



Hawkesbury City Council

ordinary meeting business paper

date of meeting: 31 August 2010

location: council chambers

time: 6:30 p.m.

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SECTION 4 - Reports for Determination

CITY PLANNING

Item: 193 **CP - Modification to Development Consent - Relocation of Dwellings, Amended Dwelling Design, Deletion of Condition 53 Requiring Construction of Footpath - 19 Old Bells Line of Road, Kurrajong NSW 2758 - (MA0844/98C, 36126, 37882, 95498)**

Development Information

File Number: MA0844/98C
Property Address: 19 Old Bells Line of Road, Kurrajong NSW 2758
Applicant: Montgomery Planning Solutions
Owner: Mrs PD Bennett & Mr KRM Bennett
Proposal Details: Modification to Development Consent - relocation of dwellings; amended dwelling design; deletion of Condition 53 requiring construction of footpath.
Estimated Cost: \$5,400,000
Zone: Mixed Agriculture
Date Received: 23 December 2009
Advertising: 19 January 2010 to 25 February 2010

Key Issues:

- ◆ State Environmental Planning Policy No. 5 – Housing for Older People or People with a Disability
- ◆ Disabled access to Vincents Road

Recommendation: Approval

REPORT:

Executive Summary

An application has been received to modify an approved development for aged/disability housing. This Report demonstrates that the proposed modified development provides a better outcome in respect to amenity and access to services and facilities, within and outside the site. In particular the proposed modification is considered beneficial, given that:

- The proposed modified appearance of the dwellings is more in keeping with the existing character of the locality and existing development within the area;
- The modified designs of the dwellings are more sympathetic to the topography of the land and sit more comfortably within the existing landscape;
- Garages are incorporated within the dwelling houses providing better access and amenity for future residents;
- A central open space area will be created providing increased amenity within the development and better visual presentation of the development.
- The relocation of the dwelling houses has provided wheelchair access from the internal road to a larger proportion (13 dwellings) of the dwelling houses than previously (9 dwellings);
- A greater number of dwellings (eight (8)) within the proposed modified development provide appropriate internal wheelchair access to all required facilities. Only one (1) dwelling within the originally approved development provided such access.

Introduction

An application under Section 96 of the Environmental Planning and Assessment Act, 1979 has been received to modify Development Consent MA0844/98 which approved a development for aged/disability housing at 19 Old Bells Line of Road, Kurrajong.

The modification application was publicly exhibited from 19 January 2010 to 25 February 2010, and no submissions were received.

The proposed modified development will result in an improved design which complements the existing character of the locality and provides increased amenity and access for future residents of the development.

The application is being reported to Council in accordance with Council Policy – *Applications Determined by Council – Re-application Process Policy*, which states:

“For any application determined by Council (rather than under delegated authority by staff), subsequent applications relating to the same project in relation to amendments or changes are also to be considered and determined by Council.”

The development was approved by Council at its meeting of 8 June 1999.

The proposed modification is recommended for approval.

Description of Proposal

The application seeks to modify Development Consent MA0844/98, which approved construction of aged/disability housing on Lot 19 DP 874188, 19 Old Bells Line of Road, Kurrajong.

The proposed modification seeks to redesign the dwellings so that they *“are more in character with the locality and more useable for the residents. The dwellings each contain a double garage and are clad with timber weatherboards and colourbond roof sheeting.”* The proposed modified development provides for three (3) designs for the dwellings, all of which are two storeys.

The proposal also seeks to reconfigure the dwellings within the development site. The proposed relocation of dwellings will result in the construction of new internal roads and the creation of a centralised communal open space area which incorporates the community hall.

The proposed modification also requests the deletion of Condition 53, which states:

"53 The construction of a continuously accessible pathway 1.2 wide from the Vincent Road entrance to the intersection of Old Bells Line of Road incorporating ramps to accommodate changing ground levels where required (including a ramp to ensure access to the existing pathway on the western side of Old Bells Line of Road)."

Background

Council, at its meeting of 8 June 1999 resolved to approve Development Application MA0844/98 for aged/disability housing.

The proposed development comprised eighteen (18) single dwelling units in the form of a village cluster with access via a circular loop driveway. The dwellings were to be of single or two storey construction, each comprising two bedrooms plus either a study or sun room. The development included a community hall for use by the residents of the estate. The application was considered under the provisions of State Environmental Planning Policy No. 5 – Housing for Older People or People with a Disability.

History of the Site

13 September 1994	Council approved thirty two (32) unit aged housing development
12 September 1996	s.102 amendment was approved deleting the community centre, reducing the number of parking spaces and increasing the number of units in Stage 1 to eighteen (18). The amendment also relocated the road layout and location of units.
13 August 1998	Application received to modify existing consent by the reduction of units to eighteen (18) detached dwellings and amend road layout. This application was withdrawn as a result of it not being substantially the same development to that originally approved.
15 June 1999	Consent issued for aged/disability housing comprising eighteen (18) units (MA0884/98). (A modification to this consent is the subject of this Report.)
29 March 2001	Construction Certificate for Road and Drainage Works in association with MA0844/98 was issued. Construction of the internal loop road and drainage of this road has been completed, thereby securing the consent.
20 March 2009	s.96 application (MA0844/98A) approved for the relocation of the sewerage treatment plant and effluent disposal areas.
20 March 2009	DA0154/08 approved for a three lot boundary adjustment. Upon registration of this subdivision the development will be located on Lot 10 having an area of 2.909ha.
23 December 2009	s.96 application (MA0844/98B) approved for amendment to the design of the community hall.

Council Policies, procedures and Codes to Which the Matter Relates

- Environmental Planning and Assessment Act, 1979
- State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004
- State Environmental Planning Policy No. 5 – Housing for Older People or People with a Disability
- State Environmental Planning Policy No. 44 – Koala Habitat
- Sydney Regional Environmental Plan No. 20 – Hawkesbury Nepean River
- Hawkesbury Local Environmental Plan 1989
- Hawkesbury Development Control Plan
- Council Policy – Applications Determined by Council – Re-application Process Policy,

Environmental Planning and Assessment Act 1979

Assessment of Section 96(2)

This application is to be determined under the provisions of s96 (2) - *Other Modifications* - of the EPA & A Act, 1979.

- (2) *A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:*
- (a) *it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all) under this section, and*

Comment: Following both a quantitative and qualitative comparison between the proposed modified development and the approved development, it is considered that the development as modified is substantially the same as the approved development. The proposed modifications in the design and location of the dwellings are not considered to be material. Following the proposed changes the development will remain a low density, independent living, housing development for seniors and people with a disability, as was originally approved.

- (b) *it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and*

Comment: The original proposal was identified as 'integrated development' and required referral to the then Department of Land and Water Conservation (now known as NSW Office of Water) and the Environmental Protection Authority

The Department of Land and Water Conservation did not object to the proposed development, did not require the proponent to obtain a Part 3 permit and did not impose any conditions on the development.

The on site effluent disposal system which was to service the development had been approved by the Environmental Protection Authority (EPA) as part of a previous consent. In this respect, a Pollution Control Approval for the land had been previously issued by the EPA, who verified in 1999 that that approval was valid for the eighteen (18) unit aged/disability housing development.

Since this time, the EPA has transferred the responsibility of the approval and monitoring of sewage management facilities to Councils. As a result, the proposed effluent disposal system servicing the proposed modified development no longer requires approval or licensing by the EPA.

- (c) *it has notified the application in accordance with:*

- (i) *the regulations, if the regulations so require, or*
- (ii) *a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and*

Comment: The proposed modification was notified in accordance with Hawkesbury Development Control Plan – Part A, Chapter 3 – Notification. The notification period was between 19 January 2010 and 25 February 2010.

- (d) *it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.*

Comment: No submissions were received as a result of notification.

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

Comment: The relevant matters for consideration under s.79C (1) of the EP&A Act are discussed later in this report.

- (4) *Modification of a development consent in accordance with this section is not to be construed as the granting of development consent under this Part but a reference in this or any other Act to a development consent is a reference to the development consent so modified.*

Comment: Council has previously obtained legal advice (2001) in respect to s.96(2) of the EP & A Act, 1979, which advised that "*Council may only approve or refuse a section 96 application in total and not approve one part and refuse another.*"

- (5) *Development consent of the kind referred to in section 79B(3) is not to be modified unless the requirements of section 79B(3)-(7) have been complied with in relation to the proposed modification as if the proposed modification were an application for development consent.*

Comment: The proposed modification is not located on land that is, or is a part of, critical habitat, or is likely to significantly affect a threatened species, population, or ecological community, or its habitat. Therefore, section 79B (3) - (7) do not apply.

Section 79C Matters for Consideration

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

a. The provisions (where applicable) of any:

i. Environmental Planning Instrument:

The relevant Environmental Planning Instruments are considered below:

State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004

Clause 6 to SEPP (Housing for Seniors or People with a Disability) states:

Clause 6 Transitional provisions relating to certain development applications and development

- (1) *Despite clause 5(1), State Environmental Planning Policy No 5 – Housing for Older People or People with a Disability as in force immediately before its repeal continues to apply to and in respect of the following as if it had not been repealed:*
- (a) *N/A*
 - (b) *any development application, whether made before or after the commencement of this Policy, that relates to a development for which a development consent was granted under the Policy as referred to in section 80(4) of the Act, and*
 - (c) *the carrying out of any development for which development consent was granted under the Policy before its repeal or that is granted under the Policy (as continued in force by this subclause).*

By way of Clause 6, the modification application is required to be assessed under the provisions of State Environmental Planning Policy No. 5 – Housing for Older People or People with a Disability.

State Environmental Planning Policy No. 5 – Housing for Older People or People with a Disability (SEPP No. 5)

Attachment 6 to this Report shows how the proposal has been reviewed against the provisions of SEPP No. 5. This review has revealed the following inconsistencies:

Wheelchair access

SEPP No. 5 requires at least 50% of the dwellings to have wheelchair access to an adjoining public road or an internal road. The proposed modified development complies with this requirement. However, the Policy further requires that 10% of these dwellings have wheelchair access to an adjoining public road. Wheelchair access to Vincents Road cannot be provided.

Comment: Whilst the proposed modified development does not, and cannot meet this requirement, it is noted that the approved development did not and could not comply as well. The applicant proposes to provide a community bus to enable residents to access services, facilities and amenities within Kurrajong and the Hawkesbury Area in general (see following discussion on accessibility).

Accessibility

SEPP No. 5 requires that *“the proposed development should, where appropriate have convenient, obvious and safe pedestrian and bicycle links from the site that provide access to public transport services and local facilities”*.

Comment: Development Consent MA0844/98 required the provision of a pathway along Vincent Road to Old Bells Line of Road. The applicant provides the following advice from their civil works designers:

“The pathway location is along the southern side of Vincents Road and follows the existing grades of Vincents Road. The grades range from 0.5% to 17%. The average grade from the start at the entrance to the retirement village to the top of the hill is 10%.

The Austroads Guide to Road Design “Pedestrian & Cyclist Paths” Part 6A set design parameters, identifies a maximum grade of 10% for wheelchairs to avoid tipping backwards (which is less than 12.5% defined in AS1428.1-1993). The proposed pathway grade exceeds both maximum grades and would not be suitable for wheelchairs.

AS1428.1 & 2 – 2001 also requires level rest areas 1.2 metres long to be provided at intervals of less than 9 metres, where the gradient is 7%. The gradient on the proposed pathway is up to 17% for a considerable distance and averages over 7% for a whole rise. There is insufficient room to establish the required rest areas and the provision of the rest area would make the gradient even steeper.

Compliance with AS1478.1 & 2 2001 is not and cannot be satisfied in the design.”

Following an assessment by Councils Development Engineers it is agreed that the construction of the pathway is impracticable.

To compensate for this lack of pedestrian access to public transport, the applicant proposes to provide a minibus to be used by the residents of the development as an appropriate way of meeting the transport requirements of future residents. The minibus will be used for weekly and special outings by the village operator. *“The proposed development comprises 18 independent living dwellings and it is therefore anticipated that demand for regular use of the bus for shopping trips will be very low if at all. Notwithstanding, this transport facility will be provided on a needs basis to meet the demands of village residents.”*

The provision of a minibus is considered to be an appropriate alternative to the provision of the pathway in providing access to facilities and services within Kurrajong village and the Hawkesbury area. It will be a requirement of the modified consent that the bus be wheelchair accessible.

The application was referred to Councils Community Services section, who advised that, whilst the application proposes the inclusion of a minibus, it is considered that accessibility to services outside of the site is not ideal. However, the provision of the minibus will provide for improved access when compared to the original approved development.

Whilst the applicant requests the deletion of the requirement to construct the pathway along Vincents Road, the applicant still intends to construct the bus shelter in accordance with Condition 55 of the Development Consent.

In all other respects the proposed modified development is considered to be consistent with the requirements of this Policy.

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

The subject land falls within the boundary of SREP 20. This Policy aims "to protect the environment of the Hawkesbury-Nepean River system by ensuring that the impacts of future land uses are considered in a regional context." SREP 20 requires Council to assess development applications with regard to the general and specific considerations, policies and strategies set out in the Policy.

It is considered that the proposed modifications will not result in the development significantly impacting on the environment of the Hawkesbury-Nepean River either in a local or regional context and that the development is not inconsistent with the general and specific aims, planning considerations, planning policies and recommended strategies.

State Environmental Planning Policy No. 44 - Koala Habitat Protection

The proposed development does not require the removal of native vegetation. Consequently, an investigation into whether or not the land is a potential koala habitat is not required for the development.

Hawkesbury Local Environmental Plan 1989.

The subject property is zoned Mixed Agriculture under the provisions of HLEP 1989. 'Units for aged persons' are prohibited within the Mixed Agriculture zone. However, the original application was considered under the provisions of State Environmental Planning Policy No. 5 – Housing for Older People or People with a Disability which allowed this type of development in rural zones where they adjoin or are adjacent to a residential zoning, where reticulated water is available and where adequate arrangements for the disposal of sewerage is available. Both the original application and the proposed modified application satisfy these requirements.

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

Draft Hawkesbury Local Environmental Plan 2009 applies to the proposal. This draft Plan was exhibited 5 February 2010 to 12 April 2010.

Under this Plan the subject land is proposed to be zoned part RU1 Primary Production. The provisions of SEPP (Housing for Seniors or People with a Disability) 2004 would prohibit development for aged/disability housing on the subject land. However, development consent for this use was granted in 1999, and this application is to modify this approval. As such that prohibition does not apply.

iii) any development control plan applying to the land

It is considered that the proposed modified development is considered to be consistent with the relevant requirements of Hawkesbury Development Control Plan including the requirements for notification, effluent disposal and residential development.

iv) any matters prescribed by the regulations

Suitable conditions of consent have been imposed within the original Consent in regard to the Building Code of Australia (refer to Condition 32) and the Home Building Act 1989 (Condition 20) in accordance with Clause 98 of the Regulations.

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

The proposed development is expected to have a positive social and economic impact on the built environment. The development is expected to generate employment during construction and operation.

The development will provide housing with adequate access to services and facilities. The relevant considerations under s79C (1) (b) of the EP&A Act are assessed below:

Context and Setting

Dwelling Design E and Dwelling Design N2 follow the contour of the land and therefore will provide improved opportunity in achieving wheelchair access to these dwellings. Dwelling Design W2 will require cut and/or fill to create a level platform for construction. Given that no details have been provided with the application as to the proposed extent of any cut and fill, the modified consent will be conditioned to include a limit on fill to minimise environmental and visual impacts.

In addition, Conditions 28, 29 & 30 of Development Consent MA0844/98 relate to the construction of the dwelling houses. These conditions are not longer applicable given that the requirements to which they relate are covered by the provisions of the Building Code of Australia and/or they are no longer relevant due to the changes in design of the dwellings. As a result it is recommended that these conditions be deleted from the Consent.

The proposed modified development is considered to be compatible with adjoining landuses. The proposal will not unreasonably overshadow adjoining properties or adversely impact on the visual or acoustic privacy of neighbours, or views and vistas.

Access Transport and Traffic

The modified development proposes a double garage to each dwelling. In addition seven (7) visitor spaces will be constructed along the internal ring road. A space will also be provided next to the communal hall for the minibus. It is considered that the parking and access as proposed is adequate.

