'The proposed commercial zoning will allow office and business premises as well as shops. The vacancy rates and type of shops in a town centre fluctuates over time due to a number of factors, including internal and external economic factors.*

*As mentioned in the proposal justification, this site is a unique opportunity to provide unconstrained commercial land for future development. Whether shops, offices or business premises ultimately occupy the site will be determined by the market at that time.*

*The planning proposal will create additional opportunities for commercial building, creating both short term construction jobs and long term retail and or administrative jobs.*

*Although service stations are a permissible use with consent in the 3(a) zone it is unlikely that a development application for a service station would succeed in this location due to adverse traffic impacts and inconsistency with existing character and proposed development controls.*

**Comment:**

With the recent gazettal of Hawkesbury Local Environmental Plan 1989 (Amendment No. 154) which rezoned certain adjoining properties within the retail/business core bounded by George Street, New Street, The Terrace and Johnston Street, Windsor to Business General 3(a), the subject three properties are the only remaining residential land within the retail/business core (see Attachment 1 to this report). Being immediately adjoining the existing retail/business zoned areas, the proposal could help strengthen the central retail/business core in the town centre.

It is agreed with claims that there are a significant number of shops in the town centre are currently vacant. According to Council's observations 27 shops in the town centre are now vacant and there may be various reasons for this including surrounding major shopping centres, inadequate residential population within the town centre catchment, unexciting public domain and shopping environment, changing consumer and trader behaviour, high rental rates, inability to compete with other businesses and poor exposure of shops to streets. According to Windsor Economic Development Strategy (2003), Windsor town centre has lost its vitality and affected retail/business viability as a result of the Rouse Hill Regional Shopping Centre and expanded Westpoint Shopping Centre in Blacktown. The retail/business viability is also heavily relied upon the population catchment. The Hawkesbury Residential Land Strategy (2011) states that there would be an increase of only 9,013 people by 2031 in the Hawkesbury LGA, and acknowledges that the population growth within the Windsor town centre is limited. The Hawkesbury Residential Land Strategy (2011) identifies a corridor between Windsor and North Bligh Park near the town centre for residential development subject to further investigations on development constraints.

However according to the Hawkesbury Employment Land Strategy (December 2008), additional 28,000m<sup>2</sup> retail floor space would be needed to serve the targeted 5,000 dwellings the Hawkesbury LGA by 2031, and both Windsor and Richmond town centres would need to accommodate only 7,350m<sup>2</sup> of additional retail floor space. With the recent gazettal of the Hawkesbury Local Environmental Plan (Amendment 158) approximately 6,000m<sup>2</sup> land area adjoining the Riverview Shopping Centre is now available for future retail/business purposes. This land is likely to exceed the required retail/business floor space within the town.

#### **6. Traffic, Truck Movements and Street Parking**

- Traffic movements, in particular, large truck movements and on street parking in The Terrace and the streets near the Riverview Shopping Centre cause a significant problem. The increased traffic as a result of additional retail/business area will worsen the problem and residents may be at increased risk in gaining access to and from the Terrace and crossing the street.
- Increased traffic, noise and vibration in The Terrace will affect the residential amenity.
- The residents in The Terrace and Catherine Street are experiencing significant difficulties in getting access to and from their properties because of significant on street parking as a result of the Riverview Shopping Centre's denial its employees' use of the centre's car park and the opening of Hawkesbury Physiotherapy directly opposite residential properties. The non- availability of onsite parking for employees was not mentioned in the Riverview Shopping Centre development application.
- In a number of occasions we narrowly missed vehicle accidents due to poor road vision caused by on street parking and were unable to find an on street parking spot in The Terrace for my family and friends. Additional retail/business area will worsen the situation.
- Another problem associated with on street parking is the left trolleys in The Terrace. These are subject to vandalism and they are also used by youngsters to damage properties. Why encourage more people to use The Terrace, whilst residents are unable to handle this problem.
- Streets within Windsor struggle to accommodate existing traffic volume and more retail outlets and staff parking on streets will worsen the situation.
- As the maximum 3hrs limit applies for on street parking near and around the retail/business area, employees and people who have longer business needs park their cars in The Terrace. The proposal enabling additional retail/business area will aggravate this situation.
- Pedestrian crossing is needed on the Terrace.

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The applicant states that:

*"It appears that residents of the Terrace currently experience additional traffic on their street. It is considered that development of the subject land for commercial or retail would not add significantly to traffic currently using The Terrace.*

*Although largely a residential street, The Terrace does in fact provide access to the existing commercial centre. The proposal represents a minor expansion only of the Windsor Town Centre.*

*The availability of on-street parking is a function of the staff parking policies of existing shopping centres, time limits in existing public car parks and on-street spaces in commercial zones. It is considered that the proposal will not significantly add this apparent existing problem. However it is suggested that the current problem could be addressed by introducing time limited parking along the Terrace during business hours.*

*There is no evidence to suggest that the proposal would lead to any significant increase in noise or vibration.*

*It is considered that a pedestrian crossing is not warranted as a consequence of this proposal. However, it is a matter for Council to assess.*

The applicant also states that complaints about existing delivery trucks to Coles and Woolworths is a matter for Council.

**Comment:**

The Roads and Traffic Authority (RTA) raised no objections to the making of the plan or issues of concern over the planning proposal. The proposal is a minor rezoning which would not generate a significant traffic volume and therefore the likely impact on the current performance and capacity of the local road network would be minimal. Currently traffic controlling signs and calming devices have been installed in the town centre to ensure safe and convenient vehicular and pedestrian movements in the locality.

Hawkesbury Development Control Plan requires any development to provide the required customer and staff parking onsite and as such any future redevelopment of the subject properties would not make any significant impact on street parking in the locality. The Riverview Shopping Centre provides 325 onsite car spaces, and in accordance with Council's current parking requirements for retail/business premises 315 spaces are only needed for both customers and employees. Also time and parking restrictions have been enforced within the town centre to minimise any adverse impacts on street parking and maintain easy and safe traffic movements, and if warranted such restrictions can be extended beyond the current boundaries.

Vandalism, left trolleys, a new pedestrian crossing and non-compliance matters raised in the submissions are not directly relevant to this planning proposals and Council will be able to consider such issues separately.

**7. Renewal of Town Centre**

- The proposed rezoning will not improve the image of Windsor as a shopping destination. It cannot compete with large and attractive shopping centres with a diverse range of businesses and services in Penrith and Rouse Hill.
- Windsor needs to be revitalised using its own historical and environmental assets to create a unique shopping and tourism environment and exciting experience not just convenient shopping. Other towns have been revitalised using their unique advantages to attract more businesses and accommodate additional population.
- Additional retail/business area will further ruin opportunities for attracting new businesses/services into the town centre. It needs activities and services such as arts and crafts, professional services,

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hospitality and other service industries to improve the centre's image to attract more visitors/ tourists and create more job opportunities.

- It is unable to find any reports to support the proposed benefits or the claims such as Windsor Town Centre as a better place to shop, work and live and improved liveliness of the town centre could be achieved with such a minor rezoning. On the contrary, with such a large number of vacant shops and offices in the Windsor CBD as a result of the previous overdevelopment, the town centre is clearly not a place to shop, work and live and improved liveliness is also not evident.
- Council may be interested in redeveloping the subject properties for retail/business purposes to attract businesses, but should fill vacant shops and revitalise Windsor as a thriving town centre in the region first.
- The planning proposal states that it will help improve Windsor Town Centre's image as a pleasant place to work, shop and live. How this could be achieved with the fierce movements of trucks?
- Riverview Shopping Centre has not been able to revitalise the town centre through the attraction of new services and shoppers from surrounding areas instead it has affected the amenity of the area with increased demand for on street parking due to its lack of provision for staff parking.

**Comment:**

According to centres hierarchy in the draft North-West Subregional Strategy, Windsor is a town centre. Generally a town centre contains between 4,500 and 9,500 dwellings within 800m walking distance, one or two supermarkets, community facilities, medical centre, schools, etc. The Windsor Town Centre meets the needs of the local community and is not meant to compete with either Penrith or Rouse Hill. Penrith is identified as a Regional Centre and contains a full range of services and activities to meet the needs of the region and Rouse Hill is a planned Major Centre with a major shopping centre to serve the surrounding districts.

The planning proposal seeks to provide additional retail/business land close proximity to the Riverview Shopping Centre to strengthen the main retail/business core within the town centre and provide increased retail/business activities, job opportunities and housing choice consistent with both the draft Windsor Masterplan (2004) and the subregional strategy.

It is agreed with claims in the submissions to revitalise the town centre upon the existing strengths of the town centre. This would involve renewal of Windsor Town Centre built upon its existing strengths such as rich and unique heritage, Hawkesbury River, distinctive character, its location as a gateway between the city and country, sporting and recreation opportunities and parklands and provides for the retention and integration of existing heritage buildings, conservation areas and other natural assets with a quality urban development. This is to create a exciting and pleasant shopping, tourism and recreational environment that have potential to attract more tourists and visitors from surrounding suburbs. Rather than focusing only retail activities, the renewal of the town centre with the use of its strengths to facilitate its potential dual role would help create thriving town centre with new businesses and services to create more jobs and promote the town centre's image as a place to live, visit, work and shop.

Large trucks movement affecting the amenity of the Terrace is a non-compliance issue and that cannot be considered as a permanent hindrance to create a liveable town centre, and this issue should be addressed separately.

With no proper retail analysis or study it is unreasonable to claim that Riverview Shopping Centre has not been able to revitalise the town centre through the attraction of new services and shoppers.

**8. Relationship to Strategic Planning Framework and Ministerial Directions**

- It is rejected the statement that Windsor as a major centre under the North-West Sub-regional Strategy and the need to provide additional 7342m<sup>2</sup> retail space to help achieve Hawkesbury's 3,000 new jobs and support 5,000 additional dwellings.

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- The proposal identifies the draft North-West Subregional Strategy's targets for the Hawkesbury of 3000 new jobs and 5000 additional dwellings by 2031 as the justification for the planning proposal. In our opinion the proposal seeks to achieve these targets should be based on credible forecasts of existing successful developments. We do not believe that there is evidence to support this in the Windsor Business District.
- The proposal is a superficial response to the State Strategic Planning Framework.
- The proposal does not comply with all the relevant Ministerial Directions. In particular, Directions 1.1 Business and Industrial Zones, 3.1 Residential Zones and 3.4 Integrated Land Use and Transport. The intended outcomes or perceived benefits such as reduced reliance on private vehicles and cycling and walking to shops demonstrating the compliance are not applicable to small commercial centres in semi-rural and dormitory suburban communities. The proposal does not state the increased public transport, cycling or walking since the opening of existing retail/commercial complexes, and in our opinion it is not increased.
- The proposal identifies various State and Local Government Planning Strategies which set out future development targets and asserts that the proposed rezoning will help achieve these targets. It is unable to find these discussions, any reference or empirical data to support these statements, in particular, the statements explaining the proposal's compliance with s.117 Ministerial Directions.

The Applicant states that:

*Windsor is identified as a Town Centre in the draft North West Subregion Strategy. The Strategy states in relation to Windsor: "Although potential for further growth of Windsor is limited due to flooding constraints, there remains the opportunity to renew and improve the physical, economic and cultural environment of the centre."*

*The Hawkesbury Employment Lands Study states:*

*"In commercial/business areas existing lot configurations, heritage and existing development constrains the potential for renewal and reinvestment."*

*It is considered that this minor addition of commercial / business land to the Windsor commercial centre will assist in providing additional unconstrained land for development, and does fall within the relevant strategies.*

*The community strategic plan contains the following directions for supporting business and local jobs:*

- *Offer an increased choice and number of local jobs and training opportunities to meet the needs of Hawkesbury residents and to reduce their travel times.*
- *Help create thriving town centres, each with its own character that attracts residents, visitors and business.*

*It is considered that the proposal is consistent with these directions.*

**Comment:**

The proposal refers to Windsor as a Town Centre in accordance with centres hierarchy in the draft North-West Subregional Strategy. According to the subregional strategy Hawkesbury is required to create 3,000 new jobs and 5,000 additional dwellings by 2031. The Hawkesbury Employment Land Strategy (December 2008) identifies a total of 7342m<sup>2</sup> additional retail/business floor space within Windsor and Richmond town centres to support 5,000 additional dwellings within the LGA by 2031 set by the subregional strategy. The planning proposal would enable additional 2214m<sup>2</sup> retail/business floor space adjoining the existing main retail/business core within the town centre and increased housing choice in the area. Although the subregional strategy acknowledges the town centre's limited potential for development growth due to flooding constraints it indicates that there is the opportunity to renew and improve the

physical, economic and cultural environment of the centre. The Hawkesbury Employment Land Strategy (December 2008) recommends to investigate opportunities for minor retail and commercial development near Windsor Station but it has not ruled out any opportunities for growth in the main retail/business core in the town centre. Therefore the planning proposal is consistent with both the draft subregional strategy and the Draft Windsor Town Centre Masterplan (2004).

Council is aware about the planning proposal's minor inconsistencies with section 117 Ministerial Directions 1.1 Business and Industrial Zones, 3.1 Residential Zones and 3.4 Integrated Land Use. The Gateway Determination in respect of the planning proposal dated 10 January 2011 received from the Department of Planning advised that they are of minor significance. The Department further advised that no further approval is required in relation to these Directions and Council may proceed with it.

## **9. Property Values**

- One of the submissions stated that the value of their property would be seriously diminished if the land was not rezoned. What would be the value of other opposite properties if their land was rezoned?
- Our house is a National Trust listed property, and we have spent thousands of dollars for its restoration. Future retail shops or the businesses just over the other side of New Street would decrease both its heritage and land values.

