



Hawkesbury City Council

ordinary meeting business paper

date of meeting: 02 February 2010

location: council chambers

time: 6:30 p.m.



mission statement

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

ORDINARY MEETING

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SECTION 4 - Reports for Determination

CITY PLANNING

Item: 4 **CP - Land Release Application to Department of Planning for 108 Grose Vale Road, North Richmond - (107430, 105365, 77679, 95498)**

Previous Item: 276, Ordinary (8 December 2009)

REPORT:

Introduction

At the meeting of 8 December 2009 Council considered a report on a submission to the Department of Planning on the Land Release application for the land at 108 Grose Vale Road, North Richmond. The resolution of that meeting was as follows:

"That Council:

1. *Consult with the North Richmond and Districts Community Action Association Inc. Group prior to the proposed submission being reported back to Council in February 2010.*
2. *Invite the North Richmond and Districts Community Action Association Inc. to provide a submission in response to the land release application for attachment to the Council's response to the Department of Planning."*

A meeting was held with representatives of the North Richmond and Districts Community Action Association Inc on Thursday 10 December 2009. The meeting was attended by Mr Dave Perry, Steven and Anne Hennessy and Council's Director City Planning.

At the Council meeting of 8 December 2009 a number of issues were discussed and some of the matters raised in the report were requested to be reworded prior to the preparation of Council's submission. These matters were further discussed at the subsequent meeting with the Association representatives on 10 December 2009.

A draft submission has been prepared and is attached to this report. The submission is based on the report to Council on 8 December and has taken into account the Council and community comments.

Conformance to Strategic Plan

The Council has been requested to comment on the application, lodged with the Department of Planning, to list 108 Grose Vale Road, North Richmond on the MDP. Council adopted the Community Strategic Plan on 13 October 2009 and Council's comments in relation to this matter will be consistent with the following Direction Statements contained within the Strategy:

Looking after People and Place

- *Offer residents a choice of housing options that meets their needs whilst being sympathetic to the qualities of the Hawkesbury.*
- *Population growth is matched with the provision of infrastructure and is sympathetic to the rural, environmental, heritage values and character of the Hawkesbury.*

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- *Have development on both sides of the river supported by appropriate physical and community infrastructure.*
- *Have future residential and commercial development designed and planned to minimise impacts on local transport systems allowing easy access to main metropolitan gateways.*

Caring for our environment

- *Be a place where we value, protect and enhance the cultural and environmental character of Hawkesbury's towns, villages and rural landscapes.*
- *Take active steps to encourage lifestyle choices that minimise our ecological footprint.*

Funding

Not Applicable.

RECOMMENDATION:

That the submission attached to the report be forwarded to the Department of Planning as Council's submission to the Land Release application lodged with the Department of Planning.

ATTACHMENTS:

AT - 1 Copy of Report to Council Meeting dated 8 December 2009

AT - 2 Copy of Submission to Land Release Application

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AT - 1 Copy of Report to Council Meeting dated 8 December 2009

ITEM: 276 CP - Land Release Application to Department of Planning for 108 Grose Vale Road, North Richmond - (107430, 105365, 77679, 95498)

Previous Item: 236, Ordinary (10 November 2009)

REPORT:

Introduction

On 10 November 2009 Council received an information report on the lodgement of an application to the Department of Planning for land release listing on the Metropolitan Development Program (MDP) at Grose Vale Road, North Richmond. A copy of that report is attached for reference. The resolution of that meeting was as follows:

- "1. *The information be received.*
2. *Following receipt of the letter of expectations from the Department of Planning in relation to this application, the matter be reported to the next available Council meeting.*
3. *Council reaffirm its resolution of 13 October 2009 as details in the report."*

The letter of expectations from the Department, as mentioned in point 2 above, was received by Council on 9 November 2009. (Copy attached). The purpose of this report is to discuss the issues raised in the Department's letter and to suggest responses to those issues.

Purpose of the Land Release Application

As mentioned in the report to Council on 10 November 2009 the land release application is not a rezoning application and it is not a development application for the development of the site. The consent authority for this application is the Department of Planning as the application seeks the land to be listed on the State Government's Metropolitan Development Program (MDP).

The 5 November letter from the Department of Planning describes the role of the MDP, its status in the planning system and clearly outlines the purpose of the program and states that "*the Government uses the Metropolitan Development Program to help guide the infrastructure and service provision of Government agencies.*" The Government agencies do not consider the upgrades of infrastructure unless land or a locality is identified on the MDP.

Role of Council

The expectation of Council in relation to this application has been set out in the letter from the Department of Planning (attached). The Department, in relation to the land release application, is keen to receive advice from Council on the following issues:

1. The level of fit with existing or proposed residential strategies.
2. The extent to which the Sustainability Criteria set in the Metropolitan Strategy (copy attached to the Department's letter, and this report) are met in the application.
3. Council's views on the broad extent and type of infrastructure required to service the land.
4. The contribution the application would have to housing diversity within the LGA.
5. Impacts on the local environment and Heritage values (as per criterion 7).
6. Those requirements Council would consider appropriate to be met if the land was to be listed on the MDP and any subsequent rezoning process.

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The original advice received from the Department in early 2009 stated that, should an application be lodged, Council would be required to respond to the Department within 60 days. However, due to the time of year and the limited Council meeting schedule during this time, the Department has extended this period to late February 2010.

Council resolved on 13 October 2009 as follows:

"That as a matter of policy Council indicate that it will not consider nor support any further applications to rezone land for residential purposes in the area west of the Hawkesbury River until such time as the existing infrastructure issues, particularly as related to traffic, have been addressed to Council's satisfaction."

The above resolution does not preclude Council from considering and commenting on the subject application, as the application is not an application to rezone the site. Consideration of the application by Council is consistent with the above resolution as the fundamental purpose of the land release application is to list the site on the MDP so that "existing (and proposed) infrastructure issues" can be addressed prior to the land being considered for rezoning.

Consideration of Issues

The following comments are provided in relation to the questions raised by the Department of Planning. As the application has been made to the Department and Council has only been asked to comment on the application, the following comments are made to assist the Department when assessing the application.

The level of fit with existing or proposed residential strategies

On 8 September 1998 Council resolved to consider land at North Richmond, North Bligh Park, Vineyard, Pitt Town and Wilberforce as it was considered that they had capability for urban development in the short to medium term. The land at North Richmond, known then as "Kemsley Downs", included the land that is the subject of the land release application. The potential yield being considered for the land was for the immediate release of 200 allotments. The work for this release did not proceed due to the State Government Policy at the time relating to development west of the Hawkesbury River, the need for a more complete residential strategy to be prepared and for the land to be included in the Urban Development Program.

A draft residential strategy has been prepared (the subject of another item on this agenda) that is consistent with the current State policies. The draft Residential Strategy (yet to be publically exhibited) includes the subject land for further investigation for land release. In this regard the further investigation relates to heritage, services (water, sewer, shops, etc) and road infrastructure.

The extent to which the Sustainability Criteria set in the Metropolitan Strategy (copy attached to the Department's letter, and this report) are met in the application

The Sydney Metropolitan Strategy sets eight sustainability criteria for testing land release proposals. A copy of the sustainability criteria is attached to this report as part of the letter from the Department of Planning. The Metropolitan strategy states the main criteria and then outlines an explanation as to how an application is measured against those criteria. The relevant sustainability criteria and comments on the application in relation to the criteria are provided below.

1. **Infrastructure Provision** – Mechanisms in place to ensure utilities, transport, open space and communication are provided in a timely and efficient way.

Measurable explanation of criteria.

- The proposed land release application has been considered in relation to Council's existing and proposed residential strategies previously in this report. It is considered that the application is consistent with existing and likely future strategies of Council.

- The application, in Section 2, considers a range of infrastructure and services for the site and proposed development. The application has indicated that there is some capacity for development within the existing infrastructure provision. Some areas, such as roads, will require immediate, staged upgrading and the applicant has already commenced discussions in this regard with the relevant authorities. The application also considers that the upgrading of the required infrastructure is economically viable for the development.
 - The application has indicated that there is opportunity for developer agreements to be negotiated with Council for particular issues such as traffic.
2. **Access** – *Accessible transport options for efficient and sustainable travel between homes, jobs, services and recreation to be existing or provide.*

Measurable explanation of criteria.

- The subject site is located adjacent to the existing development at North Richmond. In this sense development at the site would be a logical extension to the existing centre.
- The existing area is serviced by limited public transport. The existing public transport economic viability is limited partly due to the size of the existing population of the centre and partly due to the dispersed, low density nature of development surrounding North Richmond. Additional development in or adjacent to the existing development will have the potential to improve the viability of the public transport system.
- Transport within the catchment is dominated by private vehicle use. The road access to and from the locality is focused at the existing river crossing at North Richmond making road access to the locality and development site a major issue. Additional development in the locality without the upgrading of the road access is not sustainable and in the absence of any upgrade work development would make a negative contribution to travel and vehicle use goals.

The application has rightly commented that the site is reasonably well located to some transport, particularly rail via Richmond. The application has also made mention of preliminary discussions with transport agencies which have identified potential for state infrastructure contributions that would assist the required upgrades of Bells Line of Road at the intersection of Grose Vale Road and upgrade to or additional river crossing.

It is considered that the application does not currently meet the access sustainability criteria. In order for the proposed land release application to meet the access sustainability criteria, the potential for state contributions and upgrade works would need to be realised. In this sense, the necessary upgrade works and/or additional river crossing would need to be determined by the service authorities, in this case the RTA. These works would then need to be fully costed, to enable appropriate cost distribution to development potential, and the staging of the works programmed to coincide with the appropriate stages of development and population increase (as it would be unrealistic and unsustainable to construct, upfront, infrastructure for development that may take ten or more years to fully be realised).

3. **Housing Diversity** – *Provide a range of housing choices to ensure a broad population can be housed.*

Measurable explanation of criteria.

The contribution that this proposed land release application would make to housing diversity in the Hawkesbury is addressed elsewhere in this report. It is considered that the proposal will meet this criteria.