Flora and Fauna

The proposed modified development does not involve the removal of any native vegetation. It is therefore considered that the requirements of Part 5A of the EP & A Act are satisfied in that the proposed development will have no significant impact on threatened species, populations, ecological communities or their habitats.

Waste

A report titled 'On-site Wastewater Management Report' for Lot 19 Vincent Road, Kurrajong NSW, prepared by Envirotech P/L, Report No. REP-21408-A dated 3rd December 2009 has been provided with the application. This Report demonstrates that the site is capable of supporting on-site disposal of effluent for the proposed modified development.

This Report recommends that full water reduction facilities be fitted to all water use outlets in the house and include:

- Reduced flush 6/3 litre water closets
- Aerator faucets
- Front-load washing machines
- Shower-flow restrictors

It is recommended that a Condition be included within the amended consent requiring the installation/use of these water reduction facilities

c) the suitability of the site for the development

Based upon the assessment of the application it is considered that the site is suitable to support the proposed modified development for the following reasons:

- The modified development responds more positively to the topography of the land minimising the developments visual impact and improving access and amenity for future residents;
- The land is classified as 'bush fire prone' and is located within an area of moderate bushfire risk. These affectations are not prohibitive to the development.
- The land is serviced by electricity, telephone and reticulated water supply. The land is capable of supporting onsite disposal of wastewater.

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

The modification application was notified from 19 January 2010 to 25 February 2010 in accordance with Hawkesbury Development Control Plan. No submissions were received.

e) the public interest

The proposed modified development provides additional housing for seniors and people with a disability within the Kurrajong locality. The modified proposal is compatible with adjoining development and the streetscape and the design of the dwellings more positively respond to the topography of the land. The proposed modified development provides increased amenity and access for future residents when compared to original approved development. For these reasons it is considered that the proposed development is in the public interest.

Conclusion:

As demonstrated within this Report the proposed modified development provides for increased accessibility to services and facilities both within the development and within the general locality than that provided by the originally approved development. The modified designs of the dwelling are more compatible with the existing character and landscape of the locality, and the provision of a centralised communal open space provides increased amenity for future residents. It is therefore recommended that the application to modify Development Consent MA0844/98 be supported.

Planning Decision

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

RECOMMENDATION:

That Development Consent MA0844/98 for construction of aged/disability housing on Lot 19 DP 874188, 19 Old Bells Line of Road, Kurrajong be amended in the following manner:

General

Conditions 1 and 7 be amended to read:

1. To confirm and clarify the terms of this approval:
 - a) the development shall take place in accordance with:
 - the stamped approved plans (numbered 001, 002, 003, 004 dated September 2009) and documentation submitted with s.96 Modification Application M0844/98B; and
 - the stamped approved plans (numbered 00, 01, 03 & 04 prepared by environa studio) and documentation submitted with s.96 Modification Application M0844/98C;

excepting as modified by these further conditions; and

- b) no approval is granted for the caretaker's residence (as shown on the Site Plan numbered 00) and this shall be deleted. All construction certificate plans shall be consistent with this requirement.

Prior to Issue of Construction Certificate

7. To ensure that all necessary services are provided to the development and these services will function properly:

- (a) the development shall be connected to the Sydney Water's water supply;
- (b) An application to install a Sewage Management Facility (SMF) must be lodged and approved by Hawkesbury City Council.

The Sewage Management Facility shall be designed in accordance with the 'On-site Wastewater Management Report' for Lot 19 Vincent Road, Kurrajong NSW, prepared by Envirotech P/L, Report No. REP-21408-A dated 3 December 2009. The design needs to demonstrate that the appropriate minimum buffer distances can be provided from the proposed waste water disposal areas to the following:

- 6m if up-gradient and 3m if down gradient of driveways and boundaries (existing/proposed)
- 15m to dwellings
- 3m to paths and walkways
- 40m to farm dams

The application shall be accompanied by a site plan showing the location of a reserve land application area which can be made available for expansion, for the resting of the land application system, or for duplication of the land application system if unforeseen circumstances require this at some future time.

- (d) the development shall be served by water storage tanks for domestic uses in accordance with the water balance report submitted with the application.
- (e) satisfactory arrangements shall be made with Integral Energy, Sydney Water and Telstra for the provision/extension of services to and within the subject land. Written evidence of such arrangements shall be obtained prior to issue of the construction certificate.

Prior to the Commencement of Works

Delete Condition 28

During Construction

Delete Condition 29 and replace with the following:

29. To minimise the visual impact of the development, filling to create any building platforms is to be limited to 1 metre from the original natural surface level.

Delete Condition 30

Delete Condition 53

Use of the site

Insert the following new conditions:

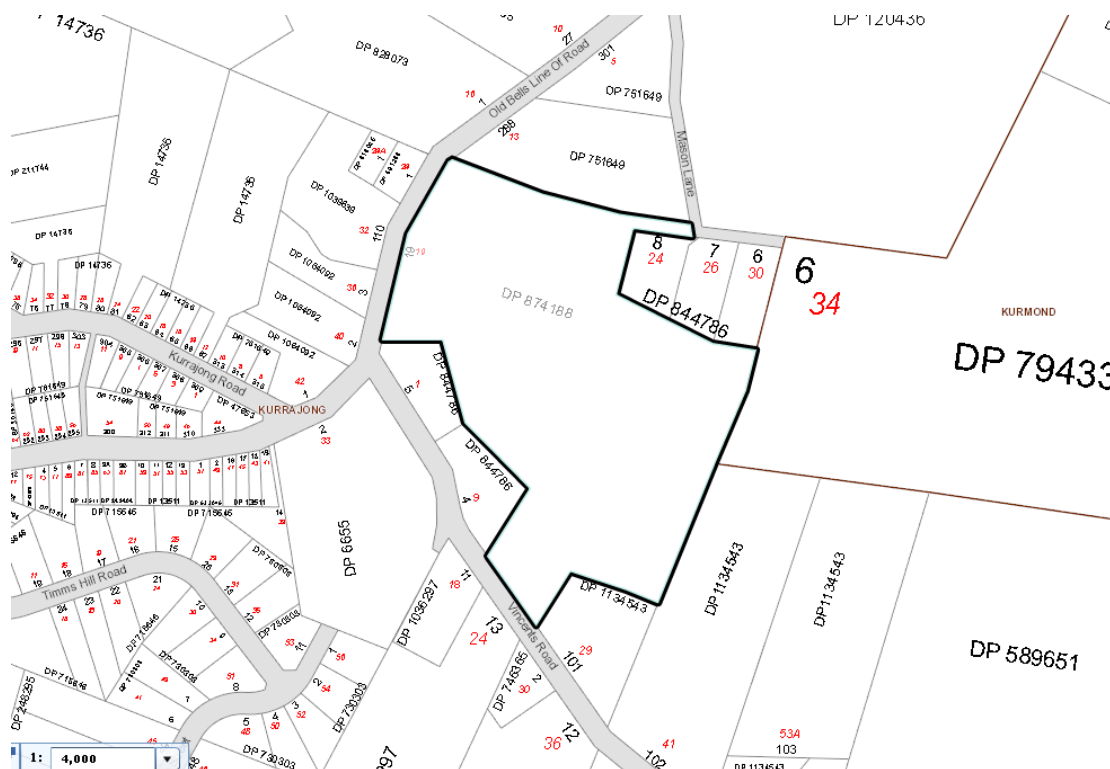
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65. A minibus and driver shall be provided to the development, by the operator, to service the transport needs of the residents for the life of the development. This minibus shall have a minimum seating capacity of 14 seats and shall be capable of wheelchair access.
66. Full water reduction facilities shall be fitted to all water use outlets to all dwellings and include:
- Reduced flush 6/3 litre water closets
 - Aerator faucets
 - Front-load washing machines
 - Shower-flow restrictors

ATTACHMENTS:

- AT - 1** Locality Plan and Aerial photo
AT - 2 Site Plan
AT - 3 Elevation Plan Dwelling Design E
AT - 4 Elevation Plan Dwelling Design W2
AT - 5 Elevation Plan Dwelling Design N2
AT - 6 Assessment of Application against State Environmental Planning Policy No. 5