### **Comment:**

Land values are fluctuating and depended on various factors. No formal report from a valuer has been submitted in support of this claim. As the report recommendation is to not support the proposal, a Valuer report has not been requested.

## **10. Community Benefits and Interests**

- Additional retail/business area in The Terrace would not create more jobs rather it would enable relocation of existing shops in the town centre into another area.
- The community need more residential accommodation in Windsor and not shops.
- At present there are approximately 45 vacant shops in the town centre. Some of the vacant shops in the Riverview Shopping Centre, Lachlan Court and Woolworths supermarket have never been rented out since their openings. The current inability of these retail/business facilities to increase local job and training opportunities disproves the planning proposal's stated proposed benefits to community.
- This proposal will not contribute to preserve our historic streetscape. The developer will only benefit from the proposal and not the community or Windsor town centre as a whole.
- Prime residential land facing the river will be lost to allow a very ordinary retail and possible shop top housing development which does not complement Windsor's heritage significance.
- The existing three houses with backyards will be replaced with shop-top housing. The shop-top housing area would be significantly less than the area of existing three houses.
- Developers always make money and live outside and therefore the Councillors need to consider the residents' and the local business community interest when they take decisions on development proposals.
- Increased job, housing, retail and training are not appropriate nexus for this location.

## ORDINARY MEETING

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The applicant states that:

*It is considered that there is a net community benefit associated with the proposal. The benefit would stem from:*

- *Providing unconstrained commercial land for new investment;*
- *Adding to the availability of services in close proximity to an existing residential area;*
- *Providing for additional employment in the locality*
- *Controlling the future built form to ensure an appropriate transition between residential and commercial development.*

*If shop top units were to be built as a consequence of the proposal, this would add to the available of housing choice within the locality and would therefore have a positive impact.*

#### **Comment:**

The planning proposal could strengthen the main retail/business core, allow additional business/retail land to facilitate renewal of the town centre and enable an increased choice of housing with the development of shop top housing to better meet the needs of existing and future residents. However given the limited potential for population growth, the availability of a large Business General 3(a) land with an area of approximately 6000m<sup>2</sup> adjoining the subject site, 27 vacant shops within the town centre and the surrounding major shopping centres it would be difficult to claim that the proposal will enable increased retail/business and job opportunities in the town centre.

#### **Main Issues for Consideration**

The following eight issues are considered as the main issues affecting the determination of the planning proposal:

1. Planning Proposal will strengthen the main retail/business core in the Windsor Town Centre with additional 2214m<sup>2</sup> retail/business land.
2. Planning Proposal will enable increased housing choice with redevelopment of the site for mixed use development containing shop top housing.
3. Adaptive re-use of existing dwellings will not be permitted in equivalent R2 Low Density Residential zone in the draft Hawkesbury Local Environmental Plan 2011.
4. The Terrace Residents' strong opposition to the planning proposal.
5. Limited opportunity for population growth within the town centre catchment.
6. The importance of the preservation of the streetscape and unique character of The Terrace.
7. 27 vacant shops in the town centre.
8. Newly rezoned Business General 3(a) land with an area of approximately 6,000m<sup>2</sup> adjoining the subject site for future retail/business purpose.

The analysis of the above issues in this report reveals that the planning proposal, on merit, should not be supported at this time.

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

The proposal is consistent with Looking after people and place Directions statement;

- Be a place where we value, protect, and enhance the historical, social, cultural and environmental character of Hawkesbury's towns, villages and rural landscapes.



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and is also consistent with (or is a nominated) strategy in the Community Strategic Plan being:

- Work with the community to define the Hawkesbury character to identify what is important to preserve and promote.
- Develop plans to enhance the character and identify of our towns and villages.

**Financial Implications**

There are no financial implications arising from this report.

**RECOMMENDATION:**

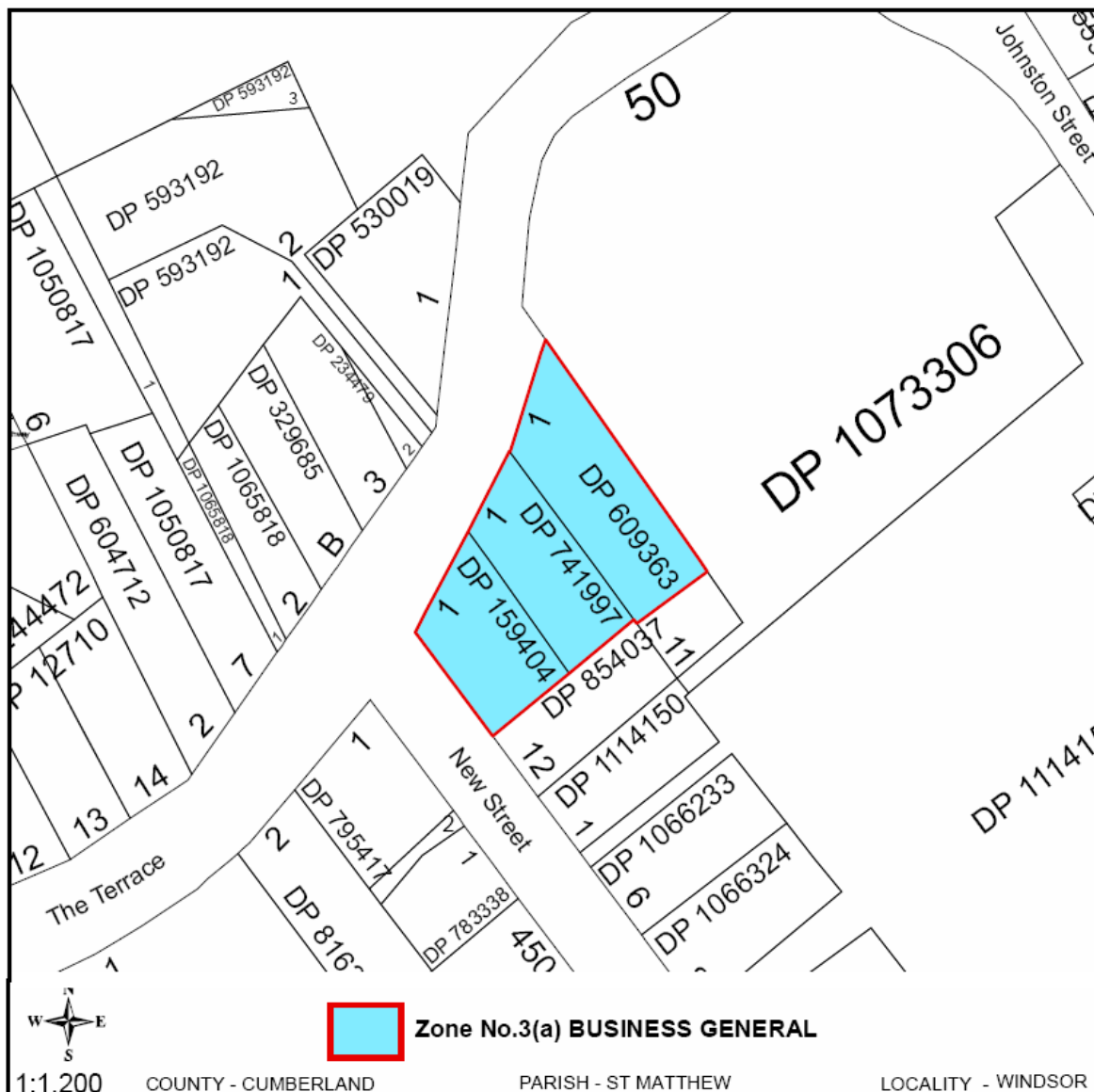
That the Planning Proposal to rezone Lot 1 DP 609363, Lot 1 DP 741997 and Lot 1 DP 159404 - 66, 68 and 70, The Terrace, Windsor from Housing to Business General 3(a)/B2 Local Centre be abandoned.

**ATTACHMENTS:**

- AT - 1** Subject Properties
- AT - 2** Exhibited Planning Proposal - (*Distributed Under Separate Cover*)
- AT - 3** Location Map

**ORDINARY MEETING**  
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**AT - 1 Subject Properties**



ENVIRONMENTAL PLANNING & ASSESSMENT ACT, 1979

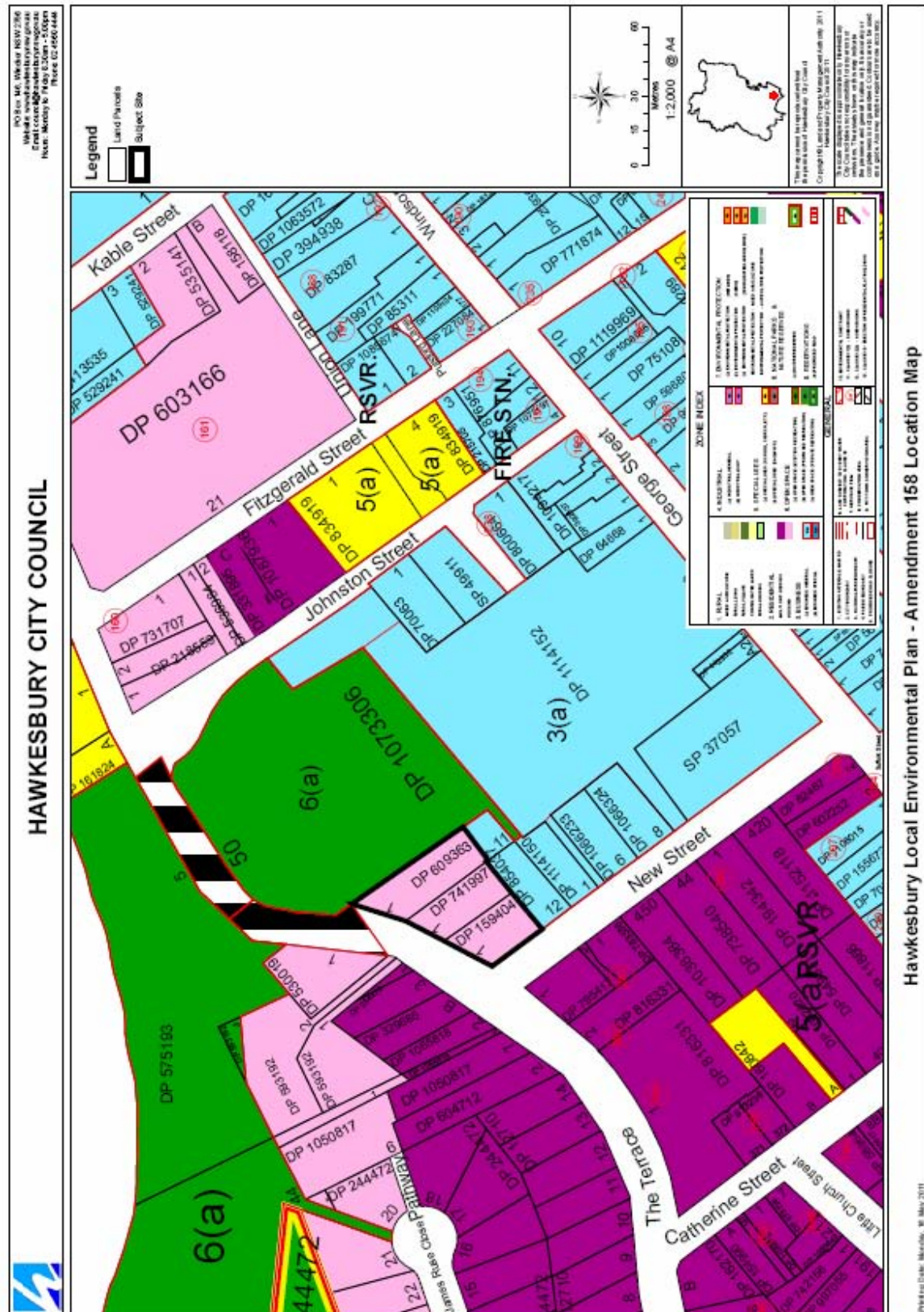
CITY OF **HAWKESBURY**

**HAWKESBURY LOCAL ENVIRONMENTAL PLAN 1989**  
**(AMENDMENT NO 158)**

DRAWN BY: C. URZUA-MONSALVE DATE: 24/11/2010	<b>STATEMENT OF RELATIONSHIP WITH OTHER PLANS</b>  <b>THIS PLAN AMENDS HAWKESBURY LOCAL ENVIRONMENTAL PLAN 1989</b>
SUP. DRAFTSPERSON: T. JOHNSON	
PLAN OFFICER:	
COUNCIL PLAN NO:	
DEPT. FILE NO:	<b>CERTIFICATE IN ACCORDANCE WITH THE ENVIRONMENTAL PLANNING &amp; ASSESSMENT ACT 1979, AND REGULATIONS</b> GENERAL MANAGER: _____ DATE: _____
PUBLISHED ON THE NSW LEGISLATION WEBSITE:	

<b>ORDINARY MEETING</b> Questions for Next Meeting
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### AT - 3 Location Map



oooO END OF REPORT Oooo

**INFRASTRUCTURE SERVICES**

**Item: 110**            **IS - Naming of an Un-named Road at Grose Wold Within Proposed Subdivision of Lot 2 DP 1118655 and Lot 3 DP 87137, No.41 Avoca Road, Grose Wold - (95495)**

**Previous Item:**        42, Ordinary (8 March 2011)

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**REPORT:**

**Executive Summary**

This report has been prepared following Council's Resolution of the 8 March 2011 to seek public comment under the New South Wales Roads Act 1993 on the naming of a new public road that is to be created within the proposed subdivision of Lot 2 DP 1118655 and Lot 3 DP 87137, No.41 Avoca Road, Grose Wold, as Oakford Place.

Public comment has now been sought with two submissions being received in relation to the proposed name.