4. **Employment Lands** – *Provide regional/local employment opportunities to support Sydney's role in the global economy.*

Measurable explanation of criteria.

The proposed land release is for residential land uses. Despite this the application is considered to be consistent with this criteria as it does not result in the loss of employment land, there will be some temporary employment generation during the construction and housing development of the land and the increase in population in the locality will require the corresponding increase in services (retail, commercial, etc) in the locality.

5. **Avoidance of Risk – Land use conflicts and risk to human health and life avoided.**

Measurable explanation of criteria.

- The site is flood free even when considered from the perspective of the Probable Maximum Flood (PMF), although the site and locality will be isolated from the existing services and evacuation routes to the east. However, there is the ability to evacuate the locality to the west in the case of flood. Existing evacuation plans of the locality during bushfire events would need to be suitably upgraded if there was any additional development in the locality. However, the site currently has a low hazard bushfire rating due to the site's previous grazing land use.
- The site, as mentioned elsewhere in this report, would need to be master planned so that any development of environmentally or physically constrained land (riparian, steep, etc) is excluded from development.
- The site has a number of different land uses adjoining. To the north is the existing urban development of North Richmond, to the south and west is predominantly rural residential development and to the east, over the ridgeline occupied by Grose Vale Road, is grazing agriculture. The use of the site for agricultural purposes, particularly more intensive uses, would result in significant conflicts with the existing adjoining urban and rural residential land uses. The development of the surrounding land uses over recent years has resulted in a constrained potential for the site and it is considered that the most appropriate use of the land would be for a mix of residential densities.

6. **Natural Resources – Natural resource limits not exceeded/environmental footprint minimised.**

Measurable explanation of criteria.

- As mentioned elsewhere in this report, it is clear that the physical infrastructure for the supply of water to the site will require upgrading prior to any development taking place. Whilst the supply infrastructure can be upgraded there is concern regarding the bulk supply of water that relies on drawing from the river. The drawing of water for urban growth depletes the supply available within the river and has the potential to adversely impact on environmental flows and the river environment. The application states that water and sewerage infrastructure is available and that BASIX requirements are able to be achieved. Should the Department list the site on the MDP, it is considered that any development should be encouraged to achieve environmental and natural resource conservation at levels greater than those specified in BASIX.
- The application states that the site is classified as Category 3 Agricultural land, being of marginal agricultural value and that the existing agricultural use is of marginal value. This has been confirmed from the Department of Primary Industry in previous advice to the Heritage Branch of the Department of Planning. It is also considered that, due to the location of adjoining urban residential and rural residential development, any significant agricultural activity on the site would result in unacceptable land use conflicts in the future.
- The land is not considered to be productive resource land for extractive or other industries.
- Energy infrastructure required to service any development of the site would require upgrading that would need to be funded by the development that benefits from that infrastructure and it is considered that there is existing capacity to supply the site.

7. *Environmental Protection* – Protect and enhance biodiversity, air quality, heritage, and waterway health.

Measurable explanation of criteria.

- The application has included a variety of studies and investigations into the natural and cultural heritage of the site. The recommendations from the reports is to protect and enhance the riparian environment along Redbank Creek and to design and manage stormwater drainage across the site to ensure that any development of the site does not adversely impact on the downstream development areas or the natural environments of the receiving waters. This approach is supported and any listing of the site on the MDP should require this approach to all the future planning for the site.
- The site contains the remnants of the Keyline Dam system that has heritage importance. Previous advice has been received by Council from the Heritage Branch of the Department of Planning indicating that the future planning for the site is to be undertaken in consultation with that Branch. Recent discussions and correspondence received by Council from the Heritage Branch has indicated that discussions have commenced and will be ongoing in relation to the retention and/or interpretation of the heritage values of the site should any future development be supported. Council supports this approach and is willing to participate in any future consultations on this matter.

8. *Quality and Equity in Services* – Quality health education, legal, recreational, cultural and community development and other government services are accessible.

Measurable explanation of criteria.

The purpose of the application for land release is to obtain listing on the MDP to enable Government agencies to consider the planning of appropriate services for the site should development occur. Generally the quality and extent of these services is commensurate with the size and location of the population and the services generally expand as the population expands.

Council supports and encourages the progressive expansion of Government services as the population grows. However, due to the location of the subject site, any planning for the provision of health, education, legal, recreational, cultural and community services needs to consider the equity impacts that arise from the restricted access across the river and the potential for isolation of the site and locality from existing services in the time of flood or other emergency. In this regard Council considers that particularly health, education and other essential community services should be readily available to the existing and proposed population on the western and northern sides of the Hawkesbury River rather than reliance on these services in Richmond or Windsor alone. It is one of the basic responsibilities of the State Government to supply such facilities should it require Council to plan and progress towards the targets set in the North West Subregional Strategy.

Council's views on the broad extent and type of infrastructure required to service the land.

It is clear that the current infrastructure in North Richmond could not cater for the development of the subject land without upgrading. This is primarily due to the fact that the current zoning of the site does not allow for development and the existing infrastructure and services have not been designed to service land not earmarked for release. It is noted that the land release application contains a number of studies and investigations into the servicing of the site. However, should the site be considered for further development the following infrastructure would need to be suitably addressed:

Water Supply

The land is serviced by Sydney Water for water supply. It is understood that there is a current limitation on water supply to the property due to the height of the existing reservoir servicing the site. In order to service the site an additional high level reservoir would be required along with the additional ancillary delivery infrastructure. It is clear that physical infrastructure expansion of these facilities is possible and it is

considered that any such expansion should be at the cost of the development that requires and benefits from those facilities.

There are concerns in relation to the source of the water supply to service any development of the site. In this regard the drawing of additional water from the Hawkesbury River at North Richmond may have adverse impacts on other existing River users and the river environment. It is considered that the overall supply of water needs to be carefully considered to ensure that there is a fair balance of water for the environment and existing users.

Reticulated Sewer

The land is serviced by Sydney Water for reticulated sewer. The application states that there is *“capacity in the existing network and treatment plant infrastructure that may, with minimal alteration accommodate the proposed land release.”* It is recommended that any required upgrade of the physical infrastructure required for additional development should be funded by the development that requires or benefits from that upgrade. However, the issue of additional water usage and discharge of effluent to the river and the potential adverse impact that this may have on the environment must be considered. Should any land be considered for future development the use of recycled water from the Sydney Water treatment plant should be required within the site.

Utility services

Power, telecommunications and gas services must be upgraded and the funding of these upgrades should be at the expense of the benefiting development.

Community services

Whilst the site is adjacent to the existing village of North Richmond, the site is outside the normal catchment of the existing retail and community infrastructure of the village. This is recognised in Council's draft residential strategy where it comments that for this site there is a *“longer term opportunity subject to provision of shops, transport infrastructure, community infrastructure and services outside catchment.”* Should any development be proposed on the subject land the additional services should be developed to cater for that increase in population.

Road Transport

There is an existing significant traffic problem during the peak periods along Bells Line of Road at the intersection of Grose Vale Road stretching east to almost Richmond in pm and westward to Colo High School in am. There are real concerns that any additional development of the locality will result in the road system breaking down. Whilst it is not expected that the existing problems should be resolved by any new development, it is expected that any new development must ensure that the existing problems are not made worse and preferably any new development should result in an improvement of the existing situation. Again it is considered that the necessary upgrade of the road system should be funded by new development with any shortfall, attributed to the existing problems, being contributed by the State Government as the problem relates to a State controlled road.

The contribution the application would have to housing diversity within the LGA.

The subject site is a significantly large site that has potential for the design of a variety of housing types, open space and retention of riparian vegetation. In this regard the site would need to be master planned to ensure that appropriate dwelling densities and open space provision is obtained. The master planning would also need to ensure retention of the existing rural and village character of the locality.

The draft residential strategy (see other item on this agenda) has found that the current provision of housing within the Hawkesbury is generally low density, detached dwellings. Whilst there is no proposal to discontinue this style of housing, the draft strategy has also found that with the predicted change to population over the next twenty years, there is a need to increase the diversity of housing provided within the Hawkesbury. In this regard there is a need to increase housing density, particularly around centres, to make provision for the changing population.

The subject site, as mentioned above, has the potential to make a significant contribution to the provision of housing diversity in the Hawkesbury LGA subject to the site being appropriately planned. Should the Department approve the land release application it would be appropriate that the Department, Council, the community and the developer work closely to achieve the appropriate development outcome for the site.

Impacts on the local environment and Heritage values (as per criterion 7).

The site is a large site that has some sensitive riparian environments along the western property boundary along Redbank Creek. The site also has the remnants of the Key Line Dam system developed by PA Yeoman. It is noted that the land release application includes a number of studies that assess and make recommendations in relation to the environmental and heritage values of the site.

The local natural environmental values of the site will need to be appropriately identified for incorporation into, rather than removal for, any development of the site. In this regard the appropriate master planning of the site, as mentioned previously, will need to make appropriate provision for retention of the natural environmental features.

In relation to the heritage values of the site, comments have been made in previous sections of this report. It is noted that the previous advice from the Heritage Branch indicates that consultation and discussion is to take place with the developer, Council and the Heritage Branch to plan for the retention and/or interpretation of the heritage of the site should any development proceed. It is considered that these discussions should be comprehensive and include all relevant information and the community.

What requirements Council would consider appropriate to be met if the land was to be listed on the MDP and any subsequent rezoning process.

The requirements of Council have been discussed previously in this report. The following is a summary of the requirements that Council considers appropriate in this matter:

1. Road infrastructure upgrading, including the intersection of Bells Line of Road and Grose Vale Road, upgrade or duplication of the river crossing or by-pass of North Richmond to improve the existing traffic problems that any further development in the locality will only exacerbate.
2. Any upgrade of utilities required for further development to be planned for and provided progressively as any development proceeds. Infrastructure being provided following development is not acceptable.
3. Any upgrade or provision of services for development is to be funded by the development that benefits or requires that provision.
4. The heritage value and significance of the site is to be impartially assessed and retained or interpreted in consultation with the Heritage Branch, developer, Council and the community.
5. Assurance that the sustainability criteria set in the Sydney Metropolitan Strategy and Council's Residential Strategy (when adopted) are to be fully incorporated into all aspects of the future development.