AT - 1 Locality Plan and Aerial photo

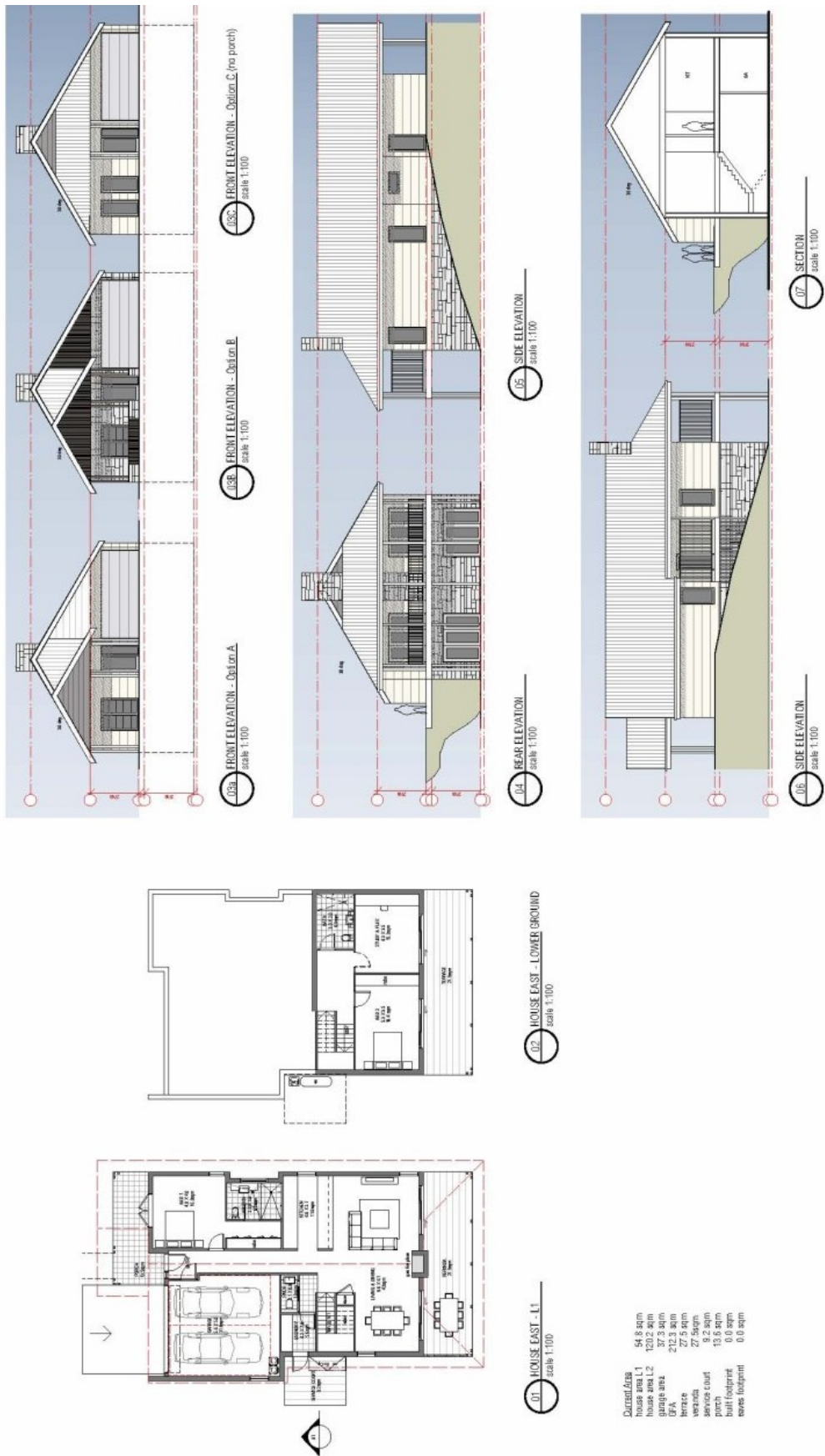


AT - 2 **Site Plan**

8



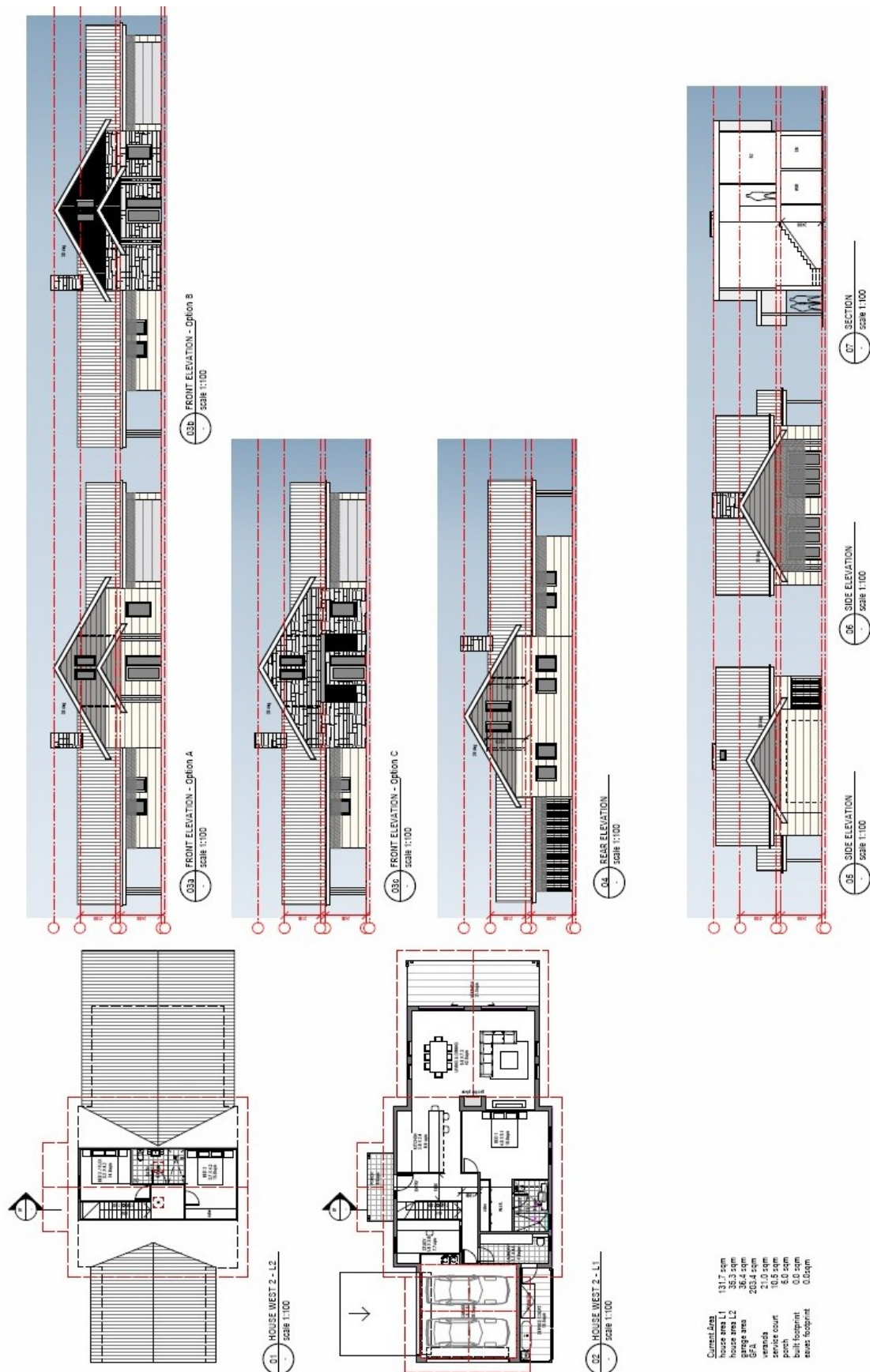
AT - 3 Elevation Plan Dwelling Design E



kurrajong hamlet ● house type east opt 1 front loaded b1

enviro studio
10/15/2021
10/15/2021
10/15/2021
10/15/2021
10/15/2021

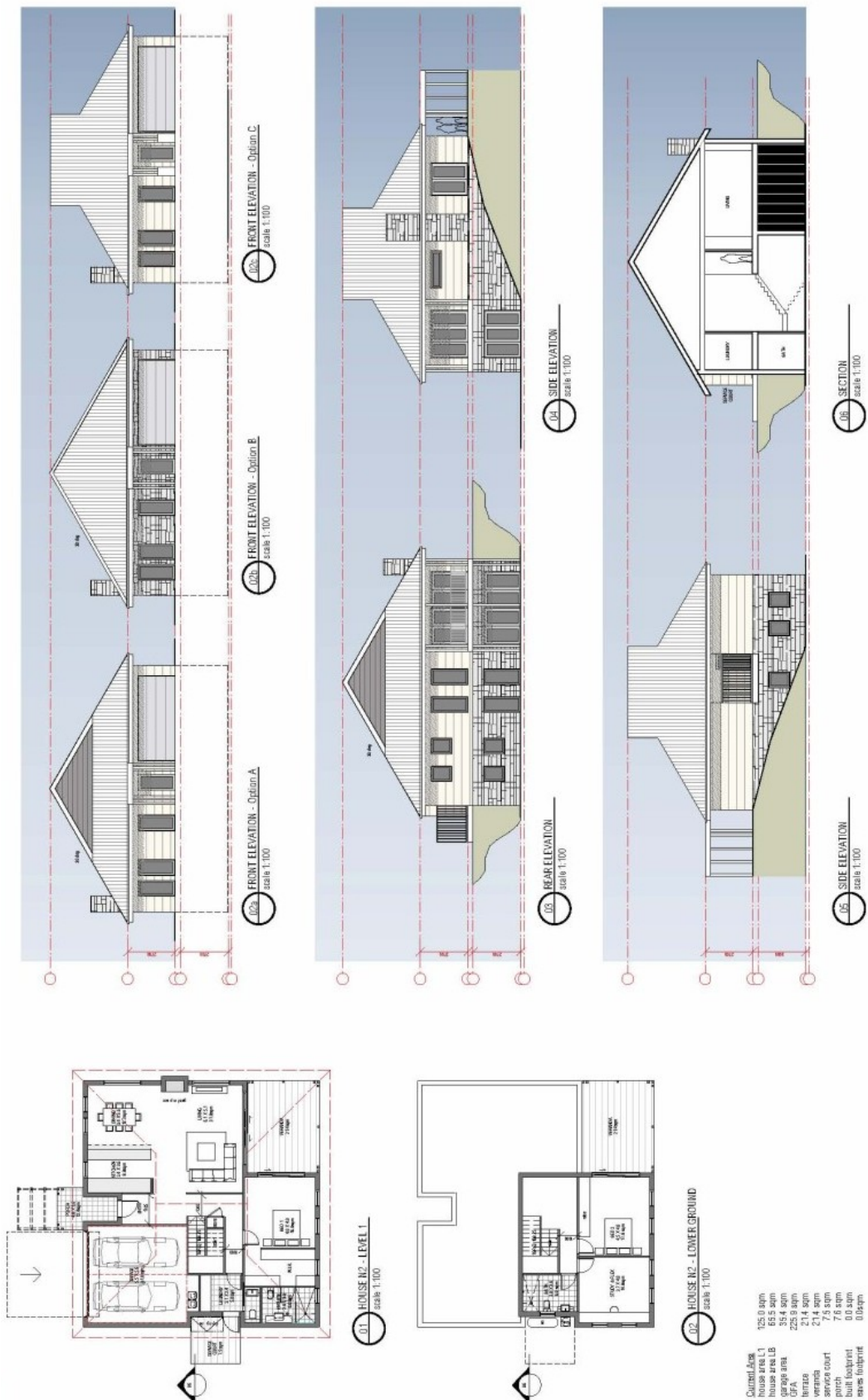
AT - 4 Elevation Plan Dwelling Design W2



kurrajong hamlet house W2 rear loaded contour house 04

environa studio
10/01/2015 10:11:11 AM
10/01/2015 10:11:11 AM
10/01/2015 10:11:11 AM

AT - 5 Elevation Plan Dwelling Design N2



enviro studio

10/01/2024
enviro studio
10/01/2024
10/01/2024

kurrajong hamlet • house type N2

front loaded 03

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AT - 6 Assessment of Application against State Environmental Planning Policy No. 5

Assessment of Application against the relevant provisions of SEPP No. 5 (Gazetted 2 January 1998)

State Environmental Planning Policy No. 5 – Housing For Older People or People with a Disability		
Requirements	Comment	
Part 2 Development Criteria		
Clause 12 Matters for consideration		
<p>(1) Location, facilities and support services The consent authority must not consent to a development application made pursuant to this Part unless the consent authority is satisfied, by written evidence, that residential of the proposed development will have reasonable access to:</p> <p>(a) shops, banks and other retail and commercial services that residents may reasonably require, and (b) community services and recreation facilities, and (c) health service, and (d) transport,</p> <p>and, where appropriate:</p> <p>(e) home delivered meals, or (f) personal car and home nursing, or (g) assistance with housework, or (h) on site communal meeting spaces (internal and/or external).</p>	<p>It was considered within the original assessment of the proposal that reasonable access to services and facilities were available to the development or could be made available through conditions of consent. The proposed modification will not change the availability of services and facilities to the development. These requirements can still be met as per the original application. The proposal includes a communal hall. A requirement of this amended approval, if supported, will include the provision of bus transport for the residents of the development.</p>	<p>✓</p>
<p>(2) In deciding whether the level of access residents have to each facility and service listed in subclause (1) is reasonable (whether provided as a part of the development or by an external service provider) the consent authority must consider the following:</p> <p>(a) the type of housing proposed and the needs of the people who are most likely to occupy that type of housing,</p>		<p>✓</p>
<p>(b) whether the type or scale of housing proposed could, or may reasonably be expected to, provide some facilities and services on site in a cost effective</p>	<p>These matters were considered within the original development application which concluded that satisfactory services and facilities were, or could be</p>	<p>✓</p>

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State Environmental Planning Policy No. 5 – Housing For Older People or People with a Disability		
Requirements	Comment	
manner,	made, available to the development.	
(c) whether any relevant facility or service is or will be convenient to residents of the proposed housing in view of the walking distance and availability of public transport to and from the facility,		✓
(d) the affordability of any relevant facility or service.		✓
(3) Availability of facilities and services The consent authority must be satisfied that any facility or service provided as a part of the development will be available to residents when the housing is ready for occupation. In the case of a staged development, the facilities or services may be provided proportionately according to the number of residents in each stage.		✓
(4) Water and sewer (a) The consent authority must not consent to a development application made pursuant to this Part unless the consent authority is satisfied, by written evidence, that the housing will be connected to a reticulated water system and have adequate facilities for the removal or disposal of sewage.	Reticulated water is available to the land, and the development will be serviced by an on site effluent disposal system as per the original approval.	✓
(b) Where the water and sewerage services referred to in subclause (4)(a) will be provided by a person other than the consent authority, the consent authority must consider the suitability of the site with regard to the availability of reticulated water and sewerage infrastructure. In locations where reticulated services cannot be made available, the consent authority must satisfy all relevant regulators that the provision of water and sewerage infrastructure, including environmental and operational considerations, are satisfactory for the proposed development.	An 'On-site Wastewater Management Report' prepared by Envirotech P/L was submitted in support of the proposed modified development. This Report demonstrates that the proposed system will satisfactorily dispose of wastewater generated by the development without any significant adverse impacts.	✓
Clause 13 Development standards		

ORDINARY MEETING

Reports of Committees

State Environmental Planning Policy No. 5 – Housing For Older People or People with a Disability		
Requirements	Comment	
<p>A consent authority must not consent to a development application made pursuant to this Part unless:</p> <p>(a) wheelchair access:</p> <p>(i) at least 50 per cent of any dwellings will have wheelchair access to an adjoining public road or an internal road or a driveway that is accessible to all residents, and</p> <p>(ii) 10 per cent of any dwellings which meet the requirements of subparagraph (i) will have wheelchair access to an adjoining public road, and</p> <p>(iii) 10 per cent of any dwellings which meet the requirements of subparagraph (i) also have, or are capable of being modified so that they have, wheelchair access to all essential areas and facilities inside the dwellings, including a toilet, bathroom, bedroom and a living area, and</p> <p>(iv) access is provided so that a person using a wheelchair can use common areas and facilities associated with the development, and</p> <p>(b) N/A</p>	<p>The proposed modified development complies with this requirement, with 13 of the 18 dwellings having access to the internal road on land having a slope less than 1:10.</p> <p>The existing approved development and the proposed modified development do not meet this requirement. See discussion within the Report.</p> <p>Eight (8) of the dwellings which comply with (i) above will be Dwelling Design E. this design provides for wheelchair access within the dwellings to all required facilities, including toilet, bathroom, bedroom and living areas.</p> <p>Can be achieved as per the original application. The proposed modified development includes pathways within the communal open space area.</p>	<p>✓</p> <p>X</p> <p>✓</p> <p>✓</p>
<p>Clause 14 Standards which cannot be used as grounds for refusal</p> <p>The consent authority must not refuse consent to a development application under this Part on the grounds of:</p> <p>(a) Building height if all proposed buildings are 8 metres or less in height</p>	<p>The proposed modified development includes three (3) dwelling house designs, two of which have a maximum height of 9m and 10m. The heights of the dwellings are considered satisfactory given the bulk, scale and appearance of the dwellings, and the topography of the</p>	<p>✓</p>

ORDINARY MEETING

Reports of Committees

State Environmental Planning Policy No. 5 – Housing For Older People or People with a Disability		
Requirements	Comment	
<p>(b) Density and scale <i>if the density and scale of the buildings when expressed as a floor space ratio is:</i></p> <p>(i) 0.5:1 or less</p> <p>(ii) N/A</p> <p>(c) Landscaped area: <i>if a minimum of 35m² of landscaped area per dwelling and 25m² of landscaped area per hostel or residential care facility bed is provided</i></p> <p>(d) Parking <i>if at least the following is provided:</i></p> <p>(i) N/A</p> <p>(ii) <i>in the case of dwellings, at least:</i></p> <ul style="list-style-type: none"> 0.5 car spaces for each bedroom where the development application is made by a person other than the Department of Housing or a local government or community housing provider, or N/A 	land. The height is considered compatible with the locality.	✓
	The floor space ratio for the proposed modified development is 0.15:1 (based on a land size of 2.909ha).	✓
	The proposed modified development satisfies this requirement.	
	Each dwelling will have three (3) bedrooms and each dwelling will be provided with a double garage, which satisfies this requirement.	✓
Part 3 Design requirements		
<p>Clause 24 Site analysis</p> <p>25 Design of residential development</p> <p>Consent must not be granted for development to which this Part applies unless the consent authority is satisfied that the proposed development demonstrates that adequate regard has been given to the following principles:</p> <p>(a) Streetscape: The proposed</p>		

ORDINARY MEETING

Reports of Committees

State Environmental Planning Policy No. 5 – Housing For Older People or People with a Disability		
Requirements	Comment	
development should:		
(i) contribute to an attractive residential environment with clear character and identity, and	It is considered that the proposed modified designs of the dwelling houses are compatible with the existing streetscape and rural character of the locality.	✓
(ii) N/A		
(b) Visual and acoustic privacy: The proposed development should, where practicable, consider the visual and acoustic privacy of neighbours in the vicinity and residents by:		
(i) appropriate site planning, the location and design of windows and balconies, the use of screening devices and landscaping, and	Given the size of the property and the setbacks of the modified development from boundaries it is considered that the proposal will have no unreasonable impacts on the visual or acoustic privacy of adjoining neighbours.	✓
(ii) ensuring acceptable noise levels in internal living and sleeping areas of new buildings		
(c) Solar access and design for climate: The proposed development should, where possible:	The design of the dwelling houses and inclusion of landscaping will afford an acceptable level of acoustic privacy between dwellings within the development and an acceptable internal noise level.	✓
(i) ensure adequate daylight to the main living areas of neighbours in the vicinity and residents and adequate sunlight to substantial areas of private open space, and	It is considered that the proposed modified development provides for adequate sunlight access to living areas and private open space to both adjoining properties and dwelling houses within the development.	✓
(ii) involve site planning, dwelling design and landscaping that reduces energy use and makes the best practicable use of natural ventilation solar heating and lighting.		
(d) Stormwater: the proposed development should, where possible:		
(i) control and minimise the disturbance and impacts of stormwater runoff on adjoining properties and receiving waters, and	The proposed modified development is consistent with these requirements as per the original development application.	✓

ORDINARY MEETING

Reports of Committees

State Environmental Planning Policy No. 5 – Housing For Older People or People with a Disability		
Requirements	Comment	
(ii) include, where practical, on-site stormwater detention or re-use for second quality water uses, and		✓
(iii) be designed with regard to the scope for on-site infiltration of water.		
(e) Crime prevention: The proposed development should, where possible, provide personal property security for residents and visitors and encourage crime prevention by:		✓
(i) site planning that allows, from inside each dwelling, general observation of the street, the site and the approaches to the dwelling's entry, and	The proposed modified development is considered satisfactory in respect to these requirements. Surveillance of the internal road, driveways and front entry is possible from each dwelling.	✓
(ii) N/A		
(iii) providing dwellings designed to allow residents to see who approaches their dwelling without the need to open the front door.		X
(f) Accessibility: The proposed development should, where appropriate:	Development Consent MA0844/98 required the provision of a pathway along Vincent Road to Old Bells Line of Road. Due to the slope of the land, the construction of this pathway cannot comply with access requirements of this Policy. To address this matter, the applicant proposes to provide a community bus to provide access to Kurrajong Village and other amenities and services. (See discussion within the Report).	✓
(i) have convenient, obvious and safe pedestrian and bicycle links from the site that provide access to public transport services and local facilities, and		✓
(ii) provide attractive, yet safe, environments for pedestrians, cyclists and motorists with convenient access and parking for residents and visitors, and	It is considered that satisfactory access and parking has been provided within the proposed modified development.	✓
(iii) where feasible, involve site layout and design that enables people with a disability to access, on one continuous accessible path of travel, the street frontage, car	As per the original development application/consent.	✓

ORDINARY MEETING
Reports of Committees

State Environmental Planning Policy No. 5 – Housing For Older People or People with a Disability		
Requirements	Comment	
<p>parking, and all buildings, facilities and open spaces within the site.</p> <p>(g) Waste management: The proposed development should, where possible, be provided with waste facilities that maximise recycling by the provision of appropriate facilities.</p> <p>(h) Visual bulk: The proposed development should, where practicable, maintain reasonable neighbour amenity and appropriate residential character by:</p> <p>(i) providing building setbacks that progressively increase as wall heights increase to reduce bulk and overshadowing, and</p> <p>(ii) using building form and siting that relates to the site's land form, and</p> <p>(iii) adopting building heights at the street frontage that are compatible in scale with adjacent development</p>	<p>Satisfactory as per the original application.</p> <p>It is considered that the proposed modified development is satisfactory with respect to setbacks, design and bulk, and overshadowing.</p> <p>The amended designs of the dwellings respond positively to the topography of the land.</p> <p>The building heights of the dwellings, and in particular those dwellings at the front of the property, are considered appropriate with respect to adjoining development, the streetscape and the character of the locality in general.</p>	<p></p> <p>✓</p> <p>✓</p> <p>✓</p>

oooO END OF REPORT Oooo

ORDINARY MEETING

Reports of Committees

Item: 194 **CP - Development Application - Rural Tourist Facility - Farm Gate Sales and Coffee Shop - Part Lot 1 DP582878, 1917 Bells Line of Road and Lot 2 DP582878 1913 Bells Line of Road, Kurrajong Heights - (DA0660/08, 21925, 83790, 83789, 21924, 95498)**

Development Information

File Number: DA0660/08
Property Address: Part Lot 1 in DP582878, No. 1917 Bells Line of Road and Lot 2 in DP582878 No. 1913 Bells Line of Road KURRAJONG HEIGHTS NSW 2758
Applicant: Cynthia Jane Demmocks
Owner: Mr C Kezik, Mrs ML Demmocks, Ms CJ Demmocks and Mr JT Groat
Proposal Details: Rural Tourist Facility - Farm gate sales & coffee shop
Estimated Cost: \$2,000
Current Zoning: Environmental Protection - Agriculture Protection and Zone 9 (b) (Proposed Road) under Hawkesbury Local Environmental Plan 1989.
Draft Zoning: RU2 Rural Landscape and SP2 Infrastructure under DRAFT Hawkesbury Local Environmental Plan 2009
Date Received: 4 September 2008
Date Formal: 11 June 2010
Advertising: 11 November 2008 to 25 November 2009

Key Issues:

- ◆ Community Land
- ◆ Carparking and access
- ◆ Owners Consent
- ◆ Traffic generating development

Recommendation: Refusal

REPORT:

Executive summary

This proposal seeks approval for the continued use of the land for the Tutti Fruitti farm gate sales and café. The tourist facility previously obtained an approval and is supported. However, the key issue for this application is the proposed use of Community Land for carparking. Council is not legally able to grant permanent use of Community Land for the benefit of a private development. Until an alternative location for carparking is proposed this application can not be supported.