The report recommends that the new public road in connection with the proposed subdivision of Lot 2 DP 1118655 and Lot 3 DP 87137, No.41 Avoca Road, Grose Wold, be named as Oakford Place.

**Consultation**

This issues raised in this report do not require further Community Engagement under Council's Community Engagement Policy. The community engagement process undertaken meets the criteria for the minimum level of community engagement required under Council's policy.

Public consultation was sought by way of advertisement in the local press, Council's web page under Consulting the Community, correspondence addressed to adjoining and surrounding owners of the proposed new road (22 letters), various organisations (9 letters), the applicant and the owner. The public comment period expired on 22 April 2011. No further public consultation is required for the name of Oakford Place.

**Background**

At the Council Meeting held on the 8 March 2011, it was resolved:

*"That public comment be sought under the New South Wales Roads Act, 1993 for the naming of the new public road in connection with the proposed subdivision of Lot 2 DP 1118655 and Lot 3 DP 87137, No.41 Avoca Road Grose Wold as Oakford Place."*

The name Oakford Place was suggested after consulting Council's Local Studies and Outreach Librarian following an application that was received from McKinlay Morgan & Associates Pty Ltd on behalf of their client Oneten Properties Pty Ltd. The application requested Council, as the road authority, to select and approve a name for a new public road being created in a proposed subdivision.

Oakford was the name of the orchard owned by John Thomas Woods. This property was in the vicinity of the proposed new road. The information was sourced from "Family of Mary Pitt" by J.Cust page 192.

At the end of the public comment period, two submissions were received as follows:

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- No objection to the use of the name "Oakford Place", from the Geographical Names Board of New South Wales providing it does not refer specifically to any living person.
- A suggestion from an adjoining owner that a more 'befitting' name for the new road is "Bronzewing Place"

Details of the newly suggested name are:

- It is of the understanding of the adjoining owner, who is making the suggestion, that the proposed subdivision and new road sits in the middle of the original land grant to Mr GP Woods and his wife Lucy. They have been told that the original home of Mr Woods was located at the end of Ashtons Road and that the home and whole property from Ashtons Road through to the William Crowley property (western boundary) was named "Bronzewing". This was on account of the proliferation of Bronzewing native pigeons found in the vicinity. These birds are still found in the area.

The suggestion made by the adjoining owner was referred to Council's Local Studies and Outreach Librarian who advised that this information appears to be based on the accounts of a previous property owner and is not contained in any of the readily available research material. Notwithstanding, if Council were to proceed with the proposed new name of "Bronzewing Place", public consultation would be required under the New South Wales Roads Act 1993 and Council's Community Engagement Policy.

It is noted that from the 22 letters forwarded to the surrounding owners, only 1 response was received providing an alternative name. Generally with public consultation, a high proportion of recipients do not respond if they agree with a proposal. Responses are usually received from people wishing to object or provide an alternative. In this case, no objections have been received only an alternative suggestion. Based on the information outlined in the report and the responses received, on balance it is felt that the naming of the new public road in connection with the proposed subdivision of Lot 2 DP 1118655 and Lot 3 DP 87137 be named Oakford Place.

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

The proposal is consistent with the Looking After People and Place Directions statement;

- Be a place where we value, protect and enhance the historical, social, cultural and environmental character of Hawkesbury's towns, villages and rural landscapes.

and is also consistent with (or is a nominated) strategy in the Community Strategic Plan being:

- Work with the community to define the Hawkesbury character to identify what is important to preserve and promote.

#### **Financial Implications**

The advertising and administrative expenses associated with this matter have been paid by the applicant in accordance with Council's Revenue Pricing Policy.

#### **RECOMMENDATION:**

That the new public road in connection with the proposed subdivision of Lot 2 DP 1118655 and Lot 3 DP 87137, No.41 Avoca Road, Grose Wold, be named Oakford Place.

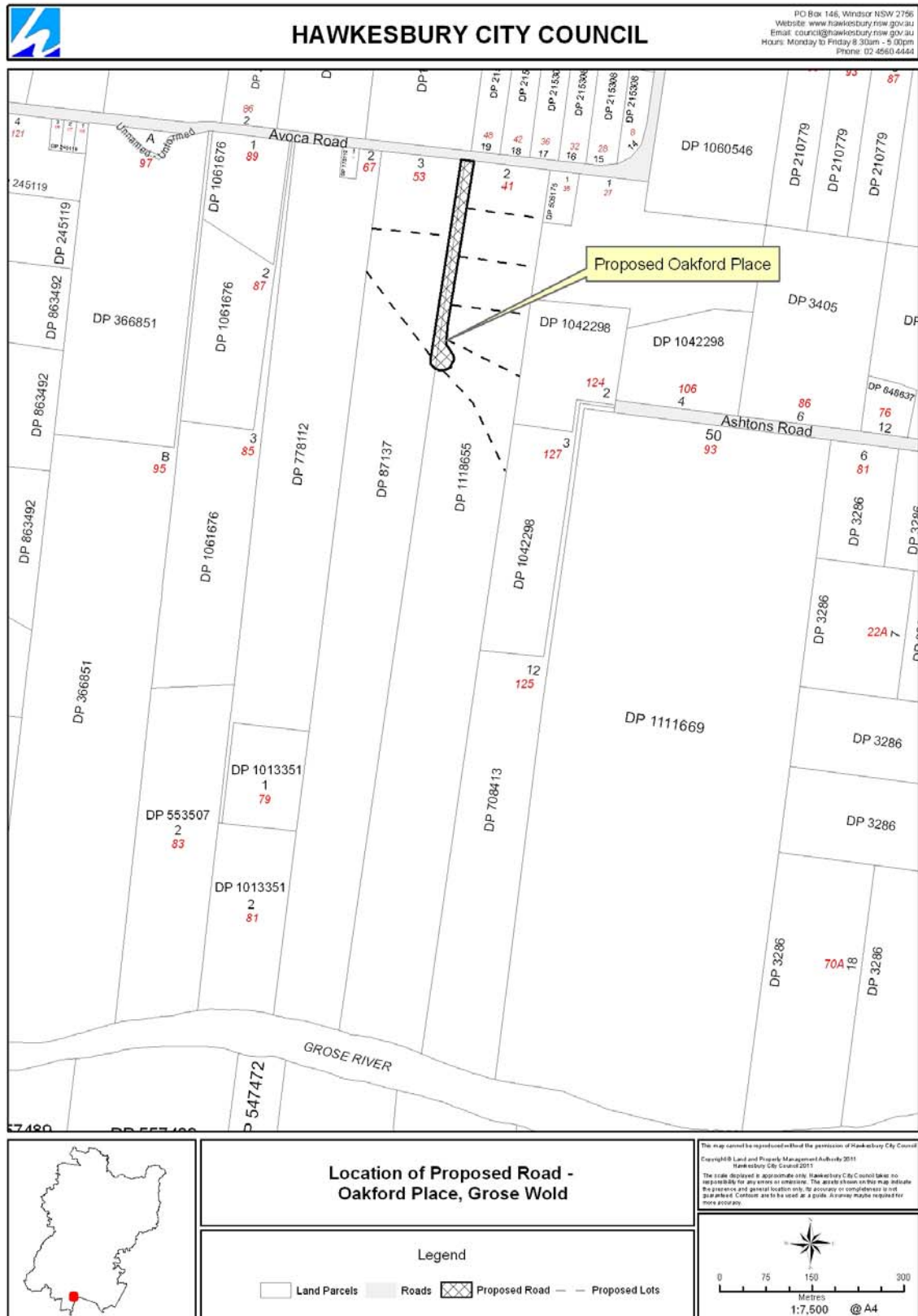
#### **ATTACHMENTS:**

**AT - 1** Locality Plan - Proposed Oakford Place



**ORDINARY MEETING**  
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**AT - 1    Locality Plan - Proposed Oakford Place**



oooO END OF REPORT Oooo

**Item: 111**            **IS - Priority List For Sealing Gravel Roads - (95495, 79344)**

**Previous Item:**        NM1, Ordinary (8 June 2010)

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**REPORT:**

**Executive Summary**

The purpose of this report is to provide criteria to enable prioritisation of gravel roads should funding become available for sealing works. Although there is no established criteria for determining priorities for sealing gravel roads, a set of basic criteria has been formulated and referenced with other councils. This matter was the subject of a Councillor Briefing Session held on 3 May 2011.

**Consultation**

The issues raised in this report concern matters which do not require community consultation under Council's Community Engagement Policy. Accordingly, no direct consultation has been undertaken with the public in regard to a priority list for sealing gravel roads.

**Background**

At Council's Ordinary meeting of 8 June 2010, a Notice of Motion was tabled in relation to the sealing of roads, where it was resolved:

*"That a:*

- 1. Methodology be prepared to enable the prioritisation of unsealed roads which could be sealed should external or additional funding sources become available for that purpose.*
- 2. List of roads be prepared based on the methodology identified and presented to Council in a Briefing Session annually."*

Council is responsible for the maintenance and repair of 300 km of gravel roads. These roads are located in a diverse geographic area comprising both flat and mountainous terrain including potentially unstable riverbanks and flood prone areas.

During dry weather periods numerous complaints are received regarding the dust nuisance associated with unsealed roads, and equally during wet weather periods numerous complaints are received in relation to slippery road conditions and potholes.

The purpose of this report is to provide criteria to enable prioritisation of gravel roads should funding become available for sealing of gravel roads.

The following criteria has been identified as being related to the need for sealing gravel roads and as such is considered appropriate to use as a prioritisation tool for this purpose should funding become available. Whilst there appears to be no industry standard in relation to prioritising gravel roads, a number of councils were referenced and similar criteria was utilised in varying forms for the purpose.

- **Average Daily Traffic (ADT)**

*Traffic volumes have been derived from volumetric counters positioned at the relevant sites.*

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- **Traffic Value**

*This score has been calculated from the ADT and assigning one (1) point for every ten (10) vehicles plus one (1) point for every percentage point of heavy vehicles.*

Since the Councillor Briefing Session, it has been pointed out by Councillor Conolly that the assignment of one point for every percentage point of heavy vehicles could skew the results should a lightly trafficked road have the majority of vehicles utilising it being heavy vehicles. For example a road with 5 ADT and all of those vehicles being heavy vehicles would receive a score of .5 relating to ADT and 100 relating to heavy vehicles, giving a score of 100.5. Whilst this would be an extreme example, it can be seen how this methodology would unduly influence the result.

As such this criterion has been amended to reflect the impact of heavy vehicles compared to cars, identifying the actual number of heavy vehicles utilising a road, dividing this number by 10 (as with the ADT) and applying a value of 5 to reflect the impact of heavy vehicles relative to cars. In the previous example the score relating to ADT would then be 3 which would appear to be more realistic.

- **Dwellings per Km**

*The score represents the average number of dwellings per road km & located within one km of the road. This reflects the impact of dust upon a dwelling caused by vehicles travelling on an adjacent gravel road.*

- **School Bus Route**

*A score of two (2) points has been allocated where a gravel road is part of a school bus route. This adds importance to the score given that a school bus route is a high priority for local residents. Bus operators on occasions have refused to service a particular road due to its potentially hazardous condition.*

- **Transport Route**

*A score of one (1) point has been allocated to a through road performing as a collector road for the surrounding district or a no through road with substantial industrial traffic.*

- **Environmental Sensitivity**

*A score of two (2) points has been allocated to gravel roads in close proximity to a river or creek. This reflects the impact of both dust and erosion of road materials on aquatic environments.*

- **Tank Water**

*A score of one (1) point has been awarded to a gravel road where the residents are dependent upon "Tank Water".*

- **Maintenance Frequency**

*The score shown in this column represents the total number of times a road has been graded over a twelve month period. Some remote gravel roads with very little traffic and population may only require grading once every few years. Alternatively, some through roads with high traffic volumes and high population densities warrant more frequent grading due to complaints and potential safety concerns associated with dust and road conditions.*

- **Accident Statistics**

*The allocated score represents the total number of reported accidents over a four (4) year period. The distinction between injury and non-injury accidents is shown for information purposes only.*



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An indicative list of gravel roads utilising the proposed criteria is attached.

It should be noted that Council's maintenance expenditure on sealed and gravel roads for the 2009 / 2010 financial year was:

Sealed Roads	-	\$7,100 per km/annum approx.
Gravel Roads	-	\$4,080 per km/annum approx.

This expenditure does not represent total funding required to maintain the network at a satisfactory level. Having regard to the above expenditure, it can be seen that additional funding will be required to maintain the sealed road network, if the total length is increased

Part 2 of Council's resolution required that a *"List of roads be prepared based on the methodology identified and presented to Council in a Briefing Session annually"*. It is suggested that rather than this action occurring on an annual basis, which could lead to an expectation that a particular road is being considered for sealing, the priority listing be presented to Council when funding for this purpose becomes available.

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

The proposal is consistent with the Linking the Hawkesbury Directions statement;

- Have a comprehensive system of well maintained local and regional roads to serve the needs of the community.
- Plan for, maintain and renew our physical infrastructure and community services, facilities and communication connections for the benefit of residents, visitors and businesses.

and is also consistent with (or is a nominated) strategy in the Community Strategic Plan being:

- Develop and implement a sustainable roads asset management system.

#### **Financial Implications**

The criteria for priority ranking does not have any financial impact.

#### **RECOMMENDATION:**

That:

1. The criteria for prioritising gravel roads for sealing should funding become available be adopted.
2. Should funding become available to seal gravel roads, a prioritised list be presented to Council at a Briefing Session.