Conformance to Community Strategic Plan

The Council has been requested to comment on the application, lodged with the Department of Planning, to list 108 Grose Vale Road, North Richmond on the MDP. Council adopted the Community Strategic Plan on 13 October 2009 and Council's comments in relation to this matter should be consistent with the following Direction Statements contained within the Strategy:

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Looking after People and Place

- *Offer residents a choice of housing options that meets their needs whilst being sympathetic to the qualities of the Hawkesbury.*
- *Population growth is matched with the provision of infrastructure and is sympathetic to the rural, environmental, heritage values and character of the Hawkesbury.*
- *Have development on both sides of the river supported by appropriate physical and community infrastructure.*
- *Have future residential and commercial development designed and planned to minimise impacts on local transport systems allowing easy access to main metropolitan gateways.*

Caring for our environment

- *Be a place where we value, protect and enhance the cultural and environmental character of Hawkesbury's towns, villages and rural landscapes.*
- *Take active steps to encourage lifestyle choices that minimise our ecological footprint.*

Funding

N/A

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:

1. Council prepare a submission to the Department of Planning on the application for land release at 108 Grose Vale Road, North Richmond, in accordance with the comments made in this report and a copy of this report be attached to the submission.
2. The application documents lodged with Council be placed on Council's website with explanatory information for the information of the public.

ATTACHMENTS:

AT - 1 Copy of report to Council meeting dated 10 November, 2009

AT - 2 Copy of letter of expectation from Department of Planning and Extract of Metropolitan Strategy Sustainability Criteria.

**AT - 1 Report to Council dated 10 November re Land Release Application to
Department of Planning for North Richmond**

**ITEM:236 CP - Land Release Application to Department of Planning for North Richmond -
(107430, 105365, 77679, 95498)**

REPORT:

Introduction

The purpose of this report is to advise Council that a Land Release application has been lodged with the Department of Planning for approximately 180.3 hectares of land at North Richmond, known as Lot 27, DP 1042890, 108 Grose Vale Road, North Richmond.

Copies of the application were given to the Director City Planning at a meeting with the Department of Planning on Monday 2 November 2009. Also in attendance at that meeting were representatives from Buildev, Urbis (consultants for Buildev), Heritage Branch of the Department of Planning, Sydney Water and RTA. The meeting was convened by the Department of Planning to advise relevant infrastructure authorities and Council of the existence of the application and the proposed manner in which the application will be considered by the Department.

At the meeting it was stated that a letter will be sent to Council from the Department of Planning formally requesting comments from Council and outlining what detail is expected from Council in their response. At the time of writing this report the letter from the Department of Planning had not been received at Council.

Purpose of the Application

The application is **not** a rezoning application and it is **not** a development application for the development of the site. The consent authority for this application is the Department of Planning as the application seeks the land to be listed on the State Government's land release schedule.

The application requests the Department of Planning to grant land release approval for the site. If a site is granted land release status by the Department of Planning the land can then be listed on the NSW Government's Metropolitan Development Program (MDP). The MDP is essentially a State strategic list of properties that are deemed suitable for further investigation, particularly in relation to infrastructure planning, prior to that land proceeding to rezoning consideration by a local Council. An extract from the Department of Planning's website in relation to the MDP states the following:

"The MDP develops an indicative ten-year dwelling supply forecast, which is an important tool in tracking the likely future availability of land for housing purposes, thereby ensuring the demand of the housing market can be adequately met, and the affordability of housing maintained.

It is also a valuable resource for Government agencies which are responsible for the provision of infrastructure by keeping them informed of likely future land release areas that will require infrastructure services such as connection to sewerage, electricity and transport networks.

To assist with these functions, it is a typical requirement that proposed land releases in the metropolitan region are included on the MDP before they can proceed to formal rezoning."

Land can be included on the MDP either by identification for further investigation in a Council strategy or via a separate application directly to the Department of Planning where the land parcel is significant. Listing on the MDP is a pre-requisite for infrastructure providers, such as Sydney Water and RTA, as those providers do not plan infrastructure provision unless land is listed on the MDP. It should also be noted that listing on the MDP does not automatically permit all the land to be developed for residential development.

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The listing will give the opportunity for the land to be investigated by the infrastructure providers to plan how and when infrastructure may be provided to the land.

Role of Council

The exact role, or expectation, of Council in relation to this application will be set out in a letter from the Department of Planning which had not been received at Council at the time of writing this report. However, Council has received advice previously regarding this pending application.

Whilst Council is not the consent authority in this matter, the Department of Planning and the Director General, are keen to receive comments from Council in relation to this proposal. The comments are likely to expect an "In Principle" comment from Council in relation to the listing and investigation of infrastructure provision for the site and will not expect a detailed assessment of the application. Should the MDP listing be approved by the Department, and the subsequent infrastructure planning be suitably completed, the land can then, subject to an appropriate rezoning application being lodged, be considered in detail by Council, and the Department, as part of a rezoning application.

Council resolved on 13 October 2009 as follows:

"That as a matter of policy Council indicate that it will not consider nor support any further applications to rezone land for residential purposes in the area west of the Hawkesbury River until such time as the existing infrastructure issues, particularly as related to traffic, have been addressed to Council's satisfaction."

The above resolution does not preclude Council from considering and commenting on the subject application, as the application is not an application to rezone the site.

Whilst the above resolution is a broad Policy statement of Council, it is likely that a response along these lines to the Department of Planning in relation to this application may be suitable.

Funding

There are no funding implications in relation to this report.

RECOMMENDATION:

That:

1. The information be received,
2. Following receipt of the letter of expectations from the Department of Planning in relation to this application, the matter be reported to the next available Council meeting.

ATTACHMENTS:

There are no supporting documents for this report.

oooO END OF REPORT Oooo

**AT - 2 Copy of letter of expectation from Department of Planning and
Extract of Metropolitan Strategy Sustainability Criteria**



Planning

Mr Peter Jackson
General Manager
Hawkesbury Council
PO Box 146
WINDSOR NSW 2756

Our ref: s07/01065
Y09/3311

Attn: Mr Matthew Owens

Dear Mr Jackson

Subject: Land at North Richmond – proposed listing on the MDP

I understand that on 2 November Council received a proposal to have certain lands at North Richmond added to the State Government's Metropolitan Development Program.

As per the Department's correspondence of February 2009, the Department requested that the proponent seek the views of Council on their proposal prior to seeking consideration by the State Government. In this light, I am writing to clarify for Council the role of the Metropolitan Development Program and the feedback that the Government is seeking from Council as part of the assessment process.

Role of Metropolitan Development Program

As you may be aware, the Metropolitan Development Program process does not have the same statutory status as a development application or an application for a rezoning under a Local Environmental Plan.

Rather, under the Metropolitan Strategy, all new inclusions on the Metropolitan Development Program are required to meet certain Sustainability Criteria (see attachment A). Inclusion on the Metropolitan Development Program does not mean that a rezoning process is imminent or must occur in the short term. Rather, the Government uses the Metropolitan Development Program to help guide the infrastructure and service provision planning of Government agencies. If a proposal is included on the Metropolitan Development Program, this allows infrastructure and service providers to include these sites in their long-term asset management plans. When infrastructure and servicing plans are sufficiently advanced, rezoning processes may then be initiated.

Advice sought from Council

In the context of the role of the Metropolitan Development Program, the Department is keen to receive advice from Council regarding the extent to which each of the Sustainability Criteria are met. In particular:

- In relation to the first Criteria on Infrastructure, Council's views on the broad extent and type of infrastructure required to service the land.

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- The level of fit with Council's existing residential strategy (or potential level of fit with any forthcoming strategy) and contribution to housing diversity within the LGA.
- Impacts on the local environment and heritage values (as per Criterion 7).

Also, in the context of Council's views on these matters, what requirements Council would consider appropriate to be met if the land was to be listed on the Metropolitan Development Program and subject to any subsequent rezoning process.

I note in this regard that on 2 November 2009 representatives from the Department of Planning, Sydney Water and the RTA met with the proponent's representatives from Buldev and Urbis to discuss the proposal. A representative from Hawkesbury Council (Mr Matthew Owens, Planning Director) was also in attendance. At this meeting, arrangements were made to facilitate Council Planning officers liaising with relevant Government agencies on issues associated with the proposal. In particular, it was agreed that Heritage officers from both the Department of Planning and Hawkesbury Council would jointly work with the proponent to investigate and report on heritage issues associated with the proposal.

Timeframe and Process

The Department's previous correspondence on this matter had requested that Council consider any proposal and provide advice within a 60 day period. It is noted that there is only a limited number of Council meetings left in 2009, and consideration by Council may fall within the holiday period. As such, it is considered reasonable to extend the timeframe to allow Council to consider the proposal and provide advice to the Government by **late February 2009**.

I have also requested that the Department's Regional Director for Western Sydney, Mr Peter Goth, be available to answer any queries you have regarding the Metropolitan Development Program or the Government's request for advice from Council.

I trust this clarifies the situation. Should you have any further outstanding queries please contact Mr Goth on 9873 8589 or via email at Peter.Goth@Planning.nsw.gov.au.