The application is being reported to Council for determination as requested by Councillor Calvert.

Key Issues Relevant to the Decision

- Community Land
- Carparking and access
- Owners Consent
- Traffic generating development

Introduction

An application has been received seeking approval for a Rural Tourist Facility - Farm gate sales and coffee shop on Part Lot 1 in DP582878, No. 1917 Bells Line of Road and Lot 2 in DP582878 No. 1913 Bells Line of Road Kurrajong Heights. The existing lot at present contains the Tutti Fruitti café.

ORDINARY MEETING
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This application seeks formal approval for the continued use of the Tutti Fruitti Café which currently operates from the subject site.

This report recommends refusal as Lot 2 in DP582878 No. 1913 Bells Line of Road, proposed to be used for the construction of the new carparking area, is owned by Hawkesbury City Council and is classified as 'Community' land under the Local Government Act 1993. Council is not legally able to grant consent to the use of Community Land exclusively to one private development.

Description of Proposal

The application is proposing a Rural Tourist Facility - Farm gate sales and coffee shop at the above address. The application has been submitted for the continued use of the existing coffee shop approved under Development Consent No. DA0310/93 for a Tourist Facility – Craft and Coffee Shop. This approval granted consent for the use of an existing cottage as a craft and coffee shop on 11 January 1994 for a period of three years.

When assessed in 1994 it was noted that the subject site was affected by road widening and although the existing cottage was partly located on adjoining Council owned land consent was granted to the use of the cottage as a craft and coffee shop with associated parking to be provided at the rear of the existing building. The carparking area was required to be located behind the café building on Part Lot 1 in DP582878, No. 1917 Bells Line of Road.

Tutti Fruitti currently contains a café and shop which sells farm grown produce and local products to the travelling public. The property also contains a rose garden and orchards with tours being made available to tourists such as garden clubs, senior citizen groups and other social groups.

The application seeks approval to operate 7 days a week between the hours of 9am and 6pm. Seating for 40 people is provided for the café in the courtyard, verandah and customer gardens.

It is proposed that access to the site will be directly from Bells Line of Road with seventeen (17) new car parking spaces proposed to be primarily constructed over Lot 2 in DP582878 No. 1913 Bells Line of Road. This lot is currently being used as an informal parking/accessway to the existing café without consent. This application seeks to change the carpark arrangement previously approved under Development Application No. DA0310/93 which gave approval for the construction of twelve (12) parking spaces behind the craft and coffee shop.

Chronology of the application

4 September 2008	Application received.
October 2008	Discussions between Council and Roads and Traffic Authority (RTA) concerning development along main road.
7 November 2008	Application was neighbour notified with a copy of the application sent to the RTA.
15 December 2008	Preliminary comments from Council's subdivision and development engineer received and forwarded to RTA.
4 March 2009	Advice received from the RTA.
11 March 2009	Letter sent to applicant requesting a site survey and amended carparking design in accordance of HDCP 2002, <i>Australian Standard - AS2890.1 and AS2890</i> and comments received from the RTA dated 4 March 2009. Applicant advised that signage shall be restricted to one sign per property and that the second sign proposed for the property is not supported.
6 May 2009	Applicant submitted additional information and plans to address the above. Information then forwarded to the RTA for comment.

ORDINARY MEETING
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9 July 2009	RTA responded to additional information provided raising issues to be considered by Council.
July - October 2009	Assessment of submitted information made and discussion with Council's Property Section about the possible use of Lot 2 in DP582878 No. 1913 Bells Line of Road for carparking as this land is currently owned by Council.
5 November 2009	Letter sent to applicant advising that all parking areas shall be provided on Lot 1 in DP582878 No. 1917 Bells Line of Road as Council does not have the power to grant consent to the use of Council owned 'community' land for car parking.
16 December 2009	Letter sent to applicant requesting a response to Council's letter dated 5 November 2010.
16 December 2009	Applicant requested additional time in order to provide a response to the letter dated 5 November 2009.
6 January 2010	Applicant proposed to purchase Council owned land for carparking area and have land reclassified as 'operational' land under the Local Government Act 1993.
14 April 2010	Councils Property Section advised Applicant that Council has no legal right to sell the property whilst classified " <i>Community</i> " and that there are no guarantees that: a) Council will support a reclassification; b) The State Government will approve a reclassification or c) Council will sell the property once it has been reclassified."
21 April 2010	Based on information from Council's Property Section a letter was sent to the applicant confirming that an amended parking layout shall be provided with the car parking area to be wholly located on Lot 1 in DP582878 No. 1917 Bells Line of Road.
6 May 2010	Applicant advised Council that they were in the process of amending the car park to be contained wholly within Lot 1 DP582878. However, the applicant requested that Council consider the use of the current car park entrance/exit on Council owned land.
6 May 2010	Letter sent to the applicant advising that all carparking areas including the entrance and exit to the car park shall be located wholly on Lot 1 in DP582878 No. 1917 Bells Line of Road.
May 2010	Telephone conversation with the applicant advising that Council is unable to consider the use of Lot 2 without owners consent.
10 June 2010	Letter sent to the applicant requesting the application to be amended to address Council's previous concerns.

Council Policies, Procedures and Codes to Which the Matter Relates

- Hawkesbury Local Environmental Plan (HLEP)1989
- Sydney Regional Environmental Planning Policy 20. (No.2 - 1997) - Hawkesbury Nepean River (SREP No. 20)
- State Environmental Planning Policy (Infrastructure) 2007 (SEPP Infrastructure)
- Hawkesbury Development Control Plan (HDCP) 2002

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

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

a. The provisions of any:

i. Environmental Planning Instrument:

Hawkesbury Local Environmental Plan 1989

The proposal is defined as a “*Rural Tourist Facility*” under Clause 5 of HLEP 1989.

Part Lot 1 in DP582878, No. 1917 Bells Line of Road is zoned Environmental Protection Agriculture Protection (Scenic) and Lot 2 in DP582878 No. 1913 Bells Line of Road is zoned Zone 9 (b) (Proposed Road).

Clause 9 of HLEP 1989 permits rural tourist facilities with the consent of Council within the Environmental Protection Agriculture Protection (Scenic) and Clause 31 (5) of HLEP 1989 enables Council to grant the use of land Zoned 9 (b) (Proposed Road) for any purpose until the subject land is acquired for the purposes of road widening.

Should the application be supported Council would need to be certain that the use of the land zoned for road widening purposes will not have an impact on any future potential road widening works and that suitable parking for the development could be provided elsewhere.

The parking area in front of the café does not provide for a development that is sympathetic to the surrounding rural locality and will appear more like a commercial development from Bells Line of Road. Parking for the existing café was previously approved behind the existing café which is considered to be more appropriate given that the development will appear low scale in nature from the road frontage. It is considered that the carparking area as proposed will have an unacceptable impact on the visual quality of Bells Line of Road and is therefore considered to be inconsistent with the objectives of the Environmental Protection – Agriculture Protection Zone which are to preserve the rural landscape character of the locality by controlling the choice of access roads and landscaping.

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

Clause 2 - Aims, objectives etc
Clause 9a - Zone objectives
Clause 18 - Provision of water, sewerage services, etc
Clause 22 - Development fronting a main or arterial road
Clause 23 - Advertising Structures
Clause 37A - Development on land identified on Acid Sulfate Soils Planning Map
Clause 43 - Rural tourist facilities

Sydney Regional Environmental Plan No. 20 (No.2 – 1997) – Hawkesbury – Nepean River (SREP No. 20)

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

The proposal is consistent with the aims, objectives and recommended strategies of SREP No. 20.

State Environmental Planning Policy (Infrastructure) 2007

The application has been identified as traffic generating development under Schedule 3 of SEPP (Infrastructure 2007) and as a result referred to the Roads and Traffic Authority (RTA) for comment.

The RTA have reviewed and assessed the application and in their most recent correspondence dated 9 July 2009 requested a proposed carparking layout in accordance of AS2890.1 – 2004 and AS2890.2 – 2002. The information requested was forwarded to the applicant. No amended design or response has been received from the applicant.

i. Draft Environmental Planning Instrument that is or has been placed on exhibition and details of which have been notified to Council:

Draft Hawkesbury Local Environmental Plan 2009 was exhibited 5 February 2010 to 12 April 2010. The subject lots are identified as being Zoned RU2 - Rural Landscape and SP2 Infrastructure under DRAFT Hawkesbury Local Environmental Plan 2009.

The proposal would be defined as “*food and drink premises*” which is a permissible form of development with the consent of Council within the RU2 - Rural Landscape zone. Clause 5.1 (3) of this permits Council to approve the use of land zoned SP2 Infrastructure for any purpose prior to its acquisition by a public authority.

Should it be considered appropriate that the proposed new carpark be located on the portion of land zoned SP2 Infrastructure, the proposal would be consistent with the provisions of DRAFT Hawkesbury Local Environmental Plan 2009.

i. Development Control Plan applying to the land:

Hawkesbury Development Control Plan.

The Hawkesbury Development Control Plan 2002 applies to the proposal. An assessment of the proposal against the relevant provisions of this Plan follows:

Car Parking and Access

The application proposes seventeen (17) new carparking spaces to cater for the forty (40) seats provided in the café. The number of proposed parking spaces for the development is considered appropriate as it is greater than the required maximum rate for refreshment rooms outside of commercial areas which is one (1) space per three (3) seats. i.e. 13.3 spaces would be required.

While it is considered that there is suitable space available for carparking on Lot 1 in DP582878 the applicant has requested that Council consider the carparking arrangement proposed in front of the existing café on Council owned land.

The proposal is inconsistent with the aims, rules and objectives of HDCP 2002 in that the proposed the parking area is not safe in terms of access and manoeuvring as the design is inconsistent with Australian Standard 2890.1.

ii. Planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F:

There are no planning agreements applicable to the proposed development.

iii. Matters prescribed by the Regulations:

The applicant has not provided an amended plan for the proposed new carpark or owners consent (as Council is unable to grant that consent) for the use of Lot 2 in DP582878 No. 1913 Bells Line of Road. In this respect, the application is inconsistent with Clause 54 and the provisions of Schedule 1 of the Environmental Planning and Assessment Regulation 2000.

b. The likely impacts of that development, including environmental impacts on both the natural and built environments and the social and economic impacts in the locality:

Context & Setting

It is considered that the proposed carparking arrangement on Lot 2 in DP582878 No. 1913 Bells Line of Road will have a negative visual impact on the appearance of the streetscape of Bells Line of Road compared to the carparking area previously approved for the site under Development Consent Notice No. DA0310/93 which was to be located behind the café.

It is considered that the parking area behind the café building would be more consistent with the locality in terms of visual appearance and pedestrian/vehicle safety as the setback of a carpark from Bells Line of Road would be more appropriate than the current proposal.

Access, Transport & Traffic

The plans provided are inconsistent with the AS2890.1 and HDCP 2002.

Council officers have encouraged the applicant to locate the carpark wholly on Part Lot 1 in DP582878, No. 1917 Bells Line of Road, consistent with Development Approval No. DA0310/93. Council does not have the authority under the Local Government Act 1993 to approve the use of "Community land" as a private carpark. To this date no amended design has been provided by the applicant and it is considered that the access, transport and traffic arrangements as proposed are unacceptable for the development.

Cumulative Impacts

Approval of the use of the portion of land zoned for road widening purposes would result in the loss of carparking for the development should the land be acquired for road widening purposes which in turn does not promote or coordinate the orderly and economic use of development of the land.

c. Suitability of the site for the development:

As detailed previously in this report the applicant has been encouraged to provide the car parking area behind the existing café on Part Lot 1 in DP582878, No. 1917 Bells Line of Road as it will provide for a development that would be more sympathetic to the rural character of the locality as opposed to the current design.

It is considered that there is suitable area available on Lot 1 to provide the necessary carparking spaces for the development as required in Council's previous approval granted under Development Consent No. DA0310/93. However, despite Council officer's recommendation that all parking be provided on Lot 1 the applicant has requested that Council consider the use of Council Owned Land.

As outlined under the chronology section of this report Council's Property Section have investigated the possibility of the sale of Council owned land being Lots 2 & 3 in DP 582878 as requested by the applicant for the proposed new carpark.

The advice provided as a result of the investigations found that *"Council does not have the power to grant consent to the use of the land for car parking as Council currently has no legal right to sell whilst the property is classified as "Community land" under the Local Government Act 1993 and that the reclassification of the land is lengthy process in which there are no guarantees that the property will be able to be sold."*

Given that a revised parking arrangement has not been provided and the proposal involves the use of "community land" which cannot be legally sold or used for the purpose of a carpark it is considered that the subject site is not suitable for the proposed development.

d. Any submissions made in accordance with the Act or the Regulations:

As mentioned under the assessment of SEPP Infrastructure 2007 in this report Council has received advice from the RTA requesting additional information. The applicant has not addressed the issues raised in the RTA's submission.

e. The Public Interest:

Based on the findings of the report above it is considered that the proposal has not adequately addressed the matters identified under Section 79c of the Environmental Planning and Assessment Act 1989 and is therefore considered to be contrary to the public interest.

Conclusion

The proposal cannot legally be supported in its current form as the land for carparking is "Community land". The applicant has not considered carparking alternatives as previously approved and the café is currently in breach of the Environmental Planning and Assessment Act 1979 as the previous consent has expired.

This report has identified various concerns of the proposal with respect to the use of 'community' land, the visual appearance of the car park from Bells Line of Road and the use of land zoned for road widening purposes. Based on the carparking design currently proposed the application cannot be supported.

Developer Contributions

The development is exempt from contributions under Section 94E of the Environmental Planning and Assessment Act 1979 or Council's Section 94A Contributions Plan.

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:

- A. That development application DA0660/08 at Part Lot 1 in DP582878, No. 1917 Bells Line of Road and Lot 2 in DP582878 No. 1913 Bells Line of Road, Kurrajong Heights NSW 2758 for Rural Tourist Facility - Farm gate sales and coffee shop be refused for the following reasons:
1. The proposal includes the use of Lot 2 DP 582878, 1913 Bells Line of Road, Kurrajong Heights which is Council owned land classified as 'Community Land' and, under the provisions of the Local Government Act 1993, Council has no powers to grant formal use of the land for a private development.
 2. The development application contains insufficient information to carry out a proper assessment of the likely impacts of the proposed development in terms of Section 79C of the Environmental Planning and Assessment Act, 1979.
 3. The proposed car park is unsuitable in terms of vehicle manoeuvring and pedestrian safety and is inconsistent with the aims, objectives and rules of Hawkesbury Development Control Plan 2002.
 4. The carpark proposed in front of the café will have an unacceptable impact on the visual quality of Bells Line of Road and is inconsistent with the objectives of the Environmental Protection – Agriculture Protection Zone contained within Hawkesbury Local Environmental Plan 1989.

ORDINARY MEETING
Reports of Committees

5. Approval would not be in the public interest as approval for the use of land zoned for road widening purposes would result in the loss of carparking for the development should the land be acquired for road widening purposes and in turn does not promote or coordinate the orderly and economic use of development of the land.
- B. The unlawful use of the existing building as a café and unlawful use of Lot 2 in DP582878 No. 1913 Bells Line of Road KURRAJONG HEIGHTS as a car park be referred to Councils Regulatory Services Department for appropriate action.