#### **ATTACHMENTS:**

**AT - 1** Indicative List of Gravel Roads Utilising Proposed Criteria.

**ORDINARY MEETING**  
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**AT - 1 Indicative List of Gravel Roads Utilising Proposed Criteria**

Indicative List of Gravel Roads Utilising Proposed Criteria																
Rank	Road	Suburb/Locality	Length	AADT	AADT Date	Dwellings per km	School Bus	T/Port Route	Envir/ment Sensitivity	Tank Water	Maint'ce Freq/year	Traffic Value	Accident Stats Injured	Non Injured	Heavy Vehicle Score	Score
1	BRENNANS DAM / OLD STOCK ROUTE / COMMERCIAL ROADS	VINEYARD	533	1047	04-Nov-09	0.00		1.00	2.00	0.00	6.00	115.69	0.00	1.00	10.9925	126.69
2	FAIRY RD (North end to Ferrnaddock St)	SOUTH WINDSOR	305	251	05-Nov-10	75.69	2.00	1.00	0.00	0.00	1.00	35.01	0.00	0.00	9.9145	114.70
3	OLD HURRY ROAD (off Chaprian Rd)	VINEYARD	446	241	30-Nov-10	35.67	1.00	1.00	0.00	0.00	1.00	33.38	0.00	0.00	9.2785	71.25
4	OLD EAST K'JONG ROAD (northern end)	EAST KURRAJONG	1464	150	05-Nov-10	12.98	2.00	1.00	2.00	1.00	5.00	16.38	0.00	2.00	1.275	42.26
5	PACKER ROAD	BLAXLANDS RIDGE	3504	211	26-Nov-10	0.00		1.00	0.00	1.00	5.00	29.22	1.00	5.00	8.1235	42.22
6	ROBERTS CREEK ROAD (incl Causeway)	EAST KURRAJONG	398	213	11-Apr-11	10.05		1.00	2.00	1.00	5.00	22.37	0.00	0.00	1.065	41.42
7	STANNIX PARK ROAD (incl Bridge)	EBENEZER	576	267	05-Nov-10	3.40		1.00	2.00	1.00	2.00	28.70	0.00	0.00	2.0025	38.10
8	EVANS ROAD	WILBERFORCE	263	64	22-Feb-11	30.42		1.00	0.00	0.00	0.50	6.98	0.00	0.00	0.576	37.90
9	SHEPHERS ROAD	FREEMANS REACH	615	176	16-Nov-10	16.26		1.00	0.00	0.00	2.00	19.27	0.00	0.00	1.672	37.63
10	OLD EAST K'JONG ROAD (southern end)	GLOSSODIA (inc c'way)	1951	153	22-Apr-97	5.13		1.00	2.00	1.00	5.00	17.12	0.00	0.00	0.815	31.25
11	LANGLINS ROAD (Northern End)	BILPIN	1191	97	11-Apr-11	17.63		1.00	2.00	1.00	2.00	10.19	0.00	0.00	0.465	30.82
12	SETTLERS ROAD	CENTRAL MACDONALD	9860	99	15-Mar-11	2.81	2.00	1.00	2.00	1.00	3.00	11.14	1.00	6.00	1.7375	29.95
13	UPPER COLO RD (East of Colo Heights Rd)	CENTRAL COLO	4329	152	19-Mar-09	0.07	2.00	1.00	2.00	1.00	2.00	19.76	1.00	1.00	3.964	29.83
14	GREENS RD (to 5th Syd Juniors Resort)	LOWER PORTLAND	2050	155	10-Mar-11	3.14		1.00	2.00	1.00	3.00	17.75	0.00	1.00	2.2475	28.89
15	REEDY ROAD	CATTAI	842	142	15-Mar-11	7.12		1.00	0.00	1.00	3.00	15.80	0.00	0.00	1.704	28.02
16	CROOKED LANE	NORTH RICHMOND	1165	110	14-Sep-91	10.30		1.00	0.00	1.00	1.00	11.61	0.00	3.00	0.805	27.91
17	MOUNTAIN LAGOON RD (to last intersection with Sams Way)	MOUNTAIN LAGOON	3575	129	11-Apr-11	4.90		1.00	2.00	1.00	2.00	14.84	0.00	0.00	1.935	25.74
18	WARRIGAL RD (Local Rd Sect only)	KURRAJONG	277	78	28-Mar-07	14.44		1.00	0.00	1.00	1.00	9.09	0.00	0.00	1.287	25.53
19	GRANDVIEW LANE	BOWEN MOUNTAIN	751	65	10-Dec-10	11.98		1.00	0.00	1.00	3.00	9.35	0.00	0.00	0.85	25.33
20	Krabo Rd	WILBERFORCE	384	77	04-Nov-08	11.10		1.00	0.00	1.00	3.00	9.97	0.00	0.00	2.2715	25.07
21	PORTLAND HEAD ROAD	EBENEZER	2330	143	23-Jul-10	3.43		1.00	0.00	1.00	3.00	15.59	1.00	0.00	1.287	24.02
22	GARFIELD ST (SE end to Old Stock Route Rd)	OAKVILLE	570	65	06-Nov-00	16.78		0.00	0.50	0.00	0.50	6.83	0.00	0.00	0.325	23.11
23	DOUGLAS STREET	NORTH RICHMOND	724	105	06-Dec-10	9.97		1.00	1.00	1.00	1.00	11.13	0.00	0.00	0.63	22.80
24	GEAKES ROAD (Northern End)	GLOSSODIA	449	61	18-Nov-10	11.14		1.00	2.00	1.00	2.00	6.89	1.00	0.00	0.793	22.03
25	SARGENTS ROAD	EBENEZER	1625	104	05-Nov-10	3.69		1.00	0.00	1.00	2.00	13.59	0.00	0.00	3.588	21.68
26	GODALLA ROAD	FREEMANS REACH	798	125	18-Nov-10	3.75		1.00	2.00	1.00	2.00	14.38	0.00	0.00	1.875	21.13
27	TIZZANA ROAD	SACKVILLE	1550	76	01-Apr-11	3.45	2.00	1.00	2.00	1.00	2.00	9.04	0.00	0.00	1.444	20.50
28	BRANDERS LANE	NORTH RICHMOND	588	30	05-Nov-10	15.31		1.00	0.00	1.00	0.50	3.65	0.00	0.00	0.845	20.46
29	LAMROCK AVENUE	GLOSSODIA	1055	100	21-Nov-00	6.64		1.00	1.50	1.00	1.50	10.50	0.00	0.00	0.5	19.64
30	at no 138/140	YARRAMUNDI	1500	123	04-Apr-11	1.33		1.00	0.00	1.00	1.00	14.21	0.00	2.00	1.9065	19.54
31	SERPENTINE LANE	BOWEN MOUNTAIN	1130	63	10-Dec-10	8.85		1.00	3.00	1.00	3.00	6.62	0.00	0.00	0.315	19.47
32	AVONDALE ROAD	PITT TOWN	696	91	26-Nov-10	1.44		1.00	2.00	1.00	2.00	10.37	0.00	0.00	1.274	17.81
33	SPRINGROVE LANE	KURRAJONG HILLS	538	71	10-Dec-10	5.58		1.00	0.00	1.00	3.00	7.81	0.00	0.00	0.71	17.39
34	CUSACK ROAD	OAKVILLE	470	71	26-Nov-10	6.38		1.00	0.50	1.00	0.50	8.38	0.00	0.00	1.278	16.26
35	MITCHELL PARK RD (Reedy Rd to Nat. Park)	CATTAI	761	30	30-Mar-11	7.88		1.00	0.00	1.00	2.00	3.11	0.00	0.00	0.105	14.99
36	PONDEROSA DRIVE / PEA PLACE	LOWER PORTLAND	1250	77	22-Feb-11	2.40		1.00	0.00	1.00	2.00	9.47	0.00	0.00	1.771	14.87

oooO END OF REPORT Oooo

**SUPPORT SERVICES**

**Item: 118                    SS - Complaint Under Council's Code of Conduct against Councillor J Reardon - (111628, 95496)**

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**REPORT:**

**Disclosure of Interest**

The General Manager, who would normally manage the processing of complaints involving councillors under Council's Code of Conduct (the Code) has disclosed a non-pecuniary, less than significant conflict of interest in this matter under the Code.

The basis of this conflict is that the meeting which was referred to in the complaint and the subject of the community meeting and discussion at a subsequent Council Meeting related to a development application before Council which will, ultimately, be referred to the Joint Regional Planning Panel for determination.

As the General Manager is one of Council's representatives on this Panel other than initially referring the matter to an independent Conduct Reviewer under the Code, he has not been involved in the matter and any dealings with the Conduct Reviewer have been undertaken by the Director Support Services.

As the report of the Conduct Reviewer deals with the complaint and does not relate to the development application concerned, the General Manager considers that apart from declaring a non-pecuniary, less than significant conflict of interest in the matter no further action is required.

**Executive Summary**

Council on 20 March 2011 received a complaint under the Code of Conduct against Councillor J Reardon. The matter was referred to an Independent Conduct Reviewer, Mr Kevin Gibbons. Mr Gibbons has subsequently submitted his "Review Report" and an "Addendum". The report recommends that the decision contained in the "Review Report" be adopted by Council.

**Background**

On 20 March 2011, a complaint was received under the Code against Councillor J Reardon in respect of inconsistency between alleged commitments made by Councillor Reardon at a community meeting on 24 February 2011 and subsequent actions in relation to the same issue at the Council Meeting held on 8 March 2011.

In accordance with Clause 12.9(d) of the Code, the General Manager decided to refer the matter to an independent Conduct Reviewer and subsequently appointed a member of Council's panel of independent reviewers, Mr Kevin Gibbons, for this purpose, with the matter being referred to Mr Gibbons on 22 March 2011.

Mr Gibbons has now submitted his "Review Report" and a subsequent "Addendum" as a result of an exchange of emails between the complainant and himself. A copy of "Review Report" and subsequent "Addendum" are included as Attachment 1 to this report. This report is now submitted to Council for its consideration in accordance with Clause 14.9 of the Code.

In respect of reports from conduct review committees/sole conduct reviewers, the guidelines issued by the Department of Local Government (now Division of Local Government) provide "advice" on a number of aspects of a reports submission to Council, and some of these issues, together with comments, are as follows:

## ORDINARY MEETING

### Questions for Next Meeting

- *"The conduct review committee/sole conduct reviewer should be mindful that there may be a need to protect the identity of the person making the complaint when preparing the report to Council".*

The Conduct Reviewer's report does not reveal the complainant's identity except in one location which has been removed from the Attachment to this report.

- *"The report will generally be dealt with in open session of Council. Council can only close a meeting to the public if the matter is one that meets the requirements of Section 10A (2) of the Act. In most cases, a report from the conduct review committee/sole conduct reviewer will not meet those requirements".*

It is not considered that this particular matter meets any of the requirements of Section 10A (2) of the Act.

- *"The Primary role of the conduct review committee/reviewer is to establish the facts of the allegation. The conduct review committee/reviewer will make findings of fact and may make recommendations that Council takes action.*

*The Council is the appropriate body to determine whether or not a breach of the Code has occurred and has the discretion as to whether or not a sanction is applied. Councillors need to ensure that there is no re-hearing of the evidence when debating the report from the conduct review committee/reviewer. The debate should focus on the outcome of the reviewer's enquiries and the appropriateness of any sanctions to be applied where there is a finding or a breach of the code of conduct".*

The issues and facts surrounding the allegation have been addressed in the "Review Report" and Mr Gibbons has made a decision (section 3), effectively indicating that the Code of Conduct had not been breached.

As previously requested by Council, it is advised that the Conduct Reviewer's account in respect of conducting this review was \$11,650.00, excluding GST.

Accordingly, the following recommendation is submitted for Council's consideration in connection with this matter.

### **RECOMMENDATION:**

That the "Review Report" by the Conduct Reviewer, Mr K Gibbons, in respect of a complaint under the Council's Code of Conduct in respect of inconsistency between alleged commitments made by Councillor J Reardon at a community meeting on 24 February 2011 and subsequent actions in relation to the same issue at the Council Meeting held on 8 March 2011 be received and the decision contained therein be adopted by Council.

### **ATTACHMENTS:**

**AT - 1** "Review Report" and "Addendum" by Conduct Reviewer Mr K Gibbons.

**ORDINARY MEETING**  
**Questions for Next Meeting**

**AT - 1 "Review Report" and "Addendum" by Conduct Reviewer Mr K Gibbons.**

**Hawkesbury City Council**

**Conduct Review**

**Councillor: Reardon**

**Conduct at Meeting 8 March 2011**

**By Kevin Gibbons**

**1. APPOINTMENT**

- 1.1 On 20 March 2011, I was appointed sole conduct reviewer in relation to a complaint that there was an inconsistency between commitments which Councillor Reardon gave to a community meeting 24 February 2011 and a vote on the same issue at the Council meeting 8 March 2011.
- 1.2 The General Manager appointed a sole conduct reviewer to investigate the complaint.
- 1.3 While I was appointed by the General Manager, he requested me to liaise with Mr Mifsud, Director Support Services, because the General Manager was a representative on the joint regional planning panel which in due course would be considering the development application which is the application which has given rise to the complaint.
- 1.4 In the course of my investigation, I have been provided with some supplementary documents held by the Council or brought into existence at the Grose Valley Community Centre 24 February 2011.
- 1.5 I have obtained further information in relation to some of the events at the meeting 24 February 2011.
- 1.6 I have obtained and considered some of the oral record of the Council meeting 8 March 2011 especially in relation to presentations to the Council by the respondents and things said by the Councillor representatives at the community meeting namely, Councillors Reardon, Paine and Williams.
- 1.7 I did not consider it necessary to receive written submissions as to what conclusion or reasons for that conclusion I should determine. I have notified the complainant and Councillor Reardon of that decision and the reasons why.
- 1.8 The complainant, when shown the minutes of the community meeting and the transcribed Mayoral Minute and the amendment, informed me that the technical form of his complaint could no longer be sustained. He quite correctly conceded that his complaint, in the terms in which it was made, could not proceed. Unless it was amended it would have to be dismissed.
- 1.9 Accordingly he altered the form of the complaint so that it mirrored the minutes of the community meeting and the amendment to the Mayoral Minute. Those things are on all fours with a letter written by the community meeting group 25 February 2011.