Yours sincerely



Andrew Jackson
Executive Director
Strategy and Infrastructure Planning

actions

IMPLEMENTATION AND GOVERNANCE

TABLE G2 SUSTAINABILITY CRITERIA FOR NEW LAND RELEASE

DEVELOPMENTS MAY BE APPROVED IF THEY SUBSTANTIALLY MEET THE CRITERIA BELOW AFTER A MERITS ASSESSMENT

Threshold Sustainability Criteria for listing of site on MDP	Measurable explanation of criteria
1 Infrastructure Provision Mechanisms in place to ensure utilities, transport, open space and communication are provided in a timely and efficient way.	<ul style="list-style-type: none"> • Development is consistent with any relevant residential development strategy, subregional strategy, regional infrastructure plan and Metropolitan Strategy. • The provision of infrastructure (utilities, transport, open space, and communications) is costed and economically feasible based on Government methodology for determining infrastructure contribution. • Preparedness to enter into development agreement.
2 Access Accessible transport options for efficient and sustainable travel between homes, jobs, services and recreation to be existing or provide.	<ul style="list-style-type: none"> • Accessibility of the area by public transport and appropriate road access in terms of: <ul style="list-style-type: none"> — Location/land use; to existing networks and related activity centres. — Network: the areas potential to be serviced by economically efficient public transport services. — Catchment: the area's ability to contain, or form part of the larger urban area which contains adequate transport services. Capacity for land use/transport patterns to make a positive contribution to achievement of travel and vehicle use goals. • No net negative impact on performance of existing subregional road, bus, rail, ferry and freight network.
3 Housing Diversity Provide a range of housing choices to ensure a broad population can be housed.	<ul style="list-style-type: none"> • Contributes to the geographic market spread of housing supply, including any government targets established for aged, disabled or affordable housing.
4 Employment Lands Provide regional/local employment opportunities to support Sydney's role in the global economy.	<ul style="list-style-type: none"> • Maintain or improve the existing level of subregional employment self containment. • Meets subregional employment capacity targets: <ul style="list-style-type: none"> — Employment related land is provided in appropriately zoned areas.
5 Avoidance of Risk Land use conflicts, and risk to human health and life, avoided.	<ul style="list-style-type: none"> • Available safe evacuation route (Flood and Bushfire). • No residential development within 1:100 floodplain. • Avoidance of physically constrained land: high slope; highly erodible. • Avoidance of land use conflicts with adjacent, existing or future land use and rural activities as planned under regional strategy.
6 Natural Resources Natural resource limits not exceeded/ environmental footprint minimised.	<ul style="list-style-type: none"> • Demand for water does not place unacceptable pressure on infrastructure capacity to supply water and on environmental flows. • Demonstrates most efficient/suitable use of land. <ul style="list-style-type: none"> — Avoids identified significant agricultural land. — Avoids impacts on productive resource lands; extractive industries, coal, gas and other mining, and quarrying. • Demand for energy does not place unacceptable pressure on infrastructure capacity to supply energy; requires demonstration of efficient and sustainable supply solution.
7 Environmental Protection Protect and enhance biodiversity, air quality, heritage, and waterway health.	<ul style="list-style-type: none"> • Consistent with Government approved Regional Conservation Plan (if available). • Maintains or improves areas of regionally significant terrestrial and aquatic biodiversity (as mapped and agreed by DEC and DPI). This includes regionally significant vegetation communities; critical habitat; threatened species; populations; ecological communities and their habitats. • Maintain or improve existing environmental condition for air quality. • Maintain or improve existing environmental condition for water quality and quantity. <ul style="list-style-type: none"> — Consistent with community water quality objectives for recreational water use and river health (DEC and CMA). — Consistent with catchment and stormwater management planning (CMA and local council). • Protects areas of Aboriginal cultural heritage value (as agreed by DEC).
8 Quality and Equity in Services Quality health, education, legal, recreational, cultural and community development and other government services are accessible.	<ul style="list-style-type: none"> • Available and accessible services. <ul style="list-style-type: none"> — Do adequate services exist? — Are they at capacity or is some available? — Has Government planned and budgeted to further service provision? • Developer funding for required service upgrade/access is available.

12

AT - 2 Copy of Submission to Land Release Application

Submission to Department of Planning on Metropolitan Development Plan
Land Release Application
108 Grose Vale Road, North Richmond

The Department's letter of 9 November 2009 requested Council's comments on the Land Release application requesting listing on the MDP for land at North Richmond. The letter requested comments on a range of issues and the comments in this submission generally follow those requests.

The level of fit with existing or proposed residential strategies

On 8 September 1998 Council resolved to consider land at North Richmond, North Bligh Park, Vineyard, Pitt Town and Wilberforce as it was considered that they had capability for urban development in the short to medium term. The land at North Richmond, known then as "Kemsley Downs", included part of the land that is the subject of the land release application. The potential yield being considered for part of this land was for the immediate release of 200 allotments. However, as part of the consideration of this immediate yield, there was a proposal for the entire site that would have resulted in a yield of approximately 1,150 allotments. Whilst this overall yield was not adopted by Council at that time, there was no formal objection to that proposal. The work for this release did not proceed due to the State Government Policy at the time relating to development west of the Hawkesbury River, the need for a more complete residential strategy to be prepared and for the land to be included in the Urban Development Program at that time.

A draft residential strategy has been prepared that is consistent with the current State policies. The draft Residential Strategy (yet to be adopted by Council for public exhibition) includes the subject land for further investigation for land release. In this regard the further investigation relates to heritage, services (water, sewer, shops, etc) and road infrastructure. The draft strategy was reported to Council on 8 December 2009 and was not adopted for public exhibition as the Council wishes to discuss and modify a number of recommendations contained in the draft Strategy. This will be undertaken in the early part of 2010.

The extent to which the Sustainability Criteria set in the Metropolitan Strategy are met in the application

The relevant sustainability criteria and comments on the application in relation to the criteria are provided below.

1. ***Infrastructure Provision – Mechanisms in place to ensure utilities, transport, open space and communication are provided in a timely and efficient way.***

Measurable explanation of criteria.

- The proposed land release application has been considered in relation to Council's existing and proposed residential strategies previously in this report. It is considered that the application is generally consistent with existing resolutions of Council. Comments on the likely future strategies of Council cannot be provided until Council has resolved to publically exhibit a draft Residential Strategy.
- The land release application, in Section 2, considers a range of infrastructure and services for the site and proposed development. The application has indicated that there is some capacity for development within the existing infrastructure provision. Some of this capacity will be taken up by the recent approval for seniors living development, containing 197 serviced self-care dwellings and 180 bed high care facility. This development has only recently been determined and has not yet commenced.

Some areas, such as roads, will require immediate, staged upgrading and the applicant has already commenced discussions in this regard with the relevant authorities. The application also states that the upgrading of the required infrastructure is economically viable for the development.

- The application has indicated that there is opportunity for developer agreements to be negotiated with Council for particular issues such as traffic.

The statements contained in the land release application in relation to this criterion will need to be carefully considered and tested should the land release application be supported by the Department. If these statements are not able to be fulfilled, Council considers that the criterion will not be met.

2. **Access** – *Accessible transport options for efficient and sustainable travel between homes, jobs, services and recreation to be existing or provide.*

Measurable explanation of criteria.

- The subject site is located adjacent to the existing development at North Richmond. In this sense development at the site would be a logical extension to the existing centre.
- The existing area is serviced by limited public transport. The economic viability of existing public transport is limited partly due to the size of the existing population of the centre and partly due to the dispersed, low density nature of development surrounding North Richmond. Additional development in or adjacent to the existing development will have the potential to improve the viability of the public transport system provided it is developed at the correct density. However, the matter of public transport must be integral to any development proposal, should the application be supported.
- Transport within the catchment is dominated by private vehicle use. The road access to and from the locality is focused at the existing river crossing at North Richmond making road access to the locality and development site a significant issue that needs to be addressed both immediately and in conjunction with any further development. Additional development in the locality, without the upgrading of the road access, is not sustainable and in the absence of any upgrade work development would make a negative contribution to travel and vehicle use goals.

The application has commented that the site is reasonably well located to some transport, particularly rail via Richmond. The application has also made mention of preliminary discussions with transport agencies which have identified potential for state infrastructure contributions that would assist the required upgrades of Bells Line of Road at the intersection of Grose Vale Road and upgrade to or an additional river crossing.

It is considered that the application does not currently meet the access sustainability criteria. There is an existing significant traffic problem in North Richmond during peak periods that must be resolved prior to consideration of any additional traffic generating development. In order for the proposed land release application to meet the access sustainability criteria, the potential for state contributions and upgrade works would need to be realised. In this sense, the necessary upgrade works and/or additional river crossing would need to be planned for and construction timings set by the service authorities, in this case the RTA. These works would then need to be fully costed, to enable appropriate cost distribution to development, and the staging of the works programmed to coincide with the appropriate stages of development and population increase and must not lag behind any development of the area.

3. **Housing Diversity** – *Provide a range of housing choices to ensure a broad population can be housed.*

Measurable explanation of criteria.

The contribution that this proposed land release application would make to housing diversity in the Hawkesbury is addressed elsewhere in this submission. It is considered that the proposal will meet this criteria.

4. **Employment Lands** – *Provide regional/local employment opportunities to support Sydney's role in the global economy.*

Measurable explanation of criteria.

The proposed land release is for residential land uses. Despite this the application is considered to be consistent with this criteria as it does not result in the loss of employment land, there will be some temporary employment generation during the construction and housing development of the land and the increase in population in the locality will require the corresponding increase in services (retail, commercial, etc) in the locality. The land release application is not inconsistent with the Hawkesbury Employment Land Strategy 2008.

5. **Avoidance of Risk** – *Land use conflicts and risk to human health and life avoided.*

Measurable explanation of criteria.

- The site is flood free even when considered from the perspective of the Probable Maximum Flood (PMF). However, the site and locality will be isolated from the existing services and evacuation routes to the east. There is, however, the ability to evacuate the locality to the west in the case of flood. Existing evacuation plans of the locality during bushfire events would need to be suitably upgraded if there was any additional development in the locality. However, the site currently has a low hazard bushfire rating due to the site's previous grazing land use.
- The site, as mentioned elsewhere in this submission, would need to be master planned so that any development of environmentally or physically constrained land (riparian, steep, etc) is excluded from future residential development.
- The site has a number of different land uses adjoining. To the north is the existing urban development of North Richmond, to the south and west is predominantly rural residential development and to the east, over the ridgeline occupied by Grose Vale Road, is grazing agriculture. The use of the site for agricultural purposes, particularly more intensive uses, would result in significant conflicts with the existing adjoining urban and rural residential land uses. The development of the surrounding land uses over recent years has resulted in a constrained potential for the site and it is considered that the most appropriate use of the land would be for a mix of residential densities.