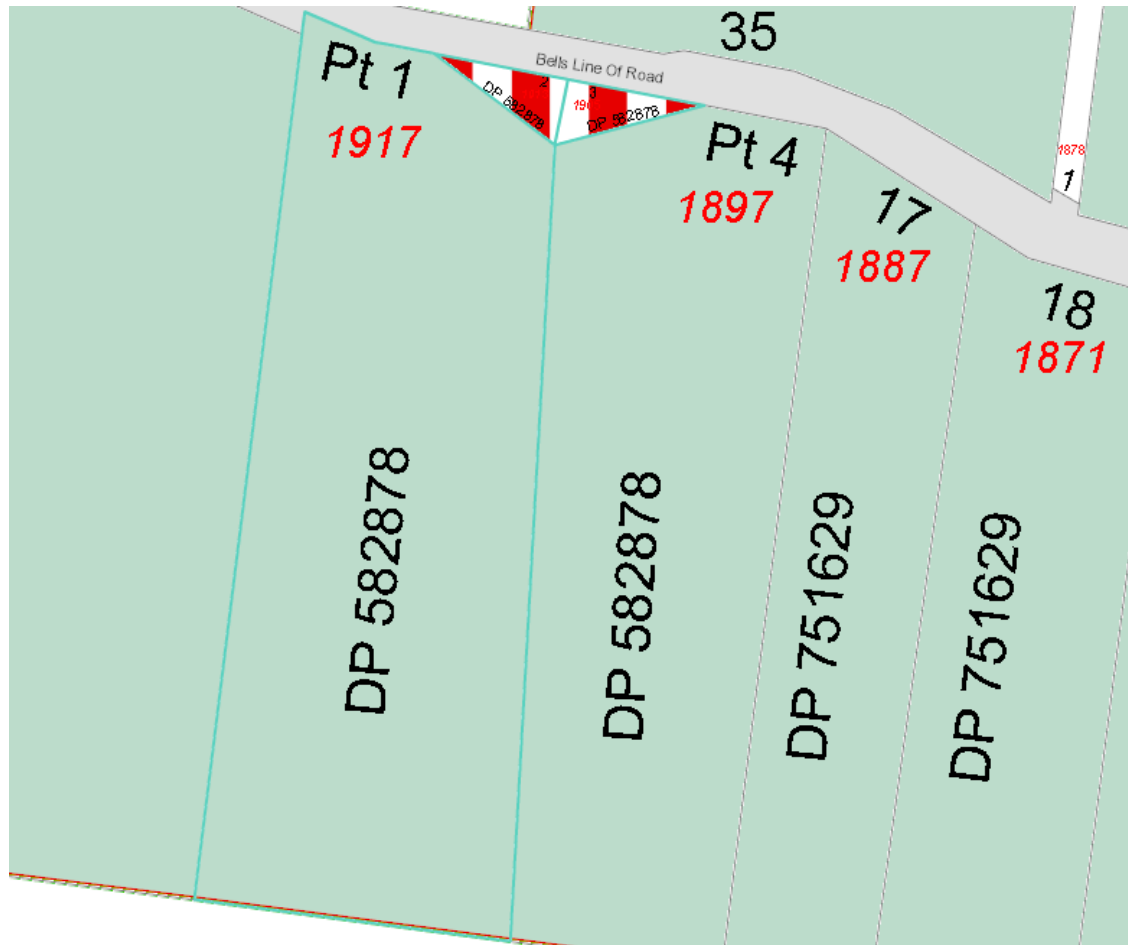
ATTACHMENTS:

- AT - 1** Aerial Photograph
- AT - 2** Locality Plan
- AT - 3** Parking Layout
- AT - 4** Site Plan

AT - 1 Aerial Photograph



AT - 2 Locality Plan

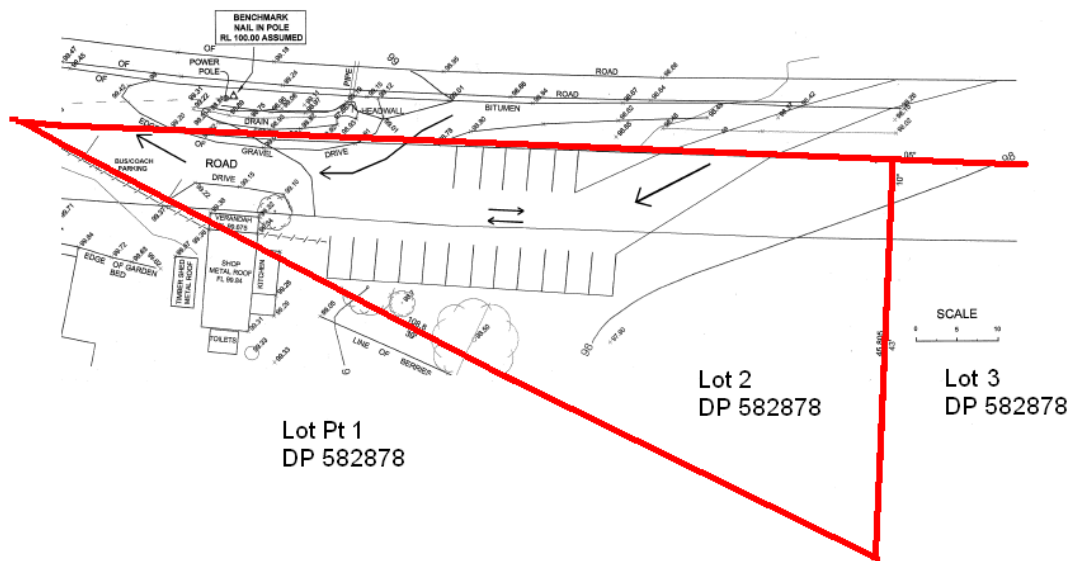


Zone 9 (b) (Proposed Road)

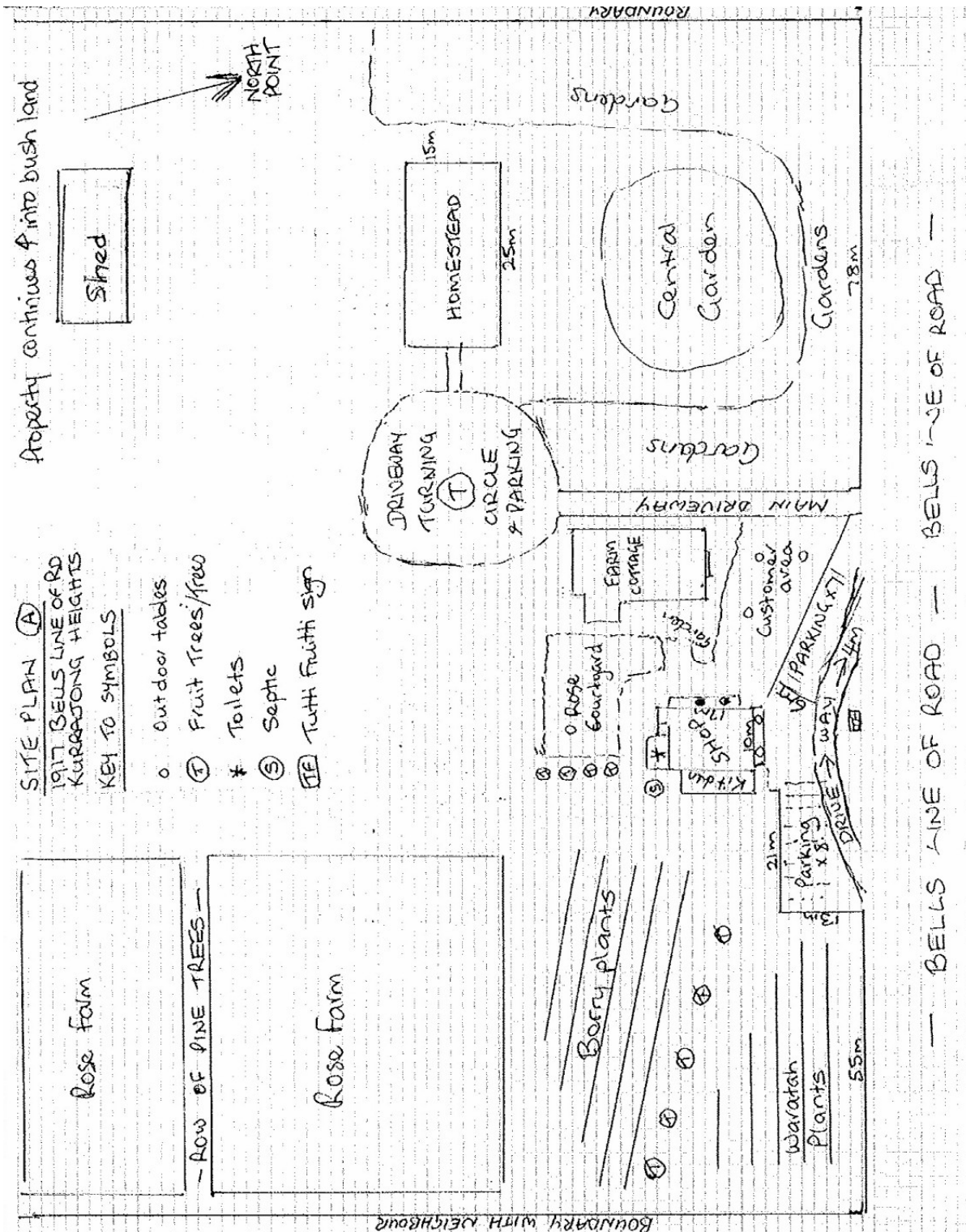


Environmental Protection - Agriculture Protection (Scenic) Zone

AT - 3 Parking Layout



AT - 4 Site Plan



oooO END OF REPORT Oooo

ORDINARY MEETING
Reports of Committees

Item: 195 **CP - Retrospective Application - Dam - Lot 287 DP 752050, 32 Scheyville Road, Oakville - (DA0068/10, 105378, 98207, 108944, 95498)**

Development Information

File Number: DA0068/10
Property Address: 32 Scheyville Road, Oakville NSW 2765
Applicant: Mr P Sultana
Owner: Mr E Sultana & Mrs M Sultana
Proposal Details: Retrospective Application - Dam
Current Zone: Rural Living under Hawkesbury Local Environmental Plan 1989
Current Zone: RU4 - Rural Small Holdings under Draft Hawkesbury Local Environmental Plan 2009
Date Received: 4 February 2010
Date Formal: 4 February 2010
Advertising: 11 March 2010 to 25 March 2010

Key Issues:

- ◆ Retrospective application
- ◆ Sediment Control
- ◆ Rectification works

Recommendation: Approval subject to conditions

REPORT:

Introduction

The application is seeking retrospective approval for a dam. The application is being reported to Council at the request of Councillor Christine Paine. The report recommends approval.

Description of Proposal

The subject application seeks retrospective approval for an existing dam expansion at Lot 287 DP 752050. The dam has a total capacity of 2.85 mega litres. The dam is constructed in an existing low point situated on the property. The total catchment area is relatively small and the dam is considered small relative to other dams situated in the immediate area.

An inspection of the dam was undertaken by Council staff during the assessment of the application and this had revealed that the structure, as constructed, did not satisfy the design criteria contained in Council's Development Control Plan. Given that the construction of the dam did not meet the minimum standards adopted by Council in its Development Control Plan various works will be required to modify the structure so that it satisfies these criteria.

In order to address these deficiencies appropriate conditions have been included in the recommendation requiring remedial works to be undertaken and to ensure that the dam is completed to a satisfactory standard.

Relevant Council Policies, Procedures and Codes

- Hawkesbury Local Environmental Plan (HLEP) 1989
- Draft Hawkesbury Local Environmental Plan (HLEP) 2009.
- Sydney Regional Environmental Plan No 20 (SREP 20) - Hawkesbury Nepean River
- State Environmental Planning Policy No 44 (SEPP 44) - Koala Habitat Protection
- Hawkesbury Development Control Plan (HDCP) 2002
- Community Strategic Plan

Matters for Consideration under Section 79C of the Environmental Planning and Assessment Act 1979 (EP&A Act)

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

a. The provisions of any:

i. Environmental Planning Instrument:

Hawkesbury Local Environmental Plan (HLEP) 1989

The relevant clauses of Hawkesbury Local Environmental Plan 1989 are addressed below:

Clause 2 - Aims, objectives etc,

The proposed development is considered to be consistent with the general aims and objectives as outlined in Clause 2 of the HLEP 1989.

Clause 5 - Definitions

The proposed development is defined as a 'dam'. A 'Dam' means "*an artificial pond created by the erection of walls or excavation.*"

Clause 8 - Zones indicated on the map

The subject land is situated within Rural Living zone.

Clause 9 - Carrying out development

A 'Dam' is permissible with development consent within the Rural Living zone

Clause 9A - Zone Objectives

Clause 9A states that consent shall not be granted for a development unless, in the opinion of Council, the carrying out of the development is consistent with the objectives of the zone.

The objectives of Rural Living zone are as follows:

- (a) *to provide primarily for a rural residential lifestyle,*
- (b) *to enable identified agricultural land uses to continue in operation,*
- (c) *to minimise conflict with rural living land uses,*
- (d) *to ensure that agricultural activity is sustainable,*
- (e) *to provide for rural residential development on former agricultural land if the land has been remediated,*
- (f) *to preserve the rural landscape character of the area by controlling the choice and colour of building materials and the position of buildings, access roads and landscaping,*
- (g) *to allow for agricultural land uses that are ancillary to an approved rural residential land use that will not have significant adverse environmental effects or conflict with other land uses in the locality,*
- (h) *to ensure that development occurs in a manner:*
 - (i) *that does not have a significant adverse effect on water catchments, including surface and groundwater quality and flows, land surface conditions and important ecosystems such as streams and wetlands, and*
 - (ii) *that satisfies best practice guidelines and best management practices,*
- (l) *to prevent the establishment of traffic generating development along main and arterial roads,*
- (j) *to ensure that development does not create unreasonable economic demands for the provision or extension of public amenities or services.*

Comments:

It is considered that the proposal is consistent with the objectives of the zone as:

- It is considered that the proposed development will not create any unreasonable rural land use conflicts, given the nature and use of adjoining properties.
- The proposed development involves a dam which is a feature typical of the surrounding area.
- The proposed development will not have any adverse impact on river valley systems, scenic corridors, wooded ridges, escarpments, environmentally sensitive areas and other local features of scenic quality.
- The proposal is consistent with the rural character of the locality and it is therefore considered that there will be no negative impact on local features of scenic significance.
- The proposal will not create unreasonable economic demands for the provision or extension of public amenities or services.
- The proposed development will preserve the rural landscape character.

Clause 25 - Development on flood liable land

The proposed development site is below PMF but above the 1-in-100 year flood level. The proposal will not have any adverse impact upon the flood regime associated with the area.

Clause 27 - Heritage items

The subject lot is not identified as a heritage item as listed in Schedule 1 of HLEP1989.

Clause 28 - Development in the vicinity of heritage items

The subject lot is not located within the vicinity of any heritage item as identified under Schedule 1 of HLEP 1989.

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

The aim of the policy is to protect the environment of the Hawkesbury-Nepean River system by ensuring the impacts of future land use are considered in the regional context. General and specific matters for consideration, specific planning policies and recommended strategies and development controls, which are to be considered in the assessment of development applications, are included in the policy.

Comments:

The subject land falls within the boundary of SREP 20 and is situated within a scenic corridor of significance beyond the region. The proposal meets the overall aims of the plan in that it is consistent with the specific planning policies which apply to the proposal. Clauses 6(1), 6(2), 6(3), 6(4), 6(6) and 6(7) of the Plan apply to the proposal and have been considered as detailed in the table below:

ORDINARY MEETING**Reports of Committees**

Specific Planning Policies and Recommended Strategies	Compliance	Comment
Total Catchment Management	Yes	The proposal is unlikely to result in any significant adverse environmental impacts on any downstream local government areas.
Environmentally Sensitive Areas	Yes	It is unlikely that the proposal will have an impact on the water table or result in the formation of acid sulphate soils.
Water Quality	Yes	It is predicted that the proposal will have a positive benefit on the quality of water entering the adjacent watercourse as the dam will reduce the amount of pollution entering the river system by retention of nutrients from the run-off. Soil and sediment erosion controls will be required to be installed and maintained as per a condition of consent.
Water Quantity	Yes	The installation of the dam will reduce the quantity of water exiting the site. It is considered that the overall impact of the proposal upon the river system would be minimal.
Flora and Fauna	Yes	The proposed works are in an area previously cleared. It is considered that there will be no significant adverse impact on flora and fauna species, populations or habitats.
Riverine Scenic Quality	Yes	The proposal is considered to be consistent with the landscape character as described in the Scenic Quality Study.