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**ORDINARY MEETING**  
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- 1.10 The complainant was not prepared to withdraw his complaint despite the technical adjustment referred to above.
- 1.11 I have determined that I should proceed to determine the matter according to the amended form of the complaint. Had I done otherwise and dismissed the complaint, I believe that the complainant would have lodged a fresh complaint. It would have been financially inefficient to resolve the matter by way of two references.
- 1.12 There is no denial of natural justice to any person that I proceed in that way.
- 1.13 Councillor Reardon did not object to that course and she was pleased that the complainant acknowledged that his original complaint was not maintainable, as it was based on an erroneous allegation against her.
- 1.14 Attached are Mr Coffey's notes, the Community Group's letter 25 February 2011, the Mayoral Minute and resolution and the amendment resolution, the letter of complaint.
- 2. COMPLAINT**
- 2.1 On 20 March 2011, the complainant wrote a letter to the General Manager (2 pages).
- 2.2 The specific matters, the subject of my investigation, were communicated to the General Manager by email 20 March 2011 being:
- (a) a two page email setting out the substance of the complaint;
  - (b) an email from the complainant to Councillor Reardon 9 March 2011.
- 2.3 The subject matter of the complaint involves:
- (a) words and conduct involving Councillor Reardon at a community meeting 24 February 2011;
  - (b) words and conduct at the Council meeting 8 March 2011 in connection with a resolution to amend the Mayoral Minute relating to development application 0038/11 in connection with the redevelopment and refurbishment of existing retreat centre 347 Grose Wold Road, Grose Wold. (As I have indicated the substance has been altered)
- 2.4 The letter referred to sets out specific breaches of the Code of Conduct relied on by the complainant. They are specified provisions in clause 6 of the Code of Conduct.
- 3. DECISION**
- 3.1 In my opinion the complaint, in its amended form, is unsustainable.
- 3.2 I find that Councillor Reardon has not breached the Code of Conduct or any provision of the Act or regulations even if the factual matters on which the complainant relies were proved.

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**ORDINARY MEETING**  
**Questions for Next Meeting**

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3.3 In short I find the complaint, although based on sincere feelings, is misplaced and is based on a general misunderstanding and an erroneous understanding as to the operation of the Code of Conduct insofar as it relates to the facts surrounding the relevant circumstances behind the complaint.

3.4 I set out my enquiries and reasons for my decision.

**4. ENQUIRIES AND REASONS**

4.1 have been provided with material documents arising from the community meeting, the disc of the Council meeting of the discussion at the Council meeting of the Mayoral minute, the emails between the complainant and Councillor Reardon, a newspaper article of the community meeting, some additional information from the journalist, and the letter from the community group 25 February 2011. I have also conferred with the following people at the community meeting: Councillor Paine, Councillor Reardon, the complainant, and Mr Paul Coffey who chaired the meeting. While I attempted to confer with Councillor Williams, a mutually convenient date and time was not able to be arranged, nor was he free to speak to me otherwise.

4.2 It was, in my opinion, unnecessary for me to speak to other people at the community meeting as I believe that there is little of particular relevance capable of being resolved differently by speaking to more people.

4.3 Before I progress to discuss what people told me or what I read, the following overview of the community meeting will be of assistance to the reader.

4.4 The meeting lasted a long time, probably over two hours. People's interest and concentration probably dwindled and waned towards the end. Although, Mr Coffey recorded certain things attributed to Councillors immediately prior to the resolution neither he or Councillor Paine had any recollection of that part. Councillor Reardon did and she told me that she did not think she said anything.

4.5 Two people present were "moles" of the applicant, although, the public was invited to attend the meeting. While Mr Coffey made a general request for people to indicate a special interest at the meeting, those two people remained silent.

4.6 Another person present at the meeting was a journalist, Justine Geake. She was well known to people at the meeting. She wrote an article following the community meeting. Its content and other information she has provided to me has been very useful to untangle what went on towards the end of the meeting when the subject of the complainant's complaint arose.

4.7 While I accept that no one voiced any opposition to the resolution passed at the meeting, it is technically not correct to say that it was unanimously supported. Councillor Reardon said she did not put up her hand.

4.8 The handwritten notes of the meeting by Mr Coffey were not intended to be minutes. They were intended to be notes. He made them as the meeting

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**ORDINARY MEETING**  
**Questions for Next Meeting**

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progressed. They by and large follow the sequence of things which were discussed.

- 4.9 Councillor Reardon also made notes of issues to report back to the Mayor. Those issues came to be incorporated in the Mayoral Minute. Those issues were also communicated back by Councillor Paine.
- 4.10 The Mayor was invited to attend the meeting but he was unavailable. He asked Councillor Reardon to report the residents' concerns.
- 4.11 Both Councillors agreed that the table of issues in the Mayoral Minute set out the concerns raised at the meeting. Neither of them believed that any additional issue needed to be added.
- 4.12 While the topic of an independent consultant was discussed at the community meeting, both Councillors agreed that that was not an issue for the purposes of the Mayoral Minute.
- 4.13 Mr Coffey's notes were not for the purpose of the Mayoral Minute. His notes were more of a narrative to assist the meeting to understand what occurred.
- 4.14 The newspaper article of the community meeting did not strictly follow the order of things in Mr Coffey's notes and dealt with some aspects more fully than in Mr Coffey's notes. I state that merely as an observation.
- 4.15 The journalist, Justine Geake, informed me that apart from a contribution from Councillor Reardon which I find occurred much earlier in the meeting, she has no other record of any other contribution by Councillor Reardon.
- 4.16 Councillor Reardon told me she was trying to concentrate on what concerns people were describing so that she could report accurately to the Mayor.
- 4.17 Mr Coffey recorded the following words towards the end of the meeting. What he recorded was what was being pressed by the complainant, which was to try and have the meeting develop a resolution or resolutions to take to the Council.

**C Paine/LW/JR said they would get it on agenda for Council meeting 8 March, including the need to appoint independent consultants**

**Meeting resolved to write to Council/ask additional two weeks. Find/appoint independent consultant**

- 4.18 The complainant says that Mr Coffey's entry immediately preceding the resolution was in connection with questions he directed to each Councillor personally. No one can recall such a process of interrogation, except the complainant, but I accept that the complainant attempted such a procedure. However, I am totally unable to say how each Councillor took the interrogation. Councillor Paine told me she did not recall such an interrogation. Councillor Paine said that Councillor Reardon, from her recollection, contributed very little by way of words. I have been unable to speak to Councillor Williams. Councillor Reardon said she declined to say anything by way of commitment along the lines indicated by the complainant, although she was very supportive of the residents. After all she was one herself. She told me that Councillors simply cannot guarantee

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**ORDINARY MEETING**  
**Questions for Next Meeting**

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to fetter their vote, irrespective of whether they are bound by some party or factional rule. We can all relate to that. We are all familiar with what is said to be core and non-core promises.

- 4.19 I return to this topic later in this report.
- 4.20 Although Mr Coffey recorded what he did, no one to whom I spoke, except the complainant, recalled the circumstances which Mr Coffey recorded. The journalist, being a person who might have been expected to have a fuller record had no note or independent recollection.
- 4.21 While I cannot say that what the complainant identifies did not occur, I am unable to conclude the context for people other than the complainant. As I indicated earlier the meeting was long and people's attention span in the mind of everyone I spoke to was dwindling and waning. It was that perception by the complainant which, he said, led him to try and get things together.
- 4.22 The complainant took that part of the meeting to be a pledge by Councillor Reardon to support a proposal to the Council to appoint an independent consultant.
- 4.23 Councillor Paine did not recall Councillor Reardon saying any words at that stage of the meeting.
- 4.24 At the stage of the interrogation there was no resolution of the community meeting in place, although, the complainant may have indicated at this stage that the meeting needed to make a resolution.
- 4.25 The complainant and the meeting probably hoped that matters of concern would be raised at Council but at the stage of the complainant's interrogation, nothing of any clarity existed. There was in existence at that time no resolution of the meeting.
- 4.26 The complainant is a person experienced in meetings and no doubt very familiar with the need to build from blocks.
- 4.27 The disc of the Council meeting 8 March 2011 was instructive. While the community representatives preferred that the application not proceed they without exception saw the process as the accomplishment of responsible conditioning rather than outright refusal. They all knew that Council was not the decision maker.
- 4.28 Perhaps that was based on resignation rather than reasoning. After all the process to be followed was by operation of Part 3A of the Environmental Planning and Assessment Act. The Council had no role in the decision making. The Council's staff had a role in responding to the application but the role of the professional staff was not as advisor to the Council. The report of the professional staff would not even be presented to the Council before it was sent off. As the tape of the Council meeting makes plain, the attitude of the Council and the community was quite different to the Part 3A application about a poultry farm at Glossodia. The community and the Council seemed opposed to the application, outright. It was not an application based on existing use rights.

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## ORDINARY MEETING

### Questions for Next Meeting

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- 4.29 The application to redevelop the retreat centre was quite different. Existing use rights were in play.
- 4.30 The issue was whether it was apt to expand the use and if so on what terms. There will be as many ideas about conditions as there are people who are asked. Even the applicant wanted to talk conditions.
- 4.31 A significant element at the Council meeting, which is germane to what I have to decide, is whether a Councillor can fetter their decision making function. Councillor Reardon and Councillor Paine in conference with me both agreed that there could never be any fetter on that function, illegality and criminality, excluded.
- 4.32 Many of the Councillors who spoke at the Council meeting spoke in like terms. The discussion at the Council meeting arose in relation to the process of considering the advices of professional staff. None of the Councillors who spoke in that context said that they were bound to follow the advice of the staff. Each of them said that it was something in the mix.
- 4.33 Their sentiments and views are entirely consistent with what we ordinarily encounter in the parliamentary chambers in Sydney and Canberra. While we know that parties and factions may fetter a vote, the ordinary right of the member can never be fettered by parliamentary rules, although, many aligned representatives we know choose to follow party lines rather than testing whether they should forgo membership of a party or faction to indicate their ordinary parliamentary right to vote as they consider fit.
- 4.34 No one would seriously suggest that an elected member be dealt with punitively for following party or factional lines.
- 4.35 There is no parliamentary rule, illegality and criminality excluded, that chastises an elected member from exercising their function of voting as they consider fit. There is simply no fetter on an elected person in the performance of that function, although a party or faction may bring havoc on their heads, if they voted differently to a party or faction.
- 4.36 The amendment was lost 8:4 with Councillor Reardon voting against the amendment.
- 4.37 Immediately after the vote, during a tea break the complainant challenged Councillor Reardon about her vote. Her response was not clear to me except the adjournment was short and she was required to return to the chamber.

#### **5. The Act, Regulations and Code of Conduct**

- 5.1 The Code of Conduct is a subordinate instrument. It does not live in a vacuum. Its origins and operations are to be found primarily and relevantly in this case, in the Local Government Act.
- 5.2 In my opinion there is no relevant Regulation which impacts on my decision.

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**ORDINARY MEETING**  
**Questions for Next Meeting**

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- 5.3 The Code of Conduct comprises parts which are descriptive, parts which are operative and parts which contain machinery provisions. The subject matters of complaint are in relation to the operative parts of the Code.
- 5.4 Councillors are spokes in a wheel. They ordinarily are not the wheel itself. A Council is a body of its Councillors (Section 22).
- 5.5 The Local Government Act is legislation to give Councils, not Councillors, certain abilities, responsibilities and roles (Section 7).
- 5.6 It is the Council which has a charter to do things (Section 8).
- 5.7 It is the Council which is conferred with functions (Sections 21, 22).
- 5.8 While a Councillor has a duty to act in a certain way indicated in Section 232, it is simply unarguable that Councillor Reardon has not breached that provision. No competent Court or Tribunal could find otherwise and if an action was commenced against her on the basis of the subject matter of the complaint (as amended), it would be seen as vexatious. The complainant makes no charge that Councillor Reardon's conduct is actionable under Section 232.
- 5.9 All of the above provisions indicate that the discretion in voting cherished by Councillors (and all elected representatives) is untouched by the engine room of the Local Government Act.
- 5.10 It seems that absent criminality or illegality the Act is not intended to fetter the right of an elected person to vote in the voting chamber as they consider fit, even if that means voting contrary to party or faction.
- 5.11 Section 439 indicates that Councillors must act honestly and with a reasonable degree of care in carrying out a function under the Act.
- 5.12 While Councillor Reardon intended reporting to the Mayor about the community meeting the only occasion of a function under the Act or any other Act was the meeting 8 March 2011.
- 5.13 If a Councillor could vote as they considered fit, even if it was contrary to party or factional policy, or an earlier opinion, or different to an earlier view, that could never be a breach of Section 439 unless the decision was smeared with illegality or criminality.
- 5.14 While Section 440 says that Councillors must comply with the Code of Conduct the section, not surprisingly, is a descriptive part of the Act not an operative part of the Act.
- 5.15 In my opinion there is no other relevant part of the Act which impacts on my decision.
- 6. Code of Conduct**
- 6.1 Section 3 of Part 1 sets out requirements for Councillors and others in carrying out their functions. In my opinion the word functions has a similar meaning to that term in the Act.