6. **Natural Resources** – *Natural resource limits not exceeded/environmental footprint minimised.*

Measurable explanation of criteria.

- As mentioned elsewhere in this submission, it is clear that the physical infrastructure for the supply of water to the site will require upgrading prior to any development taking place. Whilst the supply infrastructure can be upgraded there is concern regarding the bulk supply of water that relies on drawing from the river. The drawing of water for urban growth depletes the supply available within the river and has the potential to adversely impact on environmental flows, the natural river environment and other existing river users (e.g., agriculture). The application states that water and sewerage infrastructure is available and that BASIX requirements are able to be achieved. Should the Department list the site on the MDP, it is considered that any development be encouraged to achieve environmental and natural resource conservation at levels greater than those specified in BASIX.
- The application states that the site is classified as Category 3 Agricultural land, being of marginal agricultural value and that the existing agricultural use is of marginal value. This has been confirmed from the Department of Primary Industry in previous advice to the Heritage Branch of the Department of Planning. It is also considered that, due to the location of adjoining urban residential and rural residential development, any significant agricultural activity on the site may result in unacceptable land use conflicts in the future.

- The land is not considered to be productive resource land for extractive or other industries.
- Energy infrastructure required to service any development of the site would require upgrading that would need to be funded by the development that benefits from that infrastructure. The existing capacity of these services to supply the development of the site will require the appropriate investigation and upgrade.

Should the concept measures proposed in the land release application be implemented then any proposed development of the site would meet this criterion.

7. *Environmental Protection – Protect and enhance biodiversity, air quality, heritage, and waterway health.*

Measurable explanation of criteria.

- The application has included a variety of studies and investigations into the natural and cultural heritage of the site. The recommendations from these reports is to protect and enhance the riparian environment along Redbank Creek and to design and manage stormwater drainage across the site to ensure that any development of the site does not adversely impact on the downstream development areas or the natural environments of the receiving waters. This approach is supported by Council and any listing of the site on the MDP must require this approach to all the future planning for the site.
- The site contains parts of the Keyline Dam system and the system has heritage importance. (The missing parts of the system have been previously removed for development of rural residential development on the southern side of the property and urban residential development to the north. Also the parts of the system contained on Lot 26 DP 1042890 does not form part of the applicant's landholding. However, MDP listing should consider Lot 26 as well as Lot 27 as the subject land surrounds these allotments and it would be good planning practice to consider both properties). Previous advice has been received by Council from the Heritage Branch of the Department of Planning indicating that the future planning for the site is to be undertaken in consultation with that Branch. Recent discussions have commenced between the Heritage Branch, the landowner and Council representatives and these will be ongoing in relation to the retention of parts of and/or interpretation of the heritage values of the site should any future development be supported. Council supports this approach and is willing to continue participate in these future consultations on this matter.

Should the concept measures proposed in the land release application be implemented then any proposed development of the site would meet this criterion.

8. *Quality and Equity in Services – Quality health education, legal, recreational, cultural and community development and other government services are accessible.*

Measurable explanation of criteria.

The purpose of the application for land release is to obtain listing on the MDP to enable Government agencies to consider the planning of appropriate services for the site should development occur. Generally the quality and extent of these services is commensurate with the size and location of the population and it is understood that the services generally expand as the population expands.

Council supports and encourages the progressive expansion of Government services as the population grows. However, due to the location of the subject site, any planning for the provision of health, education, legal, recreational, cultural and community services needs to consider the equity impacts that arise from the restricted access across the river and the potential for isolation of the site and locality from existing services in the time of flood or other emergency.

In this regard Council considers that particularly health, education and other essential community services should be readily available to the existing and proposed population on the western and northern sides of

the Hawkesbury River rather than reliance on these services in Richmond or Windsor alone. It is one of the basic responsibilities of the State Government to supply such facilities should it require Council to plan and progress towards the targets set in the North West Sub Regional Strategy.

Council's views on the broad extent and type of infrastructure required to service the land.

It is clear that the current infrastructure in North Richmond could not cater for the development of the subject land without upgrading. This is primarily due to the fact that the current zoning of the site does not allow for development and the existing infrastructure and services have not been designed to service land not earmarked for release. It is noted that the land release application contains a number of studies and investigations into the servicing of the site. However, should the site be considered for further development the following infrastructure must be suitably addressed:

Water Supply

The land is serviced by Sydney Water for water supply. It is understood that there is a current limitation on water supply to the property due to the height of the existing reservoir servicing the site. In order to service the site an additional high level reservoir would be required along with the additional ancillary delivery infrastructure. It is clear that physical infrastructure expansion of these facilities is possible and the funding of any such expansion should be at the cost of the development that requires, and benefits from, those facilities.

There are significant concerns in relation to the source of the water supply to service any development of the site. In this regard the drawing of additional water from the Hawkesbury River at North Richmond is likely to have adverse impacts on other existing River users and the river environment if the environmental flows of the river are reduced further. It is considered that the overall supply of water needs to be carefully considered to ensure that there is a fair balance of water for the environment and existing users without any reduction in existing environmental flows.

Reticulated Sewer

The land is serviced by Sydney Water for reticulated sewer. The application states that there is *"capacity in the existing network and treatment plant infrastructure that may, with minimal alteration accommodate the proposed land release."* However, it is unclear how much of this capacity in the existing network will be taken up by the recent approval of a Seniors Living proposal on part of the site. It is recommended that any upgrade of the physical infrastructure required for additional development should be funded by the development that requires, or benefits from, that upgrade.

However, the issue of additional water usage and discharge of effluent to the river and the potential adverse impact that this may have on the environment must be paramount in any consideration of development and any impacts appropriately mitigated. Should any land be considered for future development the use of recycled water from the Sydney Water treatment plant throughout the development should be required. The development of recycled mains to new development should also be designed and located to enable existing developed areas to also connect to that system.

Utility services

Power, telecommunications and gas services must be upgraded and the funding of these upgrades should be at the expense of the benefiting development.

Community services

Whilst the site is adjacent to the existing village of North Richmond, the site is outside the normal catchment of the existing retail and community infrastructure of the village. This is recognised in Council's draft residential strategy (yet to be publically exhibited) where it comments that for this site there is a *"longer term opportunity subject to provision of shops, transport infrastructure, community infrastructure and services outside catchment."* Should any development be proposed on the subject land the additional services should be integrated into any development to cater for that increase in population.

Road Transport

There is an existing significant traffic problem during the peak periods along Bells Line of Road at the intersection of Grose Vale Road stretching east to almost Richmond in the afternoon peak and westward to beyond Colo High School in the morning peak. During these times the Level of Service on these roads is low, particularly when consideration is given to the fact that the location is not an inner urban locality. There are real, justifiable concerns that any additional development of the locality will result in a significant drop in the already low Level of Service for the road system in this locality both during the existing and an extended peak time. The existing problem with the road system must be addressed prior to, or as an integral part of, any future development.

Whilst it is not expected that the existing problems should be resolved by any new development, it is expected that any new development must ensure that the existing problems are not made worse and preferably any new development should result in an improvement of the existing situation. Any necessary upgrade of the road system should be funded by new development with any shortfall, attributed to the existing problems, being contributed by the State Government as the problem relates to a State controlled road.

Again, it is considered that, as there is already an existing significant shortfall in the provision of road infrastructure crossing the river, it is one of the basic responsibilities of the State Government to ensure that there is planning and a works program for an appropriate road system crossing the Hawkesbury River if it is expected that Council is to plan to achieve the housing and employment targets that are expected by the State Government in the North West Sub Regional Strategy.

The contribution the application would have to housing diversity within the LGA,

The subject site is a significantly large site that has potential for the design of a variety of housing types, open space and retention of riparian vegetation. In this regard the site needs to be master planned to ensure that appropriate dwelling densities and open space provision is obtained whilst retaining the existing rural and village character of the locality.

The background research for draft residential strategy (yet to be publically exhibited) has found that the current provision of housing within the Hawkesbury is generally low density, detached dwellings. Whilst there is no proposal to discontinue this style of housing, the draft strategy has also found that with the predicted change to population over the next twenty years, there is a need to increase the diversity of housing provided within the Hawkesbury. In this regard there is a need to increase housing density, particularly around centres, to make provision for the changing population.

The subject site, as mentioned above, has the potential to make a significant contribution to the provision of housing diversity in the Hawkesbury LGA subject to the site being appropriately planned. Should the Department approve the land release application it would be appropriate that the Department, Council, the community and the developer work closely to achieve the appropriate development outcome for the site.

Impacts on the local environment and Heritage values (as per criterion 7),

The site is a large site that has some sensitive riparian environments along the western property boundary along Redbank Creek. The site, as mentioned previously in this submission, also has parts of the Key Line Dam system developed by P.A. Yeoman. It is noted that the land release application includes a number of studies that assess and make recommendations in relation to the environmental and heritage values of the site.

The local natural environmental values of the site will need to be appropriately identified for incorporation into, rather than removal for, any development of the site. In this regard the appropriate master planning of the site, as mentioned previously, will need to make realistic provisions for the retention of the natural environmental features.

In relation to the heritage values of the site, comments have been made in previous sections of this submission. It is noted that the previous advice from the Heritage Branch indicates that consultation and discussion is taking place with the developer, Council and the Heritage Branch to plan for the retention

and/or interpretation of the heritage of the site should any development proceed. It is considered that these discussions should be comprehensive and include all relevant information.

What requirements Council would consider appropriate to be met if the land was to be listed on the MDP and any subsequent rezoning process.