Based on the above it is considered that the proposed development is consistent with Sydney Regional Environmental Planning Policy 20.

State Environmental Planning Policy 44 - Koala Habitat Protection (SEPP 44)

The aim of the policy is to encourage the proper conservation and management of areas of natural vegetation that provide habitat for koalas to ensure a permanent free-living population over their present range and reverse the current trend of koala population decline.

Comments:

Having regards to the requirements of SEPP No. 44 it is noted that the proposal will not include the removal of any significant stands of vegetation or disturbance of any natural habitats which would be considered as 'core koala habitat'. The area proposed for this development has been currently used for the same purpose and it is considered that the proposed development will not impact any potential core koala habitat areas.

ii. Draft Environmental Planning Instrument that is or has been placed on exhibition and details of which have been notified to Council:

Draft Hawkesbury Local Environmental Plan 2009 was exhibited from 5 February to 12 April 2010. The subject lot is identified as being within proposed Zone RU4 (Rural Small holding) under Draft HLEP 2009. The proposed development is best defined as *Water bodies (artificial)* and is permissible within the RU4 (Rural Small holding) zone with development consent.

iii. Development Control Plan applying to the land:

Hawkesbury Development Control Plan (HDCP) 2002

Part A Chapter 2 - General Information

It is considered that the subject application provides adequate information for the assessment of the proposal and therefore complies with this chapter.

Part A Chapter 3 - Notification

The application was notified to adjacent property owners in accordance with HDCP 2002. No submissions were received in response to the notification of the application.

Part C Chapter 4 - Erosion and Sediment

Appropriate conditions addressing erosion and sediment control are included in the recommendation of this report.

Part D Chapter 6 - Dam Construction

The objectives of this Chapter are to:

- (a) *ensure that any dam proposed is compatible with the existing natural and rural character of the site and the area generally.*
- (b) *ensure that no adverse impact results on local drainage or floodway characteristics in a catchment from dam construction;*
- (c) *ensure that appropriate environmental measures are applied to dam construction sites in order to conserve the landscape and protect the surrounding environment;*
- (d) *establish, maintain and promote appropriate site rehabilitation or revegetation techniques for dam construction;*
- (e) *maintain and enhance the visual and scenic quality of the locality by controlling form, bulk and scale to complement the environment and have minimum environmental impact;*
- (f) *ensure no adverse effects on adjoining properties (drainage, structure, stability, fences);*
- (g) *protect, restore and maintain the local non-urban character of areas and ensure viable agricultural land is sustained;*
- (h) *protect the health and safety of human residents;*
- (i) *maintain water quality within the Hawkesbury Nepean Catchment area; and*
- (j) *ensure that degradation of the environment does not occur from acid sulphate soils, sodic soil or saline soils.*

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Comments:

It is considered that the proposal is consistent with the objectives of this Chapter as the development is distinctively agricultural in nature and therefore compatible with the existing scenic character of the locality. The proposed earthworks will not change the floodway characteristics of the area and the proposed dam will improve the quality of water discharged to adjacent watercourses by allowing sediment to settle within the structure.

The following table provides an assessment of the dam as currently constructed against the design standards contained in the Dam Construction Chapter:

Element	Rules	Provides	Complies
Crest	(a) The width of the dam crest is to be a minimum of 3 metres for a 3 metre high dam wall. The crest should increase in width 0.5 metre for every metre above a 3 metre high dam.	Crest width range from 2m to 3m. No dam wall is proposed, the dam will sit below the natural ground level. A bund wall will be constructed around the dam to direct surface water flow into the dams.	No Appropriate condition included
Freeboard	(a) A minimum of 1 metre is to be established for freeboard. This should increase by 10% for every metre over a 3 metre high wall.	Approximately 0.5m	No Appropriate condition included requiring minimum 1.0 freeboard
Embankments	A soil with 25% clay content is ideal to form an impervious barrier. The following soil types should not be used for dam construction: <ul style="list-style-type: none"> • Sand, • gravels, • organic • soils or • peat. Topsoil should be stripped and stockpiled from the excavation and wall areas before the dam wall is constructed, with the stockpile located clear of any natural watercourse. There should be no excavation above high water mark.	Condition Complies No natural watercourses run through the subject property. Suitable	Yes Yes Yes

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Element	Rules	Provides	Complies
	<p>The embankment is to be completed with at least 100 millimetres of top soil. It is to be planted with a good holding grass such as couch. Trees or shrubs are not to be planted on the embankment as roots may provide seepage paths for water.</p> <p>The slope of the upstream embankment batters should be no steeper than the ratio of 3.0 horizontal to 1.0 vertical, while the downstream batter should be no steeper than 2.5 horizontal to 1.0 vertical.</p>	<p>conditions of consent applied.</p> <p>Upstream 1:1.2 to 1:1.5</p> <p>Downstream 1.1.5 to 1:2</p>	<p>See Condition</p> <p>No</p> <p>No</p> <p>Considered satisfactory given nature of structure</p>
Spillway	<p>a) The spillway should be a minimum of 3 metres in width increasing in size dependent on the size of the dam and catchment. Generally, spillways are to be designed so as not to overflow more than half the depth of the freeboard.</p> <p>b) The width of the outlet is not to be less than the inlet width. The spillway also is not to direct flows onto the downstream toe. The spillway area should be grassed, stable and able to accept runoff flow. In some instances it may be necessary to turf the spillway area. The spillway cut batter should have a maximum steepness of 2:5:1.</p> <p>c) A small diameter (100 millimetres) pipe is required where spring flows or small flows of long duration occur to ensure that the spillway does not erode.</p> <p>d) Where dams are to be constructed in gullies or water courses, a diversion weir is to be constructed up stream of the dam. The weir is to incorporate two pipes 200 millimetres in diameter.</p>	<p>Less than 1m</p> <p>NA</p> <p>NA</p> <p>NA</p>	<p>No</p> <p>Appropriate condition included requiring minimum of 3m</p> <p>NA</p> <p>NA</p> <p>NA</p>

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Element	Rules	Provides	Complies
Cut-Off Trench	(a) The cut-off trench is to be constructed along the entire length of the embankment at a minimum width of 2 metres. The trench should be excavated at least 1 metre into impervious soil and backfilled with impervious material.	NA	NA
Vegetation Filters and Tree Planting	a) A gate should be provided in the fence so that the filter area can be renovated by light grazing during rapid growth seasons. Prolonged grazing in dam catchments has potential to cause algal and weed growth in the dam due to the introduction of nutrients from manure.	NA	NA
Hydrological Aspects	a) Clay lining and limiting depths of dam construction to above the water table are consent requirements to minimise the threat of contamination to groundwater. b) All excavations which intercept the groundwater are required to be licensed by Department of Land and Water Conservation under the Water Act.	No Proposal does not seek to intercept groundwater	Appropriate condition included NA
Dam Construction	a) The dam wall is to be adequately compacted by track rolling or a sheet foot roller or similar in layers no greater than 150 millimetres. b) Erosion and sediment control devices are to be installed and maintained to ensure that there is no increase in downstream levels of nutrients, litter, vegetation debris or other water borne pollutants.	Dam wall not proposed.	Batters and bund walls will be required to be compacted as a condition of consent. Appropriate condition included

Comment

It was observed that the quality of construction work undertaken on the subject site is not in conformity with the submitted plan or the design standards contained in the Development Control Plan as detailed in the table above. In this regard the recommendation contains suitable conditions to address these concerns. It is noted that the subject site is able to accommodate the upgrade required for the dam to satisfactorily address the above provisions.

Maximum Harvestable Right

The Maximum Harvestable Right criteria apply in this instance given the size of the subject land and the proposed capacity of the dam (2.85ML). Licences are not required for farm dams with a volume of up to one (1) mega litre on small properties on land that were approved for subdivision prior to 1 January 1999. The proposed dam exceeds the harvestable right, hence a licence will be required from NSW Office of Water to authorise storage capacity in excess of the Harvestable Right.

The NSW Office of Water is prepared to grant a new surface water licence and has provided its General Terms of Approval.

Subject to NSW Office of Water Licence and additional works that have been included as recommended conditions of consent; it is considered that the dam will satisfy the design construction requirement for an earth dam. The dam proposal is consistent with the aims, objectives and rules of this Chapter.

b. The likely impacts of that development, including environmental impacts on both the natural and built environments and the social and economic impacts in the locality:

It is considered unlikely that the proposed development will have any adverse environmental or social impacts on the locality. The proposal will promote the use of the land for agricultural purposes.

Consideration has been given to the relevant matters identified under s79C (1) (b) of the EP&A Act as shown below:

Context and Setting

The proposal is compatible with the character of the locality. The proposal is compatible with the existing use of the locality.

Access, Transport and Traffic

The proposal would have no long term impact on traffic movements within the locality.

Water

It is considered that the proposed development would improve the quality of water discharged to adjacent watercourse by allowing sediment to collect within the confines of the dam.

Soils

Erosion and sedimentation controls will be utilised during construction. Once the dam has been constructed it will act as sediment pond and aid in controlling sediments exiting the subject property.

Air and Noise

There will be a short term increase in air (dust and exhaust) and noise emissions as a result of construction and trucks removing the soil from the site. However, given the short term nature of the work it is considered that the air and noise impacts will not be significant.

Waste

Appropriate conditions have been recommended in the consent to ensure that site is to be kept tidy and maintained to the satisfaction of Council during the construction period.

Construction

In order to protect and mitigate against the impact of ongoing land disturbance and possible land degradation it is considered that a reasonable time for completion would be 12 months from the date

of commencement. The recommendation of this report includes conditions to manage construction works to ensure that disruption to the locality is minimised.

Cumulative Impact

The proposed development is compatible with adjoining land uses, the objectives of the zone and requirements of Hawkesbury DCP therefore no negative cumulative impact is foreseen.

c. Suitability of the site for the development:

The site is suitable for this proposal subject to the implementation of the conditions outlined in the recommendation to this report.

d. Any submissions made in accordance with the Act or the Regulations:

No submissions were received during public notification of the proposal.

e. The Public Interest:

The proposed development is considered to be in the public interest based on the following:

- The proposal is consistent with the objectives and requirements of HLEP 1989, SREP No. 20 and SEPP 44;
- The proposal complies with the objectives and requirements of the HDGP 2002
- The proposed development is not expected to adversely impact on the amenity of the locality or the surrounding environment

Conclusion:

The proposal has been assessed having regard to the provisions contained in Hawkesbury Local Environmental Plan 1989, Draft Hawkesbury Local Environmental Plan 2009, Development Control Plan 2002 and other relevant planning policies. The subject application seeking retrospective approval for a dam having a total capacity of 2.84 mega litres is recommended for approval subject to the implementation of conditions outlined in this report.

Planning Decision

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

RECOMMENDATION:

That Development Application No DA0068/10 at Lot 287 DP 752050, 32 Scheyville Road OAKVILLE seeking retrospective approval for a dam be approved subject to the following conditions:

NSW Office of Water

***Conditions for General Terms of Approval
Water Act (1912) - Surface Water Licence***

In accordance with the Environmental Planning and Assessment Act 1979 and Regulation 1994 (as amended) the NOW has an approval role in relation to Development Application DA0068/10 Hawkesbury City Council.

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Based on details disclosed in the development application, a licence under Part 2 of the Water Act (1912) is required to licence the proposed 2.84 megalitre dam for the conservation of water and water supply for domestic purposes on Lot 287 DP 752020, Parish of Pitt Town, County of Cumberland.

Pursuant to Part 2 of the Water Act, the NOW, having reviewed the documentation associated with the Development Application, proposes to grant an approval to DA0068/10 (as presented). The general terms of approval are set out below:

1. General and Administrative Issues

- 1.1. The location of the dam as shown on a plan retained in the office of the NSW Office of Water shall not be altered. Please be advised that any installation of an additional dam and/or enlargement of an existing dam may require further local council approval and/or an amended licence from the NSW Office of Water.
- 1.2. Subject to any access or flow condition contained in the licence, the holder may divert part or all of the stored water from the licensed work.
- 1.3. The applicant shall not allow any tailwater drainage to discharge into or onto:
 - Any adjoining public or crown road;
 - Any other persons land;
 - Any Crown Land;
 - Any river, creek or watercourse;
 - Any ground water aquifer;
 - Any area of native vegetation as described in the Native Vegetation Conservation Act 1997;
 - Any wetlands of environmental significance.
- 1.4. Your attention is particularly drawn to the provisions of condition (1.3) regarding disposal of drainage waters. The discharge of polluted waters into a river or lake otherwise than in accordance with the conditions of a licence under the Protection of the Environment Operations Act may render the offender subject to prosecution and penalty under the Act. Therefore where an approved drainage disposal system involves the possible discharge of drainage water into a river or lake, a license may be required under the Protection of the Environment Operations act to authorise such discharge.
- 1.5. The existing profile of the channel and bank of any watercourse or drainage depression must not be disturbed any more than is necessary in order to site and maintain the authorised work. Any area that is disturbed when carrying out such work shall be stabilised and maintained by vegetation cover, stone pitching or any other approved material as directed and to this Department's satisfaction so as to prevent the occurrence of erosion.
- 1.6. Works used for the purpose of conveying, distributing or storing water taken by means of the authorised work shall not be constructed or installed so as to obstruct the reasonable passage of floodwaters following into or from a river.
- 1.7. Works used for the purpose of conveying, distributing or storing water taken by means of the authorised work shall not be constructed or installed so as to obstruct the reasonable passage of floodwaters other than water to be impounded or obstructed.
- 1.8. The pumping and ancillary equipment and pump site shall be, at all times, properly secured and/or sealed so as to prevent any leakage of petroleum based products and/or noxious material from entering any river or lake. Typically, a bunding wall of hay bales or other approved material shall be installed around the pumping plant to avoid contamination of any river or lake through spills or leaks of oils, fuels or greases.

- 1.9. The existing profile of the channel and bank of any watercourse or drainage depression must not be disturbed any more than is necessary in order to site and maintain the authorised work. Any area that is disturbed when carrying out such work shall be stabilised and maintained by vegetation cover, stone pitching or any other approved material as directed and to this department's satisfaction so as to prevent the occurrence of erosion.
- 1.10. Any drainage channels or cross banks associated with the authorised works or access roads to or from that work shall have installed and maintained a bunding wall of hay bales or other approved material, to prevent siltation reaching any river or lake.
- 1.11. The work shall be constructed and maintained in such manner as will ensure its safety and as will preclude the possibility of damage being occasioned by it, or resulting from it, to any public or private interest.

2. Conditions Specific to DA0068/10

- 2.1. All inflow and outflow drainage lines shall be maintained with sufficient vegetation to ensure optimum quality of water entering the dam.
- 2.2. The level of the bywash crest shall be fixed at not higher than RL 99.38 (Ref Plan No: 2077) and particulars of which are retained in the NSW Office of Water.
- 2.3. The bywash of the dam must be stabilised and vegetated within 3 months of the issue of the license.

3. Formal Application Issues

- 3.1. Upon receipt of an approved development application from Hawkesbury City Council, NOW will issue a new license under Section 10 of the Water Act, 1912.
- 3.2. A licence under Part 2 of the Water Act would generally fall due for renewal every five years.

Hawkesbury City Council Conditions

General

1. The development shall take place in accordance with the stamped plans, specifications and accompanying documentation submitted with the application as amended in red and as modified by the following conditions.
2. All site works shall be carried out in accordance with the Plan. Implementation of the Plan shall be supervised by an appropriately qualified person.
3. Construction of the dam and filling are not to commence until three (3) copies of the plans and specifications of the proposed works are submitted to and approved by the Director City Planning or an Accredited Certifier.
4. Details of any fill material removed from the site shall be submitted with the engineering plans. Details to include quantities and disposal sites.