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## ORDINARY MEETING

### Questions for Next Meeting

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- 6.2 As indicated earlier, a Councillor is a spoke, not the wheel.
- 6.3 The Councillors present at the community meeting were not exercising a function as that term is understood in the Act or the Code of Conduct.
- 6.4 As I have said in my opinion the only occasion on which Councillor Reardon or any other Councillor exercised a function relevant to the community meeting was the occasion at the Council meeting 8 March 2011.
- 6.5 While the community meeting was a very important meeting both for the community and the Council and presumably the decision makers under Part 3A, it was not an occasion of the exercise of a function under the Act.
- 6.6 Bearing in mind its terms and the consequences for breach the only viable interpretation of the Code is, unless the language of the Act dictates otherwise, that it is dealing with conduct connected with a function as that term is understood in the Act.
- 6.7 In my opinion that does not include the unfettered right to vote as a Councillor considers fit.
- 6.8 While Part 2, which is at the core of the complaint, deals with standards of conduct, it does not use introductory language repeating the overall intention of the Code. However, it is my opinion that Part is controlled by reference to the exercise of a function under the Act. If that was not so the Code of Conduct would be flying solo without legislative foundation. That cannot be what is intended. If the Code of Conduct operated in that way it would be elevated beyond its constitutional station.
- 6.9 Clause 6.1 refers to **in carrying out your functions**.
- 6.10 Clause 6.2 refers to **your functions under the Act**.
- 6.11 Clause 6.8 refers to **when making decisions**.
- 6.12 In my opinion it cannot be seriously contended that the Code operates on a broader canvas.
- 6.13 Nowhere in the Code is it suggested, for the obvious reason, that it can and should operate to fetter the primary hallmark of an elected person which is to vote as they consider fit, absent illegality or criminality.
- 6.14 For if the Code or the Act cannot operate as a fetter on that right it follows that a Councillor cannot be criticised under the Code of Conduct for exercising their sovereign right to vote as they consider fit, even if it meant seeming to some to change their position.
- 6.15 While the complainant is clear in his mind that Councillor Reardon changed her position no one else recalls it in similarly stark terms. While I am sure the residents were hoping for some special ammunition for the Council to fire at the approval authority, even if Councillor had voted for the amendment the prayer would have been lost. The flavour of the Council meeting, except perhaps by one Councillor, strongly supported a rigorous investigation as to the appropriate conditions if the extended use of the retreat centre was

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**ORDINARY MEETING**  
Questions for Next Meeting

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approved, and the applicant gave solemn undertakings to negotiate with the residents before approval was granted.

6.16 For the above reasons the complaint in its amended form must fail.



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## ORDINARY MEETING

### Questions for Next Meeting

Greene Vale Com Course Inc 24.02.11

Meeting opened by LD who explained that because of a number of visitors (not members) who were concerned about Benedict XVI he was suspending the programmed meeting (deferred to April) to allow open discussion.

LD advised PC would chair discussion.

\* Mr D: - said there problem was they had been good neighbours and rarely complained in the past.

\* PC - outlined the development of concern expressed by some residents, generally supported by all present.

\* 74 igt Williams - clarified TRPO process > \$10m & that it would be considered by 3 appointed (NSW Gov) reps + 2 from Council. (Commit outvoted)

We should contact STARRONE & get rid of Part 3A - give decision making powers back to Council.

In these cases our elected members are not able to judge.

(2)

\* Cl. C. Perie / J. Reader talked generally about Part 3A.

C. Perie said we should seek a independent assessment as was done by Council for the poultry farm at Glossop, A.

\* J. Reader agreed because it would give an independent submission for councillors to put to JRP.

\* C. Perie said we should go to Council with submission & go to Council meeting if we wanted to be heard.

\* Daniel Wheeler { spoke well about how to manage issues!  
- make it a clear issue!  
- stay focused & don't relent.

\* <sup>R</sup> Flora & Fanna both want a species impact statement which is not in PA1. We should follow up because PA suggest it is not required.

\* Tony Cook. — has not given consent to express

\* Judy Rawling - Flora & Fanna Consultant said she wants a species impact statement (SIS) - look at regional significance. 7 part test done now SIS is next step.

3

\* Michael Ward asked who the other three on TRPP are. Council's did not know.

MW suggested we could join NK's group which included NK/Reinold/Bonnie. They could be umbrella group to help to bring it together.

\* Leigh Williams said he would seek another 2 week extension.

\* MC said we need to check who will use the site - may become a school??

e-mail +cc to all email

CPC / LW / JK said they would get it on agenda for Council meeting. Sth market including the need to appoint independent consultant.

Meeting resolved to write to Council

Ask additional 2 weeks. Find/appoint independent consultant.

Make sure we request option to speak to agenda item.

No one showed up from CAB or Project Manager. Ask them to enter into consultation.

**ORDINARY MEETING**  
**Questions for Next Meeting**

*The Grose Vale Community Centre Inc.*

*c/- Grose Vale Post Office  
Grose Vale Road  
Grose Vale 2753*

25<sup>th</sup> February 2011

The General Manager  
Hawkesbury City Council  
PO Box 146  
Windsor, NSW 2756  
Attention: Shari Hussein

**re: DA0038/11 Development of Benedict XVI Facility**

Dear Ms Hussein,

At a community meeting in the Grose Vale Community Hall on the 24<sup>th</sup> February the above referenced DA was discussed. A large number of residents who were not previously aware of the extent of the refurbishment/development expressed an interest in preparing a submission but believed they would need more time than the current cut of date (4<sup>th</sup> March) allows.

A motion was put to the meeting and it was resolved to write to council and seek a further 14 day extension for submissions to close on the 28<sup>th</sup> March. We further resolved to request Council to engage an independent assessor to review the DA and report back to Council on the developments suitability in the existing environment.

We also agreed that if the opportunity were available we would be pleased to present our concerns to the council at a council meeting. We trust this information meets with your approval and look forward to your favourable response.

  
Laurie Duffy  
President

  
Paul Coffey  
Treasurer

PS: Please respond to [paul@resrecovery.com.au](mailto:paul@resrecovery.com.au)

**ORDINARY MEETING**  
**Questions for Next Meeting**

**ORDINARY MEETING**  
**Mayoral Minutes**

**SECTION 2 - Mayoral Minutes**

**MM - Development Application No.0038/11 - Redevelopment and Refurbishment of existing Retreat Centre - 347 Grose Wold Road, Grose Wold - (79353, DA0038/11)**

**REPORT:**

Council has received Development Application No. 0038/11 from Winton Associates seeking approval for the redevelopment and refurbishment of the existing retreat centre at Lot 2, DP606169, 347 Grose Wold Road, Grose Wold.

The proposed development of the retreat centre has a capital investment value greater than \$10M and therefore, this development application has been referred to the Joint Regional Planning Panel (JRPP) for determination. The public exhibition period for this development application has been extended with a closing date of Friday, 11 March 2011.

I acknowledge that Council's Planning staff will be submitting a planning report to the JRPP. However, the purpose of this Mayoral Minute is to outline to the JRPP the concerns of Council's residents and is not a direction to Council's Planning staff.

Since the lodgement of this development application, there has been a public meeting held on 24 February 2011 at the Grose Vale Community Centre to discuss this proposal. I was unable to attend the public meeting, however, other Councillors did attend.

Some of the issues discussed at the public meeting include:

- Environmental concerns.
- Noise from the property affecting the residential houses close to the subject property.
- People trespassing onto adjoining properties due to a lack of management on the property.
- Difficulties with evacuation from the property.
- Removal of trees from the property.
- Inadequate bridge for fire tanker use and other emergency access.
- Small water tank.
- Concern with the lack of power supply to the area.

I believe that due to the concerns of the local residents to the proposed development raised at the recent public meeting, the contents of this Mayoral Minute and other issues raised at the Council Meeting should be forwarded to the JRPP to enable the JRPP to be aware of the concerns of Council's residents when considering this proposal.

**Planning Decision**

As this matter is covered by the definition of a "planning decision" under Section 375A of the Local Government Act 1993, details of those Councillors supporting or opposing a decision on the matter must be recorded in a register. For this purpose a division must be called when a motion in relation to the matter is put to the meeting. This will enable the names of those Councillors voting for or against the motion to be recorded in the minutes of the meeting and subsequently included in the required register.

**RECOMMENDATION:**

That the Mayoral Minute regarding the concerns of local residents to Development Application No.0038/11 for the redevelopment and refurbishment at the existing retreat centre at 347 Grose Wold Road, Grose



**ORDINARY MEETING**  
Questions for Next Meeting

**ORDINARY MEETING**  
Mayoral Minutes

Wold and any other issues raised at the Council Meeting be forwarded to the Joint Regional Planning Panel.

**ATTACHMENTS:**

There are no supporting documents for this report.

oooO END OF MAYORAL MINUTE Oooo

**ORDINARY MEETING**  
**Questions for Next Meeting**

**ORDINARY MEETING**  
**MINUTES: 8 March 2011**

**SECTION 2 - Mayoral Minutes**

**MM - Development Application No.0038/11 - Redevelopment and Refurbishment of existing Retreat Centre - 347 Grose Wold Road, Grose Wold - (79353, DA0038/11)**

The General Manager and the Director City Planning declared a significant non-pecuniary conflict of interest in this matter as they both sit as Council's representatives on the Joint Regional Planning Panel which will ultimately determine this application. They left the Chamber and did not take part in voting or discussion on the matter.

Councillor Conolly advised that even though he is employed by the Parramatta Dioceses, this Development Application has been lodged by the Sydney Dioceses and advised that they are two separate entities and he didn't believe he needed to declare a pecuniary conflict of any kind.

Mr Danny Casey, proponent, addressed Council.

Mr Mark Calne, Ms Kellie Coffey and Mr Paul Coffey, respondents, addressed Council.

**MOTION:**

RESOLVED on the motion of Councillor Bassett, Mayor

***Refer to RESOLUTION***

An AMENDMENT was moved by Councillor Williams, seconded by Councillor Rasmussen.

That Council engage an Independent Planning Consultant to prepare a report in relation to the various aspects associated with the development application and the concerns raised by members of the public at the Council Meeting and that if time permits, the Consultants report be referred back to Council.

The amendment was lost.

In accordance with Section 375A of the Local Government Act 1993 a division is required to be called whenever a planning decision is put at a council or committee meeting. Accordingly, the Chairperson called for a division in respect of the amendment, the results of which were as follows:

For the Motion	Against the Motion
Councillor Calvert	Councillor Bassett
Councillor Paine	Councillor Mackey
Councillor Rasmussen	Councillor Conolly
Councillor Williams	Councillor Ford
	Councillor Tree
	Councillor Whelan
	Councillor Reardon
	Councillor Porter

The motion was put and carried.

This is Page 2 of the Minutes of the ORDINARY MEETING of the HAWKESBURY CITY COUNCIL held at the Council Chambers, Windsor, on Tuesday, 8 March 2011

**ORDINARY MEETING**  
**Questions for Next Meeting**

**ORDINARY MEETING**  
**MINUTES: 8 March 2011**

**50 RESOLUTION:**

RESOLVED on the motion of Councillor Bassett, Mayor

That:

1. The Mayoral Minute regarding the concerns of local residents to Development Application No.0038/11 for the redevelopment and refurbishment at the existing retreat centre at 347 Grose Wold Road, Grose Wold and any other issues raised at the Council Meeting be forwarded to the Joint Regional Planning Panel.
2. The submission to the Joint Regional Planning Panel on behalf of Council, referred to in 1 above, take into account all matters raised at the Council Meeting by members of the public.
3. Council's Planning Staff be requested to listen to the recording of the concerns expressed at the Council Meeting.

In accordance with Section 375A of the Local Government Act 1993 a division is required to be called whenever a planning decision is put at a council or committee meeting. Accordingly, the Chairperson called for a division in respect of the motion, the results of which were as follows:

For the Motion	Against the Motion
Councillor Bassett	Councillor Rasmussen
Councillor Calvert	
Councillor Conolly	
Councillor Ford	
Councillor Mackay	
Councillor Paine	
Councillor Porter	
Councillor Reardon	
Councillor Tree	
Councillor Whelan	
Councillor Williams	

This is Page 3 of the Minutes of the ORDINARY MEETING of the HAWKESBURY CITY COUNCIL held at the Council Chambers, Windsor, on Tuesday, 8 March 2011

## ORDINARY MEETING

### Questions for Next Meeting

Mr. P. Jackson,  
General Manager  
Hawkesbury City Council  
Windsor.

#### **Code of Conduct Issues: Councillor Reardon.**

**Introduction.** I write with regard to the conduct of Councillor Reardon in relation to: the commitments which she gave to a Community meeting on the 24<sup>th</sup> of February 2011 at Grose Vale community hall; Councillor Reardon's subsequent vote on the same issue at the Council meeting on Tuesday 8<sup>th</sup> of March 2011; and the blatant inconsistency between those two positions. This inconsistency causes me (and others) concern in light of the Hawkesbury City Council Code of Conduct which is currently in force (with policy number PGE00122) (the "HCC Code of Conduct").

**Background issue.** The issue is in relation to the question of whether or not an independent expert should be engaged to assist Grose Vale residents to advocate for full compliance with all necessary requirements of the DA for Benedict XVI.

- **Initial commitment.** At a community meeting on the 24<sup>th</sup> of February 2011 at Grose Vale community hall Councillor Reardon clearly, openly and unequivocally supported a proposal from Councillor Payne for the engagement of an independent expert to assist Grose Vale residents to advocate for full compliance with all necessary requirements of the DA for Benedict XVI;
- **Reneging on commitment.** At the council meeting of Tuesday 8 March 2011 Councillor Reardon reneged on her commitment of 24 February 2011 by voting against an amendment to the Mayoral minute by Councillor Williams for the engagement of an independent expert to assist Grose Vale residents regarding the DA for Benedict XVI.
- **My follow up.** Under separate cover I have forwarded an email forwarded to Councillor Reardon on Wednesday 9<sup>th</sup> of March 2011. This email correspondence sets out the details of Councillor Reardon's commitment to the community meeting, her reneging on that commitment by voting against an amendment to the Mayoral minute by Councillor Williams. This email correspondence was circulated to attendees at the meeting on Friday 11<sup>th</sup> of March. I did receive confirmation from that my email was correct. I did not receive any replies to the contrary. Councillor Reardon did not provide me with anyone who supported her claim that she made no such commitment.