The requirements of Council have been discussed previously in this report and the submission should be considered in its entirety in relation to Council's requirements. The following is a brief summary only of the requirements that Council considers appropriate in this matter:

1. Road infrastructure upgrading, including the intersection of Bells Line of Road and Grose Vale Road, upgrade or duplication of the river crossing or by-pass of North Richmond to improve the existing traffic problems that any further development in the locality will only exacerbate.
2. Any upgrade of utilities required for further development to be planned for and provided progressively as any development proceeds. Infrastructure being provided following development is not acceptable.
3. Any upgrade or provision of services for development is to be funded by the development that benefits or requires that provision.
4. The heritage values and significance of the site is to be impartially assessed and retained or interpreted in consultation with the Heritage Branch, developer, Council and the community.
5. Assurance that the sustainability criteria set in the Sydney Metropolitan Strategy and Council's Residential Strategy (when adopted) are to be fully incorporated into all aspects of any future development.

oooO END OF REPORT Oooo

INFRASTRUCTURE SERVICES

Item: 5 IS - Proposed Closure of a section of Mount Irvine Road, Bilpin - (95495, 73986)

Previous Item: 43, General Purpose Committee (24 September 2002)
 2, General Purpose Committee (26 March 1991)
 10, General Purpose Committee (25 September 1990)

REPORT:

Mount (Mt) Irvine Road is located approximately 2 kilometres west of the township of Bilpin and runs in a north-westerly direction from Bells Line of Road for 6.5 kilometres to Council's boundary with Blue Mountains City Council at Bowens Creek Bridge. The road within the Blue Mountains City Council area is another 6.6 kilometres to the Mt Irvine area along Bowen Creek Road. Mt Irvine Road, within the Hawkesbury area provides access from Bells Line of Road to properties for one kilometre and then traverses the Wollemi National Park until it reaches the bridge at Bowens Creek.

The distance from Bilpin to Mt Irvine via Bells Line of Road is 43.5 kilometres compared to 16 kilometres via Mt Irvine Road/Bowen Creek Road. The distance to Mt Wilson via Bells Line of Road is 30.9 kilometres compared to 22.2 kilometres via Mt Irvine Road/Bowen Creek Road.

The road formation is generally narrow, varying from 3.5 to 6.0 metres in width and in places has rock walls on one side and a sheer drop on the other. Approximately half the length of the road requires some form of protection to prevent vehicles leaving the road and falling down very steep to vertical cliffs.

The section of road from Bowens Creek Bridge through to the Mt Wilson/Mt Irvine area (Bowen Creek Road) is maintained by Blue Mountains Council. The road formation in this area being much wider than that on the Hawkesbury side is easier to maintain with little need for safety barriers due to the surrounding terrain.

The condition of Mt Irvine Road was previously considered by Council, and due to deteriorating conditions, Council at its meeting on 9 October 1990 resolved:

"That action be taken to close Mt. Irvine Road from a point past the access to the last property from Bells Line of Road to, and including the Bowen Creek bridge, in accordance with the guidelines for the road closures as set out by the Traffic Authority of New South Wales."

Council at its meeting on 9 April 1991 resolved to provide locked gates at either end of Mt Irvine Road to allow access for vehicles in an emergency. The above resolution was based on representations received from both NPWS and RFS.

The Mt Irvine and Mt Wilson communities, through the Mt Irvine Progress Association, consider the road to be of great importance including its heritage value, tourism use, emergency lifeline and daily transport. The community has previously requested that the road be maintained to meet those needs and the surface quality be provided to a level that meets fire trail standards.

Whilst Mt Irvine Road has been available for emergency access, funds are not available to provide ongoing maintenance. The cost to bring the road to a level of service which provides a single lane unsealed pavement with passing bays, the provision of additional culverts, safety fencing and the replacement of the single lane bridge over Bowens Creek will be in the order of \$1,525,000. This estimate makes no provision for design, geo-technical and any environmental reports.

Previous discussions with the NPWS and Rural Fire Service (RFS) did not see Mt Irvine Road as a major point of access to the Wollemi National Park but more as a fire trail to be utilised for hazard reduction

purposes. In keeping with the requirements of these organisations, the primary use of Mt Irvine Road is more aligned to a fire trail than a public road. Funding from the State Government to maintain Mt Irvine Road as a fire trail is not available as the road is currently classified as a public road. Generally fire trails are not contained within road reserves, but within either private property or National Parks. The opportunity to qualify for funding would be enhanced if the existing road formation was not contained within a road reserve.

In terms of Councils previous resolution in 1990 to physically close Mt Irvine Road, from a point past the access to the last property from Bells Line of Road to Bowens Creek, whilst this action was taken albeit ineffectually due to continual vandalism of the gates, it is proposed to formally close this section of Mt Irvine Road under Part 4 of the Roads Act 1993. The land contained within this section of road reserve can be made available to either the Crown, NPWS or vested in Council as operational land.

Transferring the land to the NPWS would be a favourable option as the existing road reserve is bounded by the Wollemi National Park. Preliminary discussions with both the Land and Property Management Authority and the NPWS to transfer the Mt Irvine Road Reserve have been undertaken, however a formal approach can only be undertaken once Council resolve to undertake the road closure under the Roads Act.

Conformance to Strategic Plan

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

'Have an effective system of flood mitigation, fire and natural disaster management and community safety which protects life, property and infrastructure'

and is also consistent with the strategy in the Community Strategic Plan being:

"Develop disaster response and community safety plans."

Funding

Funding is available in the current budget to undertake the road closure.

RECOMMENDATION:

That:

1. The section of Mt Irvine Road, Bilpin, from a point past the access to the last property from Bells Line of Road (Lot 7 DP 245105) to Bowens Creek be closed under Part 4 of the Road Act 1993.
2. Any relevant documentation be executed under the Seal of Council.
3. Blue Mountains City Council be advised of the proposed Road Closure.
4. A formal approach be made with the NSW National Parks and Wildlife Service (through Department of Environment, Climate Change and Water) to transfer the closed section of the Mt Irvine Road Reserve to the Authority for this land to be part of the Wollemi National Park as a fire trail.
5. In the event that the NSW NPWS does not concur with the transfer of land outlined in Item 2 of the Resolution, the land in question be vested in Council as operational land and application be made with the relevant Authority to create a fire trail along the existing Mt Irvine Road formation with a view to obtaining the necessary funding to bring the fire trail to a level of service acceptable to the Rural Fire Service.

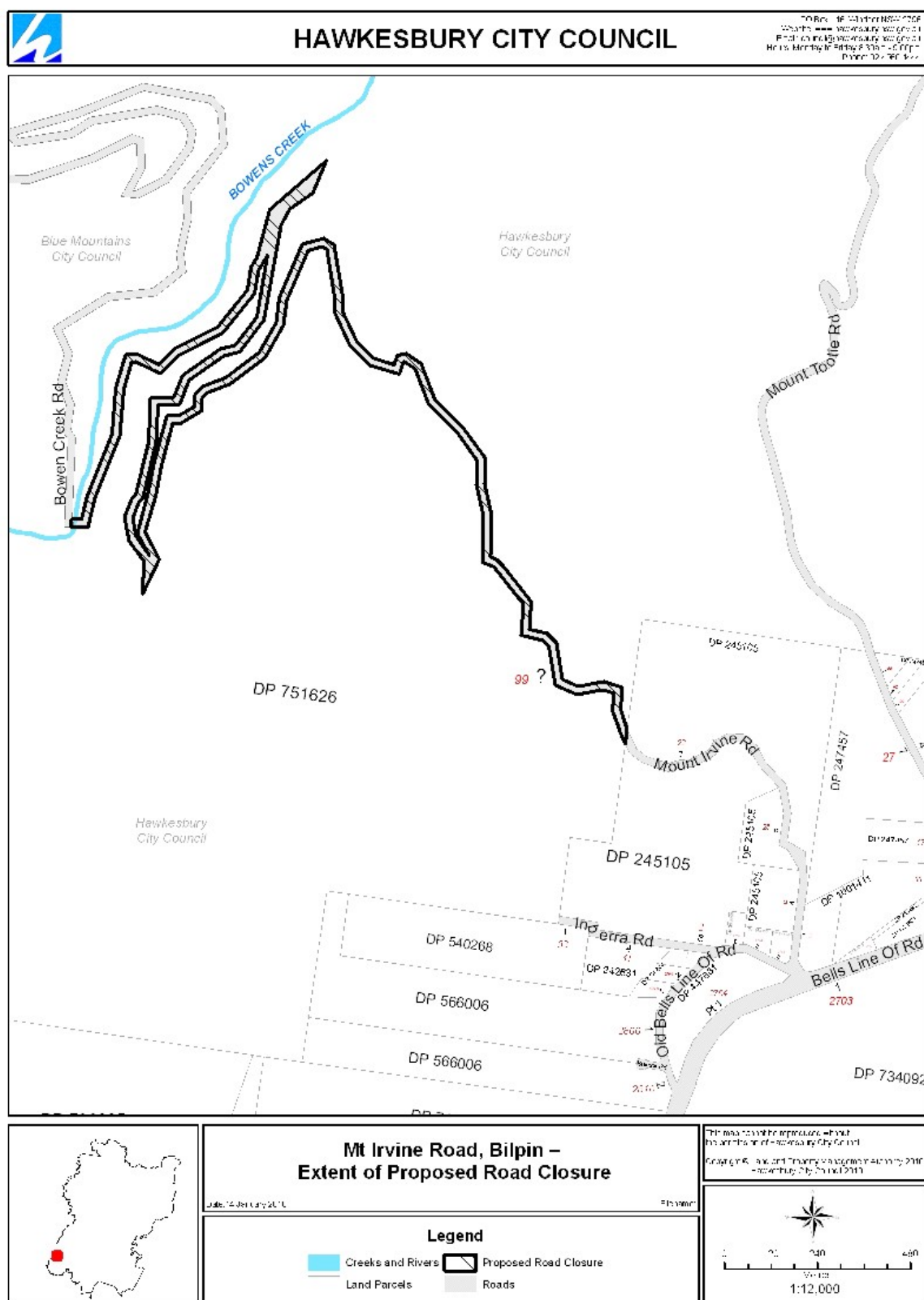
ORDINARY MEETING
Reports of Committees

ATTACHMENTS:

AT - 1 Mt Irvine Road, Bilpin – Extent of Proposed Road Closure.