Prior to Commencement of Works

5. The applicant shall advise Council of the name, address and contact number of the Principal Certifier, in accordance with Section 81A 2(b) of the Environmental Planning and Assessment Act, 1979.
6. At least two days prior to commencement of works, notice is to be given to Hawkesbury City Council, in accordance with the Environmental Planning and Assessment Regulation.

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7. A Copy of the Water Licence issued under the Water Act 1912 by the NSW Office of Water be submitted to the Principal Certifier prior to commencement of works.
8. The name and licence number of the contractor/builder who has been contracted to do or intends to do the work must be submitted to Council in writing by the owner prior to the commencement of any works relevant to this approval.
9. Payment of a Compliance Certificate inspection fee of \$520.00.

During Construction

10. All civil construction works required by this consent shall be in accordance with Hawkesbury Development Control Plan appendix E Civil Works Specification.
11. Erosion and sediment control devices are to be installed and maintained until the site is fully stabilised in accordance with the approved plan and Hawkesbury Development Control Plan chapter on Soil Erosion and Sedimentation.
12. Except as varied below, all dam rectification works shall be constructed in accordance with the Dam Construction Chapter of Hawkesbury Development Control Plan.
13. A minimum 1 metre freeboard is to be established.
14. In establishing the freeboard the by wash (spillway) is to be widened to 3 metres and graded at 1% away from the dam. Erosion and sediment control is to be maintained in place.
15. The existing embankment is to be graded level for its full length. Compaction shall be applied by track rolling in layers not exceeding 300mm.
16. A minimum of 200mm of suitable topsoil is to be spread over the top of the embankment and its adjoining downstream face. The works are to be stabilised with a suitable holding grass.
17. Erosion and sediment control is to be maintained in place until the site is stabilised.
18. Confirmation of vertical control (final top of wall and by wash levels) is to be verified by submission of a land survey prepared by a registered surveyor.

Prior to Issue of a Compliance Certificate

19. A works as executed plan shall be submitted to Council on completion of works. The plan shall include the location of the constructed dam in relation to property boundaries.
20. The structural adequacy of the dam and spillway capacity is to be certified by a suitably qualified and experienced engineer.

Use of the Development

21. The development shall be limited to the area shown on the submitted plans.
22. Trees and shrubs are to be kept clear of the dam wall at all times.

Advisory Notes

- **** Non-compliance with any condition of this development consent may result in a penalty notice being issued by Council.

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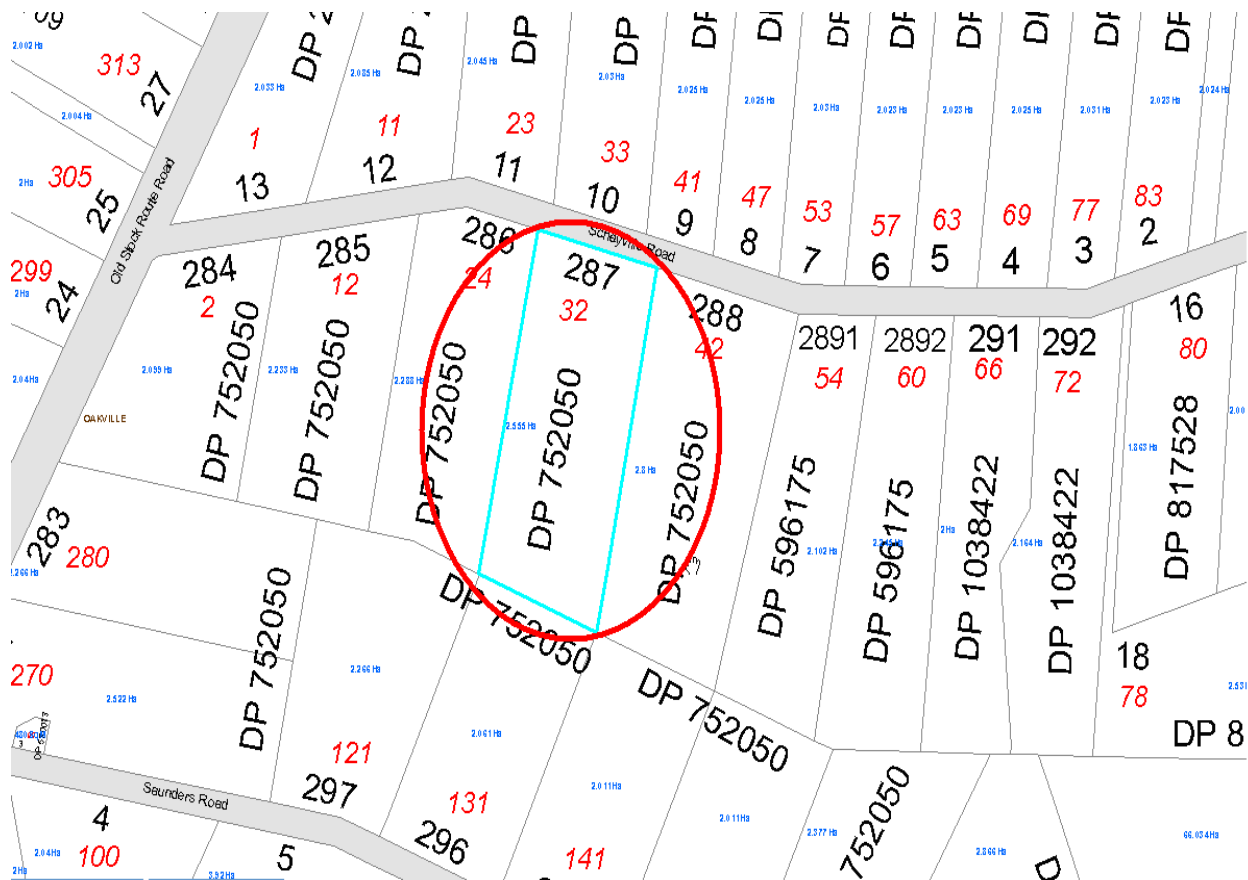
- **** The applicant shall make themselves aware of any User Restriction, Easements and Covenants to this property and shall comply with the requirements of any Section 88B Instrument relevant to the property in order to prevent the possibility of legal proceedings against them.
- **** Should any aboriginal site or relic be disturbed or uncovered during the construction of this development, all work should cease and the National Parks and Wildlife Service consulted. Any person who knowingly disturbs an aboriginal site or relic is liable to prosecution under the National Parks and Wildlife Act 1974.
- **** The developer is responsible for all costs associated with any alteration, relocation or enlargement to public utilities whether caused directly or indirectly by this proposed subdivision. Such utilities include water, sewerage, drainage, power, communication, footways, kerb and gutter.

ATTACHMENTS:

- AT - 1** Locality Plan
AT - 2 Aerial Photographs
AT - 3 Plan of proposed dam

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

AT - 1 Locality Plan

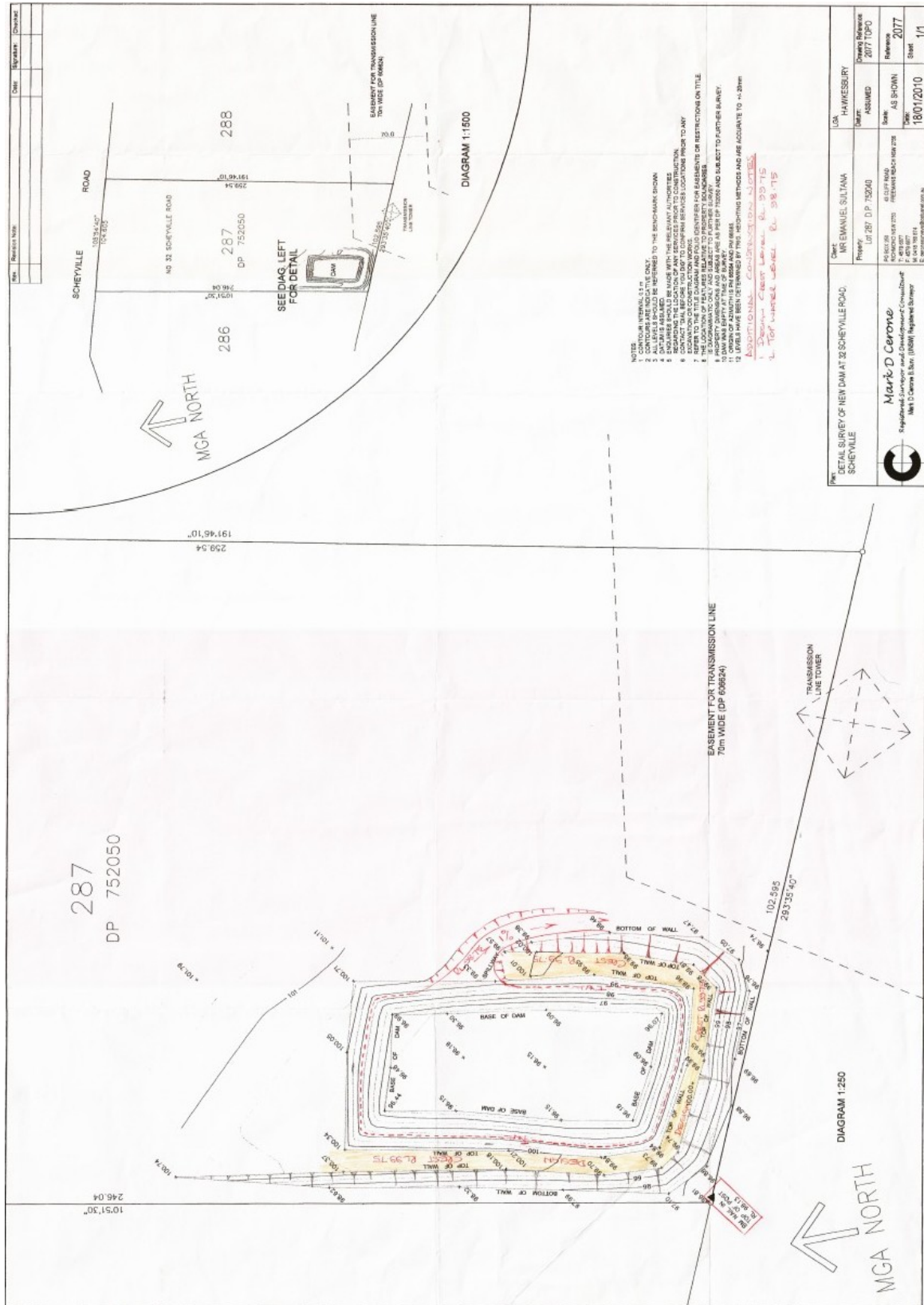


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AT - 2 Aerial Photograph



AT - 3 Plan of Proposed Dam



oooO END OF REPORT Oooo

SUPPORT SERVICES

Item: 204 SS - Code of Meeting Practice - Questions Without Notice - (95496, 79337)

Previous Item: 107, Ordinary (25 May 2010)
 11, Ordinary (2 February 2010)
 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:

Executive Summary

Council adopted a revised Code of Meeting Practice on 29 September 2009 which became effective from 10 November 2009. At the time, the review highlighted an apparent inconsistency between Council's adopted Code and the Local Government Act 1993 (LGA) and its Regulations in relation to the agenda item, for Council's Ordinary Meetings, "Questions Without Notice". Following extensive deliberations of advice received, Council at its meeting of 25 May 2010 resolved to place on public exhibition a hybrid practice consistent with the LGA and its Regulations allowing Councillors to raise questions at a Council Meeting as suggested by the Division of Local Government, Department of Premier and Cabinet (known as "DLG"). No submissions have been received as a result of the public exhibition of the proposed changes. These are recommended for approval along with changes to the Code to meet statutory changes in relation to the access to information regime for local government which commenced on 1 July 2010.

Consultation

Prior to adopting an amended Code of Meeting Practice, unless the amendments are not substantial, Council is required to prepare a Draft Code of Meeting Practice for public exhibition (Section 361 of the LGA). The exhibition period must not be less than 28 days.

The proposed amendments to the Code of Meeting Practice were placed on public exhibition as required by the LGA. No submissions were received. Other proposed amendments as a result of statutory changes to the access to information regime do not require exhibition.

Background

Following a review process, Council adopted a revised Code of Meeting Practice on 29 September 2009 which became effective from 10 November 2009. As a result of the review process, some debate was generated as to the legalities of having "Questions Without Notice" as an agenda item for Council's Ordinary Meetings as advice from the DLG was that this was inconsistent with the LGA.

Council considered a further report on this matter on 25 May 2010 in which it was noted that in light of the various professional advices received by Council, it was clear that even if Council did not delete the provision from the Code, the operation of Section 360 of the LGA would have that effect. As such Council was prevented from including "Questions Without Notice" in its Code of Meeting Practice. A copy of the report considered by Council on 25 May 2010 is attached to this report as Attachment 1.

Council considered a suggestion from the DLG to introduce an agenda item "Questions for Next Meeting" and as such resolved to publicly exhibit the following proposed amendments to the Code being:

- Deleting reference to "Questions Without Notice".

- The inclusion of new clause 3.3.12 titled "Questions For Next Meeting" reading as follows:

"3.3.12 Questions For Next Meeting"

1. *At all Council meetings, each Councillor may ask questions for the next Council meeting under the segment of the business paper designated for that purpose. The Mayor or Chairperson of the meeting may exercise discretion in limiting questions or ruling any question out of order.*
 2. *Questions for the next meeting should relate to questions concerning items not on the business paper of the Meeting where the question is raised.*
 3. *The chairperson must not permit discussion or any reply to a question under this clause.*
 4. *Councillor questions for the next meeting and responses shall be included on the next Council Meeting's business paper or, if this is not possible, the one following the next or an explanation given as to the reasons for delay and anticipated time of final response.*
 5. *These questions and subsequent reports responding to the questions are not subject to discussion, debate or public address at the meeting asked and/or answered.*
 6. *This clause does not apply to an extraordinary meeting of the Council.*
 7. *Nothing in this clause affects questions being asked, with the leave of the chairperson, relevant to any matter under discussion at a meeting."*
- A consequential amendment to the order of business for Ordinary Meetings whereby Item 12 of Clause 2.3.6 - "Order of Business" would be amended to read "Questions For Next Meeting" in lieu of "Questions Without Notice".

The adoption of these changes would mean that the last agenda item of the Ordinary Council Meeting prior to reports proposed to be discussed in Confidential Session, would have Councillors ask questions as is now the case noting that there will be no responses to those questions until the following meeting if possible.

No public submissions were received by Council during the public exhibition process.

During the public exhibition process of the proposed amendments, Section 12 of the LGA and the Freedom of Information Act were repealed and the Government Information (Public Access) Act 2009 become effective from 1 July 2010. These statutory changes to the access to information regime requires consequential changes to Council's Code of Meeting Practice by the deletion of the current Annexure B "Access to Information" and deletion of Section 10.5 and its sub sections of Annexure D "Open Meetings Guidelines" as these relate to the provisions of Section 12. The Code has been renumbered in light of those amendments. As these amendments are statutory based the public exhibition of such amendments are not necessary nor recommended.

In summary, the public exhibition of the revised Code of Meeting Practice did not generate any public submissions. Accordingly the amended Code of Meeting Practice as attached as Attachment 2 containing the exhibited changes and the statutory changes is recommended for adoption.

Conformance to Community 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 (or is a nominated) strategy in the Community Strategic Plan being:
- Have ongoing engagement and communication with our community, governments and industries.

Financial Implications

No financial implications applicable to this report.