**Report of breaches of the HCC Code of Conduct.** It is with great gravity and good faith that I hereby report to you under section 11 of the HCC Code of Conduct the following suspected breaches of the HCC Code of Conduct by Councillor Reardon:

- **Failure to represent the interests of the community.** By voting against an amendment to the Mayoral minute by Councillor Williams for the engagement of an independent expert to assist Grose Vale residents regarding the DA for Benedict XVI, in circumstances where Councillor Reardon was aware of the interests of the community and indeed provided commitment, Councillor Reardon has failed to act in the public interest (a breach of section

## ORDINARY MEETING

### Questions for Next Meeting

6.6 of the HCC Code of Conduct) and inconsistent with Councillor Reardon's role as a councillor which is articulated on page 2 of the HCC Code of Conduct which provides: *"Councillors have two distinct roles.....the role as an elected person requires councillors to represent the interest of the community and provide leadership".*

Councillor Reardon committed to the community meeting **to represent the interest of the Community by supporting Councillors Paine's suggestion to the community.** Her action, reflect very poorly on herself and also reflects very poorly on public confidence in the integrity of Hawkesbury City Council.

- **Conduct in a manner that is likely to bring the council into disrepute.** Further, my complaints are directed under section 6.1 of the HCC Code of Conduct. Councillor Reardon as a holder of civic office has brought the Council and herself into disrepute and in particular of those principles set out in sub paragraphs a), b), c), d) and g) of section 6.1. and 6.2. Councillor Reardon has breached Council's policy (HCC Code of conduct), which is detrimental to the pursuit of the charter of Council. Her actions were unethical and amounts to misconduct. This misconduct caused prejudice against the Community she said she would support at the council meeting.
- **Conduct that was dishonest (or at best without the requisite level of care and diligence).** Section 6.2 has been breached on the basis that Councillor Reardon has been dishonest (or at best, without diligence), in declaring her position to the community at one point to be one thing, and subsequently voting on the same issue in a completely different way.
- **Conduct breaching standards of fairness and equity.** In addition, the HCC Code of Conduct at sections 6.5, 6.6, and 6.8 requires certain levels of fairness and equity. Councillor Reardon has not considered the issues consistently or fairly. She has not acted in the public (community) interest as she said she would. What irrelevant matters did Councillor Reardon take into consideration when making her decision at Council? To my recollection there was no comment by Councillor Reardon on the evening of the Council meeting to explain her change in withdrawing her support she committed to at the Community meeting. As a related point I questions whether, in contrary to (Conflict of Interest 7), Councillor Reardon has put her political interest ahead of the Community's interest?

I believe my allegations and email dated March 9 provide prima facie evidence Councillor Reardon has breached the HCC Code of Conduct. I hereby request that these matters be referred to the conduct review committee/reviewer.

Politicians must be accountable for their actions. The public have a right not to be misled and deceived.

In my strong view Councillor Reardon actions breaches the standards contained in council's Code of Conduct and constitutes misbehaviour.

I request an update on this matter within 10 working days.

Please note that I am considering informing promptly the attendees at the meeting (24<sup>th</sup> February) on these complaints and the matters set out in this letter.

Should you wish to discuss further or require further information please contact me on [REDACTED]

**ORDINARY MEETING**  
Questions for Next Meeting

Addendum

Hawkesbury City Council

Conduct Review

Councillor: Reardon

Conduct at Meeting 8 March 2011

By Kevin Gibbons

Following the sending of the report to the complainant, he and I exchanged emails and he provided a response to my report.

I told him that I would attach all of those communications as an addendum.

I also told him that I would not include in the addendum any response to the specific points he raised in his response document.

Attached to this document are copies of those communications omitting any reference to the identity of the complainant.

I request that this document and the attachments be added to my report.

I am sending a copy of this addendum to the complainant and Councillor Reardon.

The attachments are:

1. "A" - collection of emails 29 April – 5 May 2011
2. "B" – emails 9 May 2011
3. "C" - reply by complainant



20110513-31

**ORDINARY MEETING**  
**Questions for Next Meeting**

*A this page and the following 3 pages*

**Carol Raab**

**From:** Kevin Gibbons  
**Sent:** Thursday, 5 May 2011 6:42 PM  
**To:** [REDACTED]  
**Cc:** Carol Raab  
**Subject:** RE: Code of Conduct Review re Councillor Reardon

While I do not wish to use my words in your mouth I am happy to have attached as an addendum to my report our exchange and your reply. And in so far as such an exchange is not intended to be an extension of the submissions leading to my report I will offer no commentary to your reply.

I would be grateful to have it by Monday afternoon so that I can send the addendum by the following day.

If that is not something that does not suit please say so and I will simply add an addendum with exchange attached.

I believe that the second sentence in your second paragraph captures the thing well. It was what I understood that you meant from reading things and speaking to you and engages the question that in my opinion had to be resolved under the Code.

It is what sort of actions attract the Code and did that include voting in a particular way at a Council meeting?

My conclusion on all that you do not agree with, as is your right.

**Kevin Gibbons | Principal, Mediator**  
p 02 9034 5577 m 0418 306 332 e [kgibbons@indemnitylegal.com.au](mailto:kgibbons@indemnitylegal.com.au)

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Please consider the environment before printing this email.

**From:** [REDACTED]  
**Sent:** Thursday, 5 May 2011 6:17 PM  
**To:** Kevin Gibbons  
**Subject:** Re: Code of Conduct Review re Councillor Reardon

Dear Kevin,



**ORDINARY MEETING**  
**Questions for Next Meeting**

I am preparing a reply. I expect to have it to you first thing next Monday.

I am disappointed with your decision. As I told you this was about saying one thing and doing another.

I note your final paragraph. However you did not include others you have spoken to example Paul Coffey and Councillor Paine. I have spoken to others, hence my original correspondence to those who attended the February meeting to check the veracity of my claim. I did confirm with you nobody advised that Councillor Reardon did not make the commitment including Councillor Paine and Paul Coffey. If there is some problem with this please advise.

Regards [REDACTED]

On Wed, May 4, 2011 at 11:03 AM, Kevin Gibbons <[KGibbons@indemnitylegal.com.au](mailto:KGibbons@indemnitylegal.com.au)> wrote:

Dear [REDACTED]

I do not think that there can be anything profitably realised from speaking to you on the phone.

You are entitled to disagree with my conclusion but in the orderly management of my function a request for such an open ended dialogue is simply not profitable or efficient.

My conclusion to which you may be referring may mean many things. It may mean a disagreement about what I have concluded on the facts. It may mean a disagreement about my conclusion about the applicability of the sections of the Local Government Act and the Code of Conduct I have referred to. It may mean a disagreement with my interpretation of the statutory provisions or the provisions of the Code of Conduct. It may mean a disagreement with my ultimate conclusion that the Code of Conduct or the Act does not fetter, absent criminality or illegality, a Councillor's right to decide to vote in a particular way at the time a vote is taken.

None of the above matters are in my opinion susceptible to profitable or efficient oral discussion as you seek. I have already expressed my opinion and the basis on which it was arrived at. I have also, to assist in clarifying for you a point of generality, expressed in longer form in my emails to you the difference between the written words of your complaint and the written words of Paul Coffey's notes, the letter to the Council and the terms of the proposed amendment to the Mayor's Minute. The written records of those things are attached to the report so that others should have been in no doubt as to the meaning of the words of generality of which you sought clarification. That it is now clarified may be of assistance to others who may not read the attachments as being aids in understanding the intrinsic meaning of parts of the report.

I also do not mind that this email exchange is added to the report subject to the omission of information which would identify you.

You will have observed that I have not included any record which identifies you by name which is consistent with the objects of the process, even though I am aware that you have notified at least one other person in addition to the General Manager and Councillor Reardon that you have lodged a Code of Conduct complaint against her.

**ORDINARY MEETING**  
Questions for Next Meeting

**Kevin Gibbons | Principal, Mediator**  
p 02 9034 5577 m 0418 606 332 e [kgibbons@indemnitylegal.com.au](mailto:kgibbons@indemnitylegal.com.au)

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Please consider the environment before printing this email.

**From:** [REDACTED]  
**Sent:** Tuesday, 3 May 2011 9:01 PM  
**To:** Kevin Gibbons  
**Cc:** [laurie.mifsud@hawkesbury.nsw.gov.au](mailto:laurie.mifsud@hawkesbury.nsw.gov.au); Jill & Rodger Reardon

**Subject:** Re: Code of Conduct Review re Councillor Reardon

Dear Kevin,

I have been interstate for most of yesterday and today.

**ORDINARY MEETING**  
Questions for Next Meeting

I note you have not agreed to speak with me about your decision as requested. However you have forwarded me a short note instead which I reject emphatically.

I am of the very firm view your conclusions in relation to my complaint are wrong.

I will take it, unless I hear to the contrary, that you are not willing to discuss your decision further.

Regards, [REDACTED]

**ORDINARY MEETING**  
**Questions for Next Meeting**

On Mon, May 2, 2011 at 8:57 AM, Kevin Gibbons <[KGibbons@indemnitylegal.com.au](mailto:KGibbons@indemnitylegal.com.au)> wrote:

**[REDACTED]**

The point is quite short.

You complained that Councillor Reardon was in breach of the Code in failing to support a motion in the nature of a proposal at the community meeting "from Councillor Paine for the engagement of an independent expert to assist Grose Vale residents to advocate for full compliance with all necessary requirements for the DA for Benedict XVI."

Putting to one side that the quotation has many parts the most significant part for the review was whether such a proposal had been made at all.

Paul's notes, the letter from the group the following day, the form of the amendment to the mayoral minute, Paul's oral presentation at the Council meeting and his slides he distributed, and the discussion at the council meeting was all directed to the Council engaging a consultant to advise it, the Council.

The Glossodia example which was the example raised by Councillor Paine at the community meeting and which was extensively referred to by Councillors at the Council meeting involved the Council engaging an expert to advise it.

Councillor Paine, on the contemporaneous written information and as corroborated by the Council meeting itself only ever discussed the independent expert point in the context of the way it was ultimately put not in the way it is put in your complaint.

In my opinion and the opinion of everyone I spoke to including you the propositions were materially, not semantically, different.

And thus I have proceeded to deal with the matter on the basis that your complaint was really that Councillor Reardon had not supported the amendment to the Mayoral Minute and that in so doing she had "reneged on her commitment".

**ORDINARY MEETING**  
Questions for Next Meeting

**Kevin Gibbons | Principal, Mediator**  
p 02 9034 5577 m 0418 606 332 e [kgibbons@indemnitylegal.com.au](mailto:kgibbons@indemnitylegal.com.au)

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Please consider the environment before printing this email.

**From:** [REDACTED]  
**Sent:** Friday, 29 April 2011 9:24 PM

**To:** Kevin Gibbons  
**Subject:** Re: Code of Conduct Review re Councillor Reardon

Thanks Kevin.

I think we are speaking different languages.

**ORDINARY MEETING**  
**Questions for Next Meeting**

It would be helpful if we could speak by telephone to discuss. Is that possible? If so when would it be most suitable to you?

Please advise. [REDACTED]

On Fri, Apr 29, 2011 at 6:35 PM, Kevin Gibbons <[KGibbons@indemnitylegal.com.au](mailto:KGibbons@indemnitylegal.com.au)> wrote:

Dear [REDACTED]:

The minutes of the community meeting at 1.8 and the notes of Mr Coffey at 1.14 are the same.

While it is unnecessary that I set out in verbatim form certain things my note and independent recollection was that when shown the notes made by Mr Coffey and the failed amendment to the Mayoral Minute you conceded that the assertion that Councillor Reardon agreed to support a motion that the Council fund a consultant to assist the residents and then failed to support that proposal at the Council meeting could not be contended, although you also did not think there was much or any difference between the 2. But if there was you continued to complain that Councillor Reardon had breached the Code of Conduct as alleged for failing to support the amendment motion in the terms in which it was proposed. The others I spoke to were of the view that there was a significant difference and I agree with them, although I would have arrived at that conclusion without hearing from them bearing in mind the content of the written materials.

The alteration was oral, not written.

In the light of the notes by Paul Coffey, which are corroborated by the letter the group sent the following day and the form of the motion to amend there was simply no other conclusion but that the words of your complaint were much broader in terms and substance than what, based on contemporaneous written material, occurred.

My recollection and note is that that was accepted by you at our meeting.

If you request me to make an addendum by way of elaboration I will of course consider it.

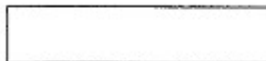
However if you request it I need your indication whether you are meaning to say that we had no such discussion of the type indicated above, or that it was fundamentally different to what I have indicated above, as that will be relevant to any elaboration you ask me to consider making.

**ORDINARY MEETING**  
Questions for Next Meeting

Kind Regards

**Kevin Gibbons | Principal, Mediator**

p 02 9034 5577 m 0418 606 332 e [kgibbons@indemnitylegal.com.au](mailto:kgibbons@indemnitylegal.com.au)



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Please consider the environment before printing this email.

**From:** [REDACTED]  
**Sent:** Friday, 29 April 2011 3:49 PM  
**To:** Kevin Gibbons  
**Subject:** Re: Code of Conduct Review re Councillor Reardon

Dear Kevin,

I have read your report and initially ask you to clarify 1.8. You refer to minutes (1.8), at 1.14 you refer to Mr Coffey's notes. Are they one and the same?