<p style="text-align: center;">ORDINARY MEETING</p> <p style="text-align: center;">Reports of Committees</p>

AT - 1 Mt Irvine Road, Bilpin – Extent of Proposed Road Closure



oooO END OF REPORT Oooo

Item: 7 IS - Naming of a un-named Road at Pitt Town within proposed Subdivision of Lot 4 DP 711815, No. 10 Eldon Street, Pitt Town - (94595, 73916)

REPORT:

An application has been received from McKinlay Morgan & Associates Pty Ltd on behalf of their client Mrs D Miller for the naming of an existing un-named road in connection with a proposed subdivision of Lot 4 DP 711815, No. 10 Eldon Street Pitt Town. The names, Iris Street and Ronald Street, have been suggested for the road name with a preference being for Iris Street.

Details of the two names are listed below:

Iris Street

"After Iris Miller, nee Curl. Iris has had a long association with Pitt Town and has family links back to the early settlers of the Pitt Town area. Iris was a well respected resident. She was a Patron and foundation member of Pitt Town Bowling Club and a life member of Pitt Town District Sports Club."

And

Ronald Street

"After Ronald Miller, who lived at Pitt Town all his life, attended Pitt Town Public School, and was a well known resident. Ronald was part of a group that formed the Pitt Town District Sports Club. The group wanted a place that the people of Pitt Town could go to meet and encourage sport in the area. Ronald was a foundation member. The Miller family can be linked back through a few generations in the area."

Both these names do not currently exist within the Hawkesbury LGA and conform to the guidelines set by The Geographical Names Board of NSW and the requirements of the Roads Act 1993. In consulting Council's Local Studies Librarian to ascertain if the names were valid for the Pitt Town area, no objections were raised.

As part of the road naming process the Johnson Property Group was consulted in regards to the previous list of names that were adopted by Council for the Pitt Town Subdivision. It has been requested by the Johnson Property Group that the list of adopted names be only used for their subdivision.

Based on the information provided by the applicant it is proposed that the un-named public road in connection with a proposed subdivision of Lot 4 DP 711815, No. 10 Eldon Street Pitt Town be named Iris Street.

Conformance to Strategic Plan

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

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

and is also consistent with the strategies in the Community Strategic Plan being:

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

And

"Develop and implement a plan to conserve and promote heritage."

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Funding

Funding is available in Council's current budget.

RECOMMENDATION:

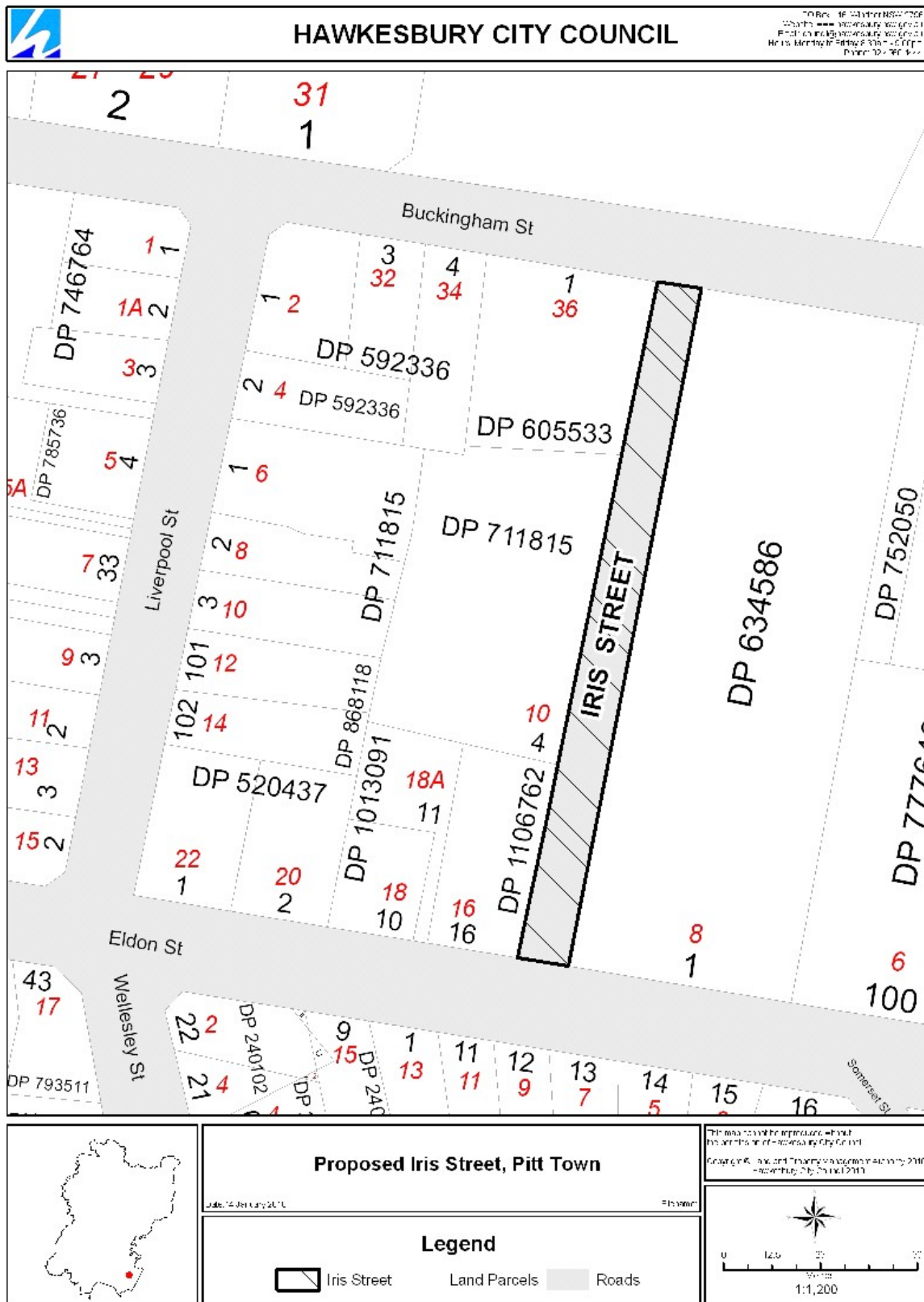
That public comment be sought under the NSW Roads Act, 1993 for the naming of the existing un-named road in connection within a proposed subdivision of Lot 4 DP 711815, No. 10 Eldon Street Pitt Town as Iris Street.

ATTACHMENTS:

AT - 1 Locality Plan - Proposed Iris Street, Pitt Town

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AT - 1 Locality Plan – Proposed Iris Street, Pitt Town



oooO END OF REPORT Oooo

SUPPORT SERVICES

Item: 11 SS - Code of Meeting Practice - Questions Without Notice - (79337)

Previous Item: 210, Ordinary (29 September 2009)
 123, Ordinary (30 June 2009)
 NM, Ordinary (12 May 2009)
 201, Ordinary (28 June 2005)
 62, Ordinary (9 November 2004)

REPORT:

Council, at its meeting of 29 September 2009, in relation to its review of the Code of Meeting Practice, resolved in part:

"That:

- 1. In Council's view the amendments, other than that relating to the proposal to discontinue "Questions Without Notice", made since exhibition of Council's Draft Code of Meeting Practice are not substantial and accordingly, but for that one exception, they may be adopted without further exhibition.*
- 2. The sections of the existing Code of Meeting Practice relating to "Questions Without Notice" be retained in the Revised Code on an interim basis.*
- 3. The Revised Draft Code of Meeting Practice, as exhibited and amended by this resolution be adopted by Council.*
- 4. The Revised Code of Meeting Practice as amended take effect from 10 November 2009.*
- 5. In Council's view, the practice of "Questions Without Notice" does not constitute transacting business in the terms of Section 241 of the Local Government (General) Regulation 2005, as no resolutions of Council are made by means of that practice, unless through the moving of a motion of urgency as provided for in Section 241 (3).*
- 6. Council obtain legal advice as to whether the asking of questions seeking information and answering of those questions by councillors or staff constitutes transaction of business in the terms of Section 241 of the Local Government (General) Regulation 2005.*
- 7. In the event that legal advice supports the view that "Questions Without Notice" are not inconsistent with Section 241 of the Local Government (General) Regulation 2005, Council write to the Minister for Local Government conveying that advice and stating its view that "Questions Without Notice" are an important dimension of councillors' role on behalf of the community and the Department's Practice Note No. 16 should be amended to permit the continuation of such questions with appropriate procedural conditions."*

In relation to point 6 above, legal advice was sought from Marsdens Law Group, and a copy of the legal advice, received by letter dated 16 December 2009, is attached as Attachment 1 to this report.

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The legal advice supports the views expressed by the then Department of Local Government in its updated Practice Note 16 – Meetings Practice, issued in August 2009. The legal advice, in relation to having Questions on Notice as an agenda item, concludes by stating:

“Whilst it may have been the practice of some councils in the past to have an agenda item for ‘Questions Without Notice’ we agree with the view expressed by the Division of Local Government, Department of Premier and Cabinet in Practice Note 16 that having such an agenda item is inconsistent with the provisions of the Regulations and is likely to constitute a breach of the LG Act in respect of which any person may bring proceedings in the Land and Environment Court to remedy or restrain (see section 674 of the LG Act).”

As previously reported, under Section 360(2) of the Local Government Act, 1993 (the Act), Council may establish a Code of Meeting Practice. The Code must incorporate meeting procedures set out in the Act, and Local Government (General) Regulation 2005, and can incorporate local provisions. However, in adopting local provisions, the Code must be consistent with the relevant legislative provisions.