RECOMMENDATION:

That:

1. The Code of Meeting Practice be amended as follows:
 - a. Delete Annexure B "Access to Information" and renumber Annexure C "Pecuniary Interests" as Annexure B and make the associated reference changes in the Code.
 - b. Delete Section 10.5 and its subsections of Annexure D "Open Meetings Guidelines" and renumber Annexure D as Annexure C and make the associated reference changes in the Code.
 - c. Delete reference to Questions Without Notice as follows:
 - i. Delete sub clause 4) (Tabling of Documents During Question Time) of Clause 2.3.4.
 - ii. Delete Item 12 (Councillors' Questions Without Notice) of Clause 2.3.6 - Order of Business.
 - d. Insert reference to Questions For Next Meeting as follows:
 - i. Add Clause 3.3.12 as follows:

"3.3.12 Questions For Next Meeting

 1. *At all Council meetings, each Councillor may ask questions for the next Council meeting under the segment of the business paper designated for that purpose. The Mayor or Chairperson of the meeting may exercise discretion in limiting questions or ruling any question out of order.*
 2. *Questions for the next meeting should relate to questions concerning items not on the business paper of the Meeting where the question is raised.*
 3. *The chairperson must not permit discussion or any reply to a question under this clause.*
 4. *Councillor questions for the next meeting and responses shall be included on the next Council Meeting's business paper or, if this is not possible, the one following the next or an explanation given as to the reasons for delay and anticipated time of final response.*
 5. *These questions and subsequent reports responding to the questions are not subject to discussion, debate or public address at the meeting asked and/or answered.*
 6. *This clause does not apply to an extraordinary meeting of the Council.*
 7. *Nothing in this clause affects questions being asked, with the leave of the chairperson, relevant to any matter under discussion at a meeting."*
 - ii. Reword Item 12 of Clause 2.3.6 - "Order of Business" to read "Questions For Next Meeting" in lieu of "Questions Without Notice".
2. The amended Code of Meeting Practice as attached as Attachment 2 be adopted from the date of this meeting.

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ATTACHMENTS:

- AT - 1** Report to Council of 25 May 2010: SS - Code of Meeting Practice - Questions Without Notice - (79337)
- AT - 2** Draft Revised Code of Meeting Practice - (*Distributed under separate cover*)

ORDINARY MEETING
Reports of Committees

AT - 1 Report to Council of 25 May 2010: SS - Code of Meeting Practice - Questions Without Notice - (79337)

ITEM: Business Paper - Ordinary Meeting Agenda - 31 August 2010

Previous Item: 11, Ordinary (2 February 2010)
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:

Executive Summary

Council adopted a revised Code of Meeting Practice on 29 September 2009 which became effective from 10 November 2009. The review highlighted an apparent inconsistency between Council's adopted Code and the Local Government Act (LGA) and its Regulations in relation to the agenda item, for Council's Ordinary Meetings, "Questions Without Notice". Council, following legal advice, resolved to make representations to retain this practice. The Division of Local Government, Department of Premier and Cabinet (DLG) has responded confirming that "Questions Without Notice" is inconsistent with the Regulations and that the LGA prevents Council from including it in its Code. In light of the advice, this report recommends a hybrid practice consistent with the LGA and its Regulations allowing Councillors to raise questions at a Council Meeting as suggested by the DLG.

Consultation

The issues raised in this report concern matters which do not require community consultation under Council's Community Engagement Policy. However, prior to adopting an amended Code of Meeting Practice, unless the amendments are not substantial, Council is required to prepare a Draft Code of Meeting Practice for public exhibition (Section 361 of the LGA). The exhibition period must not be less than 28 days.

In this regard, the proposed amendments are considered to be not substantial, as they reflect required legislative compliance, and public exhibition is not recommended.

Background

Following a review process, Council adopted a revised Code of Meeting Practice on 29 September 2009 which became effective from 10 November 2009. As a result of the review process, some debate was generated as to the legalities of having "Questions Without Notice" as an agenda item for Council's Ordinary Meetings following advice from the DLG that this was not consistent with the legislation.

Following consideration of amendments to the Council's Code of Meeting Practice, Council resolved to seek 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. Legal advice was sought on 29 October 2009 and received by letter dated 16 December 2009. The legal advice supported 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 Without 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

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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)."

Council considered the legal advice (see report attached as Attachment 1) and at its meeting of 2 February 2010 resolved as follows:

"That:

- 1. Reference to Questions Without Notice remain in Council's Code of Meeting Practice.*
- 2. Council make representations to the Director General of the Division of Local Government and the Minister for Local Government indicating that Council believes that Questions Without Notice should remain as part of Council's meeting practice and present details in support of such a position.*
- 3. Council seek support from its Local State Members of Parliament."*

In accordance with Council's resolution, representations were made to the various persons mentioned in the resolution.

By letter date 16 April 2010, the Chief Executive, Local Government (a Division of the Department of Premier and Cabinet) responded on behalf of the Minister for Local Government and the Director General of the Department of Premier and Cabinet. A copy of that letter is attached as Attachment 2 to this report.

The response maintains the view that having an agenda item "Questions Without Notice" is inconsistent with the provisions of the Local Government (General) Regulation 2005. It concludes with the following advice:

"As it is considered that having an agenda item "Questions Without Notice" is inconsistent with clause 241(1) of the Regulation (clause 1.4.11 of the Practice Note), it follows that section 360 of the Act would operate to prevent a council from including in its code of meeting practice a provision authorising such an agenda item for its meetings."

Suggested Approach

In light of the various professional advices received by Council on this matter, it is clear that "Questions Without Notice" irrespective of the arguments in support of such a practice, is, in essence, unlawful. Even if Council does not delete the provision from the Code, the operation of Section 360 of the LGA would have that effect. As such Council is prevented from including it in its Code of Meeting Practice.

Previously, it was reported that 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 (see 3.2.7 and 3.3.6 of Council's Code);
- Councillors can ask questions of the General Manager using the "questions with notice" provisions of the Code including appropriate notice (see 3.3.7 of Council's Code);
- 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 (see 2.2.3 (3) of Council's Code).

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

In view of the various advices now received it would appear that Council should now formally dispense with the Questions Without Notice item of the Council Meeting, and, as such, could resolve that the Code of Meeting Practice be amended as follows:

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- 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”.

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

The Departmental response offers a further suggestion and states:

“...Council may wish to consider adopting a practice where councillors, just prior to the end of an open council meeting, are given an opportunity to raise questions on the understanding that the answers will be provided at the following meeting.

Such questions should be recorded in the minutes of the meeting. This could be formalised by way of an agenda item “Questions for Next Meeting”. This would constitute notice of the question for the following meeting, provided that there is sufficient time between the two meetings to meet the notice requirements of clause 241 of the Regulation.”

In terms of the suggestion to introduce an agenda item “Questions for Next Meeting”, a practical way this would work would be for Councillors at the Council Meeting to raise their questions, these would be noted in the minutes and a formal response would be provided in the Business Paper for the next meeting, if timing permitted. In cases where business paper deadlines do not make it possible to have a formal written response to the questions at the next meeting, a response would be provided at the meeting after. In cases where a response cannot be provided within two meetings, a response outlining why the question cannot be answered and an anticipated timeframe for the response will be provided.

On the basis of Council’s previous discussions and resolution to lobby for the continuation of “Questions Without Notice”, it would seem that the DLG’s suggestion for an agenda item “Questions for Next Meeting” is a reasonable solution and is proposed. The proposal would be effected by the inclusion of a new clause 3.3.12 titled “Questions For Next Meeting” which would read as follows:

“3.3.12 Questions For Next Meeting

1. *At all Council meetings, each Councillor may ask questions for the next Council meeting under the segment of the business paper designated for that purpose. The Mayor or Chairperson of the meeting may exercise discretion in limiting questions or ruling any question out of order.*
2. *Questions for the next meeting should relate to questions concerning items not on the business paper of the Meeting where the question is raised.*
3. *The chairperson must not permit discussion or any reply to a question under this clause.*
4. *Councillor questions for the next meeting and responses shall be included on the next Council Meeting’s business paper or, if this is not possible, the one following the next or an explanation given as to the reasons for delay and anticipated time of final response.*
5. *These questions and subsequent reports responding to the questions are not subject to discussion, debate or public address at the meeting asked and/or answered.*
6. *This clause does not apply to an extraordinary meeting of the Council.*
7. *Nothing in this clause affects questions being asked, with the leave of the chairperson, relevant to any matter under discussion at a meeting.”*

A consequential amendment would be required to the order of business for Ordinary Meetings. In this regard it is proposed that Item 12 of Clause 2.3.6 - “Order of Business” would be amended to read “Questions For Next Meeting” in lieu of “Questions Without Notice”. This would mean that the last agenda item of the Ordinary Council Meeting prior to reports proposed to be discussed in Confidential Session, would have Councillors ask questions as is now the case with the exception that there will be no responses to those questions until the following meeting if possible.

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Section 362(2) of the LGA requires proposed amendments to Council's Code of Meeting Practice be publicly exhibited prior to adoption, unless the Council is of the opinion that the amendments are not substantial.

It is considered that the proposed amendments to the Code of Meeting Practice are not substantial as they mainly reflect amendments which are compulsory to bring it in line with the Regulations, and provide a minor variation to the Questions With Notice item.

It is, therefore, considered that public exhibition of the amended Code of Meeting Practice is not required.

Conformance to Community 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 (or is a nominated) strategy in the Community Strategic Plan being:

- Have ongoing engagement and communication with our community, governments and industries.

Financial Implications

No financial implications applicable to this report.

RECOMMENDATION:

That:

1. The Code of Meeting Practice be amended as follows:

- a. Delete reference to Questions Without Notice as follows:

- i. Delete sub clause 4) (Tabling of Documents During Question Time) of Clause 2.3.4.
- ii. Delete Item 12 (Councillors' Questions Without Notice) of Clause 2.3.6 - Order of Business.

- b. Insert reference to Questions For Next Meeting as follows:

- i. Add Clause 3.3.12 as follows:

“3.3.12 Questions For Next Meeting

1. *At all Council meetings, each Councillor may ask questions for the next Council meeting under the segment of the business paper designated for that purpose. The Mayor or Chairperson of the meeting may exercise discretion in limiting questions or ruling any question out of order.*
2. *Questions for the next meeting should relate to questions concerning items not on the business paper of the Meeting where the question is raised.*
3. *The chairperson must not permit discussion or any reply to a question under this clause.*
4. *Councillor questions for the next meeting and responses shall be included on the next Council Meeting's business paper or, if this is not possible, the one following the next or an explanation given as to the reasons for delay and anticipated time of final response.*
5. *These questions and subsequent reports responding to the questions are not subject to discussion, debate or public address at the meeting asked and/or answered.*

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6. *This clause does not apply to an extraordinary meeting of the Council.*
 7. *Nothing in this clause affects questions being asked, with the leave of the chairperson, relevant to any matter under discussion at a meeting."*
 - ii. Reword Item 12 of Clause 2.3.6 - "Order of Business" to read "Questions For Next Meeting" in lieu of "Questions Without Notice".
2. As the amendments to the Code of Meeting Practice are not substantial, the changes not be advertised and the amended Code of Meeting Practice be adopted from the date of this meeting.

ATTACHMENTS:

- AT - 1** Report to Council of 2 February 2010: SS - Code of Meeting Practice - Questions Without Notice - (79337)
- AT – 2** Response from the Department of Premier and Cabinet dated 16 April 2010.

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AT - 1 Report to Council of 2 February 2010: SS - Code of Meeting Practice - Questions Without Notice - (79337)

ITEM: Business Paper - Ordinary Meeting Agenda - 31 August 2010

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.

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:

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“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.*”

Funding

Not applicable.

ORDINARY MEETING
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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
Reports of Committees

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

Your Ref: Fausto Sut

The General Manager
Hawkesbury City Council
DX 8601 WINDSOR



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16 December 2009

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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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

16 December 2009

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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Re: Questions without Notice on Council Meeting Agenda

16 December 2009

(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

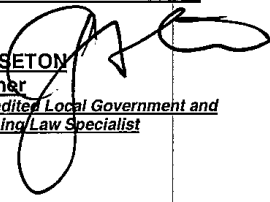
16 December 2009

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


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ORDINARY MEETING
Reports of Committees

AT – 2 Response from the Department of Premier and Cabinet dated 16 April 2010

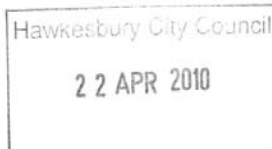


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OUR REFERENCE
YOUR REFERENCE
CONTACT

A208742
Mr P Jackson
Susan Hartley
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Mr Peter Jackson
General Manager
Hawkesbury City Council
PO Box 146
WINDSOR NSW 2756



Dear Mr Jackson

I am writing in reply to your letters of 26 February 2010 to the Minister for Local Government, the Hon Barbara Perry MP, and to the Director General of the Department of Premier and Cabinet, Mr Brendan O'Reilly, regarding the Division of Local Government's recently revised Meetings Practice Note. The Minister and the Director General of the Department of Premier and Cabinet have requested that I respond to you on their behalf.

I note that Council has requested a review of the *Local Government Act 1993*, the *Local Government (General) Regulation 2005*, and the *Meetings Practice Note* with a view to allowing questions without notice to be retained as an agenda item at council meetings.

I understand from your correspondence that, at its meeting of 2 February 2010, Council resolved to retain "Questions Without Notice" in its code of meetings practice and to make representations on this issue.

At the outset, I should mention that the *Meetings Practice Note* is designed to assist councils in running their meetings. It provides answers to questions commonly asked of the Division of Local Government in regard to meetings. While the answers do not constitute legal advice, they state what the Division of Local Government considers is better practice in the conduct of meetings within the legislative framework of the *Local Government Act 1993* and the *Local Government (General) Regulation 2005*.

For your information, following a comprehensive review of the *Meetings Practice Note* by the Division of Local Government, clause 1.4.11 was inserted into the Note. The Clause provides, among other things, that having an agenda item "questions without notice" is inconsistent with the provisions of the Regulation. The clause was inserted for the following reasons.

Clause 241(1) of the Regulation provides that a council may not transact business at a council meeting unless written notice of the business had been given within the required time and notice has been sent to all councillors. Certain exceptions are provided for in clauses 241(2) and 241(3).

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The purpose of clause 241(1) is to promote openness and transparency in local government in accordance with the objectives of the Act. The clause seeks to achieve this by ensuring that all councillors and the public will be aware of all matters that will be raised at each council meeting.

While Hawkesbury City Council's concerns have been noted, it is considered that the removal of an agenda item "Questions Without Notice" from a council's Code of Meetings Practice will not constrain councillors in asking questions at meetings nor will it stifle debate.

To the contrary, clause 1.4.11 of the Meetings Practice Note ensures that the process of asking questions is consistent across the State and that questions, when asked, are appropriately recorded and responded to.

The Meetings Practice Note provides, at clause 1.4.10, that it is acceptable to have as an agenda item "Questions on Notice". Such an item would allow councillors to provide questions to the General Manager for inclusion on the agenda for the next council meeting.

Further, Council may wish to consider adopting a practice where councillors, just prior to the end of an open council meeting, are given an opportunity to raise questions on the understanding that the answers will be provided at the following meeting.

Such questions should be recorded in the minutes of the meeting. This could be formalised by way of an agenda item "Questions for Next Meeting". This would constitute a means of giving notice of the question for the following meeting, provided that there is sufficient time between the two meetings to meet the notice requirements of clause 241 of the Regulation.

It is also important to clarify that councillors are always at liberty to ask a question without notice of another councillor or the General Manager about a matter on the meeting agenda during the debate of that matter.

Also, clause 1.4.11 of the Practice Note provides that if the subject matter of a question from a councillor is genuinely urgent and the question does not relate to an agenda item then, in those circumstances, the councillor could still raise the issue in accordance with clause 241(3) of the Regulation. This clause allows a matter to be raised before council, despite due notice not having been given, if:

- a motion is passed to have the matter brought before the meeting, and
- the matter proposed to be brought forward is ruled by the chairperson to be of great urgency.

As you are aware, the conduct of council meetings is governed by the Act, the Regulation and a council's own code of meeting practice. Section 360 of the Act provides that a council may adopt a code of meeting practice that incorporates those provisions of the Regulation that govern the conduct of meetings and that supplements the Regulation with provisions that are not inconsistent with them.

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As it is considered that having an agenda item "Questions Without Notice" is inconsistent with clause 241(1) of the Regulation (clause 1.4.11 of the Practice Note), it follows that section 360 of the Act would operate to prevent a council from including in its code of meeting practice a provision authorising such an agenda item for its meetings.

I trust this information is of assistance.

Yours sincerely



Ross Woodward
Chief Executive, Local Government
A Division of the Department of Premier and Cabinet

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ORDINARY MEETING
Reports of Committees



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