**ORDINARY MEETING**  
Questions for Next Meeting

Would you also advise me when I said "that the technical form of his complaint could no longer be sustained. He quite correctly conceded that his complaint, in the terms in which it was made, could not proceed. Unless it was amended it would have to be dismissed."

In addition I don't recall altering the form of 'the complaint so that it mirrored the minutes of the Community meeting and the amendment to the Mayoral Minute" (1.9) Would you please advise me when I did this and in what form was it?

Kind regards

[REDACTED]

On Fri, Apr 29, 2011 at 12:32 PM, Kevin Gibbons <[KGibbons@indemnitylegal.com.au](mailto:KGibbons@indemnitylegal.com.au)> wrote:

Attached is my report of my investigation.

**Kevin Gibbons | Principal, Mediator**  
p 02 9034 5577 m 0418 606 333 e [kgibbons@indemnitylegal.com.au](mailto:kgibbons@indemnitylegal.com.au)

**Error! Filename not specified.**

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**ORDINARY MEETING**  
**Questions for Next Meeting**

B this page with following 2 pages

**Carol Raab**

**From:** Kevin Gibbons  
**Sent:** Monday, 9 May 2011 10:24 AM  
**To:** [REDACTED]  
**Cc:** Carol Raab  
**Subject:** RE: Code of conduct issues.my reply May 9

Thanks [REDACTED]

I will now bundle things up including your response as an addendum to the report and send you and Councillor Reardon a copy.

**Kevin Gibbons | Principal, Mediator**  
p 02 9034 5577 m 0418 606 332 e [kgibbons@indemnitylegal.com.au](mailto:kgibbons@indemnitylegal.com.au)

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Please consider the environment before printing this email.

**From:** [REDACTED]  
**Sent:** Monday, 9 May 2011 9:46 AM  
**To:** Kevin Gibbons  
**Subject:** Re: Code of conduct issues.my reply May 9

Dear Kevin,

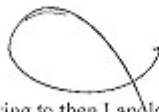
I think it is I who may have misread your email. I am content with your reply.

As I said in an earlier email we are speaking different languages.

Regards [REDACTED]

On Mon, May 9, 2011 at 9:03 AM, Kevin Gibbons <[KGibbons@indemnitylegal.com.au](mailto:KGibbons@indemnitylegal.com.au)> wrote:

[REDACTED]



If I have misunderstood what you are referring to then I apologise.

**ORDINARY MEETING**  
Questions for Next Meeting

I had assumed that you were referring to the people indicated in your email.

As my report makes plain I had spoken to the people you refer to and my reasons incorporate what they told me. I thought I had made that clear in the report.

I have not spoken to them since completing my report for the obvious reasons which have been indicated in our emails since I sent you the report.

For clarity if that is what you are seeking I do not intend speaking to them arising from our email exchanges or sending them a copy of my report.

Regards

**Kevin Gibbons | Principal, Mediator**  
p 02 9034 5577 m 0418 606 332 e [kgibbons@indemnitylegal.com.au](mailto:kgibbons@indemnitylegal.com.au)

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**ORDINARY MEETING**  
Questions for Next Meeting

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**From:** [REDACTED]  
**Sent:** Monday, 9 May 2011 8:41 AM  
**To:** Kevin Gibbons  
**Subject:** Fwd: Code of conduct issues.my reply May 9

Dear Kevin, attached is my right of reply.

I note you did not reply to the final paragraph of my dated May 5. Any reason?

Regards [REDACTED]

----- Forwarded message -----

**From:** [REDACTED] >  
**Date:** Mon, May 9, 2011 at 8:32 AM  
**Subject:** Code of conduct issues.my reply May 9  
**To:** [REDACTED] <[REDACTED]>

## ORDINARY MEETING

### Questions for Next Meeting

*C This page with following 3 pages.*

**Code of conduct issues: Councillor Reardon.**

**My right of reply: To Mr Kevin Gibbons.**

I refer to your report of my complaint 20 03 11, attachments and our subsequent emails dated April 29, May 2,3,4 and 5 2011.

I note the sole reviewer's heading does not include the Community meeting 24 February 2011.

#### **1. Appointment**

- 1.4 I was not provided with nor viewed "supplementary documents held by Council". Surely all parties to the allegations should be allowed to view and respond to advice provided to the sole reviewer. See Code of Conduct Procedural Fairness 14.7 d) (CoC).
- 1.5 I was not provided with nor viewed "further information". Surely all parties to the allegations should be allowed to view and respond to "further information" provider to the sole reviewer. See CoC.
- 1.6 I was not provided with nor did I listen to "some of the oral record of the Council meeting 8 March 2011". Surely all parties to the allegations should be allowed to hear what was said and respond "by the Councillor representatives at the community meeting namely, Councillors Reardon, Paine and Williams". See CoC.  
I note at 4.4 "Councillor Reardon did and she told me that she did not think she said anything". What did Councillor Reardon say on the oral record of the Council meeting with regards to the community meeting or the DA itself? Surely the parties to the allegations should be allowed to hear the oral record and respond accordingly. See CoC.
- 1.7 I cannot immediately recall being notified the "reasons why" the sole reviewer determined "conclusions or reasons for that conclusion". I would appreciate being provided with the "reasons why" to jog my memory.
- 1.8 The sole reviewer and I have exchanged emails on this point. Whilst I remember a discussion on the differences between the Glossodia poultry position and Grose Vale, I do recall saying words to effect "you did not think there was much difference between the 2". Discussion ensued around the allegation. I clearly remember confirming with the sole reviewer and confirmed in a subsequent email "this was about saying one thing and doing another". I do not recall and I do not accept that I said "he quite correctly conceded that his complaint, in the terms in which it was made, could not proceed. Unless it was amended it would have to be dismissed". I had and was shown the notes of the community meeting and the Mayoral minute.
- 1.9 It follows I don't recall altering the form of the complaint. The sole reviewer in a subsequent email advised me I altered it orally. Keeping in mind the complaint was set out over two pages I do not recall any discussion between myself and the sole reviewer on the two page code of conduct issues dated 20 03 11 or the part/s that needed to be altered.
- 1.13 See 1.8 and 1.9. above.

#### **3 Decision**

## ORDINARY MEETING

### Questions for Next Meeting

I refer to previous emails rejecting the sole reviewer's decision. It seems to me the sole reviewer has decided the issues on the wording of the amendment to the Mayoral minute! I can see no other reasons at this point.

Did the sole reviewer speak with the mover (Councillor Williams) and the seconder (Councillor Rasmussen) of the amendment? The sole reviewer confirms at 4.1 his inability to confer with Councillor Williams despite his attempts. Councillor Rasmussen from the reviewer's report was not contacted. I note at 14.4 "Business may be conducted by video-conference or teleconference". Was there any endeavour to make that happen to ensure procedural fairness?

It is my strong submission that it was essential if the decision was centred on the wording of the amendment, rather than saying one thing at the community meeting and doing another at the Council meeting, then the two Councillors should have been interviewed in the presence of all the parties to obtain from them the meaning of their amendment.

#### 4 Enquiries and Reasons

4.1 I have not been provided with "the disc of the council meeting" nor "some additional information from the Journalist" for my perusal. Surely all parties to the allegations should be able to peruse or listen to the disc and respond should they wish.. See CoC.

4.2 I advised the reviewer during our discussion at the Council Chambers that I requested participants who attended the community meeting and who I had email addresses for to advise me if they disagreed with the contents of my correspondence to Councillor Reardon dated 9 March. No person replied disagreeing with the contents except Councillor Reardon. In addition I offered correspondence to the sole reviewer from a person who acknowledge and agreed with the contents. The sole reviewer did not take up my offer. I submit that some endeavours should have been made to at least speak to that person.

4.4 I am not sure what "that part" refers too. Did Councillor Paine not discuss Glossodia situation? What recollection did Councillor Reardon have? The reference to Councillor Reardon "she did not think she said anything". I can confirm when I asked would she support Councillor Paine' suggestion for an "independent expert" she nodded her head up and down and moved her lips which from where I was standing to ask the question was a very clear yes. As the sole reviewer should appreciate the mouth has a certain position for yes and another for no. The mouth movement and the head moving up and down clearly indicated to me and others at the Community meeting that she would support the suggestion of Councillor Paine. There was no equivocation from Councillor Reardon. That was the only thing I remember Councillor Reardon saying/doing whilst I was in attendance. I was a few minutes late arriving at the meeting.

4.5 The two "moles" referred to are not relevant to the sole reviewers conduct review is it?

4.6 As earlier indicated I am not aware nor was I provided with the contents of Justine Geake's contribution which was "very useful to untangle what went on towards the end of the meeting when the subject of the complainants' complaint arose". Surely all parties to the allegations should be able to view, discuss and make submissions on the subject matter should they wish, See CoC.

## ORDINARY MEETING

### Questions for Next Meeting

4.7 Councillor Reardon was at the head table. She had ample opportunity to put her real position. She did not. The Code of Conduct as I referred to in my Code of Conduct Issues correspondence 20 03 11 at page two. "councillors have two distinct roles .....the role as an elected person **requires councillors to represent the interest of the community and provide leadership**" Councillor Reardon's actions at the Council meeting did not represent the interest of the community. And, the interest of the community at that meeting was not "smeared with illegality or criminally".

4.9 I take it that Councillor Reardon's notes made no reference to an "independent consultant. Am I correct? I was not shown the notes to make submissions on. See CoC. In addition "Those issues were also communicated by Councillor Paine" that being the fact if no mention was made of the "independent consultant "to the Mayor by Councillor Paine why did Councillor Paine support the amendment moved by Councillor Williams (which the Mayor with some degree of aggression rejected) to the Mayoral minute to incorporate the "independent planning consultant"? Again I was not shown anything to make comment on, nor was it discussed with me prior to the conduct review.

4.10 I am concerned that later on in the sole reviewer's conduct review he refers to the "function" of Council. "He (the Mayor) asked Councillor Reardon to report the residents' concerns" (to him). Is that not a function of Council/Councillor? If not, what is the use of Councillors attending community meeting "to represent the interest of the Community (at Council meetings) and provide leadership"?

4.11 If Councillor Paine and Reardon "agreed that the table of issues in the Mayoral minute set out the concerns raised at the meeting why did Councillor Paine support the amendment to the Mayoral minute on the 8<sup>th</sup> of March? Surely the sole conduct reviewer accepts that the request for the independent planning consultant was a concern to the residents at the community meeting, see 4.17 Mr Coffey's words. I know the defeat of the amendment at the Council meeting caused grave concerns to a number of the residents who attended the meeting on the 24<sup>th</sup> of February.

4.12 As already indicated earlier on Councillor Paine supported the amendment to make it part of the Mayoral minute.

4.15 Councillor Reardon at 4.4 "said she did not think she said anything" see my submission at 4.4 above. The very small contribution by Councillor Reardon was made earlier in the meeting and is the one I refer to in 4.4.

4.17 Mr Coffey records that "CPaine/LW/JR said they would get it on the agenda for council meeting 8 March, including the need to appoint independent consultants Meeting resolved to write to Council/ask additional two weeks. Find/appoint independent consultant" Mr Coffey's notes confirms the genesis of my complaint. The Council minutes confirmed Councillor Reardon voted against the amendment to appoint independent consultant. Surely this is same as saying one thing (to a Community meeting) and doing another thing (at the Council meeting).

4.18 How could Councillor Reardon come to the conclusion she was "very supportive of the residents". It must follow and Mr Coffey's notes see 4.17 particularly those in bold reflects Councillor Reardon position was very supportive at the community meeting but not supportive at the Council meeting when the amendment was moved. Those two positions are completely different. In other words saying one thing and doing another.

4.23 see 4.15 above.



## ORDINARY MEETING

### Questions for Next Meeting

#### 5 The Act and Code of Conduct

The Act at 232 (2) confirms the role of a councillor "as an elected person to represent the interest of the residents and ratepayers-----to provide leadership and guidance to the Community-----and to facilitate communication between the community and the Council".

Councillor Reardon, however you look at it did not represent the interest of the residents and the ratepayers. Did she facilitate communication accurately to the Mayor on the concerns and the want of the Community? Only the Mayor, Councillor Reardon and maybe Councillor Paine would know the answer. Was the question asked by the sole reviewer? I did not have an opportunity to hear what they said to the Mayor nor did I have an opportunity to question Councillors Reardon or Paine thus denying me procedural fairness.

It is clear that Councillor Reardon's conduct was dishonest or at best without the requisite level of care and diligence. Councillor Reardon according to Mr Coffey's notes declares her position to the community at one point to be one thing, ("although she was very supportive of the residents" see 4.18) and subsequently voting on the same issue in a completely different way. The later position was not supportive of the resident.

6.3 And 6.4 If the sole reviewer is relying on whether Councillors at the community meeting were carrying out a "function" in my view is missing the point. The code of conduct definitions at 2 does not define a function. It makes reference to "delegate of council" which is defined as "a person or body, and the individual members of that body to whom a function of council is delegated". If councillors attend a community meeting they are attending as an individual member/s of that body (Council) so they can represent the interest of the Community and in this case report to report back to the Mayor. What is the use of a Councillor attending a community meeting in the first place if they are to gauge the interest of the community to represent their interest at a Council meeting and provide leadership?

Should that be the case the residents and ratepayers should be informed accordingly?

I request the sole reviewer receives my submission with good will, reviews his findings in the conduct review received by me on the 29<sup>th</sup> of April. They are made in good faith and are not vexatious. Further if I was afforded procedural fairness and the opportunity to discuss the findings with him I may have had different views if it pleases.

I am available to the sole reviewer should he wish to clarify any points made in this right of reply.

**[REDACTED]**

oooO END OF REPORT Oooo

**ORDINARY MEETING**

Questions for Next Meeting



ordinary  
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