Accordingly, the Code of Meeting Practice meets the above requirements, except in respect of the issue of “Questions Without Notice”. The advice in the Practice Note, in relation to this issue, is that:

- Councillors may ask questions during the meeting on matters on the business paper, as outlined in the Code;
- Councillors can ask questions of the General Manager using the “questions on notice” provisions of the Code, including appropriate notice;
- A matter, not on the business paper, may be dealt with where the matter is ruled by the Chairperson to be of great urgency, but only after a motion is passed to allow this particular business to be dealt with.

In addition, and as previously mentioned for operational matters, Councillors may utilise existing protocols, and contact the General Manager or relevant Director for a response. Council is investigating upgrading the electronic Customer Request Management System which may also be utilised by Councillors to lodge enquiries, questions and the like.

In light of the legal advice and the advice contained within the Practice Note, it is suggested that the Code of Meeting Practice be amended to delete reference to “Questions Without Notice”, by making the following changes:

- In Clause 2.3.4 - delete sub clause 4 – Tabling of Documents during question time.
- In Clause 2.3.6 - “Order of Business” - delete Item 12 “Councillors’ Questions without Notice”, and renumber remainder.

Such amendments are not required to be publicly exhibited as they are amendments required to bring the Code in line with legislative requirements.

It is pointed out that these changes are only being recommended to ensure that Council's Code meets legislative requirements and the Practice Note issued by the Division of Local Government.

Conformance to Strategic Plan

The proposal is consistent with the *Shaping our future together* Directions statement;

“Have transparent, accountable and respected leadership and an engaged community.”

and is also consistent with the strategy in the Community Strategic Plan being:

“Having ongoing engagement and communication with our community, *governments and industries.*”

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Funding

Not applicable.

RECOMMENDATION:

That Council's Code of Meeting Practice be amended to delete references to "Questions Without Notice", by deleting Sub-Clause 4 of Clause 2.3.4, and Item 12. "Councillors' Questions Without Notice" in Clause 2.3.6.

ATTACHMENTS:

AT - 1 Legal advice received from Marsdens Law Group dated 16 December 2009.

ORDINARY MEETING
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AT - 1 Legal advice received from Marsdens Law Group dated 16 December 2009

Our Ref: 58 34 8250:tb
Contact: Adam Seton
Contact Tel: 4626 5077
Contact Email: aseton@marsdens.net.au



ABN 59 874 202 316

Your Ref: Fausto Sut

The General Manager
Hawkesbury City Council
DX 8601 WINDSOR

16 December 2009

All correspondence to
PO Box 291
Campbelltown NSW 2560
DX 5107 Campbelltown

www.marsdens.net.au
email@marsdens.net.au

Dear Sir,

Re: Questions without Notice on Council Meeting Agenda

We refer to your letter dated 29 October 2009 and the email from Fausto Sut of Council dated 5 November 2009 and note that Council seeks our advice as to whether having an agenda item on Council's business papers for "Questions without Notice" is inconsistent with the provisions of the Local Government Act 1993 and the Local Government (General) Regulation 2005 and in particular whether the asking of questions by Councillors seeking information from staff or other Councillors constitutes the transaction of business in the terms of Clause 241 of the Local Government (General) Regulation 2005.

BACKGROUND

On 31 August 2009 the Division of Local Government, Department of Premier and Cabinet published a revised and updated version of Practice Note 16 - Meetings Practice. In the circular accompanying the revised Practice Note (circular No 09/32) the Deputy Director General (Local Government) relevantly states:

"The Practice Note was developed to help councillors and staff conduct council meetings in accordance with best practice standards.

The Practice Note explains the provisions of the Local Government Act 1993 and the Local Government (General) Regulation 2005 as they relate to council meetings and decision-making processes.

It is a general guide to council meetings and provides the answers to frequently asked questions."

The revised version of the Practice Note relevantly states in the last two paragraphs of the Introduction:

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A J Seton
E M White
D R Baird
P J Crittenden
T C Reeve
G P Butterfield
J Bonura
J T Henshaw
J J Tunks
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P D Hudson
N M Youssef
J R Thornton
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D A Vardy
C R McElroy
T M Danjoux
A E Hayward
S A Rocha
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D T Stott
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Re: Questions without Notice on Council Meeting Agenda

16 December 2009

"Local councils are largely independent bodies, mainly responsible to their residents and ratepayers (rather than to the Minister for Local Government or the Division of Local Government, Department of Premier and Cabinet), for the way in which they operate. This includes the running of meetings. It is not the role of the Minister or the Division to direct councils on the day-to-day administration of their affairs.

This Practice Note has been made as a guide for councils, councillors and members of the public. It does not give legal advice. You should seek your own legal advice on issues of concern."

On page 7 of the Practice Note it is stated:

"1.4.11 Is it appropriate to have as an agenda item "Questions Without Notice"?"

Having an agenda item, "questions without notice" is inconsistent with the provisions of the Regulation that require notice to be given of matters to be discussed at council meetings (cl 241).

Allowing questions without notice would avoid the notice provisions of clause 241 of the Regulation. That clause enables all councillors and the public to be aware, by reading the agenda, of matters that will be raised at each meeting. It also enables councillors to give careful thought to any pecuniary interest or conflict of interest they might have in a matter, rather than having to hastily confront an issue during the meeting.

However, questions can be proposed by giving notice to the general manager in the usual way (see 1.4.10) and can be asked during the meeting in relation to business already before council (see 2.5). If the matter is genuinely urgent, and the matter is not on the agenda, it could be dealt with under clause 241(3) of the Regulation. For information relating to asking questions about matters on the agenda during the meeting, see 2.5 of this Practice Note."

Advice

As noted above Practice Note 16 - Meetings Practice of August 2009 is a "general guide to council meetings" and is not a guideline adopted by the Director-General under section 23A of the Local Government Act 1993 ("LG Act") relating to the exercise by a council of its functions which the council is compelled to take into consideration before exercising any of its functions.

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Re: Questions without Notice on Council Meeting Agenda

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However, given that the Practice Note sets out the views of the Division of Local Government, Department of Premier and Cabinet in relation to requirements for council meetings it would be prudent for a council to have regard to the views expressed in the Practice Note.

A council must comply with the provisions of the LG Act and the Local Government (General) Regulation 2005 ("the Regulation") in respect of the conduct of council meetings. The Regulation makes provision with respect to the conduct of meetings of councils and committees of councils of which all the members are councillors. In that regard a council may adopt a code of meeting practice that incorporates the provisions of the Regulation and supplements the provisions of the Regulation with provisions that are not inconsistent with them.

Clause 241 of the Regulation relevantly provides as follows:

"241 Giving notice of business

(1) A council must not transact business at a meeting of the council:

(a) unless a councillor has given notice of the business in writing within such time before the meeting as is fixed by the council's code of meeting practice or (if the council does not have a code of meeting practice or its code of meeting practice does not fix that time) as is fixed by resolution of the council, and

(b) unless notice of the business has been sent to the councillors in accordance with section 367 of the Act.

(2) Subclause (1) does not apply to the consideration of business at a meeting if the business:

(a) is already before, or directly relates to a matter that is already before, the council, or

(b) is the election of a chairperson to preside at the meeting as provided by clause 236(1), or

(c) is a matter or topic put to the meeting by the chairperson in accordance with clause 243, or

(d) is a motion for the adoption of recommendations of a committee of the council.

(3) Despite subclause (1), business may be transacted at a meeting of a council even though due notice of the business has not been given to the councillors. However, this can happen only if:

(a) a motion is passed to have the business transacted at the meeting, and

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(b) the business proposed to be brought forward is ruled by the chairperson to be of great urgency.

Such a motion can be moved without notice.

(4) Despite clause 250, only the mover of a motion referred to in subclause (3) can speak to the motion before it is put."

There is no definition of the term "business" in the LG Act or the Regulation. Accordingly, that term must be given its ordinary and natural meaning in the context in which it appears. In our view "business" would include the asking of any question by a councillor to another councillor or employee of council either with or without notice. If questions are asked at a Council meeting the Council is transacting its business irrespective of whether the questions are answered or result in a resolution being made.

In our view, the effect of clause 241 of the Regulation is that an item of business, which would include a question sought to be put by a councillor to another councillor or employee of the council (through the general manager), cannot be transacted unless notice of that business in writing has been given by the councillor to the general manager within such time before the meeting as is fixed by the council's code of meeting practice. The only exceptions to this rule are where:

- the question sought to be put directly relates to a matter that is already before the council, or
- the question sought to be put is a matter or topic put to the meeting by the chairperson in accordance with clause 243, (i.e. a mayoral minute) or
- a motion is passed to have allow the question to be put at the meeting and the question is ruled by the chairperson to be of great urgency.

Support for the proposition that a question sought to be put by a councillor to another councillor or employee of the council (through the general manager), cannot be transacted unless notice of that business in writing has been given by the councillor to the general manager within such time before the meeting as is fixed by the council's code of meeting practice is found in clause 249 of the Regulation which allows a councillor to put a question to another councillor or employee of council but provides that the councillor or council employee to whom a question is put is entitled to be given "reasonable notice" of the question and, in particular, sufficient notice to enable reference to be made to other persons or to documents.

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Re: Questions without Notice on Council Meeting Agenda

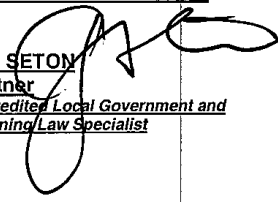
16 December 2009

Whilst it may have been the practice of some councils in the past to have an agenda item for "Questions Without Notice" we agree with the view expressed by the Division of Local Government, Department of Premier and Cabinet in Practice Note 16 that having such an agenda item is inconsistent with the provisions of the Regulation and is likely to constitute a breach of the LG Act in respect of which any person may bring proceedings in the Land and Environment Court to remedy or restrain (see section 674 of the LG Act).

We trust that the above advice is of assistance. Please do not hesitate to contact Adam Seton at our office if you wish to discuss the advice or require further advice

Yours faithfully

MARSDENS LAW GROUP


A.J. SETON
Partner
*Accredited Local Government and
Planning/Law Specialist*

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ordinary
meeting

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